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Appropriations and Judiciary  
February 25, 2016

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The Committee on Appropriations and the Committee on Judiciary met on Thursday, February 25, 2016, in Room 1113 of the State Capitol for the purpose of conducting a public hearing on Department of Corrections' budget, 2014 master plan report, and 2015 strategic plan.

Appropriations Committee members 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. Judiciary Committee members present: Les Seiler, Chairperson; Colby Coash, Vice Chairperson; Ernie Chambers; Laura Ebke; Bob Krist; Adam Morfeld; Patty Pansing Brooks; and Matt Williams. Senators absent: None.

SENATOR SEILER: All right, folks. We're going to commence. The bewitching hour is here. This is a joint conference and hearing on the Department of Correctional Services budget. And would Scott Frakes please take his seat at the plank. Almost confused you with a senator there for a second. I'd like to thank you for coming, appreciate it.

SCOTT FRAKES: Are we ready?

SENATOR SEILER: Yep. Go ahead.

SCOTT FRAKES: (Exhibit 1) Thank you. Good afternoon, Chairman Seiler, Chairman Mello, members of the Judiciary Committee, Appropriations Committee, and Senator Schumacher. My name is Scott Frakes, spelled S-c-o-t F-r-a-k-e-s. I'm the director of the Nebraska Department of Correctional Services. I took over an organization that could be described as "in crisis." The systemic failures in the department's operations discovered in 2014 demonstrated there would be a long road ahead in rebuilding public trust and faith. A tremendous amount of work has been accomplished in the past year. I thank the staff from the newest correctional officers to the wardens to support staff for the flexibility, agility, and dedication they have shown during these challenging times. Without them, NDCS cannot succeed. They have my sincere thanks and appreciation. Based on recommendations from the LR424 Committee, I made several changes to key leadership positions. The new leadership brings diverse skills, experience, and a commitment to change how we do business. I recognize the importance of moving as quickly as

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possible. I also know transformation comes through a combination of tactical decisions, strategic planning, and being prepared to take advantage of opportunities as they arise. As we continue to pursue excellence, we must consider the organizational capacity for change while conducting the daily operations at each of our ten prisons and adult parole. I have to take a measured approach in determining what additional issues we can tackle at this point. Staff at all levels of the organization continue to put in long hours to accomplish the work needed. The strategic plan identifies many but not all of the initiatives currently underway. NDCS is establishing the tools we need to assess our population and allocate program resources based on risk and needs, evaluating the population in order to house by custody level and reorganizing facilities to house people more appropriately. Right person, right bed, right time. We're also using some simple but effective work processes to be responsive to reviews and audits which you can see from the TSCI Action Plan and the corrective action plan for the fiscal audit which are included in your packet. These documents provide the structure, measurements, and the documentation needed to ensure issues are addressed. Independent of LB605, I have partnered with the Council of State Governments to conduct an assessment of programming across our system. This review of clinical and nonclinical programs by the Justice Program Assessment will provide us with recommendations on how to achieve better results for individuals returning to our community. I am thankful for the groundwork already in place with the passage of LB605. It could not have happened without the cooperation of all three branches of government. The ongoing commitment of Speaker Hadley, Governor Ricketts, and Chief Justice Heavican to address the criminal justice system as a whole makes it possible for NDCS to move forward with transformation. The most prudent course of action is to allow LB605 to accomplish what it was crafted to do. As I have said in the past, I must have accurate information in order to make decisions regarding funding requests. What I know now is that we need to expand CCC-L and address our deficit needs, which is why I'm asking for \$30 million, roughly 15 percent of our General Fund budget, mid-biennium. It is not only about where people sleep; it's about where people live. My focus is on increasing core support services. I'm open to exploring options to increase program and treatment space, but we need to invest in the right approaches. The reason I could provide estimates for the CCC-L expansion at mid-biennium was because a program statement already existed and only needed modification. 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 the fall. A copy of the plan is in

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your packet. It is a living document that will continue to evolve in the years ahead. I won't go through it in great detail. I would like to highlight a few items for you. The strategic plan is the framework for transforming our agency. On the first page, we start with capacity, risk/needs assessment, a validated classification process, use of evidence-based practices, performance measurement, leadership development, community partnerships, and staff and inmate engagement. The second page tells the world who we are. It describes how we were created and the structure of the organization. It's the third page of the document that is the heart of our strategic plan, this first strategic plan. We're pursuing five leading goals that contribute to public safety. They are not all of the goals of the agency. They are leading goals. Those five leading goals: one team, one vision; transforming Corrections; transparent and accountable; collaborative community relationships; and a culture of reentry and rehabilitation. If you look on page 3, you'll see those five goals point to the top of the page. Accomplishing these five goals in addition to all the other work we do will lead to us accomplishing our mission to serve and protect the public. One of the initiatives for Nebraska is "Grow Nebraska." And one of the ways that we're going to do that is to improve public safety. Our mission to serve and protect the public directly contributes to improving public safety, achieve the goals, achieve our mission, do our part to improve public safety. To get to those leading goals, we've identified outcomes. It's not all the outcomes. These are 15 specific outcomes tied to this plan. We have many other outcomes that we'll be working on in the years ahead. So in the example of one team, one vision, we identified three specific outcomes that we're looking for: retaining employees, engaged employees, safe employees. To get there, we need to implement strategies. For each of these goals and the outcomes identified, we've identified six strategies--once again, not all the strategies that we'll use. In some cases, these may not be the right strategies to achieve the outcomes that we're looking for--living document, a living process. For one team, one vision and the outcomes that I just described, the strategies include doing things like reducing overtime, which will help with retaining employees; it will help with employee safety; definitely could help with engaging employees as well if they're rested and excited about being at the job instead of tired because they're working so much overtime. Our employee councils are just getting off the ground, excited about that. It's an opportunity to give staff at all levels of our organization, all levels of the facility a voice. And that's an important thing that we have not provided to our staff. All of the facilities are bringing to life their employee councils with the first meetings to be held by the middle of next month. We need reliable technology. We need to have systems that work

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correctly, that are the right tools to do the job, whether it's the radios that staff wear on their hips, the PC that sits on their desktop, the medical tools they need to do the work that they do. Reducing inmate idleness is another key one, contributes to...I believe it contributes easily to safe employees because we know if you keep inmates busy in pro social activities they have less time to engage in undesirable activities. So easy link to staff safety, but also in changing a culture where our prisons, in particular, are more pleasant to be in, to work in, it's going to contribute to engaging our employees, retaining our employees. How do you know the strategies work? How do we know that we reached the outcomes? You've got to have metrics. You've got to have measurements. So the green column for each of the goals, for each of the desired outcomes we've identified six measurements. Once again, even these 30 measurements on this page are not nearly all the things that we'll be measuring as a department. But these are measurements specific to the strategies and the outcomes that we're looking for, for the most part, things that we already have some ability to measure or we measure well. Some of these things are things that we still have to develop systems for. For one team, one vision, for the outcomes that we're looking for, we already measure vacancy rates, staff turnover. We can look at internal promotions, which to me is a good indication both of employee satisfaction and engaged employees, because if they're not engaged, they're not going to be interested in moving up in our organization. Our employee evaluations, a crucial piece, we have...the quality of our evaluations are not what they need to be. Even worse, our compliance rate is less than 70 percent last year, which is completely unacceptable. So there's an opportunity to get a strategy in and get employee evaluations up to the level of performance that they should be. Staff assaults, something we've measured for a long time, continue to measure directly links to safe employees. Unscheduled leave, again, high rate of unscheduled leave could mean that we've got an ill work force. It could also mean we've got a very disengaged, dissatisfied work force. And then the last one for a measurement on here is the workplace injuries. I think it's highly overlooked as in terms of the significance. While assaults from inmates do contribute to injuries to staff, staff safety, some of the worst things that I've seen in this business are workplace injuries--slips and falls, failure to follow good safety protocols, failure to use the lockout process for electric items. I could go down the list of some of the horrific things that I've seen happen to staff. So easy to identify some good strategies around workplace safety. We'll measure it. We know we can improve it. That simple adage of that which gets measured gets done. That's how page 3 works and you can apply that same process all the way down and we'll apply that across the work we

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do in the agency. We will use...because we will identify outcomes. We'll identify strategies to get to the outcomes. We'll use measurements to guide our work to determine whether or not we think the strategies are working and to determine whether or not we reach the outcomes we want. Each time we set a target and attain it, we'll reassess, we'll set new targets, and we'll move forward. And that's all the depth that I'm going to give to the strategic plan today, but thank you for giving me that opportunity. 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. Many of our facilities were constructed at a time when sufficient program 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. We need to invest in existing facilities, all of which need varying degrees of improvements to achieve the correct operating capacities. The CCC-L expansion 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, which is at a cost of \$69,000. This project addresses operational needs at the Diagnostic and Evaluation Center and at the Lincoln Correctional Center, and healthcare/behavioral health needs for the agency. This project has 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 today is at 159 percent of design capacity, which does not include individuals assigned to county jails. As the population decreases based on the impacts from LB605, I plan to house all inmates in NDCS facilities by the end of FY 2017--June 30, 2017. If you'll look at the graph that comes from the Council of State Governments document, you can see the projections. And hopefully I can find my copy. In the packet...and what it shows is that they projected, although the numbers are a little bit off in terms of where our population reached before LB605 was implemented, they were predicting we'd be closer to 5,200. We were about 5,400 last summer when LB605 went into effect. But the numbers in terms of percentage of reductions don't change by this. They anticipated...they tell us we...and I believe that over the course of five years we would see about a 1,000-person reduction; about 500 less people coming in than we would without LB605; and a reduction by about 500 of the existing population. And if you look at the chart, you'll notice that it's a pretty steep drop off. Again, I think it's a little ambitious in terms of when it was predicted to start. And this may be a reflection of a belief that the legislation would go into effect sooner than it did. I'm not sure about that piece. What's

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important to know is that in January 2015 we had 5,436 inmates in prison, jail, and RFP beds. And I include the 40 that were in RFP because they still belonged in the prison system. Today we have 5,394 in prison and jail beds. So for the...across calendar year 2015, our population basically stayed flat. You could say a tiny downward trend, but the numbers are too close to draw any more conclusion except to say that after several years of steady significant increase in population we went an entire year without an increase. LB605 goes into effect, our first people will be leaving the system next month, three of them that are going out on community supervision. So LB605 is coming to life. There are people that are not coming into prison that would have before August 29. There are others that are coming in for a much shorter time and then going out on community supervision. The vision is coming to life. So while this would tell me that by the summer of 2016 that I should already be down to...well, you could add 200 to 300 to this number, but I should be down below 5,000. That clearly needs to move forward a year. So I would say, though, by the summer of June 30, 2017, it is certainly reasonable to think that I'll be at a level of at least 5,250. That's the number I need to hit to not need the jail beds. I'd like to think we'll be significantly under 5,250 at that point. But the number I need to hit to not need jail beds, 5,250. So the predictions would be we should be much closer to 5,000, if not below. There are other specific areas of the mid-biennium request, which I have included in my written testimony. I'm not going to go through each of these individually. I would be happy to answer any questions you have. Thank you.

SENATOR SEILER: Questions? Senator Bolz.

SENATOR BOLZ: I'll get us started. Thank you, Director Frakes. This is getting to be a habit between our committees, but appreciate the information. And maybe this is a good start-off question I think before we get into some of the conversations about the longer term vision and plan. As a member of the special investigative committee, I remain concerned about some of the circumstances of incarceration and access to medical care, access to mental healthcare. And I would appreciate your comments, thoughts, and ideas about some of the pressures and challenges and specifically about how we might recruit and retain more mental health staff to meet those needs.

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SCOTT FRAKES: There is a sense of a growing need, so it's a good place to start both in terms of the health of our population, the physical health of our population, the aging of our population, and a sense that there's a growing sense of acuity. The overall mental health numbers don't seem to have changed a lot in terms of about 30 percent-some diagnosis. But there is this belief that maybe the acuity is changing as well, not going to base that on a scientific report, that's a sense. We know that we've got a large amount of resources...I know that we've got a large amount of resources dedicated within our agency for both physical healthcare needs, behavioral health/mental healthcare needs as well. Having brought in Dr. Jones, Dr. Wetzel, giving them the opportunity to really assess what we have to make sure that we're using our existing resources the best way that we should and get the best value and then also working on an assessment process that is a combination of diagnosis and functionality so that we can really kind of get a sense of what do we need moving forward. So that's a piece of it. In the next few months, I expect to get back some very solid information about what additional resources does this department need to address the needs more around the mental health/behavioral health, the physical health piece. It's just the ongoing issue right now just staffing for providers and for the nursing staff. So need a good assessment. Should there be a great sense of urgency around that? Absolutely. But then that's tempered by the fact that we still do struggle to fill positions. So identifying the need, being allocated additional resources doesn't solve the problem of where do you find the people to come do the work? We've been talking with UNO...UNMC, thank you. We've been talking with UNMC, had some great conversations with the chancellor and many of his staff. We've got a project that's underway. Dr. Wetzel is doing--I call it a psychiatric fellowship, may not be the right terminology, but it's what it's in my head, a forensic actually. So he'll be working with someone that's in their residency that wants to gain that forensic correctional background as well. It's a good first step in seeing what partnerships we can develop. We've also been working with them on a radiology contract, seeing what else we can do together--too good of a resource to not partner with. Looked at the BHECN proposal, that's another piece, would certainly be interested in supporting a proposal like that. I see it as an educational proposal rather than one that my department would bring forward as an appropriations request, always an interest in growing any of these opportunities. I think one value that could come from that is if Nebraska...Nebraska is already recognized for the work they do out at UNMC. So anything we can do to grow that relationship and grow that nationwide awareness of it makes it more likely that we'd bring more people in.

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SENATOR BOLZ: That's helpful. I just think as the time frames move forward with the facilities plans, some of these staffing plans, I think specifically--this is my opinion--but I think specifically using and leveraging social work in mental and behavioral health can ease pressure on the system as a whole. So I just think that's an important part. And my other second question and then I'll turn the mike over is when the LR34 Committee met this summer on this issue, Dr. Wetzel gave some very compelling testimony about some of the most intense cases on his caseload. And I still have some concern about sort of the relationship between the Department of Correctional Services and the Lincoln Regional Center. I think that that relationship could be strengthened and could be a part of the solution to the demands and the demand for staffing and programming. And I just wondered if you had a comment about how we could better leverage both facilities.

SCOTT FRAKES: So first of all I agree with you, have had the opportunity both to meet with Sheri Dawson several times and the leadership from LRC a couple of times. And then there's been more meetings besides just me being in the room, actually meetings with the right people in the room. We've seen I think a renewal in the ability to reach out and ask for review of cases. I know one of LRC's challenges though is bed space as well. And then there's also this issue of who should be civilly committed and that's, you know, a big issue. So we have people that are under our care that don't fit the traditional model who would fall under a mental health civil commitment. They have severe behavioral issues. They act in ways that most of us would look and go, that's not normal. Well, it's different than how you and I act, but it doesn't fall under that classic mental health diagnosis. So while the things they do seem very different and odd to us, they are willful decisions. And I think there's a lot more work that needs to be done around the science in determining what is the right answer for those with the extreme personality disorders, behavioral disorders, especially then when there's other diagnosis as well. So I just say all that to say I don't think it's...I don't feel any sense of resistance from LRC. I really don't. I feel that they're trying to meet a community need. They're struggling as well in terms of resources. And they also have standards and laws to follow so...which is part of why the proposal that I'm asking for funding for the programming statement is critical in our department. We do need to have the right setting to deal with this population--it's not a big population, but it's a measurable population--that needs different kinds of interventions, different approaches, and safe places to house these people with these severe behavioral issues.

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SENATOR BOLZ: Okay. I appreciate the response and I think there's some agreement that there's some potential to have a stronger partnership between LRC and DCS to address some of those most urgent cases. Thank you, Mr. Chairman.

SENATOR SEILER: Senator Coash.

SENATOR COASH: Thank you, Senator Seiler. Director, I'm just going to ask you what I hope will be straightforward questions and then it should be fairly easy to answer. Out of the \$30 million request, how much of that is for expanding CCC-L?

SCOTT FRAKES: Twenty-six-point-one million dollars.

SENATOR COASH: So the bulk of the request is for CCC-L. And we are...this is to rehab the current facility and expand it?

SCOTT FRAKES: That's a reasonable way to frame it is that it's...yeah.

SENATOR COASH: We're not building something from ground up. There's a current facility there.

SCOTT FRAKES: That's right. That's right. It is an expansion and it is a rehabilitation.

SENATOR COASH: And this is community corrections, that is the level of...

SCOTT FRAKES: Absolutely.

SENATOR COASH: Okay. How...with that \$26 million, how many more beds does that buy us? How much more capacity does that \$26 million give the community corrections program?

SCOTT FRAKES: It adds 160 beds in Lincoln. But I want to bring down Omaha by 12 beds for now to address the capacity issue, not completely but I think that Omaha, until we decide

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whether or not we have the ability to support additional community custody beds and if that's the right place, I would like to bring it down slightly. The net gain is 148 beds.

SENATOR COASH: A net gain of 148 beds on to how many currently?

SCOTT FRAKES: Sorry.

SENATOR COASH: The net gain.

SCOTT FRAKES: Oh, there's currently 560.

SENATOR COASH: Okay, so 560 plus another 100...

SCOTT FRAKES: 148.

SENATOR COASH: 148.

SCOTT FRAKES: So we're going to be 700 beds.

SENATOR COASH: Through the LB605 process and CSG process, we learned that or it was presented that a lot of the bottleneck to exit out of the system happened at that level, at the community corrections level. Would you agree with that?

SCOTT FRAKES: I would.

SENATOR COASH: What does this increased capacity do to that bottleneck? I mean, where do we...when we increase capacity there, where are we relieving pressure within the rest of the system?

SCOTT FRAKES: Well, unfortunately, the way we've had to manage it's probably across the system, you know, the other six male facilities that would have people housed. The clear answer I guess would be it should relieve pressure at OCC, it should provide more opportunities for

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people at WEC to get to a community bed. There's 600 minimum beds at NSP. That's where the bulk of those people should come as well. But we do have people at minimum custody. They're sitting in other locations--Tecumseh, other custody levels at NSP--just because there's not current minimum bed. So it should have a trickle-down effect, top to bottom. That's one of the advantage of building custody beds is then it does create, you know, fluidity across the system. If you don't know the makeup of the population, if you don't know what the true custody levels of your inmates are and you need to build beds because you just have to build beds, then the right way to do that is to build max beds because you can put any inmate in a max bed. That's expensive. That's ineffective. And if you end up not needing that custody level of bed, then you've got beds that you're shoving people into that are not going to benefit from...actually will not be able to benefit for the amount of programming and other opportunities. So we know today, we know we've got classified...we've got inmates that would classify and could move into community custody beds, that 160 number. That's all the data though that I have right now.

SENATOR COASH: Out of that...this is my last question. Out of the \$26 million to increase capacity, how much of that is building bed space? And is any of that money programming space, resources, more than just walls and cots, is my question.

SCOTT FRAKES: It is and it makes me sad when I walk through program statements, because you start with about \$8 million allocated for the building that would house the 160 beds, some programming space, the other core pieces that are needed, a little more than a typical living unit because we're building it to be a standalone space for a female population. But still, \$8 million for that level of construction: pretty typical. Then you have the site work, the design work, the contingency work. Next thing you know, the cost attributed to the living unit is probably closer to \$13 million or \$14 million. Then we have about...I think the number is about \$4 million that's tied to the food service and dining hall components that would support the entire facility. And again, you add design and contingencies and all the other things and...

SENATOR COASH: So I'm sorry to interrupt, but is any of the \$26 million designed to go to programming within the CCC-L or is it all walls and beds?

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SCOTT FRAKES: Not to run programs but to create space so that we can run programs, so it's a combination of both of the dining halls will be built in a way that we can use them for more than just feeding three meals a day. So they'll have the ability to...we'll do some kind of an effective divider system. We'll be able to use those spaces then for programming. And then we free up existing space that is currently the little visiting room and the little food/feeding area that can be turned into programming space for the male side of the facility. And we can do that internally; we didn't ask for that in the appropriation. And we have the ability to look at the existing food service base that was built to feed a population of 200. Looks like a really great opportunity to get some kind of a locational culinary arts program and work with the college.

SENATOR COASH: Okay, thank you.

SENATOR SEILER: Senator Stinner.

SENATOR STINNER: Thank you. Thank you for being here. I deal a lot in probabilities and I really need to get a sense of balance on this one issue. What do you think the probability is of ACLU instituting a lawsuit against us?

SCOTT FRAKES: I really cannot predict how they might...

SENATOR STINNER: I mean is it 50/50 or is it...

SCOTT FRAKES: I honestly can't predict when they would decide that it was time for them to invest the time and energy. Based on previous conversations, they said they did not want to go that direction if it wasn't necessary because litigation is expensive and usually the outcomes aren't as good as working together to fix the problems. So I can't give you any sense of what point they would decide. I think the bigger question would be, if they decided to pursue it, what's the likelihood that they would prevail?

SENATOR STINNER: That's my next question, yes.

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SCOTT FRAKES: And I'm comfortable today that they could not show and make a case for deliberate indifference or a constitutional violation conditions of confinement. They probably would be able to find some individual cases that I would...I mean I can look at some of the things that we have already identified in the past and knowing across the system we'll probably find some delays in issuing of medication or some other things. It is not a systematic problem. It is not an endemic, would not rise to the level of a constitutional violation that would be needed to then have intervention by DOJ or others. I'm confident of that.

SENATOR STINNER: My next question is you had...and I looked through the materials for Appropriations. There's a 23 percent turnover ratio in the department. What's the national average for corrections facilities? Do you have that number?

SCOTT FRAKES: I don't have that number.

SENATOR STINNER: But this is relatively high turnover, would you think?

SCOTT FRAKES: It is. We'd be...you know, I think we're among good friends. There's a number of states that are suffering, especially in the uniform ranks, which is where our greatest turnover is as well. But on a national average, I don't have an answer.

SENATOR STINNER: Okay, thank you.

SCOTT FRAKES: You know, in Washington it was running, when I left it was running about 10 (percent) and trending upward because the economy was coming back.

SENATOR STINNER: Okay, thank you.

SENATOR SEILER: Senator Mello.

SENATOR MELLO: Thank you, Chairman Seiler. Thank you again, Director Frakes. I just wanted...to some extent I have two questions right now and it's maybe more of a follow-up based on the Appropriations Committee hearing I was hoping you would address in your testimony. It's

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in the strategic plan that you presented us a couple weeks ago, and it's also, I know, in the department's master plan. The language that's used is operational capacity and I think we discussed briefly at the Appropriations hearing that state statute actually governs the prison overcrowding act in regards to design capacity. And I believe the statute specifically says operational capacity is 125 percent of design capacity. Can you share some perspective or at least some more information in regards to how the department operates within the existing state law in regards to saying what operational capacity is? And I guess the one think I have a challenge with is a lot of the focus is on the department's desire to use operational capacity but it's not defined anywhere in statute. It's not really defined or clearly laid out in regards to the master plan from 2014. But everything that we talk about in state law that governs the prison overcrowding act is really driven by design capacity. And I know your appropriations request for CCC-L is driven by building more operational capacity. Just...can you share a little bit bigger perspective in regards to why the department is using that in comparison to design capacity? And then is it going to be the department's intent to change state law so that we start taking operational capacity in consideration moving forward, instead of design capacity?

SCOTT FRAKES: So I'm trying...it seems like the statute also does make some reference to operational capacity. Is it 125...

SENATOR MELLO: It does. It gives a definition of saying design...operational capacity is 125 percent of design capacity. So just knowing that we're at 159 percent of design capacity right now, it says our operational capacity would be 125...or 25 percent over that then in theory.

SCOTT FRAKES: Yeah. So as I've talked about before, both numbers are important. Design capacity is important at the very beginning of a project because that's the number you use when you're requesting funding for beds is, you know, the design capacity. In today's world, we are an accredited system. We are...not just our prisons, but our entire Corrections system is accredited. So when we build anything new, it will be built to ACA standards. It will be built so the design capacity is going to be consistent with ACA standards. While it would be possible to build cell space that was larger for some future belief you might add more bunks, I can't really imagine anyone using that approach. It would just make more sense to just build the cells and rooms the right size (inaudible). But much of our space was built before we were accredited, built before

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the standards were enacted. Much of our state, although it was built as single cell--single-man, single-woman cell spaces--or some multiple thereof, the square footage of the cell does allow for double bunking. And the ACA standards talk about unencumbered space, so there's so much unencumbered space required for one person; and if there's two in the room, that overall unencumbered space is a smaller number in total but a larger number. We either have cells that still meet ACA standards even though there is more people housed in them than the original design. Or in some cases we do have requests for waivers. There is a process. Each three years the ACA comes through, does the accreditation process. We make our case to explain how we got to where we are at. So everything that we currently run for housing is approved through the American Correctional Association. I just...I say that to say design, once upon a time, was much more about a number to get funding than it was about what would be the future needs. Things, custody levels change. Program needs change. Philosophies change. And the number of people housed in a given space change up and down. Tied to that is that while it's important, we are going to remain accredited, so anything, like you said, anything we ask for now, we'll build it to ACA standards and the number that we request will be...you know, it's not going to change. Design capacity for any of this new construction will not change. Design capacity for Tecumseh is another good example. So I've got a wrap up to this. If the space that they sleep in, the space that they store their clothing in and their toiletries and their commissary items meets standards or is acceptable to ACA, then the real question becomes, what is everything else that surrounds that space? Do they have adequate space for day room, for programming, for visiting, for food service? Is there adequate space to deliver healthcare and mental health needs? And you think about all the things that it takes to support a population that's housed within a secure perimeter. If all of those pieces are met as well, if that quality of life is maintained, then that comes back to the question of, is there deliberate indifference? Are there conditions of confinement that rise to a constitutional violation? So that's the package of operating capacity. You could have space built to design capacity, built to accredited, you know, cells built to the right design and the accredited square footage. But if we don't have all the other components in place as a collective package, we could in fact rise to that level of deliberate indifference.

SENATOR MELLO: I appreciate that, Director. I guess the question I need to see that you can answer today is still driven by state law. I understand and can appreciate the credentialing association, the correctional credentialing, being accredited in regards to design space, design

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capacity, and operational capacity. The question is the existing state though still states, it gives only one definition of operational capacity. That's at 125 percent of design capacity. We're at 159 percent of design capacity. That means in theory our operational capacity would be at, what, 184 percent? Am I incorrect in regards to tying those two numbers together?

SCOTT FRAKES: Can you say that one more time?

SENATOR MELLO: If we're at 159 percent of design capacity, state law says operational capacity is 184 percent. The 25 percent over...125 percent over design capacity is what state law currently says. The question I've got outside of what's currently state law is, is the department's intent to change the law in the future in the sense that right now we operate solely on design capacity in state law when it comes to the Prison (sic--Correctional) Overcrowding Emergency Act in comparison to what your budget request that you've walked us through multiple times in regards to basing everything on operational capacity? And I guess I'm just...I've asked this once before I and just...I want to give you a chance to explain a little bit further. Law is saying this is the way we judge everything. Your request is saying this is how we want you to fund us. And the two are not interconnected because the law sides with design capacity. State law sides with design capacity, not operational capacity. And the question just is, are you going to have to move forward in changing law? Because that's a pretty...we met...we changed this law last year in light of what went through with LR424. And even with LB605 that is five years down the road in implementation, the estimates still are that we're going to be in a prison overcrowding emergency. We will still be at 140 percent which implements and essentially sets off the Overcrowding Act. And that's why the question I pose is, is the department going to now have to change existing law to fit this new process and new model and to some extent creating new capacity guidelines, so to speak, for us to operate under instead of the previous guidelines we currently operate under which is design capacity?

SCOTT FRAKES: At this point, no, I have no intent to change the law. Let's allow LB605 to do what it was intended to do. Let's add some capacity with what I've asked for at this point. We're working on our biennial budget. We'll take the opportunity to see because, again, we'll have our classification process done, we'll have a better sense before the summer is over of what is the makeup of the population. There's still an opportunity to come back and request for the work that

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it would take to build additional beds besides the RTC project. We can, through strategic and effective addition of capacity beds, improving our existing facilities, and letting LB605 bring our population down, I think we can get under the 140 mark. So we would not need to change the law. I do believe the conversation needs to continue because that shouldn't be the goal, 140, if we need to stay with design. I'd like to think that if we continue to talk about this and explore and you give me a chance to demonstrate it, I'll show you why operating capacity really is the right measurement for a prison system that's healthy, that has the pieces to be healthy, and that runs well.

SENATOR MELLO: The only other question I've got is Senator Coash asked about the CCC-L appropriations request. Time frame-wise, that request kind of finishes fiscal year '19-20--am I mistaken that that final year of construction is '19-20?--which means the 148 new beds won't be on-line until fiscal year '19-20. We've asked this before in conversations: Have you given any further consideration since we met a couple weeks ago in regards to developing a short-term plan to address what we still are in, an overcrowding crisis, right now in light of not getting any new beds for three years, which proposal you put forward?

SCOTT FRAKES: Not any more than what I just described to you. I am open to conversations about other creative approaches. But until I know what the bed space need is, it's difficult for me to do anything really thoughtful. If we wanted to talk about a modular approach or a...the stick build approach is really what I'd prefer to talk about because I said I think a year ago that there are other construction methods that we can use at community custody level, even at a minimum custody, that don't put wood structures inside medium or higher security. Tecumseh shows us why you can't do that. But I need to know what the bed space need is. I need to get that assessment done and really, truly know what I'll be asking for. It won't do me any good to build another 150 or 200 minimum beds or community custody beds and then find out I can't put inmates in them except by forcing them through overrides and misusing the classification system. I believe and I'm very hopeful that, in fact, we will identify we need additional community beds, maybe minimum beds. That's where I want the beds to be. That's where I want...that's the best opportunities to give people easy access to training, deliver the most programming, get vocational programs going, get people out in the community, all the things that comes with that.

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SENATOR MELLO: So it's, to just wrap it up, it's safe to say then that there's no other plan between now and three years from now to add any new beds besides the request that's in front of the Appropriations Committee right now?

SCOTT FRAKES: That's correct today, yes.

SENATOR MELLO: That's going to be the only request. Okay.

SENATOR SEILER: Senator Krist.

SENATOR KRIST: Thank you for coming, Director. Thank you, Chair. My questions are going to be centered, first of all, in response...my questions are going to go back to the employees here in just a second. But I want to just understand. When Senator Mello described the change in the state law, your comment was, I hope, I think--I'm paraphrasing--I'll show you that the operational capacity is what's important. Is that...was that what you said?

SCOTT FRAKES: That was the end of the sentence.

SENATOR KRIST: Okay. So you don't interpret that as then needing to change state law. Once you show us that that's the case, is...can I logically assume that we're going to have to go back and look at state law to redefine whether it is design or operational in taking us forward?

SCOTT FRAKES: Yes.

SENATOR KRIST: Okay, just...

SCOTT FRAKES: But I did...but my answer was, no, at this point, I don't have any plans. I'm not talking about changing state law, don't know that I'll ever convince people that we should move away from the design measurement, so.

SENATOR KRIST: Well, you're the expert. I mean you should be able to show us the way. I'm just always concerned that leaving it unaddressed in terms of state law and being in violation of

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state law as it would be interpreted would allow us to have action taken against us, and that would be my concern. One straightforward question: Given the budget that you have proposed and the kind of conversations that we've had, and with all fair and open disclosure, we've had two round-table discussions in which we talked about issues on a forum that I believe was very helpful for us, and for you I would hope. During those round-table discussions it was suggested that we do this and that or these and those and we had talked through those options. Do I understand, based upon what you're saying right now, you have no additional requirements to put into an appropriations budget to move forward in any other area except the ones that you've identified?

SCOTT FRAKES: Yes, that's correct.

SENATOR KRIST: Okay. So here then is my concern. You came before us early last year, the LR34 Committee, and we talked about needing more personnel in the system. You told us both in the round table and at that point that you don't have a problem hiring people, you have problems keeping people. That is in fact a contract issue negotiated which just was closed out. And if we would have acted between the time when we asked you the question and when they were negotiating, we may have been able to do something. Now we have a contract in place that we're going to have to open up that contract. Wouldn't it be prudent at this point, when we all go home, to at least put some money aside to develop those step programs that would put some more money in place to keep those seasoned and professional prison employees in place? Why are we waiting to do that? Because, as I have described to you and I just want to put it on the record, if the...if our future in terms of our financial future doesn't look as bright as it does today, money starts to become less and less available, why aren't we moving towards putting that money aside if only just to say this is the goal, this is the objective, and talk to the culture of those employees in terms of their future?

SCOTT FRAKES: Well, as we've discussed in the round tables, there are compensation issues, no question about it. I've shared that I feel that what I hear from my staff, the number-one compensation issue is the flat wage gap, the fact that it doesn't matter whether you started yesterday or ten years before, you get paid the same amount of money. So that's the one that comes out loudest in the conversations I have. But it isn't just my agency. It is an issue across

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state agencies. So to me it's a conversation that has to be done in a bigger arena and in a very thoughtful way. And I need to also, while I want to certainly ensure that my protective services custody staff are well compensated, at the same time I've got 2,400 employees so I've got to make sure that I'm addressing needs across the 2,400 employees. So that's another issue. And then I'm one of many state agencies that have similar issues. You mentioned the contract process. But to my knowledge, the contract was signed before I got here, at least the negotiation process was completed. There was no opportunity presented, to my knowledge, for me to enter into the negotiation process for the last contract. Opening it again when it just went into effect July 1 doesn't seem timely. I want the opportunity to meet with DAS, to meet with other department leaders, other agency leaders, and really explore what this issue is, how big this issue is, and together be able to identify what are the true needs in terms of compensation for workers in Nebraska. Yes, I represent my staff and they are very important to me. But I'm 34 years now in state government and I don't see myself as just a Corrections guy. I'm an employee now of Nebraska. I support government workers in Nebraska. And so I've got to see it...for me, I've got to see it from a higher level. I want to do that in a way that again is effective. There's some pretty significant dollar amounts tied to addressing these issues. As we talked about the other day, there's a lot of years of not providing opportunities for correct compensation.

SENATOR KRIST: So I'll just make a couple statements then to round out my input in this discussion. Although you're not the only agency, you are the agency that is in the most crisis at this point of developing cultural needs and changes for the people who work for you. And the Governor and the executive branch need to realize we around this table want to provide, we want to provide the opportunity to keep seasoned, experienced prison employees, correctional employees employed in the state. And we want to help change that culture. And again, I'm at a loss to find out why we aren't moving quicker than we are. But maybe somebody is listening that can tell me why. The last thing I will say is, after all this is over with and all the round tables are done and the budget is passed, it is the executive branch that executes and we appropriate as much as we can when we can and then apply the oversight. So it is your decision. You are the expert. And I will support anything that you do from this point on and also be on the record as saying we offered to do more than what we are doing right now. And if the time comes next year when it's possible, I'll be there supporting your effort. So thank you very much. Thanks for coming.

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SCOTT FRAKES: Thank you.

SENATOR SEILER: Questions? Pansing Brooks.

SENATOR PANSING BROOKS: Yeah, thank you, Chairman Seiler. Thank you for coming today, Director Frakes. I just had a couple questions. Number one, could you go to this graph? Did you hand that out?

SCOTT FRAKES: I did.

SENATOR PANSING BROOKS: Okay, we're getting so many papers. So my understanding of that graph is that by the end of what we think...well, you're saying LB605 implemented will have all the people out of jails and in Department of Corrections by fiscal year 2017. Is that correct?

SCOTT FRAKES: Calendar June 30, 2017, so.

SENATOR PANSING BROOKS: Wow. So then but still we're still showing that the current prison capacity is 3,275 but you're adding how many beds again?

SCOTT FRAKES: One hundred and forty-eight in this proposal.

SENATOR PANSING BROOKS: Right, so 148 plus 3,275 is...isn't that what we add it to because we have a prison capacity of 3,275? And so you add the 148?

SCOTT FRAKES: That's design capacity, yes, isn't it? Yes, it is design capacity.

SENATOR PANSING BROOKS: Rather than operational capacity.

SCOTT FRAKES: Right.

SENATOR PANSING BROOKS: And what was the operational capacity? The 3,275 is design capacity, not operational capacity.

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SCOTT FRAKES: Original design capacity.

SENATOR PANSING BROOKS: And what's the number for the operational capacity?

SENATOR WATERMEIER: 4,100.

SCOTT FRAKES: Which is...

SENATOR PANSING BROOKS: 4,100?

SCOTT FRAKES: Right, at 100 percent, and then (inaudible).

SENATOR PANSING BROOKS: And can you tell me how you get the 4,100? I'm sorry, I...Senator Watermeier seems to think that (inaudible).

SCOTT FRAKES: That's a great question. That is...no, I can't off the top of my head tell you how we came to that and how that number was determined, because the master plan comes up with a different number of about 4,480 beds, I think it is, and the fact is that we have 5,200 people, with the exception of today 70. So I'll go back to we have over 5,100 people that are in a bed, and the other 70 or 80 are in the plastic beds at D&E.

SENATOR PANSING BROOKS: Okay, so 4,100 operational, but still the way this graph goes, even with...I'm not quite sure what the...I guess that's LB605 continued out to 2020. We're at 4,500, right?

SCOTT FRAKES: Right.

SENATOR PANSING BROOKS: That's even considering operational, so we still don't have operational capacity covered. We have more need.

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SCOTT FRAKES: We'll we'd be at...if we landed at, say, 4,700, I think is probably a more realistic number, we would be at--I don't know, I'm trying to do math in my head--115, 120 percent of operating capacity.

SENATOR PANSING BROOKS: At what? I'm sorry, when would we be at that, that 4,700?

SCOTT FRAKES: We'd be, let's say, 120 percent of operating and I think 4,700 is a more realistic number because by the time LB605 is implemented we hit a higher number than was originally anticipated. We got...

SENATOR PANSING BROOKS: Okay.

SCOTT FRAKES: They had projected 5,200 and we ended up at 5,400.

SENATOR PANSING BROOKS: And are these numbers according to, whatever it is, the American jail standards? I know that you have nationwide standards that you have to meet. So are those operational versus design standards consistent? Because it's my understanding that, like, with some cells you can't put two people in them even though we do.

SCOTT FRAKES: What ACA--American Correctional Association--looks at for accreditation is number of people within a given cell space...

SENATOR PANSING BROOKS: Okay.

SCOTT FRAKES: ...and then the amount of unencumbered space per person housed in the cell, which means take away...if it's a wet cell, take away the toilet, take away the lockers, take away the bunk space, which is why we use double bunks, because it only encumbers half as much space.

SENATOR PANSING BROOKS: Yes.

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SCOTT FRAKES: And I'm terrible about remembering what the exact numbers are of how many...I think it's 35 square feet unencumbered for a single person. It's 50 for two, or 25 each.

SENATOR PANSING BROOKS: Okay.

SCOTT FRAKES: And so our existing cells and houses, rooms either meet ACA standard with the number of people that are housed in there, even if it is more people than were housed there when it was designed, built. Or they are close enough that, and they were the number of people housed in there, that decision was made before the standards were in place or before the accreditation process started, be more before the standard was in place. Thank you.

SENATOR PANSING BROOKS: So what percentage of our facilities are grandfathered in then? That's the type of grandfathering in those facilities prior to the ACA standards being enacted.

SCOTT FRAKES: I don't know what the...

SENATOR PANSING BROOKS: So that would include the State Pen because that's such an older facility and...

SCOTT FRAKES: But I'm not...

SENATOR PANSING BROOKS: Is that correct?

SCOTT FRAKES: No, I'd have to go back...if I can get you answers about which cells don't meet those standards and have...

SENATOR PANSING BROOKS: Have to meet.

SCOTT FRAKES: ...been granted a waiver, if you'd like that information, I can get that for you.

SENATOR PANSING BROOKS: Okay, so just going back...

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SCOTT FRAKES: But it's important to note though that they don't just issue a waiver just because it was done before. If there was a significant disconnect between the number of people housed in the space and the square footage, unencumbered square footage, we wouldn't be granted a waiver. So sometimes we're talking about two or three square feet, maybe it's four square feet. It's not that they're significantly under the standard. But I...we will follow up and give you good information. We'll share it with both committees.

SENATOR PANSING BROOKS: I presume any amount of space when you're in that small a space makes a difference. But I guess what I'm also interested in is following on Senator Stinner's questions about just blatantly asking about the lawsuit that possibly could be that we're hearing might occur. You felt that there's not that much worry about it, so you aren't worried that the overcrowding...I mean there are constitutional issues with overcrowding. There are constitutional issues as far as I understand with access to healthcare, proper ventilation, ability to get exercise. So I'm just confused with what I'm hearing publicly and then you saying, well, these really aren't issues that we have to be concerned about.

SCOTT FRAKES: What I was trying to convey is that I do not believe there would be grounds to support a verdict against the department that would show deliberate indifference that would show a constitutional violation across the system. I would certainly say that they probably could find some example of a failure. Fifty-four hundred inmates, we're a good sized department. We make mistakes. We try hard to not make mistakes, but we do make mistakes. To say I'm not concerned isn't true. I'm always concerned. I don't want there to be any constitutional violations. I do not want there to be any situations where we would be failing to provide adequate medical care, providing the services that are needed, ensuring that three good meals a day are fed, that there's access to programming, recreation, and all of the other pieces. So while there has been some public statements made, I don't have a single letter in my office that says, here is an issue that we've identified, please follow up with it. Working on one case with one inmate currently housed in Tecumseh on a medication issue, so that is one I'm aware of, but...

SENATOR PANSING BROOKS: Okay, so you've never received anything from...regarding...it's my understanding that D&E is at like 365 percent capacity.

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SCOTT FRAKES: We're back down to 280...

SENATOR PANSING BROOKS: 280.

SCOTT FRAKES: ...I think of design. And I would say operating is 320 and today we were at 390, which is still too high but it's not the 545 that you saw last May I think it was.

SENATOR PANSING BROOKS: Gosh, I didn't even realize it was 545.

SCOTT FRAKES: It was horrible when the tour happened. That was almost the peak of...yeah, so we took some very immediate, aggressive action around that issue.

SENATOR PANSING BROOKS: Well, I fully believe that you, you know, don't want any kinds of constitutional violations and...but it really does concern me. It concerns me for further risk of violence. It concerns me both for inmates and of course your staff. And so, let me see, I think that's all I have right now, Chairman. Thank you.

SENATOR SEILER: Director, I have...excuse me. Go ahead.

SCOTT FRAKES: I just want to apologize for the other day. I was in a hurry and I was late. I don't like to be rude.

SENATOR PANSING BROOKS: Oh, no, it's no problem.

SCOTT FRAKES: But I, you know, I could have at least stopped and said hello.

SENATOR PANSING BROOKS: It was fine. Thank you.

SENATOR SEILER: Director, let's go back and see if can clean up one area and maybe it's all done. Tecumseh's riot, are we all back to repairs on everything and back to a system that's working? Give us a general, overall Tecumseh...

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SCOTT FRAKES: As far as the damage that is a result of the disturbance, the only pieces that are left are the reconstruction of one of the walls that was destroyed because it had OSB wood inside of it which allowed it to be lit on fire, and then replacement of one of the other existing walls that has the OSB wood product inside of it. We have finally got a contract. Now I've given myself some latitude. I think in the update report I said the contractor should mobilize within 75 days. I certainly hope that's sooner. They're already on site doing the expansion of the CSI ware...our CSI programming space. But it's been a pretty arduous project, process. Only one contractor bid on the project and they really weren't that interested in it because it's a very competitive climate right now for construction in Lincoln and Omaha in particular. So I had no idea six months ago that we'd still be looking at having that piece completed. We've managed to make operational adjustments. We're doing well with it. And the wall that just needs to be basically taken apart and put back together correctly isn't a concern for me in terms of operational procedures. We've changed who we house in that living unit. It's now a medium custody population. But common sense says I need to take the wall apart and get the wood out of it. I'd have no...would not be able to justify if something bad happened down the road why we didn't fix that. The other piece is the recommendations that see if escape hatches from the unit booths were feasible. It's always a lot better to do it when you build it. Amazingly, the contractor looked through the plans and identified that there wasn't any significant electrical or other infrastructure issues, wouldn't be that difficult to cut the hole, figured out a plan of how staff could then go up through that and out to the top of the building and for a very reasonable price gave us a bid. So we're going to move forward as that part of that. Everything else has been done, all of the cleanup, all the painting. The extensive cleaning of the HVAC system was one of the most expensive components, it turned out, because of a lot of plastic smoke, black carbon that was in the system. All of that is done, almost all of that covered by insurance process. So what's left now is continuing to restore the new normal. We're still not where we were May 8 of last year in terms of just general observations. But in some ways we're better. Some ways I think we're significantly better. One of those ways is we have created a protective management unit, not a PC segregation unit which is in the traditional approach across America for a long time. It is a living unit that is well on its way to being general population in terms of how it operates but housing this protective custody population that has to be separated from the rest of the world. And the first time in the department's history, we actually have created some residential substance abuse treatment beds for that population, because one of the challenges with the

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protective custody population is it's difficult to program them. It's difficult to do anything with them if you can't take them out of the living unit. Well, this living unit was probably the best designed living unit in my system and it has programming space on the unit. So we're going to use that component to deliver residential substance abuse treatment to the protective custody, protective management population for the next year. We'll work through the waiting list and then we're going to decide what the next steps are in terms of using that space and where we need to move that residential treatment opportunity back to a general population setting. We've taken half of the restrictive housing and turned it into a secure maximum custody living unit. We're still trying to figure out whether or not it's going to work as well as I hope it can work. It wasn't built to be a living unit. It was built to be a segregation unit. We have 100 men in there. They are 100 men that most of which have probably demonstrated the highest level of risk in terms of people we house in our system except that next layer that's sitting in our restrictive housing beds. But what we have for that group at this point is greater freedom of movement than they would have if they were in a segregation or restrictive housing setting. It's in essence created some capacity increase. No, I'm going to not say that. That's not really true today. So more important though, we have repurposed what was segregation space into something that can be effective housing space. In terms of security and control, it is the most secure housing that we have. So and then we have the same challenge that Tecumseh has had since 2001 with few exceptions, and that is staffing. And we continue to...you said it. I said it. We have hired lots of staff in this last year for Tecumseh, but the turnover remains steady. It was about 30 percent for protective custody in 2015. It did start to taper off in December. January was really good. I'm going to hope we've got a trend, as opposed to just a little anomaly, because the real answer is, obviously, if we can hire that many people--and we've run double academies now since last May--we've got to keep them. And I know compensation is a piece of it. Conditions of work are certainly another piece as well. And we've heard that. Doug Koebernick's survey brought forward information. I've got my own information. People talk to me a lot.

SENATOR SEILER: I'd like...

SCOTT FRAKES: And so we're on the mend, but we're not where we need to be to finish. Once we get to what Tecumseh looked like May 8 of 2015, then I go back to the conversation I had April 25 of 2015 with a group of inmates--here's where we need to go, here's the programming

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we need to bring in, here's the additional movement, here's the volunteer programs, and all the other pieces will make that facility run the way it can and should.

SENATOR SEILER: I'd like to go to one more subject before I give up the mike and that is your classification program that you were starting. How close to...are you at 50 percent of reclassifying these prisoners or are you at 20 percent?

SCOTT FRAKES: No.

SENATOR SEILER: Where are you at?

SCOTT FRAKES: No. The tool is in final stages of development and then there will be a validation process that UNO will do for us. We expect that it should be ready for roll out end of spring, very early summer. There will be a very quick training phase for staff. It's not going to be that difficult because it's not that significant a change in the tool, just in the right changes that make it validated and effective. And then we will begin to use it across the system. So, you know, I've got...if things go as well as I need for them to go, I'll have the information I need in August which will allow me to make informed decisions for the biennial budget process, pushing hard. It would really be nice to have it now. It would be certainly nice to have it now. It would be great to have it in May but just..you know, we've got to allow the system, the process to do the work.

SENATOR SEILER: Okay. Any further questions? Senator Schumacher.

SENATOR SCHUMACHER: Thank you, Senator Seiler. Thank you, Director Frakes, for your testimony today. I thought I had it down in my head when I came in here. Now I'm not quite so sure. Am I right in thinking that design capacity is what the engineers after they look at all the rules and everything design a facility for?

SCOTT FRAKES: Yes.

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SENATOR SCHUMACHER: Okay. So let's say we design one for 4,000, okay, and it meets all the criteria. Now operational capacity is 125 percent of design?

SCOTT FRAKES: Just in our statute. That's the statute limitation.

SENATOR SCHUMACHER: Okay. In your definition--forget about the statute--what is...is that how many people you can pack into that 4,000 population...

SCOTT FRAKES: The right answer is, whether we agree that design capacity--in current law it is design capacity--then 100 percent design capacity should be the goal. If we can come to an agreement that operational capacity makes sense and it is healthy, the goal would still be we'd be at 100 percent operational capacity; better yet, 95 percent.

SENATOR SCHUMACHER: So is in that case, is design capacity equal to operational capacity?

SCOTT FRAKES: No, no, because...

SENATOR SCHUMACHER: So the operational capacity is more.

SCOTT FRAKES: Yes, normally, but actually I have had situations of where, and even right now Tecumseh has a slightly lower operational capacity than design capacity. I haven't gotten a clear answer about why that is, because, again, while you...yes, the engineers design it, so they design the cells. Under today's rules they would design the cell to be American Correctional Association standards.

SENATOR SCHUMACHER: So we design one for...let's just say we've designed one for 4,000.

SCOTT FRAKES: Yeah.

SENATOR SCHUMACHER: That's what the engineer says, this is just great. Now what's operational capacity of that facility?

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SCOTT FRAKES: It will be the same.

SENATOR SCHUMACHER: 4,000.

SCOTT FRAKES: Yeah, it won't change because of today's standards. The only way it could change is you either built the cells bigger than you needed to, which would be pretty unusual, hard to justify, or you...there's really no other way to change it.

SENATOR SCHUMACHER: Now applying our law just the way the law reads, that 4,000 facility we could under our law to get to operational capacity, under the law we'd run 5,000 in there.

SCOTT FRAKES: Could push it up to, what, 6,400, but the question would be then it would be hitting the 140 (percent) mark for design capacity. But it's the same issue we have. I'm not trying to argue in any way that our facilities are currently operating at the capacity that they should be, because we lack dining hall space and food prep space and all those other components. So that's how...if the cell size meets the standard for the number of people that sleep in that cell, then the next question is, what are all the other supporting components? Whether you look at NSP or WEC or CCC-L or Omaha, pretty much in every case they were built at a design capacity of about half of the number people housed. In all cases the cells either meet the standard or they're close enough that a waiver is granted. But as soon as you step out of the cell, well, this day room was built for 50 but there's 100 on this wing. This visiting room was built to meet the needs of 200 but on Saturday or on Sunday there's 300 people that would like to have visits. This dining hall was built to feed a population of 200 but somehow we try to...we've got to run 400 through it. And the food prep area in the back to feed them was built to produce 600 meals a day and now we produce 1,200 meals a day.

SENATOR SCHUMACHER: I recognize that you've got to do studies and develop your metrics and your tests and things like that. But...and I haven't...I don't sit on the Appropriations Committee and don't have firsthand mental concept of exactly the money that you go through. But right now how much money do you go through a year without your special things that you're starting to build?

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SCOTT FRAKES: Current operating budget, General Fund budget I think is \$205-208 million.

SENATOR SCHUMACHER: Okay.

SCOTT FRAKES: Then we have the Cornhusker State Industries, about another \$20 million. But that's revenue generating funds.

SENATOR SCHUMACHER: Okay, so how long do you anticipate it's going to take for you to complete your studies, let your contracts for construction, bring the place up to snuff?

SCOTT FRAKES: The entire system?

SENATOR SCHUMACHER: Let's bring her out.

SCOTT FRAKES: Hmm. I'm not prepared to give that answer today.

SENATOR SCHUMACHER: Well, I mean you've got to have an idea--are we talking ten years, two years, four years?--because we've kind of got to know a general time frame of what we're dealing with.

SCOTT FRAKES: Right. Well, if I give you a number, then people are going to be unhappy...

SENATOR SCHUMACHER: We'll put you in the pen if you're wrong.

SCOTT FRAKES: Hmm?

SENATOR SCHUMACHER: We'll put you in the pen if you're wrong.

SCOTT FRAKES: I know where the keys are. (Laughter)

SENATOR SCHUMACHER: But I mean, you know...

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SCOTT FRAKES: No, it's a very reasonable question and it's a question that I should be better prepared right at this moment, too, but I have been so much caught up in the moment of all of the issues that we deal with. So you know, we have legislation passed last year that says at 20...if I remember correctly, in 2020 if we have not addressed the design capacity issue, the bar is different than it is today. So I've got to be able to come into 2020 in a much better place than I am today. Will I have...

SENATOR SCHUMACHER: Pretty close to up to snuff.

SCOTT FRAKES: Yes.

SENATOR SCHUMACHER: Okay. So let's use the number four. How much extra (inaudible) above your \$205 million is it going to take to build the buildings, to hire the additional staff, to bring it up to snuff? What money are we going to be looking for to bring it up to snuff? What (inaudible)?

SCOTT FRAKES: Yeah. No, I'm not...this biennial budget process is going to help me make a much more informed answer to that question. I'm not there yet.

SENATOR SCHUMACHER: Are we talking hundreds of millions?

SCOTT FRAKES: I just don't know yet. If we need...if our capacity needs are truly community custody and minimum custody beds, that's going to drive a lot lower cost in terms of construction. And I want to explore the opportunity for work release community beds. You know, the Washington model was brought forward. I know the model and I like the model. So we can find some fairly low-cost opportunities if we have low security bed needs. If it turns out that our bed needs are at the other end of the spectrum, now we start talking very expensive beds and now we do start talking about hundreds of millions.

SENATOR SCHUMACHER: So as people responsible of trying to pay the bills and meet those particular needs, we've got to kind of hedge our bets whether it's going to be on the heavy end or the light end. And we've got to look maybe at a four-, five-year time frame here in order to do it.

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And we've got to plan where we're going to get the money from. And this year we know how we're struggling, may or may not have any success in the property tax end. We've been told pretty much straightforwardly that next year we're going to look at cutting income taxes, okay. We also have a pretty good guess that the big boom that we've seen from the agricultural economy of \$8 corn and the farmers rolling in money is probably over and that it's getting back to the normalcy of what farming is and that's kind of day to day, year to year. So our revenue that we're going to have to be able to tap is, without us doing anything, is going to get a little tight. And we've got...your needs are not the only needs to (inaudible). So what I'm trying to get at is somehow we need a frame so when we say, gee, it sure would be nice to do a big tax cut, that we can tap ourselves on the head and say, yeah, but we know that there is--if we're reasonably guessing the situation--X hundred million dollars that we're going to have to stick in the penitentiary system. So we better not cut back because we know we can't raise taxes or somebody is not going to get reelected. So that's what I'm trying to get at, to know that when we start looking at these things and the pressure comes on from every segment out that that, gee, you took care of property taxes or tried to and failed. Now it's income taxes' turn. We can say, you know, that number of that tax cut is just too much. We're not going to be able to handle it. And we need to have some rational basis for that fear or that jubilation that, oh man, that will be easy to do. And that's what I'm trying to ascertain from you. And I know it's hard, but we kind of have to have a feeling because we're looking at \$400 million extra money for your department over the next four years. It's got to...it isn't going to grow on any trees unless we find some new seed. So I guess we've got as far as that thing is going to go. A couple of other specific things. There is...there was your budget request for your various programs. And then we had I believe they called it master plan recommendations. Can you explain to me how the master plan recommendations translate into the budget request? You know, is there a mathematical translation there? They don't appear--and maybe I'm just not figuring it out--they don't appear to be easy to understand how we got...how one relates to the other.

SCOTT FRAKES: So the request for CCC-L and for the money for the programming statement for the RTC project can both be tracked back to the master plan as well as programming statements that were done for both of those projects but in a different scope: larger projects, more beds, somewhat different approaches. So specific to CCC-L, and if I'm...I hope I'm headed down the right path.

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SENATOR SCHUMACHER: I think you are.

SCOTT FRAKES: Okay. Specific to CCC-L, the program statement included--I think it was 300 minimum custody beds, but it was maybe more than that--a large number of minimum custody beds as well as the community custody beds and other core support expansion. I do not believe that there is any wisdom in mixing minimum populations and community custody populations, nor do I like the fact that I've got a large minimum population sitting next to a medium/max population at NSP. It limits what I can do with that population. If you mix a minimum population that requires direct supervision, that has limited opportunities to go outside of a fence, and you do need to have a fence if you're going to have a minimum population. It's not a security perimeter, but it's a secured perimeter. It provides at least a barrier for people to run away. That population then, whatever access they have, even if it's just being able to see somebody through a fence, whatever access they have to that community custody population presents all kinds of challenges and opportunities around contraband introduction. The community custody folks are going out. If they're on detail, they're under very limited supervision. If they're on work release, they're under no supervision. It generates a great economy because there's a population that loves the tobacco, drugs, and other things that they can bring. And then unfortunately they can also have a very negative impact in that there will be inmates that will force that economy and will force people in the lower custody levels to do the same thing. So wisdom says don't mix populations where one has access to the community and the other doesn't and that's why I've said I'm not putting minimum beds at CCC-L. Don't do it, don't support it, doesn't make sense. So that's the biggest change in terms of the difference. Tried to pull the original program statement out of my head. I think there was some other components, a standalone warehouse. I can't recall what else was on it, so. And I want to say that total project was more like a \$40 million project, something like that. But the big change to me was I'm not interested in building the minimum bed component. I like the additional community custody beds at the level that I know I've got community custody inmates to put in them. We know we have to do something with food service because that kitchen built to feed 200, struggles to feed 400, sure can't feed 560 inmates. So that was in the original program statement. It's in the new program statement. So that's how. I use the master plan and then had the good fortune to have a couple of program statements as well that gave me a lot of detail to inform the decisions about what do I think the right approach is, what's the right project. And then, of course, using my own

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staff, talking to my own staff about what are ideas and why were these projects seen as the ones to put forward and that's why program statements were funded and done directly out of that master plan, because the believe was that the expansion of CCC-L and the expansion of we can call it the regional treatment center, there was another name associated with it, but a much larger \$185 million project. The belief was those should be the two priorities for the department.

SENATOR SCHUMACHER: Did the department have some type of process for developing the amended plan, or was it kind of more an informal situation?

SCOTT FRAKES: Well, it was internal. We didn't do...we didn't go through a public hearing process or reach out to specific consultants to prepare the original request to move forward. But it's, to me, an expansion of a facility is very different from new siting.

SENATOR SCHUMACHER: So you...

SCOTT FRAKES: If we were looking at new siting, we would have gone...we would be going through a very extensive public process.

SENATOR SCHUMACHER: So at least in this part of the process you didn't talk to folks like (inaudible) Harold Clarke, former director. You initiated the process here I think before Tecumseh was built.

SCOTT FRAKES: No, I do talk to Harold and he's a friend and mentor, but we did not talk about this construction project. He left in 2005 so there wasn't anything about it that was on his radar.

SENATOR SCHUMACHER: Could the beds at the Lincoln Regional Center be used instead of building new beds at the Diagnostic and Evaluation Center?

SCOTT FRAKES: Hmm. No, because I believe I have a population that doesn't belong in a civil commitment setting, that still needs the right kind of residential mental health treatment in the right environment to do that in. So, short answer would be no. Whether or not there's a need for additional beds at LRC that would both meet other community needs and perhaps might open up

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more opportunities for a small part of my population that I do think could meet that civil commitment level in terms of the level of acuity with their mental health. But it would not eliminate the need that I have to create some effective, usable space for these personality disorder, behavioral disorder inmates that are really difficult to manage.

SENATOR SCHUMACHER: And then one final question, why is the department proposing a change from the master plan recommendation that would result in expending community corrections beds for women in Lincoln and eliminating some of those same type of beds in Omaha?

SCOTT FRAKES: Okay. So, I explained the piece of it in terms not building minimum beds in a community setting. So there's...within the master plan, there is proposals that would increase beds both at Community Center in Lincoln, Community Center in Omaha. If we determine that there is a need, a support, that there's enough inmates to fill more community custody beds, certainly the Community Custody Center in Omaha would be on my list to consider. At the same time, we are going to continue to explore this idea of other alternatives, more community based. It's not just about Lincoln and Omaha. If we're going to be realistic about it, we have people that are committed from 93 counties. Yeah, they're individuals, but there's a measurable number that come from the larger cities from the west. So if we had the opportunity to explore something of a more 20-bed, work release setting, I'd like to see if we could do that down the road. We're just not ready to explore that and see if it makes sense. The reason to consolidate and create this opportunity and to bring the women into a single setting, while there is the trade-off of not having a work release opportunity for part of the population that's in their home community, although it's a long ways away from where most of them live out next to the airport, but it's into the community of Omaha. The trade-offs, the benefits of bringing them together, creating a therapeutic community, being able to use trauma-informed care, being able to consolidate the resources that we have here in Lincoln around healthcare, around mental health, around behavioral health, having that opportunity to do this first construction project in over 15 years in a location that is accessible to all the other staff I have that need to help guide and make sure that project is successful, it's for all those reasons that it's the smartest thing to do at this time. And then we look for what are the next right opportunities. I think that we can do more good work for this female population through this approach than we can by creating pockets of beds with no

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supporting programming, mental health, behavioral health resources, and other components. I really believe that.

SENATOR SCHUMACHER: Thank you, Director Frakes.

SENATOR SEILER: Senator Mello.

SENATOR MELLO: Thank you, Chairman Seiler. And I guess one is a clarification, Director Frakes. I threw out a number earlier and I was doing addition and subtraction instead of division and multiplication. The operational capacity, if we use the state statute, is roughly about 127.2 percent if we're at 159 percent. But the issue I want to raise and it just goes back to this issue because I really do feel it's more of a policy issue and not an Appropriations issue, but it does feel like it's coming through our committee more so, in the master plan...and I'll just draw you, page 2-7, I believe it's chapter 2 of the master plan, it walks through the recommendation of looking at another metric to measure overcrowding. And it talks about operational capacity as one of the potential metrics. And while it states that 100 percent of operational capacity is really...you can't operate at that level indefinitely anything over 100 percent, on page 2-7 there's one section that is bolded and it's underlined and I'm going to read it out loud where it says, quote, with that said, however, emphasis, the final decision regarding which crowding metric to report must be made by NDCS and other decision-makers within the state of Nebraska because of the numerous policy implications it entails, end quote. The concern I've got is we've never had a policy discussion in regards to moving anything towards operational capacity in regards to your budget, your Appropriations requests, or overall department policies. And I read this and I reread it and I kept coming back to it after thinking about our Appropriations hearing which is...that's why I guess the question I asked you earlier: Are you going to come to us and ask to make a change because it feels like to some extent when I read other decision-makers within the state of Nebraska, I assume they're referring to other people besides the executive branch when it comes to making a decision on operational capacity being the new norm of how we operate, how we appropriate, how we change policies. And I guess I'll just pose you the question in the sense again, reading that coming from the department's master plan in 2014, knowing your budget request is based on operational capacity, we have no bill, no law that changes that focus or definition in statute. Should we expect a conversation or discussion that that is going to change

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statutorily if that is what we decide to do through the appropriations process because simply because we appropriate \$26.1 million that's focusing on giving you more operational capacity to address overcrowding and not design capacity, that sure feels like you're asking the Appropriations Committee and ultimately the Legislature through the budget to make this policy change instead of changing it through statute which currently resides in the overcrowding emergency prison act. And I'll just throw that back at you because I reread this and I flipped through other components of the master plan and it reiterates over and over again, 100 percent of operational capacity is you can't be there forever, that it's the maximum. You can't be over that. And even if we're right now at 127 percent based off of the state law--it's actually closer I think to 116 percent using the master plan's new formula which is different, not in statute but they came up with a different formula--use that as example. We're 116 percent of operational capacity. We still have a long ways to go. My concern and fear though is that there's decisions being made policywise that has a fairly big impact that's not involving the Legislature, not involving statutory changes. And we're trying to do it a little bit through the budget which really does change I think the direction and the trajectory of how we're going to address prison overcrowding in the future. I know it's kind of a broad question, but it was fairly clear in your guys' report that this a decision that needs to be made. Do you feel that you're making it on your own, that it's being done unilaterally without changing the statute to help clarify or at least cement what you want to do moving forward when it comes to that capacity design?

SCOTT FRAKES: No. What I believe is that through the results of LB605 and through the additional capacity requests that I make--so let's not talk design, let's not talk operational, let's just talk capacity. This first request: 148 beds. More work to come. So between those two pieces can we get below 140 percent of design? I believe we can. That meets the intent of the law. So then whether or not there's a need for further discussion, whether or not there's a need, I'm going to continue to talk about operational capacity because to me it's important in terms of the arguments I need to make for the rebuilding of the penitentiary food service at some point and some of the other, the additions to the Work Ethic Camp that would make it really support the population that lives there. So there's a...I'll always be making the operational capacity argument. But my goal would be to get our numbers lined up so that we are under 140 percent of design and then continue to be talking about, as we look through the decade of 2020, where else do we go?

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SENATOR MELLO: So I'm clear, I think I get it then. So to some extent even though the department uses the term "operational capacity" in the master plan, you use "operational capacity" in your strategic plan, you're not basing decisions to address prison overcrowding through an operational capacity metric which would require, I would necessitate, a change in law to do that. But you're still focusing on the design capacity being the driving focus of the department when measuring our current overcrowding crisis in comparison to where we're going to go in the future still.

SCOTT FRAKES: Yes.

SENATOR MELLO: Okay.

SCOTT FRAKES: Because it's the law.

SENATOR MELLO: Okay. Great, thank you.

SENATOR SEILER: Senator Bolz.

SENATOR BOLZ: I just wanted to follow up on some of Senator Schumacher's questions in terms of our long-term fiscal obligations. And one of the things the Inspector General shared with us was a good reminder for me, and that was a reminder of our backlog of facilities maintenance. And I think whether we're talking about operational capacity or design capacity, what it comes down to for me is civility. You know, we can't get along and make sure that people have adequate circumstances of confinement if the air conditioner breaks or the toilets don't flush. So I guess I'd be curious to hear you talk about what you see as the most important backlog of facility maintenance needs. And I'm curious as to why not move forward on some of that backlog sooner rather than later?

SCOTT FRAKES: We have a combination of clear needs in some things that are probably somewhere between need and want. Total requests I think from the last biennial budgeting you process were close to \$50 million. So that went through the process, budget was allocated, we got some money. We're using that money to address needs. The fact is I don't have the capacity

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right at this moment to do more work around that. My biennial budget is the right opportunity to identify the needs, to come forward again, and to fight hard for the things like intercom systems that aren't working correctly, camera systems that need upgrades. We have some boiler issues in a couple facilities. We have a central power plant issue for NSP that's (inaudible). So it's just...again, I come out of a culture that drives part of why we're sitting here today, that in Washington State, you don't come in mid term with huge requests. If there is a crisis, if there was some kind of a natural disaster or something else, you might come in requesting funding. But for an example, there it's called the supplemental budget rather than deficit. For the department in Washington in 2015, I was leaving the state, we were coming in asking for about \$16 million to \$17 million for a \$1.6 billion biennial budget. That's just how the process works. Strategic plan drives what you request, build a biennial budget, and unless there's some incredibly different issue, and I know (inaudible) you'd be looking at me going what about this isn't that? Well, I just have a different perspective on some of the pieces. So it's a need that I need to figure out with my staff and build a good biennial budget, come in and fight for the needs. But today I'm not ready to say I can really defend an additional request.

SENATOR BOLZ: Okay. I appreciate the dialogue and I think, if nothing else, it's important that this whole committee recognizes that in addition to the forward-looking needs, we've got some backlog needs as well. Thank you.

SENATOR SEILER: Questions? Senator Morfeld.

SENATOR MORFELD: Thank you for coming today, Director. I had to step out for a call for work, so I apologize if I missed this and if I did just tell me I missed it and we can talk later. But one of the statements that you made earlier...did you make the statement that we apply...that we adhere right now currently to all ACA standards?

SCOTT FRAKES: We are accredited.

SENATOR MORFELD: We are accredited, okay.

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SCOTT FRAKES: There are always, through any accreditation review, any audit, there are typically a handful of nonmandatory standards as they're referred to that a facility or probation and parole or even central office may not pass.

SENATOR MORFELD: Okay.

SCOTT FRAKES: Then you go to ACA, sit down for a hearing, you go through those, you do a plan of action to address the deficiencies. If there are...we talked about the square footage standards. If there is a discrepancy between number of inmates housed in a cell and the number of unencumbered square footage done before the standard was enacted, then you request a waiver. And again, if the cause of discrepancy is not too large...

SENATOR MORFELD: Okay.

SCOTT FRAKES: ...we'll be granted that.

SENATOR MORFELD: Okay.

SCOTT FRAKES: So our scores run 98-99 percent compliance. There's about a hundred mandatory standards. If you fail a mandatory standard, that's a big problem.

SENATOR MORFELD: So in terms of double-bunking, is double-bunking in segregation units currently occurring right now?

SCOTT FRAKES: It is.

SENATOR MORFELD: Okay. Is that mandatory standard or is that a nonmandatory standard?

SCOTT FRAKES: That's not...I'm trying to remember whether that's currently in standards.

SENATOR MORFELD: Okay.

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SCOTT FRAKES: I think that's still in the conversation. There was a lot of hearings and discussion. But if it is a current standard--I don't think it is--it would not be a mandatory standard.

SENATOR MORFELD: Okay, okay. And then how about in the A unit for the mentally ill folks, I mean do we have double-bunking in those as well currently occurring still?

SCOTT FRAKES: When you say the A unit...?

SENATOR MORFELD: I thought that's the unit for the mentally ill, but I could be off.

SCOTT FRAKES: Hmm. I should be able to tell you. I'm trying to remember whether or not we do double-bunking.

SENATOR MORFELD: You can get back to me, too, if you don't know.

SCOTT FRAKES: (Inaudible)...not in secure mental health but in the lower, less restrictive residential mental health we do do double-bunking.

SENATOR MORFELD: Okay, okay. Thank you. That's all I have.

SENATOR SEILER: Any further questions? Thank you, Director, for coming and giving us this information.

SCOTT FRAKES: Thank you. I appreciate it. Thank you.

SENATOR SEILER: Doug, will you come forward.

\_\_\_\_\_: Marshall (inaudible).

SENATOR SEILER: Oh, Marshall is. Okay.

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MARSHALL LUX: (Exhibits 2 and 3) Good evening, Senators. My name is Marshall Lux, M-a-r-s-h-a-l-l, last name Lux, L-u-x. I'm the Ombudsman for the state and I wanted to talk about a few of these issue. I will try to make this go as quickly as possible. Mr. Frakes said a number of things that I agree with. And one of the first things he said was that he took over a Department of Corrections that was in crisis. I think all of those senators who are here tonight who served on the LR424 Committee and the LR34 Committee would agree that there are some serious issues or have been some serious issues in the Department of Corrections up until now. The...as we look at those problems and as we think about the status of the Department of Corrections, I'm sure that all of you who have been following this issue have got your own ideas of what the priorities should be in terms of what needs to...the department needs going forward. And so I thought it would be...I felt I had a responsibility, because I talked about priorities at that last roundtable, I thought I had a responsibility to sit down and figure out what my sense of the priorities are for this department at this point. And what would be number one on my list has to do with population and all of that discussion that you've this evening about design capacity and operational capacity. One of the things--and this is the number one thing on my list--that this department needs is more beds for male inmates, but only temporarily because we have LB605. We're hoping that that's going to help. But it's going to take a while. And in the meantime, the fact that we are now at what my calculations say is 161 percent of design capacity in the adult male facilities which is what I look at when I do the math, we are still well over what is the standards that it's set in our own statutes regarding population of this facility. We've handed out to you some materials. One of the things you will see in there is a page that lays out the percentage over design capacity in the adult male facilities throughout 2015 and up to recently. Today...or on the 22nd of February, Monday, the adult male facilities in this system were at 161 percent of design capacity. That's up 3 percent from the end of December. It's a little disappointing. It looked like things had...the population in the system had stabilized in the high 150s during the summer, but there's been an uptick. That is a concern. That means you need more beds for male inmates, but those don't have to be permanent beds. They could be temporary beds and that...so you need to think about that. The second thing on my list of priorities would be the need for more community custody beds. And that is an issue that is addressed in Mr. Frakes's request for the \$26.1 million to add community custody beds, 148, to the Lincoln Community Corrections Center. The problem with that is it's only 148, and the problem with that is it's not until about three years from now. So that's an issue. The third priority, I think, for this system is

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to stabilize the situation with regard to staffing, specifically the security staff, correctional officers, corporals, and all the way up to sergeants. The department, as Mr. Frakes has acknowledged, has a serious problem with regard to retaining employees of that sort. And the...that needs to be addressed and one of the things I think that needs to be seriously considered is Senator Watermeier's bill, LB733, which would try to appropriate money to address that problem. That needs to be given some serious attention. And that would be third on my list. And then the fourth issue, the fourth priority on my list for what this system needs is what Senator Bolz has been talking about which is more beds and more resources for treating the seriously mentally ill inmates in the system. We feel that there are still people who have serious mental illness who are in...who are not receiving treatment in the system and who are basically sitting in segregation cells. I happen to like the idea of dedicating beds at the Lincoln Regional Center to deal with that population. They're dealing with some of it in the Lincoln Correctional Center; that's good, but it's not enough. And the rest of the "not enough" could be most easily dealt with by dedicating beds for correctional inmates at the Lincoln Regional Center so that they can get that treatment that they need. That would be the simple, sensible way to address that issue. Also, again, a priority it seems to me is to watch how LB605 works very closely to see whether it's going to actually make a dent or help us out with our population. The...it is, in my view, essential that we get our corrections population down and not have to build up to, in terms of creating new permanent beds that aren't community corrections beds, to meet the need. And there are a number of reasons why we need to do that. Obviously, one of them is the whole question of whether there's going to be a lawsuit or not. Another reason that that has to be done is because it's very expensive to keep inmates. At Tecumseh, it costs more than \$36,000 a year to house an inmate; that's the bad news. The good news is if we could put another...that inmate in a community corrections bed, it's about half that much which is another reason why community corrections is such a good idea. And there is yet another reason why we need to be worrying about the size of our corrections system population. And that has to do with something else that Mr. Frakes alluded to which is the problem that not just Nebraska but other states are having in terms of fully staffing their facilities. One of the documents that we've given you is a news item that discusses the fact that there are a number of states who are having problems staffing their facilities. It's not just Nebraska. This is a phenomenon that's going on in other places. And so while we might be able to mitigate that problem and help the system in terms of trying to reduce the turnover and reduce the overtime that's associated with that turnover, we shouldn't assume

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that that problem is ever going to go away. And so what you need to start thinking about is that it may be necessary for...it may be necessary to recognize that our prison population will have to be right-sized in relation to our employee resources because we can't right-size our employee resources in relation to our prison population. So that's another reason why we need to keep that...we need to get that population reduced. LB605 we can all pray will help. It needs to be watched. There are a couple things I want to mention in terms of fact checks. These are issues that came up at the Appropriations Committee hearing, so those of you who are not on the Appropriations Committee didn't hear this. But one of the questions that came up about building new community corrections beds was why would we do it in Lincoln where we have 200 already rather than in Omaha where there are only 90? And the answer that Mr. Frakes gave in his testimony to the Appropriations Committee was that, "CCC-O is located in a 100-year floodplain next to a levee with documented flooding less than five years ago." That is misleading and you need to understand that and I think what we've given you is an overhead shot of some property in Omaha very close to the Missouri River. And if look at that sheet what you will see is there's a blue area in the lower right-hand corner with a very large facility in that blue area. The blue area is the 100-year floodplain. And the very large facility that's in that floodplain isn't the community corrections facility, it's our prison, our multimillion dollar, 700-inmate prison in Omaha is sitting in the 100-year floodplain. On the other side of the levee, the dry side of the levee towards the top of the page you'll see another structure with a parking lot next to it. That is the Omaha Community Corrections facility. And other property very close to that facility has been certified as being in an area where the risk, the annual risk of flooding is .2 percent which comes out to the 500-year floodplain. That's the area where CCC-O, the Community Corrections Center in Omaha is. If you...also, if you look at that sheet you'll see a very large parking lot, which is the parking lot for the prison, and next to it a large open green area not in the 100-year floodplain. That land belongs to the state of Nebraska and if there was an enlargement of the Community Corrections Center in Omaha, the proposal was to put it on that empty green space which is not in the 100-year floodplain. Another issue that came up at the Appropriations Committee and I don't want us to lose track of is that when the hearing was held on Senator Watermeier's LB733, one of the questions that came up was...it was suggested that we couldn't do anything special for the corrections staff because it might be unconstitutional. Nobody seemed to know what...where that came from or what it was about. My guess is that it has to do with Article III, Section 19 of the Nebraska Constitution which says, "The Legislature shall

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never grant any extra compensation to any public officer, agent, or servant after the services have been rendered". The Attorney General has looked at that provision and in 1995 had an opinion that said that this prohibits extra compensation to public employees after services are rendered to prevent payments in the nature of gratuities for past services. Well, obviously that doesn't prohibit merit raises because the merit raise would relate to payment for future services and obviously it doesn't prevent the state from having a step plan for correctional employees and that needs to be kept in mind as well. Finally, one other thing that I want to make sure that you understand about what you've heard is when Mr. Frakes talks about core support services at the Lincoln Community Corrections Center. If you look at the 2014 master plan which he has acknowledged is the source for this proposal and also the source for the next stage which is the RTC project that he's talking about at the Diagnostic and Evaluation Center, if you look at that closely, when it talks about the need to add to that facility's core support services, what it is basing that on is the expectation that there will be minimum custody inmates added to that facility in addition to community custody inmates. What's the difference? The difference is that the minimum custody inmates are inmates and they're going to be there 24/7. And so the theory in the master plan is that you need to expand the core support services of that facility because you're to have those minimum custody inmates who are full-time inmates unlike the community custody inmates who are on work release and come back, leave, and come back. So when Mr. Frakes says that he's not going to put minimum custody inmates in that Lincoln Community Corrections facility, you need to clarify in your own minds whether that means that they really do need those dollars for the core support services or not. Do they really need a warehouse which is a part of what this is all about? Do they need a kitchen, an expanded kitchen because the proposal is to build a separate building for a new kitchen. I'm not sure I know the to those questions, but they're very good questions. And if you look at the master plan, the 2014 master plan, that's what it says about the need for core support services. Lastly, I want to talk about the master plan and I want to talk about a...how that all relates to what needs to be done in the system. As I just mentioned and as Mr. Frakes said, the projects that he's proposed to you, the \$26.1 million at CCC-L and also the project, the RTC project at the Diagnostic and Evaluation Center which by the way is \$75 million, those all come from the 2014 master plan; 2014 doesn't sound like that long ago but it's before CSG, it's before LB605. And if you think about it, when the state invited CSG to come here to look at our sentencing laws to help try to find ways to reduce the population in our system, why was that done? It was done so we wouldn't have to

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build expensive new prison cells. When you passed LB605, why? Because you wanted to reduce the population so that the state does not have to build expensive new prison cells. Well, if you look at the master plan, here's what...here's some of what it says about what it proposes not for these first two steps but for future steps: Lincoln Correctional Center, restrictive housing expansion, that's cells; the Nebraska State Penitentiary expansion, increase disciplinary restrictive housing, that's cells; Diagnostic and Evaluation Center, expansion; Omaha Correctional Center, add restrictive disciplinary housing, cells; Tecumseh Correctional Institution, add 100 beds to the secure management unit, cells. That is what that master plan foresees. That's what it proposes. When you're brought something out of that 2014 master plan, you need to know that there...you need to consider that there's a very good possibility that what you're being asked to do is not consistent with the policy that you have made by LB605, which is to try to avoid the expense of having to build a bunch of new prison cells. Now, saying that, I'm talking about prison cells, I'm not talking about beds and community centers. That you need. So the proposal, for instance, that Mr. Frakes has made to build a new facility for women at the Lincoln Community Corrections Center I think is consistent with what I've said I believe the priorities should be. I have a problem with the fact that it's only 148 beds. I have a problem with the fact it's not going to be there for three years. But it's consistent. But then you're going to get into the \$75 million project, then you're...anything else that might come forward comes out of this master plan doesn't sound to me like stuff that is necessarily consistent with the policy that you have made in regard to the trying to avoid the expense of building all of those prison cells. Got to watch it pretty carefully. The good news is that we're in this room tonight with two committees looking at this. It's getting scrutiny that normally wouldn't happen like this. That's good and I think we should all be happy that that's happening and that you're thinking about these things. One other thing I want to share with you--this I know is risky--you're the policymakers; I am not. And I am acutely aware of that. And I respect your opinions, but I have opinions of my own. If I could have a page, please. I've prepared this not because I think you're going to pay much attention to it but because there have been so many issues going on, so many subjects that we get a swarm of issues and concerns about the Department of Corrections that I got to the point where my head was spinning there was so much stuff going on. So I decided to sit down and make an outline of what I would want to do if I were in your position and I was faced with all of these questions including questions like using modulars and questions like whether it's a good idea to dedicate beds at the Lincoln Regional Center for corrections inmates.

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And I've put them down here in a way that I would do if it were up to me. And that is for what it's worth, okay. But it shows you where I'm at in terms of this whole subject and I think I've pretty much captured all of the big issues. One of the things that you will see there, by the way, is...has to do with placing women inmates at the Community Corrections Center in Omaha. I do not believe that we should stop doing that. A lot of the women in our system obviously are going to come from Omaha. When they're done, when they're paroled, when they're discharged, they're going to go home. They might as well be in Omaha where they can be on work release at a job in that community and hopefully that will set them up for a successful life after they've been discharged. I don't like the idea of having no women in the...doing work release in Omaha. I think that's wrong. That's about it. That's about all I've got to say and if you have any questions I'll be happy to answer.

SENATOR MELLO: Thank you for your testimony this evening, Marshall. Are there any questions from the committees? Senator Kintner.

SENATOR KINTNER: I'm over here. Marshall, I'm not exactly sure why you're here. Are you here to provide a counterpoint to Director Frakes?

MARSHALL LUX: Not really, no. I heard him say things that I agree with. But I've been involved in this for a couple years now. I gave you a memorandum in the materials that...right, because I wanted to explain that and I knew that there would be questions, what the heck is this guy doing here? Okay. And the reason is because we sort of got pulled into it when the LR424 Committee was doing its work and I can't get away...

SENATOR KINTNER: Marshall, Marshall, I know you've been in this for a few years, but Director Frakes has been doing this for 30 years. This is his career. This is his life. We brought him to our state to do this whole thing.

MARSHALL LUX: Right, and I...

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SENATOR KINTNER: I mean, I would have a very tough time saying, Director Frakes, go pound salt. We're going to do it our way. I mean, I think we should at least give him a chance to...

MARSHALL LUX: I agree with that, Senator.

SENATOR KINTNER: ...implement his program and come back in a couple years. If it's not working, maybe we can work some tweaks out. But reject fairly major parts of his program and adjust it to do this instead of this, I don't see a justification to do that at this point. Have I missed anything? Am I being abrupt or something?

MARSHALL LUX: No, I agree. I respect Scott Frakes and I think that you should listen to him. But there are fairly important policy issues here and I think that's...while you have to listen to him, there are things that you have to decide. And certainly \$26.1 million of your taxpayers' money is a pretty big issue.

SENATOR KINTNER: Well, there's a McDonald's about two blocks away that's going to get some closer scrutiny by me in about ten minutes. But thank you very much for coming.

MARSHALL LUX: Okay, you're welcome.

SENATOR KINTNER: Appreciate it.

SENATOR MELLO: Thank you, Senator Kintner. Senator Krist.

SENATOR KRIST: Senator Kintner, I would invite you to go back in history and find out the last time we were below 140 percent of any capacity in any prison in this state. And I would remind you that had we had the action that we needed to have in the past administrations, we wouldn't be sitting here (inaudible). So scrutinizing whether or not someone who comes in with 30 years or 50 years of experience--hell, I tried to buy you an airplane and I got scrutinized all the way to Sunday a couple years ago and that's my livelihood. That's my job. That's what I do. We stop scrutinizing...I'm defending not necessarily Marshall but the process that we go through. I think

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Scott...I said it when Scott was sitting in the chair. He's the expert. At some point we got to shut up and color and write the check. It's just that now we know what the plan is and we go forward. But more importantly, you and I are going to be here in a couple years when the money dries up and he's going to be asking for money. And I still haven't seen bottom line that says we're going to need \$227 million because that's what it's probably going to take. And we did an over-and-under bet here and one of us is under and one of us is over. So I had to say it because, you know, I've invested four years of my life in special investigations and sitting here and listening and being here until 10:00 or 11:00 at night and having to subpoena the Governor of the state of Nebraska to get a straight answer. Scott, I really appreciate you coming and I mean that and we'll support anything that you decide to do. But having the scrutiny that we need at this point I think is also very important. Thank you.

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

MARSHALL LUX: Thank you.

DOUG KOEBERNICK: I promise I'll be done by 8, maybe 9.

SENATOR SEILER: The record is 11:30.

DOUG KOEBERNICK: (Exhibits 4, 5, 6) Good evening. My name is Doug Koebernick, spelled K-o-e-b-e-r-n-i-c-k, and I am the Inspector General for Corrections. I was appointed to a five-year term by the Legislature last fall. I would like to thank Senators Mello and Senator Seiler for inviting me to testify before you two committees and your special guest Senator Schumacher so that I can share information regarding my recent Department of Correctional Services staff survey and LB733. Before I go into that, I just want to share some testimony that I found recently by Nebraska's Director of Corrections Frank Gunter during a presentation to the Committee on Prison Overcrowding in 1989. And it's a very long report or presentation and if you want a copy I have it. It's really interesting stuff. But it's some of the stuff that Director Frakes actually kind of talked about earlier. And what the director back then said: As the number of prisoners increased, the following scenarios develop. There is an increasing level of stress for

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both inmates and staff. There is an increasing level of stress for both inmates and staff. Staff workload and caseload increases in all areas and at all levels, both adult and juvenile. Decreased living space, increased workloads and stress erode morale for both prisoners and staff. Sick leave usage and staff turnover rates increase, and inmate disciplinary actions and litigation increase. Staffing becomes inadequate which ultimately means less control of the inmate population. This lessening of control increases the probability of inmate problems and potential violence. Services and programs within the prison become overextended and the physical plant deteriorates at a more rapid rate. Educational and vocational programs, staffed and designed at a certain level, are now crowded or not available. And medical and mental health services are severely strained. And he went on and did a whole bunch more than that, but I thought those were pretty interesting points and it shows you that the challenges that we face today are really...they're not new and they're not unique to Nebraska either. I started my position in September and one of the challenges I immediately faced and still face today is how do I introduce myself to and get feedback from the over 2,200 employees of the department as well as the 5,400 men and women who reside in state prisons. In November, I decided to send out a survey to employees to begin to address this challenge. The survey was patterned after a survey that I conducted with employees of the Beatrice State Developmental Center in 2008 when I was the staff member of the Developmental Disabilities Special Investigative Committee. To get right to the point, via e-mail we sent out...I sent out--I'm an office of one--sent out an e-mail to over 1,400 employees. Over half...almost half responded. The results of the survey were shared with the Department of Correctional Services, the Legislature, and the Governor's Office and anybody else who would like to see them. Without a doubt, it did meet my goals of introducing myself to the employees and more importantly it provided great insight on a number of issues. I'd like to briefly touch on eight specific questions on the survey and also to let you know that when you look at the survey--and that's the memorandum and you probably will...see this from me before--when you look at the questions, the employees had the opportunity to select "other" for their answer. When they did that, they could write whatever they wanted to and I was the only one who was able to see those responses. It went right into a little spreadsheet for me on Google, on my Gmail. And I've told the wardens and anybody else if they would like to learn more about those "other" responses, all they have to do is ask and I can provide a summary of those responses. I won't give actual responses because I promised the employees that I wouldn't do that, but I can give a summary. So far, I think I've had three wardens that have asked for more information on that. So

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if you look at the memorandum and you go into attachment one, and I saved some money and didn't do it in color, and I've numbered the questions...I've got to get to my copy. I've numbered the questions that I want to touch on. So on that first page at the bottom it says--do you believe the starting salary you were provided when you began at the department was appropriate for your position--29.9 percent of the people said yes. And what I'd like to do is just tell you briefly on some of these questions what some of the specifics facilities, how they responded. So 29...almost 30 percent said yes. At Tecumseh it was 21 percent. At the youth facility it was about 24 percent. And the other end of the spectrum, at the Work Ethic Camp, 55.6 percent said it was. And in York at the women's prison, 48.8 percent said it was, which that's not really surprising to me because York and McCook are different labor markets. One the next page--during the past month have you generally felt safe in your work environment--64.4 percent said yes, which that's good pretty I think. However, when you look at Tecumseh, and that's attached also where I broke it down into a spreadsheet, 32 percent of the people at Tecumseh that responded said that they felt safe. So if you look at that, 68 percent did not answer that they felt safe. The administrative folks that responded, because I sent it out two ways, one to all the people in the facilities and then everybody else who labeled "central administration," those folks, 84 percent said they felt safe. Out at McCook, 94 percent felt safe so that's good. At the bottom of that page it says--would you recommend a job at the department to a friend or family member--only 32.6 percent said yes. So that's hurts recruiting obviously. At Tecumseh it was 12.8 percent. At York, it was 50 percent. On the next page and this is the ones I think that Senator Mello really wanted me to touch on when he invited me--in order to retain employees within the department, what would you say is the primary change that the department could make to keep people from leaving the department--68 percent answered salary advancement each year above the hiring wage, otherwise known as the step plan. There's some other responses there like improve staff morale was 4.5 percent. At Tecumseh, that was 7.7 percent. At the state pen, that was 8.2 percent. Provide additional supports for staff was 1.2 percent, but at Lincoln Correctional Center is was 5.5 percent. So those are some little outliers there. And then even down at the bottom there it says--better communication regarding how decisions are made that impact the ability to successfully do your job--3.1 percent selected that answer. But at the Community Corrections Center in Lincoln, 9.5 percent did. The next question--when you've had coworkers leave employment with the department, what do you believe was their primary reason for leaving--42 percent said salary. For the administrative folks, 50 percent said salary. Tecumseh only said 26.2

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percent but that's because if you look at some of these other things like unsafe working conditions, they answered much higher at 7.1 percent instead of 2.9 percent. Or lack of support from supervisors/administration, they answered 25 percent whereas everybody answered 18 percent. On that one as well, McCook was almost 39 percent but the problem with the McCook one, there's not very many employees out there so that survey data is probably not that good. And by the way, this is not scientific but it gives us a pretty good feel of what we're looking at. Job stress, Community Corrections Center in Lincoln was 28.6 percent which was double what the rest of the facilities answered. And then if you turn the page, the one that maybe caught me by surprise on there was--correctional position in another agency--only 1.4 percent of the people said that somebody left to do that. And that's unlike what we've heard a lot about: the people being attracted to, going to Lancaster County or Douglas County and other places. So I was actually surprised by that one. Toward the bottom of the page--what is your level of satisfaction of working at the department--13.8 percent said low for "one." Only 2.6 percent said high, the "five." And as you can imagine, like at Tecumseh and a couple other places, they answered a little bit differently there. And then on the final page--where is the Nebraska Department of Correctional Services headed in the next couple years--16.4 percent said it's going in a positive direction; 21.6 percent said it's going in a negative direction; and about 50 percent said they weren't sure. And if you look at Tecumseh, 5.4 percent said it was going in a positive direction and 41.3 percent said it's going in a negative direction. And then finally, this maybe was my favorite question and I did this one evening at home so I came up with this as my last question--what is your opinion of the Nebraska Legislature and its concern about the employees of the Nebraska Department of Correctional Services? And the first one they could choose was, the Legislature supports the employees of the Department of Correctional Services. Only four people chose that answer, so .8 percent. And you can look, the Legislature needs to provide additional resources and support to the department so its employees can fulfil its mission was 17.6 percent. The Legislature needs to make a better effort to engage the employees in order to understand their concerns was 26.4 percent. And then the last one was, the Legislature does not value the employees of the department and 44 percent selected that answer. So that was the survey and when you have time you can go through that and you can see how it breaks down with the rest of the facilities and everything. And like I said, I've shared that with the department, actually gave it to Director Frakes before I gave it any of you. So, sorry. So that's the survey. I

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don't know if you want to ask any questions about that before I jump into the next thing that Senator Mello and Senator Seiler asked me to talk about. I can keep going.

SENATOR SEILER: Senator Kuehn.

SENATOR KUEHN: Thank you, Chairman Seiler. I appreciate, Mr. Koebernick, the acknowledgement straight off, in your words, quote, this is not scientific. We have established, I believe it's in our priority bill in Appropriations, that we believe the Appropriations process needs to be utilizing best evidence-based practices. And I think that standard of best practices both in terms of quantitative and even qualitative data is essential if we're going to make some good decisions. And you've brought this up in Appropriations hearing and I had a chance to look over your data and you had sent us some additional follow-up on the methodology. And I guess for purpose of clarity and the public record since you're coming here and you're making statements with regarding to data which you have admittedly said are not scientific, I just want the record to reflect the methodology. So you have no way of assuring that respondents only had only one single response.

DOUG KOEBERNICK: No, and I didn't do that because the department...not everybody has an e-mail and they share computers. And so if had chosen to do that where you could lock it in so only one computer could respond, you might have five or whatever people use that computer and then they'd be locked out.

SENATOR KUEHN: So you also no way...

DOUG KOEBERNICK: So I knew that going in, yes.

SENATOR KUEHN: So you have no way of even identifying who filled out the survey.

DOUG KOEBERNICK: No.

SENATOR KUEHN: So whose responses these are.

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DOUG KOEBERNICK: Uh-uh.

SENATOR KUEHN: You have no ability to represent this as a cross section or crossing (inaudible) across different ranks, across, you know, disgruntled or not disgruntled, lengths of services, you have no ability to verify any of the data that is coming.

DOUG KOEBERNICK: No, not at all, not at all.

SENATOR KUEHN: Okay.

DOUG KOEBERNICK: This is just a way to get information from employees.

SENATOR KUEHN: My question is, is if we don't know that it's actually information coming from employees or from which employees that it's coming from, it's really not information. And that's my challenge. We need to identify what our employment issues are in the system. To do that, we have established we want best practices, we want evidence-based practices. I'm concerned that in terms of a methodology, if we're going about surveying employees and it's not in a manner which is in any sociological standard or any research method standard acceptable, doesn't have any statistical validity, we're not able to make decisions based on the best evidence possible. So in writing the questions, I'm looking through a number of these and from my limited social sciences research training, certainly scientifically in the natural sciences, did you have someone look at these to understand that these are not leading questions, that the responses you're requesting weren't leading? Was this vetted by any type of best practices? Did you have a sociologist look at this and give you some guidance or was this just something you came up with individually and sent out via Gmail?

DOUG KOEBERNICK: Those are all fair points. And, no, I just came up with them based on things that I've talked to the employees and everything. And it was a way for me to...I never imagining that we would be presenting it in front of any committees or anything. Back in November when I first started thinking about it, I shared with Director Frakes right away that I was going to do that and I even put in my e-mail, hey, this is not scientific or anything. This is just a way for me to try to get input and probably more importantly for me was the opportunity

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for people to select "other" and to write in whatever they want. And that's where I probably got the most real feedback and it gave me an idea of other things I needed to look at or anything like that. So I mean, all along, I agree with you and those are all fair points.

SENATOR KUEHN: So I guess my question for you is if the Department of Correctional Services were to come in with a methodology and a metric using absolutely no scientific method that unverifiable results, what would your analysis of that data be? What would your response to that...?

DOUG KOEBERNICK: Probably be about what your response would be to me tonight. That's why I'm looking forward to their culture survey and we'll how it matches up.

SENATOR KUEHN: Okay, so...and I appreciate that because my question is we're demanding of them metrics and we're being very critical of their metrics. We're being critical of their process. And we as a body introduce information which is admittedly not utilizing any process that is verified, that is scientific. And I do think that that's a double standard. And I think if we are going to continue to demand, which we should, oversight of Correctional Services, that our methodologies need to be of equal standard and as well above reproach. And so I hope when your next survey comes through that you continue to pull the workers of our correctional system. But I hope that there's a more deliberate methodology and that the results that we have and the evidence is actual evidence and something that I as an appropriator can begin to act upon.

DOUG KOEBERNICK: Yeah, and I'm not saying base any funding decisions on this or anything, okay? I'm not putting that out there. I was asked to come in and present this information. I think those are fair points. Like I said, they've been working on this culture survey since July. It'll be very interesting to see how that comes in and looks at...compares to this. I'm excited about it. I know they're excited about it. And we'll go from there. So those are valid points and I thank you for that.

SENATOR SEILER: Any further questions? You may go forward.

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DOUG KOEBERNICK: I was also asked to discuss LB733, a bill that was previously heard by the Appropriations Committee, due to the fact that I worked with Senator Watermeier on this bill. The bill would provide \$2.5 million to the department for strategies to retain and recruit staff in work force shortage areas. Much of the focus on the bill has been on the providing of possible recruitment and retention bonuses for staff and I think those suggestions definitely have some merit, such as providing hiring bonuses for health staff or retention bonuses for front line staff, things like that. However, the bill really gives the power to decide how to spend the funds to the department. I would contend that there are other ways to retain employees in addition to bonuses. In order to receive some input from department staff I sent a brief survey. This is not scientific. And I sent it to some Tecumseh employees and asked them for ideas on how to use the funds to recruit and retain employees. So it was open-ended questions, I just wanted to get input and get feedback. Most of them said that it wasn't about recruitment but rather about retention. Someone even pointed out that since they started at Tecumseh over 3,000 people have been hired there for 400 positions. So I received just a great deal of good feedback from them. Some suggestions that I have received from the Tecumseh employees as well as other people--I've reached out to human resources folks and others--include some of the following: enhanced supervisory or leadership training. I know Director Frakes right now, they're piloting or going through like a leadership training right now, some of his top staff over three Fridays. Establishing an employee advocate position at each facility; providing behavioral health supports for staff including wellness programs, peer support programs or behavioral health staff focused only on staff; enhanced pay for staff mentors; and one person even suggested building a fitness facility next to Tecumseh for staff to use. And I actually heard that once when I was down there as well. As well as building a day care, somebody suggested that, too, because they have day care problems down there. Those are just a few of the ideas that I have collected. However, even with all of those ideas the number one thing suggested by the employees that way was the step plan. So with that, I'd like to just...I lost a page, which is good for you. But the thing I'd end up with saying is that we need to do something about staff. They are suffering, they are stretched thin, they are tired, they're worn out. I got to see some of that firsthand when Director Frakes had a town hall down at Tecumseh. The best word I could use to describe that town hall was raw. Those people, they were angry. They're frustrated. They just want some help. And it's not a matter of just public safety. It's also about inmate safety and staff safety. And these people are out there working hard every day and we need to do what we can to keep them in their positions

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and to recruit people to get...and when we recruit them, to keep them in their positions. So I think whether it's LB733 or something else, we need to send a message to the staff that we're listening to them. We realize that they have concerns. They have needs. And we've got to do something to try to help them out. If you look at Tecumseh, I think the last numbers I saw, they had 65 to 70 front line guys and gals that were...positions were vacant out of about 400 positions in the facility. In Omaha, we're actually doing pretty good. There's not a lot of vacancies up in Omaha. The state pen has quite a few vacancies and been contacted by some people who are concerned about overtime going up there right now. And then if you look at specific areas like in health services with psychologists or nursing or LMHPs, those kind of positions, we have a great deal of need. And if we can figure out a way to spend some resources or give some resources to the department to help them attract more of those folks and keep more of those folks, that helps us all the way around whether you look at safety for all the facilities or you look at programming because if we have the right number of people staffing the facilities and we have the right people with...the LMHPs or the psychologists or different things like that or substance abuse counselors or social workers, then we can provide better programming and then we end up providing better outcomes and that helps all of us. So with that, I'll just wrap that up. And I just will say thing to Senator Stinner. When he asked the question about turnover, I have a document that I gave you and it has, on that first page, it has the national turnover rates for correctional officers. And I believe it was like 16.7 percent in 2008. So it's a little dated. I did look. DAS has a personnel almanac and you can go in there and they have ones going way back that show which positions have high turnover rates and how many positions are getting turned over and things like that. And I just scratched it out real quick and in 2014 it looked to me that about 40 percent of the correctional officer positions had turnover. So I don't know what it is for 2015, but you can go in there and I can provide those for you if you want. You can look at each one of those kind of key correctional positions where they've had some high turnover. You can look and see how it's changed. I think it was 116 of those spots turned over in 2013 and 163 turned over in 2014. So, thanks, and...

SENATOR SEILER: Senator Pansing Brooks.

DOUG KOEBERNICK: ...it's not 8:00.

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SENATOR PANSING BROOKS: Good job. Thank you, Chairman Seiler, and thank you for your work, Mr. Koebernick. I appreciate it and I appreciate the work of Ombudsman Lux and all the work that has been done. The energy between Director Frakes and all of you is fabulous. I really appreciate it. Again, one disconcerting thing is that the employees don't think that we value them and we do, so I want to state that publicly. Again, we're in this continual cycle of hearing, okay, I only \$26 million and you guys saying, well, we think that they probably need more. Are we in a cycle they're being hamstrung by the executive branch and can't ask for what's really needed? Where is the disconnect between what we believe and what all of you have pointed out and the fact that we hear from Director Frakes, no, we're really fine. We don't need this money. And we've continued to ask about programming dollars. We've continued to ask about overcrowding dollars. And so where is that disconnect? And again, we're hearing staffing issues and paying appropriately and rewarding for work and all of those issues. We continue to hear it and then...and we get these wonderful recommendations. I don't know if we're hamstrung as a committee, as a joint committee to only follow what the director wants. And of course, being good stewards of our state's money, we only want to spend exactly what's necessary. We don't throw money at things that are unnecessary. So if the director says we don't need money to pay...we don't need extra X million dollars to pay our employees. We don't need X million to get good programming in there. We only need \$26 million to pay for 146 beds. So where is the disconnect? What should we do? I don't know if you can tell us what you think we...I mean, I think we need to move on this and figure out who's going to say, yes we need more money. If the director doesn't want more money then...I guess, you know the other thing that I'm worried about is that I was affiliated...not myself but I know of a business that felt it was just as well to have somebody sue them rather than doing what they were supposed to do because then the suit wasn't actually the company's fault, it was the fault of the people who were suing. And they had to just pay that. It didn't have to be planned for in the budget. Those kinds of things worry me. If those decisions are going to be made in the back or in the upper halls somewhere here, could it be that we're sitting here thinking, well, you know a lawsuit, so that's what happened on Beatrice Six. That's what happened on a number of different things. You just suck up the mistake and go forward.

DOUG KOEBERNICK: That's a very good question.

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SENATOR PANSING BROOKS: Which part? (Laughter)

SENATOR SEILER: I was going to say, where was the question?

DOUG KOEBERNICK: I think the question is, what would you do? Or I don't know. You know, there are a lot of things going on at the department right now. And I will give Senator---I always think of Ron Raikes when I think Scott Frakes so I always want to say Senator--of Director Frakes. I mean when you're looking at programming, they had CSG in just last week looking at programming. They've got I believe deputy director Mike Rothwell is looking at programming from what I understand. So I understand that they don't know where they're at on programming right now. So I don't think you're going to get an answer from them, but they're going to have one and he's going to come back. I mean he's promised to come back and ask for the resources when he identifies what he needs. And we'll find out what they are. I would say that, you know, when it comes to the staffing, I think this LB733 is an idea and I've bugged him about it and everything. I think we have to get creative here and do something. He's got people out recruiting. His human resources department is...I've met with them. They're great people. They're being creative. He's got a full-time recruiter out there. They're hitting, you know, all over the state looking for people to come here and work and everything. So they're it, but the key is retention and he's acknowledged that. So if there's a way that we can get him some resources, at the end of the day, if you give the money he's probably going to at least think about spending it. You know, I worked in the Legislature before this position for 18 years and everything. So I've seen where the Legislature sometimes decides to give somebody extra funds because they think that there's a need. And so it's up to you really. I'll throw it right back at you. If you think there's a need then fund it. But I would also even throw out right now you're looking at the reentry initiative funding. That is a really good program it looks like. And we've got some good things going on out in the community with that. And the department is studying that and they're also opening it up for a new wave of grants. And what I think you're going to see and I've shared this with some folks, you're going to see more people applying for those funds than applied a year ago. And they're going to be people that we want probably to be providing services and helping out folks as they try to transition out into a new life. But when that happens, there's going to be a competition for those dollars and I would argue that...or maybe it's something to ask the department, do they think they need a few more dollars for that program because if we can

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successfully transition those people back into the community, maybe they're not coming back and that saves us a lot of money down the road. So there's a lot of ways to look at look it. But I do...

SENATOR PANSING BROOKS: He doesn't want more money. So I guess...

DOUG KOEBERNICK: One of the things I gave you at one time was a potential future needs of the Department of Correctional Services. And if you look at that thing, I mean we're looking at...they're doing a staffing analysis where they're trying to figure out how many more staff they need at each facility, or less, but I think it's probably going to be more. They need...they're going to have to replace some parts of their facilities. They have that maintenance backlog. Like I said, what they're doing for programming, they have core services problems at nearly every facility and he's acknowledged that. Staff salary increases, he's talked about the need, possible need for step plan or doing something else to do that. And then they're going to do a next level of the staffing analysis because that one is just kind of just focused on the front folks. And then we're not even getting into like the whole medical area and health services.

SENATOR PANSING BROOKS: Okay. So how long do you think is reasonable to wait on programming? It's been 14 months now. If I were walking into that job last year, a year and two months ago, I would have had plans in position ready to go by May. I'm sort...I mean I think most of us here are take charge and get some stuff done and not sit around waiting because it costs some money.

DOUG KOEBERNICK: I understand your frustration. I would say on that, I mean he'll have something I would guess in this next biennium budget. I haven't identified any programming needs. I mean I think the biggest thing is...

SENATOR PANSING BROOKS: You haven't?

DOUG KOEBERNICK: No, because I just haven't got to that point. The system is so huge. There's only so many things I can do each day and look at.

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SENATOR PANSING BROOKS: Okay. I'm you clarified that.

DOUG KOEBERNICK: Yeah, I mean I know they have programming needs, but I can't tell you for sure exactly what, where, and how much money and everything like that. But part of it is we're low employees, too, that provide those programs. And if we can get those employees and keep them, that will help us right there with programming.

SENATOR PANSING BROOKS: I'm just cynically scared that his hands are being tied by the executive branch. So thank you. That's my last, momentarily.

SENATOR SEILER: Any further questions? Senator Bolz.

SENATOR BOLZ: Very briefly, this summer we heard a proposal from the Behavioral Health Education Center at UNMC. And I think it was a very professionally developed proposal. The more that I participate in this conversation, the more I think that we should act on that soon rather than later. Are you familiar with that proposal and does that proposal ring right with what you have heard in the town hall meetings and in your work in the system?

DOUG KOEBERNICK: You know, I wasn't in this position back in the summer when they did that presentation, so I'm not intimately familiar with it or anything. I've heard Director Frakes talk about it, heard you talk about it.

SENATOR BOLZ: So the components of the proposal are mentoring, training, working with a trained psychologist...(inaudible).

DOUG KOEBERNICK: It makes a lot of sense. We looked at some of that stuff with BSDC where they created partnership with UNMC and we saw some good results down there. So yeah, I think it has a lot of merit.

SENATOR BOLZ: Very good. Thank you.

SENATOR SEILER: Any further questions? Seeing none, thank you.

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DOUG KOEBERNICK: Thanks.

SENATOR SEILER: Next witness.

AMY MILLER: Senators, I'm leaving my phone here so that I can try to look at the watch and make sure that I am perhaps your shortest testifier this evening. My name is Amy Miller. I'm legal director for the ACLU of Nebraska and we very much appreciate the efforts of this body and Director Frakes to make efforts to address the obvious prison crisis that Nebraska has. But the problem is that the problems that we've identified that give rise to a potential civil rights lawsuit, so far we've seen no visible impact to address any of those issues. As you continue to consider the future plans before you, I wanted to make sure that I bring you some examples of the unrelieved problems that are actually happening behind bars. As a reminder and the way that I'm going to tailor my remarks is about the medical and mental health care delays or lack of services behind prison bars. I want to remind you that the Eight Circuit which governs Nebraska has held in a recent case that a delay of three weeks is an unconstitutional Eighth Amendment violation. If someone has a serious medical or mental health need and it takes more than three weeks to get them seen and addressed, that is per se a violation of the constitution. And what we're seeing systemwide for the state inmates who are at county jail, for the inmates who are state prisons that are not that crowded, and for the inmates who are in the most crowded prisons, the delays go far beyond three weeks. Now I have the same amount of scepticism of what an inmate tells you that you might have. So let me tell you that what I'm counting when I tell you that we're seeing more than three-week delays is provable. Inmates submit written requests asking to see a mental health counselor, asking to see a doctor. And it is on a form, a grievance form that has on the bottom a place where the prison can then respond and the inmate gets a carbon copy. What I'm seeing from the carbon copies flowing back to my office that are signed off on by members of the DCS staff, the top part of the form says, I feel like hurting myself. I'm feeling suicidal. I've started to cut myself. Please send mental health. And three weeks later, there is a note saying we've got you on the schedule. People submit notes saying, I think I've got pneumonia. I think my blood pressure meds are not working and I'm starting to worry I'm going to have a second stroke. I need to talk to someone about this lump I found. The problems range from medical to mental health, and again and again the time for the response is so far afield from what the courts have said is appropriate that we have a black-and-white documented problem.

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Now even for some of the inmates that I am directly advocating with the department for we are at a point on one that we've been waiting for 14 weeks from the time that I first reached out and said, hello, there's an issue. For that inmate, it took 45 days just to get a doctor visit and another 80 days where still, no prescription after the doctor said this is necessary. We're far beyond the pale. The problems that need to be solved are vast. But the one category, how are we going to provide enough staffing and how are we going to prioritize taking care of the serious medical and mental health needs of these Nebraskans does not seem to be one of the priorities that's being presented to you with solutions by the department. So as we continue to talk about the CSG reforms that hopefully will slow down the number of people behind prison walls and as we continue to talk about reforms for parole, we need to focus on what we're going to do to solve the problems for the people who are behind bars right now. Now we did hear an admission from Director Frakes that we are double-bunking men in solitary confinement. And I don't have the material with me this evening but tomorrow we'll get to you some of the mental health documents that prove there is consensus in the mental health community that that is almost as bad as being in solitary confinement if not worse because of the chances for increased violence. We have many concerns. I'll stop because it's late and you don't need to hear from one more lawyer, but I am happy to answer questions if you have them.

SENATOR SEILER: I guess everybody wants to go home. Senator.

SENATOR SCHUMACHER: I'm slightly...the ACLU of course is a national organization, has a lot ability to get insights into systems. We certainly aren't the first state that's gotten into trouble and let things slide to the point that they started to break down. And now we're well after...well over a year, two years into getting the realization that we had a problem, a year into a new administration to correct the problem. And we still are not able to get an idea of how much money it's going to cost to correct the problem, how many years it's going to take to correct the problem, how long it's going to be to get the metrics and put the metrics in the matrix of metrics. How long is reasonable? I realize this isn't business and in business by this point we'd be looking for some new CEOs if we hired...if we were on the board of a company and hired somebody to turn the ship around of a troubled company and we were still not sure which direction and how much it was going to cost and how to do it. So how long is reasonable for us to wait in the

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context of prison rebuilding before we actually see elbows flying and dirt being shoveled and people being hired and feel that we're under way with a plan?

AMY MILLER: Well, I would agree with Senator Pansing Brooks' comments, that I have concerns that this may be arising more as an executive branch problem. I do think that Director Frakes has been very good about working with us on the individual cases as we've had to try to lift up individual problems for attention. The reality is that the ACLU for a while has been saying these figures that we're at in terms of overcrowding, in terms of the percentage of our population in solitary, in terms of the delays on medical and mental health care have long been unconstitutional. We've been trying in good faith to hold off but we can't continue to just say, well, maybe we'll file a class action lawsuit. We have concluded that at the end of this legislative session, we'll see which bills passed and which bills did not. We'll see what plan has been proposed by the department. And at that point we will sit down with the National ACLU Prison Project. They've been working with us on our advisory panel of attorneys here in Nebraska to assess whether or not it's time to move forward. It's harder for me to answer what you need to do. I can only answer that I can't continue to say to inmates who write to me saying I've been waiting for three weeks for mental health care. Oh, please hold off. I'm pretty sure everybody is working on that, probably it'll be okay. We've reached our crisis point as well.

SENATOR SCHUMACHER: So basically as far as the direct question, how long does the average case take to get a good strong hand on the helm and start turning the ship around and seeing a little action? Are we being too patient? Should we expect more?

AMY MILLER: I think the Legislature has taken great strides. I think it's now time for the department to take the additional strides that need to be pushed forward. I know that a couple of senators have asked me privately where I think the real hotspot is. Is it a lack of will to provide these services, is it a lack of funding, is it a lack of staffing? It seems to me from the outside, they do not have enough staff. I assume that men of good conscience when they receive a piece of paper that says I feel suicidal, please send help, that when someone writes down three weeks later we've got you on the list, I assume that's not because someone didn't care but because they're so swamped that that's as fast as they can get back to someone. So we need to put more people in the front line staff to provide mental health care and whether that's a psychiatrist,

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whether that's a case worker, whether that's a student, it doesn't matter as long as services and care is being given.

SENATOR SCHUMACHER: Thank you.

SENATOR SEILER: Further questions? Thank you very much for your testimony.

AMY MILLER: Thank you.

SENATOR SEILER: Any further testimony? Seeing nobody scrambling, this hearing is adjourned.