

NEBRASKA JUSTICE SYSTEM SPECIAL OVERSIGHT COMMITTEE
October 20, 2017

[LR127]

The Nebraska Justice System Special Oversight Committee met at 1:30 p.m. on Friday, October 20, 2017, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR127. Senators present: Laura Ebke, Chairperson; Kate Bolz; Tom Brewer; Suzanne Geist; Mike Hilgers; Dan Hughes; and Justin Wayne. Senators absent: None.

SENATOR EBKE: Good afternoon. Welcome to the Nebraska Justice System Special Oversight Committee. My name is Laura Ebke, I am from Crete. I represent Legislative District 32 and I'm the Chair of the committee. I would like to start off by allowing my fellow members of the committee to introduce themselves. We'll start over here.

SENATOR GEIST: Okay. I am Suzanne Geist; I represent Legislative District 25, which is the east side of Lancaster County.

SENATOR HILGERS: Hi. Mike Hilgers, I represent District 21 in northwest Lincoln and Lancaster County.

SENATOR BREWER: Tom Brewer; I represent District 43, which is 13 counties of the Sandhills and the Panhandle.

SENATOR HUGHES: Senator Dan Hughes, District 44: 10 counties in southwest Nebraska.

SENATOR BOLZ: Senator Kate Bolz, I represent District 29 in south central Lincoln.

SENATOR EBKE: Okay, thank you. And we are also being assisted today by Laurie Vollertsen, our committee clerk; Tim Hruza, who is our committee legal counsel. And I don't know if our other committee legal counsel is here anymore. Oh, there he is, Dick Clark, over there. If you're planning on...oh, we've also got our committee page, Joseph. Is Emma--is it Emma? Is she here? Okay, and Emma will be here as well. If you're planning on testifying today, please fill out one of the yellow testifier sheets on the table over there. Hand it to the page when you come up to testify. Please begin your testimony by giving us your first and last name and spelling them for

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the record. If you have any handouts, please bring up at least 12 copies and give them to the page. If you do not have enough copies, the page can help you make more. As a matter of committee policy, I would like to remind everyone that the use of cell phones and other electronic devices, unless previous permission was granted, is not allowed during public hearings. However, you may see committee members using their phones to connect with staff and so forth. But please, if you need to take a phone call step outside. And with that, we will begin today's hearing, Senator Krist.

SENATOR KRIST: (Exhibit 1) Thank you, Chairwoman Ebke and members of the LR127 Committee. And thank you for your courtesy in allowing me to speak to you this morning, or this afternoon. I'm having a package reproduced that you can all see, and we'll pass out when it gets back here. But in thinking about what I wanted to say to you this morning, this afternoon...I'm way behind...I thought it was important for you to understand historically how important it is. You all know, because you went through the indoctrination periods that I did, that our job is to legislate, to appropriate, and to apply oversight. Probably the most critical of those three, some would argue appropriations because we're in the situation that we are, but we're always in one situation or another with appropriations; but I would argue that the most critical of our responsibilities is oversight. And I would argue that what's happened in corrections and what continues to happen in corrections and continues to happen in corrections and continues is intolerable, inexcusable. I believe that there were some recommendations made by LR424, which Senator Bolz and I, I think, are the remaining members here in this room; where we looked at Nikko Jenkins and peeled back the onion and saw what a disarray had appeared to be in the corrections process. And then the follow-on, LR34, which a few of us were on, chaired at that point by Senator Pansing Brooks, saw the same issues repeating themselves and a lack of conviction and decisive action to change the situation. Now, there's been a lot of press lately. Some of my colleagues have said, hey, it took us 10 years to get here, it may take us 10 years to get out of it. Fellow senators, we don't have 10 years. We probably don't have two. We have a lawsuit facing us from the ACLU. And if you know anything about history and what happened in California, within two years of the ACLU suit followed the introduction of DOJ, the Department of Justice in the state. And the remedies to the overcrowding situation and the situations that happened in California were not acceptable to Californians. And I can guarantee you they will not be acceptable for the people in Nebraska if that situation happens. So decisive action with a

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sense of urgency, I would appeal to you, is necessary at this point. Case in point--the lawyers in the room will appreciate the fact that you always go back to a case in point. We had Inspector General Doug Koebnick present to us on January 27 of 2016 his report submitted to LR34. In that report, which you will receive a copy of, there was a detailed account for...thank you...there was a detailed account and a suggestion for release programs and community corrections programs that could relieve pressure points by putting people out in work release programs. It detailed a program that worked in Washington State, a state that was a former home to our current director. Let me ask you something. How many of these suggestions--this case in point--how many of these have actually been implemented? It would be a good question for Director Frakes when he comes up, if he does. I would contend zero. I think we heard this morning in the Judiciary Committee that there are a number of options to you that does not require building any more brick and mortar, but beds available for these kinds of relief valves that we're seeing causing an overcrowding situation. So I'll leave you with this. I know many of you are tired of me telling you that I've been here for nine years and I have more experience or I have the experience, but I'm going to tell you one more time: if you shirk your responsibilities in oversight, if you do not continue to have oversight committees over critical, critical problems in this state--and corrections is right there at the top of the list. I happened to be all over the state the last couple of days and I heard two things: property tax and corrections. It's important that you continue to have oversight committees. And in closing, I would just say this: I submitted this LR to the Executive Board as a special investigative committee, not an oversight committee. It was watered-down on the floor, but I accepted a compromise of a simple oversight committee. I think there is some special investigations that need to go on to find out what corrections is actually doing and how much action has been taken for all the work that this Legislature has done in the last five years. So with that, thank you again, Chairwoman, for the courtesy of coming to you today. And I wish you all a fine afternoon. [LR127]

SENATOR EBKE: (Exhibit 2) Thank you, Senator Krist. Any questions for Senator Krist? I guess not. For the record, I'm going to provide a bit of an overview about what the committee has done since the end of the session. And you can stay or go or whatever you want to do. But I want to bring this to the attention of those who are sitting in the room and may be watching. LR127, as we've noted, was introduced by Senator Krist and is the third iteration of Nebraska Legislature's special committee established to oversee the various aspects of the state's criminal

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justice system. By its terms, LR127 tasks the Nebraska Justice System Special Oversight Committee with the important work of studying the programs and policies relating to the adult justice system implemented and followed by the state agencies that oversee the various aspects of the justice system. The seven members of the LR127 Committee have spent the interim session reviewing the state of Nebraska's criminal justice system. Over the past several months, the committee has visited all 10 facilities operated by the Nebraska Department of Correctional Services, has visited probation service offices in both Omaha and Lincoln, and has toured the Lincoln offices of the Nebraska Board of Parole. During these visits, committee members had the opportunity to see firsthand the day-to-day operations of our criminal justice system. Committee members took time during the visits to meet with staff members and discuss issues and concerns important to them. Committee members also took time to meet with inmates at each of the correctional facilities visited. In total, the committee met with well over 200 staff members and inmates in an effort to obtain a more complete picture of the type of work those serving our criminal justice system are doing and to better understand the challenges faced. Today's hearing is meant to provide Nebraskans an opportunity to hear from stakeholders about the challenges they face in effectuating Nebraska's criminal justice system and to highlight some of the efforts they have made to meet those challenges. The committee has invited representatives from the Department of Correctional Services, the Board of Parole, the Office of Probation Administration, the Office of the Inspector General, and the Ombudsman to provide information related to their efforts and to assist the committee in its task. The committee did receive written request to address the committee from two stakeholder groups: the American Civil Liberties Union of Nebraska and the Nebraska Public Employees Union. Because both groups have a vested interest in the state of Nebraska's criminal justice system, the committee has agreed to accommodate their request and will allow a representative from each group to provide remarks. The committee would like to express its thanks to all of the various state agencies for their patience and willingness to accommodate the committee in its work this summer. The committee would also like to thank all of the staff members from corrections, probation, and parole for their candid insight and thoughtful concerns. And finally, the committee sends its thanks to the inmates, probationers, and parolees who provided open and respectful feedback to the committee. And with that, the committee would invite Director Scott Frakes of the Nebraska Department of Correctional Services to help us begin our hearing. He's

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got lots of stuff. And I would just note we're not going to, at least, I think we're not going to put anybody on a timer. But well, enough said. [LR127]

SCOTT FRAKES: (Exhibits 3, 4) Good afternoon, Senator Ebke, members of the Nebraska Justice System Special Oversight Committee, the LR127 Committee. My name is Scott Frakes, F-r-a-k-e-s; I'm the Director of the Nebraska Department of Correctional Services, NDCS. Thank you for inviting me to testify. I appreciate the opportunity to join your discussion about the issues and concerns facing Nebraska's correction system. I will begin by expressing my gratitude to the members of the LR127 Committee for taking time to tour all 10 NDCS facilities over the summer. I hope the tours provided you with insight into how NDCS operates. Physically walking through the facilities and visiting with staff and inmates gives a unique perspective on our prisons. NDCS plays an integral role in the criminal justice system. We have a mission to keep people safe and a duty to protect public safety. We carry out this duty not only making prisons safe, but also by creating environments within our facilities that help inmates transform their lives and become contributing members of society. The management and day-to-day operations of a prison system is difficult work. It's often the case that the challenges associated with running a prison dominate the social commentary and public policy conversations about prisons. That has certainly been the case in Nebraska. There has also been a lot of progress. One of my biggest concerns is that if we focus solely on the challenges we send the wrong message to the more than 2,000 dedicated men and women who work at NDCS, and that impacts employee morale. We also send the wrong message to the inmate population, reinforcing the perception that nothing is working. I can assure you this is far from the truth. The men and women who work in our prisons are highly competent. The results of their diligent work over the past two and a half years speaks to their dedication. Yet, when they constantly hear people say that the agency isn't doing enough to address its problems or that NDCS isn't seeing results fast enough, what they hear is that they are not doing enough. In my biennial budget, I requested 96 positions to address needs identified in the 2015 protective services staffing analysis. My request was supported and requested by Governor Ricketts. The Legislature funded 29 of the requested 96 positions. Despite this, I continue to focus on solutions in order to obtain tangible results and positive outcomes. In 2015, NDCS identified five goals as part of a strategic plan to change the culture at NDCS and transform the agency. These goals focus on: one, a culture of reentry and rehabilitation; two, collaborative community relationships; three, one team--one vision; four,

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transforming corrections; and five, transparency and accountability. Earlier this week, we released a report providing an update on our progress in accomplishing these goals. I have submitted the progress report as part of my testimony, but I want to highlight just a few of the major accomplishments. Staffing. Eight of our 10 facilities are successfully filling vacancies and retaining staff members. We still have work to do with turnover, I'm not going to try to sugarcoat any of this. But in 8 of our 10 facilities we don't have the challenges that we see at NSP and Tecumseh. The hiring bonuses for the Nebraska State Penitentiary and the Tecumseh State Correctional Institution should result in fewer vacancies at those facilities. The merit pay incentive at TSCI incentivizes being a part of the TSCI team and should decrease turnover at this facility, a facility that's struggled with staffing issues since it opened. Expansion of facility capacity. Last month, the agency opened a new 100-bed dormitory at the community corrections center...facility in Lincoln, which is geared at preparing inmates to return back into society, community transition. Our evidence-based practices. We put more of a focus on leveraging data to manage the prison population and to better deliver...pardon me, better deliver programming. We completed more than 7,000 STRONG-R risk/needs/responsivity assessments to determine where individuals should be housed and what programming will help them prepare for reentry. We implemented a cognitive behavioral program, Thinking for a Change, which targets criminal thinking. And we've increased our community relationships. Two exceptional examples being the Defy Ventures Program and our work with Prison Fellowship, more aptly their work with us. And then we've had adoption of process improvement and utilizing data to modernize operations and facilities. These are examples of the tangible results we are beginning to see from our state's investment of resources into corrections. These are also examples of the results we get when we prioritize culture change and employee morale. The agency has accomplished a tremendous amount of work over the past two and a half years. None of this could have been achieved without the men and women who staff our facilities 24 hours a day, 365 days a year, and who are committed to helping provide the individuals within our care the opportunity to change and lead better lives. NDCS will always face challenges and we must remain aware of them so that we can continue to grow. For example, when our recruiting and retention strategies at NSP and TSCI succeed, it will alleviate pressure on our work force, allowing our officers to better focus on their jobs, families, and personal well-being. We do not have the capacity to fix everything at once. We create sustainable change and then we move on to the next opportunity. Again, I thank the LR127 Committee for inviting me to testify. The letter I received inviting me to testify indicated

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that the committee might be interested in some specific data-focused issues and topics. I have submitted a data packet along with my testimony. Thank you for your time and I would be happy to try and answer any questions you may have. [LR127]

SENATOR EBKE: Okay. Senator Brewer. [LR127]

SENATOR BREWER: Thank you, Madam Chairman. Well, first off, my knowledge of prisons was somewhat limited when I took this job. We did help work a prison in Afghanistan, but obviously the individual we worked with and the prison itself was much different. So when I had a chance to come onto this committee, I did not probably appreciate what I was getting into. I have a new appreciation for your job. I felt like after we did the tour that even though we had a chance to hear a lot of what was happening within the prison that there was a personal obligation to try and see more of what happens inside there. That's why I volunteered to come out and speak when I was invited to, and it was a positive experience. Of course, they're not afraid to share some of their concerns with you when you go and do those things. And be careful what you ask for, because when you say "if there's anything you need, please let me know," they will do that. I have a stack of letters in my office. But they asked me to come back a few weeks ago to be a part of the Native American powwow that you allowed to have there. You allowed them to have the traditional items, and you even provided a traditional meal. I was shocked. I did not expect that. The thing that was surprising, even those that were there for life...which I got to tell you, if I was there for life it would be hard to have much of a morale, but they helped organize it. They helped to put it on and you were there that night. I thought that that was probably one of the finest events that you could possibly have inside of the limitations that you have there. On the 6th of November, I will be back to speak to your veterans. To tour the wing and to see the pride that they put into that facility kind of warms your heart that there is the potential to do great things, provided you have people that are willing to take on that responsibility. And there's some risk on your part too. We're going to hear a lot today. There are issues I think with programming, and I think there's probably some issues with moving folks while they're in the middle of programming and how that disrupts their lives. But the prisoners, who again they don't have to filter much with me because I'm that point they want to complain to if there's really terrible issues. Across the board the message was: it's getting better. Not where we want it to be, it's getting better. But I wanted to share that with you. [LR127]

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SCOTT FRAKES: Thank you. [LR127]

SENATOR EBKE: Is there questions right now? Senator Bolz. [LR127]

SENATOR BOLZ: Hi again. [LR127]

SCOTT FRAKES: Hello. [LR127]

SENATOR BOLZ: Nice to see you again. I have several questions, so I'll maybe ask a few and take a breath and finish up if other people have questions to ask as well. I guess I'll preface by saying I have been on this committee for several years and you are right, and it's important to say out loud, true progress has been made. And that is worth reiterating and reiterating from this side of the table as well as your side of the table. And one example of that that is not, you know, maybe not the headline news example, but that I was really pleased to see an update about is that I think the discharge review team that was one of the recommendations after our very first year seems to be working as it should. And so keeping some of the most potentially dangerous individuals on our radar screen, being as thoughtful and strategic as possible about working with those folks is really, really important. And your team deserves kudos for that, among a lot of other things. So wanted to highlight that example. I do have a couple of questions about things that continue to concern me. And, you know, I think it probably is an ongoing conversation between our two branches. I understand that you would have preferred to have the full staffing request, and that was not an easy decision on behalf of the Appropriations Committee. It was a difficult budget year. At the same time, one of the reasons that we hesitated was the challenges that we're seeing in staffing now, including a 25 percent overall turnover rate, as well as some of the challenges that we see in terms of hiring, an ability to fill current vacancies. So to turn that all into a question, I would be curious to know how much of those concerns you are communicating with the Governor. Because at the end of the day, I don't think these problems will be solved until we have a new contract that addresses longevity pay and some of the other major challenges in a long-term sort of vision rather than a short-term way. So to put that in the form of a question, are you having these conversations with the Governor, and are their conversations about ongoing negotiations with the union in order to address some of these long-term problems? [LR127]

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SCOTT FRAKES: I have frequent conversations with the Governor about all of the work that goes on within my department. And specific to contract negotiations, no, we haven't started that conversation again because it's not even been one year since we went into an early negotiations and came up with some agreements and initiated some pretty significant salary increases for the majority of my staff, but not all of my staff, unfortunately, but most of the represented staff. And so those went into effect November 29 of 2016, so it's a little early to begin another conversation about salary negotiations, other than continuing to look at the issue of performance-based, performance longevity pay, and what we might be able to do. And, you know, we had the opportunity to do something pretty bold and innovative with Tecumseh, and that will help in giving me some sense of is that effective. When it comes to salary issues, we know that it's a short-term motivator, unfortunately. It's an issue. I'm not going to take away from the fact that it's an issue. But there's already a loss of memory around the fact that in the case of correctional officers they've seen a...I'm trying to remember the math real quick, about a 7 percent raise in the last 15 months. From July of 2016 to July of 2017, their pay went up 7 percent. Correctional sergeants, their pay went up 9 percent. And yet, here we are just a few months past that and it's...I hear the comments, I talk to staff frequently, I see the survey results, and it's as though nothing has happened. In my mind, a 9 percent increase in a 12-month period is pretty significant. So and since you spoke to, you know, the other side issue of staffing, having the positions we need and then implementing the staffing analysis is a foundational piece to all of the work that we're attempting to do. What I found through the staffing analysis was we have a shortage of staff in all the facilities. A couple are pretty close, three of them actually are pretty close, but seven of them, from moderate to pretty significant numbers of what I would consider to be less than the optimal number of positions. That's what the staffing analysis told us. And typically what that translates to is it's not that we need more posts. We've got people at the front desk and we've got people on the control centers and we have people in the towers, but we don't have any kind of a relief factor. We don't have a vacation system that allows us to allow people to take the leave that they earn and do that in a way that doesn't have a negative impact on staffing. So one part of what the staffing model does is it actually creates an effective relief pool. Having that implemented fully is going to contribute significantly to staff morale, that's my belief, because that's one of the issues I hear so. And then the other piece of it is, as we talked about six or seven months ago, the ability to fill the positions. And while we continue to struggle with positions today at NSP and to a significantly greater degree at Tecumseh, the other facilities

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we've been fairly successful in filling positions. Yes, turnover is still our challenge. Turnover is typically lower at those facilities, which is part of what contributes too. They have fewer vacancies, a little easier to keep them full. But as a good example, I moved from what was given in the allocation, plus I moved some positions to OCC, and in the last three months...well, three and a half months now, 16 positions were newly established at OCC, Omaha Correction Center. They're all filled. So as I've said, we have facilities where we can fill and maintain staff. And that's part of the strategy is I will implement the staffing model at those locations where I know I can bring it to life. I will make those facilities even more healthy and then I'll work down and continue to narrow down to the remaining issues until we solve them all. [LR127]

SENATOR BOLZ: Well, I appreciate that, that work. And we may have different thoughts about the importance of the union contract. I think it's been reiterated during my time on the committee that the lack of the step pay increases is foundational, as well as some of the benefits issues that I think will only be resolved once and for all with an ongoing union contract that changes the quality of the job position, rather than more incrementally changing pay. And that is my perspective, it is your prerogative to share that or not share that. A question along the same lines: One of the concerns we heard, particularly in the Lincoln Community Corrections setting was that while...and forgive me if I don't get the terminology precisely correct, you can help me with that, but that while the protection and safety staffing analysis has been complete, a more universal or a more complete staffing analysis has not been done. And so everything from the records clerk to the janitorial staff to the person doing mental and behavioral health, that that more comprehensive staffing analysis is necessary in order to really pressure and improve job quality for everyone across the system. Do you have any plans to do a more complete staffing analysis? [LR127]

SCOTT FRAKES: At the point that we've made significant headway with the custody staffing analysis, then we begin to figure out what our next steps are in determining other staffing issues, as I believe I've testified to you before. While with custody staffing there's a long-established practice, the National Institute of Corrections teaches people how to do staffing analysis for custody. That same kind of tools and wisdom doesn't exist. And it varies--50 states, 50 different variations. So it would really be on us to do a needs assessment and then work back from that and determine other areas where we don't have adequate staff that we need. But at this point,

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until I make some real serious headway on the custody staffing analysis and filling those positions, it's work that doesn't bring me any value. I'm going to be another two bienniums in bringing the custody staffing analysis to life. Then today that's worth it...by then, there may be, you know, changes that require me to do it again. [LR127]

SENATOR BOLZ: Sure. I appreciate a comprehensive and data-driven approach to that kind of work. So I appreciate the process is important. I think what I heard at the Community Corrections Center particularly, and in other places as well, was that people on the ground could identify those pain points and that those needs could be identified even if it's in a less academic sort of way. And so I think that's a conversation that needs to be had because if we are continuing to see challenges with the protection and safety vacancies and turnovers, is another part of the solution looking for other staff members and additional staff roles that can address some of those needs? I've got a couple of other questions, but I'll take a breath and see if anyone else has. [LR127]

SENATOR EBKE: Senator Hilgers. [LR127]

SENATOR HILGERS: Thank you, Madam Chair. Thank you, Director Frakes, for being here today. I was wondering if you could just help me understand a little bit of the data points here on the data sheet that you provided. [LR127]

SCOTT FRAKES: Okay. [LR127]

SENATOR HILGERS: And on the first...I understand the various lines, but I wanted to see if my reading of this chart is correct. It appears that whenever we had...and by the way, the top line, or the top dotted line is the number of enrolled inmates. Is that correct? I'm on the front sheet. [LR127]

SCOTT FRAKES: Yes. [LR127]

SENATOR HILGERS: And it appears that whenever they're...additional crowding has occurred over time and I'm looking even back in 1987 when construction or operational capacity has

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remained flat. It appears that from '87 to '92 it remained flat, and that gap widened, and we built some more capacity. And you see it again in '97 and so on and so forth. Is that an accurate understanding of sort of the history of this? [LR127]

SCOTT FRAKES: There is a connection, definitely. [LR127]

SENATOR HILGERS: And if you look at 2017, we are increasing our capacity, you mentioned about the 100-bed facility in Lincoln here. But we're trying to address at least the crowding issues, not so much through capacity, but more so through some of the reentry and the other programming that we're doing. Is that a fair characterization or how would you characterize that? [LR127]

SCOTT FRAKES: I think it is definitely a combination. It's some new beds, which right now we have...we just finished 100, we have another 160 under construction. We have another 62, if I remember correctly, that are just in design phase. So that's a piece of it. Then it's also continuing to bring to life all of the work that comes from LB605 justice reinvestment work that hasn't happened nearly as quickly as it was predicted. But numbers are down, numbers still continue to trend down. It's just a very minute downward. But I also talk about where would we be if we had not done that work in terms of the population today, because when I arrived we were at about 5,430 if I remember correctly. This morning we were just right at 5,300, so about 140 or so less inmates. And we are looking at the postrelease supervision numbers, watching that trend line continue to go up; watching the parole release numbers continue to stay at about the same level, which is actually positive because the number of people eligible for parole is going down slightly because many of them are receiving postrelease supervision instead of parole options. Revocation numbers staying about the same. So it's we're at a point now where we really do need to do further analysis to see where do we believe we're going to be a year from now, two years from now. And then in terms of the building component, it's making sure that we build beds we can use. So we build community custody beds if we believe there's a need for additional beds, and we're making sure that we don't build beds we don't have inmates to fill. [LR127]

SENATOR HILGERS: I appreciate that very much. So when we were on our tours, we felt that a lot of the postrelease supervision reforms were taking hold and there's a lot of good work being

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done. But that's sort of at the ground level. How would you describe, and I heard you touch on it with the LB605 reforms. They've been a little...not quite what we might have expected before. How would you describe at a big picture level the degree to which those reforms are taking hold compared to what your expectations might be over the next couple of years? [LR127]

SCOTT FRAKES: Slower than hoped, but we are at a place where we've got really solid foundations across the boards in my agency. I think parole's got a solid foundation and parole administration has and already had some really great structure that they're improving and building on. We're improving or building our structure in a number of places. And on the probation side of the house, postrelease supervision work, I think had the best situation in terms of being already in a very robust, ready to take it on and just, you know, continue to do the good work they were already doing. So I'm still optimistic that we're going to see some of the results that were predicted early on. I have not stepped away from that yet. I don't know that we'll get to the 4,500 number that was predicted, but I still feel like we're going to see better numbers. [LR127]

SENATOR HILGERS: One other question and I might kick it back to Senator Bolz if she's caught her breath. On slide 4, I think, I just...it has the prison and jail and probation bar graph. Can you just describe for the committee sort of the importance and implications of the data that we're seeing? [LR127]

SCOTT FRAKES: Well, there are on the two extreme sides we see that prison numbers are down and we see that people on probation, either going directly to probation or receiving postrelease supervision, numbers are significantly up--alternatives to incarceration. That's to me a very important part of the solution, both for our challenges here and across America. Making sure that the people we put in prison beds present the level of risk to the community that warrants a prison sentence. I recognize the punishment component, but more importantly do they present a risk that requires that level of incarceration? In the middle we've got increase in jail numbers. And I certainly understand some of the concerns that have been expressed by some of the different counties. We knew though that that was going to be a component of this process. And what I don't have a good sense of today is what's the length of stay and how is it, you know, overall in

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their average daily population or what is it translating to. But what it does show is a measurable increase in the number of people ending up in jails for some period of time. [LR127]

SENATOR HILGERS: Okay, thank you. [LR127]

SENATOR EBKE: Senator Bolz. [LR127]

SENATOR BOLZ: I have just a couple more questions. One is purely informational, I'm just wanting an update. We changed the county jail program to try to move away from that, eliminated the funding. But consistently over 2017 we've had 87 folks, according to the data, in the county jails. I'm just curious is that...are we just waiting for those folks' sentences to roll out and no new people will be moved? I'm just trying to understand where we're at with that program. [LR127]

SCOTT FRAKES: Well, the funding was over the last biennium, but it was allowed to carry over. I wanted to be very judicious in the use of that money, both in terms of trying to keep a manageable number of people in those beds and we had a goal of trying to keep people out there for no more than 90 days. We didn't always meet that goal, but we're doing a fairly good job of it. Trying to make sure that we were using it as it was intended: a temporary space. So as we ended up at the end of the year I had...I can't, I mean, I can try to pull the number off the top of my head, but I knew I had enough funding to run about 100 beds or 100 men in beds for six months, six to seven months. We have run at that average daily number of about 85, and so I might have enough money to last me until February. So my goal is to utilize those beds as long as I need them to provide that extra space within the system and some breathing room. It's part of how we're keeping the numbers down at D&E and then continuing to work on. We've added 100 beds. It takes about three months usually to fully fill and move things around when you add new beds to the system. So by the time we have fully filled the beds that we've added here in September, continuing to look each day to watch, to see for that trending downward number. I want to...I firmly still believe we're going to see the downward numbers. And I like to think when we stop having any...we always have the potential to have one or two people in a jail bed because WEC is one of the examples of when we temporarily move someone in jail bed. But the use of these funds and the use of this program, by the time we eliminate it completely, we'll be in

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a good place to manage within the existing prison bed space. But that was it, it was making sure I used the money correctly, but using it in a way that made the most sense to meet the needs of the department and (inaudible) house. [LR127]

SENATOR BOLZ: I appreciate that, and I hope we'll see that turning point where the community beds will mean that we can draw the number down for the jail beds. At the same time, and you don't have to have a thought about this issue now, but at the same time, if those jail beds are providing a useful relief valve, while there are pros and cons to that jail program, if that's providing, you know, a little bit more breathing room in the correctional system and the numbers are showing us that it's being used consistently--because I've seen 87 all year--maybe that's a conversation we need to revisit about whether or not that's a program that needs to be continued. My last question is I know that you have parameters around your ability to discuss things as it's related to the ACLU lawsuit, but one of the things that struck me in the ACLU lawsuit was some of the concerns around compliance with the Americans With Disabilities Act. And I wondered if there were any strategies that you were using in particular or any changes that are being made now to try to address some of the concerns around individuals with disabilities; if you are able to comment. [LR127]

SCOTT FRAKES: Very briefly. We have a full-time ADA coordinator on staff. We have been and continue to work hard to make sure that we fully meet the requirements--looking for a better word than requirements because I believe strongly in the Americans With Disabilities Act. So to make sure that we meet the requirements of the act, that person is available to address staff and offender inmate needs. [LR127]

SENATOR BOLZ: Do you...maybe that's a conversation we can have off the microphone about whether or not there's additional training or capacity that is necessary around ADA issues. Some of my professional experience, because of the other work that I do, tells me that sometimes it is not about a lack of resources or a lack of even willingness to provide what is necessary to comply with the ADA, but rather a lack of understanding of how to implement the expectations in the ADA. And maybe there's an opportunity for us to discuss that further. I'm done, thank you. [LR127]

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SENATOR EBKE: Senator Wayne, did you have a question? [LR127]

SENATOR WAYNE: Thank you for being here today. I guess I'm going to ask a question which I don't think most of the time you come to the Legislature and you might hear. What do you need from the Legislature to be successful? And I'm not saying you're not successful now; but when I look at your strategic plan, what do you need from the Legislature to reach all those goals? [LR127]

SCOTT FRAKES: I need you to keep doing exactly what you're doing, because despite the stress and the frustration and all the other things that come with oversight, my agency has I'm going to say as much, if not more, oversight than any other corrections agency in the country except those that are under direct from the DOJ mandate. The value of that is the tension creates motivation, creates movement, and keeps me...I would say at the top of my game, but that sounds kind of like I'm bragging. So it gets me as close to being as good as I can be. But I appreciate that. So that's a piece of it. I'm not asking necessarily bring on another oversight committee, but having you out in the facilities that's invaluable, both in terms of what it shows in support for my staff and for the population, and they're both important to me. I know you've heard some staff believe that I care more about the inmate population than I do about them, and then when I meet with inmate groups they tell me how it's all about the staff and I don't care about them. I care about all of us together, because we are definitely in this together and having you engaged in a way that I'm truthfully not used to. I occasionally would have an elected official visit one of my facilities, but it was pretty rare. And in my time in Washington State, I had two experiences where the governor came to a facility over 32 years. Now I don't know, early in my career I wouldn't have known. But in my later career, it was very rare. So the Governor comes frequently, the Lieutenant Governor comes frequently, many members of the Legislature come to the facilities. Invaluable. I need for you to, if you're not sure about what I'm asking for, and if we got the opportunity to engage and talk through it some more, that's pretty valuable. But I understand that we get into the end of the session and the budget time frames, everything gets crunched. And I understand all that, how all of that works, but that's part of what would be beneficial for me. If there's not clarity around what it is I'm asking for, give me an opportunity to try and explain it. A lot of this stuff, it's hardwired into me. So sometimes I can talk about it fairly quickly, like the staffing analysis is a great example, and then realize that what I'm saying doesn't make any sense

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to the person across the table. So having those opportunities to provide more in-depth understanding--critical. And then trust that when I come forward with a budget request it's legitimate, it's thoughtful, it's supportable, and it's what I believe I can use within the biennium to achieve the outcomes we're looking for. I've talked about it, I talk...very briefly I mentioned the word capacity in my testimony. That's really a big issue for our department. Our capacity to respond to change, our capacity to take on new initiatives is growing. When I first arrived, and especially after the events that happened just some days after I got here in Tecumseh, we had very little capacity. You know, our agency had been stretched almost to the breaking point. We've come back. We know. NSP, yes, we've got issues that we got to address. Tecumseh, we know we got issues that we got to address. Every prison has some degree of issues because of who we house and who we deal with. But our capacity today to take on new initiatives, to take on the construction projects, to utilize the funding that I request, I believe we're in a significantly better place today than we were two and a half years ago. And a year from now, we're going to be in an even better place. So when I go in for my next biennial budget request, I'm going to be asking for the things that I believe the agency needs to move forward to do the work we need to do, to make sure staff are taken care of, to continue to address staff's concerns and the issues related to staff safety, and to do the critical work that is really why we exist: providing opportunities for people to change, to leave this system, to find success in the community, and not come back. [LR127]

SENATOR WAYNE: Okay. So the first and the third contradict each other. Not trying to be confrontational, but you said: keep doing what we're doing, but if we don't give you all the money we need you to trust that we need the money. But we can work through that. That's the fun part of us doing the second thing, which is communicating. The reason I say that is because out of the 96 positions you requested, how many of them would have addressed the issue of the VRP program being located in every institution that we have? [LR127]

SCOTT FRAKES: I have no plans to put the VRP program in every institution that we have. And what it would have addressed is the ability to better facilitate program access and for the program to be able to operate consistently day in and day out without the many interruptions that it's suffered because of some of the challenges we've had. But I...pardon me. Excuse me. I shouldn't drink, but then I get the dry mouth. I shouldn't drink water. [LR127]

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SENATOR EBKE: Put that on the record. [LR127]

SCOTT FRAKES: We just significantly expanded VRP over the last year, so now we need to get that to a place of where we're fully utilizing the resources we've dedicated to it. It's a very expensive program, very resource-intensive, but really critical, important work addressing high-end violent behavior. So at the point where I believe that we're getting the full value of what we have committed to that program at this point, then we can have the conversation about should we expand. We're not even close to that today. [LR127]

SENATOR WAYNE: So at this point you don't believe the VRP program needs to be expanded? [LR127]

SCOTT FRAKES: Well, I don't know yet, because I don't know yet what the true needs are. And that's part of what our changes, both with our risk/needs/responsivity tool and with changing our practice. Our practice when I arrived at the clinical assessments, specifically around violence and sex offender treatment, was to do those assessments at somewhere around their parole eligibility date, which then would tell us whether or not they needed...it was a practice. Which would tell us whether or not we needed it, the inmate needed it, prior to their maximum, you know, release date. And then the goal was to try to get them in. So one of the things we've worked hard to do, we're not yet at 100 percent success, but we're on the right path, is clinical assessments within 90 days of arrival in the system. So that doesn't mean that they won't need another assessment if they're doing a whole lot of time, because we know that with clinical programming, especially residential clinical programming, you need to try and gauge that enrollment and try to line it up with potential release. So that's the other part of the goal. Do an assessment, get them on a waiting list, get them in with enough time to complete prior their PED. So that then when they stand before the Parole Board they've had the critical needs addressed, and ideally they're ready for parole. [LR127]

SENATOR WAYNE: So because my understanding from our tours and everything is that as you move up steps in custody and you're getting closer to your parole date, one of the minimum security facilities is Omaha. [LR127]

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SCOTT FRAKES: Medium and minimum, yes. [LR127]

SENATOR WAYNE: Medium and minimum. But VRP is not there, so then they have to go back to a Tecumseh or NSP, right? So we're moving them up to send them back to take a program? [LR127]

SCOTT FRAKES: Yeah, there was a disconnect in what we were doing, so we're looking at that. And the right, in our current situation, the right answer would be you would complete the program before you move to OCC if there's a need. [LR127]

SENATOR WAYNE: And is this a staffing...I guess what I'm trying to figure out is how...and you said we don't know if we need it, but we know that there's a waiting list for the VRP. So then clearly there's a need for it. And my question is what can we help you with to solve that need? If the 96 you requested and we only gave 24, if none of those necessarily were going to solve that issue, then are you saying you don't need any more resources to solve that need and that being a critical need because that is determined of whether somebody gets a parole hearing? [LR127]

SCOTT FRAKES: Not today. But at the point that I determine that there is a need, if in fact I determine there is a need, and I bring that to you, then I need for you to trust me that I have done my due diligence and I will be able to answer questions and support why the need is there. [LR127]

SENATOR WAYNE: So then it's your, I wouldn't say testimony because you're not under oath, but so it's your...I don't know what else to call it but testimony, that come April I'm not going to get letters saying: I had a parole hearing for April and I haven't met the VRP program? That all of those people will be able to complete that program before their parole hearing? [LR127]

SCOTT FRAKES: I'm not going to promise you that by this coming April. [LR127]

SENATOR WAYNE: Then there's a disconnect between what you're telling me as far as need and you can handle it versus what is actually going to happen. [LR127]

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SCOTT FRAKES: We're still working to get the full value of the currently committed resources in terms of the changes that were made to the program and how it's delivered, getting all of those cohorts fully up to speed, making sure that we do our very best to not interrupt that programming that is within our control. And then so often, Senator Wayne, if you bring me a specific case I will peel it back and I will find that, oh, well, the assessment was done in 2011 or 2012 and the person was offered an opportunity at some point and declined. Maybe even offered a second opportunity and declined. And now suddenly they realize I have a parole eligibility date, they won't let me go if I don't complete this, and it becomes an urgent need. It's not always the case, but that is...I do frequently find that. We are working towards both getting our risk/needs assessment done. We're down, I think we're at about the 35 days is the average now for people coming in to get their risk/needs/responsivity assessment done. That's just the general assessment we do for everyone. Those that need clinical assessment, I can't give you a percentage off the top of my head. The majority now are receiving that assessment in less than 90 days. The goal is everybody will get an assessment in 90 days. With the people that assess for high violence and need, and are clinically assessed to need violence reduction program, invariably they're doing a lot of time. So while I realize they would be on a waiting list, then we circle back around to...now in an ideal world, we would try to address all of those issues early in their sentence to see if that doesn't have some impact on their behavior during their lengthy sentence. But the research and the clinical opinions would say they would need to do the program again prior to release, because to get the full value and effectiveness of it you need to do it as close to transition as possible. And then ideally you've got some kind of after-care in the community that you can tie to it. [LR127]

SENATOR WAYNE: The violence prevention program as close to release as possible? [LR127]

SCOTT FRAKES: Any clinical treatment. [LR127]

SENATOR WAYNE: But if they need that program to help with decision making on violence, then wouldn't that make for a better inmate environment if they had those same skills as they were in there? [LR127]

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SCOTT FRAKES: It potentially would. And so someday we may be in a place where we have the capacity and we have developed all the pieces that we need to allow that to happen. But right now, if I don't address...if I don't put all of my focus specific to VRP, as an example, on those that are nearing release, then I'm missing the really important opportunities and the really important need. So fix that piece first, we get it that robust, we get our cognitive behavioral intervention programming robust, all the rest of our clinical treatment programming, then we can start to have the conversation about what more can we do with people as they enter the system. I do see that someday. Whether or not that's in my day is a question, but that's kind of a long-term vision for many of us that are in this business today of using evidence-based practices to change how we do business. [LR127]

SENATOR WAYNE: Just so I'm clear, I mean, there are lots of reports and data and you're not suggesting that if you would have had the 96 jobs all those issues would have went away? [LR127]

SCOTT FRAKES: Nope, but we'd be farther down the path. [LR127]

SENATOR WAYNE: So give me a milestone of what farther down the path looks like for...so this next session, I'm sitting in session and I'm getting a call. What is going to be some tangible, objective things that I can say, no, we've done X, Y, and Z? [LR127]

SCOTT FRAKES: Okay. We would have positions filled in facilities that would now be properly staffed to ensure that those custody positions not only are filled, posts are filled, but those people that work those posts have someone to relieve them so that they can go to training, so that when they call in sick it doesn't generate as much overtime--always a little, and they can ask for a vacation and actually get some time off because there are relief staff and a relief factor built in to address that--huge piece in terms of healthiness, for an environment for staff in a prison setting. We would have our protective services staff doing the work that we now ask caseworkers and case managers to do. It would then free up those people, caseworkers are intended to be a combination of the protective services custody world and the case management world, so they're kind of a half and half. But the way that we use them today, they're unit officers in almost all of our facilities, that's what they do. And unfortunately, because of vacancies in two big facilities in

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particular, and because there's no relief factors in our other facilities, the case managers invariably end up working the floor doing the day to day routine jobs and they are not able to do the case management work. Not only will they be freed up to do what I want them to do in terms of classifying inmates and keeping them moving through the system, getting them on wait lists, answering their questions, motivating them to be engaged in reentry work as part of that team of how we do that, but also they're resources that can facilitate programming--cognitive behavioral programming. So that's another critical piece. We are only in the second quarter of this biennium. No, we're not. I'm getting my bienniums mixed up. Is that right? Okay, yes, that's right. So had it been funded exactly as I requested, I would have deployed 24 of those positions so far. So we'd just be moving down the path of addressing it. But I would have at least a couple, maybe three, facilities that were fully staffed under the staffing analysis, and they would become the models of where we want to take all the facilities. [LR127]

SENATOR WAYNE: But in fairness, those facilities currently have vacancies, right? [LR127]

SCOTT FRAKES: Every facility has some vacancies. The only time I've ever been in a prison where I didn't have any vacancies for more than a day or two was in 2009 when the economy went flat. [LR127]

SENATOR WAYNE: So just to say that if you would have got the 96 you would have had them is not necessarily completely an answer, because at the end of the day you still have vacancies here. [LR127]

SCOTT FRAKES: But we always will, yeah. [LR127]

SENATOR WAYNE: Okay. But I'm just, for the record, I don't want people to think that the 96 would have solved everything when really the reality is it wouldn't have. [LR127]

SCOTT FRAKES: It's foundational. [LR127]

SENATOR WAYNE: I have more questions, but I'll wait to the end. [LR127]

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SENATOR EBKE: Okay. Senator Bolz. [LR127]

SENATOR BOLZ: Your agency budget request for the next, the upcoming session, is due the 27th. Do you have additional staffing requests in that agency budget request? [LR127]

SCOTT FRAKES: Still working on that budget request; and as soon as it's finalized, then it will be out for public review. [LR127]

SENATOR EBKE: Okay. I'm going to jump in for just a second here. Since we talked a little bit about assessments with Senator Wayne, do you suppose you could give us the Cliff's Notes version, just for the record you've done this a million times before, but the Cliff's Notes version of the STRONG-R? And then talk a little bit about how successful that's been at being deployed. How many current inmates have actually been through that? [LR127]

SCOTT FRAKES: The STRONG-R is one of many risk/needs/responsivity tools. It has the advantage of being tailored to the states that implement it to a greater degree than some others, but every tool has advantages and disadvantages. The roll-out in many ways has been everything that I expected it to be, that includes the bumpy parts of it. I've had my own frustrations at times in terms of quality control. That's why we decided to really focus on quality assurance and fidelity at this point, as it doesn't do us any good to continue down the path of doing assessments that aren't accurate. We've done 7,000 assessments, but we're at the point now where we're doing second, or you know, reassessments on people if they're on a six-month rotation and they're nearing release. Plus, we have a significant number of people that come in and go out in less than 12 months. So we still have probably 1,200 long-term inmates I would call them that we still need to assess, and we will start focusing harder on those in the coming year. But for right now, I wanted to stay...we have reached a point where everyone that was three years or less for parole eligibility date has a current STRONG-R. That's needed for their parole guidelines and it's needed for the work we need to do, and it's consistent with this idea of making sure that we get people into the programming they need prior to parole eligibility, but not so far away from parole eligibility that the value of it may be lost. So trying to use that three-year window is pretty good. But ultimately, we need to do an assessment on every person. Because if nothing else, that's what we'll use for our overall agency/needs assessment in determining really what resources do we

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need to do and plan for to ensure that we're doing this work as well as we can. There's another piece that's not too far from roll-out...I'm not going to...I don't want to jinx myself. We're very close though to integrating the STRONG-R tool into the NICaMS system, and that's really going to be a game changer in my mind. We just recently did that with the classification tool. When you have standalone tools that require staff to enter all the same information repeatedly, it leads to errors, it leads to frustration, it leads to people not doing it as well as you want for them to do. And we have it tied into a system so that much of the information can be scraped out of NICaMS as an example. Makes the tool easier to use, it makes it more accurate. And I think it will definitely help with staff engagement. The last part of that is when we began that process I had no thought that I would be at a place where I was still struggling to free up case managers to do the case management work they need to do. So I have asked far too much of every staff member that works for this department. And to single anybody out doesn't seem fair, but the case managers, as a team of about 75 people, have done some incredible work around STRONG-R, parole guidelines, the new classification tool. Now here at the first of the year we will finally in 2018 have the first ever case management academy for our staff. And that's kind of the last piece of creating a real case management system for Nebraska Corrections. [LR127]

SENATOR EBKE: Okay, so we have the STRONG-R assessments and everybody who is coming into the system now is getting those in a timely manner? [LR127]

SCOTT FRAKES: Thirty-five days on average. [LR127]

SENATOR EBKE: Okay. And how does...how are the assessments being used to determine placement, for one thing, and then programming? And how does that tie in to...obviously programming probably differs depending on parole eligibility date. But how does your staff factor all of those things in? I mean, the thing that, you know, and Senator Wayne made reference to this, the thing that we hear the most in my office from inmates is that, you know, they're three months away from parole eligibility and they haven't been able to get this program so that they can move on to community corrections. Or they, you know, they've never been able to get this whatever. [LR127]

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SCOTT FRAKES: Right. Well, based on some of the dynamics that I shared earlier in terms of waiting well into sentences to do assessments; not having the kind of weightless management system that we are still trying to develop and what I know how it should work; not depending so much on the inmates to drive their engagement in programming but giving staff, case management staff in particular, much more directive. So those are important pieces of it. We've got a backlog to clean up, so I'm sorry, but you're still probably going to get those kind of calls. And anytime that you let me know I'll run it down. And if it's because we waited too long to do the assessment, it's because we for some reason moved them when there really wasn't a good reason to move them, or whatever the issue might be, we'll do our best intervention to figure it out. But if it also turns out the assessment was done, the opportunities were offered, then there has to be a little bit of pushback. And where we have to get much better is engagement of the population. It's as they walk off the county van and walk into D&E or into the women's facility for intake, somebody is standing there saying: welcome to prison, I'm sorry you're here, but you are here. Your sentence is this long, what do you think you're going to do to get the most value of that time with us? And then let's talk about what that might look like. So we've got some of that structure in place today to do that. We just need to get a lot better and not allow...we've had kind of a passive system and we need to move to a more directed system in terms of we're going to talk, sit down. [LR127]

SENATOR EBKE: One more question, sort of related but not entirely. As you know, yesterday we had a joint briefing for the LR127 Committee and the Judiciary Committee. And we talked about the vocational life skills programs and the grant...we had, I don't know, 15 groups I think come in and tell us what they were doing. How can or how is the assessment system STRONG-R being used to put the right people in the right programs, and can we do better? I guess that's a multiple-part question. And then the other question I have is, is there a need or a possibility of kind of a relief valve through the use of more community corrections? Is that something that the Legislature should contemplate? [LR127]

SCOTT FRAKES: Right. So the risk/needs/responsivity, it often gets confused by a lot of folks, including people in corrections. It's very specific, talking about risk to reoffend. It doesn't measure their risk of how they're going to behave in prison, it's the risk to reoffend. If you go back to Professor Ed Latessa, he talks about the value of risk/needs assessment is you identify

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those that have high risk, moderate risk to reoffend. You identify the right interventions, you deliver those prior to release, the evidence says it will statistically reduce recidivism by a certain amount. And if they have a low risk to reoffend, you don't invest in clinical programming or, you know, typically not cognitive/behavioral interventions. Although, maybe moral reconnection therapy probably across the board, which is kind of...I call that intro to CBI. But you don't invest the dollars into those low risk to reoffend because they're probably not coming back. And in some cases, you can actually cause more problems than good by doing that. So that's what the tool is for: risk to reoffend, what are the needs that will reduce that risk, meet the needs, and ideally better chance they leave and don't come back. You connect that then to the classification tool, because that's really how we decide where people can be housed safely within our prison system. There's some linkages, but there's not just a direct cause and effect between the two different tools. So we don't use the risk/needs/responsivity tool to figure out which prison to put people in, we use our classification tool. That is geared more towards identifying their behavior and potential for risky behavior while incarcerated. So then in that perfect world you would be able to figure out the risk to reoffend, the needs to address, the right classification level to put them at, and you would have all the resources available at any given facility. Well, someday, when our system gets as good as it can be, that could work. But today if we did that, we would have empty or partially-filled classrooms, we'd have facilitators waiting around for the next group to come in, we'd have resources not being utilized in the way we need to. And to me, that's equally important. We need to make sure that we don't waste money and resources. The last part of it was your question was about community. Okay. So you, me, the Governor, the state of Nebraska has made a very substantial commitment to community corrections. We just added 100 beds, we've got 160 beds under construction. So that's a lot of community custody beds. When those are done, we will have a total of over 700, I can't remember, it's probably closer to 800, community custody beds out of a population today of about 5,300 inmates. I came out of Washington State, where there was about, I want to say about maybe 1,100 community custody beds maybe, I think that's high, for 16,000 inmates. So in terms of being resourced for community custody, we're in extremely good shape. And mathematically we look at, you know, typically about how many people fall in that community custody range by classification. We're lined up pretty well between how many inmates we believe we can safely house in community custody and how many beds we will have and will have available. And as we continue to get better at our work and things that we're doing, I see that number growing. I do see that as one of

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the positive outcomes of using evidence-based practices. Because even though I'm not ready to advocate that we should be doing clinical treatment the month after they arrive and then again the same treatment again before they leave, I am certainly advocating that we can't just have them twiddling their thumbs for four or five years, or two or three years. And that's where things like Defy Ventures, prison fellowship work, all of the other volunteer program activities that they have going on, those pro-social activities...we have lots of good ways to keep people engaged and thinking about life differently than they have and having them ready at the right time. [LR127]

SENATOR EBKE: Okay. Senator Hilgers. [LR127]

SENATOR HILGERS: Thank you, Madam Chair. Just two questions, I know you've been there for awhile. [LR127]

SENATOR EBKE: Oh, he's used to it. [LR127]

SENATOR HILGERS: No, the first question is, and again, we were seeing things at the ground level. Sometimes, you know, the anecdote of data...the plural of anecdote is not data. So what we saw were anecdotes, and I want to get your big picture data perspective. One of the things we heard was, I think pretty consistently, that there was a desire for more programming. And the reason, or at least the perceived bottleneck to that more programming, were two different answers. And I heard maybe you touch on one or both, and I kind of want to get your sense of what the bottleneck is worth. One was resources of course, but the other one was just physical capacity. So I wanted to maybe hear from you what is the biggest, is it some combination of those two? Is it some third thing? What's...or are we not quite at the point where we can run with all the programming that we would like to run with? Can you just speak on that? [LR127]

SCOTT FRAKES: Sure. It's everything you just said. You can have a large, beautiful programming building with all kinds of space in it; but if you don't have people to facilitate, then it sits there empty. You can have a large, beautiful programming space and people to facilitate; but if you don't have the protective services or the custody staff to provide the security presence, then you can't safely run the programs. So you need all of those pieces together. Today we have

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some capacity issues, space issues--several facilities worse than others. But I'm also encouraging all of my wardens to really step back and kind of think outside of the box. Cliché. But are they looking at all the available spaces they have? And then the other piece is, and this is...I've been dealing with this for 25 years at least, there's a natural push to deliver programming from 8 to 5 Monday through Friday. That's kind of when facilitating people kind of like to work, but the fact is, is that that space is there seven days a week and it's accessible about 12 hours a day. So if you figure out how to make the best use of your space, you would be surprised sometimes at just how much capacity you really do have. Plus, we have visiting rooms, dining halls can be used during down times as gathering places for activities. So there's...I want to make sure we fully utilize everything we have before we get in too much of a panic about there's just no space. But circling back around, the key to all of this is having the security oversight that allows you to open an area up. And unfortunately, when we are struggling to fill positions, we're going to fill the most key security positions first and work our way towards. And sometimes what it means is that the library doesn't get open for an afternoon or the gymnasium doesn't get open for, you know, a morning session or whatever it might be. And that's because we don't have the staff to fill those positions. Part of that definitely in our two high-security facilities is simply the vacancies they have. That's not about the staffing analysis today. But in other locations, where the staffing analysis...and LCC is a great example, because I know I've taken...I've had a lot of questions directed from my staff to me about my comment. It's absolutely true. We fill all the vacancies in August, probably for two days; and then people transfer, people promote. And when there's new vacancies, you fill them and you keep going. But of all of the facilities of the 10 facilities, LCC has the most new positions that need to be established under that staffing analysis. If I gave them...if I was able to give them half the positions that they requested and do that in a way, maybe it's four a quarter, so that they're able to fill them and implement them, they would be able to supervise more volunteer programs, they would be able to expand other program opportunities, and they would be able to...that's a good facility. It could be...actually, it's a great facility. They're doing really good work in the mental health field and some of the other clinical programming. So we could take it to another level though. [LR127]

SENATOR HILGERS: Awesome. Just one more question for me at least. I was struck in your comments, your opening remarks, about how some of your staff, maybe many of your staff, felt that the criticisms of corrections were criticisms of their work personally. And I think I certainly

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observed some of that when I was going from facility to facility. And I think I speak for my fellow committee members when we would say that the people we met at your facilities are really incredible. And when we asked the question, why are you here, they uniformly said almost I think: one, was the mission of what they were trying to accomplish; but two, I was really struck by this, you don't hear this very often, was we really love the people we work with and the team that we have. And so we certainly understand, I think they're sensitive to that corrections has been brought up, you know, in an oversight capacity where we're trying to find things that are not working the way they should and try to improve them. And maybe that sometimes has a negative connotation. While you're here in a public hearing before this committee, is there anything on behalf of your team that you would like to focus on or say or maybe focus on some of the positive things that your team has done over the last couple of years? [LR127]

SCOTT FRAKES: I think the report does a great job of capturing what occurred last year, and that only happened because of all of the foundational work that occurred the year before. And some of the work in this report will feed even better work in this next coming year, and we're going to continue to build on it. You know, I'm incredibly proud of my staff. I feel their pain. This is...I'm in my 36th year now of doing this work and I have experienced, I wouldn't say all, but much of what they talk about. I have 29 years working in prisons, so I do get it, and I can understand the perception that I'm now too far away from the work to really know what it's like. But I do spend a fair amount of time at the facilities, not nearly as much as I would like to. But I do make it a point to get out, talk to staff. There is a lot of things left to build on, certainly the compensation issues remain one of those significant conversation points. But despite all of that and despite some pretty serious...some very serious events that have occurred, as well as a lot of smaller and unfortunately almost kind of day-to-day prison incidents that happen, we have continued to march forward and make significant progress. And that's all about the staff. Every single staff member within my agency can take pride in that and ownership in that. It's more about it's me trying to get out of their way so that they can do the good work that they do. [LR127]

SENATOR EBKE: Senator Wayne. [LR127]

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SENATOR WAYNE: I'll be brief. Just because the VRP is important to me, how many people are currently on the waiting list for the VRP? [LR127]

SCOTT FRAKES: I'll get back to you on that, but I don't know on the waiting list. [LR127]

SENATOR WAYNE: And the only reason why I keep harping on this is because the Legislature passed a statute saying that we're going to provide--83-1,110.01--that we'll provide therapy prior to the eligibility date. And I just want to make sure that we're complying with the law because I continue to hear that we're not. So walk me through a person applies for parole...how long is the waiting list from parole until when somebody jams out typically? I know they vary, but do we know typically? Like if somebody has a tentative parole date how long that would be different versus their jam date? I know it varies, but do we know the average? [LR127]

SCOTT FRAKES: I don't know an average. [LR127]

SENATOR WAYNE: The average of people sitting currently on parole? [LR127]

SCOTT FRAKES: No, I don't know. [LR127]

SENATOR WAYNE: What happens if somebody doesn't get the VRP and they jam out? [LR127]

SCOTT FRAKES: Well, I can't hold them past their maximum sentence date so. [LR127]

SENATOR WAYNE: And how many people have that been, or how many people is scheduled to project to jam out without getting their VRP? [LR127]

SCOTT FRAKES: That's something that I'll run some numbers and we'll get back to you with those. And I'll also provide some context around it as well. [LR127]

SENATOR WAYNE: Okay. And the 96 people, I think you answered this maybe when I stepped out of the room, the 96 people you requested those were for custody, nothing to do with the core programming? [LR127]

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SCOTT FRAKES: Only in terms of facilitating everything that's needed so the core programming can happen within the custody positions. [LR127]

SENATOR WAYNE: And are we saying that, because you said OCC is full, so I want to concentrate on OCC because they don't have VRP there. [LR127]

SCOTT FRAKES: Right. [LR127]

SENATOR WAYNE: If OCC is full, why would we need more custody people to allow that program to be implemented there? [LR127]

SCOTT FRAKES: Well, it's filled under the current allocation, but in the case of OCC I believe they in the staffing audit said they really needed 20...it's more than 20 positions. About 25 I think it was. And that then circles back around to some new posts. But equally important is having positions available to provide the relief factor that's needed so that staff can...because with a post, almost all of our posts are mandatory posts. A great example is a tower. Our towers on the wall at the Nebraska State Penitentiary, most of them, not all of them, most of them are staffed 24 hours a day, 7 days a week. You have to have someone in there to keep part of the perimeter security system. Old school, but that's what it is. So every day, every hour of the day, someone has to be there. So someone says that's my bid post and I'm on first shift, then they're in there from 6 am to 2 pm, let's say it's Monday through Friday. Then someone else comes in and works those same hours on Saturday and Sunday. And at some point those people call in sick, they need training, they deserve vacation, they earn leave. So now someone else has got to fill it. A piece, the big...one of the weaknesses in our current system is, is that we don't have a dedicated relief factor that would provide to say your job is to relieve people when they go on vacation. And in a large facility, you actually do have dedicated people, that's what they do. And every day they go to...or every week maybe they're somewhere different or every day sometimes. So probably getting off course from what your question was, but you know, I'm going to stop because I think I'm losing what you asked. [LR127]

SENATOR EBKE: Let me just ask a question maybe to clarify. Is one of the problems with the staffing what we heard I think in Tecumseh when we talked to staff that because of the shortage

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of corrections officers, the security staff or protective staff, that what ends up happening is, you know, you have these posts that are being manned, if you will, by the corrections officers; but then there are sort of the collateral posts that are typically manned by the corrections officers that are ending up being manned by the case managers? That was what they were telling us anyhow. And that because of that, you know, case managers were getting frustrated because they weren't doing case management work, but rather were being pushed into...is that? [LR127]

SCOTT FRAKES: That's absolutely correct. And the caseworkers to a lesser degree should be able to do some case management along with some of the more typical security duties. But it tips over. [LR127]

SENATOR EBKE: But is that in part the problem with some of the things like VRP and things like that, is that you don't have...you have case managers that are pulled out of kind of full-time case management type of roles or not? [LR127]

SCOTT FRAKES: It's more if we're to expand programming we need to make sure and we're going to use...if we need to use a space that requires security oversight, then we've got to have the people to do that. [LR127]

SENATOR WAYNE: Senator Ebke, but that... or Chairwoman Ebke, I forgot, I'm sorry. [LR127]

SENATOR EBKE: Whatever. [LR127]

SENATOR WAYNE: But that's the issue and the core of where I'm trying to get to is that if it's easier to hire in Omaha and Omaha is at capacity or we have full number of people there currently, although the staffing analysis says we may need more, currently your words when you testified was that we're full as far as staffing at OCC, then why aren't we offering programs where we can put more staff in to make sure? Instead of sending them down to Tecumseh, where we have a hard time with staff being stretched, why not add five or six more staff in OCC and run people through OCC when they're already up there on minimum security anyway? That's where I struggle, because we have a statute that says we have to have some kind of therapy before their parole eligibility date that we're currently not meeting. We understand the issues

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with Tecumseh and the location, but Omaha is at full. And if we posted two or three more jobs, maybe 10 more jobs, we probably would be able to fill them. And now we can run VRP and we can run that program better. Unless you're saying it's a facility issue. [LR127]

SCOTT FRAKES: Today it's a combination of a capacity issue, OCC is a pretty program-rich facility, so they have a fair amount of programming going on. [LR127]

SENATOR WAYNE: But not a core programming? [LR127]

SCOTT FRAKES: Yes, they do sex offender treatment. [LR127]

SENATOR WAYNE: Correct, sex offender, but not VRP? Because those are the two... [LR127]

SCOTT FRAKES: They do not do VRP. So let's go back to VRP. When I arrived, there were 10 VRP slots, so 10 people at any given time had the ability to get up to VRP, clearly way below the need. We've now five times as many slots available. We've got the potential to have five cohorts, and usually they start the cohorts at 11 or 12 if possible because there's always attrition. And if things go really well, they graduate about seven. It's a closed course, closed treatment program. So once it starts, you have to stay in to the end and you can't add new people. We are still not...that change began with bringing back the experts for VRP in summer of July of 2016, providing training to staff; assessing what we were doing; hiring more psychologists, which we had struggled to do, and then something changed and we were able to hire a significant number of psychologists. We went from having 1 cohort of 10 to 5 cohorts of 10, 11. So that's a huge expansion of the program. We are still working out all of the challenges that go to get full efficiency and maximum use of it. So today, to add a sixth cohort wouldn't necessarily make sense. [LR127]

SENATOR WAYNE: But if it's a sixth cohort in the right location, where you can hire staff to cover everything, what's your hesitancy? [LR127]

SCOTT FRAKES: Because again, I'm not so sure that it's just that simple that I can just hire the staff and that all the resource pieces are in place to add another clinical treatment to OCC. But

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more importantly, I need to fully use the significant amount of resources I've committed. And I'm sorry that we're still undoing and revising and making things work the way they're supposed to. If someone needed VRP and had a clinical recommendation for VRP and it said keep me in, I'm ready, then probably they shouldn't have been transferred to OCC. Although, there could be reasons, because we deal with so many different factors. And you know that, and you're going to see even more, all of the things that contribute to where people end up being housed. And so sometimes it means you put somewhere at the place that it works best and allows them to be out in general population safely, but at the point they need clinical treatment ideally you can get them to where that clinical treatment is located and delivered and do that safely. And unfortunately in some cases I deal with cases, not real often, but often enough, where I don't have the right answer. [LR127]

SENATOR WAYNE: These are my last two questions, they're really short. When do we start, like what's the time frame to their projected release date that we start trying to move them towards VRP? Like is it two years before their parole eligibility, is it nine months before their parole eligibility? Three months? [LR127]

SCOTT FRAKES: It's about the two-year mark is what we're working with. I think in a lot of cases though we're probably somewhere in the 2-year to 18 months. [LR127]

SENATOR WAYNE: And then how long is VRP? [LR127]

SCOTT FRAKES: It can be 9 to 12 months. Nine months is kind of the goal, but we're still seeing them run about 12 months. [LR127]

SENATOR WAYNE: Thank you. [LR127]

SCOTT FRAKES: And I would just, Senator Wayne...excellent program, it's got national and international recognition. There's not a lot of states doing clinical violence work, so I think it puts us in another area where Nebraska is leading the charge. And I just need to make sure if I've got 50 beds, or better yet 50 seats in a program, and I'm only utilizing I think maybe two-thirds

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of that effectively, I need to figure out what needs to change so that I can get full utilization before I add 10 more because it is definitely a resource-intensive program. Great stuff. [LR127]

SENATOR EBKE: Anything else? [LR127]

SENATOR WAYNE: I mean, I have another question, but I don't want to. [LR127]

SENATOR EBKE: You don't have to. I mean, if you want to you can, or send it to him directly. I think we're done. [LR127]

SENATOR WAYNE: This is kind of like Senator Hilgers' question. Community beds, work release, how much can we grow over the next two to three years if we had dollars to support more from a staffing capacity? [LR127]

SCOTT FRAKES: Okay. Today it's about having inmates that are appropriate for community custody beds. [LR127]

SENATOR WAYNE: Thank you. [LR127]

SCOTT FRAKES: I think the capacity increase that we've committed to we're in a good place right now. And I hope that we can get better. [LR127]

SENATOR EBKE: Okay, I'm looking. I see nothing. Thanks for being here today. Okay, chair of the Parole Board, Ms. Cotton. And then here's my intention, folks. We're going to run Ms. Cotton through and then we will take a five-minute break. So something to look forward to, right? And then we will come back and we will forge ahead. [LR127]

ROSALYN COTTON: (Exhibits 5, 6) Good afternoon. You're going to have to forgive me this time, because I think today I'm going to be a little bit long-winded than I usually am because we have approximately 67 new staff to the Board of Parole. So be patient with me today. [LR127]

SENATOR EBKE: Okay. [LR127]

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ROSALYN COTTON: Good afternoon, Chair Ebke and senators of the LR127 Committee. My name is Rosalyn Cotton, C-o-t-t-o-n, chair of the Parole Board. I have served on the Board of Parole approximately 13 years. I believe in working with all agencies and organizations that share an interest in keeping our communities safe and providing service delivery, principles, and values for all justice-involved individuals. Parole is a very important component of the criminal justice system. It is important to partner with community stakeholders and other criminal justice agencies. It is the agency's objective to provide justice-involved individuals transition from confinement to our communities in order to be law-abiding citizens. Also, evidence-based decision making is just as important when making the decisions to consider a good candidate for parole. Decision making is designed to target resources toward risk reduction, recidivism, and enhance public safety. The actions of the board affect those who are confined, paroled, victims, and all of society. With that, I would like to answer some of the questions that we received in my...actually I received in my invitation. Number one, state of parole services. Over the last year and a half, the Board of Parole has developed and contracted with new services to assist clients while on parole. This effort has been statewide and will have received a positive response from local providers. We are currently offering pretreatment and relapse groups related to substance abuse needs, battering intervention, domestic violence, anger management, parenting, and financial wellness education classes. We are beginning to offer Thinking for a Change as our cognitive behavior intervention. We are also still working with NDCS to offer some in-house substance treatment interventions that serve both parole clients and individuals on work release. Access to our service dollars to participate in substance abuse treatment in the community in which they live. This treatment includes intensive outpatient treatment and short-term residential treatment. We also partner with NDCS to utilize their vocational life skills grant and with Probation to access their dollars for mental health needs. Transitional housing has been a big focus for us and we are working in collaboration with Probation and NDCS to utilize federal and state grant dollars to secure appropriate housing for clients upon reentry. We also are working on a new initiative that's on the rise, and that service is to provide clients with cell phones that will assist them with looking for employment through the phone system and access to other human services programs, but also allows for GPS accountability at all times. I would also like to mention that we use our risk and needs assessment to help us identify the areas that are high-needs for each individual client. The other question, a number of individuals granted parole and the process used by the board to determine whether parole should be granted. Granting parole is

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a multi-step process, two distinct appearances: the key review and the parole hearing. At a key review, the board can determine whether an individual is ready to be considered for parole and has the option for scheduling the date of that parole hearing. From October 15, 2016, to October 14 of 2017, a total of 3,273 key reviews were held. And of that number, 1,347 were set for parole hearings. At a parole hearing, the board can parole an individual, to defer them to a later parole hearing, or defer them to their mandatory discharge. In the past year, a total of 1,959 parole hearings were held and from those, 1,412 individuals were granted parole. The total population of individuals on parole as of October 15 is 1,265 individuals. Other things that we've used in as far as far as researching including would be the parole plan and whether they meet the needs of a particular individual and their plan for employment, and whether they have a constructive support network. Number three, how many of those individuals were denied parole over the last few years, and general overview for the most common basis for denial. And what I will say is in the past three years from October 15, 2014, to October 15, 2017, a total of 1,692 individuals were not paroled at their parole hearing. Hearing that, 975 were deferred and 717 were denied. According to our data collection for this group, indicates that the most common reason for defer or deny was listed as "other." And the most prominent reasons listed to defer and deny would be that they did not fall into a category, in the category of excessive or serious misconduct reports, failure to complete residential drug treatment programming, and drug misconduct reports. We do have another "other" category for reasons why individuals are denied parole or deferred, and that would be listed as follows: need time for completing institutional programming, often substance abuse treatment; behavior of individuals, including that misconduct report; new pending charges; or removal from community corrections; need to secure residence for a parole plan; and a need to investigate that parole plan. [LR127]

SENATOR EBKE: Can I ask you a question real quick? [LR127]

ROSALYN COTTON: Yes. [LR127]

SENATOR EBKE: So how often are you...just roughly, I know you may not have the numbers in front of you. But how frequently are you seeing people coming to you for a parole hearing who have not received the necessary corrections...the programming that they need in order to be eligible? I mean is that a frequent occurrence? [LR127]

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ROSALYN COTTON: That is not a frequent occurrence. What I will say to you is those individuals that come before us for parole hearings that have not completed their program, we are keeping them on hearing status and we will parole them pending the successful completion of that program. It could be a month. It could be basically roughly a month and a half. Those individuals we don't see a lot of. It's the ones that may need reviews that we have to see, we will continue to review them. And there's really not a whole lot of them, but the ones that we do see we continue to work with them on a short time frame in order for them to have time to get into the program. [LR127]

SENATOR EBKE: Okay. Thanks. [LR127]

ROSALYN COTTON: Challenges faced by the Board of Parole in the fulfilling the obligations and some of the challenges the board has faced with respect to fulfilling these obligations is the need and time for more programming for justice-involved individuals prior to their transition to community. A related issue is a lack of time to complete required programming. Justice-involved individuals that are also needed for time to transition between the end of their programming and placement on parole. Also, we're starting to see individuals who waive their appearances for key reviews and parole hearings. As far as housing, insufficient housing, and the whole concept of that implementation of the custodial sanctions, given that the jail capacities are limited and also probably lack of funding to support that initiative. The progress that we've made--over the last several years the board has worked intensively to align with the priorities established through the Justice Reinvestment process. The Board of Parole and the Division of Parole Supervision in the last two years have collaborated with the Council of State Governments to implement a number of evidence-based practices including decision-making guidelines, a risk and needs assessment instrument, modifications to our special conditions and align to those conditions with our risk and needs assessment and implementations of sanctions matrix and custodial sanctions to limit the need of revocations. In addition, the Division of Parole Administration and Parole Supervision actually has been doing very well. They have trained in case management practices, cognitive behavioral techniques, so as to better support clients in terms of community reintegration. I must say that beyond the work of the CSG, the Board, and the Division of Parole Supervision, we have also been heavily involved in the Seamless System of Services meetings which bring together NDCS, Probation, and Parole in an effort to provide individuals with a

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more streamlined criminal justice system. This seamless system has developed a large number of subcommittees which bring together staff members with each agency to discuss ongoing issues like training support and development, document and data sharing, and programming and service delivery. The Seamless System of Services builds up the work of the JRI steering committee and has proven to be a fruitful method for identifying statewide challenges that we can work to address. Most recently, I am honored and proud that the state of Nebraska was selected to participate in the National Governors Association and the National Parole Resource Center and Learning Collaborative. This collaborative allowed the leaders of the board and Parole Supervision to sit down with leaders from other states to discuss their challenges with evidence-based practices in parole and how best to take on those obstacles. In the next year, the board and the Division of Parole Supervision will be working with NGA and the Governor's Office to continue building on our existing partnerships with NDCS and county jail authorities across the state. I would also like to add that the NGA will be supporting Nebraska's efforts to develop collaborative strategies for strengthening parole in our state justice system. And one of those goals will be to improve the coordination and strategy with existing partners in DCS, Probation, jails, and reentry coordination with NDCS. What I would like to also add is the legislation statutory changes that you asked information from, right now there's a passage of LB366 and this legislation is currently in committee. And the board and the Division of Parole Supervision would like to see this move forward as it will allow the changing the schedules of board members to accommodate new initiatives and support evidence-based changes to parole practices. One of the other things that the Division of Parole Supervision, our Director Julie Micek basically stated is we'd like to create a type of program that would allow for release of low-risk individuals into the community prior to their jam out date. The target participants in this program would be on those who are not parole-eligible and who are not sentenced to postrelease supervision and the focus would be on monitoring their time in the community and establishing full-time employment to ensure public safety and reduce the likelihood of recidivism. With that, I would like to invite each and every one of you to a public parole hearing in order to see exactly how our process works. I really can appreciate the fact that you all took time out of your busy schedule to come visit Heritage Square, the Parole Administration. I heard lots of good things that came out of that visit. I certainly appreciate it. And I also, having closed, and I don't think, unless there's questions, our data in reference to parole grants and denials, reasons for deferral and denial, our challenges with the justice-involved individuals, waiving of those parole review

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hearings and reviews and also revocations. At this particular time, do you have any questions?
[LR127]

SENATOR EBKE: Questions? [LR127]

SENATOR BOLZ: I have a question. [LR127]

SENATOR EBKE: Go ahead. [LR127]

SENATOR BOLZ: (Exhibit 7) Thank you, Chairwoman Cotton. It's nice to see you again. I passed out a document that I have from Nebraska Department of Correctional Services just because some questions have come up today and I think there are some answers in it. So that's for the committee's reference. But it's a document that talks about waiting lists and my back-of-the-envelope math says that there are 402 individuals in the Department of Corrections past their parole eligibility date waiting for programming. So I thought that was a useful number to bring up in this hearing. But the specific number underneath that that I wanted to ask you about is that there are 221 individuals...no, there are 150 individuals on the wait list past their parole eligibility date for nonresidential services, 25 for residential substance abuse services, another 25, another 106 for residential substance abuse. And you referenced in your testimony that you'll be adding more substance abuse treatment options so that you can look at long-term residential substance abuse treatment. The point I'm trying to get to is that it looks to me as though there are a lot of people in our Department of Corrections who are past their parole eligibility date but on a wait list for some sort of substance abuse treatment. And I wondered if you could talk to me a little bit more about the options you're looking at and whether or not you have any ideas to sort of solve or resolve some of that problem, if there is a creative strategy to give you more capacity to serve people with substance abuse in the community to address the waiting list and our overcrowding. [LR127]

ROSALYN COTTON: Senator Bolz, that is a very, very good question. I just want you to know that I meet with on the Division of Parole Supervision, Julie Micek, at least once a week. And one of the things that we are starting to look at is how we can literally utilize some of the programs that are existing in the community and some of the things that we're going to be

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looking at to how we can get some of these individuals who may need this programming to transition into the community. And I think we're in a good place right now. I think that there are some individuals who have short time that's left to do parole and instead of jamming their time I think we need to look at literally trying to find ways to get those people into the community. And it's just going to be a matter of what individuals we're going to look at, developing a criteria, and making sure that we can kind of honor that. I have....I guess I want to say to you that there is no doubt in my mind that that's something that can be created and that's something that we can definitely take a look at moving forward and is definitely something that has been discussed already. So thank you for asking that question. [LR127]

SENATOR BOLZ: Great. I look forward to working with you further on those issues. [LR127]

ROSALYN COTTON: Thank you. [LR127]

SENATOR EBKE: Any other questions? [LR127]

ROSALYN COTTON: Wow. [LR127]

SENATOR EBKE: Hey, wow. Okay. [LR127]

ROSALYN COTTON: All right. Thank you very much. [LR127]

SENATOR EBKE: Well, it is 3:24. We will be back at 3:30, so I'll give you an extra minute. [LR127]

BREAK

SENATOR EBKE: Okay, we're going to go ahead and get started. We've already extended this three minutes beyond what I said. So we're going to get started and the rest will join us as they have a chance, so. [LR127]

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ELLEN BROKOFSKY: So good afternoon. First, let me say that following Scott Frakes and Ros Cotton was good in a way because they said so many good and promising things... [LR127]

SENATOR EBKE: Do you want to announce your name and spell it and everything? [LR127]

ELLEN BROKOFSKY: Yeah. I'll just start with my script. [LR127]

SENATOR EBKE: That's fine. [LR127]

ELLEN BROKOFSKY: (Exhibit 8) Good afternoon, Chairwoman Ebke and members of the Nebraska Justice System Special Oversight Committee. My name is Ellen Fabian Brokofsky, B-r-o-k-o-f-s-k-y. I am the State Probation Administrator and I thank you for the invitation to address the committee today. I would also like to thank the committee for including Lincoln and Omaha reporting centers in your tour of justice system facilities. We appreciated the opportunity to show you firsthand an example of Probation's statewide community-based programs and services and the positive impact they have on our clients and ultimately on public safety. My message for you today is Probation's justice reinvestment efforts are working. Probation's basic infrastructure was ready to go on August 30, 2015, when LB605 became effective. With the skills, training, and experience gained from over ten years of implementing evidence-based practices, Probation was well-positioned to take on new statutory duties. Here is a statistic to illustrate that justice reinvestment has been effective. The Council of State Governments reports that the felony population on probation has increased 28 percent since 2015. To put it in numbers rather than percentages, between FY '16 and FY '17, probation increased by 1,314 individuals, the total number of felonies under supervision. Remember, this was one of the goals of justice reinvestment: diverting felons to probation and away from prison. I will now discuss the four topics the committee requested Probation speak to: client population, services, challenges, and statutory recommendations. First, Probation's clients--as you know, clients on postrelease supervision, or PRS as we call it, after discharge from jail or prison are a new Probation population. As of October 1, 2017, 700 persons were actively being supervised and the number is growing. PRS achieves another goal of justice reinvestment: to have former inmates not come back into the community without being supervised or supported with services. You can probably guess that postrelease clients have a higher risk to recidivate than traditional Probation clients.

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That was absolutely expected. So, what has Probation done to enhance public safety? The answer to that question addresses the second topic, recent developments in Probation services. Since 2015, Probation has established additional reporting centers in Columbus, Beatrice, North Platte, and a second reporting center in both Lincoln and Omaha. Statewide, this brings the total number of reporting centers to 16. We increased hours of programming available within all our reporting centers by 520 percent. This includes services from relapse prevention support to employment classes. For higher risk clients, Probation's longstanding Specialized Substance Abuse Supervision program, otherwise called the SSAS program, was enhanced and new programming was created which includes, Probation-based problem-solving courts, such as veterans courts and reentry courts. That's a quick but only partial list. However, I would like to focus on one initiative, Probation's transitional housing program launched statewide earlier this year. Transitional housing is a good example of the third topic: challenges facing Probation. As I reported to the Justice Reinvestment Oversight Committee in 2016, Nebraska's number one challenge for persons reentering the community from jail or prison is supportive housing. So many people have nowhere to go, that is stable at least. Progress has been made developing a network of housing providers, but that network has significant gaps. There are too few providers not only in urban areas, but particularly in rural areas of our state. This is a challenge that must be addressed. A statewide network would provide a PRS client with the best opportunity to stay safe and drug-free, become employed, and find permanent housing. Last, regarding statutory recommendations, from Probation's perspective, the basic framework is in place. We can certainly discuss the challenges of implementing LB605 and the pace of progress. But as you know, justice system reform requires attention, funding, and commitment to reach its maximum impact. For our part, Probation will continue to support programs and services which show results, will continue building on our strengths and keep moving forward. Thank you again for the opportunity to speak today. Because of time, I decided to not discuss the handouts, but to give them to you following. And so if you have any questions, they have an enormous amount of data, really drill down and give you information about programming. I don't think you received these particular handouts at your visits. So we tried to put some new information together so you'd get sort of a short version. And what I was saying earlier, just to close this, was following Director Frakes and Ros Cotton was difficult because they said many of the things that I talked to you about today. Our key is collaboration and probation is community based. We've been collaborating for a long time. We've been at evidence-based practices in terms of implementation

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for ten years as I mentioned in testimony. And we've tried to be as helpful as we possibly could to both the Department of Corrections and Parole, so. [LR127]

SENATOR EBKE: Okay. Any questions of Probation? Senator Bolz. [LR127]

SENATOR BOLZ: Thanks for coming. A couple of questions. [LR127]

ELLEN BROKOFSKY: Absolutely. [LR127]

SENATOR BOLZ: In looking at some of the services that you offer, family support services is something that you offer to the probation population, is that correct? [LR127]

ELLEN BROKOFSKY: Family support in the sense that... [LR127]

SENATOR BOLZ: It's a specific program...looking your program statements that are on-line, family support as a program meaning those wraparound services to help a family be successful in the community. [LR127]

ELLEN BROKOFSKY: We do that on the juvenile side. On the adult...the juvenile side, absolutely. On the adult side it varies in terms of things from childcare to, you know, family counseling and those kinds of things. But it's not exactly what you would see as family support. [LR127]

SENATOR BOLZ: Okay. But on the juvenile side... [LR127]

ELLEN BROKOFSKY: Oh, absolutely, yeah. [LR127]

SENATOR BOLZ: And do you think that is an effective program in terms of reducing recidivism? [LR127]

ELLEN BROKOFSKY: Oh, without question. Absolutely. [LR127]

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SENATOR BOLZ: Okay. One of the things that we've considered as a policy option is applying the family support program to the parole population because there are so many similarities between probation and parole. Given your experience with the populations and the program, is that something you think that could be effective on the parole side as well? [LR127]

ELLEN BROKOFSKY: I absolutely do. And one of the things that I would point out is that on the adult side of our system it's never really been practiced. It's never been...something that is common is to incorporate the family or integrate the family into any kind of services. We really believe that it's essential from the time you're assessing that you have significant others, you're involved with your family, you see what that home is like, and you engage whether it's on the adult side or on the juvenile side. I think it's a different culture but it's absolutely something that's key. [LR127]

SENATOR BOLZ: I appreciate that. And one more question, in terms of the number of probation officers you have as compared to your demand, are you steady as she goes? Do you need more? Are you... [LR127]

ELLEN BROKOFSKY: We're steady as she goes. We did...the Legislature worked very well with us as you know. And we did some predictions. I'm always worried--I said this to the Oversight Committee last November--that I think that there will be a point where this will be somewhat of a tsunami and I'm afraid that people will start coming so fast that we won't be able to handle them. But we do...as we talked to you about, we have the navigators that are new positions that go into the institutions so we're prepared 120 days out for who's coming out and what they need. And that's really helped us tremendously because we're sort of doing that and that handshake between the institution and the community and get them what they need instead of here they all are. And I think that does make a difference. [LR127]

SENATOR BOLZ: Okay. My last question is, one of the things we talked about in Appropriations Committee was that some of the housing work that you're doing, we delayed it for a period of time as a cost-saving measure. [LR127]

ELLEN BROKOFSKY: Yes, yes. [LR127]

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SENATOR BOLZ: Are you fully up and running now? [LR127]

ELLEN BROKOFSKY: We're fully up and running but we weren't able to start that program until April given the cuts that we had to take and that was our number one priority, that and GPS monitoring that we offered statewide. But we weren't able to actually get it going until April 1. [LR127]

SENATOR BOLZ: And with the housing, so far, so good? [LR127]

ELLEN BROKOFSKY: So far, so good, and we've been very surprised at people coming on. But, again, as I said in my testimony, we're desperately in need of more structure and more options, especially in greater Nebraska. [LR127]

SENATOR BOLZ: Okay. I guess my closing comment is I look forward to being in touch with you about that housing program because if it is your greatest demand and your greatest need... [LR127]

ELLEN BROKOFSKY: It is. [LR127]

SENATOR BOLZ: ...and that's relieving pressure on the corrections system, it may be a place for target investment. So we'll have six months or so worth of data by the time the next legislative session? [LR127]

ELLEN BROKOFSKY: Yes, you will. You absolutely will. And we're keeping very detailed data. [LR127]

SENATOR BOLZ: Okay. Let's have that conversation. Thank you. [LR127]

ELLEN BROKOFSKY: Thank you, Senator. [LR127]

SENATOR EBKE: Any other questions? I guess not. [LR127]

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ELLEN BROKOFSKY: Cool. Thank you. [LR127]

SENATOR EBKE: Thanks for being here. Doug. [LR127]

DOUG KOEBERNICK: Good afternoon, Senator Ebke and members of the committee. My name is Doug Koebernick, spelled K-o-e-b-e-r-n-i-c-k, and I work for the Nebraska Legislature as the Inspector General of Corrections. First, I want to thank each of you for your service on this committee. Having staffed special committees on developmental disabilities and Corrections in the past, I have some appreciation of the time and effort that you have put into this and I know you're out visiting all the facilities and learning a lot over the last few months and I really appreciate that. I appreciate your taking a broader look at the justice system here in Nebraska. Trying to give you an assessment of the correctional system in five minutes or less is a little daunting; however, I just recently completed my second annual report and that would actually cover my testimony, for the most part. On pages 7 and 8 of that report I shared the highlights of it which included many things that you already know. Overtime is very high, turnover of staff is high, those kind of things, programming changes have been made, restrictive housing use is up, and so on. One of the things not in my report is the fact that the system has recently hired several psychiatrists and that I believe positive change is taking place in the Division of Health Services. I met with Dr. Deol and John Wilson from the division this week and learned a lot more about what is going on there, and I will put out a report on that later this year or by January. I would also add, when I do that report I know one of the recommendations of that will be that the department institute an electronic health records system as they feel very confident that they can not only save money by doing that, but they can assist in providing better medical care and enhanced security at the same time. So that will be something that I will be bringing forward as well. With all that said, I would like to focus on just a couple of issues during my time here today. On page 31 of my report I discussed the Correctional System Overcrowding Emergency Act that was put into law in 2003. The act, as currently written, requires the Governor to declare an overcrowding emergency if at any time after July 1, 2020, the Correctional system is above 140 percent of design capacity. Right now we're right in that 160 percent range. When that is declared, offenders are released until the system reaches operational capacity, which is actually 125 percent of design capacity. To give you an idea, if we would get down to 140 percent that would mean releasing approximately 600 or so inmates. To get to 125 percent, that's probably

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about 1,100. In the report I wrote that Nebraska's policymakers should establish a goal that they would like Nebraska's system to reach. Should Nebraska be content at 140 percent of design capacity, which would still make us the fifth most overcrowded system in the country? Or should we be at 125 percent, 100 percent? Where should we be? I think that's something for the Legislature and the Governor to discuss. And I think that this discussion is really needed because once that goal is established then Director Frakes and the Board of Parole will have a much better idea of where they need to go and what they need to do. I'd also, again, stress that I believe the Department, the Board, and the Office of Parole Administration need to work together and present a plan to policymakers detailing how that Emergency Overcrowding Act would actually be carried out if the emergency is actually declared on July 1, 2020, if we're in that situation. At the end of my report, I made numerous recommendations. Included in these were ones that stated the Department of Correctional Services and Office of Parole Administration should prepare a budget request for the Governor and the Legislature that fully addresses the needs of each agency to carry out their statutory responsibilities, kind of along the lines of what Senator Wayne was talking about earlier when he asked Director Frakes that question. Those responsibilities would include such things as how they can recruit and retain all staff, not just protective services staff; infrastructure and building needs; programming needs; and any other identified needs. While I realize the funds may not be there to fully fund their request, it is important that the Governor and the Legislature understand what they believe they need to carry out their mission. In 2014, the LR424 Committee found many examples where director Bob Houston and the Department of Correctional Services knew that they did not have what they needed to carry out their responsibilities. While this was shared with the Governor's Office, it was not shared with the Legislature or the public. This resulted in a downward spiral of a vital state agency, or as I described it last year, a starving agency. The agency that always preached about the importance of safety and security to their staff during preservice and inservice training continually told their staff to do more with less. They started to take shortcuts and some would say that they began to operate on the edge of the law. This sent a negative message to staff and their inmate population which contributed to that downward spiral and the agency really became more reactive instead of proactive. Having spent two years in this position, I know that isn't the goal of Director Frakes and his staff. However, I believe he does need additional resources to carry out his responsibilities. I look forward to viewing his upcoming budget request--and not only of his but of Parole as well--to learn more about what they truly need to fulfill those responsibilities. Thank

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you again for your service on this committee and I'm open to answering any questions that you may have. [LR127]

SENATOR EBKE: Question for our Inspector General? Senator Geist. [LR127]

SENATOR GEIST: Yes, I have one. Thank you for your testimony. And I'm just curious about the numbers that you gave when you were reading your report on page 31 about the overcrowding numbers. Does that take into account the 100 beds and then the 160 that are coming in? [LR127]

DOUG KOEBERNICK: Just the 100. [LR127]

SENATOR GEIST: Okay, okay. And do you know what...if the 160, how much that will decrease? [LR127]

DOUG KOEBERNICK: Then you get down to about 450 and 950, somewhere in there. [LR127]

SENATOR GEIST: Okay. Thank you. [LR127]

SENATOR EBKE: Other questions? Guess not, thank you for being our eyes. [LR127]

DOUG KOEBERNICK: You're welcome. [LR127]

SENATOR EBKE: Okay, next. Yes, Ombudsman. [LR127]

MARSHALL LUX: (Exhibit 10) Good afternoon, Senators. My name is Marshall Lux, spelled M-a-r-s-h-a-l-l L-u-x, and I am the Ombudsman for the state of Nebraska and I'm here in response to your invitation to talk about the state of affairs in the Department of Corrections and answer any questions that you might have. I've had distributed some written remarks that I've prepared and I invite you to read those at your leisure. I hope that there is some useful information in there. That is the core of my message for you today is in the letter that I prepared

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for Senator Ebke in response to her invitation. I do have a few things I want to say in the form of testimony, but only a little bit so I won't take too much of your time. What I'm hoping to do and what I would like to do is sort of complete the circle that Senator Krist started when he opened the hearing on this LR and that has to do with legislative oversight. And the way I want to get at that is to talk about some of the positive things that have happened in our corrections system in 2017 because there have been some positive things and those things need to be acknowledged as steps forward. One of those, of course, is the new pay initiative that Director Frakes talked about that was announced early this month having to do with merit pay for staff at TSCI and basically signing bonuses for new recruits at the penitentiary and at Tecumseh. Those are good things. There obviously is going to be a question about whether that's going to be sufficient to deal with the department's retention issues and their ability to staff those two facilities. Hopefully this will help. That remains to be seen. But in any case, it's a positive step forward. It's something that has been done that we've wanted to see and hopefully it will work. The second positive thing that we need to remember and it's been discussed as well this afternoon is the opening of the new dormitory on the campus of the Lincoln Community Corrections Center. That's 100 beds. That's 100 beds that are added to the design capacity of the system. And most importantly those are community corrections beds which is where I believe and I've long believed the need is. The system, if it has a need for new beds, it should be in the community corrections area--work release. Work release is a valuable tool in terms of reintegrating inmates back into society and community corrections beds is what that's all about. So that's another positive thing that we have seen in our corrections system in 2017. In citing these two positives, I want to emphasize how important legislative oversight has been in helping to bring these changes about. The more interest that policymakers like yourselves show in these issues, the greater momentum there will be for progress in addressing the system's problems. That's what oversight is supposed to be all about. It's about finding out what the problems are, having discourse about those problems, and finding solutions and developing the momentum that is needed so that...so the change happens and the progress is made. Legislative oversight does that. So that is what I think Senator Krist was talking about and that is what I would want to emphasize today to you, that what you were doing here today is extremely important in terms of how our government works and how it will get at these problems and get them resolved over time. Finally, there's one other thing I want to mention, one other positive development in the system, extremely positive my opinion, that has not...that has gone underreported. And that has to do with the hiring of Dr. Harbans Deol to be

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the system's new medical director; that happened back in January of this year. Dr. Deol is highly experienced as a corrections medical administrator. He did that job for a dozen years over in the state of Iowa. When we heard that he was being named to that position, we quickly contacted the Ombudsman's Office in Iowa to see what their experience was with Dr. Deol. They were full of praise for the work that he did in that position in the state of Iowa. Now he has been recruited to come over here in Nebraska and take on the same...essentially the same role. That's what Dr. Randy Kohl, the system's first medical director, did. He recruited Dr. Deol to do this job. I've met with Dr. Deol a couple of times. We had a large meeting with myself and some of my staff and he and some of his staff and it was very positive. And I think that having him here is going to make a real difference in terms of keeping our system's medical care where it needs to be in terms of the quality of care for the inmates. I'm impressed with his energy, with his openness, and with his leadership qualities. And that's a big deal and it's not penetrated the consciousness to the extent that it needs to--another very positive thing that has happened. So that's about all I've got for you today. I've given you my letter that I've written to Senator Ebke. It covers some technical issues and some concerns that we have, particularly with regard to the management of segregation in the facilities which is an area that still needs some work. And that is discussed in the document that I've given you this afternoon, and that's about all I've got and I would be happy to answer questions that you might have. [LR127]

SENATOR EBKE: Any questions for the Ombudsman? Senator Bolz. [LR127]

SENATOR BOLZ: Thanks for the update on Dr. Deol. I think that's good news as well. [LR127]

MARSHALL LUX: It's very good news, Senator. [LR127]

SENATOR BOLZ: At the same time, the most recent data I have in front of me is that we've still got 31 behavioral health vacancies and I don't have the physical health data. It's here somewhere but I won't spend the time looking for it. And the basis of the ACLU lawsuit was really rooted in access to medical care and behavioral health care. And so in spite of providing the resources for those additional staff members where...we still don't seem to be moving the dial in terms of access to medical and behavioral health care. And so I wanted to ask you, from your perspective as the Ombudsman, what challenges or trends or perhaps progress you're seeing on those issues

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and whether or not there's anything this committee could continue to do after having provided all those resources for those positions to try to improve quality of life in the facilities. [LR127]

MARSHALL LUX: I haven't looked at the numbers myself very closely lately. But one of the big issues that they have, in my opinion, has to do with pay grades, salary levels. When they hire or try to hire nurses, it's very difficult to do because they're competing with the private sector which is always outbidding them. Plus, the working in a hospital is not exactly the same as working in a prison environment. And that's another issue that the system has. So I would not be surprised if there are still a lot of vacancies. Mr. Koebernick probably has those numbers. I do not. What I would say though is that if we're looking for somebody who's going to be able to attack that problem, I'm confident that that person is going to be Dr. Deol. He has impressed me with his energy and his desire to do this. The problem is very often, as I've said, the pay scale and the classification in pay plan and that doesn't come...the Department of Corrections does not have the ability to change that unilaterally. It has to be...they need cooperation from the Department of Administrative Services to do that. Now the Regional Center has managed to do that with their nursing staff. So maybe we should see that as a good sign that some change could be made for the Corrections' nursing staff, for example, as well. But that's my understanding of what the problem is. [LR127]

SENATOR BOLZ: And it's okay if you don't know the answer to this question, but those changes in terms of pay scale and classifications, can they be resolved through the administration, as in, can they be resolved in a conversation between the Department of Correctional Services and the Department of Administrative Services? Or are those problem...issues, must they be negotiated in a contract negotiation? [LR127]

MARSHALL LUX: I think that the answer is the former; that it can be done without going to the contract, but I'm not sure about that... [LR127]

SENATOR BOLZ: Okay. [LR127]

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MARSHALL LUX: ...okay, because that's not my area. But it has to start there. It has to start with give-and-take between the Department of Corrections and the Department of Administrative Services on what the classification and pay plan looks like. [LR127]

SENATOR BOLZ: Okay. So those are strategies that could be implemented starting with DCS, moving to DAS, and if necessary, through a union negotiation. [LR127]

MARSHALL LUX: Yes. [LR127]

SENATOR BOLZ: But none of those things would require action from the Legislature. [LR127]

MARSHALL LUX: Not in my opinion, no, except if there's an appropriation issue obviously. [LR127]

SENATOR BOLZ: Sure. Thank you. [LR127]

SENATOR EBKE: Any other questions? Thank you for being here today. [LR127]

MARSHALL LUX: Thank you, Senators. [LR127]

SENATOR EBKE: Okay, we have two more that requested to speak to us--NAPE or ACLU, either one of you guys can flip...okay, you're up. [LR127]

SPIKE EICKHOLT: (Exhibits 11 and 12) Good afternoon, Madam Chair, members of the special committee. My name is Spike Eickholt, first name S-p-i-k-e, last name is spelled E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska as their registered lobbyist. When we were allowed to come speak to the special committee today, we began to sort of think as an organization what things we wanted to suggest or say or comment on with respect to the special committee. You've heard a lot of testimony here today from the different stakeholders. In some respects for the Legislature, and this is a legislative committee and you are all senators, in some respects the Legislature is...it's difficult for you to help manage the prison system. But as Senator Wayne asked earlier, what can senators do? We do have some suggestions that the Legislature

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can do. We do have some suggestions for legislative action that will impact the prison population. Today we're releasing a report entitled "The State House To Prison Pipeline." And what we did over a ten-year period is that we analyzed the number of criminal law bills that were introduced and that were ultimately passed into law from 2007 until 2017. And then we also compare that to the growth or the uptick or the prison population itself, summarized generally-- and you have a copy of the report--in...from 2007 to 2017 there were 163 bills that either increased penalties alone or broadened offenses that already existed or did both. Thirty-eight of those bills were passed into law. Some of those bills were omnibus type bills that included different types of components and different kinds of crimes, but over that ten-year period, 38 bills passed into law. During roughly that same period, the number of inmates in this state increased by over 1,000 inmates. Now that is perhaps not a causal showing, but it is certainly a correlation. And that may seem obvious, but at the time when senators are receiving a bill request or considering legislation that may increase the penalty for one offense or a certain type of category offense, you might be just talking in terms of 20 or 30 more people going to prison for a little bit longer. But that has a cumulative effect. Other states have faced this problem that we're...been talking about all day. Other states have faced a prison overcrowding problem and the solutions are there. And we have said suggestions, what other states have done with respect to their prison and jail overcrowding problems. And I'll just suggest some of those right now just for the record for you to consider those. One recommendation that we have is that the Legislature think very carefully and be very cautious in making any new crimes or increasing penalties for any existing crimes. Senator Ebke has heard me say this because I've testified in front of Judiciary a number of times against bills primarily that seek to do that. I mean, I've worked for a state senator. I understand that constituents bring two sort of issues to you regularly. One is a custody or visitation matter. That's a typical thing. They're unhappy about a specific case. They want you to do something. And another type of category is they're unhappy, one or the other way, with a criminal outcome. Someone close to them went to prison who shouldn't. Someone did something bad to someone close to them that should go to prison. I think senators, for the most part, are fairly reluctant just to propose a bill to change our custody laws. You understand that some cases are bad. Hard cases make bad law. And so sometimes you can't really fix these things. That same mentality we would respectfully suggest ought to be approached when we look at proposals that change criminal code. There are a lot of crimes out there. As Senator Schumacher said before testifying, an ingenious prosecutor can stack, can add charges, can

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basically put someone away for a significant period of time. And each time a new bill is passed into law, that's another tool that can be used and, in some respects, perhaps abused. Another recommendation we have is that the Legislature continue to look at sentencing reform. I think somebody said it earlier today, LB605 was passed in 2015 and that has, at least for lower level felonies, resulted in more people going...being placed on probation or perhaps fewer people going to prison for as long as they are. But there is still room for reform to be done. We would suggest you look at the mandatory minimum laws, that perhaps you also reduce other felonies. The CSG group recommended a number of different crimes. As LB605 was passed, a number of those crimes was sort of taken out of the package. Perhaps the Legislature can consider doing those as well to further reform our punitive statutes. You've heard a lot from Probation and Parole today. We would encourage the Legislature to consider different innovations to probation and parole. Perhaps within this recommendation the Legislature ought to look at some sort of supervised release for some inmates. In Nebraska, a sentence is final. A person cannot be paroled until they are parole eligible. You have a lot of inmates, or at least a relatively high number of inmates who are in prison that cannot be paroled because they're just not parole eligible. But there are reasons and instances why you might want to somehow release those people from prison. Those people could be elderly inmates. They could be very sick inmates. And perhaps if you amend Chapter...I think it's Section 83-184 to provide for release for humane or elderly reasons, there's a significant number of people in the prisons, and perhaps you saw some of these inmates when you were doing the tours, who frankly are not a risk to society but they cannot be paroled for medical purposes because they're just not parole eligible. They just haven't served that much time on their sentence. Other states have developed similar things and we would suggest the body look at that. We would also consider...that the body consider bond reform. Studies show that people who can't make their bond at pretrial are more likely to go to prison. And there was a bill that was passed last year that encouraged some of the jails and the local officials and judges who set the bonds to set a little bit more reasonably. And we'd encourage the body to look at those. And frankly we would encourage the Legislature...finally encourage the Legislature to look at reentry opportunities as far as broadening set-aside laws, broadening the sealing of record laws and expungement statutes to give those people who are released from prison and jails a meaningful chance at entering society without the stigma of their prior conviction and without the increased likelihood that they would reoffend. There are some things that the Legislature can do. We would gladly work with the Legislature and those are just some

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of the ideas. You have the report. It's been distributed. I'm not going to read it to you or my testimony, but I ask that the members look at that. [LR127]

SENATOR EBKE: Questions for Mr. Eickholt? Senator Wayne. [LR127]

SENATOR WAYNE: I just sat down and heard about expungement laws. How can we do that legally in Nebraska when that's been determined to be underneath Parole? [LR127]

SPIKE EICKHOLT: There are ways you can do it. The way that Senator Krist and that the Legislature did by amending 29-3523 which does not necessarily provide for an expungement but does provide for sealing of a record, similar to what they do in juvenile court. In other words, a person still has a juvenile court record, a person still has a court record somewhere but it can be sealed from public, from potential employers, or from anyone. And similar to the juvenile court sphere, if you look at 29-3523, a person can legally say that they've not been convicted of a crime if their record is sealed or not been charged with a crime if their record is sealed. That's not an expungement, I understand that, but it is a remedy. [LR127]

SENATOR WAYNE: Because when we say expungement, I'm thinking you receive your rights back. [LR127]

SPIKE EICKHOLT: Right. [LR127]

SENATOR WAYNE: I walked down that whole path with the voting so that's why it kind of caught me off guard. Sealing, okay. Just one question about the...and maybe because I wasn't here and this is a good time to ask. The 2020 date for an emergency, do you know any background from your perspective of how we got to 2020 because...usually when somebody breaks a leg and it's an emergency, you don't wait and... [LR127]

SPIKE EICKHOLT: That's right. [LR127]

SENATOR WAYNE: And if Puerto Rico has a hurricane, it's an emergency. We don't wait for a year and say now we're going to declare it. So trying to understand that. [LR127]

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SPIKE EICKHOLT: That's right. When, years before frankly, before LB605 and the recent incidents, the Legislature passed the Overcrowding Act. And I think it was done in 2001 or 2002. A component of that was it allowed for the Governor to declare...to certify...or declare, I should say is the terminology, declare an emergency once the Department of Corrections is at 140 percent of design capacity. We've been there. It's discretionary now for the Governor to declare. The Governor could declare that. When we did judicial reform, when the Legislature did that in 2015 and '16, there was the date of I think it was July 1, 2020, that the...that would essentially require the Governor to declare an emergency if we're not below 140 percent of design capacity. So to answer your question, I mean that's sort of the trigger. But now, as a practical matter, at least the way we define it in statute, we are well above the 140 percent. We've been above that percentage for years. [LR127]

SENATOR WAYNE: Thank you. [LR127]

SENATOR EBKE: Senator Hilgers. [LR127]

SENATOR HILGERS: Thank you, Madam Chair. Good to see you, Mr. Eickholt. Thanks for coming by today. I really appreciate your testimony. Just a couple quick questions, one is I noticed in your report a mention of 200 percent or 300 percent over capacity. And I guess my question is not to challenge or agree with that number, but just have you seen a consistent methodology? My observation is that there seems to be not a consistent methodology amongst a number of parties--and I'm not focusing on the ACLU--to gauge what is or is not overcrowding and what percentage is overcrowding. So can you speak a little bit on just so we're...a little bit on that so that we're all speaking about the same thing? [LR127]

SPIKE EICKHOLT: I mean there's two sort of terms of art, if you will, when we talk about overcrowding. There's design capacity and I think what they call operational capacity. Our statute with respect to the emergency provision refers to design capacity. And I think that's the quarterly reports the Department of Corrections does, I think they speak in terms of design capacity. But many times the administrators particularly of the Department of Corrections that are above whatever percentage you want to call it can argue and perhaps can even show--and I don't know, I'm not an expert in that specific term--that even though it's above design capacity,

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they can operate at perhaps a little bit higher. So they can use this term called operational capacity. Whatever you want to call it, I mean Diagnostic and Evaluation is always hovering around 300 percent of something. That's just the highest...it's just the one that's most overcrowded. I know they're trying to do something to alleviate that and that is the intake facility for the men. That is a...it's just historically been above operational and design capacity. [LR127]

SENATOR HILGERS: Do you know specifically whether the Department of Justice has a different definition of overcapacity than we do here in Nebraska? You might not know. [LR127]

SPIKE EICKHOLT: That I don't know. [LR127]

SENATOR HILGERS: Okay. I just want to ask you a couple questions, if I might, about the lawsuit. I don't want to get into any particular legal strategies, just what's there publicly I think would be helpful to hear from your perspective for the committee. One is can you just update the committee on what the current procedural posture is in court, what judge has been assigned, has there been a trial date, is discovery ongoing, are there any pleadings, when do we expect certain rulings, anything you can tell...? [LR127]

SPIKE EICKHOLT: I'll just preface by I am an attorney and I work for the ACLU, but I'm not one of the attorneys on the case. But I can tell you general information. We have filed...I believe our filing date was either August 11 or August 16. I can't recall, one of those two dates. The state has not formally responded. They have not even given an initial answer or pre-answer or any kind of answer with respect to the lawsuit. So as far as anything discovery has been done, that's just not even happening. [LR127]

SENATOR HILGERS: Okay, well, then this might...I'll ask the question anyway, but if you can't answer it, I appreciate that you're not one of the lawyers on the case. But in terms of the remedies sought in the lawsuit, how do they interrelate with some of the recommendations that you've made...the ACLU has made today and that are in this packet? In other words, are they...is that some of what is being sought by the lawsuit in particular? If some of these reforms were passed, would that impact the lawsuit? [LR127]

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SPIKE EICKHOLT: Again, I'm not one of the attorneys...the ultimate remedies in the lawsuit are injunctive. They're not seeking monetary damages or anything like that. They are trying to compel the state to do something. The recommendations we have in "The State House to Prison Pipeline" are deliberately...maybe not deliberately, but are not directly related to that litigation, to the lawsuit themselves. These are policy decisions that you can make. They have nothing to do with the merits of that lawsuit and the plaintiffs and the damages that they pled. These are things that can be done and really don't have anything to do with, at least directly, with the spending and fiscal cost, whether the department administratively is doing what you want them to do. They are things that can be done and that have a demonstrated impact over the prison population. You increase penalties, you make more crimes out there, the population is going to go up. And you can undo some of these things. [LR127]

SENATOR HILGERS: Thank you. [LR127]

SENATOR EBKE: Other questions? Guess not. Thanks for coming. Okay. Is there anybody else out there that I don't know about? Last but not least. [LR127]

JOHN ANTONICH: What a privilege, the new guy gets to go last. [LR127]

SENATOR EBKE: There you go. [LR127]

JOHN ANTONICH: (Exhibit 13) Good afternoon, Chairwoman Ebke and members of the LR127 Committee. My name is John Antonich, and probably this time of day it's paramount that I spell it, A-n-t-o-n-i-c-h, for the record. I am the executive director of the Nebraska Association of Public Employees, commonly referred to as NAPE/AFSCME Local 61. As you might guess, our members and state workers are very interested in your topic and the recommendations that come out of the Correctional Services Special Investigative Committee. So before I go any further, I want to thank the committee for the time that you've spent digging into the various corrections issues around the state of Nebraska. I especially want to thank you for visiting all of the correctional facilities and for engaging all interested partners. I have received many messages from a number of our NAPE/AFSCME members that they have felt heard and understood during this process and that means more than you may know. And I say that sincerely. There are many

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issues for NAPE/AFSCME members, but certainly employee retention, mandatory overtime hours, as long as 18 hours per shift, and general working conditions rise to the top. We want to be a partner with this committee as you formulate recommendations and solutions to these corrections issues. At this point I would like to address the recent announcement by Director Frakes regarding the merit increases and hiring bonuses. I will be honest with you that this has been controversial and divisive among our members. In particular, the idea that this merit...bonus only applies to two of our ten correctional facilities throughout Nebraska has been difficult for the other eight facilities of workers, the men and women that are left out of this equation completely. Our position is and will continue to be that any solutions need to involve all correctional employees at all State Correctional Institutions. This is only a matter of fairness. Also, why would new employees be the only ones entitled to bonuses? We also would request that we be included in the decision-making process with the administration and have the ability to provide feedback going forward. NAPE/AFSCME was not consulted on the announced merit increase/hiring bonus plan. I firmly believe that if the state had reached out to discuss this initiative with us, that professional courtesy alone would have eased some of the tensions felt by our members. Again, we would have emphasized the need to include all facilities, all correctional facilities. While the \$2,500 bonus may sound fine to some, it is really a drop in the bucket based on the problems that this state is currently facing. I would suggest to you that we need to be competitive and ideally paying better than most county correctional employees, whom we are actually competing with. We have heard that this may be viewed as problematic because of the array that Nebraska looks at for comparability purposes. I would dispute that. When we are facing a crisis situation like this case, the array is not meant to dictate or restrict employee wages. This is especially true if the state and NAPE/AFSCME agree that we are in a crisis situation and come to an agreement on wages. The array comes into play at the time of a dispute. Again, I want to thank you, the committee, for all your work on this subject. We stand ready to help as a resource when you develop the report and as you prepare for the next legislative session. And I will be happy to answer any questions that I can. Thank you very much for allowing me this opportunity to testify. [LR127]

SENATOR EBKE: Thanks for coming today. Any questions? I have a couple of questions.
[LR127]

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JOHN ANTONICH: Yes, ma'am. [LR127]

SENATOR EBKE: Or at least one. So do you know roughly what other states are included in our array, or some of the other states? [LR127]

JOHN ANTONICH: Well, I can get back to you with that answer. What I can...just starting here in July I can tell you that the states that the union picked were different than the states that the state picked. [LR127]

SENATOR EBKE: That's the way it always works, yeah. [LR127]

JOHN ANTONICH: And so I will give you that definite answer though in writing rather than just guess right now. [LR127]

SENATOR EBKE: Yeah, I mean... [LR127]

JOHN ANTONICH: I mean if you want me to tell you the truth, I feel Mississippi doesn't belong with us. (Laugh) [LR127]

SENATOR EBKE: Well, here's the problem, one of the problems that we've got with...from my perspective using CIR for state employees because there aren't comparables until you go outside of the state. The problem is that the other states may not be using...aren't using comparables as well in the same way that we are. As a former school board member, we...if we raised our employment agreement too much, then everybody else in the array complained because it raises their status as well. [LR127]

JOHN ANTONICH: I will give you a definite answer to that, Senator. [LR127]

SENATOR EBKE: Yeah, so I mean it would be interesting to see how the states...how other states react, if it really... [LR127]

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JOHN ANTONICH: And, you know, I've heard, since the short time I've been here, that Colorado has gotten a lot of Nebraska correctional facility workers. And I'll do my research on that. [LR127]

SENATOR EBKE: And you are familiar with the CIR that we've got, Commission of Industrial... [LR127]

JOHN ANTONICH: Am I familiar with it? [LR127]

SENATOR EBKE: In Nebraska, you're not as familiar probably... [LR127]

JOHN ANTONICH: Oh, no, ma'am. I am very familiar with it. [LR127]

SENATOR EBKE: With our CIR? [LR127]

JOHN ANTONICH: I talk to my attorney every week about it. I am so tired of going to CIR. I would rather our members use the grievance and arbitration process for a lot of reasons, but unfortunately we've got a case Monday with the CIR that's been brewing for months. I don't think you want me to go into that. November 21 we've got a second...with Corrections and Director Frakes. I don't think you want me to go into that right now. [LR127]

SENATOR EBKE: Well, but I do think that it's worthwhile to think about, you know, we are stuck in this mold here with the CIR. Well, if that's the case then we have to look at the comparables that may not necessarily mean our...the same...the states that are in the same situation necessarily that we are. [LR127]

JOHN ANTONICH: I guess my only answer to that would be we're not involved...the cases that I know of, our union is not involved with pay issues. That's the least of our problems with the CIR. It's written contract language that's not been lived up to. [LR127]

SENATOR EBKE: Right. [LR127]

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JOHN ANTONICH: And so that's what they're going to decide on Monday and also on the 21st of November. [LR127]

SENATOR EBKE: Right. And that's probably (inaudible). [LR127]

JOHN ANTONICH: Believe it or not, the one thing I agree with Director Frakes on, I don't want to come here and negotiate a collective bargaining agreement that we just did back in July and I don't want to do that in the media either. I refuse to do that in the media. But, you know, it's interesting to me what I have not heard here today--and please don't take this personally--but from anybody is, in my opinion, correctional facility workers are some of the...they have one of the most dangerous fields in North America. Whether they're in Nebraska or wherever, I mean they're just dangerous work whether they work in Tecumseh or McCook. And I don't know if sometimes we fully realize that. And I know they have a hard time getting workers in certain areas. I understand that. But from the workers' standpoint, if you work in McCook or York or Omaha or Lincoln or Tecumseh, you've got a dangerous, dangerous job that you do day in and day out. And the feeling is that they just don't think they're rewarded. So I'm just going to leave it at that. If you have questions I'll be glad...but I will get you that answer, what states both parties looked at. [LR127]

SENATOR EBKE: Okay. Thanks. [LR127]

JOHN ANTONICH: Thank you, Senator, for that question. That's a good question. [LR127]

SENATOR EBKE: Thanks. Other questions? Do you have a question? Senator Bolz. [LR127]

SENATOR BOLZ: I can appreciate coming in that you're cautious about proceeding with a full contract negotiation. It's my understanding though that addendums can be added to the existing contract, is that correct? [LR127]

JOHN ANTONICH: Well, without getting into legality, be honest with you, I think I would need to check with...get a legal answer to that. And you know, the state can do merit pay. You understand that part of it. But wouldn't it be nice to just kind of mention it to us and kind of

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include us and just as professional courtesy? But as far as adding addendums, first of all, that would have to be agreed by the parties and I don't...with the budget process here I'm afraid I'd have to get an understanding from my attorney if I could even discuss that right now. [LR127]

SENATOR BOLZ: Well, I would appreciate it if you'd get back to us... [LR127]

JOHN ANTONICH: Sure. [LR127]

SENATOR BOLZ: ...specifically on that. It's my understanding...it's my understanding that that is a possibility. [LR127]

JOHN ANTONICH: And it might be. [LR127]

SENATOR BOLZ: ...could have... [LR127]

JOHN ANTONICH: But I'm just saying I don't know that I could come to the state and have any legal standing to say I want some addendums. [LR127]

SENATOR BOLZ: Sure. [LR127]

JOHN ANTONICH: ...because I would love to do that. (Laugh) [LR127]

SENATOR BOLZ: I think the challenge is...and I don't...I'm in no way...in any way, shape, or form am trying to be in any way disrespectful. But I do feel a sense of urgency. And I think that sense of urgency is communicated to us on this committee. It's communicated to me from my constituents. And I don't think that that sense of urgency translated fully to the last contract negotiation. And I don't think that that sense of urgency is fully reflected in the recruitment and retention strategy that was brought forward by the Department of Correctional Services. The things that I heard from correctional officers, and that is to say, things that I have heard directly from my constituents, things that I have heard as being a part of multiple investigative committees, and things that I have heard through documentation including the Department of Corrections' own culture survey are that there are things that are necessary to address that 25

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percent recruitment and retention...or retention issue that relate to long-term, career sort of reimbursement and job-quality issues, those things being not just pay but longevity increases, changes to retirement and making sure that the retirement adds value even if we can't keep up with increases in pay, things like making sure that our healthcare is negotiated so that your increase in pay isn't counterbalanced by your increase in your healthcare premiums. So I'm not disputing your perspective and your analysis. But I think there is some tension there in terms of what the short-term tension...the short-term urgencies are and the long-term visions are.
[LR127]

JOHN ANTONICH: Senator, if I may respond, I don't disagree with anything you just said. And we negotiate contracts on a two-year, as you know, basis. Now this one was negotiated, the...if I was writing a letter, my PS would be the correctional people are particularly aggravated at only getting a 1 percent increase last time. I can't do anything about that. That's with your budget process and that's with the state. And I agree with all your other concerns about healthcare, retirement, whatever. And if you want to find a room and put Director Frakes and I in, I can guarantee, lock the door, in 24 hours we will probably agree on a lot of the same stuff. But then we've got to go to the Governor. My hands are tied. So I respect...I agree with 101 percent of what you just said. [LR127]

SENATOR BOLZ: I think just having served on this committee for three, four years now, I firmly believe that this issue will not be resolved until we resolve our compensation issues.
[LR127]

JOHN ANTONICH: Right. And you're used to the word "urgency." I describe it as emergency because I was sitting at home in St. Louis in 2015 when they had the first riot here. That was on NBC, CBS, every news station. And it's continued. It's never resolved. These are emergency times with Corrections, as far as I'm concerned. I don't disagree with you at all--urgency or emergency, we can call them both. [LR127]

SENATOR BOLZ: Thank you. [LR127]

JOHN ANTONICH: Thank you for your question. It was a good one. [LR127]

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SENATOR EBKE: I see no other questions. Thank you. [LR127]

JOHN ANTONICH: Thank you, Senator Ebke. [LR127]

SENATOR EBKE: That concludes the hearing on LR127. Thank you all for coming today.
[LR127]