Judiciary Committee October 25, 2019

LATHROP: Good afternoon. My name is Steve Lathrop. I am the state senator from District 12 in Douglas County. That includes Ralston and parts of southwest Omaha. I'm also the Chair of the Judiciary Committee. We're here today to have combined hearings on two different resolutions, LR197, which is a resolution put in by Senator Vargas, who is unable to make it today, but he's got a member from his staff here to introduce that resolution. And then LR237, which is a resolution I've introduced, it is a broad general resolution to examine issues related to Nebraska's correctional system. I will tell you that this-- the subject of LR237 has been for some time the-- the-- the difficulties that we're experiencing at the Nebraska State Penitentiary. We'll-- we may go broader than that, but generally speaking, that's our focus today. We have some people that are not frequent testifiers, so I need to go through a few things and maybe start by having the committee members introduce themselves. So we'll start with Senator Brandt.

BRANDT: I'm Senator Tom Brandt from Legislative District 32, which would be Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster Counties.

CHAMBERS: Ernie Chambers, District 11 in Omaha.

PANSING BROOKS: Patty Pansing Brooks, Legislative District 28, right where we're standing, in the heart of Lincoln.

LATHROP: Assisting us today is Laurie Vollertsen, our committee clerk. And Neal Erickson is to my right; he's one of the committee's two legal counsel. Our page today is Brigita. We are going to take invited testimony from three people and then we will have an opportunity to take testimony from others who are here today to testify on these resolutions. If you're planning on testifying today, you'll want to fill out one of the yellow testifier sheets at the back of the room and hand it to the page-- that's Brigita-- when you come up to testify. We'll begin testimony with an opening statement by each of the introducers, so Senator Vargas's office and myself. We'll then hear combined testimony on both resolutions from those wishing to testify. We will finish with a closing statement by the introducer if they wish to give one. If you testify today, please begin your testimony by giving us your first and last name and spell them for the record. If you have any handouts, we'll ask you to bring 12 copies and give them to the page as well. If you don't have enough copies, the page will make copies and distribute those to the senators. As a matter of committee policy, I would remind everyone, the use of cell phones and other electronic devices is not allowed during public hearings, though senators may use them to take notes or stay in contact with staff. At this time, I'd ask everyone to look at their

cell phones and make sure they are off or in silent mode. And with that, we will begin our hearings and we'll have Senator Vargas' office come up and introduce LR237-- or, pardon me, LR197. Good afternoon.

MEG MANDY: Good afternoon. Chairman Lathrop and members of the Judiciary Committee, my name is Meg Mandy, M-e-g M-a-n-d-y, and I am the legislative aide for Senator Vargas, who represents District 7, the communities of downtown and south Omaha, in the Nebraska Legislature. Senator Vargas apologizes for his absence today and thanks you for including LR197 in today's interim study hearing. And I'll go on by reading some of his comments about this interim study. LR197 is an extension of last year's LB739, which this committee heard last session. That bill sought to make a number of changes to the use of restrictive housing in our Department of Corrections. Part of LB739, the section that prohibited vulnerable populations from being put into restrictive housing, was amended into the committee's omnibus bill last session. We are interested in exploring solutions to the problems that we sought to address in the other sections of the bill, including significantly decreasing the population in restrictive housing, limiting the amount of time any inmate can be placed there without some kind of review that is inclusive of an inmate and, in general, improving the conditions for inmates in our correctional facilities. For brief context, I'll give background about the restrictive housing bill and the issues that are most troubling to us

and then quickly summarize last session's testimony on LB739. We know that Nebraska's high population in restrictive housing is directly related to the serious overcrowding issue in our correctional facilities. And while we understand the many challenges and, at times, dangers the department and its hardworking staff are facing, we must find ways to address the problems that have surfaced as a result of these challenges. In 2018, the average number of inmates in restrictive housing on any given day was 404 for a total of 1,856 that year. The average length of stay was 48 days. And for long-term restrictive housing placements, the average length of stay was nearly 117 days. Like many of you, our office has heard of instances in which inmates are in restrictive housing for months and even years. And as is true of the population in our prisons in general, nonwhite inmates are overrepresented in the restrictive housing population. The mental, physical, and emotional effects after spending time in solitary confinement are severe and lifelong. In the hearing for LB739, a former correctional officer from the Nebraska State Penitentiary here in Lincoln testified and it was his opinion that restrictive housing is overused and that it should only be used in extreme circumstances. He spoke of his firsthand experience working around inmates at NSP that had gone from general population to restrictive housing for a period of time and then come back out again, and he said that they were completely different people. Other testifiers at that hearing, including a mental health practitioner and an advocate for disabled

Nebraskans, talked about the psychological effects that occur when a person is left alone in an enclosed space, as inmates are in restrictive housing: hallucinations, anxiety, panic attacks, paranoia, anger, rage, perceptual distortions, and self-mutilations. Perhaps one could argue that those are acceptable punishments for inmates who are in prison, serving time for serious crimes, who have acted out, been violent, or instigated a major disturbance in a correctional facility. Even if you believe that to be true, that's not what's happening here in every case. There are inmates in restrictive housing in very small enclosures, some with more than one inmate in them at a time, not due to a serious behavioral infraction. They're there because our prisons are overcrowded and understaffed, dramatically, immorally, wrongly overcrowded and understaffed, and they suffer lifelong psychological consequences from their time in solitary confinement for it. They suffer for the state of Nebraska's failure to solve the overcrowding problem. We must come together and do something to right this wrong, not at the risk of the safety of the staff at the correctional facilities or the facilities themselves. I understand and respect that is a real concern; and I would assert that by acting and solving these problems in our correctional facilities, we would be better serving and protecting both the staff and the inmates in those facilities. We have a lot of smart minds here in the Legislature, on this committee and in the Department of Corrections and I believe if we put our heads together, we can find a way to resolve these issues. I know we all

want that and it's my hope that today's hearing can be an informative and productive part of these ongoing conversations. With that, I will end the testimony and open it up for any questions.

LATHROP: Thank you. I don't see any questions, but we appreciate the introduction of Senator Vargas' LR197.

MEG MANDY: Thank you.

LATHROP: Thank you. I am the introducer of LR237, and I'm simply going to make a couple of comments by way of introduction of that resolution. We put this resolution in some time ago, recognizing that the Department of Corrections was facing significant issues relative to overcrowding and significant issues relative to staffing. Probably the most difficult institution within the Department of Corrections, or the most troubled, at least as it relates to both of those two issues, is the Nebraska State Penitentiary. We have requested information from the department in anticipation of our hearing today. It is timely that an emergency was declared yesterday. We have the director here who will give some opening remarks and then I'll have some questions for him. Most of them will relate to the pen; some of them will be broader and relate to the system, the department generally, and-- and of course, the senators are going to have questions for the director as well. The director, it's my understanding, is going to start with an opening statement and then

we'll begin questions for the director. And with that, Director, you're welcome to come up and take a seat. Can you share one of those books with him? Oh, OK. Good afternoon.

SCOTT FRAKES: Good afternoon. Again, good afternoon, Chairman Lathrop, members of the Judiciary Committee. My name is Scott Frakes, F-r-a-k-e-s. I'm the director of the Nebraska Department of Correctional Services. I'm pleased to be here today representing the 2,100 men and women who make up NDCS. Successes achieved by the agency during my nearly five-year tenure have been largely, most in totally-- in total due to their time, energy, and efforts. Their contributions cannot be understated. I appreciate each and every person who has dedicated themselves to what is a very noble and necessary profession. Without our teammates, NDCS could not fulfill its mission: keep people safe. When I came to Nebraska, I brought more than 30 years of experience to this job, and yet I'm still excited to learn new things each and every day. Admittedly-- admittedly, there are some days that bring new challenges, but also possibilities for growth, change, and success. The items that are highest on my priority list include: (1) continuing to identify meaningful and lasting solutions to the current staffing shortage at NSP and other affected facilities. The decision to place a facility on lockdown is never made lightly. When done in response to a significant incident, the justification is apparent. When done as a proactive measure to ensure the safety of all involved,

the decision becomes an informed judgment call. The decision to place NPS-- NSP on lockdown two days ago was based on a number of factors. We track staffing levels in all of our facilities, with a particular focus on NSP, TSCI, and LCC/DEC, our high-security male facilities. Over the last seven months, NSP has experienced increased turnover, losing 70 protective services staff. At the same time, recruitment efforts were bringing in fewer qualified candidates. The facility hit a high of 85 vacant positions in July, roughly a 25 percent vacancy rate for the protective services staff. The hiring and recruiting bonuses announced at the end of July have helped turn things in the right direction but not quickly enough. The high level of vacancies have contributed to a number of issues: inability to complete staff training, reduced searches, challenges in carrying out travel orders, which we have to do. It is critical that we get inmates to primarily medical appointments. There are a few other things we do. So we've had to reach out and use a variety of resources outside of NSP to make sure that we get people to their appointments. We've had increasing reliance on staff not assigned to the facility primarily coming in to work overtime, often on weekends. I applaud their efforts and greatly appreciate that, but there are times when the level of experience and tenure within the facility gives me cause-- gives me pause. The mandatory overtime, which isn't new and it's not just limited to NSP, but at NSP, it has once again climbed to probably record levels at this point. And one of the factors that specifically led to me being

in a place to make this decision of yesterday morning was frequent modifications to operations with little notice. So we were-- because we-- until we knew if we would have enough staff to operate the facility safely and correctly, we were often canceling visiting and sometimes total movement, total movement for a few hours, even a shift, in some cases, for two shifts in a row. And that is disruptive to everyone that's involved in the operation, the facility. It has significant impact on the population, on the staff, and on the family members that are unable to visit and have the interactions with their loved ones. And that contributes to rising tension, in particular among the inmate population but also staff. So all of those factors and others were what I considered when I made this important and significant decision. They're all performance measures for prison safety and effectiveness. To address these issues, the following plan is being implemented. By declaring an emergency and notifying the two unions that are impacted, I was then able to move forward with direction to implement 12-hour shifts across most of the staffing. Doesn't make sense for all staff, but for all the protective services staff, food service, recreation, some other areas, 12-hour shift patterns allows us to get the coverage that we need to have operations, combined with going to a 12-hour operational day. Typically, prisons-- most prisons, anyway, operate on a day that includes movement from 6:30 or 7:00 in the morning until around 8:30 at night. It varies a little bit. It's about a 14-hour day. What we

will be at is actually from 7:00 a.m. to 7:00 p.m. will be the active part of the day and from 7:00 p.m. to 7:00 a.m., there will be only escorted movement outside of cells. It's not a good long-term solution. It is an effective short-term solution. It will allow us to have consistency. It will allow us to deliver the clinical treatment and cognitive behavioral programming that we need to deliver. It will allow us to maintain a visiting schedule that we can deliver on. And again, it has to be-- needs to be temporary. We had already made a decision last month to replicate what we've been doing at TSCI for now over a year and a half, and that's to hire people in Omaha and bring them to NSP by van. So we had moved 40 positions. At this point, about ten of those are filled. Six of those start at academy this week. And we will continue to work hard to fill those positions. We've had amazing success in being able to fill those positions with now 80 going to TSCI. This would bring 40 here to NSP. And then we've announced some pretty amazing, significant hiring and recruiting bonuses: $10,000 to bring in new corporals to TSCI and NSP; and a corresponding $10,000 bonus to staff members that recruit and bring in new talented staff for us, new corporals, so trying to make sure that we not only incentivize our new staff but that we continue to make sure that we recognize and value staff that we have. And then equally critical is partnering with FOP to find long, long-term solutions. FOP is the representative of our protective services staff and, again, corporals being one of our key areas, key vacancy issues. Short-term

resolution of the emergency conditions depends on both increased hiring and retention. The pay increases for FOP staff and the longevity-- longevity merit pay for-- and other NSP staff that went into effect in July will help with retention of qualified, tenured staff. The hiring bonuses and recruitment bonuses will help us to attract and retain new staff. I do want to be clear. I did not initiate the actions at NSP because we are in crisis; I took the action and made the decisions to avoid placing us in crisis. The second priority item on my list entails getting inmates prepared for parole. This has been a major focus and it will continue to be. We continue to fine-tune our processes, getting inmates assessed at intake, identified needs, getting them engaged, using every tool and approach that we can think of to get people to recognize that they can make good use of their time while they are with us. Some of our greatest strides have happened as a result of our partnerships with the VLS grant participants. A new report was released this week from UNO, which I have handed out copies and have been waiting patiently but excitedly for that report, and that report actually does some analysis of the effectiveness of the VLS programs. Our reentry teams are doing exceptional work with inmates from the moment they're admitted into our department throughout their sentence. The inmates are receiving their reentry guides and workbooks that we developed last year and indications are they are being used by people. We've improved our reentry planning process and working hard to give people,

again, the tools, the guidance, and work in partnership with our population because that's the best way that reentry works. We need the buy-in from the people that are leaving our system. Inmates are being directed to numerous resources for housing, substance abuse, and other treatment providers, employment opportunities and other things that are needed to allow them to get back into a stable environment and back on their feet. One of the most recent successes is the completion of the pilot project at NSP, which involved bringing a mobile unit from the Department of Motor Vehicles and enabling inmates to obtain their state IDs so they'll be ready to have them upon release. And that's part of what will ultimately be a program across the agency by next spring so that we will be able to get everyone out that agrees to cooperate with at least an ID card, if not their driver's license, if they have one that's valid. The final item on my priority list includes the construction projects that are underway. We opened the 160-bed unit in April. It's the female living unit. It is truly a model unit for this agency and I think one that would be respected across the nation in terms of the right kind of design, especially for community corrections. I'm greatly appreciative of the $49 million that was appropriated for the new 384 beds at LCC. That project is critical to our needs as an agency. Progress continues on the project to join LCC and DEC into one facility, referred to as the Reception and Treatment Center, and the project is going well. Bids came in. Everything's moving. Very happy about that project. And the new

project at the penitentiary is also underway, a project that was-- actually has been underway now for 18 months, the newer power plant. It came on-line and is working and now we have construction beginning on the 100-bed dormitory there at NSP. And we have a new building at Tecumseh, part of the Cornhusker State Industries. It's about 1,100 square feet, slated to finish a year from now, and that's a building that will be used to run canteen packaging. And our Cornhusker State Industries-- Industries will take over the canteen operations for the department. We've had a lot of success in the last five years and, yes, we've had a lot of challenges. I hope that I can share some of our other achievements-- achievements with you as well as speak to those challenges. And with that, I think it's probably time for me to start answering questions.

LATHROP: Yes, it is. Director, I want to start, before I begin asking questions, by acknowledging that my hope that the declaration of an emergency yesterday at NSP is the beginning of a turnaround process, and I'd like to visit with you about that. There seems, in my experience and probably yours, I think you'd readily admit, that there are two significant problems at NSP that are found in some of the other institutions but probably not together as well or as bad as they are at NSP, and that's overcrowding and staffing issues. Would you agree with that?

SCOTT FRAKES: I think NSP, yes, would lead that combination.

LATHROP: Yeah. You have problems at Tecumseh and at LCC on staffing. Some of them, LCC, you have overcrowding, but at the pen you have both in a-- in a significant way.

SCOTT FRAKES: Yes.

LATHROP: OK. I want to, to the extent that-- that your emergency declaration and the plan that was articulated yesterday with that declaration suggest the beginning of a turnaround, I'd like to maybe set a baseline so that the Legislature is in a place to measure whether improvements are-- are being taken or whether we can see the improvements that you're doing and whether we're seeing a turnaround. I want to start by talking about the staffing difficulties, and that's not to-- I think it's important that we understand where they're at staffingwise right now at the beginning of the-- of what we all hope is a turnaround. OK? You have vacancies at NSP--

SCOTT FRAKES: Yes.

LATHROP: --in the custodial or the-- the security staff. What are those vacancies today?

SCOTT FRAKES: OK, I'm going to go with round numbers because I'm going to work off the top of my head. The-- we are at-- we need to hire about 30 more officers for the positions that we moved to Omaha. We

need about 30 more corporals at NSP. We have approximately 30 that are in the pipeline. When I say the pipeline, that's somewhere between a job offer has been made to they're somewhere in their academy training already, so-- and that's a pretty good assessment for that-- that piece.

LATHROP: Is that-- do I take from that, that you're down 90 protective staff?

SCOTT FRAKES: Out of the roster, yes.

LATHROP: And how many protective staff positions are there when you're fully up and running?

SCOTT FRAKES: 350.

LATHROP: So you're down 90 of 350?

SCOTT FRAKES: Yes, but, again, out of the roster, so there is a difference between how many do I need to hire and how many are actually able to report and go to work, so it's two different sets of numbers.

LATHROP: OK, I want to make sure that we're talking about the same thing. If-- if you had in a typical-- if you had NSP fully staffed with corrections officers so that no one did any overtime, you-- you know how many positions there are for corrections staff?

SCOTT FRAKES: 350.

LATHROP: 350.

SCOTT FRAKES: Yeah.

LATHROP: And you're down 90?

SCOTT FRAKES: Ninety roster vacancies.

LATHROP: OK.

SCOTT FRAKES: I've got 30 that are hired and in the pipeline, so I don't need-- I need to find about 60 more people to actually come to work for us right at this moment, just in that protective services. They have vacancies in other areas, as well, but--

LATHROP: Where are the 30 that you're-- you're talking about? Are these guys that you're hiring in Omaha that are going to--

SCOTT FRAKES: No.

LATHROP: --take a bus down here every day?

SCOTT FRAKES: These are people that are slated to start the next academy, that started the academy on Monday, or they're already at academy and being trained or even probably a small group, six or eight, that are at the facility but not yet done with their on-the-job training and field officer training pieces, so they're not deployable.

LATHROP: OK, well, let me try to-- excluding the people that you have in the pipeline, you're down 90 and you're--

SCOTT FRAKES: 60.

LATHROP: --telling me you have--

SCOTT FRAKES: 60.

LATHROP: That-- that's 90 minus the 30 you have in the pipeline.

SCOTT FRAKES: Exactly.

LATHROP: OK. What's been your-- I think you mentioned this in your press release that you had a significant amount of turnover recently in custody staff at the State Pen. What's been your turnover rate for custody staff this year?

SCOTT FRAKES: I think we're-- for the agency, we're trending at about 30 percent. I can't give you a trend number for NSP off the top of my head, but again, 70 people in seven months, just protective services, so pretty significant number. We had a great number; we had a great month in September, only three people. I was very optimistic that if we could continue that path-- because that's a big part of this equation. It's not just hiring. It's keeping people. It's always been the math, so.

LATHROP: Right, but if we just--

SCOTT FRAKES: We lost eleven so far in October.

LATHROP: Sure. If we just talk about NSP for the moment, I get that you have a-- an across-the-agency, which would include administration and so forth. The number is actually higher at NSP for security staff, isn't it, higher than 30 percent?

SCOTT FRAKES: It's higher than 30 percent, yes. Yeah.

LATHROP: Is it higher than 35 percent?

SCOTT FRAKES: I don't know off the top of my head and if I say a number, you're going to say that you said.

LATHROP: Well, can we agree it's somewhere between 30 and 35 percent--

SCOTT FRAKES: Yes.

LATHROP: --has been the turnover this year for your-- your--

SCOTT FRAKES: That's what it's trending for, yes.

LATHROP: Do you do any kind of an exit interview with these security staff that are leaving?

SCOTT FRAKES: We offer both on-line and it's open for people to do an in-person. We don't have great success with exit interviews, so, in terms of people.

LATHROP: But are all these folks-- all these folks that are leaving have an opportunity to talk to you about why?

SCOTT FRAKES: They do.

LATHROP: Do you feel like you have a handle on why they're leaving NSP?

SCOTT FRAKES: I have a good sense of the collection of reasons: the overtime, lack of control over their schedule, not really understanding how difficult the work can be. And there's a fair number, and I don't-- I don't have a percentage off the top of my head, but a fair number that we decide that it's not a good fit.

LATHROP: OK, that's less often. More-- more times than not, it's people going, I'm done with the-- I'm done with the overtime and the mandatory overtime, right? It's sort of a choice they make?

SCOTT FRAKES: Yeah, it's-- that's the majority for-- for certainly.

LATHROP: OK. When you are-- you mentioned different levels and I want to talk about you can be fully staffed on a given day, you can be-- what are-- what are the levels--

SCOTT FRAKES: Minimum--

LATHROP: --minimum staffing and below critical staffing?

SCOTT FRAKES: --and critical--

LATHROP: Can you give us that definition so we all know what we're talking about?

SCOTT FRAKES: The minimum staffing level is the number of people that it takes to staff, all of the posts required at any given time of the day to carry out the operations that need to occur. And it's a-- it changes by shift; it changes by day of the week. It's going to depend on is there medical need, is there-- is there need for help-- movement to health services, are there specific programming needs, all the other things that can occur during that period of activity and movement that occurs. So the critical staffing is the minimum number of people it takes to allow for any movement outside of cells and still do that safely. So you can reduce your minimum staffing by closing visiting, is an example, a program area, recreation, access to yards; you continue to remove work areas and then use those staff to fill other vacancies. And at some point, you hit the critical level where you no longer can safely have people outside their cells.

LATHROP: Can you give us an idea over the last couple of months how long you-- how many occasions you've had to be below critical staffing levels?

SCOTT FRAKES: Not below critical. I think below minimum, I would say that it's happened at least 15 times and that's probably considered--

LATHROP: OK. It's a common occurrence.

SCOTT FRAKES: It has become a common occurrence at NSP.

LATHROP: And just so that we understand, you have been getting security staff from other facilities to come in to try to avoid that.

SCOTT FRAKES: Yes.

LATHROP: And notwithstanding those efforts, which I-- I think we can all appreciate, can't make this job easy, but notwithstanding those efforts, you still have-- fall below the critical staffing levels.

SCOTT FRAKES: Yes.

LATHROP: And then there's modified operations where movement is restricted.

SCOTT FRAKES: Yes.

LATHROP: What happens during modified operations to me, the inmate?

SCOTT FRAKES: Well--

LATHROP: How am I going to experience modified operation?

SCOTT FRAKES: If-- it's a spectrum, so it may mean that there's not access to the gymnasium or there's not access to law-- to the library/law library, that there's not access to the recreation yards, that work areas are not going to run for a time period, then-- and

visiting. So those are the common areas where we can look at and say, can we make the decision at this point in time to not staff those areas and not allow movement to those areas? Then once we've done that, then the question becomes, is there any other post; are there other staff that have more ancillary duties; someone who does key control as their primary duty, can they be utilized to help staff a post? So we go through all of those resources. When you've utilized all those and you're still now below the staff that it takes to safely operate and have movement, then we begin to actually restrict movement outside the cells. The first step may be that we limit movement-- movement just to meals because it's always easier to feed outside the cells if possible. But depending on the staffing levels, we may make the decision to not have movement outside the cells, at which point then we have to feed people at their-- pardon me. We have to feed people at their cell, pretty much do everything that we do. And then it becomes a-- at that point, we're probably hitting the lockdown level of description. NSP is somewhat unique in the terms of it has 600 minimum-custody beds housed in dormitories and, you know, 700 inmates that are in higher security actual cells. So dormitories are really difficult to lock down. You can limit movement to the dormitory, but-- thank you very much-- but you don't have the same constraints that you do at higher security.

LATHROP: So as an-- as an inmate, I'm going to experience restrictions in two different ways. One would be modified operations where I would be limited, might, I, as a particular inmate, not have-- may not have any movement. Some inmates may have limited movement to-- to the dining hall but not to programming, to the dining hall but not to the library or the gym.

SCOTT FRAKES: There's also a day room, there's other things, so it's-- I don't know that there would be a situation where someone will-- if there's movement outside of cells, there's probably opportunities for everyone that has movement to have movement, if we're on that level of modified. It's when we reached the point of where we say, sorry, we're not going to have movement outside the cells, then everyone--

LATHROP: Which happens not un-- it's not uncommon at the NSP currently.

SCOTT FRAKES: That level is a little less common and I'm not going to give you a number off the top of my head. We've done a lot of modified operations. We haven't done as many, nearly as many--

LATHROP: You did-- you did, in response to a letter I sent in August, send a list of some of that happening systemwide. It seems to happen at LCC, Tecumseh, and the State Pen primarily.

SCOTT FRAKES: Those-- those are the three locations.

LATHROP: Right. And many times they were below critical staffing level in that summary you gave me for a one-month period of time.

SCOTT FRAKES: Correct.

LATHROP: And-- and when that takes place, no one's moving; none of the inmates are moving.

SCOTT FRAKES: Except under escort, direct observation, and-- yeah, very little. We're not going to stop someone from-- that needs to go to the clinic or, you know, has some-- if someone has a legal meeting with their lawyer or those kind of things, we'll make sure we escort them. But pretty much all the normal operations are brought to the cell front.

LATHROP: OK, and that, that's what we would call lockdown, which is what happens below critical staffing levels.

SCOTT FRAKES: Yes.

LATHROP: And that happens at NSP, Tecumseh, and LCC primarily.

SCOTT FRAKES: Yeah, and I haven't seen-- haven't seen a lot at LCC. And often what we see at Tecumseh is short-- well, I would call them short periods of time, a couple hours, two or three hours, because of the fact that they have-- Tecumseh is unique in that it actually has

about eight operating shifts right now with all the people that come and go from Omaha.

LATHROP: Right. Maybe we can stop and take a second to talk about that. You've hired a number of corrections officers in Omaha. They will get on a bus in Omaha, take the hour-and-a-half trip down to Tecumseh, work five hours, get on the bus and take the hour-and-a-half drive back to Omaha and be paid for eight hours.

SCOTT FRAKES: Pretty close. It's--

LATHROP: OK.

SCOTT FRAKES: They're on vans and it's about an hour and ten minutes and then they have a roll call and then they walk to their posts. But it-- the math comes out about the same.

LATHROP: OK. I said bus. It's a van. I said an hour and a half and it's-- the-- the drive may be less than that; might be longer than that in the winter. But these guys are working basically five hours for you and getting paid for eight.

SCOTT FRAKES: That's correct.

LATHROP: And that's-- notwithstanding those efforts, you're still having trouble meeting staffing levels at Tecumseh.

SCOTT FRAKES: That is correct.

LATHROP: And you're trying to implement similar programs at NSP.

SCOTT FRAKES: Yes,

LATHROP: That's part of what I understand to be part of your plan today. You are-- and I could tell from the information you gave me about when you were getting to low staff levels. It looks like people are providing you, or at least the warden, with a report about when they get below minimum staffing levels set. Is that right?

SCOTT FRAKES: That's right.

LATHROP: And it's sort of a narrative of what's going on at the time. They may say somebody didn't show up; we got two people who are AWOL. I saw-- that appears to be some people don't show up for work anymore. You have some people--

SCOTT FRAKES: It's not new but yes.

LATHROP: --some people that walk off and just say, I'm not doing this anymore. That happens. And then you just run out of people that you can mandatory overtime.

SCOTT FRAKES: Correct.

LATHROP: And when that happens, then you get to modified operations or-- or this lockdown category. All of this suggests significant problems with staffing.

SCOTT FRAKES: Yes.

LATHROP: And, Director, I want to ask you a question. We-- we know in the last session we all paid very close attention to the fact that the FOP went to the CIR with the department. They got an Opinion. The administration continued to negotiate with them and then we ended up with a contract.

SCOTT FRAKES: Correct.

LATHROP: At about the same time, you implemented a process for a $3,000 signing bonus.

SCOTT FRAKES: Well, about the time that those raises went into effect, yes.

LATHROP: Yeah, so we've had these two-- these two events that hopefully would solve the problem.

SCOTT FRAKES: Or move us in the right direction, at the very least.

LATHROP: But it didn't solve the problem.

SCOTT FRAKES: Again, I-- like I said, if it wasn't for the level of turnover at NSP, we would have solved the problem. But, you know, when you have a spike in turnover, then it negates--

LATHROP: Really, you're caught in a spiral.

SCOTT FRAKES: Sometimes.

LATHROP: Until you get the staffing level up, you're going to have turnover. The mandatory turnover-- the mandatory overtime is driving people out of there and you can't get ahead of it. That be a fair assessment?

SCOTT FRAKES: Feels that way.

LATHROP: And that's notwithstanding the fact that you're offering $3,000 signing bonuses and they got a modest increase in income off of the last contract.

SCOTT FRAKES: Some got a significant increase in income off the last contract. It was one of the bigger--

LATHROP: The people that have been around for a long time.

SCOTT FRAKES: Yeah, so one of the biggest overall wage-increase packages in a long, long time.

LATHROP: Worked out pretty well for the people that hadn't been getting step increases. But for the new hire, you are competing against the county jails.

SCOTT FRAKES: Not really. I know that's the mythology, but it's not really true.

LATHROP: You know, I was up in Sarpy County yesterday and I'll just share this because I don't think it's a myth. I had a-- an individual that works at the jail tell me that they put an ad out. They needed 2 people and they had like 200 applications. And when I talked to staff at the Department of Corrections, I'm told that they are leaving. Mandatory overtime is driving them to Walmart or anywhere else besides Department of Corrections. But a lot of these people who are trained staff are leaving to go work when an opportunity opens up at the county.

SCOTT FRAKES: Again, that's the story, but the-- the data doesn't seem to support it. But we have a hard time getting, you know, really firm information on it. What I do know is on Monday someone left Douglas County and came to work for us as an officer. I don't know all the other details, but--

LATHROP: He might have been moving to Lincoln. We don't--

SCOTT FRAKES: It's "she," but it's--

LATHROP: She?

SCOTT FRAKES: Yeah.

LATHROP: We don't know.

SCOTT FRAKES: Yeah.

LATHROP: In any case, you now have a plan that involves some bonuses and-- and I want to talk to you about the $3,000 bonus. The one that you have in place right now, if I come to work at the department as a corrections officer and I've seen the big sign out in front of the pen and the big sign at Tecumseh-- when we toured that this summer, it says $3,000 hiring bonus, right? For me to get that, to qualify for that, do I have to work a whole year there?

SCOTT FRAKES: Yes, to get the entire bonus. It's--

LATHROP: And do they do that--

SCOTT FRAKES: It's paid out in three payments.

LATHROP: OK. Pardon me for interrupting. Director, is that paid over the course of the year or is it paid at the end of the year after I've stayed for three-- for an entire year?

SCOTT FRAKES: It's paid out in three payments.

LATHROP: During my first year?

SCOTT FRAKES: Yes.

LATHROP: So I'll get $1,000 after I've spent 4 months there, another $1,000 after I've been there 8 months, and then at 12 months I'll get my last installment.

SCOTT FRAKES: I think it's a little bit different math, but that's the exact math that we're using with the $10,000 bonus.

LATHROP: Which is?

SCOTT FRAKES: A thousand every four months.

LATHROP: A thousand every four months?

SCOTT FRAKES: Actually it's $1,111.11.

LATHROP: OK. So I did-- I tried to do the math on this and when a person works 40 hours a week, they're-- they're working a little bit more than 2,000 hours in a-- in a year's time.

SCOTT FRAKES: Correct.

LATHROP: Right. And if I'm gonna give them $3,000, assuming all they do is work 40, then I'm giving them basically a buck and a half increase or-- or incentive. And you've tried that for-- how long has that been-- that plan been in place, Director?

SCOTT FRAKES: July 31.

LATHROP: Of this year?

SCOTT FRAKES: Yeah.

LATHROP: OK. I think we wouldn't be here if it was working or if it was sufficient.

SCOTT FRAKES: We attracted 100 people fairly quickly.

LATHROP: OK. They all passed and started working?

SCOTT FRAKES: We hired 100, yeah, hired 100 people, yes, hired 100 corrections corporals.

LATHROP: OK. They still have to go through the training?

SCOTT FRAKES: Well, I think we have some graduates at this point, I believe.

LATHROP: OK.

SCOTT FRAKES: Yeah, so--

LATHROP: And I'm trying to remember something that might have been in the IG's report about a bonus program where you offer $2,500 and within two years, you were down to a third of those people still there?

SCOTT FRAKES: That's correct.

LATHROP: OK, so they're not-- I mean, that-- the $3,000 bonus may get them there, but it doesn't keep them loyal or OK with the mandatory overtime.

SCOTT FRAKES: Correct.

LATHROP: OK. Would you tell us what the plan is? Well, you're going to meet with the FOP, is that right?

SCOTT FRAKES: That's part of this, yes.

LATHROP: OK. And that actually isn't you, is it? That's the--

SCOTT FRAKES: No.

LATHROP: --Department of Administrative Services?

SCOTT FRAKES: Correct--

LATHROP: OK.

SCOTT FRAKES: --labor relations.

LATHROP: Do you have a judgment about what kind of an increase in the hourly rate would be necessary for you to fill all the vacancies in corrections staff within a year?

SCOTT FRAKES: No.

LATHROP: So you don't know if $0.50 an hour or $4 an hour or what it's going to take?

SCOTT FRAKES: No. But I do believe that a $10,000 hiring bonus spread out across three years both incentivizes new employees and offers an

ongoing incentive across three years, so-- and at that point that they reached the three-year mark, they then will be at the 5 percent pay increase from step increases, which would help offset the fact that they're no longer getting the bonus money, plus whatever else comes in terms of any-- if there are new negotiation-- new-- new negotiated compensation.

LATHROP: OK. How many hours are these guys putting in? Most people are limited to 40 hours a week and they go home at night at 5:00. I'm sure you don't. I know these guys don't. How many hours do they typically put in, in a week?

SCOTT FRAKES: I don't have a number off the top of my head. We know it's a lot.

LATHROP: I-- I just got to-- now I'm going to editorialize, if I may. I look at the $10,000 bonus and the $3,000 bonus and it's like offering them a dollar an hour more than what they're making if they stick around, but I don't see how that solves the problem.

SCOTT FRAKES: I didn't-- don't expect it to solve the problem. I expect it to help us move the dial in the right direction while other things are done. I can't give pay increases. I can--

LATHROP: And neither can we, by the way.

SCOTT FRAKES: Yes. I can do bonuses. I can, you know, come up with other incentives. That's-- so that's what's within my authority and power.

LATHROP: OK. Well, then let me ask another question about the plan. Does the plan include, in addition to the bonuses that you've described, Director, some renegotiation of the contract with the FOP or NAPE, depending upon the employees involved?

SCOTT FRAKES: DAS and FOP are beginning conversations and that's how much I know at this point.

LATHROP: OK, but we can take away from this two things are happening. One is the bonus is happening, and that's not subject to the conversations between the FOP and DAS. And in addition to the bonuses, there's some dialog happening between the FOP and the Department of Administrative Services.

SCOTT FRAKES: Pardon me. Yes. And, yeah, you said bonuses, so hiring and recruitment both.

LATHROP: OK. Do you have a time line for turning around the staffing issues? What-- what should we-- if we are to provide oversight of the Department of Corrections on this committee and in the Legislature, what time line can we expect that your staff will no longer be working mandatory overtime?

SCOTT FRAKES: No, I'm-- I'm more focused on being able to return to a more traditional operating day and stopping the mandatory 12-hour shifts and I'm looking at less than six months.

LATHROP: In six months, what will-- what will-- what will happen and what won't change?

SCOTT FRAKES: In six months, we will have filled enough positions that we can operate the facility consistent to where we were a few months ago in terms of the length of the average day and the activities that we would normally do. And there should be a corresponding reduction in mandatory overtime as well, but I-- I can't give you a number off the top of my head, and be able to return to the voluntary 12-hour shifts that were in place two days ago, the 8-hour shifts that were in place two days ago, and people going back into their bid positions.

LATHROP: You made an observation a second ago, Director, that you can't provide raises, and neither can this Legislature, which makes the staffing issues particularly difficult for us because we-- we weren't-- we don't get to legislate what the hourly rate is; we don't participate in those negotiations. But I don't-- and I know you can't either, like somebody else is doing this and telling you the way it's going to be.

SCOTT FRAKES: I influence it. I definitely have influence.

LATHROP: OK. Well, then I'll share-- I'll share with you my perspective. I don't know how you get there without bumping wages up by bumping up the hourly rate so that you can compete in the labor market and bring people in. I don't know how these bonuses get that done. I hear you telling me that there's some negotiation underway. I don't know how you do it for less than $3 or $4 an hour more.

SCOTT FRAKES: Well, to be clear, I said conversation, not negotiation, so--

LATHROP: OK

SCOTT FRAKES: --let's be clear on that.

LATHROP: OK.

SCOTT FRAKES: There is a difference, so. And I appreciate-- I appreciate what you shared.

LATHROP: Yeah. And I-- as you know, I've been to almost every one of your institutions, some of them more than once since the-- since we adjourned the last time. And I look at the overcrowding issues, I look at the restrictive housing concerns that you've heard expressed at least earlier today, and to me, the first problem that has to be solved is the staffing, because we can't get guys to their programming on a-- in a timely fashion; we can't get ahead of the mandatory overtime that's causing the-- causing these people to quit. I don't

know how we do it until we raise or provide for a decent wage for these people so that your department can be competitive in the labor market. You can comment if you want; otherwise, I'll move on.

SCOTT FRAKES: OK.

LATHROP: All right, I'll move on. To be clear, you believe we'll be back to three eight-hour shifts within six months and that we won't be on modified operations or we won't be below critical staffing levels? That's-- that's a measure that we can hold you to in six months?

SCOTT FRAKES: Yes.

LATHROP: And-- and to be clear, I don't hear you telling me that will end mandatory overtime. But I can tell you, people up on this side of the desk have concern about that.

SCOTT FRAKES: I understand.

LATHROP: OK.

SCOTT FRAKES: I would like to believe that we greatly reduce it, and, yeah, if we have good fortune, maybe we can get to where there's no mandatory overtime. We'll still have-- we'll still have overtime, but it would be a wonderful thing to not have mandatory overtime.

LATHROP: OK. Director, I want to have you share with us. We've been talking about the corrections people, the-- the security staff. Can

you tell us how we're dealing with behavioral health and with substance abuse counselors and the like?

SCOTT FRAKES: You know, despite our best efforts, it seems like we've always had somewhere between 30 and 35 vacant positions-- we fill one and someone else moves on-- out of the 159 positions that are dedicated to behavioral health. We've had an uptick recently. I think we may be at 40 vacancies. So we've had-- I think we are down 6 psychologists out of the 20 or 21 positions that we have. We're down a number of licensed mental health providers. I'm not-- I don't have a number on chemical dependency counselors off the top of my head. I do know we have several vacancies, but I don't know a number, so always, again, competitive markets. I-- wages are not the issue in my mind for the psychologist. We have-- well, I realize you look at me, but we-- we pay well and we attract good talent. It's just an incredibly competitive market and there's not enough people for all the opportunities. I realize you would come back and say, well, then you have to be competitive in terms of-- but when you look at the package that we offer, that's why people do come to us as opposed to private practice, because there are certainly advantages to practicing medicine or mental healthcare in a state agency. So that's where we're at.

LATHROP: Yeah. I-- the one thing that I've been impressed with over the summer and the time that I've taken to talk to a number of people

that work in these facilities and the inmates awaiting programming is how many of you have to go through clinical programming and substance abuse, like a lot of those people in there have to go through substance abuse in the time that they have. And being down substance abuse counselors, mental health professionals, and psychologists is creating a backlog in the programming, as well, is it not?

SCOTT FRAKES: We're not--

LATHROP: Or at least in the-- and assessments.

SCOTT FRAKES: No, I don't-- I don't think we have any assessment issues. The-- I think we have slipped a little bit in terms of getting people in as far in advance of their parole eligibility as I want, which would be about somewhere in that two years, 18 months before parole eligibility. So I've got people now that are getting closer to their PEDs before they get their opportunity looking at that.

LATHROP: OK. They're not-- they're not involved in collective bargaining, are they?

SCOTT FRAKES: The LMHPs are represented by NAPE. The CDCs are represented, if I remember correctly, by NAPE, not the psychologists.

LATHROP: OK. To this point in time, we've been talking about the staffing issues. I want to visit with you about capacity. So maybe for the benefit of people that are here, Senator Chambers and I certainly

know this because we were around for the hearing in 2014, but I want to talk a little bit about the history. And it's not so much of a question, but in 2006 the state-- the department had a facilities need study done that projected the population and then suggested that we needed to build like 1,300 new beds. Do you agree that's what it-- roughly?

SCOTT FRAKES: I don't remember the exact numbers, but I do remember the study referenced.

LATHROP: And the administration at the time said we're not building the beds; we're going to-- we're going to try to make do.

SCOTT FRAKES: Yes.

LATHROP: And of course, we saw what happened in the hearings that-- that took place in 2014 where we were miscalculating sentences, setting up furlough programs, and pressuring the Parole Board to move people out. You came in and you were already behind the eight ball in terms of capacity.

SCOTT FRAKES: True.

LATHROP: How many more prisoners or inmates did you have than you had capacity when you arrived here?

SCOTT FRAKES: Design capacity, what, I think we were at 150 percent, roughly, I think, 2015. So I don't remember what the-- the-- the split is there, 1,500 inmates at least.

LATHROP: OK. You were-- did I understand you guys hit 5,600 last week?

SCOTT FRAKES: Hit even higher than that this morning.

LATHROP: Yeah. What's the number today?

SCOTT FRAKES: 5,620.

LATHROP: And in terms of design capacity, what's that-- what's that a percentage of, well over 160?

SCOTT FRAKES: I don't know about well over, but at least 160, yeah,

LATHROP: OK.

SCOTT FRAKES: The math keeps changing because of the new beds and I don't have the new numbers--

LATHROP: Right.

SCOTT FRAKES: --ingrained in my head.

LATHROP: That is heading the wrong direction for sure.

SCOTT FRAKES: Absolutely.

LATHROP: OK. Then we had a study done in 2015, another facilities study.

SCOTT FRAKES: Fourteen, I think, master--

LATHROP: Yeah, right.

SCOTT FRAKES: Maybe the final date on it is '15.

LATHROP: That was done by Dewberry?

SCOTT FRAKES: Yeah, excuse me.

LATHROP: And if you'll look at that folder that we left on your desk, that report is found at Tab 5, at least the executive summary. I'm not going to try to go through the entire thing with you.

SCOTT FRAKES: It's a lot bigger than that, yes.

LATHROP: Yeah, it is. That report, by the way, made some projections.

SCOTT FRAKES: It did.

LATHROP: We've already exceeded what they expected us to be at, what they projected for 2019--

SCOTT FRAKES: That's correct.

LATHROP: --by a few hundred.

SCOTT FRAKES: A couple hundred, yes.

LATHROP: You-- as an aside, you were going to have another study done on population projections.

SCOTT FRAKES: It's in motion.

LATHROP: Yeah. When can we expect to see that? I thought it was going to be done in October. I thought it was going to be done in the spring and now October. When-- when can we expect that, Director?

SCOTT FRAKES: I'll have to get back you on that again and see where things are at. I don't have a-- don't have an answer off the top of my head.

LATHROP: OK. Have you seen a draft of that study yet?

SCOTT FRAKES: No.

LATHROP: So no one's even sent you a draft or--

SCOTT FRAKES: No.

LATHROP: --an opportunity for you to review it, offer input? None of that's happened?

SCOTT FRAKES: Not yet.

LATHROP: OK. The purpose of that is to tell us what we're going to need in the out years for capacity?

SCOTT FRAKES: The purpose of it at least is to get an assessment of where another independent source thinks the population numbers might go. That's--

LATHROP: OK. And this--

SCOTT FRAKES: That's the first piece.

LATHROP: Pardon me. That-- that report prepared by the Newberry group, that was done at your request?

SCOTT FRAKES: The one we're talking about right now? Yes. Yes.

LATHROP: Yeah. And so that broke it down into-- they projected the population and then they broke it into three phases, construction phases.

SCOTT FRAKES: You're talking about this report.

LATHROP: Yes, sir.

SCOTT FRAKES: I'm sorry. This one I inherited.

LATHROP: Oh, the Newberry report?

SCOTT FRAKES: Yes.

LATHROP: OK.

SCOTT FRAKES: Yes. Thought you were talking about one--

LATHROP: But you haven't done your own facilities study?

SCOTT FRAKES: Not facilities studies, no, just population forecasting.

LATHROP: OK, because we know this one actually was short.

SCOTT FRAKES: Was short, but not as short as, unfortunately, the CSG work.

LATHROP: OK. All right. Yeah. You got-- you got a lot of people, a lot more people coming in than you got leaving. This suggested two phases of construction.

SCOTT FRAKES: Three even.

LATHROP: Three-- I think they said the first two are the first ten years and beyond that, it's hard to project.

SCOTT FRAKES: Exactly.

LATHROP: OK, but they did offer something for the-- the out-years beyond ten.

SCOTT FRAKES: They did.

LATHROP: In this-- I'm going to try to find a page here. Well, just so that people understand, when you go over 160, you have some facilities that are considerably more than that.

SCOTT FRAKES: True.

LATHROP: Where is NSP at today?

SCOTT FRAKES: Oh, I bet they're sitting at-- trying to quickly do-- 190, 185, 190.

LATHROP: OK. They've been over 190, haven't they, or at 190? I think the report that I had from July or June was at 190.

SCOTT FRAKES: OK.

LATHROP: And it's a little bit-- as this population has gone up, are they all over at D&E, or are they filling in to NSP?

SCOTT FRAKES: There's not room for-- don't think there's room for anybody more at NSP. I think we've maybe used up all the beds. So D&E, unfortunately, is back up again to 500.

LATHROP: Five hundred percent?

SCOTT FRAKES: Five hundred inmates. It's--

LATHROP: Five hundred, OK.

SCOTT FRAKES: Which is--

LATHROP: Jeez.

SCOTT FRAKES: Yeah. Yes, agreed.

LATHROP: It's at 320-- 325 percent of design capacity?

SCOTT FRAKES: If that's what the correct math is. I don't have it off the top of my head.

LATHROP: At OCC, Omaha-- or OCC is at 200?

SCOTT FRAKES: Or right around.

LATHROP: OK. I want to-- I want to have you look at the--

SCOTT FRAKES: Although you've been to OCC, so I think you would agree that OCC and NSP are two very different places and that--

LATHROP: I would agree.

SCOTT FRAKES: --it's a great example of where design capacity isn't quite as clear in terms of how you measure the health of a prison.

LATHROP: Perhaps, but you can-- your staff, your-- your security level is much lower at OCC and you have an open yard.

SCOTT FRAKES: Yeah.

LATHROP: People have a lot more freedom than-- than do the people over in--

SCOTT FRAKES: Fully staffed? Yeah--

LATHROP: Right.

SCOTT FRAKES: --better-behaved inmate.

LATHROP: The report-- I'm going to try to find the-- why don't you turn that to page 17; that's I-17. Do you see those, Phase 1, Phase 2?

SCOTT FRAKES: Yes.

LATHROP: So would we still be in-- what years is Phase 1? Is that '15 to '20, 2015 to 2020?

SCOTT FRAKES: For some reason, I had it in my head that it went through '21, but '20, '21. Let's go with '20. That's fine.

LATHROP: OK. Can you tell us, first of all, what Phase 1, what the-- what the recommendation was for Phase 1and how much of that you've got underway?

SCOTT FRAKES: Three specific projects: the expansion of CCC-L, the expansion of CCC-O, and work at the Diagnostic and Evaluation Center/really LCC. So we have done two substantial projects at CCC-L and greatly increased the capacity there. And we have the large $75 million project currently underway at DEC/LCC that addresses intake,

food service, behavioral health, medical, all the things that are specifically described here, as well as-- bless you-- a number of other key operational, core operational issues, and will link the-- turn the two now separate facilities that are kind of in transition right now into one prison, one single prison.

LATHROP: Has that-- is that on the drawing board?

SCOTT FRAKES: No, there's-- dirt's turning.

LATHROP: OK. And that will create sort of a new entrance into D&E and LCC and provide for some joint things like medical, cafeteria, and create some efficiencies.

SCOTT FRAKES: Yes.

LATHROP: Does it create any more beds?

SCOTT FRAKES: It does. It works out to specifically, in the project, 32 new capacity beds, but it frees up 32 other beds in our system that could become capacity beds because it creates the new centralized, skilled nursing unit that will serve all the Lincoln facilities and some of the other satellite facilities.

LATHROP: So down at Community Corrections Center in Lincoln, you've built a women's dorm and another 100-bed dormitory for work release.

SCOTT FRAKES: Correct.

LATHROP: By the way, the women's dorm is not yet full?

SCOTT FRAKES: No.

LATHROP: There's like-- it's below capacity by, what, 63 beds, something like that?

SCOTT FRAKES: I didn't check today. We've-- we're circling around 100 out of the 160 beds, yeah--

LATHROP: OK.

SCOTT FRAKES: --and working hard to try and get that up. Realistically, there should be about 130 women in there.

LATHROP: OK. Are you-- this plan calls for an additional, what, 100 beds in Omaha at the Community Corrections Center?

SCOTT FRAKES: It--

LATHROP: Is there any plan for that?

SCOTT FRAKES: No, not at this time.

LATHROP: So that recommendation we're not going to do?

SCOTT FRAKES: I'm not.

LATHROP: And have you done any of the Phase 2 projects?

SCOTT FRAKES: The 2.1 and 2.2, while I'm not specifically building a 384-bed restrictive housing unit, I am building the right kind of housing unit to provide the right kind of living conditions for people that unfortunately often end up in restrictive housing now. So I see what we're doing as a much better solution than building new restrictive housing units.

LATHROP: OK, that's the high security?

SCOTT FRAKES: Yes.

LATHROP: OK. Is that all of the projects that are underway or in planning?

SCOTT FRAKES: The last piece is the 100-bed-- new 100-bed dormitory at NSP that is just-- they're just breaking ground right now, although that's a fairly quick project. But the intent there is not-- at this point, definitely not to add another 100 inmates to NSP; it's simply to provide more space for the existing population.

LATHROP: OK. Is that building that you're going to put on the grounds of the Nebraska State Penitentiary going to look like the building you erected at Lincoln Community Corrections Center, that dorm?

SCOTT FRAKES: There will be similarities, yes.

LATHROP: OK. It's kind of a cement structure on four walls put in--

SCOTT FRAKES: Oh, I'm sorry. It'll be nicer-- it will be nicer than the one outside. I thought you were referring to the women's unit. It won't be as nice as the women's unit. It will be nicer than the box outside.

LATHROP: OK. But that's just to alleviate some of the minimum custody guys who were-- we have 200 in 100-bed units, dorms, right?

SCOTT FRAKES: Correct.

LATHROP: OK. So it's alleviating some of the crowding, but not necessarily creating more capacity.

SCOTT FRAKES: That's true.

LATHROP: OK. So now my question is, do you have any of these projects in the works? Do you have any capital construction that you have planned, that you are advocating for or even talking about, that will help increase capacity in your system at this time--

SCOTT FRAKES: Yeah, just a--

LATHROP: --other than what you just described?

SCOTT FRAKES: No, that's--

LATHROP: OK.

SCOTT FRAKES: That's 800 and a few beds that we so far have been able to successfully propose, convince everyone that's a stakeholder, and get funding for--

LATHROP: OK.

SCOTT FRAKES: --after not building anything for some 14 years.

LATHROP: All right. Next July, we will have a deadline to declare an overcrowding emergency. Do you have a projection as to what our population will be as a percentage of design capacity by July of next year, Director?

SCOTT FRAKES: No, I don't, no. We've just talked about the numbers of where we're at today, and it's very difficult to make any predictions. I'd just be guessing, so.

LATHROP: Do you have any reason at all to believe that they'll be below 140 percent?

SCOTT FRAKES: No.

LATHROP: OK, that-- that's not going to happen. We'll be looking at an emergency in-- at least the declaration of an emergency in July of 2020.

SCOTT FRAKES: Yes, under current law, yes.

LATHROP: Do you have any other plan or any other strategy to alleviate our overcrowding that we haven't discussed this morning or this afternoon?

SCOTT FRAKES: No, not within my control, no. I don't have any other plans.

LATHROP: I want to ask a couple of questions about restrictive housing, then I'll be done, Director. The resolution was introduced. We had a bill that Senator Vargas had in before the Legislature last year, took testimony at on-- on it in front of Judiciary Committee. You have some people that are sitting in restrictive housing that have been there for over two years?

SCOTT FRAKES: I do.

LATHROP: And to be clear, there's long term restrictive housing; there's immediate segregation. Immediate segregation is the guys that just got in a fight and you're trying to sort things out.

SCOTT FRAKES: Well, it's-- it's the process that brings someone into secured housing or, you know, restrictive housing, and then it's a decision of where can they be safely housed, which could include long-term restrictive housing.

LATHROP: OK. What do our numbers look like for use of long-term restrictive housing year over year? Is that getting better, worse, or staying the same since, say, 2015?

SCOTT FRAKES: We came down in '16. We had a spike in '17. Or I may have that incorrect. We had a spike in fiscal year '18 and now we're trending back down again. This morning we were at 326. So we've had some significant improvement just from where we were earlier this year, which is [INAUDIBLE]

LATHROP: That's your average daily population in restrictive housing?

SCOTT FRAKES: Well, the 326 number is snapshot. The ADP. I can't pull off the top of my head. I just know that it was lower, that we saw a spike--

LATHROP: By--

SCOTT FRAKES: --and then came back down again. We'd have to pull up the restrictive housing report and we could get to those numbers.

LATHROP: For an inmate who is put into restrictive housing, what due process, if any, do they experience or have available to them? What process do they have to say, I don't belong here, let me out, get me out?

SCOTT FRAKES: They have the due process that's afforded to all classification actions. So they have a classification hearing; they

have the ability to appear. They can then appeal if they disagree with the decision. At the one-year mark, if they are assigned to long-term restrictive housing, at the one-year mark, then they can appeal to me every time they're reviewed in long-term restrictive housing. They can appeal their placement on long-term restrictive housing. They can then, every 90 days, appeal when there's a new classification. At the one-year mark, it becomes a 30-day review and I sign off on all of those. And there's an appeal-- pardon me-- an appeal process to that as well. So they-- it is the due process that's afforded all classification actions.

LATHROP: Which is an appeal to you and appeal to a-- is there an MRT, some kind of a review team that looks at it?

SCOTT FRAKES: The MDRT, yes.

LATHROP: MDRT?

SCOTT FRAKES: Yeah, multidisciplinary review team.

LATHROP: So some of these people, some of these people are put into restrictive housing based on intel. Is that true?

SCOTT FRAKES: It is true.

LATHROP: OK, tell us what intel is.

SCOTT FRAKES: It's information that provides enough information to support that they present a level of risk that has to be managed. And in some cases, it might mean that they just need a higher level of security. So maybe they're currently at a Work Ethic Camp. This is just an example, hypothetical, but if-- they might be at a Work Ethic Camp, or even community corrections, it could be brought back to a secure facility, such as OCC, the penitentiary, Tecumseh. Or if the intelligence supports it and there's other information, and often that information includes confidential information that's provided by other inmates and we do the best we can to vet things and make really well-informed and defendable decisions, then a person can be put in long-term restrictive housing and held there. We have enough reason to believe that they are directing violence against others, would be the most common reason for that.

LATHROP: OK. And so for the benefit of people that don't fully understand intel, you have some employees who talk to inmates and-- and secure confidential information.

SCOTT FRAKES: That's one of the many methods, yes.

LATHROP: OK. I suppose you can listen to their phone calls, too, right?

SCOTT FRAKES: We can. We can read mail. We can do cell searches and find information. Staff throughout the corrections serve as intel-gathering sources, so.

LATHROP: OK, so whatever the sources of intel are, if you have intel that Lathrop's about to try to get a bunch of people to start a fight in the yard and you're going to put me in restrictive housing, you place me in restrictive housing and now it's my opportunity to appeal or talk to somebody, the-- the review team or I write a letter to you or whatever that-- whatever that looks like. How do I know what the intel is that's got me stuck in restrictive housing for a year?

SCOTT FRAKES: Yeah. That's always a difficult balance because we want to provide people enough information that they can make a reasonable defense; at the same time, what we can't do is put other people at risk. So providing specific conversations, as an example, is usually problematic because it's not that hard for the person to go, well, I only said this to these two people, so one of them told on me, and then that makes a problem for that or those two people. So it's-- it is challenging, I agree. It's-- it's something that I put a lot of time and energy into over the last 20 years--

LATHROP: What's--

SCOTT FRAKES: --and continue to do.

LATHROP: What's the solution? Because the guy who-- the guy who has been sent there and is now doing a year in a cell the size of a bathroom and when asked why am I still here, the answer is we have reason to believe that you're a threat to the community, or however that's phased, but no one tells him what it is so that he can stand up and say that is complete nonsense? What do they do in other parts of the country? Because that looks like a-- I don't know-- I don't know how to create due process there without sacrificing your sources and your methods.

SCOTT FRAKES: But that's the same way that we classify inmates across the system, so should there be due process, in your mind, for every level, every bedded assignment, every housing assignment?

LATHROP: Yeah, but there is a significant difference between restrictive housing and being put into a particular housing.

SCOTT FRAKES: Agreed. Agreed. So the solution would be that people don't engage in organized crime inside of prisons and don't serve in leadership roles that direct others to commit felonies and violent activities. But I haven't solved that because, unfortunately, that's what brings them into prison as well.

LATHROP: Sure. And I'm not-- I'm not trying to excuse anybody's conduct. All right? But you have somebody in there that's-- or more

than one person that's been in restrictive housing for over three years.

SCOTT FRAKES: I do.

LATHROP: Right? And I think I read in something last night where one person who had spent almost that much time, or perhaps more, was released directly to the community?

SCOTT FRAKES: I don't think I've had anybody hit three but close, yes, sir.

LATHROP: So I make-- I'll make this observation because we lived through this with Jenkins hearings. If you have somebody who spends-- you're so afraid of inside the Department of Corrections that you put them in restrictive housing for three years and then turn him loose on whatever community he returns to--

SCOTT FRAKES: That's where the three--

LATHROP: --don't-- don't we need some time, like we got to have these guys in general population just so they can socialize or--

SCOTT FRAKES: And if I can--

LATHROP: --or be socialized.

SCOTT FRAKES: Yeah. And if we can safely do that, we do. We're working very hard to not have those situations. The 384-bed project is going

to give us the right location and the right physical plant, the right setting to provide that, but I don't have that today. So, you know, we're working on other options, continue to look at other options. But the--

LATHROP: Let me ask you about another option. What if the person in restrictive housing, you've got two hours out of cell after they've been in restrictive housing for longer than six months or one year? What would that do to your operations?

SCOTT FRAKES: You'd just need to give us enough time to figure out how we're going to staff it and be able to assess whether or not we even have, you know, enough physical space.

LATHROP: I think I've heard you testify before, Director, that when we try to compare Nebraska's use with restrictive housing with other states', that other-- some other states to look so much lower because they let their restrictive housing population out more than an hour a day.

SCOTT FRAKES: Yes, that's true.

LATHROP: And we could--

SCOTT FRAKES: We-- we have the highest bar that I'm aware of, of anybody, in terms of defining restrictive housing as you have to be

out of cell at least 24 hours or more a week before you're not restricting housing.

LATHROP: But you're suggesting that having more time out of cell, perhaps two hours a day if you've been in there for more than six months or three hours if you've been in there for a year, something-- something that permits or allows for additional time, we can't do that, again, because of staffing issues.

SCOTT FRAKES: No, I answered that I'd need to make an assessment and give you some numbers, see is it a matter of additional staffing, which we realize is not simple, or--

LATHROP: Or solve it, right?

SCOTT FRAKES: --is it 24-hour operations? You know, that would be a piece of it if we're-- which still drives staffing because we have lighter staffing on our-- you know, now it's our third shift or what I would call graveyard shift. So to have people out of cell 24 hours a day, because space, unfortunately, is part of the challenge in our restrictive housing, this is a department that didn't build a lot of restrictive housing beds, to its credit, but that then is problematic. And everything that we have was built under the old standards. There wasn't any real consideration given for programming space or activity space. They were designed as segregation units and built as segregation units.

LATHROP: Right. OK. I think that's all the questions I have. I appreciate your courtesy. Senator Pansing Brooks.

PANSING BROOKS: Thank you for coming, Director Frakes. Obviously, Senator Lathrop has hit a lot of-- of the key issues. I'm-- I'm interested in a few things. First off, when you talk about modified operation, you didn't say it, but then later it sort of came up. So programming is taken away through that modified operation. Is that correct?

SCOTT FRAKES: It can be. The last thing that we're trying to impact is clinical treatment and cognitive behavioral programming. So we may stop the volunteer activities and the ancillary programmings, things like RISE, as an example. And then if we're at the point of where we're not able to get people out for clinical treatment, then we're probably-- probably in that lockdown; we're right on that edge of that. So our-- our goal is to not-- to not take away from that piece if we can at all avoid it.

PANSING BROOKS: And since I've been in the Legislature, it's been pretty clear. We-- we-- we've attempted to get the numbers on programming, attempted to get the numbers on waiting lists, attempted to find out how many people are actually getting the programming before jamming out, and we've all discussed the parole eligibility date. These are all-- these are all things that we-- you and I have

discussed from the beginning and that this-- this Judiciary Committee has discussed. And so I-- I guess we're hearing more of the same. The concern, again, is the ongoing vicious cycle that we-- that we've talked about where it's just-- it does-- doesn't matter where you start at. If we're starting with staffing, then it goes to lack of staffing, lack of programming because we can't get people to the programs, and then goes on to with the lack of programming, then of course they jam out because they miss their parole eligibility date because they do go-- go before the Parole Board and they are then denied parole because they haven't had the programming required. So then they jam out and then, of course, we have a higher recidivism rate, which then leads to overcrowding, which then leads to the same staffing issues. So no matter where you pick up that-- that vicious cycle, because it's a circle, it's still ongoing. And I-- I don't know how we-- how we stop this. This has been going on since 2015 when I was in the Legislature, and I know it was going on before, before you came and before I came. So--

SCOTT FRAKES: So we've made improvements though. I think that's-- you know, the number of people that jam out is down. The number of people that received clinical treatment and cognitive behavioral interventions are up. We're probably not going to do any better this year than we did last year, but it was over 2,000 completions. And the people that are missing their PED specifically because of programming,

I still haven't found what is now becoming that Easter egg, or whatever the right term is, of the person who was here for a long time, long enough, there was no good excuse, they had their hand in the air, and we just didn't get them there. It's-- and I-- I believe they're out there. I-- we're not perfect. But what we see time and time again is failure in the programming and treatment and/or refusing until they get right to their PED and then go, oh, you're saying I can't get out unless I do this, OK, I'm ready now. And then we, you know, queue them up and get them in but--

PANSING BROOKS: OK, well, we just met somebody today who just told us that, so I'd be-- I'll be interested to see if that person would be willing to speak with you and let you know what happened to that person--

SCOTT FRAKES: Yeah. Great.

PANSING BROOKS: --because we're still hearing that, so, that it-- that the programming is not available, that they can't-- and it may be where that person is versus where the programming is. I don't know what it is. So I guess I have another question, because on 9/6-- September 16, we had a hearing here. It was LR2-- the LR23-- LR23 committee that Senator Wishart was-- was leading. And you came to that. That's the last time you spoke before the Legislature, or at least the semi-- that-- that's a partial Judiciary Committee, partial

Appropriations, I believe. I don't know what that all is. But anyway, at that committee you said-- and I was flabbergasted, so I want to reconfirm that you said at that point that there is no proof that programming works. Could you either tell me what you were saying or reclarify what I heard or--

SCOTT FRAKES: I'm glad you brought that up because I don't believe that's what I said.

PANSING BROOKS: OK.

SCOTT FRAKES: I did say that we didn't yet have a good analysis of the VLS program.

PANSING BROOKS: OK.

SCOTT FRAKES: It arrived.

PANSING BROOKS: You were speaking specifically to VLS--

SCOTT FRAKES: That's-- that's where the convers--

PANSING BROOKS: --and not the other programming?

SCOTT FRAKES: Yes, that's where the conversation was. We talked about-- you know, you-- you or others raised the issue of shouldn't we be doing clinical treatment on the front end of sentences, and we got into the conversation about what the science says or doesn't say about when that should be done, as an example. And what I did say was

there's no research or evidence to show that doing clinical treatment on the front end of a prison sentence leads to good outcomes, because the research all indicates that the best outcomes are when you deliver the clinical treatment and then transition to less restrictive or parole or community supervision with aftercare. So that was the conversation. But I knew there was confusion. I understood after I left that there was other comments, so-- but specific to VLS, I've been waiting for this UNO report and we finally got the draft of it just, I don't know, two or three weeks ago. And I'd say it's hot off the presses, but actually the-- the formally printed copies haven't arrived in the mail yet.

PANSING BROOKS: OK, well, I feel a lot better about that, at least, so--

SCOTT FRAKES: Me, too, and I like-- it's-- it'll-- you'll see that it's-- you know, VLS continues to be an evolving work, but some pretty promising things they identified made me happy.

PANSING BROOKS: So, again, I know that you don't want to necessarily front-end the programming and-- and don't necessarily think that's the best. That's probably a cost decision. It would cost us more to give people programming and give people the help that they need throughout their whole time in prison rather than just putting them into prison and throwing away the key. Right?

SCOTT FRAKES: It's-- cost is a piece of it, but it's also about, you know--

PANSING BROOKS: Staff?

SCOTT FRAKES: --what does the science say? And, you know, there is science around when you should deliver programming, when you should deliver treatment, when are people responsive. When it comes to substance abuse treatment, it's an interesting question what the right intervention should be on the front side. But unfortunately, prison is not the best atmosphere to put to work and to put to use all of the things that you're supposed to learn in treatment. That's, again, why the science says deliver it as close to release and get people out the door with aftercare. You know, kind of equate that to doing an AA meeting at a bar. It's tough.

PANSING BROOKS: So I-- I-- I haven't seen any evidence or any kind of study that says just putting people in prison, leaving them alone for ten years and then giving them the programming in the last two years is beneficial either. So I think it's-- you have seen-- have you seen studies of that?

SCOTT FRAKES: No, no. I haven't. I agree. No one's done that study.

PANSING BROOKS: OK.

SCOTT FRAKES: Yeah.

PANSING BROOKS: Well, gosh, somebody-- I hope somebody does that study. Let's alert people on that one. But to me, if you look at people compassionately as human beings who are going to rejoin our community, and I know this is a stand you have taken, but to me, putting people in prison and just letting them wallow in their cells until it's all of a sudden time to maybe get to the parole eligibility board, I think that's really cruel and it is not a good way for us to handle. I know that you haven't built this whole system, but I'm highly concerned about these decisions to just let people languish in their cells and especially languishing in solitary. I know that we've gone down a little bit, but still, as you know and as we've talked about for five years now, you know, putting people in solitary is-- is not best practices. We are not--

SCOTT FRAKES: It's against the law.

PANSING BROOKS: Pardon me?

SCOTT FRAKES: It's against the law. Remember this conversation we've had?

PANSING BROOKS: Yes, we've had this, yes

SCOTT FRAKES: Yeah, I-- and I-- as Senator Chambers would remind me, I don't break the law.

PANSING BROOKS: Sorry [INAUDIBLE] but yes. So I-- you know, I'm highly concerned still about that. Best practices state, you know, put people in a place if they need to-- if they're a danger to self or others and get things to cool down, don't use it administratively, don't use it to-- as punishment. But clearly we're not getting-- we're not doing that. And I think it's-- it's really still disturbing to me. I know that-- I think it was-- it was Deputy Rothko-- was that his--

SCOTT FRAKES: Rothwell.

PANSING BROOKS: What?

SCOTT FRAKES: Michael Rothwell.

PANSING BROOKS: Yeah, Rothwell, who, I mean-- I think he was very supportive of-- of those ideas to get people out of-- out of solitary and to work on programming. And I'm hoping somebody has taken that charge up in his stead. Yes or no?

SCOTT FRAKES: I walked in the-- as I've said many times, remember, I was the one that was talking to Vera as I drove to Nebraska in January of 19-- 2015. I came here with a mission to impact that, so--

PANSING BROOKS: I know.

SCOTT FRAKES: --not knowing all the challenges that would be presented, and we've had plenty.

PANSING BROOKS: So-- and-- and you said just a few minutes ago, Senator Lathrop, that the-- in the-- in the Phase 2 six- to ten-year plan, even though it says increase disciplinary restrictive housing, that you have changed that plan?

SCOTT FRAKES: Well, this-- these were recommendations made in 2014. It wasn't my plan.

PANSING BROOKS: OK.

SCOTT FRAKES: So I did certainly-- have read this document many times, took it into consideration.

PANSING BROOKS: Yeah.

SCOTT FRAKES: But a better answer was to build the right kind of beds rather than just build restrictive housing beds. Restrictive housing is the worst location to try to deliver programming and do other things. If we can provide the right kind of security and physical plant and allow people to still move freely out of restraints but safely for all involved, have programming space on the living unit, which will be-- is part of the design for the 384, be able to provide services there, along with other activities that take them off the unit, that's the healthy management.

PANSING BROOKS: So how do we help you do that?

SCOTT FRAKES: You did. You-- you helped sign off on the money and--

PANSING BROOKS: Well, it's not enough.

SCOTT FRAKES: I can't build it any quicker [INAUDIBLE] we're-- we're in design conversations right now. We moved very quickly to get this off the ground. And I'm optimistic that because of the location and the fact that we ended up with the same designers as the current RTC project, that we may be able to trim some time off the delivery schedule. Right now, though, it's slated to be occupied in June of '22, so it's still a ways out.

PANSING BROOKS: Again, I am concerned about the discussion that-- that Senator Lathrop had with you regarding the due process issues. It's-- it's easy to, it seems to me, to say, you know, how do we-- how do we keep it quiet because somebody has-- has notified the guards or somebody that this person is a danger? Well, of course, anybody can make that story up, as well, so-- and you-- you know that and-- and acknowledged that.

SCOTT FRAKES: I did.

PANSING BROOKS: So I guess what I'm concerned about is if we can't have some sort of due process, some sort of hearing, people don't lose all their constitutional rights when they enter that prison, so it is very disturbing to me that there can't be a-- a-- some sort of procedural process. If it needs to be in quiet, I don't know. But

maybe then the first few times that-- that we real-- that somebody realizes that there is that procedure, then maybe they won't be giving misinformation to guards and people would actually be safer. That's just a thought. The other side of that coin is that you're getting this information and that-- that people-- you know, it-- that it's-- that it's not any safer in that regard.

SCOTT FRAKES: So we don't place people in restrictive housing and hold them in restrictive housing based on a single point of information. We do have a process to vet, verify. And there's probably some other systems out there that are doing it even better than us. But I don't know how many directors actually review everybody every 30 days after they've been there a year, and I do every week. I've got a list right now sitting in my inbox, because I couldn't get to it, from yesterday's reviews. So I'm pretty intimately aware of what's happening in restrictive housing. And again, part of my passion around the issue, I want people to be treated fairly; I want there to be better opportunities; and I want the 90 percent of the population that would-- I got 70 percent that are actively trying to engage and do the right thing, another 20 percent that are on the fence and can go either way, and about 10 percent that are the majority of the problems.

PANSING BROOKS: A cage for three years is-- I don't know how we can even justify that.

SCOTT FRAKES: I understand, do understand that.

PANSING BROOKS: Thank you.

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you for coming here today. My very first hearing was with you and it continues so. When we go to modified operations at the State Penitentiary, does that really have an effect on your minimum security portion of the prison or do they continue to operate as before?

SCOTT FRAKES: It does. Again, they'll be impacted on the front end in terms of maybe access to work, access to visits, access to other activities, then it may-- there may be more likely to still be able to go to the-- their dining hall to eat, but they're not leaving that side of the facility while the other-- so it's a-- there's some variations. But ultimately, when it comes down to staffing, at some point we tell them that they're also not leaving their dormitories and we figure out how to, you know, feed them and do everything else.

BRANDT: OK. In regards to restrictive housing, can we go over 100 percent of capacity on restrictive housing?

SCOTT FRAKES: Well, there's a challenge in that we don't really have clearly defined numbers for what our restrictive housing is, because before I ever arrived, we converted space and turned it into restrictive housing. So in terms of the fact that we do double bunk at the penitentiary, you could say that we're over design capacity.

BRANDT: OK, and then I guess the last I've got is on staffing. And I know you're somewhat restricted, like on DAS works with the union on salary and that leaves you the bonuses. Have you looked at other things, like maybe awarding comp time or vacation days in lieu of a bonus? And I will give you credit. That $10,000 is a real eye-catcher out there. I mean, you know, I think that will have hopefully the effect that you desire.

SCOTT FRAKES: You know, we con-- we continue to look for every creative idea and researching, talking to other states, talking to the private sector, talking to other state agencies specific to that issue. The challenge, of course, is that these are 24/7 operations and typically 24/7 posts, so people can take comp-- compensatory time instead of money for their overtime. But then the challenge is, of course, can you grant them the time off when you'll have to then mandatory someone else to work the overtime? So that becomes its own vicious cycle as well. So that one thing doesn't work well for the-- for the custody staffing posting piece and presented the same thing in the state I left behind. It'd be great to be able to do that. But with

prison operations, with custody, staffing, if I'm on vacation, somebody has got to be there to work my post.

BRANDT: And it sounds like what Patty-- you answered Patty's question, are we the Legislature giving you everything that you require, and if I'm reading you correctly, the answer is yes?

SCOTT FRAKES: Yes.

BRANDT: OK.

SCOTT FRAKES: Yeah, in terms of the amount of $150 million in construction since I've been here, significant money towards new compensation, increases in number of positions. Yeah, there's some little minor pieces, but overall, yes.

BRANDT: OK. Thank you.

LATHROP: Senator DeBoer.

DeBOER: Thank you for testifying. I want to ask you a little bit about this current system at NSP, the 12-hour movement, 7:00 to 7:00. Does that save on your-- your staffing to take two hours out of your movement day?

SCOTT FRAKES: By going to a 12-hour operational schedule-- thank you again. By going to a 12-hour operational schedule and lining that up with a 12-hour work shift, it absolutely does because there's some

inefficiencies that actually come with a 16-- with three, three eight-hour shifts. So staffing is covered from 6:00 a.m. to 10:00 p.m., but inmate movement typically runs, again, from about 6:30, 7:00, depending on the facility, to 8:30, 9:00 at the very latest. So with a 12-hour schedule and a 12-hour operational period, and it actually will mean closer to 10.5 hours, 10 hours of movement. So we've got three meals to feed; we've got counts to do; we've got programming to deliver; we've got work to accomplish; we've got access to religious activities; we've got access to the law library and recreational library, gymnasium, recreation. What really will suffer from this is evening recreation and volunteer programs. That's-- that's the-- to me-- and there will be some reduction in visiting hours as well, and we're going to look at that and see if there's anything we can do to have as little impact on that piece as possible. But there won't be an evening visiting period during this.

DeBOER: So--

SCOTT FRAKES: It's not-- it's not a good long-term solution, but it's short term. It absolutely does allow-- line up the staff with the hours of work and the work to be accomplished.

DeBOER: So just to kind of clarify what you've just said for me a little bit, the significant difference for an inmate is not the

variety of activities that they will have access to, but the hours that they will have access to them?

SCOTT FRAKES: With the exception, I think, of volunteer programs and evening-- other evening things, it'll impact the club activities. The amount of club activities that we've had will definitely be impacted. And we'll look for opportunities during that operational period on weekends or other times to do everything we can to try and keep the quality of life as high as we can. But when you lose roughly two hours of evening, two hours times seven days, that's 14 hours across a week where you can do things, in particular, volunteer programs, club activities.

DeBOER: So you say it's really 10.5 hours of movement. About how many hours then, because you were kind of, well, it's sort of 6:30 or 7:00 until-- about how many hours fewer of movement would an inmate see under the system?

SCOTT FRAKES: I'm going to say two.

DeBOER: Two?

SCOTT FRAKES: Two, roughly.

DeBOER: OK.

SCOTT FRAKES: Yeah.

DeBOER: And then the--

SCOTT FRAKES: It's close.

DeBOER: --the club activities, can you tell me what those are? I just am not aware of what the club activities are.

SCOTT FRAKES: Those are inmate-- typically inmate led with-- oftentimes tied to volunteer support as well, with, you know, staff supervision, not necessarily-- not staff directed, but staff making sure that the right things are occurring within the space. But it is the Lifer's Club; it is, oh, 7-- 7 Habits, I believe it's called. There is-- yeah, working off memory, I can't give you many more. There's quite a list, though, of groups of inmates that come together. There's a process for them to be approved in charter. We make sure that we supervise what's going on so they're not doing things they shouldn't be doing. The best ones are the ones that do have some volunteer support, so there's people that come in and help provide guidance and insight. They should be self-help/learning focused. They're not just a social club. Clubs, the term that's historic here, carries a really bad connotation with me from my experiences in Washington, but it's the term we use here, so.

DeBOER: Would something like a peer-to-peer, I don't know, programming that's maybe also facilitated by a volunteer fall within that category?

SCOTT FRAKES: The program specifically we have the penitentiary and that's underway at TSCI has both components, so we're utilizing it as staff-facilitated peer-to-peer activities, especially where we're using the men, which are at this point primarily lifers that we're bringing into restrictive housing to do the peer-to-peer support, so that's staff facilitated. And then you have the lifers at the penitentiary that are also doing some of that work, and they have an offshoot that's kind of a restorative-- not kind of, it is a restorative justice-focused group, so they've got some peer-to-peer work as well.

DeBOER: And what are a couple of examples of this volunteer programming that you have that might be different than what we've discussed just now?

SCOTT FRAKES: Oh-- trying to think in the evenings. There may be additional religious. Often, that's the most common, so a Bible study or some kind-- or something like that. So it's not specifically within the access-- required access-to-religion regulations, expectations, but it supports and is supportive of and it's a good activity, and so-- so that's probably the most common. There's others but I'm trying to think off the top of my head. I'm just not pulling one out.

DeBOER: And this, you think, will be restricted for the next six months?

SCOTT FRAKES: It'll be--

DeBOER: Restricted for the next six months? You think you'll be on this system for six months?

SCOTT FRAKES: Hoping we can get out sooner, but I wanted to give a number, you know, over-promise-- no, under-promise, over-deliver-- is that the right expression? So--

DeBOER: Is this something that you think there's any possibility you could be done with, in, say, four months, you could shift back?

SCOTT FRAKES: I think that's overly optimistic, but I'd like to hope I get there in less than six months, yeah.

DeBOER: So somewhere between four to six-plus months, you'll be operating on the 12-to-12 schedule?

SCOTT FRAKES: As long as the turnover slows down and we have the success that I expect to have with the hiring recruitment bonuses, yes.

DeBOER: OK.

SCOTT FRAKES: You know, those are-- I-- those are things I don't control; those are things that I'm trying to do everything I can to influence.

DeBOER: OK. When was the last time you had full staff, the 350 of your-- I think you said security or-- I can't remember what the term you used--

SCOTT FRAKES: Protective services.

DeBOER: Protective services, the 350 protective services at NSP?

SCOTT FRAKES: You know, the only story that's told to me is in reference to Tecumseh and they say that the only time that Tecumseh was every fully staffed was one day in 2009, somewhere around there, so the last significant economic downturn, which I had the same experience in Washington State. Went from 10 percent vacancies to people lined up at the door looking for work, seemingly overnight. So I'm going to guess that NSP was probably in the same place during that time period.

DeBOER: And since you've been here, what's the highest sort of consistent staffing level you've been at, at NSP?

SCOTT FRAKES: I did look at some numbers. At best, we probably got down to 40, around 40 positions that needed to be hired for, and at that time there was probably, as I say "in the pipeline," there was probably 30 people somewhere in the pipeline and they were just starting or in training or just arriving at the facility, but still being on on-boarded. And we didn't get into that conversation. We talked about roster vacancies. It's that, so it's positions that you

need to still hire someone for. It's people that are still in some part of their eight weeks of training and onboarding. And then we have people that are out on long-term sick leave and, you know, other factors that contribute to it. So-- so best-case scenario, I'm guessing, though, we were probably-- there were some points in time since I've been here where we might have been 70 holes in the roster out of the 350 positions, so that's spread out across seven days and three shifts.

DeBOER: So you've been operating with 70 of 350 people less than what you're supposed to for the entirety of your tenure?

SCOTT FRAKES: So again, it's-- again, it's two combinations. But in terms of day-to-day operations, I believe that's probably accurate, yes. So but now divide 70 by seven days and three shifts, and then the number seems a little smaller. It's still a problem. It's still a number. But it's-- it sounds like if you were talking about an operation that was Monday through Friday, 8:00 to 4:30, that number of 70 out of 350 would seem shocking. Spread it out across seven days and three shifts, it's still a problem, but it's-- you just got to think about the fact that we're not like most businesses. We've got 168 hours of operation every week.

DeBOER: So you, now that you're on these 12/12s, or the four 12s, you would be-- with 90 not available to work--

SCOTT FRAKES: Perfect.

DeBOER: --you would be at 200 and-- so you have 360-- or 350. You had 350, so you'd be at 260.

SCOTT FRAKES: Right.

DeBOER: So you have 260 people available to work. You've got-- how-- two shifts a day. They're working four, so you probably have something like-- well, I mean, it doesn't quite work out because seven days a week, as opposed to--

SCOTT FRAKES: The schedules that we're using, that we've been using from Tecumseh, which is not the ultimate desire for 12-hour shifts, but what we've been using is four on and three off, so that's a 48-hour workweek. So now you-- we've actually gained 8 hours times 260 people, so you could divide that by 5 and that's like adding 50 people, in essence, to the roster. So you've almost closed the gap, as crazy as that sounds. And now you've given people consistency; you've got consistent operations. What they're telling me in their initial assessment, as is what kind of I expected, that we're going to be in pretty good shape when we roll out this revised staffing in terms of people present to do the work. Now that doesn't mean that there's going to be some-- definitely some upset staff because they've had their hours change and maybe even days off change, or they don't want to work 12-hour shifts, they didn't sign on to work 12-hour shifts. I

do understand every bit of that. But in terms of providing the hours of coverage, this is the short-term solution that will really change things. And-- and we should-- seeing these minimal-- minimum staffing, critical staffing reports, they should go away as long as we don't continue to see high overtime and-- and don't have any success in bringing on new people. Fortunately, for us, the data has shown for the last five years that November, December, January, February are our lower turnover months, so we can take that to an advantage. And then it's a matter of can we get things stabilized, get positions filled, get people on, and what can we do different than what we've been doing to get people to stay? That's-- part of that is moving away from mandatory overtime. There's other factors though. It's not just-- people are leaving jobs all across the country for a wide variety of reasons and the aggressively hot job market is part of that.

DeBOER: Let's talk about restrictive housing for a second. I want to understand. Again, the number of hours outside of the cell in restrictive housing currently is an hour a day.

SCOTT FRAKES: It varies. It would depend. But that's the min-- hat's about the minimum. There are some days where they may not get an hour, but there are other days where they could get two or three hours if they're in programming or there's other reasons to bring them out. But let's say that that's the minimum standard, yes.

DeBOER: And what would be the maximum number that someone in restrictive housing is currently getting per week? We'll say "per week" to make it easier.

SCOTT FRAKES: I'd be surprised if there's anybody that's out of cell more than 10, 12 hours, somewhere in there.

DeBOER: OK, so 10 to 12 hours, And what has to happen in that 10 to 12 hours? Is their programming done in that 10 to 12 hours?

SCOTT FRAKES: If they have programming, that would be part of it. The base seven hours would be showers and some type of small recreation yard access, and it's small.

DeBOER: What if they have--

SCOTT FRAKES: It's another cage.

LATHROP: Seen it.

SCOTT FRAKES: Yeah.

DeBOER: What if they have a lawyer? Do they have a lawyer visit outside of-- in the--

SCOTT FRAKES: That would be outside of it. If they have medical needs that-- where they need to be taken, whether it's out of cell or off the unit, at least monthly mental health is offering opportunities for people to come out of the cell for one-to-one conversations. And then

if there's a need at any time, that can happen. So, yeah, there's a bunch of little variables, but as an aggregate, you know, again, the one-hour-a-day shower recreation component. And then, depending on programming needs, other factors, it goes from there. But it's not going to be a lot in comparison to what would happen if you were in general population.

DeBOER: What about visitation? Is there any visitation for folks in restrictive housing?

SCOTT FRAKES: So that is another area. The penitentiary still allows for face-to-face visiting. I'm not sure if Tecumseh-- where they're out with it. They have video visiting. I'm probably going to get yelled at by somebody. I don't think they do face-to-face for restrictive housing. They do for people that are on-- sentenced to death, that pop-- that small population. But that's-- they're not there in restrict-- they're not held under restrictive housing standards, but they're housed in that building where restrictive housing is.

DeBOER: And is there going to be a change to any of these programs when you're on your 12-to-12 or your-- your 12-hour?

SCOTT FRAKES: I-- boy, I don't think so. I don't think that's a population that sees much movement in the evening. And actually, Tecumseh has been operating their secure housing unit-- restrictive

housing unit, excuse me, on a 12-hour operational schedule now for a number of months because that is staffed with that 12-hour staffing pattern. That was implemented by employee request and negotiated.

DeBOER: So in the past, I know when we were talking about restrictive housing, I asked you what it would require to, say, give two hours or three hours every day out of the cell, and you thought that mainly it was a staff and a space issue. Is that still what you would say?

SCOTT FRAKES: Correct.

DeBOER: So is there space to do-- considering the number of different places a person might be during their hour off, would you say that there-- there's room for two hours off?

SCOTT FRAKES: Under our current, we would have to expand hours of operation, no doubt. And I don't know if it would-- I'm going to say that I think it would be 24/7 to do that, so.

DeBOER: To just do two hours out?

SCOTT FRAKES: Because that's doubling the time and you just-- we only have so many yard spaces, we only have so many shower spaces, and we don't have any congregate-- good congregate spaces where we can bring people out. And so it's-- it is a challenge, and then compounded again by the staffing levels that it takes to do movement in a restrictive housing unit. The right answer is to have better options to keep

people out of restrictive housing, just like the right answer is figuring out how we keep people out of prison.

DeBOER: So what is the right answer to keep people out of restrictive housing?

SCOTT FRAKES: It's having the right physical plant. And that's been movement and that's-- that project is moving forward. It's providing the-- the right opportunities so that we can improve the quality of life, engage people, provide them opportunities to be successful, again, having the right housing, physical plant space for that part of the population that's still interested in engaging in criminal and violent behavior and removing them from the rest of the population but not in a restrictive housing setting so that we can continue to provide interventions, programming, and do that in a way that's safe for them, for us, for all involved.

DeBOER: So I understand the-- the physical plant side of things, but can you be a little more specific on some of the other things that you were saying, the right opportunities? What are the right opportunities? You know, specifically, give me an example if- if you don't have more specific generals. What would be the right opportunities to keep people from getting into restrictive housing other than the physical plant?

SCOTT FRAKES: We could look at OCC just kind of as an example. So even though they are at close to double their design capacity, they've got programming opportunities, work opportunities. They've got quite a bit of clinical treatment opportunities and-- and a population that behaves in a way that allows for those operations to go, day in and day out, without shutdowns or other issues. And certainly the fact that they're able to attract staff and they have a better-- they definitely have a lower turnover number as well, so those two pieces fit together, so it's having the staffing levels. It is a facility that could certainly use more programming space, but they've gotten pretty inventive in terms of being able to use the space that they have. Because it is a facility of just short of 800 people, incarcerated people, and they have-- can't remember the number-- less than 20 restrictive housing beds and they don't use long-term restrictive housing. But they do have people that behave at a level that require them to be transferred to another facility and some of those people do ultimately end up in long-term restrictive housing, so. So, again, it's having the right physical plant for each of these different parts of our population. It's having-- you know, making good use of all the resources we have, and it's having the staff to make all the pieces work and fit together.

DeBOER: Well, so your suggestion that programming, work programs, and clinical treatment programs help OCC to limit the number of folks that

need to go into long-term restrictive housing makes me wonder if having programming, work placements, and clinical treatment in other facilities would help them--

SCOTT FRAKES: We do.

DeBOER: --to reduce the number.

SCOTT FRAKES: I know there's this perception that there's nothing going at-- at these wastelands.

DeBOER: No--

SCOTT FRAKES: But it's-- all of the facilities have lots of activities, so.

DeBOER: I'm not suggesting that.

SCOTT FRAKES: Yeah.

DeBOER: It's just that you said, you know, we want to have the right opportunities to limit the number of folks that go into restrictive housing. And then you gave the example of OCC and you said their programming work and clinical treatment facility-- or programs allow them to have low. So I'm saying, does it-- you know, by the transitive property, are we-- would we-- if we added more of those to the other facilities, would we get less problems with restrictive housing?

SCOTT FRAKES: Not until we're able to address that part of the population that's not interested and is-- creates problems for everyone else, so. But again, there is-- Cornhusker State Industries is active at Tecumseh; it is active at NSP; it is active at LCC. There is clinical treatment at all three facilities. There is programming at all three facilities. Those options are there. So between the behavior of the population and then the staffing issues, you know, that's what's getting in the way more than anything. It's those two combinations.

DeBOER: Are you running programming at, let's just say NSP, at under capacity, right, so you have a-- you can have ten people in this class and you're putting eight in?

SCOTT FRAKES: It happens, not by-- not by desire, but it does happen.

DeBOER: Is that norm-- it's not normal though?

SCOTT FRAKES: I don't know what-- I'm not going to sit here and tell you that we are doing everything as well as we can just in terms of managing the resources. More likely, it's because of a staff vacancy than it is about not filling the available space. It depends on the programming. If it's closed-in programming, it may start with ten people and then before you're very far into it--

DeBOER: Sure.

SCOTT FRAKES: --you know, you've lost a couple. So there's just so many variables around that. The goal would be to get to 95-- my goal, anyway, would be get to about 95 percent utilization of available resources. We still have work to do.

DeBOER: So if I'm at NSP and I'm an inmate and I would like to take some kind of programming, what's my wait time? Does it vary by the program?

SCOTT FRAKES: Absolutely does.

DeBOER: OK, so if I want to do the violence programming, the antiviolence programming, how-- what's my wait time?

SCOTT FRAKES: Well, you'd have to be assessed, first of all--

DeBOER: OK.

SCOTT FRAKES: --have a clinical recommendation, because it's not programming, it's treatment. So you'd have to have the clinical treatment recommendation, and then our goal remains getting people in somewhere in that 2 years, 18 months of their eligibility date. We're doing well, but I can't-- I'm not going to tell you what exactly it is because there's so many variables. We're always looking at, you know, we get in-- last year, in our-- over the last 12 months, 2,900 people, and at the same time, 2,600 people left. So the churn in our agency is huge. We get a large number of people that come in with 12 months, 18

months, 2 years to do. If they have that clinical recommendation, then the question becomes, you know, how do you weigh in? And there's just so many variables. So if we're getting people to clinical treatment prior to their PED, that's success. If we're getting people into their clinical treatment somewhere between 2 years and 18 months from PED, that's even more success because then that means they're behaving. They could go to community custody and have an opportunity for work release. And we're doing well. Again, I-- as I said to Senator Pansing Brooks, I'm sure there's somebody out there who we've failed. But when I-- every case that I get and I look at, it is more than that. It is a collection of variables. It is initially refusing. It is getting access and then failing, being removed from the program. It is other factors that they have to own in terms of they've created enemies or other conflicts that make it so they can't be housed in certain locations, which includes us looking at, OK, who needs to move so that someone else can get access? It doesn't do us any good as-- either me as the operator of this department or us as citizens, to offer residential sex offender treatment at ten prisons. Then we would have lots and lots of unused capacity because there's not that much need. Again, we've been able to do a lot of good work around the violence reduction program and have increased the number of operation-- or of opportunities and successful completion, like fivefold at least since 2015. That's-- that's a great example, one, unfortunately, of where people have the greatest struggle. They don't want to do it. And then

when they realize that if I don't do it, I'm going to have-- I won't get parole, then they have more motivation. But the very reason they need the clinical treatment makes it very difficult for them to be students and, you know, be productive and be engaged and not cause problems, so. Love to have-- come over. Let's have a one-on-one conversation or a smaller conversation. We'll walk you through like we did-- tried to do a year ago with-- was the LR127 committee, I think it was. It's necessary, valuable. It's absolutely our mission, but it is a lot of moving pieces and it's not just simple. The only way you make it simpler is you make it really inefficient, and I don't think that serves anyone well either.

DeBOER: Thank you.

LATHROP: Senator--

CHAMBERS: She--

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you. I'm sorry, I just have a couple more that I thought of as we were going and Senator Chambers kindly allowed me to just barge right in ahead of him. So as I was going through some of my notebooks of work that we've been doing, I was-- I was reminded that CSG in 2016, on page 13 said, quote, that sequence-- that it would be important to sequence programming so criminal problems are addressed early in the presentation. So that has been recommended to the state

of Nebraska and I'm just wondering if you would consider reassessing when you would offer programming.

SCOTT FRAKES: Well, as we've talked about before, we are working down that path of seeing how we could do the cognitive behavioral intervention work earlier, so. And there's-- there is some research there that shows that MRT, as an example, is kind of an engagement tool as well. It may not lead to the-- especially if you do it early, in a sense, it may not lead to really reducing criminal behavior factors, but it could lead to people being engaged and interested in doing other prosocial activities.

PANSING BROOKS: And maybe--

SCOTT FRAKES: So we're pushing that path.

PANSING BROOKS: --better--

SCOTT FRAKES: That's not clinical treatment, two different worlds.

PANSING BROOKS: Also, some of the programming could help relations between staff and inmates too. And so I think that's-- that's a concern. I-- again, the LR34 committee asked you specifically for a waiting list or what programs are available. We still have yet to get that waiting list. So I just want to bring that back up. We'd love to have it. Could you provide that to us?

SCOTT FRAKES: Yes.

PANSING BROOKS: OK, great. I would love that. Thank you. The-- quickly, also, you said brief-- you said briefly, and it sort of went by quickly, that we won't make it to the less than 140 percent of capacity in-- by July of 2020, right?

SCOTT FRAKES: I can't see any way that we could.

PANSING BROOKS: Yeah, so then you said under current law, so do you see-- do you believe there's going to be some effort to change the law so that we're no longer in violation of the law and we can just kick it down the road?

SCOTT FRAKES: No.

PANSING BROOKS: OK. It's just when you said under current law, that raised an alarm bell for me.

SCOTT FRAKES: OK.

PANSING BROOKS: And one last thing is, how many juveniles do you have in solitary among the juveniles that you have?

SCOTT FRAKES: I don't have anybody in solitary.

PANSING BROOKS: OK, thank you.

SCOTT FRAKES: Now I may have someone that's under 18 that's in restrictive housing and I--

PANSING BROOKS: OK. Excuse me.

SCOTT FRAKES: Today, off the top of my head, I don't know.

PANSING BROOKS: All right. How many kids do you--

SCOTT FRAKES: I have to do that.

PANSING BROOKS: --juveniles do you have in restrictive housing?

SCOTT FRAKES: I'd have to get back to you and tell you. We-- we have managed to keep those numbers very small but do that--

PANSING BROOKS: Could you please get me that information as well?

SCOTT FRAKES: I'll make sure-- I'll make sure that we do.

PANSING BROOKS: I appreciate it.

SCOTT FRAKES: Yeah. We provide that report to--

PANSING BROOKS: Do you also use the term room confinement?

SCOTT FRAKES: We do use-- that's a disciplinary sanction, actually.

PANSING BROOKS: OK, depending on where it is, it is complete solitary, but we can discuss that again [INAUDIBLE]

SCOTT FRAKES: Yeah, we don't-- we've let people out to-- you have to go out to eat and to, you know, other functions. You just don't get to go to recreation and--

PANSING BROOKS: Do they have mattresses?

SCOTT FRAKES: Do they-- yeah, yes.

PANSING BROOKS: OK. Well, that's [INAUDIBLE] question.

SCOTT FRAKES: They don't lose anything in their cell. We don't take away their cell stuff. It doesn't-- you could get a sanction that you might lose your tablet. That's--

PANSING BROOKS: Could you have books?

SCOTT FRAKES: Yes. You still have all your personal property.

PANSING BROOKS: OK. That is different than what I've seen elsewhere.

SCOTT FRAKES: Yeah, room confinement for us has a different meaning than it might in other settings.

PANSING BROOKS: Thank you very much, Director Frakes.

LATHROP: Senator Chambers.

PANSING BROOKS: Thank you, Senator Chambers.

CHAMBERS: Mr. Director, you and I have had many-- you could call some of our "coming togethers" confrontations, tete-a-tetes, but what you and Senator Lathrop, the Chairman, had was what could be called a colloquy. A lot of territory was covered. A lot of specific questions were asked. A lot of specific answers were given. And seldom have you and I had that kind of exchange. It might be to an outside observer an acrimonious, to others a contentious, meeting. But we probably have covered, if you took all of those meetings, however they're characterized, every question I might ask, every answer you might given-- would give, so with the abilities that computers have, if somebody were willing to go through all of our exchanges and computerize my questions and your answers and gave us a sheet, then I would just say, Mr. Director, 13, and you'd see what that was. You'd say, Senator, 28. I'd say, Mr. Director, number 2. Now I'm going to try to keep my questions succinct because of how much ground was covered by you and the director-- the Chairman. And I hope you don't feel that the questions I ask necessarily embody all of the thinking that I have on the issue that the question might cover. I don't want you to feel that I should have asked you that today but I didn't do it. In the interest of time, and because we're compiling a record, I would like it to be clear to anybody who would read it what it was I asked and what it was you answered. And with that, I'll begin. Right now, the status with the prison in Lincoln is lockdown. Is-- oh, there's a state of emergency first. And what does that state of

emergency include in terms of-- well, just tell me what it includes, for the record.

SCOTT FRAKES: It becomes almost a legal term. It's, you know, directly tied to the contracts between the two different-- the labor unions.

CHAMBERS: I don't mean you have to give me a legal definition.

SCOTT FRAKES: No, but that's--

CHAMBERS: I want to know what is being done in the prison under a state of emergency that would be different if there were no state of emergency.

SCOTT FRAKES: We have greatly impacted inmate movement. We're now in modified operations, but it's very limited movement still, but getting people out for showers is the primary thing that's happening at this moment in time. The biggest piece of this and the reason that I had to actually describe it as an emergency was because of labor contract language that said, in the event of an emergency, which then describes what would qualify, I have the ability to suspend the rules around staffing, bidding, hours of work [INAUDIBLE]

CHAMBERS: OK. And I don't want it to be the legalese for my purposes.

SCOTT FRAKES: Yeah, and--

CHAMBERS: When you mentioned the 12-hour shifts, is that to be something ongoing or that exists only during this state of emergency?

SCOTT FRAKES: Only during.

CHAMBERS: And you said that condition would persist for about how long would you estimate?

SCOTT FRAKES: I hope less than six months.

CHAMBERS: Six months, and that means 12 hours-- well, tell me what it means. How long-- how much longer would inmates be in the cell per day under this situation as opposed to if the situation did not exist?

SCOTT FRAKES: So my answer to Senator DeBoer, I believe, was two hours. You know, I'm sure we're going to find out it'll end up being more like three. So I want to-- I'm going to hedge my bets it's somewhere in that time frame, two to three hours less time out of cell.

CHAMBERS: And let's say the three hours, so you've given the maximum, probably. What, during that three-hour period that they would not be allowed out of their cell, would they have been likely to be doing?

SCOTT FRAKES: Recreation and prosocial activities--

CHAMBERS: Now I'm not going to put these grown men and even--

SCOTT FRAKES: --and visiting, so.

CHAMBERS: OK-- in the status of children, but they found out that one of the worst things that happened in elementary schools was the elimination of recess. Recreation is extremely important. It can be like an escape valve. So if you have had a very difficult day, it could be like a kettle full of water on top of a slow fire and there is no escape, so gradually steam builds up. And if it builds up to a large enough pressure point, it will explode the container. It seems to me that it is very unwise to take away the time or the activities that any human being would need to wind down from a hard day, and to me all time in prison is hard. Was consideration given to that aspect of it?

SCOTT FRAKES: Absolutely.

CHAMBERS: Now, if it seems that more disciplinary problems are developing, could some of them be traced to the fact that there is more time in confinement, less time out of confinement that would result in the type of pressure that would manifest itself in discipline problems? Let me give an example. Could there be more negative interactions between the inmates themselves when they're not locked--

SCOTT FRAKES: That is a possible outcome, just like it's a possible outcome under the current conditions where day in and day out we are

at the last minute telling people, oh, sorry, we can't let you out of your cell, or sorry we're going to cancel visits, sorry that your wife showed up in the parking lot, but we're not able to do it, sorry we're not going to have that activity--

CHAMBERS: OK.

SCOTT FRAKES: --you were looking forward to, so it's-- it's--

CHAMBERS: And it could create-- it could create worse relationships between the inmates and the staff and the guards.

SCOTT FRAKES: Either-- either one can, yes.

CHAMBERS: And that condition could persist for about six months, you say, so what we--

SCOTT FRAKES: What I've-- what I'm trying to say there, Senator Chambers, is the current situation is more likely to contribute to tension and bad behavior than coming up with a schedule that's consistent, everyone knows what it is, and they can reasonably count on those things happening.

CHAMBERS: So we can also count on more write-ups and more punishments meted out to inmates and more put in solitary for longer periods of time because of the stress that could be created, so--

SCOTT FRAKES: I guess I'm not communicating clearly. I'm saying that what I'm doing by reducing the amount of operational hours is no more stressful than the current practice of unpredictable scheduling.

CHAMBERS: Now you made it possible for me to ask the question. We should be able statistically to look six months from now at the number of disciplinary write-ups, the amount of solitary time given, and we would see no substantial difference between this period of time that, however we label it, emergency or whatever, and the time when there was no emergency.

SCOTT FRAKES: Think that's a reasonable hypothesis.

CHAMBERS: OK. And if there are more, then could we conclude that the existence of this state of emergency could contribute to it?

SCOTT FRAKES: Could be a contributing factor.

CHAMBERS: And if there is no difference substantially, then we could say that the state of emergency was a state of emergency and that's all that it was, in terms of the behavior and the interaction between the inmates to inmates, inmates to staff.

SCOTT FRAKES: I'm not going to draw large conclusions from any one piece.

CHAMBERS: OK.

SCOTT FRAKES: It's hard to measure the unknown.

CHAMBERS: Now I want to get to something that's more measurable.

SCOTT FRAKES: OK.

CHAMBERS: I read the memo you put out on the $10,000 bonus, and it's to be spread over three years. Now I'm not very good at math--

SCOTT FRAKES: Yes, you are.

CHAMBERS: --but if instead of $10,000 I took $10 and instead of $3 I took three days, if I divided three days into $10, it would be $3.33, so over that ten-- that period. So this would break down to $3,333.33 cents per year.

SCOTT FRAKES: Correct.

CHAMBERS: And if we broke it down by month, it would be about $277.77 per month.

SCOTT FRAKES: Correct.

CHAMBERS: Now that is not something that I would think of when I hear the word "bonus." I would think of a sum of money that could be used for something rather than a relatively small amount spread out over a period of a year. So who determined that a bonus system of that kind would be a draw for people to come on as employees or to remain on as employees? It seems to me it's so insignificant that it shouldn't be

called a bonus, and it certainly wouldn't be an incentive. If I were going to lose-- leave and you said, Ernie, we'll give you $3,300 more a year if you'll stay, I'll say, uh-uh, I can go to McDonald's and do better than that. Who set up that $10,000 amount and what was it based on?

SCOTT FRAKES: Yeah. So to make sure we're clear, again, this is a hiring bonus, not a retention bonus, so there is a difference.

CHAMBERS: OK, then let's take the hiring--

SCOTT FRAKES: So if I'm looking-- I'm looking for work opportunities or if I'm underemployed and see that, that might be motivating to make that decision. But the short answer to your question is me; the longer answer is me with a lot of advisement from other people that have wisdom in this, including peers across the country and looking at what private practice, what private industry is doing--

CHAMBERS: OK.

SCOTT FRAKES: --making the best judgment call you can. And that's why we do pay it out in three installments instead of just saying that we're going to, you know, add it to your paycheck every time, which then makes it feel and seem [INAUDIBLE]

CHAMBERS: OK. And I guess that same kind of national expert advice is what put the prison system into the problem that it's facing now in

terms of overcrowding and so forth. But I don't want to be argumentative. Now I looked, as I listened to what was discussed, at what breakdown we could give to what's going on in the prisons. We have staff, space or capacity, money, and we speak of the ones there as inmates. And none of these terms break down into human terms, and we don't look at these people as human beings who will react under pressure, in those circumstances, as human beings would react. So punishments can be arbitrarily imposed; their humanity can be diminished. The talk of human dignity is laughed at and mocked, so I won't go into those things, but I see that happening. And when people can have those kind of things placed upon them, the Legislature is partly guilty, the courts, but where-- however, and then those people, under those circumstances, are put back out in a population. And if some had been away many years, they don't know about catching a bus; they don't know what Uber is; they don't know what cell phones are. Now I know that some get into prison, so I'm just stating in broad terms to indicate that a way has to be found to keep these people socialized and not so isolated that when they come out they don't even know how to function, person to person. And I don't think that's being done in the prisons. Now you have to take what is given to you based on the sentencing of-- by judges. When they put mandatory minimums, you cannot grant good time even if you want to. So the control mechanism, the management tool of good time which they get when they come in, ordinarily being taken away, doesn't exist. So let's say I

get a ten-year sentence with a man-- a minimum of five, so it's easy for me. During that first five years, you tell me-- and I don't use this language--. Chambers, do this. I say, go to "H." What you going to do to me? What can you take from me? I'm as bad off right now as I can ever be and you can't torture me, so go do something to yourself. Mandatory minimums should be argued against by the prison establishment also. I don't say do away with them because I want to be soft on crime or anything else. In all of the years I've been in the Legislature, in all the years I've been in this world, I know that human beings need an incentive to do the right thing because, as Madison, James Madison or one of those people, said, if men were angels, you wouldn't need laws. So being realistic, I cannot even place total responsibility on you for everything in the prisons that happened that I don't like. But I will because it's your job, it's on your watch, and we place that responsibility. Now, if you have to accept whatever the courts give you and they take away a management tool like good time, then that's the front end where you are restricted in what you can do as far as managing these people who come in. The Parole Board can say we're not going to parole you because you haven't had the programming, and the programming is not available, so you're caught between the provide-- proverbial rock and a hard place. You have to accept what they give you and you have to keep them as long as the Parole Board says you're going to keep them, because the Parole Board, if they choose, don't have to parole anybody at any

point. The only thing that the law requires is the parole eligibility date, but it doesn't say that people must be paroled. So they can require through their operation that each inmate jams out under the conditions that the law sets. The courts can keep giving mandatory minimums. So you have 50 percent of the people, and again, easy math for me, under mandatory minimums who can't get good time, and you have 50 percent eligible parole-- for parole, but they're not going to be paroled. So now you've got a toxic mix that can be explosive. This is the question that I'm leading up to. Would it compromise-- first of all, philosophically, and you don't have to answer any of these questions and I don't blame you if you don't, are you in favor of or opposed to mandatory minimum sentences?

SCOTT FRAKES: Yeah, it's not my place to have an opinion.

CHAMBERS: OK.

PANSING BROOKS: What did he say?

CHAMBERS: He said he-- he doesn't have an opinion.

LATHROP: I don't have an opinion--

CHAMBERS: He-- and I understand that.

LATHROP: --it's not my place to have an opinion.

CHAMBERS: That's why I said in the beginning if you'd rather not answer. If you were free to testify on bills, do you think you'd have an opinion, one way or the other, on mandatory minimum bills, if there would be no consequences based on your answer either way? Could you give objective testimony without taking a position in terms of good time as a management tool and what happens if that management tool is taken away?

SCOTT FRAKES: As the director of the department, I can talk about good time, how it works and doesn't work, and I can talk about how sentence and length contributes to the population numbers [INAUDIBLE]

CHAMBERS: If a bill is brought up dealing with those subjects and I extend an invitation to you, would that put you on the spot or could you respond to the invitation and testify?

SCOTT FRAKES: I mean, provide the data, it would just depend on the bill.

CHAMBERS: OK.

SCOTT FRAKES: OK, I--

CHAMBERS: Now--

SCOTT FRAKES: You know, my job is to carry out the sentences of the--

CHAMBERS: I know. But, see, I'd be giving you an opportunity to help make your job easier, in my opinion. I only have one or two more questions, then I'm going to look at this and I may not even have two.

LATHROP: If you're going to keep answering questions, I'm going to have you speak up. I know we're getting-- I know you're--

SCOTT FRAKES: Lean forward.

LATHROP: --you've been there-- you've been in that chair a long time. I just want to make sure we--

SCOTT FRAKES: I tend to do that though.

LATHROP: --the transcribers can hear you.

SCOTT FRAKES: Yeah.

LATHROP: Thank you.

CHAMBERS: When you mentioned-- now aside from the emergency status, how long do you want to have people on 12-hour shifts, or will those two things coincide? When the state of emergency ends, there will no longer be 12-hour shifts, or is the 12-hour shift-- shift determined independently of the state of emergency?

SCOTT FRAKES: At the point that I allow staff to go back to their regular schedules and assume their bid post, that's when a 12-hour

operational day doesn't work anymore for the prison. So you-- the two work hand-in-hand.

CHAMBERS: But they are not the same. They're different?

SCOTT FRAKES: Right. One is tied to staff and their rights under the contract and the hours of work, and the other one is tied to the hours of active operation for the facility, which directly impacts the people that live there.

CHAMBERS: OK. Now I'm going to try to ask a question and-- to make it clear for me. Could the-- and when you say the regular, that means three eight=hour shifts.

SCOTT FRAKES: Correct.

CHAMBERS: OK. Could there be three eight-hour shifts and still a state of emergency where the movement of the inmates would be restricted as now?

SCOTT FRAKES: Only based on an-- some incident, not based on the current dynamic, so--

CHAMBERS: OK.

SCOTT FRAKES: --you know, if there was some incident that drove that short term.

CHAMBERS: And that--

SCOTT FRAKES: But now, what we're doing at this moment in time, that wouldn't make sense.

CHAMBERS: I want to end on an upbeat note and shock everybody because you and I usually are supposed to be like flint striking and the sparks and if they hit anything, there would be a conflagration. There were these people and they were on a chain gang, and there were some guys who had been on there a long time. And this new young guy was on the chain gang and he saw these older guys sitting around and one would give just a number, like 22, and everybody would laugh; then another one would give 38 and everybody would laugh. So this young guy came and he said, I don't understand what this is going on, so I'm going to say 12, and nobody laughed. He said, well, 18. Nobody laughed. And they said, well-- he said, just what's going on here? He asked one of these inmates. He said, well, every number is a joke, and some people know how to tell a joke and others don't. [LAUGHTER[And that's the nice note that I'm going to end on today. Thank you.

LATHROP: OK. Thank you, Senator Chambers. Director, we appreciate you being here today, your patience with all the questions. We did keep you for a couple hours and we'll look forward to and continue to watch the progress made at the Department of Corrections. We know it's not a

simple job. I am concerned about overcrowding. I know we spent most of today talking about staffing. I am concerned about overcrowding.

SCOTT FRAKES: So am I.

LATHROP: I don't know how we can address many, many of the other problems that exist without addressing that. OK. Thank you.

SCOTT FRAKES: Thank you very much.

LATHROP: We have someone from the FOP that's going to be our next invited testifier. While he's getting himself comfortable, how many people are here today to testify, actually want to testify? One, two, three, four, five, six, seven, eight. OK, terrific. Thanks. Welcome.

MICHAEL CHIPMAN: Thank you. My name is Michael Chipman, C-h-i-p-m-a-n, I'm the president of FOP 88, which represents a protective services bargaining unit. All right, so on today's legislative resolutions, I wanted to talk about restrictive housing and the staffing crisis that is ongoing in the Department of Corrections, specifically with the staffing crisis. So we saw that they have finally declared a state of emergency at NSP. We've been long-saying this is going to happen, we believe now is the time to move. What you're hearing about the $10,000 bonuses is that this is a-- I think Frakes, at one point he did say is that this will maybe get some people in the door, we hope. But this by no means will solve our crisis because you're filling the top of the cup with an endless bottom. It's just going to keep pouring out and

we're going to continue the cycle. With something like this going on, the only real way to address this is to address a merit step plan, much like the counties have now and other states have. So specifically, Sarpy County starts out at $21.25 an hour and so does Douglas County, I think they're almost dead even. From-- a corporal makes $18.44, and for an officer in the Department of Corrections, they make $17. You'll talk-- you've, you've heard how there was a significant raise that was given to people that have been there a long time. That raises 12.5 percent, so for a corporal, rough math, it's not even quite $2 an hour. So they're, they're not even making yet what Sarpy-- what they would be making as an officer at Sarpy County. So while, yes, 12.5 percent is a large percentage, you're-- we're still so far behind the eight ball that it, it didn't, it didn't do as much as we were hoping. When we were in negotiation we told them that this is moving-- a good move in the right direction, but this is far from what we need to have happen. You have to create the step plan, you have to create all this. Further proof of this is that you look at Sarpy County, it's much like you were saying, Senator. They had two applicants, or excuse me, two positions and they had 200 applicants, over 200 applicants. And they, they get to pick the best of our-- NDCS. They picked one of our sergeants, who's been there for a very long time, and the second guy they picked was one of our leaders for the CERT team, which is the team that goes in, for people that aren't knowledgeable about how that works, is a to our emergency. So he's one

of the guys that helps lead those teams when we have a state of emergency, much like what we're dealing with now. So those are the only real ways to, to address the stem crisis. We have to have this fix now, we can't wait any further. There will, there will be no way to fix this six month-- in this in six months or anytime soon unless this is addressed exactly how we're talking. I mean, there's proof of it. You don't see the counties-- they have some staffing issues, but nowhere near the level we're talking about. None of them are close to a state of emergency. Further, a competitor, if we're going on state competitor, I just found out Colorado upped their wages. They're now paying $4,100 a month, I don't know what that comes out to hourly. It's significantly more than $18 to their corrections officer. Plus they're doing a $1,000 sign-on bonus. So other states are getting this, and you're seeing the states are slowly moving up. And the counties have long-known this, you've got to pay people for this profession. It's a hard profession to do. There's few other professions where you're not only are you, you know, doing law enforcement things or keeping the facility [INAUDIBLE]. You might be a medic one day, saving someone's life. I mean, you name it, a correction officer probably does it. All away from cleaning to saving someone's life. So it's this type of career field, and it takes a certain personality to do it. So that's-- and then our-- my concerns on the restrictive housing piece is that in order to get more out-of-cell time, which I know it's been a concern of this

Legislature, is that you have to have the staffing in order to do it. I have a perfect example is that at Tecumseh we have, there's a security threat group that has an order to assault us whenever. You take that to consideration, when we had one guy who the wrong door was opened, as reported in the paper, and he was immediately assaulted with a, an edged weapon. So if I am, I'm all for focusing on rehabilitation, but it has to be done at the stake of staff safety. So that we have to fix the staffing crisis first or make real movement on that before, in my opinion, before we can go any further on that, those reforms. And so with due, and with due process, whatever reform we would make on that to make sure that it was being fairly done, is we have to make sure we're not letting people out of seg who weren't ready to be completely out of seg yet, and that we're doing it the most safe way possible. We've all, you can ask me when they seen someone who had got out of seg too early, they get into a fight, they cause a disturbance. That was what led to the 2015 riots. So at Tecumseh, I mean, so we have to do it. These are very fast-moving variables with some of these people. So that would be my testimony on this so far.

LATHROP: I'm going to start out by asking just a handful of questions. I'm not going to be long. But I first want to acknowledge what you guys do. I have been around to all but one of the facilities, talked to a lot of the security staff. I've seen you guys in action, I've

seen what you do. And I just want you to know we appreciate what you do, and your safety inside the institution is priority one. Like, I couldn't agree more that whatever we do with restrictive housing or anything else that, that's implemented by way of policy. In fact, I think that's exactly why we're concerned about staffing issues. Tell us what it means in layman's terms, if you can, in your contract relationship with the department, what does it mean to declare an emergency? What, what opportunity does that have or what effect does that have on your relationship with the department as a, as a union organization?

MICHAEL CHIPMAN: So by the director declaring a state of emergency, he's able to now move all the staff in NSP to 12-hour shifts without-- so previously it was negotiated in our contract that only half of the staff could be on 12-hour shifts and that they had-- they can't have their-- be mandatory on the Friday. When you declare a state of emergency, it takes all the provisions out. So it's saying you're, you know, you're in an emergency. You know, we can't abide by this. It can only be under extremely temporary situation. So, I mean, as far as like him locking down and all that stuff, as far as the union and the FFP, it concerns purely the 12-hour shifts, the mandatory on Fridays, and us bidding on shifts. It affected a lot of our staff. We understand the need, because we've been talking about this for a while about how NSP is getting ready to collapse. And I think that they

finally saw it was on its last leg. And so by them declaring the state emergency, it makes, I think, move everyone, like I said, to twelves. And this affects some people because they stayed on eights for a reason. Specifically, I had one sergeant, NSP told me that his wife had to immediately quit her job because of daycare concerns, and he makes enough money that he makes the money for the household. So you're going to-- you'll have a lot of cases like that. So you will watch, if this isn't handled quickly and appropriately, like we've, like I just discussed, you will watch an exodus of people because they did have their life planned around an eight-hour shift. And that's why they did bid to go on to twelves. Because before this, NSP, 30 percent of NSP was on a 12-hour shifts. So now you went from 30 percent to everyone besides eight people so.

LATHROP: OK. Does the-- does declaring an emergency necessitate that you guys engage in additional bargaining?

MICHAEL CHIPMAN: It does not require it, no. I, you know, if-- there is legal ramifications if, you know, if you're saying you're forcing all to go to 12 hours. What, what, so the contract states temporary, and it's been ruled by the court of industrial relations before with Tecumseh, they had a similar incident that, you know, because he was-- had them all on twelves for two years and that wasn't negotiated, because shifts are a mandatory bargaining, bargaining item. So if they made no real attempt to fix this problem, like the way they were

talking, then they-- they're required to bargain these 12-hour shifts and they can't do it for a long period. It has to be temporary.

LATHROP: What facility are you employed at or assigned to?

MICHAEL CHIPMAN: I'm at, I'm assigned the Community Corrections Center of Omaha.

LATHROP: You, what's your position with the union?

MICHAEL CHIPMAN: I'm the president.

LATHROP: OK, so are you talking to the other members?

MICHAEL CHIPMAN: Absolutely.

LATHROP: Tell us what's happening. What's the, what's the sentiment among your union members about the current state of the Department of Corrections. And specifically, I guess, maybe not specifically, the state of the Department of Corrections as viewed by the corrections workers?

MICHAEL CHIPMAN: I'd say specifically, as far as the corrections, the morale is low because of the state of emergency and because of how bad things are getting. When you have this, this turmoil, because of how short-staffed, are my last number for NSP was that there were 75 short. And mind you, that 75 wasn't including people as I guess they're calling the pipeline, but those are people not, or are not

helping out because they're not available. And that's not including people that are on FMLA or anything else. So it would be easily able to assume that it's over 100. So, I mean, you're talking, you're getting close to one-third of your facility. So when you're working all the sixteens, because you're scheduled on a 12-hour shift, so they can still mandatory for you an extra 4 on those three days before this declared emergency. So, I mean, people were worn out, exhausted, which is why we have such high turnover. That's been the main sentiment I've gotten. As far as what the state of emergency, I'd say people are concerned. They're why-- you know, how long is this going to last? Is it really temporary, are they going to actually work to fix this issue? You know, or you know, we're trying to reiterate that, you know, they have to fix this issue now. I mean, we're in a state of emergency, it's already in collapse. We have to fix this. Another big sentiment going on is that the $10,000 bonus, it's actually infuriated a lot of senior staff because they got $500, which after taxes is closer to about $320, at least from my personal experience. And they're off in this $10,000 to the new guys. So it's a bad, it's a bad sign when you're handing a bunch of money to new hires. And you're like, well, I've been here five years, what, you know, what are they, what is he saying to me? So, you know, I think Frakes did say in his testimony that this, they're planning on he's already renegotiated and

would talk to us. Well, in our opinion, we have to negotiate and get this fixed so.

LATHROP: I appreciate your testimony concerning the security staff. What's their take on how the population has taken all this: Being short-staffed, having lockdown, going on modified operations--

MICHAEL CHIPMAN: I mean--

LATHROP: --the visitation that's being interrupted. Do they have a-- are they sharing that with you as well? these days.

MICHAEL CHIPMAN: They share some with me. I mean, of course, inmates are frustrated. They're upset because, you know, they were expecting visits and then all of a sudden it keeps getting canceled. Like, that's been happening a lot, as you, as you have read. All this, you know, limited movement, I mean, it causes a lot of frustration among the inmates. And so any else-- not trying keep going into staffing, but it counts to staffing. So when you have a senior staff member that, you know, they know they have good report with the inmates, they know how to talk to these guys. They're able to help calm like, you know, we understand what's going on, you know? Let's work on this. We can, they can help, I mean, to the best of their ability facilitate, you know, improvement. When you're brand new, I can speak to when I was a new officers, you're learning the ropes. You know, you have this vision of what a correctional officer is. And it's, it's different,

you know? You're not just, you know, this guy that's issuing nothing but directives. And, you know, this hard guy. You're there also to help work with these guys on individual things. You know, it's not just programming. Your interactions with the staff, it's a huge piece of their day.

LATHROP: What are the reasons we have such high turnover?

MICHAEL CHIPMAN: The reasons for high turnover? I'd say the number one reason is, is definitely there is no longevity pay. So people are able to then leave, go to county. I know Lancaster County, by the last numbers I had, they're 50 percent from us, NDCS. I think the last time Sarpy County has hired, it's almost [INAUDIBLE] from us. Douglas County, they just took two sergeants of ours. So when we're losing a lot to counties and other paying jobs. At my little facility, I lost one to a job downtown and one to Sarpy County so, I mean, it's, it's, it's just a constant.

LATHROP: So it's pay?

MICHAEL CHIPMAN: It's pay and no-- and not just pay, but it's the longevity, the merit step raises. You know, a good comparison is, you work eight years at Sarpy County, you're making $27, $28 or more an hour versus you're still making with us-- you know, the guys that have been here, Jordy [PHONETIC] will testify she's been here 20 years and

she's making, I think, now $21. She's still not even making quite only what Sarpy County makes.

LATHROP: OK. How does mandatory overtime figure into--

MICHAEL CHIPMAN: Right. So since you have this low starting pay and this constant people going through, and you're now, now not only are you not paid as well as your peers, you're getting mandatoried significantly more than your peers. And so it leads to quick burnout and people leave. I mean, it's definitely-- I'd say that's the number two. That's exactly what reason why people are leaving.

LATHROP: Do you have an opinion about what the rate of pay needs to be to be competitive and for us to attract people, retain people, and fix the problem?

MICHAEL CHIPMAN: It is our opinion that the starting pay should be at a minimum of $21, $25, where the counties are. But honestly, the counties are in a better situation that us, right? They're not down 100 staff, they're not down these significant percentages. We need to raise pay more than counties to try to get some of these guys back and to get some of our experience back and to recruit, you know, corrections professionals that, you know, want to be in this career. You know, it's a very unique career field and it's not something you can just do from anything.

LATHROP: Can you tell us what's happening since this emergency has been declared? Are you talking to somebody?

MICHAEL CHIPMAN: Yeah, the Governor's Office has reached out to us to talk. I don't-- I guess they're not calling it official negotiations, but all I know is to talk so.

LATHROP: OK. I for one, I-- something's got to be done for-- as, as legislators, as policy makers, we have no control over the rate of pay. And it's, it's frustrating for us to see a problem that can be solved with simple economics. Like, you want to hire people, you've got to go pay them enough to leave a different job to come. Anyway, I appreciate your testimony. We'll see if anybody else has questions. Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Mr. Chipman, for testifying. I just have one question. The scope of the job, quite often I hear we compare our corrections against the county jails. And disregarding the pay, disregarding the mandatory in all that, just the difficulty of the job, is that the same job if you're working at Lancaster or Sarpy as working at the State Penitentiary? Or is one harder than the other?

MICHAEL CHIPMAN: I've never worked at a county, so I don't want to, I don't want to say one's harder than the other. They're, they're definitely similar, and similar in the fact that you're dealing with

incarcerated individuals. I would say and I-- the FOP, I think he's, he's done a lot with Sarpy County, so he can explain probably more. But I will say that I would assume at the state level we do, that we do a lot more with helping with, like, T4C, which is the programming. That's what, like caseworkers, we help with that program. I'm not an instructor, but some of us are. So I would say that we definitely have a lot of things that we do that would be at least to a level of county, if not higher. But I guess I have never worked a county job, so I don't want to say it's harder. I don't know that for sure.

BRANDT: All right, thank you.

MICHAEL CHIPMAN: Yep.

LATHROP: Senator Chambers.

CHAMBERS: I want to ask a direct question, because the public may not understand when they hear this state of emergency. It was not declared because the inmates suddenly were conducting themselves as though they were going to conduct an insurrection, attack the guards, or do anything. It had nothing to do with the overall conduct of the inmates, is that correct?

MICHAEL CHIPMAN: Yeah. To my working knowledge, that is correct.

CHAMBERS: And when you talk about everybody who mentions it, and I say you because you're testifying, a "staffing problem", it can be traced to inadequate compensation and other conditions of employment?

MICHAEL CHIPMAN: Correct, yep.

CHAMBERS: And if the Legislature were of a mind to listen to what the people who do the work are saying, is there any role that individually or collectively the Legislature could play to make sure that the funds are available to pay or must it be a situation where the bargaining, and I think asking the question answers it, the bargaining conclusion is going to determine how much money will be appropriated for wages? That's true, isn't it?

MICHAEL CHIPMAN: Yeah. Yes, it is.

CHAMBERS: Now, I'm not going to meddle in your business, but I'm a state senator and I bill myself as the defender of the downtrodden. And I feel people are downtrodden when they do a job and they're not paid for it. My advice to you is-- I like analogies and parables and such things as that. There was a man named Armand Hammer and he paid his employees higher than they could get in other companies for the same work was required. And he was asked, why do you do this? You don't have to pay that much more than what others are paying. He said, first of all, I want the people who work for me to know that the rate of pay is such that there are plenty of people in line who want this

job because of the pay. So if you don't do it, you're out of here. He said, but there's a second part to it: If you pay peanuts, you get monkeys. Now, I don't want us to pay peanuts, and there have been times when the Legislature, when it came to programming, would be prepared to appropriate money and the Governor would not allow the directorate to ask for it. So a lot of this, and here's another my, of my analogy, so I don't have to ask him a lot of questions, but I'm trying to make my point crystal clear without telling you how to negotiate. The oracle in the days of Greece and Rome was a person or a force, but it could answer every question that was asked. So these two boys, as boys will do, wanted to figure a way to trick the oracle. So they got together and said, you put a bird in your hand and then we're going to ask the oracle what you've got. And he can answer that easily. Then the next question is, is the bird dead or alive? And it will be alive when you have it in your hand. If he says it's alive, then you crush it and kill it. If he says it's dead, then you produce the live bird. They had it planned. So they came to the oracle and they asked the question, what do I have in my hand? The answer was a bird. And when they asked the oracle, is it dead or alive? The oracle said, that, my boy, depends entirely upon you. What you all get depends upon what you all ask for. Either you going to let them treat you like a monkey and give you peanuts, or you're going to value yourselves as human beings, you're going to value the work that you're doing. It's not easy work, it's essential work. And you've got trained

people right now, been there a long time. And I know that you don't get the nicest people to work with. When you get the experience and knowledge in terms of how to calm these people down, you all don't kill people like the cops do. And the cops are told, learn how to deescalate a situation. You all must know how to do that a lot better than they do. Determine among yourselves who are going to negotiate, how much you think that you're worth and demand it. And I, for one, will do all I can, and I only have one more session. And I would like it to be marked, if possible, by our finally paying these workers what they're entitled to. And to show you my seriousness of intent, if I am trying to get a salary for football players because they're unem-- unpaid employees of the state, I hope that will let you know how serious I am when I say those who are acknowledged to be employees should get a fair wage. The "Bibble" even says the laborer is worthy of his hire. Muzzle not the ox that treadeth out the corn. When it's doing all this hard work, then allow that ox to eat what it takes to have the strength to do that work. Now, what results, as the oracle says, is entirely in you all's hands. And I hope you don't take peanuts.

MICHAEL CHIPMAN: I agree on the not taking peanuts.

CHAMBERS: That's all that I have, Mr. Chairman.

LATHROP: OK. I don't see any other questions. Thanks for being here, Mr. Chipman. While Mr. Koebernick is coming up here to testify next, if you intend to testify, if we can have you take one of the front seats. And because these people were, these first three testifiers were invited testimony, we didn't put them on the clock. But I'm going to ask everybody to limit themselves to three minutes of testimony. I know you're probably thinking: This is my chance and I need to tell these guys. If we ask questions, it won't count, but there will be a light system there. It will be green for two minutes, yellow for a minute, red. OK? And then we may have questions for you. So as you're sitting there, you may want to distill what you had to say. OK. Thank you, Mr. Koebernick.

DOUG KOEBERNICK: All right. Thank you, Senator Lathrop and members of the committee. My name is Doug Koebernick, spelled K-o-e-b-e-r-n-i-c-k, and I'm the Inspector General of Corrections for the Legislature. First want to thank Mr. Chipman for testifying and for the union members and the staff and the facilities. The Ombudsman's Office and I have been meeting with them on a regular basis so they can update us about the challenges they're facing and the needs that they have. And we really appreciate that relationship that we've developed over the, over the last year or so. Senator Lathrop asked me to present a few things to you today. I'm going to cut out a lot of it because it's been covered. In September, I

released my fourth annual report. It built on previous reports and had a significant amount of data and information related to the correctional system. I'm not going to go through all 271 pages today, but I'll cover 270. The highlights of those in the report can be found in that, it's on-line. If you want a copy, just send me a note and I'll get it to you. If you go through the report and have any questions regarding it, please make sure and contact me and I would love to sit down with you. The issue of restrictive housing was covered in great deal, detail in that report. The department also submitted a recent report on restrictive housing to the Legislature. I provided the excerpts from my report and the department's report for your review. There are specific issues that I've mentioned in my report regarding restrictive housing practices, and they include some of the following. The department continues to utilize restrictive housing at a high rate. The director talked about how it was down, up, down, up, and he said it's about 320 right now. A week ago it was like 350. So, I mean, it's kind of, it fluctuates quite a bit depending on what's happening within the prison system. In September, each month the department provides a report to me that shows everybody who's been in restrictive housing for at least six months. The September report showed that there were 119 inmates who had been in for at least six months in restrictive housing. Forty-five of those had been in for over two years and 10 had been in for over 1,000 days. After getting those or seeing that change, because that's changed a lot since 2016.

I even recommended to Director Frakes a few months ago that he and I go out and visit some of those 1,000-day guys. He said he was thinking about doing that, I would encourage him to do that. I know he hasn't done it yet, but I hope he will. The number of inmates in restrictive housing with a serious mental illness for over six-- who've been in for over six months was around 30 inmates in September. As you heard earlier, double-bunking continues at the Nebraska State Penitentiary for those in restrictive housing. But it was stopped at the Tecumseh prison, I think in the last couple of years here by the warden, the previous warden. He did not believe that that should be done anymore and I appreciate that step that he took. Double-bunking people in restrictive housing is contrary to the standards of the American Correctional Association. The-- I will say this, the mental health presence in restrictive housing has been increased over the last few years and we appreciate that effort. Advocacy for removal of inmates from restrictive housing by the, by my office and by the Ombudsman's Office is needed on many occasions and we assist with moving people forward in the process. And there have, there have also been times when men don't get out of their cell for that recreation time and shower time for several days at a time. And that's when James Davis from the Ombudsman's Office, myself, and others get involved and try to see what's going on there and reach out to the wardens and try to end that practice. An additional concern regarding restrictive housing that, is that there are units that sometimes-- that are not

restrictive housing units, but sometimes act like restrictive housing units. As Director Frakes talked about, the standard is if you're not out of yourself for more than 24 hours in a week, you're considered to be in restrictive housing. We have units in Tecumseh, in the State Penitentiary, in Lincoln Correctional Center where at times they will go for several days or a couple of weeks without getting that time out. At that point, they should be considered restrictive housing units. That's something that our two offices watch quite a bit and we are trying to address as well. I have asked for weekly updates from the wardens at the State Penitentiary and Tecumseh regarding those units. I've yet to receive those updates, but I'm hoping that after I testify today that they will start showing up. Finally, I'd like to provide some additional information regarding the conditions at the State Penitentiary. I've handed out a couple reports for you, because I like to kill trees today, apparently. In 2018, I did a special report on the State Penitentiary and that's included with what I provided you, and also excerpts from my 2019 annual report. And I think it was over a year ago, a few years ago, that we started seeing this decline of the State Penitentiary. Last year I began to raise specific concerns regarding the conditions after myself and the Ombudsman's Office heard repeated concerns from both staff and inmates. We also reviewed key data like overtime, staff vacancies, assaults, contraband, those kind of things. And it showed a decline at that facility, and a significant decline. Currently the facility is

operating at close to 190-- 90 percent of design capacity, as director Frakes said. They had those lockdowns in September, August and September, where they went in and looked for contraband because they had such a high flow of cell phones and K2 and other items. They went in and conducted searches, searches of some, not all of the housing units, but some. In August, they had a total of 134 vacancies in the facility. So that's security and nonsecurity. During the past few months, as a result of working closely with that, with the Ombudsman's Office, I have kept Senator Hilgers and Senator Lathrop, the two senators I report to, up to date on activities at the State Pen. I've also provided information to this committee on occasion. In July, I contacted the Governor's Office and expressed my concerns regarding, regarding the state of this facility, and I've also shared those with Director Frakes on more than one occasion. Overcrowding and understaffing are the two primary issues with the Penitentiary, but other issues include the need for core improvements, including classroom programming and recreational space, deterioration of some of the housing units. We have-- those minimum housing units were designed to only last for up to 30 years and then, and they weren't supposed to operate at twice the capacity, so they have a lot of plumbing issues that people are kind of stacked on each other in there. So those buildings are being worn down. There's a definitely a need for more vocational job skills opportunities, as well as more jobs for inmates. Sanitary conditions and inconsistent laundry schedules have led to

what some believe is a recent issues with MRSA and scabies, and then there's sanitary issues in bathrooms and the kitchens. When you combine all that, and you've heard all this today, but when you combine all that with a population that's continually locked down and an inexperienced staff and it just leads to a lot of problems and difficulties. I understand the director's intent with the emergency declaration and I'm glad that the problem has been acknowledged, and I believe that something needs to be done to get the Pen, Pen back on track. Mr. Chipman talked about a lot of here, about the reaction by the staff. I've heard from staff over the last few days, it's been very much the same kind of response that he's heard. I am concerned about the reaction by the inmates because they're going to go, as they described, 7:00 in the morning till about 5:30 they're going to be back in their units. And they lock down basically at 6:00 at night, so you're going to have a 13-hour stretch there, there where they're locked in their cells. And that is unusual. When we're talking about the clubs, I think clubs are very important. Those volunteer activities are very important, recreational recess, those are all very important things. And it does concern me about how the population will react. One of the things I did hear from staff is that they believe that the director and his leadership team should have been out more often in the last year. As this decline-- from what I heard, they haven't been out there much to get the input from the staff. And then all sudden we have this state of emergency and they believe that maybe

there's some things that they could have been doing in the meantime. I would also add that I think the, the warden at the Pen and her team need to get out more often, communicate with both the staff and the inmates and engage with them. And I think that will help as they try to move forward as well. Finally, I would just add, I wrote down a few notes here in reaction to what I heard today. So I'll end it with this. When you asked why are they leaving the State Penitentiary, why employees are leaving the State Penitentiary, I'm in the middle of conducting a survey of State Penitentiary employees. And over 50 percent said it's because of high overtime and a lack of support from their administration. The staff from Omaha, we have now 80 going to Tecumseh. There's going to be 40 going to NSP. I've heard it might be up to 100 going to Tecumseh in the future. That was supposed to be a temporary fix, and I'm concerned that now it seems like a permanent fix. And we going to be pulling from this pool of people in Omaha, but eventually we're going to burn through the pool because the turnover rates for those people have been quite high. So we need a long-term plan really to get to, to stop that practice as well. There's going to be the new beds at the State Penitentiary and the Lincoln Correctional Center that the director talked about. And what happens then is you need more employees, probably close to 100 by my count. And we can't fill those positions now, so-- need, when you have a need for 100 new employees and what are we going to do there? When we talked about the mental health practitioners and substance abuse counselors, that's

something that has been very aware and been put out there for the last few years, that they need to increase those salaries to attract people to those positions. I don't know how not having those people doesn't impact your providing of that treatment in a timely way. One concern that I think is really important that hasn't talked about today is when, if we do bump up the pay, if it-- not we, but if the Executive Branch bumps up the pay for that security position, the people that are above them that are not represented by the union, we're talking lieutenants and captains, and others, there's going to be a pay compression issue. And that's going to cause some problems as well, because they're not getting those same rates of pay and increases. And as Senator Lathrop and I have been out visiting the other facilities, we've heard that while they provided some longevity pay at like the State Penitentiary and Tecumseh, other places like McCook or York or OCC have not received those. And that's maybe something they could look at as well. Let's see here. The transition-- from we talked about the trans-- you talked about the transition from restrictive housing and how difficult that can be. And I thought I'd just share a quick story. This morning we were over at the Honu house, which is run by the Mental Health Association. And I talked to a gentleman there who I recently met at the Omaha Correctional Center. He'd been in for over 30 years, over 30 years, and then he jammed out. And he, he grabbed me and said, this transition is way harder than I thought. It's overwhelming, it's difficult, it's scary. And you think about somebody

who's been in for a long time and then, then they're in restrictive housing and then they move out into the community, how hard that has to be. This guy was at least in minimum custody. So that, I wanted to bring that up as well. And then let's see. Earlier this year, the Legislature was kind enough to provide funding for James Davis, Jerall Moreland, and myself to go to Colorado and visit the restrictive housing units there and prisons there. We also had Kasey Moyer and Jason Whitmer from the Mental Health Assoc-- Association go with us. And I included information about that in my annual report, and if that's something you want to talk about at a later date, we'd would be more than willing to sit down with you in kind of a small group and share our experiences with you. And with that, I will end this testimony and be able to answer any questions.

LATHROP: Yep. Senator Chambers.

CHAMBERS: This time I'm not going to wait. Mr. Inspector General, the very imposition of this so-called state of emergency itself could create problems. And I'll use the term "explosions" in these facilities. And if you don't have employee satisfaction, if employees leave, then that's going to aggravate the problem. The director and the Governor, even without negotiating, could adopt a business model that would resolve this problem if they chose to do so. And I've said jokingly not, don't think I was joke, I mean, I don't think it was a joke that the reason Ricketts' father wanted him out of the business--

Ricketts used to be in the business. He was so dumb and incompetent that they shifted him into politics and he can do the damage here. He was praised editorially by the state's big newspapers about his bid--about his business background and he could bring that experience. Well, any business that would be conducted in the way this prison system is conducted, where more problems are created by those who are conducting it than the ones they're supposed to be managing, those people would be fired. Boeing just fired a high-ranking official in that 737 scandal. So I think focus has to be put on the director, but more on the Governor. The Governor has put skid chains on the director's tongue, there are things he dare not say. The Governor is not going to ask for the amount of money that should be asked for. When I saw that several millions of dollars, and maybe they say over a hundred-million dollars, I don't know what the amount will be, will come into the coffers that was not anticipated, all of that should go to deal with this problem in Corrections. If the same things happening in Nebraska right now were happening in another state, the director of corrections would be gone because the governor wouldn't want that heat on himself. But this Governor knows that Nebraskans are so silly, that he has bought enough senators in the Legislature, that this condition can worsen and worsen. And if there is another riot or whatever they want to call it, the Governor will say, see what those people who are locked up do. But there will be nobody, and even the newspapers may not be onto what is going on, who will point out the creation of these

problems by the Governor and the Director of Corrections. They are directly and personally responsible, but nobody is going to call the Governor's hand except me. He, day by day, is doing and saying more things to replicate what Donald Trump is doing. He's praising him, saying that what he is doing is great. His whole family went from condemning him, when he was to be the nominee, to giving millions of dollars to support him. And they're backing him altogether. It's an untrustworthy, unreliable, unethical family. He has a brother who holds a high position in the National Republican Party dealing with finances and he was not paying his property taxes as he should. He had what we would call a large house, but it was a small house by their standards. He built a palatial mansion, and for about a decade he was paying property taxes on that little house that didn't even exist anymore. And when his lawyer went to file a complaint, it was not to pay the taxes that he should, but to reduce the amount that was less than what he should have been paying anyway. His father, Joe Ricketts, moved out to Montana, or where-- one of those states, because he didn't want to pay income tax here. But he went to the Omaha City Council and persuaded them to let him use TIF to finance infrastructure around the headquarters he wanted to build an Omaha. And in order to do that, he had to have that land declared blighted and substandard, and the people were angry. And here's why I'm saying it now for the record. These people are not going to point the finger where it should be pointed. It should be pointed right at the

Governor, and that's not going to be done. This hearing is not going to do it, no other one will. But I have a session of the Legislature when I intend to do it. And I do appreciate the fact that you do these thorough reports, well-researched, well-documented recommendations. And that's all you as IG can do. So none of this is to criticize you, but you might even feel a type of frustration. And as one person in the Legislature, I want you to know that, as I think it may have been former President Bill Clinton to say, "I feel your pain."

DOUG KOEBERNICK: Thank you.

CHAMBERS: That's all that I have.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you. Thank you for being here, Mr. Ko-- Koebernick. I, I just, you mentioned the young man we met today. And we just heard Director Frakes say he doesn't know anybody that has not received programming. And this, this young person jammed out, as you said. So I presume you know others like that as well. And I don't know if we should set up a meeting, because I'm taking Director Franks at his word that he actually doesn't know anybody that hasn't had the programming ability or it hasn't been offered to them or whatever he's claiming that he just-- he did just claim that. It seems to me we ought to have some sort of meeting and bring people in if they're willing. And this, this young man we met was highly articulate and

bright and, and bring them in and talk to them about this. We also heard about the people that didn't have counseling when they went in for 30 years. And I just, I think we need to keep it up and take these people at their word and keep coming and say, OK, you haven't, you haven't met these people and here they are. Here are these people.

DOUG KOEBERNICK: I have brought cases to his attention of people who aren't getting the substance abuse program or other programming. And I go back about look at why they didn't get it and I'm trying to figure out. Sometimes there are reasons, they refused it or they've been in restrictive housing the whole time or, or whatever. But, I mean, there are people that I have brought to his attention. One of the things I would say is-- there's two things. One is that goal of having the programming, into programming within 18 to 24 months before your PED should be like 24 to 36 months, because the program takes a while. So if you can get in there at 36 months or 30, let's say 30 months out, and the programming takes 9 months, then you are going to have a chance to get in community corrections. Do work detail for six months and then a little work release for a year, where you can actually get a job, start that transition, get money in the bank, all those good things. So this goal of like 18 months of getting them in that, it needs to, I mean, they have made progress. I give them that. But they really need to step it up even further and figure out how they can do that. The other thing I would say is that when you have people that

refuse programming, I think we can do a better job. The state can do a better job of going to those people and trying to figure out why, why did you refuse this programming? And today, some senators read the Honu house and they have peers there, and they actually operate out in the facilities, doing some peer support programs and doing rap and everything. I don't know why we can't bring those people in, people like that, or use the inmates that have been trained, that have gone through the 40-hour training to be peers. Why they can't go to those people and say, hey, Joe, why didn't you choose that program? What, what can I talk to you about? What can-- what do you want to know and everything, and work with them and come back to them a few times and everything. Because maybe they said no once and then they get put on the shelf for a long time. I think we can do a better job on that, too.

PANSING BROOKS: I would agree with you. As you know, I brought a bill, LB133, that was to have the department-- or the pardons board notify Corrections when somebody did not get programming and the reason why they didn't. Whether it was programming or whether it was what the reason was. And then it was incumbent upon the Department of Corrections to say why that inmate did not get programming. And if, if the inmate chose not to have programming then they would sign something about their refusal so that people can actually know what is going on. We have those statistics from 2017 that show 308 people that

were denied parole, or 308 were denied parole due to lack of programming. And we know that because Ros, when we met with Ros Cotton, Director Cotton-- is she a director?

DOUG KOEBERNICK: Just chair.

PANSING BROOKS: Chair Cotton. We asked her about those 308. There were other reasons other-- it was a category of other reasons of why the board deferred or denied the inmates' parole hearing. And she said that the other, which was by far the largest reason, was due to-- they were denied parole because they didn't have the required programming. So we've heard this all before. Again, it gets confusing because these things, these issues keep coming back and we see them in cycles. And again, trying to get all this information together, we keep looking at one shiny objects, the staffing issue and, you know, missing the fact that the program is not getting offered, people are jamming out. And they say, oh, well, don't pay attention to that, because now what we're doing is an emergency because of the staffing. I mean, it's so frustrating, and we are very grateful for this information. This volume of information that you have provided, it's so important for the state of Nebraska. And you have to keep teaching all of us because you know way more than we do on all of this. So thank you for that work.

DOUG KOEBERNICK: You're welcome. I would also just throw out, too, that there's a lot of other things we can do besides programming, vocational education, all that stuff.

PANSING BROOKS: Absolutely.

DOUG KOEBERNICK: I mean, there's a lot of different things that we could really beef up. And you can go talk to the veteran staff and they will tell you what it used to be like. You talk to the older inmates, they will tell you that too, and the positive stories they have from those, from those--

PANSING BROOKS: But it costs money. And, you know, these are throwaway people in some people's minds, which is so terrible. And just not the Nebraska way, in my opinion.

CHAMBERS: I just want to correct the record for something I said.

LATHROP: OK.

CHAMBERS: Because if I don't you think I'm as dumb when it comes to geography as you all's president who thinks that Colorado is on the border of Mexico and the wall is going to be built in Colorado, and it's going to be a beautiful wall. They can't go over it and they can't go under it. I said, Montana. This is where "Old grab and grow Joe" lives. I see all those states as the same: Idaho, Utah, Montana. Jackson Hole, Wyoming is where he chose to live so he wouldn't have to

pay Nebraska income tax. And he made that clear. But he misused the TIF program by bringing pressure on the Omaha City Council to let him use TIF where he shouldn't have, 108th and Dodge. For people who don't know it, that's not blighted and substandard property. And the neighbors were furious, they were outraged. But it meant nothing because Big Joe has too much political power and his son also. And if we don't look at some of these things then money that comes into the Treasury of the state is going to be frittered away talking about property tax relief for farmers, property tax relief for people in the city, a check for $72. When, if you left it in that large amount and directed it in one location, it's enough to do something with. And what we're hearing today is gearing me up for what I'm going to look at doing when the session starts. And people may think that I'm just talking. And I will tell you what, that is what I will do during the session, I will be just talking and talking and talking. And I don't get tired and I don't run out of things to say, and they'll run out of time before I run out of talking. So anybody who's got a plan for this session, you all better come and talk to me and clear it first. And if you think I'm bluffing, try me. That's all I have for sure.

LATHROP: OK. Senator DeBoer.

DeBOER: Thank you for all the work that you do and for your testimony. I meant to ask this of the director, but I think actually you might be a better person ask anyway, because you might have this information.

Do you know on average how much or how many folks we are releasing directly from restrictive housing into, you know--

DOUG KOEBERNICK: Oh, into the community?

DeBOER: Into the community.

DOUG KOEBERNICK: It's not very high. I mean, you know, one or two a month maybe.

DeBOER: One or two a month.

DOUG KOEBERNICK: I mean, that's higher than zero. But it used to be higher, I believe. But I can get you that data.

DeBOER: And for those folks who are getting out of restrictive housing and going into general population and then going into the community, what's the average sort of time that they're, you know, I'd like to know if there are folks who are being released into general cust-- a general population for like a week or two and then, so, you know--

DOUG KOEBERNICK: I wanted to know that, too. And so I did some digging and worked with the department and went through a lot of cases and a lot of data and found that that rarely happens. It might happen for people, they will be in for a very short period of time because they just check in to restrictive housing, into that type of setting to get away for the last week or two. And then they might move into general pop for a day or two and then out. But we had the perception, me and

others, that that this was going on, that maybe they were moving people in and then two weeks later then they were, you know-- or going from restrictive housing to general population for about a week or two or three and then moving them out so it didn't count. I didn't find that at all.

DeBOER: OK, thank you.

LATHROP: I don't see any other questions for you. Thanks for being here, Inspector General. We will now take-- I'm going to keep going. But go ahead, if you want to run. I just want to-- it's 4:30 so I'm going to keep plowing ahead. OK. OK, good. Good afternoon.

CARLA JORGENS: Good afternoon.

LATHROP: We do have people coming and going. That's not because they're leaving, but I'm not letting them have a break so that we can get this hearing complete. Give everybody a chance to speak.

CARLA JORGENS: Well, good afternoon. My name is Carla Jorgens, C-a-r-l-a J-o-r-g-e-n-s. Some of you have already heard from me in the past. I am, have been with the department for, the Department of Corrections for 22 years, over 19 of those I spent at NSP. The first 15 years were great. I love my job, my co-workers, respected my supervisors, and was equally respected by them in return. It showed in our everyday work lives. Someone needed something, we all pulled together to make sure that the need was met. If you had an ill child,

a spouse, or a parent, the main concern was the health and well-being of you and your family. It was a great place to work. But times change, not always for the better. I no longer work at NSP. I've moved on to CCL, where there is still that camaraderie, respect, and general concern for one another. So that's a positive decision that I've made, thank goodness. Before I left NSP, I was asked by a young captain if I wouldn't mind speaking with him for a moment. So I said sure, and stepped into his office. And he said he had heard that I might be leaving NSP and asked me why, why would I want to leave? And I told this young captain that leaving NSP was going to be the hardest thing for me to do in my life. It was home to me. Many people I considered family. But I told him, unfortunately, I no longer work for the same type of people that hired me. Nobody cares anymore. The only thing that matters to the supervisors that NSP is how much overtime have you worked this week and can you put in any more time for me? They don't care that you haven't seen your spouse, you haven't hugged your kids, you haven't called your parents in over a week, because you don't have time to do it. I don't know why this young man stopped me and asked me this question and wanted to know why I made the decision to leave. I don't know why. I don't know why it would have mattered to him. I do know that it meant a lot to me that he took the time out of his day to ask, no matter what his motivation was, because somebody needed to hear why good people leave. You see, as an employer, if you don't value your employee, if you don't care enough about them to stop them

before they leave and ask them why, you'll never know what it is they're running from. These people aren't asking anyone why. The same mistakes will be made year after year after year, and the fault of losing good people and not knowing or caring why will be placed on them while the staff that are left in the institution are going to be placed-- the burden of working those vacancies and those hours are going to be placed on those people. This state of emergency didn't start on October 24, 2019. It started in July of 2015. It started when the exit interviews became computerized and impersonal and nobody cared. It started when people quit caring and quit asking the question why. It started when this state, through its past governors and its department with its administration decided that the employees of the Department of Corrections weren't worth a brief conversation to ask them why. Pay is a huge issue, but when you were in a job you love you don't mind working for a little bit less. But you still think you should get fairly compensated. When it became easier for each governor to ignore the Department of Corrections and its employees, to refuse fairly-- to fairly compensate them and keep them competitive with county corrections is when the staffing emergency began. A lot of people play a part in the reason for declaring the state of emergency and it didn't start just recently. It's been festering and brewing for years, like cancer. You can't put a Band-Aid on cancer and cure it. You have to know what caused the cancer in the first place and you have to acknowledge the cause and make an honest effort to change it.

When you expect your staff to work a 16-hour shift plus, 16-plus hours a day, day in and day out, three or four, five days in a row, max in a maximum security facility in a-- with, with a history of staff assaults, you're asking for trouble. The Department of Transportation doesn't even let a truck driver drive a semi over the road for longer than 10 hours a day. Why would you expect a correctional officer to work in a prison for 16-plus hours a day and expect them to be safe? When they can't work the hours that you require of them, you discipline them until the end result is termination. Yep, termination. They're firing them. NSP has terminated seven employees in the last four weeks, most of which are directly related to them not working the required amount of overtime. The employees on 12-hour shifts are expected to work three sixteens and one twelve. The employees on eight-hour shifts are expected to work four sixteens and one eight. That's 60 and 72 hours per week respectively to those employees. Offering hiring bonuses and hiring incentives is going to get you that person that's just looking for a job. But if you want good competitive-- if you have a good competitive starting wage and equally competitive step raises or longevity pay, you're going to get that individual that's looking for a career opportunity. This is not a new concept to NDCS and state administrators, this was what the FOP Lodge 88 bargaining team has said from day one of negotiations in the fall of 2018. Our proposal was a starting wage that was comparable and competitive to county. This crisis didn't start October 24th, people.

This is a direct result of years of indifference and negligence and not caring enough to want to know the answer to the question why.

LATHROP: Thank you. Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Carla. Thank you for all that you do. Are things better over at CCL?

CARLA JORGENS: Things are-- it's a completely different world at CCL. At the moment, a little bit of what's happening at NSP is kind of spilling over to us. They don't have enough staff to sit on their inmates that are at downtown hospitals, as well as Tecumseh being out of town doesn't have staff. So if they have any inmates that need to be at Brian West or at the Heart Institute, the Lincoln, or Lincoln Community Center is required to staff those 24/7 while those inmates are in the hospital. We run with minimum, I work third shift and there's five of us. And there was a week that we had six outside hospitals in one, three, or three or four different hospitals here in town. So we had to mandatory the entire second shift to cover third shift because all of third shift was covering NSP and Tecumseh's hospitals. So there-- it is, it does affect us. It does affect us. But our environment there is much better. Our administration is much better. They're much more, they're approachable. I just-- they're just better people. I, I, I hate to put it that way, but I've worked for

both and I prefer to be where I'm at right now. You get treated much better, that's for sure.

BRANDT: Thank you.

LATHROP: OK. Thanks for your testimony.

CARLA JORGENS: Thank you.

LATHROP: Next testifier. Good afternoon, evening, whatever 4:30 is.

ERIN ARELLANO: Mr. Chair, members of the committee my name is Erin Arellano. I live in Omaha, Nebraska, and I'm a constituent.

LATHROP: Can you spell your name for us?

ERIN ARELLANO: I'm sorry.

LATHROP: No, that's all right.

ERIN ARELLANO: E-r-i-n A-r-e-l-l-a-n-o. I'm also a mom. My son, Carlos Arellano, is a 38-year-old man currently residing in the Lincoln Correctional Center. He's intellectually, developmentally disabled, or IDD, and his IQ is 57. Each time Carlos has had encounters with the criminal justice system, arresting officers, county jail staff, public defenders, etcetera have been advised of his designation. His status is not noted or tracked, though provided through formal documentation. From one incarceration to the next, the information is not retained. I've verified with the records department at the NDCS that they do not

track this population demographic. Statistics show that 1 to 3 percent of Americans are intellectually disabled, and experts estimate that within the criminal justice system, the number is somewhere between 6 to 10 percent. Given the numbers given today, 6 percent would mean 336 individuals. And if 10 percent are IDD, we are talking about 560 incarcerated individuals whose disability is not being accommodated. Yet, this demographic may be the key to at least partially addressing the overcrowding situation. We need a system in place first to identify, collect, retain and share IDD designation information from arrest through incarceration. When the NDCS began looking at ways to reduce the use of restrictive housing, they found a way to identify the seriously mental ill population within the system. They can do this with the IDD population as well. Couldn't data be cross-referenced from other Nebraska databases, such as the Department of Developmental Disabilities or Education to identify those who are IDD? Mission-specific housing focused on individual needs and demographics to provide effective living conditions and pro-- programming for special populations with treatment responses to cognitive disabilities is what-- is one of the programs that the Department of Corrections has begun. And it's a good idea. Using mission-specific housing would be one way to maintain the safety of an already vulnerable population while incarcerated. The NDCS states that they already have mission-specific housing that includes a designated unit that serves those with serious mental illness, or sorry, serious

mental health challenges and social and developmental impairments. But the NDCS conflates IDD with mental illness. The needs of those with IDD are not the same as those with serious mental illness and they should not be house together unless they have a dual diagnosis indicating so. One of the goals of mission-specific housing is to provide appropriate interventions. Yet, current risk assessment tools do not follow evidence-based practices and are not administered by professionals staff-- professional staff trained to work with this special population. These are issues that would need to be worked out to make special-- to make mission-specific housing for those with IDD successful. The importance of the endeavor to track this demographic would not stop within the prison walls. I know that prison overcrowding will not be solved overnight, so we need to improve the conditions inside until it can be addressed. Eventually, this designation information could be used at the front end of the criminal justice process, such as police being trained in dealing effectively with this population, promising procedural due process. Evidenced risk assessment tools could be developed and administered to place individuals with IDD at appropriate levels of risk and creating avenues for alternatives to incarceration. Maybe the number of individuals with IDD going into prison could be reduced. I'm no expert, I'm just a mom. And by the way, my husband works for the

Department of Corrections and has worked there for nearly 25 years. Thank you.

LATHROP: Thank you for your testimony. That's a different perspective. I think we tried to stop the use of restrictive housing for that population. So I hope that we have some way to track them, but we'll certainly look at that.

ERIN ARELLANO: Well, I'll be working on it if you don't.

LATHROP: OK.

ERIN ARELLANO: Yes.

LATHROP: I'm sorry, Senator Chambers.

CHAMBERS: You may get a letter from me. So if it comes, we may develop some communication between now and January.

ERIN ARELLANO: Good. I look forward to it.

CHAMBERS: OK.

ERIN ARELLANO: Thank you.

LATHROP: Thank you. If you want to testify, if you come up in the front row so we could keep the seat hot, if you will.

JERRY BRITTAIN: I'm Corporal Jerry Brittain, B-r-i-t-t-a-i-n, I've been with the department for over five years. I'm as active as they'll

allow me to be. I am the FOP 88 treasurer. I've been present for all the bargaining pretty much since the birth of the union back in last October. And I'm here to represent Omaha, OCC in particular, since I spend most of my time there, although I do help the rest of the department in various tasks. I hate to take away from her testimony, that's very helpful. We sometimes get classified as being us versus them with inmates. I don't hold myself to that standard. I try and do the best I can from a custody standpoint to help rehabilitate and cut some of the red tape out. Omaha has frequently been referred to as kind of a lifeboat in that we're sending 100 people-- 80 now, there's been talks of 100 to TSCI via the van system. And now this 40, which I'm sure will be doubled if the director is to meet his goal of six months. These people aren't being compensated fairly, in my opinion. They're being hired as officers. This is the only facility where officers are still utilized or hired. They're doing the work of corporals and and not seeing any-- a small bump in pay is their only stipend for such, it does not equal corporal pay. I do not represent everyone at OCC. I don't represent kitchen staff, I don't represent captains, lieutenants, etcetera, but I can tell you that they come to me because they know I have the ear of the director and the Governor in some sense. And they feel cheated when the department decides to do everything they can for NSP, LCC, DEC and TSCI. However, it's Omaha who carries the burden of keeping those facilities afloat. So I don't understand how you can throw all your resources at the people who are

no longer maintaining the safety and security of their facilities without also rewarding the people who come in, we do 8 hours at our facility, then drive to NSP and do another 8. In addition, I do like your analogy about the peanuts. I was there for the bargaining. The union predicted NSP being the next crucial stage, whatever you want to call it. We predicted that we would need to get our wages above county. The director stated that he doesn't believe counties are true competitors. When Sarpy County first take-- started taking applications when they deputized, if you will, the position, they basically came to OCC and wiped out over 100 years of experience in one fell swoop. They, I've talked to many of them on their union board and they plan to expand. And I think you'll start to see Omaha will have critical staffing shortly thereafter that new expansion. Most of my senior staff, after what they see is a black eye of not getting the same fair compensation for doing the same, the workload, have now decided to stand in line as soon as Sarpy County opens. And they essentially hire exclusively corrections that we train and they, they take over so.

LATHROP: They're poaching our workers.

JERRY BRITTAIN: Yeah. And why not? They take the best, right? They took all of our special teams. Most of the members that they, when they first opened Sarpy County were special teams, lieutenants, sergeants. Our quality of, of supervisors has gone down. We're hiring

lieutenants off the street now, which is pretty much unheard of. Sergeants are the same. And they are our true competitors. We had a sergeant that came from Lincoln, hired on at OCC just long enough to receive a paycheck until Sarpy could put him on board so.

LATHROP: OK, let's see if there's any questions. I see none, but thanks for--

JERRY BRITTAIN: Thank you.

LATHROP: --waiting all day.

JERRY BRITTAIN: Yeah. I'm going back to work.

LATHROP: OK, thank you.

MICHAEL CORRADO: I'm Michael Corrado, spelled C-o-r-r-a-d-o, with the Michael House. And I actually sent Senator Lathrop an e-mail a couple weeks ago, and he responded quickly. I appreciate that. So we're a transitional housing, sober living. We're really similar to the Honu house. We're, we have four houses in Omaha, three male, one female, and we're opening a house here in Lincoln here in the next month or two. So to me, it, you know, you hear about budget, you know, just some numbers I heard today, $150 million for 380-some beds. That sounds like a lot of money per bed. And to me, you know, it sounds kind of unfeasible. And to me, you know, you got 5,000 inmates and we're at 150,000-- 150 percent capacity. So you're talking 1,500 beds,

2,000 beds you guys got to come up with by, you know, in a short amount of time. So to me, possibly, so I'm offering, you know, an idea as a part of a solution. Just one small piece of the solution is, you know, more organizations like myself, like the Honu house, Michael House, there's many other organizations out there that have houses that, that works with corrections. We work intimately with them, that they're their clients, they're our clients. We go over rules. So we'll have, some examples is some individuals will be on GPS monitoring will-- when they first come in. Like, like in our house, 90 percent of the people that come directly from corrections will have, have them employed within the first week. And from there we'll help them get a driver's license, birth certificates, Social Security cards, because a lot of them come out and don't have those kind of things. A lot of these individuals don't know how to job interview or don't know how to balance a checkbook or even cook. So we actually also provide programming in our house. So in our houses we provide five, with the current program, there's many different programs that we do. But one of the programs is we do five hours of programming a week. So I'll be at cooking classes, financial classes, mock interviews, how to be a leader, how to be a mentor to others. So what it really is is a peer group. It's all like-minded individuals in the same kind of situation. They're all trying to get better. And we require individuals to go to AA, NA meetings, three a week. Our houses are very well kept, you know, just like a lot of organize-- organizations. We have a live-in

house manager. So the idea of providing this, because you talk about programming, you know, this is a kind of solution on a smaller scale, where it's kind of community-based. So it's not that difficult to, I mean, we talked about 380 beds for $150 million. Well, so in the last year, we had 100, 150 individuals over four houses. And you can imagine those houses are really similar to what a lot of people in the room own, you know, in a regular single family houses. So it's just an idea. We more often are happy to talk to guys more about it if you're interested.

LATHROP: OK. Well, we appreciate that. You're doing most of your work with probation?

MICHAEL CORRADO: Probation, parole, and federal.

LATHROP: OK, very good. You qualify as a federal post-release facility?

MICHAEL CORRADO: We're not a facility. We're not like organizations where, you know, 80 beds and there's bunk beds all lined up. It's not, it's not that-- not that type. But we are registered through, like, the state of Nebraska as a registered agent. And we provide, we refer out IOP, OP, MRT class that we do that in house.

LATHROP: OK.

MICHAEL CORRADO: And so we really work, work with community.

LATHROP: OK. Senator Chambers.

CHAMBERS: Who pays?

MICHAEL CORRADO: So I'd say probably 50 percent, 60 percent comes from the state. And then--

CHAMBERS: So it's not all the individual who would come to the place?

MICHAEL CORRADO: No, because if you imagine coming right out of prison. So they come with a zero income. So, yeah, so most of them--

CHAMBERS: And what is the average amount of time a person stays, if you have any idea?

MICHAEL CORRADO: I do. So one, one-- what we ask everybody is to be 90 days minimum. But we would like it to be longer than that. But that's the funding that allows us for right now. And 90 days is tough to get enough money for first month's rent, deposit, and probably a vehicle, you know, so you can be on your own. But, but the guys are doing much better than if they didn't have that.

CHAMBERS: That's all I have.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you. Thank you for being here today, Mr. Corrado. We met some-- a number of us just went to the Honu house

today. So are you pretty much similar, are you different in any way? Because we now understand their system a little bit.

MICHAEL CORRADO: Yeah, we're similar, but different. They, I believe they receive grants. We don't receive any grants.

PANSING BROOKS: OK.

MICHAEL CORRADO: We're working on that. But I also know that state also pays for a certain number of their individuals.

PANSING BROOKS: And how long have you been-- did you, you may have said that and I missed it.

MICHAEL CORRADO: No, it's been a year and three months.

PANSING BROOKS: OK. So they've been around for 10 years.

MICHAEL CORRADO: Yes.

PANSING BROOKS: So it's a little bit different there.

MICHAEL CORRADO: Yes. Yeah.

PANSING BROOKS: And so do you currently work in the prisons to let the inmates know what's possible when they get out? Because they're, they are doing that.

MICHAEL CORRADO: Yes. We've been at-- we just were at York last week, we had an LCC, OCC work release. It's a little bit tough to get in

there, takes a little while to get in there. But spreading the word, yeah, we've been doing that.

PANSING BROOKS: This is such an important work that you and Honu house are doing. So we have to be very supportive of this point. Thank you.

LATHROP: You would be a contract vendor for reentry or transitional housing, and you get paid by the person by the day?

MICHAEL CORRADO: By the day, yes.

LATHROP: That's how it works?

MICHAEL CORRADO: And we also, there is also a charitable organization as well, churches, nonprofits that people that fall between the cracks that don't qualify for those programs, they will, they will support. But there's a lot of people that fall between the cracks.

LATHROP: Thank you.

MICHAEL CORRADO: You bet. Thank you.

TY SULLIVAN: Thank you for having me. I appreciate the opportunity.

LATHROP: Good afternoon.

TY SULLIVAN: My name is Ty Sullivan, T-y S-u-l-l-i-v-a-n. I had a whole bunch I wanted to say, a whole bunch got covered. So I'll start out like this. I spent 18 and a half years in prison, 16 of it was in

NSP. I was there before the lockdowns, I was there during the lockdowns. I was watching riots happen in front of me. I've seen everything that is needed to be addressed: the staffing, the restrictive housing, as it is now called. Every issue, I've watched it come and go. I've watched classes and programs appear and disappear. Staffing is definitely a huge issue and the staff don't want to stay for many reasons. There's violence, which I understand, there's the lack of pay, which I understand. So I just want to touch on those two real quick. The lack of pay. I'm a union electrician that is working on this very building. Twelve-thousand volts come into this building at the speed of light. And that's what I deal with every day. That's your life, if you do it wrong. Experienced people are the only ones that get to touch that. Because of it, I make almost twice what the union officers make. But their life is on the line every day, just like mine and the other guys that work on this building. The fact that they make half what I do is just ridiculous. OK? Something needs to be done about that. Staff staying, we talk about inmate recidivism. You talk about how guys get out and come back and get out and come back. Well, maybe that's a positive thing for staff. Maybe we shouldn't be looking at these new hires. Maybe, well, 18-year-old kids and people with no experience and walk in there with fear in their eye. I watched it I don't know how many times, when they bring in a new group of staff members scared to death the second they hit that yard, because there's 16 of us-- 1,600 of us looking at them. So we talk about

recidivism, let's bring back the staff that walked out. Why are we looking at no experience when all those ones with all that experience who did so well before August 2, 2012, the day when NSP was officially locked down and has stayed locked down ever since. I was there, watched it happen, was on the handball court when a supposed riot happened. It was an argument over a game of handball. NSP has been on lockdown ever since. You can call it restricted movement, you can call it whatever you want to. It's lockdown. When they slapped fences up in the middle of the softball field, I don't know how many inmates just lost it. You, for 48 hours, you couldn't sleep. There was doors being kicked off hinges, windows broken, bags of trash being lit on fire and thrown at staff. That won't change. And you talk about this emergency thing. I've heard so many terms like that. And when has it gotten better? Now, I've spent more time in prison than most have that are out now. But I've been out for three years. I've only been on parole for two, three months. I make up, well over $30 an hour, I have great benefits. I have everything I could ever want in life. Take care of my family, take care of myself. And I can afford to be here to support both sides of the fence. I'm not here for inmates rights, I'm not here for deference. I'm here for human rights. Something needs to be done. And if I can help, if I can give you any answer, if you've ever wanted to ask an inmate anything. You want to talk about restrictive housing, segregation, you want to talk about South 40, I've been there. I've been to every part of it. I've been to every prison this state has,

except for two-- except for Tecumseh. And the only reason they didn't send me there was because I was an escape risk. So if you have any questions on anything, I've got answers. I'd love to help. And there's not much they can do to me, so I'd gladly be honest so.

LATHROP: Mr. Sullivan, I've had a chance to meet you. In fact, you gave me a tour of the work that's been done in a quarter, in the quarter of the building. You're one of our electricians here.

TY SULLIVAN: Yes, I am.

LATHROP: I appreciate your testimony today. I know a little bit about your history, in that you told me while you were in you went through classes and you did a lot of the electrician training and learned to do that skill while you were incarcerated.

TY SULLIVAN: Yes, sir. Pre-2012 they offered college classes, they offered training, they offered so many things.

LATHROP: And you, when you and I have talked in the past, you talked about that date, 2012. This--

TY SULLIVAN: August 2, 2012.

LATHROP: --when they did the lockdown. Tell us what was going on, how things were running before that, what happened then, and what changed after August of 2012.

TY SULLIVAN: Still to this day, inmates consider that what they would say "golden time" or "golden years." There was a warden at Nebraska State Penitentiary, his name was Warden Bakewell, who would every day walk out on the yard without his protective staff or without anyone else and walk right up to an inmate and say, hi. Talk to him. What's going on? What do you need? Are you getting into programming? Is everything OK? Your staff members working with you? And he would spend hours on that yard. Never met a warden that ever did that. In that time, there was-- and studies can be done on this, which probably haven't been done, should be. In that time, there was less violence on those yards, even though there were gangs in equal amount as there is today. We cannot blame the gangs because there's more violence now than there was then. When the administration takes an effort in their staff, in their facility, and in the inmates, it shows. It will affect like an echo everyone it bounces off of. And at that time, the inmates respected the staff enough that the staff could respect the inmates. There were no problems. There were-- a staff assault was an outrageous thing. Oh, my God. Are you serious? That just happened? It was unheard of back then.

LATHROP: What happened on August of 2012?

TY SULLIVAN: August 2, 2012, afternoon yard locks down at 3:15. Three o'clock, I was standing on the handball courts watching a couple other guys play handball. There was-- handball is a big thing in there. It's

a very active sport, guys do it for a mental and physical activity. And there was a large group on the first handball court and they were playing handball, and two people disagreed on how the ball bounced. So there was an argument persisted. There was not a fight. There was not a single action of any type that would have indicated a fight. A tower officer saw a large group of people coming together around this argument, told somebody in administration. Administration locked down the yard. It was about 3:10 when they locked it down, so five minutes early. And over the intercom it was: All inmates immediately get off the yard, return to your housing unit. And they were screaming over the intercom. Sixteen-hundred people on this yard and only 20 to 30 in this area knew what was happening. So 1,575 we'll say had no idea what was happening, was being screamed at to get off the yard.

LATHROP: What changed about the way they operated the place after that?

TY SULLIVAN: Everything.

LATHROP: So, and I don't want to keep people here.

TY SULLIVAN: No, it's fine.

LATHROP: It's already 5:00. Just tell us briefly what changed big picture.

TY SULLIVAN: Immediate was 24-hour lockdown of all inmates for, it went on for two months before they opened it up where inmates can go out to eat. Showers were not allowed for the first week, we went without showers. You had no visits, no phone calls for at least the first week. I believe it was two weeks and a month for visits. After that immediate set of things, when they tried to re-- react to normal, jobs that were done on the yard were gone. So loss of jobs. Staff respect immediately thrown out the window. Just the overall effect of being able to live their normal life. Some of these guys, lifers that have been there 40, 50 years, can no longer live the life, the only life they knew. It's not--

LATHROP: So less movement?

TY SULLIVAN: Yes.

LATHROP: Less opportunity.

TY SULLIVAN: Less movement. But the biggest thing I want to point out is opportunity. There was no education after that. None. Religious service barely worked. The activity center barely worked. Everything that was there was taken. You were fed, you weren't even given yard time at the time when it first happened. And now the yard time they talk about, oh, we're increasing an hour of yard time. The yard didn't shut down before. You walked out soon as breakfast opened and you were allowed to be yourself. Violence didn't happen then.

LATHROP: OK, I appreciate that. Senator Slama.

SLAMA: Just have a couple of questions for you.

TY SULLIVAN: Sure.

SLAMA: And thank you so much for coming out and testifying. So were you at, did you move to a different facility before your release in between 2002 and your release?

TY SULLIVAN: So 2002, I went to LCC, spent three years there. Went to NSP, spelt-- spent 12 years there. I was considered a high-risk inmate, so they had to keep me in a high-risk unit. Usually one of the violent units, even though I wasn't a violent offender. At the very end, three months before I was eligible for parole, they decided they were going to put me in for work release. They told me to pack my stuff up, the next morning I was leaving. Well, that next morning they said, we're not sending you to work release. We're going to send you to McCook, we want to see how you do out there first because I have an escape on my record. So they sent me out to McCook. I was there for a month and a half. McCook was like, you don't need to be here, Ty. You are too close to parole, you need to go to work release. And they sent me there. But it, that only happened because wardens had to agree to let it happen, because of my escape. Sent me to work release and the staff there thought I was an outstanding inmate and tried to do everything they could. I went for work detail as Prairie Gold Homes.

They had asked me to stay on and help teach the guys, but I didn't because as soon as I was allowed work release, within 24 hours, I had a job as an electrician for a company here in town and have been doing that ever since.

SLAMA: Wonderful. That's great to hear. So how would you compare your experiences between LCC at NSP and McCook in that timeline after 2012? I'm sorry, I said 2002 earlier instead of 2012. I'm just interested to see how your experiences compared. If you saw that same rigidity happen when you went to other facilities like McCook.

TY SULLIVAN: So at the time when I was in LCC, that's back when they called it "gladiator school." That's where most of the violent offenders went and it's where I had to start my time. So at that time, that institution didn't do the programming it does now. And it was where gangs went, violent offenders, stuff like that. So that was just crazy. And then movement to NSP was a good movement because it opened up opportunity, which LCC didn't have. Took every advantage I could, loved it. It was great. I am the person I am now because of it. When they took that away, you are not that person anymore. I lost my job as an electrician-- or, I'm sorry, I lost my job at the school, which I worked at, taught GED, and tutored different levels of college classes. Got a job as an electrician, worked there for the rest of the time, almost four years' experience in there as an electrician. When I went to McCook, they didn't have jobs in McCook. Like, I think out of

the 200 inmates, 20 had jobs at the time. Stuff has changed now since I had left there, but there wasn't really opportunity for me at my level and the staff knew it, so they were trying to push me to get out of there. So the only thing they asked me to do while I was there was get my birth certificate, Social Security card. Because after 16 years straight, you don't have any of that. So they wanted to make sure I had what I needed to when I did get to work release. So that's what I worked on while I was there. So there wasn't really anything there, there was really no programming for me. There was no opportunity for me, so they moved me as quick as they could and got to work release. And that's when I was able to go back and do normal things again.

SLAMA: All right, thank you. And thank you so much for coming to testify today.

TY SULLIVAN: You're welcome.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you. What a breath of fresh air you are, Mr. Sullivan. Thank you for coming today, and I appreciate the fact that you're here on behalf of human rights, not necessarily prisoners or officers, and just worrying about all people. So I really appreciate that. Can you just remind me again, the pre-2012, who was the warden at that point?

TY SULLIVAN: His name was Warden Bakewell. He was there for--

PANSING BROOKS: Bakewell.

TY SULLIVAN: It was either four or eight years, I can't remember what his term was.

PANSING BROOKS: OK, and who was the-- who was the warden after, from on '08 to '12 on?

TY SULLIVAN: Her name was Diane Sabatka-Rine.

PANSING BROOKS: OK. She, so she, she is currently working in the system right now, I believe. Is that right? She is, she's in administration. I thinks she's a second in command. Is that the same person?

TY SULLIVAN: I believe so, yes.

PANSING BROOKS: Thank you very much. Appreciate it. I just really appreciate-- when we heard about that, the riot, we were told it was because of a life skills program being taken away. So I'm really grateful to have had your perspective, having actually been on the court, seeing what happened. Yeah, we heard that everything had broken loose. So, of course, what happened was that everything fell apart later after this, the, the, the sort of lockdown of every single thing

and every activity. So I really appreciate your time and we will probably all be wanting to get back in touch with you. So thank you.

TY SULLIVAN: Well, I work here in the building so.

LATHROP: And you'll--

PANSING BROOKS: Good.

LATHROP: Thanks for being here, Ty.

TY SULLIVAN: You're welcome. Thank you, everyone.

JASON WITMER: Try to be short.

LATHROP: Did you say a brief story?

JASON WITMER: I said, I'll try to be short.

LATHROP: Oh, OK. Welcome.

JASON WITMER: Thank you. Jason Witmer, W-i-t-m-e-r. I don't-- even though I work in human service, my voice is-- my voice, I don't say what I say is a reflection of anybody I work for or volunteer with, which is quite a few groups. They can claim that on their own. I just don't want to put that on them, even though I have nothing drastic to say.

LATHROP: OK.

JASON WITMER: But I do want to reflect off of what he just said about, I think you guys kind of got the point. So I was in Tecumseh, I got like 20 years in. I was in Tecumseh 2014, that's when they started their restrictive housing-- or restricted movement, sorry, restrictive movement. And it was a fight on the yard, I actually was out there for the fight in the yard, and then they shot the guns. And then for like a year, as we know of the 2015 Mother's Day riot, there kept being these different restrictions and tension built. And then, you know, guys were like, all right, we're not going to eat this day. Try to do, they tried to put these little things together, protests. And I'm literally on the end of my number when the Mother's Day riot comes. So when first there was a guys were going to protest, and then I actually witnessed across the yard a couple-- I didn't hear him talk them into it, but I seen them. The little guy went and started a fight with staff, and I heard him yelling to his buddies: I thought this was the plan. And they just were laughing at him. And that was the instigating staff assault. And then a couple of guys got in and then the staff broke it up. And then as nobody was locked down, the time built to the fires and etcetera, etcetera. So it was a bunch of isolated incidents built off of each other. But I just want to reflect I heard it came from-- the lockdown came from the NSP, and I, you guys have more information than me on that, that [INAUDIBLE]. And I say that because of kind of what's going on at NSP now is I understand the talk of lack of staff and he wants to readdress it. However, you can go to a child

like we've got less money, so no candy. It's punishment. It's not saving money, it's punishment. So it's not, we're not dealing with children. However, we only got so much freedoms in here and now they're reduced. All we hear is punishment and all you're going to get. It's going to be hard to be rational with your explanation and what's happening to us. So I think that's bad news. I wanted to, I wanted to say a couple of things. programming and beginning of sentencing, I can just talk on this real briefly. I know the clinical program costs a lot of money. However, I am a product unlike the Sullivan, who is a good example of somebody going in and using their time. I spent most all the first like-- an instigator to the point where I was involved in all the gang stuff, etcetera, etcetera. And when I started getting change, it came from long-termers, guys invested in me, and eventually going to what with they're calling the clubs, organization, Harambee, culture clubs. And over time, I started changing. But I also was one that like, you, you treat people like this, I, I sponsored, you know, not going to eat. You know, these things that were peaceful protests, I was all about that. They didn't include me in the last one, the, the riot, the 2015 Mother's Day sit down that was supposed to happen that didn't happen, because I was trying to go home. But what I want to say what that is I was highly known to be involved in both communities, the gang, when I was in that

life and the transition. Can I speak-- continue speaking. I got the red light on.

LATHROP: Keep going.

JASON WITMER: And the transition--

LATHROP: Kind of get to--

JASON WITMER: Yeah. And the transition. And the point that I got to where I got to changing my behavior and whatnot was the investment of the long-termers and guys that looking at other guys that somebody invested in them, that they did that for me. And they did it over a time, because it took time. And with programming at beginning of people's senses, this could be things these nonprofit organizations are bringing in. It doesn't have to be clinician programs in the beginning, because if you get some change happening and it does come along, you're going to save costs because these guys are going to be busting guys like me, like Sullivan or whoever will come out. And instead of getting back into our negative behavior, we now have these options of this might be rough, but I'm going to say no to that offer you have with of that I can get some money. So that is a profit in all ways, humanity, money, the department. Now, I just want to say these three points for legislation. Inspector General is here. I feel like you guys can give him more power in this, in things. So I know he can investigate, however, I don't think he has no power, like, if they

hide things. Does he have power to invoke something on them, invoke some type of violation on them? You know, to pursue some type of subpoena on them that like, OK, you're not-- he should have as much power as internal affairs would have on the police force. Because that's what his job is there-- his job is not there to tear them down, it's to make sure, like Frakes, when you're dealing with it, I want to bring attention to, OK, we have a staff member in power that kind of likes this position of power. And so he does all these little things and now there's things that he got to put under the table because they don't read out well. Does he have power to pull that out of-- to force that out? I feel like there should be some more power into the Inspector General of Corrections position. I also feel like there should be more money put towards these nonprofits because you can pay them, they can get grants, and you can pay them less staff-- staff shorting, that's what we talk about. Who can take over these programs for that teach people, you know, life skills, that teach these nonprofit organizations, these individuals who will put their time in. And they can do it at a fraction of the cost. So that can help solve that. You don't have to have two, three, four, five staff going and we can't run programming. Outsource.

LATHROP: Right.

JASON WITMER: And then lastly I want to say, and I would love to go along on it, but I don't need to at this time. Restrictive housing. So I want to say this for first. I like Frakes.

LATHROP: You spent a lot of time there.

JASON WITMER: I like Frakes. I talked-- he talked to me personally. I like Frakes, and I don't want this to be a roast on him. But I also told him that I'm not very in favor of the department because it doesn't make us better human beings in no capacity. It mortgages the future. I go in for 20 years, you think I'm going to be a better person for your kid who was one and that's now 20 if I come out of this type of department? And it's not all Frakes, because it was set up with him. But right now, this is the time where people make bold moves. And so for the restrictive housing, I feel like the Legislature needs to follow an example like CO, or like Colorado or something, where they put in laws in effect that hinder the ability to make such discretionary choices covered in the administrative regulations or whatever policies they like, yeah, we do this, we do this, and it's, it's, it's legal now. But it needs to start being limited because I think that's what happened there. I went with them over to there-- we went into the prisons and stuff and that's what they talked about. So mentality, mentality is hard to change. Everybody has lived in this hard on crime thing, and it's hard to argue that because we've done things to other people. So when you argue for my rights, it sounds

like you're arguing against the victim. When I argue about who I am today, I kind of feel like I'm arguing against what I did, which is not true. But when you deal with people who haven't done that, like Frakes-- we'll say Frakes. I'm just going to use him, he probably won't appreciate it. As actually Chambers said, he's hindered to a point because whose head is going to come off when this stuff keeps going? Because we watched this before. Governors don't get kicked out of office, the depart-- the guy at the top of the Corrections gets kicked out and things keep moving on. We just put another person on, see what they do. So he needs something that, at least give him some justification, like, I gotta do this. Restrictive housing can be dealt with this. Let's use Colorado's example. Let's put them laws in effect and see where that goes, because the argument of "that might not work" is not, not, not good no more. It's just not, it doesn't justify nothing because we've been doing stuff for 20, 30, 40 years. And this is where we're at. In the past four or five years we have the worst this is-- nobody could believe this is Nebraska. This is a Colorado pris-- I mean, a California type prison, a New York type prison, these big states where they have huge amount of crimes. And it's just really hard to-- this is that type of prison. People get murdered and don't even-- nobody even knows who did it or can solve it in little old Nebraska? People can get murdered in a place for a correctional officers and cameras and a bunch of guys that would have talked all day long. They just talked about all their intel. Intel tells us

stuff, but nobody can solve that? That is an example of, like, that's out of control. Before 2015 do you have a record of burning prisons in Nebraska? Of guys found murdered in the-- multiple guys found murdered in one riot? Guys running, losing their minds? And that's just an example of saying like, if this was my behavior in some degree, you'd say, OK, these past four years, this is your behavior. Well, I have some excuses for you. In the past four years, this is my behavior, this is what's happening. So that-- a law on that, you know, some legislation on that restrictive housing like you guys been pushing towards--

LATHROP: We're working on it.

JASON WITMER: That, that can help him. And then after that, I won't, you know, he might have some good justifications, but now they'll just be purely excuses. And I feel like Frakes could rise up if he doesn't feel that threat of above. But if not, that's like my own choices, that's his own choice. But that's all.

LATHROP: OK. OK, I appreciate what you do. You advocate for restrictive housing and work on that topic, and I appreciate it.

JASON WITMER: Thank you.

LATHROP: All the things you do. Did you have a question? OK, thanks for being here, Jason.

JASON WITMER: Yep, thank you.

JAMES DAVIS: I'll be brief. My name is James Davis from the Ombudsman's Office, I'm here to testify on Senator Vargas' bill on restrictive housing. But before I go into that, I want to fall back on Senator Pansing Brooks's question on programming. Because when we were at that meeting, I asked Director Frakes about evidence-based program with the clinical. So if you cut an evidence-based like your VRP, violence reduction program, from six months, I mean, from 12 months to 6 months and you don't collect the data, we don't see how the program is doing. We don't do the evidence base or basically we get in and look at what is it. We just check on the-- sorry. Accountability, that's what I was looking for. Because basically when you run these programs, you have to have accountability. And so we're not checking that out on the VRP, the SAU, or iHeLP. So those programs have been cut and we don't know whether or not they're doing what they do-- what they supposed to be doing. They're supposed to be doing the Cadillac program, but we don't know whether or not they're working. So we did ask for numbers to see the success rate when those programs, and we haven't seen them. So when we talked about that, basically, I think that's where he was coming from, where he may not have believed in those programs, but if they're not taught the way they supposed to be with the evidence-based model then we question it. Colorado, basically the restrictive housing. Myself and Doug and Honu house went down

there to look at that program. And I'll just be brief and I won't go into the weeds of it. It's, it's the closed custody program has five different stages in that program. So in other words, when you go into that close max, you go in, you do a 15-day evaluation. You know, get the four hours out of cell time until you get that evaluation done. And then you go to the MCU level, which is the highest level. And basically on the highest level, you get four hours out of cell time. Basically get structured and unstructured and your movement is in restraints and then you move onto a different level. But the lowest level on there is the CCTU, which you get up to six hours out of cell time. And that means that you move around without restraints and you get the program that you need. So basically, it is sort of like a transition where you start at the highest level, you're programming inside the close management, and then you step down into you get to a point where you get to six hours out of cell time in close management. Once you complete that phase, then you move to another close management facility for probably two weeks and then you go to a facility which is general population facility. So Colorado met those same challenges that we did. They were understaffed. But when the law came into effect, they had to get those guys out of cells for four hours. Now, what they did do was not practice solitary confinement, which we do by, by definition we do, by statute, we don't. So if we keep people inside for 23 hours, an average of 23 hours a day, that's solitary confinement. That's what the department participated in, on

an [INAUDIBLE] survey for solitary confinement. We do keep people in for three years and two years. We have cases that we discuss with the director on solitary confinement, on those guys who have been there for three years. And we've asked him to step these guys down and even send them to 4B, which is a limited movement, so they could have some hope. So we do, we have people in there for three years, two years. We have documented cases on that. The second part I think Senator Vargas was interested in on restrictive housing was the due process. The due process basically invokes debt that if you're on solitary confinement for a certain period of time, you guys can decide that you kick in that due process clause. I've talked to some of you guys, some of you guys like the four hours, six hours. Colorado capped it off at 12 months. So unless you've done something so egregious, then it would be determined by the director that you stay on restrictive housing. I'll call Colorado restrictive housing and what we do is solitary confinement. And them programming, access to programming, I think a question came up about access to programming at NSP, and I think it was a VRP. Well, we don't offer VRP at NSP. It's supposed to be offered at the housing unit 4, but they haven't initiated yet. So that's the restrictive housing. So if I needed VRP and the parole board said if I needed it, I couldn't get access to it until I got out of, out of cell or moved out of housing unit 4 into general population.

LATHROP: Right.

JAMES DAVIS: So if you guys have any questions. I know you're tired.

LATHROP: No, but you know what? I appreciate all the work you do and the advocacy on restrictive housing. You made a little round last year, I know you'd like to see us make more progress. We'll do what we can.

JAMES DAVIS: OK. All right, thank you.

LATHROP: Appreciate it. Thanks, Mr. Davis. Are you the last one?

SPIKE EICKHOLT: I think so, yes.

LATHROP: You're the one we've been looking for.

SPIKE EICKHOLT: Thank you. Good evening, members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska, testifying on both of these interim study resolutions. I did distribute a copy of my written testimony yesterday. I prepared it before the emergency declaration announcement, so a lot of it was actually geared toward Senator Vargas' interim study dealing with due process for people who are in long-term restrictive study-- confinement. Even though, but this-- obviously today's hearing has been a lot more wide-ranging, a lot of issues been discussing that we've heard about have been about the general state of the prison system. And as the committee knows, I do

work for the ACLU. The ACLU is involved in federal litigation on behalf of a number of inmates that-- and many of the subject of that lawsuit relate to many of the things that we've heard today. So I'm not going to try to argue that case here. But I would say that even though we do have a case pending, we are still committed to doing something legislatively to address our corrections problem. And if you-- as you've heard today, it's the problem is complex, it's interrelated to a variety of things. It starts at the front end and it goes all the way through the Department of Corrections and even when people leave the Department of Corrections. The front end with sentencing reform. Senator Chambers talked about mandatory minimum reform. Director Frakes even alluded to it earlier when he explained that he can't work with a lot of people coming in. There are things out of his control and the things he said, if you listened carefully was people are coming in with big numbers, flat numbers, things that he can't really do much with. And by flat, I don't mean necessarily lengthy sentences, but very short, 12, 18 month prison sentences, which is what CSG told us years ago was our problem that we needed to fix. So we are committed to helping the committee come up with sentencing reform, obviously reform within the facilities themselves with respect to programming opportunities, restrictive housing reform, and then, of course, reentry on the back end of the prison system when people leave. Whether, whether that's second chances as far as getting their convictions set aside or getting the records cleared up or

having meaningful chances at parole. But I want to see, talk about three things real quick legislatively and then ans-- answer a question that Senator DeBoer asked earlier. As far as due process, what to do with people who are in restrictive custody or restrictive housing for a long period of time based on intel, they don't know when they're going to get out. Senator Schumacher had a bill a number of years ago and I had, was just thinking of a possible resolution of that or a way to come up with a way to create a vehicle, if you will, to provide that person who is in custody, in solitary for 90 days, 6 months. What the committee could do is pass a bill that would direct the state court administrator to develop a one- or two-page form that would allow that person who was in restrictive custody to request a hearing before a judge. I say a form because we're going to have people who don't have lawyers. You get prison mail, you don't want to become a vehicle or an opportunity for an inmate just to come in to get, for a judge to talk about all kinds of things. But just a box form that lets them know-- can I continue? Sorry, that lets them know when they were in restrictive custody, when do they anticipate to be out, what their understanding is of why they're there. And then they can have a brief telephonic type hearing or something in front of the judge where the department has to somehow explain why. Even if it was real deferential to the department, I think it would still serve a purpose, and that is it would encourage meaningful record keeping from the front end from the Department of Corrections when they put somebody. So it's not so

slipshod, so happenstance, so informal, while somebody can just end up locked away in solitary confinement and just held there indefinitely. And there are people who are--

LATHROP: What's the standard, what's the standard for the, the district court judge? If we have the form, I've, I've been in there for a year, best I know I'm in there because of intel or--

SPIKE EICKHOLT: Right.

LATHROP: --the safety of the institution. I don't know what any of that means. No one's telling me why they think that.

SPIKE EICKHOLT: Right.

LATHROP: And I now send my form to a district court judge. I'm in front of Skype and I'm talking to the judge. What's that judge supposed to determine or how does a judge say, you don't belong in restrictive housing? What's the standard?

SPIKE EICKHOLT: I think the standard as a practical matter ought to be somewhat deferential to the department to articulate a reasonable corrections-related purpose.

LATHROP: But they show up, they show up-- this is the struggle I have with this.

SPIKE EICKHOLT: Right.

LATHROP: Not that I'm not going to have a problem with the idea of judicial review, necessarily. But what's, what's the judge reviewing? Because the department, you know, they listen to the, the person that's confined.

SPIKE EICKHOLT: Right.

LATHROP: The department steps up and they say, we have intel. It's not just coming from one person. We've vetted it, which is what we heard today. We vetted it and we have good reason to believe that this person would, if they were outside of restrictive housing, would compromise the safety of the institution. What's a judge do with that?

SPIKE EICKHOLT: Well, you, you put the standard in statute. And perhaps that's all a judge can make those findings and then just deny the inmate's request to be released or some similar thing. At least she would have that on the record. At least you would have it in a judicial proceeding with at least an independent hearing officer. At least you would have that process itself, it would be a bell on the cat or whatever you want to call it.

LATHROP: But what good does it do if that, if the judge can't overturn anything?

SPIKE EICKHOLT: Well, I--

LATHROP: Because--

SPIKE EICKHOLT: I think you could still provide.

LATHROP: --we're still seeing these categories, right?

SPIKE EICKHOLT: Right.

LATHROP: There's five or six of them. And, and two of them are pretty, pretty broad: safety in the institution and-- yeah, security threat group--

SPIKE EICKHOLT: The security threat group.

LATHROP: --is another one. We think that Lathrop is in a security threat group and we think he needs to stay there.

SPIKE EICKHOLT: If the--

LATHROP: At what point does the judge go, yeah, I'm not buying this?

SPIKE EICKHOLT: If the department can't make even a preponderance showing or even the lowest standard then I would argue that the court should have the authority to direct the department to develop a discharge plan for that person, unless they can show additional evidence. I mean, I think you'd have at least an improved process just from up front. You wouldn't have the double rumor, hearsay rumor. Even if it was from multiple sources, you don't know the validity or how meritorious that is. This just a solution I thought, or a suggestion I thought you could consider. Another one, as Senator Pansing Brooks

claimed before, you have LB133 that would change and have some sort of clarification or delineation how the Department of Corrections works with the board of parole for people who are denied parole. You've got 908 inmates in your facilities that are parole eligible. Admittedly, some of them aren't ready. Some of them could be made ready. Another suggestion is LB94, and that's Senator Wayne's bill. It was heard earlier last year, obviously. It directs the State Patrol to provide for law enforcement functions in the Department of Correctional Services. The department opposed that last year and explained they had it handled. But, you know, back in September and just last week, they had a number of major law enforcement searches and sweeps in their facilities where they used the State Patrol and used the police and used the National Guard. So perhaps it would be something the committee could consider doing to take some pressure off the Department of Corrections so they could focus on other things. Finally, Senator DeBoer, you asked about the number of inmates who are released directly from long-term restrictive housing into the community. In September, on September 13, 2019, Director Frakes issued his 2019 restrictive housing report. And on page 22 of that document, he tracks that in fiscal year 2019, 37 people were released directly from solitary into the community-- or 44.

PANSING BROOKS: Thirty-seven.

SPIKE EICKHOLT: Thirty-seven in fiscal year 2019, 44 in the fiscal year 2018. So like Mr. Koebernick said, it's about one a month is walk-- were walking right out of solitary [INAUDIBLE].

LATHROP: Do we know how many of those people-- some, some of them, some inmates will say, I got two months left, I do not want to get caught up in some nonsense out in the yard or in the cafeteria. And so they put themselves in restrictive housing, don't they?

SPIKE EICKHOLT: They do sometimes. And that doesn't explain why they're there. Although it does note that they, they were on long-term restrictive housing. So it might not be all--

LATHROP: More than 30 days.

SPIKE EICKHOLT: --those people were in 30 days. So it might not be all those people.

LATHROP: OK.

SPIKE EICKHOLT: So it was just some ideas I thought of. And again, we're always willing to work with the committee on anything.

LATHROP: OK. Surprisingly, no one has any questions. Thank you, everybody. I appreciate it.