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Department of Correctional Services Special Investigative Committee
April 18, 2016

[LR34]

The Department of Correctional Services Special Investigative Committee met at 1:30 p.m. on Monday, April 18, 2016, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR34. Senators present: Les Seiler, Chairperson; Kate Bolz; Ernie Chambers; Colby Coash; Laura Ebke; Bob Krist; Heath Mello; Adam Morfeld; Patty Pansing Brooks; Paul Schumacher; and Matt Williams. Senators absent: None.

SENATOR SEILER: The other two people that I'm sure that are missing are still up in the sign-in, so we'll get started here. This is a meeting of the LR34 Committee hearing. And it's Monday, April 18, 2016, and we're in Room 1113, and it's past the bewitching hour. So as I understand it, Dr. Lisa Jones would testify first. Would you please come up. We'd ask that you introduce your different topics and you'll have five minutes on each one. [LR34]

LISA JONES: Okay. [LR34]

SENATOR SEILER: And then we'll ask questions. [LR34]

LISA JONES: Okay, thank you. [LR34]

SENATOR SEILER: And we'll give you notice with the red light and yellow light when you've had four minutes gone and five minutes. Welcome. [LR34]

LISA JONES: (Exhibit 1) Thank you. And I have this. Do you want me to hand these out now or...? [LR34]

SENATOR SEILER: No, let our page help. [LR34]

SENATOR WILLIAMS: Pages. [LR34]

SENATOR SEILER: Please. Diane? Oh. You may proceed. [LR34]

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LISA JONES: Okay. Good afternoon, Senator Seiler and members of the LR34 Special Investigative Committee. My name is Lisa Jones, J-o-n-e-s, behavioral health administrator of the Nebraska Department of Correctional Services. I'd like to thank the committee for the opportunity to testify today. Director Frakes asked me to appear today to share with the committee the work that is being done within behavioral health and some of the initiatives that we have recently implemented. It has been an exciting and busy seven months since I assumed my role of behavioral health administrator for the department. We serve a very diverse population of over 5,000 inmates, the majority of which have some level of need for behavioral health services. Over the past seven months I've been very intentional towards building our behavioral health team and learning about the array of treatment, programs, and other services that we provide. I have spent the past five years working in the trenches, so to speak, with our inmate population. I have had the opportunity to see things within behavioral health that are working well and things within behavioral health that we could improve upon. In terms of things working well, behavioral health offers a variety of substance abuse, sex offender, and violent offender services, in addition to providing crisis management, individual counseling, and social work services. In terms of things that could be improved, we are examining our intake screening process and finding ways to complete this process more efficiently. It was discovered that our review team that is tasked with screening the largest number of inmates was screening fewer inmates than desired. We have since changed this process to be more in line with community standards; that is, one clinician, versus four to five, screening and making initial treatment recommendations. This process will help alleviate some of the backlog of inmates waiting to be screened. The department has adopted the Static Risk and Offender Needs Guide-Revised, the STRONG-R. We've adopted it as an evidence-based risk/need/responsivity assessment, which behavioral health will be capitalizing on to streamline our intake process. The STRONG-R will allow us to focus more clinical resources on inmates identified with higher risks and needs and facilitate completing screening and making treatment recommendations up-front while the inmates are at our Diagnostic and Evaluation Center. This will allow reentry staff to come in and help inmates design a life plan that will allow them to best meet their programming and/or treatment needs while incarcerated within NDCS. Consistent with LB598, we have been building the discharge review team to address high-risk discharges. Over the past seven months we have developed rules and regulations to establish evidence-based criteria to identify any inmate nearing release who should be evaluated to determine whether he or she meets criteria for being

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mentally ill and dangerous. We will be promulgating these rules and regulations within the next month or two. We have been able to have all of our DRT members specially trained in threat and risk assessment, thereby having the most knowledgeable clinicians at the table to review each case. A true multidisciplinary team approach has been adopted by the DRT in that we are incorporating a psychiatric provider and member of special services. Moreover, we have contracted with a national expert in the area of threat/risk assessment to vet DRT's policies and procedures and ensure that our process is robust and functioning as smoothly as possible. Also in response to LB598, mental health staff have assessed and transferred 34 inmates from restricted housing to the secure mental health unit over the past year. Fourteen of these inmates progressed to the mental health unit or general population. Therapeutic restraint chairs--which I have included a photo at the back of your handout to see--these chairs were introduced in December of last year and allow inmates within the secure mental health unit to participate in therapy groups. In order to identify and more closely track inmates with mental illness, we have adopted a mental health coding system from the Massachusetts Department of Corrections. This coding system is more in line with the community standards for determining level of care in that it incorporates level of functioning in addition to diagnosis. This coding system, in conjunction with getting treatment recommendations up-front, should streamline the process for getting programming and treatment needs met prior to parole eligibility dates. [LR34]

SENATOR SEILER: You may continue. [LR34]

LISA JONES: Thank you. Treatment teams will use this coding system to determine the most appropriate level of care and the discharge review team will use it to identify high-risk/high-need inmates who may need evaluations prior to their discharge. This coding system will also allow us to track inmates with mental illness who are functioning well within NDCS, but still may need social work and/or reentry staff to assist them as they transition back into the community to ensure that their mental health needs will be met. We will be providing training on this coding system within the next two months so that it can be implemented at our Diagnostic and Evaluation Center in conjunction with the July 1 start date for using the STRONG-R. Another area of focus for behavioral health has been on becoming more integrated in terms of our inmate care. I've been working very closely with Dr. Wetzel, director of psychiatry, on the mental health coding system and collaboration of our treatment efforts for our mentally ill inmates. Dr. Wetzel

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has developed a residency program for psychiatry and has added Dr. Natalie Baker to NDCS psychiatry. In addition to close collaboration with psychiatry, behavioral health is working to strengthen communication between clinical and nonclinical staff within NDCS and with outside agencies. We have established monthly meetings with the Lincoln Regional Center and are partnering with them in the future for training opportunities. We regularly meet with reentry staff, Probation, and parole staff to ensure communication and consistency across all of our systems. We also meet with the Parole Board and encourage behavioral health staff to attend parole hearings to provide the most up-to-date treatment recommendations to allow inmates to discharge with a plan to meet their ongoing behavioral health needs. Although I miss working directly with the inmates, I have made it a point to regularly visit each institution to speak with the inmates and staff. I am a firm believer that treatment begins at our first encounter with an inmate. I also believe that if we treat them with the dignity and respect that they deserve, while meeting their treatment needs, they will be best equipped for success in the community and more likely to seek out services in the future. All of the changes we are undergoing can feel overwhelming at times, but we know that these changes will ultimately help us achieve our goal of setting inmates up for successful transition back into the community. The mission of behavioral health is to provide treatment/programming opportunities consistent with the standards of quality and scope of service found in the community to promote the mental health and well-being of those individuals placed in our custody. Thank you. And if you have questions, I'll be happy to respond. [LR34]

SENATOR SEILER: Questions? Senator Bolz. [LR34]

SENATOR BOLZ: Good afternoon. Thanks for being here. Nice to see you again. [LR34]

LISA JONES: Thank you. [LR34]

SENATOR BOLZ: I want to take a step back and I'd be curious. One of the things that came out in the Gage report last summer that we spoke with Dr. Wetzel about was the overall philosophy of the Department of Corrections as it relates to serving individuals with mental illness. And that was one of the primary things that Dr. Gage referenced needing clarity after his report. Can you

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give me an update on what that means to you now and whether or not you feel like you've got a clear vision? [LR34]

LISA JONES: Yes. And we have adopted a vision and mission statement, and again that is we are really working towards providing integrated care, holistic care for our inmate population, and making sure that these...the care that we are providing meets standards of our community and that that will ultimately promote them in success in that they will be able to easier transition into the community. [LR34]

SENATOR BOLZ: That's helpful. And if this committee could get a copy of that, I would appreciate it. [LR34]

LISA JONES: Sure. [LR34]

SENATOR BOLZ: Another issue that I wanted to follow up on from the Gage report was concern around referrals to mental health supports and that there was lack of clarity and lack of consistency in how staff members or fellow inmates or inmates themselves could request and receive services. Can you tell me about how that process has improved? [LR34]

LISA JONES: Absolutely. We've adopted the mental health coding system that I was speaking about earlier, and this is from the Massachusetts Department of Corrections. We're going to begin using that July 1 at our Diagnostic and Evaluation Center. So each of our inmates coming in will be evaluated and then they will be assigned a mental health code that will follow them within the system; and those codes will flag us so that we know if we are needing to see these individuals and at what level of care they really need. The coding system follows a community standard of care model. It's going to help us identify and track individuals with mental illness. And then we also have multidisciplinary teams at most of our institutions to review inmates and make recommendations for different level of care, if needed. In Dr. Gage's report, he had recommended consistency with the community standard of care. And that, especially when it comes to the referrals that you're talking about, once we get our mental health coding system in place, it will help us to also triage those kind of referrals and categorize them into emergent, urgent, and routine. And again, that is in consistency with what the community provides. We

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are...we already have several clinical program managers in place and I believe Dr. Gage referred to them as residential directors. Our clinical program managers are ultimately going to be the individuals that receive the referrals. And once they receive the referrals, they are going to help make sure that they are being followed up on appropriately. [LR34]

SENATOR BOLZ: That's helpful. One last question, and then I'll share the mike, is... [LR34]

LISA JONES: Sure. [LR34]

SENATOR BOLZ: One of the things that again came up in one of our previous hearings that I'd like to hear an update on was there was not enough information about me for the staff-to-inmate ratio as it relates to the mental health staff. Could you give me an update on issues like the inmate-to-mental health staff ratios by institution and whether or not there is significant vacancies. [LR34]

LISA JONES: Okay. I don't believe I'm prepared to give those exact statistics, but I can certainly provide you on an update with that information. In terms of our staffing vacancies, we have hired a new...the new director of behavioral...or, excuse me-- behavioral health, that's me--director of psychiatry. That was Dr. Martin Wetzel. We just hired Dr. Natalie Baker, who's provided contract services for the department for years. We've also hired a mid-level practitioner in psychiatry, and that leaves two vacancies still in our psychiatry services. Dr. Wetzel is expanding a residency program which also allows more individual psychiatric care for our inmate population primarily in our mental health unit and our secure mental health unit. One of the exciting things that we have done to improve our staff-to-inmate ratio is we've applied to become an APA-approved internship site with the Nebraska Consortium of Professional Psychology. This would allow us to have three to four psychology interns who work full time, and work very hard, to fill in psychologist vacancies and provide potential future employment opportunities. We've established three new psychologist positions to focus on our restricted housing units at Tecumseh, LCC, and NSP. We've established a position for a clinical program manager over psychiatric services. We have established a position for a mental health practitioner for sex offender services to enhance the efficiency of our inpatient sex offender program. And we continue to regularly check in with individuals from the contract providers looking for contract

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services if we can fill those vacancies in at that time. We have 6 vacancies for psychologists, 10 vacancies for mental health practitioners, 11 vacancies within substance abuse, and 2 vacancies within social work. We believe these positions have been very challenging to fill due to offering lower compensation compared to private sector, and also due to statewide shortages in these areas. But consistent with Dr. Gage's report--I believe very similar that he did--he had stated that if these vacancies that we have are filled, that we would probably be on the slightly low side in terms of staff-to-inmate ratios, and I agree. If these vacancies were to be filled, mental health should have enough clinical resources, given the addition of those new positions that I just explained and gaining those psychology interns. However, first we need to fill our vacancies and get our staff trained in order to best determine if we still have unmet staffing needs. [LR34]

SENATOR BOLZ: Well, I appreciate that you've created some new positions that are better tailored to your needs. I think that's helpful. [LR34]

LISA JONES: We're excited about that. [LR34]

SENATOR BOLZ: But I would appreciate some updated information about your existing vacancies, your existing filled positions, and your staff-to-inmate ratios across the system. [LR34]

LISA JONES: Okay. Absolutely. [LR34]

SENATOR SEILER: Senator Coash. [LR34]

SENATOR COASH: Thank you, Chairman Seiler. So you have 29 unfilled mental health provider positions. [LR34]

LISA JONES: What was that again? I'm so sorry. [LR34]

SENATOR COASH: You have 29 unfilled positions. Senator Mello was...well, he's the money guy, the number guy. [LR34]

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LISA JONES: Total, you mean, within behavioral health? Yes. [LR34]

SENATOR COASH: Right, behavioral health... [LR34]

LISA JONES: Yes. [LR34]

SENATOR COASH: ...positions. [LR34]

LISA JONES: Yes. [LR34]

SENATOR COASH: That would...I just want you to tell me if I'm thinking through this in the same way the department is. If you have 29 unfilled positions, that would tell me you have mental health need on the inmate side that would necessitate what you have plus 29 more units of labor, right, 29? [LR34]

LISA JONES: Yes. [LR34]

SENATOR COASH: I'm assuming they're all full time. [LR34]

LISA JONES: Yes. [LR34]

SENATOR COASH: That's quite a bit. [LR34]

LISA JONES: Yes. [LR34]

SENATOR COASH: So to me that speaks to a large unmet need of behavioral and mental health services for the inmates. [LR34]

LISA JONES: I believe it is definitely affected in the efficiency in terms of how we're getting individuals screened and recommended for their treatment programs, and then also getting individuals through their treatment programs prior to their parole eligibility dates. That's where I see the biggest problem area that we, if we had more staff, we could run more programs and we

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could get more individuals through at the same time and get them through before their PEDs.
[LR34]

SENATOR COASH: One of the things that...and I'm looking at transcripts from actually an Appropriations hearing from last year when Director Frakes--in March of last year, so a little over a year ago--said, well, there's still a strong question in my mind about what percentage of population actually has a need for mental health services. So a year ago Director Frakes was I think telling the Legislature, I need to get my hands around how many of these inmates need mental health services. [LR34]

LISA JONES: Yes. [LR34]

SENATOR COASH: So it's been a year. [LR34]

LISA JONES: Yes. [LR34]

SENATOR COASH: You're in the position. Have you got your hands around the unmet need of mental health services with regard to number of inmates waiting for a particular type of service, if all the, you know, maybe all the sex offender services are...those needs are being filled but we're missing anger management services? I'm just using those as examples. But it seems like a year down the road we ought to be able to look to you and say a point in time, here's the need of mental health services for the inmates. Can you give us that? [LR34]

LISA JONES: Yes, I can do my best to answer that question. Again, what we need are to fill those staff vacancies. If we fill those staff vacancies, then we can offer more treatment programs that will be...and that would be across sex offender services, violent offender services, substance abuse, so that we can provide more opportunities for inmates to get through before their parole eligibility dates. So that is the way I see the unmet need. We still...there are some issues in terms of getting people seen as quickly as we would like if they are requesting to be seen by a psychiatric provider or if they're being requested to be seen by a mental health practitioner. And that obviously would be improved dramatically if we had those 29 positions filled because the majority of our staff are busy all day doing programs and treatment, especially within our

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residential programs. And so when it comes to following up on some of these other services, I see a great need in that area. [LR34]

SENATOR COASH: Other than the health of the inmate, which is why you give the service, is the lack of services that you're describing, because of the lack of personnel, is it affecting ability for Parole to discharge? [LR34]

LISA JONES: It's affecting their ability to discharge prior to their PED. That's the biggest piece that I see. [LR34]

SENATOR COASH: So the lack of services, because of the lack of personnel, pushes inmates to the point where they may or may not get it at the point that they've got to be mandatorily discharged, so they have to be let out at that point. Is that... [LR34]

LISA JONES: Prior to PED we do... [LR34]

SENATOR COASH: Parole eligibility date? [LR34]

LISA JONES: Yes. [LR34]

SENATOR COASH: Okay. [LR34]

LISA JONES: Yes. In terms of their tentative release date, we definitely focus on making sure that all of those individuals, if they're approaching that date, that they've received the treatment that they've needed. And I do see that at times there are individuals, especially within our violent offender programming, that they will refuse treatment, and so then that is a problem, and then they go through their incarceration without any treatment. So that's another area of concern that I have. And an unmet need would be some type of programming that we could implement for those that are refusing their treatment that might be engaged in some other type of treatment if we could be able to implement that. That's one of the reasons why we're partnering with our nonclinical staff. And again, that's in accordance with community standard, because the individuals that provide domestic violence groups, they need to be trained within domestic

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violence and the specific model that we are using, but they do not have to have their master's in counseling or social work. So if we are able to train more of our nonclinical staff to come in and partner with us and provide services, I think, once again, if we're able to offer it more consistently before parole eligibility date, I believe our inmate population would be more likely to accept their treatment recommendation and follow through with it. [LR34]

SENATOR COASH: Thank you. [LR34]

SENATOR SEILER: Senator Mello. [LR34]

SENATOR MELLO: Thank you, Chairman Seiler; and thank you, Ms. Jones. I apologize for being a little late,... [LR34]

LISA JONES: That's okay. [LR34]

SENATOR MELLO: ...missing the first part of your testimony. I reread your written testimony and the questions I have dovetail a little bit off of what Senator Bolz and Senator Coash just discussed. With 29 vacancies in the behavioral health, mental health division that you oversee, what's being done with the money that currently is sitting there then due to these vacancies? Are you just...is it being spent on other activities, other programming? Are you contracting out services with private providers? Or is it just sitting there waiting for the department to fill those positions? [LR34]

LISA JONES: We are trying to contract with outside providers to fill in some of those vacancies. And so, yes, some of that money is being utilized for those services. And of course contract services are much more expensive than an actual position within the state of Nebraska, so that's one area where we're utilizing that money. We are utilizing some of the money also for training, because if we get more individuals within our mental health staff trained in the violence reduction program, we will be able to start another program in Tecumseh, and that is a goal that we have and we are working towards. So that's an area where money is being used. And quite honestly, in terms of the rest of the money, I don't know exactly how that works. I've only been to

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a couple budget meetings so far in my position and so I don't know how all the specifics of that work. [LR34]

SENATOR MELLO: And I can appreciate that and this could be a question that I'm looking over your shoulder to Director Frakes and maybe he can step in when his time comes to give a little more feedback on. I guess the one question I've got, and it was...you started to discuss it with Senator Coash, is, obviously, if we prefer to hire these mental health practitioners in the Department of Corrections, but you said earlier that the biggest challenge we face is the low pay, the competitive salary,... [LR34]

LISA JONES: Yes. [LR34]

SENATOR MELLO: ...what are we doing right now to try to address the competitive salary, to try to...instead of spending more money on less services through private contracts, what are we doing to try to increase that salary to hire, I guess, more people inside the department? [LR34]

LISA JONES: If it was our decision to increase salary, we would do it, absolutely, because our mental health practitioners, substance abuse counselors, social workers deserve it and it would be more competitive with our...the pay that is being offered through the private sector. However, this is through union contract and so we don't have any capability to increase that compensation, so... [LR34]

SENATOR MELLO: Have you had any conversations recently about exploring any...I just...Senator Watermeier, who is here watching today in the back, he sits on the Appropriations Committee, he brought LB733 that we ended up appropriating them \$1.5 million for retention pay to try to address some of these issues in the short term while the department and the Governor and everyone else works through the collective bargaining process. Has there been any conversations you've had over the last month or so since that issue became more public in regards to possibly utilizing some of this new appropriation to retain your existing staff and/or to use it as maybe a hiring bonus to some potential behavioral health staff? [LR34]

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LISA JONES: Absolutely. There have been numerous conversations around how we could best utilize this, these monies, especially for behavioral health services and health services in general. And we're looking at possibly doing some type of bonuses. We are also looking at more training opportunities. A lot of the individuals within behavioral health have...well, they all have some type of specific requirement for continuing education. So that's another way that we are looking at utilizing this money is to be able to pay for continuing ed, and that has not happened in the department since I've been here. So that would be a fantastic drawing/recruitment kind of piece because a lot of individuals do have to maintain several licensures and the training for that can be quite costly. So that would be one way that we would like to utilize the money and that would be kind of a recruiting tool; and then also in terms of retainment, because when you are in this profession you have to do a certain amount of hours every year, and so that would be another way to hopefully retain our staff. The other thing that we are looking at is specialized training because ultimately anybody that is coming into behavioral health wants to be able to continue on their career path; and if we give them some specialized training in domestic violence, if we give them a specialized training in the violence reduction program, that is something that they can put on their resume. So not only would we pay for that and that would help them just to get the training, but it would also really improve their marketability and hopefully be something that attracts them to the department is because we'll continue to offer training like that that would be, again, something that would really build their resume. [LR34]

SENATOR MELLO: Now I can appreciate everything you just explained through with the training and the continuing ed, specialized training. If we're going to fill...if the state decides to fill all 29 of these positions, in theory there won't be any money available for private contracts, there won't be any money available for training, continuing ed. Is that going to require then more resources for the department then to be able to continue some of these short-term efforts to give behavioral health services to inmates knowing that you're trying to fill these vacant positions now utilizing that staffing money? Is that going to be something the Legislature will likely see next year or in the next biennium of, for us to really solve this behavioural health staffing crisis, it's going to need more money? [LR34]

LISA JONES: Um-hum, yes, I do believe...my understanding is that the appropriation is for the next year for us to utilize. And of course I would love to say that that could be an ongoing

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benefit that we could offer to our behavioral health staff because, again, ultimately that is a...it's a very important piece of our training and our professionalism and, again, it can be quite costly. So if that is to be continued, yes, I would imagine we would have to ask for more money in that aspect. [LR34]

SENATOR MELLO: My last question just deals with an issue that I know we're going to hear an awful lot about probably as we talk about a number of different institutions is the issue regarding longevity pay for existing Department of Corrections employees. It's something that I know the Judiciary Committee, the Business and Labor Committee, Appropriations, and we all heard over the last year. Has there been ongoing conversations within your division, within the department, in regards to starting to address we know the inequities that seem to exist in regards to short-term Department of Corrections staff versus medium-term versus long-term staff and looking at some way to change that compensation scale, so to speak, to help assist with the retention issues we see? [LR34]

LISA JONES: There has been discussion on that. Again, unfortunately, within behavioral health we are capped at the amount of money that we can offer to our employees. And so that piece is a little more complicated for behavioral health. We've talked about bonuses in those areas, but again it's really...it's going to be kind of a difficult process to figure out how we would do that in a very equitable manner. And we have, like you suggested earlier, talked about hiring bonuses also. But again, for those individuals that have been with us for years and years, that sits wrong with me as not being able to provide them the same opportunity. So we're just trying to make sure that we're looking at this from an aspect that we would be utilizing that money in the wisest manner and, again, in an equitable manner and in a way that would be something attractive for providers to come in knowing that they would have some of those benefits, again, like continuing ed, paid for. [LR34]

SENATOR MELLO: One last question, Mr. Chairman, if I can, and it's something we've talked pretty extensively about with maybe corrections officers is the issues surrounding mandatory overtime just in the sense of all these vacancies, all these open positions, and requiring more from the existing staff because these other positions have not been filled and/or are becoming unfilled, so to speak, on a regular basis. Do you see a lot of mandatory overtime in the behavioral

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health/mental health division that you oversee? Or is that becoming a problem like it is, we know, with the corrections officers? And if that is also part of the issue, how do we then...how do we start to address that issue on top of the unfilled, vacant positions? [LR34]

LISA JONES: We have been having conversation about that because the majority of our fully licensed staff are on salaried pay. And so once those individuals are on salary pay, there is no overtime, obviously. But they certainly work more hours, especially when they are the mental health on-call person for the day or for the week. Then that individual can work, you know, many hours over what they normally would be working. We've had conversations about being able to do some flexibility for that person, allowing them maybe to do paperwork at home, those kinds of things. But the majority of staff that I speak to are concerned that if they would take more time off, they're just going to get further behind. And we have very dedicated staff that are very passionate about making sure that our inmate population is being serviced, especially those individuals in crisis. And so, you know, we all take a rotation in terms of being that mental health on-call person. [LR34]

SENATOR MELLO: Thank you. [LR34]

LISA JONES: You're welcome. [LR34]

SENATOR SEILER: Senator Ebke. [LR34]

SENATOR BOLZ: Just a follow up if...I don't mean to butt in. I just... [LR34]

SENATOR EBKE: I just have one question. [LR34]

SENATOR BOLZ: Okay, go ahead. [LR34]

SENATOR EBKE: My only question is just one of context. You said you had 29 unfilled positions. Okay, 29 out of how many total? [LR34]

LISA JONES: Thank you for putting me on the spot like that. [LR34]

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SENATOR EBKE: Well, about, give or take, yeah. [LR34]

LISA JONES: We have approximately 176... [LR34]

SENATOR EBKE: Okay. [LR34]

LISA JONES: ...160 mental health staff within behavioral health. That's overall behavioral health. [LR34]

SENATOR EBKE: That's how many staff positions you've got available that... [LR34]

LISA JONES: Oh, in addition to that, you're going to make me do math too. So in addition, we have approximately that many individuals that are... [LR34]

SENATOR EBKE: Currently. [LR34]

LISA JONES: ...employed with us currently. [LR34]

SENATOR EBKE: Okay. [LR34]

LISA JONES: And then we would have those 29 positions on top of that. [LR34]

SENATOR EBKE: Okay, thank you. [LR34]

LISA JONES: Thanks. [LR34]

SENATOR SEILER: Senator Bolz. [LR34]

SENATOR BOLZ: Sorry. I didn't mean to cut in line. I just...I wanted to follow up on something you said to Senator Mello. You referenced using vacant...and correct me if I didn't hear you correctly, but you referenced using vacancy savings to train up individuals on the violence reduction program, which I think is a good program, but I recall putting additional violence

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reduction program dollars into the budget our last budget cycle. So does that mean that you've been able to fully utilize the violence reduction program dollars? [LR34]

LISA JONES: We have not fully utilized that. That is another area that we will be gathering money from, another example of training that we may be able to provide through that money that you were speaking of in terms of the appropriations would be more for domestic violence. And then we also have some anger management training and some schema-focused therapy training that we want to do. So those, that would probably use for that; and then in terms of the violence reduction we would be using those monies that we have already been appropriated for that to have our training done. And we are in the process of getting that scheduled at this time. We just haven't had much cooperation, so to speak, from the individuals providing it. They provide...they're out of Canada and they're very specialized, and so they are very, very busy in terms of trying to get something scheduled for them to come to us and provide that training. But we had 20 individuals on our mental health team that signed up and said that they would be willing to go through that training. And then we have three positions for...well, excuse me, we have two, I apologize, we have two positions for licensed mental health practitioners to implement the VRP, specifically for that. And we are trying to fill those positions, but they are in Tecumseh and it is extremely difficult to fill those positions. So it's already hard to find mental health practitioners that are willing to come in for the level of pay that they're compensated within the state, but also it is very difficult to have individuals come in that will be providing services in our more rural areas like Tecumseh. [LR34]

SENATOR BOLZ: Thank you. [LR34]

SENATOR SEILER: I have just one question. [LR34]

LISA JONES: Sure. [LR34]

SENATOR SEILER: To clarify the staff, you said between 160 and 170 plus the 29? Is that just for Lincoln or does that cover all the 11 penitentiaries? [LR34]

LISA JONES: That would cover all of us, yes. [LR34]

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SENATOR SEILER: Okay, thank you. Senator Krist. [LR34]

SENATOR KRIST: Hi. Thanks for coming, Dr. Jones. Three questions: The first one is, can I draw an analogy and say that if you're 16 percent undermanned, you're 16 percent short on the services that need to be provided as a baseline? [LR34]

LISA JONES: I believe we're doing a good job of filling in, but we're definitely not...we're not able to function as efficiently as we could if we had more staff. And so, for example, one of the ways that might affect our inmates in terms of their treatment is, instead of being able to offer something twice a week--for example, a treatment group--we have to offer it once a week because we just don't have enough coverage. That's the way I see it being affected. Again, efficiency and the ability to offer treatment programming across our population before PED, those are the biggest areas that I see as problematic. [LR34]

SENATOR KRIST: So part two of that question, the second question, is I'd be interested, because we saw the release documentation, release report just recently, and I believe the number is about 47 percent of the released had jammed out of the system. Can you quantify for me, I mean if you're that short on services, what percentage of that 47 percent actually walked out without any treatment, behavioral or otherwise? [LR34]

LISA JONES: I can't give you specific numbers, but I can speak anecdotally to that. And what we see is individuals who are offered their treatment later on in their sentence, closer to their TRD, oftentimes will refuse it because they may as well jam their number, as they say. And also I think because they've been waiting and they would like to get their treatment earlier but we just cannot provide it because there are not enough individuals to provide it for everyone to get done before the parole eligibility date. [LR34]

SENATOR KRIST: So we have a... [LR34]

LISA JONES: So that's where I see a problem. [LR34]

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SENATOR KRIST: We kind of have a vicious circle here. We have not enough people to provide the services and that process is delayed until further and further down the line, and then we have people that are jamming out with no services because they pushed back on not getting the services because they couldn't get it earlier enough in the system to make a difference. This is the cycle that is causing, in my opinion, what we saw in phase one, which is a swinging door. And without giving that same treatment on the front end, that you can't provide, trying to get it on the back end and people are refusing it, we have this cycle that needs to be broken. [LR34]

LISA JONES: Yes, and that's been a huge concern of mine for years, and that's one of the reasons why we are partnering with nonclinical staff because that way we can again kind of expand our resources. Individuals can get into programming before their PEDs and get it completed. That would be for individuals with just an anger management recommendation or a domestic violence recommendation that is not at the level that we need to review it between our...amongst our review teams. So that's one way that we're trying to get it on the front end. Because I hear what you're saying and I've been frustrated with that process myself, but everybody is kind of doing the best they can to make sure that at least our inmate population is given the opportunity that they have that they can get treatment before they leave. And unfortunately, that means that some of them really have to wait until they're close to their TRD. But with the implementation of nonclinical staff and if we could get our vacancies filled and we have new positions that have been developed in the psychological interns, if we would get, it would tremendously facilitate getting treatment offers to these individuals prior to PED. And that would help in terms of their engagement in the whole treatment process and hopefully get people out before their PED and with treatment. [LR34]

SENATOR KRIST: So I guess I have to say the obvious or state the obvious again, having been involved with this for a few years. One of the largest findings and top goals that we had coming out of phase one and LB605 was to eliminate, not just reduce but eliminate, the jam outs. And this is indicative of this, again, cycle that has to be broken or we're never going to do what we wanted to do or what we need to do. [LR34]

LISA JONES: Yes. [LR34]

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SENATOR KRIST: My last question for you is are all 200 people unionized? [LR34]

LISA JONES: In terms of behavioral health, are we all under the union contract or the NAPE contract? [LR34]

SENATOR KRIST: Right. [LR34]

LISA JONES: Yes. [LR34]

SENATOR KRIST: Why? [LR34]

LISA JONES: Excuse me. I should say except for discretionary positions and we do have several of those positions, so I apologize for the inaccurate... [LR34]

SENATOR KRIST: Okay. But some of these are medical profession, trained, clinical folks. [LR34]

LISA JONES: Those are the discretionary positions so... [LR34]

SENATOR KRIST: And so why would you unionize that group of people? [LR34]

LISA JONES: Those groups are not unionized. There are two sets. [LR34]

SENATOR KRIST: Oh, okay. [LR34]

LISA JONES: Yes, I apologize again. [LR34]

SENATOR KRIST: All right. [LR34]

LISA JONES: I said everybody was but only the mental health practitioners, the substance abuse counselors, and our social workers are under the contract. And then we have discretionary positions that we had a little more flexibility in terms of filling. [LR34]

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SENATOR KRIST: So the follow on to that would be so we don't have to wait for union reorganization or for any kind of compromise between a union contract to handle that group of people that are clinical in nature and healthcare professional. [LR34]

LISA JONES: Yes and no, because part of the issue is there is a shortage in these areas, especially in nursing, which really isn't under my...I'm not over any kind of the medical field, but the nursing shortages, the mental health practitioner shortages, psychologist shortages, especially psychiatry shortages. So it's not just the money that we're able to offer for those discretionary positions but it's also just a lack of providers within our communities. [LR34]

SENATOR KRIST: So just for the record, I have personal knowledge that at the same time we've been trying to add those clinical positions, those doctors, nurses, etcetera, and have not been able to fill them, others have hired at key positions in other parts of the state. They're available in Hastings and Grand Island and Chadron and other places. And I think what I'm getting to here is we've been told and we are...been absorbed by this, it has to be a union reorganization. In behavioral health, with the clinicians and the doctors and the nurses, it's not a union reorganization as much as it's making sure we get quality people. And sometimes that means spending a little extra money to get the quality people in place. Would you agree? [LR34]

LISA JONES: I would agree and I would love to do that. [LR34]

SENATOR KRIST: Okay. Thank you. [LR34]

LISA JONES: I would be more than willing to, if possible. [LR34]

SENATOR SEILER: Senator Paul Schumacher. [LR34]

SENATOR SCHUMACHER: Thank you, Mr. Chairman. In your opening testimony you said that there were several areas in which things we're working well: crisis management, individual counseling, social work services. How long have they been working well? [LR34]

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LISA JONES: I, in my position, again, I've been...I was in a position for five years and I saw those services being offered across our inmate population, but they've been limited. And so they've been working well in that people work really hard in their positions to deliver services, but once again we're limited in terms of hitting everybody because of the number of vacancies we have. [LR34]

SENATOR SCHUMACHER: So basically when you said they were working well, what is working is working well, but the system is not working well. [LR34]

LISA JONES: (Laugh) So to speak, yes. [LR34]

SENATOR SCHUMACHER: (Laugh) It sure didn't look like it was working well a couple years ago with some of the cases we looked at. You also said that the screening review team was screening fewer inmates than desired, i.e., one clinician versus four or five. Does that mean you've gone from one person to four or five? [LR34]

LISA JONES: The other way around. They were being screened by four or five individuals on a review team, because that's the way we were structured. And the review teams are critical to us providing the best level of care for our inmate population because they make the very difficult decisions about who needs what type of treatment. But not everybody needs that level of scrutiny by a whole team, and so what we're doing is moving from that entire team screening everybody to having our clinical program managers do that screening. [LR34]

SENATOR SCHUMACHER: So fewer people doing the screening is better. [LR34]

LISA JONES: It makes it go faster because... [LR34]

SENATOR SCHUMACHER: It makes it more efficient. [LR34]

LISA JONES: It makes it more efficient, absolutely. [LR34]

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SENATOR SCHUMACHER: You don't have to spend as much money on those people then.
[LR34]

LISA JONES: You don't have to spend as much time so that you can utilize your clinical resources for the actual treatment. And that's what we're really wanting to focus on. [LR34]

SENATOR SCHUMACHER: But if the money were available, it would be better to do it with the four or five than the one. [LR34]

LISA JONES: Not necessarily. I believe our clinicians are trained well enough that they know when they need to take it to a review committee, because there will always be those cases that are just more difficult to determine. We use evidence-based practices in terms of deciding who needs treatment by giving them assessments and getting cut-off scores and getting information. But there are always those individuals that kind of fall in that range between maybe a level of care like outpatient versus inpatient sex offender services. Those are difficult cases to make decisions on. Those need to be made by that review team. [LR34]

SENATOR SCHUMACHER: Now when you say that...in the other part of your testimony, you implemented a program of partnering with your nonclinical staff. So nonclinical people are doing things that would normally be done by clinical staff if the staff were available? [LR34]

LISA JONES: This is a hard one to explain. I'll do my best. There are individual treatment programs that can be provided through nonclinical staff. For example, an anger management educational group, our domestic violence groups, those can be run through nonclinical staff instead of having to have a licensure to be able to provide that treatment. And so again, our focus is on making sure that the individuals still get their treatment, but if they do not rise to the level of care that they need a licensed provider to provide that treatment, then we certainly want to take advantage of using our nonclinical staff. We just started for the first time this last summer when we implemented our domestic violence programming, we began partnering with nonclinical staff. So we would have one clinician partnered with a nonclinical staff and they would be facilitating those groups. And that has been a really positive experience for both clinical and nonclinical staff. [LR34]

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SENATOR SCHUMACHER: When the nonclinical people get diverted into performing things that they're not licensed to perform, who fills their shoes in doing what they would normally be doing? [LR34]

LISA JONES: Well, first I want to make sure that everybody understands we do not provide things, treatment, from...at that level that a nonclincian can't provide because that would be very unethical to allow people to come in and do treatment if they're not fully licensed and trained. If they're... [LR34]

SENATOR SCHUMACHER: How do you make that determination? [LR34]

LISA JONES: There's a difference between psychoeducational groups and actual treatment groups. And so again, it's following community standard where there are individuals that can be trained and specialized in an area, but they don't necessarily have to have a license to do that. And that's within your psychoeducational groups. That would be within your domestic violence. They would fall within that. [LR34]

SENATOR SCHUMACHER: Where do you find...is there a book or an outline of community standards? I mean where do you find what the community standards are that you're changing your program to comport to? [LR34]

LISA JONES: We do have statutes within the community that kind of outline everything that we need to be incorporating. For example, there's the standardized model of care for substance abuse and it gives very specific indicators of what needs to happen to meet community standard. [LR34]

SENATOR SCHUMACHER: And is that list, that book or compilation of community standards, is that available? Is that something that is...you can produce, you can Xerox off? [LR34]

LISA JONES: That is something that I can definitely produce in the substance abuse arena. And in terms of community standards for domestic violence, I can do that also. If you would like to see those, I can definitely get that to you. [LR34]

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SENATOR SCHUMACHER: And then one final question: If the core of the problem is that there's 29 spots that are unfilled of professional people, and that's basically due to not being able to offer the kind of salary and amenities that it would take to attract them, and that's due to restraints because of union contracts, what has been done to negotiate with the unions to get something changed, an addendum to that contract? Is there an ongoing effort? [LR34]

LISA JONES: That is something I really can't speak to because it's kind of like one of those parts of my job that I don't know how all of that works yet. I have had some conversations with Mr. Koebernick and he has also kind of encouraged that, that we can maybe have some type of conversation with the individuals who set that contract rate and try to negotiate that. In the past, there was a lot that was done. There was a behavioral health restructuring that was presented and actually approved, but the funding for that has not been in place and so we haven't been able to offer that. And that's unfortunate because that would solve a lot of our problems. So your answer is kind of twofold. In the past there's been a lot done, again, to develop that behavioral health restructuring. And currently, after that was not able to be funded, then currently we are looking into what we need to do with the contract. [LR34]

SENATOR SCHUMACHER: Well, perhaps I'll ask that question of somebody who's better situated to answer then. [LR34]

LISA JONES: Yes. [LR34]

SENATOR SCHUMACHER: Thank you very much. [LR34]

LISA JONES: You're welcome. [LR34]

SENATOR SEILER: Senator Williams. [LR34]

SENATOR WILLIAMS: Thank you, Chairman Seiler. And thank you, Dr. Jones. A quick follow-up on some things. We've certainly been made aware that the DEC center is maybe the most overcrowded of the facilities that are part of the corrections system. And you talked about

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the needs assessment that you are now doing on the front end and streamlining that. How soon does that get done? [LR34]

LISA JONES: The STRONG-R has not been implemented yet. It's got a July 1 start date. And those...the individuals that will be utilizing that are in the case management realm and they can utilize that within the first two weeks that that individual would come into the system. Mental health has to have some type of contact within that first couple of weeks to just make sure that the individual isn't in, like, any kind of mental health crisis or has a need right now. So there is that piece in place. But our mental health assessment right now is on absolutely everybody that comes into our system. We basically provide the same level of assessment. And once we get that risk/needs assessment in place, we can then use that to focus in on our moderate- to high-risk individuals and that way we can free-up some clinical resources in terms of the ones that would normally be spent on the lower risk offenders. [LR34]

SENATOR WILLIAMS: Is it... [LR34]

LISA JONES: All offenders will get mental status exams. All offenders will be measured on their functionality and receive that STRONG-R. [LR34]

SENATOR WILLIAMS: Will it be an expectation then that as that STRONG-R is done early, that these people will have an opportunity to move out of that facility into other facilities sooner than they are now, or is that still... [LR34]

LISA JONES: That would... [LR34]

SENATOR WILLIAMS: ...because there aren't beds other places? [LR34]

LISA JONES: Yeah, it's a complex problem,... [LR34]

SENATOR WILLIAMS: Okay. [LR34]

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LISA JONES: ...but that's essentially what we would like to do and, again, making sure that our inmates know what their treatment recommendation is up-front so they can start planning and make the best use of their time. [LR34]

SENATOR WILLIAMS: And to follow-up on a question that Senator Schumacher asked about when you were using one clinician versus four or five, will the answer that one gets be the same as if you were having four or five? You're confident that it would be the same answer? [LR34]

LISA JONES: Yes, in the... [LR34]

SENATOR WILLIAMS: Okay. [LR34]

LISA JONES: ...in the violent offender programming, yes, because they use specific cut-offs for us and information that is very clear-cut. Those are the ones that are now being screened by one person instead of five. [LR34]

SENATOR WILLIAMS: And going back to your statements concerning those inmates that refuse treatment and hanging a portion of that on the fact that they didn't get treatment early so now they're going to refuse it later, what percentage of inmates would you say just are going to refuse treatment under any circumstances? [LR34]

LISA JONES: Again, speaking anecdotally, I would say maybe 10 percent just if they don't...just meaning they are not willing to do any kind of treatment. They're not motivated. Maybe their sentence is short enough they don't want to do anything. The majority of our population does want to participate in programming, but again it needs to be offered at the right time. We don't want to offer it too soon because we want them to be able to utilize what they're learning as they're transitioning out, but we definitely don't want to offer it too late because then it just kind of creates some animosity in terms of not wanting to participate. [LR34]

SENATOR WILLIAMS: And again, we've talked about the catch-22 of this. I'm sure that your clinicians want to provide treatment because they recognize how important that is. [LR34]

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LISA JONES: Absolutely. [LR34]

SENATOR WILLIAMS: So I'm assuming that you continue to try to work with those people that are saying, I'm refusing treatment, to continue to offer and... [LR34]

LISA JONES: Absolutely. [LR34]

SENATOR WILLIAMS: ...at least they know it's available. Thank you. [LR34]

LISA JONES: Yes. [LR34]

SENATOR SEILER: Senator Pansing Brooks. [LR34]

SENATOR PANSING BROOKS: Thank you, Chairman Seiler. Thank you for being here today and for your willingness to answer questions. So I have a couple things. Can you explain a little further what holistic care for the community means when you said that? [LR34]

LISA JONES: That would be a way of looking at the person. Again, holistically means their mental health in addition to their medical health, their emotional well-being, looking at all of those things instead of just looking at one area. There are individuals that have...in our population a lot that have substance abuse needs in addition to mental health needs, in addition to social work needs, in addition to psychiatric needs, in addition to medical needs. And so being able to look at all of those things together and work together as opposed to compartmentalizing those things, that's what that holistic approach means. [LR34]

SENATOR PANSING BROOKS: Okay. Thank you. So realistically, as you look at those, and I see all these different programs or systems to investigate these inmates, how much can you really do holistically for each of the...? To deal with their mental health needs and their substance abuse needs and all the various needs that you mentioned costs money. [LR34]

LISA JONES: Yes. [LR34]

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SENATOR PANSING BROOKS: So what percentage...will you be able to...I mean once you know those needs, will you be able to provide some sort of help for those needs? [LR34]

LISA JONES: That's definitely what we want to work towards. [LR34]

SENATOR PANSING BROOKS: I know you want to... [LR34]

LISA JONES: Yes. [LR34]

SENATOR PANSING BROOKS: ...but can you? [LR34]

LISA JONES: Um... [LR34]

SENATOR PANSING BROOKS: How would you? [LR34]

LISA JONES: Well, the way we're doing it right now is we have multidisciplinary teams in each of our facilities. And that means we sit down with...and when I say "we," behavioral health staff, so that would include substance abuse staff; mental health staff; if it's a sex offender, services that are involved. And then also our social work staff would sit down with our medical staff, potentially our psychiatric staff. A lot of times they are Skyped in. And we also incorporate our unit staff because a lot of times they have a lot of information that we just don't. They may see a different thing than we're seeing. And so that's helpful information. The multidisciplinary team is the best way to do that because you just...otherwise it takes too much time to try to coordinate. Usually, the individuals that get staffed within those multidisciplinary teams are the most complex. And so, therefore, there are numerous cases that are not as complex that do not get brought before the multidisciplinary team. [LR34]

SENATOR PANSING BROOKS: Okay. So from what little I've seen when I've gone into the prisons--and I don't envy your job in any way, I think it's a very difficult job--but, to me, it seems like it's putting fires out. It's reacting to the most difficult situation at the time. And I blame that on money. I blame that on lack of people there. But how do you...and I blame it on a lack of

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programming, and lack of programming is money again. Would you agree with those...that statement? [LR34]

LISA JONES: I agree with it in terms of the...a lot of response is crisis intervention, yes. And unfortunately then, that reinforces the crisis kind of behavior and so we kind of get in that cycle too. But I also feel like our behavioral health staff do a really good job again at triaging things so that we're able to make sure that we're focusing on the most urgent needs. And sometimes again the crises over, they will definitely override something else that we also see as very important. But with that triage model, we also get to know our inmate population better and making sure that we are aware of some individuals that may have crisis in order to get some services in place, and then those are the ones that we can offer some behavioral programming to. Again, if they are not able to get into treatment or if they don't have a treatment recommendation, we could hopefully get them into some MRT group, something that can help them to occupy their time. [LR34]

SENATOR PANSING BROOKS: Okay. So it seems to me that the triage model would not be the perfect model to be attacking the whole issue of mental health and the needs in the corrections system. So do you have any kind of vision of what else, what it could be, what we could do to treat everyone with needs? I mean what is it that you're not doing that could be done better under a nontriage system where we're reacting to the greatest need? [LR34]

LISA JONES: We're following that model because that's one of the things that Dr. Gage had recommended and because, once again, I mean when we have crises within our population, they can be life or death. And so we take that very, very seriously. [LR34]

SENATOR PANSING BROOKS: Right. [LR34]

LISA JONES: And we have to pay close attention to those. Again, in terms of being able to provide treatment more equitably across our inmate population, we just really need to get our vacancies filled, because then we can offer more than one program at a time, for example. If right now we only have one domestic violence program at NSP, we could offer two or we could offer three. That's where we're at right now. [LR34]

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SENATOR PANSING BROOKS: How many people are in that program? [LR34]

LISA JONES: In the domestic violence program right now? [LR34]

SENATOR PANSING BROOKS: Yes. [LR34]

LISA JONES: Inmates participating? [LR34]

SENATOR PANSING BROOKS: Yes. [LR34]

LISA JONES: I believe 62. I am not 100 percent on that but I do have that information. I'd be happy to get it to you. [LR34]

SENATOR PANSING BROOKS: Okay. And how long does that program last? [LR34]

LISA JONES: That program is a 31-week program. [LR34]

SENATOR PANSING BROOKS: Thank you. I also...you talked in your testimony about that mental health staff that have assessed and transferred 34 inmates from restrictive housing and that 14 have gone back into the general population. How many are there, 34 out of what? [LR34]

LISA JONES: Those are the individuals that would have been diagnosed with mental illness within our restricted housing units that... [LR34]

SENATOR PANSING BROOKS: I know. How many have been diagnosed altogether? [LR34]

LISA JONES: Throughout our whole system? [LR34]

SENATOR PANSING BROOKS: Uh-huh. [LR34]

LISA JONES: With a major mental or...? [LR34]

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SENATOR PANSING BROOKS: If that's 34 out of your whole system, I'd like to know out of what number. [LR34]

LISA JONES: That, the 34 that I'm referring to have all been transferred outside of restricted housing. So they had a mental illness diagnoses, were within restricted housing, were reviewed by our mental illness review team, and determined to have a mental illness that was at the level and their functioning was so low they needed to be moved to our secure mental health unit. Our secure mental health unit, I think we have 60 beds on our secure mental health unit. And then in our mental health unit...and I'm not positive so I will get those numbers to you. Those are some of the things I'm still trying to learn and memorize. But in terms of the actual bed numbers, again, we have I believe 60 within our secure mental health unit and 80 within our mental health unit. [LR34]

SENATOR PANSING BROOKS: Great. And those don't...those numbers don't include administrative segregation. Is that correct? Or do they? [LR34]

LISA JONES: Those are individuals that, regardless of what their status is, they've been determined to have mental illness and low functioning to the point that they need to be in the secure mental health unit. [LR34]

SENATOR PANSING BROOKS: Is there a difference? Is there a difference between administrative segregation and the restrictive housing of the mental health group? [LR34]

LISA JONES: We are working on getting a different classification system in place for our secure mental health unit in terms of overriding any kind of disciplinary segregation and that. So those individuals will be afforded more movement and more privileges while they're on the secure mental health unit, because it is a levels program. And in order for us to incentivize progress in their treatment, improvement in their behavior, we have to be able to offer something to them. And so that is one of the things...one of the reasons why we're moving away from disciplinary seg. and we would have that different classification on our secure mental health unit. [LR34]

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SENATOR PANSING BROOKS: Okay. So it's my understanding that you have mental illnesses that are like a disorder that are mental illness or mental disorders which are different from the serious mental illnesses. Is that correct? [LR34]

LISA JONES: We... [LR34]

SENATOR PANSING BROOKS: So you already do identify those two groups. [LR34]

LISA JONES: Yes. Yes. There will be individuals that may have a mental illness diagnosis that is within our restricted housing and those individuals will need to be identified. Again through the coding system that we're going to have, they would be flagged. And we are allotted...we have positions for three psychologists to work primarily with our restricted housing units at Tecumseh, at LCC, and as NSP. And so what we're wanting to do is have those three psychologists focus in on the restricted housing units and the inmates that do have mental illness but don't rise to the level of severity that they need to be transferred to the mental health unit, if that makes sense. [LR34]

SENATOR PANSING BROOKS: Okay. So how fluid is your system of assigning people whether or not they're seriously mentally ill or they've just got a mental health disorder? I understand that there's some point you're going to...that there's some proposed regulations on mission specific housing that would include sex crimes or substance abuse needs. So I'm just...I'm wondering, once somebody is labeled and then somebody else goes into administrative segregation, I could see that that person has severe mental illness issues after a significant time in restrictive housing so...or administrative housing. So then do you all...I mean is it just so fluid you can barely keep track of which...whether a person is under a serious mental health illness or whether they're actually a behavioral disorder? How do you determine all that? [LR34]

LISA JONES: Now that piece is very difficult to determine. [LR34]

SENATOR PANSING BROOKS: I'm sure. [LR34]

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LISA JONES: It is very thorny in terms of trying to sometimes distinguish between more of a personality disorder versus a mental illness like schizophrenia or bipolar disorder or major depression. Those are sometimes very difficult to sort out. So some of the times what we have to do is have services in place that will do evaluations on those individuals to better tease out the appropriate diagnosis. In terms of the individuals,, regardless if they are on our restricted housing unit and they have a mental health code that indicates they have some type of mental health issue, they will be monitored closely. That doesn't necessarily mean again that they're going to be moved. But some of those individuals really do not need...they don't meet the criteria for the mental health unit or the secure mental health unit. But they may decompensate while they're in restricted housing... [LR34]

SENATOR PANSING BROOKS: Right. [LR34]

LISA JONES: ...because that is an environment that can exacerbate symptoms. And if that occurs, that's why our...we're wanting to have those psychologists in place that are watching just restricted housing. Right now we have...we really have a good communication system with our unit staff that will let us know, hey, this person is showing some signs, symptoms of decompensation. So then we get mental health in there. We do an evaluation. And if they are determined to need a higher level of care, then they would be brought between our mental illness review team and potentially moved then to the secure mental health. [LR34]

SENATOR PANSING BROOKS: Okay. And what...finally, what's your goal with restrictive housing of people with mental health issues? [LR34]

LISA JONES: I believe the department's goal overall is to utilize restricted housing as least as possible, because we don't want to use it as any type of a punitive intervention. That's not acceptable. It is used for those situations when maybe a person is so...either if they are harming towards themselves or towards others, they need to be in a place where they can be kept safe and others can be kept safe. And so my vision would be, if we have somebody again that has any kind of mental health issue that is within a restricted housing unit, we watch them closely and we try to get everybody out, back into the general population as soon as possible. And so we're working on ways of really kind of shifting our viewpoint of how we use that from the standpoint

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of some of these individuals, if they are in restricted housing and they have a mental illness, if we can move them out quicker, we would like to do that. [LR34]

SENATOR PANSING BROOKS: And what percent of the time is that not possible? [LR34]

LISA JONES: I can't give you that answer. I'm sorry. In terms of the mental illness that had the low...or the low functioning, those individuals, I feel very confident that we are getting them where they need to be. I'm very impressed with our staff that are on that review team and get people moved out because that's something we do not want to see. [LR34]

SENATOR PANSING BROOKS: And do you believe that there... [LR34]

SENATOR SEILER: Wait a minute. You said finally. [LR34]

SENATOR PANSING BROOKS: And I'm doing one more. [LR34]

SENATOR SEILER: Four questions (inaudible). [LR34]

SENATOR PANSING BROOKS: Do you believe that there's a point when they can...when there's diminishing returns on keeping people in segregation? [LR34]

LISA JONES: Do I believe that? [LR34]

SENATOR PANSING BROOKS: Yeah. [LR34]

LISA JONES: I believe that, yes. I really think...I feel very strongly about moving people out as quickly as possible because, once again, it's not a punitive intervention and we don't want individuals to be in that restricted housing for a long period of time. We do want to move them back into the general population, but we want to do that safely for not only the inmates but the staff too. [LR34]

SENATOR PANSING BROOKS: Thank you. And I am done now, Chairman Seiler. [LR34]

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SENATOR SEILER: Senator Chambers. [LR34]

SENATOR PANSING BROOKS: Didn't know we had time limits but I'll... [LR34]

SENATOR SEILER: We'll go back to four questions at most. [LR34]

SENATOR PANSING BROOKS: That's fine. [LR34]

SENATOR CHAMBERS: Dr. Jones, I would like to first go through two or three things that you had testified to. Now the final sentence in your testimony says, "The mission of Behavioral Health is to provide treatment/programming opportunities consistent with the standards of quality and scope of service found in the community to promote the mental health and well-being of those individuals placed in our custody." So that is the standard used, the one that's accepted in the community. [LR34]

LISA JONES: That is what we have adopted, yes. [LR34]

SENATOR CHAMBERS: When you were using multiple screeners, according to what standard was that process being utilized? [LR34]

LISA JONES: The review teams that were screening individuals have all been developed internally. That is not something that the community would utilize. And in the community, I practiced for 13 years in private practice and I would complete forensic evaluations and make recommendations and move people forward. [LR34]

SENATOR CHAMBERS: Now I'm not being argue...all I want to know is according to what standard were those multiple screeners used? It was an in-house standard developed. And then when you went to the single screener, was that based on a lack of resources or lesser resources so that you had to drop to the one because you could not afford to use the multiple model? [LR34]

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LISA JONES: That was not the primary reason. The primary reason was just sheer efficiency. And once again, community standard, there would one person evaluating somebody and making a recommendation. [LR34]

SENATOR CHAMBERS: Well, excuse me. I'm not talking about community standard now. That's why I wanted to read that for the general. But I was talking about the screening. How long was that multiple screening model utilized? [LR34]

LISA JONES: I am not for sure on that number, but the review teams... [LR34]

SENATOR CHAMBERS: Based on your knowledge, how... [LR34]

LISA JONES: Based on my knowledge, the review teams were all developed within the last ten years and I believe the sex offender review team was developed prior to the clinical violent offender review team. [LR34]

SENATOR CHAMBERS: But here's...I don't want you to have to tell each one. Here's what I'm looking at. If I understood you, one person would be subjected to multiple screeners. Is that true? [LR34]

LISA JONES: Multiple screeners? [LR34]

SENATOR CHAMBERS: Yeah, more than one person would screen that individual. [LR34]

LISA JONES: That was happening prior, and it still can if an individual's screening is more complex. But if it's a very... [LR34]

SENATOR CHAMBERS: But here's... [LR34]

LISA JONES: ...straightforward one, the one person could do it. [LR34]

SENATOR CHAMBERS: I think you're answering more than I'm asking. [LR34]

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LISA JONES: Okay. [LR34]

SENATOR CHAMBERS: Let's say this pencil is the individual. When you had multiple screeners, let's look at my four fingers. Were these four fingers dealing with this one individual? [LR34]

LISA JONES: Yes. [LR34]

SENATOR CHAMBERS: And now one finger deals with one individual. [LR34]

LISA JONES: In terms of making recommendations, initial, yes. [LR34]

SENATOR CHAMBERS: So then those four were...they were duplicating something that one person could do. [LR34]

LISA JONES: I believe so in ways, but again, I understand the rationale behind that because our cases can be very complex. [LR34]

SENATOR CHAMBERS: Okay. Now when you mentioned therapeutic restraint chairs,... [LR34]

LISA JONES: Yes. [LR34]

SENATOR CHAMBERS: ...what is that? [LR34]

LISA JONES: I've included a picture that's on the very back page. Those actually show you the chairs. These are for our individuals that are in our secure mental health unit and have to be in a restraint category. And they would be...what they would be able to do now that we have these chairs in place is actually participate in a group in a very dignified manner. We did have some places that had the ability to have the restraints to the floor, but that's really a very... [LR34]

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SENATOR CHAMBERS: But, Doctor, I don't want you to have to go beyond what I'm asking you. In this restraint chair, are their hands cuffed, their wrists? [LR34]

LISA JONES: They have hand...they have some restraints on them, but what happens is the bar that goes across the desk,... [LR34]

SENATOR CHAMBERS: Uh-huh. [LR34]

LISA JONES: ...it goes across those restraints. So they can still move their arms and they can still write notes, but they are securely placed in those chairs. [LR34]

SENATOR CHAMBERS: Okay. Now what is your degree in? You're not a medical doctor, are you? [LR34]

LISA JONES: No, I am not. [LR34]

SENATOR CHAMBERS: So you have a Ph.D. [LR34]

LISA JONES: Correct. [LR34]

SENATOR CHAMBERS: Where did you take that training? [LR34]

LISA JONES: I graduated from the University of Nebraska's clinical psychology program. [LR34]

SENATOR CHAMBERS: And that was how long ago? [LR34]

LISA JONES: Oh boy! That was in 1997. [LR34]

SENATOR CHAMBERS: Okay, just for the record. Now when you mentioned that there are clinical persons and nonclinical persons collaborating and there was a time when you were not using the nonclinical persons. So if I understood the testimony and some of your back-and-forth

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questioning and answering, these nonclinical persons are doing some of the things that prior to their use clinical persons were doing. [LR34]

LISA JONES: Yes. [LR34]

SENATOR CHAMBERS: Was this change made because of a lack of financial resources? [LR34]

LISA JONES: The change is made simply for efficiency sake. Because if we're able to have some nonclinical staff provide that, then we can also have clinical staff providing that, and we can offer more treatment opportunities. [LR34]

SENATOR CHAMBERS: Who made the determination that nonclinical people could do this work? [LR34]

LISA JONES: Again, that's community standard. And so we discussed this as our behavioral health team and determined that that would be a wise way to become efficient. [LR34]

SENATOR CHAMBERS: But instead of "we," what individual was responsible for that decision being taken? [LR34]

LISA JONES: Ultimately, that would be me. [LR34]

SENATOR CHAMBERS: And prior to you taking that decision, were you convinced that all of this activity needed to be carried out by clinical persons? [LR34]

LISA JONES: Prior to making that decision? [LR34]

SENATOR CHAMBERS: Yes, to use nonclinical people. Here's what I'm asking. You believed at some point that these activities, and so that it will be clear, let's say five activities, two of them are now being done by nonclinical people, three are continuing to be done by clinical people.

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There was a time when you were there when you felt all five should be done by clinical people.
Is that correct? [LR34]

LISA JONES: This was prior to my instatement into this position... [LR34]

SENATOR CHAMBERS: So as soon as you took this position... [LR34]

LISA JONES: ...those decisions were made. [LR34]

SENATOR CHAMBERS: ...you made the decision that two of these whatever we would call
them could be done by nonclinical people. [LR34]

LISA JONES: In essence, yes, but that was already established by the previous behavior health
director where we had...already had training in place for nonclinical staff, and that was well
before I assumed this position. [LR34]

SENATOR CHAMBERS: So these... [LR34]

LISA JONES: And so it's just moving...continuing to move in that direction. [LR34]

SENATOR CHAMBERS: Okay. These nonclinical people are trained by whom? [LR34]

LISA JONES: If they are going to be implementing domestic violence training, they would have
to go through the Duluth training model. And we have contracted with individuals that provide
that training here within Lincoln. In terms of the anger management programs, that is something
that's brand new and we do not have that in place yet. So all of the program now is being offered
through clinicians. [LR34]

SENATOR CHAMBERS: So how much... [LR34]

LISA JONES: But that's something we're moving towards. [LR34]

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SENATOR CHAMBERS: ...how much training does this nonclinical person get in order to do that which prior was being done by a clinical person? How much training does this nonclinical person get? [LR34]

LISA JONES: I believe, through the Duluth model, that is a weeklong training. [LR34]

SENATOR CHAMBERS: So then it only takes a week for this person to learn what clinical people were doing before. [LR34]

LISA JONES: Yes. [LR34]

SENATOR CHAMBERS: You mentioned program managers. What kind of training do they get? [LR34]

LISA JONES: Our program managers are individuals that have very specialized training in their area that they are over. For example, our sex offender services, Paul Rodriguez is the clinical program manager. He receives a lot of specialized training in that area. [LR34]

SENATOR CHAMBERS: Who gave the training? [LR34]

LISA JONES: The department does and he has paid for a lot of it himself too. [LR34]

SENATOR CHAMBERS: Does the person get some kind of certificate to determine or that determines when you see that certificate that a certain amount of training had been received? Or there's no certification involved in this? [LR34]

LISA JONES: There's no certification involved to my knowledge. [LR34]

SENATOR CHAMBERS: And who decides then that a person is qualified to be a program manager? [LR34]

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LISA JONES: They have to interview for those positions. And so it would be an interview team of individuals that would be meeting with the person, interviewing them, asking them very specialized questions, and then reviewing their resume. [LR34]

SENATOR CHAMBERS: Who are the...who comprise the interview team? [LR34]

LISA JONES: These had been established prior to me being in this position so I can't tell you that. I'm sorry. [LR34]

SENATOR CHAMBERS: Are these Ph.D.s, psychologists, psychiatrists, or just whom? [LR34]

LISA JONES: Right now we have...they are all master's level individuals. One is dually credentialed in substance abuse and has her master's in counseling. [LR34]

SENATOR CHAMBERS: And all of them took their master's degree in psychology? [LR34]

LISA JONES: They're all in this behavioral health realm, yes. [LR34]

SENATOR CHAMBERS: I'm trying to eliminate some things. When we were embarking on this venture some time ago, there was obviously a turf war going on between the psychiatrist and psychologists who wanted to overrule the decision made by a psychiatrist. Who is the psychiatrist now? [LR34]

LISA JONES: Our director of psychiatry is Dr. Martin Wetzel. [LR34]

SENATOR CHAMBERS: Is he a psychiatrist? [LR34]

LISA JONES: Yes. [LR34]

SENATOR CHAMBERS: And he was not the psychiatrist that I'm talking about. [LR34]

LISA JONES: I don't know who... [LR34]

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SENATOR CHAMBERS: There was a psychiatrist who was treating patients. It was a lady. And I may have seen her name listed here before. Are you contracting with a psychiatrist who is a lady? [LR34]

LISA JONES: I did mention that Dr. Wetzel has hired on Natalie Baker, if that's who you're referring to. [LR34]

SENATOR CHAMBERS: Would she...has she worked before? [LR34]

LISA JONES: Yes. She was under...she was in the community under a contract and now she's a state employee. [LR34]

SENATOR CHAMBERS: So she cannot be overruled by a psychologist. [LR34]

LISA JONES: You know, I don't really know exactly what you're getting at because we don't overrule, to my knowledge. I've never seen... [LR34]

SENATOR CHAMBERS: Well, she had indicated that a person was mentally ill and the psychologist said, no, this person is faking. So the department wanted to accept the notion from the psychologist. Would that happen now? [LR34]

LISA JONES: In our case, no, because we have our discharge review team in place for those kinds of situations. I believe you're referring to one that was questionable in terms of being mentally ill and dangerous. Those would be cases that would be brought between our...or before our discharge review team and that is comprised of psychologists and a psychiatrist and a special service member. And we also get information from our unit staff. They're invaluable. [LR34]

SENATOR CHAMBERS: You're familiar with Nikko Jenkins' case? [LR34]

LISA JONES: Yes, somewhat. [LR34]

SENATOR CHAMBERS: Have you had any contact with him yourself? [LR34]

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LISA JONES: No, I have not. [LR34]

SENATOR CHAMBERS: What program has been formulated for him, if you know? [LR34]

LISA JONES: He is receiving treatment with a very...a highly, highly competent provider and his team, and they are providing some behavioral treatment for this individual. [LR34]

SENATOR CHAMBERS: Who is this highly competent person whose name you didn't give? [LR34]

LISA JONES: It's Tim Knight. [LR34]

SENATOR CHAMBERS: Who? [LR34]

LISA JONES: Tim Knight. [LR34]

SENATOR CHAMBERS: Who is he? [LR34]

LISA JONES: He is a mental health practitioner at the Nebraska State Penitentiary. [LR34]

SENATOR CHAMBERS: He doesn't work for the regional center? [LR34]

LISA JONES: No. [LR34]

SENATOR CHAMBERS: Is he a psychiatrist? [LR34]

LISA JONES: No. [LR34]

SENATOR CHAMBERS: So you said he's giving...being given treatment for behavior? [LR34]

LISA JONES: Correct, and any other kind of issues that he is experiencing. [LR34]

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SENATOR CHAMBERS: Is he receiving psychiatric treatment? [LR34]

LISA JONES: I'm...all of a sudden, I'm really uncomfortable sharing some of this because, I mean, that's really confidential information. Am I allowed to be sharing this level of information, because it's very... [LR34]

SENATOR CHAMBERS: Then let me ask you this. Tell me what kind of treatment he is receiving. [LR34]

LISA JONES: Again, I'm looking for somebody to help me out because...in terms of my experience, we just can't share everything because of confidentiality limitations. [LR34]

SENATOR CHAMBERS: Then I don't want you to say anything you don't feel comfortable saying. I will find a different way to get at that information. Are you aware that he has self-mutilated numerous times? And that is a matter of public record. [LR34]

LISA JONES: Yes. [LR34]

SENATOR CHAMBERS: You're aware of that. [LR34]

LISA JONES: Yes. [LR34]

SENATOR CHAMBERS: How is it, in your opinion, that a person confined as closely as he is under observation could swallow several keys? Does that seem unusual to you that that would happen? [LR34]

LISA JONES: Speaking generally in terms of individuals that self-harm... [LR34]

SENATOR CHAMBERS: Let's just say one human being talking. Think of yourself as a human being now, not an employee who's got somebody looking over your shoulder, because that person is going to be sitting in this chair before it's over and he will answer. Does it seem

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unusual that a person would be able to obtain keys from an employee and swallow several of them? Does that seem unusual to you? [LR34]

LISA JONES: I would think that that is unusual for the majority of the population, but there are some individuals that are very creative in being able to have their needs met. And I don't know the specifics around that case... [LR34]

SENATOR CHAMBERS: So then it wouldn't be... [LR34]

LISA JONES: ...and I don't feel comfortable sharing all of them but... [LR34]

SENATOR CHAMBERS: So it wouldn't be unusual, in your opinion, for some of those inmates to be able to obtain keys from an employee. It's not unusual that an employee would be so careless with his or her keys that an inmate would obtain them. That's not unusual to you? [LR34]

LISA JONES: That's not what I was saying. [LR34]

SENATOR CHAMBERS: Well, that's what I want to ask you and get clear what you're saying. [LR34]

LISA JONES: What I'm saying is it would not necessarily be out of the norm for some inmates or people that are in other kinds of...like a psychiatric hospital to find ways, creative ways, to self-harm. So that piece I don't think is way outside of the norm. [LR34]

SENATOR CHAMBERS: So then... [LR34]

LISA JONES: But in terms of carelessness,... [LR34]

SENATOR CHAMBERS: ...obtaining the keys, you're telling me, would not be out of the normal? [LR34]

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LISA JONES: That would be highly out of the normal for me. [LR34]

SENATOR CHAMBERS: Okay. Now if this individual obtained a badge that belonged to an employee, that wouldn't be unusual either, would it? [LR34]

LISA JONES: I would believe those kinds of things are unusual because our staff are very security-minded and we are constantly accountable to each other and making sure that we are following those safety rules. So that would be something that I would think is unusual. [LR34]

SENATOR CHAMBERS: Is there a cooperative effort between staff at the regional center and staff at the penitentiary in handling the case of Nikko Jenkins? And I'm not asking you what they're doing. Is there a cooperative effort that you're aware of? [LR34]

LISA JONES: My understanding is right now we have really good collaboration with the Lincoln Regional Center. I do not have knowledge of that specific case being reviewed by them. I know that they have in the past. I don't know what they have done more recently since I've obtained this position. [LR34]

SENATOR CHAMBERS: Are you of the opinion that there are some patients, is what I will call them, because they have mental illness who could be better...and they're considered problematic, they could be handled better at the regional center, which is a hospital if I'm correct and not a penitentiary, where they could be handled better at the regional center as far as security and treatment than they could at the penitentiary? [LR34]

LISA JONES: Yes, I believe that. [LR34]

SENATOR CHAMBERS: But the regional center is free to refuse patients, aren't they? [LR34]

LISA JONES: They are. They have a number of limitations in terms of their beds and usage too. So I think we're all kind of in that same position where, unfortunately, there have been decisions made that allow our mentally ill individuals to come into the legal system and be incarcerated or be in a situation where they are civilly committed. And there's not as many beds available as

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there used to be before things were changed in terms of shutting down some of our regional centers. [LR34]

SENATOR CHAMBERS: And, Dr. Jones, what I'm doing is using you as a sounding board so somebody else who's coming here can know what he's going to be dealing with. Now when you have these 29 vacancies, what percentage of the overall staffing would that comprise, if you can give it as a percentage? [LR34]

LISA JONES: I believe Senator Schumacher shared that earlier. Did you say that about the number... [LR34]

SENATOR KRIST: (Inaudible). [LR34]

LISA JONES: Or, Senator Krist, I apologize. [LR34]

SENATOR CHAMBERS: It's what percentage? [LR34]

LISA JONES: Did you say 16? [LR34]

SENATOR KRIST: Roughly 16. [LR34]

SENATOR CHAMBERS: Okay. [LR34]

LISA JONES: Roughly. [LR34]

SENATOR CHAMBERS: And the number is not that important. When you are 16 percent down, then as suggested from your response to questions on that side of the room, that does limit the services that would be available to inmates. Isn't that correct? [LR34]

LISA JONES: It limits the population that we're able to serve at one time, yes. [LR34]

SENATOR CHAMBERS: So that limits the services available to inmates. [LR34]

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LISA JONES: It limits the services that we can provide at one time. It does not limit the type of services that we are providing. But we can't provide as many groups when we don't have as many people to implement in those group sessions. [LR34]

SENATOR CHAMBERS: So there are inmates that won't be served. [LR34]

LISA JONES: I am confident that there will still be some that choose not to be served and I am very... [LR34]

SENATOR CHAMBERS: I don't want you to be defensive. Let me say it like this. [LR34]

LISA JONES: No, I...that's something that's very important to me. [LR34]

SENATOR CHAMBERS: If we have 100 people that need to be served and that 100 would be categorized as inmates and 84 of them can be served and 16 cannot, then that limits the services available to inmates because you've got 16 who don't get anything. [LR34]

LISA JONES: Sometimes that happens because of sentence structure because the program that we have to offer is much lengthier than their actual sentence. That can happen. And then again, you are correct in saying that we just cannot provide enough treatment opportunities across our institutions because we don't have enough staff to actually be offering those programs. [LR34]

SENATOR CHAMBERS: How long have these vacancies existed? Were they existing before you came on board and to present...? [LR34]

LISA JONES: Some of them were, yes, some. [LR34]

SENATOR CHAMBERS: Okay. So this is an institutional matter and not something that just developed when you took your position. [LR34]

LISA JONES: This has been going on a long time, I'm confident. [LR34]

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SENATOR CHAMBERS: You mentioned some psychological interns. How many are there currently, if you know? Or just estimate. [LR34]

LISA JONES: There...we have some interns at this point in time that come from the University of Nebraska, but they're not at the doctoral level. They are still within their training. And we have... [LR34]

SENATOR CHAMBERS: So what do they do then? [LR34]

LISA JONES: ...right at this time, three. They do psychological testing and assessment under the very close supervision of a licensed psychologist. And so it provides them a really great training opportunity and it provides us a really good way of being able to extend more services. [LR34]

SENATOR CHAMBERS: And the main questions that I want to ask, you wouldn't be able to answer anyway and I know that. But as I said, I'm using you for a sounding board and I'm sure that as time goes on, you and I will have more opportunities to talk in a less, maybe, tense environment than you feel this one is. But I don't have anything else that I will ask you right now. Thank you. [LR34]

SENATOR SEILER: Thank you very much for your testimony today. [LR34]

LISA JONES: Thank you. [LR34]

SENATOR SEILER: Oh, sorry. Wait just a second. [LR34]

SENATOR SEILER: Senator Mello. [LR34]

SENATOR MELLO: Can I ask two quick questions, Dr. Jones, real quick. [LR34]

LISA JONES: Sure. [LR34]

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SENATOR MELLO: Senator Chambers I think was trying to get where I was going to ask these questions, which is, is there currently a waiting list in the Department of Correctional Services for behavioral health services? [LR34]

LISA JONES: Yes. [LR34]

SENATOR MELLO: There is a waiting list. [LR34]

LISA JONES: Absolutely. [LR34]

SENATOR MELLO: How many people are on that waiting list? [LR34]

LISA JONES: It depends on which waiting list you are referring to. In terms of our substance abuse waiting list, I believe...I requested all this information and everybody gave it to me, but I can't remember everything specifically. I can certainly send it to you. But roughly, about 100 individuals are on the waiting list for substance abuse treatment right now. The majority of those, the vast majority of the individuals that we are serving within substance abuse do receive their services prior to their parole eligibility date. [LR34]

SENATOR MELLO: Okay. And other programs, can you lump everyone else in the other programs outside of substance abuse? [LR34]

LISA JONES: The other programs are working towards that. The sex offender services is mandated under LB1199 to provide certain types of services that make more specific requirements, and then that makes that a little more difficult to make sure that people get in and they get out before eligibility date. And so that is not 100 percent in place, but that's what we're moving towards. [LR34]

SENATOR MELLO: Okay. [LR34]

LISA JONES: And the same thing for our violent offenders. [LR34]

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SENATOR MELLO: If you could provide the committee a breakdown, so to speak, of this waiting list, that would helpful. [LR34]

LISA JONES: Absolutely. [LR34]

SENATOR MELLO: And then also provide the information regarding how long each program, so to speak, the delay or the backlog is for each category of programs, that would be very helpful. [LR34]

LISA JONES: Absolutely. I can do that. [LR34]

SENATOR MELLO: Thank you. [LR34]

SENATOR SEILER: Thank you very much for your testimony. [LR34]

LISA JONES: Thank you. [LR34]

SENATOR SEILER: Director Frakes. Director, before we get out of here at midnight, would you take one topic that was given to you, like staff assaults, and then stop and we'll ask some questions and then go to the next bullet point. [LR34]

SCOTT FRAKES: Yes. [LR34]

SENATOR SEILER: Thank you. Welcome. [LR34]

SCOTT FRAKES: (Exhibit 2) Thank you, Senator Seiler. Good afternoon, Senator Seiler and members of the LR34 Special Investigative Committee. My name is Scott Frakes, F-r-a-k-e-s. I'm the Director of the Nebraska Department of Correctional Services. I appreciate the opportunity to appear before you today and to update you on the work we have been engaged in over the last several months. I appreciate you accommodating Dr. Jones' schedule by allowing her to speak with you first. I believe people can change. If I didn't, I wouldn't have dedicated my career to paving the way for that change. I also believe that by using evidence-based approaches

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to provide opportunities for people in prison to change, our communities are safer and the potential for new victims is greatly reduced. Staff assaults--staff safety is a priority for me and staff safety is foundational to everything we do. I made the decision at the beginning of the year to be more transparent in sharing information about staff assaults with the public. I know you are interested in what I'm doing to reduce staff assaults. Prison work is inherently dangerous. We house 5,400 men and women that are incarcerated due to their risk to society. We have people who have committed violent crimes and who have been in prison...have been...I think it's supposed say been sent to prison for violent crimes multiple times; 50 percent of our population is currently serving time for a violent crime. It's not the entire population, of course, but it's also not the entire population who are committing these crimes against my staff. That said, there are things we are doing and can do to reduce the number of assaults. We have recently revised our internal critical incident review process to include formal reviews of all serious staff assaults in addition to larger-scale incidents, which is similar to approaches used by military, law enforcement and medical professions when serious incidents occur. The key is to identify and implement recommendations for improvement. The inmate is always responsible for his or her actions, but we learn from each incident and we make changes to help keep people safe. Attachment 1 documents the number of staff assaults within NDCS from 2010 to the first three months of 2016 and Attachment 2 provides a breakdown by facility for 2013, 2014, and 2015. We've seen an increase in overall staff assaults, including the number of staff assaults resulting in serious injury. In 2012, NDCS changed from an open yard to a scheduled yard, resulting in a tightly controlled movement system, which also increased the amount Of idle time. The number of staff assaults in the agency dropped in half in 2013. This strategy was seen as necessary at the time, but it was not a long-term solution. By 2015, the number of staff assaults had nearly reached the 2012 level. The lack of out-of-cell time and pro-social activities may have been a contributing factor to the increase in violence. At the same time, as we increase movement...let me do this. So at the same time, as we increase movement and pro-social activities in our facilities, we also are seeing an increase in staff assaults. We should not draw cause-and-effect conclusions at this point. We will continue to dissect each incident, and implement changes to reduce violence and risk to staff. In November, I created an intelligence team at the agency level that is dedicated to identifying organized activity contributing to assaults and Other disruptive behavior. This allows us to target interventions that will ultimately reduce violence. The focus of the intelligence team can be seen more clearly in Attachment 3. We are also expanding the use of

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cognitive-behavioral interventions that specifically address criminal thinking. There are no simple solutions to this problem. I have three staff touring the New Mexico DOC to look at the changes they've made to reduce the use of restrictive housing, and the unit they created to reduce gang violence. We're partnering with the Nebraska State Patrol, who have expressed their willingness to assist NDCS in any way they can, including training with our special teams. Our investigators work closely with the county attorneys to ensure the criminal prosecution of assaults. I will take questions. [LR34]

SENATOR SEILER: Thank you very much. We'll take questions at that. And limit your questions to the subject matter that we've got. Senator Coash. [LR34]

SENATOR COASH: Thank you, Chairman Seiler. Director Frakes, you're an old guy in blue. By that I mean you've been doing this a long time. So I think you understand inmate behavior about as well as anybody. [LR34]

SCOTT FRAKES: Thank you. [LR34]

SENATOR COASH: Do you think this increase in staff assaults is an increase in random assaults or do you feel like this is more of an organized initiative by the inmates, to assault the corrections officers? [LR34]

SCOTT FRAKES: I'm going to be careful in how much I share in this arena on television. But I want to give you enough information so that you have a sense of and if we...if there's a need for a more in-depth conversation, if we can find a way to off-line... [LR34]

SENATOR COASH: And I'll say this for the record, share what you feel comfortable with and if there's more information I'll take it upon myself to get more information and invite my committee members, should they want to. [LR34]

SCOTT FRAKES: Thank you. At this point in time, we're not finding a clear, organized structure to the violence. We're finding links. We're finding some connections. But what we're not seeing is an organized structure of some entity or entities directing these assaults against staff. [LR34]

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SENATOR COASH: Okay. [LR34]

SCOTT FRAKES: But there are contributing factors. There is a large percentage of these people that have security threat group affiliations. So there's a behavior connection there. [LR34]

SENATOR COASH: Okay. What are your corrections officers telling you about...you know, are they coming to you, or if you ask them and say, hey, boss, you know if we could just do this, boy, we'd sure feel safer around here, or we'd feel like we...I'm interested in what your direct line COs that are out there with the inmates all day, every day, what are they telling you about why they seem to be at more risk now than they have been in the past. [LR34]

SCOTT FRAKES: Factors or things that they've brought to me include a belief that we are not holding inmates accountable to the degree that we should, that there is a belief that the use of...the reduced use of restrictive housing may be contributing to it even though we really are just beginning to figure that piece out, but that's a plea. [LR34]

SENATOR COASH: Can you say that last part again? The reduced use of restrictive housing... [LR34]

SCOTT FRAKES: Yes. [LR34]

SENATOR COASH: ...is something you've heard is a contributing factor to the increase in assaults? [LR34]

SCOTT FRAKES: Yes, both from staff and from inmates. [LR34]

SENATOR COASH: So the inmates that are currently being assaultive may be, previously to this seeming uptick in assaults, may have previously been in restrictive housing and now they're not and that could be a factor. [LR34]

SCOTT FRAKES: At least that's the belief. The belief is that in the past there would have been lower levels of unacceptable behavior that would have been addressed by removing the inmate

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from the population. It's not clear to me that has...that there's that much change, but that is something staff are expressing, that same thing that we've been experiencing now for probably close to 20 years in terms of the violence level that people with them as they're coming in, the lack of respect for authority that is reflected, you know, many of the offenders that are young and coming into our system. You know, we talked Ferguson effect. That's not just here, that's not just my department. That is a conversation across corrections departments. It's just that general disrespect for authority, challenging authority, and a feeling that authority can't be trusted; that's another piece. [LR34]

SENATOR COASH: So do you feel that the inmate--and I'm just trying to move this along because I don't want to... [LR34]

SCOTT FRAKES: Yeah. [LR34]

SENATOR COASH: ...monopolize the time--but do you feel that the inmate that you're working with now is in general more violent than the inmate you would have been working with ten years ago? Is that what you're hearing? [LR34]

SCOTT FRAKES: That is being expressed by staff. And there's some...what we're seeing is some condensing of our populations, not just here in Nebraska, but in other states as well, experienced it in Washington State. As there are more alternatives to imprisonment, there are more opportunities to keep low-risk people out of prison, then the concentration of high-risk people in prison goes up. So, yes, I can see that as a factor. [LR34]

SENATOR COASH: So are you taking stock in what the corrections officers are sharing with you... [LR34]

SCOTT FRAKES: Yep. [LR34]

SENATOR COASH: ...or are you just saying, oh, you guys don't know what you're talking about, I've been doing this a long time. [LR34]

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SCOTT FRAKES: Yeah, absolutely I take stock in what they say. And our approach has continued to be modified by, informed by, and guided by the information and the ideas that they provide. Sometimes I think they may believe that it's not as quick as they would like or that we haven't really heard what's said. But I pay close attention to what my staff are saying. [LR34]

SENATOR COASH: Okay. [LR34]

SENATOR SEILER: Senator Mello. [LR34]

SENATOR MELLO: Thank you, Chairman Seiler, and thank you, Director Frakes. In regards to the staff assaults issue, I didn't hear you discuss anything regarding the loss of good time in regards to inmates who obviously engage in serious staff assaults or any kind of assault in regards to the loss of a good time that you and the department can take away from them as a significant punishment. Can you fill us in a little bit more in regards to what you're doing to maybe utilize the good time, the reduce of good time, so to speak, to address this since the concerns are mostly around the loss of segregated housing, so to speak, of being a potential incentive for people to act out? [LR34]

SCOTT FRAKES: Yes. And then it's important...and this seems like as good a time as any to get, you know, on the record that despite rumors or beliefs to the contrary, there still will be a restrictive housing process and people that present risk will be candidates for restrictive housing. We will move away from using restrictive housing as a sanction. So the idea disciplinary seg I'm going to move away from and find the right time to completely phase out of it. That doesn't mean that someone won't go to segregation if they assault staff; they certainly will--high-risk behavior. Good time will remain as the sanction. I have a group that's been working for several months. I'm hoping that they'll be able to bring their final recommendations in the next two to three months so that by late summer, early fall we can move towards the promulgation process because those are promulgated rules and regulations. We need to come up with better sanctions, we need to come up with more effective sanctions, and we need to change our process around a good time. It's been something that I wasn't happy with or wasn't satisfied with since I arrived in terms of, we're pretty quick and maybe even in some cases a little heavy handed in the use of taking good time. But we're really quick to restore it as well. And we need to find the right balance. There

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needs to be a system so that, based on behavior and improvement, there is the ability to earn back most good time. There is some that there would be a question of whether or not...in the serious staff assaults, one of those where I'm not sure how much you should. But the short answer would be yes and I've got a team working on it. [LR34]

SENATOR MELLO: Real quick, you said that you feel like you're...you weren't happy in the sense that the department takes away a good time too quickly for incidents. What percentage of incidents are resulting in any good time loss? [LR34]

SCOTT FRAKES: I don't have an...yeah, I don't...sorry, I don't have an answer for that. [LR34]

SENATOR MELLO: Is that something you could get the committee. I know under the prior LR424 Committee, I'm very clear of this question because I know Governor Heineman actually answered it and reaffirmed that only 5 percent of the infractions actually result in any loss of good time and that seems to be...and that was over a five-year period. So I know when you say that we're very quick to take away a good time and give it back, I'd really like to see I guess more of the hard data to back...to justify that change because I believe in 2014 also that they doubled the amount of good time that could be taken away for every incident. It was doubled in regards to what it was back in 2013. So if you could get that data to us in regards to what actually good time is being taken away for incidents that would be very helpful. And then just so I'm very clear and understand what you just described, that currently goes through a rules and regulations process now in regards to anything related to the loss of a good time. You're revisiting those rules or regulations or creating new rules and regulations to further expand the loss of good time, to hone what incidents may or may not qualify for a loss then? I just, I'm lost. I guess I was trying to piece together what you're saying. You've got people working on it, but that's a very public process through the Administrative Procedures Act I just want to know maybe for my own edification since that's one law I really like to follow what agencies do. If you're going through that process, is that process going to become public sometime soon? [LR34]

SCOTT FRAKES: Okay. Short answer: yes, absolutely. [LR34]

SENATOR MELLO: Okay. [LR34]

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SCOTT FRAKES: The work Of the group, the work group's mission at this point is to look at the entire inmate disciplinary system, see if our process, if we have the right misconduct report approach, are we identifying things in the correct way and our sanctioning system, do we provide enough tools to our hearings officers, which, no, I don't think we do. We need to give people enough different approaches that they can do some tailored sanctioning because the whole point of the disciplinary system is to change behavior. That doesn't necessarily transmit well or isn't accepted by everyone. There's a...some that have a belief it should be a punishment process as well. To me, an effective disciplinary system changes behavior. So we need effective sanctions to do that. And then in terms of the good time, that's just one of the sanctions they'll look at. So what other? I don't know at this point because I haven't pushed hard on them to say tell me what you're doing. We did meet once so they gave me a clarification. They could make recommendations to revise the grid for the distribution of good time sanctions. I'm more interested really on that around our system or restoration of good time so that it doesn't feel or appear to be as automatic as it is now, and again, not because I don't want to restore a good time. But I want to do it in a way that's thoughtful, meaningful, and connected to this piece of changing behavior. It's not an effective sanction if people believe it will simply be taken and restored without any real change in the behaviour. [LR34]

SENATOR MELLO: Thank you, Director. [LR34]

SENATOR SEILER: Senator Bolz. [LR34]

SENATOR BOLZ: Good afternoon, Director Frakes. I'm reviewing your staff assaults data. And I'm just surprised and I'm going to start with asking whether this is correct, that you have had no assaults at CCC-O over the last three years? [LR34]

SCOTT FRAKES: Okay, help me. Which tab are you looking? [LR34]

SENATOR BOLZ: I'm looking at Tab 1. On the first page seems to be systemwide data and the second page also references NDCS. But then the third page says CCC-L 2013, 2014, and 2015 which...and there's only one recorded incident. And the next page is CCC-O and there are no recorded incidents. Is that accurate data? [LR34]

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SCOTT FRAKES: Yes. [LR34]

SENATOR BOLZ: Okay. So can you help me understand, I mean, if your answer for why we're seeing additional assaults is the violence level of the population...are the population, I guess I would assume that CCC-O and CCC-L also have violent individuals. I'm just confused by the story the data is telling me. [LR34]

SCOTT FRAKES: Yes they do, but those are the people that have engaged in programming, have found answers to the questions, have aged out of their behavior, found other ways to manage their behavior, hopefully prosocial methods, and that's why they're eligible for community custody. So they have demonstrated the things that say that they're safe to be built a community custody center, which is our lowest, less restrictive level of custody. And then the data bears out that that's true. [LR34]

SENATOR BOLZ: Okay. [LR34]

SCOTT FRAKES: And if you...then as we would work our way towards more restrictive custody level, we would see the numbers start to... [LR34]

SENATOR BOLZ: So it can be done. [LR34]

SCOTT FRAKES: ...with TSC, NSP, on up. [LR34]

SENATOR BOLZ: So folks can be rehabilitated and we can get to a place where even very intense inmates can get to a place where they can succeed in the community. [LR34]

SCOTT FRAKES: Yes, if they're willing. [LR34]

SENATOR BOLZ: And I guess maybe a related question is the conversations that I've with corrections officers--and they're anecdotal; I can recognize that--but the most adamant thing that they said to me is not any of those reasons for why incidents occur. But their most adamant reason--and granted it's anecdotal--is because they believe the new staffers are not adequately

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trained and there are too many new staffers and that those staff people are putting them at risk. Is not something you hear too? Do you think there's legitimacy to that point of view? [LR34]

SCOTT FRAKES: I do here that. I think there is some legitimacy...there is legitimacy to that. And I would also add though that I have some staff that are senior trained and also seem to struggle to know how to interact with inmates in a way that's respectful and avoids issues. [LR34]

SENATOR BOLZ: So you don't see a pattern in incidents between...you don't see a higher incidence of incidents (laugh) with people who are untrained versus your...experienced versus inexperienced? [LR34]

SCOTT FRAKES: Not yet, no. [LR34]

SENATOR BOLZ: Okay. Thank you. [LR34]

SCOTT FRAKES: But part of that is...really the data points are relatively small. One is too many, but if you think about ten facilities, we can take two out because they really had almost none, but eight facilities, 365 days and all the inmates are involved, and divide that across and the points of data become relatively small in most places except NSP, LCC, and Tecumseh. And we're really starting to try and put together, are there patterns such as that? [LR34]

SENATOR BOLZ: Okay, thank you. [LR34]

SENATOR SEILER: Senator Pansing Brooks. [LR34]

SENATOR PANSING BROOKS: Thank you, Chairman Seiler. It's my understanding that part of Tecumseh's whole issue occurred after some sort of health or fitness plan was taken away, is that correct? Can you speak to that a little bit? [LR34]

SCOTT FRAKES: One of the factors that was identified as a point of anger, contention from the disturbance was the wellness league and that was an incentive-based activity program that was

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intended to be in addition to all of the regular recreational activities. The question is how far...how did...did it dominate or take away more opportunities than it should have for the general population to have access? And I think the other issue at Tecumseh with their wellness league was the bar was set pretty high. We're talking about a population that struggles to follow the rules. And so if you have a program where a good part of your population simply can't get their foot in the door, then that becomes a "well you get it, I don't" point of contention. So NSP also has a wellness league. It's going well but there is some issues around that same concern right now. So we met and talked about yesterday about where have we set the bar? Is there an opportunity for people that demonstrate even a reasonable amount of, you know, decent behavior to at least get some access, continue to improve behavior, expand access. And are we ensuring that we provide adequate activities out of...not just out-of-cell time but out-of-unit time across the population. [LR34]

SENATOR PANSING BROOKS: And what do you see... [LR34]

SENATOR SEILER: Senator, let's stay with the topic. Tecumseh comes up later. [LR34]

SENATOR PANSING BROOKS: Oh, okay, if you're done already. But it had to do with assaults, that's why I brought that up. It had to do with assaults on the...I think it's perfectly appropriate. So as far as the assaults go, do you see a...what is the perfect, I mean...do you see a connection between the programming that's being cut and the different kinds of activities such as the wellness league being cut and the increase in assaults? [LR34]

SCOTT FRAKES: Well, I'm not aware of any programming that we've cut. [LR34]

SENATOR PANSING BROOKS: You don't think there's been programming cuts over the past... [LR34]

SCOTT FRAKES: Oh, several years? [LR34]

SENATOR PANSING BROOKS: Yes. [LR34]

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SCOTT FRAKES: Yes, I do. [LR34]

SENATOR PANSING BROOKS: Okay. [LR34]

SCOTT FRAKES: But again it's not...what we don't see as we look across the five years is a steady uptick. It went up, it went down, and then it's come back up. So I can attribute some of that to not having enough activities and not having enough out-of-cell or out-of-unit time. Definitely not enough prosocial activities across our campuses. So that is a component of it. The wellness league piece again, there is value in using incentive-based approach, just have to be done correctly and they have to be adjusted as we learned from them and continue to look at them, revise. But this idea, and I've had inmates say it to me, it's not fair that you have a program that I can't take part in because I can't behave. No, I think that's fair. I think it's reasonable to set some level of expectation of behavior and I do think you can behave. I do think you can meet that level. So that's some tension. I don't have any evidence to say that those things specifically contributed to an assault on staff. What factor...how that factored into the disturbance in Tecumseh a year ago is a different question. [LR34]

SENATOR PANSING BROOKS: Okay. And partly due to Tecumseh--it's not on that; it has to do with the assaults--I'm interested because I hear that there is more in-cell time being required across this whole system. And I don't know if that's true or not. I'm hearing that there are way more 23 hour...people spending their time 23 hours in the cells. And it isn't just those on administrative segregation. So I don't know if that's true or not and if so, does that relate to the incidents of...because of that increase of people being in their cells, does that relate to the increase of staff assaults? [LR34]

SCOTT FRAKES: Okay. No, I don't believe it's driven. I believe we're going the other direction and have made significant gains. We looked yesterday at the out-of-cell time for NSP. And it's, for general population, it's 11 or more hours a day. Unfortunately it's also made up at least partially of day room time, and the day rooms are not big enough. We know that. So it's not the quality time, but it's out-of-cell time. Same thing at Tecumseh. I'm not exactly sure where we're at on average in general population now. I believe it's over eight hours. In our protected management unit, we're over six hours. I've set that as the minimum acceptable level. If you

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cannot be for at least six hours a day then I don't consider that to be general population and I consider that to be...if we're there, okay, now how do we get to where we need to be? Ten hours a day in general would be a good mark; 12 hours a day would be a much better mark. In terms of being able to say, has it contributed to? The incidents that we've been able to dissect and really think we have an understanding of, no, there's not been a specific one where somebody said I'm going stir crazy so I attacked the person. The issues have been more frequently around perceived lack of respect, some mental health issues certainly coming out of LCC, secure mental health unit and the residential mental health unit as well. And then a few other factors, but I think I'm at a point where I don't want to go on the TV. [LR34]

SENATOR PANSING BROOKS: Okay. Thank you for your responses, Director Frakes. [LR34]

SENATOR SEILER: Laura, do you have any? Okay. Any questions on this side? Senator Chambers. [LR34]

SENATOR CHAMBERS: Mr. Frakes, I don't know if you've considered giving you these things or I'm asking you. Was there any determination of the length of time on the job these guards had who had been assaulted? [LR34]

SCOTT FRAKES: We are looking at the length of time of the officers that have been assaulted, yes. [LR34]

SENATOR CHAMBERS: Say it again. [LR34]

SCOTT FRAKES: Yes, we are looking at their experience, we... [LR34]

SENATOR CHAMBERS: Okay. [LR34]

SCOTT FRAKES: ...we look at different (inaudible). [LR34]

SENATOR CHAMBERS: And I think you know what I might be interested in when I ask that question, okay. Do you think...by the way, some of these things you may have answered in

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response to what had been asked during your testimony, but the acoustics are not the best here so if I ask you a question and you already covered it then just give the same that you'd given before. You know, you don't have to be creative to make something different from what you said or say it differently. Their conditions of confinement at these institutions could play a role in what is happening, but maybe it doesn't. So here's the question I'm asking you. Do you think that the conditions of confinement at the institutions are the best that they could be? I don't mean where you're letting people just do whatever they want to do. Is there any period of lockdown--they say partial lockdown--is there a circumstance like that existing now prior to these assaults having occurred, general lockdown? [LR34]

SCOTT FRAKES: Hmm. [LR34]

SENATOR CHAMBERS: Let's go past that because I don't want you to have to...there has been, from what I can gather, no steady upward increase in the number of assaults, nor a steady downward, but a fluctuation over a period of time. So has there been any review to see what may have been going on in the institution when there was an upward surge and then if that condition were alleviated and there was a downward drop? Has there been any consideration of something like that yet? [LR34]

SCOTT FRAKES: Yes. [LR34]

SENATOR CHAMBERS: And you haven't reached any conclusion obviously yet at this point, is that true? [LR34]

SCOTT FRAKES: That's correct. [LR34]

SENATOR CHAMBERS: Okay. How many inmates are...we could talk about Tecumseh or Lincoln, so let's take one at a time. How many inmates are in Tecumseh, roughly? [LR34]

SCOTT FRAKES: 1,050. [LR34]

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SENATOR CHAMBERS: Okay. And last year, how many assault were there? And the number for my purposes isn't really that important. You can estimate. [LR34]

SCOTT FRAKES: 41. [LR34]

SENATOR CHAMBERS: How many? [LR34]

SCOTT FRAKES: Forty-one in fiscal year...I'm sorry, this is...these numbers are...it's an adjusted calendar year. It's just how the data is reflected. But, no, we did fix them. So that's calendar year 2015, there were 41 at Tecumseh. [LR34]

SENATOR CHAMBERS: Now we would like to see no assaults at all, so don't misunderstand what I'm saying. But when you look at the number of people there, the conditions under which they are held, and the background that they had, 49 is not really that large a number in my opinion. We don't want to see it at all. [LR34]

SCOTT FRAKES: 41. [LR34]

SENATOR CHAMBERS: 41? [LR34]

SCOTT FRAKES: Yes, yes. [LR34]

SENATOR CHAMBERS: Okay. And there have been times when the number was even lower than that. Okay. [LR34]

SCOTT FRAKES: Tecumseh had a better year in 2014. [LR34]

SENATOR CHAMBERS: Now at the Lincoln facility, how many people are there being held? [LR34]

SCOTT FRAKES: About 1,340. [LR34]

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SENATOR CHAMBERS: And what's the largest number of assaults? [LR34]

SCOTT FRAKES: In 2015, there were 32 assaults at NSP, the penitentiary. [LR34]

SENATOR CHAMBERS: And some of this can be attributed, not the assaults but the attention, because more notice has been taken of these activities, and therefore, there's more discussion of these incidents--that's almost a tautology. What constitutes an assault? Must there be a physical contact in order for it to be considered an assault? [LR34]

SCOTT FRAKES: Not...well, thrown substances is a form of physical contact that the person doesn't actually have to put hands on the staff member. So you have thrown substances which would include: spitting, throwing of other foreign substances, could be throwing a piece of paper, throwing their ID card. It's throwing anything at a staff member. Without serious injuries is a spectrum from placing their hands on staff in an aggressive manner to... [LR34]

SENATOR CHAMBERS: But here...okay. So assault can range from spitting or hitting with a piece of paper, to punching or gouging. I meant there is a range of actions which would constitute an assault, some which would be considered very minor insignificant even, and others that are more in keeping with what the average person might have in mind when he or she hears the word assault. And when these numbers are given, they're just raw numbers, not broken down in terms of what you're mentioning now can constitute an assault. And that's not your fault. I mean when the media will print it, they might say 32 assaults and people will think that somebody has been physically attacked and that's not what really is happening. I'm not trying to be argumentative. Has there been any involvement from the Governor's Office in terms of what the reaction should be based on the public's perception of what is going on with reference to these assaults? [LR34]

SCOTT FRAKES: Hmm. Well, I keep the Governor... [LR34]

SENATOR CHAMBERS: You used to look at the ceiling for help. You can look at it. (Laughter)
We've been through this. [LR34]

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SCOTT FRAKES: Yeah, we have and this is a good one. We've kept the Governor's Office apprised, I always do, of serious staff assaults. And I've not had direct conversation with the Governor specific to just the recent... [LR34]

SENATOR CHAMBERS: Well, the reason I say office, not necessarily him personally, but somebody from that office. [LR34]

SCOTT FRAKES: Yes, we've had some conversation about what are we seeing, are there trends, what kind of strategies are being looked at. [LR34]

SENATOR CHAMBERS: Are there recommendations such as taking more good time? [LR34]

SCOTT FRAKES: No. [LR34]

SENATOR CHAMBERS: Okay. If all the good times were taken, just to make a stark example so people will have an idea of what it takes to run a prison when you're actually doing it, if all the good time were taken, if every room that could be considered administrative segregation, the whole solitary or whatever were filled then there would be nothing else you would have available to use to try to manage the prison, would there? [LR34]

SCOTT FRAKES: Well... [LR34]

SENATOR CHAMBERS: Unless you could shoot people. Let's say, okay, all the good time has been taken from everybody. There's no place to put somebody for...to separate them from the general population, however it's described. And then an assault occurs. What are you going to do with that person who commits the assault? They'll find a place that is secure enough to ensure that they... [LR34]

SENATOR CHAMBERS: But if there is no place. [LR34]

SCOTT FRAKES: We'll find a place. We'll make a place. [LR34]

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SENATOR CHAMBERS: How would you make a place where there is no place? [LR34]

SCOTT FRAKES: Then I would create more restrictive housing space if that was really what was needed. We of course would look at those that are in restrictive housing and say, okay, who is close to being ready for release, who could be let out now, if we were really that bad. [LR34]

SENATOR CHAMBERS: To make room for somebody else to get in. [LR34]

SCOTT FRAKES: And then the one who got out said, um-hum, they have no place for me now. And then he pops somebody. Here's the point that I'm getting. Maybe the public would say because they don't really understand that some of the things such as good time and other things are used to manage the prison not just to give somebody a favor, that you cannot just say we're going to cut off everything to make it look like we're being tough on everybody. Now I haven't read in the paper any account of inmate-to-inmate assault. Is there a correlation between the uptick in inmate-to-staff assault and inmate-to-inmate assault? Or there has never been an attempt to see if there's a correlation? [LR34]

SENATOR CHAMBERS: It's another issue that we do look at. I'm not seeing that at this time. [LR34]

SENATOR CHAMBERS: Okay. [LR34]

SCOTT FRAKES: But I'm not comfortable that our data is everything that it needs to be. What we haven't had recently is the same assault with serious injuries, so an inmate-on-inmate assault with serious injury. If there was one then it would receive... [LR34]

SENATOR CHAMBERS: So there's not just a general environment out of general lawlessness, attacks at random or organized going on in the student...in the inmate population along with the assaults that are occurring toward staff members. [LR34]

SCOTT FRAKES: They are still fighting. They are still assaulting each other. They are still...but their behavior. In those terms to me has not escalated noticeably at this point. Again... [LR34]

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SENATOR CHAMBERS: That's the point I'm getting at. [LR34]

SCOTT FRAKES: Right. [LR34]

SENATOR CHAMBERS: It's not like it's a spillover to the staff or a spillover from the staff, inmate assaults to the general population. Other than those assaults, whatever form they take, the inmate population is still basically behaving the way it always has, generally. Okay. [LR34]

SCOTT FRAKES: In general. There is...again, staff believe that there is a growing issue of disrespect and attention around that issue. [LR34]

SENATOR CHAMBERS: Now when you say disrespect, does it run both ways? Are staff showing disrespect and even provocative actions towards inmates? They don't keep records of that, do they? [LR34]

SCOTT FRAKES: When we're made aware of it we do and we do address it. So I can tell you that it's happened. And when we're made aware of it we address it and take appropriate action. [LR34]

SENATOR CHAMBERS: And I won't delay all this because there is other ground to cover. Thanks for now. [LR34]

SENATOR SEILER: Okay, go to your Retention Funds. [LR34]

SENATOR COASH: Senator Seiler, I just have a follow up. [LR34]

SENATOR SEILER: Oh, okay. [LR34]

SENATOR COASH: And I promise this won't take long. With regard to the good time, do you think it's an effective tool to manage inmates' behavior, prevent assaults? [LR34]

SCOTT FRAKES: I think across a population, it is an effective tool to manage behavior. [LR34]

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SENATOR COASH: Okay, because I think what Senator Mello and Senator Chambers were trying to get at--and I'll just be more straightforward about it--I believe that it's not being used simply because using it, even though it is effective, as you stated, extend a sentence which means they're in longer which costs us more money. So the previous administration used it at about a 5 percent clip, right, for I believe that reason. And I'm interested to see what Senator Mello asked for which is how much of the good time is being taken because I think there's...my sense is there's a reluctance to use it, even though you say it can be effective because it extends a sentence. And if you have a comment on that, if you... [LR34]

SCOTT FRAKES: I do. [LR34]

SENATOR COASH: ...I'd be glad to hear it. [LR34]

SCOTT FRAKES: We need to get the data. We need to see where things are at. I can look you in the eye and tell you I have never issued any kind of message along that line. To me, it's a tool that's to be used. It's a sanction that's part of the disciplinary process. We train our hearing officers to... [LR34]

SENATOR COASH: At what level...can the direct line corrections officer, if they see something that's assaultive or disrespectful or whatever, at what level can that...can the direct line corrections officer say that will cost you five days of good time, or does that need to go up to a higher level within the department? [LR34]

SCOTT FRAKES: It has to go through the hearing process. [LR34]

SENATOR COASH: Okay, so there's a due process. And is it cumbersome? [LR34]

SCOTT FRAKES: They can write their report. Hmm? [LR34]

SENATOR COASH: Is it a cumbersome process to go through? [LR34]

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SCOTT FRAKES: No, because it is a due process system when you're talking about a liberty interest. So, no, I don't feel it's cumbersome. [LR34]

SENATOR COASH: But it takes a little bit of staff effort and time to get through that? [LR34]

SCOTT FRAKES: Yes, yes. But it should because of the impact. [LR34]

SENATOR COASH: All right. I think we should move on. Thank you. Appreciate it. [LR34]

SENATOR SEILER: If you would move on to Retention Funds. [LR34]

SCOTT FRAKES: Very, very quickly, I wish I had copies for all of you. I only have two copies with me. This is Healing Corrections. This is a reflection of work that Harold Clarke is doing right now in Virginia. It is...and it's a reasonably easy read and it talks about how to change a corrections system in ways that speak to how we can reduce violence, how we can improve delivery of programming, etcetera. I have two copies and I would hope that somebody or two somebodies would like chance to take them and read them. And now I'm going to move on. Retention Funds. I have been meeting with my team on our plans to utilize the \$1.5 million in one-time funding provided for strategies to retain quality staff in our workforce shortage areas, with at least \$150,000 to be allocated for retention of health services employees. I've established a work group to address the recommendations, to identify other options, and determine what we can do immediately. Preliminary recommendations from both my team and conversations with the Inspector General, which are italicized, include the following: one-time longevity bonus and other types of bonuses; resiliency training for correctional staff and we're specifically looking at a program called Corrections Fatigue to Fulfillment; reimbursement of licensure, continuing education which Dr. Jones talked about, those expenses for health services staff, behavioral health staff; research-based employee engagement training to develop a better work environment leading to retention, example of which is contained in the book that I just handed out. The suggestions from the IG, from the Inspector General include enhanced supervisory training which is something that is...already was on a different list; staff mentoring program, which fortunately we have one that we're trying to get off the ground; the idea of staff advocates at each facility; and then wellness programs, which could be peer support, could be on-site fitness

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equipment, or if it's legal, the potential gym membership reimbursement. So those are just some of the idea so far. We have not exhausted the work. Just trying to get busy and make good use of those funds. The legislation requires quarterly reports. I will submit the first report July 15, 2016. We are working to meet or exceed the goals identified in the mandatory overtime report. Protective Services turnover for 2015 was 33.16 percent, protective services being the officers, the corporals, the case workers. Turnover for fiscal year 2016 is projected to be 25.68 percent. So we are at this point doing well and we're below our established target for this year of 28 percent. And vacancies are projected to be at 91, which is below the target we set of 95. Overtime hours per employee were much higher at the beginning of the fiscal year, but are currently 12.8 hours per employee per week. We set a goal or a target of getting at or below 14 hours per week. Our projections show us that we end the year with an annualized overtime rate of 14.71 hours per week. So we won't quite meet the target that we set, but at this point in time we have actually exceeded the target if we can continue on the path we're on. We're going the right direction. We will continue efforts to reduce overtime usage. We set attainable targets. We set attainable targets, we achieve them, and then continue to set higher expectations for performance. I've met with the state's collective bargaining team and we've begun the conversation on compensation. I can't discuss negotiation strategies, but I am actively engaged in the collective bargaining process. I have not received the results of the culture study. Once received, I will review the recommendations and determine what we can do moving forward. I regularly solicit feedback from staff and believe that the culture is already changing. Employees are sharing their concerns with me and are willing to come together and talk about how we can make NDCS safer and better. We've implemented employee councils at each facility to increase two-way communication and identify solutions to perceived, potential, or current issues. Wardens are aware of the expectation for them and their executive teams to spend more time meeting staff and being visible in their facilities. Between the recommendations of the culture study and the availability of the retention funds, we will be able to make even greater strides towards a work force that is truly engaged and fully represents the agency's leading goal: one team, one vision. And I will take questions. [LR34]

SENATOR SEILER: Senator Krist. [LR34]

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SENATOR KRIST: Thank you, Director Frakes, for coming to see us today and for giving us an update on where we are. Have you been involved with all the meetings and all the conversations pertaining to retention that either, I mean, existed either with...inside your department or with the executive branch? [LR34]

SCOTT FRAKES: Probably not all of them, no. [LR34]

SENATOR KRIST: Most of the ones inside, though? [LR34]

SCOTT FRAKES: Yes. [LR34]

SENATOR KRIST: Okay. As I recall from my several hearings of conversations with you both personally and publicly, you said--I think this is correctly stating it--attracting new employees or trainees is not the problem. Retaining the employees is the problem. You reflect a one-third...one-third of your population changes over and we're feeling good about a quarter and I get it. It's moving the right direction. But still, 25 percent of my employees turnover in any given period of time I start to worry about that. Did I quote you correctly in terms of the trainees versus the retention? [LR34]

SCOTT FRAKES: Yes. [LR34]

SENATOR KRIST: Okay. [LR34]

SCOTT FRAKES: I'll expand on that if you want me to. [LR34]

SENATOR KRIST: Yeah, absolutely. Go ahead. [LR34]

SCOTT FRAKES: I think now what we see is that we've got an issue with our largest group of staff, our protective services staff, we seem to be pretty successful at finding people and training them. We are not having the success we need at retaining them. I'm happy we're headed the right direction, but is 25 percent acceptable? No. Ten percent would be a number that would be a little closer to acceptable and I'd love to lower than that. As we heard from Dr. Jones, we have

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definitely got hiring challenges in behavioral health, our RNs, her group, and I'm beginning to wonder about our food service staff as well and whether or not we need to look at that group as well. So there are some specific job classes where it is a hiring issue. Large group of staff, it appears to be it's more of a retention issue. [LR34]

SENATOR KRIST: Okay, and then lastly just in terms of what I've been hearing and then allow you to answer, quick question, you obviously not have been part of every discussion, but at the highest level, you've been probably at least consulted if not part of the active discussion. Have you ever heard a member with any discussion, any participant in those meetings or has been relayed to you in any way that the executive branch membership was afraid of breaking the bank if, quote unquote, if they, retention issues were handled with a step promotion program or a new negotiation that would pay them correctly? [LR34]

SCOTT FRAKES: No. [LR34]

SENATOR KRIST: You never heard that term breaking the bank? [LR34]

SCOTT FRAKES: Well, I've heard the term, but not in any conversation related to compensation, honestly. [LR34]

SENATOR KRIST: Okay. So no one in the executive branch has said in any meeting concerned with breaking the bank and that mentality is never applied to doing the right thing and putting the right dollars in place? [LR34]

SCOTT FRAKES: The only conversations that I've been involved with around...have been around the large number of competing needs and figuring out what is the total cost of what needs to be addressed and can we achieve that in one biennium or are we going to look at something that's going to take longer than that. That's not just compensation. Those are the issues. There's staffing needs. There are--not just my agency--staffing needs, infrastructures needs, physical plant needs. [LR34]

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SENATOR KRIST: Okay. I appreciate your candor. I'll make one statement that goes back to our prior conversation, our prior bullet as well as this one. In my business we have crew duty days. And that's for maintainers and for flyers. And every time I see a crew duty day extended. I worry about the safety of the airplane. I worry about the quality of the work. I worry...and in your case what I worry about is if a corrections officer is required to work an extra 10 hours or 12 hours a week, at what point does that add up to fatigue factor and at what point does the safety, his own personal safety, his or hers, and the safety of the person they're contact with face to face every day having to deal with those emotional issues, where does that decay? You're more that welcome that to comment on that, but I do think that if we're not looking at that as a metric, we should be. [LR34]

SCOTT FRAKES: I believe we are looking at it. The fact that we've hit 12...I think it's 12.8 hours this month is wonderful in terms of we're headed the right direction. I'm not sure what the right number should be but it's a lot less of what it is today. There's always some overtime in a corrections system. It's actually the right way and fiscally prudent to manage a certain amount of the work, but it is not 16 hours. It's not 12 hours preferably. [LR34]

SENATOR KRIST: Sure. But just to be clear, I think you just said 12 hours this month. You meant 12 hours...actually 12.8, 13 hour per week, per four weeks. So we're actually asking them to work an extra week every month in terms of face time in their environment. [LR34]

SCOTT FRAKES: An extra week every month, yes. [LR34]

SENATOR KRIST: Okay, all right. [LR34]

SCOTT FRAKES: Not...it's not where we need to be. It's not where we should be. [LR34]

SENATOR KRIST: Okay. Thank you. Thank you for your candor. [LR34]

SENATOR SEILER: Senator Mello. [LR34]

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SENATOR MELLO: Thank you, Chairman Seiler. And, Director Frakes, I know we talked about this before. But in your testimony I completely understand you can't talk about negotiation strategies in regards to collective bargaining. Can you share with us though what has been the main issue brought forward by the collective bargaining team representing correction officers, supervisors. What has been the conversation like then? Has it been about pay, has it been the driving force right now, is salary, benefits being the driving factor, or has it been the culture of the agency being the driving factor? [LR34]

SCOTT FRAKES: Okay. So I heard you say collective bargaining team, but I'll answer it this way. What staff have said to me, what Inspector General Koebernick saw in his survey that he did, the number one compensation issue is what I call the flat wage scale, so whether it's longevity pay, step pay, different terms. But the fact that if you start as a correctional officer today, you make \$15.49 an hour. And the person who's training you and sharing their wisdom and experience and has been on the job 10 or 15 years makes \$15.49 an hour. So by far, that is the number one issue that I hear from staff in terms of compensation. At the same time, you don't so much here...you're not going to hear from the people that don't have adequate starting wages because we just can't find them. So we can just say that again, the behavioral health staff piece and the nursing staff. I take that back because the nurses that do come to work for us say it was the right opportunity at the right time, but the starting pay made it challenging to make the decision. So certain groups, starting pay, flat wage scale, lack of any movement within it pretty much across staff. And again, that was, coming here that was a surprise to me. I just had never experienced that in a system. [LR34]

SENATOR MELLO: On the retention aspect, I saw the turnover numbers look to be better than this year's goal in regards to being below that 28 percent. What are you attributing that to right now? That's I mean almost a 3 percent, 2.5 percent below, give or take, the projected goal for the year of reducing turnover. What seems to be driving that lower turnover percentage. [LR34]

SCOTT FRAKES: Well, I'd like to think that it is a combination of reducing overtime...pardon me, providing opportunities for people to believe that they can have a voice and it's safe to do that. Sincere efforts to change the conditions of work and the culture. And then, you know, you can make all those assumptions. I think...I'd like to think all those do have some direct impact.

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When I don't have a good sense of, is it also...you know, has there been some slowdown in the economic culture where people are weighing options and saying, right now this is where I need to stay. So I'll take any one of those as a contributor because the more we bring down the turnover, the more we bring down our vacancy rate, the more we will bring down our overtime rate, the more opportunities we're going to have to train staff. Real challenge right now because I really hate to cause mandatory overtime so that I can provide training to staff and yet there's training that needs to happen, so we've got to find it. So we build on that. I'd like to believe it will continue to feed towards a culture that we bring down the turnover. And then addressing the compensation piece I really think will be a significant contributor. [LR34]

SENATOR MELLO: And this is a...that's helpful because this next question has just kind of been something that you know we've talked about in private conversations. The Appropriations Committee has talked to you about this multiple times. We've appropriated more money over the last four years to the agency for more staff positions. The goal is to still have...you're going to have 91 projected vacancies still on average on a monthly basis. Is there ever going to be a time when you essentially are going to have a very minimal vacancy, I mean almost a full employment, so to speak, within the agency because, one could make the argument that we've been appropriating more money to the agency for staffing purposes but those staff position never truly are filled because you're always...have a large number of vacant positions on a regular monthly basis. And maybe it's more of a truth-in-budgeting issue, that we've been having ongoing conversations with the department on for the last, prior to your arrival with the previous administration, but since your arrival that people just need to generally know you're never going to fill. When we appropriate more money to you for positions, there's a likelihood you're just not going to fill those positions. There always will be a large amount of individuals or positions that will remain vacant because it's always been that way, unless you can provide a perspective I guess of saying that's not the goal or the goal is to get to full employment some day and that would reduce obviously mandatory overtime. We've never really got to that, I guess, discussion I should say in the budget side of the house. But even when it comes to the bigger policy, when it comes retention, is that an overarching goal the department is to say we're...I get you're at 91 (percent), but is it going to say we're going to get to less than 1 percent of our total employment will be vacant on a monthly basis? Is that a bigger stretch goal, so to speak, of the department in the near future? [LR34]

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SCOTT FRAKES: That's definitely a bigger stretch goal. But, yes, that would be the goal. If you're using the math then of about a 12 percent annual turnover, again, I'd be really...I've seen, from my own experience, a 10 percent turnover of protective services and a 6 percent to 7 percent turnover rate across the other positions. Those are healthy numbers. Even so, a 10 percent turnover rate in protective services still drives vacancies that drive overtime. So perfect world, you'd get it down. There's...the majority of the positions in protective services have to be filled. They're mandatory posts. So if the person is not there or you don't have a person to fill it then you're using over time and driving cost. There are a few positions that we can make a decision to not staff for a shift or make an adjustment. But it's very few. What we have seen...even some...another piece of this is we got additional positions last biennium budget. We have in fact filled more positions. We have more protective services staff today than we did June of last year. So we did make headway, but the fact is we're still running, you know, 91 vacancies right now. So it isn't that those positions are added and nothing happens. Now if we'd have added the positions and our overall vacancy rate was still sitting at 120 plus, then I'd have to say, yeah, we didn't do anything. But that's not the case. So we've got more staff working in protective services today than we did June of last year, not just vacancies. I mean literally there's more allocated and--I'm looking for the right word--deployed, deployed positions. So I've hit on two of the pieces. I think there's a belief, maybe it's a belief here, that an agency would try to save money or find ways to cover their budget shortages by holding positions vacant. And certainly do thoughtful management of those positions that don't drive overtime. So if a secretarial position becomes vacant, you may it for 60 days before you fill it. The fact is the process usually takes 60 to 90 days anyway at best. So you may look for savings in those areas. But with the protective services positions again, there's no money. You lose money if you hold them vacant. So the motivation is to find the people, get them trained, fill the positions, reduce the turnover rate, and end up with a system that's healthy and robust. [LR34]

SENATOR MELLO: Okay. Thanks. [LR34]

SENATOR SEILER: Senator Coash. [LR34]

SENATOR COASH: Thank you, Chairman. Director, the culture study that you mention your testimony... [LR34]

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SCOTT FRAKES: Yes. [LR34]

SENATOR COASH: ...that's something that the Governor's Office is taking upon them...it wasn't directed by the Legislature to do. It was through the Governor's Office to do that, is that correct? [LR34]

SCOTT FRAKES: Yes. [LR34]

SENATOR COASH: When will that be completed? [LR34]

SCOTT FRAKES: I don't have a firm date yet. [LR34]

SENATOR COASH: By the end of this next summer, the end of this year? I mean, I don't need you...I don't want an exact date, I just want to know if I'll still be a senator by the time they get this out. [LR34]

SCOTT FRAKES: Okay. Certainly before the end of the year, I hope much sooner. I'm just afraid to give some because I don't...it's not mine. I don't control it. [LR34]

SENATOR COASH: I understand. [LR34]

SCOTT FRAKES: And I'm staying. I want people to believe that I didn't control this or influence it or...so I'm allowing it. [LR34]

SENATOR COASH: I understand. Are you aware if that...the results of that study will be made available, will be a public document? Will this committee have access to it, or will this be an internal working document that the department will use on its own? [LR34]

SCOTT FRAKES: It will be published. We made that promise that we would share it. [LR34]

SENATOR COASH: Okay. All right. Thank you. [LR34]

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SENATOR SEILER: Senator Schumacher. [LR34]

SENATOR SCHUMACHER: Thank you, Senator Seiler. Just a quick follow up to Senator Krist's questions regarding the breaking the bank question. You indicated it wasn't anything in regard to compensation issues. But even though the terminology wasn't used, there's broader policy discussions as to how to hold the line on expenses and whether it can be done in this biennium or whether it's going to take some time. The figure that's been tossed around publicly is a 3 percent goal of government increases. Your department is one of those unfortunate departments that's going to look at a lot more than 3 percent. What are you looking at in the next biennium and the biennium after that? And what can we anticipate having to pay for above 3 percent in your department? [LR34]

SCOTT FRAKES: As I testified last time, we are doing the work to put together a good biennial budget. And I'm not even close. [LR34]

SENATOR SCHUMACHER: Not close to 3 percent? [LR34]

SCOTT FRAKES: No, I'm sorry. I'm not close to giving a number at this point. I've still got a lot of work to do to be prepared to put together and deliver a biennial budget that addresses the needs of the agency, the staffing audit being one of those big pieces, which is going well. I'm very comfortable that I'm going to have the information they need. But it's not done yet so. And that's just one piece. [LR34]

SENATOR SCHUMACHER: But whenever you take more than 3 percent, somebody else has got to take less than 3 percent. [LR34]

SCOTT FRAKES: That is right. [LR34]

SENATOR SCHUMACHER: (Laugh) That's going tough. [LR34]

SCOTT FRAKES: That's how, yes. [LR34]

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SENATOR SCHUMACHER: Thank you. [LR34]

SENATOR SEILER: Further questions? Okay. Let's go to your next, Restrictive Housing. [LR34]

SCOTT FRAKES: Attachment 4 is a copy of the proposed restrictive housing rules and regulations. These rules were developed over the last nine months in collaboration with the Long-Term Restrictive Housing Work Group established in LB598. In addition to NDCS staff, the work group includes two representatives from a nonprofit prisoners' rights advocacy group, including at least one former inmate, two mental health professionals independent from the department with particular knowledge of prisons and conditions of confinement, and the Deputy Ombudsman for Corrections. In addition, representatives from ACLU Nebraska, Disability Rights Nebraska, the Inspector General, and other stakeholders have participated in the work group and the rule-making process. Attachment 5 is a time line showing the progression of work to promulgate the rules and regulations. The rules and regulations establish the least restrictive environment standard created in LB598 and address the following, and I'll say, and more: mandates the use of restrictive housing as "an alternative of last resort" is a quote from the rules and regulations; define criteria for placement in restrictive housing; establish clear time limits for the use of immediate segregation; create a process for assignment to, and frequent review of longer-term restrictive housing placements by a central office multidisciplinary review team no longer controlled by the facilities; ensure review outside of the agency, conducted by the Inspector General, of assignment to restrictive housing for a period of six months or longer; require individualized transition plans to facilitate promotion to less restrictive housing assignments; establish a process to screen and divert individuals with serious mental health needs to alternative placements, such as secure mental health housing; and create a specialized discharge and reentry planning process for individuals that are returning to the community after recent stays in restrictive housing. The public hearing on these rules and regulations is scheduled on May 9, 2016 at 9:00 at the NDCS Central Office in Lincoln. The Long-Term Restrictive Housing Work Group will meet again on May 11 to review the feedback from the public hearing and finalize the document. The rules and regulations will be submitted to the Attorney General and Governor before June 1 allowing for approval before July 1 2016. The recommendations from the Vera project should be provided by the end of May. We have kept the Vera team

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apprised of the rules and regulations work. And I tried to work together to some degree. I expect the recommendations will line up well with the work already completed, and will give us additional...and when I say the work, I expect Vera's work will line up well with the work already completed, and will give us additional ideas to reduce the use of restrictive housing and improve how we use restrictive housing for those that are placed there. That's not...I added that last comment. I would take questions. [LR34]

SENATOR SEILER: Senator Krist. [LR34]

SENATOR KRIST: I read your proposal for the rules and regs change and unless I missed it, Director, there is no restriction that would prohibit someone who is leaving restricted housing or administrative segregation to going from his cell, his or her cell, to the general public, is that true? [LR34]

SCOTT FRAKES: That is true. It's not prohibited. [LR34]

SENATOR KRIST: That has to change. What we saw was a man who walked straight out of administrative segregation and killed people. And that happened in our community, in the Omaha community. Any rule regulation change that does not include that, and I don't intend to testify there and take public time. I intend to put my intentions and legislative intent on the record here. We cannot allow people to walk out of general...out of administrative segregation into the general population. And I draw back on a quote in the LR424 where someone in your position told us people inside of the system were afraid to put an individual into GP, yet they were discharged into the general population. So I think I think you need to address that in a rules and regulations change. And if that needs to be a statutory change, then so be it. But if we missed that in LB605 or you do not have the authority to do that even if you have to back it down and say this person is getting out of here in six months and he needs to go into GP and he messes up and good time is taken away and whatever else we need to do, there's a whole lot of detail and intricacy there. And I'm not trying to oversimplify it. But we cannot let that happen again. To you. [LR34]

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SCOTT FRAKES: This has been a focus since I arrived. We have been averaging less than one release from restrictive housing to the community in the last six months, probably the last three quarters. I didn't check the data though for this quarter. So on the first two quarters of 2016, less than one a month. Goal is zero. I could spend time here talking about all the what ifs or we could do it in a different. But there are situations where either the person has presented such a high level of risk that we're not...we don't have a choice. If they have physically assaulted staff, and we see unfortunately on occasion people do that near, very near the end of their release, then we have to deal with and figure out whether or not we can contain them, address it, and get them back. We also have people that we...on occasion we can't safely put anywhere. The have created situations where there is no safe general population place to house them. Doesn't happen very often, but it's an example. So to set a mandate that says that you cannot release from restrictive housing no matter what the circumstance is I don't think is attainable. It's a goal to continue to work towards to ensure that we don't have another situation that occurred as it occurred in the past. We've created some very strong safety nets through our discharge review team and ah additional focus on those people that are in segregation...so...in restrictive housing. Those that are in there for longer term placement, definitely the goal is to transition them out as quickly as possible. But someone that gets caught up in that system near the end of their release, then it becomes a different set of circumstances. But you've nailed the number one issue. And I say this to staff and I'll be saying it a louder and more directly in the weeks ahead. How can we look at the community and say, they were too dangerous for us to deal with and then send them out the front door the bus ticket and a little bit of money in their pocket and say, see you, it's been good. We can't. If we if we really think we need to do that, we better have an amazing set of facts to support why that's true. And the last component of that then, discharge review isn't just about meeting with people and talking about do you have an address, and you know, what else can we do for you before you leave? It's, is there a civil commitment need? Is there an opportunity to prosecute because the behavior, which is a recent case that we just had and in fact were successful in having them arraigned and put back into a different system and if convicted they'll come back to us. But we also looked at the civil commitment component for that individual as well. So it's making sure that we have explored every possible option looking for the option that not only keeps the public safe, keeps my staff safe, but keeps the individual safe as well. So I'm trying to achieve all three outcomes and I'm really committed to that. [LR34]

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SENATOR KRIST: Well, I'm glad you are because the time that I've been dealing with this and the time that I've committed personally to my constituents and to this issue, put an exclamation point on this one. We need to stop it and we certainly need to make sure that that person, whoever it is, isn't jamming out in addition to all the rest of this because unsupervised, walking out the door, this is huge. This is...this was the crux of what started to be the LR424 that led to where we are. And it's really important to me and I can tell it's important to you. But we've got to find a solution to stop going from the worst end of the system, inside, to free and able to do anything unsupervised. [LR34]

SCOTT FRAKES: I agree. [LR34]

SENATOR KRIST: Thank you. [LR34]

SCOTT FRAKES: And it is very important to me. [LR34]

SENATOR SEILER: Senator Chambers. [LR34]

SENATOR CHAMBERS: Director Frakes, much of what has happened with Nikko Jenkins has been made public. He has publicized some of it himself by way of letters to judges, to the media, and to others. So there's no issue of confidentiality here. And the questions that I'm asking are going to go to the competency of your staff. Where is he being held right now? [LR34]

SCOTT FRAKES: Nebraska State Penitentiary. [LR34]

SENATOR CHAMBERS: And under whose authority is that penitentiary? [LR34]

SCOTT FRAKES: He's there by court order. [LR34]

SENATOR CHAMBERS: And who runs the penitentiary? [LR34]

SCOTT FRAKES: The warden is Rich Cruickshank. [LR34]

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SENATOR CHAMBERS: And who sits...if it's to be viewed as a pyramid, who sits at the pinnacle, at the very top? [LR34]

SCOTT FRAKES: That's me. [LR34]

SENATOR CHAMBERS: And you could be analogized to the captain of a ship. A captain may not be aware of his or her personal knowledge of everything that happens, but the captain is held responsible for whatever happens on his or her ship whether he or she had personal knowledge of it or not because there's a duty and a responsibility to create a chain of command, farm out responsibility so that the ship is handled the way it should be. In other words, a captain cannot have something very bad go wrong with the ship and say, well, this guy who's supposed to be mopping the decks did it. It's on the captain. Now when this man winds up with several keys...first of all, is he a magician? Can he make things out of nothing? Can he make them materialize? [LR34]

SCOTT FRAKES: I don't believe so, no. [LR34]

SENATOR CHAMBERS: If he came in the position of keys, somebody either gave him those keys or he got them from somebody, would you agree? [LR34]

SCOTT FRAKES: Yes, he did get them from staff. [LR34]

SENATOR CHAMBERS: If the keys were from an employee and no employee had...first of all, if an employee were...well, let me start even further back. How would an inmate obtain an employees keys? [LR34]

SCOTT FRAKES: Pretty much has to be through the failure of staff to maintain control of their keys, bottom line. [LR34]

SENATOR CHAMBERS: Now you just short circuited a whole lot of questioning I thought I would have to do. So there has to be something done to make sure because I'm going to be frank with you. I believe they are deliberately making things available to him hoping he'll kill himself.

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And some of the implements that have been made available to him would have been able to achieve that. Now if he dies in custody, probably a grand jury would say, well, there's no wrongdoing. But even people who think that he should be locked up and some think he should be just done away with any kind of way it would happen, still don't think that he should come into possession of keys and be able to swallow several of them. He should not have been able to obtain the badge of a guard. [LR34]

SCOTT FRAKES: Officer. [LR34]

SENATOR CHAMBERS: There was one time when there was a restraint that he managed to get when he was going to take a shower or coming from one that he used to try to hang himself with. What action is taken to make sure those things don't happen? See, if it happens once then maybe somebody could have let down. But when there's a high profile case, politics and everything else enter (inaudible). For these things to continue happening, I think the responsibilities are on your doorstep because you're not do it was needed to keep that from happening. So if you had an employee and he or she continues to have derelictions, how long would it take before you terminated that employee? [LR34]

SCOTT FRAKES: It would depend on what the actions were, what the finding of the individual investigations were. There's a need for progressive discipline. It's...you know, we have a state system... [LR34]

SENATOR CHAMBERS: If you were your boss, would you fire you? You have to answer. [LR34]

SCOTT FRAKES: For what's happened with Mr. Jenkins? [LR34]

SENATOR CHAMBERS: Yes. [LR34]

SENATOR CHAMBERS: No, I wouldn't fire me for that. [LR34]

SENATOR CHAMBERS: Nobody's been fired. [LR34]

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SCOTT FRAKES: No, no. Action has been taken. [LR34]

SENATOR CHAMBERS: So then that means that what is being done there is not considered seriously. I want you to give these blunt answers like you are. It's not a very serious thing that he would wind up with an employee's keys. [LR34]

SCOTT FRAKES: It is a very serious thing that he ended up... [LR34]

SENATOR CHAMBERS: But you didn't fire the employee. [LR34]

SCOTT FRAKES: No. [LR34]

SENATOR CHAMBERS: And obtained the badge off an employees jacket, that's not considered serious either, is it? [LR34]

SCOTT FRAKES: That is serious and... [LR34]

SENATOR CHAMBERS: But you didn't fire the employee, did you? [LR34]

SCOTT FRAKES: It does not rise to the level of termination. [LR34]

SENATOR CHAMBERS: But sometimes if an inmate spits on a guard, that's an assault. [LR34]

SCOTT FRAKES: Yes. [LR34]

SENATOR CHAMBERS: I think what you're doing out there is insane. There is no proportionality. Anything an inmate does, it can be a verbal threat, it can be throwing a piece of paper and that's an assault and a punishment can be imposed. But an employee can lose his or her keys to a man who is under the tightest, I imagine, type of confinement that's possible. The employee continues to work. Are you so desperate for people that you have these totally incompetent people? You don't think that was recklessness on the part of these employees to lose

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possession of these things that I've mentioned, and there were others. How would a man in his situation get a razor blade more than once? Does he manufacture razor blades? [LR34]

SCOTT FRAKES: No. [LR34]

SENATOR CHAMBERS: You said probable? [LR34]

SCOTT FRAKES: No. I don't think he's got the capability to manufacture a razor blade. [LR34]

SENATOR CHAMBERS: What kind of surveillance do they have him under? [LR34]

SCOTT FRAKES: 24/7 (inaudible). [LR34]

SENATOR CHAMBERS: And yet he can get these objects, these items and nobody is fired. [LR34]

SCOTT FRAKES: So far... [LR34]

SENATOR CHAMBERS: When you were in Washington, this wouldn't have happened, would it? [LR34]

SCOTT FRAKES: Yes. [LR34]

SENATOR CHAMBERS: In the prison you ran in Washington, this wouldn't have happened, would it? [LR34]

SCOTT FRAKES: Yes, it would have. [LR34]

SENATOR CHAMBERS: It did happen? [LR34]

SCOTT FRAKES: Didn't specifically happen, but staff made bad decisions, staff made mistakes. [LR34]

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SENATOR CHAMBERS: Repeatedly with the same person. [LR34]

SCOTT FRAKES: But it isn't the same staff member. I think maybe that's the misconception. He's under 24/7 coverage so think of the number of staff it takes to watch him over a 7-day period. It's not one. [LR34]

SENATOR CHAMBERS: Then when you have this continual or continuous incompetency by staffs in this very critical situation, that reflects on you. You don't know how to assign staff. Then when they do something that I consider to be a very serious infraction, you just say, ho-hum. [LR34]

SCOTT FRAKES: I did not say that, Senator Chambers. [LR34]

SENATOR CHAMBERS: Well, they're still working. [LR34]

SCOTT FRAKES: But you don't terminate someone because they make a single mistake. [LR34]

SENATOR CHAMBERS: If they make a...a mistake? [LR34]

SCOTT FRAKES: A single mistake. [LR34]

SENATOR CHAMBERS: A mistake is three plus three are seven. That's a mistake. These were not mistakes. [LR34]

SCOTT FRAKES: You believe they were willful. I do not believe they were willful. I believe... [LR34]

SENATOR CHAMBERS: Were they stupid? [LR34]

SCOTT FRAKES: My staff are not stupid. [LR34]

SENATOR CHAMBERS: Then it wasn't stupidity. [LR34]

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SCOTT FRAKES: It was an error. [LR34]

SENATOR CHAMBERS: An error. [LR34]

SCOTT FRAKES: Yes. [LR34]

SENATOR CHAMBERS: Do you train them on what they are to do when they're dealing with this situation? [LR34]

SCOTT FRAKES: Yes. [LR34]

SENATOR CHAMBERS: Did that violate their training? [LR34]

SCOTT FRAKES: Yes. [LR34]

SENATOR CHAMBERS: Were you ever in the military? [LR34]

SCOTT FRAKES: No, I was not. [LR34]

SENATOR CHAMBERS: But you can imagine from things you've heard that there is such a thing as discipline and a chain of command. [LR34]

SCOTT FRAKES: Yes, sir. [LR34]

SENATOR CHAMBERS: And the one at the top is ultimately responsible. That would be you. This job has outgrown you, hasn't it? [LR34]

SCOTT FRAKES: No. [LR34]

SENATOR CHAMBERS: You can't figure how to handle it, can you? [LR34]

SCOTT FRAKES: I'm satisfied with my performance so far. [LR34]

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SENATOR CHAMBERS: Well, naturally you would be because you don't have a very high standard. Suppose one of your people made, as you call it, a mistake and left a door open that shouldn't have been open and 20 inmates escape. That would just be a mistake, wouldn't it? [LR34]

SCOTT FRAKES: Now you describe a situation that could lead to termination. [LR34]

SENATOR CHAMBERS: It what? [LR34]

SCOTT FRAKES: You've just described a situation that could lead to a staff member being terminated. [LR34]

SENATOR CHAMBERS: I think I've said enough and enough is in this record to make my point. I think there is not only incompetency, I think there is willfulness and I think it's with you being complicit and having given tacit approval of all these things happening. Nobody can make...I'm going to give you an example then I'm through, Mr. Chairman. When I was in basic training, we had what's called a poncho. That's just a square cloth with a hole in it and you put your head through it. Well, what you had to do is roll that up so that it was relatively narrow, then you wrap it around what they call your pistol belt and your cartridge belt. And if it came loose while you were marching, then whoever the sergeant was had some unkind words said by the company commander because that made the captain look bad. So this sergeant called all of the privates together, his name was Erwin Cheatum (phonetic). This was down in Fort Leonard Wood, Missouri. He had a very heavy southern drawl or accent. And he said, I want to tell you all something. He was a white guy, red as a beet. You all can try to make it hard on me by not wrapping them ponchos the way you should, but you can't make it as hard on me as I can make it on you. Now they've made it bad on you. You are the one who is incompetent. You are the one who knows that these things have happened over and over and over and you have done nothing to prevent it from happening. You're the captain of the ship. You're on leave while the ship is foundering in the harbor, just so you know what I think. And that's all I'm going to say. But I'm not through with this by a long shot. [LR34]

SENATOR SEILER: Any other questions? Senator Schumacher. [LR34]

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SENATOR SCHUMACHER: Thank you, Senator Seiler. I've had a chance the last couple of days to look at the proposed segregated housing rules and also to look at the report, I guess it's to the Governor made by code agencies before submitting these rules for a hearing. And a line jumped out at me in that report which then made me go back a second and third time and reread through these particular rules. And the line was: What is the agency's best estimate of the additional or reduced spending? And the comment was, these rules are not expected to increase spending and may ultimately decrease spending by reducing the use and frequency of restrictive housing. And I would have thought that question would have been answered by, yeah, there's going to be a fairly significant increase in costs because we're going to have additional psychiatric intervention; we're going to have additional procedures; we're going to have to have some type of a intermediate facility as we work these people back into the population; we're going to have to have a number of things that we don't have now by just locking somebody in the cage and kind of forgetting about the situation for ten years. So, yes, there's going to be additional cost and quite a bit of them as part of an ongoing renovation in the penitentiary. So I went back and read these with a mind of reading them that, okay, how do we do this with no additional cost? And the only answer can be that these regulations really aren't going to change behavior or procedure or facilities very much because that's the only thing that can have no cost, at least in the initial phases of it. And then I looked a little closer to regulations and this is the crux of my question. The Administrative Procedure Act looks for a set of rules and a set of decision makers in the rule process and procedures of hearings or whatnot in order to get the decision maker in the position to make a decision. And then the decision maker enters a final finding based upon the facts and based upon the law. And that finding is then appealable to the courts. It just doesn't stop with a decision maker within the agency that's making up the rules. Yet nowhere in the rules do I see the mechanism or time limits for a final order, an adjudication of any of the questions in here as to whether or not this procedure has been followed. And if somebody objects to it, there's a final order that they can say, okay, judge, these things were not followed internally and now, dear judge, I'm coming to you. I have my final order. So what do you see as a time frame for issuing a final order with regard to any of the procedures into here? And I guess you would be the party receiving it or issuing the final order. And who do you see as being able to appeal your order to the courts? And how...do these regulations interface with the Administrative Procedure Act mandated by the statute that you have got to have a place by the

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first of July so that that statutory compulsion is complied with? How does one get from these regulations to before a court to say these regulations were not followed? [LR34]

SCOTT FRAKES: I'm sorry, but you really did lose me. [LR34]

SENATOR SCHUMACHER: Okay. [LR34]

SCOTT FRAKES: You've gone into an...this is my first time promulgating rules and regulations. So if you could give me a better understanding of what it is that it appears that I've completely missed. [LR34]

SENATOR SCHUMACHER: Well, let me try and not ramble into the thing then quite as much. The rules and regulations do not stop with the finding of the agency director in any agency. There is a right to appeal by an aggrieved party saying the rules weren't followed here, Judge. [LR34]

SCOTT FRAKES: Okay. [LR34]

SENATOR SCHUMACHER: And what triggers that appeal is a finding of a final decision by the agency director, the decision maker, that you can now take to a judge. [LR34]

SCOTT FRAKES: Okay. [LR34]

SENATOR SCHUMACHER: What is the time frame for making that decision by you? What is a...who is entitled to take it to a judge? That seems absent in here and needs to be addressed. And so how do you see these regulations interfacing with the fact that there is a right in somebody to take your final order to a judge? [LR34]

SCOTT FRAKES: Did not have an awareness that that needed to be specifically spelled out in the rules and regulations. So if that's the case, we have the opportunity to do that since it is going to hearing here in a few weeks. And in terms of the way it was explained to me was we would do the hearing, we would make the final version, we would give it to the AGs to see that...the

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Attorney General's Office, to see if it was in compliance. I don't know if that ability to challenge happens at the point that I submit it or is it at the point the Governor signs it? I don't know the right answer. [LR34]

SENATOR SCHUMACHER: It wouldn't be challenging these regulations. Let's say you adopt these regulations. [LR34]

SCOTT FRAKES: Okay. [LR34]

SENATOR SCHUMACHER: My question is an aggrieved party, somebody who disagrees with your decision, what is the mechanism by which they go from these regulations to before the judge? [LR34]

SCOTT FRAKES: Oh, you're talking about the restrictive housing rules themselves. [LR34]

SENATOR SCHUMACHER: Right. [LR34]

SCOTT FRAKES: Not the rules that...I'm sorry. I thought you meant about the rules and regs (inaudible). [LR34]

SENATOR SCHUMACHER: (Inaudible) we were missing. [LR34]

SCOTT FRAKES: Okay. Again, my first time through that process. The same challenge that exists today--they would have the class...there's an appeal process for the initial placement. If they were placed in a longer-term restrictive housing, then it becomes a classification action. We'll have an appeal right for that as well. At any point, they could reach out to the courts and say I'm being held inconsistent with the rules and regulations or somehow in violation of my rights. So I don't...it's the same access to the courts that they have today. [LR34]

SENATOR SCHUMACHER: So at any point in these proceedings it's your interpretation and intent that they could say, wait a minute, is not at the three-month mark, not at the review by this board, but at any...and not at the final hurrah when you would be called in to make a decision. So

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at any point along here it's your interpretation of this and it would be your intent in these regulations to...that an inmate would be able to file an appeal. [LR34]

SCOTT FRAKES: No, that's not my intent. I'm saying that they have...it's a right that they have to reach out to the courts. Whether or not the courts would see that there's an issue that they would address is independent of. [LR34]

SENATOR SCHUMACHER: Well, the Administrative Procedure Act says that they can appeal a final order to the courts. So my question is still how...what needs to be addressed in these or at least we need to know what your thoughts and your behavior will be like when they jump from here into the courtroom. And that should be spelled out for somebody. And who can jump? Can the ACLU take the jump? Does it have to be an inmate that's held in restrictive housing? Can it be a guard who feels that his opinion was disregarded? There's a big chasm there between these regulations and plugging them into the court system. [LR34]

SCOTT FRAKES: Okay. I will take it under advisement and go back and find out what the correct answer is. [LR34]

SENATOR SEILER: Senator Krist. [LR34]

SENATOR KRIST: I'll be very brief. One of our frustrations in the past few years was that Corrections thought that they didn't have to comply with the APA. They can change rules and regulations and policies when they wanted to because--I'll put it in my words--they'd given up their liberty and we can do with them what we want to do with them. This is a big step forward to actually comply with the APA in my opinion. But I think Senator Schumacher's heeding his concerns are well founded because at some point the person is going to have to have standing in the court to do what he or she wants to do. At what point do they go from your system back to the court system? I think you really do have to define that. And I'm not even a lawyer and I didn't spend the night in a Holiday Inn Express last night. [LR34]

SCOTT FRAKES: Thank you. [LR34]

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SENATOR KRIST: Thank you. [LR34]

SENATOR SEILER: Senator Chambers. [LR34]

SENATOR CHAMBERS: Mr. Director, you've heard the term "deterrence." [LR34]

SCOTT FRAKES: Yes. [LR34]

SENATOR CHAMBERS: What to you, what does that term mean and how does it apply?
[LR34]

SCOTT FRAKES: It's those things that encourage...I'd say encourage is the best word I can think of, people to act in different ways. So the laws serve as deterrence. The sanctions that are part of our laws serve as deterrence. [LR34]

SENATOR CHAMBERS: So it's actually to prevent somebody from behaving in a certain way that's not acceptable, to deter them. [LR34]

SCOTT FRAKES: That's (inaudible). [LR34]

SENATOR CHAMBERS: When a person gets sentenced, there have been instances where the judge said that to do anything less would diminish the seriousness of the offense and not deter others. When the Counsel for Discipline files a complaint and the Supreme Court decides to impose a sanction, they say one of the primary purposes is to deter or prevent others from doing the same thing. So if we'll designate the misconduct as X and then it's done by Mister A and there is no punishment, it's done by Mr. B and there is no punishment, then the failure to punish means there's no deterrence or no reason why somebody else shouldn't do the same thing. Would you agree? [LR34]

SCOTT FRAKES: For some, the deterrence is just the knowledge that there is a law. For some, the deterrence is the knowledge that if they are caught and found guilty there will be a sanction.

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And for some, it's not clear what the deterrence is because they know all of those pieces and still engage in the behavior. [LR34]

SENATOR CHAMBERS: You're very helpful. When somebody is talking about liability that the law will talk about negligence like ordinary negligence, gross negligence, and then you can go to reckless disregard absolutely. And although somebody might want to call it negligence, it rises to the level of an intentional act and is treated as such. I'm coming back to what I was talking to you about and you helped, I think, contrive the noose that is now around your neck. The actions of these people, the action was so reckless, so disregardful of any standard of care that it rises to the level of an intentional act. And when one person does it and gets away with it, another person does it and gets away with it, a third one does it and gets away with it, the one in charge of maintaining discipline has not relied on the principle of deterrence, but has rather encouraged and facilitated this misconduct by allowing those who engage in it to get away with it. That's why I spoke with such, you might even say ferocity, because these acts by your people were not done in a corner, so to speak. They were known. They were discussed, whether you know it or not, even by some employees out at that facility and how there was no excuse for them, they never should have happened, and those people should have been terminated as a warning to others. So if your intention, and I'm going to say that your failure to act rises to the level of intent as I view it, if your intention is to have Nikko Jenkins kill himself, if he does, I'm going to ask for a federal investigation to have you charged because you knew, you have warning, you could anticipate what was going to happen. You did nothing to prevent it from happening when you had the authority and the wherewithal to prevent it. So if anything happens to him, I want you to know that I, using whatever tools are available under the law, intend to come after you. You could stop this from happening today, Mr. Director, if you chose to. But you have chosen not to. And that's the way I see it. [LR34]

SCOTT FRAKES: I think you should do exactly what you described. I believe the record will speak for itself. I'm not mad at Nikko Jenkins. I see a man who has had a horrible, horrible life, who has been put in situations that no one should be put in, starting from childhood. I see a man who didn't get the care at many points in his life that might have made a difference. I see a man who doesn't want to live like he lives. I see a man who recently has began to try to engage and change his behavior. I can't get into this treatment plan. In fact, I really don't know his specific

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mental health treatment plan. I can talk about the behavior plan a little bit and some of the approaches and interventions that they're having success with. And a big part of that is because there was a little bit of a break through in which conversations were had about where do you want to go in life? What do you want to be different? And what are you willing to sign on for in terms of if we make these changes, what behaviors will you exhibit or not exhibit? And a piece of that is in his own view of the world Mr. Jenkins, like most of us, care about our word. And I do think he cares about his word. And so...and I'm hesitant to say as much as I just said because odds are good that he either will see this conversation that we're having right now or it will get to him from other people, other inmates, and could be misconstrued. But, Senator Chambers, I care about everyone that's under my charge; and I care about the 2,400 staff that work for this department; and I care about the citizens of Nebraska. I don't want another situation like occurred with Nikko Jenkins. I don't want Nikko Jenkins to hurt himself. I certainly don't want him to kill himself. I would love nothing more than for him to find a way to communicate differently than he has chosen to communicate over the last few years. I see potential in every human being. And I can continue to sit here and talk and it's just me talking. So again, there's certainly a record of the actions that I've taken in the last few months, the actions taken with the staff that made mistakes, the efforts to ensure that Nikko Jenkins gets the help he needs. [LR34]

SENATOR CHAMBERS: But you have failed to take action that I think you should have taken against those employees. If I had a weapon and they're not supposed to be loaded in the military and I left a round in there and it was discharged, I'd probably wind up in the brig and I might wind up with a bad conduct discharge. But you're letting them get away with it. Mr. Chairman, I understand your situation, so I'm going to let it go now. [LR34]

SENATOR SEILER: Thank you. [LR34]

SENATOR BOLZ: Mr. Chairman. [LR34]

SENATOR SEILER: This next subject...oh, excuse me. Go ahead. [LR34]

SENATOR BOLZ: I have a question that I've been waiting to ask and I'm not sure where it fits in your testimony so I'm just going to ask it now. But it sort of builds on this conversation we've

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been having, and I want to circle back. The last time that we were in this room together it was the Judiciary Committee and the Appropriations Committee and you were here when Amy Miller from the ACLU testified. And some of her concerns related to slow responses to crisis requests for mental health needs, slow responses in requests to medication, not enough access to mental healthcare. And I recall that there were some good eye contact with you and Director Miller. And I wonder if you followed up with those questions and those concerns, if you felt like they were imminent, if you have remediated some of those issues. I just wanted to follow through on the conversation that we had last time. [LR34]

SCOTT FRAKES: I believe we met the next day. We met very shortly after that hearing and sat down and talked for more than an hour. She did not provide specific cases to look at. I'm trying to remember if we ended up with any because she was going to verify whether or not there was a need. Some of them may have already been resolved. We've been...we worked on one specific case. I'd say we worked together; she probably wouldn't frame it that way. But there was one case in particular that we were working on and came to successful, what I would say is successful outcome. So the issues that she brought forward are legitimate. The issues that she brought forward, if not addressed, would rise to the level of deliberate indifference. That is certainly a way in which I should be fired. If I am deliberately indifferent or if I allow my department to operate in a way that's deliberately indifferent, I should not be the director. So we're going to continue and I've asked her and she agreed to the degree possible in their specific cases, let us know. We want to look into them. We want to address them. Things...there are legitimate reasons that those mistakes happen or those issues happen, you could even say mistakes. But communication gets misrouted, things don't get addressed, things get put under...a piece of paper gets put under another piece of paper. Those are all excuses, but those are some of the things that do occur in a large system. And then there are people that just get overwhelmed and backlogged and don't bring that to others' attention. So those are the kind of challenges that we continue to work through. We are taking a hard look at our healthcare system. I'm not satisfied that we're achieving everything that we need to achieve in terms of how quickly we respond and some of the follow-up issues. So I see an ongoing need for us to continue to ask questions, push back, challenge. And at the same time, I'm proud of the level of care that we provide in our healthcare system and our behavioral healthcare system. There are still a significant part of America, Americans in this country that do not receive the level of care that

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we provide. That doesn't mean that we're doing everything we need to. It means that we're working hard to get to where we need to be. [LR34]

SENATOR BOLZ: So what has changed since the conversation with Amy Miller? [LR34]

SCOTT FRAKES: Just this continuing effort to identify where there are problems. There has been some personnel changes recently, as an example. Again, I don't want to talk publicly about personnel issues, but there have been some changes. And there's this ongoing effort to address our health services, behavioral health vacancies. The compensation piece is a critical component of that and we're in that work right now. [LR34]

SENATOR BOLZ: Thank you, Mr. Chair. [LR34]

SENATOR SEILER: You're welcome. Let's move on to Tecumseh update. I want to tell the committee that because there is an ongoing investigation we have to be a little bit careful about diving into some of these issues. And if there's a grand jury being drawn, we don't want to pollute the grand jury, and so we need to be real careful about that. I'm sure you can guide us if you should have an issue that you think the grand jury is going to have a problem with or will pollute the grand jury to let us know. [LR34]

SCOTT FRAKES: Yes, Senator Seiler. Thank you. [LR34]

SENATOR SEILER: You may begin. [LR34]

SCOTT FRAKES: Attachment 6 is the corrective action plan with a cover sheet identifying the items that are still in process. These are the same six items that were still in process the last time that we talked. Five of those items relate to the agency staffing analysis. Again, that project is going well; and I am very comfortable that I'll have the information I need this summer to make the important decisions around custody staffing, protective services staffing. The remaining item is the rebuilding and repairing of the walls in Unit 2 and 3 and installing the roof access hatches in the unit control booths. The wall project is now approximately 70 percent completed. As I expected, once they got into that project, it went a lot quicker than they had estimated so I'm very

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happy. It will be done by the end of May, I think sooner, but by the end of May. The roof access project is scheduled to be completed by the end of September. That's a matter of providing access out of the control booths in the living units that would allow staff to get out of the building if there was an emergency. The report by the Ombudsman provided observations regarding staffing, custody levels at TSCI, the grievance procedure, and a method for enhanced communication between staff and inmates. A number of these are also addressed in the TSCI corrective action plan. I've identified improvements to the grievance process which will be addressed in the biennial budget process. Staffing--the staffing analysis will be completed this summer and addressed in the biennial budget process. We have inmate councils meeting at every facility which has greatly improved communication between staff and inmates. Warden Hansen recently provided a response to questions from the Ombudsman's Office which provides a snapshot of the many current activities at TSCI. And I've included that as Attachment 7. And I would answer questions. [LR34]

SENATOR SEILER: Senator Coash. [LR34]

SENATOR COASH: Thank you, Chairman Seiler. Director Frakes, I don't need you to go into any kind of details on the ongoing investigation. My question is just one of potential time lines. We're about a year since the incident at Tecumseh. [LR34]

SCOTT FRAKES: Yes. [LR34]

SENATOR COASH: And I know you did the internal investigation. The Ombudsman's Office did their investigation. And, of course, there's an ongoing criminal investigation that the State Patrol is working through, correct? [LR34]

SCOTT FRAKES: Yes. [LR34]

SENATOR COASH: With regard to the criminal investigation, do you have any idea when that...there might be some finality to that? [LR34]

SCOTT FRAKES: No. No, I do not. [LR34]

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SENATOR COASH: Okay. You don't have to say any more. I think it's important to get right, not done quickly, but it seems like a year is a pretty good time line. I would hope we start to hear something soon on that. [LR34]

SCOTT FRAKES: I understand. They want to be sure that they can successfully prosecute the people that are responsible. [LR34]

SENATOR COASH: Fair enough. After the incident last year, there was a...I don't want to say...pretty much the whole institution was on--these are my terms, maybe not yours--a lockdown because...first of all, because of all the damage. And after that, started to get remediated, it was for a safety, you know, to maintain some safety. With regard to time in and out of cells pre and post incident, where are we? Are we back to what it was the day before that incident happened? Or are we still in some way the same way we were 30 days after the incident? [LR34]

SCOTT FRAKES: No, we're much closer to where we were May 1 a year ago. I think to quantify it in terms of out-of-cell time, I think in some situations we have more out-of-cell time, protective custody in particular as a group that has more out-of-cell time. I think the general living units now are pretty close to exactly where they were. We don't have the club activity. It's still scheduled to start happening shortly and getting...I'm not so...no, we're not yet back to the same level of volunteer faith-based activities as we were. [LR34]

SENATOR COASH: Okay. [LR34]

SCOTT FRAKES: I'll call it about 90 percent. [LR34]

SENATOR COASH: Pre where we were (inaudible). Let me ask you this. When we talked to administrators and workers at Tecumseh, and you said this on record I believe numerous times is that because of the distance that Tecumseh is from the work force that you continually have a challenge of keeping seasoned corrections officers there. Because of the high turnover, when you train up a new corrections officer, if there's an opening at Tecumseh they go. But as soon as

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there's an opening maybe closer to where they live, Lincoln or Omaha, they typically transfer. Is that accurate? [LR34]

SCOTT FRAKES: It's still happening. The good news is we've had three people that pulled their transfers in the last month or so after the new leader had some conversation. [LR34]

SENATOR COASH: Do you have...with regard to Tecumseh, I think one of the things that I feel was a contributing factor and some of the investigations have supported this notion is that...we know it's not as overcrowded especially as compared to like NSP. I mean, it's about at capacity which is what you would want so we know overcrowding isn't a factor. But the level of experience in corrections officers at Tecumseh does seem to pop up frequently as a factor in what happened. Do you as the director have any control over a CO's ability to transfer? I mean, can you say, you know what, no, I need to have...I need to manage my labor in a way that says I need to have more seasoned officers there? Because also, isn't it true that Tecumseh has more high-risk inmates? I mean, comparatively, the inmate population at Tecumseh is maybe more dangerous, so to speak, than? And I could be wrong on that. I'll let you clarify that. But I'm just wondering why if you have some prohibition that prohibits you from managing your labor so you can keep more seasoned people where you feel you need them. [LR34]

SCOTT FRAKES: Comparing the populations of NSP and Tecumseh, I would say there's a fair amount of similarity. There is a larger number of true minimum custody inmates at NSP in the external housing units. But in terms of the population that lives in Units 1, 2, 3, and 4 and 5 at NSP, pretty similar to the general population at Tecumseh. Tecumseh does have a larger restrictive housing population because it's a large, new unit. Another interesting dynamic about Tecumseh, there is an inexperienced corps of work force combined with the highest number of vacancies per (inaudible), the highest protective services. Ehh, probably again with NSP they're probably about the same. So they definitely have more protective services vacancies than any other facility. And then there's a group of staff, some of which have been there since Day one and came from other facilities. And so when you just look at the data, there's not a significant difference between the overall average of seniority at Tecumseh and other facilities. But we know that there's a long-term core group and then a short-term core and a churn. Addressing the vacancy issue is a huge part of the solution. We have delayed the transfer request. We

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have...there are some contractual rights so we have to address that as well, and people have been good about that. The downside of that, though, is that there's even people that go to work at Lincoln may ask to go to Omaha or, you know, the people move to other facilities as well. And so as you delay it, you create a backlog and that's part of what we're experiencing right now. We've held people off for nine months or more and it's, eh, we need to address that and provide that opportunity. Part of it, too, is something that I don't think has happened in the past and it has happened now and that's a good administrator, a good warden who goes to the person and has a conversation and says, you know, what are the needs? Is this about family needs? Is it about the commuting time? Is it reasonable? Could you stay? And we've had three people that have pulled their transfer request just because of those. [LR34]

SENATOR COASH: Could I pull that thread just a minute? You have a new warden in Tecumseh, correct? [LR34]

SCOTT FRAKES: I do. [LR34]

SENATOR COASH: As of about 60 days ago or so? [LR34]

SCOTT FRAKES: A month or a little more. [LR34]

SENATOR COASH: A month or so. [LR34]

SCOTT FRAKES: Yeah. [LR34]

SENATOR COASH: Okay. I know you're not going to talk about the separation of the previous warden because that's a personnel issue. But I will ask you in the last 30 days have you seen different outcomes because of the change in leadership? [LR34]

SCOTT FRAKES: I believe I'm seeing some very positive signs and pulling the transfer request would be one. Some of the e-mails that I've received from staff. I walked and spent all day the Saturday before last at Tecumseh with the deputy director and with Warden Hansen. Senator Watermeier came for a little while as well and spent some time with us. I saw a much more

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engaging and respectful interaction with the general population that we dealt with or, you know, interacted with as opposed to just 60 days before when I was out there on a Saturday and the interaction with staff felt really good. So sometimes you just go with a gut feeling. Yes, staff retired and, yes, staff are looking for...there are staff that are excited about the 12-hour shifts and really want them to stay and there are the staff that it's not the best fit for them and they'd like us to go back. But in general, the mood and the tone of the facility was as good or better than I'd ever felt it before. Then we sat down with a group of about 16 inmates I think and myself, the warden, Deputy Director Sabatka-Rine, talked to them for over two hours, heard what I expected to hear in terms of when is there going to be more programming, when is there going to be more opportunities, some of the things that we really are working on. The most positive thing that came out of that was a piece of information that said that that was well received. Of course, they would like more, always love to have face time with me. But just the fact that the administration was willing to come on a Saturday, sit down and have a conversation and listen to what they had to say had an impact on reducing tension as well. So that's an awful long answer to what you asked me. Yes, I think things are changing. [LR34]

SENATOR SEILER: Senator Mello. [LR34]

SENATOR MELLO: Thank you, Chairman Seiler. Thank you, Director Frakes. Did you just say that the issue regarding 12-hour days, is that still kind of the norm right now down at Tecumseh is the 12-hour days? [LR34]

SCOTT FRAKES: For the protective services, the officers and corporals and sergeants, yes. [LR34]

SENATOR MELLO: Now is it your desire or the new warden's desire to move to 8-hour days to move away from those 12-hour days? Is that a goal or typical? [LR34]

SCOTT FRAKES: It is. Well, I still hope for the day through appropriate contract negotiations that we will be able to land in a place where alternative shifts are an option that could be deployed. I think that Tecumseh is a great example of a facility that could run two or maybe three living units on a 12-hour schedule, have another set of positions that were 8-hour

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schedules. There are even some positions like visit room is a good example that could run on a 10-hour schedule. You provide those different options, that becomes attractive to different groups of staff. That can help with retention and just general staff morale. But under the current contract, the only reason that we are currently able to have the 12-hour shifts is because of the emergency conditions that existed. That was reviewed and supported. But at some point and, you know, that day is coming, I would no longer be able to say that I can justify that it's an emergency situation and we will need to go back. [LR34]

SENATOR MELLO: So you just told...I guess I want to clarify because you just explained to Senator Coash you think that right now Tecumseh is about where it was May 1 of last year prior to the riot. So we're about...in regards to where we are at, we're really close. Were we in emergency status last year May 1 before the riot? [LR34]

SCOTT FRAKES: No, no. [LR34]

SENATOR MELLO: So in theory we should be moving out of emergency status quickly if we're getting close to being where we used to be at, right? [LR34]

SCOTT FRAKES: (Nods head.) [LR34]

SENATOR MELLO: So when we move out of that emergency status, would then...would your decision likely be to encourage now Warden Hansen to say we're going to move to 8-hour days? We're going to start looking at addressing some of the staffing analysis issues that we should be getting in the near future to address the staffing at Tecumseh to move back to 8-hour days? [LR34]

SCOTT FRAKES: In fact having those conversations. [LR34]

SENATOR MELLO: Was that an issue at all that ever came up with former Warden Gage at all? Was that ever a concern of his, a concern of his bringing forward about moving back to an 8-hour day or staying at a 12-hour day with the staffing issues at Tecumseh? [LR34]

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SCOTT FRAKES: We'd had some conversation. [LR34]

SENATOR MELLO: Were there any disagreements between the two of you on this? [LR34]

SCOTT FRAKES: We hadn't gotten to a point of decision, just started some conversation. And just to clarify, you know, the conversation now is what should be the next steps and when. And so we're not talking about...I would expect to give staff at least 90 days' notice before we made that change. [LR34]

SENATOR MELLO: Before you make the staffing change... [LR34]

SCOTT FRAKES: Yes. [LR34]

SENATOR MELLO: ...back from 12 to 8 to try and address... [LR34]

SCOTT FRAKES: Yeah, because people need to be able to figure out day care and all those other pieces that go with that. [LR34]

SENATOR MELLO: The staffing analysis in your testimony, can you walk us through a little bit more about the staffing analysis and how it's going to be addressed in theory through the biennium budget process? [LR34]

SCOTT FRAKES: I had a group of staff trained by the National Institute of Corrections last August. From that group of staff, we put together a work team. I think it has eight members and it's led by Superintendent Lewien from OCC, I'm sorry, Warden--slipped back into an old role--so Warden Lewien from OCC in Omaha. They have done an outstanding job. For us, part of the challenge was we had neither a staffing model nor any kind of staffing analysis. So they had a dual mission. And to build a defensible model, you've got to kind of do some auditing, think about, okay, this should be about the number of staff it takes to run a medium security living unit and to house or to staff a new recreation area. And then you go back and you reassess your assumptions. So ultimately, they have put together a draft model. They've wrapped up the initial analysis. I now am getting ready to schedule a meeting with that team so they can walk me

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through their work. There will be some, I'll call it arm wrestling, because I'll have my opinions about what I think the correct model should be, they'll have theirs. We'll land on what we believe is the correct protective services custody staffing model for this agency. Then we'll go through the audits because there will be some opinion there, too, because you have a model that guides and then you audit a facility where you identify, well, the shape of that living unit requires an additional body or that living unit has a control booth that has to be staffed or all the different...usually it's physical plants, could be physical plant, could be programming needs. Ultimately, you then land on what are the right number of protective services staff it takes. Then we look at what we have allocated. We see what the gap is. We add up the gap across ten facilities. That gives me a raw total number and then I have to decide is it something that I pursue in a single biennium or do I need to try and do this in...you know, I'm hoping it's not more than two biennial number. I don't think the gap is huge. It's big in terms of my overall budget--100 positions to me is a large gap; and I'm pretty sure it will be at least 100 positions. So that's really the logistics of it. I've been giving myself enough time so that...that's why I continue to say this summer, but done in advance of so that it is...so that I'm able to come into this biennial budget and say either I need X positions and it will address the total gap or this is how big the gap is, you know, can we do it in two biennial budgets? [LR34]

SENATOR MELLO: And who is doing the analysis again? Is that internal employees or is that external? [LR34]

SCOTT FRAKES: It's internal. [LR34]

SENATOR MELLO: Internal employees in the Department of Corrections are doing the staffing analysis. [LR34]

SCOTT FRAKES: Yes. [LR34]

SENATOR MELLO: Any...has there been any discussion at all about seeking outside, an outside counsel, an outside analysis away from people inside the department to make the determination of whether or not we have enough staff at certain facilities? [LR34]

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SCOTT FRAKES: Using, to me, using NIC and using their skill sets and the people that they use who have national exposure to--and I went through the same training way back in the day--they have a good sense of how to build a process. To me, that provided the external voice and wisdom. So, no, nor am I aware...I've had NIC come in and look after a serious incident and make an assessment. But they...it's kind of a generic assessment. It really is dependent on an agency to figure out how they manage how they're going to staff given areas. [LR34]

SENATOR MELLO: And now you just said that this draft report is done essentially, the draft analysis is done. [LR34]

SCOTT FRAKES: There is a document that is put together, yes. [LR34]

SENATOR MELLO: And correct me if I'm misinterpreting what you said, you will review this draft analysis and discuss with them whether or not there is components of the analysis you agree with or disagree with when it comes to staffing. [LR34]

SCOTT FRAKES: That's correct. [LR34]

SENATOR MELLO: So we have an internal group of employees at Department of Correctional Services that have gone through training at the NIC, the National Institute for Corrections, to do an analysis of what our Department of Corrections staffing should be. They do their own analysis, come back to you, and you simply can change...you're going to just make the decision whatever you want to do, could be lower, could be higher, essentially kind of the process. I'm just trying to get my head wrapped around what we may see both in a draft format from the department as well as a final report so to speak. [LR34]

SCOTT FRAKES: And the answer is yes based on my first exposure to staffing audits and staffing analysis. It was 1988. I have been to the same NIC training as well, just to verify that I knew what I already knew. I do have an extensive history in staffing analysis, roster management, staffing models, those components. I will not discount the work of my staff. And I just...I want to be open, honest, transparent. There may be places...the staffing model, I think, is a mutual conversation because that is a guiding document. That's not a...because there's...we don't

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have prototypical prisons. In Washington, it works a little better because there actually are some prototypical living units of which there are 16 or 18 of them and different custody levels that look identical in different locations. We really don't have that in our system. So we'll have a pretty generic model. It's the individual audits. And so whether it's me, I come from my experience in Washington State, there was a person at headquarters that that was their full-time job. And the facilities would express their ideas, opinions, and needs and ultimately it would fall on that person to say the model says this and I think this exception is right or I think this is not. And then, of course, there's levels above that ultimately. [LR34]

SENATOR MELLO: Could you see from where we sit maybe a bit of cynicism in regards to hearing that process laid out the way you've just described it where you put a caveat at the end of saying this will all determine, to some extent, whether or not I request funding over two years, four years; I can change the staffing analysis, so to speak? Do you see how we could kind of take this process a little bit more of a cynical view in the sense that really this analysis is going to simply come out to what you can spend or what the Governor will allow you to spend in the budget process more than really addressing staffing needs? [LR34]

SCOTT FRAKES: Based on all the history and the experiences, I absolutely can. The challenge that I'd put back to you is I trained the staff. I mean I've made the request to train the staff. I set up that to occur. I made the commitment to create a staffing model, to do an audit process that's defensible and it be transparent. So it would have been easier for me to simply do none of that and continue to do this, which seems to be how the department is staffed for as far back as I could tell. [LR34]

SENATOR MELLO: For years. [LR34]

SCOTT FRAKES: And I'm sure it was a little more thoughtful than that but not based on any kind of tool, assessment, or anything else, and acknowledging and me saying out loud I expect that there will be a request that comes from this. We know that, so. [LR34]

SENATOR MELLO: Uh-huh. [LR34]

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SCOTT FRAKES: But if in the end I said it was 200 positions--"if," hypothetical--yeah, I would expect that we would have to have a conversation about is that really realistic to try and attain in a single biennium in light of all the other issues that this department needs to address and that other departments need to address. So that's why I put that out there. [LR34]

SENATOR MELLO: I've got one more question. Is that all right, Mr. Chairman, one very quick? Former Warden Gage, very abrupt firing, resignation, was Warden Gage fired? Was he urged to...was he pushed out of the department for any reason or did he leave on his own voluntary terms? [LR34]

SCOTT FRAKES: He voluntarily retired, resigned. Retired is what's it's called because he's in a position to retire. It was time for a change. And here again, differences in systems, Nebraska personnel rules and things don't give me the flexibility that I'm used to coming out of Washington State in terms of being able to make other decisions. And so he is eligible to apply for and seek any position that's open and he's qualified for in my agency or any other agency. He was not terminated. [LR34]

SENATOR SEILER: Senator Bolz, you have a question? [LR34]

SENATOR BOLZ: I just wanted to ask a follow-up question from Senator Mello. So as, you know, the person on this committee who's most likely to be having the budget conversation with you, and Senator Watermeier is listening closely as well, what criteria should I trust? When you're talking to me about, over one biennium or two bienniums or three bienniums, how can I discern what makes sense in terms of what you're bringing to us as a budget request? Can you tell me now what you'll be telling me in the future can wait versus what needs to happen immediately? I guess I'm asking you to give me some foreshadowing as to what does Director Frakes think is going to be important in the next budget requests so that we've had this conversation before you bring me the budget? [LR34]

SCOTT FRAKES: Recruitment, retention, adequate staffing levels where those do not exist, physical plant needs, programming needs, addressing the capacity issues, whether that is through additional bed space or through the programming and other support...court support needs that we

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know. That's about seven. And then just the general budget needs, although we've...I'm very pleased with the funding that was received this mid-biennial year in terms of just addressing some of our deficit needs, escalating healthcare... [LR34]

SENATOR BOLZ: I didn't ask that question very well, but what I'm asking is,... [LR34]

SCOTT FRAKES: Okay. [LR34]

SENATOR BOLZ: ...in terms of your staffing analysis, to me, that seems like a safety issue. And so why wouldn't you bring that to us all at once? Under what circumstances would it make logical sense to split that up over years? [LR34]

SCOTT FRAKES: If I felt that there was the overall things that need to be addressed were such that I had to compromise one to do another, then I have to make some decisions. And so that's...and until I get all of these pieces figures out, I can't give you that answer. Maybe it turns out that, in fact, I feel like I can bring the entire request forward, either because it is closer to where I hope it's going to be or because other needs aren't as big as I think they are, but you got to give me the time that I need to figure out all these things and put together that biennial budget. [LR34]

SENATOR BOLZ: What does that mean, closer to where you hoped it would be? [LR34]

SCOTT FRAKES: Just in terms of it not being 200 positions, as an example. That's all. I don't have any numbers. I don't have any set numbers in mind. It's... [LR34]

SENATOR BOLZ: Okay. I appreciate that you don't have the information fully compiled yet, but I guess I'm saying now that I'm struggling with this idea that, if we identified a staffing analysis that we believed in, that you would bring that to me over a series of years if it's a matter of safety. So I guess I'm putting that on the record now. We can continue that (inaudible). [LR34]

SCOTT FRAKES: It is. Well, okay, now I understand fully your question. There would be needs for positions that would be directly attributed to increasing safety of the facility for staff and

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inmates. And then there are positions that would be attributed to expanding services and providing more oversight and doing other pieces. So there's a component. And I could wrap all that together and say it still all falls under the umbrella of safety, but there is...there are some differences. [LR34]

SENATOR BOLZ: Okay. That's helpful. [LR34]

SENATOR SEILER: Senator Pansing Brooks. [LR34]

SENATOR PANSING BROOKS: Thank you. Again, Director Frakes, I'm just discouraged to hear this pushing off of the time of when we're going to know, when we can have these numbers. I'm interested. It says in the paper that was sent to us by the...or you...that you gave us. I guess it's number seven of the inserts with responses from Warden Hansen. It talks about 68 FTE vacancies at this time at Tecumseh. Are there requests for employees to apply? I mean are there...are those on the Web site somewhere on the state and...? So there's just 68 out there. And what is the total number of employees again? Is it...right what I'm reading is there are 191 working 12-hour shifts, but that isn't a total number of employees, by any means. [LR34]

SCOTT FRAKES: No. Yeah, and I'm sorry, I don't know the total staffing. [LR34]

SENATOR PANSING BROOKS: Okay. So overtime, I'm understanding, from January 1 till March 23 was over a third of a million dollars, \$347,026.40. [LR34]

SCOTT FRAKES: That is correct. The 12-hour shifts are part of that, but... [LR34]

SENATOR PANSING BROOKS: So I mean to me it's just astounding to think that this effort to continue to just pay overtime, because that's what we have to do for the safety feature of what's going on within the prison center itself, is taking precedence over an incredible effort to try to get money to help pay for additional employees and to help with programming, which we all now directly relates to safety of our community. So I guess, again, can you tell us when these numbers are going to come, because I keep hearing different bienniums? Can you tell us when

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you will know how much money you need to make our communities safe and to make the corrections facilities safe? [LR34]

SCOTT FRAKES: My biennial budget request will move us...I (laugh) I only struggle to say that's question is a difficult one to provide a definitive answer to. You will see in my biennial budget request a sincere, thoughtful, and I believe effective effort to move us in that direction. I will come back again to this whole issue of capacity. It doesn't do me any good to ask for funds that I can't deploy. And so... [LR34]

SENATOR PANSING BROOKS: And why can't you deploy them? Sorry. [LR34]

SCOTT FRAKES: Well, the turnover piece, the vacancy issue. I've got to have staff to be able to put things in motion, so that's one of the reasons. I've got to have staff with the capacity to develop the programs or to deliver the programs to do the other pieces. We've got a lot of things in motion at this time and we will have even more things in motion in the coming fiscal year and we'll have even more things in motion as we move into the next biennium. (Inaudible) [LR34]

SENATOR PANSING BROOKS: Okay. And how is the status quo helping with that? [LR34]

SCOTT FRAKES: I'm not trying to maintain the status quo, so we are actively recruiting. We are looking for any opportunity we can to bring good staff into this agency. We are looking at the compensation issues. I do tend to be part of the voice in addressing those. I am grateful for the additional funding that was provided and we're going to look for ways to use that and hope to provide some short-term interventions that help us bring in more. Really it's about retention for these funds so it will retain the staff. There's a lot of work going on, Senator. [LR34]

SENATOR PANSING BROOKS: Okay. [LR34]

SCOTT FRAKES: A lot of work. [LR34]

SENATOR PANSING BROOKS: Well, I appreciate that. I just want to say the one discouraging thing is hearing you say that the reduced use of restrictive housing is seen by some as part of the

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increase in violence. And that was said earlier today. And I think that...I hope that you will look at what's happening across the country and the best practices that are going on across the country and help make that change occur within the corrections system. That is not the vision or understanding of what's going on by experts across the country, in my opinion. Do you believe that it is correct that we need to have more restrictive housing and not less? [LR34]

SCOTT FRAKES: I've got a long answer if you're ready. [LR34]

SENATOR PANSING BROOKS: Okay. And I'm done then. [LR34]

SCOTT FRAKES: Absolutely not. I was asked... [LR34]

SENATOR SEILER: (Inaudible) [LR34]

SCOTT FRAKES: Huh? [LR34]

SENATOR SEILER: (Laughter) Yeah, I couldn't pass that up. [LR34]

SCOTT FRAKES: I was asked what are my staff saying. That is something they're saying. I have inmates that are also saying, you know, you're not going to be able to send me to seg. anymore, so that's part of it. Now whether you hear things and you hear things. Okay, let's talk about what do I believe? I'm the guy who led a significant reform of the use of restrictive housing in another state. I'm the only person at this point who's doing it in a second state,... [LR34]

SENATOR PANSING BROOKS: Thank you. [LR34]

SCOTT FRAKES: ...which is why I've been asked to sit on a panel at ACA at Boston in August with VERA and talk about that work. I attended a symposium with NIJ in October. I spoke at the American Society of Criminology in December on a panel on reforms of restrictive housing. I am passionate, and remember this is the guy, okay, I am passionate about the reform of restrictive housing. There was a question at some point, I think it was Senator Schumacher, might have been Senator Krist...no, it was Senator Schumacher about funding. Okay. Part of how

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you get to the funding you need is you reduce the use but you don't take away the resources. Can I close spaces that are currently used for restrictive housing that are archaic and should not be used? Can I get there? Absolutely. Can I redeploy those staff in other locations to facilitate training, to facilitate access to programming, to do the work we need to do to continue to reduce the population? Absolutely. So that's part of how we'll get there. In the end, I still expect someone is going to say, what do you mean you got twice as many staff now running your restrictive housing? Well, no, it's the same number of staff we always had; we cut the population in half when we deployed the resources to meet the needs of that really...what should be really small, dangerous, high-need population. We find the right interventions, we create more of the classrooms, like Dr. Jones showed you the picture of. Those really are amazing. They really change the dynamic when moving from the old, what I call, the "Hannibal Lecter" cages. If you look on the ACLU Web site, you could probably find an example. We used those in the '90s in Washington and thought we were really progressive. Now it makes me cringe to think that we put people in those and thought that they would behave differently. We use the eyebolts on the floor. We used the eyebolts on the table. When we created the true classrooms for our high-end restrictive housing, the world changed. Just the way they interacted with us, the way they interacted with others, the people in the room became so different. Then we were successful in the interventions and that's...so that is the vision and that is the work we're doing. Am I going to have staff that are going to resist? Absolutely. Did I have staff that resisted me in Washington? Absolutely. I'll find people that are...have a different viewpoint. I'll get them on board. They'll be cheerleaders for others. I'll find the right leaders. And that's not just me. I say I, I, I. It's a bunch of I's. And we will get to where we need to be, so. [LR34]

SENATOR SEILER: Senator Ebke. [LR34]

SENATOR PANSING BROOKS: Thank you, Director. [LR34]

SENATOR EBKE: Thank you, Chairman Seiler. And thank you, Director Frakes, for being here. Always fun before us, isn't it? [LR34]

SCOTT FRAKES: It's all right. [LR34]

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SENATOR EBKE: Okay. Well, let me just say as a social scientist, it seems like one of the problems that we may be dealing with here as we talk about some of the questions of how much money you need and things like that is that we're dealing with human behavior and that...I mean is it safe to say that any numbers you give us tomorrow don't deal with static needs into the future? [LR34]

SCOTT FRAKES: Yes. [LR34]

SENATOR EBKE: And so you can give us numbers for today or tomorrow, but two weeks from now or three months from now or six years from now your needs are going to be different based on different behavior within the institution, within the system, within...with both those who are incarcerated and staff. Does that mesh with your experience in the field? [LR34]

SCOTT FRAKES: It absolutely does. [LR34]

SENATOR EBKE: Okay. Let me just ask another question about unemployment in Nebraska. I know you're not the Department of Labor, but it's a relatively...is it your sense, based on your experience on Washington, elsewhere, that perhaps our relatively low unemployment rate may be having an impact on our ability to hire? Is that possible? Is it reasonable? Is it... [LR34]

SCOTT FRAKES: It does. I think it's certainly more evident in the healthcare, the behavioral health, and some of the other specialty fields. Because again, we are finding correctional officers and caseworkers. We are finding those people. So even though the wage is not like drawing people from, you know, half the country, it's competitive. But then it's the flat wage scale effect. They come in and stay at that same level. Could we get a better...a bigger candidate pool to select from if there was a higher wage? That's a possibility as well. But certainly, when you talk about a less than 3 percent unemployment rate and when you talk about starting wages, I see for McDonald's at \$12 and when I see a help wanted sign in almost every business that you walk by, those do contribute to our challenges as well. Great, it's great, but it still does defy logic to me. I don't... [LR34]

SENATOR EBKE: Sure. Thank you. [LR34]

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SENATOR SEILER: Senator Morfeld. [LR34]

SENATOR MORFELD: Thank you, Mr. Chair. And this is stepping back a little bit. I'd wait until the end but I have to teach my class at 6:00, so I'll be leaving in a few minutes. But I just received word that the Governor line-item vetoed part of the Corrections funding for rulemaking, and I haven't been able to see the letter yet or anything. I mean how is that going to impact a little bit about what we talked about earlier with the rulemaking process? [LR34]

SCOTT FRAKES: I don't know. This is news to me, so I don't know. [LR34]

SENATOR MORFELD: Thank you. [LR34]

SENATOR SEILER: Anybody else? Thank you. We'll move on to the next subject right after a five-minute break. [LR34]

SCOTT FRAKES: Oh, so people do have to...(laughter) it's not me this time. [LR34]

SENATOR SEILER: We'll start at 5:45. [LR34]

BREAK

SCOTT FRAKES: (Recorder malfunction)...Members of the Legislature, I have signed LB867 but I am returning LB867A with line-item reductions. My vetoes in LB867A, Section 2, total \$43,621 General Funds, \$21,489 salary limit for fiscal year 2016-17. LB867A, Section 2, appropriates the incorrect amounts to the Department of Corrections in fiscal year '16-17 and '17-18 to implement LB867. My line-item reductions correct LB867A to comport with the cost of LB867 for fiscal year 2016-17 according to the fiscal note prepared by the Legislative Fiscal Office. I urge you to sustain these technical reductions to LB867A. [LR34]

SENATOR SEILER: Okay. Thank you for bringing us up to date. And that fits right with the audit update. [LR34]

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SCOTT FRAKES: It does. Well, wait a minute. Did I skip one? [LR34]

SENATOR COASH: They're on page 7. [LR34]

SENATOR PANSING BROOKS: At the bottom. [LR34]

SCOTT FRAKES: Six...your 7--mine is much bigger print. Audit update--attachment 8 is the audit corrective action plan, which includes a full listing of the 78 action items with responses, and then we did a separate document that shows the 21 items that remain in process. My staff are working hard to address the remaining items by the target dates. That's my testimony and I'll answer any questions. [LR34]

SENATOR SEILER: Okay. Senator Bolz. [LR34]

SENATOR BOLZ: Just thank you. I appreciate your work. [LR34]

SCOTT FRAKES: Thank you. [LR34]

SENATOR SEILER: Okay, let's move on to the next topic: update on reclassification and overcrowding issues. [LR34]

SCOTT FRAKES: Development and validation of our classification tool remains on track for completion before the end of August. I want it sooner but I'm going to keep that as the date. This project is being completed in conjunction with the new risk/needs/responsivity tool targeted for roll-out by July 1. Review of the data that's used to develop these tools will provide an initial assessment of the custody classification of our current inmate population. And I'll use that to inform future decisions in the immediate future around bed space needs. I've assigned one of our facility engineers who works out of central office to research modular housing options and provide me with a written proposal for options for utilizing the \$1.8 million provided in LB956, and I expect to get that before May 10. What I would like to do is create dormitory space that can be converted to program space when the beds are no longer needed. Because of the size of the project, I am told this project requires a program statement to address all of the state

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construction requirements. An initial estimate indicates the soonest we could see beds ready to occupy is in the fall of 2017. The program statement for CCCL expansion project funded in LB956 has been completed, and the RFP for facility design work has been issued. The program statement for CCCL that was completed in 2014 was based on the vision of the previous administration and was not suitable for our current needs. The need for additional community custody beds was identified in the 2014 Master Plan, and the waiting lists for community custody beds supported our ability to fill the beds, without completing the reclassification project work. The CCCL expansion takes into account the projected reduction in prison admissions as a result of LB605, which will be realized over the next several years. CCCL currently houses nearly 400 inmates. The kitchen, visiting room, and program space were designed for a population of 200. This \$26 million investment turns a crowded facility into a functional community custody facility with an operational capacity of 560. The project increases female bed capacity by 48 across the system and opens up an additional 100 beds for men in community corrections. The practice of coed correctional facilities in Nebraska needs to end. Female inmates have higher rates of mental illness, past sexual, physical, and mental abuse, which can and does create anxiety and resistance to treatment in a coed setting. This proposal provides our female population with a community-based living environment that supports delivery of trauma-informed care. It's a living unit designed to meet the needs of women transitioning to the community. The strategic plan was shared publicly in October 2015 and included the proposal to expand CCCL and establish a single location for females at the community custody level. This information has been shared in public forums, the media, and legislative hearings. The proposal was approved by the Legislature and authorized by the Governor. A small number of concerns have been expressed to me about eliminating the option for 24 females to access work release in Omaha, and I have been responsive to people expressing concerns. The value of consolidating and greatly improving services to our female population far outweighs our current approach. And I would take questions. [LR34]

SENATOR SEILER: Senator Coash. [LR34]

SENATOR COASH: Thank you, Director Seiler...Senator Seiler. Director Frakes, can we talk about the inmates we've farmed out to the county jails? [LR34]

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SCOTT FRAKES: Yes. [LR34]

SENATOR COASH: How many inmates do we currently have farmed out across the state approximately? [LR34]

SCOTT FRAKES: We're currently at 145 this morning. I've been trying to pull those numbers down and at the same time maintain the numbers that we achieved at D&E, keep that balance, like we need to...we went over our funding levels earlier in the year, and so I'm bringing it back down so that I can get to June 30 and be in that average daily population of 160 over the year. [LR34]

SENATOR COASH: Okay, because I don't know what...you're currently funded for those county jail beds through the end of next year? [LR34]

SCOTT FRAKES: June 30 of '17. [LR34]

SENATOR COASH: Of '17, so you've got just really a year left of that, yet what I've heard is that you won't ask for more jail beds in the next biennium and, if you did, probably wouldn't get them. But the "Grim Reaper" is gone so we'll see. But what would be your intention with regard to those 144 inmates in about a year? [LR34]

SCOTT FRAKES: The Council of State Governments' predictions that were a part of development of LB605, and then have been reaffirmed I think recently in some testimony that was given, show that the results of both the diversion, the alternatives to incarceration, the shorter sentences with mandatory supervision, are going to start leading...are going to give us a reduction in the number of people in our prison system. And so far the numbers seem to be panning out. There's been a small number of people convicted under the changes in law, LB605. There's a large number of people that have committed crimes and are somewhere in the system of prosecution and leading to. And so as it was predicted we wouldn't see anything to begin with and then we'd start to see a small trickle in a reduction and then there would be a fairly large cascading effect that happens somewhere around the end of this year, we should really start to feel that. And they continue to say they expect a reduction of 1,000 people in the system by June

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30 of '17. I have said I am very confident that there will be at least 160 fewer people in the system by June of '17. And I'm actually really hoping for the full effects because that would really change our dynamics in terms of, you know, our ability to do the work that we need to do. But even a 500-person reduction, half of what has been, you know, anticipated, if we get to 500 less by June of '17, it will have nothing but positive impacts on our system. [LR34]

SENATOR COASH: Okay. I want to talk about the community beds. You've testified, and I think we've heard for quite awhile, that one of the bottlenecks of our inmate population that we continue to hear about is the need for community corrections beds. Right? The bottleneck is there which backs everything else up, right? Now... [LR34]

SCOTT FRAKES: Sort of, kind of. [LR34]

SENATOR COASH: Okay. Would you agree that that's a bottleneck though, that level of... [LR34]

SCOTT FRAKES: Yes. [LR34]

SENATOR COASH: ...I don't know if you call it level of custody, but community corrections, that that level is where we really need it? Obviously you agree, because you asked for money and we appropriated money. [LR34]

SCOTT FRAKES: So right now it's less of a bottleneck than where it will be once we are operating the way we should be. Once we're getting people ready for release at parole and giving them the treatment and the programming they need, yes, it definitely will be I think a significant bottleneck. [LR34]

SENATOR COASH: And this Legislature with Corrections threw in a pile of money to address that; but that, I mean, we're three years out from an inmate being in that facility. [LR34]

SCOTT FRAKES: Right. [LR34]

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SENATOR COASH: My question is, between now and the day that that opens for business and for construction and all that, what is the community corrections plan, initiatives? What are you doing between now and the time when we can start placing some inmates in that new facility we just funded? [LR34]

SCOTT FRAKES: The \$1.8 million to create some...I'll call it temporary housing, but some housing using a different approach, the most logical place to do that would be community custody. So that's part of what we're trying to figure, out of the two sites, what makes the most sense in terms of bringing something in and being able to set it up fairly quickly and knowing that we've got some issues in the Omaha site. But I'm not going to rule anything out. I want to keep an open mind in terms of how can we best utilize those funds. So that's a piece of it. And, you know, there's...we are having a conversation right now about the potential to do something very different that would move us towards--I don't want to call it the Washington concept, it's used in a lot of places across the country--where we would have more residential or community-based work release beds. As we work through it, we're probably going to need a statutory change to be able to do that because it would no longer...to make it work and make it work effectively, they wouldn't be correctional facilities, they would be more like a transitional housing. But we already have one idea that's being explored right now. I'm excited about it. So we need to continue to look for those opportunities as well. [LR34]

SENATOR COASH: So not to get the cart before the horse, but do you anticipate coming in front of the Legislature next year and saying, we'd like to get some transitional housing, here's the statutory change we need to do that, that will kind of bridge the gap until we can get these new community corrections beds up and going? [LR34]

SCOTT FRAKES: It's on the table. I haven't figured out all the pieces yet to see if it's something that we think we can really do. [LR34]

SENATOR COASH: Okay, thank you. [LR34]

SCOTT FRAKES: Okay. But we sincerely are exploring it. [LR34]

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SENATOR SEILER: Senator Krist. [LR34]

SENATOR KRIST: I'm going to use this to do a paid political announcement. We have invited other committees, meaning the Legislative Oversight Committee, for our CSG efforts, of which you sit on the steering committee, and the JRIC really need to get back together as a larger group, because those priorities that have been set, when you talk about having an effect on...LB605 having an effect, that effect is dependent upon the judiciary, which takes some real measured steps in terms of sentencing. And they need to understand what that legislation actually says on the part of law enforcement, on the part of thinking out of the box for other programs and alternative detention facilities and those kinds of things at the local level. My opinion? We're losing the bubble on what LB605 was intended to do in terms of the large group buy-in to where we are going and want to continue to go. It's time to get together as that larger group again. It's time to start emphasizing the things that were so important about LB605 because, if LB605 doesn't work, your 140 kids are going to...people are going to turn into 300 in the community jails, because we're not going to have any place to put them. Go ahead and comment if you'd like to. [LR34]

SCOTT FRAKES: I agree with you, so I'll help make that happen. [LR34]

SENATOR KRIST: Thank you. [LR34]

SENATOR SEILER: Senator Williams. [LR34]

SENATOR WILLIAMS: Thank you, Senator Seiler; and thank you, Director Frakes. You've talked at some length about the classification tool for several times that we've gotten together and it's taking quite awhile to get there, which I understand. How confident are you in making the decision to expand the community correction beds without having the completed classification tool? [LR34]

SCOTT FRAKES: Confident in that at the time that we were making these decisions, we had an estimated waiting list of about 160 people that were, could be, would be in the community custody if there were beds for them to go to. Recently our list has shrunk, don't have a good

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sense of why that is, but I believe that we have a lot of people that are overclassified. And I still look at the numbers and see that we still have 30 percent of our people are being classified at maximum custody, another 30 percent at medium custody. So I am very confident that with a new, updated...it's not new, but an updated and validated tool and a reassessment, and then the other work that we're doing that's going to get people prepared, because in our current system, if there are not...not "if." There are not the opportunities that there need to be for people to engage, there are not the opportunities for people to be motivated to behave, there are not...the things that are in place that would encourage people to do programming, to behave better, which would then lead to a less restrictive custody classification. [LR34]

SENATOR WILLIAMS: Also, can you help me understand, so I can explain to other people when I'm asked, why we would choose to put the community beds in Lincoln versus our larger population base in Omaha? And I know that's not an easy question and I know you've thought about that, so. [LR34]

SCOTT FRAKES: I have. And those are...I think they're important decisions. There's always questions about, well, why shouldn't it be there or why shouldn't it...why there instead of here? So we had some site issues with Omaha. There's certainly some back-and-forth decisions or discussion about how significant those issues are. But the reality is it does sit on the other side of a levee and the Missouri River is right there and there has been some, you know, water intrusion issues--I called it flooding--in the past, so there's...it's a fact. Can you work through those? You know, that's why I don't rule Omaha out. So that's a factor. To me it was, what could I get the biggest bang for the buck? Could I invest in Omaha and get the needed improvements and create additional space, or could I invest in the Lincoln center that's already 400 and is grossly under the needs in terms of the food service, the programming space, and the other components? So I just...I felt like this was the right opportunity to take this facility and bring it to where it needs to be, And then we look at Omaha and see. And then the last piece of that was, because we haven't built anything in forever, because we don't have a lot of institutional capacity or organizational capacity around it, and with all the other pieces we have going on, this project has got to be 100 percent successful. It needs to be delivered ahead of schedule and under budget. Those are two of my standards when I do construction. We needed to keep it where we could really be able to pay attention to it and have the resources, and those resources are here in Lincoln. [LR34]

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SENATOR WILLIAMS: Thank you. [LR34]

SENATOR SEILER: I have one topic that seems to fit under here. I have not seen any data on recidivism rate for nine months. Are you collecting that data? [LR34]

SCOTT FRAKES: We are. [LR34]

SENATOR SEILER: Then why isn't it being published? [LR34]

SCOTT FRAKES: Because we just ran out of resources to deal with all the different issues that we need... [LR34]

SENATOR SEILER: We just gave you \$1.8 million. I don't ask it to be published it gold. But it seems to me that that's your criteria on whether your programs are working. [LR34]

SCOTT FRAKES: It is and it will be published. We have talked about it. It will be published, yes. [LR34]

SENATOR SEILER: Okay. I think the last report I had was 32 percent, 31 percent. [LR34]

SCOTT FRAKES: Yeah, knowing though, again, that that's a...we're trying to figure out if we can do a more effective and reliable one-year measure so that...we are working on that because the measure that we use, you know, across the country is that three-year measure, and that makes it a little difficult to really make course adjustments when I'm being measured. My work won't show up, you know, for another year and a half. So we are working on that piece as well. [LR34]

SENATOR SEILER: Well, but LB605 should be showing up and I'd like to be able to see the back side of LB605, and that's recidivism. [LR34]

SCOTT FRAKES: Right. [LR34]

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SENATOR SEILER: Okay. Any other questions? Senator Krist. [LR34]

SENATOR KRIST: Just a comment. This next area looks like it's going to take longer than five minutes, so let's just let him read through it without having the light go on him, please. [LR34]

SENATOR SEILER: Okay: update of justice reinvestment. [LR34]

SCOTT FRAKES: I believe Sara Friedman provided this committee with minutes from the Legislature's Justice Reinvestment Oversight Committee, which met on April 6. NDCS staff have been active participants in all the justice reinvestment issue-specific teams working to implement LB605. We have developed a closer partnership with the Office of Probation Administration to coordinate reentry planning for people leaving prison for the newly created postrelease supervision. There have been unprecedented levels of information sharing between NDCS and Probation staff, including a new procedure for NDCS to receive presentence investigations from Probation for people entering prison within three to five business days. This helps the clinicians and case managers at the Diagnostic and Evaluation Center understand who's coming in the door and what their needs are. We have been working at full speed to implement a validated risk/needs/responsivity tool, with staff training targeted for June. The STRONG-R will serve as the foundation for the adoption of many evidence-based practices across NDCS and parole, including the parole supervision matrix and the Parole Board guidelines. The Parole Administration has been working closely with CSG to implement the evidence-based practices and training required by LB605. The parole staff training plan includes training in the STRONG-R, the incentive and sanction matrix, and Effective Practices in a Community Setting, which is EPICS, a nationally recognized training by the University of Cincinnati. A work group of parole staff and a Parole Board member are collaborating with CSG to develop the matrix of sanctions and incentives as required by LB605. Use of a matrix is a nationally recognized, evidence-based practice in supervising offenders. It will standardize officers' responses to both positive behavior and violations by parolees in a way that decreases the parolee's likelihood to commit new crimes. The matrix group meets regularly and expects to complete its work by the end of summer. We're working with the courts and other stakeholders to streamline restitution collection practices and automatically withdraw restitution payment from inmate accounts as required by LB605. Rules and regulations have been drafted and reviewed by the restitution issue-specific team. We will

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have a public hearing by June 1 on the rules and regulations, with the goal to have the rules and regulations going into effect no later than July 1, 2016. We've worked with CSG and the data issue-specific team to create a large list of data metrics to track the implementation of LB605 and its progress in meeting CSG's projections. NDCS has begun to submit data to CSG monthly. Due to LB605, DCS expects to see fewer felony IV admissions to prison in coming months. As we implement the changes facilitated by LB605 we will see the number of mandatory discharges decrease and restitution collections increase. The JRI Steering Committee has applied to the Department of Justice for a "Justice Reinvestment Initiative: Maximizing State Reforms" grant. The was submitted last Monday, April 11. It would provide \$1.6 million over 36 months to support Project Integrate, which is a new initiative to provide supportive housing to inmates with substance use and mental health issues that are reentering the community. NDCS, Probation, Adult Parole, and Douglas County Department of Corrections will collaborate with the Metro Area Continuum of Care for the Homeless and other local service providers to target high-risk offenders returning to Douglas County who have behavioral health issues and are homeless or near homeless. Project Integrate is expected to serve as a model for transitional housing to be implemented statewide. I share your concern with the 47.2 percent rate of mandatory discharges from October through December of 2015. These numbers represent the rate of mandatory discharge prior to implementation of LB605 and they do not reflect efforts currently underway by NDCS and the Board of Parole. As indicated in the materials provided by CSG, 86 percent of the individuals who have committed offenses since LB605 passed have yet to be sentenced. Of the 257 individuals who mandatorily discharged during this time period, the three months reported, 74 had sentences which did not allow for parole--they were flat sentences--and another 64 were granted parole and then revoked. There are efforts underway now that are reducing mandatory discharges, and we know the full implementation of LB605 will have a significant impact on reducing "jam outs." These things include: the reentry planning that was established in LB907 is already having an impact; the discharge review team review of inmates who will potentially discharge from restrictive housing; NDCS and Parole Board have identified key reviews one year in advance of parole eligibility to prepare inmates for release...I want to go back to the last one. I'm sorry. The sentence just doesn't read very well. The intent of that is engaging the discharge review team and other resources to avoid discharges from restrictive housing. So we're going to get in there early. We're going to look for interventions. That is the goal, is zero releases. We've identified the...now we're going to do key reviews one year in

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advance of parole eligibility to prepare inmates for release and get them engaged in the parole process, and then getting the STRONG-R needs assessment and the parole guidelines rolled out. At my request, CSG is conducting an in-depth analysis of prison programming--the Justice Program Assessment project, or JPA. We asked CSG to evaluate our programs for prisoners and parolees that will reduce recidivism by adhering to evidence-based principles. CSG staff have observed programming; met with clinical review team staff for sex offender, violence, and substance abuse programming; and reviewed the curricula used to facilitate programs. They are currently reviewing data collected by our programs. We anticipate CSG will release the JPA findings and recommendations late May/early June. We expect to see recommendations on how we can improve our assessment process, increase program capacity, use evidence-based program curricula, and implement quality assurance measures to ensure programming is delivered with fidelity, a key component of evidence-based practices. The final component of the JPA project is the guidance that CSG will provide to us as we implement the recommendations. I have provided attachment 9 that gives details on the transition of Adult Parole Administration from NDCS to the Parole Board. We are on schedule and will complete the transition successfully July 1, 2016. I will try to answer questions. [LR34]

SENATOR SEILER: Senator Krist. [LR34]

SENATOR KRIST: Thanks for clarifying that second bullet on the discharge. And I don't have to say how I know you are as engaged as I am, and I think we all are, to make sure we don't jam out, particularly out of that environment. Thanks for your continued help there. The JPA? Bravo! Thanks for requesting that. You didn't have to do that, but I think it goes, and I think you've heard from CSG, it's kind of a hand-in-glove thing with phase two and JPA. So good work and I'm happy that you're going to make that public, as you've promised to do. That will help us with future decisions. And then I have one other question for you, but if you'd want to comment on anything I've just said, feel free. [LR34]

SCOTT FRAKES: I just...you know, I've met the director from Idaho, Kevin...his last name went right out of my head. I met him last year at the first ASCA meeting, the directors and secretaries that meet. And we immediately began that conversation about what JPA had done for his department and I went, ah, this is what we...we've got to have this. [LR34]

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SENATOR KRIST: Yeah. [LR34]

SCOTT FRAKES: The advantage we have over what Idaho got was they came in at the end, so they got their assessment but they didn't have CSG there then to help figure out how to fix things. So we get both pieces, so it's... [LR34]

SENATOR KRIST: Yeah. [LR34]

SCOTT FRAKES: And it's not costing us anything. [LR34]

SENATOR KRIST: No. And the strength of that I think is that you have CSG and we have personnel on staff with Amy Prenda that is going to help consolidate those two things. And you have it right on the money, right on the mark. Thank you for doing that. But I do have one serious question for you and it has...I don't expect you to answer it today. I'm told that there are two different standards in evaluation in the Corrections system for sex offenders in the primarily two different locations, three different locations, I guess, that we have sex offenders there. Doesn't it make sense to consolidate those measures, those treatments, those metrics, and get on track with the same kind of programs? Maybe it doesn't. Go. I'm sorry, go ahead. [LR34]

SENATOR SEILER: There's...we need to use a consistent assessment approach, and we need to do that, as Dr. Jones talked about, we need to do that as close to intake as possible, instead of later on, although we're doing a better job with our sex offender assessments than we are with the violence assessments in terms of, you know, timeliness. There are different approaches though. So if the question is should we just have one program, I like the fact that we actually do have different levels based on risk to reoffend. Specific to risk to reoffend is a sex offender, so that piece works. I think we need to continue though. We'll get the information from JPA. We need to continue to look at what we do and ask questions. Some of our long-term residential sex offender treatment is starting to push well past two years. That's an awfully long time. It makes it difficult in terms of resource utilization; it makes it difficult in terms of somebody being able to last that long in a prison program. If it's the program they need and that's what it takes to address the issue, then, yes, that's what you want to do, but you want to make sure that that's...you know, we're delivering that to the people that truly need it and we're doing it in a way that ensures that

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they can complete the program, because if they only go through two-thirds of it and then drop out or run out of sentence time or whatever, then I'm not sure that we've used our money well. In some cases I think we can do a disservice when we don't give people the entire program that they need. [LR34]

SENATOR KRIST: And I'd kind of rewind to when Dr. Jones was speaking to us. If it takes 33 weeks to do something, it takes 33 weeks to do something; but if 33 weeks can be boiled down and get behavioral or mental health treatment in a lesser amount of time and get more people to go through a program, I mean, it's up to the professionals, but it seems to me a better use of...more efficient, more economic use, and maybe an outcome-based program that needs to be looked at. So thank you. [LR34]

SCOTT FRAKES: You and I are on the same page. [LR34]

SENATOR KRIST: Thank you. [LR34]

SCOTT FRAKES: Thank you. [LR34]

SENATOR SEILER: The LB605 program is being used by Georgia and South Carolina. Georgia is five years ahead of us and South Carolina is three. Have you seen any publications on those? [LR34]

SCOTT FRAKES: I reviewed one of those two, and I just can't remember which one it is though. But I think that, yes, I thought on the CSG Web site there was an update on one of those, one of the two. [LR34]

SENATOR SEILER: Okay. They were having pretty good success when I talked to them. [LR34]

SCOTT FRAKES: The only one, and I can't remember which state it is, I know there's a state where they kind of walked away, so that would be one that didn't go the way it should have. But I think it was...I don't know. I don't know why it fell apart but it did. It wasn't that CSG walked

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away, it was the other decision makers, which goes back to Senator Krist's point. We need to get...we do need to get in the room. And sometimes, even when it's going well, we need to remember to get in the room because it doesn't take long. [LR34]

SENATOR SEILER: Thank you. Senator Williams. [LR34]

SENATOR WILLIAMS: I'd make one comment at the end if I could. And, Director Frakes, I'd like to personally thank you for being here; and not just here today, being here in Nebraska and taking on this task. You inherited a very tough situation that those of us that are new on Judiciary over the last two years were not even aware, at least I certainly wasn't, that existed this badly, largely because it was ignored. And I think we believe our role, or at least I believe our role, as a legislator is to see that this is not ignored again, and we're working hard to do that. But I disagree with some of the comments that were made earlier about your leadership. I have found you very easy to work with, very committed to your job, passionate about corrections, and wanting to have data and answers before you try to make decisions. I think that's the only way you make the right decision, so I applaud you in that. And I appreciate your willingness to sit here for these hours and put up with those of us that are trying to understand what you're doing. So I would ask you to continue communicating as often and as much as you can to us because we're eager to help. I do not view this body as adversarial to your position, so thank you for being here. [LR34]

SCOTT FRAKES: Thank you. [LR34]

SENATOR SEILER: On behalf of the committee, I thank you too. We're adjourned. [LR34]