

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee October 18, 2022  
Rough Draft

**LATHROP:** Welcome and good morning. Welcome to the Judiciary Committee. My name is Steve Lathrop, and I represent Legislative District 12 and I chair the Judiciary Committee. We're here for an interim study today, LR375, which is sort of our general, broad, examine issues within the jurisdiction of the Judiciary Committee. Today, our focus is on, sort of, I'll call it things that we've legislated and where are we at and sort of where are we at, at the end of 2022? As we go from one administration to the next, where are we at with the Department of Corrections? So we'll cover sort of a variety of issues related to the Department of Corrections. We have an interim director here today to answer questions and to testify. I'm not going to use the light system again. If you're up here testifying, I'll just ask that you be mindful, that we try to keep it at four or five minutes. Unless you're-- and you will be asked questions today. I think this committee has a lot of questions about where are we at as we close out 2022, as we close out this administration and this legislative session so that people have an idea of what to work on as we go into 2023 with the Department of Corrections, at least that's my intention. If you're planning on testifying today, please fill out one of the yellow testifier sheets at the back of the room and hand it to the clerk when you come up to testify. We will begin today's hearing with an opening statement by the introducer of the resolution, followed by public testimony. We will have the interim director testify first at her request. As a matter of committee policy, we would like to remind everyone that the use of cell phones is not allowed during public hearings. At this time, I'd ask for everyone to look at their cell phones and make sure they're off or in the silent mode. I'd like to start off by having the members of the committee introduce themselves, and as we typically do, we'll start with Senator DeBoer.

**DeBOER:** Last time.

**LATHROP:** Yes.

**DeBOER:** My name is Senator Wendy DeBoer and I represent District 10, which is in northwest Omaha.

**BRANDT:** Good morning. I'm Senator Tom Brandt, District 32: Fillmore, Thayer, Jefferson, Saline and southwestern Lancaster Counties.

**MORFELD:** Good morning. Adam Morfeld, District 46, northeast Lincoln.

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**GEIST:** Good morning, Suzanne Geist, District 25, the east side of Lincoln and Lancaster County.

**LATHROP:** Assisting the committee today, are Lor-- Laurie Vollertson. And this will be our last committee hearing, Laurie Vollertson and Neal Erickson, one of our two legal counsel. I got to tell you, I always feel like I have the best staff in the world in the time that I've been here. I'm on my last hearing. I have been blessed with great staff and these two are no exception. Laurie is sort of the dean of committee clerks. And Neal Erickson has been-- I think he started in the Legislature 50 years ago, [LAUGHTER] and comes to the committee with a great deal of background, and we have been well-served by these folks. Our page today is Logan Brtek, who is a UNL student. Thanks for being here today. And with that I will introduce LR375. Good afternoon, members of the committee. My name is Steve Lathrop. I am the-- L-a-t-h-r-o-p, I'm the state senator from District 12. And I'm here today to introduce LR375. LR375 was sort of a thought that I had. As you know, this is sort of our anything within the jurisdiction of the, of the Judiciary Committee resolution. So I've tried to make today's theme and the subject matter the Department of Corrections. And if I may, in 2014, I was involved in chairing the special investigative committee into the Department of Corrections. And as an eight-year member of the Judiciary Committee, we watched as-- and we served as the Department of Corrections drifted into more and more issues. We watched as overcrowding became more acute. We watched as staffing issues became more acute. And ultimately, in 2014, a guy named Nikko Jenkins was released from the Department of Corrections, went out and murdered four or five people, and that led the then Ombudsman, Marshall Lux, to write a report. And Marshall's report said that Niko Jenkins represented everything that's wrong with the Department of Corrections. And that report by Marshall Lux-- by the way, the response from the administration, Governor Heineman, at that time was Marshall Lux is soft on crime, which was a ridiculous statement to make. We-- I put in a resolution to study the Department of Corrections, and as we studied the Department of Corrections in that special investigative committee in 2014, we realized that we had problems all over the Department of Corrections: the way we were treating individuals in restrictive housing, the inability of the incarcerated to access healthcare and in particular, mental health care. We recognized staffing issues. We recognized overcrowding issues. Certainly that in that committee investigated the miscalculation of sentences, which I still believe was intentional to try to, as a strategy, to alleviate overcrowding. When I returned to

the, to the Legislature four years ago, one of the first things that this committee did was hold a briefing. And we were, we were months away from coming into a-- an overcrowding emergency, as that was defined by statutes passed in 2015. We, we had a briefing with the Director and I was struck, as you probably were, that there was no sense of urgency. There was no sense of urgency. There was no plan to, to try to avoid an overcrowding emergency. And the response then was, there's no consequence. When we get to an overcrowding emergency, what's that mean? We go through a list of people. We don't do anything. Maybe we put-- parole another person, but there's no consequence. So nothing was done to avert the overcrowding emergency. And we've seen where we're at today. We're, we're probably somewhere near 150 percent of capacity. We haven't opened up the additional beds, the 384 beds yet, and so we continue to be among the most overcrowded institutions in the country. Our staffing issues at the security level have improved. The FOP is here today. I think they'll tell you that while we have raised the pay and we saw an influx of people coming into the Department, that's slowing down quite a bit. So today the point is to try to take a snapshot of where we're at and what work needs to be done next year. I feel like that's my responsibility as the Chair of this committee that's been deeply engaged in corrections issues to have a hearing where we air this so that we have a baseline and a list of things on the to do list as we address issues facing the Department of Corrections. In 2001 [SIC - 2021], we amended the appropriations bill LB383 with AM911. AM911 required that the department do three things: one was to develop a project statement for a halfway back house. You'll remember this. A halfway back house-- this idea was something that Senator McDonnell and I brought after having toured such a facility over in Iowa, where they generally will have a parolee with technical violations come back to a more structured environment. We were pretty clear about what we wanted in that study, and we received-- by the way, I had meetings with the Governor, to be very clear, with the Governor, with Parole and with Director Frakes, Senator McDonnell and I did, about what we wanted. And that was a project statement where individuals who were on parole, who needed more structure, could be pulled back into a facility where they would have access to drug and alcohol treatment if they needed it, more structure, more accountability-- instead, we thought that would be done in time for last session, January of 2022, so that we'd have the benefit of that study. And there was a whole bunch of we're not sure what you want. We really didn't know what you were after. So there were meetings. It was crystal clear. And what we got instead in July 15-- July 15 of this year was the 96-bed

transitional housing, which was-- it's fine if you want to do a transitional housing, but that's not what we asked for. We were clear what we wanted in that amendment. We were clear in the meetings, and what we got was something that was not responsive. In that same amendment to the appropriations bill in 2021, we said we need a facility study before we're going to agree to a prison. That was the Appropriations Committee working with some members of this committee, coming up with an amendment about what do we need before we can proceed with a, proceed with a prison? We need a facility study. We-- those of us that were involved in preparing this amendment thought it would be available to us in January of 2022. Then we were told it wouldn't be available in time for the session. It would be available this summer, then it was going to be in August and we still haven't seen a facility study. Why does that matter to the Legislature? Why should it matter to the Legislature? Because, colleagues, before you build anything, you need to have a study about what you need. You need to know what your needs are. Where is everybody classified? What are the projections for each level of classification? What's our inventory of beds and what beds do we need? Instead of just building a bunch of high security, high-cost, high cost-to-run beds. That facility study, to my knowledge, has not been done. I certainly haven't seen it. We've also, in 2015, we passed, the Legislature passed LB598 in 2015, that required that we go on to electronic medical records that instead of being shipped out to a vendor and having someone familiar with the topic take something off the shelf, modify it and put it in place. It was going to be done in-house, we made appropriations and it still has not been done. We are not on electronic medical records to this date. We've also asked that the department conduct a program evaluation. In 2015, so the year after the special investigative committee, we passed LB605 that you've heard a lot about. That required that the department shall evaluate its programming and may enter into a contract. We have spent money on this and nothing has been done. In 2022, last year, we passed LB896 and said, the Department shall evaluate and they shall use an academic institution for that purpose. It's my understanding that they're still in negotiations with an academic institution, that nothing has been done to advance the directive from this Legislature, that they evaluate programming. And finally, in 2021, we asked for a classification study that was in LB384. That contract indicated that that classification study should be complete this summer. It won't be, I'm told, complete until February or March of next year. And why is that important? If you're going to do a facility study, you want to know that you're classifying people properly. Once you know where everybody fits in the list of classifications and what your population

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looks like, you project it with a study, and then you, you examine your inventory of beds, and it tells you what your needs for beds are. As you know, I was invested in corrections reform and that did not pass last year. I think, colleagues, that that's important if we are going to build a prison, that we evaluate our facilities but also evaluate the direction that we're going to go in. Are we going to try to build our way out of overcrowding or are we going to pass meaningful criminal justice reforms and then assess what our needs are for a new prison? That's a lot to cover today. A lot of questions that I think we will have on those topics. If you have other questions, we-- I see Dr. Spohn here. We have interim director, Sabatka-Rine. The Inspector General is here. Mike Chipman from the FOP is here. So we have a lot of people and I would invite you to ask a lot of questions today so that we can set a baseline for where we are at the end of this legislative session and develop sort of the list of things that need to be done going into 2023. With that, I'd be happy to answer any questions.

**PANSING BROOKS:** Senator Morfeld.

**MORFELD:** Thank you, Senator Pansing Brooks. Thank, thank you for all of your work on this, Senator Lathrop. I've got a few different questions for you. So originally, when were you elected to the Nebraska Legislature?

**LATHROP:** 2007 was my first year.

**MORFELD:** And then, as I recall, your last year in the Legislature for your first two terms really culminated with the investigation into the Department of Corrections and specifically what happened with Nikko Jenkins. Is that correct or--

**LATHROP:** That's true. In 2014, which was my last year before being term-limited, we had a resolution with a special investigative committee, which incidentally had subpoena power, and we placed every witness that testified under oath.

**MORFELD:** And as I recall, there was a fairly lengthy report that was, that came out of that investigative committee, because I think that I took office in 2015 and that was issued right before then. Is that, is that correct timeline?

**LATHROP:** That's true.

**MORFELD:** So since 2000, since that report was issued in late 2014, 2015, how much progress do you think that we've made with the Department of Corrections since then?

**LATHROP:** I think that there have been some meaningful changes in restrictive housing. I think there's room for improvement. Restrictive housing-- we passed bills to keep the vulnerable population out of restrictive housing. I think that's been a meaningful improvement for restrictive housing. This year we watched meaningful improvements as a consequence of a new contract with the FOP in security staffing. We still have a ways to go with staffing, the security staffing piece of, of our Department of Corrections. I would say those are two things that we've seen improvement in. I would say we probably fared pretty well with COVID. There were a lot of-- when you have that many people confined in to a facility, it's not unlike a nursing home where the risk of COVID moving through the place is pretty significant. I think we did a decent job of managing COVID. When it comes to, when it comes to meaningful criminal justice reform, I think we have come up short. I don't-- I think there are many people who are receiving flat sentences and are coming straight from the Department without any programming and without any transitional services or any accountability. We have come up short in that respect. I have concerns about our programming, which is why we've asked to have them evaluated twice now. We have legislated that they should be evaluated twice and we still don't have a meaningful evaluation, a meaningful evaluation of our programming. If we are to incarcerate these people and 95 percent of them will get out one day, we must have rehabilitation while they're incarcerated. We're not doing that well, I don't believe. Overcrowding remains a significant issue. And we heard last week that we're having significant issues with respect to our staffing of medical and mental health positions. In the mental health positions, I talked a lot about mental health on the floor at the end of this, this last session. Most of these people are in trouble because of mental health or addiction issues. We have to be-- we have to have robust programs in place and we have to have those positions staffed in order to deal with the mental health issues and the programming that is-- required programming that requires mental health professionals to administer that programming.

**MORFELD:** Thank you, Senator Lathrop. I guess my experience has been that the last eight years that I've served on this committee and been in the Legislature, my experience has been that, quite frankly, not much has changed. I mean, I think that you noted a few different things, particularly with restrictive housing and some other things.

And I think that that's, that's concerning to me simply because it seems like any time that we come up with solutions that are substantive and not just kind of nipping around the edges, we get a lot of opposition from various different entities. And the fear that I have is that we're going to have a third of the Legislature turn over, at least a third turn over, and they're going to have to reeducate themselves, reorient themselves on what the problem is and exactly what some of the solutions are. So I guess my next two questions are hopefully creating the record or educating people on, kind of, what the barriers are. When it comes to criminal justice reform, what do you think is the number one barrier? When I say number one barrier, I mean entity, person, individual, whatever the case may be. What's the number one barrier to substantive criminal justice reform?

**LATHROP:** Well, if you're asking me to do a postmortem on LB920, which was substantive criminal justice reform, Senator Morfeld.

**MORFELD:** I am asking you to do that.

**LATHROP:** OK. Well--

**MORFELD:** Because I think it's important that people know exactly what we're up against, because until we start addressing that issue, until we start addressing criminal justice reform, which is the front-end problem, and until we start addressing the correctional-- the issues that we are having with the Department of Corrections, which I see as kind of the back-end problem, that then informs another front-end problem that it creates. Until we start addressing those and, and being honest about the entities, the actors, the political forces that are opposing that, our communities simply aren't going to be safe. And-- so that's-- I am asking you to do a little bit of a postmortem on that, because I think it's important for us term-limited senators or those choosing to leave, that we, we leave the public with that knowledge.

**LATHROP:** So the challenge that I faced and-- having served for 12 years, along the way, I had the opportunity to work on a variety of issues that brought people together. So I worked on embryonic stem cell research. That was a, that was a pitched battle every year between two people, two groups who had strong convictions about their positions. We were able to come to a solution. The CIR, when the wave was sweeping across the country to end collective bargaining for public employees, I was able to bring labor and management together to come up with a solution and make some changes. I didn't do that on my

own, but I was involved in it. There are a number of issues that I've been able to bring people together and get things done. When it came to criminal justice reform, Senator Morfeld, I went through the CJI process, which was intended to be collaborative, and what I encountered was resistance to making any meaningful change. And that-- I know that I sat down with the county attorneys, the County Attorneys Association, and a couple of county attorneys in particular that spoke for the association--resistance, to meaningful change. And I'm not talking about some of the-- some of the things that would have had little effect on our prison population. But those things that were meaningful, like having a difference between the low and the high number on an indeterminate sentence, having enough of a gap in there to provide inmates with an incentive to go through programming, have them paroled and have them followed. I would hear we need more people on parole, and then the very solution, the only solution, there was opposition to it. And some of that came from law enforcement. Some of it came from prosecutors. Not unusual, but that's what-- that's where it came from. And that-- if I'm looking back on LB920 was where the opposition came from, and that then led to opposition from the administration and a number of senators who were involved in the opposition as well. I did everything I could, honestly, to try to bring people together, to try to talk to law enforcement, to try to talk to county attorneys. There was no-- and the Governor, for that matter, and there was no bringing people together. There was just opposition. We're not going to do that. We'll do some things that would not meaningfully affect the population at the Department of Corrections. And to me, I think that would have been a step backwards. The risk there being-- we fixed it last year when we passed LB920. That was gutted and I think it needs to be-- the host of options should be available to the Legislature in 2023 and meaningful reform needs to be done or we're going to be building prisons that we can't afford, and we apparently can't staff either.

**MORFELD:** So that's a useful rundown of criminal justice reform in terms of resistance to corrections reform and reforms within the correction-- Department of Corrections. What would you identify as the one or two biggest barriers or--

**LATHROP:** I'm glad you asked that question because one of the, one of the, one of the most concerning things I will say over the last 16 years, from my perspective, is the willingness of this Legislature to pass laws and tell the executive branch what we want done. We make the policy, Governor signs the bill, and the Department of Corrections or the administration ignores it. So we've needed a facility study that



was in an appropriations bill in 2021. We still don't have it, and so we're supposed to ignore-- that was the law in an appropriations bill. Coming up with a program statement for a halfway back house was the law in an appropriations bill. And they just get ignored and they come down to the Judiciary Committee when we ask questions and say, well, I don't know. We really didn't know what you were after. That's nonsense. I've been in meetings where it's been crystal clear, and what we need for a facility study may tell us that this prison that's been proposed is nonsense. But until we have the study, I can give you my judgment. And there's plenty of people that can say that facility study needs to be done before we spend a nickel on additional space. And in my judgment, the reforms should happen, the facility study should happen, and the classification study should happen because, in my experience, that's being gamed to make it look like we need more higher security cells than we actually do. And colleagues, you know this from sitting here. The higher the security level, the more expensive that cell is going to be. Community corrections, cheapest thing to run. High security, the most expensive. All those doors, the fancy ways they move and the way we have to staff them, the most expensive. Making sure that we custom fit the, the facility to the population that we are going to serve is critical. Bob Houston-- We had we had a group and I know Senator Pansing Brooks and Senator McKinney was on it along with three or four members of Appropriations Committee. We had a number of phone calls with Bob Huston, the former director, and he will tell you, you don't build until you have a facility study. And that, we thought was going to be done before the beginning of the 2022 session. And it's still not done. It's still not done. Not having that done is intentional in my experience. And the Legislature next year needs to understand that they can decide whether they're going to let the administration get away with not doing what we put into law and directed them to do, because that's happening and it's our role as the legislative branch to provide oversight. And when we turn the other way or we don't want to embarrass the administration and don't engage in oversight, then they don't respect the legislative branch and they can ignore what we put into law, which is what's happening. That's the most concerning thing about the Department of Corrections in my experience over the last four years since I've been back.

**MORFELD:** Thank you, Senator Lathrop. Do you think that, do you think that the Department of Corrections and our community-- and this is kind of a broad statement or a broad question, I should say. So you can take it where you want. But do you think that the Department of

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Corrections and our community and our state as a whole is safer than when the incident with Nikko Jenkins occurred years ago? Do you think we are in a better place?

**LATHROP:** You could look at statistics for crime. You could look at, you know, is criminal activity up? That may be part of the answer. I think the thing that's most concerning to me is that when we debated LB920, what we, what we discussed were statistics and examples of some of the worst and most dangerous people getting flat sentences. This isn't happening to somebody who broke into, you know, the Dairy Queen. And you know, maybe they're 21 and they broke into a Dairy Queen. We're talking about people who committed really, really serious offenses. And the judge imposes a sentence of 49 to 50. OK. So that guy that got those sentences, and this is-- LB920 was about this. That guy that gets the flat sentence is getting no programming because they will be out sooner if they jam out than if they try to parole. So they no longer have any incentive. They're not going to get any transitional assistance. So no one's going to help them find a place to live. And more importantly, they're not going to be accountable to anyone. And so when you're not accountable to anyone-- they can be Senator DeBoer's next-door neighbor, coming from the Department of Corrections, committing the most serious offense, getting a flat sentence, getting no rehabilitation, no programming, no assistance, and then no accountability when they leave the Department. That's the biggest, that's the biggest piece of corrections reform. And because that hasn't happened, I don't think we're any safer than when we were before. I also think the overcrowding, the overcrowding also historically has led us to ways to get people out of the Department of Corrections that maybe shouldn't be right now just so that we can alleviate overcrowding. That was certainly true before 2014 when we were, you know, they were walking around and pressuring Parole Board to put people out on the street and creating furlough programs.

**MORFELD:** Thank you, Senator Lathrop.

**PANSING BROOKS:** Thank you, Senator Morfeld. Any other questions?  
Senator DeBoer.

**DeBOER:** Thank you. Senator Lathrop, of all the items on LB920 last year, what was the sort of most meaningful nonconsensus item in terms of-- you've said that there were several consensus items that wouldn't have moved the dial much. What's the one that would really have moved the dial, or if there were two I guess that's fine?

**LATHROP:** I think the most meaningful and-- is the one we just talked about. If, if we have indeterminate sentences and this would have been available not to the, you know, the guy who committed a first-degree murder, but where we have indeterminate sentences, we need to legislate a gap between the high number and the low number. I think the bill had 50 percent. The low number needed to be 50 percent of the high number. What that does is it provides a window of opportunity for parole and an incentive. And when-- as you know, you're parole eligible at half of the low number and you jam out at half of the high number if you keep and retain all your good time. The difference between those two dates is the incentive someone has to parole versus jamming out. They don't really like all the follow-up, right, and being accountable when they get out. But creating that window then provides them with an incentive to get their programming complete, behave, not get any class one violations, go before the Parole Board and be paroled, where they will then have transitional services and then be followed and accountable to somebody. That was the heart and soul of LB920. And interestingly, the CJI Working Group, everybody on there said more people need to be on parole. This was the only way to make it happen, but when the bill is introduced and that's how it is structured, the opposition began.

**DeBOER:** Another area that you touched on was the lack of accountability or the lack of follow through from the executive branch or the department on laws that we have passed in the Legislature in the past. What do you see as the most effective ways of enforcing that accountability? Is it just--

**LATHROP:** I think, I think the legislative branch has been complicit in that. As long as we don't-- as long as there's no accountability or no consequence and we don't hold hearings with a meaningful investigative committee that looks into these things and requires that people come in and be answerable and answer questions. So in 2015, we said we shall have electronic medical records. It still hasn't happened. Every year we're told it's-- they're working on it. For example, when we don't have a facility study. We should have had a facility study at the beginning of this year before we went into the 2022 session so that we could see is this plan that Director Frakes was walking around with and talking about what we need, or are they building the wrong kind of beds or more beds that are, beds that that are more expensive than the ones that we need? The, the willingness to ignore what we have required in legislation is concerning.

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**DeBOER:** I agree. I've also passed a law that was not followed exactly. So I wonder what is the recourse that the Legislature has to work with a branch of government that will not do what that branch of government is supposed to do?

**LATHROP:** Well, the answer is you do a special investigative committee that has subpoena power. Because when we did that in 2014, you ended up with LB605 and a number of efforts at least to try to reform the Department of Corrections. By contrast, when you look at what we did with the Saint Francis Special Investigative Committee, which basically was bring a few people in, we didn't subpoena anybody. We stripped that out of the resolution, you'll recall. I think that is a toothless tiger and you don't get to the bottom of things until and unless this body, this branch of government gets serious about engaging in oversight, which includes, in my estimation, special investigative committees with authority to subpoena and place people under oath.

**DeBOER:** And when you did that, was there enough media coverage or whatever of those proceedings that--

**LATHROP:** Oh, yeah there was.

**DeBOER:** That's--

**LATHROP:** Yeah there was.

**DeBOER:** --my recollection.

**LATHROP:** There was, there was plenty of interest and plenty of public interest. And it's not, it's not done to embarrass the administration. It's more done to shine a light on the problem and, and give people the background and the political cover to make the reforms that need to be made.

**DeBOER:** Thank you, Senator Lathrop.

**PANSING BROOKS:** Yes. Senator Brandt.

**BRANDT:** Thank you, Chair Pansing Brooks. Thank you, Senator Lathrop, for bringing this. As a member of the committee for the last four years and a citizen of the state, thank you for your 12 years of service. So since 2014, which is the end of your first two terms, then you got to sit out and watch the show and now you're back and now you're leaving, from the discussion with the previous two senators,

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your number one priority for change today would probably be the facilities report?

**LATHROP:** Well--

**BRANDT:** From the--

**LATHROP:** --my number one would be LB920, Senator Brandt.

**BRANDT:** OK.

**LATHROP:** OK. But beyond the corrections reforms, if I were to put it in order, I think the reforms need to happen. I think we need to have a classification study so that the facility study accurately reflects what our population-- how we classify our population. Are we doing it accurately or are we classifying-- as I, I get letters and you probably do too from people that are down at Tecumseh and they say, I haven't hurt anybody and I've been in here for 16 years. I can't get out of this place because I'm a long-termer. Are we classifying people because that's where we got a bed? Right. So that's sort of the point of the classification study. Then a facility study will tell us what our needs are, because facility studies generally will have a projection of the population in each classification. And then you look at the inventory and then it'll tell you what your needs are for beds.

**BRANDT:** But is the, is the issue with the studies that we have asked Department of Corrections to do the study or because we have not asked a third party to come in and do the study?

**LATHROP:** No, we directed them to, to update the Dewberry study that was done in 2014. So we didn't-- we don't want a report from the Department of Corrections on a facility study because we know-- we want an outside group that has expertise to come in and that's what they were directed to do.

**BRANDT:** OK. Another issue you've been a real champion of is programming. And, you know, you sit here and you listened to a lot of this over the last four years. I'm all about incentives and how we incentivize people to take programming. And it sounds like you're saying that the biggest incentive out there would be an early parole date. Is that, would that be correct?

**LATHROP:** Having them-- having a gap between your parole eligibility and your mandatory discharge date, that's where the incentive is, the opportunity to be released on parole sooner.

**BRANDT:** OK. Final question. We have three branches of government. This, this is-- seems to come down between the Legislature and the administration. Why, why does a court not intervene with such a overcrowding situation in the state of Nebraska? You know, if we're at 150 percent or wherever we're at, why is the court sitting on the sidelines?

**LATHROP:** So let me be really, really clear about the judiciary. The judiciary can't engage in policy. And Senator Geist was on the CJI. We had three members of the, the court-- the Chief Justice, a district court judge, and a county court judge. They were there basically to say, hang on, that's not going to work. They did not and cannot, under their ethics, offer opinions on policy. So you won't see the Chief Justice come down here and say, you need to do LB920. He can't. That, that violates their ethics. As far as the court's intervening, that requires a lawsuit. The ACLU did sue the Department of Corrections in federal court over the conditions of confinement. Interestingly, the department defended the penitentiary and then that case got dismissed. And after it was dismissed, then we got an engineering report last year that said, you know, the place is falling apart and we need to replace it because it has so many deficiencies. But it would require somebody like the ACLU or an inmate. The ACLU files it on behalf of an inmate suing the state over the conditions of confinement.

**BRANDT:** All right. Thank you.

**PANSING BROOKS:** Yes, Senator Geist.

**GEIST:** I guess I can't not comment. I didn't realize we were just going to rehash LB920 today. But since we are, you do understand that, that part of the, the pushback is a philosophical disagreement with not taking LB920 as a whole. What I mean by that is your division of LB920, which was penalty and sentence reduction, separated from reforms and community. Beefing up community, parole, probation, programming is simply allowing a reduction and allowing people to get out early without following up and financially beefing up their support system, which is the philosophical disagreement that came down between what the pushback of LB920 was. And I just want to not let that go because we agree on programming. What we don't agree on is simply the reduction of sentence and, and penalties without the programming piece attached to it.

**LATHROP:** So I'll respond to that if I may.

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**GEIST:** OK.

**LATHROP:** So when we were debating LB920, there were two central arguments made by the opposition. One was that we're letting people out early. And Senator Geist, what I tried to explain, and maybe this wasn't clear, is that no one gets parole or leaves the Department of Corrections before their mandatory discharge date unless and until the Parole Board, by the way, appointed by the Governor, grants them parole. We're not simply opening the gates like the TV ads say, and letting people out early. They had to-- let me finish, please. They had to be paroled by the Parole Board. That's not automatic. They have to appear and demonstrate that they are suitable candidates for parole and then they have to be approved by the Parole Board, which for the last 20 years have been appointed by Republican governors. The other argument that was made is that we'll work on it during the interim. LB920 isn't ready for primetime. We'll work on it in the interim, and what I understand is nothing has been done. There was going to be a meeting between you and Senator McKinney and others and the boots on the ground to get something done, and to my knowledge, none of that's happened. So that's where I got a problem.

**GEIST:** Senator, I am working on programming. I am working on what we can do to beef up our community programming at this point. That doesn't involve you, but--

**LATHROP:** Or apparently, Senator McKinney.

**GEIST:** No, I have not met with Senator McKinney yet.

**LATHROP:** OK, because I think that was one of the things that we heard when we were debating LB920.

**GEIST:** That doesn't mean that that's not going to happen.

**LATHROP:** OK.

**GEIST:** Thank you.

**LATHROP:** Sure.

**PANSING BROOKS:** Thank you for bringing all this and, you know, I feel like it's just Groundhog Day all over again, Senator Lathrop. When we first came in eight years ago, LB605 was being passed. I brought the one third rule as you know, at that point, and to separate and allow people to get that programming. We later decided to go to a

one-fifth-- one-half rule so that they get the, the programming they need before they are released and it's just the continual same thing. Senat-- previous former chair, Senator Seiler, appointed Senator Ebke and me to look at programming and bring forward all the ideas that can come forward on programming. Again, we just met barrier after barrier. We just talk great stories about helping programming. And I've talked continually about the vicious cycle. The overcrowding leads to a lack of staffing. A lack of staffing leads to a lack of programming because there's not enough people to take the people to the programming or take them out of their cells. And then we have, with that lack of programming, we have-- ending up with people jamming out. And with that jamming out, we have recidivism. And so then again, that leads again to overcrowding. It's the continual vicious circle. Nothing has changed since LB605. LB920 wasn't accepted. We are doing nothing unlike bright red Texas, where they're closing prisons. We are continually talking about building prisons, not helping our taxpayers, not working to make a difference. What I, what I'm interested in is why you think we ignored the law, because Senator Brandt touched on this. The law regarding overcrowding of prisons at 156 percent, I believe, and they were supposed to start having emergency procedures. It was basically ignored. Nothing happened. What-- can you explain that?

**LATHROP:** I don't think--

**PANSING BROOKS:** That was a law.

**LATHROP:** I think if you are an administration that's not accountable and the legislative branch does not hold the administration accountable for the failures, then you get this, which is indifference. There was indifference towards-- in my experience, there was indifference towards the looming deadline of, of an overcrowded emergency. And we had four years ago, when I was first elected, we held a briefing with the director and the director, what's your plan? I remember Senator DeBoer was brand new and she was like, wait a minute, I'm new at this, but what's your plan? And there was no plan. There was no plan. And the communication from the executive branch was, look at the, look at the statute. There's no consequence. They were supposed to, they were supposed to examine to see if they had more people eligible for parole.

**PANSING BROOKS:** For parole.



**LATHROP:** But there was no-- ever, never sens-- any sense of urgency for the impending overcrowded emergency. And even after that came and went-- and we're still in one; even after that came there hasn't been, there hasn't been meaningful efforts to address.

**PANSING BROOKS:** So, again, we've talked about sentencing reform. And, I mean, those are the two ways to address this: there's sentencing reform and programming-- to make our communities safer, to make sure that we have-- we know that 96 percent of the inmates that are going to be released and we are, we are just fine with releasing them without programming. It's, I think, one of the greatest disappointments about this eight years in the Legislature for me. A complete barrier every single time. No, we aren't going to do it that way. No, we aren't going to be smarter on crime. We're just going to lock people away, and gosh, we expect by the day that they are released that they're going to be safer and better human beings, more capable to live next to us, next to Senator DeBoer. And it's just, you know, this is the definition of insanity. It's probably one of the most disappointing things. I've been vice chair for eight years and we have continually hit this barrier after barrier. And, you know, I, I think the Legislature owes some apologies to the, to the people of the state of Nebraska, because we are not spending taxpayer dollars wisely. It is not fiscally responsible what we're doing. And I think the citizens of Nebraska need to rise up and talk more to the senators and say, we are, we are expecting wiser legislation. We're expecting wiser use of our taxpayer dollars. Thank you.

**LATHROP:** OK.

**PANSING BROOKS:** And Senator Lathrop, you're going to lead this today, I think, so.

**LATHROP:** Right, yes I am. OK, we will begin with interim director Sobatka-Rine. Good morning and welcome to the Judiciary Committee.

**DIANE SABATKA-RINE:** Good morning, Senator, Chairman Lathrop and members of the Judiciary Committee. My name is Diane Sabatka-Rine, S-a-b-a-t-k-a-R-i-n-e. I am the interim director of the Nebraska Department of Correctional Services. This past year has been a productive one for NDCS. Since emerging from COVID, we have been able to get back on track with initiatives that were previously delayed. And one year since the compensation increases were implemented, we continue to experience steady hiring and low turnover. Since the start of 2020, the agency has hired almost 700 people. Of those, nearly 300

are from other states and many are coming to us with former correctional experience or have military or law enforcement backgrounds. We have hired new team members from 39 states. Given the staffing challenges that NDCS faced this time last year, this is remarkable progress. Based on current numbers, the agency is projected to close 2022 with a total agency turnover rate of about 12 percent. Turnover among custody staff is around 18 percent. Those numbers represent historic low turnover rates, the best in more than a decade. While we recognize the importance of pay in attracting staff, we also know that job satisfaction, work/life balance, employee engagement, and other factors help determine how long people stay. We are back to having regular leadership academies and other online and in-person activities aimed at giving staff opportunities to learn and develop their skills. We are currently participating in the latest engagement survey through Gallup, a partnership that goes back to 2019 and has produced positive results. Mandatory overtime has dropped significantly and staff morale has greatly increased. All of those things are important because when our staff members are in a good place, they are better able to securely manage and work with our inmate population. For a third year in a row, our reentry success rate has increased now to 70.2 percent, which puts it-- puts us among the top one-third of all states. This summer, we were able to return the Nebraska State Penitentiary to norm-- a normal operating schedule. We have also expanded operations at the Tecumseh State Correctional Institution and the Reception and Treatment Center to five days a week. Those facilities are still operating on staffing emergencies, but we hope, but we hope that continued hiring and training of new staff will allow us to move those facilities back to normal operations very soon as well. In May, the Reception and Treatment Center opened, combining the Lincoln Correctional Center and Diagnostic and Evaluation Center. We are working toward filling the two 384-bed units at RTC. That location will allow NDCS to house male, males in maximum security, those who demonstrate the greatest need for living in a structure, higher security environment. It includes dayroom space, program space, and other features that are designed to best manage those who present the greatest behavioral challenges in our facilities. Inmate activities have returned in full swing, and we have in-person volunteers and program partners interacting with them again. One of our success stories involves the use of our intentional peer support specialist-- inmates who are trained and certified through the Mental Health Association to provide mentorship, companionship, and guidance to fellow inmates. What started with a pilot program has grown to 82 inmates, 78 of whom are still incarcerated; 37 inmates who

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will work alongside staff to facilitate T4C, a cognitive behavioral program; 14 inmates are being trained to serve as facilitators for 7 Habits on the Inside, developed in part by FranklinCovey. Throughout COVID, approximately 5,000 inmates discharged from NDCS. That speaks to the continued efforts of our licensed clinicians to provide timely and effective clinical treatment to inmates with issues related to violence, substance abuse, and sex offenses. Clinical treatment is a vital part of the agency's commitment to rehabilitation and in many cases is required for individuals to be paroled. The department continuously monitors inmates who are nearing parole eligibility and provides the opportunity to participate in treatment prior to their parole eligibility date. While some barriers exist that are outside of our control, such as inmates refusing treatment, engaging in violent behavior, or having a sentence too short to complete treatment, NDCS does everything in its power to ensure that the clinical treatment needs of our population are met. The agency puts significant effort toward meeting its statutory duties and being good stewards of taxpayer dollars as appropriated by the Legislature. We look forward to what we will achieve in 2023. At this time, I am happy to answer any questions that you have.

**LATHROP:** Very good. Thanks for being here. Senator DeBoer.

**DeBOER:** Thank you very much, Senator Lathrop. Thanks for being here. You've now been like twice as long, the interim director as the last time you were here. So, so I have some questions for you about programming. Is programming sort of back to normal at Tecumseh or is it still being affected by the modified operations, which I think you just mentioned, were less modified but still modified?

**DIANE SABATKA-RINE:** They're still slightly modified, more so on Saturdays and Sundays. So programming is on a normal schedule at Tecumseh, to the best of my knowledge. The only date that might be effective is [INAUDIBLE] programming.

**DeBOER:** OK. Thank you. And does overcrowding continue to affect the ability to provide programming?

**DIANE SABATKA-RINE:** I don't believe the crowding does. Again, we do a great job of managing program lists using either parole eligibility date or tentative release date, whichever is closer. And based on that, we're able to put inmates in programs within three years of their discharge or parole eligibility.

**DeBOER:** So one thing that we talked about, I've talked about with Frakes in the past, is that we're sort of back-heavy on the programming. So we don't give people programming when they first get into the system, but it's at the end of their system. And that sounds like what you're still talking about, is that you're, you're making sure they have it within three years of the end. Do you have any knowledge of how far from when they first come into corrections they're getting their programming and what would make that something they could-- that we could move closer to the beginning?

**DIANE SABATKA-RINE:** So our goal is for individuals who have nonclinical programming recommendations to complete those in the first one-third of their sentence. So those are the front-end programs. Those would be cognitive programs like MRT or T4C. Certainly the clinical programs are during that last three years because based on clinical recommendations, programming at that time is more beneficial to them as they prepare for reentry into the community.

**DeBOER:** What about doing programming both at the beginning and the end that's clinical in nature? I just don't have the benefit of this information that you do. So you said that it sort of does the best for them at the end. I've heard that argument before. So if that's true, could we do some sort of like, when you first get here clinical programming to sort of make sure that they're doing productive things while they're incarcerated, and then have the programming at the end as well?

**DIANE SABATKA-RINE:** So I think that, you know, we could consider that. But again, I wouldn't-- would rely on the clinicians and studies that would tell you when that programming is going to be most effective.

**DeBOER:** Well, it seems if we would do both, I mean, you'd have the effective stuff at the end still. And I don't think it would be disaffected to have additional programming.

**DIANE SABATKA-RINE:** I think clinicians might tell us that if you don't provide the programming at the right time, it might not be a benefit to the individuals completing it.

**DeBOER:** OK. Well, something I can look into. Thank you. Then another thing, I was told by the previous director at one point that-- well, let me just ask you, how full do your programming classes have to be in order to proceed with the class?

**DIANE SABATKA-RINE:** I think each clinical program has a different class size. So there have been occasions if we don't have the full complement of individuals for a class, we can, if it's appropriate to move them from one facility to another so that we can do the full complement. But they will have the class as scheduled, whether there's a full complement or three less. Obviously they prefer the full classes simply because it's, it's more effective to have a full group. But we don't cancel a clinical program class because there's only one or two people. We would move those one or two people to a place where they could participate in that program.

**DeBOER:** And do you have the staffing now on your transportation staff in order to move people?

**DIANE SABATKA-RINE:** Our transportation staff primarily moves our inmates that are transferring, yes.

**DeBOER:** I mean, do you have enough transportation staff? We've heard in the past in here that you were low on transportation staff. Do you have enough of those folks right now?

**DIANE SABATKA-RINE:** I believe all of the FTEs allotted to the transportation division are filled. But again, we would transfer the inmate physically so we wouldn't maybe be moving them back just for the program.

**DeBOER:** Right.

**DIANE SABATKA-RINE:** We would physically transfer them.

**DeBOER:** Right. So in the past, I was told that you would not offer classes if they were not full, even if it was the appropriate time for the inmates to get them. So your understanding is that that's no longer the case?

**DIANE SABATKA-RINE:** Well, my understanding is, again, we would look for options that we could put the individual into a class at perhaps another location. But we'll do everything within our power to ensure that they get those clinical programs when they're recommended for the treatment.

**DeBOER:** OK. OK. And when, when in their sentence do the folks get their alcohol and drug treatment?

**DIANE SABATKA-RINE:** So again, that's a clinical program so it would be offered at the end of their sentence within that three-year window.

**DeBOER:** Because at one point I was told it had to be in the last six months, but, but it's the last three years?

**DIANE SABATKA-RINE:** It's within the last three years, yes.

**DeBOER:** OK. And do they have to be in any sort of special facility in order to get those drug and alcohol treatments? Because at one point, I was told that they needed to be in-- in order to have inpatient treatment for alcohol or drugs that they needed to be in one of the transitional or community corrections facilities. Is that the case?

**DIANE SABATKA-RINE:** So currently we offer the two residential substance abuse programs. One is at the Nebraska State Penitentiary in the minimum security housing. The other is at the Omaha Correctional Center, which is a medium/maximum, or excuse me, a medium/minimum security housing facility. Then IOP and OP, which are the outpatient substance use, are generally offered at the Work Ethic Camp in McCook or else the Community Correction Centers.

**DeBOER:** OK. So would there ever be a situation where someone was eligible or supposed to be in these in-patient drug or alcohol treatments that they wouldn't be able to get there because the facilities that offered them were full? I mean, I know you said that you have them at NSP, but is there ever a problem where you can't get folks to the right place to get those treatments?

**DIANE SABATKA-RINE:** So, again, they would need to be either medium or maximum or medium or minimum custody to participate in either one of those programs. So we could look at a classification custody override to facilitate their placement. That would be dependent on their behavior in many cases and whether or not it's safe for them to be in those lower custody options.

**DeBOER:** OK. The restrictive housing, can we turn to that now for a second? I know you all have been making some really great progress on restrictive housing. I was wondering if you could go through with us again. We passed a law a couple of years ago, I can't remember which year, that was to prevent people being in restrictive housing if they had a serious mental illness. Are you familiar with that?

**DIANE SABATKA-RINE:** Yes.

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**DeBOER:** You remembered that one. OK. So one of the things that we understood after that law was implemented was that the, the Department understood that to mean that if they had drugs or pharmaceuticals, that would sort of make them less acute, that that would dequalify them for that exception to restrictive housing. They moved to a 3, I believe it was-- meant that they could be put in restrictive housing even though they had a serious mental illness. But because it was pharmaceutically affected, they were still put there. Is that still correct?

**DIANE SABATKA-RINE:** So I believe the statute says that if someone with a serious mental illness that substantially limits their life activities cannot be in restricted housing. And so we-- clinically, they developed a level of care system, so anyone who has an SMI-- well, any-- anyone in our population is given a level of care. It's a clinical designation. And individuals that are a level of care 2 or below can be in restrictive housing. Anyone who is a level of care 3 or above cannot reside in restrictive housing. And those levels can change based on the individual circumstances. So our mental health providers assess them on a frequent basis, and if their level goes higher, that would prohibit placement in restrictive housing. We would find alternative housing for them until they become more stable.

**DeBOER:** So once they're in restrictive housing, you continue to do that classification evaluation.

**DIANE SABATKA-RINE:** Our providers do. Yes.

**DeBOER:** And how often is that reevaluation of their classification done?

**DIANE SABATKA-RINE:** It can be weekly. It can be monthly. It can be daily depending on the individual's needs. Again, we have providers available in our restrictive housing unit that closely monitor this because we certainly don't want anyone who has that level of care 3 or above to remain in restrictive housing. We want to get them the assistance they need outside of that environment.

**DeBOER:** And when you say your providers, who do you mean by that?

**DIANE SABATKA-RINE:** So it can be a psychologist. It can be a licensed behavioral health practitioner. It's a qualified provider.

**DeBOER:** And we know that those are staffing positions that you're very short on right now.

**DIANE SABATKA-RINE:** Correct.

**DeBOER:** So is that causing trouble in terms of making sure that everyone is at the right classification level because you are short on that position?

**DIANE SABATKA-RINE:** It's a priority need for us, and I'm not aware of cases where they've been unable to do those required assessments of the restrictive housing population.

**DeBOER:** OK. Thank you. That's helpful. That's all.

**LATHROP:** Senator Pansing Brooks.

**PANSING BROOKS:** Thank you. Thank you for coming, Interim Director Sabatka-Rine. Just following up a little bit on what Senator DeBoer said, so, so people come into the prison with drug addictions and you don't deal with them until the end of their sentence?

**DIANE SABATKA-RINE:** Correct.

**PANSING BROOKS:** So they're just struggling with coming down off of the drugs and there's no help whatsoever.

**DIANE SABATKA-RINE:** So typically before they arrive with us, I mean, struggling, coming down, they've already had a period of county jail time before they're sentenced and come to us. So certainly there are nonclinical programs available to them. We have AA available, some facilities offer NA. We have educational opportunities available to them, but that clinical program that addresses whatever their substance use needs are does not happen until the, the, the end of their sentence.

**PANSING BROOKS:** That seems-- is that best practices across the country?

**DIANE SABATKA-RINE:** Again, my understanding is that that is based on the clinical recommendations of when that programming will be the most effective in our environment.

**PANSING BROOKS:** Is that our clinical recommendations based on money or is that best practices across the country clinical work?



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**DIANE SABATKA-RINE:** I can't answer that question with certainty, but I don't think it's just us. I think there are clinical studies that suggest that.

**PANSING BROOKS:** OK. I also am wondering about what the status is of the Electronic Medical Records Project. What's, what's happening there?

**DIANE SABATKA-RINE:** So I can speak to that. I was not intimately involved in the onset of this, but I have a little bit of historical perspective in that I understand that the legislation was initially passed in 2015. And at that point, the plan was to buy kind of an off-the-shelf EHR. So while the purchasing process was being initiated for that, some of the ground foundational work began and that included the Electronic Medication Administration record was established. They converted the diagnosis codes from the DSM IV to the DSM V, and they implemented what is a clinical format for, for notes so that we had consistency. They're referred to as SOAP notes, but that's so that all of the clinical notes were in the same format. So that work went on behind the scenes. At some point the decision was made that the off-the-shelf product would not serve the Department the best, in that it was a standardized product. You could customize it to meet our needs. But of course, with every customization, that would be a higher cost and it would not integrate with our NICaM System, which is our electronic database for our entire population. And so the decision was made that that-- the EHR would be built in-house. And work began on that, I think it was in October of 29, or excuse me, of 2019. Sixteen or 17 of the behavioral health modules went live, so those are in process. We are working on other modules. One of the other benefits of doing it in-house is you can have that roll-out so that it's easier for our team to adapt to using. So it's in process. I recognize it is not as far along as you would like it to be, but I think recently Inspector General Koebernick suggested if it was not done by July 31 of 2025, that we need to go a different direction. And former director Frakes committed us to having that system complete before that deadline.

**PANSING BROOKS:** So that's your understanding is it will be completed by October 2025?

**DIANE SABATKA-RINE:** July 2025.

**PANSING BROOKS:** Oh, July 2025. OK. So. Another few years. Do you have, do you have a feel or an understanding of what the cost will be?

**DIANE SABATKA-RINE:** I don't know that off the top of my head. I think that we can provide that information to you.

**PANSING BROOKS:** I think that'd be great if you wouldn't mind. Are you, are you, are you one of the finalists for the-- to take over the Scott Frakes position as director?

**DIANE SABATKA-RINE:** I think our new Governor will determine that.

**PANSING BROOKS:** OK. But will you be submitting your name?

**DIANE SABATKA-RINE:** I am interested.

**PANSING BROOKS:** OK. So-- as that, do you have ideas on what can improve with our corrections system? What you can see there, how there are changes to be made, what, what you could do that's different? I mean, you might as well have the Legislature supporting you. Right?

**DIANE SABATKA-RINE:** Well, I appreciate that. Thank you. So earlier there was conversation about meaningful change in the agency. And while I certainly respect what everyone said, I have witnessed meaningful change in this agency over the course of my nearly 40 years, and particularly in the last 7 or 8 years. So I think that there are many things we can still improve upon. And I don't think that will ever change.

**PANSING BROOKS:** Like what?

**DIANE SABATKA-RINE:** I think that we can look at more nonclinical programming to offer. I think we want to see what the fidelity, of fidelity of our programs that we do offer is and that the study that we are doing will give us that information. I think certainly we need to make sure the classification tool we use for the custody to determine custody levels of our population is important for us to know. So that work would know-- will give us kind of a roadmap for what we need to do differently there. I think we can continue to improve the quality of life in many respects for our population by looking at those pro-social, meaningful activities, many of which that come to us through the VLS providers that we have funded money to come into our systems and work. But I think that corrections evolves constantly. I think there are best practices that many of our neighboring states and states across the country use. I think it's important for us to be open to those new programs, new initiative, new ideas, and do whatever we can to engage our population in that

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meaningful change that they need so that when they return to our community, they can be better citizens.

**PANSING BROOKS:** Thank you, Interim Director. And no further questions.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Director Sabatka, for being here today. I appreciate the fact that we have somebody with 40 years experience. Was that all in Nebraska?

**DIANE SABATKA-RINE:** It was.

**BRANDT:** Even better. So first question: Where are we at on the facility study and the classification of inmate study?

**DIANE SABATKA-RINE:** So I think when you speak of the facility study, it's what we commonly refer to as our master plan. So we-- I believe we signed the contract for that in September of 2021, and it is in the final stages. So I am confident that document will be published and ready for release before the end of this year.

**BRANDT:** OK. What about the classification of inmates?

**DIANE SABATKA-RINE:** So the classification study-- I'm going to just check my notes here because I'm trying to keep everything straight in my head. So we initially did the statement of work with UNO for that back in August of 2021. I think there was either some misunderstanding or miscommunication, assumptions may have been made that were not accurate. So there was a more recent amendment to that work this past August. But meanwhile, I mean, data was provided to UNO as early as August. They did staff interviews. They've done a lot of background work. And my understanding is that that project will also be completed with the report by March of 2023.

**BRANDT:** OK. Next question. What is the Department of Correctional Services relationship with the Office of Inspector General? How would you classify that?

**DIANE SABATKA-RINE:** I think we have a cordial relationship. I mean, it's uncommon that the Inspector General requests information from us and we provide that. Certainly the reports that he produces, we review them, we respond to those as required. We each have a role in our system and we respect that role.

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**BRANDT:** We had a bill on domestic violence, a death review team, last session. I have received a lot of questions. Does Department of Correctional Services provide a domestic violence treatment program or is that part of the programming that inmates get? I cannot answer that question. I don't know if you have an answer to that.

**DIANE SABATKA-RINE:** We currently do not provide domestic violence programming inside our facilities. Individuals who are in community corrections can attend domestic violence programming in the community. It's not that we are unwilling to provide it, but there has been some concern in the past, as I understand it, that the programming provided inside the facility may not meet the requirements of probation or parole in the community. So we have a meeting later this month to meet with probation and parole. If it's something we can offer, we will certainly implement that within the facilities as long as it meets the requirements that they need in the community.

**BRANDT:** OK.

**DIANE SABATKA-RINE:** And I just want to add, too, that domestic violence is not a clinical program, so it's a cognitive program. So it does not have to be provided by clinicians.

**BRANDT:** OK. The last one is, four years ago when we set our first meeting, Senator DeBoer and I did with Director Frakes. It's the same question. What can we as the Legislature do? What's the number one thing that we as a Legislature can do to help you succeed?

**DIANE SABATKA-RINE:** That's a big question. I mean, certainly, support the initiatives we request. And I think that you all have done a tremendous job doing that. Probably the number one thing on my list is the replacement facility for the Nebraska State Penitentiary.

**BRANDT:** Do you have a new cost on that?

**DIANE SABATKA-RINE:** I don't have the new costs, no.

**BRANDT:** All right. Thank you.

**DIANE SABATKA-RINE:** Thank you.

**LATHROP:** Director, I got a few questions for you as you might expect. You've been with the department for 40 years?

**DIANE SABATKA-RINE:** Nearly 40 years.

**LATHROP:** What did you start out doing, Director?

**DIANE SABATKA-RINE:** Correctional Officer.

**LATHROP:** You were a correctional officer. You moved up the food chain. You, you were a warden at a facility, too. Am I right?

**DIANE SABATKA-RINE:** I served as a warden at three facilities: at the Diagnostic and Evaluation Center, and then the Lincoln Correctional Center when they were separate and then the Nebraska State Penitentiary.

**LATHROP:** And how many years of experience do you have doing the warden?

**DIANE SABATKA-RINE:** I think 10 in total.

**LATHROP:** Ten. And then you were brought into what we generally refer to as the front office?

**DIANE SABATKA-RINE:** Yes.

**LATHROP:** Yeah. How long ago were you brought into the front office?

**DIANE SABATKA-RINE:** In May of 2015.

**LATHROP:** So for the last seven years, you've been an assistant. Or is, is the title, before your current title, deputy director or is it an assistant director? What's the proper term?

**DIANE SABATKA-RINE:** I did serve as a deputy director, but then I was in the Chief of Operations role most recently.

**LATHROP:** Is that a deputy or an assistant deputy position?

**DIANE SABATKA-RINE:** Actually, as the chief of operations. I oversaw the four deputy directors, so all four divisions.

**LATHROP:** So if we looked at the organizational chart, there's Frakes, and then there's you, and then some deputy directors, then some wardens.

**DIANE SABATKA-RINE:** Correct.

**LATHROP:** Maybe simplifying it a little bit, but just so that we understand where you fit in the organization since 2015, and what your

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40 years of experience involved while you were at the front office. And the reason this hearing was important to me is we don't know if you're the next director or not or who the next Governor will be, but we do know we're ending a legislative session and an administration and having some kind of a where are we at and where-- what are the loose ends, if you will, at the end of this administration I think is important for us to cover today. And that's why I offered a number of topics, including electronic medical records, which you've already talked about. I do have some questions for you, and I'm going to run through a number of different topics, but I think they're all within your experience or within your knowledge. I'm not trying to trick you today, in other words.

**DIANE SABATKA-RINE:** Thank you.

**LATHROP:** OK. So where is our population at as a percentage of design capacity that's open and operating today?

**DIANE SABATKA-RINE:** I think this morning we're at 149 percent of our, our design capacity.

**LATHROP:** OK. And we recently opened the RTC, which is this building that, that is built between what used to be D&E and LCC?

**DIANE SABATKA-RINE:** Correct.

**LATHROP:** And that apparently was designed to create some efficiencies and a little more capacity, is that right?

**DIANE SABATKA-RINE:** Capacity only in that with the skilled nursing beds and, of course, the secure mental health beds that are also in that complex that's open.

**LATHROP:** Right. It marginally improved our capacity, but there's supposed to be some efficiencies with the RTC.

**DIANE SABATKA-RINE:** Certainly.

**LATHROP:** And we're at 149 percent of design capacity today. We have had an opportunity to tour, a number of us have, the 384 beds. You have a 300-- the Legislature appropriated the money and the Department has constructed 384 high-security beds. Am I right?

**DIANE SABATKA-RINE:** Correct, yes.

**LATHROP:** And those are high-security beds?

**DIANE SABATKA-RINE:** Yes. Maximum custody.

**LATHROP:** Maximum, maximum custody being for the high-- highest security level of offender.

**DIANE SABATKA-RINE:** Correct.

**LATHROP:** That highest classification. So tell us when that was supposed to open originally.

**DIANE SABATKA-RINE:** June stands out in my mind as the initial date.

**LATHROP:** Of '21 or 22?

**DIANE SABATKA-RINE:** Of '22, I believe, but that could be off.

**LATHROP:** I thought we were going to open it like at the beginning of the year, maybe in February.

**DIANE SABATKA-RINE:** I wouldn't argue that.

**LATHROP:** OK. And, and it's not open yet.

**DIANE SABATKA-RINE:** The 384 is not open yet, correct.

**LATHROP:** OK. Tell us what the holdup is with the 384 beds.

**DIANE SABATKA-RINE:** Well, I think much of the holdup had to do with, with some of the construction delays in that COVID happened during that time period. There were some, some supply issues. But we are very close to being able to, to occupy the 384 beds.

**LATHROP:** OK. Are you going to be able to staff it?

**DIANE SABATKA-RINE:** Yes.

**LATHROP:** You got all the, all the security staff you need to open that?

**DIANE SABATKA-RINE:** RTC still have-- has some vacancies. I don't know the exact number, but they are staffed sufficiently to operate the 384 bed, and there's actually two units in the 384. So one unit is slightly behind in the finished work for completion. So we will open one unit, continue to hire staff and then we'll open the other unit.

But I anticipate both will be fully operational before the end of the year, absent any other unknown delays.

**LATHROP:** OK. And I want to ask about that, because I-- my recollection is when the Appropriations Committee was presented with this proposal, it was for the highest security level of individual incarcerated at the department. True?

**DIANE SABATKA-RINE:** True. General population.

**LATHROP:** It was-- I don't know if you're qualifying my answer by saying general population. It was supposed to be 384 beds of the highest level of security inmate that the department houses. Is that true?

**DIANE SABATKA-RINE:** True.

**LATHROP:** Is there any plan to house individuals in those 384 beds that are not the highest level of security?

**DIANE SABATKA-RINE:** Not that I am aware of.

**LATHROP:** OK. So when we, when we open that up by the end of the year, 384 beds will be filled with the highest level of security individual housed at the department.

**DIANE SABATKA-RINE:** And I qualify that as general population because we also have our restricted housing units. Those are really our highest security. Those are the individuals that need to have that separation from others. The 384 is general population, maximum custody housing.

**LATHROP:** So is, is the 384 beds, is some of that going to be put to restrictive housing use?

**DIANE SABATKA-RINE:** No.

**LATHROP:** Then I'm not tracking with you. I asked, are these all going to be the highest security level individuals? You said yes. And then you said general population, restrictive housing.

**DIANE SABATKA-RINE:** From a correctional perspective, individuals that are in restrictive housing are in our most secure or highest security level. So these are not restrictive housing beds. These are general



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population bed. So it will be a general population unit filled with 384 maximum security general population inmates.

**LATHROP:** And they will be individuals classified as maximum security?

**DIANE SABATKA-RINE:** Correct.

**LATHROP:** OK. In 2021, we passed, the Legislature passed LB383, which was an appropriations bill that included AM911. Are you familiar with that?

**DIANE SABATKA-RINE:** Not the numbers. If you could help me a little bit with the content?

**LATHROP:** OK. Yeah. And believe me, I'm bad at that after, even after 12 years. But one of the-- this was an appropriations bill that, that required, among other things, that the department develop a-- I want to find the right terms-- \$500,000 for the preparation of a program statement site selection for a new halfway back correction center in Omaha. You're familiar with that appropriation?

**DIANE SABATKA-RINE:** I'm familiar with the bill you referenced.

**LATHROP:** And the fact that the Legislature appropriated \$500,000 for site selection in a program statement for a halfway back house.

**DIANE SABATKA-RINE:** Yes, I'm familiar with that.

**LATHROP:** And-- have we developed a program statement and identified a site in the Omaha area? This was a 2021 bill. Have we identified a site and do we have a program statement for a halfway back house?

**DIANE SABATKA-RINE:** We have a program statement for a 96-bed community, community transitional facility.

**LATHROP:** And no halfway back house.

**DIANE SABATKA-RINE:** I think that it's referenced as a community transitional facility.

**LATHROP:** It is. And I'm going to-- and you, you were not at one of these meetings, but at one point, when this wasn't done by the beginning of the year, which was the expectation I think Senator Stinner and myself had-- that-- because this was in a 2021 appropriations bill that by the beginning of 2022, when it came time

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to show up here and legislate, that we would have a program statement. And the concept of a halfway back house was something Senator McDonnell and I talked to the Director about, as well as the Governor and Ros Cotton. And a halfway back house was to be a facility where individuals who were on parole and had technical or low-level violations could be brought back to a more structured environment. What we got instead is this program statement for a community transition housing, which is substantially different mission than a halfway back house. You would agree with that.

**DIANE SABATKA-RINE:** Why, I can't say with certainty. I'm not sure what a halfway back house is based on your description. This could serve-- the transitional housing could serve a variety of populations.

**LATHROP:** I know you don't because you weren't in the meetings. When I met with the Governor, Ros Cotton and Director Frakes, where we discussed this and everyone thought it was a great idea and agreed and understood what a halfway back house was, and that's why I'm dismayed that instead of a design plan and a site selection for a halfway back house, we have a transitional housing. What makes that even more frustrating was when Ros Cotton was here and I asked her, how much transitional housing do we need? And she said, I have no idea. I just want the record to reflect that we appropriated a half a million dollars for a design plan and site selection for a halfway back house, and the homework that was delivered by the department, if you will, was a community transition housing statement, program statement, delivered July 15 of 2022. Have I misstated any of that?

**DIANE SABATKA-RINE:** Again, as you mentioned, I wasn't involved in that, so.

**LATHROP:** OK. OK. That same bill required that we have a facility study. And this was an appropriations bill passed in 2021 when we began having serious conversation in the Legislature and in this administration about building a new prison. Right?

**DIANE SABATKA-RINE:** Right.

**LATHROP:** And if I understand, I can tell you what my expectation was, and I think I can speak for Senator Stinner and the Appropriations Committee. We thought the facilities [INAUDIBLE] would be done in time, that it would be available to us in January of 2022, so that we could compare our needs in the master plan to the proposal put forth

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by Director Frakes. And today, your testimony is that that would-- that the contract was entered into in September of '21?

**DIANE SABATKA-RINE:** I believe so. We can certainly confirm that date.

**LATHROP:** Do you know why it was not completed before January of 2022?

**DIANE SABATKA-RINE:** I do not know. I do know that it's an extensive project and it requires the consultants that we hired to visit all of our sites, to talk to staff at the facility, certainly to speak to the administration of each facility, to work with our engineering, to get our building designs and all of those, so it's-- I mean, it's extensive work. But I can't answer specifically why it was not done by last January.

**LATHROP:** You believe that facility study will be done by the end of the year?

**DIANE SABATKA-RINE:** Yes.

**LATHROP:** What involvement have you had in that master plan-- the development of this master plan or the implementation of this contract?

**DIANE SABATKA-RINE:** So I was involved in some meetings toward oh, I think probably over the summer they were held. The draft, a draft had been provided; some of the facility schedules weren't accurate, so we got them accurate schedules. It was kind of like, you know, the proof process at that point to make sure that the content matched what our current operations were today.

**LATHROP:** Were you involved in that meeting this summer?

**DIANE SABATKA-RINE:** Yes.

**LATHROP:** And did you receive a copy of the draft before that meeting?

**DIANE SABATKA-RINE:** Not-- I don't know that I received one before the meeting. Certainly we reviewed their draft at the meeting.

**LATHROP:** And so, at what point in the summer? Was that in June or May or July?

**DIANE SABATKA-RINE:** I can't tell you for certain. I'm sorry.

**LATHROP:** Who is, who is preparing the, the facility study?

**DIANE SABATKA-RINE:** Dewberry.

**LATHROP:** So they are-- actually what we asked them to do is amend the 2014 or update it. Am I right?

**DIANE SABATKA-RINE:** So they're updating the 2014. But as you're aware, much has changed in our agency in terms of building and construction in certain pop-- certainly our population since 2014.

**LATHROP:** In the draft that you saw, did you have an opportunity to review it at this meeting?

**DIANE SABATKA-RINE:** We reviewed it at the meeting and went over specific section-- sections of it, yes.

**LATHROP:** In that draft, does it propose using any part of the Penitentiary for housing inmates, or does it include any part of the Penitentiary as-- beds in our inventory of beds for the Department of Corrections?

**DIANE SABATKA-RINE:** My recollection is it is a, a snapshot of today's facilities, so the Penitentiary would certainly be included.

**LATHROP:** Is it your expectation or is it the expectation, as you understand it, that when we or if we were to build these additional beds that the Penitentiary would be somehow rehabbed and put into use for lower custody level inmates?

**DIANE SABATKA-RINE:** So at this point, my expectation is that a new facility would be a replacement of the Nebraska State Penitentiary. Certainly, if we look at population projections, currently, they appear like they will be increasing over the course of the next few years. If there are reforms that happen to reduce the projection, we would not have a need to repurpose the NSP for anything. And again, the new facility is a replacement project for the NSP.

**LATHROP:** So-- and I don't want to be argumentative, but sometimes I hear qualified answers and I want to try to parse yours a little bit. When we hear "at this point in time" or if the population, if there are reforms and our population doesn't grow as we expect right now, we're not going to repurpose it. But isn't it true that you expect to repurpose the Penitentiary and that's been true since the time the new facility has been proposed?

**DIANE SABATKA-RINE:** Personally, I do not expect to repurpose the Penitentiary. It is my hope that our population can decrease. But I think that, that you have to go into this with your eyes wide open and we have a responsibility to house inmates. And if those projections don't take a different direction, even the replacement facility will not give us the space we need to meet the needs of the population projection.

**LATHROP:** I appreciate that answer. And this is, this is what I'm hearing you say, and you can tell me if I'm wrong. We're not closing the door on repurposing the Penitentiary. And in fact, we probably will have to repurpose it unless there is some change in our population projections. Would that be a fair interpretation of what you've said?

**DIANE SABATKA-RINE:** If I could qualify that, I'm closing the door. I am not locking the door because I don't know what our numbers will look like.

**LATHROP:** But if the numbers continue as projected, you'll need to repurpose the Penitentiary.

**DIANE SABATKA-RINE:** We'll need to have additional bed space. I don't know if that includes repurposing the Penitentiary or if that includes other options that we've not yet explored.

**LATHROP:** And by other options, that would be even more beds than the director proposed.

**DIANE SABATKA-RINE:** It could be.

**LATHROP:** Well, you have two options: repurposing the Penitentiary or building even more beds than the Director proposed in the proposal he was walking around for the last two years. True?

**DIANE SABATKA-RINE:** True.

**LATHROP:** OK. I just have a couple, a couple more things. I want to talk about these two studies that we, the Legislature, basically commissioned in legislation, and one was program evaluations. And in 2015, LB605 included the directive that we have, the department shall evaluate its programming and may enter into contracts with outside organizations to do that. We've never done, we've never done the program evaluation required in LB605. Is that true?

**DIANE SABATKA-RINE:** I believe we did an in-house evaluation initially and then we had turnover and vacancies and, and lost momentum. But I believe we had someone in our research division who did an initial evaluation. It wasn't of all programs, it was of a program. It certainly had potential.

**LATHROP:** Did you say of a program?

**DIANE SABATKA-RINE:** Yes.

**LATHROP:** OK so.

**DIANE SABATKA-RINE:** And it could have been one or two programs, but it wasn't extensive and all of our. But then we had some turnover, some vacancies, and we lost momentum. And so with the 2022 legislation, we have now contracted with UNO to do that study.

**LATHROP:** And that's LB896. That requires that you shall evaluate and you shall use an academic institution. Do you have a contract with UNO today to undertake that evaluation of our programming?

**DIANE SABATKA-RINE:** I believe we are in the process of finalizing the statement of work for that project, and they are planning to begin that work no later than January. Sooner if they can.

**LATHROP:** Was there a-- any challenge from the perspective of the department to entering into a contract with UNO to do the program evaluations sooner? It doesn't even sound like you have a contract signed yet. Am I right?

**DIANE SABATKA-RINE:** I don't believe that the statement of work is signed by both, by both parties yet.

**LATHROP:** Can you tell us why that hasn't happened or why that didn't happen, say, in May?

**DIANE SABATKA-RINE:** I can't--

**LATHROP:** I'll just use that date.

**DIANE SABATKA-RINE:** I was not involved in it back in May, and I don't have an answer to that question.

**LATHROP:** When did your involvement begin?

**DIANE SABATKA-RINE:** About six days ago.

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**LATHROP:** OK, that's fair. We also required in LB384, in 2021, a classification study.

**DIANE SABATKA-RINE:** Correct.

**LATHROP:** That's one, to be honest with you, I thought we would see by January of 2022. Where are we at with a classification study that we legislated in LB384 in 2021?

**DIANE SABATKA-RINE:** So my understanding is that the statement of work for the classification study was in effect in August of 2021. UNO, initially, we provided them data, they began doing their analysis, they interviewed our staff, they've been to our facilities. And then in August of this year, there was an amendment to that statement of work. And so they are scheduled to have that completed by May of 2023.

**LATHROP:** Who amended the contract that was entered into in August of '21, a year later?

**DIANE SABATKA-RINE:** I assume that it was Director Frakes. I've not seen-- I mean, I don't remember the signatures on the amendment to the contract.

**LATHROP:** Do you know what, what-- the substance of the amendment? What-- did we change something substantially or nominally?

**DIANE SABATKA-RINE:** I think that there was, again, some miscommunication, misunderstanding, whatever the case may be. And so based on what we were saying, it wasn't going to give us the product that was responsive to answering the questions that we had about the classification tool that we're using. And so they did some clarification in this amendment so that when we get our report in May of 2023, it will provide the information to talk to us about the effectiveness of our classification tool.

**LATHROP:** I think that's all I have. Anyone else have any other questions? Senator Geist.

**GEIST:** I know that you-- this is going back to programming-- have clinical programming that, that you all traditionally offer later in the sentencing or in a person's sentence. So it goes over the past three years or the three years before they, they transition out. Do you have other programming that inmates are involved in that keep them busy or give them educational value while they're incarcerated that is

before that clinical programming? And if so, is that all optional or is it-- any of it necessary for them to qualify for parole?

**DIANE SABATKA-RINE:** So we have a host of nonclinical programs that are offered throughout an individual's incarceration. The cognitive evidence-based programs that can be recommended based on the STRONG-R evaluation or score that the individual receives. Our goal is to offer those within the first one-third of their sentence. Inmates, of course, have the option not to attend ever. Those programs will not adversely affect their eligibility for parole when they are eligible. The clinical programs, however, that we offer the, the last three years of their sentence with us or time with us could impact their parole.

**GEIST:** OK.

**DIANE SABATKA-RINE:** And then we have lots of other programming opportunities that vary from facility to facility. I referenced previously, we have our VLS providers that come in and provide a host of programs. So that's one of the things when we spoke of meaningful change that I have witnessed over the course of the last seven years is many of those things that we've been able to bring into our facilities.

**GEIST:** Have you heard of, in other states, how some of the nonmandatory or nonapplicatory programming, how other states do good time where they-- an inmate can actually earn time off their sentence by participating in programming and educational opportunities where that could affect the sentence? Have you heard of that happening in other states?

**DIANE SABATKA-RINE:** I can't think of any specific states, but it would not surprise me if some states still have those kind of good time credits.

**GEIST:** Would, would you see that as being an incentive to someone to take earlier programming that may not be clinical in nature, but would help them adapt better to what's going on inside or just enrich them personally?

**DIANE SABATKA-RINE:** So I think that, that would be an option that certainly we could look into and study. Again, I don't know if states still do that. I mean, I know years ago when I worked in records administration that was not unusual. And at one point, Nebraska gave



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good time to individuals for donating blood. That was many, many years ago.

**GEIST:** Yeah, I remember that in other states, too. There are a couple of states that do that. I know South Carolina is one that does all good time by earning it in different ways. But-- and the other thing that I wanted to just ask is, is opportunities for job training. Is that something that the department is looking at with businesses maybe outside the community or in the communities where the facilities are? Is that something that's being investigated currently?

**DIANE SABATKA-RINE:** So again, we have some opportunities through those VLS providers and certainly for individuals when they get to community custody. Our Cornhusker State Industries has, you know, the opportunity for individuals to, to do internships, to get certification, to learn those trades that they can use when they get out. So we have the Home Builders Association that has a program at the Tecumseh State Correctional Institution, again, providing them those skills that will help them with their reentry.

**GEIST:** And if, if that were to be broadened, is that something that, that the department would be interested in partnering with other, other industries that may want to get involved with that?

**DIANE SABATKA-RINE:** Certainly. I mean, we have done that over the course of time at different facilities and with various organizations in the community. Whatever we can do to provide skills for individuals so that when they return to our communities, they have opportunities for meaningful work there. We're always interested in looking into this.

**GEIST:** Thank you.

**LATHROP:** OK. I don't see any other questions. Thanks and good luck.

**DIANE SABATKA-RINE:** Thank you.

**LATHROP:** Next testifier.

**MICHAEL CHIPMAN:** Hello, members of the Judiciary Committee. My name is Michael Chipman, M-i-c-h-a-e-l C-h-i-p-m-a-n. I am the president of FOP 88, which is the union that represents the correctional officers, correctional caseworkers, and correctional, correctional sergeants that are in the facility. So some things we just kind of want to go over, you know, I guess the state of the department, things that--

good things and some things that need definitely improvement. You know, staffing has significantly improved. We're down to 150 staff vacancies compared to almost 500 we had at one time from our calculations. That is definitely a good thing. Some of the facilities that are doing really well with staffing are CCL, CCO, OCC, WEC, NCYF and NCCW. They're, they're doing very well. NSP is doing significantly better as well. And then places that have challenging-- challenges are definitely-- Tecumseh is still having some challenges, and RTC is by far having a lot of our challenges. And I will kind of go into why we think some of that is. And so, because of the less vacancies, overall, in most of our facilities, staff morale has greatly increased. So the concerns we are having currently that are going on is that our rate of new hires is down to only 20 protected service staff per class. To give you an idea, a month ago our average was probably closer to 60. And so that is-- it is concerning. The next two classes each only have 20 of protective services. So that downtick is concerning. The, the new unit at RTC is-- needs post orders and then also needs emergency plans put in place for the clinic, the new clinic that they just put in.

**LATHROP:** I'm sorry, Mike. What'd you call that?

**MICHAEL CHIPMAN:** The new-- the clinic, post orders and emergency plans.

**LATHROP:** Post orders?

**MICHAEL CHIPMAN:** Yeah. Sorry. Corrections speak, so-- it's the, some facilities call, like operational memorandums. It's telling you what to do in the facil-- in that area. This is a rule. This is how you are to run it, things of that nature. And so, you know, it's obviously important. You know, every, every post should have a post order because there's a certain way that things need to be ran and things of that nature. And a lot like the clinic, there's currently none. And there's no emergency response plans in the clinic as well, which, so if there is a fire, we don't have an active plan that is known to the staff when I was talking to them. And so-- and if you guys need, stop me any time, go ahead, because I know I talk fast. Training needs to be improved greatly as well. I talked to the staff at this particular-- at RTC, one guy who is running the clinic. He said he was by himself in this-- we refer to it as a bubble, but it's actually a control center and it's clearly meant to be a two-man post. One part is supposed to watch the actual skilled nursing facility, and the other part is supposed to watch the secure mental health housing, and

he's doing all of that. And he was a fairly new-- and when we talked to him, I said, do you know how to do this? He's like, no, I'm learning today, and there is no one training him. So I think, you know-- and then I've had multiple reports from staff that multiple doors are being opened, which is a high-risk situation obviously, with that clientele there. They can be rather spontaneous and dangerous. And so opening multiple doors at the same time can be deadly, frankly. And so that's just kind of a little breakdown. And also, a lot of staff have complained about the new units. They're-- about training. They started training, I believe, around two weeks ago. And there, there's a lot of concerns with it. I have heard that they moved back the new-- at least two weeks for the new place. And part of that is due to training. So they are hopefully going to start addressing that. And when I talk to staff about training right now, they, all they were doing was like scenario-based, which obviously, if you don't even have post orders and know exactly how to run it, scenario based isn't really that great.

**LATHROP:** When you talk about the new facility, you're talking--

**MICHAEL CHIPMAN:** I'm talking about the 384. Sorry. Yeah.

**LATHROP:** The 384 bed?

**MICHAEL CHIPMAN:** This is the 384. Sorry. Yeah. And so that, that's an issue. Minimums are also a large concern in RTC. We believe that the minimums-- so when I say minimum sorry, I'll explain is the minimum amount of staff for it to run safely, we believe it needs to be up to at least by 20. And I can-- I didn't bring it with me, but there's a really good IR that was written by some staff there that really know the facility and explains why you need these extra positions. Just an example. Part of the minimums of that clinic I just got done explaining. It should clearly be two, but it's one. You have one guy now watching one of our most dangerous population and watching the skilled nursing facility. That's just not really acceptable. And I mean, there's two different computer screens that they've lumped into one, and you can tell this is supposed to have another computer screen. So, you know, we, we believe that, you know, I don't know if like a staffing analysis or something of that nature to say, which we're probably going to address at bargaining, that the staff need to be at a certain level because-- just for safety. It's actually [INAUDIBLE] when we we're talking to staff leaving RTC, it's their number one concern is that they're saying that they're not being allowed to work overtime. I don't know if it's budgetary or what that

nature is because-- and they don't feel safe. And so if they, since they don't feel safe, they're just like, I'm quitting and going back. And so that's our biggest turnover problem at RTC right now is that, you know, you have staff like this, this new guy in the bubble by himself. He's not going to want to, you know, continue to keep working there if he feels that unsafe or he's, you know, he's juggling these people's lives and, you know, he doesn't have any real experience. So, with them not-- like I said, by far the largest parts is them not wanting overtime, and so they're only allowing them to fill up to what they believe is the true minimum. And like we said, the minimum should be at least 20 higher. They won't let them fill up, and people are willing to volunteer and work it. But they're, they're saying no. I don't know if it's budgetary or what the reason is. And then another large concern was, is that the new 384 building, the staff are not going to have vests. Currently, in housing unit 2C at Tecumseh, the staff have vests. And that--

**LATHROP:** What do you mean by that, Mike?

**MICHAEL CHIPMAN:** Stab-resistant or--they have a nicer name, but it's stab-proof vest, that's what we call it. And so, you know that, that's where it protects your main torso and protects you from getting stabbed and things. To give you a idea how, how good they are, we had an assault two weeks ago at Tecumseh and a guy got stabbed in the heart, but that vest saved him. He was OK. So, I mean, it's really a critical piece of equipment.

**LATHROP:** Your guys want people and the 300 [INAUDIBLE]--

**MICHAEL CHIPMAN:** Yeah. Because they're coming from that same unit from [INAUDIBLE] 2C. They want that same vests at-- and they're getting told no right now so something that needs to be addressed. And so kind of, that gives a big piece of RTC, what's going on there-- a lot of our big concerns, big ticket items going on there, so to speak. NSP staff vacancies are low, we're down to 20-30. The issue we're having at NSP is it's all on second shift. So there's a huge concern that there-- once this 90-day pause, I don't know if you guys are familiar with the 90-day pause, but what that is, is a real-- I believe, Scott Frakes created, saying we won't mandatory you since we went off this emergency for the first 90 days. There's no mandatories allowed under any circumstance, so I've been told. And so it's-- we're about ready to come up, I think it's gonna be next week is when the 90 days is up. And so we have a lot of staff that are concerned on first shift that they're going to start getting hit. And as you guys all know in the

past, that's how 2015 started. One shift started getting hit and they started quitting and then the cycle begin. I just don't want us to lose all this work we've-- and time, money and work we put into this, getting them back to only having 20 to 30 vacancies. And so, and at Tecumseh, staffing has significantly improved but there's still at least 60 vacancies by the last reports I've seen and that is also including the 80 staff that are getting still bused from OCC. So there's 60-plus. In theory, I know the department wants to get rid of that program if it could. And so, you know, that's obviously of concern. Another thing that we would like probably in the future-- I don't know if this is probably the right forum, but I want to say it anyway-- is that we would like to work with either the Legislature or the Governor's office on creating a mental health program for our correctional officers. We currently had two suicides in the last four months. And so I would, I'd really like us to be able address that because our suicide rate is sky high right now and it has been for a while. We average probably, I'd say, at least one to two officers a year kill themselves, unfortunately. And so that's kind of something we would like to, you know, talking about [INAUDIBLE] no programming but for staff. And, and so you know, to kind of cap it all up, you know, staffing has greatly improved and so has morale at most facilities. We are really thankful for these raises and what we've all accomplished together with the Ricketts administration. And you know, like we said, TSCI is still kind of short staffed. We've, we've made some significant progress, but there's still plenty to do, you know, and we, we need to continue to work on the compensation piece-- obviously, not 45 percent probably, right? But-- like we got our last ones. But the counties are now-- Lancaster County is going up to \$27.80, I believe, is what the number I got. And Sarpy County's at \$27, they're all within a buck of us. And as you know, that's-- so they're catching up. And I know some of them are going back into bargaining. So there could be some more natural competition as you're seeing, our numbers are going down. That's a concern. As I've said many times before, there's only a certain group of people that are willing to do this profession. And so you have to recruit and retain, retain them. So [INAUDIBLE] with these other pieces of safety, obviously, are a huge concern. And so, you know, we're looking forward, like we have bargaining coming up this year where obviously-- we started it technically in September, but we're going to really do the heavy bargaining, I think, more in late November, early December because we're kind of waiting for the new administration, whoever that may be. And so hopefully we can address all that and this and then,

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you know, we-- probably some legislative issues as well. That's it for me.

**LATHROP:** OK. Senator DeBoer.

**DeBOER:** Thank you. Thanks for being here.

**MICHAEL CHIPMAN:** Yeah, of course.

**DeBOER:** Is this no vest rule for the 384 beds-- are you hearing that that is like their plan indefinitely or is that just like--

**MICHAEL CHIPMAN:** Indefinitely, yeah, they have no plans for vests in there. I think they're referring 'cause they're saying that this is general population. Well, I can make the same argument they declared 2C as general population. The fact is, they're our highest-risk general population. They have, you know, high tendency towards outbursts and violence. And it's a defensive mechanism. You know, it's purely to--it's not to harm an inmate or anything of that nature. It's purely to help protect the individual. It's a no brainer to me.

**DeBOER:** So if they offered vests, let's say, do you, do you imagine that if they just put them on offer as voluntary, would everyone take them?

**MICHAEL CHIPMAN:** Oh, yeah, absolutely.

**DeBOER:** So--

**MICHAEL CHIPMAN:** Current-- yeah, currently at like 2C and RHU's, the staff are assigned vests, just kind of like how police are and you're expected to take care of it, maintain it. You know, if you don't then you're responsible fiscally for it and things of that nature. Yes. So absolutely they'd be all for it.

**DeBOER:** OK. You mentioned that in the-- I believe it's the 384 beds again. You said that the folks don't feel safe. I suspect that the lack of vest might be one piece of that, but also was that-- I'm sorry. It's kind of hard to hear from this side--

**MICHAEL CHIPMAN:** No, you're fine, and I talk really fast, you're OK.

**DeBOER:** Was part of that just the lack of having enough folks and wanting to raise the minimum number of folks there? Was that part of the safety issue or what, what's the nature of the safety issue?

**MICHAEL CHIPMAN:** Well, yes, it's a compounding issue. So when I talked to staff, they said that they think they would have enough staff if they would allow overtime in the facility. So, I mean, also it's kind of a double-edged question, right, so, do we have the staff without overtime? No. Do we-- do I think if they opened up the overtime back up because it's two-times overtime and people are always happy to get two-times overtime then we could staff it temporarily that way? Yes, I do. But currently, they're really concerned 'cause of all the lock-down overtime practices going on. Like I said, where you're leaving one guy above all that was assigned to and this is the brand new built clinic, and so, things of that nature. People are, are concerned, and there has been no word one way or the other that management-- how they're going to run that, because I've been told that --they've told me how many staff are out there and the allotted amount seems reasonable. But are they-- is that going to be their true minimum [INAUDIBLE] they'll allow overtime up to or not. I don't-- they haven't-- I haven't had clarification.

**DeBOER:** And are there folks-- this has been a little unclear to me. Are there folks already in the 384 beds, inmates?

**MICHAEL CHIPMAN:** No. Staff have been-- that have been assigned there-- they have about, oh, I'd say, 20 or so staff and they're training in there actively for the last two weeks, but there is no inmates in there yet.

**DeBOER:** So the fear that they have is a future, like--

**MICHAEL CHIPMAN:** Oh, absolutely yeah.

**DeBOER:** --a future fear.

**MICHAEL CHIPMAN:** Yeah. And like, I know, and I don't-- I haven't confirmed this with administration but I've had a bunch of staff tell me that lieutenants are telling them they're going to have, you know, inmates coming in the next two weeks or so and the tables aren't even bolted down yet, and they said they're going to leave it like that and fix that in December. So that's-- stuff like that. It's just it's like, uh let's not rush this. It's something-- this can be very dangerous.

**DeBOER:** Thank you. That's helpful. I'll say to you right now, if I'm reelected, I'll help you with that mental health program for staff. So let me know about that.

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**MICHAEL CHIPMAN:** Yeah.

**DeBOER:** So when you're talking about the multiple doors opening at the same time, was that in the 384 beds?

**MICHAEL CHIPMAN:** That was in the new clinic, S&F, I was told. Yeah.

**DeBOER:** OK.

**MICHAEL CHIPMAN:** Yeah. And that's where that they had the one guy running that whole unit, that whole thing. That's all wrong. And he-- and I've talked to him personally and he said he's brand new and he had never trained on it. After I made the lieutenants aware, they did send him through FTO immediately I was told. But still--

**DeBOER:** Put him through?

**MICHAEL CHIPMAN:** Excuse me, field training officer. That, that's the training. But that should also have been done before he was on the post.

**DeBOER:** Who watches out for the trainees? Is that something that typically a warden is responsible to make sure that everyone does?

**MICHAEL CHIPMAN:** No. They have a--

**DeBOER:** Who polices trainings?

**MICHAEL CHIPMAN:** They have a supervisory sergeant position and they call it a train-- it's a training sergeant. And they're out of our classification. They do the training. An issue they, they have is that-- so with-- he's in charge. It's one guy for all of RTC, to my knowledge, and he has to watch all of them. That's difficult to do. You also have a bunch of brand new staff. As we just mentioned, we've gotten 300 staff; a lot of those went to RTC. And so it's really hard to maintain all this training to know exactly where they're going and things of that nature, you know. And the training program has its own issues anyway because [INAUDIBLE] of the staff training academy level that-- they're called training specialists and they're under a different union; it's something we're looking at addressing down the road. And they are-- they make about \$6 to \$8 less an hour than a starting staff member. So you can imagine how happy they are to have train someone.



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**DeBOER:** So this training sergeant, does he help or she help with the placement on a daily basis? So when you're going to get wherever you're going to go that day, does the training sergeant, is that person part of the decision making?

**MICHAEL CHIPMAN:** The first two weeks of OJT-- OJT he is on the job training. Yes. After that, no, then it goes to the lieutenant.

**DeBOER:** So then do you have different trainings for different positions within the facilities?

**MICHAEL CHIPMAN:** You're supposed to, yeah. And so I think some of that's not happening, clearly it's not happening with that guy in the clinic saying he's [INAUDIBLE] been up there and you know, he was off OJT. So yeah, they're supposed to like-- each area-- that's why I mean, we don't even have a post order for that area. So how are we going to train someone on how to properly run it if we don't have rules to properly run it? It's--

**DeBOER:** So it seems like there's a breakdown then, is what you're suggesting, in sort of-- first of all, what the training is for each area because you don't have your post orders and then also some kind of-- whoever's putting people into positions on a daily basis and whether or not they have the ability to check whether people have been trained.

**MICHAEL CHIPMAN:** Yeah. And trainings get interrupted quite often. An example is I had someone who I was on a WebEx with yesterday and he told me that they cancelled his training for tomorrow and it was a four-day training, because of staffing is what they told him, I don't know. And so that happens, I'm told, frequently. So when you have mix and mash of training getting-- I mean, you can imagine the chaos--

**DeBOER:** Yeah, OK.

**MICHAEL CHIPMAN:** --with a lot of new staff.

**DeBOER:** Yeah, that's helpful. Thank you. And then last, you said the, the concern that you have at NSP is that you're about to end the 90 days that the, that the shifts are such that the first shift is pretty well filled.

**MICHAEL CHIPMAN:** First and third, yeah.

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**DeBOER:** The third is, the second is not so the first-shift people, you're afraid, are going to get mandatory overtime.

**MICHAEL CHIPMAN:** They are, yeah. It's a constant a phone call I get, they're like, what's going to happen? You know, we'll quit if we all getting mandatoried all the time on first, yeah. But yes, the second shift is by far where most of those vacancies are. First and third, that's always been typical. Third shift-- I love it when they call it the retirement shift. It's a good graveyard shift. It's easier work. It still, it has it's own inherent dangers-- I don't want to make people angry. But, but then first shift is-- there's, there's a lot of action going on. And second shift is-- there's a lot of need, but it's where all the act-- it's a lot of action happens, a lot of fights, a lot of the drug stuff's going on, and so people tend to switch that and change [INAUDIBLE].

**DeBOER:** So folks, you say, have reason to not want to participate in second shift.

**MICHAEL CHIPMAN:** Oh yeah, yeah, yeah. When you-- once you get seniority, nine times out of ten, I'd say, you go to first, you try to get on first or third if you're OK with staying.

**DeBOER:** Interesting. OK.

**MICHAEL CHIPMAN:** It's very common.

**DeBOER:** Thank you.

**MICHAEL CHIPMAN:** Yep.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Mr. Chipman. I always enjoy it when you come and speak to us.

**MICHAEL CHIPMAN:** Yeah.

**BRANDT:** I'm a little confused. RTC. You guys for years have tried to get rid of overtime and now you're asking for overtime. Is that a correct statement?

**MICHAEL CHIPMAN:** So yes, we are asking for more overtime allotment because the minimums are at an unsafe level. We-- and to, to clarify,

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we're not talking about more mandatory overtime. We have a lot of staff willing to work voluntary overtime.

**BRANDT:** But then what happens if you don't have enough volunteers? They're going to have to do a mandatory overtime.

**MICHAEL CHIPMAN:** That is correct.

**BRANDT:** And you guys are all right with that?

**MICHAEL CHIPMAN:** Yeah, we're OK with that if it keeps us safe. And obviously, our safety is our number one priority. I agree, I don't want a bunch of guys getting mandatoried for extra positions that aren't needed, but these are not-- I mean, we're talking about one guy running an entire unit. I can give you more examples. I'd be happy to.

**BRANDT:** To start today, I think we're at what, \$28.50? Is that an hour? Is that what a--

**MICHAEL CHIPMAN:** \$28 even.

**BRANDT:** \$28 even. And then overtime is usually time and a half, right? So you'd add \$14--

**MICHAEL CHIPMAN:** It's double time now.

**BRANDT:** It's double time? OK. So you'd add \$28 bucks to that, so they'd be making \$56 an hour.

**MICHAEL CHIPMAN:** Correct.

**BRANDT:** OK. So if you were managing, if you were on the opposite side now and you weren't labor and you were management, can you understand why management would try and contain overtime at 56 bucks an hour?

**MICHAEL CHIPMAN:** So, yeah, absolutely. I understand the, the management section. That's why I said I assume it's budgetary. I don't know that for sure. And, and I understand that, you know, we don't want to be using overtime willy-nilly, but we can't be-- this isn't a, you know, grocery store or something of that nature. When we cut back on the, on the areas that's-- and it leads it to dangerously low minimums. Sometimes I have two people in the yard of that, of that entire facility. That's, that's an issue, right. We need to have a safe minimum, which may include more overtime. I'm not saying open up the, the vault and let it-- you know, and at one time, there was a

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little time period that where-- the lieutenants weren't managing it well and they were letting them go way over, like 20 or 30 over. I understand that's not acceptable and it's a waste of taxpayers' funds.

**BRANDT:** And we also understand this is a 24-hour facility and we have to keep people there, mandatory or voluntary. Can you clarify something for me? I had an opportunity to tour the RTC and the 384 oh, probably three months ago, four months ago. The people in Nebraska should be very impressed with the facilities we have there. And you come in here today and tell me the RTC is a problem. And I kind of saw, from a layman's perspective, a state-of-the-art facility. Why is the RTC a problem from labor standpoint?

**MICHAEL CHIPMAN:** So it's not the, the, the physical layout. The physical layout's fine. The problem is this, this, is like I told you, our biggest problem by far is this-- they're not allowing overtime and it's creating this unsafe environment which is creating some of our, some of our new hires are starting to quit. And as you see, we don't have a huge back door behind it if we're only getting 20. So that's, that's by far one of the largest-- there are some issues with any new building, of course, with some of the stuff that we can point out. But overall, I agree, it's a very nice facility.

**BRANDT:** So from a labor perspective, if you're a new hire and you think, man, I've been here for a month and I don't like this, do they offer that new hire and say, here across the street we've got community corrections or here down the road we have the state penitentiary? Do they give them the opportunity to go to another correctional facility?

**MICHAEL CHIPMAN:** Typically, not in the first six months they won't but then after that, yes, they do. And that's not always followed, but it's hit and miss on each facility.

**BRANDT:** OK, last question. Now, you mentioned the county corrections. We --and I understand this is an arms race. The state raised to \$28. They got a raise to \$28. All things being equal, does the state offer a better compensation package to employees than the counties do? Is that enough incentive to keep people working for the state corrections facilities versus Lancaster and Omaha?

**MICHAEL CHIPMAN:** So like I would say, Douglas County's total package just because they have a pension plan, it's probably-- it's significantly more. Of course, that's a lot more costly to the

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employer. But I would say that they have a better overall plan. But as far as Sarpy and Lancaster County, I'd say our health care is better than theirs. And we have, to my knowledge, we have the same retirement plan. And so, you know, I think it all depends-- it depends on what-- how your style is. People, new staff love the 12-hour shifts with what, we call it the Panama schedule, which is four on, three off, three on, four off. And that's, that's how Sarpy County does it and they really like that. And they always get some people because of that, those scheduling things. And then-- or they like working in a more secure environment. Counties are a lot more rigorous. They have a lot less programming, things of that nature. And some, some staff enjoy working in that environment instead of the prison environment, which has a lot more program, a lot more stuff going on.

**BRANDT:** All right. Thank you.

**MICHAEL CHIPMAN:** Yeah.

**LATHROP:** Senator Geist.

**GEIST:** Yes. Thank you for your testimony. And I just have a question about the mental health that you were talking about for officers. Is there anything currently in their insurance program that provides mental health for, for your officers?

**MICHAEL CHIPMAN:** So right now you have EAP. And I'll be honest, no one really likes to use EAP. A good example is I had a staff member at one of my facilities after she lost her son, use it and they did-- it was three phone calls and that was it.

**GEIST:** Oh.

**MICHAEL CHIPMAN:** And that just isn't real acceptable for [INAUDIBLE]. It's hard enough to get our guys to reach out because they're concerned about if they get reported to their job. Because if, if someone reports that I, I'm having suicidal thoughts of that nature, we handle firearms, so that affects our career. And so there's a lot of concern about even bringing it up so then it's kind of pent up. You'll hear that a lot in law enforcement communities in general. And so as far as our regular health Insurance, it's coverage is like regular. So I mean, it's 35 bucks on the wellness plan and I think 50 bucks on the regular plan each time you go. So if you're going weekly in it's-- it'd be 200 bucks or something, so, I mean, I guess that--

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to answer your question, we would like something a little more easily--

**GEIST:** Accessible. I know there, there are some programs that are starting in the community. I know here in Lincoln, I know there's some in Omaha that are for first responders. Some of those are-- also include correctional officers, I think maybe in Douglas County, I know not yet in Lancaster, but they do a lot of community involvement to raise money to serve the mental health issues of people just like your officers so.

**MICHAEL CHIPMAN:** Yeah, I'm all-- if-- I'm looking for resources and the more the better. I'm all for it. Whatever it takes.

**GEIST:** I'll, I'll see-- I'll get with you and connect you with--

**MICHAEL CHIPMAN:** I appreciate that.

**LATHROP:** I just have a couple questions, Mike, by way of clarification. When you talk about the RTC and you're concerned that there are not enough posts, does the American Association of Corrections Officials or some group like that set standards for how many posts there should be in different environments? Is it just something the director decides, or is it standard?

**MICHAEL CHIPMAN:** Yeah. So from everything I've seen, I'm sure the ACA has some form of standards. From everything I've seen-- it's, it's been changed so many times. We had the minimums change three times in one month at RTC, and so I want to say it has to be a central office decision. We-- just because of how quickly it happens, it's obviously not a standard by the ACA. They don't move that quickly.

**LATHROP:** Does the ACA come through? If you know, does the ACA come through and certify the department every year?

**MICHAEL CHIPMAN:** I think it's every two or three years. I could ask that--

**LATHROP:** OK. That's all right. Somebody is going to come through and realize that there is insufficient posts if that's actually the case.

**MICHAEL CHIPMAN:** Possibly. Like I said, and so-- and I'm not necessarily talking about insufficient posts. We have, we have, posts that are just left empty. So there are posts. They're in the-- there is-- they're in the allotment to be allowed to fill up to. But they're

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not considered part of your minimum, your critical staffing. So it's not a matter of having assigned posts. It's a matter of us not-- we're not allowing overtime or anything to fill those posts because we don't think that they're necessary.

**LATHROP:** Gotcha. Well, thanks for clarifying that. That's the only question I have. And I don't see any more. Thanks for being here today.

**MICHAEL CHIPMAN:** Yep.

**LATHROP:** Good afternoon. Welcome, Mr. Inspector General.

**DOUG KOEBERNICK:** Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Doug Koebornick, spelled K-o-e-b-e-r-n-i-c-k, and I'm the Inspector General of Corrections for the Nebraska Legislature.

**LATHROP:** Doug, can you speak up just a little bit?

**DOUG KOEBERNICK:** I'm following her example of [INAUDIBLE]

**LATHROP:** Apparently, someone in my family is right that I don't hear very well. [LAUGHTER] I'm still in denial, and so I'm just going to ask you to speak up a little bit.

**DOUG KOEBERNICK:** Yeah, I thought I would touch on a few issues today that-- and then answer any questions that you have. A lot of what I was going to talk about has been discussed already by Senator Lathrop and the acting director, Sabatka-Rine, and Mr. Chipman, so I'll kind of just skip through my notes here. But last week, Zach Pluhacek from our office came in and talked to you about the health staffing issues, and I thought he did a really good job. I think that he really highlighted the concerns that we had about that. One of the things, though, that I think is really important is that we can discuss how pay should be raised for those positions, for some of those positions, if not all, to meet what's happening in the community or maybe in Health and Human Services. But when we did that survey and had half the people respond, what we found was that it's the culture that is really impacting people's decisions to leave. It's how they are treated by those above them, how they are respected by those above them, and we think that needs to be addressed as well. That's an issue that has been ongoing for seven years as-- during my time as Inspector General that we've heard from security staff, health staff, constantly over this time period. And when you go back and look at the surveys

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that we did of security staff back in the day, they didn't talk about pay being the big factor to keep them around. It was how they were treated by those above them. And if we had done more on the front end to do that, I don't think that-- I mean, we probably would have increased their pay significantly, but probably didn't need to do it like it did, like it happened. I think the same thing can be said for the health, health care staff as well, so I want to make sure and make that point. And yesterday, I received a Department of Administrative Services vacancy report. They put one out every quarter and I just provided it to you. And what you'll see there-- and I was really surprised by it because I thought this number had probably gone down, but I'd like to look at the DAS report because it's a constant that comes out every three months and you can see. And if you look at what I handed you, the total vacancies, if you go back to like 2016 for the department were about 252 and then over time it kind of gradually crept up there. And I remember raising some concerns back in 2021 when it got to 391 vacancies. And I was like, whoa, that's an all-time high and everything. Well, then it really escalated and went over 500. And the department has made some really significant strides in getting those security staff positions filled and everything. But at the end of the day, as of September 30, just two weeks ago, we still have 377 vacancies in the Department of Corrections, according to the Department of Administrative Services. So I wanted to bring that to your attention because it shows that while there's progress and the line's going down, that's good. But we still have a ways to go. I don't want anybody to think that this problem has been solved 100 percent or anything like that. And what's really interesting about this report, too, is that it lists all the positions that are vacant, the date that they were vacated or created, because there are new positions in here, too, so that accounts for some of those 377 positions that were added in the budget this past year. And then their, their rate of pay is also included in there. I think that's a really helpful report that I look forward to receiving from our Fiscal Office, actually, every three months. I was going to provide you some updates on all of those reports that you talked about, so I won't really go into that. Classification study is very important. I'm looking forward to that being completed. I wished it was done by now. It's not, so we just have to accept that and hopefully we'll get a good work product and learn things in the spring of 2023 that will help with the Legislature in making good decisions and the new administration. The program evaluation, I wish that was moving forward in a faster rate as well. The Legislature provided them with \$240,000 to do that, and that's something that back in 2016 they did do an



initial evaluation. I thought it was done really well. It was supposed to be the first of a three-phase report. That person who had conducted that left and at that time, I reached out to the department and they indicated that they just weren't going to go ahead and finish it. And we've been pushing that over and over. And finally, in 2021, in our annual report, we really highlighted it. And, and as a result, the Legislature took action this last year to, to have them contract with somebody outside. So we're encouraged by that. I think that's going to be really important because there are some clinical programs that really need some evaluation for sure. The, the one issue on the halfway back report, which I don't think is a halfway back report either on those 96 community beds, is that the program statement said that the parole administration would be administering that transitional housing facility and running it and everything. When I received a copy of the report, I contacted parole and asked them, you know, who they'd been in contact with about that study, about that program statement. They were unaware that it was taking place and had been completed; nobody had talked to them. So they-- in this program statement that we now received that we spent a few hundred thousand dollars on, it says parole runs it, but parole was never involved in any of the discussions from what I was told by the parole administrator. So I'm not sure that that really is a helpful program statement. The electronic health records system, we do have a lot of concerns about whether that's actually going to get done by 2025. Even if it does get done, I really don't think it's going to do what it needs to do. An electronic health record system lets you communicate with other EHRs. The way they have this one set up right now, they've admitted that it will not. It will take some time after that for them to actually connect up with the other EHRs. So if I'm an individual incarcerated and I go out and get knee surgery somewhere, they don't-- they won't be able to, even when this is completed, they won't be able to send that information electronically to the Department of Corrections. And none of my medical records from the Department of Corrections can go there. They will hand things like disc or paper back and forth between those. And when I leave the, leave the prison system, they will hand me a disc with my medical records if I'd like them, and I will then hand them to whoever my provider is. They won't be connected up. And that's a real concern. And I think that if we reached out to the OCIO and asked them where they are at with the status of this development of the system, I think that they would probably tell us that it will not be done by 2025. Our office probably should reach out to them this week and ask them about that, because if it's not going to get done by 2025, we should really just stop it and

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get a system in that works. So I feel pretty strongly about that. That's something that we started raising back in 2016 as well. And then on the RTC, the 384 beds, that unit will open here soon. We will have a report out probably this afternoon or tomorrow for the public that talks about the opening of that report. We had several recommendations on how that should be opened up, how things should take place within that unit, including having more experienced staff working in that unit. We didn't have anything about the stab vest. I wish we would have, but we did have a recommendation about having body cameras on the individuals assigned to those units because these are going to be very risky individuals that are in those-- in that, in that unit. Down at Tecumseh in the 2C program, they actually do have body cameras and stab vests. But Director Frakes rejected our recommendation on having body cameras and having more experienced staff there. But I will-- we will have that out sometime later today or tomorrow. And then finally, I would say-- one thing for the Legislature: in our annual report this year, we had a few different suggestions for the Legislature. One of those was that there's statutory language right now that requires the department to provide strategic plans to the Legislature. The law required plans through the biennium ending in 2021, as well as progress updates on the plans through 2021. The last plan that they issued was in 2018. I think that those plans can be very valuable. I think it is important that the Legislature go in and amend that law to have them provide those strategic plans going forward, because it is very important to get that information from the department. In the past, 10, 15 years ago, they used to put out annual reports that had a lot more information in them. They really don't-- they don't do that anymore, and I think that these strategic plans, when they were done, were very helpful in providing us with some insight on where the department was going. And then-- I said finally once, but I wrote a few notes here based on things that you had asked already. When we look at programming being more on the back end, the clinical programming on the back end, it's been stated today and in the past that there are studies that say that we shouldn't provide it on the front end. I've been on a seven-year journey to find those studies. I have not been able to find those. Director Frakes was never able to provide those to me. I've talked to clinicians and other people and they say that they have never seen anything like that and they believe that they should be providing that kind of program more on the front end, and I would hope that we would start to do that. And then, let's see here-- one thing, too, about when Director Sabatka-Rine talked about some of those innovative programs like the Home Builders Association. I just wanted to throw

this out here: at Tecumseh they are providing that class when they have enough staff to, to handle it and everything. I mean, those guys are in there doing some construction work, wiring, you know, framing, things like that. It's really good and they really like the program. The last time we were down there, there was only a couple of people in the class because they hadn't quite figured out how to approve people to get into the class from different parts of the facility based-- because they might have had some assault or some other event in their incarceration that was disqualifying them from the class. So we think, our office thinks that if we're going to have this class, we should actually have it filled up with more people. And if you can't fill it up at Tecumseh, let's put it somewhere else. But we can envision this where the-- these people learn this job skill at Tecumseh or the State Penitentiary, maybe they can go to OCC and then maybe end up at the Work Ethic Camp. And when we were out at the Work Ethic Camp last, we had staff talk to us about why can't we have our incarcerated individuals build homes here, like low-income housing that can help the communities in southwest Nebraska? And so that's, that's a really good idea. And we said, you know, there's this HBA thing at Tecumseh where they're learning some skills here. If you could learn some skills here, then go to the next place and then you go there, and we could work with NIFA and other folks to create such a program and actually help communities, help guys have these job skills. And so when they go out to the community then, they're ready to roll. They get to work release, they have a job lined up and everything. So we can do a lot of different things like that. Springfield, South Dakota, has a prison that does that. And I've talked to some folks about going up there, and I think that might be a worthwhile visit to learn more about that, and I'll make sure and invite the Judiciary Committee when I do that. So I said a lot. I'll answer any questions that you have. Thank you.

**LATHROP:** Senator Geist.

**GEIST:** I do have one and it's about electronic medical records. And I'm just-- I'm wondering, I, I used to be in pharmaceutical sales, so I went through a number of clinics and hospitals that were transferring their electronic medical records. And a lot of times the clinic and the hospital couldn't talk to each other. And I'm wondering if that's just a symptom of a typical problem that's even in the private sector of electronic medical records speaking to each hospital, because not necessarily does each hospital even have the same server of records. So I wonder if, if that issue is going to be an issue no matter what system they implement.

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**DOUG KOEBERNICK:** I think if they use an outside vendor, from my understanding, those systems all now, because of technology, are able to talk more together than in the past. I think there were like silos before. But if I-- what I've been told by people who work in the field-- and actually I have a meeting set up with an EHR person tomorrow to learn more about this since it's kind of an emerging issue. I think what we're seeing is that more they can now talk better together and everything. I'll find out tomorrow and I'll let you know.

**GEIST:** OK. Yeah, I'd be interested to hear that because that would be something that I, that I didn't know because it was a, it was a conflict early on when people were migrating over to electronic records, so. And then one other thing is about the body cams. Is that a common thing in other prisons that, that guards wear body cams?

**DOUG KOEBERNICK:** I don't know about every system, but I'm-- it's a, it's definitely something that's out there and used pretty frequently around the country.

**GEIST:** OK.

**DOUG KOEBERNICK:** So it's not unusual. What's really interesting to me, and I've been pushing this body camera thing for a while because-- and it's not just me, it's like, it's the staff members coming to me over the years talking about how they would like to have body cameras. Right now, we only have body cameras on some individuals at Tecumseh and at the State Penitentiary. I think, at a bare minimum, anybody who is an emergency responder-- so if some incident erupts at like the Omaha Correctional Center, somebody is classified as an emergency responder. They should have that body camera on them so that when they respond to the situation, then at least we have the body camera. Even inmates would prefer to have body cams, some of them, some of them would prefer not, but some would because they can then say, well, watch the body camera and you can hear most conversations on a body camera. What's been disturbing to me is at the Lincoln Correctional Center where we had mental health units where guys acted out over and over and over and there's a lot of conflict because of that with staff and a lot of different events that took place, they've never had body cameras there. And I don't know why in those situations you wouldn't want to have body cameras.

**GEIST:** So currently, I-- and I might have missed this in what you said. Currently, is it just the people who are in the most high-risk areas that, that have them now?

**DOUG KOEBERNICK:** It just depends on the positions for each at the Penitentiary and Tecumseh. But yeah, like at-- you're going to have, I believe you will have more body cameras down in like restrictive housing than in other units. Though recently I watched an event take place in restrictive housing and like nobody had a body camera. So it's puzzling, but I-- yeah, I think it would be helpful. And the staff brought that to me too.

**GEIST:** OK. Thank you.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Inspector General Koebernick. We used to have a program that built houses at the State Penitentiary until recently because I know they built housing and they built about 20 a year. And communities like Plymouth, where I'm from, could apply for-- to purchase those but there were such strict guidelines on-- they could only be used for low-income housing and-- which was unfortunate because, because -- and I'm not going to go into what the needs are here. But what happened to that program?

**DOUG KOEBERNICK:** It was a pretty small program, and it was a private entity outside the department that ran it and they received some state funding. And it all kind of happened at the beginning of my time as Inspector General, but I believe they had some management issues that ended up having that entity just-- I mean, they just ended what they were doing. And so nobody stepped up and taken their place since then.

**BRANDT:** Is that, is that a viable enough program that Cornhusker Industries could take it over?

**DOUG KOEBERNICK:** I think, I think they could. They definitely could. They are capable of a lot of things at Cornhusker State Industries, and I think that is something that they could work with other partners and develop and, and do a really good job at for sure.

**BRANDT:** Because I would say when we toured OCC three or four years ago and we took a tour of the facility and got over to like the sewing shop, woodshop and talked to the supervisors over there. I was just so impressed by the quality of work and they will tell you that these individuals love working there because it gives them something to do. So I would say, given Nebraska's current shortage of available workers, particularly in the trades, that I would love to see us pursue this in any way, shape, or form for more plumbers,

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electricians, drywallers, truck drivers, anything of that nature that would work well with Corrections. And I don't know how businesses in the state of Nebraska can communicate that to our Corrections.

**DOUG KOEBERNICK:** Yeah, I think, I think it really-- whoever the next director is, whether it's Director Sabatka-Rine or whoever, I think that's something that they could really take a run with and reach out to different leaders in the business community and housing. I mean, like-- NIFA has gone up and visited that facility in South Dakota and knows all about what goes on there. They're very interested in it. So I think somebody could really take it, take it and run with it. And the other thing is McCook has a couple hundred guys out there that are, for the most part, they're a little bored when they go out there. They have some nonclinical programs or little substance abuse programs to do, but they kind of sit out there and wait till they get their turn to go to community. They, they could use more things to work on and it would be more of a destination for them because they know that if they went out there, they would get those job skills and they, you know, we probably could pay them a little bit more, too.

**BRANDT:** I want to ask you the same question I asked Director Sabatka-Rine. What is your relationship with the OIG with Corrections?

**DOUG KOEBERNICK:** I think she said cordial. I'd say, OK, that's probably accurate. I think, to be honest, because I think one of the things I've done in my seven years is be very honest when I get asked questions, it could definitely be improved. The last time I met with Director Frakes was July of 2021, because he didn't choose to meet with me to talk about things. When I first started, we met on a regular basis. And I was just at a conference last week out in Washington of the Association of Inspectors General, and we had inspectors general from federal agencies there, and they were talking about how they've actually worked more to build those communication contacts and work with, with their departments earlier on when, when things are happening. And they-- they're not giving up any authority, responsibility, but they think they've seen some positive efforts from that. I think that is something that sitting in on those sessions, I learned that that's maybe something I need to work on, that I need to reach out to the department a little bit more and try to reestablish that communication and those-- have some regular meetings with the leadership. So I plan to do that.

**BRANDT:** All right. Thank you.

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**LATHROP:** I don't see any other questions. Thanks for being here. We appreciate what you do. You're the eyes and ears and-- from inside the department. We can all tour facilities, but having someone there that's talking to staff and talking to those people that are incarcerated is beneficial in making policy.

**DOUG KOEBERNICK:** Thank you. Thank you so much.

**LATHROP:** And I very much appreciate what you do, Doug. Anyone else here to testify on this resolution? Dr. Spohn.

**DR. RYAN SPOHN:** I don't have anything to add unless you have specific questions for me.

**LATHROP:** Maybe if you would come forward, just a few.

**DR. RYAN SPOHN:** Is this LR395?

**LATHROP:** Three, LR375, isn't it?

**DR. RYAN SPOHN:** LR375. Good morning. My name is Dr. Ryan Spohn, R-y-a-n S-p-o-h-n, and I'm director of the Nebraska Center for Justice Research at the University of Nebraska-Omaha. And we have contracts with the Department of Corrections to evaluate the location life skills program, the classification study that has been mentioned a number of times. My associate director, Dr. Zach Hamilton, is working on that project as well. I'm open to any questions.

**LATHROP:** Can you just tell us where we're at with those or how they're progressing?

**DR. RYAN SPOHN:** Yes, the--

**LATHROP:** Or have we seen progress? And by the way, I can appreciate that, that you enter into contracts with the department. I'm not asking you to express any criticism of the department, but to provide us with sort of where are we at on those contracts.

**DR. RYAN SPOHN:** Right. The classification study is just as everybody has described. The terminology we use is a no cost extension so the, the project has been extended and that was due to delays in getting the data. And my understanding is that the, the CJI project was obviously very data intensive and the Department of Corrections only has so many data staff and they recently had turnover in that office as well. So all their staff were busy getting the data for-- to CJI

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and we had to wait on that. But during that time we did conduct the, what we call the process evaluation, and that was the interviews of staff and visiting all the facilities. And the Department of Corrections does have that first portion of the project, the process evaluation, in their hands to look at. And we do have the data and are working on the, what would be the outcomes of the study.

**LATHROP:** And that's on the classification? When do you think that's going to be done?

**DR. RYAN SPOHN:** I believe it will be March is what I'm told, early spring.

**LATHROP:** March of 2023?

**DR. RYAN SPOHN:** And then the correctional programming tied to, most recently LB896, we do have a verbal email agreement. We're finalizing a statement of work on that project, very excited about that. I think it will kind of be a game changer as far as just being a resource and being able to help have an outside pair of eyes look at this programming and, and what's working and what isn't, particularly the, the implementation of the programming from the clinical side. These evidence-based programs have treatment models that have been developed. And so we want to look at fidelity to the models and what are we, we able to to get done. A lot of that depends on staffing, both the security staffing to be able to move people around if a facility isn't on lockdown. But then you also need security staffing in most of these facilities to actually walk the people to the program and get the people there. And then the discussion of having the clinical staff to deliver the programming, all of that has an impact on the ability of these programs to be delivered with fidelity and then that impacts the outcomes. We are very excited to be looking at that. We just need to go back and we have to form the, the legal contracts and things between the University and the Department of Corrections. And all of that is, is as everybody said, it's moving forward and we're very positive about that.

**LATHROP:** One of the things you're going to look at, if I'm remembering this correctly, is the timing of programming as well, whether it's, whether it's more effective done early or near an individual's departure from the department.

**DR. RYAN SPOHN:** To the extent that that, that information is in the literature, we'll look at that. And part of that is the two projects



aren't mutually exclusive. So the classification study, you know, are we getting individuals at the right place at the right time where programming is being delivered and at a time in their window that it's not holding them back from being paroled? Things of that nature. So is the individual where they need to be to get the programming, right time, right facility, and there's the staffing to deliver that program. So that's kind of where the, the classification study comes in to kind of streamline that process, to make sure, you know, individuals at this part of their sentence are getting where they need to be to get the programming. And then the evaluation of the programming then is, you know, is it being delivered with fidelity? Is it being delivered at the right time, if there is research it. That's going to vary across programs. So we can't say all clinical programs should happen at the beginning of a sentence or at the end of a sentence or nonclinical should be delivered-- you know, that can depend on the program or there just isn't evidence and we can be an entity that helps build that evidence on, it seems to work better when people get it earlier or later and things of that nature.

**LATHROP:** OK. When do you expect that report to be completed?

**DR. RYAN SPOHN:** The Correctional Evaluation Report?

**LATHROP:** The-- yeah the, the--

**DR. RYAN SPOHN:** That will be ongoing so I believe LB896 writes that we would evaluate seven nonclinical and six clinical programs each year. So each of those evaluations would be separate entities and they would have an evaluation report. So each year we would be handing over evaluation reports on individual programs that we're evaluating and that is just an ongoing process.

**LATHROP:** Is that one program at a time, like each year will take-- each year we'll see one program evaluated, or will you do six each year?

**DR. RYAN SPOHN:** It'd be 13 each year. Seven nonclinical and six clinical is how it's written in LB896. It's a big endeavor. Very big endeavor. But there's no like, this evaluation will take exactly a year. Some of these programs are larger, some of them are smaller, some of them are in multiple facilities, some are in one facility. So the-- there's just going to be a lot of variety in what those evaluations look like.

**LATHROP:** And when do you think we'll see the first set of evaluations?

**DR. RYAN SPOHN:** If we get the full evaluation process started, you know, I'm hopeful for January. We will need to hire some people to get this done. January of 2023, if that's when we started, you know, maybe this time in 2023, we might get some, have some evaluations completed.

**LATHROP:** So. All right. That's all the questions I had. I don't see any others. Thanks for what you do and the information that you provide this committee and the department to help them run well and improve in their mission.

**DR. RYAN SPOHN:** Thank you.

**LATHROP:** Thanks for being here today, too. Anyone else have any testimony? OK. I see no other individuals coming forward. I don't have a big close. I just-- I think this has been a useful undertaking so that we can, as a committee, talk about some of the issues that, that, that to me feel like they have not been resolved. And to the extent it informs what might be worked on in the next session or with the next administration, that was our purpose today. I appreciate the testimony of those who appeared here and there is much work to do. It's a big organization with a lot of challenges and a lot of ground to make up, and hopefully we've shone a light on some of the things that need some attention. With that we'll close our hearing on LR375. And that's our last hearing of the year.

**MORFELD:** Thank you, Chairman.

**DeBOER:** Thank you, Chairman.

**LATHROP:** Thank you.