

LATHROP [00:00:04] Good afternoon. Welcome to the Judiciary Committee. My name is Steve Lathrop. I am the state senator representing Legislative District 12 and also the Chair of the Judiciary Committee. I go through, before we start, kind our-- the-- how we handle this and what we do, our process. On the table inside the doors when you came in, you'll find yellow testifier sheets. If you are planning to testify today, please fill one out and hand it to the page when you come up to testify. This helps us keep an accurate record of the hearing. There is also a white sheet on the table if you do not wish to testify but would like to record your position on a bill. Also, for future reference, if you're not testifying in person on a bill and would like to submit a letter for the official record, all committees have a deadline of 5:00 p.m. the day before the hearing, and that would be 5:00 p.m. tonight because tomorrow is our last hearing, which I'm happy to say. We will begin bill testimony with the introducer's opening statement. Following the opening, we will hear from proponents of the bill, then opponents, and finally, by anyone speaking in a neutral capacity. We will finish with a closing statement if the introducer wishes to give one. We ask that you begin your testimony by giving us your first and last name and spell them for the record. We utilize an on-deck chair left of the testifier's table. Please keep the on-deck chair filled with the next person to testify to keep the hearing moving. If you have any handouts, please bring at least 12 copies and give them to the page. If you got here without enough copies, let the page know and they'll try to make more for you. We also utilize a light system. That's this box on the desk right in front of me. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning. When the red light comes on, we ask that you wrap up your final thoughts and stop. That's a total of three minutes: two minutes on the green, one on the yellow, and when the red happens, we-- please wrap up your thoughts and stop. As a matter of committee policy, I'd like to remind everyone that the use of cell phones and other electronic devices is not allowed during public hearings. You may see senators use them to take notes or stay in contact with staff. That is permissible. At this time, I would ask everyone to look at their cell phones and make sure they're in the silent mode, which I need to do myself. It was embarrassing one time when it-- my phone went off after giving this. Anyway, also, verbal outbursts or applause are not permitted in the hearing room. That behavior will get you a red coat and escorted out of the hearing room. You may notice committee members coming and going. That has nothing to do with how they regard the importance of the bill or the matter before the committee. But senators have bills to introduce in other committees and have other meetings to attend to. We are holding our hearings in the Warner Chamber while our regular hearing room is being renovated. Please remember that water bottles, soda cans, and cups are not permitted on the desks, and that's to avoid damage or watermarks in this historic Chamber. Assisting the committee today are Laurie Vollertsen, our committee clerk. Neal Erickson and Josh Henningsen are our two legal counsel. Committee pages our Alyssa Lund and Dana Mallett, both students at UNL. They've served this committee well through the hearing

process and we appreciate their service. And with that, we will have the senators introduce themselves, beginning with Senator Slama.

SLAMA [00:03:48] Hi. Julie Slama, District 1, Otoe, Nemaha, Johnson, Pawnee, and Richardson Counties.

LATHROP [00:03:54] You.

PANSING BROOKS [00:03:55] Oh. Hi. I'm Patty Pansing Brooks. I represent District 28 right here in the heart of Lincoln.

CHAMBERS [00:04:00] Ernie Chambers, District 11, Omaha.

BRANDT [00:04:03] Tom Brandt, District 32, Fillmore, Thayer, Jefferson, Saline and southwestern Lancaster County.

DeBOER [00:04:09] Hi. I'm Wendy DeBoer. I'm from District 10, which is Bennington and the surrounding areas and northwest Omaha.

LATHROP [00:04:14] Very good. And with that, our first matter is the confirmation hearing of Don Arp, Jr. Mr. Arp, if you'd like to come forward, we'll take up your confirmation. Good afternoon.

DON ARP, JR. [00:04:30] Good afternoon. Good afternoon, Senator Lathrop, members of the Judiciary Committee. My name is Don Arp, Jr., spelled D-o-n A-r-p, Jr., and I appreciate the opportunity to share with you my credentials to serve as the next executive director of the Nebraska Commission on Law Enforcement and Criminal Justice, popularly known as the Crime Commission. I'm a lifelong Nebraskan who is honored to sit before you today and share my background and vision for the Crime Commission. I am admittedly not a traditional candidate for the position of executive director. The last three executive directors have all been retired law enforcement officers, with my two immediate predecessors both having retired from the Nebraska State Patrol. Statute provides one sentence as to the required qualifications of the executive director of the Crime Commission. 81-1425 [SIC] states: The executive director shall be qualified for the position by appropriate training and experience in the field of criminal justice and law [SIC]. While I have never been a law enforcement officer or worked in a detention facility, my education experience in criminal justice is no less relevant to the position and no less compliant with statute than the qualifications of my predecessors. I simply present a different perspective, one that is needed after 20 years of the status quo. I've been around law enforcement since birth. My father, after working in a small-town police department and then a county sheriff's office, joined the Lincoln Police Department, retiring after 30 years of service. This constant exposure to law enforcement had an impact on me. In addition to my bachelor of arts with highest distinction in history with

minors in anthropology, geology, and political science and my master of arts in anthropology, I've gained certificates in computer security from the Stanford University Center for Professional Development and the forensic-- and a forensic science certificate from North Central State College in Mansfield, Ohio. I have also supplemented my knowledge with training courses, including information technology auditing, and was trained in interviewing by Gary Plank, a nationally known criminal profiler, investigator, and retired State Trooper. While in college, I interned for the U.S. Secret Service and after graduation twice interned for the Nebraska State Patrol where I served as the first-ever intern for the executive protection detail assigned to then-Governor Johanns. While my career has followed a different path, I've maintained my interest and work in criminal justice and public safety, predominantly through academic research and publication but also fieldwork. I served as a forensic consultant for the State Patrol and executed a facial reconstruction on a human remains case. I discovered and investigated a case of trademark infringement in the South American nation of Guyana and published that in the Journal of Intellectual Property Law and Practice. I examined issues with our current racial profiling data collection system and suggested findings in an article I published. I've studied LPD's use of substations and wrote an article for the FBI Law Enforcement Bulletin to assist other agencies to determine if such facilities could be of benefit to them. I've published articles for law enforcement officers on animal activity at crime scenes, rapport building in interviews, and effective report writing. My work on effective report writing is cited in three textbooks, including criminal ident-- Criminal Investigation, 10th Edition; Police Operations: Theory and Practice, 5th Edition; and Introduction to Private Security, 5th Edition, and was required reading in a criminal investigation course in Northern Arizona University. I reestablished the use of fingerprints and archaeology with my work cited in an FBI bibliography on forensic archeological field techniques. I also highlighted the early contributions of women to forensic science by telling the story of Emily Byram, a fingerprint examiner with the Omaha Police Department in the 1920s. I've also served as a manuscript reviewer for the journal Police Quarterly. My work in public safety has resulted in two public service awards with the Nebraska State Patrol and the U.S. Army Commanders Award for Public Service. I have also found my training in interview and investigations to be helpful in my auditing and compliance roles. My career has focused on public and private sector compliance, oversight process improvement, and management assessment. I started my career in corporate communications in a large insurance company before serving as a Performance Auditor for the Nebraska Legislature for a little over four years. I then shifted to private-sector compliance, contracting, and auditing, and spent two years in business innovation before returning to state government in June 2016. I was hired as the process improvement coordinator for the Department of Administrative Services and was tasked with assisting the director of the Center of Operational Excellence with launching the state's process improvement program. In January 2017, I was promoted to deputy director of what we called the COE. While in that role, I handled special projects and assisted agencies, including the State Patrol Crime Lab, Crime Commission, Brand Committee, Fire Marshal, and HHS. In October 2018, I moved to the Division of Children

and Family Services as a deputy director to focus on operational improvements. On February 19, 2019, was my first day as the executive director of the Crime Commission. Since then, I've been learning agency operations while making process and operational improvements. I've also established a new list of core beliefs for the agency, and I believe these beliefs paint a picture of the future of the agency that I see. These beliefs are: We are stewards of this agency, entrusted by the citizens of Nebraska with its well-being and operation. We have a relentless focus on our customers. Ethics means knowing what is right and doing what is right every day. As teammates, we respect and appreciate one another and we are empowered to ask questions and drive improvements at all levels. In furtherance of these goals and beliefs, I've achieved the following in the last six weeks: rescinded 30-plus outdated and non-value-added staff memos and procedures, freed up 29 hours of staff time by eliminating nonvalue practices, implemented DAS/HR-shared services and shared services employee handbook, appointed a legislative liaison and policy coordinator, met with customers including the Sheriff's Association, Nebraska Coalition to End Sexual and Domestic Violence, the U.S. Marshal, several police chiefs, the Inspector General for Child Welfare and the Attorney General. I'm working with the Commission on Indian Affairs to develop a grant summit for our tribal communities so they better access grants not only administered by the Crime Commission but also administered by other entities and available through the federal government, and we're preparing to launch a paperless records process. The Crime Commission is responsible for law enforcement training, certification, investigations, and detention facility inspections and serves as the administrator of millions of dollars in grant funds. The executive director is, in everyday work, an executive leader making complex operational decisions across diverse fields, supported by staff who, when required, have specified experience and certifications in law enforcement and other fields. The commission is further fortunate to have access to literally hundreds of years of experience through the commission membership and members of advisory and standing committees, such as the Police Standards Advisory Council, the Crime Victim Reparations Committee, the Office of Violence Prevention, and the Jail Standards Board. Those who know me best say I have ability to see connections between diverse groups, their goals, and available resources that is fundamental to building a shared vision that achieves results. I find synergies, solve problems, and get results for all involved. I'm a seasoned leader with a track record of results. I see a new and exciting future for the Crime Commission wherein it's better positioned to meet the needs of its diverse customers and handle the challenges of the future. I'm excited by this opportunity, honored to be able to serve the state of Nebraska in a new capacity, and would be happy to answer any questions you may have.

LATHROP [00:11:56] OK. Senator Chambers.

CHAMBERS [00:11:57] Have you ever been convicted of a felony?

DON ARP, JR. [00:12:01] No, sir.

CHAMBERS [00:12:01] Have you served time in jail for any offense?

DON ARP, JR. [00:12:04] I have not.

CHAMBERS [00:12:05] Do you consider that a gap in your experience that if you'd had that experience, you'd be better qualified for this position?

DON ARP, JR. [00:12:11] Absolutely. I see the inmates in our detention facilities as being customers, too, and we have to talk to them. One of the directives I've given my leadership, what we call chiefs in our agency, is to get out and talk to our customers. Those customers are anybody our programs touch: law enforcement officers, victims, grantee programs, Jail Standards. But getting that customer perspective from the people who experience our programs, absolutely, that is something I want. I've directed my staff that anytime they have downtime is time they should be out talking to customers. And finding a conduit for that insight from those who are held in our detention facilities, I think, is an important development we do need to look at and-- and have readily available.

CHAMBERS [00:12:52] We might get along very well. Thank you. That's all that I have.

LATHROP [00:12:56] Senator Pansing Brooks.

PANSING BROOKS [00:12:58] Thank you. Thank you for coming, Mr. Arp. I enjoyed meeting with you a couple weeks ago. So I think because of how you wrote your introduction, you are aware of the law and the statute that we have before us--

DON ARP, JR. [00:13:10] Correct--

PANSING BROOKS [00:13:11] --and the fact that, I think you quoted, the executive director shall be qualified for the pos-- for the position by appropriate training and experience in the field of criminal law and justice. So just to be clear, you haven't-- you haven't been a sheriff or a marshal or law enforcement officer?

DON ARP, JR. [00:13:28] Correct. I have not.

PANSING BROOKS [00:13:29] And-- and you-- and the training and you feel is having grown up in a-- in a family that-- that-- who your father was law enforcement.

DON ARP, JR. [00:13:37] And even more than that, I have a forensic science certificate. I have executed a forensic facial reconstruction for the Patrol based on that-- that certificate program. I took four course--

PANSING BROOKS [00:13:47] How long was that program?

DON ARP, JR. [00:13:48] So it was a-- a-- it was a two-year program. I did the first four classes of the two-year program at Wesleyan, transferred it to North Central State College so I could take a course that finished the certificate and focused on forensic facial reconstruction and aligned with my anthropology master's degree.

PANSING BROOKS [00:14:05] OK.

DON ARP, JR. [00:14:05] And I'm also published in the Journal of Forensic Identification, FBI Law Enforcement Journal. You know, I have standing as an academic expert on various police procedures.

PANSING BROOKS [00:14:17] So you can imagine our-- our-- our angst a little bit because generally these are pretty pro forma and we've had people writing saying this isn't sufficient for law enforcement. So I'm asking you to give us the argument, so the-- the training in the-- the training is sufficient in facial recognition?

DON ARP, JR. [00:14:37] So I think, you know, the-- one, I think the statute is somewhat vague. But I think if you look at what I've done with having a college certificate in forensic science, a college certificate in-- in computer security, working as a-- as a forensic consultant for the State Patrol, digging into our racial profiling system and suggesting changes, looking at how APD practiced the use of substations and-- and if that could work for other agencies, those-- all of those tasks are training and experience. The statute simply says training and experience in criminal law and justice. It does not say be a certified law enforcement officer. When the statute requires a certification, it specifies the certification. Look up the statute for the Superintendent of the Patrol. It requires five years of law enforcement experience and a certification. This is a very nebulous approach. Predecessors, there has been a judge who has served as Crime Commission director. I think the fact that in the last 20 years the last three executive directors have been retired law enforcement has kind of set a pattern, and it might not be a pattern that-- that we want to continue should we want to change the operational tempo of the Crime Commission. For example, I ran across people in the State Office Building who I worked with in HHS and stopped and congratulated me on being appointed director. Their next question was, what's the Crime Commission? That disturbed me. That means people don't know a fairly important agency that administers millions of dollars of grant funds and oversees the certification of our law enforcement officers is unknown to folks in government. What's it known for to the community? We have to fix that, and I think my predecessors haven't driven that change. I expected people to question my nomination because I am a different appointee. But the other thing, too, is it's time for different. You know, I have the experience. I have people around me. I have a director of the training center, a deputy director of the training center, and all of my staff at the training center are commissioned law enforcement. I have a Police Standards

Advisory Council made up of representatives across the state. So when it comes to those issues, I have expertise to pull on in my advisory groups. The same for Jail Standards. I have a Jail Standards Board and I have excellent reviewers in my Jail Standards division. Denny Macomber, my chief, and his staff are amazing, amazing teammates that do a great job. So I would say, based on what the statute says and based on my experience as a researcher, having two certifications, and digging into the problems that face law enforcement more than qualifies me for this position.

PANSING BROOKS [00:17:22] Thank you for being prepared for those questions.

LATHROP [00:17:26] I want you to know that our concern is not personal. I think everybody has enjoyed the opportunity to meet you before today. As Senator Pansing Brooks said, we are getting questions or some comments from people in law enforcement that have concerns that your considerable resume doesn't include experience in the field of criminal law and justice. And when you talk about forensic identification, you're an anthropologist and this was done so that we could-- or you might be better able to conduct your profession of anthropology, and it wasn't necessarily done in context of being involved in identifying people who have been victims of crime.

DON ARP, JR. [00:18:17] No.

LATHROP [00:18:17] That true?

DON ARP, JR. [00:18:18] That is true. And I'd like to point out another thing, too, of--

LATHROP [00:18:21] You know what, we have a bunch of hearings today--

DON ARP, JR. [00:18:23] OK.

LATHROP [00:18:23] --so I'm just going to ask you to answer the question. I appreciate that you grew up in a house-- household with-- where your father was involved in law enforcement. My dad was an attorney and I don't think I could practice somehow without going to law school.

DON ARP, JR. [00:18:42] Sure.

LATHROP [00:18:43] And I think you can appreciate that distinction or the fact that that may be interesting background but not necessarily a qualifying occurrence. You've not been a law enforcement officer at all?

DON ARP, JR. [00:18:55] Correct.

LATHROP [00:18:56] Probation officer?

DON ARP, JR. [00:18:59] No.

LATHROP [00:19:02] Parole officer?

DON ARP, JR. [00:18:59] No.

LATHROP [00:18:59] Anything of the sort?

DON ARP, JR. [00:19:01] No.

LATHROP [00:19:01] OK. I think that's all the questions I have for you, Mr. Arp. I don't know what this committee is going to do. We'll sit down and talk about it. I-- we-- we have to take seriously the qualifications that are set out in the statute.

DON ARP, JR. [00:19:14] I understand.

LATHROP [00:19:15] OK. And certainly it's not a personal thing because your resume is full of a lot of government service, as well, and we appreciate that as well. OK.

DON ARP, JR. [00:19:26] Understood.

LATHROP [00:19:26] I don't see any other questions. I think that will do it today.

DON ARP, JR. [00:19:30] Thank you.

LATHROP [00:19:30] OK. Thank you very much. That will close our-- oh, are there any proponents of this appointment? Good afternoon.

JUDI gaiashkibos [00:20:00] Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Judi gaiashkibos, that's J-u-d-i g-a-i-a-s-h-k-i-b-o-s, and I am the executive director of the Nebraska Commission on Indian Affairs. And I come here today to support the nomination of Don Arp to head the Crime Commission, and I commend the Governor for appointing him. I have been the director of the Indian Commission for the past 23 years, so I have worked with, going back to Allen Curtis, the different directors who were experienced law enforcement. And quite frankly, I found that they often didn't listen to the Indian Commission or to me as a Native woman. My voice just really often didn't matter, and specifically that was concerning the grants that they oversaw, the Violence Against Women Act grants. It was kind of a "group think" law enforcement process where we would submit grants, the tribes would, and the way it was set up, they always went to the same, good-old boys, and one comes to mind, Gary Lacey, and other people. And it was just sort of to the point where the tribes quit applying for grants. So moving forward, I was appointed to the Racial Profiling Advisory

Committee and attended under the past director, really just didn't see too much enthusiasm about that and dealing with this-- traffic stop reports. Nothing really came out of that, you know, that there were different counties that didn't have police officers, they weren't participating, and why weren't they participating. So today, just recently, Don Arp was appointed and I knew Don from about five years ago when he was on the Humanities Nebraska board of directors, so just in that way, as a colleague, but otherwise really didn't know him. But recently, attending the racial profiling advisory meeting that he convened, I was totally blown away by his leadership. And as a director of a state agency, I know what's all involved in working with government, you know, all the layers and everything and how building relationships and-- and how your agency is perceived. So I have a master's in management with a leadership emphasis from Doane University, so I-- I know a little bit about leadership. And I-- I really was so impressed with what I saw at that meeting. And this was a whole new approach to leading that he is going to go out to all the counties and visit and he's going to find out, you know, how he can help the Silver Creek, Nebraska, that doesn't have a police officer. And so I think to me he's a breath of fresh air, and for the Indian Commission, he's willing to work with us to find monies for our missing women's bill that comes with no fiscal note. So perhaps our little agency that has such a small budget, if we can receive some grants through the Crime Commission that will help us execute that bill, that will make us more effective and it will protect the women and children that the bill was intended to. Also, just the fact that he-- he's very-- you know, you can see in the report what's been done. That is quite amazing. And what I find, there could be a little bit of resistance. I think I heard the word "maintaining the status quo," and oftentimes in state government that's what folks want. And the world is changing, and so sometimes we need different people. So with that, I think in closing I would like to say that I would hope that you would really give full consideration to this young person that I believe is very capable and will, with his various educational skills and his desire, that he will lead the Crime Commission in a way that no one will have to ask, what is the Crime Commission, what do they do?

LATHROP [00:24:25] OK.

JUDI gaiashkibos [00:24:25] They really do something. They make a difference.

LATHROP [00:24:26] OK. Thank you. Any questions for Ms. gaiashkibos? Senator Pansing Brooks.

PANSING BROOKS [00:24:32] Thank you for coming, Ms.-- Director gaiashkibos, so happy to have you here. What a brilliant move to have you come and sing the praises. You heard our concerns about-- about complying with some of the statutes, and do you have a response to some of that and the fact that the statute say it's supposed to be in the field of criminal law and justice that-- his background?

JUDI gaiashkibos [00:24:57] I thought that was a bit vague, and I don't know this statute, you know, in detail, so I would leave that up to you. But I wonder if it might not be driven by internal maintaining the status quo and that law enforcement thinks they know what is best. And, you know, looking at our prison systems and the things that are going on in our state, I wonder if they do. So sometimes it's better to have somebody that's not in this system but out of it, and they can be more objective and see the bigger picture, and I think that's what Don Arp brings to his role as the new leader of the Crime Commission.

PANSING BROOKS [00:25:35] OK. Thank you for that answer. And we don't have the pleasure of having you very often before this committee, but thank you for your work on behalf of the tribes of Nebraska and all of your heartfelt work for the Native women and the missing people, so thank you very much.

JUDI gaiashkibos [00:25:48] Thank you, Senator, for all of your work. And I don't usually come before this committee, but it's really great to be before you, and I wish you the best in your decision

LATHROP [00:25:57] OK. Thank you. We appreciate you being here today. Anyone else here as a proponent wants to be heard? Anyone here in opposition? Anyone in a neutral capacity? We do have one letter of opposition that has been sent by Ken Dahlke. That will be part of the record, as it necessarily is required to be. And with that, we'll close the hearing on the confirmation of Mr. Arp, and that will bring us to LB686.

PANSING BROOKS [00:26:45] Welcome, Chair Lathrop. This opens the hearing on LB686.

LATHROP [00:26:51] Thank you. And good afternoon, Vice Chair Pansing Brooks and members of the Judiciary Committee. My name is Steve Lathrop, L-a-t-h-r-o-p, and I'm the state senator from District 12, here today to introduce LB686. I brought this bill to continue the discussion about the overcrowding in the Nebraska Department of Correctional Services. In addition to understaffing, I've come to view overcrowding as one of the core ailments within our corrections system. At last count, the system as a whole was above 160 percent of its design capacity, and some facilities remains significantly more crowded than that. Crowding in our correctional facilities has wide-- has wide ranging impacts such as reducing access to rehabilitative programming, limiting flexibility for the Department of Corrections to assign inmates to the least-restrictive settings possible, and placing inmates, staff, and the general public at greater risk of harm. The current overcrowding crisis has also exposed the state of Nebraska to federal litigation. And should this overcrowding persist, which appears to be the path we're on, our Board of Parole and our Governor will be placed in a situation next summer that is challenging, to say the least. It is with these consequences in mind that I introduce LB686. This bill modifies the Correctional System Overcrowding Emergency Act to encourage continued effort-- efforts to reduce overcrowding in our prisons, as well as overflow into county jails. It's really in substance sort of a soft landing for the

Department of Corrections, as opposed to going from 140 percent of capacity, if you don't meet that goal, down to 125. I regard it as a softer landing for the Department of Corrections. As you may know, and this committee appreciates, I continue to be frustrated with the fact that we don't seem to be on course to get to below 140 percent before July 1, 2020, and I'm hopeful that we can find solutions and that this bill can be part of that process. With that, I'm happy to answer any questions you might have and I appreciate your consideration of LB686.

PANSING BROOKS [00:29:17] Thank you, Senator Lathrop. Any questions for Senator Lathrop? Senator Lathrop, I have a question. So--

LATHROP [00:29:25] OK. Good.

PANSING BROOKS [00:29:26] --could you go into this a little bit and what your thoughts are-- how-- so I don't think you intend to be kicking this can down the road.

LATHROP [00:29:33] Not at all.

PANSING BROOKS [00:29:34] No?

LATHROP [00:29:34] Not at all. I have-- I have concerns that if we require that someone-- that the Department of Corrections get the population below 140 percent and they don't make it by the emergency date next summer, that they'll have to take the population down to 125 percent. And now we've done something that was put into statute to provide an incentive. It's been hard to see that the Department of Corrections has been responsive to the incentive in that bill, and now I think this is a more realistic way of dealing with getting the overcrowding down.

PANSING BROOKS [00:30:17] OK. And-- and how-- how do you believe that-- that-- so I understand what you're doing, because that incentive was there. So if this provides an incentive and we take away the incentive and we haven't seen movement to fixing the issue, I'm just interested in what your thoughts are on that.

LATHROP [00:30:38] Well, yeah, we have the director here, I think.

PANSING BROOKS [00:30:42] He is here.

LATHROP [00:30:42] I believe he's in opposition and I'm-- and we'll look forward to his testimony. I-- you know, we don't have to incorporate this soft landing into the bill that comes out of this committee. I think we need to see some movement or some plan on the part of the-- the Department of Corrections that-- that provides us with a different answer than the one we heard in the briefing. When we had a briefing in January, the director, my recollection is-- it was not on the record, but my recollection is the director testified that

he didn't believe they were going to get below 140 percent, they-- and they didn't need anything from the Legislature, the Judiciary Committee, or the Appropriations Committee that would help them get below 140 percent. And I've expressed this more than once. I'm completely frustrated. I'm completely frustrated because I think this committee is committed to providing policy support for the Department of Corrections to aid them in alleviating the overcrowding and meeting the deadline. And I just-- I don't feel like we're getting any feedback that's been constructive or helpful. And maybe they have some plan that they haven't told me about, but I haven't heard one that will get them below 140 percent. And I feel like the Appropriations Committee has been on the same parallel path where they have tried to make some determination as to what needs to be done to get the-- to alleviate the overcrowding and meet the deadline next July.

PANSING BROOKS [00:32:29] Yes, I-- I share your aggravation and, you know, doing the same thing over and over again, I guess, is the definition of insanity, supposedly, so hopefully something will happen and something will break free. But otherwise, we've got to work to protect our communities.

LATHROP [00:32:45] Right. I think-- I'm impressed with the commitment of the Judiciary Committee to enact policy that will help the Department of Corrections meet that deadline and alleviate overcrowding. My frustration has been it's hard to get a plan out of the Department of Corrections. And every time we have a bill in this committee, and you've brought up a number of them, that tries to restructure sentencing or slow down the rate at which people are going into the department or the duration of time they spend there, we run into opposition from the Attorney General's Office and others that's making solving this problem virtually impossible from a policy point of view.

PANSING BROOKS [00:33:27] Thank you for bringing this, Senator Lathrop. Any other questions? No. Thank you, Senator Lathrop. OK. Proponents for LB686. And we have the on-deck chairs, if you're willing. [INAUDIBLE] welcome.

KELLEE KUCERA-MORENO [00:33:50] Hi. Kellee Kucera-Moreno, K-e-l-l-e-e K-u-c-e-r-a-M-o-r-e-n-o. I would like to apologize to the committee. I come here and speak from my heart. The fact is last year I studied you guys, I learned a lot, and I do plan on share-- sharing that with the constituents of Nebraska. I think there's a lot of people out in the community like me that don't know what a senator is, the Unicameral, any of this, and that's humbling to say, but it's the truth. I'd like to read a letter from-- that I wrote from Judge Maret, and it was in hopes that she would take a look at my husband's situation of being incarcerated. I'm going to skip that one-- 2018 Nebraska corrections reform, I got a snippet of a letter that on January 19, 2018, if this is correct, that a panel and citizens' discussion featuring Mr. Doug Koebernick, Inspector General, Nebraska Corrections; former Senator Danielle Conrad, director of ACLU; Professor John somebody, he's a writer of the criminal justice system, I think I want to call him; and Mr. Shakur Abdullah, case manager at ReConnect, Inc. And I have met him and he is with

reentry skills and services. The Nebraska corrections system has been the subject of continued study and controversy. In recent, the three branches of government and the cooperation with Community [SIC] of State Governments, and a considerable examination of the corrections, the ACLU has filed a suit concerning overcrowding, health issues, and other problems alleged as part of the corrections system. Other critics of the system have spoken of the overemphasis on minimum sentencing, lack of restorative justice, delay in the restore-- restoration of civil rights to the released prisoners, and issues that lead up to probation and inmate education. The panel will discuss its perceptions of what needs to be done and how it needs to be done through state action, finances, volunteer work, and the mobilization of citizens. Volunteer work and the mobile mobilization of citizens is the most important. People who have been incarcerated, family members, we know better than anybody what we need. My credentials is I've been an addict and an alcoholic. I've been in recovery since 1986 with treatment, mental health services. I'm on disability. I was put on disability because of breast cancer. Nebraska has taken care of me, and I'm one of the few people. There's a lot of people who Nebraska hasn't taken care of. We need to be out in our community taking care of ourselves. My father died, left \$8,000. I promptly gave my sister \$1,000 for taking care of him, and the \$7,000 is gone, most of which has gone for me traveling back and forth to Omaha for-- to support my husband, to give him money for Native American drums, a treatment program. I've worked my butt off, and my money is going towards the system and I'm tired. Thank you.

PANSING BROOKS [00:37:07] Thank you, Ms. Kucera-Moreno. Any questions? No. Thank you for coming.

KELLEE KUCERA-MORENO [00:37:14] Thank you.

PANSING BROOKS [00:37:16] Next proponent. Welcome.

DOUG KOEBERNICK [00:37:24] Thank you. 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 of Corrections. First of all, I want to thank Senator Lathrop for introducing this bill, and I also want to thank the Judiciary Committee for listening to all the different Corrections bills over the last few months. This morning my wife said, what are you doing today? I said, I'm testifying in front of Judiciary. She said, again? And I said, yeah, they're probably getting tired of me. But this bill, as Senator Lathrop explained, really puts-- makes some changes to the Overcrowding Emergency Act that I think are very important for a couple different reasons. First, right now, if-- if the Overcrowding Emergency Act were to go into effect, to get to 125 percent of design capacity, over 1,200 people would have to be released from the Department of Corrections. In 2014, the LR424 Committee looked back at some of the things that the department had done in the past, and they had figured out ways to move people out before they were ready, and the result was a lot of people came right back in. So for that reason, I think setting some sort of new mechanism in this act

would promote public safety, it would help people to succeed when they do get out. And the second reason is that I also think that this enables the Legislature to set a goal for what they believe the capacity of the system should be. Right now, we're running at about 160 to 163 percent of design capacity. In the past couple years, Alabama was the only state that was running at a higher capacity than Nebraska. In the handout I gave you-- I gave you a couple of handouts. One has several articles from Alabama, including kind of a plan laid out by their governor. And in it, she says they're now operating at 160 percent of design capacity, and if that's accurate, that would mean that Nebraska is now the most overcrowded system in the country. So we really need to look at where do-- where does the system need to go, how does it need to be operated in a safe manner, should it be at 140 percent of design capacity, 130, 125, and I think this bill would provide the Legislature and the Governor with a means of-- of setting that goal. And after setting that goal, then they can develop more effective and strategic plans, short term and long term, for the future in operating such a system. So the two handouts I gave you, one was from Alabama. It has a lot of really interesting information, including comments from their department of corrections that talks about how overcrowding, understaffing, things like that, lead to more violence and to negative outcomes in a prison system. And then the other one has a lot of data on it. If you go back to 2002 when LB46, which created this act, was passed in 2002, 2003, you can compare where we're at then to where we're at now as far as the design capacity and how each facility is operating now versus back then. In the back page, there's also some interesting information that just shows you what kind of offenses people are in for right now, and you can see the changes between 2003 and 2019. And one of the things that Director Frakes has talked about is you have a different population, a more violent population. This might indicate that that is accurate. We also have to look at crime in Nebraska. So I did a little snapshot there on the bottom. I think that's something the Crime Commission actually could dig into a little bit more. So with that, I'll close. I'll apologize for being out of breath because I had a run like four blocks get over here because I thought LB686 was last, so I'm a little-- phew.

PANSING BROOKS [00:41:26] Thank you, Mr. Koebernick. Any questions? Yes, Senator DeBoer.

DeBOER [00:41:31] Thank you, Mr. Koebernick. So I think you heard Senator Pansing Brooks ask Senator Lathrop after his opening, you know, if these incentive-- by sort of softening the incentives, that we had to-- or the-- I don't know if it's an incentive so much as a stick more than a carrot. But on the Department of Corrections, are they still going to be properly incentivized if we step down this process?

DOUG KOEBERNICK [00:42:05] Yeah, I-- I think so. I mean, there are efforts being made to provide more programming within the department. And if we can slow that down and have a more stair-step, gradual stepping down of that, of the act, I think we-- we-- we would assist the department in that way that they could be better preparing people for those eventual releases. Right now, to release 1,200 people, there's not even a pool of

1,200 people. There's only about 900 people that are parole eligible right now, and not all of those are very good candidates, so I think it could assist them.

DeBOER [00:42:41] And then should we have some other-- should the Legislature-- we've been trying to sort of work on what's the policy process we do to help get the overcrowding emergency-- you know, to forestall it, to keep it from happening, to make it smaller. We don't seem to be succeeding from a policy perspective, at least at the moment. We haven't found the right piece, I guess. So is there some other angle we should be approaching this from? I mean, should we just accept that we're going to be overcrowded after-- after the overcrowding emergency gets declared? And then should we be putting money aside for, you know, defending against this ACLU lawsuit? I mean, are-- you know, maybe we haven't found the right incentive. Do you have any idea of maybe another direction we might go that would-- I'm sorry to kind of put you on the spot here but--

DOUG KOEBERNICK [00:43:46] Well, that's my job.

DeBOER [00:43:50] --is there another direction we might go that we say, well, you know, we don't seem to be making a lot of progress so maybe we should-- we should go a different angle?

DOUG KOEBERNICK [00:43:57] You know, the-- the problem with this that-- this is a huge problem, as everybody knows in here, and there's so many different pieces of the puzzle. I mean, one is you can use this act to help encourage the Parole Board to move people out that-- to take kind of a second look at. But we also need to look at the-- the number of beds in the system. You need to look at the-- the programming being provided, like right now they're missing-- I believe 10 out of the 40 mental health practitioner positions are vacant in the department, 10 of about 40 of the substance abuse counselor positions are vacant in the department, over half the registered nurses are vacant in the department. All those things impact behavioral programming, healthcare, things like that, so we have to get a handle on the staffing, you have to get a handle on the overcrowding, and there's different ways of going about it. I mean, there's, you know, there's lots of different options out there. One of the thing-- you have 160 beds that's-- that are coming on-line at the Communications Corrections Center for women, which will now open up about 100 beds for men in the Community Corrections Centers in Lincoln and Omaha, so that will help bring that capacity figure down here in the near future a little bit. And then around January of 2021, another 100 beds of minimum-security housing will come on-line at the Nebraska State Penitentiary, so now you're getting it down a little bit closer to that 140 percent. So you combine that with some of these other things, as far as making people better candidates for parole, to encourage the Parole Board to move them out. I think beefing up the reentry grant program that the Legislature funded in 2014 would also be very beneficial and encourage people to-- or have-- let them have better success on the--

on the outside, as well, get prepared on the inside. So there's lots of different things that I can-- I can write down a whole lot of different things for you.

DeBOER [00:45:44] So just so I'm perfectly clear on this point, can we build our way out of this problem?

DOUG KOEBERNICK [00:45:51] Not by July 2020.

DeBOER [00:45:52] And could we do it if we had longer?

DOUG KOEBERNICK [00:45:57] If you had longer, yeah, I mean, you can add beds in a certain period of time. But it's a combination of things. I don't think we want to build 1,200 beds. But it depends on where the Legislature and the Governor want to go as far as the capacity of the system. If you want to get down to 125 percent of the design capacity, I mean, you also have the whole front end as far as probation and sentencing and things like that, too, so to get-- to move down 1,200 spots, that's-- that's significant and I think it would take some additional beds.

DeBOER [00:46:29] OK. Thank you.

PANSING BROOKS [00:46:29] Thank you. I have some questions. Or did you have questions, Senator Chambers? OK. So thank you for coming, Mr. Koebernick. Number one, could you talk through the differences in operational capacity versus design capacity, because that's a change in this statute.

DOUG KOEBERNICK [00:46:46] Yeah. Design capacity is really what a facility was designed to hold when it was originally built. So if you had a facility that was originally designed and built for 1,000 incarcerated individuals and had 1,000 people living in there, that would be operating at 100 percent of design capacity. If you had 2,000 people in there, you'd be operating at 200 percent of design capacity. Operational capacity is a little bit harder to define. In the statute, operational capacity is really defined as 125 percent of design capacity. The department has their own definition for operational capacity, but they have to-- that's when you kind of take in-- into account how a facility is structured and whether it has enough core support services to serve that population. So if you have a facility that's running at 200 percent of design capacity, it's going to be short recreation space, education space, kitchen space, a lot of those different things, and-- but if you would improve those core support services in those areas, then you could say, well, now we're operating at more toward the operational capacity of like 100 percent or whatever it would be. But that's kind of a vague number. I know Marshall Lux, before he retired as the Ombudsman, put together a paper on that to differentiate between the two, and I could get that to the committee.

PANSING BROOKS [00:48:10] I-- I would like that, please. So also, could you-- do you have the bill-- the amendment in front of you?

DOUG KOEBERNICK [00:48:16] No, I don't.

PANSING BROOKS [00:48:20] Is there a copy of the amendment that somebody could get to him? He has it, OK. I guess I'd just like to walk through a little bit of the-- we've got a lot of percentages here. We've got 140 percent of design capacity on line 25. And then later on, on page-- that's on page 2. And on page 3, line-- let's see, where am I? --10 it talks about 130 percent of design capacity. Could you walk through a few of those for us, just to get it all on the record.

DOUG KOEBERNICK [00:48:52] Oh, OK. Yeah, the way the bill is structured, on July 1-- or currently the law says on July 1, 2020, if the department is operating at over 140 percent of design capacity, the Governor shall declare an overcrowding emergency. And then it encourages the release of people until it gets down to operational capacity or the-- or 125 percent of design capacity. I believe the 140 percent number came from the case out in California where the federal-- where the courts got involved. This bill was originally-- or the act was originally drafted in 2002, I believe, and passed in 2003, and so there was a lot of activity going on in California at the time, and we were kind of approaching that 140 percent number back then, if I recall. Then on page 3 it says on January-- so the law or the bill would say on July 1, 2020, if you're over 140 percent, the emergency is declared and you need to release people, really, until you get to 140 percent. Previously, you go down that other-- to that 125 percent. On the next page it says--

PANSING BROOKS [00:49:50] Excuse me, before you go on, so-- and then you added "until December 31," so why-- why that range of dates?

DOUG KOEBERNICK [00:49:57] It's just a six-month time period.

PANSING BROOKS [00:49:58] To allow the department to act or why is that?

DOUG KOEBERNICK [00:50:00] Well, you have to give the Parole Board some opportunity to-- to act and follow the emergency act, I believe--

PANSING BROOKS [00:50:07] Thank you.

DOUG KOEBERNICK [00:50:07] --and the department, as well, would assist with that.

PANSING BROOKS [00:50:10] So go ahead.

DOUG KOEBERNICK [00:50:10] And then the next one would be to-- starting January 1, 2021, until June 30, 2021, that overcrowding emergency would kick in at 135 percent of

design capacity. Six months later, on July 1, 2021, it would change so that the overcrowding emergency would kick in at 130 percent. And then on January 1, 2022, it would kick in at 125 percent, and then it would just stay there so that your system couldn't be over 125 percent of design capacity. And the reason I came up with those dates and numbers is really the numbers-- I-- I thought that the original intent of the Legislature was to get it down to 125, though, the way it was written, it would allow it to creep back up and if you stay at 139 percent forever and ever, you could just operate your system there. I think 125 percent is a pretty fair number to our goal to-- to look at and to achieve, and so that's kind of where the direction came for that. And then as far as the six-month time period, that's something I just came up with, but you could put any time in there that you wish.

PANSING BROOKS [00:51:14] Thank you. I believe you were working in the Legislature when LB605 was going on, weren't you?

DOUG KOEBERNICK [00:51:20] Correct.

PANSING BROOKS [00:51:20] And so you're pretty familiar with the law as set, as-- as written prior to this bill, correct?

DOUG KOEBERNICK [00:51:29] Correct.

PANSING BROOKS [00:51:31] So what I'm interested in is-- it's always good to relook at the law, and so I'm interested in the fact that on page 3, if you start in-- in section-- well, let's see, line 24, it's the new section (4) then under this amendment. What-- do you think that the-- because it talks about other such reconsideration and-- and for all other consideration of committed offenders eligible for parole while the correctional system overcrowding emergency is in effect, the board shall order the release of such committed offender unless, there's the big "unless," unless it is the opinion that such release should be deferred because-- so then we've got (a), (b), and (c) on reasons that they don't defer. Was that discussed originally, and could the Board of Parole just say, oh, all these conditions exist for everybody, there's nothing we can do, no one's going to be released, it's over?

DOUG KOEBERNICK [00:52:31] Yeah, I think that language was in the original bill back in 2003.

PANSING BROOKS [00:52:34] Yes. Yes.

DOUG KOEBERNICK [00:52:36] And, yeah, I do-- I do think that gives the Parole Board an out there. But if you go to what was formerly number (5), "The board shall continue granting parole to offenders under this section until the director certifies that the

population is at operational capacity," then that's kind of a second-- OK, they kind of get an out above that--

PANSING BROOKS [00:52:55] Where did-- where did you just read?

DOUG KOEBERNICK [00:52:56] It would be on line 9, starting on line 9 on page 4.

PANSING BROOKS [00:53:03] Line 9 on 3 and 4?

DOUG KOEBERNICK [00:53:03] So there-- I mean, the Parole Board should have the ability to look at the risk of the individuals that they're-- they're considering for-- for this parole. But then there's that extra language, and I don't know what the thought was of the Legislature for that section, but it seems like that's also kind of another push toward them to-- you know, you got to keep going, you got to keep looking at these people, these candidates, and you can't just stop. That's how I read it.

PANSING BROOKS [00:53:31] OK. And so that language in line-- starts in line 12 and then through 14, "The director shall so certify within thirty days after the date on which the population first falls below such percentage," and you're talking about the percentage on July 1, 20-- or January 1, 2021, with--

DOUG KOEBERNICK [00:53:54] Yeah, all those different percentages as it stair steps down.

PANSING BROOKS [00:53:58] So the goal is to enforce action. And so what happens when they don't act? Is-- do you have a feel for that?

DOUG KOEBERNICK [00:54:07] No, I don't know what would happen. We-- we might find out.

PANSING BROOKS [00:54:15] OK. So we just continue. And-- and did you just say that one of these articles shows that we're number one in-- in over design--

DOUG KOEBERNICK [00:54:24] It indicates, yeah, the governor of Alabama, in her statement about her plans for-- she's got a lot of plans down there for building new facilities but beefing up reentry, different things like that, doubling the number of staff that they have. They have the-- the federal court system is involved down there right now on staffing and on restrictive housing. But in it, she indicates that they're at 160 percent of their design capacity. And I looked back at their-- the latest stats I could find from them were from December and they were at about 168 percent. So either way, they-- they've come down quite a bit recently, whereas we've kind of crept up, though we will now go down here in a few weeks when the new beds come on-line at Community Corrections. So we might be just number one for a few days.

PANSING BROOKS [00:55:09] And was there any feeling by CSG that by continuing to build, that we're going to solve the problem at all? I mean it does change it, but-- but if the-- if the numbers are going up, then it's the old "if we build it, they will come."

DOUG KOEBERNICK [00:55:25] Yeah. Well, and CSG projected that our numbers would go down, so I don't know that they ever really got into the building part.

PANSING BROOKS [00:55:33] OK. Thank you, Mr. Koebernick. Any other questions? No. Thank you for coming. Other proponents? Additional proponents? OK. Opponents, any opponents? Welcome, Director.

SCOTT FRAKES [00:56:08] Good afternoon. Good afternoon, Vice Chair Pansing Brooks, members of the Judiciary Committee. My name is Scott Frakes, F-r-a-k-e-s. I'm the director of the Nebraska Department of Correctional Services, NDCS, and I'm here today to provide testimony in opposition to LB686. On December 1, 2018, NDCS and the Parole Board submitted to the Legislature a joint report outlining the process by which each agency would respond to the declaration of an overcrowding emergency. That document lists the steps NDCS has undertaken over the last-- past three years to ensure that individuals are prepared for parole. Part of my recent request to the Appropriations Committee includes \$250,000 in fiscal years '20 and '21 for additional inmate programming. These funds will provide more treatment opportunities to individuals prior to their parole eligibility date. In addition to ensuring that men and women are ready for release, the agency, through funding approved by the Legislature, has been on a steady clip to increase much-needed capacity. In 2017, we added 100 dormitory beds at CCCL. We are putting the finishing touches on the addition of the 160-bed female living unit at CCCL. We will be adding 100 beds at NSP by early summer 2020. The Phase 1 RTC project adds 64 beds in April of 2021, and I have a request from the Legislature for funding, and it's included in the Governor's budget request, for 384 beds that will be Phase 2 of the RTC project. These projects are about more than creating beds or increasing capacity. They encompass the need for core services, mental and mental health facilities-- mental and medical health facilities, provide internal work opportunities, expand food preparation and dining areas, and provide the type of space critical to effective-- to provide effective treatment for individuals. These projects-- these are projects that will help improve the operational stress index of those facilities and the system at large. And the OSI comes out of the 2014 master plan, provides to me one of the best definitions I've ever seen of operational capacity and how you figure out what operational capacity should be. The challenge of addressing crowding or reducing the OSI is not simply a matter of bed space, programming, or paroling individuals. It's the subtle act of balancing available bed space with needed space, necessary programming, core support services, staffing, and the prison population in a way that maximizes public safety. All of these demands must be addressed in a combined and strategic way. It's a misconception that programming is the sole solution to getting people out the door. It's

also a misconception that we can simply build our way out of crowding issues. We need to work with the facility space we have, expand where we can, prepare individuals for parole to the best of our ability, and continue to work with those who, for various reasons, fail to complete or engage in programming and other opportunities that will allow them to move towards release. We cannot deny the impact of a ballooning inmate population. As of March 17, 932 inmates had reached or passed their parole eligibility dates. The population this morning for the system was 5,502 inmates. Even if all of these 932-- 932 individuals were paroled today, we'd still be at just over 135 percent of design capacity. The attached document helps explain why those 932 people are not paroled. Current statutes establishes a challenging but attainable goal of ultimately getting below 140 percent of capacity. Creating additional arbitrary benchmarks that are not possible to attain within the described time frames will do nothing to improve our prison system. It will not cause the prison population to drop to an accepted-- to an acceptable level. Measures to address crowding take time, strategic planning, and perseverance. Thank you for the opportunity to testify today, and I'd be happy to try and answer questions.

PANSING BROOKS [01:00:26] Do we have any questions? Yes, Senator DeBoer.

DeBOER [01:00:28] Good afternoon, Director Frakes.

SCOTT FRAKES [01:00:31] Afternoon.

DeBOER [01:00:33] Thank you so much for coming. I know you have a hard job and so I appreciate your time coming to talk to us. I think some of us saw this as an easing of some of the requirements for the overcrowding emergency by stepping it down slowly as opposed to the flat 140, 125 percent. So is that not how you're reading the-- the situation?

SCOTT FRAKES [01:01:00] No, it doesn't feel that way to me. The time frames, six months, six months, six months, don't really-- in our world, don't provide much opportunity for change in terms of practices or other methods that would change the population numbers or increase the capacity, so--

DeBOER [01:01:18] So would you prefer the flat, if you aren't below 140 percent, you have to go down to 125 percent?

SCOTT FRAKES [01:01:26] Well, my first goal was to get below 140 percent and see if we could get there. As I testified to before, the increase in population we've seen in the last ten months doesn't bode well. It troubles me. But again, we've seen spikes, and then numbers drop down again. So I'm always-- I'm optimistic that we may see a dip again in our overall population that would help us. We have beds coming on-line, and I have a substantial request for additional beds. I realize those won't be completed anywhere close to June of 2020, but that's all part of making progress in the right direction. And I hope that the conversation continues. You know, this is a complicated conversation. I

think we're starting to have kind of a rich conversation around it. The document that I handed out is intentionally marked "draft" because I wasn't really ready to share it, but it just seemed like today was the opportunity to let people know that we really are paying attention to this group of people that are past their parole dates and trying to figure out what are the issues, what can we do different, what changes do we need to make to our system, because it is a large number of people, there's no question about it. But as you'll see, there are some pretty substantial, significant reasons for why many of these people have not yet been granted parole, things that I can't really impact, so now my challenge of course is to figure out what can we do different, how could we impact. And it's also helped us identify some areas where we can really focus our efforts and see what-- see what else we can do to get people not only ready but really seen as ready for parole.

DeBOER [01:03:15] OK. So I guess the 140, 125 is a better system to you because it doesn't have the six-month steps. If we changed the bill that we have before us today and made it a year instead of six months, does that help you? Was that-- is that preferable to you?

SCOTT FRAKES [01:03:36] I'm-- I don't know how it improves on the existing statute, I guess.

DeBOER [01:03:42] OK. OK, well that's probably helpful feedback for us to have. So thank you for that. When do you think you'll get below 140 percent? You've told us you don't think you're going to get below 140 percent by the deadline. When do you think that will be? If you had to-- I-- I know that there's spikes and things but there is a kind of a-- a pattern. There is a pattern that you can generally follow. Your best guess, when do we get below 140 percent?

SCOTT FRAKES [01:04:17] Sorry, I'm trying to run numbers in my head, you know.

DeBOER [01:04:18] Yeah.

SCOTT FRAKES [01:04:21] With everything that's currently funded, and if the population stays where it's at today-- oh, I'm trying to remember. I still don't believe we get below 140, so we still need-- we still have to reduce from the 5,500 where we're at. So the most direct answer today would be funding the 384 beds, completion of that project, which is sometime in 2022, and continuing to do everything that we else-- everything else we-- we can to ensure that people are getting out as soon as possible, continue to look at all of the other things that feed people into our system, see what other things that can be done differently. And you know, I think there's still opportunities for improving different resources within the community that will help both in keeping people from entering the system and helping those that leave the system. It's a-- it's a lot bigger problem to fix than just my piece of it. I've got an important role, but--

DeBOER [01:05:29] I-- I don't disagree. It is absolutely a complicated problem with a lot of different people and-- and organizations involved with it. But I guess, since you're kind of at the head of the numbers on this, you don't-- you don't foresee-- you-- you could not tell us when you would be able to get below 140 percent at this point. Is that right?

SCOTT FRAKES [01:05:52] To definitively say I'm going to be there on a specific date, I can't because everything is in flux.

DeBOER [01:06:00] Um-hum.

SCOTT FRAKES [01:06:00] You know, if you'd have asked me last April, I would have honestly said, based on what we're seeing, I think we're going to hit the July 2020 date. I've got new beds coming on-line. The last hundred beds will come on-line in June of 2020, that we're, you know, currently funded. The population is trending downwards. Yeah, we're on the right path. Now, with the population up significantly from where we were just six months ago, trying to figure out what's going on, we've looked at the last six months. In fact, since you raised that question, I think this is a good thing to hand out right now, so I'll add one more. So what I'm handing out is just a snapshot of the last six months just to show that over the last six months our intakes have been 1,448 people, which is a pretty significant increase. In 2018 fiscal year, calendar year, don't remember which it is, we were about 2,500, 2,600. If we stay on this path, that will be 2,900 intakes in a 12-month period. And our outflow in the same six months-- six months has been 1,279. So the gap between those two has also grown pretty significantly in six months. Now we're trying to look at what's different. We know that people getting parole has dropped some. We know that part of that is because a big part of what used to be the parole population now gets post-release supervision and those are also the people that were probably most likely to attain parole on their PED because they were low-level offenders with less concerns. We've also seen, not so much a significant uptick in revocations, violations of parole in terms of numbers, but if you look at the ratio between the number of people getting parole and the number of people that are not being successful on parole, that number is up as well. So-- so we're what-- you know, every day we are trying to figure out is this just a blip, is this just another one of those anomalies and we'll see a leveling and-- and, you know-- we know that the total postrelease supervision numbers are still-- still have the potential to trend higher. We're not exactly sure what they're going to cap out at. You can look at these numbers over six months and see that we were averaging somewhere around 70 a month across that. Yeah, it's pretty close. So, you know, if we get to 100 on average a month for PRS, that would be a pretty significant increase, and that certainly would contribute to bed space. If there's other issues that right now are contributing to why people aren't getting parole that we have a role in, typically that's going to be programming, but it also can be helping people to prepare for, get engaged, behave appropriately, and all those pieces, so it's a daily, daily effort and a daily conversation. And, you know, we talk about the 932 people as though if-- if we could fix those 932 and get them out today, we'd be good. But six months from now,

there will be another 400, and a year from now. So that 932 will be a different group of people, even-- there's already changes because some of those probably got paroled since we pulled those numbers a few days ago, so it's always in flux.

DeBOER [01:09:36] So is there anything you need that we might be able to help you with in terms of getting more data, having more information about why these trends are going that way? Is there anything we can study or look at or help you with in that kind of way that will help you guys to have a better understanding of why we have these flux situations or why there's an uptick suddenly, or can we help you?

SCOTT FRAKES [01:10:03] OK, and I greatly appreciate that. Support my request for additional bed space because that is part of the-- the equation here. It's important that we build beds thoughtfully and at the right time. As is often said, build them and they shall come. Well, if you do that in the correct way, you won't drive a perception that, oh, now we can bring more people in the system because we have space, which unfortunately, history has shown, if you overbuild prison beds, that's exactly what happens. I-- having leadership in the Crime Commission that has a strong background in data analysis and data collection and performance enhancement certainly would help all of criminal justice in terms of-- of our ability to-- for them to take all the information that they are the keepers of and help us really understand what's going on across the system, so that's another area. And I think you have a really good candidate in that position. You know, the rest of my budget request provides what we need for the next two years to carry out our work. As Mr. Koebernick testified to, I don't-- today I don't need more FTEs, I need people to come fill the positions that I have that are vacant so that we can maximize our resources. Conversations around compensation in a variety of areas continue. There's a lot of work going on around that, so I still remain optimistic that we're going to be able to address some of those issues as well.

DeBOER [01:11:45] So-- so let's talk for a second about those empty spots. Is it just compensation that is keeping those spots empty? Or-- or, you know, we were talking with some folks, some workers a while back at the prison, and they said that, you know, they were interviewing candidates, they had a number of good candidates come in, they were told they could only hire two, they asked if they could hire three, they-- you know, the positions were available-- they asked if they could hire three, and they were told, no, after all, only one. So what's happening there? Why-- why aren't we filling these positions? I mean, yes, compensation is low, we probably need to bring that up. Why aren't we filling these positions? Do you have any comments on that?

SCOTT FRAKES [01:12:33] I hope there's a misperception or some confusion around it because I would question exactly why as well. Where-- we should be in a place today where if we have three good candidates and we have two vacancies at NSP and one vacancy at Tecumseh, that we're still entering into some conversation to see if we can hire all three people. And if it means-- whether it means moving the position to a place

where we can deploy it or seeing if we can convince that person to go to where the, you know, the work currently is, those are both options. So I can't really speak to the specifics. If you can get me more details or have somebody reach out to me, I would gladly do that. But that would be my expectation that-- that we are hiring every good quality-- qualified candidate that we can find to fill all of our vacancies and keep them full.

DeBOER [01:13:25] It just seems strange to me though that we have this many vacancies for this long and that we continue to have these vacancies. I mean, is this just a compensation issue or-- I guess I'm just kind of flummoxed--

SCOTT FRAKES [01:13:41] Yeah.

DeBOER [01:13:41] --why we continue to-- I mean, this has been a perennial problem. I'm-- I'm new here but I've looked at the history of it and this is not something that just happened, you know, six months ago or something like that. This is-- this is more long term than that. So--

SCOTT FRAKES [01:13:53] Much.

DeBOER [01:13:55] --why do we not have these positions filled? Are we not advertising them in the right places? I mean, I-- you know, I don't even know. I'm willing to entertain any idea.

SCOTT FRAKES [01:14:03] No, I think-- so if you view it in the same lens as we view the conversation about this 932 people that are parole eligible as though it's a static body, then that-- that would be confusing. But with-- I believe we have about 40 chemical dependency positions, so through normal turnover you're always going to have vacancies of movement. So that's a piece of it. It isn't that the same specific position is never filled. We fill a position, someone else leaves. There is-- it's a competitive job market. There are opportunities in the community, true across all of mental health, behavioral health, healthcare, and some people in those fields work in prisons for a while and they reach a certain point of burnout. And so they see the community as an opportunity to still do the work they know and love and they're certified for, but in a different setting. Working inside prisons is stressful, it is dangerous, and our population are a challenging group of folks. It can be incredibly rewarding when you have that breakthrough, but for many of them, that-- the breakthrough is not easy to get to.

DeBOER [01:15:13] And I get that and-- and that makes a lot of sense to me on the one hand, like, yeah, you're going to have some turnover and maybe more than your average number of turnovers than you would in, say, a different setting for the same type of job. But it seems to me that the number is very high, and I'm wondering if there's something

else that we could do. I mean, again, I'll ask you, how can we help? You know, what can we do to-- to help you fill those positions more regularly?

SCOTT FRAKES [01:15:44] If I identify something else that I believe you can assist me with, I promise I'll ask. At this point, though, I have the funds. Staff that are represented by unions, we've got to go through that process. There are other positions that are shared across agencies so we work together to find out what solutions would work to help us all, nursing being a great example. But at this time, I have the money in my budget, it's just a matter of figuring out what's the right approach and what will work for the needs of everybody that's involved. And as you said, some of these situations, it's not just compensation. So the more that we-- it's not me, it's "we"-- are successful in making our prisons as safe as possible, the more that we're able to do in reducing the attacks against staff, the more that we do to make staff truly feel safe within the setting, the better our retention is going to be, and especially true for those-- it's true for everybody that works there.

DeBOER [01:16:49] And isn't that-- I mean, it seems to me that one of the functions of overcrowding is that the prison is more dangerous.

SCOTT FRAKES [01:16:57] I think--

DeBOER [01:16:57] You've got more people per staff member, that seems less safe to me.

SCOTT FRAKES [01:17:03] That's a potential outcome.

DeBOER [01:17:08] Well, that's-- that's what I've got right now. Thank you. Thank you for your testimony.

PANSING BROOKS [01:17:13] Anybody else? OK, Senator Chambers.

CHAMBERS [01:17:15] Mr. Frakes, did I read correctly that you or your stop-- top officials are saying that those two recent assaults have nothing to do with staffing or training?

SCOTT FRAKES [01:17:32] Those two specific incidents, there was-- the staff were properly trained, there was the right number of staff on duty, they-- yes, that's correct.

CHAMBERS [01:17:41] Well, how did it happen? Because it did happen.

SCOTT FRAKES [01:17:45] Yes.

CHAMBERS [01:17:46] So what is the explanation that's being given to you so that you wouldn't feel that it was not a matter of inadequate staffing or inadequate training? Was somebody inattentive who was there?

SCOTT FRAKES [01:18:05] So at this time both of those are criminal investigations, so I'm not going to comment yet, nor have I had a chance to review the reports, so I'd be speaking from, I think, inadequate information as well.

CHAMBERS [01:18:18] And just for the sake of the record, I'm not going to ask you specific questions. How long ago did those events take place? How many days?

SCOTT FRAKES [01:18:30] March 21, and day before last.

CHAMBERS [01:18:42] And today is the 27th.

SCOTT FRAKES [01:18:43] Yes.

CHAMBERS [01:18:44] So it's a matter-- that's for the record. And you haven't had a chance to review any reports yet? Have any reports been generated?

SCOTT FRAKES [01:18:52] Yes.

CHAMBERS [01:18:54] And if you don't mind me asking, and if it's not prying, why haven't you had a chance to read any of them?

SCOTT FRAKES [01:19:00] Well, again, they're both criminal investigations, so I give the people that are responsible to do that the opportunity to collect those-- the information and-- before I--

CHAMBERS [01:19:08] They don't let-- excuse me, they don't let you read the reports? You're the director of Corrections.

SCOTT FRAKES [01:19:14] They will.

CHAMBERS [01:19:14] Who's conducting the investigation, the State Patrol?

SCOTT FRAKES [01:19:17] Yes. And, yes, I will have access.

CHAMBERS [01:19:21] And have they given any idea how long it will take them to complete this investigation?

SCOTT FRAKES [01:19:27] I have not asked, no.

CHAMBERS [01:19:29] Now they know who was injured, they know the perpetrators, they know precisely where it happened, and in a week's time they haven't been able to generate any reports yet of any significance? Have they even let you read a detailing of what happened?

SCOTT FRAKES [01:19:53] I have not asked for that at this time. I have enough information to be able to take the steps I need to at this time to make sure we're addressing any immediate concerns.

CHAMBERS [01:20:03] And what steps are you taking? Great, long, fast ones? No, what-- what steps are you taking, if it's not revealing any confidential information?

SCOTT FRAKES [01:20:16] Direction on making sure that procedures are followed correctly and that those procedures are clear and understood by all the staff involved.

CHAMBERS [01:20:27] And let me ask this, then I'm through.

SCOTT FRAKES [01:20:31] OK.

CHAMBERS [01:20:31] And I don't think you have to reveal anything about an investigation on this. There was adequate staffing, training is not deficient, somebody was not where they should have been or somebody was not doing what ought to have been done. Would you agree with that? If everything was being done as it should have been done, how could this occur?

SCOTT FRAKES [01:20:57] In-- in one of the incidents I'm aware of, at least one staff mistake so far, so-- or I believe that to be true. But again, I'm-- I want to see all of the information before I jump to conclusions. But I believe an error was made by staff, less clear about who made the error. In the case of the other assault, the individual that was assaulted at the Diagnostic Center, have not identified anything except just a direct attack.

CHAMBERS [01:21:30] Maybe you can answer this for me. I'm very puzzled by it. Will Rogers said: I only know what I read in the papers. One of the staff members was stabbed 15 times. Did you-- were-- is that correct?

SCOTT FRAKES [01:21:45] I can't-- that's a number that was given by other sources. I've haven't seen the--

CHAMBERS [01:21:50] But the person was released from the hospital the same day, isn't that correct?

SCOTT FRAKES [01:21:53] Yes.

CHAMBERS [01:21:54] So you get-- you've sustained-- was "stab" maybe an over-- a word that overstated what happened?

SCOTT FRAKES [01:22:08] It may not be exactly the correct medical term. I think Dr. Deol used a different term. But it draws an image that, I believe, it's probably somewhat inconsistent with what occurred, but he had puncture wounds and at least I'm aware of-- I don't know if it was one or two, and I-- and it may turn out that-- that I'm wrong there, but at least one of them required sutures. So it was a puncture-type weapon, not a-- not a slicing weapon.

CHAMBERS [01:22:40] I'm-- I'm so puzzled. I don't want to keep saying I have one more question, but could it be that that term was used mainly because a knife-like weapon was used, so any injury caused by the knife would be described as a stab? If you haven't seen reports, you wouldn't know. I'll-- I'll let--

SCOTT FRAKES [01:23:04] Right, thank you.

CHAMBERS [01:23:05] At least you know some of the things that are swirling around in my mind. And when you get the reports, I'd like to get more information.

SCOTT FRAKES [01:23:12] All right.

CHAMBERS [01:23:13] OK.

PANSING BROOKS [01:23:15] Thank you, Senator Chambers. I have a few questions. I-- I'm wondering what percent you think is-- that we should-- what percent should we operate the prisons?

SCOTT FRAKES [01:23:27] Well, I'm hoping that the work that we're doing right now at CCCL and then soon-- when I say soon, soon in Corrections time-- at RTC will help me in my efforts to move us away from being locked into the idea of design capacity as being the right measure and move us towards what the master plan 2014 language did in creating a supportable but flexible measurement of what the right capacity is. And I say that in that with the addition of the 160 beds at CCCL, the design capacity for that facility-- we added 100 beds, originally built to hold 200, so the design capacity will be 460 beds. We will be housing 660 people there. An average daily population will probably be 430-- or, I'm sorry, 630, because we have a lot of movement at community custody level. But we have added dining halls and a kitchen that can easily feed that population, plus all of the sack lunches and everything they do because that's a work-release population. We've added programming space. We've added a new clinic for medical. We've added other components that make that a healthy campus. But truly, I think, the OSI, when we get all done and we can make a straight-faced argument, is going to be-- at

660 people, it's still going to be maybe 110. And my longer term goal would be we'd run it at about 600 and we'd be able to say that's a true operational capacity, 600 people. But under the current statute rules and the conversations that we have, really, under statute, our operational capacity would cap at about 560, roughly, 125 percent of design. So that's part of, you know, where I want to move towards is getting us collectively to think about this differently. The work that we're doing at RTC, same vein, it's about creating all the core support services that can provide healthy support, space, programming, recreation for the people that live there.

PANSING BROOKS [01:25:45] OK, so do you believe that those design capacities, once we get to that number, are sustainable?

SCOTT FRAKES [01:25:51] If we don't go back into the pattern that the state has fallen into and many other states have fallen into time and time again, we recognize that we're at a point where something's got to happen. We commit to the construction needed as well as looking for every opportunity to try and not grow our population, remembering that we are a low-incarceration state, and that's-- it's easy to lose sight of that, but we truly are at 270-- we heard last week in Appropriations 274 per 100,000. Worldwide, that's a high number. But in America that puts us, you know, in about the maybe top or the bottom 10, 11, somewhere right around there, consistent with places like Washington State, so-- so as long as we maintain that or maybe we're able to even improve on that through things like veterans courts and drug courts and all of the other good work that's going on. So if we can do those pieces, we build the right beds, we're strategic about it and we don't stop, because we address all of these issues, we don't overbuild so that we don't encourage raising our incarceration rate-- and then the penitentiary was completely redesigned and rebuilt and opened at around 1981. It is on the other side of its life cycle. LCC, this project fixes most of the issues, but there still be some things from that original 1979 design and construction that will need to be addressed. And by the time we get all those pieces fixed, OCC in Omaha will be on the downhill side of its life cycle. So that's an unfortunate part of the world that I'm responsible for. As a society, we recognize the need to incarcerate part of our population because of the risk that they present to us. We make that contract, that's a contract that we continue to pay in perpetuity.

PANSING BROOKS [01:27:53] OK. I guess I just-- I have some more questions. So what about increasing community beds?

SCOTT FRAKES [01:28:00] I don't want to build beds I can't fill, and that's-- we've added, with the new beds about to come on-line, that's 260 more community beds. It gives us 820 by our-- you know, by our capacity, not design capacity, but 820 beds that we're using for community custody. Right now, I don't feel that I've gotten-- that's-- that's-- we're going to have to work very hard and very diligently and very deliberately to make full use of those beds with the existing population.

PANSING BROOKS [01:28:33] So I'm-- I guess I'm interested, too. I understand you went to the Appropriations Committee and asked for 168 more employees-- pay-- payment for, is that right? Do I not have that right?

SCOTT FRAKES [01:28:46] No.

PANSING BROOKS [01:28:47] No one asked for more money for staff?

SCOTT FRAKES [01:28:48] I did ask to continue to fund the staffing analysis, 48 positions and for 4 case managers. I think that's all. That's what I remember.

PANSING BROOKS [01:29:02] Do you know how much that ask was?

SCOTT FRAKES [01:29:04] No, not off the--

PANSING BROOKS [01:29:05] I'm sorry, I wasn't there.

SCOTT FRAKES [01:29:05] Yeah, not off the top of my head, no.

PANSING BROOKS [01:29:08] OK. And of course we do want more employees and we want the staff safe and-- and of course everybody in the prison system safe. And again, we've said-- we've heard for years that the-- that the funding is sufficient from you. Right? So I guess-- but then the numbers went up. So what-- why do you feel you're confident now? What, what gives us hope now that something's going to work?

SCOTT FRAKES [01:29:39] I'm-- I'm not following your question.

PANSING BROOKS [01:29:41] Well, you-- you've come to us and said you don't need additional funding from the Legislature. You said to Senator DeBoer you don't need any additional funding, everything's fine, everything's going all right, we're going to increase some-- some community corrections beds and that we'll be fine, yet our numbers are going up. And so-- but you continue to say we're fine, we don't need anything else, right?

SCOTT FRAKES [01:30:04] I don't think I say we're fine.

PANSING BROOKS [01:30:05] Well, we don't need any more-- you don't need any more from the Legislature right now.

SCOTT FRAKES [01:30:10] I need the requests that I made and that's, you know--

PANSING BROOKS [01:30:13] OK.

SCOTT FRAKES [01:30:15] And again, if you look at our budget, it has continued to grow every year since 2015. And the ask that I've brought forward for this next biennium is pretty substantial, given all the circumstances in Nebraska, so I'll be very happy if it is supported and funded as I requested.

PANSING BROOKS [01:30:37] So again I-- I just-- I'm interested. You asked for \$250,000 for programming. Is that correct?

SCOTT FRAKES [01:30:44] Additional programming.

PANSING BROOKS [01:30:45] How many programs do you think that will, will provide?

SCOTT FRAKES [01:30:55] I don't want to make a number up. You know, we're going to-- we need to--

PANSING BROOKS [01:30:59] But if you gave us that number, then you didn't make a number up.

SCOTT FRAKES [01:31:03] We need to both maintain and increase our facilitator base, so that's what part of the money for-- is for, for training for staff, for facilitators. We need to continue to look for new options that we can bring on, and especially with the tablets that we now have, and be able to use those tablets as an education platform. So my commitment to the Governor was that this was part of contributing to and getting at least 100 more people parole eligible by ratio, not by just 100 people over the two years. So that would be the one performance measurement we'd look for.

PANSING BROOKS [01:31:40] OK. When you-- I mean, you said that we're actually doing pretty well. But Alabama has supposedly all of a sudden done better than we're doing with many of the same problems, if I read your-- I'm reading through this. They-- they increased funding for Correctional services and health service staffing by \$86 million, significant. They have-- there was a federal court order that required them to double the number of correctional officers in the next two years. The facilities need \$750 million in maintenance. The-- I-- I mean, they've got some of the same kinds of things going on that we do. Meanwhile, in California, of course, the federal judges ordered the release of more than 40,000 inmates. So again, last year we passed a law, a bill, that was my bill, that became Nebraska Revised Statute 83-907, requiring the department to prepare and submit to the board a listing of parole-eligible inmates. Has that occurred?

SCOTT FRAKES [01:32:53] I don't know. I'll find out.

PANSING BROOKS [01:32:55] OK, I would appreciate it.

SCOTT FRAKES [01:32:58] Was that an ongoing request or a one-time request? I don't recall the--

PANSING BROOKS [01:33:02] It-- it was-- it was passed in December of '18. I mean that became law and-- and they're going to-- and it says the process by which the department shall prepare and submit to the board a listing of parole-eligible inmates to be considered or reconsidered accelerated for parole--

SCOTT FRAKES [01:33:17] Oh, well, we-- yes, well, I mean--

PANSING BROOKS [01:33:17] --that whole plan.

SCOTT FRAKES [01:33:20] OK, so we did our report that was submitted in December. We-- we regularly provide the Parole Board with all the information they need. They-- it's a-- it's a partnership, you know. They identify and set hearing dates and we make sure that people are notified and available. But it's all-- it's all information that's accessible to both agencies through the offender tracking system, NICAms.

PANSING BROOKS [01:33:41] OK, and just going to the sheet that you sent out, I'm looking at it and I know that there are 932 inmates that have reached their-- or passed their parole eligibility dates. And you set these out, and my-- my quick math adds-- adds up to more than 932. So can you walk me through this just a little bit? We've got--

SCOTT FRAKES [01:34:06] Yeah, and that's because there's-- they're not-- not unique. There are people that qualify for more than one section, so--

PANSING BROOKS [01:34:12] OK. So we're looking at inmates with additional sentences, that's from assaults within the correctional facility, is that correct?

SCOTT FRAKES [01:34:21] Or out on parole or potentially crimes that they committed and that they were then brought to trial while they're with us, so it's all those factors.

PANSING BROOKS [01:34:30] And can you break-- break those people down into people who have programming and/or people that were under postrelease supervision?

SCOTT FRAKES [01:34:38] Not off the top of my head, no.

PANSING BROOKS [01:34:40] Could we get those numbers--

SCOTT FRAKES [01:34:41] We're-- we are working on dissecting that list just to give a better--

PANSING BROOKS [01:34:45] --because that all applies to it. And then if we look at too much, too little time remaining on the sentence, there's 334 of those. You have some that-- 25 that were-- are life sentences, but you get down to less than six months and there's 169, so that's about-- it's-- it's not a third, it's probably half of a third, which means a sixth, but that does have long numbers.

SCOTT FRAKES [01:35:09] It's substantial, yep. That's a group we're looking at, but here's a group of people that come to us typically, there's occasionally some others, but mostly they come to us with less than six months' time left. They have a short sentence, credit for time served. And there are-- there is some science to supervision as well, and short periods of supervision typically don't achieve much in terms of outcomes. And excessively long periods of supervision also can have the wrong effect. And so that's those groups that are five to ten years, or ten years out. But we're going to continue. I have this-- that's highlighted, the six months, 169. You know, what else can we do, because if there's half of those that we could figure out the right kind of approach, and if they were out for even 90 days, that becomes a measurable number in terms of bed-- excuse me, in terms of bed space.

PANSING BROOKS [01:36:06] OK, then trying not to be discouraged, but we-- we do have the most serious offenses, the murder and manslaughter, 53; sexual assault, 187; assault is 214. I don't know the level of those assaults, but it's sounding like those are pretty serious. But then you get into the nonserious offense groups and other includes 6, and the drugs, which are 141.

SCOTT FRAKES [01:36:35] I think the most interesting thing that I found from this-- looking at this group, because it's, you know, a common belief that we have a lot of people that are in our system that are in for just low-level drug offenses, well, the majority are actually-- have a higher history-- manufacturing, distributing-- a more significant involvement. But also, if you look at the second bullet, the average number of prior convictions for the people in this group of 141 people, 20.5 convictions, and that is exactly the story, that is exactly what I hear when I talk to judges: We have tried interventions, we have tried probation, we have tried every option, and we're out of choice-- we're out of, you know, options. So at 20.5 convictions, I can understand why they end up with me. I wish we had some alternative as a society, but I'm-- I don't have a better answer for those judges either because, of course, these are the people that are also engaging in petty crimes, property crime, shoplifting, and other activities that ultimately have a negative impact on public safety, so.

PANSING BROOKS [01:37:47] So going back to that number, the 20.5, that's the number of prior-- they've had 20.5 prior convictions? So--

SCOTT FRAKES [01:37:56] You can-- if you look at that chart, you can see the peak is right in that time frame. There's a-- there's two people with only one prior conviction. And

then, you know, we get up to, what, seven people with ten priors, and then we get under the 18 to 20, and then you look at the other end of the scope and we have people with 47 prior convictions, extensive, extensive criminal history. And a lot of it, I know, low-level crime, it's just--

PANSING BROOKS [01:38:25] Do we know-- do we know what percent of those people that have had multiple convictions have had any kind of programming?

SCOTT FRAKES [01:38:32] That's something that we're taking apart as well. I did specifically look at one case because it jumped out at me and that's on the next page, Terry E. [PHONETIC], because, I thought, well, that's interesting, he's got a prescription drug issue, whether or not he was-- his prescription, the diazepam-- burglary and some theft, again, low-level offenses, and then we looked into it some more and what I found was he had four opportunities to go through residential substance abuse in 2015, 2016, 2017. And finally, in 2018 they said, we give up, we've done all we can, you've spent a total of about 15 months in residential, you're not-- you don't engage, you're not cooperative. And so they said there's nothing more they can do for him. And that's-- I'm not saying that he represents all of the people, but time and time again, when I dig into these cases, this is more likely what I find. I continue to look, honestly look, for that case where I go either we just completely dropped the ball or I-- you know, I really can't understand how it could be at this place. And I know that case is out there and I bet there's more than one. So-- and as we take apart this group of 932, just as a good exercise for us to really understand what we're talking about, I expect to find that person where I look at everybody and go, how could this be? You know, in the case of-- of Terry E., he should have had an opportunity for his first substance abuse treatment prior to 2013. But when I arrived, the process was, typically, if they got him into treatment by their PED, that was considered success, and if it was a little after, that was OK. So that's one of the first huge changes we made. Now we assess people for clinical treatment in their first 90 days of incarceration, and we target them to get into and complete, and we're getting pretty close now to getting people in at the two-year mark, so then they have time ideally for community custody, as well as completing treatment.

PANSING BROOKS [01:40:47] Well, I really appreciate you and your staff for bringing all this very data-intensive information. It's about as hopeless as anything I've seen in the past couple of years and--

SCOTT FRAKES [01:41:01] Don't see it that way.

PANSING BROOKS [01:41:02] I see it totally as hopeless. How do you not see this as hopeless?

SCOTT FRAKES [01:41:06] Well, if I did, then I'd have to quit because I would be really ineffective in this role. We've talked about it repeatedly. These are not-- we, as Nebraska,

allowed Corrections to tread water, in fact, not even tread water, hardly keep its nose above water for way too many years. And to come out of that is going to take, I hope, not the same 15 years, that would not be my hope, but it's certainly going to take more than the four years so far that we've really focused on this. And-- and I've talked about it before, capacity, our capacity as an agency, our capacity in state government to do some substantial changes. If we didn't have a statute, and I'm not sure what else might drive this, but we clearly have some statutory language that says that we cannot send people out of state unless they agree to go out of state, we would probably-- I would have proposed the conversation, like many other states, that we could have rented beds in some other state. And how this other state I know about that I worked for did it, was on two different occasions, they place people in private prisons, rented beds in other locations, and then used that time frame to build the-- the new space that they needed, do the remodeling, create the capacity, and then bring those people back. But that's not an option for us. It's not anything that I consider to be a great strategy, but it's a tool that has helped other states work through issues like this, whereas here we've got to do everything that we're doing while we today take care of 5,500 people within the space we have. So lacking that ability to empty out a living unit, as an example, we're doing a project in Tecumseh, I'm really excited about it, but it's a project that if we'd have been able to empty those 64 beds and have it just empty space, we might have been able to complete in four months and it's probably going to take eight because we have to continue to house people and work around that and manage all the security, and that's just true about everything that we do in this system.

PANSING BROOKS [01:43:25] OK.

SCOTT FRAKES [01:43:25] But I have to be optimistic. I have to believe that we're going to make progress.

PANSING BROOKS [01:43:31] You didn't really make me feel better, just letting you know.

SCOTT FRAKES [01:43:34] Well--

PANSING BROOKS [01:43:35] So unfortunately, all I can see is the-- the lawsuit coming and the fact that we've got-- if-- if we don't want to do the programming and we don't want to do sentencing reform, then we're just-- we're all going to sit there and go, oh, well, we'll keep building, and the numbers will keep growing, and there's nothing we can do.

SCOTT FRAKES [01:43:59] Oh, I don't know why you say we don't want to do the programming. We are spending many millions of dollars on programming in this agency. So I realize that \$250,000-a-year request seems inconsequential, but that's an expansion of-- I don't want to throw out the wrong number-- you know, just the vocational/life skills

program is \$3.5 million a year directed towards programming. We have an education program that's over-- well over \$2 million a year, and I think I'm lowballing that. If you take the behavioral health staffing and all the other pieces that are tied to substance abuse, sex offender treatment, violence treatment, millions and millions of dollars. So this agency, I talk to my peers and many of them are amazed/impressed by the degree of programming and resources that we have for the 5,500 people we're responsible for.

PANSING BROOKS [01:44:54] OK, so why are we continuing to hear from people that are saying they can't get into the programming, they're on-- they cannot get there, they're-- they end up just jamming out because they aren't able to do that?

SCOTT FRAKES [01:45:03] Yeah. I'd ask that every time that letter comes that you let us know and we'll look into it and maybe that's when I'll find the one where I go, he's absolutely right or she's absolutely right, we dropped the ball and we failed.

PANSING BROOKS [01:45:16] [INAUDIBLE]

SCOTT FRAKES [01:45:16] But as I described, each time we take it apart, each time we look into it, we find people that got involved in negative behavior, didn't want to engage, given an opportunity, didn't succeed, and then finally at some point realized, oh, I understand now, if I get this done, then I would be able to get parole and so now I'm ready for that, I need it today. Well, our system doesn't work that way and most systems don't work that way in terms of the moment you raise your hand we can say, come on and sit down, maybe someday, but I'm not going to commit to that one.

PANSING BROOKS [01:45:56] OK, thank you. I appreciate your determination, Director. Thank you for coming and answering questions. Any other questions? Oh, Senator Chambers.

CHAMBERS [01:46:04] Mr. Frakes, did I understand you correctly? Early on, you said you have enough money in your budget to do what it is that you need to do at this time.

SCOTT FRAKES [01:46:13] I do, and with the funding and for-- that I've requested for next biennium, I need what I asked for.

CHAMBERS [01:46:22] Are you going to ask for more money?

SCOTT FRAKES [01:46:24] I did.

CHAMBERS [01:46:26] You did ask for more? Is it considerably more?

SCOTT FRAKES [01:46:29] If you include the construction, it's considerably more.

CHAMBERS [01:46:34] Do you have a specific line item in your budget for execution drugs?

SCOTT FRAKES [01:46:39] No.

CHAMBERS [01:46:41] I read in the paper, and you did not say that it was a misprint, that you have no execution drugs and you have no way to procure them. Is that still true? Well, let me put it like this. None of the top drug manufacturers are going to make drugs available for execution now. I can say this because I've-- I've directly contacted them, they have directly contacted me. You will not get the drugs from them. You will not get the drugs from any of those they supply them to, because they sign an agreement that they will not make them available to any state that wants to use them for executions. So when it comes to the pharmaceutical companies and the ones that they distribute to and those who distribute for them, you're not going to get any death drugs from them. So what-- what is your-- what is going to be your source of drugs? Now you're not going to use antifreeze, are you, to execute people with?

SCOTT FRAKES [01:47:46] Is that a serious question?

CHAMBERS [01:47:48] Are-- yes, it's a serious question, because you're not going to get any from the pharmaceuticals. So either you're going to use antifreeze, an excess amount of rat poison, or some-- you all are the ones who are talking crazy. Now you can't get the drugs and you admitted it. So I'm asking you, what are you going to do for drugs? Do you have any idea right now?

SCOTT FRAKES [01:48:12] I do.

CHAMBERS [01:48:13] And where are you going to get them from?

SCOTT FRAKES [01:48:16] I'm not going to discuss that in this hearing.

CHAMBERS [01:48:17] Say what?

SCOTT FRAKES [01:48:18] I'm not going to discuss that in this hearing.

CHAMBERS [01:48:20] Are they going to be from a supplier in this country?

SCOTT FRAKES [01:48:26] I'm not going to discuss that in this hearing.

CHAMBERS [01:48:28] Are they going to be put together by somebody who's got a compounding factory in Nebraska?

SCOTT FRAKES [01:48:36] My answer is the same.

CHAMBERS [01:48:38] Say it again?

SCOTT FRAKES [01:48:38] My answer remains the same. I'm not going to discuss procuring drugs.

CHAMBERS [01:48:41] You take the Fifth. You don't want to incriminate yourself?

SCOTT FRAKES [01:48:43] Well, I don't see in any way how this is germane to today's hearing and testimony, for one thing.

CHAMBERS [01:48:48] Do you know how you sound right now? This is the most serious thing the state is going to do and you're trifling. All these other things are serious.

SCOTT FRAKES [01:48:56] I don't--

CHAMBERS [01:48:56] They don't involve you killing people. You don't have the drugs and you said you don't have them and you cannot get them. And the Supreme Court was persuaded to go along and allow a political execution before your drugs ran out that you had. The drugs that you have, I know you did not properly store. They were not maintained at the proper temperature. Having that as a fact, when they were administered, they did not operate the way they were designed to operate. First of all, they were not designed to kill. And these drugs did not function properly because you did not store and maintain them properly. You know it, and now you know that I know it, don't you? Don't you? You don't want to answer that, do you? You're not saying yea or nay. You're not stunned are you?

SCOTT FRAKES [01:49:53] No, no.

CHAMBERS [01:49:54] But you don't want to answer, yea or nay, do you?

SCOTT FRAKES [01:49:57] I believe we still have an active lawsuit that involves you and me.

CHAMBERS [01:50:01] It's not just a lawsuit now. We're beyond that. That is-- we're talking about the way those drugs were maintained. We're not talking about a protocol. You did not properly store those drugs and your people made it clear. There's a temperature below which they are not to be stored and they were not stored at all times below that temperature. Those were the only drugs you had, and they were going to be by date rendered ineffective. But they were ineffective before that date because they were not properly maintained. I see I'm not going to get anything from you.

SCOTT FRAKES [01:50:46] I--

CHAMBERS [01:50:46] Your silence--

SCOTT FRAKES [01:50:47] I'll refer you to the grand jury.

CHAMBERS [01:50:48] Your silence gives your consent.

SCOTT FRAKES [01:50:50] And please-- please look at the grand jury review.

CHAMBERS [01:50:52] Your silence gives consent.

SCOTT FRAKES [01:50:53] No, certainly not.

CHAMBERS [01:50:54] Well, we're going to see what develops, not through a lawsuit, not through the grand jury. And when and if it develops, this transcript is going to be exposed. You are telling me that you properly maintained those drugs at the right temperature the whole time. Isn't that what you're telling me?

SCOTT FRAKES [01:51:11] No, I'm telling you I'm not going to discuss this issue today.

CHAMBERS [01:51:14] Well, if you maintained it correctly, you can answer that. You can say, yes, we maintained them at the correct temperature. You don't really know, do you, of your personal knowledge, because you don't know what the temperature was supposed to be, did you? Did you have people who told you they were maintained at that temperature? And I know why you closed that curtain, and you know why you closed it. And we both know why you refused to answer questions after that execution, and wardens had always, and directors, after the execution. You ran from that place like a bat out of Hades. And this is so serious, I want it on the record and I've got it on the record now. You might want to find-- what could we call-- a reservation on something other than a Boeing 737 MAX, 7 or 8. And I don't think the Governor is going to take a fall for you, though you're willing to take one for him. And that's all I have. I was just kind of laying back in the weeds looking uninterested, disinterested, listening to the other questions, let you get very comfortable, and you played right into my hands. And you can talk about the grand jury and anything else you want to. To show how significant and insignificant that is, a man who had 16 felony counts brought against him, based on what a grand jury said, and I said before those charges were dismissed that's crazy, you don't make that many charges of perjury when one event is involved, now all those charges are dismissed. The head of the-- the Chicago police are saying, well, look what the grand jury did. That means nothing. You thought it gave you cover, but it didn't. And now you know that I know. That's all I have, Madam Chair.

PANSING BROOKS [01:53:26] Thank you. Any other questions? No. Thank you for coming today, Director Frakes.

SCOTT FRAKES [01:53:30] Thank you.

PANSING BROOKS [01:53:38] Next opponent. Next opponent? Anybody in the neutral?

DANIELLE CONRAD [01:53:50] Hi, Madam Vice Chair, members of the committee. My name is Danielle Conrad. It's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I'm here today on behalf of the ACLU of Nebraska. I want to thank Senator Lathrop for introducing this legislation to help continue the dialogue on a critical issue facing our state. And I think that the debate and dialogue thus far has been good. So I know I have limited time. I know it's already late in the day and we're just getting started. So I'm going to do my best to kind of run through how we got to where we are, where we are today, and some paths forward, and then be happy to-- to answer any questions. But here's the bottom line. Nebraska has created a system of mass incarceration that's so unwieldy that today it has ensnared thousands and thousands of Nebraskans. And to put it into perspective, about one in ten Nebraska children will have a parent in the criminal justice system. Let that sink in for a minute when we think about the people doing time, their loved ones, and the collateral, sometimes lifetime collateral, consequences that go with these criminal sentences. So we can't talk about mass incarceration without also talking as voraciously about racial injustice and racial justice issues. And I'm talking in generalities. I'd be happy to follow up with specifics. But at every single stage of our criminal justice system, there's a significant, disparate overrepresentation of individuals of color, whether that's initial traffic stops, searches, solitary confinement, amount of bail, etcetera. So roughly about 15 percent of Nebraskans emanate from communities of color. About 40-45 percent of those incarcerated in our state systems are people of color, so-- so keep that in mind, of course. So you've heard already Nebraska remains at the top of one of these lists that we don't want to be at the top of, right? So today we are leading the nation, or perhaps second in the nation, for extreme overcrowding. Systemwide, we're well over 160 percent of capacity, and some facilities are well over 300 percent of capacity. Ninety percent-plus of those that are incarcerated in our state system will one day return to our communities. So that's kind of the bad news. How did we get here? We got here through deliberate policy choices by your predecessors in this Legislature. We call it the "state house to prison pipeline" where state legislators are continually increasing penalties and criminalizing new behaviors. We also see key stakeholders and prosecutor's offices that are a significant driver in overincarceration and mass incarceration that have a lack of accountability. We see extreme sentences, like mandatory minimums and habitual criminal sentences, which tie the hands of our independent and fair-minded judiciary to ensure appropriate sentences for those that are before them. We see decades of inattention, we see a broken parole system, and we see a lot of political rhetoric and considerations that help to foster this system and perpetuate this system of mass incarceration and racial injustice. So that being said, that's the bad news. The good news is, is that we are not the only ones who have found ourselves in this situation, and there is a lot of sound models from our sister states and promising reforms that have been

initiated on the federal level that point a path forward toward smart justice reforms that are a better value for taxpayers, have a better human impact, and that won't in-- inhibit or hinder our shared public safety goals. So I see that my time is out. I'm happy to answer any questions about the issues before you with this legislation.

PANSING BROOKS [01:57:35] Could you just finish what you were saying on the promising reforms and ideas--

DANIELLE CONRAD [01:57:39] Sure.

PANSING BROOKS [01:57:39] --and our values that are--

DANIELLE CONRAD [01:57:40] Yeah. So again, here's the good news/bad news, right? So our system has become so broken and so unwieldy that we no longer have the luxury to address any one aspect of it at one time. But the good news is we can walk and chew gum at the same time, right? We can do the hard work, working together. And here's what you got to do. You've got to do the front-end stuff. You've got to right size the sentences. You've got to appropriately fund alternatives and diversion to keep people from entering this overburdened and underresourced system, number one. Additionally, we know what the drivers are for a lot of criminal behavior. That's mental health issues. That's behavioral health issues. Those issues need a public health response, not a criminal justice response. The voters of Nebraska just gave you a gift by expanding Medicaid. That is a promising "decarceration" strategy that this Legislature and elected officials across the state can utilize to build up public health services and address those issues. You also have to make investments on the inside, particularly for programs and services, mental healthcare and medical healthcare. To get right to the point, and Senator DeBoer's question, you cannot build your way out of this crisis, you absolutely cannot. You've funded some additional beds. There's additional beds in the budget request before you. But let me tell you this. If you don't fix the front end, if you don't provide appropriate programs and services, and if you don't fix the back end, it's build and build and build in perpetuity. Look at the Corrections budget in comparison to the growth that you see for healthcare, for economic development, for natural resource preservation, for roads, for education. It is eclipsing the growth in those other areas, so be very, very clear about that. And I know, from eight years on the Appropriations Committee, this Legislature wants to do the right thing, to fund appropriate state obligations and services, but you also don't want to throw good money after bad. And when you have so many vacancies because of compensation, because of culture, because of leadership, because of inattention, that we cannot fill, you have to ask yourself those really hard questions about whether or not that's good money or bad money that you're throwing at it that could be utilized in some of these other places. And on the back end, these are where the-- the policy solutions are actually a little bit easier sometimes to address from a political perspective. But I've seen the Legislature, just this year and just this morning, struggle, right? Removing barriers to public benefits, removing barriers to employment,

removing barriers to civic participation like restoration of voting rights, these-- that's the easy part of smart justice reform that this Legislature has also turned its back on thus far, and this administration has. So you need to take a deep and hard look at every single aspect of the criminal justice system and be prepared to make reforms that are proven to work in other states, that don't hinder public safety, and that give a better benefit to taxpayer dollars.

PANSING BROOKS [02:00:59] Thank you, Ms. Conrad. Yes, go ahead, Senator-- let's have you first, Senator Brandt, because you haven't spoken.

BRANDT [02:01:06] Thank you, Vice Chairman Pansing Brooks. Thank you, Ms. Conrad--

DANIELLE CONRAD [02:01:08] Yes.

BRANDT [02:01:08] -- for testifying today. So how many beds is the right number? You're saying we don't need to build beds. And really, based on your testimony, if-- it doesn't make any difference. We could cut the number of beds in half.

DANIELLE CONRAD [02:01:25] Well, I think that state statute is very clear, and this was part of the negotiations and deliberate policy process that this Legislature and all three branches of government went through, led by the Council on State Governments, many years ago. There was a decision-- should we try and build our way out of this or should we focus on justice reinvestment? There was a decision to focus on justice reinvestment so that we wouldn't have to build and build and build in perpetuity. And that's why this legislation, which was originally putting permissive caps on back in 2003, was first adopted and then that was updated as part of that LB605 and LB598 provision to hold this body accountable, to hold all stakeholders accountable about getting serious to continue the reform, and that hasn't happened. After LB605 was adopted, the reforms essentially stopped dead in their tracks, and we see prosecutors continually overcharging people and that contributes to increased incarceration. And the number of beds, I mean, it's clear. It's design capacity, right? That gives you the standard. Operational capacity is essentially made up. I mean, let me give you a real-life example, right? So you can have a car that's-- their operational capacity is to hold four people. You could still drive it if 12 people were crammed in it, but that doesn't mean it's safe or right. That's what's happening with this distinction without difference about these terminology debates that-- that aren't addressing the roots of the problem.

BRANDT [02:03:02] Except we're dealing with a hard number here. You have 5,500--

DANIELLE CONRAD [02:03:04] That's right.

BRANDT [02:03:05] --people in a system designed for I think 3,300, 3,600--

DANIELLE CONRAD [02:03:07] That's exactly right.

BRANDT [02:03:09] --but 160 percent of capacity.

DANIELLE CONRAD [02:03:11] That's right.

BRANDT [02:03:11] OK, so to get to that 140, do we do that by adding some beds, or what number is the right number here?

DANIELLE CONRAD [02:03:20] Right, and you already have, right? The director already talked about how they've just-- the Legislature in recent years has funded increased bed capacity. But the numbers are still at historic highs, so that goes back to Senator DeBoer's point. Can you build your way out of this? I'm here to tell you, you cannot.

BRANDT [02:03:38] All right.

DANIELLE CONRAD [02:03:39] Could it relieve some immediate pressure on the system? Perhaps. But again, you can build and build, but who's going to staff them and provide services? We have that problem right now. It's magical thinking without a plan to assume otherwise.

BRANDT [02:03:52] All right. Thank you.

DANIELLE CONRAD [02:03:53] Yeah. Yes.

PANSING BROOKS [02:03:57] Senator Chambers.

CHAMBERS [02:03:58] Maybe for the record because I-- Mr. Frakes got kind of noncommunicative, but I was going to point out that the Corrections area is always the one where the Governor can dictate that you will not ask for the money that you need--

DANIELLE CONRAD [02:04:15] That's right.

CHAMBERS [02:04:15] --because nobody really cares. And with him talking about property tax relief, there can't-- there's going to be none. And Senator Brandt made me think of a famous line in that movie Jaws. When that little sea captain saw that shark, he said, we're going to need a bigger boat. That's what the Governor is saying and everybody's saying, we're going to need more beds, but there's no money. There cannot be money to build a bigger boat, in other words, a big-- build a bigger prison and give property tax relief. They're going to have to acknowledge what that shark is and that this is not the way you're going to handle this shark. The shark in this case will be, you touched on it, the overcharging by prosecutors who are funneling a lot of people into the

prisons who shouldn't even be there in the first place. So until the Legislature gets serious about prison reform, which, by the way, conservatives all over the country--

DANIELLE CONRAD [02:05:13] That's right.

CHAMBERS [02:05:13] --they've seen it. They haven't seen it here yet. It takes a while to filter down to Nebraska. The Koch brothers, who nobody would say has a corpuscle of, what do they call it, liberalism or whatever they call it, they are saying something needs to be done. Congresspersons who are conservative are saying it.

DANIELLE CONRAD [02:05:33] That's right.

CHAMBERS [02:05:34] I got a call from a lady doing an article on the death penalty who wants to talk to me because she said that there are senators, legislators, she said, in the western part of the country who are talking about abolishing the death penalty, not for moral reasons but the expense and the ineffectualness of it. There are ideology-driven notions in legislatures and the people do not look at the practical reality. They will not look at what is creating the problem that has to be solved. So that's why I wanted to engage Mr. Frakes in that exchange. Mr. Frakes knows what I know. And here's where I mean that. We both know the same thing. But now he knows that I know the thing that he knows. You saw him get out of here. He-- I saw him here, I looked down, and when I looked up again, he was banging his way out of those doors. That's not the way he customarily leaves. I'm saying this for the record. The Judiciary Committee is where we hear the testimony from knowledgeable people about the overcrowding that exists now that we cannot build our way out of it. Even if you could do that, the money is not available for that because there are people like my colleagues-- I think Senator Brandt might be trying to work on that property tax relief. They say that has to be done.

DANIELLE CONRAD [02:07:11] Yeah.

CHAMBERS [02:07:11] Well, you can't do them both. And the reason I'm glad for this hearing is that these realities are going to have to be confronted. And we who are trying to do something, others more directly than I am now because I am a lightning rod, there's a knee-jerk negative reaction to what I bring, but something as minor as offering people who are released from prison a way to obtain food while they look for work being killed because the Governor had his people to scrape votes off that bill, three people who are members of the committee that voted it on the floor did not vote. That's what the Governor did. He is controlling this Legislature. But we as a Legislature-- it'll never happen-- are going to realize that we are the branch of government that I say has paramountcy because we are the ones who determine how much money the state is going to have, how it will be spent, and we can raise enough money through taxation to get this done. Taxes are the means by which government gets the money it takes to operate. If it refuses to raise the amount of money it takes to operate, it's simply not

going to operate. And now, with what we're hearing, and the lawsuit is there, that lawsuit will not be determined by the Governor or by those people that he put in office. It's going to be determined judicially. And if and when it's determined judicially, it's out of the hands of the Legislature. Either the court is going to dictate that people will be released or the Legislature is going to have to do something about prison reform that will bring it into compliance with what the court said. It can determine the category of persons who will be released or whatever. But when the court says this is what you'll do, then it's what you will do. And if the Governor or any other person stands in the way, the court, by its inherent power to enforce its directives, will find them in contempt, and the way you punish those in contempt who will not purge themselves is to lock him up, lock him up, lock them up. I like that now that I can apply it to the Governor and to Director of Corrections. But I just wanted to tailgate and get that into the record. I don't have any real questions.

DANIELLE CONRAD [02:09:47] Yeah, there-- there's a lot to unpack there, Senator, and I don't disagree. I mean, I can tell you, from eight years on Appropriations, I strongly believe that a budget is a moral document. It sets forward what we prioritize as a state. And when you invest more and more and more into throwing more and more Nebraskans away, throwing the key away with them, and have them return to our communities sicker and more helpless and more hopeless than when they entered, that's problematic. It says a lot about this Legislature and their priorities and their vision for our state today and well into the future.

CHAMBERS [02:10:23] This is a legitimate question.

DANIELLE CONRAD [02:10:25] Yes.

CHAMBERS [02:10:25] Are-- even corrections people and jailers, are there, for the record, more and more people with mental illness who are being handled as criminals--

DANIELLE CONRAD [02:10:34] Yes.

CHAMBERS [02:10:35] --and locked up rather than receiving the treatment that their condition should call for?

DANIELLE CONRAD [02:10:41] Yes, absolutely. And that's a significant cost driver in the system and it's a significant driver in overall population numbers. And let me be clear. We don't bring forward costly, lengthy civil rights litigation lightly. It was a measure of last resort after sounding the alarm bell for years and attempts to work collaboratively with the department and other key stakeholders in the Legislature for years. And what we're asking for are rather straightforward remedies. We're asking that our clients and those that are incarcerated get their broken bones fixed, get to see a psychologist when they have a diagnosed severe mental illness, that they have accommodations if they're

blind or deaf or disabled, to access the parole process. Read the papers that have been filed with the-- I know you have, Senator-- with the federal courts, but they're not asking for a pay day. They're asking for basic human dignity that comports with the Eighth Amendment that constrains us all, that you took an obligation and an oath to uphold. We can get further faster working together by addressing those issues collaboratively than we can through litigation. But if we're not going to have that kind of collaboration, if we're not going to have that political will to continue the reforms, we absolutely must pursue-- pursue judicial strategies in the courts to-- to hold the state accountable for those violations.

CHAMBERS [02:12:08] Thank you.

DANIELLE CONRAD [02:12:08] Yes. Yes.

PANSING BROOKS [02:12:10] Senator DeBoer.

DeBOER [02:12:13] Thanks so much for being here today. As I'm listening to the kinds of-- I don't know. You said front-end and back-end solutions--

DANIELLE CONRAD [02:12:22] Right.

DeBOER [02:12:25] --sentencing alternatives with diversions and maybe other courts, mental and behavioral health in general. These all seem like long-term solutions to me and, I mean, we need to do them. I'm not saying that. What I'm saying is I'm worried about right now, and we're overcrowded right now. Do you have any ideas of what we could do in the short run? I mean, removing barriers to public benefits and to getting jobs, I mean, I voted for it this morning, I think we should do that.

DANIELLE CONRAD [02:12:59] Thank you. Yes.

DeBOER [02:13:00] But, you know, I think-- you know, how do-- how do we address the present issue of the overcrowding right now, because I think one of the things that's happening is it's sort of ballooning, right? You have overcrowding and that means that fewer people want to work in those jobs because the jobs are less safe. And so because the jobs are less safe, then it becomes more dangerous to work there and then you get--

DANIELLE CONRAD [02:13:25] Right.

DeBOER [02:13:25] --fewer people, which means you're not going to have the-- the programming that you want, which means you're not going to get people out on parole, which means you-- and people are going to recidivate and-- I mean, I think the problem is ballooning right now. I think that the uptick we've seen in the numbers is not a coincidence. So what can we do in the short term? Any ideas?

DANIELLE CONRAD [02:13:47] Yeah, you-- a lot of different ideas. And-- and thank you for your votes in terms of helping to remove barriers to public benefits for formerly incarcerated Nebraskans. But the fact of the matter is that bill failed to advance today, right? That's-- and I know it's overwhelming, I get that, I appreciate that, and particularly for new members of this body, right? But that doesn't mean we get to walk away. It means we have to take it bite by bite. And you have to get real serious real fast about addressing the front-end stuff, keeping people out of the system, getting a public health response, building that up through Medicaid expansion and otherwise. You have to eliminate extreme sentencing which ties judges' hands. You have those bills before you. And, yeah, it's going to take some heat and some political will because the Attorney General, the Governor's Office, sometimes law enforcement and county prosecutors keep coming down here and saying, no, no, no, don't, don't, don't, but have failed to offer any commonsense solutions. And they're not on the hook for any of the remedies or any of the issues that are brought forth through-- through litigation or otherwise. So you're going to have to make some tough decisions and that's why people ran for the Legislature, right, because they care about governance and they care about the future of our state. And so you have to be prepared to have the political will to take those hard votes right at the front end. Inside, I'd put some strings on those budget requests, as many as you can, right, and make sure that those go to front-line services, mental health services, medical services, programming. I definitely would have pause for concern before you-- you write a blank check to a department that's done very little to engender your trust.

DeBOER [02:15:35] Thank you.

DANIELLE CONRAD [02:15:41] Yeah.

PANSING BROOKS [02:15:41] Thank you for coming.

DANIELLE CONRAD [02:15:42] Yes. Thank you.

PANSING BROOKS [02:15:42] I just have one more. So along those lines of sentencing reform, programming, as you said, I mean, all the things we've been talking about this year are exactly what you're talking about--

DANIELLE CONRAD [02:15:52] That's right.

PANSING BROOKS [02:15:53] --making a difference, and it's-- it's all sorts of bites of the apple that make the difference.

DANIELLE CONRAD [02:15:57] It does.

PANSING BROOKS [02:15:58] I'm awful pleased that one of our newest members understands the entire circle of the overcrowding crisis, how it's a vicious cycle and we just--

DANIELLE CONRAD [02:16:05] Right.

PANSING BROOKS [02:16:05] --end up just putting people right back into prison and aren't helping on any of this--

DANIELLE CONRAD [02:16:10] You do.

PANSING BROOKS [02:16:10] --in a way, so--

DANIELLE CONRAD [02:16:12] And to leave you on a positive note, I--

PANSING BROOKS [02:16:14] Oh, good.

DANIELLE CONRAD [02:16:15] --I think Senator-- Senator Chambers was-- was right on in his statements. Criminal justice reform is one area where we continue to see increased bipartisan support. The ACLU has been working hand-in-glove with the Koch brothers on this on the national level and on the state level. In the past, we've worked with the Platte Institute as some of our strongest supporters in commonsense reforms on these issues. And I think that's very powerful and very exciting and very cool and a lot like the Nebraska Legislature works, right, where we put aside our differences and focus on what we can work together on and-- and should provide a good pathway, a good-- a good amount of support for you moving forward. I mean just look at the federal FIRST STEP Act that passed which was, you know, the first time in generations that we've seen some front end sentencing reform and changes on the federal level that was signed into law by President Trump, right, and supported by most of our congressional delegation. There is a roadmap for you right there. Why aren't those similar provisions that have just been adopted and supported by-- by the federal level that have applicability in Nebraska already passed? Many of them are on the table. Many of them are before this committee. That's a great place to start. That would have a significant difference. But again, it takes political will and it comes and it requires you to work together to-- to do that. So I-- I am hopeful that there's an opportunity to move forward. And to be clear, we come at these issues for very different reasons, but the end result is the same. And-- and that's what's happening in other states. There's no reason why it can't happen in Nebraska.

PANSING BROOKS [02:17:56] I agree. And my daughter just called me and-- what do you think about ALEC? And I looked it up and here's information on that they don't support the mandatory minimums--

DANIELLE CONRAD [02:18:06] That's right.

PANSING BROOKS [02:18:09] --they don't-- I mean, these are all issues that are before us. And the fact that-- that filling the pipeline on the juvenile justice side--

DANIELLE CONRAD [02:18:14] That's right.

PANSING BROOKS [02:18:15] --is just accelerating what's going on in adult prisons, because we know so many of them go on and are--

DANIELLE CONRAD [02:18:22] That's exactly right.

PANSING BROOKS [02:18:22] --are then part of the adult correctional problem.

DANIELLE CONRAD [02:18:23] Whether it's juvenile justice or our county jails, that's the front door to our prison system. So the more that you can do to eliminate cash bail, to eliminate the school-to-prison pipeline, to provide second chances and record sealing for youth, I mean, there's a host of different solutions before you that-- that you can build on and should utilize that contribute to a positive-- a positive future for Nebraska but that are currently not being utilized to the-- the level-- I mean that those should be really robust strategies that should be in play and-- and they're languishing for lack of political will.

PANSING BROOKS [02:19:00] Initiating programming earlier--

DANIELLE CONRAD [02:19:01] Yes.

PANSING BROOKS [02:19:01] --letting people go to the parole board to hear all of that earlier and--

DANIELLE CONRAD [02:19:05] Yes.

PANSING BROOKS [02:19:05] --mandatory minimums for juveniles, I mean, we've had all these things that [INADUIBLE].

DANIELLE CONRAD [02:19:07] Yes. And I'll tell you, I mean, I think that this legislation, it looks to me, and I don't know what's in Senator Lathrop's heart and mind when he brought it for this-- before this committee, but I think it was to provoke a dialogue and a discussion about the issues. As written, I appreciate that it might be a good idea to-- to talk about what that deadline means and if there's a way to work collaboratively to address that, but I would caution this committee to move this legislation forward and remove those accountability provisions for the department and other key stakeholders who have yet to come to the table. When we're talking about emergency levels, that 140 percent is not arbitrary. That's based on clear case law from the United States Supreme

Court and in other jurisdictions that say this is an emergency level that violates our Constitution. So at the very top, that's a problem and we're way past that.

PANSING BROOKS [02:20:02] Any other questions? No. Thank you for coming--

DANIELLE CONRAD [02:20:04] OK. Thanks.

PANSING BROOKS [02:20:10] --former Senator Conrad. OK. Any other neutral testimony? Neutral testimony? No. Would you like to close, Senator Lathrop?

LATHROP [02:20:22] Yes. I was listening to the testimony and the people who have spoken today, and it took me back to 2014. In 2014, Nikko Jenkins went on a rampage. And I put in a resolution. Nikko Jenkins went on a rampage. Marshall Lux, then our Ombudsman, wrote a report and he said this is a case study in what's wrong at the Department of Corrections. Governor Heineman got that and said Marshall Lux is soft on crime. I'm like, he's the Ombudsman. It really has been the-- that-- the attention-- it typified the attention and the seriousness that this subject had been treated with to that point in time. So I put a resolution in to study the Department of Corrections. It was mostly to get to the bottom of why they let Nikko Jenkins out, why they left him in solitary confinement when he was, on his way out of the door, begging to go to the Regional Center. And fortunately that was broad enough that when the miscalculation of sentences came along, we were able to investigate that. The long and the short of it is, when we-- when we were engaged in LR424 Committee, and Senator Chambers was involved in that as well, we had subpoena power and we subpoenaed a bunch of records from the executive branch and from the Department of Corrections, and that was my very last year in the body. And what was interesting to me is that we subpoenaed those records and we found that in 2006 the Department of Corrections, by the way, while the director was coming over to the Judiciary Committee and telling us everything was fine, actually, they had done a study and they projected the population at the Department of Corrections, they projected that they had a crisis approaching, and the director, then director, made a pitch for more-- more capacity. And you-- we could see it in the e-mails and the correspondence. It was fascinating. They opted for the low-cost option. The no-cost option is what-- they had three options. One was to build space. One was to make some modifications and do a little bit of some things. And then they had the no-cost option, and you could tell that they had a meeting where the Governor made a decision, we're going to go with the no-cost option. And that really is an example of how Corrections has been regarded and how we got to where we're at today. We had an opportunity to do something in 2006. By the way, the Legislature never saw that report until we subpoenaed it. In 2006, they did nothing. They just kept letting the population grow and we were probably at 150 percent in that time, and they had projected in that study what was going to happen to our population. The trend was like this. No-cost option, we're not-- we're not going to put the resources into it. And here we are today. I don't get a sense that there's any sense of urgency to correct the problem. It's why I put

the bill in. I also thought about the time that we spent investigating the Beatrice State Developmental Center. And if you-- I don't know if Senator Chambers was around for that. I don't think the rest of you were. But the Beatrice State Developmental Center blew up when the-- when the Department of Justice came in and said we were violating their civil rights, did another special investigative committee. We ignored that problem until they took away our funding. They took away our funding. It cost us \$80 million in federal matching funds before we got the Beatrice State Developmental Center back on track. Here's my point, that when we ignore these problems, when we treat them as something that we're going to save money, we're not going to properly staff them, then they turn into more expensive problems, and that's what we're looking at. I honestly believe it. I've read some of the pleadings that the-- involved in the litigation. It is alarming, the overcrowding, what's happening in restrictive housing. When we talk about overcrowding, we talk about it in a global sense or in a big sense. You-- we-- and we look at the number of 160. If you look at the Diagnostic and Evaluation Center, they're at 332 percent. People are sleeping in little cots on the floor. When we took the tour, when they put those cots out, if you had to go to the bathroom in the middle of the night, you wouldn't be able to find your way there for all the-- for all the bodies that are on the floor. And the-- when you go into the detail of the overcrowding, you look at restrictive housing, we are overusing it. The director has indicated that part of that problem is not just policy but the fact that people sit there waiting for another place to go. And I offered this bill. The fact that it's heard late is-- is not by chance. It will be the vehicle for this committee to make amendments and try to engage in some policy. This would be a far more constructive policy-- process if we were to engage not just the director but the Governor. Interestingly, when we-- when we subpoenaed the Governor in the LR424 Committee and Governor Heineman was before the committee, maybe the most significant question the committee had for the Governor was, when were you going to engage? Like we could see the history of the mess that was being created, how it was growing, and the question that committee has was, when were you going to engage? And the answer was, well, I have a director and it didn't seem appropriate for me to be engaged. And it's-- we're getting whipsawed. We're getting whipsawed because, I can tell you, no one wants to spend the money on a new penitentiary. If we had a bill to build 500 beds, it wouldn't pass, right, because no one wants to spend the money to-- to build our way out of it. When we talk about building our way out of it, it's a distraction because no one is going to spend that money. We can't staff the places we have right now. I'm concerned that we won't be able to staff the 384 beds they want for maximum security people, which I think may alleviate some of the restrictive housing. But we certainly can't staff the number of beds and we don't have the will or the resources to build our way out of it. So we have to come up with some policy approach, and we need to spend the money inside the place. And the-- the difficulty is that the Appropriations Committee tries to find out what needs to be done and they're told fill the vacancies. They-- they authorize that money and they appropriate that money, but then the executive branch won't raise the pay sufficient to hire the people for the appropriations, nor do we know where the rest of the money needs to be spent, whether it's on psychologists, mental health

professionals. And then we have people that come in when you offer bills to reform or make policy changes that may alleviate it, and then comes the Attorney General and says you can't do that, it's a public safety concern. And I, like this committee, am frustrated. This bill was intended to generate the conversation you heard today and ultimately serve as a vehicle for policy changes where we're going to do our best, with as much collaboration as the executive branch cares to engage in, to try to alleviate the problem with overcrowding and staffing issues. And with that, I look forward to working with the committee to develop and add to this bill those policy considerations we think will help.

PANSING BROOKS [02:28:58] Senator Chambers.

CHAMBERS [02:29:00] I don't believe in funerals, I don't go to them, so my philosophy is, if you have a flower to give somebody, give it to them while they can smell it. This is why I'm glad you came back. Thank you, Mr. Chairman.

LATHROP [02:29:11] Yeah. Thanks, Senator Chambers. I appreciate that.

PANSING BROOKS [02:29:16] Anybody else? No. Thank you.

LATHROP [02:29:18] OK. Thank you.

PANSING BROOKS [02:29:20] Let's see, we have one letter of support-- where that--that came in I think from the League of Women Voters, and no other letters. And that will close the hearing on LB686. OK. And now we're going to open the hearing on LB455, Senator Arch. Welcome.

ARCH [02:29:53] Thank you. I'm not sure what procedures are for the yellow sheet. OK. Good afternoon, members of the Judiciary Committee. And for the record, my name is John Arch, J-o-h-n A-r-c-h. I represent the 14th Legislative District in Sarpy County and I'm here this afternoon to introduce LB455. The intent of LB455 is to correct an ambiguity in statute that came to light as a result of a recent court case. LB455 seeks to clearly define which government agency is responsible for certain medical bills incurred by an arrested person if no other means of payment, such as insurance, is available. Under our current state law, if a person is arrested and injured during the course of the arrest, the apprehending or arresting agent-- agency is responsible for the medical bills. This provision is clear. The issue that has been brought into question is which agency is responsible when a person is taken for medical treatment that is not directly related to their-- the arrest and before being booked into the jail. This would most likely include DUIs, drug overdose, or a mental health situation. While this bill was brought to me by Sarpy County, the bill involved-- evolved from a recent Nebraska Court of Appeals decision involving Chase County and the city of Imperial. It is my understanding that historically the arresting agency paid for these medical bills in question and the lodging agency, and that's the terminology within the statute, the county jail, would pay for any

medical treatment deemed necessary for the arrestee was-- was in the jail's custody. This is how it happened in Sarpy County, at least. However, the Court of Appeals interpreted the statutes to mean the lodging agency should be responsible for any bills that were not the direct result of injuries sustained during the arrest. The question arises whether or not the county jail should be considered the lodging agency if the admissions or booking process is incomplete and the arrestee is not in that facility's physical custody. The Court of Appeals decision was appealed to the Supreme Court. However, a couple of weeks ago, the court found that there was a problem with the record and declined to issue a declaratory judgment. Of course, it is not the Supreme Court's job to determine policy, it is the Legislature's, and that's why LB455 is in front of you today. Interested stakeholders, the counties, and the cities have been meeting regarding this situation but have been unable to come to a resolution. I am asking this committee to hold LB455 as we continue to work through this issue to find a consensus. With that, I'll try to answer any questions, but I will point out that there is testimony following mine from individuals who could probably provide more insight and speak to the legal issues. And thank you for your time.

PANSING BROOKS [02:32:45] Thank you, Senator Arch. Any questions? Yes, Senator Chambers.

ARCH [02:32:52] Yes, Senator Chambers.

CHAMBERS [02:32:53] Senator Arch, other than some comments I may have made today--

ARCH [02:32:55] Yes.

CHAMBERS [02:32:55] --you and I have had a couple of con-- conversations on the floor, haven't we?

ARCH [02:33:01] We certainly have.

CHAMBERS [02:33:01] That is what you're manifesting today. And if you don't understand, I'll tell you later, but I don't have any questions--

ARCH [02:33:08] Thank you.

CHAMBERS [02:33:09] --on what you said about--

ARCH [02:33:09] Thank you. I-- my--

CHAMBERS [02:33:10] --holding the bill until more can be done.

ARCH [02:33:14] Thank you very much.

CHAMBERS [02:33:13] That's all I have.

ARCH [02:33:13] Thank you.

PANSING BROOKS [02:33:14] Any other questions? No. Thank you, Senator Arch. Any proponents? Welcome.

KATHARINE GATEWOOD [02:33:33] Thank you, Senators. Good afternoon, committee member-- committee members. My name is Katharine Gatewood, first name Katharine, K-a-t-h-a-r-i-n-e, last name Gatewood, G-a-t-e-w-o-o-d, and I'm here to testify in support of LB455 on behalf of Sarpy County in my role as a deputy county attorney who regularly works with the Sarpy County Jail. I'd especially like to thank Senator Arch for proposing this bill which would provide some much-needed clarity on liability for certain prelodging jail medical bills for arrestees. I have provided for you today a copy of my written testimony, and I think Senator Arch did an excellent job at paraphrasing the issues that are brought to light by this bill and by the Chase County case. So the long and the short of it is that Sarpy County is simply seeking the codification of, in our view, of current practices or the historical practice for prelodging arrestee medical bills, and that practice is that the agency that has custody over the person who requires medical attention would ultimately be responsible for that person's medical costs as the payer of last resort, and that's tied back to that agency's constitutional due process obligation to provide necessary medical treatment to people held in their custody. So the primary situations that we're talking about in this prelodging context relate to the fitness-for-confinement exams, and that's related to Nebraska Jail Standards requirements for jails, and then also your street cite-and-release situations that remain unanswered at this time. As Senator Arch stated, currently there is some confusion about the language in 47-703, subsection (2), as it's currently written, which was brought to the forefront of our collective minds through the Chase County v. City of Imperial appeal. And LB-- LB455, as it is written, is responsive to that appeal in the sense that that case dealt with a prelodging fitness-for-confinement medical bill involving a heavily intoxicated DUI arrestee. And Sarpy County was in a similar situation as-- as Chase County was, so we joined by filing an amicus brief in that matter. So ultimately the-- the statutory interpretation issue of that case has not been settled and Sarpy County expects to receive more payment demands from cities in the future to that end. I would also note that Sarpy County would recommend removing the added words "to be" from lines 7 and 16 of page 2 [SIC] of the introduced text, should that eventually be advanced, due to the fact that the-- that language ultimately is not necessary and could add additional confusion. So with that, it looks like my time is up, so I'm happy to answer any questions that you might have.

PANSING BROOKS [02:36:47] Thank you very much, Ms. Gatewood. Anybody have a-- no. Thank you for coming today.

KATHARINE GATEWOOD [02:36:53] Thank you.

PANSING BROOKS [02:37:00] OK. Further proponents? Welcome.

BRAD JOHNSON [02:37:09] Hi. Good afternoon, Senator-- oh, Lathrop's not here. Good afternoon, Senator Pansing Brooks and members of the Judiciary Committee. My name is Brad Johnson, B-r-a-d J-o-h-n-s-o-n. I am the director of the Lancaster County Department of Corrections. I'm here to testify on behalf of our county board and my department in favor of LB455. As a county correctional facility-- facility, our department is regulated by Nebraska Jail Standards. Chapter 4 of those standards bars our department from receiving into custody individuals who are unconscious or seriously injured. Based on that mandate, our department has refused to accept custody of injured or seriously ill individuals until after they have been evaluated and deemed to be fit for confinement by the physician at the hospital. This has been our practice for at least 25 years. I would estimate that we encounter on average two to three of these cases a week. The vast majority of those refused are taken to the hospital by the arresting agency, evaluated for their fitness for confinement, treated, if necessary, and returned to our department for booking. Because the arrestee is not in our custody, the arresting agency has been liable for the cost associated with the hospital visit. This has always created friction between county jails and law enforcement agencies. However, our department enjoys a strong and collaborative relationship with the primary law enforcement agencies we interact with and historical practices have continued. A recent court case has challenged those practices and may require the county jails to pay the hospital cost associated with fitness-for-confinement evaluations. These-- this raises the logistical concerns and I believe it will create confusion. As mentioned, we cannot accept anyone into custody that we feel may not be fit for confinement. This court case brings about possibility that we may be responsible for the medical cost of someone who is not yet in our custodial care. Currently, our medical provider and security staff work very closely with the local hospitals when one of our inmates is admitted to their facilities. In these cases, the individual is not yet an inmate. How do we coordinate medical care? Who is responsible for providing security and supervision if the individual is admitted to the hospital for treat-- treatment? I also believe that this type of payment structure has the potential to incentivize smaller county jails to take more risk when making fitness-for-confinement decisions. Most jails in Nebraska do not have 24-hour nursing care and must make the decisions based on their training experience. I worry that the issue of having to pay the medical expense may influence some to accept custody and attempt to treat within the facility those that they would have sent to the hospital before. Let me be clear. This is not a money issue for my department or me. I feel strongly that we are responsible for providing those individuals under our care with appropriate medical services. We will not change any of our policies or procedures should this cost

be shifted to our department. In conclusion, I believe this bill clarifies which agency is responsible for cost associated with fitness-for-confinement situations. I also believe it establishes a practice that makes the most sense by establishing responsibility based on who has custody of the arrestee. And I'll answer any questions at this time.

PANSING BROOKS [02:40:33] Thank you, Mr. Johnson. Any questions? Senator Chambers.

CHAMBERS [02:40:36] Mr. Johnson, I don't care what the subject is, I'm impressed by good, clear writing. Are you trained in the law at all?

BRAD JOHNSON [02:40:45] Oh, no, sir.

CHAMBERS [02:40:46] Did you write this?

BRAD JOHNSON [02:40:48] I wrote the majority of it. I have-- I have somebody that's a real good editor for-- for me.

CHAMBERS [02:40:53] Well, between the two of you, you get an A on this.

BRAD JOHNSON [02:40:56] All right.

CHAMBERS [02:40:57] It's very clear. I just wanted you to know that.

BRAD JOHNSON [02:40:58] Thank-- thank-- thank you very much.

PANSING BROOKS [02:41:00] Thank you, Senator Chambers. Anybody else with a question? No? Seeing none, thank you for coming today.

BRAD JOHNSON [02:41:06] Thank you.

PANSING BROOKS [02:41:07] Any additional proponents?

LATHROP [02:41:16] Good afternoon.

ELAINE MENZEL [02:41:19] Good afternoon, Chairman Lathrop and members of the Judiciary Committee. For the record, my name is Elaine Menzel, E-I-a-i-n-e M-e-n-z-e-l, in support of LB455, and I'm appearing here on behalf of the Nebraska Association of County Officials. We would also like to express our appreciation to Senator Arch for introducing this legislation. And the previous testifiers have gone through the basis for what's brought us to this issue, and I was going to bring up some issues I identified on the fiscal note that you have before you. But given that Senator Arch has asked that we will be working together, hopefully this summer, on trying to come to a resolution on this

issue, I will raise those issues at that time. And I will just say at this time our primary goal is not to specifically shift costs to other political subdivisions. Rather, it's to come to some clarity on what's to be expected. As was highlighted from the Chase County v. City of Imperial court case, it's caused some indecision. Thank you for your time. It's our hope we can continue to work through these issues and come to an agreement. If you have any questions, I will attempt to answer those.

LATHROP [02:42:47] OK. I do not see any questions for you today, but thanks for being here.

ELAINE MENZEL [02:42:53] Thank you.

LATHROP [02:42:53] Next proponent of LB455. Seeing none, anyone here in opposition to LB455?

JOSHUA WENDELL [02:43:17] Members of the Judiciary Committee, my name is Joshua Wendell, J-o-s-h-u-a W-e-n-d-e-l-l. I'm an attorney with the firm McQuillan and Wendell in Ogallala, Nebraska, and one of our clients is the city of Imperial. So I am one of the individuals that was involved in the litigation, you know, that's previously been referred to here, some of which, you know, the history of-- of the-- of the parties prior to the litigation may not be completely correct, but I don't think it's necessarily important to straighten that out at this point. I'd-- I'd like to-- the-- come down to the opposition on LB455. It's-- it's a situation where in many-- you know, in western Nebraska, where we're from, there are, you know, multiple law enforcement agencies involved in arrests and, you know, law enforcement always involves a degree of discretion and is a situation where we think LB455 doesn't further the goal of cooperation and public safety and law enforcement. Now the situation that resulted in the Chase County v. City of Imperial decision involved an individual that only had a blood-alcohol level-- well, it was lower, according to the PBT, than was required to get an aggravated DUI in the state of Nebraska. So this was not an incredibly intoxicated individual. He was taken to the hospital, medically cleared, returned to the jail, and it is true that we've had-- we've got a disagreement with respect to who's responsible under the bill. I guess I don't think there's a-- you know, to characterize as an ambiguity I think might be a bit of a stretch. I don't-- you know, this Court of Appeals did not find any ambiguity. However, that case has been, you know, vacated by the Supreme Court for want of a procedural prerequisite, you know, prior to declaratory judgment being rendered by-- you know, the court-- by the appeals courts. So we're here to ask everyone to consider, you know, not only the cost. The cost is something that's politically unpopular, you know, amongst local governments irrespective of who pays it. So we're asking the committee to think about LB455 and perhaps-- you know, I think it's a good idea that this is on hold and further discussion to be had. We're asking for everybody to think about the best way for, you know, certified law enforcement officers to make their arrest, to get through the jail booking process in a, you know, orderly fashion that makes sense, and then get those

law enforcement officers back out on the streets and perhaps allow the jails to make their own decisions with respect to what-- what procedures need to be followed to make sure that these individuals can be kept safe and allow the jails themselves, you know, if-- if they make the decision to require a booking decision, have that cost be kept in house by that agency that's making that decision. So I'm sure my time is getting short at this point, so I'm-- if there's any questions, concerns, I'm happy to address those.

LATHROP [02:46:24] I see no questions, but thanks for being here today.

CHRISTY ABRAHAM [02:46:35] Good afternoon, Senator Lathrop--

LATHROP [02:46:37] Good afternoon.

CHRISTY ABRAHAM [02:46:38] --and members of the Judiciary Committee. My name is Christy Abraham, C-h-r-i-s-t-y A-b-r-a-h-a-m. I'm here representing the League of Nebraska Municipalities. And I certainly appreciate Mr. Wendell coming from Ogallala to testify today. One of the messages I wanted to bring to you is, although that case has gotten the most publicity, this is an issue of statewide concern. We have had a lot of municipalities contact us since that court case has happened and since this bill has been introduced. They raise a lot of concerns. They don't-- again, as Mr. Wendell said, we don't see it as an ambiguity. It says when the arresting officer causes the injury, they need to pay. In all other cases, the jail pays. We don't feel that that is an ambiguity. Our other concern is, particularly for Chase County and for others, too, that the Chase County Jail is basically going to say to every prisoner that's brought in, we need a medical clearance. The issue in Chase County, although that person was intoxicated, the affidavit of the jailer seems to imply that their biggest concern was that the person was going to throw up in their jail. That may be concerning, but we don't think that a janitorial issue is necessarily-- necessarily needs to have a medical examination. And as many of you know, in small communities, if they're going to have a medical examination, they're probably going to be taken to the ER, which is some of the most expensive care that you can get. So we are very grateful for Senator Arch in his opening to say that we can have a little bit more time to work on this. Again, we're grateful to NACO and Sarpy County for working with the cities to try to come to a compromise. The representative from Sarpy County wrote, in our opinion, a brilliant amicus on this case, and I thought one of the best points that they made was, you know, there are situations where law enforcement takes someone to the hospital but it's a cite-and-release situation, and if that person never steps foot in the jail and they're never lodged, that perhaps the jail should not pay for those. And we did submit an amendment that reflected that to the counties to see if we could start there with a compromise. They came back with additional changes they would like. So we are working on it, Senator Lathrop, but we need some more time just to make sure that we can come to common ground. So thank you so much.

LATHROP [02:49:05] I'm going to make a note that you're working on it.

CHRISTY ABRAHAM [02:49:07] We're working on it, Senator Lathrop.

LATHROP [02:49:09] Any questions? I don't see any but thanks for being here. We [INAUDIBLE].

CHRISTY ABRAHAM [02:49:12] Thank you so much. We appreciate it.

LATHROP [02:49:17] Anyone else here to speak in opposition? Anyone in a neutral capacity on LB455 that wants to be heard? Seeing none, Senator Arch to close. Senator Arch waives close, and I don't believe we have any letters. We do not, so that will close our hearing-- thanks, Senator-- on LB455 and bring us to LB539 and Senator Walz. Good afternoon.

WALZ [02:49:59] Good afternoon.

LATHROP [02:50:00] Welcome to the Judiciary Committee.

WALZ [02:50:03] I-- I want-- is this the first time I've been here? Oh, it is.

LATHROP [02:50:06] Well, we're thrilled to have you on the second-to-the-last-day of hearings.

WALZ [02:50:11] Thank you so much. Good afternoon, Chairman Lathrop and members of the Judiciary-- Judiciary Committee. For the record, my name is Lynne Walz, L-y-n-n-e W-a-l-z, and I proudly represent Legislative District 15. I'm here today to introduce LB539-- oh, sorry. LB539 is a bill to redefine abuse under the Adult Protective Services Act. More specifically, the bill adds, "Such act shall constitute abuse regardless of whether it impairs physical functions of the victim and regardless of whether the victim reports such act or seeks medical attention or treatment." This idea was brought to us by the Ombudsman's Office in an attempt to provide more stringent reporting to Adult Protective Services. My office has been working very closely with them throughout this past year on our LR296, and this was one of our recommendations to increase oversight over state-licensed care facilities. The LR296 Investigate-- Investigate-- I am sorry-- Investigatory-- I can't say it-- Investigative Committee emerged last session when a veteran died at Life Quest facilities in Palmer, Nebraska, in an extremely horrific manner. To give you a rough time line of events, DHHS surveyors visited this facility in June and July of 2017 and detailed a lengthy 81-page report on violations that they found there. This veteran was later found dead in her room in early September, lying on the floor in a pool of her own vomit and feces on a Sunday morning. Other residents had reportedly complained about her need for medical care on Friday and Saturday but were told that they needed to wait until the VA was open on Monday so they could get the cover of the cost paid for. A month after her death, the 81-page report was released by the department

and shortly thereafter the facility was closed, nearly four months after the original investigation was completed. In that report, a list of violations was found including, but not limited to, one resident who was a registered sex offender exchanging money or other commodities in exchange for sexual favors, residents being required to cook, clean, and do laundry for the facility without pay, access to only one telephone or a pay phone at the entrance of the facility with no privacy. One resident wanted to be moved to a different facility but was unable to do that due to the fact that their guardian was the administrator of the facility. They were all served the same meals, regardless of whether or not the doctor had ordered a specific diet. Those are just some of the examples that were listed in the original report and does not include what we found through the investigative committee. There obviously needs to be more oversight over these-- over these facilities and that is something we're working on. For now, my hope is that this legislation will help strengthen reporting requirements under this act and hopefully prevent further incidents. With that, I would be happy to answer any questions.

LATHROP [02:53:45] This arises out of the "house of miseries" and you were the vice chair of the special investigative committee. Do I remember that right?

WALZ [02:53:52] Yep.

LATHROP [02:53:54] When you did your investigation, did you have the cooperation of Health and Human Services?

WALZ [02:54:04] When we started our investigation, we asked Health and Human Services to come in and do a briefing with us where we could ask them questions on whether or not they felt that there was enough oversight and questions on investigations and surveying. I thought that the answers were very vague, and a lot of times they said that they could not provide answers to those questions for us. So I-- I don't feel like--

LATHROP [02:54:39] Did you-- did you attempt to get any records? And specifically, did you attempt to get the last survey done before these events took place?

WALZ [02:54:49] A last survey of --

LATHROP [02:54:51] So Health and Human Services in a licensed facility will do surveys from time to time--

WALZ [02:54:55] Um-hum.

LATHROP [02:54:55] --right, and go in, announced or unannounced, and check the place out and see if there's violations or if it's a safe and healthy place for people to be.

WALZ [02:55:06] Um-hum.

LATHROP [02:55:06] Right?

WALZ [02:55:06] Did we get the records for that?

LATHROP [02:55:07] Did you get the records for the last survey, any of the surveys that were done before this incident happened?

WALZ [02:55:15] No.

LATHROP [02:55:16] Did you ask for them?

WALZ [02:55:19] I don't remember, Senator Lathrop.

LATHROP [02:55:20] I thought when we were briefed at the Legislative Council that Senator Friesen said that he requested them and that Health and Human Services wouldn't give them to you.

WALZ [02:55:31] Yes, and now I-- I don't remember. I'll have to find out. I'm sorry.

LATHROP [02:55:37] OK. I was just trying to get the background on that investigation. So 28-351, this says abuse means-- is this an-- we don't-- because it's just one paragraph, I don't have context to this. Is this just abuse in a nursing home setting?

WALZ [02:55:54] This is-- no, this is abuse in assisted living, assisted living facilities.

LATHROP [02:55:59] OK, but it's not broadly, like how they would determine whether a kid in a schoolyard would be abused but, rather, what's happened in a-- in the context of a licensed care facility.

WALZ [02:56:12] Right, yeah.

LATHROP [02:56:12] OK. Thank you.

WALZ [02:56:13] Um-hum.

LATHROP [02:56:14] Any other questions? I see none. All right. Are there proponents that wish to testify on LB539? Seeing none, are there any opponents of LB539? Anyone here in a neutral capacity? That is a short hearing, Senator Walz. Do you want to close? Senator Walz waives closing and we have no letters of support, in opposition, or in a neutral capacity. So thanks for coming in and introducing LB539.

WALZ [02:56:52] You're welcome. Thank you.

LATHROP [02:56:52] That will close our hearing on LB539 and bring us to LB578, Senator La Grone. I saw him here a moment ago. Welcome.

La GRONE [02:57:58] Thank you, Mr. Chairman and members of the committee. I introduced LB578 to deal with the problem of-- that we've seen in other states of redistricting cases getting in the way of-- of proper election cycles. So at the federal government level, they have a three-judge panel that is able to expedite these kind of cases, and they end up heading straight to the Supreme Court. At the state level, we don't really have anything to that nature. Now if you look at redistricting cases and how they have increased over the last few years, at the federal level since 1990, we've seen a pretty normal rate of cases filed, yet in '90s-- in the 1990s cycle, the researching cycle that followed that, there were 96 federal cases. In 2000, there were 94 federal cases. And in 2010, there were 125 federal cases, so it's a little bit of an increase, not much. If you change to the state level, in the 1990 cycle, there were 51 cases. In the 2000, cycle there were 94 cases. And in the 2010 cycle, there were 130 cases, so you can see a marked increase. Nebraska hasn't had a redistricting case since 1990 and that case caused a delay of an election, a primary election that had to be moved. And in this last cycle, as I said, we saw an increase in cases and as-- as of August, there are still 13 active state-level cases. So that's the issue that is meant to be addressed by this legislation, so pretty simple. It sets venue in Lancaster County District Court-- excuse me-- and just expedites the proceeding. And with that, I'd be happy to answer any questions you may have.

LATHROP [02:59:41] Oh. Senator Brandt has got a question for you.

BRANDT [02:59:48] Thank you, Chairman Lathrop. Thank you, Senator La Grone. So what problem does this specifically fix?

La GRONE [02:59:53] So it makes sure that a case that is filed doesn't mess up an-- so let's-- I'll give you a specific example. Let's say that someone-- we redistrict in 2021 and let's say a case was filed immediately following that session being over and there was an-- there's an election in 2022, and let's say the case took three years. Now you potentially-- and let's say the-- the lawsuit was over one of the districts that was up for election in 2022. Now you potentially have a senator serving that may or may not be lawfully representing that area. That's the problem it's meant to address.

BRANDT [03:00:34] All right. Thank you.

LATHROP [03:00:39] OK. The statistics you gave us about 2010 state court filings, none of them were Nebraska. Am I right?

La GRONE [03:00:46] That's correct. So--

LATHROP [03:00:47] So maybe they had something in Pennsylvania or Wisconsin or something like that, but it's not a specific problem that we've identified from a previous redistricting issue in our state.

La GRONE [03:01:00] Well, I think what the trend shows is that since 41-- so of those cases, 41 have dealt with it. And so I think that it's likely-- I think it's better to be prepared for something like that, since we are ascending-- seeing a trending increase, rather than to not have a process and get caught flatfooted if something does come along.

LATHROP [03:01:21] Does current law provide that a redistricting suit needs to be filed in Lancaster County--

La GRONE [03:01:28] No. So the Lancaster--

LATHROP [03:01:29] -- [INAUDIBLE] pick it? Or-- or can it be in the jurisdiction where the plaintiff resides?

La GRONE [03:01:34] If the venue asks-- if-- I'll tell you the two reasons. The-- there's really two aspects of the bill, the expedition part and the venue part, and I'll-- I'll tell you why they're both in there. The expedition part was to speed it up. The venue part was to-- since redistricting is often contentious, the ven-- goal with venue is to make sure there wasn't any-- couldn't be any question of judge shopping. It was to avoid that question. I view that as the lesser part. If the committee just feels that that-- if that's the impediment, I would have no problem with that being removed. I think the expedition part is the really important part. The di-- that's why the venue pro-- provision was in there, though, to try to give the appearance of propriety when it comes to picking a venue.

LATHROP [03:02:19] OK. Thank you for answering those questions and I don't see any others. Are you going to stick around to close?

La GRONE [03:02:26] Absolutely.

LATHROP [03:02:27] Thank you, Senator. Anyone here as a proponent of LB578? Seeing none, anyone here in opposition to LB578?

DANIELLE CONRAD [03:02:37] Hi again. Good afternoon, members of the committee, Chairman Lathrop. My name is Danielle Conrad. It's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d, appear today on behalf of ACLU of Nebraska in opposition to LB578. I want to thank Senator La Grone for his time prior to the hearing and sitting down and having an ability to talk through some of the issues involved in this legislation. Unfortunately, we weren't able to come to a meeting of the minds but definitely appreciated his time amid busy schedules. Let me just be clear about a couple of our concerns with this legislation. So

initially it's important to note, and I'm passing out some information from our own Legislative Research Office, that Nebraska historically doesn't have an issue with redistricting litigation or redistricting litigation abuses. I think the last case we can agree upon was back in 1990, about 30 years ago, and seems to have been appropriately and deliberately decided. So I think that's kind of the first thing to keep in mind. The second thing is that redistricting litigation is governed by a complex set of federal and state laws, including constitutional provisions at both the federal and the state level, so redistricting litigation may or may not be filed in state court. In fact, many times it's filed in federal court which, again, would be beyond the purview of this legislation and-- and this Legislature. So this isn't going to be really a cure-all in terms of judicial efficiency related to redistricting issues. The other thing that I think that's really important to keep in mind is that perhaps this is not a good area of law to afford expedited process to because of the complexities involved. One example that we see frequently in our practice, in our work, that the Legislature has afforded expedited process to is open records case-- open records cases. So that's a pretty straightforward legal analysis. It's either an open record or it's not, right? But I can also tell you that with expedited review, that doesn't come any time certain for trial or decision. In the death penalty case that we filed in regards to open records issues, we filed that in I think December 2017 and it has yet to be set for oral argument before the Supreme Court after winning at the district court level, and today is end of March 2019, so kind of keep that in mind when you're looking at this legislation here. And we-- when it comes to something as important to redistricting that goes to the heart of fundamental rights and voting rights, administration of elections is important, rights of candidates to run for election is important, but the paramount, tantamount right is the right of voters to have fair elections, to ensure that minority voting rights are not diluted, to ensure that the tr-- that the system is transparent and-- and less partisan. And-- and that's really what should be at the heart of any challenges to redistricting litigation and-- and at the top of mind. And in order to ensure that Nebraska doesn't see a trend towards increased litigation surrounding redistricting, we encourage Senator La Grone and other members of this Legislature to join with us in reforming our redistricting process in Nebraska to make it less partisan, more transparent, and respectful of minority voting rights. That is the recipe to end redistricting litigation, not this legislation.

LATHROP [03:06:05] OK. I see no questions.

DANIELLE CONRAD [03:06:07] OK.

LATHROP [03:06:07] Thanks for being here.

DANIELLE CONRAD [03:06:08] Thank you. It's a walk down memory lane. I was on the Redistricting Committee last go around and-- phew.

LATHROP [03:06:13] Yes, you were.

DANIELLE CONRAD [03:06:13] Yes. Thank you.

LATHROP [03:06:18] Any other opponents to LB578? Anyone here to speak in a neutral capacity? Seeing none, we have no letters, Senator La Grone, so you're free to close.

La GRONE [03:06:29] Thank you, Mr. Chairman and members of the committee. Just a couple of points I'd like to respond to. Essentially, first, on the-- that this doesn't-- isn't a cure-all because it doesn't govern federal cases as well, as I pointed out, the federal government already has a procedure. It's a three-judge panel procedure. That's their provision for dealing with this quickly and we can see that it does deal with it quickly. An exam-- an example, the-- the flaws of that is that the Maryland case that's, once again, going before the Supreme Court I believe on Tuesday next week. That's, you know, nine years into a ten-year cycle. That's rather problematic, but that's because it's had three rounds at that district panel level. So this is to put something in-- in place to cover the state level. That covers the federal level. And, yeah, you can file it in federal-- a redistricting case in federal or state court but, you know, it-- it just-- it's the litigant, the plaintiff's choice of where to file that, obviously, and we have seen a marked increase in the choice for state court, and that's the problem this is trying to solve. And I-- the second-- I think it's very important for expedition to apply to these cases because of the time sensitivity with elected office. When-- I'm sure you're all familiar with how long lawsuits can obviously take, and they often can outdate an elected official. And so that's the problem we're trying to solve is if a person votes for someone, they should be voting for someone who is going to represent them for that period. If it turns out they were voting for someone who then didn't lawfully represent them, if the district wasn't lawfully drawn and that person then served and voted on a number of-- of provisions, I think that brings in-- calls into question legitimacy of those votes which is-- would undermine the whole purpose of our democracy, which I think is rather not a great situation to be in. And I would agree with Ms. Conrad that the-- the rights of voters is the most important part that we're trying to protect, and that is why I think that this legislation is a good idea because it does protect the voter. It ensures they are being represented if there is a suit. It ensures that that suit is dealt with quickly so that they are being represented by someone who is representing a district that is lawfully drawn to represent them. So with-- I mean that is why I brought the bill and that's why I would ask for it to advance from the committee. So thank you.

LATHROP [03:09:03] I don't see any other questions. Thanks for being here. Thanks for bringing LB578.

La GRONE [03:09:09] Thank you.

LATHROP [03:09:11] Appreciate it. Since there are no letters, that will close our hearing on LB578 and, actually, close our hearings for the day, recognizing that this is the eve of our last hearing day tomorrow.

