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Transcriber's Office

Executive Board Committee
May 16, 2017

[LR127]

The Executive Board of the Legislative Council met at 12:00 p.m. on Tuesday, May 16, 2017, in Room 2102 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR127. Senators present: Dan Watermeier, Chairperson; John Kuehn, Vice Chairperson; Kate Bolz; Ernie Chambers; Sue Crawford; Dan Hughes; Tyson Larson; John McCollister; Jim Scheer; and John Stinner. Senators absent: None.

SENATOR WATERMEIER: I'm going to go ahead and get started. Senator Chambers is on his way up, but welcome to the Executive Board Committee hearing room. I'm Dan Watermeier from Syracuse, Nebraska, representing District 1. I serve as Chair of the Executive Board. The committee has one thing on the agenda today, LR127, and this is part of the legislative process and your opportunity to express your position on the proposed legislation before us, the resolution here today. The committee members may come and go today. During the hearing, we get called away for various reasons. It is not an indication we are not interested in the resolution being heard today. It's just part of the process. To better facilitate today's proceedings, I'd ask you to please silence or turn off all your cell phones. The order of testimony will be the introducer, proponents, opponents, neutral, and then closing by the introducer. If you're testifying, please make sure you fill out a green sheet. They're in the back of the room. They're located back there. The page can help you if you need to. Please hand the green paper to the page. State and spell your name for the record at the start of your testimony. If you will not be testifying but want to go on record as having a position on the bill being heard today, there are white sheets in the back that you can fill out and then you will be in the record. Written materials may be distributed to the committee members while testimony is being offered. Please hand these to the pages and we will need 12 copies. To my immediate right is Janice Satra, legal counsel for Executive Committee. To my left is Laura Olson, our clerk. With that, I'll open up with the introduction of our committee members, starting with Speaker Scheer.

SENATOR SCHEER: Jim Scheer, District 19.

SENATOR MCCOLLISTER: John McCollister, District 20.

SENATOR BOLZ: Senator Kate Bolz, District 29.

SENATOR HUGHES: Dan Hughes, District 44.

SENATOR KUEHN: John Kuehn, District 38.

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SENATOR CHAMBERS: Ernie Chambers, District 11.

SENATOR CRAWFORD: Senator Chambers, District 45.

SENATOR LARSON: Senator Chambers?

SENATOR CRAWFORD: What did I say? Senator Crawford. (Laughter)

SENATOR HUGHES: Chambers.

SENATOR CHAMBERS: It's all right. You didn't do anything wrong.

SENATOR BOLZ: We can only handle one of those.

SENATOR LARSON: Tyson Larson, District 40.

SENATOR WATERMEIER: Senator Larson. All right. We are also supported today by our page, Heather, glad to have her as well today. So with that, we'll go ahead and open up. Senator Krist, you are welcome to start.

SENATOR KRIST: Good afternoon, Senator Watermeier, members of the Executive Board. For the record, my name is Bob Krist, B-o-b K-r-i-s-t, and I represent the 10th Legislative District in northwest Omaha, along with north-central portions of Douglas County, which includes the city of Bennington. I appear before you today in introduction and support of LR127, and I appreciate you taking the time to hear this resolution today. In 2014, the Legislature established the Department of Correctional Services Special Investigative Committee through the adoption of LR424 in response to the murders committed by Nikko Jenkins. As the committee moved forward, it expanded its investigation to include the members...a number of other significant issues within the department. The LR424 report provided a "candid and blunt report concerning the dysfunction at the Nebraska Department of Correctional Services and the Governor's role in the specific problems examined," and also provided "a candid assessment as a starting point for reforms that must be undertaken to restore the public's confidence in the Nebraska Department of Correctional Services." In 2015, this Legislature adopted LR34 to continue the work of the special committee as it sought to continue to provide oversight over the Department of Correctional Services and to assess the department's progress on the recommendations made in LR424. And for clarification, LR424 was a special investigative committee; LR34 was an oversight committee. The LR34 Committee held ten hearings that examined the issues of staffing, overcrowding, mental and behavioral health treatment, programming, and restrictive

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housing. At the end of the process, the LR34 Committee issued a report with their findings and recommendations on each of those issues. LR127 that you are hearing today would continue that work as outlined in the resolution. Listed on page 2 behind the number 1, the bullets are as follows: The Executive Board of the Legislative Council would appoint a special committee of the Legislature to be known as the Nebraska Justice System Special Investigative Committee of the Legislature. The committee shall consist of seven members of the Legislature appointed by you, the Executive Board. The committee shall elect a chairman and vice-chairman from the membership on the committee. The Executive Board is authorized to provide the committee with a legal counsel, committee clerk, and other staff as required by the committee from existing legislative staff, including the office of Public Counsel and the office of Inspector General of the Nebraska Correctional Systems. The Executive Board is also authorized to hire outside legal counsel, consultants, and investigators as required by the committee. The committee shall be an investigative committee and is authorized to hold hearings and issue subpoenas as necessary and deemed necessary by the committee. However, in addition to the focus on the Department of Correctional Services, this resolution would establish the Nebraska Justice System Special Investigative Committee of the Legislature and attempt to gain a much greater understanding of the role of the state agencies and their involvement in the adult correctional systems. The committee would be charged with studying programs and policies relating to the adult justice system implemented and followed by the Department of Correctional Services, the Office of Parole Administration, the Board of Parole, the Nebraska Commission on Law Enforcement and Criminal Justice, and the Office of Probation Administration. This is critical since the work of these agencies impact the Department of Corrections on a daily basis. The committee would be required to brief the Judiciary and the Appropriations Committees of the Legislature by December 15 of 2017, which terminates...and December 15, 2018, and issue a report of its finding and recommendations to the Legislature. That's my introduction, and I would stand for any questions, or sit for any questions as the case may be. [LR127]

SENATOR WATERMEIER: Thank you, Senator Krist. Questions from the committee? I'm assuming you'll stick around to close as well. [LR127]

SENATOR KRIST: Yes, sir. [LR127]

SENATOR WATERMEIER: Speaker Scheer. [LR127]

SENATOR SCHEER: In relationship to your item 3, making the report back to the Judiciary and Appropriations, it appears to me this is bigger than process and maybe even larger than those two committees. Would it make more sense to do that, for example, at the Legislative Council each December reporting back to the entire group rather than just a smaller group? [LR127]

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SENATOR KRIST: I would hope that in setting up the Legislative Council meeting during the year that that would be an appropriate item to be briefed at the council meeting, particularly with new members in the following term. Yes, sir. So, yes, I agree. [LR127]

SENATOR WATERMEIER: Go ahead. [LR127]

SENATOR SCHEER: And refresh my memory. At what point in relationship to the two other committees was LB605 introduced and passed? [LR127]

SENATOR KRIST: In the middle. [LR127]

SENATOR SCHEER: Okay. [LR127]

SENATOR KRIST: Yeah. So what we had simultaneously was a special investigative committee that ran into the CSG process in phase one that ran through phase one into phase two and LR34 then was implemented to carry on both the oversight work and to look at what was suggested in LB605 as statute changes. [LR127]

SENATOR SCHEER: Okay. Thank you. [LR127]

SENATOR WATERMEIER: Senator Kuehn. [LR127]

SENATOR KUEHN: Thank you, Mr. Chairman. Senator Krist, since you've been involved with the process from LR424 as a member of the Exec Board since 2014, could you outline for the committee changes that have been made on the legislative side? We've obviously added some additional full-time employees as a result of these that deal with oversight. Would you want to detail what's different now than what was different in 2014 in terms of legislative role? [LR127]

SENATOR KRIST: The one position that is impacted I think most significantly is the addition of an IG, Inspector General for Corrections, and a reorganization--I won't say new employees--but reorganization enter into the oversight of Corrections. We have two full-time people within the Ombudsman's Office. We've always had those two folks, but they're working hand in hand with the Office of the Inspector General. As far as legislative oversight, we've employed existing employees and staff in the committees to specifically watch this in terms of LR34. LR34 essentially became the Judiciary Committee plus a few that were carried over from LR424 so that we had a person from Appropriations, we had a person from HHS, we had other representation in that role. So we've kind of brought other people together. To my knowledge, I don't think we've added any other additional employees. I may be missing someone but. [LR127]

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SENATOR KUEHN: So in terms of the Justice Reinvestment Committee, where does that fit in your mind in terms of this process and how would that be distinct or not? [LR127]

SENATOR KRIST: Justice Reinvestment was a process that we undertook trying to solve our overcrowding problem in the prison system. And CSG was very helpful to analyze the data and tell us how we could do that. That resulted in LB605. So from a macro level, I will compliment Director Frakes in implementing what we saw in phase one and phase two at the macro level. This really is designed to look at what's happening operationally within our institutions: Why are we having so many problems? Why are we having so many deaths? We have people being put in cells that should never even talk to each other in a facility let alone spend that much time in a tiny cell together for obvious reasons, some of those decisions that are being made. This would focus on the operational capability. [LR127]

SENATOR KUEHN: So then where does...Amy Prenda is currently working as the Justice Reinvestment Coordinator. Is that the correct title? So where would that or how would that fall under her jurisdiction as a current employee? I realize she's covered by grant funding now, but I believe we've authorized that to be a full-time position appropriated out of General Funds. So how would that fit into this process that you're proposing? [LR127]

SENATOR KRIST: I don't think she fits into this process at all. I think she's separate and distinct. Her function is to oversee the administrative functions resulting from CSG's phase one and phase two. I don't see her fitting into this at all. [LR127]

SENATOR KUEHN: And then the Inspector General, since we've added a full-time legislative employee with Doug Koebernick in the Inspector General, where do they fit into this process of investigating these issues? And again, I believe it was one of your bills that increased his authority and ability to interview individuals following a crisis. So given that that position has also been added and we have a full-time employee with experience in these matters now addressing that oversight, where do they fit into this process? [LR127]

SENATOR KRIST: Data source. Everything that they know the committee should know about the processes in place. [LR127]

SENATOR KUEHN: Then do you feel by proposing this that there is somehow a lack of expressing that information to the subject matter committees, that Judiciary is not adequately informed or Appropriations is not adequately informed of the information from that office? [LR127]

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SENATOR KRIST: Not from his office, but from the JROC perspective, several questions have been asked and not answered by the Corrections. And I don't believe that that oversight function has happened as much as I would like to see it happen. [LR127]

SENATOR KUEHN: So JROC would again be the Amy Prenda involved issue? [LR127]

SENATOR KRIST: That's part of this phase one, phase two CSG. [LR127]

SENATOR KUEHN: Okay. Okay. All right. [LR127]

SENATOR KRIST: But it's not Prenda's responsibility to feed any information outside. It's her responsibility to look over the funding in the grant and how we're proceeding in terms of the goals and objectives that follow from CSG's evaluation. [LR127]

SENATOR KUEHN: So her role would be purely administrative as opposed to content or management. [LR127]

SENATOR KRIST: I would think so. And I wouldn't even see her being a witness so to speak. I think her role is clearly defined, and I think we would be stepping over the line if we asked her to get outside of those boundaries. [LR127]

SENATOR KUEHN: Okay. Thank you. [LR127]

SENATOR WATERMEIER: Thank you, Senator Kuehn. Further questions? Thank you, Senator. Stick around here? [LR127]

SENATOR KRIST: Yep. [LR127]

SENATOR WATERMEIER: Those in proponents of LR127. Welcome, Mr. Marvin. [LR127]

MIKE MARVIN: (Exhibit 1) Good afternoon, Senator Watermeier and members of the Executive Board. Thanks for this opportunity. My name is Mike Marvin, M-i-k-e M-a-r-v-i-n. I'm the executive director of NAPE/AFSCME Local 61, the union representing the majority of state employees. I'm here today to urge you to move LR127 to the floor of the full Legislature for debate. I have grave concerns about how things are proceeding in the Department of Correctional Services. In the last two years, Director Frakes has made little to no progress in staffing correctional facilities. Overtime and overcrowding are still not under control. As a point to

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illustrate that, Director Frakes entered into an agreement with NAPE, negotiated by the employees at Tecumseh State Correctional Institute, to return TSCI employees to a normal work hour. Director Frakes has since reneged on that written signed agreement, stating that TSCI was still in an emergency two years after the Mother's Day riot and he could not return to normal hours. That dispute will soon end up in the Commission of Industrial Relations as a bad faith bargaining case. I ask you to look at the following when you make your decisions: two riots-- make no mistake both were riots that ended with four deaths; massive amounts of overtime being worked at most facilities; little to no movement on the overcrowding issues; and numerous assaults on staff and inmates. Senators, someone needs to examine why these issues continue to exist, and I believe that someone is you, the Legislature. You must continue to hold the department accountable. You need to ensure the safety of the public, the employees, and the inmates are being watched over. Thank you for your time and I would be happy to answer any questions you may have. [LR127]

SENATOR WATERMEIER: Thank you, Mr. Marvin. Questions? Senator Chambers. [LR127]

SENATOR CHAMBERS: Mr. Marvin, have there been any discussions with Director Frakes as to precisely what this emergency status consists of and what is being done to address it? [LR127]

MIKE MARVIN: Well, Senator Chambers, as defined in our last case at TSCI, as he defined it then, he had to have enough staff and the flexibility to escort the repairs that were being done at Tecumseh to have somebody there to watch over to make sure that things were being taken care of the way they should. And since that time, he has not given me any indications of why he still thinks it is an emergency today. And I have not had that discussion why he does believe it's still an emergency today. [LR127]

SENATOR CHAMBERS: Thank you. [LR127]

SENATOR WATERMEIER: Thank you, Senator Chambers. Speaker Scheer. [LR127]

SENATOR SCHEER: You talk about little to no movement to overcrowding. How would you propose that that would have taken place in the last several years? [LR127]

MIKE MARVIN: Well, that's what they pay you guys to determine. I don't know how to fix it, but there has been little movement. We're still extremely overcrowded. [LR127]

SENATOR SCHEER: Well, and I get that. [LR127]

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MIKE MARVIN: And I can't...I'm sorry. [LR127]

SENATOR SCHEER: But I guess my problem is it's not Director Frakes's problem personally from my perspective. I've looked at the numbers. And based on what was implemented in LB605, the dismissals, those going out, are on schedule. It should have decreased substantially in the last two year...year and a half. What we've seen is an unprecedented increase in the felonies that are being incarcerated in the penitentiary that are above what was supposed to be not incarcerated. So something has happened within society that has increased those numbers which, I guess, I take no fault in the director's position. He's not out committing the crimes. You have more numbers coming in than are leaving. I'm not exactly sure...I guess I'm curious what is in his capability to be doing that he's not doing in relationship to that? [LR127]

MIKE MARVIN: I'm not sure that he was given the tools that he needs to bring that down. And maybe this investigative committee can look at why that's happening and what's going on and why the numbers aren't going down and why the increase in the people coming into the system. [LR127]

SENATOR SCHEER: We've looked at that and the penalties and there doesn't seem to be any rhyme or reason why more people are committing crimes. But from a vantage point of making that a problem of the Corrections facilities I think is maybe disingenuous. They're not controlling those people coming in. That would be the courts. They're moving the people out based on what I perceive to be the process of LB605 in relationship to trying to reduce those numbers. So I'm not trying to nitpick, but I mean I think they have tried their best to follow the directives that have been presented to them to try to reduce those numbers. [LR127]

MIKE MARVIN: I understand that, Senator. And I don't necessarily blame that on Director Frakes. But it is still a problem and it still needs to be addressed, and maybe it needs to be studied more on how to address that issue and what more can be done. And maybe even build another correctional facility may be the end result of that, but it needs to be a part of this discussions. [LR127]

SENATOR SCHEER: Well, fair enough. [LR127]

MIKE MARVIN: Yeah. [LR127]

SENATOR SCHEER: I just don't perceive that to be under the director's immediate ability to (inaudible). [LR127]

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MIKE MARVIN: I understand. [LR127]

SENATOR WATERMEIER: Senator McCollister. [LR127]

SENATOR McCOLLISTER: Yeah, thank you, Mr. Chairman. Thank you for being here, Mr. Marvin. The lack of programming has been a theme that's plagued us for a long time. Have you seen any improvement in that respect? [LR127]

MIKE MARVIN: Senator McCollister, I really don't feel qualified to answer that question for you in a correct manner so I'm going to pass on that one. [LR127]

SENATOR McCOLLISTER: Thank you. [LR127]

SENATOR WATERMEIER: Senator Chambers. [LR127]

SENATOR CHAMBERS: Mr. Marvin, we know on this committee and you've acknowledged, I think everybody does, that the director does not determine how many people are going to be in that institution. But regardless of how many are there, why they are sent there, is it the duty of the director to manage that prison population? [LR127]

MIKE MARVIN: Yes, sir. [LR127]

SENATOR CHAMBERS: Is one of the responsibilities to maintain safety for the inmates? [LR127]

MIKE MARVIN: Safety for the inmates, safety for staff, safety for the general public. [LR127]

SENATOR CHAMBERS: In managing the population, is it necessary, in fact not just necessary but absolutely essential, that there be enough staff to carry out the functions that those who manage the prison population are to carry out? [LR127]

MIKE MARVIN: I believe so, sir. [LR127]

SENATOR CHAMBERS: In your opinion, if you feel qualified to give one, is there adequate staff out there to do this? [LR127]

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MIKE MARVIN: No, there's not. We have way too many vacancies. [LR127]

SENATOR CHAMBERS: Has your organization raised the issue of inadequate staffing with the director? [LR127]

MIKE MARVIN: We've raised it with the director in the past and we've raised it with the Governor. [LR127]

SENATOR CHAMBERS: Is there anything your organization can do to increase the staffing without the director being involved? [LR127]

MIKE MARVIN: No, we cannot. [LR127]

SENATOR CHAMBERS: Is it a responsibility of your organization to raise these issues and bring them to the attention of the policymakers? [LR127]

MIKE MARVIN: Yes, it is. [LR127]

SENATOR CHAMBERS: Is that what you're doing today? [LR127]

MIKE MARVIN: Yes, it is, sir. [LR127]

SENATOR CHAMBERS: Have recommendations been made by your organization as to how additional staffing could be procured? [LR127]

MIKE MARVIN: Yes, they have during contract negotiations and through other discussions. [LR127]

SENATOR CHAMBERS: Would some of those matters be involved in the circumstances which led you to use the word "renege" to describe the director's dealing with your organization? [LR127]

MIKE MARVIN: Could you repeat that? I want to make sure I answer your question. [LR127]

SENATOR CHAMBERS: Okay. I'm going to try to simplify it. You had indicated...I'll read the language so I won't paraphrase. [LR127]

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MIKE MARVIN: Yes, yes. [LR127]

SENATOR CHAMBERS: "Director Frakes reneged on that written signed agreement, stating that TSCI was still in an emergency two years after the Mother's Day riot and he could not return to normal hours." In order to return to normal hours, what, in your opinion, would be necessary? [LR127]

MIKE MARVIN: Well, I believe he can do it now because we're already in mandatory overtimes. So more staff would definitely ease the problem and lessen the overtime capabilities and would probably give him more faith that he could. And I hate to answer for him, but it would give him more faith that he could return to normal hours. [LR127]

SENATOR CHAMBERS: Okay, thank you. [LR127]

SENATOR WATERMEIER: Thank you, Senator Chambers. Further questions of Mr. Marvin? Thank you, Mr. Marvin. [LR127]

MIKE MARVIN: All right. Thank you. [LR127]

SENATOR WATERMEIER: Further proponents. Welcome. [LR127]

SPIKE EICKHOLT: (Exhibit 2) Good afternoon, Chairman Watermeier, members of the committee. Spike Eickholt, S-p-i-k-e, last name E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska, testifying in support of LR127. We want to thank Senator Krist for introducing this legislative resolution requesting or suggesting the creation of a special committee. I am handing or I'm having distributed a copy of our written testimony. I'm not going to read that. I'll just point out a couple of points that we do support Senator Krist's effort. I think what he explained when he introduced this LR was he's envisioning something similar to the LR424 and the LR34 special investigative committees. And I think that would make sense and we think that would make sense for this Legislature to do as well. Even though there are some reform efforts that have been implemented and there are some reform efforts that are ongoing, we believe that it's important for the Legislature to be actively involved and have a special dedicated entity, if you will, to provide oversight, not only for the Department of Corrections in its day-to-day management, but also in their interrelationship with the criminal justice system overall. So we would urge the committee to authorize the creation of this special committee. And I'll answer any questions that you may have. [LR127]

SENATOR WATERMEIER: Thank you. Questions? Senator Chambers. [LR127]

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SENATOR CHAMBERS: Thank you for your testimony. I almost was going to call you by your nickname, Mr. Eickholt. [LR127]

SPIKE EICKHOLT: Thank you. [LR127]

SENATOR CHAMBERS: I think the key to what your testimony was from my position is the emphasis on the need for independent oversight. And we can see at the national level that there is considerable concern, even in the President's own party, that there is not anybody in his administration who really has independence. If anything in the way of independence is manifested, that person is either silenced or fired as was the case with the head of the FBI. Now at the state level, the Legislature has a responsibility to exercise oversight. The prison system is a part of and managed by the executive branch. So without even disparaging anybody, it is difficult to have a situation where nobody watches the watchers. In a sense you could say that the Governor and his people are watching the best they can a department that they manage, that they fund, that they control. The Legislature, on the other hand, is not supposed to be under the dominance or the influence of the executive branch. So in your view from what you've said, this committee would be that independent voice and observer that is required to begin addressing the problems that everybody tends to acknowledge exist in Corrections now. [LR127]

SPIKE EICKHOLT: That's correct. I would agree with that. I mean, as you said, even though the day-to-day, the administration of the Department of Corrections, like any agency, is the responsibility of the executive branch, it always comes back to the Legislature, whether it's simple funding, proposal to change the laws relating to that implementation and the executive carrying out of the functions. And we think it makes sense just for the Legislature to be actively involved and have that active oversight. People are dying in the prisons and people are getting killed. We have an overcrowding problem. It is, at least it would seem like with the implementation of LB605, things were on track. But as Speaker Scheer indicated in an earlier questioning, for some reason the numbers increased for admissions for drug offenses. So to get an appreciation of that, I think it makes sense for the Legislature to have a special committee dedicated to look at all of those things because it really needs to be comprehensive, not just during the time that people are in prison but on the front end, what leads them to prison and then the back end, rehabilitating them back into society because most of them are going to leave the prison system. [LR127]

SENATOR CHAMBERS: I presume from past work with the ACLU in connection with the prison issues--and I've been on investigative committees--I presume that ACLU would be willing to lend any assistance or advice or input that it would be capable of. [LR127]

SPIKE EICKHOLT: We are. [LR127]

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SENATOR CHAMBERS: Thank you. That's all that I have. [LR127]

SENATOR WATERMEIER: Thank you, Senator Chambers. Senator Bolz. [LR127]

SENATOR BOLZ: Thank you, Senator Watermeier. The first committee in this area was really a case study. It was a case study of the Jenkins case which helped us unravel and understand some of the challenges within the system. The second committee was really an oversight committee of some of the changes being recommended and some of the challenges that we needed to monitor. This committee is, as I'm sort of perceiving it, takes the next step in terms of being a comprehensive look at the continuum of systems and services that address all of these issues because each individual entity has their own area of influence, and no one agency or entity or director can handle all of it. So I guess my question is, how do you see that adding value to the conversations that we've had so far? And are there any entities or agencies that should be included that aren't included now? I don't think there's a specific reference to mental health or to juvenile justice. Maybe it's broad enough; maybe it's not. But so to reiterate, the two questions are: How do you see that comprehensive nature adding value and is there anybody else who should be a part of the overview? [LR127]

SPIKE EICKHOLT: I think to answer part of what you just asked, I think it does make sense for the LR to include maybe some nongovernment entities or providers who sort of work with the government agencies: mental health providers, people who provide drug and alcohol counseling for people who are on parole, and so on. As far as what value the committee might have, I think...I know that you were on the LR34 special committee; and I'm going to be presumptive, but I suspect that your experience on that committee made you a bit more appreciative of all of the issues the Department of Corrections faces because of your exposure to the subject. So one benefit I would suggest to having the committee is that those senators who are involved in it will really appreciate and understand perhaps more than they might otherwise the issues related to Corrections. Senator McCollister had a bill this year that would try to figure out the number of people who are parole eligible who are in prison. Even though we've had these multiple committees, it came to Senator McCollister's attention that we didn't quite realize we don't have any way of tracking the few hundred maybe, we're not sure who, of inmates who are parole eligible presently but are not paroled. They're still in our prison system. So I think that's just an example of what might come from something like this. There are still, even though we've looked at this issue and the Legislature has for a couple of years with different committees, there are still additional work and study to be done. [LR127]

SENATOR BOLZ: I appreciate that. And I particularly noticed your reference to investing in specialty courts and problem-solving courts. And maybe those are the types of public policies

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that could come out of a committee like this that go beyond our more acute focus on Department of Corrections and look at it in a more comprehensive way. Thanks. [LR127]

SENATOR WATERMEIER: Thank you, Senator Bolz. Further questions? All right. Thank you, Mr. Eickholt. Further proponents. Those wishing to testify in opposition to LR127. Director Frakes. Welcome. [LR127]

SCOTT FRAKES: (Exhibits 3 and 4) Senator Watermeier. Good afternoon, Chairman Watermeier and members of the Executive Board. My name is Scott Frakes, F-r-a-k-e-s, and I am the Director of the Nebraska Department of Correctional Services, NDCS. I am here today to provide testimony in opposition to LR127. I recognize the importance and value of legislative oversight of the executive branch. It is important to this discussion to identify how oversight is currently being accomplished without a special committee. The Legislature established the Inspector General for Corrections in 2015 and enhanced his investigative authority this session with the passage of LB539. The Inspector General is able to gather and provide legislators the information that was provided via committee hearing or subpoena in the past. The office of Public Counsel also has several staff dedicated to oversight and investigation of the department. The Judiciary and Appropriations Committees have the authority to investigate issues within the department as the subject matter committees of jurisdiction. Senator Ebke has introduced an interim study this session, LR196, to investigate and monitor the progress the department is making in a number of areas. I met recently with Senator Krist, Senator McCollister, and the Inspector General and agreed to include additional metrics in the department's quarterly data report that are specifically designed to assist with legislative oversight of the department. The Legislature also created the Justice Reinvestment Oversight Committee in LB605, which works with the Justice Reinvestment Implementation Coordinating Committee and the Justice Reinvestment Steering Committee to oversee and track implementation of the Justice Reinvestment Initiative. The Long-Term Restrictive Housing Work Group was established in LB598 to perform a similar function for restrictive housing reform. As a result of these multiple levels of oversight and the resources currently dedicated to investigating issues within the department, I do not believe that LR127 is the correct approach. I encourage the Executive Board to support Senator Ebke's LR196. I believe Senator Ebke captured where the department is today in terms of implementing reform in her opening to LR196. She writes, "Since the enactment of LB605 and completion of the LR34 study, the Department of Correctional Services has made positive changes to comply with the requirements set forth by the Legislature, while also seeing a number of negative incidents in state correctional facilities. The Legislature understands the changes enacted by LB605 and prompted by LR34 will take time to reach full implementation, as seen in the work of the Justice Reinvestment Implementation Committee. Nevertheless, there is a clear need to track the progress of the department in order to ensure the intentions of the Legislature are being carried out properly and effectively." I carefully considered all the recommendations made by the LR34 Committee and developed an action plan to ensure

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implementation. I have distributed a copy of the department's action plan responsive to the recommendations issued in the LR34 Committee's December 2016 final report. We have completed or made progress on all of the recommendations and continue to work on implementation with a number of others. I agree wholeheartedly with the sentiment expressed by Senator Ebke. Trust, but verify; it's how I do business. Thank you for this opportunity to testify today. Be happy to answer questions. [LR127]

SENATOR WATERMEIER: Thank you, Director Frakes. Senator Chambers. [LR127]

SENATOR CHAMBERS: Mr. Chairman, I'm not going to ask all my questions at this point. I'm going to ask some, leave room for others, and then maybe come back. [LR127]

SENATOR WATERMEIER: Very good. [LR127]

SENATOR CHAMBERS: Mr. Frakes, you are part of the executive branch. Is that correct? [LR127]

SCOTT FRAKES: Yes. [LR127]

SENATOR CHAMBERS: This is the legislative branch. Is that correct? [LR127]

SCOTT FRAKES: Yes. [LR127]

SENATOR CHAMBERS: The legislative branch does have the responsibility of oversight of and for those programs and activities that are funded by the Legislature. Are you aware of that? [LR127]

SCOTT FRAKES: Yes. [LR127]

SENATOR CHAMBERS: Do you see a bit of presumptuousness in you telling the Legislature how it should conduct its business? I saw you do this (holds up hand by ear) so maybe I'm not speaking loudly enough. Do you consider it presumptuous for a member of the executive branch to tell the Legislature how it should conduct its business of oversight when that individual operates an institution which would be the subject of that oversight? [LR127]

SCOTT FRAKES: As I understand the legislative process, this is my opportunity to share my insight and concerns and I'm taking that opportunity. [LR127]

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SENATOR CHAMBERS: Could you have done that in a neutral role where you're giving information, your...an opinion rather than an adversarial role in opposition as you're doing today? [LR127]

SCOTT FRAKES: To take a neutral role would suggest that I'm supportive of the idea and I'm not. [LR127]

SENATOR CHAMBERS: Do you know what neutral means? [LR127]

SCOTT FRAKES: Yes. [LR127]

SENATOR CHAMBERS: What does neutral mean according to your understanding? [LR127]

SCOTT FRAKES: Specific to legislative process it would be to... [LR127]

SENATOR CHAMBERS: Just the word. What does the word "neutral" mean? Does it mean you're not taking any side, you're not for or against whatever is being presented? [LR127]

SCOTT FRAKES: That's a good definition, yes. [LR127]

SENATOR CHAMBERS: You're not being neutral today, are you? [LR127]

SCOTT FRAKES: No. [LR127]

SENATOR CHAMBERS: You are taking a position in opposition to what is being proposed by a member of the Legislature. Is that correct? [LR127]

SCOTT FRAKES: That is correct. [LR127]

SENATOR CHAMBERS: And you would be opposed to the activities of that committee were it to be formulated. Is that correct? [LR127]

SCOTT FRAKES: No. [LR127]

SENATOR CHAMBERS: You would not be opposed? [LR127]

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SCOTT FRAKES: If it's enacted and a committee is formed, I will comply and follow the law. [LR127]

SENATOR CHAMBERS: But you're opposed to the committee being formed. [LR127]

SCOTT FRAKES: I am. [LR127]

SENATOR CHAMBERS: Do you feel that it would inhibit you as far as carrying out your duties as Director of Corrections? Do you feel it would inhibit you, would it hinder your ability to perform your role as Director of Corrections? [LR127]

SCOTT FRAKES: Having the committee formed? I'm not sure about your question. [LR127]

SENATOR CHAMBERS: You're opposed...let's back up. You are opposed to the formulation of this committee. Isn't that correct? [LR127]

SCOTT FRAKES: Yes. [LR127]

SENATOR CHAMBERS: You are opposed to it for what reason? And I'm trying to lead you. Are you opposed because you think if the committee was in existence and carried out the duties that it would have pursuant to this resolution it would hinder you in carrying out your role as Director of Corrections? [LR127]

SCOTT FRAKES: It would be another consumer of very precious resources. [LR127]

SENATOR CHAMBERS: That's not the question. Do you feel it would hinder you in performing your duties? [LR127]

SCOTT FRAKES: It would be a consumer of precious resources. It would take up more time. [LR127]

SENATOR CHAMBERS: And does that equate to a hindrance to you in carrying out your duties? [LR127]

SCOTT FRAKES: There's only so many hours of me to go around. [LR127]

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SENATOR CHAMBERS: Does that indicate that it would hinder you in carrying out your duties? [LR127]

SCOTT FRAKES: It would all depend on how the committee moved forward. [LR127]

SENATOR CHAMBERS: I'm asking you these questions so the record will show how unforthcoming you are and have been. So let me try to ask additional leading questions as a court allows when there's a hostile witness. Which one of your duties could you not carry out if the committee were formed? [LR127]

SCOTT FRAKES: It's not that I can't carry out my duties. It's that it is yet another consumer of resources when there are multiple ways to achieve the outcome that you're looking for. How many different ways of oversight are needed for the department is the question. [LR127]

SENATOR CHAMBERS: Would you be able to carry out your duties if this committee were formulated? [LR127]

SCOTT FRAKES: Some other part of my duties would suffer during the time I've spent responding to this committee. [LR127]

SENATOR CHAMBERS: Which ones would suffer? [LR127]

SCOTT FRAKES: I'll have to figure that out at the time that the committee is...if it's brought to light. [LR127]

SENATOR CHAMBERS: Now you don't know how it would interfere or which parts of your duties would suffer, yet you feel competent to come here and speak against the formulation of the committee. Correct? [LR127]

SCOTT FRAKES: I do. [LR127]

SENATOR CHAMBERS: So you're speaking without information or knowledge. Correct? [LR127]

SCOTT FRAKES: I'm not going to make stuff up. [LR127]

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SENATOR CHAMBERS: You are speaking without knowledge or information regarding which of your duties would be affected by this committee. Isn't that what you just said? [LR127]

SCOTT FRAKES: I'm speaking from my past experience and the time and energy taken to be responsive to the LR34 Committee and again acknowledging or at least attempting to bring forward the point that there are more oversight...there is more oversight of my agency than the majority of my peers across the country. And... [LR127]

SENATOR CHAMBERS: You won't answer my question so I'm going to keep asking you. [LR127]

SCOTT FRAKES: Okay. [LR127]

SENATOR CHAMBERS: You said that you could not respond to me in terms of specificity regarding which of your duties would be impacted. You said you had to take time and figure that out. In general, isn't that what your answer was? [LR127]

SCOTT FRAKES: It's going to be situational. It will depend on the number of hearings, when the hearings are held... [LR127]

SENATOR CHAMBERS: Wait a minute. [LR127]

SCOTT FRAKES: ...and what else is occurring. [LR127]

SENATOR CHAMBERS: Is that what your answer was? I don't want to be toyed with. Either it was what your answer was or it wasn't and the transcript will make it clear. [LR127]

SCOTT FRAKES: Okay. [LR127]

SENATOR CHAMBERS: Then let's proceed. The transcript is there. [LR127]

SCOTT FRAKES: Okay. [LR127]

SENATOR CHAMBERS: Are you aware that there have been more...when was the last time there was a death occurring at one of the institutions before you came? [LR127]

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SCOTT FRAKES: I don't... [LR127]

SENATOR CHAMBERS: Or hadn't...you hadn't looked into that? [LR127]

SCOTT FRAKES: I don't have a date off the top of my head, no. [LR127]

SENATOR CHAMBERS: How many deaths have occurred since you have come? [LR127]

SCOTT FRAKES: There have been five murders. [LR127]

SENATOR CHAMBERS: And that did not lead you to investigate to see whether such things had occurred before? You did not inquire into whether there had been murders in the institutions before? [LR127]

SCOTT FRAKES: I did ask questions, but I don't have the dates or the specifics of those cases off the top of my head. [LR127]

SENATOR CHAMBERS: You're not speaking loudly enough. Now I can't hear you. [LR127]

SCOTT FRAKES: I did ask questions. I do not have the specifics or the dates off...I'm not going to pull them off the top of my head (inaudible). [LR127]

SENATOR CHAMBERS: Was the number given you that you just have forgotten? [LR127]

SCOTT FRAKES: I didn't do a review of the history of the department to see how many murders had occurred because it's really not relevant to the issue at hand. [LR127]

SENATOR CHAMBERS: Well, I can tell you that more killings have occurred under you than have occurred the whole time I've been in the Legislature. But let's go and see what the problem is. Are there vacancies at all levels in staffing in your department? [LR127]

SCOTT FRAKES: Sorry. I'm just trying to think about... [LR127]

SENATOR CHAMBERS: At various... [LR127]

SCOTT FRAKES: So the short answer would be yes, at various levels, yes. [LR127]

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SENATOR CHAMBERS: Okay. And how long has this problem existed since you've been director? [LR127]

SCOTT FRAKES: It was a problem when I arrived and it's still a problem today. [LR127]

SENATOR CHAMBERS: Does this impact on working conditions and the hours of work for what might be called the line staff? [LR127]

SCOTT FRAKES: At some facilities, yes. [LR127]

SENATOR CHAMBERS: Have there been complaints from these staff members relative to the shifts that they work and the number of hours they're required to put in, in terms of overtime? [LR127]

SCOTT FRAKES: Yes. [LR127]

SENATOR CHAMBERS: Were these issues to be subjects of a negotiation between you and the organization that represents the employees? [LR127]

SCOTT FRAKES: Not specifically to that, no. [LR127]

SENATOR CHAMBERS: Would it logically seem to be a subject that would be covered by the negotiations that were to occur between you and the organization that represents employees? [LR127]

SCOTT FRAKES: It could be if it was brought forward, yes. [LR127]

SENATOR CHAMBERS: A comment was made and the word "reneged" was used with reference to your agreement to deal with this organization. Would you say that that word is correct or you would use a different word to describe your reluctance? [LR127]

SCOTT FRAKES: Mr. Marvin has informed me that he's taken this issue forward to the...I believe it's the...I'm not sure what the "C" stands for. Is it Court of Industrial Review, CIR? And so I can't comment. [LR127]

SENATOR CHAMBERS: Has that action been taken? [LR127]

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SCOTT FRAKES: He informed me that he was going to file last week. I don't know whether or not the action has been taken yet. [LR127]

SENATOR CHAMBERS: Is there anything pending before the CIR addressing this matter? [LR127]

SCOTT FRAKES: Again, he informed me last week that he was going to take it forward and file. I don't know. [LR127]

SENATOR CHAMBERS: You... [LR127]

SCOTT FRAKES: I haven't been notified. [LR127]

SENATOR CHAMBERS: I think I speak English. You have somebody sitting with you who informs you. His name is Jeff. Has Jeff informed you? Have you read in the paper? Do you have information from any source that an action has been filed with the CIR? [LR127]

SCOTT FRAKES: I have direct communication from the head of the union saying that he intends to do it. That's what I have at this point. [LR127]

SENATOR CHAMBERS: I'm going to see if you can understand me. Do you have information that such an action has been filed? [LR127]

SCOTT FRAKES: Other than the communication from Mr. Marvin, no. [LR127]

SENATOR CHAMBERS: If there is no action filed, does that mean that perhaps none will be filed? [LR127]

SCOTT FRAKES: I trust Mr. Marvin to follow through. [LR127]

SENATOR CHAMBERS: Leave Mr. Marvin out. This is between you and me; you and me. I'm a member of the Legislature. You are the Director of Corrections hired by the Governor. You chose to come here and speak against this committee being formulated. I want direct answers from you in your role as an opposer of what is being offered here. Now if you're not going to answer the questions, tell me now. [LR127]

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SCOTT FRAKES: I attempted to answer every question that you've asked me. I can't ensure that you'll be satisfied with the answer I give you, but I'm attempting to answer your questions, Senator Chambers. [LR127]

SENATOR CHAMBERS: Were there to be discussions between you and the organization representing the employees? [LR127]

SCOTT FRAKES: There have been negotiations between me, my organization, and the organization that represents the employees. [LR127]

SENATOR CHAMBERS: And the allegation is that you reneged on that written, signed agreement. And that agreement...first of all, was there an agreement that you signed with the organization? [LR127]

SCOTT FRAKES: So again, I believe this is going to be reviewed in a court of law and I'm not going to speak to that issue today. [LR127]

SENATOR CHAMBERS: The CIR is not a court. It's not a court of law. [LR127]

SCOTT FRAKES: Okay, a court of review. [LR127]

SENATOR CHAMBERS: It's what? [LR127]

SCOTT FRAKES: A court of review. Give me the right terminology. [LR127]

SENATOR CHAMBERS: It's not...what does CIR stand for? [LR127]

SCOTT FRAKES: I know it's industrial review. [LR127]

SENATOR CHAMBERS: Is it a commission? A commission is not a court because I got the legislation to do away with the term "court" because it's not a court. It is a commission. [LR127]

SCOTT FRAKES: Right. [LR127]

SENATOR CHAMBERS: So I wish you'd be better informed so that's why I want to take your knowledge. And if you don't know anything, I want the record to show that. Did you sign an

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agreement with the organization to negotiate about these various issues? That's a yes or no question. Did you sign such an organization...such an agreement? [LR127]

SCOTT FRAKES: I answered your previous question. I have been in negotiations with the union on a specific issue. It's now being taken forward for further review and I'm going to stop there. [LR127]

SENATOR CHAMBERS: Did you sign such an agreement? Yes or no. [LR127]

SCOTT FRAKES: I've answered your question, Senator Chambers. [LR127]

SENATOR CHAMBERS: Then I'm going to say your answer is yes, you signed such an agreement. And you have backed out of that agreement, haven't you? Speak, man. [LR127]

SCOTT FRAKES: I answered your question. [LR127]

SENATOR CHAMBERS: Did you back out of that agreement? That's not the question I asked you before. I'm asking you a different question. Have you... [LR127]

SCOTT FRAKES: The issues at hand are going to be reviewed in another venue and I'm not going to comment. [LR127]

SENATOR CHAMBERS: I want my colleagues to see how difficult it is for members of the Legislature to get anything out of you, and that should let them understand the role that employees are placed in. If you will not answer us, then it's not hard to imagine how you mistreat employees and staff. Did the Governor converse with you before you appeared here today? [LR127]

SCOTT FRAKES: No. [LR127]

SENATOR CHAMBERS: The Governor did not instruct you then to come here in position of opposition if he didn't talk to you before today. So you decided on your own to be here today. You're hiding behind this notion of something going forward with the Court of Industrial Relations, but I'm not aware of any question I asked you which if you gave an honest answer would any way prejudice your cause before the CIR. Now if you're going to lie here or tell a lie there, then when you gave conflicting statements, one would nullify the other, it would impeach the other. Are you trying to be in a position where if you spoke the truth here today it would

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hinder you if you were asked to speak that same truth should an issue come before the CIR? Is that why you don't want to answer? What does an honest man have to fear from...in giving an honest answer to a question? [LR127]

SCOTT FRAKES: Nothing at all, Senator Chambers, but I'm still not going to speak on that issue. [LR127]

SENATOR CHAMBERS: Are you an honest man? [LR127]

SCOTT FRAKES: I believe I am. [LR127]

SENATOR CHAMBERS: I think what you have shown is exactly why this committee needs to be formed. Are you aware that if a committee of this kind is formed it will have subpoena power? Are you aware of that? [LR127]

SCOTT FRAKES: I know LR34 did have. [LR127]

SENATOR CHAMBERS: It did have? [LR127]

SCOTT FRAKES: Yes. [LR127]

SENATOR CHAMBERS: And you're basing a lot of what you're saying on what that committee did as you've already indicated. Were you subpoenaed to come before that committee? [LR127]

SCOTT FRAKES: I was not. [LR127]

SENATOR CHAMBERS: I didn't understand you. [LR127]

SCOTT FRAKES: No, I was not. [LR127]

SENATOR CHAMBERS: Could you be subpoenaed to come before this committee if it's formed? [LR127]

SCOTT FRAKES: I believe so. [LR127]

SENATOR CHAMBERS: Did you testify before the LR34 Committee? [LR127]

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SCOTT FRAKES: I think I heard ten times. [LR127]

SENATOR CHAMBERS: And that was a voluntary appearance on your part, wasn't it? [LR127]

SCOTT FRAKES: Yes. [LR127]

SENATOR CHAMBERS: And were you placed under oath? [LR127]

SCOTT FRAKES: H'm. [LR127]

SENATOR CHAMBERS: You don't remember if somebody said words to the effect, you promise to tell the truth? [LR127]

SCOTT FRAKES: You know, I don't recall at this point. [LR127]

SENATOR CHAMBERS: Can you remember being asked to raise one hand or the other and repeat after me? You don't remember that ceremony? [LR127]

SCOTT FRAKES: I don't recall, no. [LR127]

SENATOR CHAMBERS: Okay. [LR127]

SCOTT FRAKES: I'm not saying it didn't happen, but I don't recall. [LR127]

SENATOR CHAMBERS: Well, you could be placed under oath when you are subpoenaed. You're aware of that, aren't you? [LR127]

SCOTT FRAKES: Absolutely. [LR127]

SENATOR CHAMBERS: Did your legal counsel inform you when you testified before the LR34 Committee that you could refuse to answer questions put to you? [LR127]

SCOTT FRAKES: H'm. I don't know. I don't recall if I had that conversation or not. There was not any point in time when I wasn't willing to try and provide an answer to the question that's asked. [LR127]

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SENATOR CHAMBERS: I'm going to let this fish off the hook for the time being and let others ask questions. But as I stated, I will reserve the right to ask additional questions if necessary. Thank you, Mr. Chairman. [LR127]

SENATOR WATERMEIER: Thanks, Senator Chambers. Further questions? Senator McCollister. [LR127]

SENATOR McCOLLISTER: Thank you, Mr. Chairman. Director Frakes, staffing has been a critical issue in most of the facilities you manage. Is that correct? [LR127]

SCOTT FRAKES: That is correct. [LR127]

SENATOR McCOLLISTER: What are you doing to resolve that issue? [LR127]

SCOTT FRAKES: Well, over the last two years we have created a dedicated recruitment position and other resources that assist in the recruitment of staff. We have greatly broadened our recruitment approaches. We have implemented a variety of activities, initiatives to help with employee engagement, which we believe directly contributes to reducing employee turnover. The good news there is that over the last seven months we have seen some decline in employee turnover. We're running just below 25 percent turnover for the entire agency, most of that represented by the turnover that's in our protective services, our uniform staff ranks. Those numbers also though for the last seven months are averaging about 28 percent, which is down from 2016 we ran it just short of 32 percent. So it's not where we need to be really until we can get down below 20 percent, and that's not the end goal. But if we get down below 20 percent, we can actually say, okay, we've accomplished part of what we need. So those are pieces that we're using. We know that for the last two years specific to the protective services staff the issue was not as much about hiring as it was about retention. We filled all the positions; but unfortunately, we had just as many people leave the agency so we made no ground over those two years. [LR127]

SENATOR McCOLLISTER: Tell me how on the sheet that you gave us, the first page: complete a comprehensive staffing analysis by July 1, 2017, have you done that? [LR127]

SCOTT FRAKES: I have done it for protective services. I have not done it for the noncustody positions in the agency. [LR127]

SENATOR McCOLLISTER: And the entire survey is supposed to be complete by March of 2018? [LR127]

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SCOTT FRAKES: That would be what we would target to begin the process. Because at this point in time, we're not in a position to do anything if we identified a need for additional noncustody positions. I had a significant request for protective services positions and that was significantly reduced through the budget process. So I now have a custody or protective services staffing analysis that, depending on how things move forward, at best will be completely staffed by 2021. So to move forward on the noncustody piece is premature. [LR127]

SENATOR McCOLLISTER: Was your budget impacted at all by the recent revelations or the shortages in the budget and did you lose any funding that you had counted on? [LR127]

SCOTT FRAKES: I did. I lost the funding for 80 protective services positions over the biennium, which is very substantial and a significant issue in terms of figuring out how we're going to move the department forward. And I understand that there was confusion about how we were going to use those positions, but in fact there was a plan and there was the ability for the agency to do that. So now we're going to regroup and figure out how we move forward in the next two years. [LR127]

SENATOR McCOLLISTER: In your testimony you mentioned the quarterly report that you're going to complete. And that's on target and you make a commitment here that that will be forthcoming? [LR127]

SCOTT FRAKES: I do and it will be. [LR127]

SENATOR McCOLLISTER: Thank you, Director. Thank you, Mr. Chairman. [LR127]

SENATOR WATERMEIER: Thank you, Senator McCollister. Further questions? Speaker Scheer. [LR127]

SENATOR SCHEER: If when you have been trying to replace staff, has funding or salary or pay scheduling been a problem in either hiring or the retention? [LR127]

SCOTT FRAKES: Well, we were able to negotiate some increases that I would say is part of what has improved both in terms of we had some increased success in recruitment lately and again some reduction in turnover. I've got to think that's one of the pieces that's helped with this. Longer term, there is still the issue of our flat pay scale, and that is an issue that comes up as the number one issue from staff in terms of compensation and that whatever you start at is what you earn for the remainder of the time you stay. So if you're a corporal making \$17.98 an hour, whether you started yesterday or ten years from now, you make \$17.98 an hour. So that's one

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compensation issue that we still have out there. The negotiations last fall did open the door, did create some structure that would allow us to move forward at our next negotiations; but we're two years away so...or about a year and a half away at this point. [LR127]

SENATOR SCHEER: I would think that would have a dramatic effect on your employees if there's no room for advancement either from pay or position. I certainly can see that as a major stumbling block in trying to retain and obtain employees. [LR127]

SCOTT FRAKES: It's an issue for those that choose to go into a specific job class and stay in that job class for years and for some that's exactly what they need. It meets their personal needs, their career goals. For many others, though, the option is to move up in the organization, which is one of the advantages that state corrections has over county corrections. We're not a flat organization. There's lots of opportunities for advancement so there is some trade-off. But as we move into negotiations a year from now, well, it will be 18 months from now, something like that, that certainly will be something that I would hope to see on the table for conversation. But there again, it's negotiations is two-sided. It is the responsibility of the labor union to bring forward demands and requests and issues they think are important and to negotiate for those. So it isn't just on state government to fix the problem; it is a two-sided piece. [LR127]

SENATOR SCHEER: Fair enough, but that still doesn't solve the problem if the problem still exists. What can you tell me about would be the usage of the 80 positions that are no longer going to be available to you? [LR127]

SCOTT FRAKES: Well, what we would have done is we would have looked at the entire staffing analysis. The staffing analysis for protective services identified 138 positions across the agency in 10 facilities that needed to be filled. I proposed a three-year rate to fill those. I had an initial plan when the conversation began about a year ago that would have focused on the apparent greatest needs. But as we came into this year and we saw that we continued to have significant vacancies specifically at Nebraska State Penitentiary and the Lincoln Correction Center, then the right approach would be if those positions were funded to see where else we could allocate what we can fill. We do not have challenges to any degree filling positions in Omaha, at the women's prison in York, at the Work Ethic Center out in McCook. Those are all positions that are all needed as part of the staffing analysis and at the community custody centers for that matter. So I would have, as the positions rolled on--and it was a phased rollout across the eight quarters of the biennium--I would have allocated the positions where I knew they could be filled. If I got to a point of where I still...I had filled all the ones I knew I could fill and there was still too high a vacancy level at the remaining large facilities, as I call them, then I certainly would have done like I did...I believe it was last year where I came back and said I can't spend all the money that's in my budget in terms of what I need for a deficit. I want to offset it by the savings that are here

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so. In general, that was the approach and the plan. There's needs across the entire agency and those positions could be used to increase the quality of operations, facilities that can fill them, and allow us to ultimately meet our mission. [LR127]

SENATOR SCHEER: Were the 80...was the reduction of the 80 positions your idea or the Legislature's idea? [LR127]

SCOTT FRAKES: It was the Legislature's idea. [LR127]

SENATOR SCHEER: Okay, thank you. [LR127]

SENATOR WATERMEIER: Thank you. I'm sorry, Senator Chambers first and then Senator Crawford. [LR127]

SENATOR CHAMBERS: She can go first. Everybody can go before me. [LR127]

SENATOR WATERMEIER: Okay. Senator Crawford. [LR127]

SENATOR CRAWFORD: Thank you, Senator Watermeier. And thank you, Director, for being here. I appreciate you being here to answer questions today. And I appreciate this sheet that reviews some of the LR34 recommendations and your follow-up. I should think they'll be helpful for Senator Ebke's committee, the Judiciary Committee, and keeping oversight on however we move forward on that process. Was the LR34 process helpful in providing opportunity for senators from other committees to hear more about what you're doing in Corrections and then to also help in terms of introducing bills and moving proposals forward above and beyond the work of the Judiciary Committee members? [LR127]

SCOTT FRAKES: I can't speak to that question. I don't have any insight one way or the other. [LR127]

SENATOR CRAWFORD: Of whether or not the LR34 process...you don't know whether the LR34 process was helpful in providing an opportunity for you to educate members of the Legislature who are not on the Judiciary Committee? [LR127]

SCOTT FRAKES: I don't. [LR127]

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SENATOR CRAWFORD: And what would it take for you to know whether or not it was helpful in educating members other than the Judiciary Committee? [LR127]

SCOTT FRAKES: I guess some kind of communication between myself and those senators that (inaudible). [LR127]

SENATOR CRAWFORD: So the LR34 process did not give you or members of your department an opportunity to provide information to or testify to members of the Legislature who are not on the Judiciary Committee? [LR127]

SCOTT FRAKES: I think, okay, if I understand, yes, I understand your question now. So there was a lot of overlap between the two committees so that didn't, you know, sometimes it was hard for me to remember which was which so that's why. But in terms of the broader body, I don't recall any specific communication or conversation with people that said that process led them to greater understanding. I'm not saying it didn't happen. I'm just saying I wasn't aware. [LR127]

SENATOR CRAWFORD: Right, or perhaps a member of the Appropriations Committee introducing a bill for one of the goals of the LR34 who was a member of that committee. I believe that's on this sheet as one example, just trying to illustrate what sometimes these committees that are beyond the committee of jurisdiction do in terms of helping educate the body and also helping to mobilize effort that's needed in other areas above and beyond the jurisdiction of Judiciary Committee. Thank you. [LR127]

SENATOR WATERMEIER: Thank you, Senator Crawford. Senator Bolz. [LR127]

SENATOR BOLZ: I have two fairly straightforward questions. I appreciate all the dialogue because I think it's getting at whether or not there are issues for which we should provide investigation or oversight so I appreciate that. But I think the crux of the conversation today is whether or not this committee should be formed, and so I have two questions related to that. The first is, as I understand you, I just want to affirm my understanding, your major concern or major reason that you're coming in, in opposition to this committee is the amount of time or resources that it would take for you to...for your agency to participate. Is that accurate? Is that correct? [LR127]

SCOTT FRAKES: That's accurate. [LR127]

SENATOR BOLZ: Okay. And so is it also accurate or fair to say that you, because you are not representing the Office of Parole Administration, Board of Parole, the Nebraska Commission on

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Law Enforcement and Criminal Justice, or the Office of Probation Administration you don't have a position on whether or not a special committee or an oversight committee would be appropriate for those pieces? Maybe you do but... [LR127]

SCOTT FRAKES: No. My testimony is very specific to my agency. But again, while the title indicates a broader purpose, everything in the body of it is about my agency. [LR127]

SENATOR BOLZ: Okay. I just...I guess I wanted to refocus a little bit on what our decision is today and whether or not the committee should be formed. I appreciate the concern about the use of your time and resources. I also think that it's broader than just one department and so I'd add that for the committee's consideration as well. [LR127]

SENATOR WATERMEIER: Thank you, Senator Bolz. Senator Chambers. [LR127]

SENATOR CHAMBERS: Mr. Frakes, I'm going to try to be as specific as I can in my questioning. I'm going to read a statement from Mr. Marvin's letter and then I will see if you think it is accurate or inaccurate. "Director Frakes entered into an agreement with NAPE, negotiated by Tecumseh State Correctional Institute employees, to return TSCI employees to normal work hours." Is that statement true? [LR127]

SCOTT FRAKES: Again, it's an issue that's been elevated to the Court of Industrial Review according... [LR127]

SENATOR CHAMBERS: Could you speak a little louder? I'm not being facetious now. I can't quite hear you. [LR127]

SCOTT FRAKES: This is, according to Mr. Marvin, this is an issue that is being taken or will be taken to the Court of Industrial Review so I'm not going to comment on that issue. [LR127]

SENATOR CHAMBERS: So you feel that you cannot even comment on whether you entered an agreement to negotiate? You cannot even comment on that? [LR127]

SCOTT FRAKES: No, I'm not going to comment on that today. [LR127]

SENATOR CHAMBERS: Then did you not enter such an agreement? [LR127]

SCOTT FRAKES: I'm not going to comment on that issue today. [LR127]

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SENATOR CHAMBERS: There is a formula I'm more familiar with: I respectfully decline to answer on the grounds that it might incriminate me. I would understand. Is that basically what you are saying? [LR127]

SCOTT FRAKES: No. [LR127]

SENATOR CHAMBERS: Before the LR34 Committee was created, there had not been four murders, two riots, and an additional murder because you put two people together in a cell in solitary. There had not been the massive amounts of overtime being required. There was not the level of serious assaults against staff and inmates. Now if it was reasonable to have the LR34 Committee created without those matters having taken place, you still believe it would not be advisable to have an investigative committee in view of these murders, the riots, the complaints about inmates being left in their cells even while fires were burning, smoke was affecting them in a negative way. You feel that those things ought not be investigated by the Legislature, shouldn't be explored? [LR127]

SCOTT FRAKES: No, I didn't say that. In my testimony I said that there are many different resources available to the Legislature to investigate everything that you raised. [LR127]

SENATOR CHAMBERS: But it's not for you to determine how we will decide to exercise our oversight. So for you to say that the Appropriations Committee does the job or the Inspector General does the job, therefore, the Legislature should keep its nose out of further investigation by creating a committee, that's what you're saying. That's the impact of it. So let me ask a specific question. What does the word "solitary" mean to you? [LR127]

SCOTT FRAKES: One single. [LR127]

SENATOR CHAMBERS: Okay. Why was the one who murdered that inmate in solitary? The one who murdered his cell mate, why was that murderer...why had that murderer been placed in solitary? He was in a cell in solitary. Isn't that correct? [LR127]

SCOTT FRAKES: No, we don't use solitary confinement in Nebraska. [LR127]

SENATOR CHAMBERS: What term do you use? [LR127]

SCOTT FRAKES: Restrictive housing. [LR127]

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SENATOR CHAMBERS: He was in restrictive housing, correct? [LR127]

SCOTT FRAKES: That is correct. [LR127]

SENATOR CHAMBERS: How many people are to be in each one of those cells? [LR127]

SCOTT FRAKES: Depends on the situation. [LR127]

SENATOR CHAMBERS: Based on your policy, how many are to be in this restrictive cell which others call solitary? [LR127]

SCOTT FRAKES: Up to two. [LR127]

SENATOR CHAMBERS: How many? [LR127]

SCOTT FRAKES: Up to two. [LR127]

SENATOR CHAMBERS: Is it your policy? [LR127]

SCOTT FRAKES: Administrative regulations addresses how we can use those cells to house people, yes. [LR127]

SENATOR CHAMBERS: Now in view of the fact that a murder occurred, I know you did some investigating of that. What was that man in restrictive housing for? [LR127]

SCOTT FRAKES: Depending on...it was a request for protective custody framed as a threat. [LR127]

SENATOR CHAMBERS: Why was the other person placed in solitary with him? [LR127]

SCOTT FRAKES: The other person was in restrictive housing based on a request for protective custody. [LR127]

SENATOR CHAMBERS: He was there for his protection? He wanted to be there for his protection? [LR127]

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SCOTT FRAKES: (Nods yes.) That's right. [LR127]

SENATOR CHAMBERS: He requested to be placed there? [LR127]

SCOTT FRAKES: Yes. [LR127]

SENATOR CHAMBERS: And you were aware that these two people were in this cell together? [LR127]

SCOTT FRAKES: Not prior to the murder, no. [LR127]

SENATOR CHAMBERS: Based on your experience as a Director of Corrections, would you have placed those two together in a cell in solitary...whatever you call restrictive housing, it's solitary. Would you have placed those two men together? [LR127]

SCOTT FRAKES: Well, here again, we have a capital murder case so I'm not going to get into any more details specific to the case. [LR127]

SENATOR CHAMBERS: Was there no other cell in restrictive housing available at that time? All right, let's leave that. I think the record will show how non-forthcoming you were and how little you seem to be aware of as an experienced correctional professional. You've heard of Erica Jenkins, haven't you? [LR127]

SCOTT FRAKES: Yes. [LR127]

SENATOR CHAMBERS: You know she's locked up at York, don't you? [LR127]

SCOTT FRAKES: I do. [LR127]

SENATOR CHAMBERS: You knew that her cousin testified against her and that helped procure a conviction. You knew that, didn't you? [LR127]

SCOTT FRAKES: I do. [LR127]

SENATOR CHAMBERS: Why was she placed...why was her cousin placed in a cell with Erica Jenkins? [LR127]

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SCOTT FRAKES: Because there were errors made. [LR127]

SENATOR CHAMBERS: Tell me the rationale for them being placed...more than an error is involved here. I don't think even nonexperts would see something wrong with that. A person testified against an individual and that individual against whom the testimony was given was convicted of homicide and some other offenses. Why would you put the one who testified in the cell with the one that person testified against? You call that a mere error? Was somebody fired as a result of that decision? [LR127]

SCOTT FRAKES: There are staff that no longer work with the department that were part of that. [LR127]

SENATOR CHAMBERS: Your policies, though, did not prohibit that obviously. Isn't that correct? [LR127]

SCOTT FRAKES: That's correct. There was processes and procedures...that's one...it's a good example of a situation, though, where policy and procedure doesn't provide all of the answers. Judgment (inaudible). [LR127]

SENATOR CHAMBERS: But so that I'm crystal-clear, you have no policy against double bunking in you call it restrictive housing. [LR127]

SCOTT FRAKES: We have administrative regulation language that describes the double-bunking process and what steps will be taken to place two people together. [LR127]

SENATOR CHAMBERS: Do you think that there remains overcrowding in the institution? [LR127]

SCOTT FRAKES: We are crowded. [LR127]

SENATOR CHAMBERS: Is there adequate rehabilitative treatment being made available to all the inmates who need such treatment? [LR127]

SCOTT FRAKES: Not yet. [LR127]

SENATOR CHAMBERS: Is there adequate, appropriate mental health treatment being provided to all the inmates who need such mental health treatment? [LR127]

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SCOTT FRAKES: I believe we're doing a much better job in that area, but I don't believe we're flawless. [LR127]

SENATOR CHAMBERS: I'm not talking about being flawless. That's not the way I phrased the question. Are the inmates who need mental health treatment receiving adequate, appropriate mental health treatment? Are they, yes or no? [LR127]

SCOTT FRAKES: Yes. [LR127]

SENATOR CHAMBERS: Okay. [LR127]

SCOTT FRAKES: But I'm not saying that... [LR127]

SENATOR CHAMBERS: Okay. [LR127]

SCOTT FRAKES: ...mistakes are not made. [LR127]

SENATOR CHAMBERS: You said yes and I disagree with you. And I think there are people maybe even on the Parole Board who disagree with you. But anyway, do you think there is an overuse of what you call restrictive housing, others call solitary, so the kind of housing, the circumstances I would refer to as solitary, do you think that's being overly used? And I'll tell you why I know you understand what solitary confinement means. During a previous hearing I was questioning you and you told me that you were going to reduce the use of solitary confinement, and that was just a number of months ago so you know what the word "solitary" means. But for some reason you don't want to acknowledge it now so I won't pursue that. In addition to the vacancy levels, do you have an unacceptable or an undesirable turnover rate which means people who were employed don't retain their employment? Is there an unacceptable rate of turnover? [LR127]

SCOTT FRAKES: It's higher than I want it to be, yes. [LR127]

SENATOR CHAMBERS: Do you think that these problems can be attributed to a great extent to low pay? [LR127]

SCOTT FRAKES: I think pay can be a factor, but it's many different issues. [LR127]

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SENATOR CHAMBERS: Do you think low pay is a serious factor when they can make more money working for a county jail, and that has been testified to, so they will leave to take one of those jobs? Is low pay a serious contributing factor, a serious contributing factor? [LR127]

SCOTT FRAKES: I believe that the lack of progression in the pay scale, having some kind of merit or performance-based pay opportunities is the bigger issue and that comes from staff. [LR127]

SENATOR CHAMBERS: I'm just asking you is it a serious factor, contributory factor, to being unable to hire adequate people or to retain them after they're hired? Does inadequate pay play a very important role? [LR127]

SCOTT FRAKES: We're not having a problem with hiring people. [LR127]

SENATOR CHAMBERS: (Laugh) [LR127]

SCOTT FRAKES: Well, we're not. [LR127]

SENATOR CHAMBERS: I'm not...I didn't even say anything and (inaudible). [LR127]

SCOTT FRAKES: Yes, you did. You just did. So it's not about hiring although we're always looking for the best candidates that we can find. But in terms of retention, the feedback that I receive now since the pay raises that were implemented last November is that our pay scale is competitive. Is it competitive on-line with the large counties? No. But on the other hand, there is a perception that the counties take all of my staff. But there's not that many staff in a county jail and their turnover is lower than ours. So it isn't that we're just losing waves of staff. It is this very competitive work employment here in Nebraska with a 3 percent average unemployment rate, with work opportunities very accessible, especially in the urban areas where most of my facilities are. And then again, there is that issue of the performance, merit, progression pay, however you want to term it, that staff continue to bring forward. That is the number one pay issue that they bring to me. [LR127]

SENATOR CHAMBERS: You puzzle me, Mr. Frakes. When I've indicated that your answer was sufficient, you become very loquacious and go on and on and on. Then on issues where a yes or no question...answer could be given, you not only choose not to give that but you don't even want to discuss it. So I'm going to ask are working conditions which employees find onerous contributory factors to an inability to retain employees? Would working conditions contribute significantly to the inability to retain employees? [LR127]

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SCOTT FRAKES: I believe it contributes at three locations in particular: Nebraska State Penitentiary, Lincoln Correctional Center, and fortunately we've had something change at the Diagnostic and Evaluation Center and our vacancy numbers have dropped just recently, but it's another area where sometimes that's a challenge. [LR127]

SENATOR CHAMBERS: Has there been any significant decrease in the amount of overtime that employees are required to work? [LR127]

SCOTT FRAKES: No. [LR127]

SENATOR CHAMBERS: What about the staff or the shifts? Those things are basically what they were the last time you may have appeared before a committee, correct? There's not been any significant change there. [LR127]

SCOTT FRAKES: Can you ask the question again? [LR127]

SENATOR CHAMBERS: That's all right. You don't have to answer it because you wouldn't even... [LR127]

SCOTT FRAKES: We've had some good success in hiring if that's...but in terms of people deployed and actually filling the vacancies in the rosters, we're in different stages of people going through the academy or on-the-job training so we're headed the right direction. [LR127]

SENATOR CHAMBERS: Okay. Now I'm going to ask you an easy question. You mentioned several things that are being done by legislative committees, individuals such as the...oh, the Office of the Ombudsman, the Inspector General, the Appropriations Committee, Senator Ebke's resolution, that's what's known as fragmentation. That is a fragmentation, bits and pieces. This committee would do away with fragmentation and be able through its structure and its activities to look at all of the things we're talking about. It could do it. It wouldn't be where Senator Ebke might have to ask the Appropriations Committee, what did you find out, or review something that happened under the LR34 Committee. So here's the easy question that I said I would ask you. You still are opposed to this committee being established. Is that correct? [LR127]

SCOTT FRAKES: Yes. [LR127]

SENATOR CHAMBERS: That's all that I have. Thank you, Mr. Chairman. [LR127]

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SENATOR WATERMEIER: Thank you, Senator Chambers. Further questions? Thank you, Director Frakes. Are there further testimony in opposition to LR127? Anyone wishing to testify in a neutral position? Mr. Koebernick. [LR127]

DOUG KOEBERNICK: Good afternoon. My name is Doug Koebernick, spelled K-o-e-b-e-r-n-i-c-k, and I work for the Legislature as the Inspector General for Corrections. I'll just kind of get right to the point here. Senator Krist asked me to testify today regarding this resolution due to my experiences working with the past two special committees. In 2014, I was one of three individuals who staffed the LR424 Special Committee. The LR34 Committee started in 2015. I started this position the fall of 2015 so in 2015-2016 I worked with that committee and I kind of saw myself as a resource if they needed any questions answered or anything looked up or any data, whatever. I was there for them as a resource. Prior to that, I actually served as a staff member for the Developmental Disabilities Special Investigative Committee which I believe--I was sitting back there--I think that lasted for about six years and so I worked on those issues down in Beatrice and across the state for about six years. But as far as LR34 and LR424, I believe that both committees did excellent work and were able to make numerous findings and recommendations, many of which you heard have been undertaken by the department or the adult Parole Administration and the Board of Parole. There's still many issues facing our justice system, especially at the department and with Parole as well I believe. If LR127 is adopted, I think it's important that the committee look at how all the parts of the justice system work together, impact the mission of the department. And if, just to kind of get right to it, if it is adopted, I again would be willing and ready to assist the committee with their work and be a resource to them. [LR127]

SENATOR WATERMEIER: All right. Thank you, Mr. Koebernick. Any questions? Senator McCollister. [LR127]

SENATOR MCCOLLISTER: Yeah. Thank you, Mr. Chairman. Director Frakes gave us a copy of this action plan and that was developed with LR34. LR34 no longer exists, is that correct? [LR127]

DOUG KOEBERNICK: That's correct. [LR127]

SENATOR MCCOLLISTER: Do you have any concerns that the action plan itself will in some way be diminished or not get completed if we don't produce another committee to review the progress? [LR127]

DOUG KOEBERNICK: There could be those concerns. I haven't seen that action plan. [LR127]

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SENATOR McCOLLISTER: Thank you. [LR127]

SENATOR WATERMEIER: Thank you, Senator McCollister. Further questions? Senator Chambers. [LR127]

SENATOR CHAMBERS: Is it your understanding that this resolution, which would commit...create this committee, extends beyond just the Department of Corrections? [LR127]

DOUG KOEBERNICK: Yes. The way it reads is that the agencies that would be reviewed would include the Department of Correctional Services, the Office of Parole Administration, the Board of Parole, the Crime Commission, and the Office of Probation Administration. I think the point is to kind of look at the whole system, see how they all interact and impact each other. [LR127]

SENATOR CHAMBERS: And not all of those entities are under the control of the Director of Corrections, correct? [LR127]

DOUG KOEBERNICK: That's correct. [LR127]

SENATOR CHAMBERS: And nobody other than the Director of Corrections said the committee should not exist. [LR127]

DOUG KOEBERNICK: I didn't hear anybody else testify. I saw the executive director of the Crime Commission was here, but he left without testifying. [LR127]

SENATOR CHAMBERS: That's all that I have. Thank you. [LR127]

SENATOR WATERMEIER: Thank you, Senator Chambers. Further questions? Thank you, Mr. Koebernick. Further testimony in the neutral? Seeing none, Senator Krist. [LR127]

SENATOR KRIST: I've had some extensive conversations with Senator Chambers and Senator Bolz who started out in this endeavor with LR424 and have come forward. I have great concerns that for the first time in legislative history back to 2014 when we started to "unpeel" this onion that we will not have a special investigative committee in force or an oversight committee in force. That's why I'm bringing this to you. I think we need to continue an oversight committee. I think it needs to be a special investigative committee with all the powers of LR424. For all of those reasons, I included all of the support agencies around Corrections, including parole. But more importantly, what you will approve with Senator Ebke is nothing more than an interim

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study. It has no teeth. It has no direction. It is a judiciary function only. And I would support-- Senator Crawford and Senator Bolz both alluded to it--that the cross-section of this body needs to be infused into this committee. When Senator Campbell and Senator Hadley and a few of us were here together, we said there has to be somebody from HHS; there has to be somebody from Appropriations; there has to be...and I won't go on with that. I think I made my point. That is where you get the cross-section and the understanding in the body to move forward. Term limits will put us further and further behind understanding what our problems are. And this special investigative committee is a way to ensure, if not a special investigative committee, this Executive Board has the power to enforce an oversight committee in place of a special investigative committee. My opinion is it needs to be a special investigative committee. More importantly I guess where I became energized and convicted to do this, I asked Director Frakes specifically in a JROC meeting, does he have the right people in the right places making the right decisions, and he said yes. And that's concerning to me because he may be doing great things on a macro level, but people are getting killed because they're being put into cells together that should never be there. And if that's a little dramatic, think about it. Think about it. Those decisions are being made at the local level. I'm not blaming Director Frakes for that. All the questions and all the answers that were proposed to him and that he gave have already been asked and answered a hundred times. So this committee looks at the entire structure. I also asked Ros Cotton, Chairman of Parole, is everything being done to get people out? She said, we've got 200 people that are on the edge. We just need to push them a little further over the edge legally. So how do we do that? We got to think outside the box and try to reduce the population, reduce the overtime, get more people to stay around, find an incentive program that goes on, all those issues are being worked on right now. This one is looking at an operational issue and a macro perspective again of all the agencies involved. And with that, I would thank you for your time and will take any other questions you might have. [LR127]

SENATOR WATERMEIER: Thank you, Senator Krist. Are there questions? Senator Chambers. [LR127]

SENATOR CHAMBERS: Just one for the record. A committee looking at an interim study committee, interim study resolutions will have more than one resolution to look at anyway, won't it? [LR127]

SENATOR KRIST: We'll have 14 or 15 in Judiciary this year. [LR127]

SENATOR CHAMBERS: But this committee would be limited to what is proposed here. [LR127]

SENATOR KRIST: Single focus, yes, sir. [LR127]

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SENATOR CHAMBERS: Thank you. That's all that I would have. [LR127]

SENATOR WATERMEIER: Thank you, Senator Chambers. Further questions? Thank you, Senator Krist. That will close the hearing on LR127. Thank you for attending. [LR127]