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Appropriations Committee February 18, 2021
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STINNER: [RECORDER MALFUNCTION] the Appropriations Committee hearing. My name is John Stinner. I'm from Gering. I represent the 48 District. I serve as the Chair of this committee. I'd like to start off by having members do self-introductions, starting with Senator Erdman.

ERDMAN: Thank you, Senator Stinner. Steve Erdman. I represent District 47, ten counties in the Panhandle.

HILKEMANN: Robert Hilkemann, District 4, west Omaha.

STINNER: John Stinner, District 48, all of Scotts Bluff County.

KOLTERMAN: Mark Kolterman, District 24, Seward, Polk, and York County.

VARGAS: Tony Vargas, District 7, downtown and south Omaha.

DORN: Myron Dorn, District 30, Gage County and southeastern Lancaster.

STINNER: Assisting the committee today is Brittany Sturek, our committee clerk. And to my left is our fiscal analyst Doug Nichols. For the safety of the committee members, staff, pages, and public, we ask that those attending our hearing to abide by the following. Submission of written testimony will only be accepted between 9:30 and-- between 8:30 and 9:30 with respective hearing-- in the respective hearing room where the bill will be heard later that day. Individuals must present their written testimony in person during date-time framework and sign the submitted written testimony record at the time of submission on the day of the hearing on the bill. Individuals with disability can have other people representing them. Due to the social distancing requirement, seating at the hearing room is limited. We ask that you only enter the hearing room when it is necessary for you to attend the bill hearing in progress. The bills will be taken up in order posted outside the hearing room. The list will be updated after each hearing to identify which Bill is currently being heard. The committee will pause between each bill to allow time for the public to move in and out of the hearing room. We request that everyone utilize the identified entrance and exit doors to the hearing room. We request that you wear a face mask covering while in the hearing room. Testifiers may remove their face covering during testimony to assist committee members and transcribers in clearly hearing and understanding the testimony. Pages will sanitize the front

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table and chair between testifiers. Public hearings for which attendance reaches seating capacity or near capacity, the entrance door will be monitored by the Sergeant-at-Arms who will allow people to enter the hearing room based upon seating availability. Persons waiting to enter a hearing room are asked to observe social distancing, wear a face cover while you're waiting in the hallway or outside the building. To better facilitate today's proceedings, I ask that you abide by the following procedures. Please silence or turn off your cell phone. Move to the front row when you are ready to testify. Order of testimony: introducer, proponents, opponents, neutral, closing. Testifiers, sign in. Hand your green sign-in sheet to the committee clerk. When you come to testify, please spell your name for the record before you testify. Be concise. It is my request that you limit your testimony to five minutes. If you will not be testifying at the microphone but want to go on the record as having a position on a bill being heard today, there are white sheets at the entrance where you may leave your name and other pertinent information. These sign-in sheets will become exhibits in the permanent record at the end of today's hearing. We ask that you please limit or eliminate handouts. Written materials may be distributed to committee members as exhibits only while testimony is being offered. Hand them to the page for distribution to the committee and staff when you come up to testify. We need 12 copies. If you have written testimony but do not have 12 copies, please raise your hand now so the page can make copies for you. With that, we will open today's hearing with LB304, Senator Hansen. It is a pleasure, sir.

M. HANSEN: Thank you. It's a pleasure for me too. All right. Good-- good morning, Chairman Stinner and members of the Appropriations Committee. My name is Matt Hansen, M-a-t-t H-a-n-s-e-n, and I represent LD 26 in northeast Lincoln. I'm here this morning to introduce LB304, which increases funding to the Crime Commission to add capacity to [INAUDIBLE] related to officer certification and revocation. Over this past summer, I, like many of us, paid close attention to the listening sessions and interim studies held by the Judiciary Committee, including my own LR417, held in response to the protests and movements following the murder of George Floyd. These hearings examined the interactions between citizens and law enforcement. Many of those testifying expressed the desire for reform regarding use-of-force policies, law enforcement training and

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practices, and improved transparency and oversight. In those hearings and other meetings, law enforcement pointed out several times that the Nebraska Law Enforcement Training Center in Grand Island does not seem to have the resources and staff to fully accomplish their duties. Specifically, the president of the Police Chiefs Association of Nebraska, told the committee that as a result of the Legislature passing LB791 in twenty eighteen, the training center had been forced to pull away instructors from their training duties to conduct investigations on cases involving officer decertification. For context and background. LB791 tasks the Crime Commission with several new duties, including receiving documents from law enforcement agencies on personnel changes, receiving reports from agencies and officers who are terminated or allowed to resign under certain circumstances, and providing waiver forms to agencies giving them permission to contact former employers of prospective hires. Perhaps most important is that LB791 increased the commission's investigatory powers and gave them the duty to review and determine whether flagged officers should retain their certification. It is this requirement that law enforcement and others have pointed to that is being completed at the expense of much-needed education and training requirements conducted at the training center. Recent events have made it more clear than ever that all law enforcement officers should be fully prepared to complete their duties before starting their careers. In order to fully address the issues involving police conduct, we must both increase accountability and make sure we're fully funding officer training and education. I think part of the issue with the funding from the Crime Commission comes from the legislative history of the bill. Most of the provisions of LB791 were actually part of that year's same LB792, which were both introduced by Senator Ebke. When the bills were combined, some of the changes resulted in the fiscal note from LB792 not following the contents of its bill. Thus, to determine the proposal I have in front of you from LB304, I used the amount in the original fiscal note for LB792. In that, the Crime Commission budgeted for additional FTEs, saying that the additional duties under the bill could not be absorbed by the current staff at the training center because it would be a significant workload increase. I will note that I'm always willing to defer to the expertise of the committee and the commission to determine the best amount. I just know that it needs to be more if we want to adequately fund training, education, and

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accountability of our law enforcement officers. With that, I'll close and be happy to take any questions from the committee.

STINNER: Thank you, Senator. Questions? Seeing none, thank you.

M. HANSEN: Thank you.

STINNER: Thank you. My goodness. Proponents?

LYNN REX: Senator Stinner, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We're here today in strong support of LB304. This bill is tied into, again, providing additional funding for the Crime Commission. We do think that they are woefully underfunded, and this is based on conversations I've had with a prior director of the Grand Island Training Center. He's no longer been there. He hasn't been there for several years, but he left because they've not had a new instructor in 25 years. Other than Lincoln, Omaha, Papillion, La Vista, everyone else, their training goes through the Grand Island Training Center for the certification. And so we have 529 municipalities in the state of Nebraska. And the reason for this handout, of the 529 cities and villages of the state of Nebraska, half of them are up against the maximum levy limit, the 45 cents plus 5. Half of them cannot even raise the 2.5 percent that was spent, basically that they could spend if they had the authority to do so. And frankly, probably the only thing that says it all is on page 5, the very bottom. This is just kind of the history of one fund after another cut, cut, and cut and eliminated by your predecessors. And in 2011, LB383 passed. And contrary to the Syracuse report, contrary to the tax modernization report of 2013 that the Revenue Committee did, basically the Legislature did just the opposite of what was recommended. The single most important thing that could be done to alleviate property taxes is to properly restore funds to local governments due to exemptions granted by previous Legislatures. Instead, the Legislature, as you can see, at the recommendation of Governor Heineman, on page 5, eliminated state aid. All of our major funding sources, except for the Municipal Equalization Fund, have been eliminated. So with that, this is really important because municipalities cannot pick up the difference to send their folks to the training center. And again, I'm not talking about Omaha or La Vista, Papillion, or Lincoln that have their own training centers.

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Everybody else, though, is going to Grand Island. LB51 is a bill that Senator Lathrop introduced this year. We're going to be supporting Senator Wishart's bills as well. We really appreciate additional funding that could be done. We think that it is not sufficient in terms of what the offset will be for the unfunded mandates of LB51, but it is really important and we think any step forward is really important to have some kind of an offset to-- to provide assistance here. One of the things that I think is really important is that the Judiciary Committee, I think, just did an outstanding job holding hearings after the George Floyd murder. And essentially that resulted in a number-- I think over 185 individuals testified before Judiciary those two days. Another set of hearings, another hearing set was done in October by the Judiciary Committee. We testified in that; others did as well. And LB51, in and of-- even though the league opposes LB51 in its current form, we look forward to working with Senator Lathrop to make some accommodations for our smaller entities because, of course, it's going to work for Omaha, it's going to work for Papillion. They already have their own training center. But for some of your cities, it's not going to work. And so we want to make sure that that accommodation will be done. We're really looking forward to working with Senator Lathrop in that regard. So these funds are really important. I mean, I don't think it's sufficient. I don't think it's enough. But we really appreciate Senator Hansen putting this bill in. We appreciate him also putting in LB303, which is a bill that was heard before the Government Committee last week. That bill would provide an exemption from the lid on unrestricted funds. That is extremely important. When the Legislature put those caps in, in 1996, and I know, Senator Dorn, you're aware of this because you're a longtime county official, and you, too, Senator Erdman, maybe some of the rest of you are aware of this in your other capacities, but in 1996 the Legislature decided that they were going to institute levy limits. The Legislature passed levy limits for municipalities. Well, the maximum was \$1.05 per \$100 of valuation. It went down to 45 cents plus 5. Second-class cities and villages had two years to do that, two years, from 1996 to 1998. The lid on restricted funds went in immediately, and the reason for all of that was because Senator Warner at the time thought that there were areas of the state that weren't paying enough in property taxes, other areas paying too much. But what does that-- how does that align with this? Because, again, our smaller communities have still really not recovered from that. If the state,

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if the federal government said to the state of Nebraska and the Appropriations Committee was tasked with here's your income tax rate, here's your sales tax rate, you have two years, reduce it by half and good luck with that, that's really the position that the Legislature put second-class cities and villages in. Every one of them was up against a maximum levy limit. So these funds are so critically important. What Senator Hansen is doing here, not only with LB304 but LB303, to provide an exemption outside of the lid on restricted funds in 13-520 to say that that does not apply to additional law enforcement funds and so forth. And that would, of course, help counties too. In addition, LB303, in addition, your bills, too, Senator Wishart, these are all extremely important and we, again, look forward to working with Senator Lathrop to make LB51 work for small communities. With that, I'm happy to respond to any questions that you might have.

STINNER: Questions? Senator Dorn.

DORN: When-- when you're visiting-- or in your comments, or you talked to Lincoln and Omaha, wouldn't have some of the same issues, some of the-- I call it the smaller municipalities with the training that's required, or even there's some bills this year that are proposed. What-- how are some of the cities, the smaller communities, handling that? Are they going without enforcement or what-- what are they doing to get the required training?

LYNN REX: OK, so I-- I-- let me just give a little bit of backdrop here, Senator. LB51 would increase the training hours from 20 hours of training annually to 40 hours of training annually, and to be a new officer, 48 hours. And that's an additional two days' training at-- there's three different classes at the Grand Island Training Center, 16 weeks. In talking to Don Arp, that adds an additional two days to it, which is neither here nor there, other than to say it's more money, it takes more to make this happen. And the smaller communities, one of the issues that we'll be discussing with Senator Lathrop is the notion that was talked about by Senator Hansen, which is law enforcement officers in this state are not required to go to the Grand Island Training Center or a training-- get certified for up to a year. But the reason for that and the history behind that is because the Grand Island Training Center couldn't take in more people. And so as-- in talking to a number of law enforcement officials even yesterday

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from our smaller communities, and a couple of the largest communities were there. Tobias [PHONETIC], by the way, I didn't have a chance to get to his issues, but he was on that call, Senator. But at the end of the day, what they're doing now is they are struggling. What happened after LB1114 passed in 1996, coupled with LB299, the lid on restricted funds in 1996, the lid taking effect immediately, the levy limit taking effect two years later, what occurred from that is that several folks said, isn't this great, there's all this consolidation. Well, what happened is the smaller communities lost their law enforcement officers, and at that time several of them could afford to contract with the county sheriff to provide that law enforcement. Many of them cannot even afford to do that now. So it has really been a struggle. And to the-- and to the extent that we also support training, I mean, the league has over-- I think we've got over 30 of-- we have over 170 members of our League Association of Risk Management, which is a risk management pool; of those, about 30 of them are municipalities with law enforcement agencies. We have over 140 municipalities in the pool, but 30 of them have law enforcement agencies. And, I mean, so the training element is really important. And one of the other bills we'll talk about is for online training. To have that, you need broadband across the state of Nebraska that is fast and works. But what's-- what's happening right now is people are struggling. And we agree. We hope that we can come up with some language that's acceptable because people are not just putting law enforcement officers out on the street with a gun, a badge, and a car, and say "go forth" on day one. They are partnering with people. They are making sure for liability reasons, if no other reason. But still, you can't expect to get a position in the Grand Island Training Center unless you have a name and an officer ready to go. You can't have a name, an officer ready to go, if you don't have that person hired. And one of the-- one of the issues that have come forward at the hearing on LB51, which I thought was a great hearing, was to talk about the issue of maybe community colleges and others providing some level of training too. And I talked to Greg Adams about it this morning because back in the day, we worked-- the league worked with the Grand Island Training Center and community colleges, the notion being, wouldn't it be great if when kids are in college or in high school, they could decide, I'd like to have a career in law enforcement. And at that time, community colleges were prepared to partner with the Law Enforcement Training Center, but then other things aligned and there weren't even positions for the law

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enforcement officers hired, much less letting a kid in college or-- or-- or high school take that position. They have a maximum of 50 people that they allow in those classes out there. And again, they haven't had a new instructor. They have seven instructors and they haven't had a new instructor in over 25 years. So they-- as-- as a former director, not the current director, the-- a former director who has now gone on to do other things told me, he said, I left the Grand Island Training Center because we have been cut, cut, and cut to the bone, and there's no way I can accomplish our mission in good faith.

DORN: Thank you.

LYNN REX: Thank you.

STINNER: Additional questions? Seeing none, thank you.

LYNN REX: Thank you very much, and we really appreciate Senator Hansen introducing LB303, LB304, and we'll be testifying in support of Senator Wishart's bills too. We really appreciate it. And again, LB55 has got some great elements to it and we appreciate that.

STINNER: Thank you. Afternoon-- good morning. Excuse me.

JIM MAGUIRE: Chairman Stinner, good morning. Senators of the Appropriations Committee, my name is Jim Maguire, J-i-m M-a-g-u-i-r-e. I'm president of the Nebraska Fraternal Order of Police, and we're here to support this bill, which we believe is vitally important. LB51 was introduced to help shore up some of the shortcomings that come along with decertifications. And we believe that this, this funding, is-- is needed to help fulfill that promise that-- that a lot of the senators and-- and people in law enforcement made during-- over the course of the summer with all of the protests to try and improve policing in Nebraska, and we believe that this bill will do just that. Be happy to answer any questions.

STINNER: Questions? Seeing none, thank you.

JIM MAGUIRE: Thank you.

STINNER: Any additional proponents? Seeing none, any opponents? Anyone in the neutral capacity? We do have written submitted testimony on LB304, proponent, ACLU of Nebraska. Senator, would you like to close?

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M. HANSEN: Yes, I would, briefly. Thank you all, and thank you to the testifiers in support and written testimony. As you can kind of see by the stakeholders that have all come in, in support, I think supporting the Crime Commission, supporting the Training Center is one of the things that is genuinely consensus right now. I know we've heard a lot of different things and a lot of different bills we're focusing on this year. You know, my bill exists kind of independently of any other things the Judiciary Committee was doing and certainly could also help things the Judiciary Committee might be doing. I think, just as we look at it and what I've heard from the summer and I-- what I believe Senator Wishart's heard from the summer, is that there's-- right now, there's just a really clear bottleneck at the Crime Commission, at the Training Center, and that just some increased staff, some increased operational efficiency would pay huge dividends across the state. So with that, I urge you to support LB304 and happy to work with the committee.

STINNER: Thank you. Additional questions? Senator Erdman.

ERDMAN: Thank you, Senator Stinner. Thank you, Senator Hansen. So why is this just one-time, one-year expenditure? What happens next year?

M. HANSEN: Yes, thank you. I should have clarified. Originally, the-- basically, it's a drafting error. We meant to do a-- have that be split over two years, be about \$80,000 over two years for FTEs. They got drafted as a one-time lump sum. So I should have mentioned that in my opening. But that's-- that was my intent, is to-- for it to be FTEs kind of perpetually.

ERDMAN: OK.

M. HANSEN: And again, like I said, I'm not the appropriations expert. I don't necessarily know the right amount of FTEs. But as you've heard multiple testifiers, it-- they-- consensus seems to be that they are understaffed.

ERDMAN: OK

STINNER: Just for a point of clarification, you-- should I divide this \$172,000 by 2?

M. HANSEN: Yes.

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STINNER: OK.

M. HANSEN: So we are all--

HILKEMANN: You just answered my question.

M. HANSEN: Here, I will-- if you'll allow me, the original fiscal note for LB792, which is how I got this number, had a fiscal note of-- this is-- this would have been '18-19, '19-20, but they had \$84,900 and then \$80-- \$86,000 the next year, and it was for a deputy director of administration and operating costs and travel and so on, is-- is how they proposed. It was a new full-time position and this was that amount for.

STINNER: OK, for the record, divided by 2 is \$86,000 per year, so good catch. OK, additional questions? Senator Hilkemann.

HILKEMANN: I just picked up on this last-- your last statement here. This is-- this is not going-- your-- what you're using this money, resource for, is for an individual that will work at that-- at that department?

M. HANSEN: Yes.

HILKEMANN: So this is not going into the direct training of-- of officers?

M. HANSEN: Yes, so what I understand currently has happened is we assigned new duties to the Crime Commission, but we didn't give them any staff. So they've repurposed some staff from their original duties of training to the revocation process that's new. My-- my idea is to give permanent staff to the revocation process and allow them to transition the training staff back, if that makes sense.

HILKEMANN: OK, so this is not going to be utilized directly for training.

M. HANSEN: The net effect would be that they could do more training because we would allow some of their original trainers to go back to their original duties by allowing them to hire new staff that the trainers are the new kind of temporarily. Does that make sense? Honestly, if you wanted to change this bill and repurpose it to

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directly go into training and allow the people who are currently doing revocations, that would support my missions and goals. Fundamentally, the issue, and I think we'll address it, is just there's not enough people at the Crime Commission. That's why there's a waitlist for cities to get people to the Training Center. And part of the reason the waitlist got worse is they had to pull some people away to do the other duties we assigned them.

STINNER: I just have one question, is, where's the Crime Commission at? Are they favorable to this? If we allocate the money, are they going to actually use it for this purpose? I mean, they haven't made a budget request for this, right?

M. HANSEN: No, they-- not to my knowledge. As with you, sometimes, I think state agencies have some difficulty asking for what they always need. I haven't necessarily talked directly with the Crime Commission to see how they feel.

STINNER: I haven't seen too many agencies that-- shy about that, but that's-- I'll follow up with the Crime Commission.

M. HANSEN: Sure.

STINNER: Any additional questions? Seeing none, thank you.

M. HANSEN: Thank you.

KOLTERMAN: John?

STINNER: Yeah, we have letters of support from Lancaster County Board of County Commissioners, and that-- that ends are hearing on LB304. We will now open the hearing on LB192.

WISHART: Well, good morning, Chairman Stinner. Members of the Appropriations Committee, my name is Anna Wishart, A-n-n-a W-i-s-h-a-r-t, and I represent the great 27th District here in west Lincoln. And I am here today to introduce LB192. LB192 appropriates \$140,000 from the General Fund to the Nebraska Commission on Law Enforcement and Criminal Justice, or the Crime Commission, for each fiscal years 2021-22, and 2022-23 for in-person and online training for law enforcement officers to be certified through an accreditation agency approved by the Nebraska Commission on Law Enforcement and

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Criminal Justice. LB192 would provide for the purchase of an online training system that would help law enforcement to meet their continuing educational requirements. These online trainings cover everything from antibiotics to First Amendment laws. Representatives from the Fraternal Order of Police will be here to walk you through the specifics of these trainings, as well as the need and the continuing education requirements for law enforcement in Nebraska. As you'll look at the fiscal note, the Crime Commission, the agency did identify that they would spend the total of these intended appropriation on this training if it's passed. And again, there's a wide variety of trainings that would be available to meet the specific needs of local law enforcement agencies. Similar to Senator Hansen, I brought this bill in response to some of the conversations and dialogue that happened last year, and recognizing that there was one space where all parties tended to agree, which was that if you want to be very skilled in any profession, that takes time and energy and practice and that, and so the more we can invest in law enforcement training, the better results we'll get. And as a spouse of a former police officer who spent five years on Lincoln Police force, you know, I saw firsthand the dangers of working in law enforcement and the benefits of access to quality training. We want to make sure that training isn't just available in Lincoln or Omaha, but it's available across the state equitably for other communities. So that's why I'm bringing this bill and happy to answer any questions.

STINNER: Any questions? Senator Dorn.

DORN: Thank you for bringing this. How does this funding-- or will-- will this funding be used different than the previous bill, from Matt's?

WISHART: So this is online funding, so it wouldn't be directly just towards the Grand Island Training Center. This would be flexible in its use and-- and it's online. So it is a little bit different. And again, I'm willing to work with the committee on determining what is the best to prioritize and work with the Fraternal Order of Police and other stakeholders in sort of figuring out what funding we want to prioritize this year.

STINNER: Additional questions? Senator Hilkemann.

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HILKEMANN: Senator Wishart, so-- and in following up from our previous testimony that-- so your bill is going to actually be directed more to the officers themselves rather than to an administrator?

WISHART: Yes, this will be available to the police forces themselves. Yep.

HILKEMANN: OK, is this-- is this a matter that the-- that the-- the training is there and this is just a way for them to get the training, or are we having-- or are we going to be-- is this for the development of the-- of the training program itself?

WISHART: Oh. Yeah, no, the training-- the training is there, but there are costs associated with getting accredited and accessing accre-- accredited training. And so this would allow for that. This would give access to training, like nonbias training, training in terms of nonlethal use of force, just a lot of sort of virtual opportunities that are available to police officers in certain areas, making sure that the funds are available so that they are accessible to law enforcement that may serve in a much smaller community, that hasn't had the opportunity for this.

HILKEMANN: At \$140,000, approximately how many officers could be trained with this?

WISHART: Jim will be able to better answer that question.

HILKEMANN: OK, thanks.

STINNER: Senator Erdman.

STINNER: Thank you, Senator Stinner. Thank you, Senator Wishart. I have a-- have a question that was prompted by your conversation with Senator Dorn about online training. The-- the bill says for in-person and online training.

WISHART: Yes.

ERDMAN: So if it's in person, how would that happen, at the-- at Grand Island, or where would that training take place?

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WISHART: Oh, no, that training would-- I mean, it could take place in Grand Island, but it also could take place at the local law enforcement office as well. And again, there's-- and Jim can talk about this. I've had the opportunity to tour and experience some of the training facilities at the Omaha Police Department, which are unbelievable, I mean, and so this would give the opportunity for types of those training experiences, equipment, virtual training, all that kind of stuff, to be available for law enforcement in greater Nebraska as well.

STINNER: Yeah, thank you.

STINNER: Additional questions? Seeing none, thank you.

JIM MAGUIRE: Good morning.

STINNER: Good morning.

JIM MAGUIRE: Chairman Stinner, Senators of the Appropriations Committee, my name is Jim McGuire, J-i-m M-a-g-u-i-r-e. I'm president of the Nebraska Fraternal Order of Police and I am thrilled to be here supporting this bill. This bill is vitally important. Even when you go from in LB51, we're trying to increase the hours from 20 to 40 hours, currently, you-- only 10 of those can be Internet based. Under-- if-- if-- under LB51, all 40 hours can be Internet based, but you have to have some kind of a way to get the training. We know that when Senator Chambers passed his antibias bill, that there were some agencies that struggled to find quality antibias training. There are-- there are several companies that offer that training. It does cost some money. However, there are-- there are certain companies that we've-- that we've looked at that have nationally accredited people that go through. They will track how much training online that you've done. And in order for us to improve policing in Nebraska, we have to have a means of training them. That's-- it's there's-- there's no other way of getting around it. We have to train people better because you-- you have an expectation of getting pulled over in Omaha of a-- of a certain, I guess, profession when-- when the officer pulls you over in Omaha or even Valentine or in Scottsbluff, you should-- you should know that the-- the officer that's coming up to you is fully trained and knows what they're doing. So with-- with the improvement in

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training and everything else, we believe that we will meet that goal with that. So with that, I'll-- happy to answer any questions.

STINNER: Any questions? Senator-- Senator Hilkemann.

HILKEMANN: Thank you for being here. So as I asked Senator Wishart, the \$140,00, how many-- how many officers would this actually-- could you train with this-- this amount of money?

JIM MAGUIRE: So I-- I had talked to Director Brenda Urbanek out at the-- the Training Center. She told me that there was 4,200 police officers in the state of Nebraska and that would train all of them.

HILKEMANN: Oh, OK.

STINNER: It-- it-- online-- online training, you're not seeing if the person actually is paying attention. Is there a testing com-- part of this thing so that you can ensure that they got the information?

JIM MAGUIRE: They can certain-- we know that they can do that. It would be up to the individual agencies to make sure that that's part of the compliance part of it.

STINNER: OK. Any additional-- Senator Dorn.

DORN: Thank you, Chairman Stinner. Thank you for being here again. What happens if they don't get the training done? What happens? Is that officer then now not able to work or what?

JIM MAGUIRE: Yes. Yeah, if you don't meet your-- your annual continuing education requirements, you can no longer-- your-- your license is essentially suspended.

DORN: And that's 40 hours every year, or how often is that?

JIM MAGUIRE: Yeah. Currently, it's 20 hours. This-- this-- there's a couple of bills, but in LB51 it would increase it to 40 hours, and that's just a proposal right now. But with this allocation of the money, everything can be done online. You could do it during a roll call. If you're a little slow, you can go into your office and-- and watch one of the videos so that you can be caught up on what you want to be-- it would be-- each individual agency can tailor-make it to

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what they think it's important, to what video that they should be watching. So if-- if a certain agency is having issues, let's say, with somebody understanding the First Amendment, they have videos on this is what the First Amendment allows you to do, you cannot overstep on this.

DORN: Thank you.

STINNER: Very good. Thank you. Any additional questions? Thank you for your testimony.

JIM MAGUIRE: Thank you.

LYNN REX: Senator Stinner, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. We really appreciate Senator Wishart introducing this important bill. We do think it's important the Legislature knows that it ties into LB51. The league was not the only group opposing LB51 in its current form, and again, we look forward to working with Senator Lathrop on amendments that make this workable for smaller entities. We can certainly see why it works for Omaha. We can see why it works for Papillion. We can see why it could work for Lincoln, because they have their own certified training centers. But I think this kind of-- this bill is important in that element. But the Nebraska Sheriffs Association opposed LB51, as did the greater cities of Nebraska, which is comprised of Hastings, Kearney, gosh, Holdrege, Grand Island, and others. So with that, just to underscore the need for this, my understanding is that what this will basically do is that there'll be free online training or that there'll be some kind of subscription purchase for the law enforcement officers in the state. There are, as I understand it from talking to folks, 210 law enforcement agencies in the state, minus the 93 counties, minus about 100 municipalities. Others are Game and Parks and other agencies that are trained. There's-- we were told 4,300 sworn officers, and Jim was apparently told 4,200, but there's a lot of officers. So with online training, there's a number of things that you can do. But a lot of this, too, also requires in-person training. And so we think this is important and this bill would allow for that. We would want to underscore the importance of giving maximum flexibility to the Crime Commission in how to proceed with this so that they don't just have a directive on here's the specific training. The bill itself, LB51, has an additional

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24 hours of training that's mandated in certain components, and we think that those compon-- there's nothing wrong with those components, per se, in terms of those types of topics. For example, it includes one hour on mental health and substance abuse; two hours' antibias/implicit bias training; scenario decision based, four hours; firearms, two hours; officer wellness, one hour; legal updates, some of the things that Senator Wishart talked about, including, but not limited to, First Amendment, Fourth Amendment issues, four hours; defensive tactics and use-of-force reporting, eight hours; emergency vehicle operations, two hours; training as determined by a law enforcement agency. So that's in addition to what we have here. And again, we're getting a lot of pushback from our smaller entities in particular, and even some of our first-class cities, about the application of it. But that being said, there are some extremely important elements of LB51. This bill's a very important piece of it. The Law Enforcement Training Center has been underfunded for a long time. The Crime Commission needs maximum flexibility. And we hope that you take that into consideration too. And we just can't thank the committee enough, Senator Wishart, Senator Hansen, and others who are working to try to provide funding in this important area. With that, I'm happy to respond to any questions that you might have.

STINNER: Questions? I have one.

LYNN REX: OK.

STINNER: Very briefly, would you tell me if there's any federal money coming down? I know that the Fed-- or the Congress was working on something related to this, and I thought maybe we were getting money for this.

LYNN REX: The answer is, I don't know.

STINNER: OK.

LYNN REX: We work with the National League of Cities. They-- we partner with them, all-- their 50 state leagues, obviously, we partner with them, Senator Stinner, and the messages have been mixed messages about what's going to come out and what isn't. So I don't know that anything's definitive.

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STINNER: Thank you.

LYNN REX: But whether it is or isn't, this money is really necessary. It's-- it's critically important. We really appreciate Senator Wishart introducing this and we hope the committee will include this in their recommendations.

STINNER: Thank you. Any additional questions? Seeing none, thank you.

LYNN REX: Thank you.

STINNER: We do have written submitted testimony as proponents. Jon Cannon of NACO has submitted his written testimony. Are there any other proponents? Seeing none, anyone in opposition? Seeing none, anyone in the neutral capacity? Seeing none, would you like to close, Senator?

WISHART: Well, I'll just come up for my-- just wanted to be clear that there is another bill, LB51, that outlines some other things. It's not in front of this committee. This bill is just \$140,000 per year and we give the ability of the Crime Commission to determine how those dollars are spent.

STINNER: Thank you for that. Questions? Thank you, Senator. Letters of support are from Lancaster County Board of County Commissioners, United-- United Cities of Sarpy County, Nebraska Alliance of Child Advocacy Centers, and Nebraska chapter of the National Association of Social Workers. And that concludes our hearing on LB192. We will now open LB 193, Senator Wishart.

WISHART: Well, good morning, Chairman Stinner and members of the Appropriations Committee. Again, my name is Anna Wishart. A-n-n-a W-i-s-h-a-r-t, and I represent the 27th District in west Lincoln. I am here today to introduce LB193. This bill would appropriate a one-time fund of \$800,000 from the General Fund to the Nebraska Crime Commission for fiscal year '21-22 for the purchase of two law enforcement training systems and software to simulate real-life encounters of law enforcement officers, in person. These systems and software would be designed for law enforcement officers to train on the use of-- on the use of force, especially on the use of nondeadly force. In order to ensure that the two new systems are available to

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currently underserved areas in law enforcement agencies, the Nebraska Police Standards Advisory Council would decide on the location of these systems so that they are not located where similar systems are already in place. I had the opportunity last year, with Senator Wayne and Senator DeBoer, to go to the Omaha Police Department's training center and train on this virtual system. The system that they have costs, I believe, approximately \$400,000. It is incredible system. It-- you-- it's a virtual reality system that walks you through different scenarios so that police officers can find ways to de-escalate a situation. And it's real-time, real-life training, which is critical that we take advantage of these innovations to ensure the safety of police officers and the safety of the public. So my goal is these training systems exist on the east side of the state and we need to make sure that mobility and mileage doesn't get in the way of officers having more frequent access to similar training systems. And I would encourage anyone on this committee to make an appointment with the Omaha Police Department and go and train on this. It's absolutely incredible, and Jim from the Fraternal Order of Police can talk more. Again, the goal is that we move forward as a state leading in terms of public safety for the public and the officers, and these types of systems move us in that direction. Happy to answer any questions.

HILKEMANN: Are there any questions that we-- members of the committee? Senator Erdman.

STINNER: Yeah, thank you, Senator Hilkemann. Thank you, Senator Wishart, for this. I read the fiscal note, and at the bottom it says that they assume that the equipment would be warrantied for two years. And then their-- their comment was, what happens to the maintenance going forward? So we will have to make an appropriations for that maintenance of that equipment going forward?

WISHART: My anticipation is that that would need to be covered by the-- the agency and the Crime Commission.

ERDMAN: OK.

HILKEMANN: Additional questions? Senator Kolterman.

KOLTERMAN: Thank you, Senator Hilkemann. Senator Wishart, thanks for bringing this bill. I-- I did have an opportunity yesterday to visit

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for two hours with my-- my sheriffs in person to talk about some of their concerns about training and-- from Seward and York Counties, and-- and they've been active in the Sheriffs Association. And as you-- as you indicated, they are supportive of LB51, but not quite to the extent that-- not the 40 hours. But at the same time, they expressed concerns. They-- they want to be very professional. I will say they are both very professional operations. However, the need to find people and train them and make sure that they are properly trained in western-- when I say western Nebraska, I'm thinking anything west of Lancaster County line-- needs to take place. And it's not happening at the present time because of lack of resources. And so I-- I think-- I appreciate the fact that, you know, you're right, Lincoln and Omaha, they have their own training centers, but you get west of here and it's not available. And-- and we deserve-- the people that are being pulled over in western Nebraska and central and north Nebraska, all should have the same opportunities that exist in the bigger communities. So I appreciate you bringing this bill and the one before and also-- it-- it's just a matter of how much can we do. And so as we look at these, I'm-- I'm sure we're going to have to prioritize some, but appreciate the opportunity to discuss it with you. Thank you.

STINNER: Thank you. Additional questions? Senator Hilkemann.

HILKEMANN: Senator, do you-- so do you anticipate that this software would-- or this program, and I-- and I know it's more than software and I-- and I-- so in the medical profession, we use lots of virtual training on things. And do you anticipate that this would be located in Grand Island then?

WISHART: No, it's up to the Crime Commission and the Police Standards Advisory Council to determine where it would need to be placed. So I-- probably that would be one of the locations for this type of training since there are also police officers coming there. But the-- the-- and I'll have to ask Jim if there is one there already.

JIM MAGUIRE: You mean right now?

WISHART: Yeah, no. So I'd imagine--

JIM MAGUIRE: [INAUDIBLE]

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WISHART: I'd imagine potentially in Grand Island, but then there's and-- there's an opportunity for another one in the state, and I would hope that the commission would consider going to the full western portion of the state to provide access to people there.

HILKEMANN: Is just the type of thing we-- we have-- in the medical profession, we have the EMTs and so forth that can train on-- on a-- on a mobile van type of a thing. Is this the type of thing that we could do the same sort of a thing with?

WISHART: That is an absolutely great question. It would have to be a huge mobile station--

HILKEMANN: OK.

WISHART: --because the room that you walk into where you train on this is the size of all of you sitting there because you're really training in a real-life situation where the vehicles, the people, everything is actual size and you are wearing virtual reality glasses and you are walking through real-life situations that have happened to police officers and they are walking you through. Those that are watching are then critiquing you based off of the decisions you make on how a situation escalates or de-escalates. It's-- it's state of the art and, again, something that should be available to all portions of the state.

HILKEMANN: OK. Thanks.

STINNER: Additional questions? Seeing none, Scottsbluff's a wonderful place. We actually have an iWall out there, so.

WISHART: Yes.

STINNER: Morning again.

JIM MAGUIRE: Chairman Stinner, Senators of the Appropriations Committee, good morning. My name is Jim Maguire, J-i-m M-a-g-u-i-r-e. I'm president of the Nebraska Fraternal Order of Police, and I am here to support this bill that will provide state-of-the-art equipment availability to law enforcement in Nebraska. As-- as Senator Wishart said before, she had attended and saw the actual simulator. There are three in Nebraska that are like this. One's in Omaha; one's in

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Bellevue; one's in Lancaster County. That's it. We have multiple officers that are being trained out in Grand Island that don't have access to this kind of training. What is fantastic about this is that it goes from the old days-- I-- I've been a law enforcement officer for 29 years. Training has progressed immensely from when I first started to where we're at now, but this is the next step. There's no other training like this. Before, there was no money, so there were times where we would have to literally do-- train hands-on with plastic guns. This, you can-- you will have a sidearm that is not real. It basically just blows out air, but it will simulate where the round is going. And if you are doing everything right, it-- they-- the person behind you can get on a computer and de-escalate the situation to where you don't have to use a firearm. You may not even have to use any force at all. It is true de-escalating training, and that is what is needed right now. We have to have this. This-- this-- not only can the officer on the street use this, you've got-- if you've got SWAT teams, they can put up a-- a door to where you can breach and then you can go in and see people if they're just coming up with their hands up so you don't shoot. There's-- there-- there are so many scenarios in this that it is-- it is so vitally important that we-- that we provide this kind of access of training to all our officers in Nebraska rather than the select few. I'll be happy to answer any questions.

STINNER: Questions? Seeing none, thank you.

JIM MAGUIRE: Thank you.

LYNN REX: Senator Stinner, members of the committee, my name is Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. Once again, we're a strong support of this measure. We think that this bill-- and thanks, Senator Wishart, for introducing LB192 and LB193. This particular measure is important because I think it provides equity for law enforcement across the state to have access to this critical training. Like I said, we're looking at 100 law enforcement agencies. And so you basically have 97 of them that have-- municipal agencies, 210 law enforcement agencies, 100 of which are municipal, and of course your 93 county-- your-- our 93 counties. And with that, you know, you're looking at basically only three entities right now that have access. I was told yesterday that Kearney just purchased a simulator. You do have maintenance costs that are tied into this, too, but this is really critically important. And officers

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across the state want access to this. So we appreciate the committee seriously thinking about this as well. And again, if it's a-- if misery loves company, let me just say there is not enough that you can do to reinforce the Law Enforcement Training Center and also the Crime Commission in providing them adequate funding because they have been cut so severely over the years by your predecessors. With that, I'm happy to respond to any questions you might have.

STINNER: Any questions? Seeing none, thank you.

LYNN REX: Thank you very much. Really appreciate it. Thank you. And again, thanks to Senator Wishart for introducing these bills, and that-- Senator Hansen. Thank you.

STINNER: Thank you. We do have written testimony in support from Jon Cannon of NACO. Is there any additional proponents? Are there any opponents? Seeing none, is there anyone in the neutral capacity? Seeing none, Senator Wishart waives closing. Thank you, Senator Wishart.

WISHART: John, we also have letters of support.

STINNER: I'll reopen the hearing on LB193. We do have letters of support that I failed to read, Lancaster County Board of County Commissioners, United Cities of Sarpy County, and Nebraska chapter of the National Association of Social Workers. That concludes our hearing on LB193.

WISHART: Our committee will now open the hearing on LB304.

HILKEMANN: LB341.

WISHART: LB341.

STINNER: I was just looking at my book. I said--

WISHART: LB341.

STINNER: --must not be up then. Good morning, Vice Chairperson Wishart and fellow members of the Appropriations Committee. For the record, my name is John, J-o-h-n, Stinner, S-t-i-n-n-e-r, and I represent the 48th District, which is all of Scotts Bluff County. LB341 limits the

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balance of the State Settlement Cash Fund to \$5 million. Any unobligated or unencumbered balance in excess of \$5 million would be transferred to the General Fund at the end of the fiscal year annually, June 30. This bill is an attempt to limit the buildup of unexpended funds under the Settlement Cash Fund, which is a cash fund administered by the Attorney General for the purpose of consumer protection litigation in conjunction with other states. It consists of recoveries from the Consumer Protection Act resulting in civil damages in and out of court, as well as other payments received on behalf of the U.S. Department of Justice for the benefit of the state of Nebraska or general welfare of the public. Based on General-- the Attorney General's fall 2020 budget request, the State Settlement Cash Fund is projected to have a June 30 balance in 2021 of \$14.1 million. Transferring the balance over \$5 million would bring an estimated \$9.1 million into the General Fund. The projected 6-30-22 balance is \$12.7 million. That figure, minus 9.1, results in an adjusted June 30 balance of \$3.5 million under the assumption zero would be transferred on June 30, '22. Should be noted that the revenue stream in this fund is difficult to predict due to the nature and amount of settlements that may occur. The Attorney General's budget request asks for \$1.75 million appropriated from the fund each year. Utilizing a cap of \$5 million, that provides approximately 2.8 years of appropriation, assuming revenue to be funded at zero-- that revenue to the fund is zero. Please keep in mind this legislation in no way hinders the ability-- AG's ability to carry out its mission of consumer protection. I don't intend to encumber AG's mission, which is why I allowed for sufficient coverage of more than a full budget cycle. For most funds at-- we as a committee use a three month as a guideline in the event of revenue absence in the-- into the fund. This committee would be tasked with considering additional appropriations out of the fund, just as we do in various other cash funds in the state under our jurisdiction. I also have an amendment for your consideration, AM137, which incorporates feedback I've received from the AG's Office. This feedback includes striking obsolete provisions which include transfers to the Capital Construction Fund and the Legal Education of Public Service and Rural Practice Loan Repayment Assistance Fund. This change in the bill would harmonize provisions under the current statute. I look forward to the discussion and will welcome any questions.

WISHART: Senator Erdman.

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ERDMAN: Thank you, Senator Wishart. Thank you, Senator Stinner. So the cash fund is now 14-- did you say \$14 million? I didn't write that down.

STINNER: It's \$14.1 million is what the projections are, yes.

ERDMAN: Fourteen-point-one-- and how is that-- how is that money put in that cash fund?

STINNER: It's from settlements from various things and I-- how is it? It's exactly as I described in my opening comments: could come from the U.S. Department of Justice, could come from suits, consumer protection suits, those types of things.

ERDMAN: So it was generated by things the Attorney General did--

STINNER: Yes.

ERDMAN: --on our behalf to get those settlements?

STINNER: On behalf of the consumers.

ERDMAN: OK, and so we're going to sweep \$9 million-something out of that account?

STINNER: That's what the fiscal note-- \$9.152 million would be the projected number to be swept out.

ERDMAN: So then the remaining balance would be \$5 million.

STINNER: Yes, and that's 2.8 [INAUDIBLE]

ERDMAN: Have we swept that account before?

STINNER: We've swept it, but we've had-- we've had to wait till we get back in session. We've had to wait till we can have a budget hearing, those types of things. So this is-- this is putting in a little bit more discipline.

ERDMAN: So-- excuse me. So we'll-- we'll probably hear from the Attorney General on that.

STINNER: I presume we will.

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ERDMAN: Are they-- but what happens in your discussion with them about taking this?

STINNER: I think the discussion has-- has really occurred between my staff and-- and the Attorney General specifically on this, and it was clean-up language that we added in the amendment, not sure that we've had that discussion specifically on this. We've had discussions on other items.

ERDMAN: OK, well, we have been-- we've been kind of restrictive. We're kind of holding down the Attorney General's budget in some of the decisions that we've made, and they have this cash fund that they actually were responsible for getting. It doesn't make any sense that we would have a heavy hand on them for some of their budgetary requirements when, in fact, they have this kind of cash fund.

STINNER: I think we've adequately provided for the needs of the Attorney General's Office based on historical analysis and based on actual versus what we've budgeted. We've provided cushions for them. We're providing 2.8 years of appropriations that they attempt. We've also increased cash funding appropriations as to accommodate them. I definitely disagree with your analysis that we've been heavy-handed or restrictive. That may be their term, but I think the Attorney General's Office has never spent over the appropriations amount. And many times-- and I think they've done a great job, frankly, I'm not going to say they haven't done it, but I don't think appropriations have been unusually restrictive at all.

ERDMAN: OK.

WISHART: Thank you. Any other questions? Seeing none, thank you. Any additional supporters of LB341? Seeing none, we do have-- actually, I'll read that after. Do we have any letters in support? So, seeing none, then let's move to opposition.

JOSHUA SHASSERRE: Good morning, Vice Chair Wishart and members of the Appropriations Committee. For the record, my name is Joshua Shasserre, J-o-s-h-u-a S-h-a-s-s-e-r-r-e. I am assistant Attorney General and chief of staff of the Attorney General's Office here to testify somewhat reluctantly on behalf of the Attorney General in opposition, and I say reluctantly because I'd prefer that we wouldn't be in this

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position. Nonetheless, I think Senator Stinner's opening remarks and the exchange with Senator Erdman was educational in terms of what this settlement fund consists of and how it may be spent. And I do want to just note at the onset that we do appreciate Senator Stinner's willingness to amend the bill, at least to the degree where we are eliminating obsolete language. Nevertheless, we are opposed to LB341 because, first of all, the funding for this cash fund in large part are court-ordered settlements, thus, the language of those court orders should be taken into account when we are making decisions about then transferring money away from that fund. Those terms of those settlements, most of which I have-- I can give you some example, but each of them normally constrains spending to purposes such as cost of investigation, attorney time, future consumer protection enforcement and consumer education and litigation costs. Our office has, over the entire tenure of Attorney General Peterson's terms, only utilized this fund for those purposes, and the statute itself says-- if you take a look at it in the bill, the relevant section that's amended first begins in sub (3) to say that the fund may be expended for any allowable legal purposes as determined by the Attorney General. We take that rather literally to say that the-- those court-ordered settlements, the terms within them, thus govern how we ought to spend it; thus, we have never then come back to this committee to ask for any state settlement dollars on our own behalf other than to fund those personnel and outreach efforts upon-- from our office that are consumer protection solely. So we view that LB341 is at least not in keeping with the primary-- primary intent and terms of these settlements, nor the statute itself. LB341 also, as was noted by Senator Stinner's opening, it is unpredictable, and the handout that I passed around, the loose-leaf Excel sheet, will give you the last ten fiscal years of deposits on an annual basis to the State Settlement Cash Fund. You will see that the last several years have been good, that we had years in the past where we're under \$50,000 per deposit yearly. That is just to reiterate that it is inherently unpredictable. Again, these are settlements that the-- our office enters into, usually in conjunction with multiple other states, and then those funds are allocated back to those states, usually by a population basis. So we would view that-- that that is counterproductive to simply keep \$5 million in this cash fund-- I'm sorry, I-- I'll wrap up here. When considering the preliminary recommendations of the committee for our agency, which the Attorney General will speak about

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in the-- following this bill, we have concern that there is at least a possibility in the future where we would ironically be coming to this committee and asking for additional funds if we did not have monies that were sufficient to sustain our current expenditure rate. And so, therefore, the Attorney General respectfully requests that LB341 not be advanced to General File. However, should the committee choose to do so, we would be willing to further engage in any discussion about an amendment. And at the very least, we would ask that the language in-- the new language on page 2, line 21, that says that each year thereafter it is automatically transferred to the General Fund for any monies in excess of \$5 million dollars, that that be struck and that the committee do as it normally would, which is to assess whether that need exists each biennial Legislature. So with that, I'll be happy to answer any questions you may have and thank you for your time.

WISHART: Thank you, Josh. And I couldn't hear. I wasn't sure whether you stated your name and spelled it for the record. Did you do that?

JOSHUA SHASSERRE: I did, yes, um-hum.

WISHART: OK, thank you. Any questions from the committee? Senator Erdman--

ERDMAN: Thank--

WISHART: --and then Senator Dorn.

ERDMAN: Thank you, Senator Wishart. Thank you, Josh, for coming today. So I'm concluding from your comments that the appropriate use of these funds would be what? Explain to me an example of how these funds should be used, according to your opinion.

JOSHUA SHASSERRE: Thank you, Senator. And again, the settlement terms define what those are. They can vary and they can also say, you know-- they also do say however the statute may require. OK? So that's why I'm not suggesting-- I want to be clear that I'm not suggesting that this is legally impossible for the committee to do. I'm simply suggesting that it is not in keeping with what the purpose of this cash fund was originally and how we have constrained ourselves in utilize-- utilizing it thus far. And so I would simply say that those are anything related to the acts that we were required to implement.

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So that's consumer protection outreach, which we do across the state. We took, for example, over 9,000 calls into our consumer protection center that we house in our office that's funded by this program-- these funds. It funds all of our attorneys that work in this area on-- on consumer protection and antitrust cases. We have no other intent to expand upon that. But those are the-- those are the monies for which it may be used, in our opinion.

ERDMAN: OK, so let me give you-- let me give you an example that came to my mind when I seen this. Tell me whether this applies. And so, you know, Will Rogers once said whiskey's for drinking and water's for fighting over.

JOSHUA SHASSERRE: Um-hum.

ERDMAN: And so we will continue to have those issues about water with Kansas, Colorado, and-- and those states.

JOSHUA SHASSERRE: Um-hum.

ERDMAN: So if we had some litigation on a water issue, would these funds be available to be used for that?

JOSHUA SHASSERRE: Historically, they have not been. Now that, again-- again, that ties into one of our budget request items that we'll talk about next, which we would view as highly necessary. And so, again, as we have done in the past in other budget cycles, there have been some exchanges with this committee in terms of reducing the General Fund cut that we have been subjected to by an exchange for cash funds of one form or another. And so, again, that has been a prior practice. And if that were the direction that the committee would intend to go, I-- I presume that we'd be comfortable with doing that.

ERDMAN: OK. Thank you.

WISHART: Senator Dorn.

DORN: Thank-- thank you, Senator Wishart. Thank you for being here. I get-- this handout when you handed this, it looks like in the last ten years, you collected a little over \$28 million.

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JOSHUA SHASSERRE: In total, sir, yes, without taking into account the expenditure out of it, yes.

DORN: Some years are better than other years.

JOSHUA SHASSERRE: Yes, indeed.

DORN: But if-- when Chairman Stinner was here and made the comment, this fund currently has more than half of that in there, in that cash fund with all of \$14 million, when we look at-- I guess when we look at other budgets--

JOSHUA SHASSERRE: Right.

DORN: --and we look at the amount collected and the amount still in there, this is a very high amount.

JOSHUA SHASSERRE: Correct. And I would just suggest, Senator, that, one, again, these are not-- what I wanted to make sure is-- it's clear is that it's not a function of the number of people that we have doing this work. It's not a function of their efforts, necessarily. It is more so a function of what bad acts occur that are undertaken by any national or global company in any given year that determine primarily how much money comes in, in any given year. So there you could-- I mean, from that chart you can see the fluctuation there. And again, the reason why there's so much built up in there is that in the past several years, there's been a substantial amount of settlement dollars that come in. But on the other hand of that is that once Attorney General Peterson took office, we pledged to the former Chair of this committee, Senator Mello, that we would only expend those monies for related purposes for the fund, which are all those consumer protection-related personnel costs, etcetera, that I had mentioned before, and thus that's why our request for expenditure has never really been anything recently more than approximately \$1.7 million on an annual basis, which is why at this point there's so much excess cash. So we would suggest that if the committee intends to go this route that, again, either it be done as it normally would occur, without this perpetual cap, because of the possibility that there would not be sufficient funding coming in on an annual basis in terms of new deposits, because, again, it's not a function of how well we do our job, or at the very least, that because of that same reason, that

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this cap, if it was insisted that it be perpetual, that it would be increased such that it not be simply less than three years of the current expenditure rate.

DORN: Part of-- and maybe I missed part of the discussion. Part of what you-- you-- you said your concern was that at some point in time this \$5 million may not be enough to cover, I call it, expenditures or allocations or whatever.

JOSHUA SHASSERRE: No, I'm sorry, sir. I-- what I mean to say is that it's possible that our deposits on an annual basis may-- after this cut and cap is put in place, it's possible that they may not keep up with the current expenditure rate, and thus we would at some point in time perhaps not have \$1.7 million in there, and thus it would be an odd situation for someone from our office to then come and make a request to continue to carry out statutory function without there then being a cash fund that's readily available to fund that that's logical.

DORN: Could you possibly, and maybe you can't, show us where some of the-- a listing of like this for ten years for expenditures too?

JOSHUA SHASSERRE: Yes, I actually think the-- we have another handout we might give you in the agency budget hearing, but that'll show the Program 290 expenditures and what we've requested over at least the last six years. And that-- that was a time where we had made a substantial request, when Attorney General Peterson took office initially, to expand our efforts in this consumer protection realm, because it was a priority of his. And so-- but since then, it has been approximately \$1.5-1.7 million.

DORN: OK.

WISHART: Senator Hilkemann.

HILKEMANN: On the-- when-- in reading this bill, and we go to-- to line 21 of the first page, which is-- this is \$5 million on June 30 of 2021, and then each June 30 thereafter.

JOSHUA SHASSERRE: Uh-huh.

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HILKEMANN: If that line were not there, would this be more palatable to you?

JOSHUA SHASSERRE: Frankly, yes, Senator, it would.

HILKEMANN: You said yes?

JOSHUA SHASSERRE: Yes.

HILKEMANN: OK.

JOSHUA SHASSERRE: I mean, although, obviously, we would object to it, because I don't think it's in keeping with the purpose of the-- the statute or the fund itself. However, again, I-- I think that would be more in line with how this committee operates normally because it would then assess whether deposits, you know, at that point in time were sufficient to continue to sustain it. And it could-- you know, it could, for lack of a better term, sweep that money to the degree it thought appropriate. So, yes, I think this perpetual cap is perhaps the even more concerning part of it.

HILKEMANN: OK. Thank you.

WISHART: Any other questions from the committee? OK, I have just a couple. And you and I spoke yesterday about this as well.

JOSHUA SHASSERRE: Yes.

WISHART: So just to be clear, you spend on average every year about \$1.2-1.7 million.

JOSHUA SHASSERRE: Yes, the last couple of fiscal years is about 1.7, give or take.

WISHART: OK, and your concern, what I'm hearing is that if you have perpetual years of like FY '11 and FY '13, where you're only inputting into the fund \$40,000, that if those accrue over a series of years, then that \$5 million cap may not replenish that fund enough for you to continue at the pace with which you are funding your staff to go after these dollars.

JOSHUA SHASSERRE: Yes, um-hum.

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WISHART: OK.

JOSHUA SHASSERRE: I think so. That's what I'm trying to say.

WISHART: So do you anticipate growing any more than 1.7, your maximum amount per year, other than just inflation?

JOSHUA SHASSERRE: At this time I would say no, with a caveat there to say I think when we submitted our budget to the committee-- again, this is a little bit going into our agency hearing. But aside from the additional water litigation funds, we-- we remain flat, as we did even the prior biennium. That is, I think-- and I appreciate Senator Stinner mentioning this, that we-- we have never been in a position where we have overcome the amount of appropriation provided to us by the committee and by the Legislature. So we've been good stewards of our funds. So although I think I could suggest that perhaps even with our current initial litigation against big tech firms, for example, on antitrust cases, that we may have a future need for additional attorneys in that area, amongst others, so-- but at this point in time, we thought it was most prudent to simply maintain personnel as they are. And thus, I-- all I guess I'm trying to get across is that we-- we could expand that somewhat. But at the moment, yes, the presumption is 1.7 with, you know, typical COLA and benefit increases built in.

WISHART: OK. When-- when we spoke, there was a potential compromise, potentially, that the \$5 million is maybe too narrow to project for future issues, but if we were to go at around \$8 million, capping that fund at \$8 million and then pulling the other dollars into the General Fund, that that would give a longer runway, if there were issues, then that we could come back and address.

JOSHUA SHASSERRE: Yes. Thank you for that. Again, I think two potential options that I would see or suggest is either that or, again, just simply removing that phrase that says each June 30 thereafter. So removing the perpetual cap entirely would be highly preferable. If the cap is intended to stay, then something for which, at least at the current rate, two biennial cycles, would be also preferable.

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WISHART: OK, and then the last thing is we have in recent history swept these dollars.

JOSHUA SHASSERRE: Yes, not to this extent.

WISHART: Right. But we have-- we have done it before.

JOSHUA SHASSERRE: Yes.

WISHART: Yes. OK, thank you. Thanks, Josh.

JOSHUA SHASSERRE: Thank you very much.

WISHART: Any other follow-up questions? Seeing none, thank you.

JOSHUA SHASSERRE: Thank you very much.

WISHART: Do we have anybody else in opposition to LB341? Seeing none, anybody in the neutral position? Seeing none, Chairman.

ERDMAN: Thank you. I-- I think there needs to be some clarification about what this fund's about. This is consumer protection, and associated with that is a lot of activity within the AG's Office. And it takes \$1.75 million for personnel and cost associated with Consumer Protection Act. And there are times where we collect money from lawsuits, either-- lots of states join in on a lawsuit. Dollars come in, in settlement. It goes into this fund. Now how much dollars do you want to keep in there? How many years of operating funds, given traditionally what you've seen as funds flow, to be maintained in this fund so that if we don't settle and we don't receive funds, you know, 2.8 years, that's 1.75, 1.75, and a little bit more. Now Josh was talking about maybe three years. OK, I can go with three years. That means you got zero revenue coming in. Historically, how-- how-- how is that? Unless we change all the consumer protection laws, it's pretty much not going to be the case. Now the other thing is, is make sure that you understand unobligated and unencumbered. Many times you'll get a lawsuit and it has to be paid out in a certain fashion to consumers or whatever. That would be an encumbrance. So you'd subtract that money out. That would have to be set aside. If you have specific water legislation or-- or litigation that you're having, similar to what they're asking us to do in the budget, which we did not put in our preliminary budget because we wanted to hear from the Attorney

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General's Office, what specifically do-- do you have in mind on water legislation-- or litigation, excuse me. And that's the feedback we got, so I've got a pretty good answer for it. I think the Attorney General will talk in general terms about it. That fund is set up. If we deplete this fund and we have \$1.75 million, guess what? We do General Funds. We have to help them. But this is just a little bit of a discipline that makes it automatic. I appreciate his comments and concerns. I think we put some safeguards in here, but I want everybody to understand it's unencumbered funds, unobligated funds, come specifically from a source. And we do-- we do allocate money, just like we do all the time in Appropriations, to running those funds, and they have not exceeded the appropriations. That's a-- that is a true story over as long as I've been here. So we've adequately provided appropriations and adequate funding for the-- for the AG's Office in the past. With that, I'll take questions.

WISHART: Seeing none, thank you.

ERDMAN: Thank you.

WISHART: And Brittany, I have down here a letter of support, but I think it was for LB304. It was from the Nebraska chapter of the National Association of Social Workers, so I'm going to make the assumption that that was a letter of support for LB304, Senator Hansen's bill.

STINNER: Yes, it is.

WISHART: OK, well, with that, that closes our hearing.

STINNER: Thank you, Senator Wishart. We will now open the hearing on Agency-- I believe it's 11:00. I don't have it in front of me, but I believe it's Agency 11, the Attorney General's Office. Is that our next one?

DOUG PETERSON: Good to go?

STINNER: Please, please. Thank you. Yes, Agency 11, Attorney General. Good morning.

DOUG PETERSON: Good morning, Chairman. How are you?

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STINNER: Good to see you.

DOUG PETERSON: Good morning, members of the Appropriations Committee. Thank you for the time to just generally talk. I-- I think I can be pretty straight and to the point. The-- Josh addressed questions with the cash fund. If you have any more questions on that, I will address that just a little bit with regards to some of the things that we're doing in consumer protection. I want to start with Program 507, and I think we've had a chance to discuss with all of you individually some of the questions that you may have with regards to that. But let me first really quickly, 496-- I'm terrible with numbers-- but 496 is the special fund. And I think my understanding, in speaking with you all individually, or Josh, is that you didn't have the context of the information because it was related to litigation and we had to be somewhat guarded in that regard. I think everyone generally understands now the nature of where we're coming from on that. It's extremely important to the state of Nebraska and potential litigation and preparation. And so with that, unless there's any questions, I think if we have an understanding, our request would be for the next two years, \$300,000 a year in order to fund that. So let me move to Program 507, which is really our general operations budget. And I think what we would like to propose is that this committee consider the recommendation from the Governor's Office in that amount. I think right now we're looking at a proposal of about a \$79,000 cut. If that were to go into effect, two significant things that would happen is it would-- we would basically be able to address the-- what we estimate as that or what we've been told is the 4 percent health insurance increase in our payroll that we'll have to do. All of our payroll comes out of this budget, or the vast majority of it. And then it would make it very difficult for us to do a cost-of-living increase for our team. Now one of the things, and I appreciate discussions with Senator Stinner on this and his-- his thoughts on looking at the budget over the six years that both of us have been in office, and the message I've gotten from Senator Stinner is, look, you've got some money in there, put it to use. And the good news is-- I'm very excited. I wish I could give names now, but I can't, but soon we will have, beginning of March, a new attorney on board in our criminal prosecution area, a lawyer who's got over 30 years of experience in criminal prosecution in the state of Nebraska. We also will be bringing on an excellent-- I still consider him a young lawyer. He's

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in his mid-30s, but he's coming out of the military. What are you smiling about?

KOLTERMAN: That is young.

DOUG PETERSON: It is young, isn't it? [LAUGH] We will be having this young lawyer joining us June 1. And this lawyer has won significant litigation awards within the JAG program, federal program, so he's going to be an excellent lawyer. And I think we've explained enough. There's no really new senators on this committee. But we do criminal prosecutions all across the state, and so having this type of experience, we've had-- in 2020, we had four significant murder cases that required very experienced litigators. We had the Keadle case, that Peru State student who went missing. We got a successful second-degree murder case on that one. We had the-- the Trail, Boswell prosecutions, both of those fairly detailed cases where our prosecutors, I believe, did an excellent job. We had a case, a guy named Surber up in Dakota County, just a gruesome murder case. We have, on average, I think, around 14 to 16 murder cases a year, and then the other high priority for us, and why I'm looking forward to this young attorney coming on board, is in the area of child sexual assault and child abuse. Right now, Bill Tangeman does a ton of that. And, you know, it's tough because he has to travel all around the state. He himself has a young family. But if we get a call from the county attorney in Cheyenne County and says, hey, we just got-- just got a complaint or an investigation on a child sexual assault case, we'll have our investigators out there within six hours and our prosecutors. Our-- our way of prosecuting cases is we don't have the investigators or the State Patrol do the investigation and bring the file to us. We get our prosecutors in there from the get-go, working closely with investigators. And that's really important in the child sexual assault case, because in these child sexual assault cases, if you don't get it right at the outset, you're going to have a tough time, because you have fragile witnesses and important physical evidence that has to be recovered. Anyway, so we took you up on your recommendation. We went out and got some more people, and I'm-- I'm fired up about that because it's going to strengthen the state of Nebraska's ability to prosecute these type of criminal defendants. Civil litigation, what we-- one of the things that we've done is we put in a merit pay system, so we're evaluating and we're doing yearly evaluations, review-- quarterly reviews. Sometimes it's not done that

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frequently, but saying to our lawyers, we want you to set goals for what you're doing in the office. And if you meet those goals or the excellence that you demonstrate in your-- in your particular area, we want to be able to give some type of merit increase, not only to recognize good work, but also to be competitive with counties and federal offices that we compete against. Probably never going to compete in the private sector with regards to salary, but we need to be able to compete with-- with the other governmental entities. And if we don't get that money put back in our merit system, if we can't do a cost-of-living increase for these lawyers and the important work they do, we're certainly not going to be able to take the next step into the merit area. One final thing with regards to just our overall work, the Sabata case, sometimes I probably sound like a nonobjective grandfather watching their grandkid on the basketball court, but what those guys did in the civil litigation area, six lawyers, led out by Ryan Post, who, by the way, is going to be announced today as a new district court judge, so I'm going to have to go on the market. I'm looking to find a bureau chief with 15-plus years' litigation experience. That's what we're talking about, why-- why we need a little bit of flex in that budget, because I don't know exactly where I'm going to find a 15-plus experienced litigator who has leadership skills the way Ryan did with that unit. But within that Sabata case, the model that we didn't want to follow was Arizona. Arizona turned it over to a private law firm and they paid a ton of money in private fees. And then ultimately, the result in that case was pretty detrimental for the state of Arizona. Our six-member litigation team, in the litigation section led by Ryan Post, was able to get that case dismissed. There was a big fight on trying to get a class certification. And under the legal standards and the factual information of that case, we were able to present to the federal court a case that caused not only for the class not to be certified, which was critical-- that would have been over 5,500 inmates in a class action-- but, number two, then got the case dismissed and got it con-- dismissed on such a convincing basis that the ACLU out of New York chose not to appeal it to the Eighth Circuit Court of Appeals. The amount of money saved by those lawyers in the civil litigation is significant. And so, anyway, I want to be in a position to look at that good work, particularly young lawyers, actually, and-- and be able to look at the merit pay situation in their case. So that's why that money is important. I think we're-- we're producing a good

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product. The one thing I want to talk about just a little bit on some of the things that Josh testified on that cash fund, we as a state have gotten more proactive in consumer protection on a national basis. And I may have misunderstood Josh. There was one comment made about not due to our merit, but actually I think our office has made a big impact on merit on some of these big settlements because we have really good lawyers heading that up. But we have taken the lead, along with the state of Colorado, in the Google antitrust case. And in-- in that role, when-- when that investigation started almost two years ago, 50 states-- well, 48 states and 2 territories and the District of Columbia joined in the investigation. With everything with COVID and others and the financial situation in those states, when it came time to complete the investigation, pull the trigger and file a complaint, we lost some of those states, states like Wisconsin that said, we don't have the budget to contribute into the cost share to litigate that case. We're running into that with different states that are not in such a good situation as Nebraska and, as a result, are not able to make their contribution to the cost share. So it goes much like the river litigation. You've got to get technical experts to go against Google. You have to get economists. These economists know how to bill a boatload and it's-- it's expensive litigation. So we look at that cash fund as potential because obviously when you go against a company like Google, and we're also on the executive committee of New York's lawsuit against Facebook, you're talking significant legal expenses and whether or not we look at potentially new lawyers. So that 1.7 is-- what I'm going to say is that 1.7 may not look the same in a year or two. We're not set to go to trial until September 2023, so there's a lot of expert work, a lot of discovery still to take place, but that's a case where I could see having to have the flexibility there in order to do it well, particularly when we're seeing some states peel off on us, saying, hey, we have no money, we're there in spirit but no money. We-- well, thanks for the spirit, but we need that-- we need to share these costs best we can. So I would ask-- I got a little bit long winded, but I would ask that-- I think the number that was suggested by the Governor's Office was \$7,021,704. We'd ask that that number be considered and restored to the budget for the Attorney General's Office. And with that, and the understanding we have with regards to the litigation cost, I would answer any questions.

STINNER: Senator Wishart.

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WISHART: Thank you so much, Attorney General, for being here. Just to be clear, with my notes, it shows in Program 496 that your reappropriation is \$298,115, but in talking with Josh, that actually that number might be lower. What is the-- what is the reappropriation that-- that we would be giving to you?

DOUG PETERSON: Well, it's my understanding that the \$300,000 is antici-- that came from the prior litigation fund, but the allocation for the upcoming years are expenditures that will have to be above and beyond. That's-- that's primarily the Republican River.

WISHART: OK. I'm just trying to understand. Our committee, we did approve giving you the reappropriation money that was carrying over from the previous year for Program 496. And then you're asking for, on top of that, \$300,000 additional. So you're anticipating. I'm just trying to get what that exact number would be.

DOUG PETERSON: That would be a separate-- the \$300,000, along with Department of Natural Resources also requesting, that's separate funding needed for separate analysis on a different matter.

WISHART: OK.

DOUG PETERSON: And the \$296,000 is the money that was set aside, had been set aside for the Republican River. Now with that, there's been constant interactions between Kansas and Colorado on the Republican River. And there will be-- it's amazing to me how this industry works, but those things never go away. And there's still water flow analysis. There's other analyses that are required by experts, and that's what that money is set aside. Three hundred is in anticipation of a new challenge.

WISHART: OK, so you'll-- you're estimating that you will need, in 2021 and '22, approximately around \$600,000 for all of your-- in a-- to utilize in addition for all--

DOUG PETERSON: Into-- based on the new legal threat.

WISHART: Of-- OK.

DOUG PETERSON: Yeah.

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STINNER: Senator Kolterman.

KOLTERMAN: Thank you, Senator Stinner. Attorney General Peterson, thanks for being here. I am new on the committee, so-- so bear with me.

DOUG PETERSON: Oh, are you?

KOLTERMAN: Yeah, I'm the newbie and I'm learning, but it-- I'm a slow learner. I have a couple questions, though. As I've looked at-- at your budget and what's going on here, I've been involved in different committees and-- and I'm curious to know, how do you-- how do you deal with outsourcing? Because I know for a fact you've got several firms that you outsource litigation to, like the Wipro situation, and I-- I know that we're in litigation with the State Patrol, of 400-some individuals there. Those things are-- those things are money generators for the other attorneys. You guys do a tremendous job in house. But when you have to outsource them, that costs us a lot of money, and you alluded to that yourself. How-- how can we streamline that? Because-- because, as an example, that one lawsuit's been in-- it's ten years now and-- and we're-- I don't see an end to it. I'm just curious.

DOUG PETERSON: Well, there's two circumstances that cause it. One is a conflict.

KOLTERMAN: I understand that.

DOUG PETERSON: Yeah. And then the second one is there are certain areas of law where the skill set within the Attorney General's Office, it may be highly unique: pension, retirement-type stuff, where I look around at the team of litigators and say, do we have the expertise or skill set in that special area of law to properly or sufficiently defend the state of Nebraska or represent the state of Nebraska? And so the cases that you do see is where we reached the conclusion that we didn't have that skill set and we needed to go outside. Now one is a particularly complicated contract with Health and Human Services, and the Fraser Stryker firm in that particular case had litigated a very similar case. And as we looked at our litigation team, we didn't have people who had that degree of experience. And then I think the other one you're referencing is the pension one with the Nebraska

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State Patrol. And again, that was a special skill set of lawyers that we felt the state would be better represented.

KOLTERMAN: Well, and I-- I want you to understand, I'm not concerned about the-- the-- the level of competency of the people you've hired. They're doing a terrific job. But I am concerned that they tend to, like-- like the pension one, that's been in discovery for ten years.

DOUG PETERSON: Yeah.

KOLTERMAN: And I know it's been transferred from federal court to, you know, to state. I-- I'm just concerned that when we outsource like that--

DOUG PETERSON: Right.

KOLTERMAN: --who stays on top of that and who pushes them to get them settled? Because you know as well as I do, when you have a bunch of attorneys working, they're-- they've got billable hours coming in and we're paying the cost for that.

DOUG PETERSON: Right. You know, Senator, I think that's a-- I think it's a valid question and concern because, to be honest with you, you have your current cases that you're managing and you're-- you're focused on that and you're meeting with your lawyers. When you go outside counsel, there's-- there's a tendency mentally to say, take care of it, you're the specialists, get it done. And is it carefully monitored? I think you could always be more carefully monitored as to the amount of time, where things are at motionwise, why aren't we strategywise moving forward for this type of, you know, motion for summary judgment or things of that nature? And--

KOLTERMAN: Well, and-- and the reason I'm concerned about it is obviously we have term limits here. And so it's-- in one case, it started before I got here. It's going to be still going after I leave, and that's eight years.

DOUG PETERSON: Yeah.

KOLTERMAN: I mean, that's-- that's not-- to me, that's not accept-- acceptable. Either the courts are failing us in not getting through or we're not pushing hard enough. The other thing--

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DOUG PETERSON: Let me-- let me look at that, because I-- I-- I don't disagree. Maybe we need to be pushing harder on that.

KOLTERMAN: The-- the other thing I will tell you is that there was an announcement this morning and you will have to go looking for a new-- and that's very nice for Mr. Post.

DOUG PETERSON: Yeah, it is. You know, we've had some great lawyers in our office go on to be judges, and I-- I just-- really excited for him, but it's a loss for us because, man, he stepped in and did a great service leading that team. He's-- he's a bright guy.

STINNER: Any additional questions? Senator Vargas.

VARGAS: Thank you very much for being here. And, you know, I appreciate the consumer protection work you've done, and sex trafficking work as well. And I wanted to-- so I've gotten a lot of emails, and I shared this your chief of staff, regarding the AG joining with other states on the amicus brief in support, questioning the legality of the-- I think it's the Pennsylvania use, changing in their mail-in ballots or early voting ballots. And a lot of the questions that I got via email are concerns regarding the use of taxpayer resources for this sort of amicus brief and wanted to get on the record a little bit more transparency on decision making on these, but also costs, like how much sort of people power, manpower time is going to making these decisions, and then the amicus briefs, or joining onto them--

DOUG PETERSON: Right.

VARGAS: --so that I can answer questions for constituents that-- that I've gotten a lot, that-- got some that agree. Most of them disagree with the use of those funds, so I want to make sure to answer the questions that they have.

DOUG PETERSON: Yeah, I appreciate that, Senator Vargas, and I appreciate the opportunity to speak to it. I-- we tried to speak to it a little bit in a press conference, but the message didn't get out. And frankly, one of the things that's so frustrating about it is people don't know the distinction between an amicus brief and joining a lawsuit. And let me quickly go to your question with regards to the

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amount of resources, the process. There are actually two amicus cases. An amicus brief-- I actually brought a definition, because, you're right, I anticipated the question-- is a brief filed with the appellate court by an individual, an entity who is not a party to the litigation, but who has an interest in the court's decision. It's-- they're very common. We do amicus briefs. I just got a request from our office to join an amicus brief this morning. I probably get-- at least, in a month, I probably get six to eight requests to join amicus briefs. It's where you say to the court, if you're going to consider this case, we would ask you to consider these legal principles. So what happens is when-- the first case, that there wasn't a whole lot of media about, was the Pennsylvania case. The-- and-- and as you know, one of the things that we've got a six-year history of being engaged in is litigation on separation of powers. And so Article II, Section 1 is-- Article II in the U.S. Constitution relates to Presidents, the presidential office, the executive office. And in that it says every-- each legislative body shall set the rules of how they elect a President in their state. So it's uniquely the legislative's authority to set the rules for election. It's not a secretary of state. It's not any other election commission or committee. It's the legislature's role to set forth the terms for electing Presidents and Vice Presidents. What happened in Pennsylvania was with mail-in ballots, they had set the standard. The Pennsylvania Legislature had set the standard, and they said that those ballots were due the day of election. And what happened was the Pennsylvania Supreme Court, in a 4-3 decision, said, we think with the unique circumstances of COVID and some problems we saw in the primary, that we're going to extend that. The separation-of-powers argument would say, no, under Article II, Section 1, under the election clause, that's not your discretion as the judiciary branch to amend the language of the legislative branch, the constitutional duty. And so our argument was that if you want to change that law or flex it, you have to go back to the legislature because they're the sole constitutional authority to do that. What happened in that case is that there were actually two: Missouri and Oklahoma said they want to do an amicus brief. We looked at the Oklahoma brief and decided that's the one we would join because I think it's critical. And anytime you look at separation of powers, it's always important to understand some days you're in a position of power, some days you're not. And when you're not, you want these separation-of-power provisions protected, and it's what I believe my

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constitutional duty is. So we joined that amicus brief saying that a Supreme Court in Pennsylvania should not expand a law that was uniquely the duty of the legislature. What happened with-- and-- and the amount of time put into that, specifically to your question, is a review of the brief by our Solicitor General. What he may do is he may consult with others in the office who have a specialization, but then he will make a recommendation to me and I will read the brief. So it's not any-- and there may be a situation where he researches the case. He may look at some and see if the case is properly decided for the authority being suggested, but that's-- that's it. It's basically the Solicitor General and myself. The Texas case came up, basically the same argument with regards to Pennsylvania, but also Georgia, Michigan, and Minnesota, and in that particular case, it was, once again, there were three arguments that were made, one, separation of powers. And in that particular case, you had not only Supreme Court action, but you had secretary of states [SIC] or other elected officials who were making arbitrary decisions about whether or not signatures needed to be reviewed as required in the statute, and they were making certain exceptions, and it came back to the same thing as, look, if we're going to have integrity across the 50 states in our election process, we got to make sure that there's not states that are loosely going outside of the legislative-drafted process. And so if it says if-- if a legislature in Wisconsin says all signatures need to be reviewed for authenticity and an elected official in some portion-- you know, a county commissioner or an election commissioner chooses to waive that, we would argue that that's outside the scope. It's applying discretion that you don't have and it's a separation-of-powers concern. So we looked at Missouri's brief and, again, same process. Solicitor General-- I think Post looked at it also because he's a bright guy and I asked him to take a look at it. They argued separation of powers. They also argued in reference to the Carter-Baker analysis of how Maryland ballots are particularly subjective, susceptible to fraud. That was in one of their arguments. And the third argument was just the integrity of campaigns. Now one of the-- the one thing that we did do was when that brief was circulated to us by Missouri as to whether we would join, one of the concerns we had-- I specifically had-- was that we don't know if the facts alleged are true. So I asked the Solicitor General to let Missouri know that our concern would be that assertions in the briefs should say, "as alleged." And that's exactly what we did. We-- we contacted them and

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they went into their brief and made some adjustments in that regard to include more language about "if, as alleged," or "as alleged." So we didn't know. I had no factual basis to understand whether or not the facts were true or not. But in submitting a friend-of-the-court brief, which is what an amicus curiae brief stands for, we did believe that the integrity of campaigns and compliance with Article II, Section 1 were important, and the time taken to do that was, in my mind, important time that we had to commit to that, because there was at the time concerns as to the integrity. Now there are a lot of assertions being made and a lot of hearings that took place, and no one who made those assertions, from what I understand, was able to make sufficient factual showing. So now we've moved on to that. But the legal principles still applied. I know-- you know, frankly, this has been very emotional and there is a lot of emotional letters to the editor, a lot of emotional calls to our office, and a few editorials that were quite emotional, using some pretty strong words about being ashamed of their Attorney General for doing something like this. Senator Chambers filed an ethics complaint, which, by the way, the Discipline on Counsel [SIC] came back and dismissed that, and they dismissed it because they said these were legal-- first of all, they put it in the proper context, which, to be honest with you, I've been frustrated because the media has not really put this in context. All I hear from my best friends: I-- why'd you join that lawsuit? I didn't join the lawsuit. I filed an amicus brief for legal principles that I wanted the Supreme Court, if they chose to take the case, to consider these legal arguments. And that's what amicus briefs are about, to argue your legal issue if facts, as alleged, are true. And so we did that legal process. The court chose not to take the case on another principle that's been somewhat frustrating. In the Constitution it says, when one state sues another, that should be original cause of action in the U.S. Supreme Court. You don't have to go through a trial court, court of appeals. You go straight to the Supreme Court. So when we sued Kansas-- or Kansas sued-- sued us over the Republican River, that went straight to the U.S. Supreme Court. When we-- when Attorney General Bruning sued Colorado over the marijuana issue in Colorado, we are-- that was filed originally in the U.S. Supreme Court. Now what happened is the U.S. Supreme Court ultimately decided we're not going to take it. They said that was a discretionary call. Justice Alito and Justice Thomas said, look, the way we read the Constitution, this is not a discretionary call, we have to take the case. And in this

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particular case, again, a majority of the Supreme Court justices came back and said to Texas, we're not going to take jurisdiction on this, and Alito and Thomas once again said, we don't think we have that choice. Now I would say this, you know, the init-- I told you we initially joined or sent-- we didn't join. We sent an amicus brief with Oklahoma on the original Pennsylvania case. The U.S. Supreme Court has conferenced three times in January and has not made a decision whether or not they will take that case up. They're supposed to conference tomorrow on the case. They may or may not. They may pass it on to another conference, but that case is still there and that-- that will go to the heart of the issue that I think needs to be addressed. So you as state senators, you pass items 1 through 15 on what you want to see in elections and how mail-in ballots or anything of that nature are handled. That's your exclusive authority in Article II, Section 1. If you have someone with political power in some region of the state disregarding rules 1 through 15, that-- that issue will be important. Now whether it's, you know-- well, what I'll just say is this constitutional principle is important. And the reason behind the theory is you are the ones who are most accountable to the citizens as to our election laws, more so than someone in the executive branch or-- or an administrator in the executive branch or our judiciary, and so, therefore, that's why the Constitution exclusively gives you authority for setting the terms of election law.

VARGAS: OK, I-- I don't have a follow-up question, just I-- I appreciate that. I wanted to make sure that constituents, for the record, understand that, you know, not pointed. The only thing that is maybe not a question, just more of a statement-- you can answer to this-- is the sufficient showing piece. If they're-- if you're admit-- if you are alleging that there is no-- there was not sufficient showing, but you're looking at the argument and deciding whether or not you support the argument, even whether or not there's no facts, right? How do you make that determination for every case? So you're moving forward if the argument is sound enough and you agree with it, even if there's not sufficient evidence?

DOUG PETERSON: I can't make that judgment on sufficiency of evidence.

VARGAS: OK.

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DOUG PETERSON: --because it's always-- either-- the amicus briefs are typically after trial and that's-- that's what makes this case, so I can't make a determination on sufficiency. What I can say is, if this gets before the U.S. Supreme Court on these particular issues, there's legal principles that we think are very important, like the separation of powers. So when I went through this analysis with the Solicitor General, I did not sit there and say, what's-- what's the degree of evidence? And that's why when that brief came out, I said, as-- if true, as alleged, because I'm in no position. And some attorney generals [SIC] chose to join the Texas case. I didn't choose to join the Texas case because I didn't have sufficient information on the facts. Now when you see us get involved in some other amicus cases, like, for example, in-- in California, there were some issues with regards to California passing some laws that would have significant impact on interstate commerce, I can see those facts being presented at the trial level, know what the trial judge ruled. There, I'm in a better position to evaluate how this affects Nebraska and how we should join. But in this unique case where it was originally filed in the U.S. Supreme Court as an original action, I couldn't determine; I couldn't say those facts are solid or I could say; couldn't say they're really weak. I didn't know. But I did say, hey, if you're going to take this case up, and there were some who said we have no-- absolutely no right to intervene on Minnesota, Pennsylvania, Wisconsin, just as they have no right to intervene in our laws. Well, frankly, in presidential elections, we do have a right to make sure that the states are all in compliance with Article I-- or Article II, Section 1, and from a standpoint of an amicus brief, because an amicus brief, I mean, I-- I've got to really make this clear. You are not a party to the lawsuit. You may have no connection to the parties of the lawsuit. But what you're saying is we know a really important issue is going to be considered by this court and it's a chance to be heard. And oftentimes with U.S. Supreme Court, they get numerous amicus briefs where parties will-- not parties, entities will submit, because the issue being decided will affect them and they want these legal arguments to be considered.

VARGAS: Thank you.

STINNER: Thank you. I'd like to get back to the budget now. We actually have to clear this room by 12:00. But I want to ask two budgetary questions-- or one of them is actually an observation. But

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the number of FTEs when you started in your office versus where we're at today, could you give me those numbers, how many attorneys you had?

DOUG PETERSON: We can get that to you.

STINNER: OK.

DOUG PETERSON: I don't have that off the-- you know, I would say, Senator, that other than the additions that we made in the consumer protection division, I think our FTEs are going to be fairly close. But I'll give you the actual numbers.

STINNER: I-- I would appreciate that. I just want to make this observation because I think there was some comment that we've been restrictive. What this committee tries to do, we have revenue that comes in that's projected. We try to make sure that the appropriations dollars actually fit the needs of that agency, whether it be yours or anybody else. Those appropriation dollars are many times very scarce and very important, and I'm going to give you an example. The fiscal year '20, the Appropriations Committee, we looked at what historically you've done and what-- actually the appropriations. At that time, preliminarily, we reduced your appropriation by \$500,000. You came in and testified you needed the money. And I worked, I believe with Josh, at that particular time. We restored \$300,000 of that, OK, and-- which means you had a base reduction of \$200,000. Interestingly, as we ended that fiscal year, \$375,000 was a reappropriation, or it could be reappropriated, so I don't think we've been overly restrictive. I don't think we've been heavy-handed. I think what we're trying to do is fit the appropriations to historical spending. Now, when you're talking about two additional attorneys, we probably need some money on-- some numbers on that. We'll try to fit it in and make sure that you have what I would call-- call either a contingency fund or a cushion or whatever you want to have. But excessive amounts of-- of appropriations, I'm sorry, that's not in my vocabulary. And I will--

DOUG PETERSON: Now it--

STINNER: --assure you that our committee is-- we understand what you're trying to get done. But what we're trying to do, too, is to try to fit appropriations into the-- the realities that are out there for all agencies.

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DOUG PETERSON: You know what I would say, Senator Stinner? And you know you didn't hear the word "restrictive" out of my mouth. I think the-- I think the relationship has been good. I think in the six years, I think we've had good dialogue. I-- I think obviously, because of your business practice, you do this. You-- you watch the numbers and you hold people accountable, and I think that accountability is good. I think the good news is we got-- we got audited by, you know, the random audit by the State Auditors and came out in flying colors. And Dana Hoffman, our chief operating officer, deserves full credit for that, very proud of the work she does. And so I think, Senator, for the record, I think it's been a healthy process. It makes us look at our numbers. I think Senator Kolterman's comment about general counsel or outside counsel makes me say I got to go back and call these guys up and say I need an update. I want to know why it's taken so long. So I think it's a healthy process. Do we get sometimes sensitive? Well, yeah, because it's our baby and we know the people who would be affected. But you guys have always been good to work with us, so I-- I would not call it restrictive. And I'm not-- I'm not one to take it personally, although I would say this. The \$500,000 and the being sued by your lawyer comment kind of got a little personal, but, you know, we got a job to do and we'll do that and we'll explain what we're doing in our job and I think we can work well, and I appreciate you guys being the stewards of state taxpayer money.

STINNER: And we have worked together really well.

DOUG PETERSON: We have.

STINNER: And thank you for that.

DOUG PETERSON: Yeah.

STINNER: Any additional questions? Seeing none, thank you very much for your time.

DOUG PETERSON: All right. Thank you.

LYNN REX: Senator, I have neutral testimony. Can I please say something real quick? [INAUDIBLE]

STINNER: I'm going to go through proponents. Any additional proponents? Any opponents? Someone in the neutral capacity?

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LYNN REX: Senator Stinner, members of the committee, my name's Lynn Rex, L-y-n-n R-e-x, representing the League of Nebraska Municipalities. Just very quickly, first I want to tell you Attorney General Peterson did not ask me to come. They didn't know I was coming. I'm sure he's nervous, wondering, what is she going to say? So let me just share this with you. His office and his job, and also Josh and others in the AG's Office, has saved municipalities and counties a boatload of money in this state on the opioid litigation issues. There were attorneys and law firms from all across this country lobbying our municipalities: You need to hire us; you need to be represented in these opioid cases. And our Attorney General stepped up and said, tell them they do not need to do that, we will take care of their interest, and they have done that and we really appreciate it. And he's been collaborative in terms of with NACO and with the league in how those funds then, which are dedicated under the term sheets, how those can be spent for abatement and treatment of opioid abuse, how those will be disseminated across the state in a fair and equitable manner. I just wanted to make that comment. And by the way, it is freezing in here, so perhaps the state could pay their utility bills.

STINNER: Yeah, thank you for that.

LYNN REX: I'm happy to answer any questions.

STINNER: Any questions?

LYNN REX: Thanks so very much.

STINNER: Thank you. That concludes our hearing on Agency 11. We'll now open on Agency 78, Commission on Law Enforcement and Criminal Justice. Good morning.

DON ARP, JR.: Good morning. Good morning, Senator Stinner and members of the Appropriations Committee. My name is Don Arp, Jr.; last name is spelled A-r-p. I'm the executive director of the Nebraska Commission on Law Enforcement and Criminal Justice, otherwise known as the Crime Commission. The commission supports the Governor's budget recommendations for the 2021-23 biennium. I want to thank the committee for your consideration of our budget request, any recommendation of support from the General Fund increase and cash fund reduction to the funding for fleet vehicles for the training center,

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funding for the academic testing software to help our instructors and our students, and the increase in instructor salaries at the training center. I thank you for your time and I'm glad to answer any questions you may have.

STINNER: Thank you. Questions? Seeing none, I will ask you one quick question. You've looked at the legislation that's been proposed for training?

DON ARP, JR.: Yes, sir.

STINNER: Are you a proponent of that? Will you carry out whatever is in that legislation if you're appropriated those dollars?

DON ARP, JR.: Sure. So I think one of the-- the questions to look at, I kind of see the whole-- I see the appropriations bills that were brought today as kind of supporting the overall legislative package on other reforms. Depending on what passes overall, I see those as kind of the funding conduit to those-- those requirements. So it kind of depends on what-- what gets passed between the LB51, LB551, LB601, and the other-- the other various reforms. For the three things that were talked about today, for the-- the funds for training, if the Legislature determines that, you know, we need to give municipalities more access to online training, that that funding would be used. For the-- the simulator training, it would-- I have con-- a little bit of concern about the structure of that because of the cost. As currently structured, it buys two systems, but it doesn't provide for the training on those systems, storage, insurance, you know, any of those costs. And my budget is not structured in a way that I have the flexibility to rent space, say, in North Platte or-- or somewhere else, you know, staff with a trainer. As was commented earlier, you know, my training staff, we haven't had a new instructor in 25-plus years, and they also handle some investigations. For the other-- the other bill that was brought up, LB304, I-- I did not understand from its construction that it was for an FTE, so-- or that it was for two years. So we put in our fiscal note that it was-- we put the \$172,000 in an operational context and we weren't, to be honest, sure how to spend that, because with the-- the two sections of statute cited are reporting to-- to the commission from different agencies. And our new software that you're already supporting allows actually for online submission of what are called change-in-status and 791 reports. So

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part of the-- enforcing those two sections of statute is kind of already done with the software that we're implementing. But for the other-- the other training things, it would be implemented, the-- the money would be spent, if appropriated, if we had the increased statutory need to-- to fund those-- those efforts, if that--

STINNER: OK, do you see any federal funds coming in for this purpose?

DON ARP, JR.: You know, we-- we don't. I use some unspent federal funds to-- to address issues at the training center when I can. For example, this year review some unspent 2019 JAG funding to buy some supplies, some training supplies, and this year we will replace the target system at one of the ranges. We have a west range and an east range. We'll use some federal funds to replace that so we don't have to seek an appropriation. But most of the federal funds that come down for law enforcement aren't necessarily training focused. They're more operational focused. If we look at the JAG program, a lot of the money for JAG is, you know, funding drug task forces. It's, you know, allowing them to have overtime, you know, have-- you know, buy cars, get equipment. Some entities have brought up using it for training, which is kind of a new approach, but most are using it to fund enforcement initiatives, increase manpower where they can. So actual federal-- a federal line item for-- to fund training, we-- we haven't really seen it.

STINNER: And I presume you're going to change the fiscal note that we're now using to include your concerns?

DON ARP, JR.: Yeah, we will-- we will update the-- the fiscal note, because now that we understand that it was to fund it-- for LB304 to fund an FTE and it was spread across two years, we'll-- we'll update that.

STINNER: OK.

DON ARP, JR.: And the other fiscal notes have our-- our comments on them.

STINNER: Any additional questions?

WISHART: I have one.

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STINNER: Senator Wishart.

WISHART: Thank you so much for being here, and I've heard great things about your new data system.

DON ARP, JR.: Thank you.

WISHART: So that's awesome. Have you had a chance to experience one of these virtual sim-- simulators?

DON ARP, JR.: I have not.

WISHART: OK.

DON ARP, JR.: I have-- actually, if-- I have deployed staff to research. I have my firearms instructors out looking at stuff, and we have actually started to look at virtual reality systems just so we kind of get a basis on-- on what-- what is out there.

WISHART: OK.

DON ARP, JR.: I do understand-- I think my staff has gone through those virtual systems, but I have not.

WISHART: OK, but you could see the benefit and the need for something in, say, a Scottsbluff, for those who are out western portion of Nebraska, because there will be one in Kearney, but that's still a long drive for a lot of people.

DON ARP, JR.: Oh, yeah, clearly.

WISHART: OK.

DON ARP, JR.: One of the-- the perspectives of looking at the-- the bill, of looking at the appropriation, you know, we question what the funds could be used for, you know, support, storage, you know, insurance, if there weren't options that achieved the same end, that would allow us to buy more systems, to deploy them across the state or have them on a traveling basis. Some of the virtual reality systems can be boxed up and-- and moved around and are pretty easy to-- require little training to pick up and be able to be used, which would allow us to hit more areas of the state. You know, having two systems,

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sadly, with a state the size of Nebraska having two systems, were always going to be missing some spot.

WISHART: OK. Would you be able to get us some numbers on what you anticipate the-- the maintenance would be?

DON ARP, JR.: Sure. Absolutely.

WISHART: OK. That would be helpful. Thank you.

DON ARP, JR.: Yeah, we could look at-- we could look at some vendors and see what the-- the software maintenance would be.

WISHART: OK.

STINNER: Any additional questions? Seeing none, thank you very much.

DON ARP, JR.: Thank you.

STINNER: Any proponents? Seeing none, anyone opp-- opponent? Seeing none, anyone in the neutral capacity? Seeing none, we do have letters for the record: neutral from Jon Cannon of NACO for Agency 71. And to note for the subscriber, Agency 11 did have a neutral from Jon Cannon on NACO, as well, so hopefully you can amend your transcript accordingly. And that concludes our hearings for this morning. We'll conclude [SIC] at 1:30.

STINNER: [RECORDER MALFUNCTION] to the Appropriations Committee hearing. My name is John Stinner. I'm from Gering and I represent the 48th Legislative District. I serve as Chairman of the committee. I like to start off by having members do self-introductions, starting with Senator Erdman.

ERDMAN: Steve Erdman. I represent District 47. It's ten counties in the Panhandle.

CLEMENTS: Rob Clements, from District 2, Cass County and parts of Sarpy and Otoe.

McDONNELL: Mike McDonnell, LD5, south Omaha.

HILKEMANN: Robert Hilkemann, District 4, west Omaha.

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STINNER: John Stinner, District 48, all of Scotts Bluff County.

KOLTERMAN: Mark Kolterman, District 24, Seward, York, and Polk Counties.

DORN: Myron Dorn, District 13, which is Gage County and the southeast fourth of Lancaster.

STINNER: We do have two members presenting bills this-- they'll-- they'll be back after the presentation. Assisting the committee today, Brittany Sturek, our committee-- our comm-- our committee clerk. And to my left is the esteemed fiscal analyst Doug Nichols. For the safety of our committee members, staffs, pages, and public, we ask those attending our hearing to abide by the following. Submission of written testimony can only be accepted between 8:30 and 9:30 in the respective hearing room where the bill will be heard later that day. Individuals must present their written testimony in person during the time framework and sign the submitted written testimony record at the time of submission on the day of the hearing on the bill. If the individual is covered under the American Disability Act, they can have someone else signing in for them on the written testimony. Due to social distancing requirements, seating in the hearing room is limited. We ask that you only enter the hearing room when it is necessary for you to attend the bill hearing in progress. The bills will be taken up in order posted outside the hearing room. The list will be updated after each hearing to identify which bill is currently being heard. The committee will pause between each bill and allow time for the public to move in and out of the hearing room. We request that every-- we request that everyone utilize the identified entrance and exit doors to the hearing room. We request that you wear a face covering while you are in the hearing room. Testifiers must-- may remove their face covering during testimony to assist committee members and transcribers to clear-- clearly hearing and understanding of the testimony. Pages will sanitize the front table and chairs between testifiers. Public hearings for which attendance reaches seating capacity or near capacity, the entrance door will be monitored by the Sergeant-at-Arms who will allow people to enter the hearing room based upon seating availability. Persons waiting to enter the hearing room are asked to observe social distancing, wear a face covering while waiting in the hallway or outside the building. To better facilitate the day's proceedings, I ask that you abide by the following. Please silence or

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turn off your cell phones. Move to the front row when you are ready to testify. Order of testimony is introducer, proponents, opponents, neutral, closing. Testifiers, sign in. Hand your green sign-in sheet to the committee clerk when you come up to testify. We ask that you please spell your name for the record before you testify. Be concise. It is my request that you limit your testimony to five minutes. That may be modified depending on numbers and time of day. If you will not be testifying at the microphone, but want to go on the record as having a position on a bill being heard today, there are white sheets in the entrance where you may leave your name and other pertinent information. These sign-in sheets will become exhibits in the permanent record at the end of today's hearing. We ask that you please limit or eliminate handouts. Written materials may be distributed to the committee members as exhibits only while the testimony is being offered. Hand them to the page for distribution to the committee and staff when you come up to testify. We need 12 copies. If you have written testimony but do not have 12 copies, please raise your hand now so the page can make copies for you. With that, we will begin today's hearings with Agency 5, Supreme Court. Welcome, Chief Justice. It's always great to see you.

MIKE HEAVICAN: And it's always great to see you. Thank you very much and good afternoon to you, Chairman Stinner and members of the Appropriations Committee. My name is Mike Heavican; Heavican is spelled H-e-a-v-i-c-a-n. I am the Chief Justice of the Nebraska Supreme Court, testifying on the committee's preliminary recommendation for the judicial branch for the next biennium. I would like to thank the committee for the items included in the preliminary recommendation, especially your recommendation to include probation in your service provider rate increase discussion. It is essential to keep our rates, that is, Probation's rates, consistent with those of the Department of Health and Human Services so that Probation's clients receive the same needed behavioral health rehabilitative services as clients of DHHS. At this time, a 1 percent increase for both adult and juvenile probation, the anticipated increase for providers is estimated to be \$955,000. Being a participant in this process has been and will continue to be important for Probation's ongoing success, enhance the success of alternatives to incarceration here in Nebraska. As you know, our preliminary recommendation also includes a \$10 million base reduction divided between Program 435--

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that is adult probation-- and Program 437, juvenile probation. Probation service expenditures are estimated to increase once the pandemic subsides and society is open again. However, I am confident Probation can live within the committee's recommendation. Since our-- since you have allowed us to move appropriations between budget programs in the next biennium, should problems arise, we have some flexibility to meet any unforeseen budget challenges. I also want to update the committee on and request your support for a solution to an ongoing problem-- that is, cash fund sustainability-- in our-- in our case, three funds supported by court fees. Two years ago, I alerted this committee that some of our cash funds were diminishing and were becoming inadequate to perform their intended functions. Where are we two years later? Court fee rates remain unchanged and court filings continue to decrease. Revenue continues to decline, accelerated by the pandemic. Some expenses, such as rates charged for computer automation-- automation services, continue to increase. How have we responded? We have shifted expenses from cash funds to general funds, putting more pressure on our General Fund appropriation. Having no other choice this year, LB352 was introduced and heard before the Judiciary Committee last week. LB352 increases or would increase the rate of three court fees: first of all, the Automation Cash Fund, used to operate JUSTICE, which is our judicial branch statewide court case management system; secondly, the Education Cash Fund used to provide education to both judges and court staff, particularly newly appointed judges-- both judges and court staff have a mandatory annual education requirement; third, the Dispute Resolution Cash Fund used to provide partial funding for services to mediation centers throughout the state. The current budget bill appropriates \$270,000 annually from-- from this fund for those centers. Mediation centers do a number of different things, but they are particularly useful in finding solutions for child neglect and abuse cases and juvenile justice cases. If LB352 does not pass, we will need to move more of these cash fund expenditures to the General Fund or court programs will have to be cut. As stated in last week's Judiciary Committee testimony, aid to mediation centers will decrease as early as next fiscal year. Judicial education is essential to keep our judges current on a variety of topics and issues in the law. JUSTICE, that is, the computer case management system I mentioned, is continually modified and enhanced because of new legislation and changes to case processing. These enhancements will take longer to incorporate and will no longer be

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able to be paid for without additional funding. IT enhancements to the judicial branch will be slowed, if not stopped. This cash fund is ultimately a big-ticket item that potentially has a major General Fund impact, so we would appreciate your support for those cash fund increases. These are essential to court programs that need adequate funding. Thank you for this opportunity to discuss with you the judicial-- this judicial branch challenge, and thank you again for your support as shown in your preliminary recommendations. And I would be happy to try and answer any questions that you have.

STINNER: Any questions? Senator Clements.

CLEMENTS: Thank you, Mr. Chairman. Thank you, Chief Justice, for being here.

MIKE HEAVICAN: Um-hum.

CLEMENTS: Regarding the JUSTICE computer system, my brother's an attorney and I'm aware that he uses that. But do-- do the users pay a fee to access that system?

MIKE HEAVICAN: They do. And I don't know what the fee exactly it is, but they-- they pay an annual fee to--

CLEMENTS: Are you considering increasing their fee because it's costing you more?

MIKE HEAVICAN: That is a possibility. We don't want to make that so difficult that people can't use it because it is about to be mandatory for lawyers. Without that case management system and the electronic filing that goes with it, we would not have been able to operate a court system in the pandemic setting that we're in.

CLEMENTS: But you do have authorization to set the fee as you wish?

MIKE HEAVICAN: Pretty much.

CLEMENTS: You have-- yeah, you're not capped on what you can charge--

MIKE HEAVICAN: No.

CLEMENTS: --right now.

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MIKE HEAVICAN: No.

CLEMENTS: OK, thank you.

STINNER: Additional questions? Mediation center, I-- I've got one in Scottsbluff I visited a few times. And of course, I look at them as keeping our caseload away from the court system in many cases.

MIKE HEAVICAN: Right.

STINNER: How many mediation centers do we have?

MIKE HEAVICAN: We have seven, I think-- six.

STINNER: OK, and it's \$270,000 total to run those?

MIKE HEAVICAN: Yeah, that is-- that is set. That's the only funding they get from a state source.

STINNER: OK, thank you. Any additional questions? Seeing none, thank you very much. Thank you for your time.

MIKE HEAVICAN: Thank you very much.

STINNER: Thank you for the help on the budget too.

MIKE HEAVICAN: I'm guessing you don't have a lot of people who come to you and say, we can take a \$10 million cut in our base budget. That is due to the good work of Probation, by the way.

STINNER: Thank you for that. Good afternoon.

COREY STEEL: Good afternoon, Senator Stinner, members of the Judiciary-- or of the Appropriations Committee. My name is Corey Steel, C-o-r-e-y S-t-e-e-l, and I am the State Court Administrator. I just wanted to take a minute to clarify and add a little bit to Senator Clements' question regarding the JUSTICE portal and attorneys that are using that. That's actually a portal that is operated by Nebraska.gov and the user fee that the attorney pays to utilize the portal for query searches and what have you goes to Nebraska.gov, so that's where that funding and that rate to pay for that-- we don't pay for that system. That's what that then operates and pays for, that

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system. The cash fund we utilize in JUSTICE, which is a court fee, goes to the programming and the building of our internal case management system, which then Nebraska.gov has a portal that then attorneys can come in and access the system in that route. That way, there's protections and what have you, but it's a public-private partnership with Nebraska.gov to do that. So that's the fee, and I just wanted to clarify that. We do work with them on the rate of that fee, but it doesn't come back to us to pay for the enhancements within our JUSTICE system case management system.

STINNER: OK.

COREY STEEL: And so I just wanted to clarify that for the committee.

STINNER: Good. Any additional questions? Seeing none, thank you.

COREY STEEL: Thank you.

STINNER: Good afternoon.

CORRIE KIELTY: Good afternoon, Senator Stinner, members of the committee. I will be very brief. My name is Corrie Kielty, C-o-r-r-i-e K-i-e-l-t-y. My testimony, I think, is coming. I'm the director of the Nebraska CASA, or Court Appointed Special Advocate Association, and I'm here today to thank you for funding the \$500,000 annual appropriation for Nebraska CASA programs through the Supreme Court agency budget. It is essential that CASA has no potential conflict of interest with the agency. Our funding is pass-through. CASA programs recruit, screen, train and support volunteers who are assigned by judges as a friend of the court to foster care children's cases. CASA volunteers spend time with abused and neglected children. CASA volunteers investigate the circumstances and make recommendations in court reports regarding the safety and long-term placement for those children. Our volunteers make recommendations for the best interest of the child based on their initial 30 hours of training and continuing education each year. Our volunteer recommendations are independent of all parties of the case, including attorneys and the Department of Health and Human Services. We must remain independent of those other parties to always recommend what is best for the child. Much like the Nebraska Foster Care Review Office, our only intent is to serve children in foster care. We do not serve the parents, the attorneys,

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nor are we a agency that is funded by the Department of Health and Human Services, providing a service for them. Two-thousand, one hundred and eight children were assigned to 908 CASA volunteers by Nebraska judges in 2020. Our goal is to continue expanding costs of programming so that every child in Nebraska who needs one has a CASA volunteer. The first CASA program was established in Nebraska in 1986 in Sarpy County and there are currently 20 active programs in the state that provide services in 52 counties. Twenty of those counties were added due to the funding received from the state's Nebraska CASA Fund in the last ten years. Eighty percent of the Nebraska CASA Fund has been design-- designated for grants to local programs. These grants subsidize the recruitment and training of new volunteers. We have increased the number of volunteers statewide by more than 120 percent in those ten years. The investment of the state of Nebraska into CASA volunteers is essential and saves the state more than its investment. In addition to program expansion, recruiting, training and retaining volunteers with the CASA Fund, Nebraska CASA has also conducted statewide evaluation of our programs to ensure we are providing quality service with those funds. We also fund our statewide data system and provide an annual volunteer conference with those funds. Finally, I would like to address the cost-benefits to our state as a result of CASA programs. National studies and one conducted by Creighton University on the Douglas County CASA program have extrapolated the cost analysis to the Department of Health and Human Services based upon children who are assigned to a CASA volunteer. A child served by a CASA volunteer spends an average of four to five months fewer in care than a foster child without a CASA volunteer. If every child had a CASA volunteer, the reduced time in care is estimated at a \$12.5 million per month cost savings, which is \$50-62.4 million per year annual savings to the state of Nebraska. And this is based on 2009 costs of simply housing foster care children. It does not include other costs to the state like services or the increased cost of foster care since 2009. Children in care with CASA volunteers also have few replacement changes. These children also reenter the system at a lower rate. CASA is an incredibly cost-effective program. We utilize volunteers to provide as much direct service to abused and neglected children as possible, while also ensuring our volunteers are background checked, fully trained, and supported by qualified staff. We operate under the Court Appointed Special Advocate Act Sections 43-3701 to 43-3720 of the Nebraska State Statute. We thank you for

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your continued funding of us through the Nebraska Supreme-- Supreme Court budget so that we experience no conflict of interest while representing the best interest of foster care children in the court system. Thank you.

STINNER: Thank you. And my presumption is that you're giving testimony on the fact that the Governor's recommended CASA to go to DHHS.

CORRIE KIELTY: Yes, that's correct.

STINNER: And you would rather stay with the Supreme Court or possibly Foster Care Review Office. Is that--

CORRIE KIELTY: Yes. We have a great relationship with the court. And because our job is to provide reports to the judges, we think that's an appropriate place. But if you feel the need to move us, we think Foster Care Review Office would be a much better place because there's no conflict of interest with that agency either.

STINNER: And your conflict of interest would occur because HHS also represents something?

CORRIE KIELTY: So, because HHS is doing the case plan for children who they've removed from the home and they're making decisions about services and about reentry to the home and about permanency for the children, we do not always agree with their recommendations. And we may-- and maybe 25 percent of the time don't completely agree with them in our court reports that we provide to the judges. So if our funding or part-- part of our funding comes through their department, that's a conflict of interest for us because we're not always agreeing on what-- what the outcome for the kids should be.

STINNER: Yes. Questions? I'm glad we got that on the record, I wanted to clarify those points. Thank you for-- for what you do. You do a great job.

CORRIE KIELTY: Thank you.

STINNER: I know in Scottsbluff they do a great job. I know that.

CORRIE KIELTY: They do.

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STINNER: So thank you.

CORRIE KIELTY: Thank you.

STINNER: Any additional proponents? Any opponents? Seeing none, anyone in the neutral capacity? Seeing none, that concludes our hearing on Agency 5, Supreme Court. We'll now open with LB353, Senator Lathrop. Afternoon.

LATHROP: Good afternoon, Mr. Chair and members of the Appropriations Committee. It is a pleasure to be here. This is like my one and only time here. I try to avoid this place, but today I'm here to talk about community corrections beds. My bill proposes to build and finance or have an appropriation for 300 community corrections beds in Omaha, and I'd like to tell you a little bit of my rationale for bringing this bill back to you this year. We are obviously, and have been since July, in an overcrowding emergency. We have a problem with too many people inside our facilities. We have a proposal to build 230 beds. They are of a higher security level. And I'm not here to comment on that or to-- to pass judgment on the-- on a matter that you'll take up later on. But I have to tell you that I've been involved in corrections issues since 2007, having chaired-- or, pardon me, served on the Judiciary Committee for eight years before being term limited, and now I'm back there on my second year since my return. I've chaired a committee that did a special investigation into Nikko Jenkins, the miscalculation of sentences. I think I understand this topic and what I can tell you about the numbers, this last year we did a new assessment on our population projections. We're going to go up by about 250 men a year in our-- in our average daily population. The solution to our overcrowding is not going to take place because we build our way out of it. Politicians for a generation promised to make streets safe by increasing penalties, and we've done that. We did the war on drugs and we increased penalties. We did mandatory minimums, increased the length of time people spend in-- in prison. And we did habitual criminal statutes where people spent more time in prison if they were convicted of three felonies. All of those things that we have done in the name of public safety have increased the number of people who are incarcerated and the length of time they spend there. And Director Frakes will be the first one to tell you that is something he has no control over, none. He just incarcerates the people we send down there and keeps them as long as we tell them they

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need to be kept. Community corrections is part of a movement that Legislatures across the country are engaged in. It's called Right on Crime. You can be tough on crime, and that worked for a generation. But now that we are at the point in time, and the state of Nebraska is where we got to figure out, do we want to spend all of our money building facilities that in our case we have difficulty staffing or do we want to take a look at a different approach? Other states are doing this. It generally falls under the banner of criminal justice reform or being right on crime. And the idea is that 93 percent of the population that's incarcerated is coming back into the community. Those 93 percent won't do better to have another year tacked on to their sentence. The important thing is, is that they get rehabilitation while they are incarcerated, so that can take the form programming; it can take the form of vocational rehabilitation. But it's also important for them to have-- be paroled where someone can supervise them and have some supports around them, might be transitional housing, those kinds of things. In between those two points in time is community corrections. That's where we take inmates who have completed their clinical programming and give them an opportunity to go back into the community in a very structured way. They typically start out with doing jobs around the community corrections center. They may be the guy that does the laundry or the guy that cleans the bathroom. But eventually they get work release. And why is that important? If you are getting work release, you can go to an apprenticeship program, for example. You can go to the community college and get more education or-- which is more likely the case-- you can get a job. And why is that important? If I am an inmate within a year of my release and I have an opportunity to go into the community during the day and work a job at construction or manufacturing, whatever it might be, I am banking money. I'm being paid whatever the prevailing wage is. I give some money to the Department of Corrections for my keep, for-- I think they take money out for two different things. But I'm banking money. So when I leave-- when I leave the community corrections center and I'm discharged, a couple things are true. I have a job. I have some stability. I've banked some money so I can get a-- get an apartment, get a car, get a cell phone, be able to function after I get out, and I don't just get the \$100 gate check, right, and-- and wish me good luck. Community corrections is really an important piece, and right now our community corrections, in my estimation, and I think I understand this and I

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suspect the director may disagree with me, it's underutilized. Our facilities, I think, are-- and I haven't looked recently, but they were somewhere around 200 percent and 170 percent, so they're over capacity, like the-- much of the entire system. My understanding is we have 191 people who are waiting to get in there. There are also people that could get in there if they had completed their programming sooner. So the last report that I read, the quarterly report from the Department of Corrections, said they're trying to get people in programming before their parole eligibility date, on or before their parole eligibility date. Really, what needs to happen in the system when it functions well is complete your programming a year before and have an opportunity to do that community corrections. If we get to that model, we will need more community corrections beds. Another thing we can do with community corrections beds, and Senator McDonnell and I went over to Iowa and watched-- or toured a program they have where they bring people back into that structured settlement or structured circumstance when they're on parole but they have a slip-up. Maybe they have a bad drug test, and instead of putting them back in the Department of Corrections and putting them in a jail cell, you-- you put him in a place that's structured where you say, you know what, maybe it's not good that you're out at night, let's have you spend a little time back at community corrections in some kind of a more structured setting, and give them some supports to-- to be successful. At the end of the day, these things are how we ought to score whether we're doing well keeping people safe, and that is, what is our recidivism rate? Are we reducing the number of people that reoffend? And we know the science is there. If you give them the rehabilitation, the programming, some vocational training and an opportunity at community corrections and work release, they will have better opportunities and less likelihood to reoffend. That's the logic and, in my estimation, the imperative of LB353. And with that, I'd be happy to answer any questions you may have.

STINNER: Very good. Questions? Senator Dorn.

DORN: Thank you, Chairman Stinner. Thank you for being here, Senator Lathrop. How long a stay does a-- how long is the average stay for someone in community corrections?

LATHROP: I think it's somewhere between-- Director Frakes, if he's testifying, can answer that specifically, but it's somewhere, I think,

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between a year and six months, somewhere in that. I understand that if you start it too soon, then some of those guys slip away from you and decide they want a little more freedom, and so there is a window there that's sort of the sweet spot.

DORN: Is the amount of time they stay there based on how they're progressing through the-- I call it the community, or is it based on their-- their length of sentencing?

LATHROP: I think right now it's-- it's not based on their sentencing, to my knowledge. I think it's based upon availability. So we have a bunch of people waiting to get in there. And maybe I can make one more point, which is the idea that we turn the Work Ethic center into a community corrections center, I-- I-- I'm just going to comment because I won't be here for the rest of the presentation. I don't think that works because there aren't jobs there, like people-- the best-- the best circumstance is being in community corrections in a community you're going to return to, right, because you start working here and then that job is still there in the place you're going to live. If you're out in McCook, you might be able to get somebody a little community college. I think we had a deal with Valmont when it originally opened to teach people to weld, but that fell through. It's best done where the-- where the prisoners-- or where the inmates are going to return to, and that's predominantly Omaha and Lincoln.

STINNER: Any additional questions? I have a couple of them. And-- and you are the longest term senator we have, probably the most knowledgeable senator-- senator we have in this body about Corrections and what's happened to Corrections. Dewberry study was commissioned and finished in 2014. When did they commission that? How long did it take them to do that study? I mean--

LATHROP: I'm not sure how long it took. I know--

STINNER: --maybe you also want to talk about what the findings are.

LATHROP: I know-- yeah. So it was at the-- it was in the last year of the Heineman administration and we were involved, and that was more Senator Mello and maybe Ashford, with CSG at the time. I did not get involved in the special investigative committee until that was a resolution in 2014. And that Dewberry report came out, I think, in the

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latter part of 2014, which would have been just before I was term limited.

STINNER: And do you-- do you have a-- what were the conclusions in-- that-- that you see?

LATHROP: So the Dewberry report went through and did a-- and I have a copy of it here. The Dewberry report went through and the first thing it does, and any-- any one of these facilities study necessarily has to, it does an estimation of what your population is going to be. We've had one done in 2006, maybe '10, certainly had one done in '14 in connection with the Dewberry report, and one just last year. Those reports and those projections have been spot on. There's a science to that and we had one done by JFA. Once you know what your population is going to be or how it's going to grow, they break it down by classifications: Are they going to be the most serious, dangerous people; are they going to be lower level? And then they determine what your bed needs are. Right? Dewberry made, as I recall, the observation that we want to be more rehabilitation and less storing people. Certainly that-- the director's said that too. We want to be more about rehabilitating people and getting them prepared, so they went through and said, we're going to lay out what-- what Nebraska should do in phases. Building the community corrections beds was something in phase one. They also had other phases and then at the end they said, ten years out, we're not really sure what you're going to need, but you may want to build some more beds. But that included that center that we-- that you funded. It has a name. It's like the RTC or something. It's between Diagnostic and Evaluation Center and LCC. It kind of has the laundry and the cafeteria and those kind of things, but it also has some beds in there for the mentally ill and I think some of the, you know, like prison hospital beds, if you will. That-- that proposal in the Dewberry report was to build maybe 120 mental health beds, and I think we actually funded 32. Mental health is a big, big-- we have a lot of people that are sitting in jail cells at LCC, I think, is where the mental health facility is, and it's really-- I think we would have done well to fund those beds, but--

STINNER: Yeah, and you-- you said that classification drives the numbers and--

LATHROP: It did. So--

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STINNER: --the cost associated with it. Do you want to give us--

LATHROP: I got off track.

STINNER: Yeah.

LATHROP: So the Dewberry report went through and-- and made projections about how many beds we would need in each classification over the next 10 years and then broke down how we should do our construction in I think three or four phases and when they should be done; when you get done with this, then you move on to this, then you move on to this. And that's-- that's the second facilities study that was done in my time. I think one was done in the early Heineman years, maybe 2006. That was stuck in a drawer and none of those beds were ever built, to my knowledge. Then, on his way out, Heineman-- Governor Heineman had another one done and we've sort of picked and chose what we want to out of there. We haven't done it in the order Dewberry proposed. While we did build some women community corrections beds down in Lincoln, we haven't built the Omaha beds that were proposed.

STINNER: In the Dewberry study. Does it percentage wise breakdown what they project the maximum security to be, the minimum, and community corrections?

LATHROP: It probably does. And I got to tell you, I've read that report three or four times, but-- but I haven't read it in the last month.

STINNER: And the only reason I ask, we're building 384 maximum security beds right now, and that's 7 percent or so of the population. And so I-- I'd really kind of like to find out what, percentagewise, maximum and medium, because that really does drive costs and what we have to do.

LATHROP: Part of the challenge there, Chairman, is that we have a-- we have a system for assessing risk. I think it's called the STRONG-R. We can do an assessment of the risk, but it's often overridden. So you may show up as a, you know, maximum security, but they lower it. I think that's done a lot of times related to beds. Or they can increase that if they don't have a lower-level bed, and there you find yourself somebody that's not trouble and sitting in Tecumseh.

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STINNER: So you're saying availability of beds really dictates po-- your possibility of classification?

LATHROP: I think it does. I suspect the director's going to disagree. I can't really see him over my shoulder, but he's probably shaking his head no, That's-- that's a concern that I have in-- in my experience with the Department of Corrections. I saw a list of people who were on the-- 191 people on the waiting list to get into community corrections, and there are people at virtually every security classification cleared to go there, just waiting for an opportunity.

STINNER: And to get to your model that you were talking about, getting programming-- finishing programming a year before probation, then maybe doing a community custody at that-- how do we get to that and what's our-- what's our hurdle? Is it facilities? Is it programming? Is it programmers?

LATHROP: It's probably all of that. That-- by the way, that model isn't something that Steve Lathrop made up. CSG shared that with us--

STINNER: Right.

LATHROP: --when they did their work in 2014. You have people in the Department of Corrections for a shorter period of time if their programming is done a year before, and then they have the opportunity for community corrections. What's it take? Right now, I think we have so many people inside the Department of Corrections, so little room to move around, and so few staff to get people to cover taking people from one place to the next, that it's hard to get all the programming in. I don't think anybody is trying to get it done a year before. Some people may get it done a year before, but there's an awful lot of it that-- that doesn't start until people are at their parole eligibility date and at that point, Parole's just saying, well, complete your programming and we'll-- we'll cut you loose.

STINNER: So we mentioned Dewberry. We mentioned CSG. These are considered to be experts. Is there are other experts out there that we can go to, to get some ideas of which way forward?

LATHROP: Yes, there are people that do that kind of work. CSG came in and did a deep dive into our data, and that was what was done in 2014.

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There are other groups and I'm probably not going to go into that here, at least today; maybe I will on Monday. But there are groups that come in and do a deep dive and can then say, we've looked at other states, this seems to be where you have the bottleneck, if you made these kind of changes-- they don't dictate-- when they come in, they don't tell you what to do. They just tell you where your problems are and what possible remedies you may have and then it is a matter of-- of whether you're politically able to move that kind of legislation through the body.

STINNER: Well, isn't it prudent-- a prudent business decision, whether we're building a prison or not, doing long-term projects, isn't it prudent, with the money that we're trying to spend, prudent to bring in the best and brightest to help us understand what our problem is and how best to go forward?

LATHROP: Yes.

STINNER: Thank you. Just wanted to get that on the record. Any additional questions? Seeing none, thank you.

LATHROP: All right. Thank you.

STINNER: Is there any proponents? Seeing none, are there opponents? Director. Afternoon.

SCOTT FRAKES: Good afternoon, Chairman Stinner, members of the Appropriations Committee. My name is Scott Frakes, F-r-a-k-e-s. I'm the director of the Nebraska Department of Correctional Services. I'm here today to provide testimony in opposition to LB353. Community custody is the lowest-custody setting in NDCS. Combined, the centers in Omaha and Lincoln have space for 840 people. NDCS has the right number of community corrections beds for the individuals who qualify. In fiscal year 2020, 1,428 individuals were deemed appropriate for community custody through our classification system. Of those, 1,371, or 96 percent, transitioned through a community corrections center prior to release. The people that can be safely housed in a community corrections setting are receiving the opportunity to do so. Increasing the number of community corrections beds will not increase the number of people classified for community custody. In fact, pushing people into community corrections before they're prepared to manage all that

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comes with it-- all that comes with it can lead to setbacks and sometimes unfortunate outcomes. Getting someone ready for community corrections is a multilayered, multipronged approach which includes our classification process, getting the person to engage in and complete clinical treatment, having them work on a reentry plan, helping them identify education or work goals, getting them to participate in the vocational/life skills program and other opportunities. We look at a myriad of factors to determine if someone is ready to make the transition to a community correctional center with enough time there to benefit all-- to benefit from all it has to offer. It's always our goal to house people in the least restrictive setting possible, but it's not good public safety policy to put individuals in community beds just because there may be an abundance of those beds available. The proposal to build a 1,512-bed, multi-custody level facility does some key things that LB353 does not do on its own. First, it proposes making better use of the State Penitentiary as a minimum custody facility. While NSP would still operate behind a secure perimeter, it will be-- it will open up programming space that will allow us to do more for that population than we can currently do in a facility that also houses maximum- and medium-security inmates. Second, by changing NSP to a minimum custody, we can create staffing and operation-- operating efficiencies while making the facility a safer and more attractive place for our team members to work. Third, building a new facility allows us to create modern, maximum- and medium-security housing that'll best meet the needs of our highest-risk populations. Individuals who pose the highest risk will live in an environment where we can provide opportunities for change by using modern corrections security design and technology. This will improve inmate, staff, and public safety. Since 2015, this Legislature has approved funding for more than 800 beds, which includes 260 community custody beds. The funding request that I'm seeking is one that addresses multiple needs across the entire correctional system. To ensure the continued effectiveness, safety, and security of NDCS, we must take a global perspective to our immediate and long-term needs. Spending money to build beds that we cannot safely fill will do nothing to address crowding or aging infrastructure. Nebraska does need to invest in our prison system, but LB353 is not the right investment at this time. And I'd be happy to try and answer questions. Thank you.

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STINNER: Senator Hilkemann.

HILKEMANN: Director Frakes, thanks for being here. Now, if I-- I want to get this right in my mind. You're saying-- first you said we had-- we had enough beds right now for the classification for-- for the minimum security. Is that correct?

SCOTT FRAKES: Yes, it is, for community custody.

HILKEMANN: For community custody. I'm sorry, yeah, I have to use the right term. OK. But then you go on, you say that if we change NSP, then we'll have enough for the community custody, or is that--

SCOTT FRAKES: Minimum.

HILKEMANN: Am I not catching that right?

SCOTT FRAKES: Yeah, two different-- so maximum cus-- custody, level one; medium custody, level two; minimum custody, level three; community custody, level four. Community custody has no secure perimeter. People leave and go in the community without escort. At minimum custody, they're kept behind a security fence. It's not a secure perimeter, but a security fence. If they go outside, they go under escort, not in restraints, but so that medium custody and max custody, if you leave the secured perimeter, you're in restraints under direct escort of staff.

HILKEMANN: So then community custody is at the-- at the fourth level.

SCOTT FRAKES: Yeah, normally called work release, and that's a typical generic term.

HILKEMANN: And-- and-- and so you're saying right now, at the fourth level, we have all of the beds that we need to have and all the facilities that we need to have for--

SCOTT FRAKES: We have--

HILKEMANN: --to meet the needs of the fourth level.

SCOTT FRAKES: We have a robust work release system.

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HILKEMANN: And then if we do the plan we're going to be talking about a little later and we-- and we remodel NSP, then does that take care of-- of level three then?

SCOTT FRAKES: It does, one, two, and three, and then, as Senator Lathrop mentioned, I've opened a door if there's interest in conversation about the Work Ethic Camp becoming level four, work release, and that would address the need-- by then, there will be a need for additional work release beds, by 2025, 2026, and one option would be to convert the Work Ethic Camp to community custody. Other options would be to pursue new beds in another location. There's the proposal to do small contracted work releases in communities, so those are all options that could be looked at. The Work Eth-- Work Ethic Camp conversion actually saves money for the agency and could still lead to really good outcomes.

HILKEMANN: So if we look at our overcrowding situation, the overcrowding is really occurring with the first three levels of-- of--

SCOTT FRAKES: Our greatest tension today is maximum custody because--

HILKEMANN: The level ones?

SCOTT FRAKES: The level ones. Most of what we have, where we house level ones today, is really level two construction.

HILKEMANN: Thank you.

STINNER: Additional questions? I have a couple questions. You were talking tier one, tier two, tier three, tier four. Maximum, percentagewise, can you give me-- is that percentage, I presume, pretty static-- static, is it not--

SCOTT FRAKES: It is. It was--

STINNER: --within a range?

SCOTT FRAKES: You know, that information was in that handout that I provided when we met a couple weeks ago. I didn't bring it today. I want to say, off the top of my head-- please stay with that-- that right now we're sitting at about 20 percent max, 30 percent medium, 30-- maybe 32 percent medium, somewhere in there, a little over 30

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percent minimum, and 17 percent community custody. That number is stuck in my head.

STINNER: OK, tell me why you think McCook's a good idea to take it to community custody. I-- and the only reason is I know McCook pretty well.

SCOTT FRAKES: Yeah.

STINNER: I live somewhat close to it.

SCOTT FRAKES: Right.

STINNER: Still a long drive, but I don't see the jobs out there and the absorption that--

SCOTT FRAKES: If it was-- if it was just a traditional work release and we were trying to turn-- most of our-- you know, at any given time, maybe half of our community custody population is actually in a job. They come in. They get established. They do what-- what I call prerelease from my previous experiences. They get prepared for, they get vetted for, they go out there, find their job. So if I have 200 beds, then I need 100 jobs if it's just a true traditional work release. But really, what I envision for LCC is more of a prerelease, and also this opportunity now with Pell Grants, second-chance Pell Grant, to start to build a program around educational release, as opposed to work release. So we provide the safe place for people to live and the medical care and the food and Pell pays for the education, and we could tap into that. So the-- I think there's-- I definitely think there's 50 jobs in the Mc-- McCook community that could be identified and that would-- it'd be a welcome labor force. And then it would at least put that part of the population that comes from the west side of Nebraska, back in the west side of Nebraska. I mean, there's-- there's no great location. We could go to Scottsbluff, but even there, the problem being, of course, that we have geographically 70 percent of the state that is widespread, doesn't put a lot of people in the system, so there's no good answers for getting them closer to home, truly closer to home.

STINNER: The other question I have is, when you talk about 260 community custody beds, I think inside of that is the 160 women's

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dormitory that we built. I think the first year I was here, we approved it. What's the occupancy--

SCOTT FRAKES: Second, third--

STINNER: --rate of that?

SCOTT FRAKES: Well, it's not very good today because of COVID, unfortunately. We've got 91 women in there today and we've got 26 sitting at NCCW that would be there if it was not for the COVID outbreak. First, we had an outbreak at the women's work release, then we had an outbreak in the women's secure facility. That one's just about done, so hopefully here, any day now, we'll be able to move those people and then, you know, things will gear up again. COVID has not done anything to help us in terms of being able to move people fluidly through our system, so.

STINNER: From my understanding, that facility has never been fully occupied.

SCOTT FRAKES: No, we hit 135 or 140, but--

STINNER: OK.

SCOTT FRAKES: --that's not a bad thing.

STINNER: Well, for the record, I voted against. I thought we could have spent money somewhere else--

SCOTT FRAKES: Well--

STINNER: --to help our overcrowding. But that's-- I don't want to get into that right now.

SCOTT FRAKES: OK. What it did do is bring NCC-- NCCW down to where it needs to be in terms of the right number of people for the size of the facility. And it's-- to me, it's not a bad thing that right now we have a little bit of space on the women's side of corrections because it's also projected to grow, fortunately not at the same rate, but, you know, so we shouldn't have to worry about addressing issues with bed space for women in Nebraska maybe through the '20s.

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STINNER: Tell me-- you say space for 840 people in community custody beds. Define-- define that. Is that 125 percent of design capacity, is it 150, or is it 200?

SCOTT FRAKES: For-- yeah, for CCCO, it's 200 percent, I think. I believe the facility was-- it's either 2-- it's either 180 or 200 percent. It's 180 beds and the facility was designed for 90 or 100 people. And here in Lincoln, we're now at a place where the design capacity is 200-- 300-- 460 and we have 660 good, occupiable beds, so whatever the math is for that. I don't remember.

STINNER: So if we did build more community custody beds, we would lower from 200 to some other number?

SCOTT FRAKES: Yes, but in a location that is least impacted by the number of people that are housed in the space, because these are people-- unlike a prison--

STINNER: I'm trying to figure out--

SCOTT FRAKES: OK.

STINNER: I mean, he's talking Omaha--

SCOTT FRAKES: Yeah.

STINNER: Omaha is our biggest population so I--

SCOTT FRAKES: But I-- what I'm saying is, if you go to CCCO, the fact that there is 180 inmates in that space and it was originally designed for 90 or 100, let's say it was 90, so it's got twice as many inmates as the original build, so instead of two people in the room, there's four people in the room. They have-- they go to jobs. They have community access. They are moving in and out of the facility. They are in transition to returning to society. They see the hope and the light at the end of the tunnel and it's fine. Take that same kind of condition and put it maximum custody, and now you start to see the bad tension that comes around crowding, because there is not the freedom to leave the living unit, let alone to leave the facility, and so big difference.

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STINNER: But isn't it true that-- I think Senator Lathrop said 191 are waiting to get into community custody beds because you're--

SCOTT FRAKES: I've heard this number a couple of times, but I don't know that-- I don't think that list came from my agency. I would-- you're shaking your head yes. OK, can you tell me-- can somebody let me know who provided it, because that is not consistent with the information that I have.

STINNER: I'll-- I'll turn-- I'll turn it over to Senator Wishart.

SCOTT FRAKES: Yeah. I would est--

STINNER: But isn't the--

SCOTT FRAKES: My estimate is there's about 100 people right now that could be in community custody if we didn't have COVID getting in the way.

STINNER: Isn't what we're trying to do, though, is to try to get more programming up-front, get more people into the community custody model faster, or at least the model that-- that Senator Lathrop talked about, getting people programmed, community custody, probation? Isn't--

SCOTT FRAKES: And we're much farther along than I seem to have been able to convince people.

STINNER: But we're not there. But, see, we're going to do something that's going to last 50 years, so don't we have to prospectively plan and look to do that? That's one of my points, is--

SCOTT FRAKES: We do, but we also have to make decisions about where are we going to spend the limited funds that we have.

STINNER: Well, I-- I--

SCOTT FRAKES: So--

STINNER: --I appreciate that.

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SCOTT FRAKES: So to speak to this issue, there is one thing that gets in the way of people not being granted parole related to the generic umbrella called programming. It's actually clinical treatment and it's actually residential clinical treatment or the violence reduction program. Failure to engage in that and successfully complete that, the board's pretty unlikely to grant someone parole. They can get resi-- they can get outpatient substance abuse in the community and we do outpatient substance abuse at community custody, so that doesn't-- that's not a parole stopper. We now are getting people in substance-- residential substance abuse treatment three years from their parole eligibility date, not on their date, not a year from their date, three years from their date, which actually pushes against the science that says you really want to try and get that treatment done in relation to transition to the community. Two years is kind of the favorite model. But what we decided was that we'll get people engaged and they complete it, then we'll get them to work release, as long as their other behavior supports it. As Senator Lathrop mentioned, there's not as much science as some, you know, operational knowledge. Six months of work release? Probably not enough. Unfortunately, there's a lot of systems around the country where you're lucky if you get that and some systems don't have work release. Twelve months of work release, that seems to be a sweet spot. Eighteen months, for most people, that's starting to push the boundaries. When you put people in work release, community centers for two or more years, unless they have a really good program and a lot of other things going for them, it's very difficult to live in that setting, to follow all the rules under that level of supervision when half of your brain feels like you're living outside and half of it says, no, I'm still in prison, much-- there's a very similar dynamic with community supervision. There's a sweet spot for how long people should be on parole, there's a sweet spot for how long probation should last, and certainly some good science that shows overuse in length of parole leads to the wrong outcomes, so.

STINNER: OK. Senator Wishart.

WISHART: Thank you, Chairman Stinner. You actually asked one of the questions I had. But just to follow up, first of all, Director, thank you for being here. So I-- what I'm hearing is that Senator Lathrop did announce that there were 191 men waiting, and that is a number that I have gotten several times from our Inspector General, and it is a number from Corrections in terms of how they are-- are listed, but

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they are waiting right now to go into community corrections. They are-- all the boxes are checked for them to be in there.

SCOTT FRAKES: OK. All right. I'll-- I will look into it. It's not consistent with the information that I've been given, but I'll look into it. Thank you.

WISHART: OK. You-- you spoke a little bit, and-- and some of this, I try to-- I'm trying to stick as much to the-- the budget and our-- our money decisions behind these things as opposed to the conversations you have in Judiciary. But sometimes they do overlap because in terms of a community correction bed as opposed to a more higher security bed, there is just a cost savings.

SCOTT FRAKES: Absolutely.

WISHART: Yes. So philosophically, what-- what I'm hearing you say is that some of the science that you are following is that you should wait for someone to get their programming until closer to their parole date.

SCOTT FRAKES: The science on clinical treatment, big diff-- so big difference. We have clinical treatment for an identified mental health issue and then we have all the other programming we do, none of which will stop somebody from being granted parole. Clinical treatment, residential, the one thing that the parole board says, if you have a recommendation for clinical treatment, residential or violence reduction program, then we expect you to complete it. The science would say about no more than two years from release is kind of the sweet spot. A year from release is even better. Twenty years ago, we were very much into getting people into residential substance abuse one year from release, maybe four months of work release, and then out the door, out-- the sooner you can finish that clinical treatment and transition into the community and then get aftercare, the greater the likelihood of success. Recognizing that clinical treatment is not a panacea, you don't cure people, basically--

WISHART: Yep.

SCOTT FRAKES: --we give people tools, you know, to help them with recovery and, you know--

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WISHART: And--

SCOTT FRAKES: --it's--

WISHART: --what I'm trying to get at is that the goal, and from reading your 2019 strategic plan, is to immediately, when somebody enters the corrections system, for them to be working towards a healthy release. And from my mind then-- I'm thinking from a budgetary perspective, too-- it would make the most sense, and I'd be interested in your perspective and I think this is what senator is working on, for-- to get the programming as quickly as possible to people in the sense that they can move in a stair-stepped way to community and then into the community, because that gives someone a much more graduated approach before release instead of someone jamming out.

SCOTT FRAKES: That's exactly what we're doing and that's what I'm trying to describe to you. There's a lot of pieces to this, so one question leads us one way and another leads us another way. We do assessments of everyone coming into the system, in total, with almost everyone in less than 90 days. That includes their education level, their healthcare needs, their mental health needs, their clinical treatment needs, and if there are other programming needs. We've now moved cognitive behavioral training, cognitive behavioral interventions-- that was the word I was looking for-- to the front end. So we're getting people into CBIs fairly quickly because there's a recognition now as the science and the learning, the knowledge grows, that it is what I thought it was 20 years ago: It's really good engagement work. It gets people to open their minds and think about maybe I could finish my GED, maybe I should do that clinical treatment. So we're doing CBI on the front end, as close as possible. If there's education needs and they're interested in pursuing those, we're getting people into those. If they have a clinical treatment recommendation that's not resident-- not residential, there's potential they might get in-- into it a little earlier, but probably, again, not-- not more than three years from PED, because the science would say that if you do that, if you do it when they're four years from potentially walking out of a secured facility, you probably need to do it again. And we-- we're not in a place to get to that level. It's--

WISHART: Well, my-- I would like to--

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SCOTT FRAKES: So I got a little bit more-- I've got a little bit more just to-- I want to finish this. So we are figuring out what people need. We're providing the opportunities in the right staged degree. Certainly, part of the challenge is engagement. Not everybody is excited about taking what we have to offer. Part of that is a reflection of the environments that we have people housed in. Some of those environments make it challenging for people who want to get engaged in what it is we have to offer. Sometimes it makes it challenging for us at times to deliver because of the conflict, and the penitentiary is a good example of that. But this idea that-- when I arrived, this agency had the goal of providing sex offender treatment assessment by PED. That was the goal of the agency. That was the practice of the agency. Today, that happens less than 90 days from arrival and we're queueing people into sex offender treatment about two years out, depending. The last piece of all this is, if everyone had a nice, clean, you know, 7- to 15-year sentence and we could just check the box and identify the marks, but we're getting people that have 6 months with us, 9 months with us, 18 months with us, 20 years with us, 50 years with us. So you have this incredible spectrum and it is always in churn, about 2,700 people a year coming in and going out of the system, so a heck of a lot of movement. If you think about all the moving pieces that have to be figured out, addressed, queued up, lined up, we-- from 2015 to where we're at today, we've made incredible headway.

WISHART: Well, I would like to see the science behind that, because my concern is that we have a system where we are moving as many people towards community corrections who are capable of doing that before they graduate into the community.

SCOTT FRAKES: Fourteen-hundred people--

WISHART: Yeah.

SCOTT FRAKES: --out of 2,700 is pretty amazing.

WISHART: But if that is the goal and if the goal is to move more people towards community corrections and have a stair-stepped approach instead of jamming out, so that people are waking up in the morning and going to a job and paying their child support, doing all the things the rest of us have to do instead of just sitting in a cell,

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if-- if we-- if that is the goal, then why wouldn't we be looking years from now at building more community corrections, recognizing that the goal is that's what we're all working towards?

SCOTT FRAKES: So I offered a different proposal that will create more community corrections beds without an investment of capital, as well as using our limited, extremely valuable dollars to address the greatest needs, that will have the best overall impact across the system. If we make it safer at higher security, we will give more people more opportunities to engage in what we have to offer. No, there's no question that a part of the reason that we struggle with our higher security level, level one, level two, max-, medium-custody inmates, is because we don't have good settings to house them. We have a mixed population in-- when Senator Lathrop was up here and talking about-- and I think, Senator Stinner question, a question you asked, you know, does classification drive beds or do beds drive classification? In a healthy system, classification determines where people are housed. Again, if you're going to have tension in the system, i.e., the sh-- the smallest number of beds, you want it at the highest level-- sorry, lowest level custody. If you have the right number of beds for your max population, the right number of beds for your medium population, then it's-- it works better if there's people queued up and waiting to get to that least-restrictive piece. Connected to that is we absolutely were in a place when I got here where beds drove classification, and that led to some really bad practices. And that's why we have mixed medium and maximum populations at Tecumseh and at NSP and, to some degree, even LCC. We-- we've done a pretty good job there. But the beds that I got funded, the 384 high-security beds, were a phase of moving us to where we need to be, and then the project that I'll talk more about later is the next phase of it. That's the-- that's the best investment. It's going to make this system healthy so that we can do all the things that you want us to do and you want us to do and I want us to do. But without that, a bunch of community custody beds and people that I-- you know, if I can't prepare more people to fill those beds, one of two things will happen. They'll sit empty, which means those facilities are less crowded. That's not a bad thing. But I already hear concern, the fact that the women's side is not crowded, that we built 160 beds and they're not full. OK? The other piece of it is crowding at low security and crowding at high security produced very, very different

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results. You go through CCCL, tour the place, you're not going to feel that that's a crowded facility. Maybe on a Sunday afternoon, since right now we don't have furloughs, it may feel a little bit packed, but once we get back out of COVID, no. You go to the penitentiary, go to the high-security units pretty much any day of the week, you'll feel what it's like when a facility is crowded.

SCOTT FRAKES: OK. Any additional questions? Senator Clements.

CLEMENTS: Thank you, Mr. Chairman. Thank you, Director Frakes. This discussion about your proposal, the 1,500-bed facility, does that add community corrections beds or would that have to be done as another step after that?

SCOTT FRAKES: What I put on the table is the proposal that, one, we would repurpose the state penitentiary as a full minimum-security or level three facility, and we can do that without capital investment, which I'll talk more about when I do appropriations-- my appropriations. And then I've opened a door to conversation about converting the Work Ethic Camp in McCook to a level-four community custody facility--

CLEMENTS: Oh, that--

SCOTT FRAKES: --and that would be 200 beds.

CLEMENTS: All right. Thank you.

SCOTT FRAKES: And-- and we could do that, again, without capital investment and we could drop the operating cost, I think, a couple of million a year, because it takes a lot less staff to operate community custody.

CLEMENTS: All right. That's fine.

STINNER: Thank you. Additional questions? Senator Hilkemann.

HILKEMANN: I have a question for you on-- regarding LB353. If I'm hearing what you're saying is if we were to move LB353, it would be a waste of state dollars and it would not help the overcrowding situation.

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SCOTT FRAKES: I'm going to reframe it a little bit. It would not be the best investment of state dollars at this point in our evolution in terms of the corrections system, and it would not produce the kind of benefits to crowding that we would all want to see.

HILKEMANN: OK, thank you.

STINNER: Additional questions? Seeing none, thank you.

SCOTT FRAKES: Thank you.

STINNER: Any additional opponents for LB353? Opponents for LB353?

DORN: Thank you.

DANIELLE CONRAD: Spike was distracting me. Hello, good afternoon. Hi, my name is Danielle Conrad; it's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d, here today on behalf of the ACLU of Nebraska. I'll keep it brief. I-- I hope to have a broader dialog with you all later on the Department of Corrections' budget. But just for consistency purposes, we are opposed to this measure, as we were the last time Senator Lathrop brought it forward. We deeply appreciate his leadership in bringing forward solutions and working, of course, to address sentencing and reentry and diversion and alternatives through his work on the Judiciary Committee as well. I know you have a lot of difficult decisions before you, but we-- we strongly believe that common sense and the record are crystal clear. If Nebraska attempts to build its way out of this problem, it will bankrupt the state fiscally and morally. Look no further than the data you have before this committee. You have invested millions and millions of dollars to building hundreds and hundreds of beds just in the last years, not to mention the past decade, and it hasn't solved the problem. There is an emergency overcrowding crisis. There's a staffing crisis. We have higher recidivism rates. County jails are-- are being utilized to take care of state obligations. We have to find a better way and we don't have to come up with it ourselves. We can look at our sister states that have similar demographics, that have similar political landscapes. We can look at the federal government that literally just took important steps forward to reduce their prison population. It saves taxpayer dollars. It has better outcomes. And from a fiscal perspective, I know how carefully you look at each dollar and each

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line item before you because it's precious taxpayer dollars and you take your duty seriously. To see Corrections outpace education, human services, tax relief and the overall budget, is all you need to know about this conversation. It's time to chart a different course. We can do that together if we have the political will, and we have the blueprint to do it from our sister states and national experts. Thank you so much.

STINNER: Thank you. Questions? Seeing none, thank you.

DANIELLE CONRAD: OK, thank you so much.

STINNER: Any additional opponents on LB353? Seeing none, is there anyone in the neutral capacity? Afternoon.

DOUG KOEBERNICK: Good afternoon, Senator Stinner and members of the Appropriations Committee. My name is Doug Koebernick, spelled K-o-e-b-e-r-n-i-c-k, and I am the Inspector General of Corrections for the Nebraska Legislature. I'm here in a neutral capacity to provide you information because I thought that what I shared might come up as an issue, and that would be the-- the people that are on the transfer list that Senator Lathrop mentioned. In my annual report, back in September-- I just was looking it up back there-- on page 13, it lays out what I'm talking about. And I'll make a copy of that and get it to everybody, but I also have a little handout here too. On January 25 of this year, I went and looked at the department's information system and in-- within that, there's so much information. But there's an active inmate transfer list, and these are all people who have been approved and recommended for transfer to other facilities or different custody levels, things like that. And if-- to just cut to the chase on that list, on that date, there are 191 men who are approved and recommended to go to community corrections. There are also a number of women on that list. When Director Frakes talked about the 26 women that are approved right now to go to community corrections, I would guess that if I went on that list today, there would be-- that's the list we're talking about. So I've checked with people in the department when I was writing my annual report to make sure that that was accurate. I was told that it was. And I think that is about all I have. I just wanted to share with you the source of that-- of that piece of data.

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STINNER: Thank you. You're going to stay around, as well, for the records?

DOUG KOEBERNICK: Yeah, if you-- if you have any questions, I can come up.

STINNER: We may-- I mean, we may have to bring you up again, more for information.

DOUG KOEBERNICK: OK.

STINNER: Any additional questions? Seeing none, thank you.

DOUG KOEBERNICK: Thank you.

STINNER: Any additional testifiers in the neutral? And I see that Steve Lathrop-- Senator Lathrop is not here, so I presume he's waiving closing. We do have a support letter from Nebraska County Attorneys Association. We have opposition from Allisyn Mills, Bethany Brunzman, Gerise Herndon-- Herndon, Guadalupe Estrada, RISE, Amy Wenzl, Wendy Smith. And that concludes our hearing on LB353. We will now open with the Department of Corrections, Agency 46, Director Frakes.

SCOTT FRAKES: Seems like I was just here. [LAUGH] I am going to do this. It just--

_____: Thank you.

SCOTT FRAKES: --dries the throat out and-- just get so used to wearing it, you know?

_____: Thank you.

SCOTT FRAKES: [INAUDIBLE] read the wrong testimony. Good afternoon, Chairman Stinner, members of the Appropriations Committee. My name is Scott Frakes, F-r-a-k-es. I'm the director of the Nebraska Department of Correctional Services. NDCS appreciates Governor Ricketts and the Appropriations Committee's support of its budget request. I will focus my testimony today on requests related to the electronic health records system, the HVAC and HVAC repairs, and leased costs, and the supplemental biennium budget request submitted on December 21, 2020, for a correctional facility and fiscal year 2021 deficit budget

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adjustment from federal Coronavirus Relief Fund reimbursement for certain prison payroll costs. (1) Electronic Health Records: NDCS is working with OCIO staff members to develop a tailored and efficient electronic health records system designed to provide improved tracking and continuity of care in the areas of medical services, behavioral health services, substance abuse, sex offender services, social work and more. Funding of \$744,736, as supported by the Governor, is being requested to complete the EHR project in fiscal year 2023. HVAC Server and Leased Computers: the HVAC server at one of the facilities is outdated and must be replaced. In addition to the server, upgrades must be made to enable the system's endpoints to be compatible with a new server. The total estimated cost for the HVAC server and all the related replacements and upgrades is \$750,000 in fiscal year 2022. This is actually a shared server between Tecumseh and OCC in Omaha. Additionally, under the computer master lease program managed by the OCIO, additional costs will be incurred in the upcoming biennium. The additional expense will be \$29,797 in fiscal year '22 and \$184,864 in fiscal year '23. The total fiscal impact is summarized below. And again, the Governor's recommendations support funding these items. (3) Deficit Budget Request for Federal Coronavirus-- Coronavirus Relief Fund Reimbursement for Certain Presumed Payroll Costs: Federal guidelines related to the use of the 2020 CARES Act funding, specifically the federal Coronavirus Relief Fund, "CRF," authorized reimbursement for state costs related to presumed payroll for public safety personnel proportions of calendar year 2020. NDCS submitted costs for and were reimbursed through the CRF for public safety payroll in the amount of \$38,172,406 for the period of July 1 through December 31, 2020. This allowed us to shift the level of expenditures from General Funds to federal funds, and the Governor's recommendations in the NY 20 21 deficit bill reduces the agency's General Fund appropriations in fiscal year 2021 by this \$38-and-some million. We support the Governor's request, or recommendation in this area, Multi-Custody 1512 Bed Correctional Facility: NDCS is requesting the below funding for a multicustody, 1,512-bed correctional facility. Future years' anticipated expense of this \$115 million is included, so you can see it spreads out over three biennium, five fiscal years, the request for this biennium being \$115 million. The decision to invest in a new prison is not an easy one. It is, however, a necessary one. As an agency, we've become very creative in maximizing space to the benefit of our incarcerated population as well as their teammates.

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Spaces are utilized for multiple purposes. We've designed mission-specific housing and places to house those with serious mental illness. We utilize cots to accommodate inmates living at the Diagnostic and Evaluation Center. Throughout COVID, creative use of our space has allowed us to manage the disease with significant success. Currently, we're building 384 beds to provide appropriate housing for the portion of the population who propose significant security risk and can't be managed in the general population. For all that-- for all that has been accomplished through funding of capital construction projects since 2015, it cannot make up for the many years in which investment in NDCS was stagnant. If you look at 2005 to 2015, we were not a growth agency. To ensure that Nebraska continues down the path of preparing people for release and managing those who have longer sentence structures, we need to add to our capacity. As I told this committee in January, it's not an objective I had when I came to NDCS, but after spending six years working to improve outcomes for the people we care for, for the citizens of Nebraska and the teammates who work for NDCS, I know what I'm proposing is the correct answer for our current situation and for paving the way forward. Despite an incarceration rate which was 39th in the nation, 2018, projections indicate that our state's inmate population will continue to climb from the 5,300 it is today to 6,438 men and women in 2025. We cannot afford to wait and see if other options exist to keep people safe. When I'm asked, do we need a new prison, the answer is, yes, because I know that this is the necessary next step towards moving our state correctional system into the 21st century. The State Penitentiary is at the end of its useful lifespan. It must either be replaced or repurposed. The citizens of Nebraska could invest-- could invest about \$196 million into NSP and bring it up to current standards for the population we house there. Unfortunately, we would lose 150 beds of operational capacity, which would only further compound our crowding issues. But not only that, it will result in a combination of new, rehabbed, and old construction. Some of the facility will come into compliance with ADA standards, but not all of it. Outdoor recreation space for higher-security inmates will be nearly eliminated. While investment would significantly improve parts of NSP, it will not raise the facility to the quality of a newly constructed prison for less than an additional \$35 million in capital cost, \$196 million for rehab versus 230 for new. We can address crowding, provide space for all the services consistent with 2020 correctional practices, and create

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cost-saving efficiencies. At the same time, we can repurpose NSP into a full minimum-custody corrections center with 960 beds at no additional infusion of capital funds outside of the normal ongoing maintenance funds that we plan for in each biennium. That will open up ample programming and workspace without adding new buildings. Construction of a new facility will give us the type of footprint that will provide flexibility in how we manage people based on custody needs of the future. Nebraska has been under-built for decades, at least four decades. Reducing the population through other means will only provide a measure of relief. It is part of the solution, but it is not the solution. It does not change the fact that NSP's physical plant is deteriorating and the-- in the near future it will not be adequate for housing higher-security inmates, nor provide a working environment that's safest for staff. And with that, be happy to try and answer questions.

STINNER: Very good. I-- I just want to start questioning. Normally I don't do this, but I'm going to jump ahead. The electronic health records project, I was kind of highly involved pushing and couldn't believe we didn't have it in the first place, but then in 2017 we funded the consultant to develop a plan. In 2017, we also got electronic administration-- admin-- records system, which is a barc-- barc-- scanning.

SCOTT FRAKES: Yes.

STINNER: OK, I got that. But in 2019, we funded a one-time request to put this system in place for \$1.346 million, and now we're asking for another \$746,000, and we're doing it internally. And I'm sorry, for the life of me, first of all, there should have been a sense of urgency that says, we need this today. The second thing, in my-- my opinion, is there's got to be a lot of vendors out there that you could have gone to, to get a fairly sophisticated and certainly a good system with expertise that would back it up, as opposed to going internally. I mean, who internally has the expertise to put something like this in? And actually, I have a doctor on my staff over here that-- or on the committee, and I just don't understand it, and maybe you can enlighten me.

SCOTT FRAKES: Sure. I think that's-- I was expecting the question, so I'm-- I'm glad you've asked. I have had a chance to talk about this in

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some other venue. So, yes, we-- first of all, there's statutory language that says we need to be operating with electronic healthcare records, and so it's not just an internal desire. We're-- we're trying to meet a good and reasonable expectation. We had the contract with ATG that-- both for our pharmacy services and then for our electronic medication record system. So those two pieces were brought in and brought to life, and we were able to do that through one of the contract-- I don't remember if that was a federal contract or [INAUDIBLE] or one of those contract systems that doesn't require you to then go out and do the typical bidding process. It's already been vetted by state law. We could use them. We had information in 2017 that we would be able to do the same thing with-- I'm sorry, there's a line right in the middle here-- do the same thing with ATG to do this next piece of healthcare records. They have module-- module systems. For the money that we requested, they would give us a good foundational project. And then as we continue to mature and evolve, we could ask for more money or maybe even figure out how to do it. So, unfortunately, after funding was approved, we found out that the information we had specific to that was not true, that the electronic healthcare records had to be taken out for bid. We couldn't use that methodology that we used for the other pieces. So, as I told Senator Chambers many times, I like to follow the law. We did a request for information. We had vendors come in and present different options, basically, you know, kind of their entry-level budget. Basic, good, foundational EHR, \$5-6 million was kind of the estimate, was the best estimate. So we knew that-- we knew that we were nowhere close to that. We sat down as a team and with OCIO, we looked at the work we did with the sentence calculation project and the quality of that project and how complicated it was, how successful it was. We made the decision that we could do it, and I'm still very comfortable that we can. COVID, unfortunately, didn't help us last year in terms of people working from home, people sick, and most of my healthcare staff deeply involved with providing healthcare to our population, so we didn't-- we're not as far along today as I thought we'd be. Love to be telling you about the four modules that were already out. The behavioral healthcare module is of maybe a few months away from launching and the intake module should be out by this fall. And then, of course, like every project, well, they identified additional things that would really be beneficial to being able to, straight-faced, say we've got

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an effective electronic healthcare system, and that's where the additional request for that funding in '23 comes from.

STINNER: My only comment on-- push back is \$5-6 million should have told you this is a relatively difficult program to install and put in place. It's complicated. And on that, that's my only push back on that. Any additional questions as relates to electronic-- Senator Hilkemann.

HILKEMANN: Yeah. Director Frakes, how many-- how many health records are we talking about?

SCOTT FRAKES: In a given year, we interact with-- you know, right now, 20-- I'm sorry, 8,000 people, roughly, and so-- and then we maintain-- ideally, as we move forward, we would maintain, so that would be a growing database. The question that's not answered yet is how much we will put into trying to go back and capture, you know, the extensive paper records we have on people, so that-- we haven't answered that question yet, so 8,000 a year.

HILKEMANN: So-- so if we have 8,000, we're basically spending a thousand dollars a-- a record.

SCOTT FRAKES: We're-- well, yes, but that's-- you know, I get 2,700 new people a year, so in ten years, we're talking 27,000 plus the existing-- there's that 1,500 people that don't move a whole lot. So over time, I guess if you're going to use that as the math, then that number is going to shrink and continue to shrink because it's not an ongoing cost. It's--

HILKEMANN: Well, from my end, unfortunately, my understanding, talking to my healthcare professional friends, is that once you get started into this EHR, and I know you had no choice, I mean, the Affordable Care required that, but you're just-- you're going to constantly be-- it's-- it's going to be a constant drain on your budget--

SCOTT FRAKES: It's another--

HILKEMANN: --trying to keep up with it.

SCOTT FRAKES: That's-- and I think that was part of our conversation. You've reminded me of the fact that under this approach, we're not

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beholden to someone else, so we don't have ongoing maintenance costs. We don't have a cost per patient or a cost per record. That was part of why the ATG proposal was low, because it had an annual cost, and I knew that that would grow and that would be how they made their money. They weren't going to make any money on the installation of their basic foundational EHR; they were going to make money off the services. We won't have a service fee because it's our tool.

STINNER: Additional questions?

WISHART: I have some about this--

STINNER: Senator Wishart.

WISHART: --health record.

STINNER: Yeah.

WISHART: So my understanding-- so first of all, this committee, we've looked at some other issues with different agencies where they're looking at purchasing something internally that's very technically advanced and have made some decisions that it's better to contract with that because then that's on that other entity if technology changes, if there are added values, that they're the ones that are sort of investing in that change and-- and you still get that. So my understanding is with some of the bids that went out, there were some companies that did not give an amount, a \$5 million amount. They just asked for-- for more clarification, so they could have potentially done it at a lower cost than \$5 million.

SCOTT FRAKES: I-- potentially. That was not my impression, though, but-- but potentially, because we didn't do an RFP, so we didn't get firm numbers.

WISHART: OK. Is there-- has there been any thought process in working with NPERS, our state's health records system that's sort of already in place? Why not just utilize that?

SCOTT FRAKES: I can't remember whether or not we had conversation, so I don't know if we had-- did or not. The big difference about us as compared to the private world, the public sector, is we have an extensive database, our inmate management system, that probably-- that

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is the, you know, repository of all things known about the population we're responsible for. So whatever tool it is that we have for electronic healthcare records, if we want it to be really effective, it needs to be integrated into that system, or else then we have a system that requires duplicate entry. And if it's, you know, one or two entries on something, and we've got a lot of that kind of stuff across our system, it's not a big deal. But if you're talking about something that has extensive recordkeeping, you want it to be able to scrape as much from that database as possible, so-- and I'll stop there because I just don't remember if we had the conversation.

WISHART: Yeah, and I'll-- I'll correct myself because I don't think it's called NPERS. I think it's called NeHII--

SCOTT FRAKES: OK.

WISHART: --NeHII, so excuse me.

SCOTT FRAKES: The other one sounded more familiar than the NeHII.

WISHART: The other one is Retirement Systems, so--

SCOTT FRAKES: Oh, there you go. That's why.

WISHART: Yeah. I saw him moving and it reminded me.

SCOTT FRAKES: Yeah. You shouldn't be thinking about NPERS.

WISHART: Got to invest early. So the-- the last question I-- I have is, will this record system have the capability of partnering with Probation and Parole and other entities outside of the correctional facility so that there is a seamless transition of records?

SCOTT FRAKES: Definitely for Parole; I'm not sure about Probation. I believe Probation has some access to our system and we, you know, will give as much access as possible. It won't speak to whatever their specific system is, but at this point Parole and us are still on the same system, so--

WISHART: And then what would be the-- what would be the downfall of going out for bid on this project to see if there was a cheaper way to contract with a company that does this in many other states and just

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has the sophistication of being able to address any unforeseen challenges that may occur?

SCOTT FRAKES: Well, besides the labor and energy that it takes to do that, the belief that we were not going to get res-- based on the request for information process, that we weren't going to get anything that would meet our needs or even close, you know, the-- earlier it was mentioned, the STRONG-R that-- that is our risk-to-reoffend tool on our classification tool, but-- and it's a good tool and it serves us well, but it is still not fully integrated within our NICaMS system, which means we're paying them a fee, so that's one downside, and we will pay them a fee as long as we continue to use that as our tool. And because it's not fully integrated, then it still requires duplicate entries and things like that, which are frustrating to staff. So having seen the experiences of some of my peers across the country who went into projects believing that they were going to spend \$10 million and end up spending 25 and still weren't satisfied, that was part of what was in the back of my mind.

WISHART: OK.

SCOTT FRAKES: I felt like-- not that \$1.3 million, and now I'm asking to make it \$2 million, is small money. It's not small money, but I think that we can produce a good foundational product and then build on it in the years ahead.

STINNER: Just for clarification purposes, the \$1.3 million was actually the consultant's estimate?

SCOTT FRAKES: It was a combination of one of my higher-level medical staff that's no longer with us, second in command of the medical unit, and then that ATG. So they had-- they mapped out something that looked really good and looked like it made sense. But once we got into the-- the real nuances of state contracting, unlike the medical records and the pharmacy stuff, it didn't meet the qualifications and we couldn't do that direct sign-a-contract approach. And again, it would have-- I'd forgotten about the fact that it had an annual cost to it and that would have gone on in perpetuity and only gotten bigger because that's where the money is in EHR.

STINNER: Senator Hilkemann.

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HILKEMANN: A quick question to-- for you. Are your-- are your healthcare providers, are you providing them a scribe?

SCOTT FRAKES: No, no.

HILKEMANN: You may want to-- you may want to consider using a scribe. From my-- understand from my colleagues that that-- it's the only way they're able to overcome the problems with the H-- or the-- these health records is to have a scribe, because otherwise you're spending all of your time treating a computer and not the patient.

SCOTT FRAKES: OK, noted. Thank you.

STINNER: Senator Clements.

CLEMENTS: Thank you, Mr. Chairman. Thank you, Director Frakes. Are we open to other topics now?

STINNER: Yes, sir, we are.

CLEMENTS: All right. I've heard that you've enhanced the pay scale, especially for Tecumseh, in trying to recruit. I was wondering how retention and turnover is doing with that facility and maybe other facilities.

SCOTT FRAKES: I could speak to the agency better than I can specifically Tecumseh right now because I just looked at the agency numbers, but I'm not going to throw the numbers out. We trended down again for the third year in a row, both with protective services and with agency across. I think the agency came in at about 21 percent, but we will follow up and give you firm numbers on those. And I can't remember where the protective services one just-- we were just pleased to see the trend line once again went in the right direction, not as much as I was hoping it would com-- com-- thinking of the COVID impacts, but having the lowest unemployment rate in the nation, we didn't see the same kind of impacts that other states did.

CLEMENTS: All right. Thank you.

STINNER: Any additional questions? I'm going to make one observation while we get into this prison idea. And I-- I've listened long. I mean, six years you and I have been together now, going on seven

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years, and you are somebody that says, I-- you send me prisoners, I put them up, I take-- you know, have to deal with sentencing, those types of things, inside the walls, inside the package. And every time we've deviated or asked your opinion about sentencing or sentencing requirements and the like of that, it's not my-- that's not your game. I get that part. Also, as people go out and reoffend, you know what the cost of that is. Again, you may have some comment on it, but it comes back to you. You just house the person and execute the sentence that you're supposed to execute. And I know that this was put together in good faith. This is the way you see the brick and mortar based on the trends that-- that you see coming in. But wouldn't logic dictate that-- we're going to spend \$235 million, and wouldn't the logic dictate that we bring a task force, a lot of people to the table, people like from Judiciary to give us some ideas of our sentencing versus maybe other states, those things, and their thoughts, people in criminal justice and what's happening, and so-- and socially what's happening out there and what we can do, specialty courts, those types of things, and trends that are going on within-- right now, within the corrections business? And when we bring in a CSG, a Dewberry, a-- you know, some of the smart people, I can't-- I can't say this is a good plan, bad plan. I don't know. I don't have that expertise. That's why we put a lot of people around the table bringing in the best and brightest with the best and brightest ideas. Turn \$30 million, I-- you-- you know, that-- there is a gag problem here for me. I mean, that's a lot of money.

SCOTT FRAKES: Yeah.

STINNER: It's a lot of taxpayer money and it's ongoing money and it's a big long-term plan. So all of a sudden, I feel kind of rushed to make a decision that I'm saying, whoa, wait a minute, I'm not sure I'm capable right now, I'm not sure this committee is capable, of making a decision long term like this without getting input from a lot of different folks, different disciplines, different people, to-- to give us the best way forward that Nebraska can and the best way to spend these tax dollars. That's the end of my sermon. It wasn't meant to be a sermon, but it-- and there was no question in that, so I-- I apologize to my committee members, but that's where I'm sitting today. I think that's where the committee is sitting today. We're trying--

SCOTT FRAKES: Right.

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STINNER: --to listen as best we can and trying to also decide what-- what the path is forward. And I know Senator Wishart has about 18 questions for you, so--

SCOTT FRAKES: Could I quickly--

STINNER: Yeah.

SCOTT FRAKES: I'll try to be quickly when I speak to--

STINNER: Please.

SCOTT FRAKES: --you know, because your observations are absolutely valid. And so we know that in the mid-2006-- 2006, '07, somewhere in there, there was a committee, group that was formed, community justice or something like that. I don't remember the name. I did meet some of the members when I first came. And it was disbanded in 2014, I think. It had been disbanded by the time I got here. So to me, that was an example of the group that was trying to do exactly what you said. A group worked with-- and I touched, just at the very end of it, the CSG piece, so CSG did come to Nebraska and did make some really good recommendations that led to some good outcomes but, unfortunately, didn't reduce prison population. But it did do some other good things in terms of more people on supervision and significantly fewer people jamming out. And I think there's always the potential to look around and see who out there has got the next best, greatest thing. That's-- that's part of why I'm not just part of the Correctional Leaders Association, but I'm a board member for that organization so I can tap into the wealth of information across this country and look at what works, what are the promising practices, what are the evidence-based practices, you know, what are people seeing that makes a difference? I also have to believe that some kind of process-- I don't have to believe. I know because I know Harold Clarke. There was a lot of people that were involved in Tecumseh. Senator Wishart.

WISHART: Well, jumping kind of a little into what Senator Stinner was talking about, I come from a little bit of a different perspective than him on-- as a committee member, I probably had to be one that's been kind of pull-- pulled in-- and into being OK with the funding that we've done over the years for building. And-- and eventually I did get around to it and since I have been in office, we have put a--

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quite a bit of money into new beds, and each time it took really, truly knowing fully the direction we were going, why those beds were important, the full plan. And so my-- my question is, you'd asked for \$350,000 one-time funding to update the master plan in your budget. Was that to update this?

SCOTT FRAKES: Right.

WISHART: Right.

SCOTT FRAKES: I proposed it.

WISHART: You proposed it, yeah, and we did not accept that, but I think--

SCOTT FRAKES: I--

WISHART: --that was a mistake on the committee's part. I don't think we accepted that.

SCOTT FRAKES: It never went forward, I don't think. I had conversation with the Governor and we talked it through and we said, you know, the-- the pros were getting something in place because there'll be a new administration by the time--

WISHART: OK.

SCOTT FRAKES: --one was done. The downside was, just like we inherited this product with no input, that would put the next administration in the same place, so we decided it was smarter just to hold off.

WISHART: Oh, but-- but in your original request, there was-- when looking at your budget request, there's \$350,000 to update the master plan.

SCOTT FRAKES: Right. But it wasn't recommended by the Governor and it wasn't-- so the ask didn't go forward.

WISHART: Well, sometimes things that are not recommended by the Governor, but by the agency, we listen to as a legislative body.

SCOTT FRAKES: Yeah, I don't want it.

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WISHART: I would-- I, personally, in order for me to feel confident with that much money being spent, would like to see an update of this master plan that's holistic to what your vision is for the future, because even though you might not be around, we're-- the decisions that we're making and the-- your guidance is going to be around.

SCOTT FRAKES: So having worked with master plans for 30 years, they work best, honestly, they do work best when they're created in the earlier years of an administration as opposed to the end of the administration, because my vision for where things should go, the Governor's vision for where things should go, clearly the previous director and the previous Governor's, you know, vision, it's mostly the director that's going to influence that. There was things in there I agreed with and there was things in there I said there is no way that I see that as a good decision or something that I would push to implement. And I would fully expect whoever inherited a product that I produced to say exactly the same thing, because there's different approaches and different philosophies and plus the landscape changes. So that's the other factor that even within my tenure, because none of this stuff moves quick, that's-- that's one of our big challenges here. So if we push things another year down the road, now we're talking about being able to occupy in 2026, when the population could potentially be 6,550 inmates and we'll have a design capacity of 4,000 beds, just over 4,000 beds. We will be in some real trouble at that point if we haven't built something. OK.

WISHART: But if--

SCOTT FRAKES: But the 384-bed project, the vision I had for that when I first started thinking about it in 2017 or very early 2018, whatever it was, has already morphed because of changes in legislation specifically around how we're going to effectively and correctly manage our severely mentally ill population; and the other thing, the fact that we haven't been able to bring down our intake center numbers. So it looks to me like 100 of those 400 beds are probably going to end up being intake beds. So what was 400 new max beds for just general population, by the time we open it next summer, I think it'll be 100 secure mental health beds, general population, but high-security mental health beds, 100 beds for intake and 200 beds for the max population, and that's-- that's the other part of the reality we have.

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WISHART: What-- I understand the philosophy of having the new director come in and do a master report, but what I'm hearing is in-- that it is not in-- in your goals to do a master report, but it is to encourage this committee to make a significant expenditure that will go on beyond your tenure here. And so in my mind, before we spend those dollars, we should have a comprehensive understanding of the direction that you see Corrections going because you're asking us to spend the dollars in that direction but not to have the plan for that direction--

SCOTT FRAKES: Yeah.

WISHART: --and a full plan because-- and I'll go on. When I look at your 20-- I've read a lot these past few weeks. When I look at the 2019 to 2023 strategic plan that you have-- I like that plan, by the way.

SCOTT FRAKES: Thank you.

WISHART: I think it's really well-written. I don't see anything in there about-- I see some things, some capital things that need to happen with NSP. But it wasn't until last year in October when this Legislature was briefed that NSP was really at its end of life cycle. What-- what-- was it doing that DL-- what did that DLR report-- what made you decide to come before the Legislature and-- and really talk about the comprehensive needs of NSP when we hadn't seen that in your strategic plan?

SCOTT FRAKES: Well, I'll blame COVID or I'll blame whatever, but we didn't do an update to the strategic plan in 2020 that we intended to do in-- we talked in January of 2020, so that very well could have happened had we not been consumed by other things. But more specifically, if-- thank you very much. I can't remember when exactly we announced the RFI process where we were going out to just get information about the potential to do a private-public partnership to build a new facility. And at that time, that's when I first started to talk about the fact that we needed to do something to address the State Penitentiary needs as well as the crowding needs. I want to say that was like February 2020. So there was public knowledge, but because the session got split in half, you know, and other factors, it kind of bubbled up again when that RFI information came out around

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June. But again, we weren't in session, and so-- so that's part of why it rolled out the way it did. Normally, there'd be a program statement in your hand. You have a program state [SIC] for NSP, because I had moved forward on that piece, because I wanted to get a-- as-- when I do program statements, I do my very best to make sure that I work with consultants, first of all, that are experts in the field, and we-- we do: Dewberry, DLR; there's others that we worked with over the years. Every one of them are excellent in doing that kind of work, as well as the-- all the other components that they do. I want them to create a program statement that addresses the issues and the concerns I have or helps describe the project that it is I want them to build. But I want them-- I want it done in a way that isn't just me writing it for them, because I could do that. You know, I'm paying for it. I could sit down and I could just say, here's exactly what I want it to say and I want you to make NSP look like the most unattractive project possible. And soon we will have a project statement for this. I've said the end of April, but I'm pushing to get it done before that because I know you need it. There, again, I want that project statement to reflect realistically the cost and the design and the need and try- and try-- and try not to influence it to any greater degree than I'm going to do that as the, you know, kind of the owner of the project. So if you had a project statement for this project, I think you'd feel a lot closer to where you want to be absent a new master plan, because the other thing about the master plan is, while it reflected the estimates for the next ten years and the recommendations of where this consultant and the director at that time and the Governor at that time felt the agency should move, it didn't map out every project in great detail. It didn't tell about-- you know, it didn't do all of the design aspects, nor did it have a crystal ball to be able to forecast where things were going.

WISHART: It got pretty close.

SCOTT FRAKES: As far as the numbers of inmates, it did. I'll agree with that, yes. Yeah.

WISHART: I'll-- I'll [INAUDIBLE]

STINNER: Senator Kolterman.

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KOLTERMAN: Thank you, Senator Stinner. Senator-- or, Senator Frakes-- Director Frakes, I appreciate what I'm hearing today. And, you know, I-- I was involved, I guess it must have been when-- when you meet. Was that December we met, last December? And you kind of brought us up to speed or--

SCOTT FRAKES: January.

KOLTERMAN: January?

SCOTT FRAKES: Yes.

KOLTERMAN: I don't remember exactly when it was but--

SCOTT FRAKES: I understand-- COVID time.

KOLTERMAN: Con-- yeah. Something that I-- maybe you can enlighten me on this a little bit. I-- I've been involved in economic development throughout the state for quite a few years and-- and-- and I've been here for six now. And I-- you know, like Senator Wishart said, up until even-- even as of when you came in, in January, you really didn't have a full-- I mean, I think you had an idea of what you wanted to do and you kind of threw out these numbers to us. But I was already hearing things throughout the state from economic developers that, hey, we're going to build a new prison and it's going to be built by somebody and they're-- we're going to lease it from them and we're going to get somebody to operate it. And people would come to me and say, you know anything about this? And I'd say, never heard anything in the world about it. And it even got down to the point where these communities had been asked to-- to bid on it or decide whether or not they wanted it in their backyard. How-- how does that come about before we as a Legislature have any knowledge at all about what's going on in the prison system and where it's going and what kind of direction it's taking? Because that's kind of alarming to me to hear something. I mean, this isn't small change.

SCOTT FRAKES: Right.

KOLTERMAN: And in fact, when-- when we also have the same problem that we can't staff what we've got, the idea of building something new, I-- I'm just curious because-- I'm new on this board, by the-- and

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committee and it-- this is all foreign to me, all new to me. But when you hear things, you want to react, but you don't know what to say.

SCOTT FRAKES: Yeah. So I think I'm going to try and work backwards, work from the top down from what you said. First of all, at the top of the list, when we move-- if we all come to agreement and appropriation is made, then the siting process begins. I've had no conversation with anyone about siting except answering a couple of questions from local landowners here in Lincoln that don't want it by their house. That's it. I have not engaged in any siting conversations with anyone. On the checklist of where should you put the prison, the top item is going to be where can you put it that it can be staffed. That's the number-one criteria when we start the siting process, because that is so critical. So we did this request for information because we wanted to explore that pub-- private-public partnership model to see if it made sense for Nebraska. Alabama is doing it. Kansas did it. There's other states that have done it as well. Yeah, I had a pretty good idea of the general mathematics of how it works, and I kind of knew that it was going to be challenging because we don't borrow and bond. So that's a big one, you know, so if you can take the cost of borrowing money and apply that to the cost of the lease, that starts the offset. If you can close an old facility that's really expensive to run and build a new one and reduce the operating cost 30 percent and apply that towards the lease, that again brings down that cost. And in some cases, both Kansas and Alabama were able to do it within their operating budget, or at least they believe they're going to be able to. Kansas is so far, is the information I get. So that's where that private-public partnership can work. Well, we don't borrow money. I couldn't close the facility because I have capacity needs, so I don't have beds to give away. And so after we did the due diligence around that and looked at the proposals and ran all the numbers and saw that we were looking at a potential 30-year investment of \$750 million, it just-- where-- and if we did it by direct appropriation and the operating and maintenance cost, or just the maintenance and associated cost, we'd be closer to \$400 million. The spread was way too far. So I announced I was doing that-- I think it was in January or February of last year-- and then we had, you know, big press when the information was shared in June. And then again, I meet with the Governor and we talk through and we went back and forth and really started digging into are we absolutely sure we're not missing something? You know, we

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want to make sure that we've got a good assessment of traditional approach cost and public-private partnership cost and all the smartest pencils in the room that I could get into. So there was far too big a gap. It absolutely did not make sense to do that approach. But in the meantime, from June or January or February to June, yeah, I heard, too, that some of the people that were out there, they-- they probably flew people out here and had them go walk around and talk to different businesses because their due diligence included not specifically identifying sites, but where could a facility be sited that we could staff? Where would it be sited so that it best met the needs of the majority of the population we serve? Does it have the-- the city infrastructure, which would include, you know, one of the greatest challenges with Tecumseh is that there's nowhere to live near Tecumseh. And I think more than anything else, that's why we struggle to maintain our staffing. If you don't have a community nearby where people can live and there's other options, they're going to go there. So when they were out doing their due diligence to put together their proposals, yeah, I heard they were talking to folks. And so that's, I'm sure, where some of that confusion and conversation came from. But anybody, if any of them were specifically saying, you know, we're going to get this thing and, you know, do you want it? Shame on them. Because we were-- we were not in a request for proposal process. We were in a give us your ideas and share with us what you think, you know, process.

KOLTERMAN: OK, thank you.

STINNER: Senator Hilkemann.

HILKEMANN: Yes, sir. Director Frakes, on line-- on page 4 you have the question, do we need a new prison? And when I first heard that, I had two answers for it. No and H-no. And the-- my thoughts were that way until I heard the Governor talk about it in his preliminary budget about the need to remodel NSP. And now I'm hearing in your testimony today, if we don't-- that you said if we were to remodel NSP to bring it up to the standards that we need to have for ADA and one thing another, it's going to cost \$196 million.

SCOTT FRAKES: That's the estimate, yes.

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HILKEMANN: OK. And-- and if-- if we don't-- so we're really on-- in a way we're on the hook because now we're talking about overcrowding. If we don't do something with NSP, that building, but don't do something with NSP, then we' not only have an overcrowding situation, we're going to have people in a very unsafe environment. Is that correct?

SCOTT FRAKES: That's correct.

HILKEMANN: And-- and-- and as I understand it, you can remodel that. The number for the remodeling of NSP to make it serviceable for the-- for the lower level is approximately how much?

SCOTT FRAKES: What the consultants penciled out, because I asked them to list-- I don't want to hide anything. So they showed the ongoing maintenance cost, most of which-- which are all identified projects right now. So it would be roofs or HVAC replacements or other basic infrastructure needs at every facility every year that we invest in is about \$20 million between now and 2025. And that includes design fees and contingencies and everything else, I think about \$13 million in actual product and then all the other costs that are dumped on it. So that's money that we're going to spend no matter what we do. That's just the ongoing cost of NSP. And we get that through our appropriations each year, through the 309 matching funds. Sometimes projects get pushed off a little bit longer because another project comes up. But that's-- that \$20 million will be addressed in ongoing maintenance costs regardless of what we do. The other \$4 million was some recommended remodeling. They said they felt like it would be a good investment to remodel a couple of the existing buildings that are no longer-- would no longer be used for housing to make them even more amenable for programming space. My assessment is with a minimum custody population, these are the people that can do work. They can do the kind of, the level of construction that's needed, the painting and the other things, with guidance from our maintenance team. We don't need an appropriation to do that. We would have the workforce and the landscape and within our existing budget, we could make that facility function very well for another 10 years at minimum custody. Again, in that next 10 years, there'll probably be another \$15 million in, you know, roofs and other things that come up. Prisons are costly.

HILKEMANN: And you arrived on the scene here as the-- as the director about two or three months after I started in this position. Senator

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Stinner and I were-- were-- were part of that original Appropriations Committee [INAUDIBLE]. And I-- and I'm-- I'm just going to say I remember very well the discussions when you first got here. There was a lot of pressure on you to-- there were some members of the committee wanted you to commit to building a new facility almost right away. Am I, do I remember that correctly?

SCOTT FRAKES: I think you're correct. Yes.

HILKEMANN: Yeah. And so when we talked about an advanced study or a proposal, I would hope to say that over the last six years, that's what you've been doing. Is that correct?

SCOTT FRAKES: Night and day and in my sleep. Honestly,

HILKEMANN: OK. I've got other questions, but I want to defer--

SCOTT FRAKES: Thank you.

HILKEMANN: --to the other committee members, too, as well but.

STINNER: Additional questions? Senator Wishart.

WISHART: Thank you. So I was surprised to hear that the Governor and-- and yourself were looking at prison last year, because I remember when I first came in to the Legislature, the Governor, and I have him quoted in the paper on March 20, 2017, he was quoted by Joe Duggan in the World-Herald when he was asked about a new prison, he said, solutions won't be found by throwing more money at corrections than has already been requested. Nor does Nebraska need a new prison estimated to cost \$262 million, he said. I quote, Long term, the real solution is not building another prison. It's building a prison system that is actually efficient. Why has that not happened in four years?

SCOTT FRAKES: Well, it has. Going back to the master plan, what we've done extremely well is bring to life the concepts that they mapped out with the RTC project, with the work at CCCL. We could have done some of what was recommended in Omaha. But as I've testified about before, I don't feel like that's the right place to invest our money. The space is too small and it's too, you know, sits right on the river; and when the river rises, water comes out of the ground. And that's problematic in a prison setting. So-- plus the 2011 event where plans

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were made to empty the prisons because they were afraid the levee was going to be breached. And it's likely we will continue to see those issues. So-- so we definitely took work out of that master plan and brought it to life and did exactly what they talked about, not just addressing needs through building more beds, but actually creating the infrastructure and the support and the spaces, the quality of life spaces that make prisons healthy for the number of people that you house within there. But as we got to 2019, the thing that's faded from memory. And I don't know that it was that great of public memory, but it was on my mind night and day was it was just a year ago that we were at 5,700 and climbing. And the rate of climb from the summer of 2019 had been phenomenal. I don't remember exactly what it was, but we were going up 75 a month. And I still believe it was not for COVID that that trend would have continued. We were really at the place where we didn't have many more empty beds. We had 450 people at D&E. That's-- at 350, that place doesn't run too bad, even though it was designed for 160. But as soon as you start having to put people in the cots on the floor, the tension goes up. And at 450, we actually hit 525 or 530 at one point in time at D&E, which was horrible. You know, reading the tea leaves, as you say, trying to figure out is this trend going to continue that-- that we're going to see us potentially by 2021, you know, being over 6,000 people, if that number had continued, looking around and going, well, what else can we do? And certainly putting some very hard thought into trying to do the same thing with NSP that we did at [INAUDIBLE] So today, it's the Lincoln Correctional Center and the Diagnostic and Evaluation Center, two prisons at one point put together, separated, I put them back together. The Reception and Treatment Center project identified in the master plan will truly make it one single prison. Its mission will be intake, mental health, residential mental health and some other pieces. So that project had all the right pieces. It had the right landscape, it had enough space, and it worked. Unfortunately, as you go, if you go through the program statement for NSP, you see the challenges. It isn't that it's not doable. It's doable, but it's expensive because of the cost of building inside a secure perimeter when you can't move the inmates away. It takes up even more real estate. So for the high-security inmates, there's no more grass. And it gives us, I'll be generous and say 75 percent of the value of what we would get with a building on a new clean slate in terms of the quality and the livability and the effectiveness so we can get the outcomes we want.

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WISHART: And I look, I may be able to be convinced with the right information on the-- on NSP on needing to build new. I'm not there. I'm not there now and need to see that April program statement. But beyond that, we talked about this at the last hearing. By the time we will have finished this new proposed correctional facility, should we go along with your request, reading the tea leaves again and population in terms of incarceration rates? we will be looking at sitting in a place with that facility filled and looking at potentially having to-- to build more. And so, again, I will just again reference the importance of a master plan report, because this report, I understand and I know you have actually an expertise in your history, life history of being able to to build things well. I'm not worried about that. What I want to know is if we're being asked to make a long-term investment for Nebraskans when every single person on this committee has roads in their district that they may not live to see completed. So when we're asking to build something significant and brand new, we need to know that there are other systems in place beyond just the building that are working to make sure when we come across that finish line, if we choose to do that, we're not turning around and looking at having to build [INAUDIBLE] again. So I don't understand why you backed down on, why we backed down on doing a master report, taking the time to do it. I know NSP needs work. We can put \$20 million into doing that. But spending the summer doing this and then showing back up and really having a plan for how we get this under control and we're not just continuing every year to be funding more beds.

SCOTT FRAKES: I don't know how to better frame it. I think Senator Lathrop mentioned there was a 2006 or 2007 master plan and nobody knows anything about it. I did look at it a long time ago, but it was created and put in a drawer and no energy was invested in it. The 2014 plan, I read it at least three times before I came for my interview with the Governor because it was the best thing I could get my hands on to try and understand the system. And I've kept a copy on my desk ever since. And I still see it as a guiding document. At this juncture, investing the time and energy to create a master plan that would reflect basically what I think the world should look like, knowing that the administration will be changing about the time that it's published, just isn't the-- I-- I initially thought it was a good

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idea and after not a lot of conversation, I quickly agreed that it wasn't the right time. So--

WISHART: Well, I would argue that this would be done with an outside consultant. So it would have a-- it would have an expertise beyond just what we have here.

SCOTT FRAKES: But every master plan is a reflection of the administration and the, you know, the leadership of the agency because a consultant has to work with the agency to create the master plan so.

WISHART: Yeah, I understand.

STINNER: OK, I'm just going to make this comment. If you remember, we look at line item detail to approve or disapprove of different things, but it's all dumped into one program. So the director then has discretionary use of the funds to move around. Just wanted to remind everybody that. Senator Vargas, do you have a question?

VARGAS: Yeah, and I was going to make that point, too. And it's important. I mean, so-- so first thing sort of a commentary because we've been here before. I really appreciate you coming here, Director Frakes. We don't always agree on things, but I think we still do it, at least in the most civil way possible.

SCOTT FRAKES: Agreed.

VARGAS: You know, we've been here before where we've had, I think, staffing issues. And I think this committee has been-- any request for funding having to do with your budget requests, pretty sure we've done a pretty good job this, at least the last four years we've been together. And part of the reason is because at least I view your intent is there's not one solution to the problem. My question is about capacity. And this is kind of building off of Senator Clements or Senator Erdman. How many current vacancies exist across the system now? I've asked this question in the past, but I'm just trying to get--

SCOTT FRAKES: Staff--

VARGAS: --the most up to date.

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SCOTT FRAKES: Staffing?

VARGAS: Staffing vacancies across the system. Approximately.

SCOTT FRAKES: Between 350 and 400.

VARGAS: And how does that compare to how we've maybe a couple of, you know, two years ago, let's say?

SCOTT FRAKES: I think it's pretty close to the same.

VARGAS: OK.

SCOTT FRAKES: Yeah.

VARGAS: And I guess this is part of the problem that I have. I actually do not fault you and the department for requesting an additional, the funds for this prison. Part of the reason is you're looking at data. You look at the anticipated need and the growth in overcrowding. That's what you're looking at. That part I can't necessarily disagree with. I think what at least I heard Chairman Stinner is the part that I have a hard time with is at the same time when we have any issues or conversations outside of this committee and specifically in Judiciary about reforms that could potentially reduce overcrowding, you're typically an opponent to that legislation. That's the part that is hard for me to-- to sort of look at when we're looking at sentencing reform. You've made the statement before that that's not really your job, which I get that that is your vision for, you know, the department. Focusing on the operational and structural and quality of life within, I understand that. The hard part I have is even if we do appropriate these funds to answer to what you just told me, we're going to be building a prison. And you look at data and you're saying we're going to have increased need and overcrowding. And so that's why we need to build a prison. I have a hard time stomaching this because if I look at data, doesn't matter really where you necessarily build the prison or when we're going to build the prison, we're not going to be able to staff it. And we're going to keep appropriating money that won't get fully expended because we won't be able to staff it. So I'm having that really hard. And I don't know if you have a response to that, because that is the hardest part I have with this. And I don't think the solution is simply we put it in a

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metro center and then we're going to be able to fill those spots. That's-- that's not the solution and I don't think we can make that assumption. So what are-- what-- what's your answer to-- to this concern that I have?

SCOTT FRAKES: OK. So, again, being able to staff the facility starts at the top of the list of criteria for siting and we can't collectively settle for less. So if we can't, the brightest minds can't identify what the best location is, even if the money is appropriated, we shouldn't move forward. We can't do another Tecumseh. That's-- just can't do that to ourselves. So we know that looking at our facilities, our facilities with the lowest vacancy rates, with the exception of CCCL, because again, community custody at that low custody level, those are great places to work.

VARGAS: I get it.

SCOTT FRAKES: No question about it. You know, in minimum custody, a little less so, but still pretty good. Then you start to get to higher security and it's tough work. Better design facilities is less, the work is not as tough. So you can address part of the challenge in terms of turnover by the quality of the workplace you provide. If staff feel safe and they have the tools they need and the physical plant to manage the population we house, it will impact turnover in a positive way. The Omaha facilities collectively don't have a recruitment problem. Their retention numbers aren't significantly better. The work release is just like the one here. You know, they don't have the turnover, but the-- the medium security, OCC, their turnover numbers aren't significantly better than anybody else. But they don't have a challenge filling their vacancies. Their vacancy numbers look a little higher, oh, no they don't. We fixed that. So, no, they just don't, they don't have a challenge. And I got to believe that's two easy factors. One is the biggest metropolitan area, by far the biggest metro area; and two, probably the highest unemployment, too, in terms of Nebraska, which still isn't high. There is-- it's not high. All right. So I have been very deliberate in not saying that, you know, 76th and Dodge is the absolute best epicenter of where we can put the facility because I want people to bring ideas forward and make suggestions. There is certainly a circle that encompasses, you know, Lincoln, Omaha, some area north, not too far south. And one county south has already said we don't want to talk about it without

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being asked. But, you know, that reflects, it's like 70 percent of the population of Nebraska. So I think that we can site a facility in an area where recruitment is not nearly the challenge that we have. Part of the challenge in Lincoln is this is 60 percent of the corrections jobs, roughly something like that. You know, we've got today four, it'll soon be three big facilities: penitentiary, the RTC and then CCCL plus this is the heart of state government. This is one of the lowest unemployment numbers in Nebraska. And there's so many other opportunities. So we gain two things with the repurposing of NSP and then building in the right location where there is a viable workforce. There is a significant reduction in the staffing at NSP under the repurposing, not quite half. It's close, though. The program statement will speak to that. But currently today, close to 500 staff. We should be much closer to 250 staff. So there's 250 fewer jobs to fill. Many-- most staff, you know, we won't have any problem. There will be more staff would like to stay at NSP than there are positions. There will be vacancies at the RTC that we can automatically fill if there's anything left at CCCL. So there should be no corrections vacancies in Lincoln at the point that we-- if we did this project and made this transition. And then again, if we truly site it and site it based on fact, not on opinion or emotion, but actually looking at the demographics, looking at the workforce, looking at travel time, looking at livable areas for the pop-- for the, you know, the workforce that feeds it. Yeah, I know we can find an opportunity and find a location that will help us address that piece. And the last part of that is so community custody, work release, minimum custody, attractive because you're working with a population that is better behaved, more motivated, excited about life because they know they're transitioning out. But also the improvements to CCCL in terms of the physical plant are just one more factor. The improvements, why people stay, the improvements that we do to RTC are going to help us attract and retain staff because new facilities are more pleasant to work in. What we learned in the last 20 years, probably a little farther back, but it's been 20 years that I've been in conversations about the importance of the environment for the workers, it doesn't matter whether it's an office building or a hospital or a prison. And we did not as prison constructors think much about staff until somewhere in the 1990s. And people started to say, gee, should we think about staff space? Should we think about things like if we know that natural light and acoustics is better for the population we house, well, why

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wouldn't it be better for the staff that work in those environments? So we build prisons today to be healthier for the people we house and the people that work there. All of those things will contribute to getting us to where we need to be.

VARGAS: That's helpful. Maybe it gets to sort of Senator Wishart's point where there needs to be beyond sort of within clues of a master plan, more, even more transparency about how you're changing and addressing retention issues. I still don't think simply putting it closer to a metro center is going to solve the issues. We still have issues with work conditions. I know that you're saying that the-- the new building itself will create new opportunities or better improvements for work conditions. But I don't think we can bank on that. I don't think that on its own is enough. I think we still-- still need to look at wages. We've had that conversation here in the past. And I know you've worked in negotiating with the FOP in the past, recently, and I appreciate that. The other part that I'm still weighing here, which is I get a lot of emails from constituents, is we have to weigh on whether or not this is the best investment. I know you're saying this is an investment based on data. We're trying to weigh whether or not this is the best investment for this-- the state when we have competing, a lot of competing concerns. I mean, even-- even in my own backyard, I have schools that are overcapacity and where we're struggling to meet those-- those needs. And we're talking about instead of addressing the number of individuals getting into the system, we're talking about anticipated need and setting a precedent, because we're all going to be gone, that every six to eight years we aren't going to have to build a new prison to meet capacity. And that's just what every new Appropriations Committee is going to have to do. And that doesn't sit right with me. I'm still going to listen. But at the current moment, this investment doesn't seem like the best investment for our state. But I am encouraged about the way at least you're talking about community corrections and changing the infrastructure within so that it's not just viewed as a prison, but all the different services that go along with making it sort of a multioperational corrections facility.

SCOTT FRAKES: Well, I-- I appreciate everything you said, Senator. To some degree, I have to be selfish because I'm responsible to run this agency. And not only am I responsible for the agency, but my-- my commitment to this work isn't about a job. It's not about the

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paycheck. It's not about the glory. In fact, I'm still waiting for that piece. It's about 35 years ago deciding that I had an affinity for this work. And I liked working with people that were involved in the criminal justice system and that I felt I could make a difference. And so I owe it to that population to fight the best I can to get them the best tools, the best of whatever it is within reason. I'm not talking about, you know, excess, but I am talking about having good safe spaces and the ability to have a good, healthy place to live and to feel safe in your setting and provide that same, you know, level, of course, to the staff. And so, you know, in my perfect world, I wish we could put us up, put me out of business. I really do.

STINNER: Thank you for that. Maintenance budget. Let's go back, talk a little bit about ongoing maintenance budget. What has it been? Do you recall? [INAUDIBLE] for me to break it out. I asked Doug Nichols, our fiscal analyst, to break it out. He has a number, but it's-- it's like a million or so or a million and a half. And I got to believe [INAUDIBLE]

SCOTT FRAKES: I want to say I thought I had a \$5 million, two and a half per. And then there was some other security electronics money that I think's in another pot. And then-- then there's always the 309 matching.

STINNER: OK. How much does 309 normally give you for your deferred maintenance? [INAUDIBLE]

SCOTT FRAKES: Yeah, I don't have an answer. I think it's at least a couple of million a year. That really does vary in terms of urgency and this is no different than the system I left behind because prisons are-- they're 24/7. So they have really high impacts on all those infrastructure systems. So we have failures regularly, especially around HVAC, but also sewer, plumbing failures and things, and then they become emergency. And so that roof that was going to get done, you know, next summer, eh, it moves on because we have to put in two new chillers and whatever it might be.

STINNER: Yeah. And I guess that gets back to the-- the deferred maintenance was 80 to 90 million when I saw it last. I don't know what it is today. But, you know, embedded in, like I said, we allocate based on line by line, but then you throw it in the pot. You have

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discretionary capabilities within your budget. And, you know, it wasn't but I think the last budget cycle that we take \$12 million out because we weren't spending it. Then my question back to you is, why not? You could have spent it on the maintenance of facilities and cut some things up and then come back to us and say, I got \$80 million project or problem.

SCOTT FRAKES: Lesson learned.

STINNER: [INAUDIBLE] this stuff up.

SCOTT FRAKES: Believe me.

STINNER: Or we could have done it 10, 20 million at a time--

SCOTT FRAKES: Yeah.

STINNER: --and caught it up. And maybe the facilities weren't in such a--

SCOTT FRAKES: Right.

STINNER: What I read is they're at a critical need right now. We've got doors that won't close or lock or whatever.

SCOTT FRAKES: Yeah, and that's, you know, the budget issues across all the different agencies. If I only was-- if I was able to come in each year and just ask for my basic operating budget, maybe a small increase because of salaries or healthcare benefit and cost and-- and then, please, yeah, I need \$20 million to address this backlog of no maintenance issues. I think that's feasible. But I think I have come in asking for capital money every session. And as soon as we do that, compounded by the staffing salary increases, compounded by the healthcare increases, compounded by other costs. And now I continue to be that agency whose budget has grown significantly over every biennium for all the-- for all the legitimate and I'll say right reasons, but, you know, and so that does get in the way.

STINNER: Well, we've always tried to help and we-- even back when we were cutting a billion dollars shortfall--

SCOTT FRAKES: Yep.

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STINNER: --you came to us with an ask to-- for programming and people and all the rest of that stuff. And I think we ended up doing it over three years. But I don't think any of those people were ever hired or if they were, I don't know. Because at the end of that, as I look, continue to put the budgets together on an annual basis, we just continued to have more and more carryover. And a lot of it's vacancy carryover because you can't hire people. I think Senator-- Senator Vargas said it best. You start your analysis. Can you actually staff these things? And, of course, you say, well, if I locate the thing right, I can do that. Eh, I'm not sure. You haven't staffed what you've got. So, you know, that's kind of where the analysis has to start. But I'm not picking on you. I'm just observing what our decision-making process has to be. So is there any more ques-- I know that there's lots of people that want to testify. So is there additional questions or? Senator Hilkemann. Anybody else?

WISHART: One other--

HILKEMANN: Director--

STINNER: I don't want to cut anybody short.

HILKEMANN: --the fact that the remodeling of it got me off of the-- the-- the remodeling got me away from the H-no. I'm still at no. Have we exhausted all of the other options that-- that are available to: sentencing, classification, parole, community corrections, pardoning? Have we done-- have we done everything we can on those lines first before we start talking about building a prison?

SCOTT FRAKES: My agency is either there or on the way to getting there for the things that I have control over. There are certainly still conversations to be had about everything you just listed. There should always be those kind of conversations. You know, we as a society each year, we like to enact new laws and modify things. And it's maybe this one brings a couple people to prison and this one brings five people to prison. And then over 20 years, our rate of incarceration climbs. So we should always be asking ourselves collectively, you know, that-- that question, looking at it. We should be examining sentencing length to see is stacking of sentencing, you know, part of what's driving it? You know, I think there's a-- there's a little component of that within my system. At the same time, I have the conversation with

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judges and they express their frustration in trying to find the right answer to deal with a part of our population that seems destined to be stuck in the criminal justice system through their behavior. So short answer is, there's certainly always more work to do. When I look, though, at what all those pieces could do, there's the potential to slow down the rate of growth. Some hard decisions to make because part of that then comes back to the whole-- what should be the whole purpose of our criminal justice system addressing risk? It's not always, but it should be. But even absent, even with that, it's not going to reverse the crowding situation that we have to the degree we need to. And it's not going to fix the issue that the penitentiary is at that point where something's got to happen. And by the time all that project is done, if we have collectively figured out how to cap growth or better yet backed it down even because, you know, if we brought it down 500 inmates from where we're at today, my capacity is 36, 35 design. And that would bring us down to 4,800 inmates. So it's still 1,200 more inmates than the design capacity, the reflection of this being totally overbuilt. So no matter what, it's still going to be an issue. And then the need to after the penitentiary, the women's prison's got pieces of it that are-- one of the buildings was built in the '20s, in good shape for now but at some point. Then OCC, which was opened in the later '80s, you know, there's parts of it. And it unfortunately, that is the cost of doing business in corrections. There will always be a need to either refurbish, replace or then ultimately make that decision about is the smarter decision to invest somewhere else and walk away from. And I always like to look at can you repurpose NSP, get some more life out of it without a lot of investment? And then I still think the wise dollar would be in 2030, 2035 that we, you know, say it's been great, 170 years that it's been operational, but it's time to make it a museum.

HILKEMANN: And what have other states that-- that have faced the same thing of the overcrowding as we have here in Nebraska, how have they been addressing this situation? Are they building new prisons?

SCOTT FRAKES: Not too many building new prisons today except for people in the situation that we're in. So I talked about Kansas. I talked about Alabama. Good examples,--

HILKEMANN: Yeah.

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SCOTT FRAKES: --you know, at least conceptually of the same kind of issues. And if you look at the-- when I look at the states that have seen some pretty measurable reduction in their population, what I saw was a reduction in the rate of incarceration. So they made options. I don't know what all those might have been in any given place, but they found ways. They either decriminalized activities, they reduced sentence structure, they created more opportunities for community release. But it didn't-- it moved them from being maybe in the bottom one third of rate of incarceration to the middle or closer to where we're at. So that's this piece. When you're already at a relatively low rate of incarceration for America, not for the world, but for America, moving that dial significantly is pretty challenging. If we reduced our recidivism rate 5 percentage points, if we brought it down from the roughly 30.5 it was in 2017, we'll have a new measurement here in June for 2018, so today we're at 30.5, 30.6. If we brought that down to 25.5 percent, 5 percentage points, that would be a huge reduction. That would make us one of the best in the nation in terms of recidivism-- recidivism, definitely in the top 10 for sure. That's about 135 beds. That's beds. That's important. There's no question about it. But that's the example of how difficult it is to move just because of the math that we work with. So I absolutely agree. We should continue to look at all the different options and make sure that we're smart about corrections, that we're smart about the money we invest. But we also got to acknowledge the fact that you don't just-- we don't get to just build a prison and then it's good to go for the next hundred years. They don't last that long. In some ways, they don't last as long as they used to. The physical structure does. We'll build the outer shell so that it lasts, you know, ideally 100 years. But in today's electronic-based world and all the other pieces, we see significant investments sooner in terms of having to rebuild security systems and things than we did when everything was pretty much manual.

HILKEMANN: OK. I'll stop.

STINNER: Senator Wishart, one last question.

WISHART: I just have one question that's not about the new prison. It's actually about your effort to address the ways-- wage suppression issue. I was given an example that a unit manager who was getting paid probably less than \$3 an hour, \$3 an hour less than the caseworker

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that they were overseeing because some of the salary union contract negotiations and that. And so this year you come for us with a request to try to get those salaries more in line so you can reduce turnover [INAUDIBLE] from some of the supervisory level [INAUDIBLE]

SCOTT FRAKES: And make sure that I'm not "deincentivizing" promotion.

WISHART: [INAUDIBLE]

SCOTT FRAKES: That's the-- that's the frightening part for me.

WISHART: But the way that I read it would be that that unit manager with the dollars you're asking for would just get a bump up about 60 cents, not the \$3 to get. Can you walk me through? Is there a place where staff can go and see what this change is going to do and where we can go and see how this is-- whether these dollars are enough to really reduce that suppression that we're seeing?

SCOTT FRAKES: I absolutely should be able to provide something. I'm just trying to peel off the top of my head where it's sitting, so I'm just going to go, yes, I can get that information. And to speak to I think the question you didn't exactly ask is this doesn't fix things.

WISHART: OK.

SCOTT FRAKES: This is a move in the right direction. But it definitely doesn't fix the problem. Until-- until there is a pay for performance plan across all of state government that, you know, is consistent with what the unions, although there's two variations. The unions have different variations now of that. So that only makes it more complex. But you have the FOP approach and now there's the NAPE approach and then you have the rules and regulations staff, which are a significant part of state workers across, it's not just my agency, that are under a very traditional approach that doesn't have that ability for pay increases except for whatever the cost, what I call the cost of living raises that come forward.

WISHART: OK. Well, it would be helpful to maybe to know what that dollar amount would be for us to get that, for example, unit manager at a rate that is above the people that he or she is supervising.

SCOTT FRAKES: All right. I'll see what I can do with that.

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WISHART: OK.

SCOTT FRAKES: Yeah, it's-- not only is it compounded by the current contract changes, but it's less known. But there is a group of staff still with state government that benefited from some kind of a step raise plan that existed in the late '90s I think it was for a short amount of time. So I have some anomalies out there. You know, corporals that make \$30 an hour, not many, but there are people out there. The recent changes, though, are so much broader and so much more visible that it's really elevated the issue.

WISHART: OK.

STINNER: Thank you very much. Seeing no-- no other questions, thank you for your testimony.

SCOTT FRAKES: Thank you for your time. Appreciate it.

STINNER: Additional proponents? OK, we will take opponents. Just so I can get an idea, how many testifiers do we have as opponents? Can I see hands? All right, I'll stick with the five-minute light, so thank you.

MAGGIE BALLARD: Thank you. Good afternoon, Chairperson Stinner and members of the Appropriations Committee. My name is Maggie Ballard, M-a-g-g-i-e B-a-l-l-a-r-d. And I am here on behalf of Heartland Family Service in opposition to building a new prison. With 50 programs that serve a total of 57,000 people each year, Heartland Family Service provides and connects clients with many services that prevent them from ever committing crimes, entering or reentering the correctional system. This includes mental health treatment, substance use disorder treatment, crisis response, therapy and counseling services, a restorative justice program, in-home family services, financial and having-- housing programs, and more. In fact, I could probably list all 50 of our programs and explain to you how every single time we invest in people, we are investing in the prevention of crime and thus the prevention of incarceration. We want to see people rehabilitated, not incarcerated. As Nebraskans, it seems inconsistent and unfair to see our tax dollars withheld from investing in preventative measures but put toward punitive measures. I have no doubt that each one of you appreciates the work that our agency does, and I hear that from each

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and every one of you. And-- but it's time for, for lack of a better term and I mean no disrespect by this term, but it's time to put your money where your mouth is. If any of you have met with me or attended Heartland Family Services luncheons, you have heard us talk about ACEs or adverse childhood experiences. There is groundbreaking research about how certain childhood experiences affect the likelihood of that child having problems later in life, problems like heart disease, diabetes, teen pregnancy, addiction, depression, and more. There's a list of ten experiences. I apologize if this is all old information to all of you, but the higher the ACE score, basically, the more likely it is for someone to have these problems later on in life. And as it turns out, one of those 10 adverse childhood experiences that has been proven to adversely affect children and youth is the incarceration of a parent or caregiver. And sadly, we see that one in ten Nebraska children have a parent that has been incarcerated. We have clearly seen that a tough on crime attitude has not alleviated the problem. If incarceration were such a deterrent, we would not be in a state of emergency. Instead, we see a vicious cycle continue, a cycle in which children are often punished for the crimes of their parents. Knowing that a child should not be punished for the actions of their parent, we have adopted a unique model in one of our 50 programs. So at Nebraska Family Works, women are able to attend our inpatient treatment program and keep their kids living with them so that they, the kids, do not have to go into foster care. And this is, like I said, just one example of a cost-saving program that deserves our state's investment. We also advocate for early childhood programs, mental health treatment, substance use disorder treatment, drug prevention, drug treatment, diversion, mental health court, drug court, and more. This is quite a large ask, but the Legislature has had opportunities to do all of these things, and some of these have passed. Some of them have had funds appropriated and some have not. So our frustration lies with the sentiment that we can incarcerate our-- our-- our way out of issues like poverty or food insecurity, homelessness, mental health problems, and addiction. While we are all for reducing overcrowding and ensuring humane living conditions for prisoners, that's not how we see this issue. It's instead about putting money into corrections and locking away people whose crimes oftentimes could have been prevented if our state had invested in people to begin with. So that's why we ask you to please reject

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funding a new prison. And I would be happy to answer any of your questions.

STINNER: Questions? Seeing none, thank you very much.

MAGGIE BALLARD: Thank you.

STINNER: Good afternoon.

JOANNA LINDBERG: OK. Thank you, Senator Stinner and members of the Appropriations Committee. My name is Joanna Lindberg, J-o-a-n-n-a L-i-n-d-b-e-r-g, and I'm a volunteer with the League of Women Voters. The League strongly opposes LB383, which would fund the construction of the 1,512 bed facility we've been talking about with the cost of \$230 million and then annually \$34 million to operate. In addition, there are plans that the facility would expand over 3,000 prisoners in the future. And as I'm sure you've heard, in 1980, our prison population here in Nebraska was 1,402 individuals. Now, despite falling crime rates, our prison population exceeds 5,500. Nebraska, during that time, our population increased as a state by 500,000, which is like a 13 percent increase since 1980. And our Nebraska prison increased by 300 percent, over 300 percent since 1980. So we have a problem that can't be addressed by building another prison. As, let's see, Nebraska needs to stop prison building and focus on decreasing prison population. The League of Women Voters supports a correctional system which provides for realistic and humane treatment of the sentenced offender, as well as for the protection of the community. To achieve a system like this, the League advocates community-based alternatives to incarceration and the protection of the basic human rights of sentenced offenders. We encourage the Legislature's leadership in providing solutions that decrease the number of incarcerated individuals. A range of bills you, I'm sure heard about from many of the senators from the Judiciary Committee, are trying to enact changes like that. Apparently, there's a thousand prisoners right now who are eligible for parole and there's some-- some legislation that would help promote change in that area: the earned time incentives that has been introduced; the mental health professional on the Parole Board to help support decisions; another, I think it's McCollister's, was to provide a list of prisoners 60 and over; identify prisoners eligible for parole when the offender has served the total of one half of the minimum term or two years prior to

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the offender's mandatory discharge date; and then providing more transparency to the Legislature through annual reports from probation, parole, and the county prosecutors. Got a little bit more. Do I have time? OK. In addition, we know there are effective best practices to reduce the overcrowding problem in the Nebraska corrections system through smart justice programs like diversion, mental health, drug courts. Thirty-five states have implemented sentencing and corrections policies through the Justice Reinvestment Initiative. And what we know is with property and income tax reforms in effect and more proposed, where will this new funding come from? You know, will we saddle our future generations, my grandkids, with a debt that Nebraska cannot afford? What justifies the case to build more prisons over funding education, workforce development, mental health, and rehab? With the staffing shortages and reported staff injuries that our Department of Corrections is already experiencing, it is impractical to think that the state can find sufficient and well-trained employees to staff a new prison facility. We thank Mr. Frakes, director of Department of Corrections, for his efforts to improve the Nebraska correctional system. And we acknowledge the difficult job he and his staff face. But it is critical to think outside of the box. Prison correction is not the answer. Please do not advance LB383 to the floor.

STINNER: Thank you very much. Questions? Seeing none, thank you very much.

HILKEMANN: Thank you.

DANIELLE CONRAD: Hello, good afternoon.

STINNER: Good afternoon.

DANIELLE CONRAD: 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 and in opposition primarily to the aspect of the budget regarding the construction of a new prison. So, and sorry to jump the line. I know you have a busy day, but it's our little one's fifth birthday today, so I'm hoping to make it home in time for cake. I just wanted to start out to let you know that even though we are here as a civil rights and civil liberties organization, we also took the temperature of Nebraska voters this summer and did a first of its kind poll to say, hey, Nebraska voters, what do you think about this new prison plan that's

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been in your headlines over the last year or so? And what the polling found was across the political spectrum and across the state, Nebraskans do not want you to build a new prison. They want you to chart another path. It's too expensive. It doesn't fix the problems before you. We can't-- we can't staff what we already have. And the system, the status quo is unsafe and expensive and unsustainable. Where we are right now is we're taxing ourselves to death to fuel racial injustice and mass incarceration on both the local level and on the state level. We-- we have to find a new path forward. And what Nebraska voters understand is that there are better alternatives: diversion, the great investments you've made in problem-solving courts, in supervised release. Those are all things that are going to have a better human outcome and a better outcome for the taxpayers. And those are the kinds of models that you should be building on instead of building a massive new prison that we cannot afford, we cannot staff, and that exacerbates human misery in this state. And let me be very clear. Director Frakes is not responsible for mass incarceration. He's right about that. He has to deal with it on a daily basis. But-- but he's not the cause of it. What goes into that is a lot of decisions in the front end, a lot about what happens in this building: creating new crimes, enhancing penalties for crimes, that continual decades-long political process to get tough on crime and wage a war on drugs has ensnared too many of our Nebraska neighbors. Today, about one in ten kids in Nebraska will have a parent in the criminal justice system. Let that sink in for a minute and think about what that means for your communities. Think about what that means for the kind of Nebraska we want to build today and for our kids and generations to come. We got to break these cycles, and writing a check for \$250 million isn't going to break the cycle. I know that you all ran on a host of issues that you're passionate about that mean a lot to your district. So the good news is, Senator, who wants to be a hero? You all get to be a hero. There is an infinite number of better possibilities for how to spend these taxpayer dollars than continuing to dig a deeper and deeper hole in the state budget and throwing money at Corrections. And I think it's also really important to note that the staff on the front lines, it's not about a shiny new building. It's about taking pressure off the system. We have a staffing crisis. We have an overcrowding crisis. People are missing their kids' birthdays all the time because they're working mandatory overtime. The tensions are high because programming and opportunity is

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low. That increases threats to front-line workers. And think really deeply and hardly about whether or not perpetuating misery is a good economic development and job strategy because it's not. That's another reason why we continue to have such persistent staffing problems in these facilities. That's the reason communities don't want this massive new prison in their backyard. We have so many opportunities to chart a new path to get a better value for the taxpayers to have better outcomes for our neighbors. And if you're feeling pressured about where you are in this moment, it's because all the entire approach by the Department of Corrections is out of alignment with what you normally see in the budget process. That's the tension you're feeling. And I know that from sitting in your chairs for eight years. A proposal this big needs a lot of buy-in, a lot of planning, and a lot of thought. You don't just slap it together a couple of days before the hearing, and that's where we are right now. So with that, I'm happy to answer any questions. I thank you for your time. I know how hard you all work.

STINNER: Questions? Senator Hilkemann.

HILKEMANN: Thank you for being here.

DANIELLE CONRAD: Yeah, hi.

HILKEMANN: When I was a freshman senator,--

DANIELLE CONRAD: Yes.

HILKEMANN: --the big issue was LB605. I think that was the number.

DANIELLE CONRAD: Yeah.

HILKEMANN: But that was supposed to be--

DANIELLE CONRAD: Yeah.

HILKEMANN: --supposed to solve a lot of this problem and I think you and I had conversations about it.

DANIELLE CONRAD: Yes, we did. Yeah.

HILKEMANN: Is LB605 working?

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DANIELLE CONRAD: Well, yes and no. So let me provide a little context for folks who maybe weren't here during that time. LB605 was the first step. It was the first step in pulling back on that decades-long failed approach where we continually increased crimes and penalties. It said, hey, let's-- let's rightsize some of these sentences. Let's give a little bit more discretion to our hardworking judges that are out there. But it was really, truly a first step. And all three branches of government came together. The Governor's Office, the courts, the Legislature worked with CSG and they said let's-- let's start this path. So that got passed along with some good things on solitary reform. And this body's continued to make a lot of reform there, LB605 and LB508 went together. But the Legislature stopped short because of voracious opposition from the Attorney General's Office, the Governor's Office, county attorneys, and other stakeholders in really taking the next steps down the path and continuing to rightsize those sentences and increase independence for our hardworking judges so that they can give an individualized sentence instead of have their hands be tied by extreme sentencing. So that's why you look at habitual criminal laws, you look at mandatory minimums, you look at those kinds of things to really get some changes in the system. And that's where the Legislature has really stopped making progress on the path of reform. And even more modest reforms in recent years have met with the Governor's veto pen. Even on the back end, if you'll remember, last year's issue around parole eligibility and some of those kinds of things. So LB605 was a crucial first step. But, Senator, it was just that. It was a first step. And what we hear in talking to a lot of folks and a lot of stakeholders across the state is that it did make some positive difference. But we continue to see overcharging sometimes to elicit plea deals. We continue to see way too many people come in for technical violations on the back end. So there's still quite a bit of discretion usually wielded by-- by county attorneys that have frustrated some of that process. So they really need to be a part of this-- this dialog as well.

HILKEMANN: I think Senator Seiler used to refer to that bill as getting smart on crime.

DANIELLE CONRAD: That's right. Yeah, that's exactly right. I think that's a great, smart justice approach. But I do think it was really sad and a mistake when Governor Ricketts sent CSG home and hung up a mission accomplished banner and took away that momentum and that

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collaboration that was happening across three branches of government to see how LB605 was working, to study it hard, and to keep going. But it stopped. It stopped dead in its tracks. And now we're all trying to kind of catch up and figure out, you know, how can we go about this? Because I know you care deeply about meeting state obligations, even if it's not your top priority. But-- but we're going to need everybody together. This is-- this is bigger than an agency coming in and throwing down a 100-page program proposal in order to-- to really fix the problem.

HILKEMANN: Thank you.

DANIELLE CONRAD: Yeah.

STINNER: Senator Wishart.

DANIELLE CONRAD: Yeah, hi.

WISHART: Thank you so--

DANIELLE CONRAD: Yes, hi.

WISHART: --much for being here. You-- recently, the ACLU has been involved in a lawsuit with the--

DANIELLE CONRAD: Um-hum.

WISHART: --with the Department of Corrections.

DANIELLE CONRAD: That's right.

WISHART: And in reviewing that lawsuit, one of the arguments that the department made was that the Nebraska Penitentiary was fine.

DANIELLE CONRAD: Yeah.

WISHART: That the facility was fine, that it was ADA compliant.

DANIELLE CONRAD: That's right.

WISHART: When was that lawsuit? When did that occur?

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DANIELLE CONRAD: Sure. That's a great point. And thank you, because I knew I wasn't going to have time to cover that with the compressed schedule. But so we filed the lawsuit in 2017 and it was dismissed in late 2020. And you're exactly right, Senator. For the-- the entire time that legis-- litigation was pending, the Department of Corrections and the Attorney General's Office told the federal court for years nothing to see here. We got it all under control. There's no systemic problems when it comes to healthcare, mental healthcare, solitary, ADA. And we did a lot of depositions, a lot of discovery. There's thousands of pages of briefing. And ultimately, even though we never got to a decision on the merits, we were still in a procedural stage, the federal court agreed with them. So it's particularly troubling, strange, and should raise red flags to you to then just a few weeks and months later to all of a sudden say, well, NSP's lived its life. There's major ADA problems. Which is it? That seems rather-- rather troubling.

STINNER: Additional questions? Seeing none, thank you.

DANIELLE CONRAD: Well, thank you so much. I appreciate how hard you all work and thank you for your public service.

STINNER: Have a piece of cake for us.

DANIELLE CONRAD: OK, I heard that it has a King Kong on it, so that will be really fun.

STINNER: There you go.

RICHARD HALVORSEN: Good afternoon, Senators. My name is Richard Halvorsen, R-i-c-h-a-r-d H-a-l-v-o-r-s-e-n. It's pretty obvious you can't build your way out of this. In recent years, you've had two new dormitories at the State Penitentiary, a work ethic camp out west, a youth center or correctional center in Omaha, revamped OCC, and of course, there's Tecumseh. And here we are back where we were several years ago. So that doesn't seem to be a solution. And actually my main concern is the talk about the re-- revamping the penitentiary. Like they say, Director Frakes says, well, that's at the end of its lifespan. Whoa, what are you talking about? When I went, started working at the Correctional Center years and years ago, many years ago, actually it seems like a galaxy ago, corporal, you had to work

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there three years to go up to corporal. No matter if you worked that slot every day of the week three years; sign-on bonus, huh, you're lucky to get a new uniform. You got-- actually you got a different color, the old style uniform. Overtime, yeah, there's plenty of overtime. You didn't get paid overtime [INAUDIBLE] time. And there were two cell houses, the east and west cell house. And the west cell house actually had an outer wall that started to fall off. They had to spackle it. And so I don't see how he can say that the current penitentiary is at the end of its lifespan. Maybe I have to ask my senator to get the plans, what they think they need to redo. I mean, I just can't see, I mean, not-- really relatively speaking, it's not that old, especially if you go out and downsize the minimum security where you wouldn't need electronic locks in the cell houses. And some of the other security features, too, like electric fences, you wouldn't need them either. So I guess that's my concern there, that they-- that his least intrusive proposal seems to be pretty expensive to me. And again, maybe I'll get my senator digging some of the facts about that. Thank you.

STINNER: Thank you. Questions? Seeing none, thank you very much.

RICHARD HALVORSEN: You're welcome.

STINNER: Good afternoon.

PASKA JUMA: Good afternoon, everyone. My name is Paska Juma, P-a-s-k-a J-u-m-a. I am representing Black Leaders Movement, an organization that was formed during the George Floyd riots in June of 2020. I just want to thank you guys for your time today and all the civil service work that you guys do for the community every day. I'm here to testify, disagreeing with the building of the new prison. I've been hearing and I was listening at home as I was working during the day, during my day job, and I was listening throughout the day as the hearing was going on. And one of the many things that people have been talking about has been centered around a need for a different way of looking at recruitment. They've also brought up the need for different instances of parole or diversion or different programming and a whole bunch of great things. I believe all those things are great and they should be put into place. But I also believe that there does need to be a whole new renovation of the entire system. I believe there needs to be a multilateral approach. Of course, my stance is that the prison

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shouldn't be built, but I don't believe that there is going to be a one-size-fits-all problem-solving solution to this. It definitely needs to be multilateral. As we're increasing different diversion programs, as we're-- as we're adjusting sentencing and as we're building more programs, that's where I think that there was going to be really the needle was going to be pushed forward. Because if we only continue to look at this as an individual solution, then we're going to only see progress in one area. The mass incarceration system was not built in a day. In fact, if you look at a lot of the issues that Black Leaders Movement tries to solve, it's around African-American disparities within the criminal justice, healthcare, and economic systems. So within the times of what we would call slavery, there was less people in that than there is currently, African-Americans within the system of parole and including the prison systems accounted together. So that is one of the statistics that has personally, if I was not affected by the mass incarceration system personally on a level by family members and my brothers and siblings, that would push me alone to know that at a time in slavery, there was-- there was less people in that system than there currently is people on parole or within a prison system. So that alone. But personally, I've come here to give you guys a different story. One of the people that was speaking up here earlier, they spoke about ACEs, ACEs being that what she spoke of was that if you faced certain things in life, you're more likely to end up, since we're talking about prisons within the prison system, there's other implications. So as for me, facing all of those ACEs within my life, I was luckily able to escape that and people would say, pull your-- pull yourself-- I was able to pull myself up by my bootstraps. Right? But that was not the story for the other people within my household. I have seven brothers and all seven of them are currently in the system or on parole. So everybody was not able to escape that. Not everybody is going to be able to pull themselves up. I would say an anomaly based on my God-given ability to rise above tenacity. That doesn't mean that I'm supposed to be here because there's something special about me or that this should be the way that everybody is supposed to do it. I believe that everybody needs-- everybody needs someone to help them to solve the problems within their life. And unfortunately, many of the people that are within this system don't have that support within the household. I personally believe the \$10,000 that they're giving to recruit and recruit staff at NSP, if they were to put that into a

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14-year-old, it would yield a better return of investment than recruiting someone who's going to matriculate after two years. I believe it would greatly reduce the amount of people that end up there and it would greatly reduce the amount of taxes the taxpayers then have to go ahead and pay to-- pay to maintain them across the board. I believe that there is a time that we're in right now that there needs to be changes that are-- that are happening at the level that you guys are able to work at, which is on the political level, which will then trickle down to the education system, which will then trickle down to the city attorneys, county attorneys, and everybody else who would then have to follow the laws that are passed. I call upon Pete Ricketts himself to go ahead and not veto if any positive things are passed as far as bills or laws so he can actually give a chance to these people who are working within the systems to fix it and to give you guys a chance to see these legislative bills actually come to pass. Again, I thank you guys for your time and I thank you guys for allowing me to testify. Thank you. Do you have any questions?

STINNER: Thank you. Questions? Seeing none, thank you very much.

PASKA JUMA: Thank you. Have a good day.

HILKEMANN: Your protected device.

FRAN KAYE: Thank you, Senator Stinner, my own senator, Senator Dorn, and members of the Appropriations Committee. My name is Fran Kaye, F-r-a-n K-a-y-e, and I'm testifying for myself and for the Racial Justice Policy Committee of the Reentry Alliance of Nebraska, who is concerned with, as you might guess, reentry for people who've been in the prison system. I'm enclosing for you a letter that the organizations and some of the individuals who are involved in that have signed about this. We strongly oppose the part of LB383 that would be providing for money for two-- two years to build a new prison. The main arguments for a new prison that we've mostly heard besides that NSP is getting old and moldy, which it is, are that our current overcrowding means that there is not enough time or space for programming within the prisons and that overcrowding itself leads to a criminogenic culture. Sorry. We agree. But these problems are not best addressed by a new building and all its associated costs. Despite being the second most overcrowded prison system in the United States, Nebraska does not need a new prison. A little more room would be

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helpful for more prosocial programming. We are not entirely out of space. Anything within a prison can be a potential security hazard. And I know that the people who work there have to look at it that way. But I have worked in institutions and I've been a volunteer in the Nebraska prison system for more than 25 years, where administrators' inventive and thoughtful resource allocation continuing-- considering long-term gains as well as short-term hazards have found the room and the time to add programming. Often the problem is actually lack of staff. It's not that there's no room. There's nobody in the room to watch the people who are there, the volunteers and the inmates. If we cannot staff the prisons we have, what are we going to do with a whole new facility? The dominant reading-- reason that overcrowding does not dictate a new prison is that we can release out of our way, out of overcrowding more safely, more quickly, and much less expensively than we can build our way out. We need to release more people than we admit. This is not an intractable problem. There's a really cute graph on there. Although Nebraska imprisons fewer of its citizens than the U.S. average, it still incarcerates a much higher proportion than any other Western democracy or most other countries in general. The attached charts showing how each state's incarceration rate compares to the rest of the world, and more particularly the other Western democracies, are definitely shocking. The general U.S. rate of incarceration is 698 persons incarcerated per 100,000 in the general population. Nebraska's rate is 577. If you look at the third page, there's a graph that shows these Nebraska and the U.S. against the other NATO countries. It is literally off the charts. Nebraska's rate is 577 persons, but Canada's rate is 114, despite its many similarities to the United States and its similar crime rates, except for murder, which is half the US rate. Sweden and the Netherlands incarcerate 57 per 100,000. I have lived many years in Canada. Nebraskans are not five times as vicious as Canadians. I mean, Canadians are nice, but really? Sweden and Netherlands incarcerate 57 per 100,000. Nebraskans are not ten times more stupid and ineffective in their crime fighting than Swedes and Hollanders. Really. Although we have complex sentencing rubrics, they have never been subject to a serious study to determine when punishment is enough and when it becomes counterproductive, making it more likely for released persons to reoffend and less likely to have the skills and attitudes to merge successfully back into the free world. We have never really carried out the reforms in LB605. We have many bills pending before Judiciary

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Committee this year that would reduce overcrowding and that would address issues like transitional housing that would prevent recidivism. A new prison is always a money pit. It would be unfortunate and poor stewardship of taxpayer dollars to commit to one now without using these other tools. Let's spend our money on prevention, programming, and premium reentry support, not another prison. Thank you very much.

STINNER: Thank you. Questions? Seeing none, thank you.

FRAN KAYE: Thank you.

CAROL WINDRUM: Good afternoon, Chairperson Stinner and the Appropriations Committee. It is still afternoon, believe it or not. My name is Carol Windrum, C-a-r-o-l W-i-n-d-r-u-m, and I reside at 3735 North 39th Street, Omaha, Nebraska. And I come to you this afternoon as a person of faith; and for my religious tradition, we believe that all people are sacred and all persons can be redeemed and that includes our incarcerated neighbors. We have an overcrowded prison system for a variety of reasons. We've heard a myriad of them this afternoon. But I want to come to you just bringing two people in my life to this story. For over 30 years, I've been visiting a man at the state penitentiary. He was a member of the church I served in the early '80s. I testified on his behalf a few years ago and stated that I would welcome him as my next-door neighbor should he be released. He is still incarcerated. And let me tell you, he is wasting away inside. When he first entered the system, he read voraciously. He got another degree. He exercised. And now he has basically given up; and he could be out and be a productive, contributing citizen to society today. He has served over three decades, actually, it's almost four decades, for a crime that he regrets. And I can see no reason to keep him locked up other than a punitive and vengeful criminal justice system. This is what gets me. Crime is down and yet our prisons are overcrowded, due in part to criminalizing more nonviolent behaviors and mandating more harsh and lengthy-- lengthy sentences. So another person comes to my mind. A member of my extended family has schizoaffective disorder. He takes his meds. He goes to work. He is an avid reader. A couple of years ago, he was involved in an auto accident and long story short, went through the criminal justice system. And had it not been for his parents and their ability to hire an expense-- experienced lawyer, he faced prison time. And had he gone to prison, I believe that he would

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have died there, unable to cope. He is mentally ill. And my understanding is that around 15 percent of those in prison suffer from severe mental illnesses. Many of these people do not belong in our prisons. They deserve adequate mental health treatment. And I know our state and I know you all are trying to address that, but we need to make more serious investments. I want to live in a safe community. I want persons and property to be respected. I have personally been assaulted and I've had a knife held at my throat. I understand the need for the public to feel safe, but simply locking people up is not the answer. I oppose building a new prison, but I support increasing investments in diversion, earlier parole, access to mental health, and better reentry programs. Thank you.

STINNER: Thank you. Questions? Seeing none, thank you.

CAROL WINDRUM: Thank you.

DIANE AMDOR: Good afternoon.

STINNER: Afternoon.

DIANE AMDOR: Chairperson Stinner and members of the Appropriations Committee, my name is Diane Amdor, D-i-a-n-e A-m-d-o-r, and I'm the staff attorney for the Economic Justice Program at Nebraska Appleseed. Nebraska Appleseed is a nonprofit law and public policy organization that fights for justice and opportunity for all Nebraskans. Nebraska Appleseed opposes the proposal to appropriate funds for new prison construction. There are a lot of p's in that sentence. The main argument for building a new prison is that it is necessary for public safety. So we just have to do it even though it's expensive. Public safety is of vital importance to all of our communities and such a clear duty of state government. But we want to dispel the idea that there's just no choice but to build a new prison in order to ensure public safety. That notion rests on too narrow a view of what public safety is and how it is achieved. What if we shift the way that we think about public safety funding? Instead of limiting it to the realm of public safety, to things like police and prisons, what would our society look like if we took a broader view? What if we viewed it as essential to fund the programs that make sure that all Nebraskans have access to housing, food, healthcare, including mental healthcare, meaningful work opportunities, education, and support for our

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children? Research has shown that supports in these areas prevent people from ending up in prison in the first place and help people stay out of prison once they return home. Nebraska Applesseed is opposed to building a new prison. We are also opposed to setting aside hundreds of millions of dollars for the eventual construction of a new prison. We urge this committee and the full Legislature to fund public safety by meeting people's basic needs. I provided a handout with just a few of the bills in front of the Legislature just this session to address issues such as removing barriers to accessing food, childcare subsidies, paid sick and safe leave, and others. This is by no means an exhaustive list. We will not achieve public safety without providing our communities with real opportunities, which requires investments in these areas. As cocounsel with ACLU of Nebraska on the recently concluded prison litigation, Nebraska Applesseed gained valuable insight into the challenges within our prison system, from touring prison facilities, depositions, reviewing the thousands of pages of documents that were mentioned earlier, and most importantly, from the experiences of our clients and other incarcerated individuals. We learned the department struggles to adequately treat mental health issues and to fully staff the prisons we have already. Building a new prison will not reduce overcrowding. It will not improve staffing shortages. And it certainly will not address the department's inability to adequately treat mental health issues. Another argument in support of the new prison proposal is that Nebraska's prison system is underbuilt. This is inaccurate. We do have one of the lowest rates of incarceration in the country, but still a higher incarceration rate than most countries around the world, as others today have noted and as Director Frakes, of course, acknowledges. Clearly, we need sentencing reform and changes to the parole and pardons processes. The details of those policies are beyond the purview of this committee, but the general concept is just common sense. Our country, including our state, has overincarcerated people for far too long. We've overincarcerated people of color, particularly black people, for far too long. Black people constitute 5 percent of Nebraska residents, but 29 percent of people in prison in our state. That number, it just boggles my mind, honestly. It's time to change course. We have to send fewer people to prison and we need to bring more people home. But we need to bring people home to safe, supportive communities and to increase their chances of success. That requires significant investment in a broad range of public safety issues like

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the economic justice, healthcare access, immigrants and communities and child welfare issues that Nebraska Appleseed has been advocating for over the past two decades and will continue to fight for every chance that we get. Thank you for your time. I again urge you not to fund a new prison in this year's budget. Instead, look at the bigger picture when you think about public safety. I would be happy to answer any questions that you may have.

STINNER: Any questions? Seeing none, thank you very much.

DIANE AMDOR: I sincerely thank you for your time and your hard work. It's been a long day. Thank you.

STINNER: Good afternoon. Still the afternoon.

PAUL FEILMANN: Senator Stinner and Appropriations Committee, I'm used to Judiciary. My name is Paul Feilmann, F as in Frank-e-i-l-m-a-n-n, and I passed out some material I want to refer to. I had written out kind of a presentation, but I'm going to kind of deviate a little bit from that. Director Frakes and I've communicated a lot over the last couple of years. I volunteered in a lot of the prisons, and I wanted to share a little bit of a story with you that's been very moving for me and given me a lot of insight into the issues that you're dealing with today. On the cover of the material that I gave you, there's a picture of a flier about the movie Out of Omaha. This is an amazing opportunity for people in this state to understand why we have an overcrowded prison system in a personal level. This movie won the audience award at the New York City Film Festival. And I wanted to tell you a little bit about the story of Darcell Trotter. He's the-- there's twin brothers that one of them had been-- he had-- he grew up in poverty. Both parents were incarcerated, chemically dependent, the housing situation, it was just horrible situation, severe poverty. And he-- he got some help at U-- to get into UNO, and the guy there met him. It was a mentor for him, trying to help him pull himself up by his bootstraps. And this guy is-- the guy that was mentoring him, his son was a movie producer, does documentaries like Ken Burns. And so they were looking to-- to do a documentary about poverty and so forth. So they asked Darcell if he would be interested in letting them follow him around and, you know, do a documentary. He said, yeah, sure. So they followed Darcell and his twin brother for eight years. OK? And what you see in this is this movie that shows the story of what it's

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like growing up in this severe poverty that we expect kids to not end up incarcerated. And if you can-- it's available on Amazon Prime. And I watched it on YouTube. It's about 90 minutes. Darcell's a wonderful guy. I met him at the premiere. I introduced myself. And what happened was he and his brother got away from Omaha and got away from the severe poverty through the help of this movie producer and so forth. They had a younger half brother, Charles Trotter, who he came to live with them because he was growing up in the same poverty in Grand Island. And-- but the mother, the stepmother felt guilty that she was dumping him on the brothers. The brothers wanted him to stay there because they knew if he stayed in the poverty area of Omaha that he was going to be in trouble. He ended up coming back to Omaha and was staying with his mom, got caught up in the gangs, gang violence that the other brothers had escaped, and ended up in a violent shooting. And now Director Frakes knows him. And I know Doug Koebernick knows him because he's serving 90 years at a Nebraska State Prison. This is the difference between poverty, getting away from poverty, and not getting away from poverty. You have two brothers that are raising children in Grand Island. And then you got Charles Trotter, who's serving 90 years in a state penitentiary. And I get kind of emotional about this stuff because it's-- it's the poverty piece, the severe poverty piece. You expect kids to grow up from the time they're born and they live in these circumstances. And we expect them to not end up being incarcerated and having these problems. And the thing is, it can be changed. I put in information in there about the Canada antipoverty program. They set up an antipoverty program in Canada in 2015. They set out to figure out how to solve poverty, severe poverty. And they asked people that were affected and they came up with a plan and goals to reduce poverty in Canada as a nation by 20 percent by 2020. Well, in 2019, they met that goal. It can be done. And my sense of a healthy community and healthy Nebraska has to do with how many children we expect to be born tomorrow into severe poverty. I'm talking severe poverty with mental illness, poor housing, exposure to gang violence, trauma. I mean, I watched my grandson. He's a year old. And I keep thinking, what if he was growing up in severe poverty? I watch him on Face-- FaceTime because I can't see him because of the virus. But I keep thinking, what would it be like? What would his life be like if he was in the poverty?

STINNER: You have a red light.

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PAUL FEILMANN: And I think that really your idea about a task force to look at these factors, if you solve the poverty, severe poverty issue and-- and dealt with a lot of other factors, you could address this prison issue. So thank you.

STINNER: Thank you. Questions?

PAUL FEILMANN: I encourage you to take a look at that movie--

STINNER: Seeing none, thank you.

PAUL FEILMANN: --if you get a chance. Thanks.

STINNER: Any additional opponents? Seeing none, anyone in the neutral capacity? Seeing none, we have-- I think I've got this, written testimony, first of all, opponents: Ella Durham, Abbi Swatsworth, Cassandra Lottman, Elena Salisbury, Jasmine Harris of RISE. Neutral is Julia Plucker, Omaha Police Officers Association; and Doug Koebernick, Nebraska Inspector General of Corrections. We also have letters for the record in opposition of the new prison: League of Women Voters; Black and Pink; from Romulo Vega; Kristen DuPree; Kerry Eddy; Danielle Smith. So that concludes our hearing on Agency 46, Department of Corrections. We'll now open the hearing for Agency 64, State Patrol.

WISHART: Welcome.

JOHN BOLDUC: Thank you. I was going to thank the Chair, but he left.

STINNER: Thank you for coming.

JOHN BOLDUC: Good afternoon, Chair, members of the Appropriations Committee. My name is John Bolduc, J-o-h-n B-o-l-d-u-c. I'm the Superintendent of the Nebraska State Patrol. I want to thank you for giving me the opportunity to appear before you today and offer testimony consider-- concerning the Governor's recommendation in LB380, the main appropriations bill intended to support the Nebraska State Patrol. The State Patrol is a state police agency servicing all 93 Nebraska counties, performing a wide variety of public safety duties. This complex mission includes, but is not limited to, responsibilities in traffic safety, criminal case investigation, carrier enforcement, air support, Capitol security, and providing a state-of-the-art forensic laboratory that serves all of Nebraska at no

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cost to our allied agencies. In addition, we provide background check services for various boards, commissions, and state agencies. The State Patrol is also responsible for issuing concealed handgun permits, explosive permits, and managing the state's Sex Offender Registry. The Governor's recommendation in the fiscal year 2021 deficit bill, LB379, reduces the agency General Fund appropriations in FY '20-21 by \$11.7 million. Federal guidelines related to the use of 2020 CARES Act funding, specifically the federal Coronavirus-- Coronavirus Relief Fund, or CRF, authorized reimbursement for state costs related to presumed payroll for public safety personnel for portions of calendar year 2020. The State Patrol submitted costs for and were reimbursed through the CRF for public safety payroll in the amount of \$11,709,891 for July 1, 2020, through December 30 of 2020. The Governor's recommendations in FY '20-21 deficit bill reduces the agency General Fund appropriation in FY '20-21 by this same amount. Also, the Governor's recommendation included a General Fund increase of \$259,500 for each fiscal year, supplementing the Patrol's vehicle budget. The committee's preliminary budget recommendation did not include this increase. This funding provides for increased costs in maintaining the agency's aging fleet. The Patrol needs to purchase 105 vehicles annually in order to maintain a serviceable fleet. This small addition will help us achieve that goal. We would also appreciate the committee's support in the carryover of unexpended General Fund appropriations from FY '20-21. This carryover will be used for the agency's plan to purchase a helicopter. The Patrol provides air support for all 93 counties in the state, which includes search, rescue, surveillance, tactical operations, and traffic enforcement, to name a few. Funding for a helicopter lease was not included in either the Governor's or the committee's budget recommendation. In addition, the Governor supported the switch of \$75,506 from cash funds to General Funds for rent for the Investigative Services Division Facility in Troop A Omaha. The Investigative Services Division does not generate revenue. Therefore, using cash funds for their facility rent is not allowed. This switch was not included in the committee's preliminary budget recommendation. Finally, the Governor's recommendation included \$105,790 in the second year of the biennium for an OCIO contractor that serves as an IT manager for the Patrol. This was not included in the committee's preliminary budget recommendation. The agency has paid for this employee for several years and absorbed the costs without additional General Fund

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appropriation. The Nebraska State Patrol supports the Governor's budget recommendations. I want to express our appreciation for your ongoing support of these public safety initiatives. The Nebraska State Patrol remains committed to operating in a fiscally responsible manner and will continue to do so with your support. I would be happy to answer any questions you have at this time.

WISHART: Thank you so much for being here today and for your service to our state.

JOHN BOLDUC: Thank you.

WISHART: Does anybody on the committee have any questions? Senator Vargas.

VARGAS: Thank you very much for being here, Colonel. So one question I have so one, thank you. So I know we've had a lot of conversations about Capitol security--

JOHN BOLDUC: Yes, sir.

VARGAS: --the last couple of years as a member, Vice Chair of Executive Board and we've had some really good conversations on how we respond to things that we never expected to happen. So I appreciate your work on that.

JOHN BOLDUC: Thank you.

VARGAS: Question about the cost for the helicopter. I know you're requesting the carryover of unexpended General Fund, and I know that was the intent. I just wanted to-- how much is the cost of that again?

JOHN BOLDUC: Sir, it's \$2.8 million.

VARGAS: OK. OK. I just wanted it for the record. And then the question I have and maybe this is I don't know if you can answer this, the Governor's recommendation that you mentioned included the \$105,000 for OCIO contractor that serves as an IT manager for the Patrol. Now, I'm trying to get clarity on this because typically when we've had OCIO costs, it is-- it is within OCIO, not necessarily-- is this-- so this is we're contracting OCIO, another agency to be your IT manager, and we're paying them for that, for that, rather than them having a

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full-time equivalent OCIO, IT person? Can you-- do you see the-- I'm trying to get clarity on this because some agencies have OCIO people that work for the agency that are not con--they're not paid out by the agency, but they work at OCIO for an agency. But you're asking for a contract, an OCIO employee to work for State Patrol? Yeah.

JOHN BOLDUC: Senator, thank you. I'm still trying to wrap my head around it. So our IT manager provides leadership, capable leadership for the IT staff that we have, about 29 people. But she is an OCIO employee.

VARGAS: Yeah.

JOHN BOLDUC: OK. They don't-- so we pay that salary. So we pay that contractor, that person to perform that work. But that appropriation has never been included in our budget

VARGAS: Because it's in OCIO's budget.

JOHN BOLDUC: It's not.

VARGAS: Oh, it's not.

JOHN BOLDUC: It's not in neither budget. So we just have to eat that \$105,000, which if we go back to the vehicle budget, that's three cars.

VARGAS: But OCIO has a revolving fund from that, if I'm correct. So maybe it's not in their budget but so but they're not paying for, they're asking you to pay for it. But it wasn't in your budget request two years ago when you came to us for funds.

JOHN BOLDUC: Actually. Senator, I believe that's been in-- in our request, you know, for the three years that I've been here.

VARGAS: Oh, OK. So we have been appropriating the funds for this position in the past.

JOHN BOLDUC: No, you've said no every time. Sorry.

VARGAS: Oh, no, no.

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JOHN BOLDUC: Yeah.

VARGAS: Just trying to get clarity. OK, so we said no every time, but you've still been eating the cost of it. OK.

JOHN BOLDUC: Correct.

VARGAS: OCIO is a headache sometimes when we're trying to figure out--

JOHN BOLDUC: Is this on? OK.

VARGAS: No, no, I appreciate the answer. I'll have to do a little bit more investigating, but that's, appreciate

JOHN BOLDUC: Thank you, Senator.

STINNER: OK. Senator Kolterman.

KOLTERMAN: We didn't include the helicopter in our recommendation to you, I believe. Why would we lease a helicopter and pay that kind of a lease when you can almost buy one for the same price?

JOHN BOLDUC: Well, that's an excellent question, Senator. We were not anticipating the carryover that-- that we're going to experience. So initially we planned on doing a lease, a ten-year lease and ended up our-- our lease costs or our financing costs were-- were going to be minimal. But obviously, that's-- that's a cost that we-- we can avoid if we pay for it with cash.

KOLTERMAN: OK.

STINNER: Senator Hilkemann.

HILKEMANN: It's a question unrelated to what your testimony was, but I'd be curious of it. How many officers did we have on the road in 2000 approximately?

JOHN BOLDUC: Senator, I wasn't here then, but I'm going to take a stab. I believe in 2000 it would have been somewhere in the neighborhood of 535

HILKEMANN: And how many do we have today?

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JOHN BOLDUC: 482 is the budgeted amount. That doesn't you know, of course we have vacancies.

HILKEMANN: So we've drop-- so we have 50 less officers now than we did 20 years ago about.

JOHN BOLDUC: That's an estimate, sir. Yes.

HILKEMANN: OK, thank you.

STINNER: Senator Erdman.

ERDMAN: Thank you, Senator Stinner. Thank you for waiting.

JOHN BOLDUC: My pleasure.

ERDMAN: So in your request, you had made a comment about currently we are-- you're decommissioning those cars at 150,000 miles.

JOHN BOLDUC: That's correct, Senator.

ERDMAN: And you're requesting to go to 130, is that correct?

JOHN BOLDUC: That's our goal, sir.

ERDMAN: Have you found a lot of problems in between that 130 to 150 with these cars?

JOHN BOLDUC: Well, Senator, as a matter of fact, we have. Obviously the cars that they make today are certainly better than the ones 30-plus years ago. When I started, it would be unfathomable, you know, 30 years ago to drive a car to over 100,000 miles. So we're seeing quite a bit of maintenance and sometimes severe maintenance that makes it, you know, infeasible to keep that car running. So what we're trying to do, you know, the 150, that-- that was established again, you know, prior to my tenure here, but partially in response to some budget challenges where we just-- there were a couple of years where we didn't buy cars. And you have to pay now or pay later and we're paying later. So in order to get that cap down to 130, we're going to need to buy 105 cars a year. But do the math. You know, we have a fleet of 500-plus vehicles. And the amount that our troopers are driving them, you know, in four or five years, they're at the 150,000

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end of their useful life. So we have to extrapolate that out. And-- and we know that we can gain ground if we are buying 105 a year or so. That's why that, you know, having that \$250,000 cut doesn't seem like a lot. But, you know, again, that's-- that's several vehicles.

ERDMAN: So your officers are driving 25,000, 30,000 miles a year.

JOHN BOLDUC: And sometimes more depending on their duty station.

ERDMAN: Right.

JOHN BOLDUC: Yeah.

ERDMAN: So there's been some discussion about the helicopter. You currently have one.

JOHN BOLDUC: We do.

ERDMAN: And I got information from Doug. Doug sent this out. The questions that were answered about the helicopter, you're going to retain the old helicopter and have two?

JOHN BOLDUC: Yes, Senator. The-- the helicopter that we have right now in our fleet is a Bell 407. It's 15 years old. We still have several years of serviceable life in that-- in that helicopter. The newer helicopter that we intend to purchase is a 505. It's a smaller ship. It's much more fuel efficient. By purchasing this particular helicopter, we'll be able to extend the life of the one that we have now. And they are very similar platforms. But the 505, which is much more fuel efficient, lower cost to operate per hour, is more conducive to the routine things that we do: traffic enforcement, traffic surveys, those kind of things. The larger ship that we have can actually haul more people in the event that we need to bring our bomb team or SWAT team to a location further away. We still will need that capacity, but we'll be able to extend the life of that, you know, through routine maintenance. So, yes, we'd have two. And that also would enable us to have better coverage throughout the state. Currently, we don't have any pilots in the western half of the state. We're training one right now and we intend to train another one in the very near future so we have better coverage.

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ERDMAN: OK, so according to email, the question was asked, what's the value of the old helicopter, was twelve point-- \$2.9 million.

JOHN BOLDUC: I believe that's close.

ERDMAN: What's the value of the new one?

JOHN BOLDUC: The new one costs 2.8.

ERDMAN: OK, so you currently have one, but you want-- you want to have two.

JOHN BOLDUC: Yes, sir.

ERDMAN: OK.

STINNER: Just for the record, you're not purchasing it, you're leasing it.

JOHN BOLDUC: Well, since the--

STINNER: Or is this a lease purchase?

JOHN BOLDUC: This is a purchase. since the lease was not included in the-- neither the Governor's nor your recommendation.

STINNER: So you changed your mind and now you're going to purchase it.

JOHN BOLDUC: That's right.

STINNER: I'm sorry, I was a little late in the discussion.

JOHN BOLDUC: Yes. We're going to purchase this.

STINNER: I apologize. Senator Dorn.

DORN: Thank you, Chairman Stinner. Thank you for being here today. I believe you said 480 or is your-- or 450 was your amount now.

JOHN BOLDUC: 482.

DORN: Are you fully-- are you fully staffed or whatever?

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JOHN BOLDUC: We have 40 vacancies in--

DORN: How many?

JOHN BOLDUC: 40.

DORN: 40?

JOHN BOLDUC: Yes, sir.

DORN: Are you having or what is-- talk a little bit about your training, some of this that's been proposed, new proposals and all of that and what you're doing with that, I guess. Are you able to keep up with that?

JOHN BOLDUC: Well, the short answer is yes. Right now, we-- the initial training for new troopers who are hired, they spent six months at our training academy in Grand Island and they fulfill all the state requirements to meet the requirements of the Crime Commission. Any additional requirements that will be added through proposed legislation we'll be able to adapt to. There are some fiscal implications to that, but I don't believe that they are, you know, of a nature that would cause serious budget problems for us.

DORN: If I remember right, part of the discussion through the budget process was that you're going to-- normally you put-- you're putting one class through Grand Island and you're expanding that.

JOHN BOLDUC: We have expanded that two years ago to do two camps per year. What we have found, and this is a-- this is a challenge in law enforcement across the country. There are fewer people who are interested in law enforcement as a profession than there were several years ago. So we are getting adequate applicants, but those that are qualified to do the job are much lower. For example, again, I'll go back to my personal experience. Thirty years ago, if we put out an advertisement for a job, you would get 300 applicants for every opening. Right now we have 40 vacancies and we just closed an application process and we had 417 applications. If everything goes well, we would get a throughput of 5 to 10 percent of those who will make it through the training program. So as you can see, it will take us a few years to get caught up. And we do anticipate a dozen retirements this year, a dozen next year, and then two dozen the year

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after that. So our hiring imperative in that training program is really important for us.

STINNER: Senator Erdman.

ERDMAN: Thank you, Senator Stinner. Colonel, yesterday the State Auditor was in. And DAS has just a small problem with auditing \$21 billion. And as the questions developed and the conversation went on, the question was asked, are there other agencies that send their audited information to the DAS that are included in those errors and misstatements? And he said, yes, there was. There were several other agencies and yours happened to be one of those. Have you ever received information from the State Auditor that said that you're not accounting correctly or categorizing your-- your expenditures correctly? Have you had that conversation with the State Auditor?

JOHN BOLDUC: I've had-- well, I want to make sure that we're talking about the same thing. So every year we submit our annual report to the State Auditor. It's called the CAFR, Certified Annual Financial Report. And in the past three years, we've had one or two issues. They call them issues each year. And they were very minor in nature and were corrected with additional documentation. And we were given, I don't know if it's a technical term, but a clean bill of health. So in the latest CAFR, I believe that came out with-- with zero issues. So, yes, there have been a few what I would consider minor accounting, putting things in the wrong category or not having the right receipts for a gas slip or something, but nothing significant, to my knowledge.

ERDMAN: Thank you.

STINNER: Additional questions? Senator Wishart.

WISHART: Yeah, one question following up. And, Senator Erdman, thank you for bringing that up, because that's something that our committee is going to be more mindful of. Do you ever hear from DAS when, before you hear from the Auditor, do you ever hear from DAS in those years when there were a few, a few errors with them saying, hey, we caught these errors. You'll need to-- because I-- you submit your-- your CAFR to DAS to then submit it to the Auditor.

JOHN BOLDUC: Well, actually, I don't know if that's the process.

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WISHART: OK.

JOHN BOLDUC: I believe that goes directly to the Auditor.

WISHART: It goes-- yours goes directly to the Auditor.

JOHN BOLDUC: Yeah. And I-- because I don't recall there being an in-between step with respect to DAS so.

WISHART: OK.

JOHN BOLDUC: Don't quote me on that. It didn't sound-- it didn't sound familiar to me.

WISHART: OK, thank you.

JOHN BOLDUC: Yeah, right to the Auditor? We send it right to the Auditor.

WISHART: Right to the Auditor.

JOHN BOLDUC: Yeah

WISHART: OK.

STINNER: Yeah, something caught my ear when you said I wasn't anticipating this carryover, so I asked Doug Nichols to give me an analysis. Apparently, we had \$8 million of carryover from fiscal year '20. I'm just looking at unexpended appropriations, \$8,073,000.

_____ : [INAUDIBLE] encumbrances [INAUDIBLE]

STINNER: OK, so you had encumbrances, but I also heard as it related to the \$2.8 million purchase of the helicopter, we were going to use, reappropriate or unexpended appropriations, reappropriations to do that.

JOHN BOLDUC: That's correct, yes.

STINNER: Tell me this. How did that happen that you didn't use the appropriations?

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JOHN BOLDUC: The short answer is the vacancy savings. We anticipated a larger recruitment than we had. And based on the number of applications that we received, we anticipated filling two camps with between 20 and 25 troopers. We ended up with 18 and 8. So largely--

STINNER: You know, that reminds me because I know you actually pulled your staff down during the time we had the revenue shortfall. And I think we tasked you with building that back up, and I'm sure the Governor has also complied with that. That was a question is if you could fill those slots, but it sounds like that's going slowly.

JOHN BOLDUC: It's-- we were on a pretty good pace until this last year. And if you think of the totality of the circumstances, COVID probably having some impact, very low unemployment rate certainly prior to the pandemic, we were netting 10 percent of our applications as throughput. And so when we had 330-some applicants for Camp six four, we thought we were in great shape. We would get 10 percent. We got like 3 percent. So in that, we're hoping, we're believing, based on the analysis of that, that that's an anomaly. But one thing that was brought to our attention was that with some of the economic challenges of COVID, there was-- there was some increase in unemployment. A lot of folks, in order to continue to collect unemployment, have to be applying for jobs, which may include jobs for which they're not qualified. So that could have-- that could have accounted for that large increase in our applications. But if our vacancy levels--

STINNER: I'm hoping it's a one off because I think you've got to build the squad back.

JOHN BOLDUC: I couldn't agree more, sir.

STINNER: OK. Additional questions? It's awfully late, but I'm sure you're pretty hungry because I am. Anyhow, any additional questions? Seeing none, thank you.

JOHN BOLDUC: Thank you.

STINNER: I don't see anyone here, so I don't think there's going to be any more proponents. Any proponents? Nobody is here. Any opponents? Anyone in the neutral capacity? Seeing none, that concludes our

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hearing of Agency 64. Agency 15 and 94, the Board of Pardons and Parole and Commission of Public Advocacy, have sent in letters. And so that concludes our hearing for today.