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Department of Correctional Services Special Investigative Committee
September 30, 2016

[LR34]

The Department of Correctional Services Special Investigative Committee met at 9:00 a.m. on Friday, September 30, 2016, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR34. Senators present: Les Seiler, Chairperson; Kate Bolz; Colby Coash; Laura Ebke; Bob Krist; Heath Mello; Adam Morfeld; Patty Pansing Brooks; Paul Schumacher; and Matt Williams. Senators absent: Ernie Chambers.

SENATOR PANSING BROOKS: I think we'd like to get going if possible. I think some people are still coming in. Well, thank you for coming. This is the LR34 Committee and I'd like to welcome you all. This is the LR34 Department of Correctional Services Special Investigative Committee of the Legislature. My name is Senator Patty Pansing Brooks. I represent the 28th Legislative District right here in the heart of Lincoln, and I serve as Vice Chair of this committee. We will start off having members of the committee and committee staff do some self-introductions, so starting on my right. [LR34]

SENATOR COASH: Colby Coash, senator right here in Lincoln. [LR34]

SENATOR BOLZ: State Senator Kate Bolz, District 29, south-central Lincoln. [LR34]

SENATOR MORFELD: State Senator Adam Morfeld, District 46, northeast Lincoln. [LR34]

STEVE LATHROP: Steve Lathrop, counsel for the committee. [LR34]

SENATOR PANSING BROOKS: And this is Oliver VanDervoort who is our committee clerk. [LR34]

SENATOR SCHUMACHER: Paul Schumacher, District 22. [LR34]

SENATOR EBKE: Laura Ebke, District 32. [LR34]

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SENATOR SEILER: Les Seiler, District 33 which is all of Adams County and the west half and the south half of Hall County. [LR34]

SENATOR MELLO: Heath Mello, District 5, south Omaha. [LR34]

SENATOR PANSING BROOKS: And I'd like to also welcome our pages, Brianne Hellstrom and Brenda Gallardo who are here with us as well. We're grateful. This morning we will be hearing from Diane Sabatka-Rine, deputy director of institutions for Corrections. She will be providing us with an incidents report. Following Deputy Director Sabatka-Rine, we will hear from Julie Micek, Parole Administrator, and Rosalyn Cotton, chair of the Board of Parole. This afternoon at 1:00 Director Frakes will be testifying on overcrowding. We will ask our testifiers if you have any handouts to please bring at least ten copies and give them to the clerk. And if you need additional copies, the pages can make you some. We also ask that you begin your testimony by giving us your first name, your last name, and please spell them for the record. And if you have any prepared remarks after that, please go ahead and feel free to give them. And then we'll begin asking any questions we may have as a committee. Let's see. I'd like to remind everyone including the senators to please turn off your cell phones or put them on vibrate. The other thing that I wanted to add that I know that I can speak on behalf of the committee is that these hearings are an attempt to improve things. They are not a criticism to staff. They are not a criticism to any people in particular. These...we want to make clear that safety is a priority for the Legislature. And we want to make sure that the people working in Corrections understand that we truly do care about them. We care about their safety. We care that they are treated appropriately and we need to find out what the issues are that are causing assaults, if there's absence of resources, whatever it is and if there's anything that we can do in order to help improve that situation, that's our goal as a part of the Legislature. We are grateful for their great work every day. So with that, I would like to begin today's LR34 hearing. And first off, Senator Krist, could you introduce yourself, please? [LR34]

SENATOR KRIST: Hi, I'm Bob Krist. (Laughter) [LR34]

SENATOR PANSING BROOKS: And your district? [LR34]

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SENATOR KRIST: Oh, I'm sorry. District 10. Good morning. [LR34]

SENATOR PANSING BROOKS: So we'll begin. And with that, please, we welcome Deputy Director Sabatka-Rine. [LR34]

DIANE SABATKA-RINE: (Exhibit 1) Good morning, Senator Seiler and members of the LR34 Committee. My name is Diane Sabatka-Rine, S-a-b-a-t-k-a-R-i-n-e, and I am the deputy director of operations for the Nebraska Department of Correctional Services. I appreciate the opportunity to discuss recent incidents within our facilities with you today. Director Frakes will be testifying later on the subject of capacity and overcrowding. To begin, I would like to acknowledge the staff within the department. We have employees working 24 hours a day, every day to keep Nebraskans safe. I am grateful for the continued recognition and appreciation that many of you have extended to our staff. Prison is not an easy place to work. The courage and perseverance of NDCS staff is nothing short of incredible. I will discuss assault data and identify what we are doing to move NDCS forward under the leadership of Director Frakes. I have included a summary of recent incidents in my written testimony, by facility, but will not read it aloud. I will be happy to answer any questions you have about those incidents. We have experienced an increase in inmate-on-staff assaults over the past several years. In 2013, there were 78 staff assaults reported within NDCS, none of which resulted in serious injury. In 2015, staff assaults totaled 143, and 5 of those assaults resulted in serious injury. Through August of 2016, we have reported 141 staff assaults, 10 of which resulted in serious injuries. To be clear, our department's goal is zero staff assaults. The data on inmate-on-inmate assaults does not reflect the same increase as staff assaults. From 2013 to 2015, inmate-on-inmate assaults were relatively flat, increasing from 227 to 233. Through the first eight months of 2016, there have been 143 reported inmate-on-inmate assaults, which is a promising downward trend. Staff safety is a priority for me. I have been a part of this agency for 32 years and have worked with many of our staff for decades. This isn't just a job, it is a part of who I am. NDCS staff are a part of my life. There is never a justification for an inmate to assault anyone. The responsibility for these assaults is ultimately on those individuals who made the decision to physically harm another person. We are determined to identify what is contributing to the increase in staff assaults. For more than two years now, we've talked about reforming Nebraska Corrections. I believe that reform has been achieved with the change in leadership, the automation of sentence calculation,

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reducing the use of restrictive housing, and the development and implementation of the Discharge Review Team. Our efforts to effect change must never stop as this is how we create safe prisons, transformed lives, and safe communities. Current efforts include: budget request for 164.5 additional staff, the vast majority of which are protective services staff; creating an Agency Security Administrator position and an Agency Intelligence Administrator position; focused initiatives for employee recruitment and retention; staff resiliency training to address the stress associated with working in a correctional environment; supervisor training academy; training nonclinical staff to deliver cognitive behavioral programs and interventions; shift sergeant pilot at the Nebraska State Penitentiary; Employee Positive Impact Councils; increased management visibility; improvements to internal and external communication; upgrades to the physical plant security; capital construction projects; identifying additional safety and security equipment; the purchase of a security transport bus; completing internal critical incident reviews on each staff assault incident to identify ways to minimize risk to staff and improve staff safety; a partnership with the Nebraska State Patrol which includes facility tours, joint training exercises, and sharing of resources; collaboration with Lincoln Fire and Rescue to ensure more immediate access into the facility for emergency response personnel; intentional reentry planning starting at reception; implementation of a risk assessment and revised classification tool; decreased screening time for behavioral health treatment programs; revisions to the inmate disciplinary process; and family and inmate councils at all facilities. These changes cannot be considered in a vacuum, but must be considered as part of our overall commitment to keep people safe. Much remains to be done, but I am confident we are moving in the right direction under Director Frakes's leadership and that we will succeed with the continued support of our staff, the Governor, and the Legislature. Thank you for the opportunity to testify this morning. [LR34]

SENATOR PANSING BROOKS: Thank you, Ms. Sabatka-Rine. [LR34]

STEVE LATHROP: They're going to have me start out and ask some questions before the senators do. And we...I introduced myself before we started, but my name is Steve Lathrop and I'm counsel to the committee. And I do have some questions. At one time we were going to have you talking about overcrowding and I think yesterday you or the director suggested we take that up with Director Frakes this afternoon. [LR34]

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DIANE SABATKA-RINE: Correct. [LR34]

STEVE LATHROP: So what I want to focus on in our dialogue this morning has to do with some of the incidents that have occurred. And I see you've written some of them out and I want to maybe just have you kind of talk about them a little bit. And maybe I'll have some follow-up questions. Before we go into the individual occurrences that we're going to talk about today though, your testimony about assaults gave some statistics. And we can agree that the increase in assaults on staff are alarming. [LR34]

DIANE SABATKA-RINE: I would agree with that, yes. [LR34]

STEVE LATHROP: And not only are they going up at a significant rate, but where we in the past had assaults that didn't result in serious injuries, now we're seeing assaults that involve serious injuries to the staff. [LR34]

DIANE SABATKA-RINE: Correct. [LR34]

STEVE LATHROP: That's an alarming trend as I read your report and read the report of the Inspector General which also highlighted some of those assaults as well. Can you go through...and maybe you don't have to read your prepared text. Just tell us a little bit about the Tecumseh...give us an update on the Tecumseh disturbance. [LR34]

DIANE SABATKA-RINE: Okay. [LR34]

STEVE LATHROP: Is that what we call it, a disturbance? Or do we call it a riot? [LR34]

DIANE SABATKA-RINE: We call it a disturbance. [LR34]

STEVE LATHROP: Okay, a disturbance. [LR34]

DIANE SABATKA-RINE: So as you all know, on May 10 of 2015 there was a significantly large disturbance at the Tecumseh State Correctional Institution. Resulted in the loss of lives to

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two inmates, significant structural damage to the facility that took months and months to repair. Subsequent to that, we had an expert from Washington State come in and do a critical incident review of the incident, identified I believe there's a total of 83 recommendations of things that needed to be changed: facility security, some training issues, and some administrative things. Of those 83 recommendations, all but one has been completed. The one that still is pending is the recommendation that there be escape hatches added to the control centers in the housing units for staff assigned to that area. We are working on the first one and it is scheduled to be completed the second week in October if everything goes according to plan. So in terms of recovering the damage done from the disturbance in May, we are almost completely 100 percent finished with that. So... [LR34]

STEVE LATHROP: Recovering from the property damage? [LR34]

DIANE SABATKA-RINE: From the property damage as well as restoring the culture of the facility to a more appropriate level. So there's been lots of work done, particularly at Tecumseh, but throughout the agency. I mentioned inmate councils. We are trying to get a much better handle on how to manage our inmates, what their challenges and concerns are, and how we can better address those. [LR34]

STEVE LATHROP: As far as that occurrence or disturbance as you refer to it, they took the place over for like two days, didn't they? [LR34]

DIANE SABATKA-RINE: They didn't take the place over for two days. [LR34]

STEVE LATHROP: Much of or portions of the facility. [LR34]

DIANE SABATKA-RINE: It didn't go on that long. By the end of that night, I believe it was at midnight or shortly thereafter, we had control of the facility. We still had lots of things to take care of in terms of securing all the inmates in secure locations. But they didn't have control of the facility for two days, no. [LR34]

STEVE LATHROP: Okay. What precipitated that disturbance? [LR34]

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DIANE SABATKA-RINE: Well, I think there was a lot of unrest in the inmate population and they felt that their concerns and grievances weren't being appropriately addressed. There was some poor communication perhaps from management staff to the inmate population. And their perception was that they were being treated unfairly. [LR34]

STEVE LATHROP: Were they...and believe me I'm not asking these questions because I know the answer to them. As it relates to this disturbance, I know what I've read in some of these reports and the newspaper. But these folks were trying to make some kind of a...present some kind of a list of grievances to administration at Tecumseh? [LR34]

DIANE SABATKA-RINE: After the initial onset of the disturbance, there was an individual who made it known that they had a list of grievances. [LR34]

STEVE LATHROP: Nobody knew that ahead of time? [LR34]

DIANE SABATKA-RINE: I don't know for certain if that had been presented. But inmates have numerous ways to submit grievances to management staff to review. So I think it's fair to assume that management staff were aware of what some of their concerns were. [LR34]

STEVE LATHROP: Okay. So what's the lesson or the takeaway from Tecumseh? Now that you've had somebody come in from Washington and look at the circumstances and come up with recommendations, what's the takeaway from that disturbance in terms of how we're going to run the Department of Corrections? [LR34]

DIANE SABATKA-RINE: I think that there's lots of takeaways. For me one of the primary things is that we need to involve our inmate population in solving some of our challenges. They are a part of this. They're sentenced to our facilities. We need to hear what their challenges and concerns are so that we can address them. I don't think it's fair that we assume that we understand those unless we have avenues to communicate with them effectively on what those challenges are. And then we have a responsibility to be responsive to addressing those. Doesn't necessarily mean they're always going to agree with our response certainly, but we have an obligation and a responsibility to do that. [LR34]

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STEVE LATHROP: So if the takeaway is we need to have some dialogue between the employees at Tecumseh and the inmates, that's happened, right? [LR34]

DIANE SABATKA-RINE: Um-hum, that continues to happen, yes. [LR34]

STEVE LATHROP: Is that the only thing that's changed? [LR34]

DIANE SABATKA-RINE: Oh, no. Lots of things have changed. [LR34]

STEVE LATHROP: Okay. How about mental healthcare and programming? [LR34]

DIANE SABATKA-RINE: We continue to work on... [LR34]

STEVE LATHROP: What's changed since this disturbance with respect to programming mental healthcare at Tecumseh? [LR34]

DIANE SABATKA-RINE: We continue to work on both treatment programming opportunities as well as nonclinical programming opportunities. So I can't speak directly to the efforts and where they are today with clinical programming because that falls outside of my area. But certainly we recognize that we need to have sufficient numbers of mental health staff available to provide those clinical programs. More importantly, we've learned that we can use nonclinical staff to offer programming to the inmate population, and we've started to do that throughout the agency as well as at Tecumseh. [LR34]

STEVE LATHROP: To what extent...when this disturbance happened, what was the population at Tecumseh? [LR34]

DIANE SABATKA-RINE: I don't recall specifically what their count was in May of 2015. [LR34]

STEVE LATHROP: Does 1,008 sound about right? [LR34]

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DIANE SABATKA-RINE: That could be right, yes. [LR34]

STEVE LATHROP: And do you know what the design capacity is? [LR34]

DIANE SABATKA-RINE: Not off the top of my head I don't, but that's not much over their design capacity, I don't believe. [LR34]

STEVE LATHROP: Okay. So you don't think overcrowding was a contributing circumstance to that disturbance [LR34]

DIANE SABATKA-RINE: Not directly, no. [LR34]

STEVE LATHROP: Not directly, but indirectly? [LR34]

DIANE SABATKA-RINE: Well, I mean I'm not going to say that...I mean certainly if you had half the number there, you have half the number of individuals to manage. So certainly that would be a contributing factor, but I don't think it was a primary factor. [LR34]

STEVE LATHROP: How about the amount of overtime the staff was working? [LR34]

DIANE SABATKA-RINE: It's concerning. [LR34]

STEVE LATHROP: Well, tell me, tell me the relationship, if any, between that disturbance and the fact that an awful lot of those people were working overtime and you had the less experienced staff at Tecumseh by virtue of the fact that it's a hard place to recruit at. [LR34]

DIANE SABATKA-RINE: Correct. [LR34]

STEVE LATHROP: To what extent do those two considerations play into the disturbance?
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DIANE SABATKA-RINE: Well, it's never ideal to have staff working a lot of overtime. As I indicated in my testimony, corrections is a tough business. And certainly doing 8 hours is challenging; doing 16-hour days is even more challenging. Not having a break from the work that we do can impact things. But Tecumseh, unfortunately, has had vacancies since they opened. They manage it extremely well. They have an extremely dedicated group of staff there that do what they need to do. So was it a factor? Probably to some extent. I know that there were some activities that were supposed to occur that weekend and because of staffing they were not...did not occur. So certainly that impacts the inmate population. [LR34]

STEVE LATHROP: So when we look for takeaways, what has the Department of Corrections learned as a consequence or in the wake of a disturbance like this? The circumstances of high vacancies, high overtime, those are contributing problems. And the takeaway must include we've got to get the staffing up where it needs to be. [LR34]

DIANE SABATKA-RINE: Right, and I think we knew that even prior to the Tecumseh disturbance. Again, it didn't take a disturbance of that size to tell us that staffing is a concern for us. So we've been working on it. Certainly since May of 2015 we increased our efforts... [LR34]

STEVE LATHROP: Right. [LR34]

DIANE SABATKA-RINE: ...for recruitment as well as retention. [LR34]

STEVE LATHROP: I appreciate that you knew it ahead of time or you would have known that those were problems for the department in advance of the disturbance, but the fact that they were contributing circumstances for the disturbance suggest that it's one of the things that the department needs to fix to reduce the likelihood of another disturbance and improve safety for the workers. [LR34]

DIANE SABATKA-RINE: And we are attempting on many different levels to fill vacancies and improve retention. [LR34]

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STEVE LATHROP: Your notes also include the Lincoln Correctional Center which I think is one of the things you and I were going to talk about. And really they come to us with two separate occurrences. One is an escape. [LR34]

DIANE SABATKA-RINE: Correct. [LR34]

STEVE LATHROP: Tell us what we've learned about...well, give us an overview of the escape or the circumstances, or how did these two guys get out? [LR34]

DIANE SABATKA-RINE: They got out because there were a series of breaches in security and it was kind of a perfect storm event. So we had staff who were working in areas that were not specifically trained for that. We had staff who were not following the written procedures, and we had inmates that took advantage of every opportunity that was presented to them that day and successfully escaped from our facility. [LR34]

STEVE LATHROP: Inmates will do that. [LR34]

DIANE SABATKA-RINE: Yes, they will. [LR34]

STEVE LATHROP: Okay, so what are the breaches in security? [LR34]

DIANE SABATKA-RINE: We had staff that didn't follow written procedures, allowed inmates to be in areas that they were not authorized to be in. We had inmates being in the load...the area where laundry carts were being loaded that were not authorized to be there. We had staff that weren't using rosters to check people through at the turnkey area that allowed them to get to the laundry area. [LR34]

STEVE LATHROP: And if I understand correctly, they load some laundry carts at LCC and take them to Tecumseh to do laundry, right? And they have these big bins and these two fellows just somehow jumped inside the bins, rode the truck some distance towards Tecumseh and jumped off. [LR34]

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DIANE SABATKA-RINE: Correct. [LR34]

STEVE LATHROP: I'm simplifying it maybe. But in order for that to happen, there had to be breaches in security in or around the laundry loading dock. [LR34]

DIANE SABATKA-RINE: Correct. [LR34]

STEVE LATHROP: Okay, which allowed these two guys to get in the truck, jump in the carts, and leave through the front gate. [LR34]

DIANE SABATKA-RINE: Correct. [LR34]

STEVE LATHROP: And what you're saying is there were procedures in place which, if followed, would have prevented this escape? [LR34]

DIANE SABATKA-RINE: I believe they would have prevented the escape. I think that since that time we have improved those procedures even more so that...and ensure that they're followed. We have a process in place to make sure that that occurs. [LR34]

STEVE LATHROP: I suspect they have. But my question is, where do we come up with the breaches in security? Do we have people who were pulled from somewhere else and today they're unfamiliar with the laundry loading dock and now they're going to be laundry loading dock workers? [LR34]

DIANE SABATKA-RINE: Not today, no. [LR34]

STEVE LATHROP: I don't mean today, but I mean the day this occurred. [LR34]

DIANE SABATKA-RINE: The day it occurred, yes. There were people working in posts that they had not been appropriately trained for. So correctional officers all go through standard training. They were all through that standard training, but then we have specialty posts; and our

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procedures require that before someone assumes that post that they're appropriately trained. We learned afterwards that that didn't...what had not occurred on that particular day. [LR34]

STEVE LATHROP: Okay. [LR34]

DIANE SABATKA-RINE: So people who are not familiar with the procedures were responsible for making sure that things went according to those procedures and it didn't happen. [LR34]

STEVE LATHROP: Okay. They should have been checking the roster. Somebody should have been looking in the truck before they closed the door. And somebody at the front gate should have looked through the truck before they let him out the front gate. [LR34]

DIANE SABATKA-RINE: Correct. [LR34]

STEVE LATHROP: So there was a series of things that had to happen for these two guys to actually get out on the street and do whatever they did in Lincoln before they were captured. That sounds like a personnel issue. [LR34]

DIANE SABATKA-RINE: And I think in some respects it was. [LR34]

STEVE LATHROP: Well, we don't excuse what the inmates did, but they behave the way you might expect inmates to behave, at least those that might have a long sentence and want out of the place. But the people who were brought in to do a task that they hadn't been trained for, how does that happen? Is this a somebody called in sick, or is this a symptom of the vacancies and not having enough staff? [LR34]

DIANE SABATKA-RINE: I think it's a little of both. So I think it certainly is a symptom of vacancies to some extent and also if someone calls in sick then shift supervisors are left to scramble at the last minute to find someone to work those posts. And sometimes they have limited choices as to who can do that. [LR34]

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STEVE LATHROP: As I was looking and preparing for the last hearing where we did...we spent a lot of time with Director Frakes talking about vacancies and turnover and those kinds of things, I was impressed as I read about the number of times somebody has a role to play, they have a post to fill and they don't have enough people, they don't even have people they can make work overtime. And so they try to figure out we have these corrections officers--and I mean that in a big...a broad sense--let's go pull this guy from over here and now we have one less guy in the yard so we've got to do something different in the yard but we'll have him work laundry where he doesn't know what he's doing, right? And that's the problem, the underlying problem, created to public safety by not having the vacancies filled. [LR34]

DIANE SABATKA-RINE: Correct. [LR34]

STEVE LATHROP: Do I have that about right? [LR34]

DIANE SABATKA-RINE: I mean I think that's fair to say and again I think the staffing analysis that we've completed and our budget request for the additional positions will address that to a large extent, but that's not an ideal situation. But what you described is often what happens so that we can keep the facility operating day to day. [LR34]

STEVE LATHROP: Okay. [LR34]

DIANE SABATKA-RINE: Now since...if I may... [LR34]

STEVE LATHROP: Sure. [LR34]

DIANE SABATKA-RINE: Since the incident, the escape incident, there are procedures in place so that at LCC as well as at other facilities throughout the agency that can't happen. We can't put an untrained person in a post, particularly those posts that control entrance and exit posts. [LR34]

STEVE LATHROP: But the...I appreciate that answer and that's...I'm sure everybody feels better about knowing that that's taken place. That may prevent the next escape but it's still...the problem

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still is an example of pulling somebody out of the yard to go drive somebody to a medical appointment. Those kinds of things are still happening because of the vacancies and the fact that you don't have all the posts filled. [LR34]

DIANE SABATKA-RINE: I can't say it never happens. I think that it only...I think we do a much better job of managing that. So again, if we know that someone is not trained to work a particular specialty post like in the laundry, they'll call a sergeant in who is, they'll have another supervisor who's trained to work that. We no longer allow us to just take anyone off the shift roster to work that. It has to be someone who's trained. And then the supervisors go through the list with them so that they understand specifically what their duties are before they're allowed to operate that post. [LR34]

STEVE LATHROP: But the vacancies still create that same problem... [LR34]

DIANE SABATKA-RINE: The vacancies are still concerning. [LR34]

STEVE LATHROP: ...which is pulling somebody from here to do a task and it's leaving another post vacant which has sort of a domino effect. [LR34]

DIANE SABATKA-RINE: Correct. [LR34]

STEVE LATHROP: I was here eight years and I never really mastered the budget. And so we had a long conversation before this preliminary sort of sketch of the budget. I'm not even sure what you call it. Maybe an outline of a budget was presented, since we last discussed vacancies; but do you think that the...the problem that was identified is that you have about 200 vacant posts at any given time and you need somewhere between 138 and 254 more people on top of that, right? [LR34]

DIANE SABATKA-RINE: Um-hum. [LR34]

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STEVE LATHROP: Tell me what the plan is. How fast are we going to fill the 200 vacancies and how are we going to make ground on the 138 to 254 additional people we need as correction officers, corrections officers in a big sense? [LR34]

DIANE SABATKA-RINE: So we have recruiting efforts that occur daily. And I think as Director Frakes has testified previously, it's difficult to hire people when you don't have people applying. So we're out there. We're trying to recruit. We're recruiting with places we've never done recruitment before. We've entered partnerships with some military offices in an attempt to try to attract people to come to our agency to work. We're doing everything we can. But again, when you don't have the applicants coming in the door, it's hard to hire. [LR34]

STEVE LATHROP: Are you involved in that? [LR34]

DIANE SABATKA-RINE: In the recruiting? [LR34]

STEVE LATHROP: Yeah. [LR34]

DIANE SABATKA-RINE: Not directly. [LR34]

STEVE LATHROP: I know your title, I haven't asked you what all your duties are. But do they...are you involved in this process of trying to fill the vacancies? [LR34]

DIANE SABATKA-RINE: Not directly. I mean it's an HR function and we have a designated recruiter for the agency whose primary responsibility is to do that. [LR34]

STEVE LATHROP: Are you over that person? [LR34]

DIANE SABATKA-RINE: No, I am not. [LR34]

STEVE LATHROP: Okay. So you can or you can't discuss the efforts to fill these vacancies? [LR34]

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DIANE SABATKA-RINE: I can only address what my involvement is and it's limited because again it's an HR function. [LR34]

STEVE LATHROP: Okay. Maybe let me ask this question: When we had Director Frakes here the last time, it looked like they had a team that they put together to figure out how are we going to recruit people. And the...and you could see in the notes that they were brainstorming and they were running ads in the theater at Tecumseh before movies would start and they were going to college campuses and they were...social media and newspaper ads and Husker football. I mean they were doing like everything you could think of to fill these vacancies but it wasn't effective. So did they come up with something more recently or are we doing the same things with the same pay scale to try to attract the people we know we're not going to get? [LR34]

DIANE SABATKA-RINE: I know that we are continuing to do many of the things that you referenced. I don't know specifically if we continue to do all of those. And again, I don't know other than what I mentioned in terms of partnering with other areas, whether it's the military offices here in Lincoln or Offutt or those places. I can't speak directly to what all our recruiter is currently doing. [LR34]

STEVE LATHROP: Okay, but you and I can agree that having these things and these escapes illustrate this point: that having vacancies creates an opportunity for miscommunication and having the wrong guy at the wrong post and that affects public safety. [LR34]

DIANE SABATKA-RINE: I think having vacancies increases our challenges even further, yes. [LR34]

STEVE LATHROP: And it ultimately has a direct or at least a strong indirect connection to public safety. [LR34]

DIANE SABATKA-RINE: Yes. [LR34]

STEVE LATHROP: Are we going to be safe? Somebody on the streets in Lincoln was assaulted by one of these guys, right? [LR34]

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DIANE SABATKA-RINE: Correct. [LR34]

STEVE LATHROP: The Lincoln Correctional Center also had an assault this summer. [LR34]

DIANE SABATKA-RINE: Yes, they did. [LR34]

STEVE LATHROP: Can you give us an overview of that assault. I don't know if we've had anybody from the Department of Corrections talk to the Legislature about that so perhaps you could tell us what happened. Start there. [LR34]

DIANE SABATKA-RINE: Okay. So on August 24, there was an incident in one of the mini yards at LCC which is the yard directly outside of a housing unit. Staff were trying to restrain and remove an inmate from the area. There were numerous other inmates in the area. Subsequently, many of them joined in and assaulted staff--both staff that were trying to restrain the inmate initially as well as responding staff that came to assist. So in total, I think there were 15, I think is what my statement says, inmates involved and 9 staff who were injured. [LR34]

STEVE LATHROP: What started this? What was the precipitating occurrence? [LR34]

DIANE SABATKA-RINE: As I understand it--and the critical incident review is not yet completed--there was a discussion with an inmate and another inmate became involved and he's the one that was defiant and disobedient toward staff. [LR34]

STEVE LATHROP: The second one? [LR34]

DIANE SABATKA-RINE: The second inmate, correct. [LR34]

STEVE LATHROP: Let's go back to the first one. There's a staff person having a discussion with an inmate. Is that like, when you use the term "discussion" that could be like talking about the football game all the way to I'm going to force you to get back in your cell. I mean, what was this discussion? [LR34]

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DIANE SABATKA-RINE: Again, based on my understanding of the incident it was just simply a discussion, nothing controversial necessarily. The inmate was concerned about a transfer to another facility. Staff were discussing that. And then a second individual became involved. [LR34]

STEVE LATHROP: Okay. And was this second person...and by second person you mean second inmate? [LR34]

DIANE SABATKA-RINE: Correct. [LR34]

STEVE LATHROP: Was this second inmate involved because he had a stake in the conversation, or he just went after the guard or the security person? [LR34]

DIANE SABATKA-RINE: My understanding is he had no direct stake in the initial conversation. However, he chose to involve himself in the conversation and then it escalated from there. [LR34]

STEVE LATHROP: And how did it escalate, or tell us what...so we got two inmates and one staff person and it's escalating. What's that look like and where did it go from there? [LR34]

DIANE SABATKA-RINE: So he became argumentative with the staff. They decided to remove him from the area. He tried to get away from the staff member. And then he was being restrained when another inmate hit one of our employees. [LR34]

STEVE LATHROP: A third inmate? [LR34]

DIANE SABATKA-RINE: Yes. [LR34]

STEVE LATHROP: By the time they're restraining...this is inmate number two in this, by the time they're restraining inmate number two, how many guards are involved? [LR34]

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DIANE SABATKA-RINE: Well, there were probably more than a dozen correctional employees that responded. [LR34]

STEVE LATHROP: And it's still two inmates and now a dozen correctional...? [LR34]

DIANE SABATKA-RINE: No, by that time numerous other inmates joined in. So it all happened rather quickly. [LR34]

STEVE LATHROP: Okay. What are people getting hurt with? Is this just a...is this a fist fight, or are we taking things and objects and hitting security staff with it? [LR34]

DIANE SABATKA-RINE: In this particular incident, there were no weapons used. So it was...they were hitting staff and then kicking staff once they were down on the ground. [LR34]

STEVE LATHROP: And what was the score on serious injuries for staff? [LR34]

DIANE SABATKA-RINE: I believe there was one individual who received serious injuries by definition, and then eight other staff that were injured. [LR34]

STEVE LATHROP: Okay. Let me ask it differently. How many staff people went to the hospital as a result of this melee? [LR34]

DIANE SABATKA-RINE: I know that there were nine staff injured and I'm fairly certain all nine went to a community hospital to be checked. Not all of them went by ambulance, but I believe all nine of them went to the community hospital. [LR34]

STEVE LATHROP: How many went by ambulance? [LR34]

DIANE SABATKA-RINE: Five or seven, I can't...I'm sorry, I don't remember specifically. [LR34]

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STEVE LATHROP: Of the nine security folks that were injured, how many ended up taking more than a couple of days of work off? [LR34]

DIANE SABATKA-RINE: I can't answer that. I'm not certain. [LR34]

STEVE LATHROP: Okay. Were you involved in trying to drill down and find out how this took place? [LR34]

DIANE SABATKA-RINE: Well, again, the critical incident review is still being conducted and that's the process that we use to really drill down. So we have one of our wardens who's leading that effort. So... [LR34]

STEVE LATHROP: What was the date of this occurrence if you know? [LR34]

DIANE SABATKA-RINE: August 24. [LR34]

STEVE LATHROP: So a little over a month ago. [LR34]

DIANE SABATKA-RINE: Yes. And in this particular case, the State Patrol is also investigating. [LR34]

STEVE LATHROP: Okay. So I assume you have a critical incident team do a report or an investigation so that you can find out what led to this and what do we need to change so stuff like this doesn't happen again. [LR34]

DIANE SABATKA-RINE: Correct. [LR34]

STEVE LATHROP: Okay. What's the takeaway from this assault on nine of our staff? [LR34]

DIANE SABATKA-RINE: Well, I don't have the critical incident review team's report yet so I don't know what all their recommendations will entail. [LR34]

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STEVE LATHROP: Well, are they talking to you about it as they go through this process?
[LR34]

DIANE SABATKA-RINE: Not necessarily. That's not part of the process. I mean if there's something urgent that comes up, if they identify a specific thing in policy that is obviously missing that we need to address right away. [LR34]

STEVE LATHROP: It may not have been a clear question. The question wasn't, generally do they where they may or may not or may not necessarily. The question was, have they? Along the way since this happened, they start their investigation, have they been telling you about their investigation or what they're finding now over a month later? [LR34]

DIANE SABATKA-RINE: No, not in this particular case. I've had numerous conversations with the warden of the facility, but I have not had specific conversations with the individual leading the CIR. [LR34]

STEVE LATHROP: When will that be done? [LR34]

DIANE SABATKA-RINE: I don't know what the due date is off the top of my head, but generally we give them 30 days to complete it. [LR34]

STEVE LATHROP: Okay. So if it's August 26 and we're on September 30. [LR34]

DIANE SABATKA-RINE: But he probably was not assigned it on August 26 or on August 24. Again, the State Patrol would complete their investigation. So generally we don't start our internal process until they're finished with their initial review and investigation and then we begin our internal process. [LR34]

STEVE LATHROP: Well, where are you at in the process then? Let me ask that question. Are you four days into it because the State Patrol just got done? [LR34]

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DIANE SABATKA-RINE: Oh no. I can tell you I think I have the thing that I can tell you the date it was assigned if it's on my log and it might be. But I'm guessing it was probably a week to ten days later that...when it was officially assigned for an internal critical incident review. And again, normally we would do that more quickly but in this case because the Patrol was doing their investigation. [LR34]

STEVE LATHROP: I got that. So you think sometime in mid October somebody is going to have this. [LR34]

DIANE SABATKA-RINE: I would expect it within the next week to ten days, yes. [LR34]

STEVE LATHROP: So from August 26 until this report is done and then somebody does something with the recommendations, no changes happen in the way we run that particular institution? [LR34]

DIANE SABATKA-RINE: No, that's not true at all. [LR34]

STEVE LATHROP: Okay, then let me back up and ask it differently. What's the takeaway? Anybody know that until the critical incident review team has completed their study? Or do we know enough about what happened to figure out what we need to do differently so that 9 staff don't get beat up by 15 inmates? [LR34]

DIANE SABATKA-RINE: Certainly. There have been internal procedures that have been modified at the Lincoln Correctional Center to control inmate movement in and out. And those would all be under the direction of the warden. [LR34]

STEVE LATHROP: Okay, let me stop you there. It sounds like you're about to give me a list but I would like to have you expand on that. Was the unrestricted movement of inmates a contributing circumstance? [LR34]

DIANE SABATKA-RINE: Well, there were numerous inmates in the area at the time, so that would certainly be a concern that we would look at. [LR34]

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STEVE LATHROP: Well, you changed the policy, right? [LR34]

DIANE SABATKA-RINE: We didn't change... [LR34]

STEVE LATHROP: So somebody must have informed you that that was part of the problem. [LR34]

DIANE SABATKA-RINE: We didn't change the policy. Again, the procedures at that particular facility were reviewed by the facility team to determine if they needed to make revisions to their internal schedule and how that flow of inmates occurred. [LR34]

STEVE LATHROP: Was that flow of inmates that set the stage for this 15-on-9 disturbance, was that related to not having enough people in their posts? [LR34]

DIANE SABATKA-RINE: No, all the posts were staffed that day. The staff working on that housing unit were assigned to work on that housing unit to the best of my understanding. I think they had one employee on one side of the housing units that came from another unit but certainly she would be trained on how to manage a housing unit. So I don't think that was... [LR34]

STEVE LATHROP: So it wasn't a staffing issue? [LR34]

DIANE SABATKA-RINE: I don't think that was necessarily a contributing factor, no. And as I indicated, there were multiple staff that were available to attend, to respond to the incident. [LR34]

STEVE LATHROP: Okay. You answered that question like you know a little bit more about it than...like I don't really have to wait until they finish this review before you can tell me what you think the problem was. [LR34]

DIANE SABATKA-RINE: Well, certainly, I mean when you have an incident like that that occurs, as you know...and you understand how our facilities operate, there are things that immediately come to light that we need to look at. That would be... [LR34]

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STEVE LATHROP: Okay, tell us, tell the panel what that is. What went wrong that this assault could happen? [LR34]

DIANE SABATKA-RINE: Well, I don't know that anything necessarily went wrong. I think in this particular case the incident occurred on a housing unit where inmates for a period of time have been pretty defiant and disrespectful toward staff, hesitant to follow rules. So they were having some management challenges there. So certainly we have done some efforts. We have a unit administrator who's acting at unit manager to try to bring better control and day-to-day management to the housing unit. [LR34]

STEVE LATHROP: Okay, so defiant inmates, that's the focus. You think that was the problem... [LR34]

DIANE SABATKA-RINE: Well, that's one of the factors. [LR34]

STEVE LATHROP: ...and then finally the defiance turned into a physical altercation. [LR34]

DIANE SABATKA-RINE: That's certainly one of the factors, yes. [LR34]

STEVE LATHROP: Okay, tell us why these guys are getting defiant because we heard that last time we were here, that the Department of Corrections is having more assaults. People are...it might have been in the culture study or in some survey, where the corrections officers are complaining that the inmates are getting more defiant. Is there a discipline problem or why the increase in defiance among the inmates? [LR34]

DIANE SABATKA-RINE: I don't think that there's any one factor that results in the increased defiance. I mean, I think it's a variety of factors. I mean, I think that to some extent we see that in our communities as well. There's just more general defiance towards authority. Certainly that affects us within the facilities. But those are the things that we're trying to look at and try to address through the things that I talked about earlier with the inmate councils. We're trying to figure out what is it that makes people challenge every direction, every directive, every expectation. [LR34]

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STEVE LATHROP: Right. So let me ask a question... [LR34]

DIANE SABATKA-RINE: And if I may, Mr. Lathrop. [LR34]

STEVE LATHROP: Oh, yeah, absolutely. [LR34]

DIANE SABATKA-RINE: In fairness, it's not all of our inmates that do this. The majority of our inmates are very compliant. They go to programs. They go to their work. They do the things they want...that they're expected to do. But certainly there are some individuals that opt not to and they can be very disruptive to the institution. [LR34]

STEVE LATHROP: When we talk about defiance and when I was reading the culture survey...and I know there was a study and a survey that I read before we had our last hearing. And I wonder...there was some question among the staff about trying to modify the use of restrictive housing and whether the not having the threat of restrictive housing was affecting the behavior of inmates. And I also question or I want to ask you about good time because the tools that you have--and I mean you, the Department of Corrections--has to affect behavior would involve at the...I would assume at the extreme, putting people into restrictive housing, right? [LR34]

DIANE SABATKA-RINE: Correct. [LR34]

STEVE LATHROP: That's like at the strong end of the spectrum. [LR34]

DIANE SABATKA-RINE: That's the immediate intervention we have to separate them. [LR34]

STEVE LATHROP: Then there's sort of write-ups and things that you might put in somebody's folder where they were mouthing off to a guard. But in there somewhere between the two is good time. [LR34]

DIANE SABATKA-RINE: Correct. [LR34]

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STEVE LATHROP: And when an inmate rolls in to or is confined at the Department of Corrections, they are...if they have a ten-year sentence, it starts out as five years and we're going to add more time if we're taking away good time. Is that kind of how good time works? [LR34]

DIANE SABATKA-RINE: In a nutshell, yes. [LR34]

STEVE LATHROP: Yeah, we spent a little bit of time on that a couple years ago. And so I do remember the good time discussion, that it's basically you start out with the good time and it's revoked, right? [LR34]

DIANE SABATKA-RINE: You can lose the good time, yes. [LR34]

STEVE LATHROP: You can lose good time. And the department can also restore good time. [LR34]

DIANE SABATKA-RINE: Correct. [LR34]

STEVE LATHROP: And notwithstanding some of the political conversation, what we learned is that good time and the use of good time as a disciplinary tool is affected by overcrowding, like the more good time we pull the longer people are going to stay here. The longer they stay here, the more acute the overcrowding situation will become. We can agree on that much, not whether you are or you're not. But if you are pulling good time from inmates, that's keeping them at the Department of Corrections longer and exacerbating the overcrowding. That would be a true statement. [LR34]

DIANE SABATKA-RINE: If an individual loses good time, certainly, yes, that would extend his or her sentence by the amount of good time lost. [LR34]

STEVE LATHROP: And if we do that to enough people, the cumulative effect of that is...and we have this thing sitting in front of you--the statistics on the population and the overcrowding which is at 161 percent, something like that, of capacity. [LR34]

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DIANE SABATKA-RINE: Um-hum. [LR34]

STEVE LATHROP: So that number gets worse the more people we take good time away from. [LR34]

DIANE SABATKA-RINE: It has the potential to, yes. [LR34]

STEVE LATHROP: Right, okay. So two years ago we had a hearing, talked about good time and maybe the reluctance to use good time or take good time away because of its effect upon the overcrowding at the Department of Corrections. My next question is, do you track the use of taking away good time as a disciplinary tool? [LR34]

DIANE SABATKA-RINE: I'm not sure. Do we track it in what way? [LR34]

STEVE LATHROP: Like, are you keeping track of how many days, weeks, months, years of good time have been taken away from the population of inmates that you have? [LR34]

DIANE SABATKA-RINE: Not that I'm aware of. [LR34]

STEVE LATHROP: Obviously somebody who's deciding when somebody gets to leave the place is keeping track of how much good time has been taken away from any one individual inmate. [LR34]

DIANE SABATKA-RINE: Well, certainly that would be a function of the records manager... [LR34]

STEVE LATHROP: Okay. [LR34]

DIANE SABATKA-RINE: ...who maintains that information. [LR34]

STEVE LATHROP: Okay. And the cumulative effect of that upon the population you don't know. [LR34]

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DIANE SABATKA-RINE: I don't know and I've never been involved in a discussion where that's been addressed. [LR34]

STEVE LATHROP: And you don't know anybody who does? Like the records keeper guy doesn't say, you know, revocation of good time is up and it's added 25 inmate years to our population. [LR34]

DIANE SABATKA-RINE: Not that I'm aware of, no. [LR34]

STEVE LATHROP: Can you answer this question for me about good time? Are you revoking or taking away good time and not restoring it at a rate greater than two years ago? [LR34]

DIANE SABATKA-RINE: I don't know. [LR34]

STEVE LATHROP: You don't have anything to do with the good time? [LR34]

DIANE SABATKA-RINE: In my current position, I have the responsibility to review good time requests, restoration requests. But I have no involvement in taking good time from an individual. [LR34]

STEVE LATHROP: Okay, then I'll ask you this question and maybe I'll get this information from somebody else today. As far as good time and the restoration of good time, once it's taken away from somebody as a disciplinary tool, they can go back to the department--and apparently that lands on your desk--and ask to have their good time restored. [LR34]

DIANE SABATKA-RINE: They can make a request, unless the good time that was taken was nonrestorable and they have to meet the criteria established by policy. So they have to have a record of good behavior before they can make the request for it to be considered. [LR34]

STEVE LATHROP: Okay. So if I have some taken away, a year of good time or six months of good time, and I behave for a year I can come back if it's restorable, for a restorable event and you can look at it and decide to restore it if you, in your discretion, you choose to. [LR34]

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DIANE SABATKA-RINE: The individual can look at it and certainly then the request can be moved forward. But again, he or she would have to meet the criteria established in policy to be considered for that and it's not an automatic action. [LR34]

STEVE LATHROP: I appreciate that because it's coming to you for you to exercise discretion... [LR34]

DIANE SABATKA-RINE: Um-hum. [LR34]

STEVE LATHROP: ...and you regularly restore good time. [LR34]

DIANE SABATKA-RINE: I wouldn't say regularly. It's not...I don't get good time requests every week that come through. [LR34]

STEVE LATHROP: Well, how many do you get in a week? [LR34]

DIANE SABATKA-RINE: I don't get them every week. [LR34]

STEVE LATHROP: How many do you get in a month? [LR34]

DIANE SABATKA-RINE: Maybe a couple. [LR34]

STEVE LATHROP: Okay. So what's the average in terms of restoring good time, if somebody is behaving and they did what they're supposed to and it's good time that was taken from them for...that is subject to a...being restored? [LR34]

DIANE SABATKA-RINE: I don't know what an average would be. Again, it's not something that I see daily or weekly. [LR34]

STEVE LATHROP: Okay. [LR34]

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DIANE SABATKA-RINE: And before it comes to me, it has to go through the warden. So the warden also has to make the recommendation. It doesn't just come directly to me. It's a classification action. [LR34]

STEVE LATHROP: If the warden says yes or no, in either case it comes to you? [LR34]

DIANE SABATKA-RINE: No. If the warden says no, it doesn't come to me unless the inmate appeals that decision. [LR34]

STEVE LATHROP: Okay. Any other takeaways from this assault on nine of your officers? [LR34]

DIANE SABATKA-RINE: Well, again, I think that it would be more prudent to wait until the critical incident review is done to determine that. But certainly the takeaway probably...the other takeaway would be for staff to disengage when appropriate until assistance is available to help control a situation. So... [LR34]

STEVE LATHROP: That would be the first guy and not the second or third guy? [LR34]

DIANE SABATKA-RINE: So nothing is worth being assaulted over. So if a situation is getting out of hand, my preference would be that staff would take a step back until someone there is available to assist them. [LR34]

STEVE LATHROP: Okay. They've had a couple fires at LCC as well. [LR34]

DIANE SABATKA-RINE: They've had two fires: One was I think in May and one was earlier in September, both of them were in restrictive housing...the restrictive housing unit at LCC. [LR34]

STEVE LATHROP: Can you briefly tell us what happened? [LR34]

DIANE SABATKA-RINE: Sure. In the first one, the individuals assigned to their cell were using a technique that's referred to in our business as fishing. So they were able to ignite a flame and

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then they use a string or something to throw it out under their door. Out on the gallery there was a supply cart with paper items, and they were able to ignite some paper products on that supply cart and started the fire outside of the cell door on the gallery. [LR34]

STEVE LATHROP: Both times? [LR34]

DIANE SABATKA-RINE: No, the second time two individuals started...again, were able to use some items that they're allowed to purchase from the canteen and started some papers and books on fire on top of the bunk in their cell. [LR34]

STEVE LATHROP: How do they get a hold of fire? [LR34]

DIANE SABATKA-RINE: So my understanding is in this case they used batteries and foil from a candy wrapper. I don't think I could do it, sir. [LR34]

STEVE LATHROP: I guess if you got all day to think about that stuff, you'd come up with some creative ways to generate a spark, huh? [LR34]

DIANE SABATKA-RINE: Um-hum. They also have electrical outlets in their cells, so you can spark if you don't use that receptacle appropriately. [LR34]

STEVE LATHROP: Okay. Do you know why they did this? [LR34]

DIANE SABATKA-RINE: No, I don't. [LR34]

STEVE LATHROP: It's just behavior? [LR34]

DIANE SABATKA-RINE: Well, in the latter of the two cases I'm not sure that they really thought through the actions of their behavior because it just sounds like a pretty bad idea to light a fire in a cell that you have no way to get out of. Pretty dangerous. I'm very grateful that they weren't significantly injured. Staff did a great job catching it early on, responding immediately, and evacuating those individuals. But, yeah, I can't explain why someone would do that. [LR34]

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STEVE LATHROP: I want to go back to that assault. I appreciate your explanation about the fires and I don't have any more questions about that. But I do want to go back to the assault. One of the things that I saw in the Inspector General's report concerning the assault at LCC where nine people were...nine staff were injured or involved in this melee with 15 people is an interesting observation that these people hadn't had...perhaps hadn't had the programming they needed. So we're going to be talking about programming in a couple of hearings from now and a little bit this afternoon. But the idea that somebody comes in, has an assessment, they identify them and say you need to have this type of cognitive programming to get to the heart of your criminal tendencies and maybe your assaultive tendencies, and these guys that were involved in the assaults, none of them have had...or most of them hadn't had any of that kind of programming. [LR34]

DIANE SABATKA-RINE: That's correct. [LR34]

STEVE LATHROP: And I'm just going to use that to make this point perhaps, which is we're going to talk about programming as it relates to parole. And how does programming or the absence of enough programming create a bottleneck? But the reality is it shows up in places like this too. If your inmates haven't been given the programming that we want them to have before we turn them loose back into society, that very programming can help keep the staff safe if they've gone through violence reduction programming, the cognitive programming they need to get over their criminal tendencies. Would you agree with that? [LR34]

DIANE SABATKA-RINE: I would agree with that. [LR34]

STEVE LATHROP: Do you know how many of these nine people needed some kind of programming? Maybe you don't know that yet but... [LR34]

DIANE SABATKA-RINE: I don't know off the top of my head but I think it's the majority of them. [LR34]

STEVE LATHROP: You don't have any quarrel with the conclusions of the Inspector General about the number of people and what they needed by way of programming? [LR34]

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DIANE SABATKA-RINE: Not necessarily, no. And again, as I mentioned earlier during my testimony, that's one of the things we're looking at. So we have the clinical staff providing treatment programming. We're also working to train our nonclinical staff to facilitate other programming that might address anger issues and those kind of things that can happen earlier on in their sentence to help them be more successful while they're living with us. And then eventually they'll also do their clinical programming as recommended by the clinical treatment teams. [LR34]

STEVE LATHROP: We'll talk about the bottleneck created by programming but we need a lot more capacity for programming. [LR34]

DIANE SABATKA-RINE: I... [LR34]

STEVE LATHROP: These guys, if they were getting the programming, would probably be better inmates, the staff would be safer, and we'd have them ready for parole perhaps by their parole eligibility date. [LR34]

DIANE SABATKA-RINE: I think there's a direct connection to that, yes. [LR34]

STEVE LATHROP: We had something on this list called warning shot incident at NSP. [LR34]

DIANE SABATKA-RINE: Um-hum. [LR34]

STEVE LATHROP: What are we...did we try to shoot somebody down at NSP? [LR34]

DIANE SABATKA-RINE: So on August 2, there was an incident on the yard at NSP. There were individuals returning from the dining hall to their living unit and then subsequently refused to exit the yard. There were groups that gathered around staff that were on the yard trying to direct them back to their housing unit. It was described as they converged upon staff. Subsequently a warning shot was fired and eventually all of the inmates were returned to their cells. [LR34]

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STEVE LATHROP: Did you say this happened in the yard? [LR34]

DIANE SABATKA-RINE: Yes. [LR34]

STEVE LATHROP: At NSP? [LR34]

DIANE SABATKA-RINE: Correct. [LR34]

STEVE LATHROP: Can you describe the yard, just for people who don't understand sort of the geography of where this took place. [LR34]

DIANE SABATKA-RINE: So the yard itself, I mean the penitentiary I'm sure most of you have driven by, a pretty large complex with individual buildings scattered throughout. So everything outside of the housing units in the confines of the institution proper would be considered the yard. So they leave their housing unit, walk across the yard which is really a series of sidewalks and walkways to the dining hall, and then when they're done in the dining hall, walk back to the housing unit. [LR34]

STEVE LATHROP: Okay. [LR34]

DIANE SABATKA-RINE: In this particular case they were refusing to return to their housing unit. [LR34]

STEVE LATHROP: So this same place, and I have driven by it and I've been in it a long time ago, but they have towers outside or sort of on the perimeter. [LR34]

DIANE SABATKA-RINE: Yes. [LR34]

STEVE LATHROP: Did somebody shoot a gun from the perimeter? [LR34]

DIANE SABATKA-RINE: From the tower, um-hum. [LR34]

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STEVE LATHROP: Okay. And that was like, hey, I mean business. [LR34]

DIANE SABATKA-RINE: It was a warning shot, yes. [LR34]

STEVE LATHROP: Okay. And we didn't end up taking a second shot at anybody? [LR34]

DIANE SABATKA-RINE: We did not. [LR34]

STEVE LATHROP: Is that a live round? [LR34]

DIANE SABATKA-RINE: Yes, it is. [LR34]

STEVE LATHROP: Are we shooting rubber bullets? Or what are we shooting when do...?
[LR34]

DIANE SABATKA-RINE: It was a live round. [LR34]

STEVE LATHROP: Okay. And did that...was it shot into the yard or was it shot up in the air or
what...? [LR34]

DIANE SABATKA-RINE: The shot is fired into the ground, the warning shot is. [LR34]

STEVE LATHROP: Okay. And is that a rifle or a shotgun? [LR34]

DIANE SABATKA-RINE: I believe it was a rifle. [LR34]

STEVE LATHROP: Okay. And do you know how close it was to any human being? [LR34]

DIANE SABATKA-RINE: I don't know where the warning shot was fired. [LR34]

STEVE LATHROP: Okay. So we'll call this a disturbance in the yard at NSP. [LR34]

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DIANE SABATKA-RINE: Okay. [LR34]

STEVE LATHROP: What...how did we get to a place where a guard has to shoot a gun? What's the takeaway from this occurrence? Did we not have enough security people in the yard? Or is this just everybody was at their post, everybody was doing what they're supposed to, these darn guys are being defiant? [LR34]

DIANE SABATKA-RINE: I'm not aware that staffing, that they were not at their minimal staffing at the penitentiary. So it's my understanding based on the circumstances that staffing was not an issue. It was an issue with the group of inmates that were defiant and refusing directives to return to their housing unit. [LR34]

STEVE LATHROP: Okay. And I want to make sure that I don't get too...like, splitting hairs with you, but when you answered the question you said I'm not aware that that was an issue and so it wasn't an issue. Do you know that they had enough people in the yard for the number of people that were inmates that were passing through? [LR34]

DIANE SABATKA-RINE: Based on the verbal reports I've had, they had their minimum staffing requirements on that day. [LR34]

STEVE LATHROP: And you used to be a warden there. [LR34]

DIANE SABATKA-RINE: Correct. [LR34]

STEVE LATHROP: Okay. And we've done a staffing study for corrections officers and we need somewhere between 138 and 254 new ones or additional staff. Is the yard one of the places where they need more people in that staffing study? [LR34]

DIANE SABATKA-RINE: I...I... [LR34]

STEVE LATHROP: Like: We were meeting the minimum requirement; by the way, we did a study; we actually need more people there than we have. [LR34]

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DIANE SABATKA-RINE: I can't answer that with certainty. I don't know if the staffing analysis specifically addressed the yard officers. [LR34]

STEVE LATHROP: Okay. So what's the takeaway from that, Deputy Director? What have we learned and what do we change after we have this occurrence in the yard and the people won't leave and now somebody's shooting a rifle into the dirt in the yard? [LR34]

DIANE SABATKA-RINE: So again, we have an internal critical incident review being done. And so upon completion of that, we'll formally have our process in place to identify corrective action. And depending on the number of those, there may be a corrective action plan that's implemented. I think in this case there might have been some issues with how we communicated a change in procedures to the inmate population and their perception of that communication. But again, I think in fairness it would be better to wait until we have the critical incident review to make those determinations. [LR34]

STEVE LATHROP: Let me ask you about that because when I...as I prepared for these last two hearings, I've read, you know, reports, studies, surveys, the Inspector General's report. And communication seems to come up often, communication between the folks at the department and the inmates. But there's also a lot of concern, complaints about communication between the higher-ups and the corrections officers and that seems to influence the culture and ultimately morale. Can you talk about the problems with communication at the department? [LR34]

DIANE SABATKA-RINE: Well, I mean I think that one of the most common complaints we hear from staff is lack of communication. So there's numerous processes in place in how we communicate and disseminate information. Certainly we're looking at ways to get better at that. But it's challenging at best to communicate with folks that work three different shifts, 24 hours a day. Not all of them have e-mail access. You have limited amounts of times when they're all in a room together. For shift personnel we do roll calls and so we communicate information that way. That's one way we get, but everybody doesn't attend roll calls. Again, everybody doesn't have e-mails. Everyone that does have e-mails doesn't always read their e-mails. So it's just really challenging, so we have a series of things that we do to try to effectively communicate with our staff. But it's an area that we're working on. [LR34]

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STEVE LATHROP: What about the inmates? [LR34]

DIANE SABATKA-RINE: The inmate population is equally challenging. So one of our best ways to communicate is through memos that are posted. There are occasions where we not only post them but we also hand them out to all inmates. But it's difficult to communicate everything in writing. I mean we would be sending out things weekly and that's challenging to do. So we post memos. We have staff talk. We have the inmate councils meeting at the facility level. We have a unit management system in place so that there's staff on the housing units to discuss issues with inmates and respond to questions, concerns if they're not clear about something. We distribute inmate handbooks that clearly identify the rules and regulations of the housing units. So it's just a multifaceted way that we try to communicate effectively. [LR34]

STEVE LATHROP: Is it different now than it was six months ago or a year ago? [LR34]

DIANE SABATKA-RINE: I think we make much more intentional efforts to ensure better communication now than we did six months ago, yes. [LR34]

STEVE LATHROP: Those are the incidents that I wanted to talk about, but I do want to ask a couple questions about Nikko, okay? [LR34]

DIANE SABATKA-RINE: Okay. [LR34]

STEVE LATHROP: He has been convicted in Douglas County and is awaiting sentence and now housed at NSP. [LR34]

DIANE SABATKA-RINE: Correct. [LR34]

STEVE LATHROP: And how long has he been there? [LR34]

DIANE SABATKA-RINE: I don't know off the top of my head. I know that there was an order issued that he would be held within our department, but I don't know the date of that order. [LR34]

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STEVE LATHROP: You used to be the warden there. [LR34]

DIANE SABATKA-RINE: Correct. [LR34]

STEVE LATHROP: Were you promoted and no longer the warden at NSP when he returned there for safekeeping or whatever term they use? [LR34]

DIANE SABATKA-RINE: I don't believe I was at NSP when he came back as a safekeeper. [LR34]

STEVE LATHROP: Okay. He's had three different incidents where he has cut himself. [LR34]

DIANE SABATKA-RINE: Correct. [LR34]

STEVE LATHROP: Have you inquired into how that happened? [LR34]

DIANE SABATKA-RINE: We have done critical incident reviews internally of all of those, yes. [LR34]

STEVE LATHROP: Are those all done? [LR34]

DIANE SABATKA-RINE: I think there's one outstanding right now. [LR34]

STEVE LATHROP: That would be the cutting his throat with a razor blade? [LR34]

DIANE SABATKA-RINE: Probably because I think that was the most recent one. [LR34]

STEVE LATHROP: Okay, which was the first one? Was that with a...we had an officer's badge, like the pin on the back of an officer's badge. [LR34]

DIANE SABATKA-RINE: That was one incident, yes. [LR34]

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STEVE LATHROP: And he cut himself. Do you know how he got access to that? [LR34]

DIANE SABATKA-RINE: I believe that it was determined, if my memory serves me correctly, that the officer left his coat on a chair and Nikko was able to reach out of his cell and get the badge off the coat. [LR34]

STEVE LATHROP: He's in restrictive housing or some version of that? [LR34]

DIANE SABATKA-RINE: Yes. [LR34]

STEVE LATHROP: Like he doesn't get to mix it up with other people? He's in a cell 23 hours a day? [LR34]

DIANE SABATKA-RINE: Um-hum. [LR34]

STEVE LATHROP: And he was able to go outside of his cell and grab a... [LR34]

DIANE SABATKA-RINE: He didn't leave his cell. The cell door has a hatch that can open and close and he was able...as I understand it and recall, the hatch was left unsecured so he was able to reach out through the hatch. [LR34]

STEVE LATHROP: Okay, and grabbed a security officer's... [LR34]

DIANE SABATKA-RINE: Badge. [LR34]

STEVE LATHROP: ...badge and then used that to cut himself. If anything, was there any consequence to that employee? [LR34]

DIANE SABATKA-RINE: I don't specifically recall what the consequence...there was follow-up action done. I don't specifically recall if it was through corrective counseling or if it was through the disciplinary process. [LR34]

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STEVE LATHROP: Does that person still work there? [LR34]

DIANE SABATKA-RINE: I believe so, yes. [LR34]

STEVE LATHROP: Okay. The second one was a key chain? [LR34]

DIANE SABATKA-RINE: There were keys, yes. [LR34]

STEVE LATHROP: Okay. He used keys to cut himself. When did that happen? [LR34]

DIANE SABATKA-RINE: I don't recall the date of that. [LR34]

STEVE LATHROP: Was it this summer? [LR34]

DIANE SABATKA-RINE: Possibly, yes. [LR34]

STEVE LATHROP: Do you know how that occurred, how he got access to keys to cut himself?
[LR34]

DIANE SABATKA-RINE: As I recall, he was able to remove the keys from a staff member's
belt I think. [LR34]

STEVE LATHROP: Did the staff member not know about it? [LR34]

DIANE SABATKA-RINE: I believe they knew rather quickly. But then they had to assemble
additional staff to get the keys from him and so by the time that happened... [LR34]

STEVE LATHROP: So that involves opening up his cell door and having a bunch of people go
in there with... [LR34]

DIANE SABATKA-RINE: I don't believe he was in this cell at the time. I believe he was in the
shower at the time. [LR34]

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STEVE LATHROP: Okay. Any type of disciplinary action taken as a result of that? [LR34]

DIANE SABATKA-RINE: Again, I don't recall specifically if it was formal corrective action or a disciplinary action. [LR34]

STEVE LATHROP: OK. And those are those are kind of...well, they were serious, right? He hurt himself pretty good. But this last one he had access to a razor blade and slit his throat. And Senator Chambers had pictures for the committee to look at of this person's injury. And it's like a cut from here to here with a razor blade. As he sits in restrictive housing, does he have access to razors? I mean is he on some kind of a "don't give him a razor blade or a knife or anything sharp"? [LR34]

DIANE SABATKA-RINE: He's on a razor restriction. So he doesn't... [LR34]

STEVE LATHROP: What's that mean to be on a razor restriction? [LR34]

DIANE SABATKA-RINE: He's under direct and immediate supervision when he uses the razor. [LR34]

STEVE LATHROP: So if he wants to shave, some guard is going to be standing like this and watching and then go, okay, give me the razor blade. [LR34]

DIANE SABATKA-RINE: Right. And I don't recall the specific procedures but they're very controlled in this particular case, yes. [LR34]

STEVE LATHROP: Okay, so in this particular case. Do you know how he had access to a razor blade to slit his throat with? [LR34]

DIANE SABATKA-RINE: I do not know if that's been determined yet. So the ICIR that was completed on that focused on the emergency response. It was sent back to the facility to try to determine what occurred that allowed him to have access to that razor and it... [LR34]

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STEVE LATHROP: When did this happen roughly? [LR34]

DIANE SABATKA-RINE: When did the incident? [LR34]

STEVE LATHROP: Yeah, when did he do this, cut his throat? [LR34]

DIANE SABATKA-RINE: I apologize. I don't remember the date. [LR34]

STEVE LATHROP: More than a month ago? [LR34]

DIANE SABATKA-RINE: Probably. [LR34]

STEVE LATHROP: Okay. And we didn't need to have the State Patrol investigate that one, did we? [LR34]

DIANE SABATKA-RINE: I think it was referred to the State Patrol. [LR34]

STEVE LATHROP: To find out if somebody should get in trouble for giving him a razor blade? [LR34]

DIANE SABATKA-RINE: Correct. [LR34]

STEVE LATHROP: Okay. So you would have completed your internal review before the State Patrol got involved? [LR34]

DIANE SABATKA-RINE: No, I think the reports were immediately forwarded to the State Patrol. [LR34]

STEVE LATHROP: What reports are those? [LR34]

DIANE SABATKA-RINE: The reports from the incident itself. [LR34]

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STEVE LATHROP: Okay, so he does this to himself. Somebody sutures him up. And then some reports get written. [LR34]

DIANE SABATKA-RINE: Correct. [LR34]

STEVE LATHROP: What's the first report that gets written? [LR34]

DIANE SABATKA-RINE: The first reports would be from the responding staff. [LR34]

STEVE LATHROP: And they would write something up. But then it becomes an internal...what's the term, internal review? [LR34]

DIANE SABATKA-RINE: A critical incident review. [LR34]

STEVE LATHROP: Critical incident. So that begins before the State Patrol or did they get the State Patrol involved before the critical incident review? [LR34]

DIANE SABATKA-RINE: I'm not certain in this particular case, but because they were self-inflicted it's likely that our review started at the same time. [LR34]

STEVE LATHROP: Okay. And what you said, I think you testified that they got done with their critical incident review team and when somebody read the report they go, well, this is weird. No one tried to figure out how he got the razor blade in the critical incident review. [LR34]

DIANE SABATKA-RINE: It wasn't contained. That doesn't mean that they haven't done it. The information was not contained in the critical incident report so I sent it back so that it would include that information. [LR34]

STEVE LATHROP: Okay. Does it go to you? [LR34]

DIANE SABATKA-RINE: The completed report comes to me for review, yes. [LR34]

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STEVE LATHROP: And it was completed and then you sent it back. [LR34]

DIANE SABATKA-RINE: Correct. [LR34]

STEVE LATHROP: Did you have somebody that did the report come into your office and say, how the heck this guy get the razor blade? [LR34]

DIANE SABATKA-RINE: We've had that conversation, yes. [LR34]

STEVE LATHROP: Okay. Tell us what you know about... [LR34]

DIANE SABATKA-RINE: I don't know. [LR34]

STEVE LATHROP: ...how he got a razor blade. [LR34]

DIANE SABATKA-RINE: And I don't know that they know, but there's a series of ways he could get a razor blade. [LR34]

STEVE LATHROP: Okay, before I have you tell me the series of ways he could get access to a razor blade, I just want you to tell me you don't know and no one has told you who did it. [LR34]

DIANE SABATKA-RINE: Correct. [LR34]

STEVE LATHROP: Okay. Tell us what your theories are. What are the possibilities here? [LR34]

DIANE SABATKA-RINE: Well, the possibilities are another inmate could have given it to him, threw it across the floor under the cell door; we could have allowed him to have a razor and he could have taken it out himself and kept it and we didn't catch it; or staff. [LR34]

STEVE LATHROP: Somebody handed him one. [LR34]

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DIANE SABATKA-RINE: It's possible. [LR34]

STEVE LATHROP: And I think everybody in this room has learned not to take what Nikko Jenkins says as truth, okay? But he did say that somebody gave it to him, somebody who was former staff gave him the razor blade. [LR34]

DIANE SABATKA-RINE: Correct. [LR34]

STEVE LATHROP: Have we looked into that? Have we talked to the guy who supposedly gave him the razor blade to see if he says, yeah, it wasn't me? [LR34]

DIANE SABATKA-RINE: I don't know if the Patrol has talked to him or not. [LR34]

STEVE LATHROP: I do want to ask you a question because I was around, of course, when we did the LR424 and we looked at Nikko Jenkins. He went from Tecumseh to the State Penitentiary, is that right, before his discharge? [LR34]

DIANE SABATKA-RINE: Correct. [LR34]

STEVE LATHROP: And he went from restrictive housing at Tecumseh to the institution you were warden at, at the time, NSP. [LR34]

DIANE SABATKA-RINE: Correct. [LR34]

STEVE LATHROP: And how long was he there before his discharge? [LR34]

DIANE SABATKA-RINE: It seems like it was several months. I don't recall specifically how many. [LR34]

STEVE LATHROP: I don't either, but it feels like several sounds longer than I remember. [LR34]

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DIANE SABATKA-RINE: And it might be. [LR34]

STEVE LATHROP: Maybe a month or two perhaps. [LR34]

DIANE SABATKA-RINE: I don't recall specifically. [LR34]

STEVE LATHROP: But when he came to the NSP, he was placed in general population initially, wasn't he? [LR34]

DIANE SABATKA-RINE: I don't believe so, no. [LR34]

STEVE LATHROP: You think he was put in restrictive housing? [LR34]

DIANE SABATKA-RINE: Um-hum, um-hum. [LR34]

STEVE LATHROP: Was he ever out on in general population before his discharge, or did he go from your institutions--and by that, NSP where you were warden--did he to go from your institution, restrictive housing straight to the community? [LR34]

DIANE SABATKA-RINE: It's my recollection that he discharged from restrictive housing to the community. [LR34]

STEVE LATHROP: Why did you have him in restrictive housing? [LR34]

DIANE SABATKA-RINE: He had been in restrictive housing for an extended period of time based on his behavior. I don't recall specifically if he was on disciplinary segregation or if he was on administrative confinement. But it was the safest place for him to be housed and so... [LR34]

STEVE LATHROP: Because you were afraid of what he would do to your staff? [LR34]

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DIANE SABATKA-RINE: I don't know...again, I don't recall if his status was administrative confinement or disciplinary seg. And I don't recall specifically what his behaviors were. But I recall that he was in restrictive housing and he did discharge from restrictive housing. [LR34]

STEVE LATHROP: Did you ever take any steps to take any of his good time away? [LR34]

DIANE SABATKA-RINE: As a warden, I don't have the authority to take away good time. That would be a disciplinary process. [LR34]

STEVE LATHROP: You could initiate a disciplinary process against somebody you wanted to take good time away as the warden, couldn't you? [LR34]

DIANE SABATKA-RINE: The individual would have to conduct an act of misconduct, receive a misconduct, and have an institutional disciplinary committee recommend good time lost. And then as the warden I could authorize that sanction. But absent that process, as a warden I just can't take good time. [LR34]

STEVE LATHROP: We talked a little bit about the continuum of things you can do to discipline an inmate. You can take away some good time or you can put him in administrative confinement. [LR34]

DIANE SABATKA-RINE: That not a disciplinary process, the administrative confinement. Previous to July 1 of this year, we could do disciplinary segregation. We no longer use disciplinary segregation. [LR34]

STEVE LATHROP: Okay. I think that's all the questions I have. I appreciate your courtesy. [LR34]

SENATOR PANSING BROOKS: Okay. Thank you, Mr. Lathrop. Okay, Senator Seiler. [LR34]

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SENATOR SEILER: I have just a fill in. You talked about recruiting in the dialogue between you and Mr. Lathrop and you were talking about how active it's been, both of you. Now let's assume we've got a recruit. Is there a class size that you build to before you start training? [LR34]

DIANE SABATKA-RINE: No. We have...our preservice training is scheduled on an ongoing basis. [LR34]

SENATOR SEILER: Okay. [LR34]

DIANE SABATKA-RINE: And while generally we prefer to have full classes, of course, if we don't have a full complement of new staff in the class they still host the class. So some class might have 20 students in it. Some classes might have 45 students in it. [LR34]

SENATOR SEILER: Okay. Let's assume we've got 20. Do you vet them before they become class...start classes, their backgrounds and everything? [LR34]

DIANE SABATKA-RINE: Well, they all are...they all go through the screening process for hiring. And once they're hired, I'm not sure what you mean by vetting. [LR34]

SENATOR SEILER: Well, the screening--similar. [LR34]

DIANE SABATKA-RINE: Right, so they're all screened and then they all go through an interview process and they do a thing, it's called a CSI screening instrument. So they're all hired and that's all done before they start their preservice training. [LR34]

SENATOR SEILER: Okay, then they start training, right? [LR34]

DIANE SABATKA-RINE: Yes. [LR34]

SENATOR SEILER: Okay. And how many do you have that drop out in that training before we get to a graduated class? [LR34]

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DIANE SABATKA-RINE: I don't know the statistics on that. Our HR, our human talent director keeps those statistics. But there's generally a couple a month that drop out. [LR34]

SENATOR SEILER: In a class the size of 20 you'd expect to lose how many? [LR34]

DIANE SABATKA-RINE: I don't know that I can fairly estimate that. I mean some just decide when they get through...to the training academy and start--not for them. Some don't pass some of the required tests that they have to do. [LR34]

SENATOR SEILER: Would you do me a favor and have that information forwarded to our committee? [LR34]

DIANE SABATKA-RINE: Sure, certainly. [LR34]

SENATOR SEILER: Because I think we're talking about 264 new members versus 138, somewhere in between. [LR34]

DIANE SABATKA-RINE: Okay. [LR34]

SENATOR SEILER: And I want to know how long it's...20 years to get to that point and I think these numbers that I'm asking you about will help. [LR34]

DIANE SABATKA-RINE: Certainly we can get those for you. [LR34]

SENATOR SEILER: And then after you've got them in as employees and they start their job, what is your retention for employees? Let's take the guards. I can see where you get to be a captain or a sergeant or a higher officer, your retention rate is going to go up. But just the people we need for security, do you have any...do you have that information on retention? [LR34]

DIANE SABATKA-RINE: We have that information. I don't know the number off the tip of my head. [LR34]

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SENATOR SEILER: Would you forward that to us also? [LR34]

DIANE SABATKA-RINE: Certainly. [LR34]

SENATOR SEILER: Because I believe it's really important that we know how many jobs...how many recruits it's going to take to get to X and then how long they're going to stick around when we're planning a budget for 164 new members. [LR34]

DIANE SABATKA-RINE: Okay. [LR34]

SENATOR SEILER: Thank you very much. [LR34]

SENATOR PANSING BROOKS: Senator Mello. [LR34]

SENATOR MELLO: Thank you, Chairwoman Pansing Brooks, and thank you, Director Sabatka-Rine. In your testimony, you've worked for the department for 32 years? [LR34]

DIANE SABATKA-RINE: Correct. [LR34]

SENATOR MELLO: When did you become the deputy director for operations? [LR34]

DIANE SABATKA-RINE: Officially I was appointed in August of 2015. Prior to that, I served in an acting capacity from beginning I think May 4. [LR34]

SENATOR MELLO: So May 4, 2015. I think to some extent I think it's...we're appreciative--and I can at least speak for myself--appreciative of hearing some of the reforms and some of the significant changes in operations that the department is undergoing right now in light of staff assaults and a number of critical incident reports. My question to you is a little bit before you became deputy director is if you've worked for the department for give or take 30 years prior to becoming the director, why weren't these changes made during that period of time when you were a warden or any other leadership positions? What was holding the department back from making all these changes prior to 2015? [LR34]

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DIANE SABATKA-RINE: I don't know. I think that's a question that we've asked ourselves repeatedly. I mean certainly as a warden, and I served as a warden at three different facilities, there's a process in place. We would go through the process, we would identify what our needs were when we submitted our biennium budget request. But certainly I don't think that we had...we always received the support we would have liked to have seen from outside of the agency. It's unfortunate that a series of really horrific events had to happen before we got that, but I mean I think this is where we are now. I think Director Frakes is extremely proactive and is not afraid to ask for what he wants, and I'm not implying that former directors weren't. But I think that we're in a different world today than we were in previously. And in many respects I think that that is to our advantage and will help us work collaboratively with folks to get what we need. [LR34]

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

SENATOR PANSING BROOKS: Thank you, Senator Mello. Senator Bolz. [LR34]

SENATOR BOLZ: Thank you. I have a couple of questions about the assaults. The Office of the Inspector General's report indicates that inmate-on-inmate assaults have decreased while inmate-on-staff assaults have increased. Do you have any comments or insights about why that is occurring? [LR34]

DIANE SABATKA-RINE: I mean I think that's one of those things that we're really trying to drill down and figure out. No assault is okay on anyone. Certainly our expectation and our goal is that we have zero staff assaults. It's encouraging that the number of inmate-on-inmate assaults has decreased, but I don't really have an answer as to why that is. [LR34]

SENATOR BOLZ: It's my understanding that there's something called a code of offenses that guides what expectations are for inmate behavior. And if someone, for example, threatens the life of a correctional officer you would refer to the code of offenses about how respond to something like that. Is it time to review that code of offenses to better protect the correctional staff? [LR34]

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DIANE SABATKA-RINE: While that's one of the things we're looking at, I think I mentioned in my list of things during my testimony we're looking at our inmate disciplinary process. But certainly if someone threatens or actually does physical harm to an employee those would be violations of our current code of offense. [LR34]

SENATOR BOLZ: So in that set of circumstances when someone, say, threatens a staff member, what happens then? [LR34]

DIANE SABATKA-RINE: It depends on the nature of the threat and the severity of the threat. There's the potential that the inmate can be immediately removed from the population and placed in restrictive housing. Certainly he or she would get a misconduct report for their behavior and then it would proceed through the disciplinary process. So they could lose...if it was a serious and flagrant offense, they could lose good time. They could get anywhere from room restriction to some other form of additional extra duty type behavior or a verbal reprimand. They could also get referred for longer term restrictive housing. But again, it would depend on the nature of the threat and the significance of it. Certainly if someone assaults a staff member they get the misconduct report. It goes through the disciplinary hearing process. They would be sanctioned there. They would be in restrictive housing. They would most likely be referred for longer term restrictive housing. And the case would be referred to the county attorney for potential prosecution. [LR34]

SENATOR BOLZ: And when someone is referred for either that short-term, 72-hour period where they do the review or if it's disciplinary in nature and they need to stay there longer, do you have the capacity you need to respond to those things as they happen? Do you have enough flexibility to house in those units both short-term and long-term disciplinary actions? [LR34]

DIANE SABATKA-RINE: Currently we do. We have cells in restrictive housing at the Tecumseh facility. And so while restrictive housing cells at LCC and the penitentiary are sometimes full, we have the option to move inmates as necessary for that to occur. That's not to say that sometimes we don't have to remove others from restrictive housing. But again, we would assess their current level of risk before they're removed to determine if that's an appropriate action so that they would go back to general population. If everyone is still at a level of risk that

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we don't believe that they should be returned to general population, we would then have the option of moving inmates to the restrictive housing unit at Tecumseh. [LR34]

SENATOR BOLZ: Is there double bunking in those units? [LR34]

DIANE SABATKA-RINE: The Lincoln Correctional Center has some double bunking in their restrictive housing cells. The penitentiary has some double bunking in their restrictive housing cells but only for inmates that have either requested protective custody or are classified through protective custody waiting for transfer to a protective management unit. Tecumseh is not double bunking in their restrictive housing cells. [LR34]

SENATOR BOLZ: My concern is that there's some gray area in the response to someone who assaults or otherwise threatens or acts inappropriately towards a staff member and because of that gray area and potential pressure on those segregation units, that that is exacerbating the assaults. And so I just want to make sure that as we have this overcrowding conversation, that need for flexibility and capacity in those units to respond in a disciplinary way is there. So I just wanted to highlight that for the committee. [LR34]

DIANE SABATKA-RINE: And if I can just clarify, if there is an actual assault, whether it's on staff or an inmate, the individual will go to restrictive housing. The ones that there might be the gray area, as you referenced, would be if it's a verbal threat. Again, it would depend on the nature of it, the severity of it. But if there's an actual physical assault, the individual will be placed immediately into restrictive housing as the immediate intervention and preparation necessary. [LR34]

SENATOR BOLZ: But as you...as I thought I heard you say previously, sometimes other people may need to be moved out to build that capacity. And I'm concerned that the impact of such discipline is watered down if it's not, you know, consistent and serious. So, yeah, for the record, I wanted to bring that subject up. [LR34]

DIANE SABATKA-RINE: Okay. [LR34]

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SENATOR PANSING BROOKS: Thank you, Senator Bolz. Senator Krist. [LR34]

SENATOR KRIST: Thank you, ma'am. Thanks for coming. First, I just want to start off by asking you a couple simple questions. Do you feel like you've been grilled or have the questions that have been asked you have been inappropriate given your years of experience with the department? [LR34]

DIANE SABATKA-RINE: I don't know that I feel that they've been inappropriate. I'm not sure I was...knew what to expect for today so...but I don't know that I'd say I've been grilled. [LR34]

SENATOR KRIST: Okay. So your level of experience and years of experience with the department, the questions that have been asked you have been appropriate in terms of us gathering information? I'm not trying to put words in your mouth but... [LR34]

DIANE SABATKA-RINE: I mean I think they've been fair questions, yes. [LR34]

SENATOR KRIST: Okay. Good. So you were a warden during the LR424 Special Investigative Committee. And as you know, some people would say it's inappropriate for us to continue to go back to Nikko Jenkins, but in fact the case study of Nikko Jenkins peeled back the onion on what was happening within the Department of Corrections and that's why we're here today. It's fair to say that either you or, at the time, Director Kenney made the statement, and it's a matter of public record, that he, Nikko Jenkins, was placed in administrative segregation because he was too dangerous to put into the general population, either too dangerous to others or too dangerous to your staff, and I believe the exact quote is to the staff. Yet, we found it necessary to discharge Mr. Jenkins into the general population of my home, and I'll make that point because I know that others would make it if they were here. That process is still going on when we look at the discharge from administrative segregation. Is that not the case today? [LR34]

DIANE SABATKA-RINE: I'm not sure what process you're referring to, Senator. [LR34]

SENATOR KRIST: We're still discharging people from administrative segregation from our corrections institutions into the population outside the walls of the penitentiary. [LR34]

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DIANE SABATKA-RINE: There are occasions when that's occurred, yes. [LR34]

SENATOR KRIST: Okay. And that was one of the major findings in LR424 and has been reemphasized over and over and over again. If there's one public safety issue that I am very concerned with it's that we are still, for whatever reason, discharging from your institutions into our communities. So if you'd like to respond to that, I have a couple other questions, but it will stop there. [LR34]

DIANE SABATKA-RINE: Well, I can tell you that with the new restrictive housing rules that were implemented on July 1, we are now required to track individuals who are in restrictive housing. So at a minimum, 120 days prior to discharge, if they're in restrictive housing, we have a process that we have to follow to start evaluating them and setting them up for success when they leave. We tell the story of each individual who discharges from restrictive housing, so there have been a couple individuals, and I think it was Senator Pansing Brooks that we did a report not long ago to that told the story about some of the individuals that had left. Sometimes they go to detainers, so while they're leaving us, they're not going directly to the communities. Sometimes they have requested protective custody and are not in restrictive housing for a disciplinary matter. But we are trying to be much more proactive so that we can take steps in advance of their discharge to put them in the least restrictive environment possible and prepare them for discharge. So things have changed significantly from our prior process. [LR34]

SENATOR KRIST: So I can appreciate the change because there was a spotlight put on the department to take necessary action. [LR34]

DIANE SABATKA-RINE: Uh-huh. [LR34]

SENATOR KRIST: But to be fair, the statement that they are still discharging in some cases dangerous people from solitary, from administrative segregation, into the communities is still a correct statement. [LR34]

DIANE SABATKA-RINE: Our goal is to have no one discharged from restrictive housing to the community. [LR34]

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SENATOR KRIST: But we haven't met that goal yet. [LR34]

DIANE SABATKA-RINE: Correct. [LR34]

SENATOR KRIST: Okay. [LR34]

DIANE SABATKA-RINE: And in fairness, I believe that there could still be occasions where that may not happen. But the expectation would be, again the goal, no one. But we try to work with those folks. You know, the best example I could provide is that if on today an individual assaulted someone and he's scheduled to get out tomorrow, we're limited as to what's going to happen, so. But we do target those individuals who have spent a long term or more than...or any length of time in restrictive housing. [LR34]

SENATOR KRIST: So you... [LR34]

DIANE SABATKA-RINE: So we're doing much better. [LR34]

SENATOR KRIST: ...you present me a wonderful segue into you just had someone either assault or do something that was counter to good behavior and you have not inflicted good time laws in order to keep them away from where we are. So my question ultimately, and you can respond to this, is I would like to know how much good time is actually associated with each one of these incidents that we have talked to by person, by institution. Because I believe that we, the Legislature, has been criticized many times for the good time law in general, but I also believe that the good time law has not been used efficiently or effectively by the Department of Corrections for whatever reasons. And the reasons that we heard early on from people who were under oath and subpoenaed is, if you take away their good time they're going to be in prison longer, and if they're in prison longer then we've got an overcrowding situation. And those were quotes in the LR424 report. You can go back and look at it. So I'd like to know, with all of these situations that we have talked about,... [LR34]

DIANE SABATKA-RINE: Okay. [LR34]

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SENATOR KRIST: ...how much good time was taken away. Or was it simply, he's ready to go or she, she or he is ready to go? Because I think we're repeating the same things that I have heard for the last six years. [LR34]

DIANE SABATKA-RINE: Okay. So we can certainly, just so I'm clear, you want for the instances that we talked about today, the individuals involved, you want to know how much good time has been taken from those individuals. [LR34]

SENATOR KRIST: Since Director Frakes came in and was influential in changing culture, I'd like to know how much good time was taken away. [LR34]

DIANE SABATKA-RINE: Okay. [LR34]

SENATOR KRIST: I think that's the simplest way to put it. [LR34]

DIANE SABATKA-RINE: Okay. [LR34]

SENATOR KRIST: My last comment or question comes from a list of things that I think we've heard over and over again. And so, given our circumstance with Corrections today, stop me when there's something that isn't creating an issue that's creating some of the turmoil between guards and the inmates and the administration: overcrowding; overtime; culture; staffing; retention; salary and pay; training, and by that I mean both operational training that we've discussed here today as well as other training in terms of how to handle a situation, and you talked about it specifically--nothing is worth getting beat up for, basically; behavior and mental health; substance abuse and the availability of chemicals inside our institutions. We have talked about each one of these things, and I think you would agree that there are higher priority issues on that list of things. I'm waiting to hear how any one of these is being fixed today before we start moving on to other programs. And I'll just leave it at that because I have a question for the director when he comes this afternoon. And I think that every one of these things, in your 30-plus years in the department, has been either a subject that has been discussed and dismissed by potentially someone outside of your agency or has been discussed and there's been no credible work done in order to correct the problems that are there. Now I would say in the last 18 months,

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19 months, whatever that period of time has been that Director Frakes has been there, I've seen changes and identification of changes, and I'm now seeing a budget that would support that we want more changes. But I'm not seeing these individual items go away. And I think if you're a businessman or you have my background, if you have 20 things that are staring you in the face and creating issues, you have to solve them one at a time and you have to take the actions that need to be taken to get them off your plate so you can get on to other things. But security and safety of the community from...that you're going to discharge into, and especially the security and safety of the staff that are exposed to the situation would warrant that you need to look at disciplinary actions. And I believe a tool, just in recap, that is not being used effectively, has not been used effectively is the good time law. So if you'd like to comment on any of that, if you're willing to comply. [LR34]

DIANE SABATKA-RINE: Well, I think as I mentioned in my testimony, we have a number of things that are underway currently that are addressing many of the things on your list. As I also made reference to in my testimony, most of the things that you identified you don't fix and then just move on and not have to address them anymore. They're kind of ongoing things. So certainly some of the things have existed throughout my career in the department and we address them. And then time goes on and it becomes an issue again so you have to readdress them. So I think our focus now is that we continually address them and we have processes in place to evaluate them to see if we need to do more. So it's, from my perspective, it's not that you just check it off your box and you move on to the next thing because you have to have that quality control piece in there, that you go back and you check and you make sure it's still working, that you don't need to modify it any further, that you don't need to request, you know, additional assistance from a funding perspective or changes to rules or anything like that. So it's kind of that continual review process in addition to correcting it. [LR34]

SENATOR KRIST: So if I understand your comments, if you had the power to correct them in the past and potentially some of those...some of that was taken away by people outside the agency not listening to you, you didn't correct them but you didn't pay attention to the continuing problem? Because all I'm seeing here is a number of things that have been blamed by the administration and by the Department of Corrections for why we are in the position that we're in,

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but I don't see a consolidated effort to solve some of these individual issues and continue to keep them on an even playing field. So your comments kind of confused me a little. [LR34]

DIANE SABATKA-RINE: Well, again, I think that we have addressed many of those things. I think then that new challenges are presented and we have to go back and we have to reassess and address them again. I think it's a continual process. [LR34]

SENATOR KRIST: Okay. The number one challenge you have is not getting guards beat up. The number one problem you have is the security inside the institution. LR605 will take care of the judges and the sentencing parameters. The CSG process will take care of many other things. You've got to make sure that that place is secure, not just for the criminals who are there, for the convicted that are residents, but for the staff. That's your number one problem. And if all of these other things are adding up into it, I still go back to you need to get...somebody has to get control of the system and make sure that the prisoners understand they're there to be rehabilitated and to move on into society. And if that means that they're there for a longer period of time and we have to take good time away or we need some more tools, then you need to come to us and let us know. But we've got to have safe institutions. That's the bottom line. [LR34]

DIANE SABATKA-RINE: And I would agree with that. [LR34]

SENATOR KRIST: All right. Thank you very much. [LR34]

SENATOR PANSING BROOKS: Okay, Senator Coash, and then Senator Schumacher. [LR34]

SENATOR COASH: Thank you, Senator. Are you aware of any changes in the past year with regard to the procedures in dealing with these more assaultive inmates that seem to be on the rise? [LR34]

DIANE SABATKA-RINE: Changes in terms of what? [LR34]

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SENATOR COASH: Well, earlier in your testimony, during the questioning, we talked about or you talked about, you know, there seems to be a higher level of assaultive inmates than maybe we've seen in the past. Is that correct? [LR34]

DIANE SABATKA-RINE: Right. I think that (inaudible) numbers. [LR34]

SENATOR COASH: I mean the nature of the inmate, I mean. And I talk with a lot of corrections officers and they're certainly telling me that the level of violence in some of the inmates that are coming is very different than it was ten years ago. And so we're seeing more violent inmates in prison. My question is, are you aware of any changes in procedure that...with regard to how corrections officers are supposed to deal with some of those violent inmates? Have you changed any procedures in how that's dealt with or are we still dealing with violent offenders inside the prison the same as we always have been? [LR34]

DIANE SABATKA-RINE: No, I think we've made some improvements to our operational procedures. We've looked at (inaudible) improvements. We certainly looked at improvements to our emergency response. We're looking to identify additional tools and security equipment for our staff to put them in a better position. [LR34]

SENATOR COASH: Okay. [LR34]

DIANE SABATKA-RINE: So we're doing those kind of things. But I think that you do make a good point in that the nature of our population has certainly changed over the years and the folks coming in the door appear to be much more aggressive and violent than perhaps in the past. [LR34]

SENATOR COASH: Yeah. Well, as I said, I get a lot of correspondence from corrections officers. I'm just going to read you some correspondence that I did get from somebody who works within the prison and just ask you to respond to it, because it goes to how...the expectations that corrections officers have in dealing with violent inmates, which we know they have to daily. It's very...it's short, so...but I would like to hear your response to it because he's outlining some challenges here: It's a small number of inmates, usually the younger generation

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who have no respect for authority, no desire to follow procedures, no desire to rehabilitate and seem to be causing the most disruption, and it's these inmates whom the administration seems to be catering to the most and that's at the expense of staff safety. These troublesome inmates seem to get what they want, push for even more. Then the administration, it appears to us, lets them receive more. The inmates are then told, along with these new procedures provided for their benefit, they are to follow certain caveats, that they then ignore with no real repercussions. This follows month-long pattern of certain inmates not obeying what we are tasked with enforcing, but then we are limited in what we can do about it. We as staff have been put in a precarious position where inmates now openly defy or ignore our direction and the administration has tied our hands in terms of enforcing the policies and procedures of the institution. Staff does their best to enforce what we can and then are met with resistance, which includes being assaulted, because a certain population of inmates has been getting their way and are very reactionary in a negative way when that doesn't happen. So that's the correspondence I received and I just wanted to...that prompted my question to you about what are we telling corrections officers? I realize this is a one-sided approach but...that I've got, but I'm interested in your response to that person working within the department. [LR34]

DIANE SABATKA-RINE: I'm not sure how I would respond to that. I mean I would have to give it some thought. I don't know...so certainly controlling our population is important to what we do. So if an inmate is assaultive or overly aggressive and threatens the safety of staff or other inmates, we have processes in place to restrict them. But we're in the business of trying to change behavior. So just simply locking people up and not giving them programming, not treating them appropriately isn't going to change their behavior. So, you know, I would love to have a dialogue with the person who wrote that to you so that I can better understand their position and ask them questions. Perhaps if they could give me, you know, a real example of someone that they're talking about and the behavior that they see versus what our policies...the policies that are in place tell us how to manage them. [LR34]

SENATOR COASH: Yeah. The person who wrote this didn't...I'll repeat one of the lines: The inmates are told that these new procedures, and so I don't have more than what new procedures are,... [LR34]

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DIANE SABATKA-RINE: Uh-huh. [LR34]

SENATOR COASH: ...which prompted my question if there's something new that's been happening that's been... [LR34]

DIANE SABATKA-RINE: The only true new procedure that comes to mind when you read that is the change in the restrictive housing rules. [LR34]

SENATOR COASH: Okay. [LR34]

DIANE SABATKA-RINE: I mean and it's a significant change. I think everyone in the room recognizes that. We're changing how we use restrictive housing. There's no doubt about that. And we're changing what we do with individuals (inaudible). But I don't know what other significant change might be referenced there. [LR34]

SENATOR COASH: And I don't have any more information,... [LR34]

DIANE SABATKA-RINE: Yeah. [LR34]

SENATOR COASH: ...but since you kind of have a broader view of policies and procedures, I thought you might have some insight into...my guess is, and I'll follow up, is that maybe this is restrictive housing, but just the detail wasn't here. So thanks for your answer. [LR34]

SENATOR PANSING BROOKS: Thank you, Senator Coash. Senator Schumacher. [LR34]

SENATOR SCHUMACHER: Thank you, Senator Pansing Brooks. Just a couple questions: First of all, a tidbit. You said at one point in your testimony "serious injury by definition." [LR34]

DIANE SABATKA-RINE: Uh-huh. [LR34]

SENATOR SCHUMACHER: What is serious injury? I mean is it what we, what a common person, would think is serious injury or is it fitting of a narrow legal definition? [LR34]

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DIANE SABATKA-RINE: So a serious injury requires urgent and immediate medical treatment and restricts the inmate's or staff's usual activity. Medical treatment would be more extensive than mere first aid, so it might be stitches, broken bone, hospitalization certainly, at that level. So that's the definition the Association of State Correctional Administrators has put forth so that when we report assault data we are all reporting the same type of data. Again, any assault is not okay. I'm not implying that. But there's a definite definition of a serious assault that is used across the country. And so when we report those serious assaults, as I talked about in my testimony, those would be the ones that meet that definition. [LR34]

SENATOR SCHUMACHER: So if somebody hits somebody in the mouth and cuts their lips, that's a serious assault. [LR34]

DIANE SABATKA-RINE: If they needed more than just basic first aid, that would be a serious assault. If someone pushes you and knocks you into a wall and you bruise your shoulder but you don't need hospitalization, that would not necessarily qualify as a serious assault. [LR34]

SENATOR SCHUMACHER: Okay. In response to one of Senator Krist's questions, you made the comment that if someone is scheduled to be out tomorrow and assaults somebody today, assault being anywhere from minor to serious, we are limited. In that case, couldn't you pick up the phone and call the county attorney and say charge this guy with assault? [LR34]

DIANE SABATKA-RINE: And thank you because I should have clarified that. We're limited as to the administrative processes we could use. Certainly we wouldn't let it go. We would contact law enforcement, the State Patrol. We would work with the county attorney in whatever county it is. And it's more than likely we would work to have a detainer placed on file so that individual would not go to the community. So my point, when I was making that and I didn't articulate it well, was that administratively we are limited as to what we can do because we wouldn't have time to issue the misconduct report, give them notice of the hearing, and get that process in place to take good time. But certainly there are other (inaudible) actions that we could take so that that person would not walk out the front door into the community tomorrow. [LR34]

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SENATOR SCHUMACHER: And suppose it's...instead of an assault, the person clearly had a deteriorating mental condition and what's your procedure now when you say, you know, this person is not right? You know, we shouldn't really return him back to the community. What procedure do you have now? [LR34]

DIANE SABATKA-RINE: So we have the discharge review team process in place right now so again they start tracking and monitoring people that we know about in advance of their release dates. But even if we notice the day before the release or the morning of the release that there's a concern, we would make a referral to the discharge review team and they would do an emergency hearing or meeting if necessary to determine how we can situate this person best for success. [LR34]

SENATOR SCHUMACHER: So are you satisfied that we've taken care of the problem that we saw in the Nikko Jenkins case that the county attorney was calling and saying, hey, what's the story with this guy, and the county attorney was told, ah, he's just a behavior problem? [LR34]

DIANE SABATKA-RINE: I believe the discharge review team process is...has made a significant difference in that regard, yes. [LR34]

SENATOR SCHUMACHER: Okay. You also said that, in response to Senator Mello's question of, you know, what is changing and how are things progressing, that in 2015 forward there's been some change because up to that point we didn't seem to see support from the outside. What did you mean by that? [LR34]

DIANE SABATKA-RINE: I can only reflect on what I felt in the positions I was prior to that time, and I felt that Corrections did not have the support needed for the resources that we said we needed. So I don't know where that support didn't come from because that wasn't my corner of the world. My corner of the world is I presented my needs for my facility to our administration. So I don't know what...if it stopped at that level, if it stopped at the next level, or if it stopped at the next level. But we've been asking for staff for years. We've not gotten those staff. I am grateful and appreciative to everyone who has assisted us to get to the point that we are now that we are able to request staff in our budget. [LR34]

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SENATOR SCHUMACHER: Well, let's go into that just a little bit because it's a phenomena I think that we've heard the entire hearing. So you make a request to the higher up, who makes a request to the higher up, who either puts it in his budget or gets it into the Legislature's Appropriations Committee where they stick it in the budget. When you made a request and you felt you did not get an adequate response, how does that system work? I mean do you just be quiet at that point? Is there some appeal mechanism? Do you feel comfortable in going to a state senator, a committee and saying, wait a minute, there's something wrong here? Because somewhere in that process all this seems to tie back into not enough money and somewhere along the line hitting a bottleneck: space, training, people. Even now people needs drug on for over several years when it looks like were needed right now. So where in the mechanism is that there is the ability by someone along the line to shut down the request before it gets to the Legislature? [LR34]

DIANE SABATKA-RINE: I can't answer that with certainty. [LR34]

SENATOR SCHUMACHER: Have you made any request this year or do you know of any people in the chain of command below you who made requests that they feel are needed that have not been passed on? [LR34]

DIANE SABATKA-RINE: Again, I think staffing is one of...across the agency, one of our primary concerns that every warden shares. And certainly those are addressed in our budget request that will submitted this year. So there's no formal appeal process that I know of, Senator. [LR34]

SENATOR SCHUMACHER: We heard testimony here that...on the staffing issue, that originally there was thought that there would be somewhere like 250 additional staff over and above the filling of the existing 100-200 vacancies that were needed. And then that...the final report was cut basically in half, like 130 additional staff. And I think the request we saw asked for like 95 or 98 additional staff spread over a number of years. Is that adequate? Do we need the 250 or 130 people and do we need them now? [LR34]

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DIANE SABATKA-RINE: I believe that our request is adequate for what we know right now. That doesn't mean in another six months, another year we won't have additional needs. But based on where we are right now, I believe that our budget request is adequate, yes. [LR34]

SENATOR SCHUMACHER: How can 98 fill 130-some plus or 250-some? And if those 98... [LR34]

DIANE SABATKA-RINE: So I'm not sure where the 98 is coming from, sir. [LR34]

SENATOR SCHUMACHER: I think that was the additional number of people requested to be phased in. I might be mistaken on that. [LR34]

DIANE SABATKA-RINE: So from the staffing analysis, there's 138 positions. [LR34]

SENATOR SCHUMACHER: That was...yeah, right. [LR34]

DIANE SABATKA-RINE: Uh-huh. [LR34]

SENATOR SCHUMACHER: But I don't think that entire request has been made in the budget, has it? Wasn't that pared back? [LR34]

DIANE SABATKA-RINE: I believe it's included in the budget request, yes. [LR34]

SENATOR SCHUMACHER: Over how many years, just the two years? [LR34]

DIANE SABATKA-RINE: Over the...I think it's a three-year period. A three-year period. And that was just from the staffing analysis. And then there's some additional staffing requests also included in the budget request. [LR34]

SENATOR SCHUMACHER: I think I'd like to hear, and maybe some of the other members of the committee would like to hear, from your perspective. Forget about the administrative hierarchy, forget about the rules and the procedures of the bureaucracy. What do you think we

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need to do to satisfy Senator Krist's concern of protection of the public and also to get on with a situation where we have adequate mental health, adequate programming, and the facilities to do that? What's your recommendation to us? I think the sentiment for the last couple years at least has been the checkbook is open if somebody would just ask. [LR34]

DIANE SABATKA-RINE: So again, I think our challenge and the thing that would help us most is if we are able to fill the vacant positions that we currently have. So hiring is significant into helping us get to where we move forward, where we can move forward, and then receiving the additional positions that we've asked for in the budget. [LR34]

SENATOR SCHUMACHER: And these...this hiring we're talking about basically starts in the neighborhood like 15-16 bucks an hour? [LR34]

DIANE SABATKA-RINE: Uh-huh. [LR34]

SENATOR SCHUMACHER: Okay. Would it make a difference if that figure was \$25 an hour? Or is there just not enough people who want to work or work there? [LR34]

DIANE SABATKA-RINE: I'm not sure. I mean I'm certain that if starting pay was \$25 an hour that might attract more people, but I don't know. I believe that again it's a combination of things. So while pay is one issue, I think that it's a combination of things, with safety being the primary issue. It's difficult to recruit people to come to an agency if they don't think that they're going to be safe. [LR34]

SENATOR SCHUMACHER: And now, as my final area, and it's actually one that you started with, is safety and the dramatic increase in the assaultive behavior between the population and corrections officers in particular. That dramatic increase, if I can remember some old behavioral engineering experiments, almost looks like almost an exponential or it's just not a flat-line increase. It's all of a sudden happening more and more. And what's also happening more and more at the time is the density of population. And I think the most basic behavioral animal studies even show that the denser the population, at some point every additional one in there you have a dramatic increase in contact, in snarling between the subject population. So have there

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been any studies, either within the institution or within the science of corrections, that say, look, when you get at so much density in population, inmates per square foot or per something or other, that you begin to see a geometric expansion or exponential expansion of these kind of snarly behaviors which are easy just to say, well, defiance. But are we there? Is this one of the consequences of too many people in too little space and too little for them to do? [LR34]

DIANE SABATKA-RINE: I mean I think like we've discussed this morning that it's certainly a contributing factor. I don't think it's the only factor. I don't think it's the factor. [LR34]

SENATOR SCHUMACHER: And doesn't that, if it is a contributing factor, maybe a significantly contributing factor, don't we need to move posthaste on decreasing that density? [LR34]

DIANE SABATKA-RINE: And I believe that there are initiatives in place that will hopefully help us do that. [LR34]

SENATOR SCHUMACHER: And while we're waiting for them to happen, is there any interim thing we should be doing or funding as a stopgap measure? [LR34]

DIANE SABATKA-RINE: I'm not thinking of anything other than the things that we are doing within the department and the things that have been put forth in the budget request. [LR34]

SENATOR SCHUMACHER: Okay. Thank you. [LR34]

SENATOR PANSING BROOKS: Thank you, Senator Schumacher. I have a few questions myself, Deputy Director. While you were at the...while you were warden at LCC, there were staffing...were there staffing issues at the facility at that time? [LR34]

DIANE SABATKA-RINE: There were. I don't know if they were equal to what our staffing issues today are in the department. But staffing has been an issue for almost as long as I can remember. [LR34]

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SENATOR PANSING BROOKS: Okay. So you don't have any knowledge of why it was happening, was it assaults or high turnover or what the issues were? [LR34]

DIANE SABATKA-RINE: So when I was warden at LCC, like in 2006, I think assaults weren't that high. There were still challenges with staffing. So, in that respect, I would not directly correlate the two. It's just challenging oftentimes to staff correctional facilities. I don't think that's unique to Nebraska. I don't think it's unique to facilities here in Lincoln or Tecumseh. I mean I think we're seeing that across the country. [LR34]

SENATOR PANSING BROOKS: So is the feeling then across the country that this is status quo and this is something we're going to accept or what is the...what are the best practices then to handle this across the nation? [LR34]

DIANE SABATKA-RINE: So again, I think many of those states that are undergoing similar challenges to ours are focusing on recruitment and retention, with retention being primary, because once you get them in the door, you want to keep them, so. [LR34]

SENATOR PANSING BROOKS: Okay. And what are other states doing then for that retention? [LR34]

DIANE SABATKA-RINE: Well, certainly pay would be an issue in many of the other states, and also just general working conditions. So those are some of the things that we are also trying to address. [LR34]

SENATOR PANSING BROOKS: Okay. Let's see, and also while you were at LC...as the warden at LCC, it's my understanding from previous discussions with other people that the policy was to maybe change it from an open yard to a managed yard. [LR34]

DIANE SABATKA-RINE: Correct. [LR34]

SENATOR PANSING BROOKS: Okay. And can you explain why that change was made? [LR34]

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DIANE SABATKA-RINE: Certainly. Back in the...around that time period, we had an increase in the amount of inmate assaultive behavior, STG-related behavior, and we felt that it was necessary in order to ensure the safety of the entire complex that we controlled movement within the facility. So we implemented an operational schedule that did just that and controlled when portions of the population could be out in particular areas. So instead of all general population being out at one time, only identified housing units could be out at those given times, so a much more scheduled, controlled basis. [LR34]

SENATOR PANSING BROOKS: So was part of this decision to make that change at all due to the overcrowding or to the increase in inmate population? [LR34]

DIANE SABATKA-RINE: I think it was due to the challenges we were having managing the population at the time. [LR34]

SENATOR PANSING BROOKS: Okay. Now I'm going to switch to some NSP questions that I've sort of been taking notes and looking at. It's my under...when Mr. Lathrop was questioning you, you said that the reports generally take 30 days. And so on...there isn't anything on the 8/24 incident. But the other incident was on 8/2 at NSP, so I'm just interested in when we can expect that report to come out. [LR34]

DIANE SABATKA-RINE: I checked earlier this week on the status of that report and the individual who is responsible for doing it was in training this week. So as soon as he's back, I hopefully will have a date on how close to completion we are. [LR34]

SENATOR PANSING BROOKS: Okay. And did the State Patrol also investigate that incident? [LR34]

DIANE SABATKA-RINE: I'm not certain. You're talking the warning shot incident. [LR34]

SENATOR PANSING BROOKS: The 8/2, yeah,... [LR34]

DIANE SABATKA-RINE: Yes. [LR34]

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SENATOR PANSING BROOKS: ...the warning shot into the ground. [LR34]

DIANE SABATKA-RINE: I'm not certain that the State Patrol is investigating anything in that regard. [LR34]

SENATOR PANSING BROOKS: Okay. So this is almost 60 days rather than 30 to... [LR34]

DIANE SABATKA-RINE: Correct. [LR34]

SENATOR PANSING BROOKS: ...investigate and have a report on that. [LR34]

DIANE SABATKA-RINE: Uh-huh. Correct. [LR34]

SENATOR PANSING BROOKS: And so is that...why is that? [LR34]

DIANE SABATKA-RINE: Well, if I may, numerous factors can impact that. So it depends on who is assigned to lead the team. It depends on the schedules of those individuals, because we don't have designated people. So in addition to your regular duties, you get assigned to do this. And then you have to all get together. People have different days off. People have vacation schedules. So all of those things can delay it. Certainly we work really hard to get them done as quickly as possible. [LR34]

SENATOR PANSING BROOKS: Okay. Thank you. Through some of the investigations we've had, there was a 2012 demonstration at NSP. Is that correct? [LR34]

DIANE SABATKA-RINE: Yes. [LR34]

SENATOR PANSING BROOKS: And were you warden at that point? [LR34]

DIANE SABATKA-RINE: If you're talking about the one in December, yes. [LR34]

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SENATOR PANSING BROOKS: Okay. And it's my understanding further that inmates had some specific complaints at that point. Did you review those complaints? [LR34]

DIANE SABATKA-RINE: Well, anytime inmates put forth complaints, they're reviewed. [LR34]

SENATOR PANSING BROOKS: Okay. So do you remember the complaints or what they were? [LR34]

DIANE SABATKA-RINE: As I recall, the majority of the complaints around that particular incident again was the controlled movement that had been implemented at that facility. [LR34]

SENATOR PANSING BROOKS: Okay. Maybe it's people, staff members I've talked to or somebody, but I had heard it was that there were specific complaints about lack of access to programming, to clubs, to medical and mental health issues. So does that seem true or does that...do you not remember that? [LR34]

DIANE SABATKA-RINE: I don't remember specifically today if that was what those concerns were. Those concerns were not uncommon so I've heard those similar concerns. You know, four years later here I'm not connecting the two necessarily. [LR34]

SENATOR PANSING BROOKS: Okay. And as far as the Tecumseh...the issue that happened at Tecumseh with the incident, we're calling it I guess today, but I think most people think it was a riot. So with that incident, we had heard when we were walking through the facility after the fact that part of it had to do with taking away a fitness program that was part of the exercise and the ability of various members to be able to get out and exercise. And it's called Fitness For Life or something like that. Are you aware of that? [LR34]

DIANE SABATKA-RINE: They had...I think they called it a Wellness Program. [LR34]

SENATOR PANSING BROOKS: Yes, that's it. [LR34]

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DIANE SABATKA-RINE: And so they had a program so that in addition to the regular recreational access that the general population got, individuals who were behaving according to the guidelines of the program could have additional time outside on the recreation yard. [LR34]

SENATOR PANSING BROOKS: Okay. [LR34]

DIANE SABATKA-RINE: That's kind of an overview of the program that was in place at the time. [LR34]

SENATOR PANSING BROOKS: So what's the status of that program right now? [LR34]

DIANE SABATKA-RINE: TSCI no longer has a Wellness Program or something that resembles that. [LR34]

SENATOR PANSING BROOKS: Okay. Is TSI still in a state of emergency? [LR34]

DIANE SABATKA-RINE: No. [LR34]

SENATOR PANSING BROOKS: Okay. So people are not being...it's not under some sort of lockdown. Is it under a different lockdown than it was under before? In other... [LR34]

DIANE SABATKA-RINE: No, it's operating at normal operations. [LR34]

SENATOR PANSING BROOKS: Okay. And what about overtime? Is there...are there still mandatory overtime requirements of staff? [LR34]

DIANE SABATKA-RINE: Throughout the agency, yes. [LR34]

SENATOR PANSING BROOKS: Throughout the agency. And at TSCI? [LR34]

DIANE SABATKA-RINE: TSCI staff or the majority of their security staff are still working 12-hour shifts right now, but there is some mandatory overtime occurring there as well. [LR34]

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SENATOR PANSING BROOKS: Okay. So is this just related to staffing and...but is it also overcrowding that is causing the issue? [LR34]

DIANE SABATKA-RINE: I think it's primarily related just to staffing. I mean again, as referenced earlier, Tecumseh continues to have a high vacancy rate. So in order for them to operate at a normal operational status, they need for staff to work overtime. [LR34]

SENATOR PANSING BROOKS: Okay. Thank you. Switching gears a little bit, we've heard that there were complaints about officers, about African-American officers having some sort of workplace harassment at NSP. So...and it was while you were warden there. That's what I've heard. Is that correct or not? [LR34]

DIANE SABATKA-RINE: I'm not certain what you might be referencing. [LR34]

SENATOR PANSING BROOKS: Okay. That we've heard that at a number of different hearings that there were complaints by African-Americans that there was discrimination and that they actually took legal action over these complaints. [LR34]

DIANE SABATKA-RINE: So there was a case where legal action was pursued, a lawsuit was filed. [LR34]

SENATOR PANSING BROOKS: Okay. [LR34]

DIANE SABATKA-RINE: But that occurred before I was warden at NSP. [LR34]

SENATOR PANSING BROOKS: Okay. So after that happened, have there been changes made to encourage minorities and other officers and other staff to be there and to work there and to facilitate their acceleration through job positions? [LR34]

DIANE SABATKA-RINE: Well, certainly we work really hard at recruiting diversity. [LR34]

SENATOR PANSING BROOKS: How do you do that? [LR34]

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DIANE SABATKA-RINE: Well, that's part of our overall recruitment effort. But it's challenging, particularly in some locations, to recruit diversity from a population that doesn't have a lot of diversity in it. So that would be true at Tecumseh, at our facility perhaps out at McCook. But certainly we try to recruit people from all backgrounds, all ages, all experiences. That makes for us to be a better department. [LR34]

SENATOR PANSING BROOKS: Of course, you know, when you have people taking care of you that look like you, it's a little bit...it makes it a little bit better, in my opinion. So while you were tenured as the warden of NSP and LCC, did you have qualified minorities that were promoted to various positions of deputy warden, associate warden, major, captain, all the higher-up positions? [LR34]

DIANE SABATKA-RINE: Can you repeat your question? I'm sorry. [LR34]

SENATOR PANSING BROOKS: Yeah. While you were warden at LCC and NSP, were people of minorities promoted to higher positions like warden or deputy warden or--I've written just down some--captain, housing unit administrator, unit manager? Did you have people that were promoted in various minorities? I'm concerned. As a woman, I'm very grateful that you're here working and doing that. And we have to also be concerned about people of minorities in this state that are being protected by people that they can relate to. [LR34]

DIANE SABATKA-RINE: So we have several females in some of those positions that you've identified, some of whom were promoted under...when I was warden at the facility. Some of them were promoted prior to or since then. In terms of minorities, again, we don't have a lot...a huge minority base within our staffing so you don't see promotions through the ranks up to that level at the same level of...at the same as you might with females. [LR34]

SENATOR PANSING BROOKS: Okay. So the answer to that is, no, there's really been no promotion of minorities. [LR34]

DIANE SABATKA-RINE: I'm not thinking of minorities in that regard that have been promoted recently, no. [LR34]

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SENATOR PANSING BROOKS: Okay. [LR34]

DIANE SABATKA-RINE: But I also, in fairness, I can't think of what the applicant pool has been either... [LR34]

SENATOR PANSING BROOKS: Okay. [LR34]

DIANE SABATKA-RINE: ...for all of those positions. [LR34]

SENATOR PANSING BROOKS: But surely there are places in the state that the Department of Corrections could go that would allow access to people who might be interested. Those would be good recruiting areas. Just like the military recruits in high schools, there are areas where you could recruit and offer some good, positive jobs and training to people of minority background that could help the situation, it seems. [LR34]

DIANE SABATKA-RINE: I think that our recruiter has expanded to include those areas and those organizations as well. [LR34]

SENATOR PANSING BROOKS: Okay. And do you know how many minorities are in executive positions at the Central Office? [LR34]

DIANE SABATKA-RINE: I'm not sure what you mean by executive positions. And I mean I can go through the list of people from the director,... [LR34]

SENATOR PANSING BROOKS: Okay. [LR34]

DIANE SABATKA-RINE: ...the deputy directors. So there are two female deputy directors, Director Frakes of course, the medical director and...who is a male, the CSI deputy director who's a male, and Deputy Director Rothwell who's male. [LR34]

SENATOR PANSING BROOKS: Okay. And the people directly under them? [LR34]

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DIANE SABATKA-RINE: That would be taxing for me to go through all of them in my head. [LR34]

SENATOR PANSING BROOKS: Okay. But surely you could just think of some, right? Can you? [LR34]

DIANE SABATKA-RINE: Yes. [LR34]

SENATOR PANSING BROOKS: Okay. All right. Thank you. Let's see. I have just a couple more that I was wanting to know. There was a video on the LCC incident. What did that video show when...with the 9 on 15. [LR34]

DIANE SABATKA-RINE: So there were actually more than one video recordings from the LCC assault from a couple different angles, and so it captured the entire assault on the video. [LR34]

SENATOR PANSING BROOKS: Okay. And again, from various people I've talked to, I've heard that there was an incident where one inmate...where the inmate tried to walk away and he was pursued by staff. Is that correct? [LR34]

DIANE SABATKA-RINE: I believe that that's correct, yes. [LR34]

SENATOR PANSING BROOKS: Okay. Because that wasn't exactly what we were hearing, that that had happened. So why was he pursued if he was trying to walk away and then somebody came in and interrupted the whole thing? Is that the process if somebody is... [LR34]

DIANE SABATKA-RINE: I think, from my understanding, the individual who was walking away was given a directive to stay there and he opted to walk away from staff. And so they pursued him. [LR34]

SENATOR PANSING BROOKS: Okay. All right. Also, it's my understanding that you've received petitions from LCC and NSP and that they were sent to both you and Director Frakes. So do you recall receiving those? [LR34]

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DIANE SABATKA-RINE: We receive petitions occasionally. [LR34]

SENATOR PANSING BROOKS: Okay. Do you feel that communications are good with the people that are offenders? Do you feel the communication is good between you and the rest of the inmates? [LR34]

DIANE SABATKA-RINE: Well, as I indicated earlier in my testimony, communication is one of the things that we are working hard to improve, not just communication with our staff but certainly communication with the inmate population. [LR34]

SENATOR PANSING BROOKS: Could you speak a little bit to why Mario Peart and Brian Gage resigned? [LR34]

DIANE SABATKA-RINE: I'm not sure I'm comfortable, I mean, speaking to that. They actually worked for Director Frakes, so. [LR34]

SENATOR PANSING BROOKS: Did you know them? [LR34]

DIANE SABATKA-RINE: I did know them. [LR34]

SENATOR PANSING BROOKS: Okay. It was my understanding that you were part of the decision process. [LR34]

DIANE SABATKA-RINE: I made a recommendation in both cases to Director Frakes, yes. [LR34]

SENATOR PANSING BROOKS: And why did you recommend that? [LR34]

DIANE SABATKA-RINE: Why did I recommend? [LR34]

SENATOR PANSING BROOKS: That they resign. [LR34]

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DIANE SABATKA-RINE: Because I think that we had recognized that there were some performance issues that we had been addressing and some other concerns, and we were not where we needed to be. [LR34]

SENATOR PANSING BROOKS: Okay. What kind of performance issues? [LR34]

DIANE SABATKA-RINE: Again, those would be personnel things and I'm not comfortable discussing them in this forum. Certainly, if there's specific information you'd like, I'd be happy to share that with you. [LR34]

SENATOR PANSING BROOKS: Okay. Do you feel that they had something to do with some of the disruptions and assaults going on or do you think that they could have done better at making the institution safer for both inmates and staff? What is it that you generally think could have happened differently? [LR34]

DIANE SABATKA-RINE: Well, both issues involving those two individuals are uniquely different. I think, in general, to say that I had concerns specific to performance. [LR34]

SENATOR PANSING BROOKS: Okay. So we had a little bit of a discussion with Senator Schumacher about segregation. We've heard numerous times from Director Rothwell and others that--and the psychiatrist, whose name has just escaped me, but anyway--that segregation...the goal is to get segregation down and to put people. So are those numbers going down? What are those numbers looking like? [LR34]

DIANE SABATKA-RINE: They are not where we want them to be. We have some targeted outcomes that we've identified and we're working really hard to reduce that. So we've had some success reducing longer term restrictive housing but we continue to still have high numbers of individuals we placed on immediate segregation so that immediate removal. Doesn't mean they stay there for a significant length of time. So we are working to address that and to identify alternatives to that placement that would still maintain institutional security. [LR34]

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SENATOR PANSING BROOKS: Okay. Do you have a good understand...do you believe you have or that the Corrections Department has a good understanding of who are the greatest risk to others? [LR34]

DIANE SABATKA-RINE: Yes. [LR34]

SENATOR PANSING BROOKS: Can you give us a percentage of who you think are the...what percentage of your population is of greatest risk to others? [LR34]

DIANE SABATKA-RINE: I can't give you a guess, no, because that's what it would be is a guess. [LR34]

SENATOR PANSING BROOKS: You couldn't say 50 percent or 10 percent or...because across the United States... [LR34]

DIANE SABATKA-RINE: Well, I would say it's less than 50. []

SENATOR PANSING BROOKS: ...there is a generally best practices knowledge. So I'm just interested if you think our numbers are different than anywhere else in the country. [LR34]

DIANE SABATKA-RINE: I don't know what our numbers are or what the national average is. [LR34]

SENATOR PANSING BROOKS: But you do say that you do have a good understanding of who poses the highest risk. [LR34]

DIANE SABATKA-RINE: In terms of individuals and their behaviors, not in terms of statistically. [LR34]

SENATOR PANSING BROOKS: Okay. So if you do know those people and their behaviors, you can't even offer an estimate, whether it's 10 percent of the population? Is it 90 percent of the

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population? You surely have some feeling of where...who poses the highest risk and what is that percentage. [LR34]

DIANE SABATKA-RINE: My guesstimate, and that's what it is, is simply a guesstimate,... [LR34]

SENATOR PANSING BROOKS: Yes. That's what we under.. [LR34]

DIANE SABATKA-RINE: ...is less than 25 percent of our population. And I'm fairly certain it would be less than that, but for my guesstimate I would say 25 percent of our population. As I indicated earlier, at least 75 percent of our population does their time, wants to move forward, completes their programming... [LR34]

SENATOR PANSING BROOKS: Right. [LR34]

DIANE SABATKA-RINE: ...and follows rules and moves on. [LR34]

SENATOR PANSING BROOKS: And I appreciate that because that's what I've read some of too. And I've heard nationally that they think it's lower than 25 percent. But I'm glad that that's...I'm glad to have your answer. Is that information...are you finding it out more and more through the STRONG-R assessment? Is that part of the assessment that you're going to be going through when you assess each inmate as they come in and hopefully everybody in the near future? [LR34]

DIANE SABATKA-RINE: Well, the STRONG-R will certainly give us...is one tool for us to assess risk, but that's not necessarily risk...institutional risk. It's more about risk to reoffend and risk to the community. So there is no tool that we are aware of that helps us determine institutional risk. There's nothing that's been developed, defined, proven as far as a similar tool, assessment tool like the STRONG-R to determine institutional risk. [LR34]

SENATOR PANSING BROOKS: So how do you determine that? [LR34]

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DIANE SABATKA-RINE: So we have several processes in place as a result of our restrictive housing rules, and then there is still much subjectivity to those decisions. [LR34]

SENATOR PANSING BROOKS: Do you have the same understanding on those who pose a risk of flight? [LR34]

DIANE SABATKA-RINE: Yes. [LR34]

SENATOR PANSING BROOKS: So you have...it's...just generally what I've learned in the past is that there are some inmates that could just have a little 3-foot fence and, because they're told to, they will not walk out of there. Is that correct? [LR34]

DIANE SABATKA-RINE: Uh-huh. Uh-huh. [LR34]

SENATOR PANSING BROOKS: Do you have a guesstimate on that as well, what percentage? [LR34]

DIANE SABATKA-RINE: No. But again, I think that the majority of our inmates that would be at high risk for flight would be lower than those there are for violence. [LR34]

SENATOR PANSING BROOKS: Okay. And some of that intermingles. [LR34]

DIANE SABATKA-RINE: Some of it. To some extent, yes. [LR34]

SENATOR PANSING BROOKS: Okay. I just want to be sure. You did say that you asked for more staffing at one point...at various points, and you don't know whether it stopped at the level of the Corrections Department, you don't know if it stopped higher up at various levels. Are there other things that you've asked for that you didn't get? [LR34]

DIANE SABATKA-RINE: When I was a warden or now? [LR34]

SENATOR PANSING BROOKS: Both. [LR34]

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DIANE SABATKA-RINE: Well, I mean I think part of the budget process is that everybody submits what it is they think they absolutely need and then there's prioritization. So while it might not be at the same priority that the person who requested it thinks it should be, it's all captured within the budget request. [LR34]

SENATOR PANSING BROOKS: So can you tell us something specific, anything else that you think that you really feel is a risk? Because as legislators, we need to know what the highest risks are so we can address those. So the fact that you've been asking for more staff, and we didn't exactly know that, is relevant to us. What else have you asked for that either deals with safety issues, it deals both to the community and to the staff and the Corrections Department or dealing with overcrowd...? What have you asked for that you're not getting that you feel is critical to your ability to do your job? [LR34]

DIANE SABATKA-RINE: So again, I think that the budget request that is in process right now adequately and appropriately addresses those things now. What I spoke to earlier was, as a warden, there were oftentimes that we made requests and that we didn't get them. But I believe that we are at a much better place right now and that the department's budget does address those things, many of which I identified on my list. [LR34]

SENATOR PANSING BROOKS: What has changed from your position as warden to your position now to make you think that you are getting what you need? [LR34]

DIANE SABATKA-RINE: Well, I think lots of things have changed. I mean I think the leadership in our agency has changed. Certainly I think the focus and attention from the Legislature has changed. And I think that the support from the Governor's Office is extremely apparent right now. [LR34]

SENATOR PANSING BROOKS: Thank you. Just wanted to see, thought there was one more. And I think you...I was just writing notes while you were talking. There you did address that dangerous inmates aren't getting some of the anger management and the VRS and the VRP classes. And so do you believe that these classes would affect and lower assaults on staff? [LR34]

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DIANE SABATKA-RINE: I think it's certainly something that we would like to have in place and hopefully be more preventative in that regard. [LR34]

SENATOR PANSING BROOKS: Okay. And so why aren't you...why are those programs not available? Why are there not enough of those programs available for inmates? [LR34]

DIANE SABATKA-RINE: Well, I think our past practice has been that individuals were not necessarily screened early on in their sentence so that they could do those and still be focused on providing those clinical programs towards the end of their sentence. And currently, behavioral staff, health staff are in the process of turning that around so that we reach them much earlier. And as I spoke about earlier, we're also doing nonclinical programming opportunities so that we can address some of those same behaviors through cognitive behavior type programs. [LR34]

SENATOR PANSING BROOKS: So you believe you have enough programs for these anger management and for the dangerous inmates; it's just that you haven't figured out which ones they are that need it? [LR34]

DIANE SABATKA-RINE: No, I didn't say that I think we have enough. I think we're working towards having enough. [LR34]

SENATOR PANSING BROOKS: Okay. So that's one other goal that hopefully...I mean you've said that you needed more staff. Do you believe we need more programming? [LR34]

DIANE SABATKA-RINE: Yes. [LR34]

SENATOR PANSING BROOKS: Okay. [LR34]

DIANE SABATKA-RINE: And I think that that was included on the list, too, that I spoke to earlier. [LR34]

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SENATOR PANSING BROOKS: Okay. That's just what we want to make sure that we're getting, you know, what your needs are and what you're asking for. I have no further questions. Does any...Senator Krist. [LR34]

SENATOR KRIST: Thank you. Just a quick follow-up: I understood after you and I exchanged questions and answers and the question and answer you exchanged with Senator Schumacher that there was a point in time when if there was an assault or an infraction prior to a release that the good time law would have prohibited you from taking administrative action. Did I understand that correctly? [LR34]

DIANE SABATKA-RINE: Depending on the timing of it because, again, the process in place to take good time is a disciplinary process and there's due process requirements, so you have to give the individual notice of the misconduct report, you have to give the individual notice of the hearing, you have to give...and then it has to go through the complete process. [LR34]

SENATOR KRIST: Okay. So,... [LR34]

DIANE SABATKA-RINE: So... [LR34]

SENATOR KRIST: ...just to be clear, if I'm going to be discharged tomorrow, I know that if I punch you in the mouth today you can't do anything about it because I can walk because I know you have a requirement to do it in terms of time? [LR34]

DIANE SABATKA-RINE: We can't do anything about it through our disciplinary process. It doesn't mean you wouldn't be help accountable through the other things that I followed up with Senator Schumacher on. [LR34]

SENATOR KRIST: So is your disciplinary process constructed or prohibited in any way by a statute that needs to be changed that gives you the authority to do what you need to do to keep people in confinement that should stay there? [LR34]

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DIANE SABATKA-RINE: I think from a legal perspective, because you were affecting the inmate's discharge date, that there's due process requirements in there. So I think the time frames are...have been tested through the courts and I think they're pretty consistent. So I'm not sure that there's anything we can do to change that particular process to make it more immediate. [LR34]

SENATOR KRIST: Okay. I think this is a real constructive kind of exchange because if we have some...the only way you're going to control a prison population--and now you're talking to a senator, not a corrections officer--but I have to have some control over you if you're a disciplinary problem. If I know I can get to this end and you can't do anything to me, that, to me, is counterproductive to rehabilitating people and getting them to a point where their confinement will release them into the community in a safe manner. So I believe, and you don't have to answer, but I think that you, as deputy, are in a great position to come back and tell me, as a senator, we need to press this a little further than where we're going and you need to enable me, if it requires a change of legislation. It may not. It may be policy procedures internally. It may be due process that's going to restrict us in terms of time, but at some point we either have to have the county attorney on a hot line... [LR34]

DIANE SABATKA-RINE: Uh-huh. [LR34]

SENATOR KRIST: ...or we have to give you the advantage to say you ruined your opportunity to walk out the door because we're taking good time away from you until there is a further investigation. So if you could take a look at that. [LR34]

DIANE SABATKA-RINE: Okay. [LR34]

SENATOR KRIST: And I'll probably pose the same question to the director or remind him of the conversation that we had, because I think that's pretty important to this discussion. And I don't understand all of what Senator Schumacher does because he was a former county attorney, but if there's anything at the end that prohibits you from taking the action you need to, to keep dangerous people from walking out the door, I think we need to enable you to be able to do that. [LR34]

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DIANE SABATKA-RINE: Okay. [LR34]

SENATOR KRIST: Thank you. [LR34]

DIANE SABATKA-RINE: And I would just clarify again, and I think I've made my point, but so while you would...the individual would not necessarily be held accountable through the inmate disciplinary process, those cases, should they occur, we would be on the phone with the county attorney as well as probably the State Patrol. [LR34]

SENATOR KRIST: And as long as you've clarified, I want to say this for the record: And none of it should have anything to do with overcrowding. [LR34]

DIANE SABATKA-RINE: Right. [LR34]

SENATOR KRIST: Right. [LR34]

DIANE SABATKA-RINE: Correct. [LR34]

SENATOR KRIST: Okay. [LR34]

DIANE SABATKA-RINE: I would agree with that. [LR34]

SENATOR KRIST: All right. Thank you. [LR34]

SENATOR PANSING BROOKS: Thank you, Senator Krist. Both of you have a question but I think Senator Seiler had a quick one if you don't...that relates to that. [LR34]

SENATOR SEILER: Just to follow up on what you two have just discussed, the county attorney on the assault could file a hold and bring separate charges, not under the good time law but under separate criminal charges. And so I think if the prisoner would be aware of that, may take a second thought about punching somebody out the last day. [LR34]

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SENATOR PANSING BROOKS: Okay. Thank you, Senator Seiler. Senator Mello, did you have a final question? [LR34]

SENATOR MELLO: A couple quick ones. [LR34]

SENATOR PANSING BROOKS: Okay. [LR34]

SENATOR MELLO: And thank you, Chairwoman Pansing Brooks. Director, this...if you think this is best...this question is best directed or more appropriate for Director Frakes, by all means let me know and I can ask him later. The Legislature's Office of Inspector General released a very lengthy, 400-page-plus report and provided roughly 30 recommendations for your agency and for the Legislature to consider. In reviewing those recommendations, a number of them seem to be more operational recommendations. Have you, in your role, or the department began to review that report and evaluate those recommendations that essentially are coming from our legislative branch? [LR34]

DIANE SABATKA-RINE: I have started my review of the report, but, as you indicated, it was pretty lengthy. [LR34]

SENATOR MELLO: Uh-huh. [LR34]

DIANE SABATKA-RINE: So I've not gotten through the whole thing. And we've not yet discussed the recommendations made but I am confident that we will do that. [LR34]

SENATOR MELLO: Okay. And the second issue was dealing with a budget item request. And if you think it's best to leave it to the director, I can. One of the requests dealt with an intelligence administrator and, to some extent, with Senator Pansing Brooks's question in regard to the general risk nature of a number of inmates. Communication I've gotten from correction officers has consistently brought up the issue of gangs, gang activity within the Department of Correctional Services. And if you could provide maybe a little bit more background in regards to is that a specific item when dealing with risk, with more risk-adverse inmates the department is starting to identify differently of saying we've got to probably develop a strategy specifically to

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address gang units or gangs within the department in the sense that they have maybe some outside influence of the department from the community, and, vice versa, gang units or gang activity (inaudible) department that's influencing activity outside of the facility? And then seeing that position I assume in some form (inaudible) somewhat connected to the gang activity that's occurring in the department. Could you... [LR34]

DIANE SABATKA-RINE: Right. [LR34]

SENATOR MELLO: ...provide a little bit more background and feedback on that? [LR34]

DIANE SABATKA-RINE: And thank you for bringing that up because I should have mentioned that earlier. So several months ago, I'm not sure how long ago, Director Frakes formed and developed an intel unit. So we have five captains right now throughout the agency whose primary focus is on being proactive in terms of STG behavior and other disruptive behavior in our facilities. Currently there is no one designated to lead that unit. So while they're doing a really great job amongst the five of them, we want to approach this from a systems approach. Because the reality is if there is inappropriate STG behavior at one facility, there's a strong potential that the same thing could pop up in other facilities. So we want to be much more systematic in our approach to that and that's exactly what that security intelligence administrator will do. [LR34]

SENATOR MELLO: Is there any...has there been any discussion at all in regards to engaging law enforcement agencies, both the State Patrol, Lincoln Police Department, Omaha Police Department in regard...specifically in regards to gang activity as part of your intelligence operation? [LR34]

DIANE SABATKA-RINE: And we already do that to some extent. Our staff that work in our intel offices attend meetings with law enforcement throughout the state to address STG. There's very open communication. There's some other social...not social media. There's some other tools out there that are available that they all exchange information. If law enforcement knows we're getting someone who is at high risk because of their gang behavior, certainly they share that information with us and we do the same when folks are getting ready to leave, so. [LR34]

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SENATOR MELLO: Okay. Thank you. [LR34]

DIANE SABATKA-RINE: Uh-huh. [LR34]

SENATOR PANSING BROOKS: Okay. Thank you very much for being here and answering questions so forthrightly. Hopefully we'll learn a lot and may have to be back in touch at some point. But we're really grateful, Deputy Director Sabatka-Rine. [LR34]

DIANE SABATKA-RINE: Thank you. [LR34]

SENATOR PANSING BROOKS: Thank you. And now I think we're switching the order just a little bit and we're going to have...we're going to go ahead and half, let's see, sorry, Rosalyn Cotton, who is from the...she's the chair of the Board of Parole first, and then we'll have Ms. Micek. Thank you for coming up. And if you'd just spell your name and then if you have a statement, you can go ahead. [LR34]

ROSALYN COTTON: Good morning, Senators of the LR34 Committee and members. My name is Rosalyn Cotton, C-o-t-t-o-n, chair of the Parole Board. I have been a board member since August 1 of 2005. Senators, I have taken my 11.5 years as a board member very seriously. I have been involved in numerous reviews, hearings, parole review hearings, public speaking engagements, mentoring, and leadership programs. I believe in working with all agencies, organizations that have shared interest in keeping our communities safe and providing service delivery, principles and values for individuals to facilitate their return to society as productive and law-abiding citizens. It is important to know that parole is a very important component of the criminal justice system and now, based on results of the reviews and hearings, it is when the decision-making process begins. At this particular time, it's very important to discuss some of the things that board members and myself have discovered in, I would say, the last couple of years as the chair. And one of the things I would like to discuss is the fact that many individuals are not eligible, due to their sentence structure will not allow parole. Many of them waive their appearance. Believe it or not, even at hearings they waive their appearance. Some of them have refused programming. Some of them may not have even completed the programming at the time of their hearing, not so much parole reviews but their hearing. And then again many have not had

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enough time to complete their programs. We focus in on detainers, federal detainers, local detainers. Many of them come before us with detainers and will not have backup residence. We can't just parole them without backup residence. Some of them would like to do their time, they like it for (inaudible) staying in an institution and would prefer to stay here versus going to their federal detainer. Victims' opposition: At some time or another, when we set these hearings out, victims will show up and they will present testimony in opposition. Restricted housing individuals: When we have individuals that come before us in restrictive housing, we actually take a look at what they are in restrictive housing for, whether it's fighting, whether it's just the fact that they're in restrictive housing, administratively what happened. But we do take a look at those. The individuals that I will say to you that come before us on PC we will basically go ahead and parole one way or the other. And then of course the fact that some of them just, I don't know, it's just very interesting that when we have hearings set they will wait until the day of their hearing to waive their appearance, not during the duration that they have hearings set. But at the time of their hearing we will get individuals that will waive their hearing. One of the things I want to touch bases on before finishing up my testimony here, and I think this is a perfect time to discuss this, is those parole review hearings, what I call aka revocation hearings. The Board of Parole and Parole Administration works very hard in trying to keep these people out. And we have gone, I would say probably in the last year or so, with allowing these individuals to stay in the community on receiving drug violations for methamphetamine two and three times. The board continues to work with them. It's the third time and now it's becoming one of those things, well, you know what, I'm going to get a second chance, I'm going to get a third chance, and I'm going to continue to use. That's a big concern and a risk to public safety. We also have the opportunity to look at those laws violations. Not all law violations are felony charges but some of them are misdemeanor charges. We work with those. Recently, we've been having individuals come back before us who have had their law violations already taken care of. We will continue to work with them. We will continue to set them hearings. Those are the kinds of things that we actually look at. The other thing that I like to discuss is they abscond. When individuals are gone off parole for 14 days or more, we don't know where they're at, we don't know what they're doing, and it's a concern. So when they come back before us, some of the times we take those things in consideration. And if it's something like, you know, well, I was just at my girlfriend's house and I just didn't want to show up, well, we take those into consideration. If they have enough time, we will still consider them for hearings. So I had to explain that because I think at

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this time, while the board is starting to work with our guidelines and Council of State Governments' Cathy McVey, those are some of the kinds of things that we're going to be looking at when we're dealing with our guidelines, when we're dealing with the STRONG-R, because it is important to understand what risk reduction is prior to. Factors such as offense severity, risk levels, institutional programming, and institutional conduct, these factors are assessed to reoffend and general readiness for parole. Again, all those things are taken a look at. As of September 20, we are currently piloting our guidelines at the following institutions: the Omaha Correctional Center, the Correctional Center at Lincoln community, and Nebraska Center for Women. It is our goal to utilize guidelines scores, along with the STRONG-R risk assessment scores, and they're going to all be in all the institutions by February 2017. Then I would like to share on May 27, 2015, the Governor signed LB598 into law, and on July 1, 2016, the Office of Parole Administration and all the staff were transferred to the board. The board and all staff work collaboratively with the Department of Correctional Services to ensure continuity and the parole operations (inaudible) parole administration to the Board of Parole. The transition is going well. I must say the director of supervision services, Julie Micek, is here this morning to be able to speak more on the transition, but I am very excited that we're doing well with this. I will say that the staff of this newly created agency is learning as we go along. We will continue to work hard and ensure that effective leadership and management will be successful moving forward. With that, Senators, I would like to close by inviting you all to public hearings. It's amazing what individuals probably don't understand about the process, but we work hard every day. I will say to you, and this is the only data number I do have, this month we have actually visited with 193, I'm going to call them, clients individuals, and we have 30 today. And I would say I think approximately 108 of those have been on parole. But let me clarify something. When we say they've been paroled, they may have been parole pending residence verification, they may have been paroled to their detainers because they had backup residence, they have been paroled to their federal detainers, they are parole pending. This is the problem. When they're parole pending, we always run into a snag. While they're waiting, they just happen to get themselves in just a little bit of trouble. And when that happens then we have to reflect back on rescission hearings. Do we want to have rescission hearings? And majority of the time we don't unless the individual has been a very disruptive disturbance to the Department of Correctional Services. And we actually had one like that this week where he was removed from one institution and moved to another institution, came back before us, and was actually still acting out. So those are

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the kinds of concerns that we have a challenge with when we parole them pending residence verification. And that's exactly what we will do with him. We paroled him pending trying to get into one of the transitional facilities. Another thing I'd like to bring to your attention before I'm going to ask you if you have any questions is that many times when we have these hearings that are already set, talk about programming. Even though I mentioned earlier that programming is not completed, programming is one of their concerns. They'd like to get into the programming. We work with them on programming. We don't defer individuals to mandatory discharges unless they have a short period of time and those individuals can't get in the program and can't complete the program. And I'm going to clarify, when I say they can't complete the program, we're talking about core programs: violence reduction program, the RTC, substance abuse programming, and then sex offender program. Those are the three core programs that we home in on and make sure that they've completed prior to their discharge. We have been doing something--I actually thought about this about eight months ago but this is what we've been doing. We're not deferring anybody to mandatory. Even those individuals that I mentioned to you about waiving appearance, they think they're like slick. So what I say to them, oh, okay, so they waive their appearance. If they have a period of time left, perhaps January of 2018--because believe it or not, they're individuals that come before us that have a long period of time left to do parole--we will not defer them. We will review the again within a matter of six months. So those are the kinds of different changes we have been doing in, like I said, for the like last year or so. Basically, that's all I have. []

SENATOR PANSING BROOKS: Okay. Mr. Lathrop. [LR34]

STEVE LATHROP: Okay. Oh, I do have some questions. Before I start asking you questions, I'm seeing that it's 10 (minutes) till 12:00, and do I understand that you have a conflict somewhere (inaudible)? [LR34]

ROSALYN COTTON: I do. I just need to be back in Omaha by 3:00. [LR34]

STEVE LATHROP: Means you need to be out of here by 2:00 and I'll...let me jump in and we'll see what we do about a lunch break. [LR34]

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SENATOR PANSING BROOKS: What was it he said? [LR34]

STEVE LATHROP: She needs to be in Omaha by 3:00. [LR34]

SENATOR PANSING BROOKS: No. And what about... [LR34]

_____: (Inaudible). [LR34]

SENATOR PANSING BROOKS: You have to leave by 2:00, both of you. Okay. Just wanted to... [LR34]

STEVE LATHROP: Okay. Well, let me jump in and see how quickly we can kind of cover some ground. You said you were on the Parole Board since 2005. [LR34]

ROSALYN COTTON: That is correct, sir. [LR34]

STEVE LATHROP: And you've been chair of the board? [LR34]

ROSALYN COTTON: I appointed the chair of the board December of 2014 approximately. [LR34]

STEVE LATHROP: So a year and a half or something like that? Okay. And you've seen the changes, the legislative changes. [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: And you said the transition is going well. [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: Good to hear. I want to...for those of us that don't understand parole and the whole process that well. And I know I've sat through several confirmation hearings, but we just

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like confirm they look like good people and they're going to do a good job and then they get voted on up on the floor by the senators. But their role is to decide who's going to actually end up paroled. [LR34]

ROSALYN COTTON: That is correct, sir. [LR34]

STEVE LATHROP: And that's...that's a form of an early release. [LR34]

ROSALYN COTTON: Uh-huh. [LR34]

STEVE LATHROP: Right? And maybe for my benefit I'm going to...and, believe me, two years ago I understood sentencing really well and parole eligibility dates. But if you're given a 10- to 20-year sentence, what's your parole eligibility date? We're not doing any mandatory minimums to complicate this math, but. [LR34]

ROSALYN COTTON: I would say roughly maybe three years parole eligibility date perhaps. [LR34]

STEVE LATHROP: So is it a fraction of the lower end of the number? [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: So if you do 10 to 20, it's some fraction of the 10 years? [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: Do you know what that is? [LR34]

ROSALYN COTTON: I do not right off. [LR34]

STEVE LATHROP: Okay. But it's much shorter than if we were to jam out. [LR34]

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ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: Jam out, if you get all your good time and you behave yourself on a 10 to 20, you have to wait for half of the larger number? [LR34]

ROSALYN COTTON: That's correct, sir. [LR34]

STEVE LATHROP: And the idea behind parole is there are certain advantages in public safety to parole. [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: Right? [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: First, that the...there is incentive for the inmate to reform or to do the things they need to do to put themselves in a position to get out early through the parole process. [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: Right? [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: That's an advantage because if they're doing the things they need to do and they're doing the programming they need to do, then they're less likely to be involved in reoffending. [LR34]

ROSALYN COTTON: Yes. [LR34]

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STEVE LATHROP: You are also, with the parole process, having some period of time where you're monitoring the inmate after they're released. True? [LR34]

ROSALYN COTTON: That's under the LB605 with probation. [LR34]

STEVE LATHROP: But when you put them out on parole, somebody is going to follow them. [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: The parole officers are going to follow them. [LR34]

ROSALYN COTTON: Parole officer, yes. [LR34]

STEVE LATHROP: They got to check in. And they do that during the period of time where they are at highest risk to reoffend, right? They're coming out of prison and now they got to adjust to life on the outside. [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: And the greatest risk to reoffend is what, in the first 90 days? [LR34]

ROSALYN COTTON: I would say so, yes, approximately. [LR34]

STEVE LATHROP: And by having them on parole, by having them on parole as opposed to just having them jam out, you have an opportunity to keep track of them, make sure they're staying clean, make sure they're working, they're doing all the things that are conditions of their parole, and you sort of get them on the right path out in society. [LR34]

ROSALYN COTTON: That is correct. [LR34]

STEVE LATHROP: Better outcome for public safety. [LR34]

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ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: Lower chance of recidivism. [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: So by using parole as opposed to letting somebody jam out, a couple of things are happening that are beneficial to the state, state being the people. We have less chance that they're going to reoffend as opposed to those people who just jam out. Is that true? [LR34]

ROSALYN COTTON: Uh-huh. [LR34]

STEVE LATHROP: We are also going to have him outside of the institution sooner. [LR34]

ROSALYN COTTON: Uh-huh. [LR34]

STEVE LATHROP: Right? That alleviates overcrowding when we add up all those people being paroled as opposed to waiting to jam out. Would that also be true? [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: And we reduce the chance that they'll be back filling up our prisons once again. [LR34]

ROSALYN COTTON: That is correct. [LR34]

STEVE LATHROP: So parole is a much, much better policy than just letting somebody sit around, do nothing, and then leave after they've jammed out. [LR34]

ROSALYN COTTON: That is correct. [LR34]

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STEVE LATHROP: What percent of people are actually going to be returned to society that are in the Department of Corrections? Is it like 97 percent? [LR34]

ROSALYN COTTON: It just varies. It varies. And I guess I only say that speaking of the individuals that come back on those parole review hearings. Again, as I stated earlier, my concern are those individuals with the drugs and the law violations, so I can't give you the exact numbers. But, yes, I would say it's a concern. [LR34]

STEVE LATHROP: No, but what I'm looking for is the number of people that are in prison, like 90-some percent of them are actually going to get out or have a chance to get out. [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: So we need to do something for these people if we want to improve public safety, right? [LR34]

ROSALYN COTTON: If, yes, if they're eligible for parole, that is correct. [LR34]

STEVE LATHROP: Okay. So walk me through somebody that comes in the front door of the Department of Corrections. They've just been sentenced in Douglas County. The first thing that happens is what? They do...they end up at D&E? [LR34]

ROSALYN COTTON: First 90 days they're in D&E to be assessed. [LR34]

STEVE LATHROP: Okay. [LR34]

ROSALYN COTTON: Then at that particular time they transfer to the institution of their classification. And at that time, after the 90 days, the board will review them, key review. [LR34]

STEVE LATHROP: Pardon me? [LR34]

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ROSALYN COTTON: The board will review their case on a key review. [LR34]

STEVE LATHROP: Okay. [LR34]

ROSALYN COTTON: That's their first initial review. [LR34]

STEVE LATHROP: How many days into their sentence does that happen? [LR34]

ROSALYN COTTON: Approximately 90 days. [LR34]

STEVE LATHROP: Okay. So the first thing you said was an assessment at D&E. [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: What's the point of an assessment? What are we trying to accomplish?
[LR34]

ROSALYN COTTON: You're looking at your programming, their programming assessment, medical assessment, all the things that they need to do to acclimate themselves back into the institution. [LR34]

STEVE LATHROP: We're starting a new assessment program, are we not, the STRONG-R?
[LR34]

ROSALYN COTTON: The STRONG-R is the department's new instrument, yes, assessment tool. [LR34]

STEVE LATHROP: Okay. That's the new assessment tool. And as of sometime like in July, everybody that comes in is going to have the assessment. [LR34]

ROSALYN COTTON: That is correct. [LR34]

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STEVE LATHROP: And does the assessment tell the department what programming a person needs when the assessment is complete? [LR34]

ROSALYN COTTON: That is the goal, from what I understand. [LR34]

STEVE LATHROP: So when hypothetical inmate from Douglas County shows up at D&E and they do the assessment, it may say you need cognitive programming to stop your criminal behavior, whatever that program is called, right? [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: And they may say you need violence reduction programming because it appears that you've been violent on the outside. And it may say you need substance abuse, depending upon sort of the things that they unearth during the assessment. [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: Right? [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: Now once that assessment is done and those needs for programming are identified, what does that mean in terms of the person's ability to get parole? [LR34]

ROSALYN COTTON: Basically, depending on the risk level and depending on what the guideline scores are going to look at, the key is to make sure that those individuals get into the programming that's necessary so that we can consider them for parole. [LR34]

STEVE LATHROP: Okay. And without the programming, assuming a certain level of risk, without the programming, they're never going to get to or through parole. [LR34]

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ROSALYN COTTON: That depends on, and I say that only because there are individuals that may have a programming need that they can actually be able to participate in that programming in the community. [LR34]

STEVE LATHROP: That's sort of the secondary type programming but not the core programming. Would you agree with that? [LR34]

ROSALYN COTTON: The core programming, yes, that's correct. [LR34]

STEVE LATHROP: So the core programming is the things that we're going to give the people or require that they participate in that make them high risk. [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: Like this guy has got a tendency towards criminal behavior and he needs to go through this cognitive program that addresses his inclination or his tendencies towards criminal behavior. And it might be, I think you said, another one was the substance abuse. [LR34]

ROSALYN COTTON: Substance abuse programming. [LR34]

STEVE LATHROP: And the domestic violence. [LR34]

ROSALYN COTTON: That would be...that would not be a core program,... [LR34]

STEVE LATHROP: Okay. [LR34]

ROSALYN COTTON: ...domestic violence. [LR34]

STEVE LATHROP: But you have about four of them, don't you? [LR34]

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ROSALYN COTTON: There are three: sex offender, violence reduction program, and the substance abuse treatment program. [LR34]

STEVE LATHROP: Okay. Until somebody who needs those goes through those programs, then they're not going to be successful in their attempts to get parole. [LR34]

ROSALYN COTTON: That is correct. [LR34]

STEVE LATHROP: All right. In other words, Parole Board, and we talked about this a lot a couple of years ago when we talked about Parole Board, Parole Board is the gatekeeper to public safety. Right? [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: And the idea is that the Parole Board is charged with the responsibility of not turning people loose, back in the community, who are going to or who are likely to reoffend, through the parole process. [LR34]

ROSALYN COTTON: That is correct, sir. [LR34]

STEVE LATHROP: Right? [LR34]

ROSALYN COTTON: That's correct. [LR34]

STEVE LATHROP: So in your gatekeeping function, one of the things you're going to look at is have they completed these core programs during their stay here at the department to make them eligible. [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: Now they may have other things that you're looking at: does the victim come in, do they seem repentant, do they have a place to live, is it likely they're going to have a

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job and some family support? Those are sort of the incidental things that you look at. But in discharging your role as a gatekeeper you're going to make sure that they have those core programming. [LR34]

ROSALYN COTTON: That is correct. [LR34]

STEVE LATHROP: So in front of you is a sheet, a big, long sheet and you probably can see that. Hopefully the print isn't a challenge for you. But at the very bottom of that there's a list of one...the very bottom row it says parole eligible. Do you see that? [LR34]

SENATOR PANSING BROOKS: And the senators all have this as well, so. [LR34]

ROSALYN COTTON: Yes. Parole eligible, yes. [LR34]

STEVE LATHROP: Okay. And if you follow it all the way over to the other end, you'll get the last few years' worth of numbers of people that are parole eligible. [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: You see that? It's somewhere around 1,300. [LR34]

ROSALYN COTTON: 1,324. 1,324. Yes. [LR34]

STEVE LATHROP: Thirteen twenty-four as of July of 2015. I don't see that we have numbers for 2016 yet. But is that pretty much a constant? Is that pretty close to what the number is today? [LR34]

ROSALYN COTTON: I can't speak on that at this time. I'm just looking at what you have here as far as your data sheet. I'd have to get back with you on that,... [LR34]

STEVE LATHROP: Okay. [LR34]

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ROSALYN COTTON: ...that constant number. [LR34]

STEVE LATHROP: Whatever the number might be. Whatever the number might be. When we were...when I was preparing for this and I was reading the report of the Inspector General and I think it's in other places as well and maybe it's in the JPA assessment of the Nebraska prisons, I saw a statistic that 33 percent of the people who are within one year of their parole eligibility date had not completed their programming. Does that sound right to you? [LR34]

ROSALYN COTTON: Yes. Possibly, yes. [LR34]

STEVE LATHROP: Okay. Has programming become a bottleneck for parole? [LR34]

ROSALYN COTTON: At this point, to a certain extent. And it's those core programs that's the concern because of the high risk of violent offenders that need the program; that is, that's something that I can say. [LR34]

STEVE LATHROP: Okay. You sound like you're busy over there with people who want to get paroled out and people who may have made some mistakes while they were out and whether you need to bring them back in. [LR34]

ROSALYN COTTON: That's correct. [LR34]

STEVE LATHROP: So you're having a lot of hearings. [LR34]

ROSALYN COTTON: That's correct. [LR34]

STEVE LATHROP: How many of these people never get a hearing because they don't have their core programming completed? [LR34]

ROSALYN COTTON: I couldn't give you the actual data number of how many people are not being paroled because of that. [LR34]

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STEVE LATHROP: Can you give us an estimate? [LR34]

ROSALYN COTTON: This is within a year of their parole eligibility date? [LR34]

STEVE LATHROP: Just if we took the population of people who are at their parole eligibility date, how many of those people don't get paroled for the simple reason that they haven't completed their core programming? [LR34]

ROSALYN COTTON: I'm going to...I'll probably just make a guess. Maybe 10-15 percent. [LR34]

STEVE LATHROP: Okay. And so if these people had the core programming before their parole eligibility date, they would be considered. And absent some other consideration, would be discharged on parole and followed up by a parole officer. [LR34]

ROSALYN COTTON: Absolutely. Yes. [LR34]

STEVE LATHROP: Okay. And so parole in some sense is a bottleneck...or, pardon me, programming is in some sense a bottleneck for parole in terms of putting people back or putting...placing them on parole. [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: What are the other considerations? [LR34]

ROSALYN COTTON: For considering for parole? [LR34]

STEVE LATHROP: Yeah. Yeah. So if this says that we have...and I'll just take the last number we have, 1,324 people that are parole eligible but not on parole, so if it's not programming what are the other considerations? [LR34]

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ROSALYN COTTON: It's kind of like some of the challenges I mentioned during my testimony. You have individuals that may not come before us when we're looking at sitting in the hearing. We actually have individuals who have come before us and we have literally had them scheduled for hearings and they don't show up. Again,... [LR34]

STEVE LATHROP: Why is that? [LR34]

ROSALYN COTTON: We don't know. We don't know why they don't show up for the... [LR34]

STEVE LATHROP: Let me ask you about that. Are the people that don't show up somebody who's so close to their jam-out date that they say, I'm not doing this programming and, by the way, I don't want to be on parole, so I'm just going to sit here, jam out, and not fuss with the parole? [LR34]

ROSALYN COTTON: That is correct, sir. [LR34]

STEVE LATHROP: How much of that, how prevalent is that in your population of... [LR34]

ROSALYN COTTON: It depends on the sentence structure, depends on the individual. Because again, as I stated earlier, there are some of those individuals that will come before us and we will still, even though they have enough time to parole, we will still review them. We will not defer them mandatory. So every time they come before us they're going to waive, and then finally when they get towards the end of their discharge, then when we really can't do anything, then we'll defer them mandatory. So that, again, that's just something that we just start looking at. [LR34]

STEVE LATHROP: But what's the problem there? Are they feeling like they've been horsed around on waiting lists and I can't get the programming anyway, it's a waste of time because the waiting list for this is way past my parole eligibility date so I'm not even going to bother? [LR34]

ROSALYN COTTON: We have heard that. Yes, we have heard that. We have heard those individuals come before us, have said things like that, and they kind of give up. [LR34]

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STEVE LATHROP: Okay. [LR34]

ROSALYN COTTON: And we'll say basically that then we'll defer them mandatory. [LR34]

STEVE LATHROP: Okay. So I guess my point in the questions that I have for you today is, to what extent is our programming a problem with being more efficient in discharging people on parole, which is a much preferred method to letting them jam out? [LR34]

ROSALYN COTTON: I think from what I've heard and basically spoke with Director Frakes and even some of the clinicians from mental health, clinicians from substance abuse is the fact they're just trying to get them programmed and get them into the position so that they can be prepared and ready for parole. And that's just something that's going to be ongoing that we're going to have to work with. [LR34]

STEVE LATHROP: So now I want to talk about overcrowding for just a minute and the role you play in alleviating overcrowding. We've seen the numbers. We have them on this chart. We're at 161 percent of capacity as of September 16...or 2016. So we're making very little progress as a percent of the design capacity. We're making very little progress towards alleviating overcrowding. And it strikes me that we can alleviate overcrowding by building more capacity, which I don't hear anybody talking about. Do you? [LR34]

ROSALYN COTTON: No. [LR34]

STEVE LATHROP: Okay. Or we can have fewer people coming in the door, right,... [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: ...which is sort of that LB605 business with the Class IVs. And we can have them come in through the front door less frequently if we lower the rate of recidivism. Right? [LR34]

ROSALYN COTTON: Uh-huh. Uh-huh. [LR34]

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STEVE LATHROP: That's an important goal of the Department of Corrections. And the last is getting more people on parole because they're leaving the institution sooner. And the cumulative effect of that is to alleviate overcrowding. Right? [LR34]

ROSALYN COTTON: That is the goal, yes. [LR34]

STEVE LATHROP: So this committee I think is very concerned about what needs to take place for parole. For all the reasons, it's better than letting somebody jam out and as a tool of alleviating overcrowding. Okay? [LR34]

ROSALYN COTTON: Uh-huh. [LR34]

STEVE LATHROP: And my questions have to do with what do we need to do to increase your ability to have parole, people ready and situated in a position where they can be paroled when their parole eligibility date comes up. I have read the report of the Justice program assessment by the Justice Center, the JPA. You've read that? [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: Okay. It talks about our programming struggles, right? Are you familiar with those? [LR34]

ROSALYN COTTON: Well, yes. Yes. Yes and no. [LR34]

STEVE LATHROP: So these are the services the people that come before you should have... [LR34]

ROSALYN COTTON: Uh-huh. [LR34]

STEVE LATHROP: ...before they get to you, right? [LR34]

ROSALYN COTTON: Yes. [LR34]

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STEVE LATHROP: And if I am an inmate and I have, let's say, my parole eligibility...and now I'm really in an area I'm not familiar with, right, and maybe I should just give you a second to explain how that works. But if I come in there and I have a parole eligibility date, it's a couple years down the road, what's going on in my world? Right? Is somebody reviewing me before I approach my parole eligibility date to see if I have my programming done or how does that work? [LR34]

ROSALYN COTTON: I think what I can say is usually case management will work with them on making sure that they're in the right programming so that when they come before us that they're in the programs that they need. But because they're two years out and know that we're not going to be able to schedule them a hearing, that's just a continued work progress for them, including the inmate or I'd say the client and the case manager. [LR34]

STEVE LATHROP: And I get that you're no longer attached to the Department of Corrections, right? [LR34]

ROSALYN COTTON: Um-hum. [LR34]

STEVE LATHROP: But you are familiar with these people that come before you. [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: You look at their files... [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: ...and you go, God, I'd put this guy out but he hasn't had his programming yet. [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: That's a big problem. True? [LR34]

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ROSALYN COTTON: We work...yes, that's correct. [LR34]

STEVE LATHROP: Okay. And when it comes to programming, the difficulties that the state is experiencing, the Department of Corrections is experiencing with programming are, according to the JPA, probably five different problems. Right? [LR34]

ROSALYN COTTON: Um-hum. [LR34]

STEVE LATHROP: It's a function of the assessments that were done. Maybe it will improve with the STRONG-R, right? [LR34]

ROSALYN COTTON: And guidelines, yes. [LR34]

STEVE LATHROP: And guidelines. And...but in Nebraska the problem is sort of the backlog while people wait for an opportunity to go through a program. True? [LR34]

ROSALYN COTTON: That's correct, yes. [LR34]

STEVE LATHROP: And we talked about the hypothetical person that comes in and he needs three different programs, core programs before you're going to say, okay, you and the board. Right? [LR34]

ROSALYN COTTON: That's correct. [LR34]

STEVE LATHROP: And that person may get an assessment, but the department is--and we heard this term a couple of years ago--triaging folks for programming, right? [LR34]

ROSALYN COTTON: Um-hum. [LR34]

STEVE LATHROP: So they look around and they go, well, I know that you have a long sentence and I know you're dangerous as anybody in this place; but you're not going to get programming

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because we got to get the guys that are closer to a parole eligibility date through the programming. [LR34]

ROSALYN COTTON: We've seen that, but we also have noticed that there have been some individuals that have been programmed that have been eligible for a year or two as well because they completed the program. We just set their hearings that far out so that they can get into the program. But that was prior to, you know, December 2014. [LR34]

STEVE LATHROP: Okay. You are familiar with the fact that these people have to wait to get their programming. [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: And in many cases and the current model is that they get...they wait for program number one, they complete program number one, right? The JPA report talks about how it ought to be done over a shorter period of time, maybe more intense, true? [LR34]

ROSALYN COTTON: Um-hum. [LR34]

STEVE LATHROP: Okay. And then when they get done with program number one, they got to wait for program number two to open up and that's another waiting list. They complete that program and then they got to wait some more for program number three. Right? And that is what the Justice Center was critical of when it came to our programming. [LR34]

ROSALYN COTTON: Um-hum. [LR34]

STEVE LATHROP: Is that right? [LR34]

ROSALYN COTTON: Yes, yes. [LR34]

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STEVE LATHROP: Okay. And this points to the resources, right, or the capacity of the Department of Corrections to provide the programming these people need so that it is completed before their parole eligibility date. Right? [LR34]

ROSALYN COTTON: That's correct. [LR34]

STEVE LATHROP: And right now that's a problem. [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: Okay. And you have as many as 15 percent, perhaps more, if we count the people that have given up it's maybe, what, half? [LR34]

ROSALYN COTTON: That I couldn't tell you. [LR34]

STEVE LATHROP: Okay. But we have a significant population that we would prefer to see on parole who can't get parole either because they couldn't complete their programming in a timely fashion before their parole eligibility date or they've just given up because of the waiting list. [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: All right. So the conclusion: We have a capacity problem when it comes to programming. [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: All right. Talk to us about that. Tell us what your view is of our capacity issues when it comes to the programming and in particular these core programs. [LR34]

ROSALYN COTTON: I actually...and again, I will speak as a Chair. I have been proactive in working with the substance abuse supervisors and helping us get some of these guys reassessed

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that have short time, a short time of parole, a short time that they could do parole. I've also been speaking with mental health on the acting behavioral health administrator as to setting up some conversation with some inmates (inaudible) say clients and trying to get away from that whole terminology of inmates/offenders. I mean, I would like to start using the term "clients," "individuals." I think they will probably grasp and embrace that a little bit better in the future. But I think working with them and finding out this is my concern: Why are you refusing programming? You have a year left. Why are you refusing programming? And that's just a concern. So I am going to be meeting with one of the clinician and an administrator in a couple weeks and some inmates as to why they're refusing the programming. That's number one for me. The other thing is I think they just need to have more programming and they're working on that. Staffing, getting the individuals to get into the program, you're going to need to have staff. In order to establish more programs, you're going to need to have staff. They're going to have to be ready to be able to implement that (inaudible). [LR34]

STEVE LATHROP: Okay. And this committee will take a look at some of the staffing issues when it relates to programming in a couple of hearings from now. And so we'll drill down into the detail perhaps a little bit more. But do you have any thoughts or any judgment about how much more capacity they need? [LR34]

ROSALYN COTTON: No. [LR34]

STEVE LATHROP: Because ultimately the committee is trying to figure out what do we need to fix in order to make...to alleviate overcrowding to make the place run better. And by the way, if these people are getting the programming earlier then they maybe take some of the programming to heart and not engage in assaults on guards, assaults on one another. I mean there's a lot of reasons we need the programming. Can you give us any insight into how much more capacity we need for programming? [LR34]

ROSALYN COTTON: No. Like I said, I just think that continuing to work with the department on basically ways that we can get them programmed, staffing problems or not, is just...and this is, like I say, I'll speak for myself, is a concern. And that's just something I'm going to continue to work on. At the same time, looking at those individuals that may have a parole eligibility date

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that right now they're eligible and a short period of time to do parole, what can we do for those individuals now? Those are the kinds of things that I would like to take a look at and those are the kinds of things that we're working on. [LR34]

STEVE LATHROP: And when you say "we're working on" is that Parole or are you working with the Department of Corrections... [LR34]

ROSALYN COTTON: Both. [LR34]

STEVE LATHROP: ...as it relates to the programming? [LR34]

ROSALYN COTTON: Both--the Parole Board, my colleagues, and the Department of Correctional Services. As I stated earlier, it's a great concern to have supervisors and clinicians a part of this process. And we work with them every day. [LR34]

STEVE LATHROP: Are you putting anybody out on parole that hasn't had these core programs? [LR34]

ROSALYN COTTON: No. [LR34]

STEVE LATHROP: Like...and the reason I ask is two years ago we heard that there was an awful lot of pressure on the board, and you would have been around for that, to start paroling people even though they hadn't completed what would be essential programming. [LR34]

ROSALYN COTTON: Mr. Lathrop, I will say this to you. One of the biggest concerns that I've actually--and this is why I am proactively involved--is that the violence reduction program, those individuals that have been refusing the programming, that's why I'm being proactive in trying to see how that's...what's happening with that. We have not been able to parole those individuals. One of the things that I really took a look at is trying... [LR34]

STEVE LATHROP: Which individuals is that? Forgive me for interrupting. [LR34]

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ROSALYN COTTON: Individuals that are close to being eligible or individuals that are eligible and have a short window of time to discharge. Those are the individuals that have basically...have been refusing programming or have not been able to get in the programming, and I'm taking a look into that. And the reason why I'm doing that is because if we don't understand what is going on, then we don't understand why this is taking place. And one of the biggest concerns is having those individuals reassessed. Well, because they are high risk, they cannot go back in and reassess them because that's not a program of the Department of Correctional Services. So it's kind of like we're at the end of just basically mandatory discharging those individuals that can't get that core program. [LR34]

STEVE LATHROP: And what you're describing is an attempt by your board or you in particular to go reach out to inmates who you might parole today, otherwise they're going to discharge in, what, a year, nine months? They'll just jam out. [LR34]

ROSALYN COTTON: They'll just jam out. [LR34]

STEVE LATHROP: We'll have no tail on them and the opportunity for or the likelihood of recidivism is higher. [LR34]

ROSALYN COTTON: Yes. And that's why I'm being proactive to see what we can do as a board. [LR34]

STEVE LATHROP: Okay. This isn't a problem you recognized this morning. You know this has been an issue for you. [LR34]

ROSALYN COTTON: Yes, with VRP, yes. [LR34]

STEVE LATHROP: Okay. [LR34]

ROSALYN COTTON: Yes. [LR34]

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STEVE LATHROP: So tell me then what you've learned about it to this point in time. Why are these guys electing to jam out as opposed to go through some programming and be paroled out and leave the Department of Corrections sooner? [LR34]

ROSALYN COTTON: Well, I will learn that from the clients in probably hopefully two weeks from now. But what I don't know is they can't be assessed to get into any other programs prior to their discharge date. I do know that much. [LR34]

STEVE LATHROP: Say that again if you would. [LR34]

ROSALYN COTTON: I do know that I will find out more from the clients in about two weeks, but I will not...I do not know what kind of program...there isn't any other programs that they can parole to before their mandatory discharge date. [LR34]

STEVE LATHROP: One of the core programs is the violence reduction program. [LR34]

ROSALYN COTTON: Yes, that's correct. [LR34]

STEVE LATHROP: Do you know what the backlog is for that? If I'm incarcerated, what...and my parole eligibility date is coming up and so is my jam out date, it's out there, too, how long am I waiting around for the violence reduction program? [LR34]

ROSALYN COTTON: I think it's a combination of the amount of time that they have on their sentence and the fact that the program only exists at two locations, which are Tecumseh and not...they're going to be working on getting it at Tecumseh but at NSP. [LR34]

STEVE LATHROP: So do we move people around, and maybe you don't know the answer to this, but are we moving people around the Department of Corrections so if I'm housed at Tecumseh and I need the violence reduction program and it's only offered at NSP, do I get a transfer or do I just like too bad, we don't have it where you're housed and you're in maximum security so you don't get it? And as a result, they're never going to get paroled. They're always going to be somebody that has to jam out. [LR34]

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ROSALYN COTTON: I have heard both. I've heard that, for instance with substance abuse individuals have been able to transfer to other institutions. And I have seen a couple individuals that have been transferred from one institution to NSP to get the program. [LR34]

STEVE LATHROP: So when we talk about capacity to provide the programming necessary for people to be...for their folder to look right when they get to your board, the capacity is whether or not we have enough instructors on violence reduction programming, that's one issue, and we certainly don't. Would you agree with that? [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: Okay. And the other is that if it's not offered at every institution or if we can't transfer people to the institutions where it's offered, then it's like they never have a shot at parole. Would that be true? [LR34]

ROSALYN COTTON: That is correct. But from what I understand, I do know that the violence reduction program, you're looking at your high-risk individuals--that will probably be your NSP and your Tecumseh at this point. And that's just from my observation. [LR34]

STEVE LATHROP: But we've talked about this group of people--I didn't even think about this last night so I'm glad you brought it up--we talked about this group of people who are electing not to be paroled. [LR34]

ROSALYN COTTON: Um-hum. [LR34]

STEVE LATHROP: And part of the issue is the VRP program have like...it takes a long time, too, doesn't it? [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: So if we don't get into it in a timely fashion so we can wait for a long time; and then when someone says, well, I got an opening, Lathrop, and we'll run you through the

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violence reduction program which you're going to need; and, by the way, it takes a year. And you go, well, I'm going to jam out in 13 months. I'm not doing it, right? [LR34]

ROSALYN COTTON: There's truth to that, yes. [LR34]

STEVE LATHROP: So when we look at these people that you want to parole, because that's the preferred method, right, you want them in at least the shape and have the folder or the boxes checked before they get to you, they can't do it because they can't get in the programs in a timely fashion; the programs take too long; the waiting lists are too long; we don't have them everywhere we need them; and then we're not getting as many people paroled as we should. [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: I appreciate your testimony. And the next logical thing and maybe this is what we take up in two hearings, how much capacity do we need? And that's sort of outside your wheelhouse or do you know? [LR34]

ROSALYN COTTON: Repeat that again. [LR34]

STEVE LATHROP: How much capacity do we need so that when these people who have a parole eligibility date...the goal from the...as I read the findings of this report from the Justice Center, the JPA assessment, the goal is to have everyone complete their programming before their parole eligibility date. Would you agree with that goal? [LR34]

ROSALYN COTTON: Yes. And I think the department is working on that. I think as some of these individuals come in the front end, they're getting assessed for the programming; but the bottleneck is those individuals that are already eligible, yes. [LR34]

STEVE LATHROP: Right. And, Chairman, I wouldn't argue with you that the department is trying to look at it and trying to assess it. They brought these guys in, got a handle on what it is. Now the question is, how much more capacity? And the people sitting at this table besides me

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that have to allocate money to create the capacity, I'm just trying to get a sense of how much more we need, if you know. [LR34]

ROSALYN COTTON: Without knowing the actual assessments and what all needs to be done through the process, I really wouldn't know. [LR34]

STEVE LATHROP: Okay. What we do know is if we don't change the capacity for programming, we're not going to have more people on parole than we've been doing now. [LR34]

ROSALYN COTTON: That is correct. [LR34]

STEVE LATHROP: And parole will not be a tool in that case for alleviating overcrowding. [LR34]

ROSALYN COTTON: I think parole is always a tool for alleviating overcrowding. However, we have to look at all factors, and it's not just programming. We need to get down to the nitty-gritty as to why these individuals are refusing programming, why they're waiving hearings. I think it's just a bigger picture. [LR34]

STEVE LATHROP: But didn't you say that that's because they're so close to their parole eligibility date or rather their jam out date that the programs that they need weren't taken because all it does is... [LR34]

ROSALYN COTTON: That is... [LR34]

STEVE LATHROP: ...make them jump through a bunch of hoops? [LR34]

ROSALYN COTTON: Yes, that is correct. However, you still have the individuals that I mentioned earlier about detainers, some of those individuals who may not have places to go. Those...it's just a combination. I think that's going to just encompass a case management which, again, I think the department is going to be working on. [LR34]

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STEVE LATHROP: Are there other barriers? [LR34]

ROSALYN COTTON: I think I named them all during my testimony. [LR34]

STEVE LATHROP: Yeah, but in terms of policy, so when I look at the barriers and what this committee may be interested in as they try to make policy or at least make appropriations next year, programming is one that over which the Legislature, with a request and some supporting information, can make an appropriation and say if we do this, we'll have more people paroled; we'll reduce the population; and we'll have better outcomes, lower recidivism, fewer people coming in the front door, kind of the things that the CSG was pitching. [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: Okay. That's a policy thing. And you can't help it if somebody shows up and says, the guy he killed was my brother-in-law and I don't want him out. Those things come up in parole hearings. [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: But tell me about other policy things, money things, constraints that the Legislature can address through policy or appropriations that you think prevent you from putting more people out on parole. [LR34]

ROSALYN COTTON: The only thing that sticks in the back of my mind is just getting them ready, just getting them into the programming that they need to be in and getting them ready for transition. You know, that's key. That's huge if we can just do that. And that's just some of the things that I've experienced over the years of being on the Parole Board is to have them ready. [LR34]

STEVE LATHROP: Okay. Programming. [LR34]

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ROSALYN COTTON: Programming. And I think everyone is trying to touch bases on what needs to be done moving forward. But again, this is going to be just a work in progress and just making sure that they are prepared for parole. [LR34]

STEVE LATHROP: Okay. Is transition housing a challenge? [LR34]

ROSALYN COTTON: Transition housing, yes, at times, yes. [LR34]

STEVE LATHROP: Tell me about that. If I'm about to get paroled and I've been sitting in the penitentiary for ten years and my family has all quit talking to me and, you know, my wife's left me and I'm all alone coming out, what do we do with that person and what's the role of transition housing? [LR34]

ROSALYN COTTON: Well, re-entry is working with those individuals, but the transition housing, there's not very many of them. And depending on what geographic area they're going to, some of those sources are going to be limited so that may be a challenge. But, you know, they pick one, they parole to that particular facility. And I think the challenge for us now is will they stay there and how long they're going to stay there. [LR34]

STEVE LATHROP: Does the absence of sufficient transitional housing affect how many people you can put out on parole? [LR34]

ROSALYN COTTON: No. [LR34]

STEVE LATHROP: In other words, is it one of the barriers that we're talking about? [LR34]

ROSALYN COTTON: It can be. It just kind of depends on...most of the times with any cases like that it is, but we still continue to keep them on hearing status so that they can continue to work with that particular individual. [LR34]

STEVE LATHROP: And is transition housing something that's done by the Department of Corrections? [LR34]

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ROSALYN COTTON: The reentry team work with transition housing. [LR34]

STEVE LATHROP: Okay. So this is some kind of a halfway house that state government runs. [LR34]

ROSALYN COTTON: No. It's pretty much private. [LR34]

STEVE LATHROP: Or like the Open Door Mission kind of a place. [LR34]

ROSALYN COTTON: Yes, yes. [LR34]

STEVE LATHROP: Okay. When you were making your comments at the beginning of your testimony, you talked about the revocations, something I hadn't thought about last night when I was making my notes. You have a lot of people who are placed on parole and basically they're told stay away from drugs and misbehavior and no criminal activity, keep a job and do the family thing. [LR34]

ROSALYN COTTON: Those are the conditions, some of the conditions of parole, yes, sir. [LR34]

STEVE LATHROP: Okay, in a very general and maybe not very sophisticated way of summarizing it. And some of these people trip while they're out. [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: And I think you said we will give people three or four chances to work through...if they come back with a dirty UA or if they get in a scrape or some kind of a misconduct while they're out. [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: Is that new? [LR34]

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ROSALYN COTTON: Yes, it is actually. [LR34]

STEVE LATHROP: See, two years ago when we were talking about revocations it was like, hey, we do not want these people back in the Department of Corrections because we don't have room for them. Right? So is the three or four chances that you're talking about before you'll make them come back and spend more time at the Department of Corrections incarcerated, is that a function of overcrowding or is it a function of a new approach that we're going to be kinder and gentler? [LR34]

ROSALYN COTTON: You know, I think it's twofold. First of all, there are going to be individuals that have four and five DUIs on their record; and we've basically stated that, you know, we're going to work with you. But we're going to add a special condition that if you run into drinking relapse that we're going to bring you back before the board. I mean, at that particular time, those individuals are assessed for any programming that they may need. But, yes, you know, in the past, in the history that I've been on this board, usually is one time. You know, specifically with meth and they come back. But, you know, we have a great source and our parole officers are really doing a great job in trying to work with these individuals to keep them out in the community that keep them from coming back to prison to deal with the overcrowding. So it kind of goes back and forth. And there are some months that we have, you know, little if none of those individuals coming back. But then there are other months that they come back so it just kind of depends, and it comes in different aspects of when, where, and how actually. [LR34]

STEVE LATHROP: Okay. Let me ask the question differently then. Is giving three and four chances to somebody who comes back using meth or some other violation, giving somebody three or four chances, is that an idea from the Council of State Governments? [LR34]

ROSALYN COTTON: I won't say an ideal. I think for me I can speak it's realistic, I mean, so much of three or four times but just give them something to work on. And I will say to you specifically with drugs, they are assessed by the Department of Correctional Services prior to us bringing them back. So if they're assessed to do some treatment in the community, then there's no reason to bring them back. So I... [LR34]

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STEVE LATHROP: But if they're doing...if you catch them using meth three or four times, I mean, so the first time somebody uses meth that they're on parole, they get an assessment before they come back to you. And if the assessment says this guy is going to use, do you throw them back in prison? [LR34]

ROSALYN COTTON: They're coming back, yes, for treatment, yes. [LR34]

STEVE LATHROP: Okay. And if they're using three or four times, then the assessment wasn't working. Right? It didn't predict that he was going to do it two more times before you finally got fed up. [LR34]

ROSALYN COTTON: That's a possibility. [LR34]

STEVE LATHROP: So how much of this giving three or four chances, Chairman Cotton, is a function of the fact that the place is at 161 percent of capacity? [LR34]

ROSALYN COTTON: I would not say that that's something that we look at as capacity. I think we look at that as far as making sure that they get the treatment that they need in the community. And if they need to come back to do treatment, then that's when they return. [LR34]

STEVE LATHROP: So if we had the correctional facilities were at 100 percent of capacity, plenty of room, plenty of room. And somebody is out on parole and you told them, I'm telling you if you use meth we're putting you back in here; and you find out that they're using meth and you're only at 100 percent of capacity at the Department of Corrections, are you going to follow through and put them back in prison? [LR34]

ROSALYN COTTON: I'm going to speak for myself. [LR34]

STEVE LATHROP: Okay. [LR34]

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ROSALYN COTTON: If the assessment states that they need community treatment, they will remain in the community. If the assessment feels that they are a threat to the community, they will come back. [LR34]

STEVE LATHROP: Okay. And so you're telling me then or I'm going to conclude from your testimony, and you tell me if this is wrong, that the fact that we're at 161 percent of capacity has no influence on you as a board member in making the decision whether the guy ought to go back to prison or you give him a fourth chance. [LR34]

ROSALYN COTTON: Yes. I will speak for myself. That is correct. I like to give individuals the opportunity that they need to continue to transition and continue to get the treatment that they need where that level of capacity is at that time. [LR34]

STEVE LATHROP: Are you kind of hoping no one was listening? I mean, all these people on parole if they find out that they get four chances... [LR34]

ROSALYN COTTON: Guess what? It's something that we're taking a look at right now as we speak. [LR34]

STEVE LATHROP: All right. [LR34]

ROSALYN COTTON: And we have to view that case by case. I mean each revocation hearing we take that seriously. We look at that. There are some of those and we had an individual come in on Tuesday. He came in out of custody. And it was my impression, without being drug tested, that he was using. And he had to stay in. So we're able to continue to work with Parole Administration and get results from the clinician as to what level of care they need at that particular time. [LR34]

STEVE LATHROP: One of the reasons I think the Legislature passed a bill that made you independent from the Department of Corrections is we took plenty of testimony a couple of years ago about the pressure applied on the Parole Board to kick people out to alleviate overcrowding. You would have been around for all of that. [LR34]

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ROSALYN COTTON: You know, I'm going to be real honest and I'm glad you brought that to my attention. I was around. However, I did not know anything about what was going on. [LR34]

STEVE LATHROP: Okay. Well, now you're the Chair. [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: And can you tell this committee that that's not happening? [LR34]

ROSALYN COTTON: That is not... [LR34]

STEVE LATHROP: You don't have anybody...you don't have the Governor talking to you, the Department of Corrections, no one is telling you let's crank it up and by the way, we don't have room for these guys to come back so quit revocating or quit doing revocations. [LR34]

ROSALYN COTTON: With a smile on my face, I can say absolutely not. The board will be independent. We will make the best decisions for public safety. We have a new created agency. They will continue to work well with the board and make sure that the public is safe by making sure that those individuals are participating in the programming necessary in the community. And basically that's the way it's going to go. [LR34]

STEVE LATHROP: Okay. Well, that was the way I think they intended it, especially if your role is a gatekeeper. The next witness would be the right person to talk to about Parole Administration? [LR34]

ROSALYN COTTON: Absolutely, sir. [LR34]

STEVE LATHROP: Okay. [LR34]

ROSALYN COTTON: You'll get some very good information. [LR34]

STEVE LATHROP: Tell me about the effect on...I want to talk about mental health. [LR34]

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ROSALYN COTTON: Um-hum. [LR34]

STEVE LATHROP: Right? So we learned a couple of years ago, I think it's well settled, that an awful lot of people with mental health issues who should be getting treatment before they get arrested end up in the Department of Corrections. [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: And many of those people will have a parole eligibility date and come before you. [LR34]

ROSALYN COTTON: Yes. [LR34]

STEVE LATHROP: Talk to me about the role of mental health and whether the people are getting the mental health treatment they need before they get to you for consideration for parole. In other words, is that one of the holdups or not? [LR34]

ROSALYN COTTON: One of the things I can say to you is this: In the many years that I've been on this board we have had a very good working relationship with LCC mental health unit. We have quarterly meetings. They bring us individuals who are ready for transition and we work with them. The social workers are great. They give us the information that we need. And at that particular time, they have their plan already put together and we will take them into consideration for parole. That is substance abuse and mental health at LCC has never been a concern of mine. And I can only speak for myself in the many years that I've been on this board. And when we look at recidivism and when I say actually recidivism, I'm only talking about those parole review revocations, I would say I can probably count maybe four or five who've come back. And they were basically assessed, reassessed again and the Parole Board have worked with them in paroling them again--very, very good success. [LR34]

STEVE LATHROP: You just made a distinction, though, about the people that come to you on revocation. [LR34]

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ROSALYN COTTON: Um-hum. [LR34]

STEVE LATHROP: You're seeing these guys come through the turnstile again, though, with the mental health issues, though, aren't you? [LR34]

ROSALYN COTTON: Yes, but it's only because...and I can say because they were not following the facility rules and regs and they would come back. And that's why we're able to assess them and continue to work with them that I can recall. And again, these are individuals that we are paroling. I can't speak for the individuals that's coming through the front door that need mental health while they're institutional, you know, why they're in the institution. I can only speak for those individuals who are eligible, the mental health team has been very, very good in getting them ready. And they will bring those individuals to us, before us, or contact me and say, hey, this is somebody we're looking at; we have meetings; and we discuss it in detail. Yes. [LR34]

STEVE LATHROP: So the violence reduction program, I just have a few more questions for you. [LR34]

ROSALYN COTTON: Okay. [LR34]

STEVE LATHROP: The violence reduction program, they prioritize folks over there in terms of who's going to go through programming. Is that true or do you know? [LR34]

ROSALYN COTTON: I don't know exactly how that...how they do that. That's again something that I'm going to be taking a look into in a couple of weeks. I can get back with you on that... [LR34]

STEVE LATHROP: Okay. [LR34]

ROSALYN COTTON: ...but I am working on that. This is my proactive stage and in getting in there, again as I stated earlier, to find out exactly how that process is working because we are starting to see...I think I asked a couple of months ago to provide me a list. And I'm basically

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seeing individuals, approximately 32 individuals, that may have been parole eligible that may have refused the programming. I just want to get... [LR34]

STEVE LATHROP: Did you say 32? [LR34]

ROSALYN COTTON: Approximately. I'm just saying approximately. [LR34]

STEVE LATHROP: So you think of the 1,300 you have 32 that are... [LR34]

ROSALYN COTTON: That was just for...that was for August...July and August, those individuals. [LR34]

STEVE LATHROP: So what percentage of the people that are parole eligible you think are refusing to jump through the hoops? [LR34]

ROSALYN COTTON: That's what I'm going to be investigating. That's what I'm going to be looking at. [LR34]

STEVE LATHROP: You don't know. [LR34]

ROSALYN COTTON: No, I do not. [LR34]

STEVE LATHROP: Okay. [LR34]

ROSALYN COTTON: That's what I'm going to be looking at. [LR34]

STEVE LATHROP: I think that's all the questions I have. Thank you. [LR34]

SENATOR PANSING BROOKS: Senator Krist, do you have a question? Thank you, Senator Lathrop. [LR34]

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SENATOR KRIST: Thank you, Chairwoman, and thanks for coming. I want to make a couple of comments and then I'm going to ask a question. First of all, I am really impressed as we came out of phase one with the CSG process and they identified issues and we passed legislation to help run down that road and the transition obviously and the independence of your organization was part of that. But I'm most impressed at the way you've been working with...the CSG has been working with you and you've been working with them. Because in that, we have a national expert who has been able to look at your processes, your procedures and recommend things to you and the way that you've adapted during that time and the feedback I'm getting in this phase two of CSG is remarkable. I wish, I only wish that the other state agencies that have that kind of and they all have that kind of expertise available to them were doing as much proactively as you are. I understand you're not going to right the ship all at one time, but you're starting to do a good job getting there. The question I guess is given the fact that CSG will go away and that there will be a time when we will not have any oversight or not have as much emphasis in terms of oversight, what are you doing as the Chair to try to preserve what's happening now in transition so that as you right the ship it doesn't list in the future? [LR34]

ROSALYN COTTON: Two things: Legislature, thank you very much. We have a data analyst, number one. Number two, communication. As long as I continue to communicate with the entities of the criminal justice system specifically, with the Department of Correctional Services, and some of those particular areas that I've discussed already this morning, I think we're going to be just fine. Again, I think the whole point of communication and making sure that we are where we're at with numbers, then I think we're going to be fine. [LR34]

SENATOR KRIST: And to comment just on your data analyst, I think we went down the wrong path in filling that position to begin with. But I think you, again, have identified and have a person in place and a functional data analysis person in place that's going to help with that effort. The second question and my final question to you, I'm going to use the term "long in tooth." But you have some board members that have been there for a while and you have new ones coming in. Do you believe that there will be quality people that we can tap on and that you will look at mentoring and looking forward to making sure that board has the right people on it? [LR34]

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ROSALYN COTTON: We have at this time we have one board member, the Vice Chair, that's been on the board approximately four years. The other three individuals are relatively new. We're doing a great job with training, with CSG, working on some of our strategic planning for the upcoming year. There's a lot of things that we're working on at this time that we never have done before. And I'm just really grateful to be able to have the opportunity to work with new individuals who have brought in new ideas to be able to assist us accordingly. But at the same time, we still have to get through this whole process of where these individuals are at in the institutions and moving forward. So, yes, I think moving forward we're going to continue with our training, continue with our strategic planning, and trying to make sure that we are where we need to be at hopefully soon. [LR34]

SENATOR KRIST: Good. Well, don't forget Senator Coash is term limited and he's looking for a job in the future so (laughter). But thanks again for all your hard work. [LR34]

ROSALYN COTTON: Thank you, Senator. [LR34]

SENATOR PANSING BROOKS: Thank you, Senator Krist. Senator Schumacher, do you have a question? [LR34]

SENATOR SCHUMACHER: Just (inaudible). Thank you, Senator Pansing Brooks. Over the summer I was contacted by a couple of young men. I think they were still on parole. [LR34]

ROSALYN COTTON: Um-hum. [LR34]

SENATOR SCHUMACHER: And their big complaint was they could not get good employment, steady employment because they have a felony on their record. Is that a big problem and what do we do about it? [LR34]

ROSALYN COTTON: I think it is a big problem. I think there are some programs in the community that we've tapped into that can certainly assist. I think that also starts not so much of here, and this is just my opinion, but making sure that there are other community organizations that's willing to address that. There could be, you know, possibly some legislation to that. I'm not

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sure. But I think that's a huge problem for some individuals trying to find employment. And it's not so much because of the felony. It's because some of them just want a certain job. And because of their skill levels or because of what they're looking for, they may not be eligible for those positions. So there's a combination of things we have to look at. [LR34]

SENATOR SCHUMACHER: Do you have a list of those agencies that would be available to help people like that or is there such a list? [LR34]

ROSALYN COTTON: Parole Administration has been working with community agencies, and I'm just aware of a few. But based on what the location we have is listed as to help agencies that's been helping with some of these individuals, yes, there are...I don't have an actual list. I don't. [LR34]

SENATOR SCHUMACHER: Thank you. Thank you. [LR34]

ROSALYN COTTON: Thank you. [LR34]

SENATOR PANSING BROOKS: Okay. Thank you. Anybody else? Okay. Well, we're very grateful for your testimony today, Chair Cotton, and we really appreciate all that you've done. [LR34]

ROSALYN COTTON: You don't have any questions for me? [LR34]

SENATOR PANSING BROOKS: No, not right now. [LR34]

ROSALYN COTTON: Okay. [LR34]

SENATOR PANSING BROOKS: I think you did a really good job. [LR34]

ROSALYN COTTON: Okay. Well, we're working on some things. [LR34]

SENATOR PANSING BROOKS: Okay. [LR34]

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STEVE LATHROP: Thanks. [LR34]

ROSALYN COTTON: Mr. Lathrop. [LR34]

SENATOR PANSING BROOKS: Well, we're grateful and we'll be back in touch. [LR34]

ROSALYN COTTON: Okay. I'm going to leave now, you sure? Okay. Thank you all. [LR34]

STEVE LATHROP: Positive, yeah. [LR34]

ROSALYN COTTON: Thank you. [LR34]

SENATOR PANSING BROOKS: Okay. And to the committee, I feel like we should probably push through because of the fact that they need to leave by 2:00. Are you all in agreement or do you want to take a quick break or just keep it going? Anybody have a problem with keeping going? Okay. So next if we could please hear from Julie Micek who is the Parole Administrator. Thank you. [LR34]

STEVE LATHROP: You want to tell Frakes he doesn't have to be here until 2:00? Or do people want to just keep rolling along? [LR34]

SENATOR PANSING BROOKS: Yeah, I guess if...I don't know if anybody from Senator...or from Director Frakes's office is listening, but probably he could wait until 2:00 to be here, so that's...I guess if anybody is listening to the streaming or if anybody...maybe my...some of the staff could call. [LR34]

CHRIS TRIEBSCH: I'll call. [LR34]

SENATOR PANSING BROOKS: Okay, thank you, Mr. Triebisch. Okay, thank you very much, Ms. Micek. [LR34]

JULIE MICEK: I was going to say good morning, but I'll say good afternoon. [LR34]

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SENATOR PANSING BROOKS: Okay, thank you. [LR34]

JULIE MICEK: (Exhibit 2) My name is Julie Micek, M-i-c-e-k, and I am the director of supervision and services for the Board of Parole and I have been in this position since April 1, 2016. Thank you for inviting me to discuss with you our transition and our activities since July 1. Our focus as a new division under the Board of Parole is to bring evidenced-based practices to parole supervision. This is a quite an undertaking and requires the development of a significant number of protocols, staff training and systematic implementation to ensure positive and sustainable outcomes for our agency, our communities, and the state. So on July 1, we transitioned 60 employees from the Nebraska Department of Corrections to the Board of Parole and the transition occurred seamlessly. We had clients continue to report, parole officers continue to provide supervision, and the system functioned as it had been designed. Since July 1, many things are currently underway and I'd like to give you a glimpse of what we have accomplished thus far. Beginning in late June and throughout July, staff were trained on the first principle of evidence based practice which is assess risk and need by learning to administer the STRONG-R. As of August 8, we are currently assessing all clients who are being placed on parole and we're in the process of collecting data and evaluating how the STRONG-R will incorporate into our case management supervision. Our second initiative is to assist staff with understanding and implementing the principle of evidence-based practice was to train them in motivational interviewing. Motivational interviewing is a skill that is critical to effective parole supervision, and this tool assists staff in communicating with clients and sets the stage for behavior change. All Parole staff took part in the motivational interviewing training last week. We had nationally known trainers from Arizona come into Nebraska and assist us in honing our skills and teaching us these valuable techniques to work with our clients. Our next step in the goal to be evidence based is to target interventions to our higher risk parole clients and have probation officers trained on these new skills. Our next training initiative that will address this principle is EPICS. EPICS stands for Effective Practices in Community Supervision. This model offers two critical pieces that enhance supervision practices. First, EPICS requires assessment of parole officers' skills through frequent evaluation of their performance. And the second piece of EPICS focuses on the officer-client relationship, which is essential to effective supervision. It encourages the formation of a client-specific case management plan that fits each client, and officers will match supervision techniques and services to the client's individual criminogenic risk factors. We're

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also working to increase the services that are available to parole clients and to ensure we have resources statewide to offer to clients in regards to substance abuse, mental health, employment and vocational training and a variety of services that address other criminogenic factors and target behavior change. In addition to this implementation of evidence-based practice many operational decisions have been made to enhance our efficiency and increase our managerial capacity. The board has hired an attorney, a data analyst and an administrative assistant to assist in the daily operations of the Division of Parole. An organizational chart has been developed and distributed to all staff to ensure that everyone understands the functions of the additional positions. All of the policies and regulations from the Department of Corrections pertaining to parole are currently being reviewed and revised to reflect the new organization and structure. Policies are being developed for areas that had not been addressed previously to include our new evidence-based approach. Building space is also being sought for Parole staff located at the Lincoln office and at the Central Office of the Department of Corrections. The location of the Lincoln regional office is being closed. In an effort to unify parole efforts in Lincoln all staff, officers, supervisors and administrative personnel in Lincoln will be relocated to one building. We are currently in the process of looking for that space and are hopeful that we'll be in a position to move in early 2017. Our agency budget was submitted September 15 for the first time as the Board of Parole and the Division of Parole Supervision. And we're also working to establish a baseline for our data and our performance measures that we have begun to track. Finally, I want to mention that we have had several town hall meetings with Parole staff across the state and an all staff meeting last Friday. During all of these interactions with staff we have addressed the implementation of evidence-based practice, answered questions regarding the transition and addressed their feelings of uncertainty of how this transition would impact them directly. I am happy to report that staff are becoming more comfortable with the evidence-based approach and are looking forward to growing our new agency under the direction of the board. The collaboration between Parole staff and the board has been wonderful to watch and I look forward to growing in our efforts to parole the correct clients and change behavior while offering quality services and strong case management. Thank you for your time, and I'm happy to answer your questions. [LR34]

STEVE LATHROP: I guess I'm going to start with the questions. [LR34]

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JULIE MICEK: All right. [LR34]

STEVE LATHROP: And tell me what your role is in this new agency. [LR34]

JULIE MICEK: So I have oversight over the entire Parole Division side. So that's oversight of the staff in the Administrative Office and then all the officers that are in the field throughout the state. So we have myself, an assistant deputy administrator, a data analyst, an attorney, and then we have seven supervisors out in the field, so two in Omaha, two in Lincoln, one training supervisor, and one out in the western part of the state. So I supervise all of them and then all the officers that are in the field. [LR34]

STEVE LATHROP: And do you have background in parole or administration or...? [LR34]

JULIE MICEK: I do, yeah. I've been in the field for over 20 years. I came from probation. I worked in probation for about ten years. I was a...I worked in the administrative office for several years as a reporting center coordinator with services and counseling and those kinds of things. I actually worked for the department right after graduation years and years ago as an officer/caseworker, so I'm familiar with the department and how things work. But my background is also in counseling, so I'm a licensed mental health therapist. [LR34]

STEVE LATHROP: Okay. But you're administering this program. [LR34]

JULIE MICEK: Correct, yes. [LR34]

STEVE LATHROP: You're not involved in the day-to-day...you don't have any clients, for example. [LR34]

JULIE MICEK: No, not in the...not...no, no, uh-uh. [LR34]

STEVE LATHROP: Okay. How much are you involved in the process up to the point where the board says you're paroled? [LR34]

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JULIE MICEK: The board...I mean I have regular meetings with the board, so I am aware of everything that Ms. Cotton has talked about. I'm aware of the parole guidelines. I understand how the structure works and so I'm meeting with the board frequently, daily basis. [LR34]

STEVE LATHROP: Do you have any insight into the barriers to putting more people on parole? [LR34]

JULIE MICEK: I think everything Ms. Cotton said is accurate. I think that we're seeing, you know, as the board has developed the guidelines and have made these decisions to say this is where our line is and these programs have to be completed before someone comes out, I mean, that's really the barrier that I can see at this point because the board has said, if you don't need those programs, we're going to parole you and it's our responsibility as Parole Administration then to get the services in the community. And so that is where I see the major issue at this point. [LR34]

STEVE LATHROP: There seem to be two different groups of people who are being held back in their opportunity to be paroled according to the testimony of Chair Cotton. One is the group that actually wants to be paroled and they say, I want to be paroled but I can't get the programming. Right? [LR34]

JULIE MICEK: Right. [LR34]

STEVE LATHROP: And the other group is the ones that have given up and said, ah, I'm on a waiting list, by the time my name comes up and I go through the programming that takes a year, for example, I'm a month away, I might as well just jam out and no one is following me around when I leave. [LR34]

JULIE MICEK: Right. [LR34]

STEVE LATHROP: Right? How many more people a year could we...so both issues go back to programming. [LR34]

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JULIE MICEK: Um-hum. [LR34]

STEVE LATHROP: And now I know you have a data analyst, right? Somebody is keeping track of... [LR34]

JULIE MICEK: Correct, um-hum. [LR34]

STEVE LATHROP: ...how come. Right? One of the reasons that we're going to score it, so that we can look back as policymakers, you as an administrator, the Legislature as policymakers, and come up with some kind of a "here's where the problem is" or "here's where the bottleneck is." [LR34]

JULIE MICEK: Um-hum, right. [LR34]

STEVE LATHROP: And it is to some extent, we can agree, in programming. [LR34]

JULIE MICEK: Um-hum. [LR34]

STEVE LATHROP: Right? So can you tell us how many more people you'd parole in a year, for example, if we had the programming up to where the Justice Center of the Council of State Governments wants it, which is everybody has completed their programming before their parole eligibility date? [LR34]

JULIE MICEK: I can't give you a number of how many more we could parole. I mean we looked at some numbers when we were looking at our budget to try to figure out what kind of dollars we would ask for, for an increase in services because, if we do get more people out on parole, we're going to need more service dollars than to make sure we can get them into the IOP treatments and the mental health counseling and the things that they need. So we've made some preliminary projections about, you know, in the coming years, you know, for example, if '18-19 we projected that, you know, if we got another 380 people out on parole, which is the numbers that would be eligible at that point to come out, what would that cost be then for us to incorporate in our budget

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saying all those people got what they needed, are coming to us, this is what we think we need now, so we can then provide services in the community. [LR34]

STEVE LATHROP: So when we talk about resources, there's two pieces to it. One is, have they had the programming by the time they show up at the board? [LR34]

JULIE MICEK: Correct. [LR34]

STEVE LATHROP: But then the other is, hey, listen, you can't do this too fast because there's only so many people we can serve once you parole them. [LR34]

JULIE MICEK: Correct. [LR34]

STEVE LATHROP: So money on the postparole end of it is a barrier to paroling more people. [LR34]

JULIE MICEK: I mean it could be. You know, I think...and it's a difficult position right now because, you know, we just submitted our budget. We haven't had a year or two under our belt to see what this looks like and what things are actually going to cost. We've made some projections. But, yes, I mean, I believe where we're at right now with we have about 1,300 people on parole right now and we have...our budget is set, I believe that we can do the things that we need to do for this fiscal year to get the people the programming that they need if we stay status quo. If we start talk... [LR34]

STEVE LATHROP: What's status quo in terms of the number? [LR34]

JULIE MICEK: So the 1,300 people that we have on parole right now. [LR34]

STEVE LATHROP: Okay. [LR34]

JULIE MICEK: So as we increase that, I mean, we can talk case load size and that kind of, you know, look at, you know, when you have your highest risk people helping, do you want your case

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loads to be...we can get into all of that. But really, I mean, if we're going to start paroling more people, then the idea would be, well, we would need more officers to assist in that, of supervision. [LR34]

STEVE LATHROP: Well, then let me ask the question from a different angle which is, would you parole more people if you had more resources? [LR34]

JULIE MICEK: Well, I don't know if I could...I mean that's a question more for the board. But I think if the people had the programming inside the institutions, they would parole those people and we would need more resources. [LR34]

STEVE LATHROP: From your point of view, what's the message that you are sending to the Parole Board? Is it: (a) send all the people you want, we'll make it work because we have all the resources we need once you parole them; or is it (b) we need to talk because we can only have 1,300 people on parole and any more than that and I'm going to need more money than anybody has allocated to me? [LR34]

JULIE MICEK: And we have had some very frank conversations as we put the budget in with the board and we've talked about, you know, what would be our capacity, how much higher could we go sustaining what we have now without asking for any more dollars. And again, it's a hard question to ask because this is the first time that we've had our budget separated from the Department of Corrections and under the board. But... [LR34]

STEVE LATHROP: Why are you asking that question in the first place? [LR34]

JULIE MICEK: What? [LR34]

STEVE LATHROP: The question...you said we're asking the question about how many more people can we serve without more money. [LR34]

JULIE MICEK: Well, because... [LR34]

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STEVE LATHROP: Because that sort of sounds like what got us into trouble. [LR34]

JULIE MICEK: Yeah. But realistically if, let's say, they start paroling people, if programming were to be where it was supposed to be starting tomorrow, I mean, we would have to build up to get resources. I don't think anybody is going to just, you know, give me 15 more parole officers. So we'd have to look at caseloads, we'd have to look at structure, we'd have to look at... [LR34]

STEVE LATHROP: But... [LR34]

JULIE MICEK: ...the services we're providing. [LR34]

STEVE LATHROP: But in a state government budget process you only get to come in like once a year, right,... [LR34]

JULIE MICEK: I know. [LR34]

STEVE LATHROP: ...or once every two... [LR34]

JULIE MICEK: Once every two years. [LR34]

STEVE LATHROP: ...and say, well, this is how much money we're going to need for the next two years. [LR34]

JULIE MICEK: Um-hum. [LR34]

STEVE LATHROP: And then that's going to constrict to some extent how many people you can accept on parole... [LR34]

JULIE MICEK: Correct. [LR34]

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STEVE LATHROP: ...because Ms. Cotton and the board may be prepared to parole more people. But if you don't have enough workers and you don't have enough resources, you can't take them and do an effective job. [LR34]

JULIE MICEK: Correct. [LR34]

STEVE LATHROP: So what do you need for resources? [LR34]

JULIE MICEK: Depends how many people you parole. [LR34]

STEVE LATHROP: (Laughter) Well, how much...when you made the preliminary budget request,... [LR34]

JULIE MICEK: Yeah. [LR34]

STEVE LATHROP: ...how many people are you assuming that you're going to... [LR34]

JULIE MICEK: So we looked at it and--myself and Jenny Miller (phonetic) (inaudible) kind of looked at it--and we said, you know, if there is...let's say we...for this next fiscal year coming up, '18-19, if we parole 385 people, we asked for \$1,300 a person, there's some math in there calculating what the average parolee needs as far as money out on parole to provide services. Not everybody uses all \$1,300; some people use more. So we asked for it was around \$382,000 for an appropriation if there were 385 more people put on parole. [LR34]

STEVE LATHROP: If you put 385 more people on parole, is that in addition to the \$1,300 you already have there? [LR34]

JULIE MICEK: Well,... [LR34]

STEVE LATHROP: Or are 385 people going to drop off and you're telling us that I'm going to replace them with 385 more? [LR34]

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JULIE MICEK: Somewhere in the middle, somewhere in the middle probably. They're not...we're not going to lose 385 people in the next year, but we won't gain a full 385 either so. [LR34]

STEVE LATHROP: Okay, well, now I got a question for you and this may be a preview to Director Frakes's testimony. But when it comes to overcrowding, we can build more capacity, as in build more prisons. [LR34]

JULIE MICEK: Um-hum, sure. [LR34]

STEVE LATHROP: We can, well, build more capacity or we got to have more people leave, right, than we have coming in? [LR34]

JULIE MICEK: Um-hum. [LR34]

STEVE LATHROP: And as I look at the options for the Department of Corrections or this administration to reduce the number of people in prison or incarcerated so that that 160 gets down below 140 before the year 2020 or we have a mess, right? [LR34]

JULIE MICEK: Um-hum, sure. [LR34]

STEVE LATHROP: We declare an emergency for the Governor... [LR34]

JULIE MICEK: Yep. [LR34]

STEVE LATHROP: ...not we...the Governor declares an emergency in 2020 and he has to come up with a bunch of people to turn loose to get us down to 140 percent, right? [LR34]

JULIE MICEK: Right. [LR34]

STEVE LATHROP: So tell us, are you going to be part of the solution? [LR34]

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JULIE MICEK: I believe so. I mean I...I believe... [LR34]

STEVE LATHROP: In what respect, because it looks to me, and that spreadsheet is in front of you, pardon me for interrupting,... [LR34]

JULIE MICEK: No, you're fine. [LR34]

STEVE LATHROP: The spreadsheet is in front you to talk about capacity, right? We know what the design capacity is and we have a column here for the number of inmates that need to be decreased to reach 140 percent of designed capacity. That's clear over on the right-hand. You see that 704? [LR34]

JULIE MICEK: Yes. [LR34]

STEVE LATHROP: So we either need to have fewer people coming in than we have going out, or we need to increase the number of people that are going out. [LR34]

JULIE MICEK: Um-hum. [LR34]

STEVE LATHROP: And if they're just jamming out, that's not helping us alleviate overcrowding. It's going to require parole. [LR34]

JULIE MICEK: Correct. [LR34]

STEVE LATHROP: Right? So are you tooled and do you have the resources to be...to contribute to the solution of alleviating overcrowding? [LR34]

JULIE MICEK: With the budget request that we put in for the next two years, yes, I believe that we would have the resources if that budget gets passed and we get those extra dollars for services that we would be resourced to help assist with decreasing that. Part of the other piece of my job is to make sure that the people who are on parole don't come back. And so that's the other issue is that's the other way I can help, can control that, is to make sure my officers are trained. We're

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bringing in all these trainings, we're giving them all these skills and all these tools to be able to work with clients and give them opportunity, but then also be able to say when enough is enough. But that's the other side of it. So when you parole them, I got to make sure that they stay out. I mean that's the other issue. Doesn't do any good to let everybody out and then all of a sudden a month later we've got them all back again. [LR34]

STEVE LATHROP: Right. When you talk about the budget request that you made, that's in some form, is that something the Governor put out? [LR34]

JULIE MICEK: Yeah, it's in the budget system, yes. [LR34]

STEVE LATHROP: For some reason I didn't get that. I'm not sure why. [LR34]

JULIE MICEK: Um-hum, okay. [LR34]

STEVE LATHROP: Somebody probably thought that I wasn't an Appropriations person, which is true. But the budget request that you made, do you feel like that request is "this is what I need," because if we start shaving money off of that budget request, what's going to happen to your ability to participate in being part of the solution to overcrowding? [LR34]

JULIE MICEK: Yes. I believe that what we asked for we need in order to assist with the overcrowding situation. [LR34]

STEVE LATHROP: And it's essential to the operation of the Board of Parole. [LR34]

JULIE MICEK: Yes, it's essential. [LR34]

STEVE LATHROP: How much is that? [LR34]

JULIE MICEK: Our total budget...well, our initial allocation was \$7 million. We asked for another...we had three budget issues we asked for, so the services dollars which I said was around \$380,000. We asked for rent space for the move out of...our officers out of Trabert Hall.

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That came to about \$160,000. And then we also have in our budget issue request the salary increase for the officers. That was in the legislation. [LR34]

STEVE LATHROP: Yeah, you do have a problem with salary, right? [LR34]

JULIE MICEK: We do. [LR34]

STEVE LATHROP: Because if you don't increase the salary of the parole officers these people are just going to go over to Probation. [LR34]

JULIE MICEK: They're all going to work for Probation, yes. [LR34]

STEVE LATHROP: So what's that going to be in the next biennium? [LR34]

JULIE MICEK: So that, so we figured with...to raise our parole officers up to what would be comparable of Probation and then to increase our supervisors, we're asking for I think it's around \$260,000. [LR34]

STEVE LATHROP: What's the total amount of the ask though? You're breaking it down for me and... [LR34]

JULIE MICEK: About \$700,000, somewhere around there. Those were the three... [LR34]

STEVE LATHROP: Is that \$700,000 more than you sort of...\$700,000 over and above what you... [LR34]

JULIE MICEK: Of what we have now. [LR34]

SENATOR PANSING BROOKS: (Inaudible) \$7 million. [LR34]

STEVE LATHROP: Okay. When you try to...when somebody gets out on parole, are you having trouble keeping providers for the services you need for the parolees? [LR34]

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JULIE MICEK: No, we've... [LR34]

STEVE LATHROP: So these people are happy to do like transition housing? You got enough of that? [LR34]

JULIE MICEK: I kind of break service down into a couple different things. So when we're talking about substance abuse and mental health services, we have some very good success with finding providers that will work with us. We are working on a grant now that is with Probation and through CSG and BJA awards that did get us some transitional housing money. So we are making some headway and it's really a matter of finding the funds to do it. It's not that providers won't, but you have to be able to pay for it. So there are people, even out in the western part of the state, who are willing to start opening up transitional living houses for us, but there's got to be that funding for it and the population coming so...so... [LR34]

STEVE LATHROP: So this budget that we talked about, that will give you all the money you need to do the things with transition housing and mental health and so on? [LR34]

JULIE MICEK: Yes. For the numbers that we are projecting, yes; for the next biennium, yes. Now I'm not saying I won't be back here in two years asking for more. But you also have to understand that this is the first time that we put in a budget together as the board and Department of Corrections. So, you know, the money transferred over, but a lot of things that the department provided for Parole, you know, it's hard to know what all of that was. And so we did our best to sort things out and really itemize things and make sure we had what we needed. And then we focused on our biggest three asks, which were services for clients, our space for our staff, and then the salaries for officers, which is essential. [LR34]

STEVE LATHROP: And your...the capacity you will have in the next...over the next two years, the next two fiscal years, will be what, 385 additional parolees per year? [LR34]

JULIE MICEK: Plus the...and if we have 1,300 now, so on top of that, um-hum. That's if...I mean so we have 1,300 now. So let's say we hold at 1,300. Those people never...we don't...they're

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there for longer than we think or...and then we get another 385, that's kind...that's our capacity for the next two years. [LR34]

STEVE LATHROP: And so when we talk to you in a year from now you'll be at 1,300 plus the 385. [LR34]

JULIE MICEK: Possibly, if those people are paroled, if they receive the programming. I mean we were making estimates out to 2019. [LR34]

STEVE LATHROP: And maybe I'm not asking these questions artfully enough, but the 385 or the 1,300 that you have right now, some of them are going to drop off and you're going to put some new ones in. [LR34]

JULIE MICEK: Correct. [LR34]

STEVE LATHROP: Are the new ones that you put in for the ones that complete, successfully complete parole, are they part of the 385 or in addition to? [LR34]

JULIE MICEK: That's additional. [LR34]

STEVE LATHROP: Okay, so you're saying our capacity to put people out on parole will increase by 385 per year? [LR34]

JULIE MICEK: If we get these service dollars, correct. [LR34]

STEVE LATHROP: Which case you're going to make a, presumably, a dent in the overcrowding. That's the plan. [LR34]

JULIE MICEK: That's the plan. [LR34]

STEVE LATHROP: In your budget, is the \$700,000 over and above \$7 million? [LR34]

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JULIE MICEK: Yes. [LR34]

STEVE LATHROP: Okay, so your budget is going to be \$7.7 million. [LR34]

JULIE MICEK: Correct. [LR34]

STEVE LATHROP: And if you do that, you think you'll be able to do 385 more parolees a year. [LR34]

JULIE MICEK: Um-hum, correct. [LR34]

STEVE LATHROP: And are they all going to be suitable candidates? [LR34]

JULIE MICEK: I mean that's... [LR34]

STEVE LATHROP: I mean to do 385 we're not going to do, like the old days, where somebody is running around with a clipboard trying to find people and drag them over to the Parole Board. [LR34]

JULIE MICEK: No. I mean (laugh)...no, I mean, I would think that comes down to the board. I mean what the parole guidelines are going to help do is say if you don't have those three programs to do inside and everything else being okay, so, you know, minimal misconducts, we're not concerned about you as a person out in the community, we're going to serve you out in the community. And so the days of, you know, people having to do everything inside the institution before they're released, that's not what the board is looking for. They're looking for those three specific programs and then everything else is going to fall to Parole to say, okay, but you didn't get residential treatment but you still need outpatient, okay, well, we're going to take care of that. [LR34]

STEVE LATHROP: Two questions for you: Who pays for that? So if you put me out on parole and I need the substance abuse and now, instead of getting it inside, on the inside, I'm going to

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do it after I'm paroled and you say, you know, go over to this treatment center and go do your 30 days in there, is the Department of Corrections or Parole or who is paying for that? [LR34]

JULIE MICEK: No, so that's the service dollars that I'm asking for. I mean last year there was \$600,000 allocated to us for services for clients, so part of that money is used for that. We do a financial assessment, so if clients can pay some of it they certainly pay some of that. And they work that out with the providers. But we have...that's what we use our service dollars for is for that treatment. [LR34]

STEVE LATHROP: Taking care of the cost of those services. [LR34]

JULIE MICEK: Um-hum. [LR34]

STEVE LATHROP: Now all this sounds good. We have the Parole Board tooled with all the capacity they need. And what they do have to have are eligible people, right? [LR34]

JULIE MICEK: Correct. [LR34]

STEVE LATHROP: And so if we can't get these people to stop saying, no, thanks, or the people that need the core programming don't get it, then you can have all the capacity you have established... [LR34]

JULIE MICEK: Correct. [LR34]

STEVE LATHROP: ...with this budget increase, but you won't have suitable candidates. [LR34]

JULIE MICEK: Correct. [LR34]

STEVE LATHROP: And the numbers won't go up. [LR34]

JULIE MICEK: Correct. [LR34]

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STEVE LATHROP: So just as critical to this process of adding or having 385 more people per year is not just your budget going up, but having sufficient programming so that the people, sort of the intent of the Council of State Governments in this study,... [LR34]

JULIE MICEK: Yes. [LR34]

STEVE LATHROP: ...that everybody has their programming, the core programming at least, done by the time they get to parole eligibility. [LR34]

JULIE MICEK: Yes. [LR34]

STEVE LATHROP: And if we don't increase the capacity--in ways that we'll talk about in a couple of hearings from now--to do the proper programming, then it won't do any good. [LR34]

JULIE MICEK: No good. [LR34]

STEVE LATHROP: The whole thing falls apart. [LR34]

JULIE MICEK: Yes. [LR34]

STEVE LATHROP: Everybody jams out and then they show back up in a couple months. [LR34]

JULIE MICEK: And...yes, it's... [LR34]

STEVE LATHROP: Bad deal. [LR34]

JULIE MICEK: They're going to...I mean without that reentry piece and without that parole piece, I mean, that is the critical component if we're going to really try to make a dent in reducing this recidivism. [LR34]

STEVE LATHROP: I think that's all I have. Thank you. [LR34]

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JULIE MICEK: Sure. [LR34]

SENATOR PANSING BROOKS: Senator Krist. [LR34]

SENATOR KRIST: How much has...thank you. And thank you for coming. How much has the CSG team helped in terms of the culture changes that you're talking about now in terms of these services and the provisions that you're talking about? [LR34]

JULIE MICEK: CSG has been tremendous to work with for us. They...we have a great relationship. They meet with us frequently. I talk to Jen Kisela constantly. And so having them help kind of guide us and then having had Mr. Burrell as our transition director is phenomenal. And he still continues to work with us. So as things come up or as we have, you know, some difficulties with trying to...you know, implementing evidence-based practice across an entire agency is no small feat and it doesn't happen in six months. And so really getting officers and staff to wrap their brain about what this means and how this is going to change the role of what a parole officer does is...takes a lot of effort. So we're relying on CSG heavily to help us, you know, with our training curriculum and organizing so it makes sense and so we're not putting one thing before the next and it really follows a logical, systematic way of implementation. [LR34]

SENATOR KRIST: And I wanted to get that on the record because I know that's the case and I again compliment you for being receptive to someone coming in and pointing out different things and different culture issues that will help you succeed. Two comments, one is...suggestions I guess. One is for your data collection. Don't forget that we have some data systems out there, like the Crime Commission, like the folks at UNO that are associated with the Justice Reinvestment,... [LR34]

JULIE MICEK: Okay. [LR34]

SENATOR KRIST: ...those kind of folks. And I'm hoping that what we've heard...what I've heard my whole eight years here is that there's data but we can't get to it or we can't use it or we can't analyze it, so the common data streams that are out there. [LR34]

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JULIE MICEK: Okay. [LR34]

SENATOR KRIST: And the other thing is you said at some point, you know, you get one shot at it; you got to ask for a budget; you got to tell me what you need; you get one time. You can call me up anytime. I'll be here for the next two years. [LR34]

JULIE MICEK: Okay. [LR34]

SENATOR KRIST: Hopefully some of these guys will be here for more than that. [LR34]

JULIE MICEK: Okay. [LR34]

SENATOR KRIST: And if the capacity and the capability start to go askew,... [LR34]

JULIE MICEK: Okay. [LR34]

SENATOR KRIST: ...and you need more help, we can do that. [LR34]

JULIE MICEK: Okay. [LR34]

SENATOR KRIST: This lady from Appropriations and Senator Mello have done it all the time. As soon as there is an issue, there can be a balancing. [LR34]

JULIE MICEK: Okay, great to know. [LR34]

SENATOR KRIST: So, please, when you get to a point where you need to scream uncle, give us a call. [LR34]

JULIE MICEK: I will. I'm not afraid to. I will. [LR34]

SENATOR KRIST: All right. [LR34]

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JULIE MICEK: Thank you. [LR34]

SENATOR KRIST: Thank you very much. [LR34]

JULIE MICEK: Thank you. [LR34]

SENATOR PANSING BROOKS: Appreciate that. Yes, Senator Seiler. [LR34]

SENATOR SEILER: Thank you. I was just...the numbers that you threw for increasing your budget, wouldn't they be offset by a decrease in the prison budget? If we're talking about \$39,000 per prisoner and we'll apply it times the 700...or 385, that would be...the budget itself doesn't get affected that much even though it's a change in departments. Am I wrong on that? Mello, (laughter) sit down. If we take people out of prison and put them into parole, doesn't the money just go across the board basically? [LR34]

SENATOR BOLZ: No. [LR34]

SENATOR MELLO: Not during...not budget, not processwise, no, the money was appropriated... [LR34]

SENATOR SEILER: No, no, I mean...but I'm saying as to the effect on the total budget. Like I said, it's \$39,000 per prisoner. [LR34]

SENATOR MELLO: Um-hum. [LR34]

SENATOR SEILER: Okay. We put them out on parole. And she's saying her budget is...what was that per prisoner? [LR34]

JULIE MICEK: About \$1,300 for services. [LR34]

SENATOR SEILER: About \$1,300. We're making a profit. [LR34]

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JULIE MICEK: Don't forget I still need a few officers. [LR34]

SENATOR MELLO: I wouldn't use... [LR34]

STEVE LATHROP: (Inaudible.) [LR34]

SENATOR MELLO: I don't know if we're...I think the thought, I think the issue is that the appropriation is more on the fixed costs in Department of Corrections because you're paying for infrastructure, you're paying for beds... [LR34]

SENATOR SEILER: Okay. [LR34]

SENATOR MELLO: ...where parole is mostly being paid for staffing and services. [LR34]

SENATOR SEILER: Well, you still...but you got food and intangibles that would be available, so it's not that big of a jolt to the overall budget in my mind. [LR34]

SENATOR BOLZ: If I could just...sorry to pop in. [LR34]

SENATOR SEILER: Go ahead. [LR34]

SENATOR BOLZ: But you're correct, Senator Seiler, in that the fiscal note for LB598 indicated how those dollars would transfer. So now we're at a point where we're forward looking, and so the savings in Corrections we'll see hopefully a cost curve change over time, but it won't necessarily translate to the budget dollars in the Board of Parole. [LR34]

SENATOR MELLO: In Parole, yes. [LR34]

SENATOR BOLZ: Does that make sense? [LR34]

SENATOR SEILER: Okay. [LR34]

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SENATOR MELLO: Yeah. [LR34]

SENATOR SEILER: Okay. I thought I was losing my mind there for a minute. [LR34]

SENATOR MELLO: No. [LR34]

SENATOR KRIST: Can we get one more thing on the record (inaudible). [LR34]

SENATOR SEILER: Thank you very much. [LR34]

SENATOR PANSING BROOKS: Yes. [LR34]

SENATOR SEILER: That's the only question I had. [LR34]

SENATOR PANSING BROOKS: Go ahead, Senator Krist. [LR34]

SENATOR KRIST: Do you...can you...thank you, Chair. Just came to both of us: Are your folks union? [LR34]

JULIE MICEK: Yes, they are. [LR34]

SENATOR KRIST: So when you say it is critical that this...it's \$200,000-some odd increase for how many people? [LR34]

JULIE MICEK: There's 44 parole officers and 7 supervisors. [LR34]

SENATOR KRIST: So it's critical that in that renegotiation, given that class of people that we are talking about for increase of pay, that that is increased within union negotiation. [LR34]

JULIE MICEK: Correct. [LR34]

SENATOR KRIST: And is that... [LR34]

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JULIE MICEK: Well,... [LR34]

SENATOR KRIST: ...what's being negotiated now as... [LR34]

JULIE MICEK: Well, the legislation had said, you know, that the probation...parole officers should be compensated similar to probation, but there was no allocation put in when the legislation was passed. And so it's there in legislation and so...but this has been a conversation about how does legislation mix with the unions and how do we negotiate this to get them that salary increase so. [LR34]

SENATOR KRIST: And that's disturbing for me because what we've heard in the last couple of years is we need more people or we need to pay more people or we need retention rates. But no one has been at this point, up till this point, no one has come in here and said I need this number of people and they have to be paid this way. [LR34]

JULIE MICEK: Yeah. [LR34]

SENATOR KRIST: That discussion is now going on I know with the unions on different levels. But if it's critical that we get that done, then there needs to be some communication and time between what you're asking for in appropriation and what the renegotiated rate within the union structure would be if I understand the process. [LR34]

JULIE MICEK: Okay. Correct. I mean...and I am aware of that and we've kind of tried...we're trying to navigate how that's going to look. [LR34]

SENATOR KRIST: Okay, thank you. [LR34]

JULIE MICEK: Yes. [LR34]

SENATOR KRIST: Thank you, Chair. [LR34]

SENATOR PANSING BROOKS: Thank you. Senator Schumacher. [LR34]

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SENATOR SCHUMACHER: Thank you, Senator Pansing Brooks. A couple of different things. I notice you lit up when asked the job question. Is there is list of... [LR34]

JULIE MICEK: (Laugh) There is. We actually have a new Web site. The Board of Parole has a new Web site and we as part of our agency of Parole is on that Web site. And on that Web site is a master list of Lincoln and Omaha resources and other western part resources. So we keep that up to date. And we are very active in the vocational employment work for our clients. And so we're partnering...I mean the Department of Corrections has the \$5 million that they used for their grants, and so our clients are getting involved in those programs and getting those resources, so, yes, it's out there. [LR34]

SENATOR SCHUMACHER: Could you make sure my office has that so we can pass this on? [LR34]

JULIE MICEK: You bet. No problem. [LR34]

SENATOR SCHUMACHER: A couple of other clarifications here. Now you've got 1,300 people on parole. [LR34]

JULIE MICEK: Um-hum. [LR34]

SENATOR SCHUMACHER: You figure you're going to pick up a net of about 385. [LR34]

JULIE MICEK: I mean it was a really kind of a rough estimate just because we needed to put something in the budget to say, you know, in this year, this is how many people will be eligible. There's 385 people to be eligible in '18-19. And so if those people all got everything they need from the Department of Corrections and they were paroled by the board, that's what we would assume would come out to us. [LR34]

SENATOR SCHUMACHER: And that's net of the ones that fall off. [LR34]

JULIE MICEK: Correct. [LR34]

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SENATOR SCHUMACHER: Now how does that number relate to the number on the bottom of the chart that Mr. Lathrop prepared? [LR34]

JULIE MICEK: I haven't seen this chart. [LR34]

SENATOR SCHUMACHER: The 1,384 number, is that the people that are now on parole or the people who could be on parole if they had the... [LR34]

JULIE MICEK: The 1,324 in July? [LR34]

SENATOR SCHUMACHER: Right. [LR34]

JULIE MICEK: I'm assuming...I mean I'm assuming these people are all currently parole eligible. And every year you add to that number. [LR34]

SENATOR SCHUMACHER: So parole eligible means they're not there yet but they could be if they had programming? [LR34]

JULIE MICEK: I mean they're...they...if they're parole eligible but they need...something is keeping them from being paroled. [LR34]

SENATOR SCHUMACHER: Okay. So really, out of the 385, the total pool if this is...if our interpretation is accurate, there is 1,324 and all we're going to get out of those is 385. [LR34]

JULIE MICEK: I don't...I'm not sure where the 1,324 comes from. I don't... [LR34]

SENATOR SCHUMACHER: Okay. Maybe we'll have to get that clarified at some point. And that... [LR34]

STEVE LATHROP: I think those are people who have reached their parole eligibility date but have not been paroled for one reason or another. [LR34]

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SENATOR SCHUMACHER: Okay, well, it seems to me if that number is 1,324 and that number is 385, we've got a problem there of about 1,000 people that are in limbo. [LR34]

JULIE MICEK: We projected for '18-19. [LR34]

SENATOR SCHUMACHER: Okay. [LR34]

JULIE MICEK: But in the budget we said, in '18-19, how many people who are currently incarcerated would be eligible for parole in that year, because we asked for the fiscal money for that year. So that's what we looked at. So in '18-19 you're going to have another 385 people who are parole eligible. [LR34]

SENATOR SCHUMACHER: So this number will be 1,600 then? [LR34]

JULIE MICEK: Well, I hope not, because I hope that some of these people will get out before then, but I don't know. [LR34]

SENATOR SCHUMACHER: I mean probably... [LR34]

JULIE MICEK: I mean that number is going to continue to grow because people are going to come in and become parole eligible. So unless they get paroled, I mean, the parole eligible people, that number will continue to grow. [LR34]

SENATOR SCHUMACHER: I think we probably need to figure out how that...all those numbers relate. [LR34]

JULIE MICEK: I agree. [LR34]

SENATOR SCHUMACHER: The next thing, you mentioned three things that you wanted the extra \$700,000 for. One was raises for existing officers; two, get a different office. And three was? [LR34]

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JULIE MICEK: The services for those people that would be coming out on parole. [LR34]

SENATOR SCHUMACHER: Okay. So to add to your workload by the extra 385 people, you won't need any more officers, just better paid officers? [LR34]

JULIE MICEK: Better paid...I mean right now, I mean, and that's a hard question to answer again because we're still looking at the distribution of cases throughout the state. But as some of those people fall off, we do have some flexibility in some of our caseloads. So I wasn't comfortable saying I need seven more officers right now because I don't have an answer to that. So, I mean, just honestly, if we get, you know, if we get a few more hundred people, we would certainly be able to manage those on the caseloads that would currently exist. And so that's...that was kind of the thought process that, you know, I can't tell you exactly at this point I need three more officers in Grand Island or I need two more in Kearney or whatever the case may be. But staying within those constraints, I think we can manage with what we have right now. [LR34]

SENATOR SCHUMACHER: We're kind of in uncharted waters. We don't...or you're guesstimating. [LR34]

JULIE MICEK: Kind of, kind of. [LR34]

SENATOR SCHUMACHER: And I would then second what Senator Krist has said. [LR34]

JULIE MICEK: Okay. [LR34]

SENATOR SCHUMACHER: There is flexibility in the system. [LR34]

JULIE MICEK: Okay. [LR34]

SENATOR SCHUMACHER: And as long as I'm here, and I only have two more years left before my carriage turns into a pumpkin, but, you know, we're committed to this. We've sat through four years of this and it's time we figured out how to do it and strike while the iron is hot. [LR34]

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JULIE MICEK: Okay. [LR34]

SENATOR SCHUMACHER: So don't be afraid to come back and say, you know... [LR34]

JULIE MICEK: I won't be--oops, I need more, yeah, I get it. I get it. I'm going to keep a close eye on it, believe me. [LR34]

SENATOR SCHUMACHER: Okay. Thank you. [LR34]

JULIE MICEK: Thank you. [LR34]

SENATOR PANSING BROOKS: Okay, I just...I have a couple things just to follow up. So I think we would really appreciate some sort of graph or numbers of what you're looking at, I mean, how many it increases with new parolees every year... [LR34]

JULIE MICEK: Okay. [LR34]

SENATOR PANSING BROOKS: ...and what you were considering those 386. Are they just...is that a wash? Is that what...I keep hearing sort of that it sounds like a wash, at which point it doesn't sound to me like we're really dealing with the issue that we're talking about. And if you have enough to take more, then why are you talking to your Parole Board about...I mean we heard intimations that you're saying we can't handle much more because of our resources. So if it's just because of pay, that doesn't make any sense. [LR34]

JULIE MICEK: No. [LR34]

SENATOR PANSING BROOKS: So it seems to me you also need more employees, more staff. So I guess we need to see numbers about... [LR34]

JULIE MICEK: Okay. [LR34]

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SENATOR PANSING BROOKS: ...how you're making this decision, how it relates to your history of how the numbers come in and out. If we're just looking at washes, that is...that doesn't help us and it doesn't help us plan for the future for our money. [LR34]

JULIE MICEK: Sure. [LR34]

SENATOR PANSING BROOKS: So I'm still pretty confused about what's happening and what you're asking for. [LR34]

JULIE MICEK: Okay. [LR34]

SENATOR PANSING BROOKS: So again, if we could have that within the next couple weeks, is that possible? [LR34]

JULIE MICEK: Sure, you bet. [LR34]

SENATOR PANSING BROOKS: We would really like it because we're trying to look at all these sorts of things. We're trying to look at programming and figure out what is possible. Also, I know that there are re-entry dollars of about \$5 million. [LR34]

JULIE MICEK: Um-hum. [LR34]

SENATOR PANSING BROOKS: So does some of that money go to parolee transition plan or do you get any of that? [LR34]

JULIE MICEK: We don't...Department of Corrections facilitates that money, and so they put out... [LR34]

SENATOR PANSING BROOKS: They...excuse me, they what? [LR34]

JULIE MICEK: They facilitate that money. [LR34]

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SENATOR PANSING BROOKS: Okay. [LR34]

JULIE MICEK: So that money is with them and they have...I believe there's seven or eight different providers that won the contracts that then they use that money to provide services, so whether that's building the houses or whether that's the Mental Health Association, and so parolees are eligible to go to those particular programs, but that's the extent in which we use that money. [LR34]

SENATOR PANSING BROOKS: Okay, thank you. [LR34]

JULIE MICEK: Um-hum. [LR34]

SENATOR PANSING BROOKS: Any further questions from the committee? [LR34]

STEVE LATHROP: Can I just try one clarification? [LR34]

SENATOR PANSING BROOKS: Sure, Mr. Lathrop. [LR34]

STEVE LATHROP: With respect to the...so you were...your base was \$7 million, right? [LR34]

JULIE MICEK: Um-hum. [LR34]

STEVE LATHROP: You're asking for \$700,000 more. Part of that \$200,000-and-some is to increase the salary of staff which you believe can absorb the additional 385 parolees per year. [LR34]

JULIE MICEK: Correct. [LR34]

STEVE LATHROP: The rest of the money, roughly \$500,000, is going to be spent on services for the additional 385. [LR34]

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JULIE MICEK: Part of that is services, so like \$308,000, and then the rest was for rent space.
[LR34]

STEVE LATHROP: Rent? [LR34]

JULIE MICEK: Yeah. [LR34]

STEVE LATHROP: Okay. So that's where it comes in. [LR34]

JULIE MICEK: That's...yeah. [LR34]

STEVE LATHROP: Okay. [LR34]

SENATOR PANSING BROOKS: Okay. Anything else? Okay, thank you so much, Ms. Micek,
for all your... [LR34]

JULIE MICEK: Thank you. Thank you. [LR34]

STEVE LATHROP: Can I ask maybe one other question if I can? So is there a way to measure
the effect that that will have on overcrowding? Is there...is 385 people...I guess we need to know
the length of their sentence. But if 385 people each get a sentence reduction between parole and
jamming out of a year, then we're saving 385 bodies at the Department of Corrections a year.
Right? [LR34]

JULIE MICEK: Um-hum. [LR34]

STEVE LATHROP: Some of them...what's the typical amount of time that they are...if they
stayed and jammed out, in other words, what's Parole shortening their sentence by? [LR34]

JULIE MICEK: Oh, I don't know. I don't know if I can answer that. It varies. I mean...it varies.
[LR34]

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STEVE LATHROP: I would think it does. I'm just wondering how we measure what this does. If you're successful, everybody's got programming, everybody's ready, and you have the money and the resources and now 385 more people are out,... [LR34]

JULIE MICEK: Right. [LR34]

STEVE LATHROP: ...do you just have 385 more that come in and nothing is changed? [LR34]

JULIE MICEK: I mean we're really looking and we're really working with the board too. I mean, as people get programmed in the department, is to get them out on parole for longer periods of time, because, you know, it doesn't do us much good to have someone come out on parole for a month or two. I mean it's certainly better than jamming, of course, because we can try to help them, assist with housing and those kinds of things. But we're looking for those longer parole sentences, terms, so the sooner they get programmed, the sooner we can get them on parole. And even if they're on parole for two years or three years, that's great. I mean there's a lot of things that we can do and then we have a lot of eyes on them, wrapping those services around them. So the longer we get those terms, the better we are. But that's the front-end programming that has to happen. [LR34]

STEVE LATHROP: Okay. [LR34]

SENATOR PANSING BROOKS: Okay. And again, in a perfect world, we would like to see, you know, if you could handle more because you had more people or whatever you need. That's what we really need to know... [LR34]

JULIE MICEK: Okay, I'll get that to you. [LR34]

SENATOR PANSING BROOKS: ...because your costs directly relate, as Senator Seiler was talking about, to Corrections and where do we want to spend our money the most efficiently. [LR34]

JULIE MICEK: Correct. [LR34]

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SENATOR PANSING BROOKS: So that's what we really want to know if you could help us with that. [LR34]

JULIE MICEK: You bet, be happy to. [LR34]

SENATOR PANSING BROOKS: Okay. Thank you for your time. [LR34]

JULIE MICEK: Thank you. [LR34]

SENATOR PANSING BROOKS: It looks like you're both going to get back to Omaha, so...on time. [LR34]

JULIE MICEK: Thank you very much. Thank you. [LR34]

SENATOR PANSING BROOKS: Thank you very much. And we...at this point the LR34 Committee is going to go into a brief Exec and then we will take a break. So I appreciate everybody who came and testified (recorder malfunction)... [LR34]

BREAK

SENATOR PANSING BROOKS: ...today, it's the bewitching hour. (Laughter) And so I think we need to get started. Welcome back to the LR34 Committee hearing. And we are resuming the testimony from Director Frakes. Director Frakes, would you please come. And we have asked that...I think last time you had some things to read and things have been so discombobulated that I hadn't encouraged you to read whatever you had. So if, again, if you have something, feel free to read it to us and then we can move forward with any questioning from that point that we might have. [LR34]

SCOTT FRAKES: I do have a short opening. [LR34]

SENATOR PANSING BROOKS: Okay. Thank you. And you have some things to pass out, the pages will help. [LR34]

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SCOTT FRAKES: I do. [LR34]

SENATOR PANSING BROOKS: And for the record, could you just introduce yourself again.
[LR34]

SCOTT FRAKES: So good afternoon. I'm Scott Frakes, Director of the Nebraska Department of Correctional Services. And if we're ready, I will move forward. [LR34]

SENATOR PANSING BROOKS: We are; thank you. [LR34]

SCOTT FRAKES: (Exhibit 6) So again, I'll say good afternoon once more to Senator Seiler, Senator Pansing Brooks, and to all the members of the LR34 Committee. And my last name is spelled F-r-a-k-e-s. I appreciate the opportunity to discuss capacity and overcrowding within our facilities with you today. On February 2, 2015, when I arrived in Nebraska, the total population for the facilities was 5,383 inmates. And that did not include the approximately 40 inmates that were part of the RFP program and still belong to the system. So technically, we were closer to 5,430 inmates in the system. One hundred and sixty-eight of those inmates at that time were housed in county jails, leaving the institutional population at 5,215 which was designed capacity of 159.2 percent based on the design capacity of 3,275. As of September 27, 2016, the population was 5,306 inmates, with 144 inmates housed within county jail facilities, for an institutional population of 5,162, which equates to 157.6 percent of design capacity. This represents a decrease of 77 inmates, which is not enough, but it's a positive trend after seeing the inmate population increase by a thousand inmates from 2005 to 2015. This data is promising, but it is important to recognize that NDCS is just one piece of the larger criminal justice system and that we need to see the data from other areas within the criminal justice system to evaluate the overall impact of current reforms. I am looking forward to the upcoming Justice Reinvestment Coordinating Committee meeting in October...which is meeting in October, October 20 actually, where we will have the opportunity to review data from Corrections, Probation, Parole, jails and the courts, and receive a comprehensive assessment of our progress to date and the areas where we can improve. Along with examining the impacts to the entire criminal justice system, addressing overcrowding within the prison system must be done comprehensively. Treating it solely as a capacity issue limits the available solutions to just one--build more beds. While

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adding capacity is one piece of addressing overcrowding, providing alternatives to incarceration for low-risk offenders, reducing recidivism by addressing inmate criminogenic needs while incarcerated, and providing inmates a meaningful opportunity to transition back into the community are equally as important and more cost-effective methods to address overcrowding. Building more beds is one part of the solution I have proposed to address NDCS capacity issues. NDCS received funding for the 160 bed CCCL, Community Correction Center-Lincoln, expansion and for 100 beds to be used as temporary housing. The temporary housing will be completed in September of 2017, and the CCCL expansion project will be completed in January of 2019. I have also submitted a program statement and funding request for the Reception and Treatment Center project at the Lincoln Correctional Center/Diagnostic and Evaluation Center campus. This project will consolidate the two facilities, add housing for inmates with acute behavioral health issues, build food service operations to meet the needs of up to 1,400 inmates, repurpose existing space, and consolidate the outdated skilled nursing beds currently at NSP and DEC into a single facility. In addition to these targeted construction projects that increase our capacity at custody levels projected to have the highest need, NDCS is engaging in a number of other initiatives that will help address our capacity issues. These include: supporting criminal justice reforms such as justice reinvestment in order to divert low-risk offenders away from prison and into community-based alternatives; evaluating current programming and treatment options and adopting evidence-based practices that ensure inmates have an opportunity to complete treatment prior to parole eligibility whenever possible; implementing a risk-needs assessment tool for the department, and targeting treatment resources based upon risk; implementing an updated classification tool to provide an accurate portrayal of the custody levels of the NDCS population and gauge future needs; training staff to engage inmates in prosocial activities and provide cognitive behavioral interventions to help prepare for transition into the community and reduce recidivism; continuing to analyze the operational capacity of our existing facilities in comparison to design capacity; refocusing on re-entry and preparing inmates for return to the community as soon as they enter the prison system; and collaborating with criminal justice partners such as the Board of Parole and Probation to share data, evaluate programs, and build a corrections system that provides people with meaningful opportunities to change. From our experience to date, the timing of the original CSG projections, justice reinvestment work, we're overly optimistic in how fast the bed savings would be realized. I have included a chart with my testimony that provides the current NDCS population and the projections by CSG and

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the Jim F. Austin group. CSG projected that the NDCS population would be at 4,762 at the end of September 2016, and down to 4,560 by 2020, an overall decrease of nearly a thousand inmates when compared to the projected population of 5,581. That came from the Jim Austin calculations. I remain confident that the direction we are moving with LB605 is the right one and will help reduce the NDCS population by the end of this fiscal year to allow the county jail program to be eliminated, and I remain confident that we will exceed that goal. Thank you for the opportunity to testify today. I am ready to respond to any questions you may have. [LR34]

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

STEVE LATHROP: Sure. Director, as you're testifying, people are dropping papers on the desk. Would you like to go through those and tell us what the attachments are to the handouts. [LR34]

SCOTT FRAKES: If I could ask to get a set of copies back, because I gave everything away. (Laughter) Thank you. [LR34]

STEVE LATHROP: And if you could, maybe start with the population trends which is...did you get that one? [LR34]

SCOTT FRAKES: All right, so I need those, too, as well. I'm sorry. I don't want to take everybody's stuff. [LR34]

STEVE LATHROP: And just while you're getting your glasses on or whatever you need to do to testify about this, it looks like there's a blue, a red, and a green line and maybe you could tell us what those represent and what we're looking at with this. [LR34]

SCOTT FRAKES: (Exhibit 4) Okay. So looking at this document called the NDCS Population Trends dated September 29, 2016, the blue line is our average daily population. So that's an averaging figure, other than a single-day snapshot. And as of the point on here, I'm looking for the reference date, and it drops off so I'm not sure...oh, there it is, excuse me, September population numbers based on the average daily population, we were at 5,351. That number also includes our safekeepers, the people that we take from county jails. It also includes the people

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that are parole violators and haven't been adjudicated. So it's a number that has...it's fluid, and again, it's an average daily population number. Then we have the Jim Austin group, the JFA projections, these were the projections that were used by the people who put together our ten-year plan. I don't know specifically what projecting tools they used. They estimated though that based on how the laws, the processes that were in place in 2014, that we would be sitting at about 5,300 inmates today. So they were pretty accurate. The CSG projections, which is the green line, suggests that we should be, today, at about 4,800 inmates or slightly under that. And again, this morning we were at just under 5,300 inmates in prisons and...in the jail beds and prison beds. So that's what this chart shows us. Certainly, a fairly substantial gap between what CSG had projected and where we're at today. I think there's a number of factors. It was...there were...definitely optimistic in their projections. You know, like all projections, they're based on the best calculations that could be made at that time. The law was enacted August 29, 2015. People then were sentenced to crimes committed after that date. They had to work through the process. We are now at the point where we have a number of people that have come in under the new rules, have gone out on community supervision with probation. Certainly a measurable number of people that have been diverted from prison beds. That information is what I spoke to that will all be available in about 20 more days or...yeah, about 20 more days, October 20 when we meet. So CSG is currently working on those calculations. [LR34]

STEVE LATHROP: Do you have some capital improvements you want to tell us about and then I'll have some questions. [LR34]

SCOTT FRAKES: (Exhibits 8 and 9) I do. So let's look at the document that looks like this. This is the 100 bed; we refer to it as the temporary housing unit. It came from the funds that were allocated by the Legislature in this past spring, 2016, specifically to build some kind of temporary emergency housing. We went out; we looked to see what was available in terms of modular housing. We explored a variety of different options. What we found was challenges in terms of...you can't find anything modular that allows you to put a significant number of people in the space, so that was one of our challenges...sight lines. So typically what you...what we were able to find was modular options that would house 12 people. And when you allow for the bathrooms and the other space that are needed, so we...to get to 100 or 96 beds we would have to have a series of eight trailers. It really creates a lot of challenges in terms of staffing, safety,

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Prison Rape Elimination Act, and just...and some of the building code challenges. It was suggested, based on a construction project that we're just wrapping up at Tecumseh, that we could do a very simple tilt-up concrete construction, 100-bed dormitory. And that's what this project represents is...you can see the dimensions, it runs about 78 by 96 feet; so it's 7,500 square feet, give or take. It is...the shell is a 50-year-plus lifespan. It is permanent in the sense of the construction and the ability...and it is as flexible as can be because it's a span structure, so there's no interior walls. It can be used for housing. At the point that we believe we don't need it for housing, we can use it for programming space; we can reconfigure it for classroom space, for office space, pretty much anything we want to do with it. It has gone out to bid. So the project is going slightly ahead of schedule. Sealed bids, I don't know yet, I think it's the end of next week that those bids will be available. So far four contractors have put in bids and we understand there may be one or two more, which is good; it's a competitive market. Based on the numbers that we had from the Tecumseh project, we're pretty confident that we'll get a good valid bid that's within the \$1.8 million. And then again, it's a fast-track project with the goal being to have people living in this in September of 2017. So that would give us 100 beds (inaudible). [LR34]

STEVE LATHROP: Where are you going to put it? [LR34]

SCOTT FRAKES: Huh? [LR34]

STEVE LATHROP: Where do you intend to put it? [LR34]

SCOTT FRAKES: It is at the Community Corrections Center in Lincoln. Part of why it is affordable was that we knew we could do...or really we could do this project within the budget that we have to work with this because we have the other project, we already have infrastructure work that's going to be done to support that project. So that helps us avoid some cost that we would run into in other locations in terms of utilities and hookups and some of the other pieces. We already had a foot printed area identified in the master plan. It was identified as the new Parole Administration Office building, but that's okay. The space was right. So, because of the efficiencies that the location provides and the fact that it is...this is the kind of setting where you need to have a low-security, low-custody type of inmate. [LR34]

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STEVE LATHROP: Who is going to populate this building once it's done? [LR34]

SCOTT FRAKES: It will be work release or work detail inmates. As we work closer to the opening day, we'll decide what's the smartest approach, whether it is using it as an inmates first arriving, almost as a staging area, and then as beds open up in the larger facility we can transition. Pardon me, we could decide it's got a special purpose and use it for a work release population or a detail population. We're going to look at all the different options and make the smartest decision, but it will be level 4A, level 4B inmates will live in this. [LR34]

STEVE LATHROP: And when do you expect it to be done? [LR34]

SCOTT FRAKES: September 2017. [LR34]

STEVE LATHROP: Okay. [LR34]

SCOTT FRAKES: (Exhibits 5 and 7) The other project is the 160-bed living unit and facility expansion, here again, at the Community Correction Center in Lincoln. This was the project that was funded also in this last year. And good news is this project is slightly ahead of schedule. I always wait to say that, but I like to say, my goal is always to be, you know, at least a day ahead of schedule and a dollar under budget. If we can do better than that, that's a good construction project. This shows you both an exterior elevation; gives you a sense of what the new unit looks like, the new food service area. It's another supporting piece of the warehouse, maintenance areas. And then there's an interior shot that gives you a sense it is four tiers of two-person rooms...two-woman rooms actually because we're building this facility to house female population. We've got programing space; we've got office space for individual treatment sessions. We've got a very good functional layout in terms of sight lines. If you look into the middle of it, you can see down all of the tiers from the location where the officer might be stationed for those times that they need to be in one location. Connected to that, then again, a new food service operation that's designed and built to feed the 560 inmates that would now be housed in this facility. The current food service operations were built for a 200-bed prison and are strained to feed the 400 that are housed there today...new warehouse and other (inaudible). So project is, again, it's slightly ahead of schedule; very comfortable that we'll be well within

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budget and be able to accomplish everything. Those beds scheduled to come online January 2019. [LR34]

STEVE LATHROP: Okay, that's your handouts. I have in front of you a spreadsheet. And I...you talked about this a little bit. On the right, you see that long thing, on the right. The last column on the right has sort of what the rows are about. And it looks like...I think you said your total population is what, 5,306? [LR34]

SCOTT FRAKES: This morning it was 5,290-something, but, yes, 5,300 is a good word. [LR34]

STEVE LATHROP: Okay, it's right around 5,300. [LR34]

SCOTT FRAKES: Um-hum. [LR34]

STEVE LATHROP: And if we...and that includes the people that are in jails, right? [LR34]

SCOTT FRAKES: That includes the jail people; that includes the safekeepers, every single person we're responsible for. [LR34]

STEVE LATHROP: Okay. And you intend to bring those folks back when? [LR34]

SCOTT FRAKES: No later than June 30, 2017. [LR34]

STEVE LATHROP: Okay. If we include them in the...if we include them in the total number of people that you have versus the design capacity, you're at 161 percent. And if we exclude them you're at 157 (percent). [LR34]

SCOTT FRAKES: Correct. [LR34]

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STEVE LATHROP: Right? And I'm going to make this observation. There's a statute that says, of course, that the Governor may declare an emergency after 140 percent, and in 2020 he must or shall, right? [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: So the goal is to get to 140 percent or less before 2020. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: Or then we have a system that's going to require the Governor to do some things that may not be consistent with public safety. Would you agree with that? [LR34]

SCOTT FRAKES: I would agree. [LR34]

STEVE LATHROP: Okay. Are you going to be able to make that goal? [LR34]

SCOTT FRAKES: I believe we are. [LR34]

STEVE LATHROP: Okay. Are you going to be significantly below that goal or you think you're going to be right at 140 (percent)? [LR34]

SCOTT FRAKES: Well, the CSG numbers, if they completely pan out, even if it ends up that it's six months or a year later than originally anticipated, should put us at about 139 (percent), I think is the number, right around 139 (percent). And then I've added 160 beds for long term, so that brings up our capacity from where it is...our design capacity by 160 beds. And we have this 100-bed unit as well that we refer to as temporary, but it's built to be used as long as it needs to be used. So if the need is there, that's 260 additional designed capacity beds. So that changes the math. So full realization of the CSG projections and the additional beds that we funded and then I have requested a small number of additional beds in the project that's in this biennial budget; I can't tell you what the number is, but we'd definitely be below 140 percent design. [LR34]

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STEVE LATHROP: Okay, that's the plan. So when you look at the tools available to the department or the administration to get the population at or below 140 percent, you have building additional capacity as one of the tools available to you. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: And you've gone through the project that was...for which you've already secured an appropriation, that was the second project you talked about, and then you want to add these additional beds, which was the first project you discussed and that will add some additional capacity. Did you say that you intend to ask for or create some capacity on top of that? [LR34]

SCOTT FRAKES: My biennial budget request includes a project that would add 32 additional beds, capacity beds. [LR34]

STEVE LATHROP: Where would that happen? [LR34]

SCOTT FRAKES: That would happen at the the...what is now the Lincoln Correctional Center and the Diagnostic and Evaluation Center would be melded into a single facility. The project name is the regional treatment center...I'm sorry, I do that all the time, reception and treatment center. But that's just a project name. [LR34]

STEVE LATHROP: Okay. So what's that intended to do or tell me what you hope to accomplish with that. [LR34]

SCOTT FRAKES: The capacity beds are for the high-end, deepest, most severely mentally ill, behaviorally challenged inmates that we have. So they would be high-security beds designed for a population that has very special needs which would... [LR34]

STEVE LATHROP: How many more beds would that be? Forgive me. [LR34]

SCOTT FRAKES: Thirty-two. [LR34]

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STEVE LATHROP: Thirty-two. Is that going to be enough? [LR34]

SCOTT FRAKES: I believe that that is enough in concert with the other resources that we have to address our mental health/behavioral health needs. [LR34]

STEVE LATHROP: And I think everybody is pleased to see that you're making some headway there. Tell me why we can't use the regional center...the Lincoln Regional Center. Is that place at capacity? And the reason I'm curious, I know that when...and we did a little work on Nikko Jenkins before you got here, and this guy was, in my recollection, begging to go to the regional center and no one would send him. And I don't know if that's...are they just not equipped to handle the kinds of people you're talking about? [LR34]

SCOTT FRAKES: I think that's a fair assessment. There's that ongoing challenge of those that are seriously mentally ill, they have some kind of diagnosable and potentially treatable mental illness, and then those that are severely behaviorally ill. I think it's a growing field. We'll see where it evolves to. But today, you would not do a civil commitment just based on behavioral health; there's got to be that mental health component as well. So, not to say the people we deal with aren't incredibly challenging, confusing, behave in ways that to you, me, and pretty much everyone else, doesn't seem normal, but there's a difference. [LR34]

STEVE LATHROP: If you're successful...pardon me, if you're successful in getting the funding for this project that you've just described at D&E, is that going to be...are those folks going to be there in those 32 beds in isolation or will they be in some kind of a setting where they're...I don't know, what do you call them, mods or pods? [LR34]

SCOTT FRAKES: That's a perfect term. We'll probably decide which one we use. We don't use either one clearly in our system now, but I did in the system I came from. So it will be a combination. There will be...probably the biggest collection of rooms will be six or eight. There will be some single cells because if you have someone that's acting out and screaming and yelling, causing those kinds of issues, then that can impact other people in terms of their treatment. So we'll try to design...not try to, we will design a behavioral health living unit that

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provides the right kind of separation, not isolation, but separation; provides for different approaches depending on the needs presented by the different inmates that we deal with. [LR34]

STEVE LATHROP: Do you think the construction you've just described is essential to your plan to get at or below 140 percent? [LR34]

SCOTT FRAKES: No. This program...this request is much more essential to meeting a very important need within our agency in terms of dealing with a small group of highly challenging inmates. [LR34]

STEVE LATHROP: You need that for the mentally ill and the behavioral problems. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: And not to meet the 140 percent. [LR34]

SCOTT FRAKES: But the benefit, certainly, is to add 32 beds of capacity. [LR34]

STEVE LATHROP: Okay. The other two projects, the two that you've shared plans with, those are, however, essential to meeting your goal of 140 percent or less? [LR34]

SCOTT FRAKES: Again, full realization of CSG projections, and we would be just slightly below 140 percent, adding the 160-bed living unit brings us down a little further, or helps compensate if the projections aren't fully met. And then the 100-bed temporary unit does the same thing. [LR34]

STEVE LATHROP: Okay. So let me talk about the CSG projections, because that's the first handout you provided us and it does show...the projection was that you would be at 4,800 and you're still at 5,300. [LR34]

SCOTT FRAKES: That's correct. [LR34]

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STEVE LATHROP: Tell us why you think that is. Were they...did they use some variable that was too optimistic? Or has there been more challenges for you to make the changes they recommended to realize the reduction that would get us to 4,800 today? [LR34]

SCOTT FRAKES: I'll be able to answer that question in a lot more detail and clarity after October 20. We have the opportunity to review all the data and the first real assessment of where we're at. At this point though, I do believe that it...some of the factors were not fully taking into account how long it would take to make the changes required to my system in terms of implementing a risk-needs assessment tool, the change of...not really the change of the classification tools and that part of it, that's more for our needs than for that. So really, getting a risk-needs assessment tool, making use of that tool, and the fact that we still struggle to provide the level of clinical interventions, the clinical programming that we need to meet. [LR34]

STEVE LATHROP: Clinical programming being the core programming that we'll talk about in a little bit. [LR34]

SCOTT FRAKES: That would be substance abuse, sex offender treatment, violence, high-level violence, yes. [LR34]

STEVE LATHROP: When the Council of State Governments created this projection, it was part of a process or a plan, did they give you benchmarks for meeting different goals? They said by this date you should do this; and this date you should do another thing; and by the next date you should have this done; and if you do all those things, you'll be at 4,800. [LR34]

SCOTT FRAKES: Hmm. You know, I don't recall at this point. They probably did, but it's been a while since I've looked at the report. [LR34]

STEVE LATHROP: Say that again; pardon me. [LR34]

SCOTT FRAKES: I said it's been a while since I've pulled up the document and looked at it again. [LR34]

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STEVE LATHROP: I just wonder if the failure to get to 4,800 is just somebody is too optimistic in their projection or we're not meeting benchmarks in terms of the timetable they set. [LR34]

SCOTT FRAKES: Okay. And I can't give you a straight answer to that question. [LR34]

STEVE LATHROP: Okay. Should we question whether or not this is a realistic projection if we're 500 off right now? [LR34]

SCOTT FRAKES: No, not yet. [LR34]

STEVE LATHROP: When do we...not yet, when do we start to go, hmm, maybe CSG was a little too optimistic and we're not going to get to 140 percent following this plan? [LR34]

SCOTT FRAKES: I think if we see the same level of gap, the same size of gap six months from now, then we're going to have to definitely ask some harder questions. But again, I think...I'm looking forward to the analysis and the data that will be shared here in a few weeks to get a better sense at this point of why we're where we're at. [LR34]

STEVE LATHROP: Is this CSG data that you're talking about or something you're keeping track of? [LR34]

SCOTT FRAKES: Well, each of us has a component that we provide. It's CSG then that's gathering all of it and doing the analysis. [LR34]

STEVE LATHROP: When we talk about the ways you can reduce overcrowding, of course we have build more capacity, and you just talked about that. And the other...another tool is to have fewer people coming in the front door. Right? [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: Have fewer people either return to or be sentenced to the Department of Corrections. [LR34]

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SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: And LB605, I understand, is intended to prevent or...not prevent...is intended to make policy changes to the number of people who are sentenced to the Department of Corrections in the first place. [LR34]

SCOTT FRAKES: That's correct. [LR34]

STEVE LATHROP: Am I right? [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: And that, basically, creates a presumption of...I may not be wording that exactly correctly, but a presumption of probation for Class IV felony convictions unless certain things exist. [LR34]

SCOTT FRAKES: That sounds correct, yes. [LR34]

STEVE LATHROP: Okay. And that's been in place for a time. How's that working? In other words, do you have the cooperation of the judges, or do we have a situation where the bill is passed and you're still getting just as many Class IVs as you did before? [LR34]

SCOTT FRAKES: No, we believe we've seen some reductions. Again, these are questions that I'm not going to be able to answer well until I get this report that's due. So you're just a little bit ahead of me in terms of some of the things that you're looking for today. [LR34]

STEVE LATHROP: Does somebody give you sort of a dashboard printout of inmate population every day? [LR34]

SCOTT FRAKES: Yes. [LR34]

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STEVE LATHROP: Okay. So you have some idea, don't you? Are you getting fewer Class IVs?
[LR34]

SCOTT FRAKES: I don't get it by felony. I don't get it broken down by conviction, no. [LR34]

STEVE LATHROP: Don't you? Well, are you seeing a reduction in the number of people who are sentenced to the Department of Corrections, generally? [LR34]

SCOTT FRAKES: Well, we're down, on any given day, 50 to 60 to 70 inmates from where we were in 2015. So gradually we (inaudible). [LR34]

STEVE LATHROP: Well, that's the total population. And my question has to do with...do you track the number of people who arrive at your doorstep, the Department of Corrections, for incarceration, arrive at your doorstep on a daily basis? [LR34]

SCOTT FRAKES: We do, and the (inaudible). [LR34]

STEVE LATHROP: So there's got to be some kind of a trend line, right? [LR34]

SCOTT FRAKES: Yes. Right. [LR34]

STEVE LATHROP: Something that documents or demonstrates. [LR34]

SCOTT FRAKES: Okay. [LR34]

STEVE LATHROP: Do you have fewer people showing up to spend time within the Department of Corrections since LB605 passed? [LR34]

SCOTT FRAKES: Again, it's not just a...it's not just a simple numbers game because it really depends on what they bring with them. If they show up at our door and they're only going to be with us for two months or less, which happens, then that's a much different impact than if they show up at our door and they're doing 10, 20, 30 years. [LR34]

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STEVE LATHROP: And it's also a different question. And I don't want to sound argumentative. But are you...since LB605 passed, do you have fewer people that are being sentenced to the Department of Corrections for however long? I know you can't tell me until October sometime. How many people...how many few Class IV felonies you have showing up. So now my question is, do you have fewer people showing up to spend time at the Department of Corrections at all? [LR34]

SCOTT FRAKES: I don't have an answer to that right here. [LR34]

STEVE LATHROP: Okay, so we don't know if that number is going up, down, or flat. [LR34]

SCOTT FRAKES: That's correct; not at this moment. [LR34]

STEVE LATHROP: Okay. So at this point in time, you can't tell us if LB605 is impacting the overcrowding. [LR34]

SCOTT FRAKES: Other than the numbers I've shared with you and the assessment that's coming in a few weeks. [LR34]

STEVE LATHROP: All right. The other way to prevent people from showing up at your door, so to speak, or being sentenced to the Department, is to lower the recidivism rate, right? [LR34]

SCOTT FRAKES: Correct. [LR34]

STEVE LATHROP: Try to rehabilitate the people so that they never come back. And that is important for a lot of reasons; it improves public safety because we have less crime if these guys are committing less crime and not returning to the Department of Corrections. [LR34]

SCOTT FRAKES: Absolutely. [LR34]

STEVE LATHROP: Okay. In terms of the tools available to lower recidivism, they involve parole and programming, am I right? [LR34]

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SCOTT FRAKES: Those are two important components, yes. [LR34]

STEVE LATHROP: Is there anything else that will reduce recidivism besides parole and programming? [LR34]

SCOTT FRAKES: Community resources, other prosocial activities within the prison setting, the general quality of life within the prison setting; addressing inmate violence, creating an atmosphere where it's actually safe and relatively healthy to live so that you can engage in the programming when it's made available. So those are some of the other factors that contribute to it. And then treating mental illness is another significant one. [LR34]

STEVE LATHROP: So parole and...okay, pardon me. So parole programming, mental illness, and the others are sort of incidental to that and help make them be more effective. [LR34]

SCOTT FRAKES: But critical; or can't carry out the other pieces of the mission if...if the prison is unsafe, you can't deliver programming. That's just a simple connection. [LR34]

STEVE LATHROP: Yeah, everything seems to be connected when it comes to prisons, right? [LR34]

SCOTT FRAKES: It is. [LR34]

STEVE LATHROP: And when we talk about recidivism, in order to lower recidivism, the people that come into the Department of Corrections have to have programming. Right? [LR34]

SCOTT FRAKES: Based on the risk and needs, yes. [LR34]

STEVE LATHROP: So the starting point for the programming is the assessment. And you're now going to start using the STRONG-R method for determining risk and needs. [LR34]

SCOTT FRAKES: That is the first part of the assessment process, yes. [LR34]

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STEVE LATHROP: Okay. And that's going to tell us what kind of programming...what the risk is that this person is going to reoffend. [LR34]

SCOTT FRAKES: Correct. [LR34]

STEVE LATHROP: And what programs he's going to need before he gets out of the department. [LR34]

SCOTT FRAKES: Correct. [LR34]

STEVE LATHROP: And I keep using like the male pronoun, and I think you understand, because most of them are men, right? [LR34]

SCOTT FRAKES: Yeah, 90 percent. [LR34]

STEVE LATHROP: Okay. And that programming is also critical for parole to have qualified people to put on parole when they reach their parole eligibility date. [LR34]

SCOTT FRAKES: Absolutely. [LR34]

STEVE LATHROP: Okay. And we had a conversation with the chair of the Parole Board and the administrator earlier, before you arrived, but if I can summarize it, their testimony would, basically, be that the Parole Board has a certain number of people that they see every year for parole. Some of them choose not to go through parole, which, apparently, is a...the reasons seem to be a little bit mysterious to the chairman, Ms. Carter (sic-Cotton). But it sounds like some of them are giving up and choosing to jam out rather than go through the steps of programming. Have you found that to be true? [LR34]

SCOTT FRAKES: I believe that's true. [LR34]

STEVE LATHROP: Director Frakes, are these people just unwilling to participate in programming or is it something different where they say, whether I go through the programming,

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that I have to wait for, or I jam out, the time that I'm going to spend here is so similar that I might as well just jam out? [LR34]

SCOTT FRAKES: There are a multitude of factors that lead to those decisions. [LR34]

STEVE LATHROP: Tell us what your opinion is. Why are these people that Ms. Cotton talked about, why are they electing to not go through programming and be candidates for parole and they, apparently, have made the choice to not even show up at a parole hearing? [LR34]

SCOTT FRAKES: Factors that I see include their affiliations and beliefs conflict with engaging in programming; they're not ready to change who they are and how they behave. Those that have relatively flat sentences don't see the benefit of trying to engage in programming because it's not really going to change things a whole lot. Those that have not been assessed until near or even past their parole eligibility date, which is something we're working to fix, that's a significant issue. Those that are reluctant to engage in programming--sex offender treatment being probably the strongest example, because of either denial of their crime or being in denial about their crimes; and/or the stigma and the fear that's placed with being identified as a sex offender in a prison system. So it's those factors; it's our capacity, especially in terms of violence, violence reduction program. To some degree that's an issue with sex offender treatment; probably doing the best work in our substance abuse treatment; still room to improve though. So I'd weigh in all those factors. And then you also have the group that says okay and starts programming and then doesn't like programming. They've got antisocial behaviors and other things. And so they're either removed from the programming or they self-elect to drop out of the programming. Then we're faced with the decision of--so where do we put them in the waiting list? Some of the science would say they should be right at the top because as soon as you can get through to them and get them to rethink that and get them back in that might be the best approach. But at the same time, the person that's been at the top of the list has been behaving, doing their time, waiting for their opportunity, then gets denied that opportunity. So we're always in that tug of war around when people fail in programming opportunities, when should they be given their second opportunity? Those are the highlights. I don't think I captured all of the different reasons, but that's... [LR34]

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STEVE LATHROP: Let me ask you about the assessments, because I thought I heard...maybe it was you or somebody else on the first day, and I suspect it was you, say that not everybody that was going through Diagnostic and Evaluation Center was getting an assessment. [LR34]

SCOTT FRAKES: They were getting...well, until we put out the...until we implemented the STRONG-R, definitely there was minimal assessments happening, some substance abuse assessments. So now we have the STRONG-R being used at the reception center. [LR34]

STEVE LATHROP: And that's as of what, July? [LR34]

SCOTT FRAKES: We started the first training right before July...yeah, July 5 I think was the official kickoff. [LR34]

STEVE LATHROP: So people that are coming in so the new guys that are getting sentenced around the state and told their first stop is at D&E? [LR34]

SCOTT FRAKES: For the men, yes. [LR34]

STEVE LATHROP: And now since July they're going to get a STRONG-R assessment. [LR34]

SCOTT FRAKES: Correct. [LR34]

STEVE LATHROP: And that's going to tell us the risk and it's going to tell us what programming they need. [LR34]

SCOTT FRAKES: Well, it's going to tell us needs to be addressed. Then you've got another component. If they're moderate or low risk to reoffend, then it's a question of what kind of programming. It should...probably should be a clinical intervention (inaudible) have absolutes, especially with the moderate folks. So they probably don't need additional assessments. Then it's just a question of what are the right cognitive interventions for the issues, the needs that they've got, you know. If they are high risk to reoffend or moderate with some specific needs, sex offender or substance abuse treatment, then you need another assessment, a clinical assessment.

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Our practice has been to not complete those clinical assessments until later in the sentence. And in the case of violence and sometimes in the case of sex offender treatment as well, those assessments weren't occurring until PED or even past parole eligibility date so. [LR34]

STEVE LATHROP: So has that changed now? [LR34]

SCOTT FRAKES: (Inaudible). [LR34]

STEVE LATHROP: Now with the STRONG-R, are we doing the entire thing now, including the sex offender and the other substance abuse? [LR34]

SCOTT FRAKES: The goal is STRONG-R done within 30 days of arrival and some other work as well to get people engaged, clinical assessments where needed done within 90 days of arrival. No, we're not hitting the clinical assessment piece yet. That's a reflection of our short staffing, staffing shortages in behavioral/mental health. [LR34]

STEVE LATHROP: Okay. That would be true with the guys that are coming in. And if you weren't before July doing proper assessments of people on their way in, what about the population that's been here since June or before June of 2015 that never got a proper assessment? What's the plan with those guys? How do we...are they going to get the STRONG-R assessment at some point? [LR34]

SCOTT FRAKES: They will and they'll get their clinical assessments sooner and sooner as we work our way through the process. So I'm estimating that it's going to take us until next June to clean up the backlog and to get all the pieces working the way they're supposed to. If we were fully staffed in behavioral health, I think we could make...and if I was fully staffed in my custody and protective services side so that my case managers could just be case managers and if I had all the resources...I've got the resources. If I had the staff to fill the positions in behavioral health, we could get done sooner. But those two pieces are going to slow us down. [LR34]

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STEVE LATHROP: So you're at this point in time even though you've begun to implement the STRONG-R, you're doing the assessment but the clinical evaluations aren't being done at the target 30 days. [LR34]

SCOTT FRAKES: Ninety days. [LR34]

STEVE LATHROP: Ninety days. [LR34]

SCOTT FRAKES: No, not yet. [LR34]

STEVE LATHROP: Still not getting there. [LR34]

SCOTT FRAKES: No. [LR34]

STEVE LATHROP: How many more people do you need to do those? [LR34]

SCOTT FRAKES: Well, I'll need...well... [LR34]

STEVE LATHROP: First of all, what kind of people? Are these psychologists? Are they licensed mental health specialists? [LR34]

SCOTT FRAKES: Psychologists for the clinical assessments so. [LR34]

STEVE LATHROP: How about the STRONG-R? [LR34]

SCOTT FRAKES: That can be done by anyone that's trained and has the capability to do it, but it's the case management staff are the ones that should do it. It's a tool that's as important to their work as to anybody in terms of managing inmates. [LR34]

STEVE LATHROP: So I'm going to jump ahead for a second and then come back to this assessment. What we heard from Parole is in order for this to work for parole to be effective in participating as a remedy for the overcrowding and to put the number of people out on parole

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which is preferable to jamming out, they need...Parole needs certain resources that they testified to. But they also need people who are ready to go, right? They got to have completed all their programming, the core programming at least. [LR34]

SCOTT FRAKES: Right. [LR34]

STEVE LATHROP: And, you know, cooperate and behave themselves and things like that. But if they need those people to do this, then the assessment is a bottleneck, right? [LR34]

SCOTT FRAKES: It is, right. [LR34]

STEVE LATHROP: If you don't have proper assessments of all of the people that are behind the wall or the walls at the Department of Corrections, then you don't know what programming they need, right? [LR34]

SCOTT FRAKES: (Nods yes.) [LR34]

STEVE LATHROP: And if you don't know what programming they need when it comes time for them to look at parole, somebody does some assessment or another, and then they realize I guess I need the violence reduction program. There's a 12-month wait and the program is 12 months long and I'm supposed to be out of here or parole eligible in 9 months. [LR34]

SCOTT FRAKES: Correct. [LR34]

STEVE LATHROP: That's the problem. [LR34]

SCOTT FRAKES: That's one of the problems. [LR34]

STEVE LATHROP: Okay. So the assessments, you think you're going to have them done in a year, caught up. You said cleaned up... [LR34]

SCOTT FRAKES: Caught up. [LR34]

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STEVE LATHROP: That would mean...I would take that to mean all 5,300 will have an assessment by then. [LR34]

SCOTT FRAKES: Right. Because what we have is we have a turnover of over 2,000 inmates. So 2,000 people will come through D&E between July of this year and June of next year. So those are...that's 2,000 I'll guarantee I'll get done because it's already working there. We've trained additional staff in the facilities, and so now the facilities are doing the risk-needs assessment on inmates that are already in the facilities. And that's where I'm...I'm doing some of this because, again, the staffing issue is another contributing factor to people having enough time in their workday. [LR34]

STEVE LATHROP: So last time you were here we talked about the corrections officers. Are they still...are they the same people that are going to be doing the STRONG-R or is this a different class of employee? [LR34]

SCOTT FRAKES: Different class. But again, we have line...we have correctional officers and we have caseworkers. Those are both line level staff. [LR34]

STEVE LATHROP: Right. [LR34]

SCOTT FRAKES: Correctional officers typically run the booths, the towers, and they oversee inmate movement and inmates in program areas and they are kind of the response security force. The caseworkers work in the living units. They work on the floor. In essence, they serve as unit officers. That's not really how it was designed, but that's how things evolved. So while they come with a four-year degree unless they have got to the position through experience, there's two different tracks in each of their...but the vision for those positions was they would do some case management work as well as the overall supervision within the living units. But our system just does not allow that to happen. [LR34]

STEVE LATHROP: Those are all people we talked about the last time you were here. [LR34]

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SCOTT FRAKES: Yes. So the people that do the true case management work are case managers. There are just short of 80 of those in the agency. The distribution is probably not exactly where it needs to be, but... [LR34]

STEVE LATHROP: You're telling me about these people. Are they the folks that you expect to do the STRONG-R when they have time? [LR34]

SCOTT FRAKES: Well, it's more than when they have time, but, yes those are... [LR34]

STEVE LATHROP: I mean it's like when you hire these people that you need to hire, the 200 plus the 138 additional... [LR34]

SCOTT FRAKES: One (hundred) twenty-five and 138. Remember the 200 included the people in the academy or if you want to talk about every vacancy in the department. [LR34]

STEVE LATHROP: Okay. You've got to fill the vacancies which we talked about 200... [LR34]

SCOTT FRAKES: Yeah. [LR34]

STEVE LATHROP: ...and then you have to come up with 138. And when you do that, then these case managers are going to be freed up to do STRONG-R assessments of everybody else? [LR34]

SCOTT FRAKES: No, it's not quite like that. So today, we have vacant positions, 125 of them in the correctional officer/caseworker level. That contributes to the need for case managers to spend more time on the floor doing supervisory duties and not as much time to focus on their case management duties, which have never been really clearly defined anyway. That's why we need a case managers academy. So...and then the 138 positions is the next biennium. I expect that we'll be...we'll have our STRONG-R process working the way it's supposed to work and our population assessed before the next biennium begins. [LR34]

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STEVE LATHROP: Wait a minute. Did you just say the 138 that you would add to your front-line staff are the subject of the next biennium? [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: Okay. Back to assessments: You want to get them done and once they're done we can figure out what programming they need and we got to have the programming available or they're going to sit there. [LR34]

SCOTT FRAKES: That's correct. [LR34]

STEVE LATHROP: Now the Council of State Governments did an assessment this JPA. [LR34]

SCOTT FRAKES: They did. [LR34]

STEVE LATHROP: You're familiar with this, right? [LR34]

SCOTT FRAKES: They did, yeah. [LR34]

STEVE LATHROP: And it kind of went through and talked about our programming. And in the report it came up with sort of the criticisms or the shortcomings in the programs, right? [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: And they said we need to streamline the assessment process, which you're doing, right? [LR34]

SCOTT FRAKES: Right. [LR34]

STEVE LATHROP: They need to have program assignments based on an individual's risk needs and the time to parole eligibility. Is that being undertaken? [LR34]

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SCOTT FRAKES: That's a project that's underway. [LR34]

STEVE LATHROP: We need to allow multiple need areas to be addressed simultaneously. Currently, if somebody needs three programs to be eligible for parole, they get in line for the first one, they complete it, then they get in line for the next one and they complete that, and they get in line for the third one and they complete it. Right? [LR34]

SCOTT FRAKES: That's true. [LR34]

STEVE LATHROP: And what's happening, we can agree, is that some of those people are completing the last of their programming after their parole eligibility date. [LR34]

SCOTT FRAKES: No. Some of them aren't starting it until after their parole eligibility. But it's important to understand that for some inmate, if you need residential treatment, then you can only do one at a time. So that's important to note. [LR34]

STEVE LATHROP: Okay. [LR34]

SCOTT FRAKES: But in other cases, if the lower level of clinical services will meet the need and/or if it's a cognitive-behavioral intervention, if it's going to address one of the criminogenic needs, there's no reason that you can't be taking moral reconnection therapy in the morning and perhaps Thinking for a Change in the afternoon and outpatient substance abuse in the evening when the system is properly put together and working the way it needs to work. [LR34]

STEVE LATHROP: And it isn't there yet. [LR34]

SCOTT FRAKES: No. [LR34]

STEVE LATHROP: Okay. We're going to have a conversation about that in two hearings from now, right? So we want to talk about programming. [LR34]

SCOTT FRAKES: Isn't that the end of... [LR34]

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STEVE LATHROP: We're going to do mental health next I think. [LR34]

SCOTT FRAKES: Right. Then the end of October... [LR34]

STEVE LATHROP: And then the last one... [LR34]

SCOTT FRAKES: ...it's the programming. [LR34]

STEVE LATHROP: Last one is going to be programming. Do I have that right? [LR34]

SCOTT FRAKES: Okay. [LR34]

SENATOR PANSING BROOKS: Yeah. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: Okay. So we'll drill down into that before, but we can agree that programming is a bottleneck over at the department. [LR34]

SCOTT FRAKES: And it is an opportunity for huge improvement. There's lots of low-hanging fruit with programming. [LR34]

STEVE LATHROP: Okay. I will just tell you I think the committee will be interested in what do we need for resources to get...because the Council of State Governments as I read this report basically has come up with this goal for you, which the goal is at the Department of Corrections everyone will complete their programming, this core programming at least, by the time they get to their parole eligibility date. So if they get to the Parole Board and they don't get paroled, it's going to be for a reason other than programming. [LR34]

SCOTT FRAKES: Correct. [LR34]

STEVE LATHROP: Right? That's the goal. [LR34]

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SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: Do you agree with that goal? [LR34]

SCOTT FRAKES: Absolutely. [LR34]

STEVE LATHROP: And they set out a time line in here which looks like a three-year time line. [LR34]

SCOTT FRAKES: That's right. [LR34]

STEVE LATHROP: Do you think you can meet that? [LR34]

SCOTT FRAKES: I'm not ready to say that today. I want to, but I'm not ready to say that today. [LR34]

STEVE LATHROP: Before we have the hearing on programming, what I think would be useful to this committee is if we could get from you in some form or another in advance of that hearing some indication, some modeling or some study that shows how many more people do you need. Because part of this, as I understood it from the testimony this morning, part of it is some of these programs are only offered in certain institutions. [LR34]

SCOTT FRAKES: That's true. [LR34]

STEVE LATHROP: Right? [LR34]

SCOTT FRAKES: And that would be true...when everything works correctly, that would also be true. [LR34]

STEVE LATHROP: Right. There may be some moving them around to get them to the place where the programming is happening. [LR34]

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SCOTT FRAKES: That's right. [LR34]

STEVE LATHROP: But there's also the capacity even for where it is offered to be able to meet the needs of everybody who need that particular program, right? [LR34]

SCOTT FRAKES: Correct. [LR34]

STEVE LATHROP: And sort of right now what you're doing is going, well, this guy is close to getting out. We better run him through next, right, what they refer to as triage? [LR34]

SCOTT FRAKES: That's true. [LR34]

STEVE LATHROP: Okay. And if we follow or get to where the Council of State Governments wants you to be, everybody is going to be assessed within 30 days? [LR34]

SCOTT FRAKES: Risk-needs assessment and clinical assessments within 90 days. [LR34]

STEVE LATHROP: And clinical assessments in 90 days. And I imagine that that's going to look like, whether it's on a computer or in a hard file, somebody is going to have a checklist of things each inmate needs to have done before they leave. [LR34]

SCOTT FRAKES: That's correct. [LR34]

STEVE LATHROP: And they're going to get the programming completed before they get to parole eligibility. [LR34]

SCOTT FRAKES: As long as they're willing to participate, yes. [LR34]

STEVE LATHROP: Exactly. And with that, you will have done...accomplished about three things, right? If they're getting programming and one of it's violence reduction, they're probably less apt to get in fights with your staff, right? [LR34]

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SCOTT FRAKES: Yep, correct. [LR34]

STEVE LATHROP: So we're likely to reduce the number of inmate-on-staff assaults and inmate-on-inmate assaults, right? [LR34]

SCOTT FRAKES: Potentially so, yes. [LR34]

STEVE LATHROP: If they're taking to heart what they're learning in violence reduction, right? [LR34]

SCOTT FRAKES: Correct. [LR34]

STEVE LATHROP: You are going to reduce recidivism, right? [LR34]

SCOTT FRAKES: We should. [LR34]

STEVE LATHROP: These people who go through this programming are less likely to reoffend. [LR34]

SCOTT FRAKES: That's correct. [LR34]

STEVE LATHROP: And you're going to help alleviate overcrowding because more of them are going out on parole and fewer of them are coming back. [LR34]

SCOTT FRAKES: Correct. [LR34]

STEVE LATHROP: So you did a study on the number of corrections officers you needed. That was done pursuant to some type of a recognized model. Is there any model or any way for you to determine what you need to do differently to have enough people to do the programming in a manner that CSG is looking for you to do it in? [LR34]

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SCOTT FRAKES: Well, we have some assessment, that isn't the right word, estimates of how the population is going to break out based on the risk needs, just from the modeling that was done to create the tool. But the real proof won't be there until we've done assessments and everyone has an assessment. And then that will tell us a true breakdown of how many are high risk/high violent, you know, high risk/nonviolent, moderate, and low risk. But connected to that and to get down to the more granular level of what kind of interventions or what kind of clinical work is needed, you don't get that until you do the assessments. We can do some...we can look back, I think, and get a little bit better sense. At this point in time, until we fill the positions that we already have and get the full value of those positions, I still believe that we have the right allocated number of resources. We just don't have the people in the resources. [LR34]

STEVE LATHROP: Earlier you did one of these for me like this (thumb up), right? [LR34]

SCOTT FRAKES: I did, yes. [LR34]

STEVE LATHROP: That means you're kind of spitballing it and you're estimating and using maybe professional guess or estimation. [LR34]

SCOTT FRAKES: Correct. [LR34]

STEVE LATHROP: And so this is what I'm hearing you say and you tell me where I'm off the track. We are not going to be able to go and catch up on all the assessments we need to do for a year. And it won't be until we've caught up on all the assessments that I can tell you how much more we're going to need by way of resources to get the programming to a place where we accomplish the goals set out by CSG in this report and apparently something we've bought into as a department. [LR34]

SCOTT FRAKES: No. [LR34]

STEVE LATHROP: Am I missing something? [LR34]

SCOTT FRAKES: Yes. [LR34]

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STEVE LATHROP: Because it sounds like we're going to kick the can down the road a year and then we're missing out on opportunity to... [LR34]

SCOTT FRAKES: And that's the piece you're missing. [LR34]

STEVE LATHROP: Okay. [LR34]

SCOTT FRAKES: That's the piece that you oversimplified. The work started. We are doing assessments July 5 moving forward. We are identifying needs. We are gathering the information. The capacity to address those needs is you can't flip a light switch. So if I was tomorrow suddenly to find six psychologists and some other mental health providers and a variety of other folks, still got to get them trained and in place and do all the other components and ramp up the things it takes. So the good news is, is that as we build capacity we'll also have inmates identified to use that capacity. So it's a work in progress. I'm not waiting until June 30 of 2017 to go, okay, now I know what I need, now let's go get busy. We're getting busy right now, I mean, so we're going to be making steady progress to address the issues. [LR34]

STEVE LATHROP: So maybe this is the next question: Do you have a lot of vacancies in the areas in these specialties where people would be doing these assessments and providing these programmings? [LR34]

SCOTT FRAKES: The clinical piece, yes. [LR34]

STEVE LATHROP: Okay. So what you're telling us is the money has already been appropriated for these slots. If I can just fill them, I think I can do the programming and have it track so that it's not end to end, if we can help it at least, and meet the goals in the JPA. [LR34]

SCOTT FRAKES: I believe so. [LR34]

STEVE LATHROP: Don't need any more people over and above the ones that have already been appropriated for. [LR34]

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SCOTT FRAKES: At this point in time, I don't believe that we do so. But again, I don't have all of the pieces... [LR34]

STEVE LATHROP: Is there any way to study that or to know? [LR34]

SCOTT FRAKES: Well, by the time we studied it, we'll already know. [LR34]

STEVE LATHROP: The year would be by, okay. [LR34]

SCOTT FRAKES: We'll know so in essence we are. We're doing a moving study. [LR34]

STEVE LATHROP: Okay. So the folks over at Parole tell me that if they receive the resources that they've requested they will have the capacity to put a hundred, pardon me, 385 more people out per year. Are you going to have enough inmates through all the programming they need so that they are qualified for parole when they get to their parole eligibility date? [LR34]

SCOTT FRAKES: Well, I can't answer that question yet today. [LR34]

STEVE LATHROP: Why? Where is the hesitation? Is it over I don't know if I can hire those people or get them retained? [LR34]

SCOTT FRAKES: That would be the biggest hesitation (inaudible). [LR34]

STEVE LATHROP: So I may be jumping ahead two hearings, but let me ask you this: Is that a money issue, like no one wants to work for us to do this kind of work because they can make better money in the private sector? [LR34]

SCOTT FRAKES: In some cases it's money, but I think it's also a combination of a difficult clientele, a difficult work environment, a very demanding work environment, some other cultural issues. [LR34]

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STEVE LATHROP: But, Director, isn't that...if we're talking about the free market, isn't that a reason to pay them a little bit more than what they could make sitting in an office in an office building listening to people talk about, you know, their divorces and stuff? [LR34]

SCOTT FRAKES: Within the rules and regulations of state government, absolutely. And for those positions that I have control over and actually have the ability to change their salary, I am making adjustments. For those that are covered under a bargaining unit, there's a process that has to be followed. [LR34]

STEVE LATHROP: Are these psychologists and these mental health professionals part of a labor union? [LR34]

SCOTT FRAKES: The psychologists are discretionary so they're under my control. [LR34]

STEVE LATHROP: So you can pay them what you need to. [LR34]

SCOTT FRAKES: Well, no, but I can pay them...I have some ability to adjust, yeah. [LR34]

STEVE LATHROP: What somebody will let you. [LR34]

SCOTT FRAKES: Yeah. I still can't be competitive with the private market. And the last piece that I didn't say was especially in the psychologist field, just an incredibly competitive market across the nation so lots of different places fighting for the same people. [LR34]

STEVE LATHROP: So we were talking about this three-year plan that the Council of State Governments has in their Justice Program Assessment. And you sounded hesitant to commit to achieving that goal, or that you'd be able to achieve the goal? [LR34]

SCOTT FRAKES: Not the three-year plan, but the having 385 more people out on parole by, you know, I don't know what date we have in mind. If we're talking July 1 of 2017, I don't think we'll be...I don't know that we'll have made that many improvements. [LR34]

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STEVE LATHROP: Oh. Maybe I misunderstood you. [LR34]

SCOTT FRAKES: Now maybe I... [LR34]

STEVE LATHROP: So you think that you won't be able to put enough qualified people in front of the Parole Board for them to put 385 more people out per year? [LR34]

SCOTT FRAKES: You asked me whether or not I knew the answer to that question. I don't know the answer to that. That's my hesitation. In terms of meeting the expectations for JPA in three years, I do think that's attainable. There will always be exceptions. We will not get every single person ready on their parole date for the variety of things that we deal with, like flat sentences and noncompliance, but... [LR34]

STEVE LATHROP: Sure. So the three-year goal from the JPA, is that critical for you in your plan to get to 140 percent or below? [LR34]

SCOTT FRAKES: Yes, it is. It's critical--that's a strong word. It is an important component of it. [LR34]

STEVE LATHROP: So for this Legislature, these folks up here who are listening today and who will be watching or providing some oversight, watching for your ability to achieve the...and there are three separate one-year goals, right? That would provide a benchmark for whether you're on your way to get to 140 percent. [LR34]

SCOTT FRAKES: It'll be an indicator. [LR34]

STEVE LATHROP: Okay, so now you've got... [LR34]

SCOTT FRAKES: Okay. Don't look for straight cause and effect but... [LR34]

STEVE LATHROP: Now you'll have to come before the Legislature for whatever additional resources you need. And do I hear you say you don't need any more for programming? [LR34]

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SCOTT FRAKES: I don't know. [LR34]

STEVE LATHROP: You just need to fill the positions that you have? [LR34]

SCOTT FRAKES: Until we fill the positions that we have, fully utilize those, make some adjustments to our approaches, I can't tell you that I need additional resources. That's part of what the JPA is going to help us do. [LR34]

STEVE LATHROP: Before I leave the topic of programming, has anybody done...you have somebody working on this, right? Is it Roland or what's the fellow's name? Who do you have working on the programming issue? [LR34]

_____: Rothwell. [LR34]

SCOTT FRAKES: Mike Rothwell is my deputy director. [LR34]

SENATOR PANSING BROOKS: Rothwell. [LR34]

STEVE LATHROP: Pardon me? [LR34]

SCOTT FRAKES: Mike Rothwell. [LR34]

SENATOR PANSING BROOKS: Rothwell. [LR34]

STEVE LATHROP: Rothwell, pardon me. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: He's studying this issue? Is he going to study or provide you with information about how many people you need to do or to meet these benchmarks set out by the JPA? [LR34]

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SCOTT FRAKES: No different than what I've described. [LR34]

STEVE LATHROP: So that's not going to be part of it with... [LR34]

SCOTT FRAKES: Well, that is the process that we're going through. By doing the assessments, by determining what the true needs are, ultimately we get down to the granular level. But at this point, when half of the clinical positions are vacant and our clinical services could use some adjustments and improvements, whether it's in terms of frequency of delivery of programming or length of the programming or other factors, which again JPA is going to help us move that forward as well, until we get all those pieces in place, to say that, you know,...to me, that is part of how we're studying the issue, that we are moving forward, we're getting our assessments done, we're collecting data, we're looking at the information from that, and that's what we're doing moving forward from today. [LR34]

STEVE LATHROP: Okay, then we can agree, however, that the only way you'll be able to do that is to fully staff the positions that you already have, and I think you said they're like half empty right now? [LR34]

SCOTT FRAKES: Yes, (inaudible). [LR34]

STEVE LATHROP: How many people are we talking about? [LR34]

SCOTT FRAKES: I didn't look at a number this morning. [LR34]

STEVE LATHROP: Can you ballpark it? [LR34]

SCOTT FRAKES: Over 30. [LR34]

STEVE LATHROP: Pardon me? [LR34]

SCOTT FRAKES: Over 30. [LR34]

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STEVE LATHROP: Over 30? So that will be critical, bringing those people in. And we talked last time you were here about recruiting and the efforts you made to get Corrections officers and you were advertising and you were in theaters and on Big Red football and all that. Were you doing the same things for these positions? [LR34]

SCOTT FRAKES: Doing the right things--those wouldn't be the right things for those positions--so, yes, we are using professional networks and using the different mental health and healthcare networks across the nation. [LR34]

STEVE LATHROP: Okay. And I'm not here to beat you up, and my next question isn't intended to sound like I am, but is it working? Are we back to money again? [LR34]

SCOTT FRAKES: Well, it's not working as well as it needs to, that's for sure. That's why I am making some adjustments for salaries for psychologists once I figure out the details. [LR34]

STEVE LATHROP: Okay, and do you have some study, like if we pay X we should be able to fill the 30 slots, or 40 or whatever it is? [LR34]

SCOTT FRAKES: We have not done that at this point. [LR34]

STEVE LATHROP: Because the whole thing kind of collapses if you don't, doesn't it? [LR34]

SCOTT FRAKES: It's a problem. Part of it though, too, is making sure that inmates that need clinical services receive clinical services and many of those inmates that have either ended up in clinical services, because that's what we had to offer, or got nothing could actually be addressed through cognitive behavioral interventions. And those can be facilitated by paraprofessionals, you know, so we don't have to have clinicians. [LR34]

STEVE LATHROP: Okay. [LR34]

SCOTT FRAKES: So that's another component of bringing all this to life. [LR34]

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STEVE LATHROP: Another consideration or a variable, if you will, on facility population or your overcrowding is the good time. And I had some questions for your deputy director who was unfamiliar with the systemwide good time, the application systemwide of good time. And so I'll ask you, are you...is there...do you have information or do you have statistics that demonstrate how much you're using the good time statute for discipline, as in taking away people's good time, compared to two or three or four or five years ago? [LR34]

SCOTT FRAKES: No, it's not data we've looked at. [LR34]

STEVE LATHROP: Is it data you have available? [LR34]

SCOTT FRAKES: It may be, probably is. [LR34]

STEVE LATHROP: So if we made a request for how many days, weeks, or months in 2015 were lost to revoking good time, you could come up with that? [LR34]

SCOTT FRAKES: I believe so. [LR34]

STEVE LATHROP: Okay. And that's a request I suppose we'll make, but let me ask you this: Can you estimate, are you revoking good time at a pace faster, slower, or about the same as was done before you got here? [LR34]

SCOTT FRAKES: I've done nothing that would impact that. I've done...I've issued no direction, I've made no policy changes that would impact it. [LR34]

STEVE LATHROP: So you don't...you have no reason to expect that you are revoking good time more or less than your predecessor or predecessors? [LR34]

SCOTT FRAKES: All I can say is that I haven't done anything to impact it and I haven't...in my experience you pay attention to good time when you're thinking about issues of overuse and impact on beds. That has not been something that I've looked at, I have not, because I

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specifically am not interested at this point in time in saying that we should reduce the use of good time so that we have people...you know, fewer bed days. [LR34]

STEVE LATHROP: Yeah. Maybe let me see if I can clarify that. Are you...when you make the decision to use good time, or not to use good time, do you have one eye on your census? [LR34]

SCOTT FRAKES: I don't because I don't do it. So that would be the first important part. I have given no direction to my deputies or my wardens or my hearings officers to change any of their practices around the use of good time as a sanction. [LR34]

STEVE LATHROP: One way or the other? [LR34]

SCOTT FRAKES: Well, no, I take that back. What we did talk about was I felt that the restoration process was too automatic, and so I did give some direction to just look at that. We haven't done any policy changes, but ultimately when we do change our administrative regulations, which are promulgated so it's a lengthier process is why... [LR34]

STEVE LATHROP: You've got to use the Administrative Procedures Act, yeah. [LR34]

SCOTT FRAKES: Yes, and we need to make some changes to our computer systems, and so that's part of why we haven't moved as quickly. I want a better, more thoughtful, measurable system around restoration of good time taken. So that would probably lead to... [LR34]

STEVE LATHROP: Is it resulting in any changes in the amount of good time restored? [LR34]

SCOTT FRAKES: I haven't measured it to see whether or not it is. [LR34]

STEVE LATHROP: But if we make a request for data or information statistics on good time, the use of good time and the restoring of good time once it's been taken away, you can...your office is capable of providing that? [LR34]

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SCOTT FRAKES: I believe it is, but I'm not going to promise you until I go back and ask my data people or you make the request and I'll...we'll do our very best to fulfill the request. It's probably...I'm going to guess it's probably easily retrievable, but... [LR34]

STEVE LATHROP: I thought we got it two years ago. [LR34]

SCOTT FRAKES: Okay. [LR34]

STEVE LATHROP: I mean we were looking at the use of good time and (inaudible). [LR34]

SCOTT FRAKES: I think I saw some stuff on one of the reports, so that would tell me that it's in NICaMS and it's not difficult to get. [LR34]

STEVE LATHROP: You don't have any reentry furlough program-type things that you're doing, right? [LR34]

SCOTT FRAKES: (Laugh) No. [LR34]

SENATOR KRIST: Right? [LR34]

STEVE LATHROP: Right? [LR34]

SENATOR KRIST: Right (laughter). [LR34]

SCOTT FRAKES: One of the first things I... [LR34]

STEVE LATHROP: I just wanted to make sure because I never...you know what... [LR34]

SCOTT FRAKES: One of the first official acts I did was stop putting anyone on reentry furlough. And I'm trying to remember whether or not the administrative regulation has been changed but, no, there's no one (inaudible) eliminated. [LR34]

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STEVE LATHROP: Changed? I would say thrown in the waste basket... [LR34]

SCOTT FRAKES: Well, okay. All right. [LR34]

STEVE LATHROP: ...because it was never properly promulgated, right? [LR34]

SCOTT FRAKES: That's correct. That was the... [LR34]

STEVE LATHROP: But you don't have any program similar to that, that's sort of...other than parole and other than somebody jamming out, there's no way out of that place, or a pardon. [LR34]

SCOTT FRAKES: That's correct. That's right. [LR34]

STEVE LATHROP: Right? Okay. [LR34]

SCOTT FRAKES: You know, we have daily furloughs that come out of work release, but they leave, they come back. There's rules and regulations around that, no go off to live in the community and we'll see you when you're ready for parole, which is kind of confusing. [LR34]

STEVE LATHROP: You have...we've talked about risk assessment. Well, before I go there, any other challenges from your point of view to getting the population down below 140 percent by 2020? [LR34]

SCOTT FRAKES: Hmm. Well, barring no significant change in the current laws or sentencing laws, or some other factor that would result in a significant increase in crime in Nebraska, no, not at this point. [LR34]

STEVE LATHROP: Besides doing the assessments, the STRONG-R assessment, you also do classifications, do you not? [LR34]

SCOTT FRAKES: Yes. [LR34]

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STEVE LATHROP: Some kind of an assessment for classification? Tell us what that is. How does that differ from an assessment? [LR34]

SCOTT FRAKES: In a sense it is but it's not a...classification tools are used to determine where you should safely house someone within a prison system. It's always the goal to house people in the least restrictive prison security level. The less restrictive the level, the easier it is, or, in a healthy system, the easier it should be to deliver programming and access to services, lower cost because they run with fewer staff, all the good things that come from less restrictive, lower custody facilities. But to do that safely you've got to have a good validated tool (inaudible). [LR34]

STEVE LATHROP: Do we have one in use? [LR34]

SCOTT FRAKES: We do. We have a tool that was validated in 2006 or '07. It was a good tool, outlived its life span, should have been at least taken back for validation several years ago, also a dynamic tool, so it did not take into account...I'm sorry, it was a static tool so it did not take into account any kind of changes that might be exhibited. So we took our tool out, worked with UNO. UNO worked with...yeah, his name goes right out of my head...Dr. Zach Hamilton from Washington State University. They contracted with Dr. Hamilton, but he's got an extensive background in this kind of work. So he took our existing tool, put together...could say it's a new tool or improvements to our existing classification tool, but it now includes dynamic factors. So it takes into account their behavior while they're in prison, their engagement in programming. We took a look at...we had a...our current tool is...shouldn't say our current tool because we've stepped away from it. The tool we were using up until just a few weeks ago heavily relied on sentencing as the indicator of risk. It's something you have to take into consideration, but it's not the only thing that you should look at. [LR34]

STEVE LATHROP: Okay. [LR34]

SCOTT FRAKES: So what we have now, new, updated, validated tool, validated based on extensive sampling. The next phase of it, like any tool that you bring in, is then you still have to do your internal validation to ensure that it is...works really well with Nebraska. [LR34]

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STEVE LATHROP: Have you implemented this new tool? [LR34]

SCOTT FRAKES: We're training staff right now and starting to roll out. [LR34]

STEVE LATHROP: Okay. So to this point in time, we're still using the old one. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: And I thought I saw somewhere where...the idea behind this is you figure out if they're a high risk, like this guy is going to jump the fence and beat somebody up and we need a lot of barbed wire and guards... [LR34]

SCOTT FRAKES: Officers. [LR34]

STEVE LATHROP: ...to somebody where you barely need any fence and they can come and go practically. [LR34]

SCOTT FRAKES: Correct. [LR34]

STEVE LATHROP: Right? And some places in between. Is there a place in Omaha that's a minimum security? [LR34]

SCOTT FRAKES: OCC--Omaha Corrections Center--is. Originally it was built under a minimum classification. But from the world I come from, it's somewhere between minimum and medium. It has a double perimeter fence and detection systems and all the other things that go with, so. [LR34]

STEVE LATHROP: Sure. So what kind of people are supposed to be at OCC? [LR34]

SCOTT FRAKES: Inmates that are classified medium or minimum custody or medium and below. [LR34]

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STEVE LATHROP: Medium and below? [LR34]

SCOTT FRAKES: Yeah. [LR34]

STEVE LATHROP: You don't have anybody misclassified there? [LR34]

SCOTT FRAKES: Well, I hope not. [LR34]

STEVE LATHROP: Do you have any other minimum security places in Omaha? [LR34]

SCOTT FRAKES: We have the community custody facility, the Community Corrections Center in Omaha. [LR34]

STEVE LATHROP: Those are all minimum people though, right? [LR34]

SCOTT FRAKES: Those are all 4A community custody, so they're the next step down. [LR34]

STEVE LATHROP: All right. I kind of have a couple of miscellaneous topics and I'm pretty close to done. [LR34]

SCOTT FRAKES: Okay. [LR34]

STEVE LATHROP: To what extent do you think the staff assaults are a function of overcrowding? Or what do you attribute the staff assaults to? We had...we went through some of them with your deputy director this morning and talked about some of the considerations or why they're taking place. And obviously I think you testified before and we heard it again this morning that some of these people that are showing up at your door are a little more defiant than others or than when they used to be. That seems to be a societal thing. [LR34]

SCOTT FRAKES: Yes. [LR34]

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STEVE LATHROP: But to what extent does the overcrowding contribute to the staff assaults?
[LR34]

SCOTT FRAKES: So I've said many times, I know at least more than once in testimony, the issue isn't where they sleep. The issue is what happens when they step out of their cell. So it's the lack of programming and the lack of programming space. It's lack of other prosocial opportunities. So in some cases, having fewer inmates would allow us...the space then would be more adequate. So in some cases you could say, yes, it would be improved; at the same time, if we had programming and prosocial activities and some other pieces that add to a healthy culture, I think that we could safely and effectively manage the number of inmates we have in all of our facilities as they are today. [LR34]

STEVE LATHROP: So when we look at, and I'm looking at page 30 of the Inspector General's report when he has these statistics on inmate-on-staff assaults. And I'm not going to be able to pull the numbers up, but the information that he provided suggested that there were up until recently no serious injuries to staff in an assault until the last couple years. And those numbers are like seven and ten in the last two years... [LR34]

SCOTT FRAKES: Correct, but... [LR34]

STEVE LATHROP: ...something like that. [LR34]

SCOTT FRAKES: So we're looking at 2013, '14, '15. But if we go back in history, there certainly have been serious staff assaults that have happened in the system, so. [LR34]

STEVE LATHROP: Oh, I'm...there's no doubt about it. [LR34]

SCOTT FRAKES: Yeah. [LR34]

STEVE LATHROP: But the trend line is like this... [LR34]

SCOTT FRAKES: It is, yeah. [LR34]

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STEVE LATHROP: ...for assaults and assaults resulting in serious injuries to staff. [LR34]

SCOTT FRAKES: And yet interesting enough, you know, from your own numbers we've been 151 percent of design in October of '13. We've been over 150 percent of design through that time period when there was no staff assaults. So we were packed at that point. So to say that there's a direct cause and effect, I struggle with that. [LR34]

STEVE LATHROP: Okay. [LR34]

SCOTT FRAKES: Is it a factor that fits into this? Certainly. Is it... [LR34]

STEVE LATHROP: Maybe the correlation is a lot stronger for vacancies. [LR34]

SCOTT FRAKES: Possibly so. [LR34]

STEVE LATHROP: Right? So now we got your staff working overtime and we have some places...for example, at Tecumseh the disturbance, if you will, was due in part to the fact that they didn't have enough people for that weekend and they stopped some of the activities for the weekend at Tecumseh. Did I hear that right this morning? [LR34]

SCOTT FRAKES: That's a factor that was identified, yes. [LR34]

STEVE LATHROP: Okay. So it may not be so much the overcrowding, is what you're telling me, but certainly the vacancies, the difficulty staffing, the fact that when you're shorthanded some things don't happen, like the programming, getting people to the programming, and that makes them restless and results in more staff... [LR34]

SCOTT FRAKES: Those are all contributing factors but it still doesn't clearly explain why people went...because those factors existed, as well, during the year that there was no serious assaults on staff. There were assaults on staff but none that resulted in serious injury. So what's...you know, there's something else that's changed. Is it the civil disobedience? Is it some greater organization growth among the security threat groups? [LR34]

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STEVE LATHROP: Yeah, but, Director, if I can say this, when I hear you say that, here's what goes through my mind, which is if you say, well, it's not a direct correlation, maybe it's just the fact that we're getting meaner people or more defiant people, then you excuse any role the department has and you're telling us, effectively, that it's defiant people showing up, we're just going to have to get used to more assaults, and there's nothing I can do about it. And I suspect you'd tell me there's something you could do about it so that you can keep your front-line staff safe. [LR34]

SCOTT FRAKES: Absolutely. [LR34]

STEVE LATHROP: What are you going to do different? And maybe that will tell us what you think the problem is. [LR34]

SCOTT FRAKES: We are increasing training. We are looking at security upgrades and technology where it makes sense and where it would be of value. We are continuing to aggressively figure out how to address, you know, the staffing issue. We're at the table with the union; compensation is certainly a part of that, but we know that that's not the only issue. We've got cultural issues within our prisons. We've got to make some changes there. Part of that is giving our supervisors more tools so that they can be more effective. Part of it is giving our staff more tools so we provided resiliency training to 600 staff this month. So some of the pieces... [LR34]

STEVE LATHROP: If I may, Senator Coash earlier today read some correspondence from a constituent who works at the Department of Corrections. And you and I talked before the hearing started. I don't know if you had a chance to hear Senator... [LR34]

SCOTT FRAKES: I heard about it. I didn't hear it. [LR34]

STEVE LATHROP: Okay, okay. Basically this person is saying these people don't...they're not worried about the consequences because there are none. I'm going to paraphrase it; Senator Coash can read it if he chooses to when I get done. But they're not worried about it. And I'm

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wondering, so do we have assaults because people think they can get away with it because no one is going to take their good time? [LR34]

SCOTT FRAKES: Well, if they do, they're mistaken because we certainly take good time for assaults on staff. We refer for prosecution. We put people in restrictive housing. We put people on long-term restrictive housing for staff assaults so that we can figure out what we're going to address and change so they don't do it again. I understand the perception is there, but the reality is there are more people in restrictive housing today than there were before the reforms went into effect July 1, which is unfortunate because that's not what I was looking for. [LR34]

STEVE LATHROP: That's not what we wanted you to testify (inaudible). [LR34]

SCOTT FRAKES: Well, it's the truth though and that's...you know, it doesn't make me happy either. But the actions of the last six months have directly contributed to that. [LR34]

STEVE LATHROP: So when I listen to you, then do you think the solution is all training, like we're going to train our staff better to deal with these guys? [LR34]

SCOTT FRAKES: No, that's just a piece of it. [LR34]

STEVE LATHROP: And forgive me, what else is there that you think you can do as the director to stem the number of assaults on staff at the Department of Corrections? [LR34]

SCOTT FRAKES: Hold inmates accountable. [LR34]

STEVE LATHROP: And how...so let's stop there. How are you going to hold them accountable? [LR34]

SCOTT FRAKES: The actions I just described. They... [LR34]

STEVE LATHROP: You're going to have them prosecuted and put them in solitary and take their good time? [LR34]

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SCOTT FRAKES: I can refer them for prosecution; I can't prosecute. [LR34]

STEVE LATHROP: No, I understand that. [LR34]

SCOTT FRAKES: We have a hearing. If they're found guilty, they're issued sanctions by the hearings officer. I'm going to believe that in cases of staff assault there's a loss of good time and it's probably the maximum loss of good time. [LR34]

STEVE LATHROP: Does that happen for all nine of those guys that were involved in the last assault...pardon me, 15 people that were involved in the assault of nine staff folks at LCC? [LR34]

SCOTT FRAKES: I can't answer the question. I'd have to go back and verify. [LR34]

STEVE LATHROP: Okay, and I interrupted you when you were giving me the list of things you can do. [LR34]

SCOTT FRAKES: Okay, all right. So it's change in the culture of the facility. We had an excellent event yesterday, a new program that we're bringing in, Defy Ventures, an entrepreneurial training program funded by community resources, no state dollars. That program provides not only some skills that will be very beneficial in terms of leaving prison and not coming back, but it also provides a lot of skill sets that will be valuable in terms of human interaction, starting with just some basic civility and how to treat others. So that's just another example of how we can reach our population there is getting Thinking for a Change actively going. We are just starting to roll that out at the women's prison and the Work Ethic Camp. We're going to continue to build our core of instructors around that and build our capacity. There are other violence interdiction or interruption...I'm looking for the right word. There are other violence programs besides the violence reduction program that we can do much more of. We're trying to figure out what needs to be clinical and what could be done by paraprofessionals, if anything, specific to that. That's one that may have to be a clinical service. The sex offender treatment is a clinical service, there's no question about it. [LR34]

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STEVE LATHROP: Okay. [LR34]

SCOTT FRAKES: So we build a better culture. We address the issues with the people that do the assaults. We make sure that we give our staff the tools that they need. I'm not going to describe the specific things that we're looking at because I don't want that information to be in the hands of my inmate population. If we were in a different setting we could get into some more details in terms of technology and those things. [LR34]

STEVE LATHROP: Some stuff has to be secret. [LR34]

SCOTT FRAKES: It does. [LR34]

STEVE LATHROP: Sounds familiar. [LR34]

SCOTT FRAKES: Yeah, but not in an unhealthy way. [LR34]

STEVE LATHROP: Okay. Restrictive housing, you just told me that you have more people in restrictive housing than you did before the reforms. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: It doesn't sound like the reforms are working. [LR34]

SCOTT FRAKES: Uh-uh, no, not true. [LR34]

STEVE LATHROP: What's happening there? [LR34]

SCOTT FRAKES: We've had a significant uptick in serious incidents and that led to placements in restrictive housing. But I think the process is working very well in terms of quick review, decision making, determining whether or not they need to be there after 24 hours, after a few days, after 15 days. In the long term, restrictive housing referrals are solidly based but certainly not everyone that comes to the Central Office Multidisciplinary Team is approved. So what we

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had was I think a hiccup is what I'd call it, but we had a spike in activities that would legitimately lead to people being placed in restrictive housing. We've had...you know, I hate to say things out loud because it's just like, you know, sometimes you're superstitious. We had a good month. I would like to think we're going to continue down that path. And the way the system is set up with the weekly reviews of who's in...at the Central Office level, not at the facility level, weekly reviews of who is in restrictive housing, we'll see the trends head back the direction that they should be. And we don't...I don't have baseline numbers yet because we really don't know. What we do know is because we created appropriate housing for protective custody inmates which, when I arrived, were part of the restrictive housing segregation population,... [LR34]

STEVE LATHROP: Right. [LR34]

SCOTT FRAKES: ...we've still, from where we were in June of 2015 to where we are today, we're 300...275 less people in segregation across the system. So in terms of making progress, yeah, absolutely, but I really expected that July 1, with the disciplinary segregation process being taken away, being eliminated, which I know has created some concerns. Part of that is because we just didn't really communicate well with the staff. [LR34]

STEVE LATHROP: I read that. [LR34]

SCOTT FRAKES: Yeah. I did not...I anticipated we'd go the other direction a little quicker. I think we'd be more like at 250 instead of 327 I think we were this morning. That's the other thing, I look at it every day. I look at the numbers every day. [LR34]

STEVE LATHROP: So how many of those people are being released directly from restrictive housing to the community? [LR34]

SCOTT FRAKES: I can't give you a number. We changed how we measure that as part of the reforms. Prior to July 1, our measurement was people that were in there 60 days or more prior to release. It was a measure that I used in Washington State. There's no standardized measure. But looking at the reforms and where we needed to go, we agreed that the right answer was, it doesn't matter if you go into restrictive housing on Monday afternoon and you release on

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Tuesday morning, that's a measurement. So we'll have our first quarterly measurements here in another couple weeks to be able to (inaudible). [LR34]

STEVE LATHROP: So the first time I came to one of these hearings before I was sitting up here asking questions, I think you said you were releasing approximately one a month directly from restrictive housing? [LR34]

SCOTT FRAKES: Under the old measurement, yes. [LR34]

STEVE LATHROP: Okay. Is there a practice at the department...and I'm looking at the Inspector General's report. I'm just going to read a couple of sentences: A situation was reviewed by the OIG regarding the practice of moving individuals from restrictive housing to general population for less than a day prior to their release. While these inmates all would (not) have been counted as direct releases due to their relatively short stay in restrictive housing, staff were told they were individuals who were being moved into the general population to avoid being considered direct releases. You familiar with that practice? [LR34]

SCOTT FRAKES: I read that and Doug and I...yeah, Doug and I...I don't know about practice. Doug and I talked about that, so... [LR34]

STEVE LATHROP: Okay, is that happening to improve the numbers of people who were...to give the appearance that the number of people going from restrictive housing to the community is actually lower than it really is? [LR34]

SCOTT FRAKES: So at the time in question, as I explained to Doug after we went through it,... [LR34]

STEVE LATHROP: Sure. [LR34]

SCOTT FRAKES: ...that what was described wouldn't have changed what they needed to report. Now today, if that same practice is happening, then that would be a concern. I don't have any evidence that that's happening. I have asked the question of the wardens. They assure me that it's

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not happening. So we'll continue to monitor closely. If I find some example to suggest that that's true, I'll follow up, take appropriate action. But under...before July 1, the measurement was somebody that had been in there 60 or more days and released to the community. So (inaudible)...and this came out of OCC where they don't keep people for very long because they don't have a long-term segregation/restrictive housing unit. So what was described to me was a situation where people may have believed in fact that that was the goal. I did have communication with the warden. He said that was not the goal. The goal was, can we get somebody out and give them a little bit of free movement before they walk out the door the next day, for the legitimate, good reasons that you would do that, but it...they didn't have to report it because it didn't meet the data expectations that were in place. [LR34]

STEVE LATHROP: Okay. Did you say that you will have...that you're waiting on information regarding the number of people in restrictive housing? Like if we... [LR34]

SCOTT FRAKES: Direct releases? [LR34]

STEVE LATHROP: ...make a request, we have a hearing, the next hearing is going to involve restrictive housing and mental health, you have all that, all the information on that and the data and the statistics... [LR34]

SCOTT FRAKES: We do. [LR34]

STEVE LATHROP: ...available for a request? [LR34]

SCOTT FRAKES: Depending on the request, yeah. I never like to just promise you I can get you anything because there are still limitations in our system. [LR34]

STEVE LATHROP: I'll hold you to it, yeah. Okay, I think that's all I had. [LR34]

SENATOR PANSING BROOKS: Thank you, Mr. Lathrop. Yes, Senator Krist. [LR34]

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SENATOR KRIST: You mentioned earlier that...let me start with just a quick question. And this is...there's nothing tricky about it. Senator...we've had some conversations and I think that the conversations come down to, do you have to make someone an employee of the department in order to have quality programming within the institution? If you can't hire eight psychologists to come work for you to do this, can we go out with contract or can we go out with an insurance program or, as it's been suggested overall, using community resources to come in? And if that's just not possible, I mean, those people are not union members. But if it's not possible, then I understand. But it seems to me like a clinician is a clinician, and they'd just as soon spend maybe two days in the jail and 28 days making a million dollars as you owing them, if you get it.

[LR34]

SCOTT FRAKES: We are actively pursuing resources. We're asking for a proposal to provide mental health services at Tecumseh, because we're at a point where we can't meet the need with existing staff. So I'm not sure if that went out yet or not; it was gone for a few days, but it should either be out or it's going out shortly. We already use contracted healthcare services at Tecumseh, so in terms of mental health services, easier, not easy. If you go with individual contracts, you need to use two staff psychologist position to cover the cost of a single contracted physician, you know, psychologist. It takes about double that amount of money because you don't...you go out, you know, through a service. [LR34]

SENATOR KRIST: Right. [LR34]

SCOTT FRAKES: And so then there's already...so that piece is still...we're using those resources wherever we can, wherever it makes sense, with...and then continuing to look to fill the positions with permanent staff because that's the best bang for the buck and it's really what you want because with contracted services it's...you don't get the same level of patient care. It's not bad but it's still not the same kind of commitment as a permanent employee. When we get into the clinical treatment it gets more challenging because now we're not just asking for the psychologist's licensure but also then certification in a specific sex offender treatment, substance abuse treatment, even higher demand in the private sector. So we have not had as much success in finding people that could come do clinical-level services. In terms of other programming though, cognitive behavioral interventions, I believe that we can train, build our cadre of

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facilitators within our staff. We struggle to do that because of our challenges just with filling staffing. It is certainly possible to go out and contract services. We could do substance abuse. At this point that has...we've been fairly successful in keeping positions full, starting to see a little challenge there. I'd prefer to not go to that model just from past experiences because, again, I think we can do better work. [LR34]

SENATOR KRIST: Well, I think... [LR34]

SCOTT FRAKES: But you got to look at all the options. [LR34]

SENATOR KRIST: Yeah, and I know you're doing that. I just think that, you know, if you're...if it's a two-to-one trade-off and you could put four people in the facilities for the price of eight and we can start making some headway, you can always get rid of the contract at the government's...at the state's whim. One other comment I'm going to make and this is strictly for the record. You and I have had this discussion before. But those of the panel that are not and those that are potentially listening that have not been involved with the Legislative Oversight Committee in conjunction with CSG in phase two, and I've been pretty vocal on this issue, there's a large group of people that come together. They represent judges, lawyers of all kinds, legislators, yourself, your staff, Probation, the Chief Justice, the Governor. It's called the JRIC. We need to meet. We don't meet once a year and get things done. And some of the things that you talked about in terms of response to questions are we're waiting for them to do the data and the analysis, and they'll come in on the 20th of October and they'll do their show and we'll be able to absorb. But in conversation with the Legislative Oversight Committee and the literally...the dozen or so phone calls that I've had with CSG, Sara Friedman and her staff, there are issues we should have been talking about during this year that were bigger than Corrections, they were bigger than Appropriations, they were a total group effort. And I think we have missed the mark, and I'll be very vocal until I'm not here anymore. That JRIC was supposed to have been at least a quarterly meeting event where we got together and measured and forced CSG to give us the measurements that we needed. That's been a real gap. And you see him a lot more than I do and he needs to understand, as I just point to the corner, to the Governor's Office, that it's not a status briefing that he gets. He gets that from you. He can call Appropriations and talk to his folks anytime he wants to. This is a working committee that has not been energized, except

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for one meeting in this entire year. Some of the questions that have been asked and answered here today having to do with LB605, a status report from the Chief Justice in that large setting, and from his judges that are, again, looking at the statutes and how sentencing and all of those things have been made, those were things we needed to be talking about during the past year. Again, it's one of those things that I feel very strongly about. I know you and I have talked about it. But we need to make sure that that JRIC energizes because, as we fall further and further behind on what potentially has been asked to you about can we meet these parameters that are coming up that CSG has aggressively set in terms of goals, how are we going to know that, because we only have them for another nine months, I think, 18 months total at the beginning of this thing. So I think we've gone from... [LR34]

SCOTT FRAKES: August, in my mind, of next year, but close enough. That's ten months, so... [LR34]

SENATOR KRIST: Yeah, ten months. [LR34]

SCOTT FRAKES: Yes. [LR34]

SENATOR KRIST: Okay. We only have them for that period of time. [LR34]

SCOTT FRAKES: Right. [LR34]

SENATOR KRIST: If we don't actively as a state, all three branches of government, get together, and the acronym is "JRIC," we're going to lose ground on a daily basis. And there are some parameters out there that really need to be paid attention to. And I'm using you as a sounding board. I just want to make it clear. That's one of those groups that's going to have a huge impact, because it's all three branches of government, on how we move forward with CSG's efforts. Thank you. Thanks for coming today. [LR34]

SENATOR PANSING BROOKS: Thank you, Senator Krist. Senator Morfeld. [LR34]

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SENATOR MORFELD: Thank you. Thank you for coming today, Director Frakes. Related to overcrowding, if we were to get rid of the death penalty, how many beds would that open up? [LR34]

SCOTT FRAKES: Until the day comes that I can find a different use for where they're housed, it wouldn't free up any because they're housed in a building that's currently housing the restrictive housing population. We're managing them differently and giving them access and freedom, time out of cell and other things, because it's a group of ten men so we can manage it, but... [LR34]

SENATOR MORFELD: So that's still... [LR34]

SCOTT FRAKES: So the correct answer is it's...they aren't general population beds so it really wouldn't free up any general population space today. Now I have a vision, and I thought I had a clearer vision about a year ago, and we tried one approach and it failed in that same building--it's SMU West. So at some point when our restrictive housing populations drop down to where I know it's going to go across the agency, then we'll have the...we'll start the conversation again about what type of population could be housed in that unit and, you know, safely, effectively managed there. [LR34]

SENATOR MORFELD: So in that unit, and I was only in there briefly I think when we were touring the aftermath of the disturbance, there's ten inmates in that unit. How...what's the capacity for that unit? [LR34]

SCOTT FRAKES: Okay. So where they were before, what you saw,... [LR34]

SENATOR MORFELD: Yeah. [LR34]

SCOTT FRAKES: ...they were in a general population setting. [LR34]

SENATOR MORFELD: Okay. [LR34]

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SCOTT FRAKES: And unfortunately that was 60 potential beds and we had 10 plus some transition folks. So any given day there might have been 20 people living in that space. [LR34]

SENATOR MORFELD: But that situation has since changed? [LR34]

SCOTT FRAKES: We said this doesn't make sense, so we created a different place,... [LR34]

SENATOR MORFELD: Okay. [LR34]

SCOTT FRAKES: ...replicated the amount of freedom and the access to the things that they get because they're not...they shouldn't be managed as a segregated or a restrictive housing population, but they need to be in a place that's isolated from the rest of the population. So we found that space and...but, yes, that living unit you saw now houses 64 men. [LR34]

SENATOR MORFELD: Okay. Okay, that's good to know. And then also related to overcrowding, and particular resources, how much more does it cost to have death row as opposed to not having death row? [LR34]

SCOTT FRAKES: I'm just going to use old figures from past experiences. In general it costs about \$35,000 or \$36,000 per inmate across our system today. If you were to look at where I house them in a restrictive housing setting, because of the additional staff that we allocate to those that's highest, you know, highest security, it's reasonable to say that those beds probably cost closer to \$45,000. [LR34]

SENATOR MORFELD: Okay. [LR34]

SCOTT FRAKES: That's just an estimate. [LR34]

SENATOR MORFELD: Thank you very much, Director. [LR34]

SENATOR PANSING BROOKS: Thank you. Senator Mello. [LR34]

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SENATOR MELLO: Thank you, Chairwoman Pansing Brooks, and thank you, Director. I asked Deputy Director Sabatka-Rine this morning two questions and I think to some extent she kind of gave an answer to one and kind of a half answer to another. And so I told her I would ask you depending upon her response. And you mentioned earlier in regards to some questioning from Mr. Lathrop. What's the department done in respects to the OIG's report? There was over 30 recommendations that were made. Most of those involve some kind of operational aspect, more so than a legislative policy change, so to speak. What, from your perspective and your direction, what have you as an agency done with those recommendations, if anything? What's your plan moving forward in regards to considering those recommendations? [LR34]

SCOTT FRAKES: Well, there's some of them that we're working on. No, I'm not going to pull them off the top of my head. [LR34]

SENATOR MELLO: That's fine. [LR34]

SCOTT FRAKES: So thank you for that. But there are some of the things on there that we're looking at or considering whether or not...you know, one example that I'll give right now is the idea of physical hiring standards, you know, returning to that, so that's a conversation that we've been having over the summer and I've got some people actually going out and looking at what makes sense, what would we want to try and bring back. So that's one example. But the best part of it is, or the most important part for me, was to meet and sit down with Doug and...which he made the offer before I had a chance to reach out and say let's do it. So we meet next week one morning--I can't remember off the top of my head. So after that, then I'm going to come back to my executive team. We're going to sit down and walk through and talk about the things that we're not already considering in one of our multitude of initiatives. [LR34]

SENATOR MELLO: And the second question, to some extent, and this could be something that could be followed up on either materialwise and/or at another hearing pretty good if we're going to talk about programming, is I've received communication from the department as well as from constituents who have raised concerns about gang activity within the Department of Correctional Services. And to some extent, what is the strategy from the department perspective in regards to trying to...an intervention and prevention strategy, so to speak, in regards to minimizing gang

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activity, minimizing gang recruitment? Deputy Director Sabatka-Rine today said, reiterated that the department is working in concert the best it can right now with law enforcement agencies when an inmate is arriving or coming into a DCS facility. I was looking more so in regards to what are you doing operationally, not so much people coming in but what are you doing operationally in regards to interjecting yourself. And I know there was a budget request, which I didn't want to get in too detailed because you and I haven't been able to sit down and talk through that yet, but I made notice that was something that looked like it was part of your request was that intelligence administrator. She gave a little background on that as well, not too much, but is there anything more you could share in regards to what...is there an overarching strategy that you're developing right now to try to minimize the gang activity and recruitment? Or is that going to be so much spearheaded or more addressed with this position that's been requested?
[LR34]

SCOTT FRAKES: No. The department had a database. It was in disrepair would be a good word for it. It had not been...you need to go through them annually and clean them up, vet them, make sure if things change. So we've completed that process. We established our statewide intelligence and investigation team. I was hoping I could figure out within existing resources how to create the administrator position. I cannot do it. I made a budget request that so far is in my budget, key piece. And we have gained so much just in terms of understanding what our issues are, where are our greatest challenges, where do we have recruitment issues, where do we have violence directed by security threat groups, and then being able to target interventions specific to those. I've always been a believer that the first best strategy is you address the behavior. For most of these people that come in with affiliation, it's part of their core values. There some interventions down the road that you can use after you've done some other work. But in the beginning it would be like asking them to step away from their religion or their family. So you don't ask them to step away from that but you tell them we will not tolerate the violence, we will not tolerate the extortion and the other behaviors, and you address those behaviors. So we're doing that component. We are looking at some of the programs that are out there. I had some staff that went earlier this year to New Mexico, looked at their...it's reintegration program I think is what that one is called. So they've got a security threat group kind of renouncement process. California has got some processes as well. We're just not...we're not mature enough yet to get into that work. That's where we will ultimately head. We created the protective management units, one at LCC,

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one at Tecumseh. That has been very successful both in providing a safe haven for people to get away from those issues and to have a setting that they can live in where they can still get programming and access to yard, you know, some freedom of movement, unlike how we were managing before. And there was one more piece to that and that is this whole concept of mission-specific housing. We're just getting that off the ground. We've got a couple of veterans units, actually, that are pods, part of a unit that we're getting close to bringing to life. We're working on some other ideas. So what we want to do is create this system where there are safe places for people to live. And then we're going to continue to narrow down and condense down those that don't want to change. By then I'd like to think we'll be in a better position to start talking about strategies. But right now, if you act in ways that create violence, that direct violence, that, you know, are engaged in running drugs or packing in cell phones and those things, we address that, because that isn't just security threat groups that do it. You have people with no affiliation whatsoever that do all of those things as well. [LR34]

SENATOR MELLO: If it's all possible with the request of information regarding sanctions of good time loss and restoration, it would be great to be able to identify how much of that has been identified or connected in some form or another to gang activity, in comparison to nongang activity related...I mean I understand there's people who assault someone who is not a member of a gang, and then there's people who assault someone who is a member of a gang, both inmate on inmate or inmate on staff. But I think that information would be helpful just in regards to understanding how big the problem may or may not be. [LR34]

SCOTT FRAKES: Pretty sure we have that (inaudible). And there's one more...there are those that have security threat group affiliations and do those things, but it has no connection to their affiliation. So there's, like, three different dynamics that happen. [LR34]

SENATOR MELLO: Okay, thank you. [LR34]

SENATOR PANSING BROOKS: Okay, thank you, Senator Mello. Just a couple quick things, back to trying to look at the overcrowding and the issues with what you've brought forward on these abstracts and different building plans. I think Dr. Gage wrote in his report, and you just

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mentioned the mission-specific housing, and I was trying to wonder about that because he...that was recommended for problematic behavioral inmates. Is that correct? [LR34]

SCOTT FRAKES: Yes. [LR34]

SENATOR PANSING BROOKS: So how have you addressed that and are you addressing it with these plans? [LR34]

SCOTT FRAKES: Well, not these plans, but first piece was expanding our secure mental health, which we did at LCC a year ago, providing additional staff resources and increasing the number of beds dedicated to that from what was 16 to 32 beds. So that was an important piece, but that's not the right physical plant. It's, you know, it's what we have for now. The next piece is the reception and treatment center proposal that's part of my biennial budget request, and that will allow us, if funded, allow us to build the right kind of structure and the right kind of beds for those. Then we can repurpose what we now use for secure mental health as a transition. And then we have the D unit, currently, which is residential mental health. It should be more transitional than it is. And then we're going to look at a unit, or at least a part of a unit, that's committed to the cognitive-impaired, developmentally disabled, you know, low-functioning folks. That's a conversation today that I'm going to tell you that's a work that's in progress. But, you know, I...that was one of the things I'm most proud of that I left behind in Washington was that unit. [LR34]

SENATOR PANSING BROOKS: Okay, so do you have a timing on this like when you're thinking the mission-type housing...I can't remember the phrase. [LR34]

SCOTT FRAKES: Mission-specific. [LR34]

SENATOR PANSING BROOKS: Yeah, mission-specific housing. [LR34]

SCOTT FRAKES: Well, the ones for general populations, like the veterans unit, I'd like to think that we're maybe a couple months from at least getting the one at NSP off the ground. Some of the other ones we're still looking to say, you know, what...are there additional resources? You

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need to have some kind of a focus. That's part of why it's mission-specific. So sometimes it's demographics, veterans being a great example. Sometimes it's programming. Sometimes it's a, you know, combination of all those things. You know, more than anything, the events of the last four months in particular, we could even go back into the spring, have diverted so much time and resources away from where we thought we'd be today. We've just...one incident after another, and all the follow-up work that needed to happen is...didn't derail us but it definitely kept us from focusing on moving forward on things. [LR34]

SENATOR PANSING BROOKS: Okay, so are a bulk of those with problematic behavior placed in segregation? And we're going to get to that more, but that affects the overcrowding issue. [LR34]

SCOTT FRAKES: Okay, so it depends. If they have a severe mental illness, a severe mental illness diagnosis, and they're not treatment compliant, then they're most likely going to be in the secure mental health unit. If they have a... [LR34]

SENATOR PANSING BROOKS: And where is that? Excuse me for interrupting. Is that in segregation or where is that? [LR34]

SCOTT FRAKES: It's at Lincoln Corrections Center. [LR34]

SENATOR PANSING BROOKS: Okay. [LR34]

SCOTT FRAKES: It's next to the lower-level residential mental health. It's residential mental health for the most ill, most dangerous people that are not treatment compliant. It's typically where our people on involuntary medication will end up, history of violence, demonstrated violence, a variety of other things, but not all of them. There's kind of a spectrum of things that they present. We call it restrictive housing because of, you know, the rules say if you're not out of cell at least four hours a day, opportunity to be out of cell four hours a day, then it classifies as restrictive housing. [LR34]

SENATOR PANSING BROOKS: Okay. [LR34]

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SCOTT FRAKES: So it's residential mental health and it falls within that spectrum of restrictive housing. But it's not a punitive, it's a therapeutic intervention. [LR34]

SENATOR PANSING BROOKS: Okay, so good time isn't necessarily taken away from them... [LR34]

SCOTT FRAKES: No. [LR34]

SENATOR PANSING BROOKS: ...because of their inability to cope and understand fully? [LR34]

SCOTT FRAKES: Correct. [LR34]

SENATOR PANSING BROOKS: Okay. You talked about the classification tool. You're using the old tool. When will the new classification tool be ready? [LR34]

SCOTT FRAKES: It's ready. Staff training started this week and so we're going to pilot it. And don't ask me where we're going to pilot it because I can't remember right now. [LR34]

SENATOR PANSING BROOKS: Okay. [LR34]

SCOTT FRAKES: We're going to pilot it at a couple facilities. We also have the parole guidelines pilot that's going on. And then with the STRONG-R, we're just doing the roll-out, training staff and doing the roll-out, so. [LR34]

SENATOR PANSING BROOKS: Okay. Is it...am I correct in...I don't believe the STRONG-R has anything to do with a psychological evaluation. Is that correct? [LR34]

SCOTT FRAKES: No. The only thing it helps do is tell you a certain subset that don't need a clinical assessment, you know, and that's... [LR34]

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SENATOR PANSING BROOKS: Okay. So when is that psychological evaluation being given?
[LR34]

SCOTT FRAKES: Well, clinical assessments for substance abuse, sex offender treatment, you know, high-level violence,... [LR34]

SENATOR PANSING BROOKS: Right. [LR34]

SCOTT FRAKES: ...the substance abuse assessments are happening earlier but not necessarily as early as they need to. The sex offender assessments are happening more like midterm, and the violent, you know, midway through the sentence point, too close to their PED in many cases.
[LR34]

SENATOR PANSING BROOKS: Okay. [LR34]

SCOTT FRAKES: And then with the violence, the high level, those that would need the...if assessed would need the violence reduction program, for whatever reason, the practice had become that they didn't get an assessment until their PED. I don't have an answer for how that culture developed but that's what the practice was. Where we are going to is risk-needs assessment first 30 days of arrival, clinical assessments within 90 days of arrival for those that need a clinical assessment. [LR34]

SENATOR PANSING BROOKS: Okay, so clinical would include a psychological evaluation in my nomenclature. I don't know what that really is. [LR34]

SCOTT FRAKES: If there was a referral for mental health,... [LR34]

SENATOR PANSING BROOKS: Okay. [LR34]

SCOTT FRAKES: ...that actually...those should already be happening. I don't know exactly a time frame. I want to say more like two weeks if there is...or at least an initial assessment. Now whether or not it's a full psychological work-up... [LR34]

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SENATOR PANSING BROOKS: So since we've closed most of our institutions that really help and our prisons are becoming the go-to place for people with the most serious mental health illnesses, shouldn't one of the three...shouldn't a fourth core one be what to do and how to help with mental illness and what to do, because if we're waiting until the parole eligibility date, that's a long time in some people and some of those people are severely having major issues. [LR34]

SCOTT FRAKES: Okay, so to be clear again, if there are...I always drop back to Axis I because that's what I know, but I know that's not the right nomenclature in today's world, but those with the schizoaffective disorder and schizophrenia and bipolar, those people with what I think of as the more classic mental health needs, they are being assessed at the women's prison and at the Diagnostic and Evaluation Center on the front end so... [LR34]

SENATOR PANSING BROOKS: Within the first year? [LR34]

SCOTT FRAKES: Should be within the first...I was told once within the first couple weeks. I am not going to sit here and tell you that's accurate given our staffing resources. But it's...and it would depend on the symptoms that they are presenting and, you know, level of acuity. It could be immediate. We get safekeepers in from the county jails that are actively decompensated. They get immediate services. [LR34]

SENATOR PANSING BROOKS: I'm sorry, I don't know...I've heard you say safekeepers and I don't know what that means. [LR34]

SCOTT FRAKES: It didn't mean anything to me until I got here either. That is the term, I don't know if that is actually in statute but it's in our nomenclature, it is those that are still under the county's jurisdiction but the county can't manage them, don't have the services. [LR34]

SENATOR PANSING BROOKS: Okay. [LR34]

SCOTT FRAKES: Typically it's around behavior, although it can be around mental health needs as well. [LR34]

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SENATOR PANSING BROOKS: Okay, and I just have one last question. Why are we still housing the restrictive inmates at the Nebraska State Patrol (sic) and Lincoln Correctional Center? Wasn't the goal to have all the restrictive housing at Tecumseh? Or is that not right? [LR34]

SCOTT FRAKES: No, that was not the goal. [LR34]

SENATOR PANSING BROOKS: I thought that sort of helped pull it all together and... [LR34]

SCOTT FRAKES: I would like to believe that we can get to the point of where our long-term, longer term restrictive housing, those that need programming interventions would be housed at Tecumseh, so we may be able to get there someday and that may be how SMU West is best, most effectively used. But for short-term restrictive housing, all major institutions have to have some kind of space because there's just an immediate need and we couldn't put people in a car and drive them to Tecumseh. [LR34]

SENATOR PANSING BROOKS: Okay, and so isn't the Vera report supposed to be coming out with something on restrictive housing? [LR34]

SCOTT FRAKES: Yes, I... [LR34]

SENATOR PANSING BROOKS: And when...you don't know when that is? [LR34]

SCOTT FRAKES: Well, I've been just short a promise that it will be out before the end of October. They've just had a variety of their own staffing challenges and changes in leadership and it should have...you know, I was told I'd have it in May. And then I was told July. And then I just talked...well, e-mail exchange yesterday and: October. [LR34]

SENATOR PANSING BROOKS: Thank you for your time, Director Frakes, and for your flexibility on moving your time an hour later. It's very kind of you. I'm sorry we didn't get to you before you arrived at the Capitol, but we're grateful for your forthright answers and we

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appreciate it. And with that, it's the end of the LR34 Committee hearing for today. Thank you.
[LR34]

SCOTT FRAKES: Thank you. [LR34]

STEVE LATHROP: Thank you. [LR34]