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Judiciary Committee  
March 15, 2007

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[LB406 LB540 LB541 LB669 LB671 LB680]

The Committee on Judiciary met at 1:30 p.m. on Thursday, March 15, 2007, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB540, LB671, LB541, LB669, LB406, and LB680. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Amanda McGill; Dwite Pedersen; Pete Pirsch; and DiAnna Schimek. Senators absent: Vickie McDonald.

SENATOR ASHFORD: Welcome, everyone, to the Judiciary Committee. We're about five minutes late, so we'll get right into it here. We have...where are our bills? What's the bills here? We have six bills to go through. The first bill is LB540. Most of you have been here before, but those who have not, we have a light system that we would ask you to follow a bit. It gives you about three minutes to testify. When the yellow light comes on that means you have a minute left, and when the red light comes on we would ask you to sum up your testimony. And there's a sheet going around that those of you who have been here know about, but if you would sign it before you come up to testify, and then we'll take the sheet from you as you come up. Let me introduce...Senator McDonald is not here today, from St. Paul, Nebraska. Senator Pirsch from Omaha; Senator Schimek from Lincoln; Senator Pedersen from Elkhorn; Senator Lathrop from Omaha; and Senator McGill from Lincoln. She's been ill so out-of-sight, out-of-mind, but we're glad to have her back. Welcome everyone. Let's start with LB540, Senator Synowiecki. And I think we're going to go ahead and introduce LB540 and LB671 together, if we could. [LB540 LB671]

SENATOR SYNOWIECKI: Yes, Senator Ashford, that was my understanding we were going to take both Senator Pedersen's and my bill at the same time. [LB540 LB671]

SENATOR ASHFORD: That would be great. [LB540 LB671]

SENATOR SYNOWIECKI: (Exhibits 1 and 2) Good afternoon. I am John Synowiecki. I represent District 7 in the Legislature. I have passed out a couple things. One is an amendment to my bill that I would like you to consider; another is a copy of the constitutional amendment that was passed last November at the ballot box. I offer the committee this amendment on the bill and I want to let you know that this is a result of a series of meetings that I've had with the Chief Justice of the Nebraska Supreme Court. I believe the Chief is endorsing this amendment and will speak favorably toward it. This is truly an important issue, one that ultimately needs to be resolved. The Speaker has designated this issue as a Speaker priority. The proposed amendment, through a multibranch approach, seeks an objective, in-depth, neutral-based analysis of the issues involved in our probation and parole service delivery system, and I believe that undertaking this study would serve the best interests of criminal justice administration in our state. Having probation and parole under different branches of government and

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under two entirely different administrative frameworks, I believe, certainly serves as barriers in providing a continuum of offender services and is not conducive to a seamless community corrections model. In 1971, under LB680, the Legislature elected to house the probation administration within the Supreme Court. LB680 was innovative in providing a limited forum of cross-jurisdiction authority for parole officers to supervise probationers. Cross-jurisdictional authority was proposed by Senator Terry Carpenter and it centered upon his recognition that probation and parole officers have strikingly similar duties. Nationally, 33 states, the District of Columbia, and the Virgin Islands have probation and parole services located uniformly under the executive branch. Alabama, South Carolina, and Tennessee have merged probation and parole into an agency separate from their Department of Corrections. Today, only 13 states have probation located within the judicial branch. No states have probation and parole merged under the judicial branch. Since 1957, there have been six attempts to merge Nebraska's Probation Department into the executive branch of government. Moreover, in 2003, the Legislature passed LB46 which provides for the development of community-based programs and facilities for probationers and parolees under the guidance of the Community Corrections Council. In order to promote enhanced opportunities for successful LB46 outcomes, I believe it is necessary for us to seriously examine the concept of unifying our probation and parole resources. Last year, voters passed a constitutional amendment, which I have provided to you, to change the separation of powers provisions of the Constitution of Nebraska to authorize the Legislature to assign to the judicial and executive departments responsibilities regarding the subversion of individuals sentenced to probation, released on parole, or subject to programs provided by a court. Particularly with the passage of this constitutional provision last November, I do believe now is an appropriate time for the Legislature to act on this issue. I want to again thank you, Senator Ashford and the committee, for your consideration of the amendment. [LB540 LB671]

SENATOR ASHFORD: Thank you, John, very much for your testimony. Any questions of John? Shall we wait...are you going to have...then we'll have Senator Pedersen testify and then if you want to stick around, I assume you do, are you going to... [LB540 LB671]

SENATOR SYNOWIECKI: Yeah, I'll probably stick around. [LB540 LB671]

SENATOR ASHFORD: Okay. [LB540 LB671]

SENATOR SCHIMEK: Mr. Chairman, I think... [LB540 LB671]

SENATOR PIRSCH: No, that's fine. I think you addressed it in your question there. I think there are people going to be testifying after you, so. [LB540 LB671]

SENATOR ASHFORD: Right. [LB540 LB671]

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SENATOR SYNOWIECKI: Yeah. [LB540 LB671]

SENATOR ASHFORD: Thank you. Senator Pedersen. [LB540 LB671]

SENATOR PEDERSEN: Thank you, Senator Ashford and colleagues on the Judiciary Committee. I'm in 100 percent support of Senator Synowiecki's bill, LB540, that he just introduced. LB671 would be a merger bill of merging probation and parole under the Department of Corrections in the administration side of our government. I would ask the committee at this time, without introducing this and going through all the testimonies of to and for it, that we sit on this bill until next year, and those that are here to testify for or against my bill, to hold their testimony, because if I have to reintroduce it next year I would make it different and give them a chance to testify at that time anyway. Our people that work in probation in the state of Nebraska are people I work with on a direct basis from day to day as a drug and alcohol counselor in my practice. They have worked themselves to the bone. They get very little pay. And their pay is not the big issue right now. They have morale problems that are unbelievable. This interim study or study that the Chief Justice and Senator Synowiecki have come up with, I think might be an avenue to maybe take a look at that, because if it doesn't, I will be back next year. These are very well-dedicated state employees and they don't feel like they have a voice in their employment, and they work very, very hard for us and they keep a lot of people--a lot of people--out of prison and save us a lot of money and at the same time help a lot of people. They are a neat group of people. So I would like to leave it at that, if that's all right you as a committee. [LB540 LB671]

SENATOR ASHFORD: Thank you, Senator Pedersen. Senator Schimek. [LB540 LB671]

SENATOR SCHIMEK: Thank you, Mr. Chairman. I just have one quick question. If you have in your mind that you may need to introduce something again next year, wouldn't it be better if we just kind of (inaudible)... [LB540 LB671]

SENATOR PEDERSEN: Killed it now? [LB540 LB671]

SENATOR SCHIMEK: ...IPPed your bill this year? [LB540 LB671]

SENATOR PEDERSEN: The reason, Senator Schimek, to be quite honest with you, I don't want to kill it. I'm not so sure that the people working in probation might not take that as a bad sign. [LB540 LB671]

SENATOR SCHIMEK: I see. Thank you. [LB540 LB671]

SENATOR ASHFORD: Senator Pedersen, I really appreciate all the work you've done,

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and Senator Synowiecki, too; and also I'm glad you are on the Community Corrections Council... [LB540 LB671]

SENATOR PEDERSEN: Thank you. [LB540 LB671]

SENATOR ASHFORD: ...so you have some expertise, certainly. Any proponents of either bill, I guess, at this point? How many proponents do we have to testify? How about opponents? Okay. Chief. [LB540 LB671]

CHIEF JUSTICE MIKE HEAVICAN: Thank you, Mr. Chairman, committee members. My name is Mike Heavican; that's spelled H-e-a-v-i-c-a-n. I am the Chief Justice of the Nebraska Supreme Court here to support LB540, Senator Synowiecki's proposal to do a study on probation and parole. We have worked together, tried to work this out so that there would be an objective study done as to the various benefits that might accrue with merger or how best to handle these two groups of hardworking people. I agree with Senator Synowiecki's summary of the history of how probation got to be where it is, and I agree with Senator Pedersen's comments about the dedicated people that are part of the probation system and the parole system. Obviously, in the judiciary, I think as all of you know, we feel very strongly that probation should remain with us and that the probation officers are the eyes and ears of the judges around the state of Nebraska, and we think that that is a situation that works very much to the benefit of the criminal justice system. And as community corrections becomes more than a theory and a concept and becomes implemented in the state, we think that the system will work most effectively if probation remains with judiciary, and I would anticipate that there could be great benefits if parole became a part of probation in the judiciary. But all of those things I think can be better illuminated if they are indeed researched as outlined by this bill. And we look forward to cooperating with everybody to do an objective study so that the citizens of Nebraska and the taxpayers of Nebraska and everybody involved in the judicial system comes to the very best conclusion in regard to probation and parole. I'd be happy to answer any questions. [LB540 LB671]

SENATOR ASHFORD: Thanks, Chief. Any questions of the Chief? The deal, the basic or the provision that was passed by the voters removed the jurisdictional impediment to these discussions is essentially where we are. Would that be a fair... [LB540 LB671]

CHIEF JUSTICE MIKE HEAVICAN: That is a pretty fair summary, yeah. [LB540 LB671]

SENATOR ASHFORD: But it didn't tell us what to do exactly (inaudible). [LB540 LB671]

CHIEF JUSTICE MIKE HEAVICAN: It didn't tell us what to do and... [LB540 LB671]

SENATOR ASHFORD: We tell us what to do, I guess. [LB540 LB671]

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CHIEF JUSTICE MIKE HEAVICAN: That's right. [LB540 LB671]

SENATOR ASHFORD: All right, so we just know that. Okay, Senator Pedersen. [LB540 LB671]

SENATOR PEDERSEN: Thank you, Senator Ashford. Chief, I just want to make sure and make it public that we thank you for your cooperation in wanting to do something in this area. [LB540 LB671]

CHIEF JUSTICE MIKE HEAVICAN: Well, thank you, and thank you for your cooperation, and again thanks to Senator Synowiecki for working with me and working with us. [LB540 LB671]

SENATOR ASHFORD: Thank you. Thank you very much. [LB540 LB671]

CHIEF JUSTICE MIKE HEAVICAN: Um-hum. [LB540 LB671]

SENATOR ASHFORD: Any other proponents? Opponents? Neutral testifiers? Senator Synowiecki or Senator Pedersen, do you desire to close? John, do you want to close or are you... [LB540 LB671]

SENATOR SYNOWIECKI: Well, I think I...do I have the next bill, too? [LB540 LB671]

SENATOR ASHFORD: You do, so you just launch right into that. [LB540 LB671]

SENATOR SYNOWIECKI: I just, in terms of closing, would likewise want to thank the Chief. He has been a, in his short time as the Chief Justice, has demonstrated an enormous advocacy for the Probation Department and probation officers, and I'm very appreciative of that, and hopefully we can work from that foundation to resolve some of the issues within the probation system. I'm confident, with Chief Heavican, that we can work together and resolve some of this stuff that Senator Pedersen alluded to in his opening. [LB540 LB671]

SENATOR ASHFORD: Thanks for your work on this, John. LB541 is the next bill. [LB540 LB671]

SENATOR SYNOWIECKI: Good afternoon, members of the Judiciary Committee. My name is John Synowiecki. I represent District 7 in the Legislature. I'm a member of the Community Corrections Council. And Speaker Brashear felt it would be wise if we perhaps introduced a bill that opened up the statutes relative to the Community Corrections Council, so that we have them open for us should something come that would be needed. So it's, essentially I think, what you refer to as a shell bill is what we've got here. Simply, as an additional duty of the Community Corrections Council

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specifically the bill changes the council with coordinating the budgetary needs and funding sources to ensure a statewide, seamless, synchronized system of community corrections in Nebraska. For an efficient and effective criminal justice system it is important to identify needs and coordinate funding sources across agencies. The Community Corrections Council provides the best forum for us to do so. So I would hope, Senator Ashford, that the committee would hold this bill for the Community Corrections Council. [LB541]

SENATOR ASHFORD: Thank you, Senator Synowiecki. Any questions of John? Thank you. Any proponents for LB541? Opponents? Neutral testifiers? John? Okay. LB66...I'm sorry, come on up. No, no. [LB541]

JOHN KREJCI: I'll be really brief anyway. [LB541]

SENATOR ASHFORD: Take your time, we're just... [LB541]

JOHN KREJCI: (Exhibit 3) I'm John Krejci, and K-r-e-j-c-i. And I come before you really to testify in general for community corrections, because I've followed the Community Correction Council for several years. I've passed out a little article I...I write for the "Nebraska Criminal Justice Review," it's a quarterly advocacy for corrections and for inmates. And I just think community corrections has been tried for...fooled around with for 15 years, and finally we're doing something. We've got some money in community corrections. Community Corrections Council is an example of a really, really effective multi-agency, broad-based cooperation. And they've done some really, really fine things. They already have got...they're maybe keeping 300 people out of prison and, you know, at much great savings. I speak a little in my testimony about the problem of overcrowding and the studies that have been doing, saying that we may need to build another \$300 million worth of prisons in the next 20 years. And community corrections may not be the only solution, but it certainly is a step in the right direction, it's a very powerful tool. And the Community Corrections Council, under Senator Brashear's, not Senator anymore, Brashear's leadership has really done some wonderful things. And I just want you to give a lot of credibility and support for community corrections because they are a real...it can be a real service to the state, to inmates, and to the overcrowding situation. So that's all I have to say just in general, community corrections and the Community Corrections Council. [LB541]

SENATOR ASHFORD: Well, it's good to hear we're on the right track on something anyway. [LB541]

JOHN KREJCI: And they need more money. [LB541]

SENATOR ASHFORD: Yes. When we started it, you know, we had...I think our...the community corrections in the Legislature, years ago, I think our budget was...our first

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appropriation was \$25,000. So we've at least gone up from there. [LB541]

JOHN KREJCI: Yeah. And... [LB541]

SENATOR ASHFORD: But we could use more. [LB541]

JOHN KREJCI: They can use more. I'm sure Senator Synowiecki and Senator Pedersen would agree. And my senator, McGill, I hope will come along. [LB541]

SENATOR ASHFORD: Okay. Thanks, John, very much. [LB541]

JOHN KREJCI: Thank you very much. [LB541]

SENATOR ASHFORD: Yeah. Any other testifiers on this bill, LB541, or really any of the community corrections bills? Okay. John, do you wish to...that would conclude the hearing on LB541. LB669, Senator Hudkins. Welcome back again. You're here all the time. (Laugh) And it's great to have you. Okay. [LB541 LB669]

SENATOR HUDKINS: (Exhibits 4 and 5) Let me catch my breath, I ran. Thank you, Senator Ashford, and good afternoon to all the members of the committee. I am Carol Hudkins, representing District Number 21. And that's H-u-d-k-i-n-s. I'm here today to introduce and support LB669 which would adopt the Nebraska Behavioral Health Advisory Council Act. As many of you are aware, jails and prisons are overcrowded necessitating the public to pay for the creation of more institutions or forcing authorities to release individuals sooner than they would like and prior to their full rehabilitation. Evidence of this is apparent in the newspapers across the country. Further, the criminal justice system has no standardized or successful way of rehabilitating individuals with mental illnesses who commit crimes. Society often ends up placing these persons in jail because of limited mental health capacity or it simply doesn't know what else to do with them. I received this, and I'm not sure from whom, but it's entitled "Behavioral Health, Jail Diversion Programs". It talks about what is jail diversion, why does it work, where are the pilot projects. We are fortunate in that we have pilot projects, both in Douglas and in Lancaster County. We have post booking jail diversion programs using intensive case management. And Douglas County uses a dedicated mental health court, where Lancaster County doesn't use a specialized judicial setting. Unfortunately, we have a revolving door when it comes to these cases. The cycle of police contact, arrest, and release continues for many of the individuals without proper intervention. Jails and prisons are overcrowded. The public has to pay more for prisons or they force authorities to release the individuals, which I said before. Lancaster County and I don't know how many other counties, a number, are looking at building a new prison. That's expensive. You've got to build in the first place, you have to staff it, you have to keep it up. For persons with serious mental health involved in the corrections system the issue is just not being arrested, it is recidivism. According to anecdotes by corrections, law

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enforcement and the courts, many persons with serious mental illnesses become part of the core group of jail clients that recidivise on a regular basis, in other words high utilizers. Beyond the anecdotes, the academic community has put forth evidence that mentally ill offenders are rearrested more frequently than their nonmentally ill counterparts. A study in Lancaster County showed that for 31 percent of those that were booked, they were responsible for 57 percent of the bookings. So some of these people are just going through the system over and over again. People who are mentally ill were the majority of the recivists, and they accounted for a disproportionate share of the bookings. In 2003, Lancaster County launched Nebraska's first mental health jail diversion efforts with time-limited funding from a federal grant. In 2006, Douglas County followed suit with a maximum of three years of funding from Alegent Hospital. Many other jurisdictions around the state have voiced their desire to also begin mental health jail diversion programs in their communities. However, they are currently lacking the necessary guidance and resources to do so. A recent survey, I knew I had seen this, a recent survey by NACO, the Nebraska Association of County Officials, and subsequent analysis performed by the state public policy group, there are 49 senators, we all know that, 22 of them have at least one county in their district that is currently building or planning to build a new jail. Twenty-three of our 49 state senators have at least one county in their district that sends inmates to another county to be held for incarceration because their own jail is at or beyond capacity. This is an important issue which deals...directly impacts approximately half of us serving in the Unicameral and the constituents that we represent. National data has demonstrated that mental health jail diversion programs work. Locally, in Lincoln and Omaha, we know that diversion not only works, but it also saves lives and makes our communities safer for everyone. You should have been given a copy of a letter and some other information for the ACLU, and then another one with that, entitled "Criminal Neglect." I would urge you to please read those, and I would also ask that they be made part of the record. At this point I think I have...let me say one more thing. Mental health jail diversion programs provide a structured, well-monitored, and cost-effective program designed to reduce incarceration and recidivism among individuals with mental illness or co-occurring substance use disorders by promoting their recovery and by linking them to the behavioral health services and supports that might have prevented their arrest and incarceration in the first place. So I hope that you will join me in supporting this bill and adopting the creation of the Nebraska Behavioral Health Jail Diversion Planning and Coordination Advisory Committee Act, I don't know where they come up with these names, in order to further explore and examine how mental health jail diversion programs might be of benefit to many communities across Nebraska and assist in keeping an ever growing number of citizens in Nebraska in their communities and out of jails and prisons because they truly do not belong there. Thank you, Senator Ashford. I would attempt to answer any questions. [LB669]

SENATOR ASHFORD: Thank you, Senator Hudkins. Any questions of...Senator Pirsch.  
[LB669]

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SENATOR PIRSCH: I take it there is going to be some one who testifies, too? [LB669]

SENATOR HUDKINS: Yes. [LB669]

SENATOR ASHFORD: Thank you very much. [LB669]

SENATOR HUDKINS: Thank you. [LB669]

SENATOR ASHFORD: Do you desire to stay and conclude? [LB669]

SENATOR HUDKINS: I'll stay. [LB669]

SENATOR ASHFORD: Okay. First proponent. [LB669]

TRAVIS PARKER: (Exhibits 6-10) Good afternoon, Senator Ashford, and distinguished members of the Judiciary Committee. My name is Travis Parker, P-a-r-k-e-r. I am the director of the Behavioral Health Jail Diversion Program of Lancaster County and am here to speak with you today regarding Lancaster County's strong support for LB669. Lancaster County was fortunate enough to be the pioneer in Nebraska in launching mental health jail diversion. Through a federal grant from the Substance Abuse and Mental Health Services Administration, or SAMHSA, Lancaster County began diverting individuals with a severe and persistent mental illness or co-occurring substance use disorder from the Lancaster County jail in November of 2003. Incarcerating persons with a severe and persistent mental illness or co-occurring substance use disorder is a growing problem for Nebraska's communities and communities around our country. Jails and prisons have become America's de facto mental and substance abuse treatment facilities, which they were never designed to become. I can speak firsthand of this as I worked for six and a half years in various Nebraska state prisons providing mental health care prior to becoming the director of our jail diversion program. To date we have diverted 140 individuals with a severe and persistent mental illness out of the jail and back into community-based services in the Lancaster County area. We are able to provide these persons with therapeutic services, intensive case management, medication management, assistance applying for Social Security benefits, substance abuse evaluations and treatment that these persons might not otherwise receive. Just as importantly, we help people meet their basic needs, such as obtaining food, housing, resources to pay for their medications, transportation and other items. After three and a half years of providing jail diversion services to Lancaster County residents, here are a few key highlights: three out of every four people we divert from jail stay out of jail; of those persons who do return to jail, they are doing so far less than they used to prior to entering the program. In other words, the revolving door in and out of the criminal justice system has slowed down significantly for these individuals, and it gives treatment a chance, having a lasting impact on their lives. Virtually every participant of the program

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has reported that the symptoms of their mental illness have improved. Finally, at the time of diversion, 40 percent of our participants identified themselves as unemployed and looking for work. At 18 months post diversion, only 4 percent of those participants identified themselves to be in that same category. The Technical Assistance and Policy Analysis Center for Jail Diversion estimates that 800,000 severely mentally ill persons enter the prison and jail systems each year, the vast majority of which, 72 percent, also have substance abuse problems. Additionally, 77 percent of the women who have been incarcerated have been victims of physical and/or sexual abuse at some point in their lives. Moreover, half of the individuals with severe mental illness who are incarcerated are imprisoned for nonviolent crimes. For persons with serious mental illness involved in the corrections system, the issue is not just being arrested, it is also recidivism or returning to incarceration. A gentleman I just did some training with in Corpus Christi, Texas, shared his story of being incarcerated 59 times, over a three and a half year period, for primarily misdemeanor offenses prior to his involvement with jail diversion. In the last three and a half years, he has not had one single arrest or negative contact with law enforcement. He now trains law enforcement officers in Texas about ways to better interact and deal with persons who have a severe mental illness or co-occurring substance use disorder. In summation, I would emphasize Senator Hudkins' words, we know that jail diversion works on a national scale, and we also know from the pilot programs in Lancaster and Douglas Counties that jail diversion has worked in Nebraska to this point. I thank you all for your time and would be open to any questions you might have. [LB669]

SENATOR ASHFORD: Senator Pirsch. [LB669]

SENATOR PIRSCH: Thanks so much for coming down here today. Could you tell me, what kind of crimes, it's a little bit different structure in Douglas County as it is in Lancaster. And you're operating this now as a formal structure or as a diversion program currently, correct? [LB669]

TRAVIS PARKER: Correct. [LB669]

SENATOR PIRSCH: What types of crimes, are we talking misdemeanors or felonies? And if you could just kind of delineate what kind of crimes are eligible for this type of diversion. Obviously, probably not crimes involving violence or anything of that type, right? [LB669]

TRAVIS PARKER: Correct. When we initially began to work with our county attorneys office, we were limited to diverting folks who had committed primarily nuisance misdemeanor crimes, maybe trespassing, disturbing the peace, petty theft, shoplifting, some of those more minor, nonviolent offenses. But what evolved over the last three and a half years is that through the success of those individuals in the program, we are now able to divert folks who have committed higher level misdemeanor offenses, that

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could be as simple as a higher dollar amount that goes along with the offense they've committed. There have been a handful of assault cases that we've been able to divert, but again that could be because an individual with a mental health problem is living in a group setting, a group home environment, and there may have been a conflict within that setting that resulted in the arrest of an individual. Another thing that's happened recently in Lancaster County is the creation of our local Community Corrections Agency. And our County Board has given approval for us to team up with our pretrial services and drug court programs, so we actually do now team up with them to divert folks who have committed felony offenses that perhaps might be on ankle bracelet monitoring through pretrial services, but have severe mental health needs that community corrections can't address, so we provide those mental health services to them. [LB669]

SENATOR PIRSCH: Well, I think that's a key point that you mentioned, that there is a high overlap rate between, and I experienced that as a prosecutor, too, between those who have mental illness and those who are addicted to drugs or alcohol. So you can't separate, often times, the two. So I think that's a good point. Can you kind of quantify that percentage of the jail population on a given point in time who have...suffer from a mental illness such that it was a largely contributing factor for them being there in the jail to begin with? [LB669]

TRAVIS PARKER: Well, the second piece of your question is more difficult to answer. The first piece, what we know through some data collection that comes in through the booking desk not only at the Lancaster County Jail, but also the Douglas County Jail, which certainly make up the vast majority of Nebraska's jail populations, in Lancaster County 29 percent of the folks who were admitted through the booking desk were identified as individuals who are potentially mentally ill. Now some people who come in, it becomes evident that they do suffer from a mental illness, however there may not have been any formal diagnosis, for example they might not have sought treatment in the community or have been on an inpatient status at the Regional Center. But we know roughly 29 percent are identified as potentially mentally ill in Lancaster County, with 20 percent in Douglas County. [LB669]

SENATOR PIRSCH: How does that screening take place or what's the process or questions? [LB669]

TRAVIS PARKER: There are multiple steps. The first step is at the booking desk. There's a standardized instrument that is used by whoever is the booking officer at that particular time of day. We have 14 questions at Lancaster County that poll for primarily mental health and substance abuse information or co-occurring disorders. So if folks answer in the positive to some of those questions, what we do from there is send them onto our screening clinician, a licensed mental health practitioner, within the state who is officed at the booking desk, and she will further assess them to poll for the severity of the mental illness, to get background records, treatment records, to basically confirm

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that there is a mental health diagnosis present. [LB669]

SENATOR PIRSCH: Is part of that screening, does it recognize or screen for prior contacts with the criminal justice system? In other words is it weighted so that this is your first contact with the system, and you're 58, that it would tend to make you a less appropriate candidate than somebody who is 16 and this is their seventh time? [LB669]

TRAVIS PARKER: Certainly, one of the things that we have access to is the CJIS system in Nebraska. And so we are well aware, as a person is coming in through booking and identified, the frequency of their contact with law enforcement, both from folks that we do end up diverting, as well as those that we don't take into the program. So, yeah, we do certainly take the arrest record and the nature of the offense and the frequency into consideration and have access to that information. [LB669]

SENATOR PIRSCH: Okay, thank you. [LB669]

TRAVIS PARKER: Thank you. [LB669]

SENATOR ASHFORD: Senator Pedersen. [LB669]

SENATOR PEDERSEN: Thank you, Senator Ashford. Bravo, job well done. Nebraska is finally starting to look at getting smart on crime, instead of tough on crime. And with that said, you talked about some of the therapy that was in there. Me being a therapist, I always say that my therapy is not near as good as therapy is a job. In your testimony you stated that is pretty important, isn't it? [LB669]

TRAVIS PARKER: Absolutely. We're finding that it's a two-forked road. What we're finding initially as we divert a person, a lot of folks don't know how to navigate systems in Nebraska, and I say that with folks with mental illness or co-occurring disorders. We found a lot of people were experiencing the revolving door because they didn't know how to navigate the housing system, how to get into a safe place to live, they didn't know how to navigate the court system. We had so many folks that were cycling in and out of jail because they might have a court date scheduled 45 days down the road, and think about it, if you're suffering from schizophrenia, let's say, and you have competing stimuli in your head, voices, external stimuli, probably one of the last things you're going to be worried about is that court date 45 days down the road and trying to recall it. So we have many individuals who had a warrant for their arrest for failure to appear because they simply forgot about their court date. So what we try to do is you think about "Maslow's Hierarchy of Needs", first help them with the basic needs: a safe place to live, make sure that they've got food and clothing. But just as importantly, after those basic needs have been met, is engaging them in treatment systems that are appropriate for the level of care that they need. And so we've worked very closely with community providers and set up relationships to where we can be a short-term service provider for

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them through our program as we are trying to not only integrate them into a system of care that's appropriate, but work towards their maintenance in that system of care. Because if we just get them introduced, they may fall by the wayside. That's why it's got to be an appropriate level of care, so the maintenance issues... [LB669]

SENATOR PEDERSEN: Are you getting good support from the court system? [LB669]

TRAVIS PARKER: We are getting excellent support from the Lancaster County court system. I couldn't be more pleased, not if the...we have recommended to date a total of 142 individuals for this program, and 140 of them have been approved. [LB669]

SENATOR PEDERSEN: Do you get many referrals that are just, I don't know exactly how to say this, but referrals just so they have someplace to go or are most of your referrals pretty accurate and need to be there? [LB669]

TRAVIS PARKER: They are pretty accurate. I certainly wouldn't deny that we've had some folks that if you take a look at the community treatment system as a whole, I think that system has gotten tired of trying to provide services and move them from one agency to another. But the vast majority of the referrals that we receive are very appropriate. We, fortunately, have the types of services that we can refer the folks to, often capacity becomes the issue. And it's that way for Nebraska as well as the rest of the country, and that's why we work with people on a short-term basis until bed space becomes open or a treatment slot becomes available. And just having that human contact with somebody who cares about them goes an awful long way, awful long way. [LB669]

SENATOR PEDERSEN: Again, bravo, thank you. [LB669]

TRAVIS PARKER: Thank you. [LB669]

SENATOR ASHFORD: Thank you, Senator Pedersen. Senator Pirsch. [LB669]

SENATOR PIRSCH: I just wanted to touch upon a few more subjects. It holds the potential for a win-win from the individuals perspective. You have a better quality of life if you can handle more availability of services direction, and for society, obviously, to the extent they're not going through a revolving door, a lower cost. And that's what I wanted to kind of get at. Now the service had been in place, in 2003 in Lincoln, and 2006 in Douglas County. Have you gotten any feedback, any quantitative, objective studies done that have kind of compared the dollar results in the short history that you've had? [LB669]

TRAVIS PARKER: Absolutely. One piece of that, in fact, my mistake was I thought I had five minutes today, so I didn't get to the last part of my testimony, but that was

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addressed. [LB669]

SENATOR ASHFORD: Is your testimony in written form? [LB669]

TRAVIS PARKER: I do have it, yes. And I have the testimony of several other staff members who couldn't be here today. [LB669]

SENATOR ASHFORD: Well, why don't we get those copied and we can hand those out. [LB669]

TRAVIS PARKER: I'd be happy to give them to you. The one quick piece that I would share with you is that from my experience of having worked for the state prison system for several years, and it certainly depends, give or minus a few dollars, depending upon which institution the person is incarcerated at, but that cost is approximately \$30,000 a year to incarcerate an individual. We know, from the data that we've been able to track in our program, we can serve that same person, and I bring this up because we have had multiple people who were facing state prison time, and in fact the judge has shared: I was prepared to sentence this person to three years in prison, but instead what I'm going to do, because they're doing well in your program, is I'm going to not only maintain that they continue with jail diversion and team them up with probation or community corrections. We can provide that same service to the person for a year for \$3,500 compared to approximately \$30,000 it takes to incarcerate someone in the state system. It's a very cost-effective model, especially once a person has been integrated into the treatment system. [LB669]

SENATOR PIRSCH: Even on these...a lot of these people, especially most of the ones you're treating now are just misdemeanors, in jail for a day, you know, contacted for yelling down at the bus station and then judge gets them the next day and gives them a night in jail. So they're out a couple of days. The next day they're in. So even, you know, notwithstanding that a lot of these guys are not in jail for a year, they're just in and out of the system, and they'll have to be arrested nonetheless, even with this diversion system. It would still save money for these in and out, day in and day out kind of deals. [LB669]

TRAVIS PARKER: Because you have the cost of medications that go along with that incarceration, and then when a person loses their benefits because they are incarcerated, like Social Security, the whole startup and going through the appellate process and trying to get them reengaged in services, all of those are very, very expensive services. And so if we're able to get them into the program, even if they do go back, they are with somebody now. And like I said earlier, that treatment has the chance of taking a long-lasting effect. And we've had the opportunity to work with approximately 30 to 50 programs around the country who are doing similar things that we are, and the message seems to be loud and clear from those programs. This is such a cost-effective

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solution compared to incarceration, and it's a long-lasting effect as opposed to just the punishments. [LB669]

SENATOR PIRSCH: Thanks for the answer. [LB669]

SENATOR ASHFORD: Thank you, Travis. [LB669]

TRAVIS PARKER: Thank you. [LB669]

SENATOR ASHFORD: Next proponent. How many proponents do we have today? Okay. Good afternoon. [LB669]

JIM ADDY: (Exhibit 11) Good afternoon. My name is Jim Addy, A-d-d-y, and I'm the evaluator for the Lancaster County Behavioral Health Jail Diversion Program. Thank you for this opportunity to testify. And I'd like to use your time wisely, so I'm not going to reiterate some of the statistics you've already heard. As the evaluator, I produce some of these. You've heard about the number of folks that are actually potentially mentally ill in your jails and local jurisdictions. You also have learned about the revolving door of persons with mental illness, how they repeat, offend over and over. And the third point you've heard about how in many of your districts over half that either a county will have to build a new jail, or they are transporting prisoners to another jail because of overcrowding. The concentration of persons with mental illness in Nebraska correctional facilities, the disproportionate rate at which persons with mental illness recidivate, and the cost of providing mental illness services in correctional facilities that are not designed to deliver them make this a public policy dilemma for the entire state. Hence, my purpose here today is to advocate for LB669 because behavioral health jail diversion is one of a set of tools that can help address this public policy dilemma. Now I'd like to give you a few statistics about recidivism that you haven't heard. Behavioral health jail diversion works by reducing recidivism, reducing usage of costly emergency room services, improving divertees symptoms, and helping divertees contribute to society through employment and like contributions. However, this is the Judiciary Committee, so I will spend the time delineating the recidivism findings for Lancaster County. Only 25 percent of successful divertees recidivate over a two-year period compared to 39 percent of persons who are screened as potentially mentally ill and left in corrections. That's the first point. In that same time period, the most any successful divertee was put back into jail was eight times, the senators point over there. This is less than any person who is screened to have no association with mental illness, whose highest individual was booked in ten times. And it's significantly less than any person who is potentially mentally ill and left in corrections. In Lancaster County one individual recidivated 30 times in that period, not quite the 59 that Travis had said, but still 30 is quite a number of times to be booked in, to be processed and to use those resources. Further, there is a significant difference in the amount of actual time spent behind bars by these three groups: 27 percent of successful divertees who recidivated, which is a

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small number that actually did recidivate, did not spend more than 10 nights in jail; 52 percent of persons with no association with mental illness that recidivated spent more than 10 nights in jail; and 68 percent of persons who were screened to be potentially mentally ill spent more than 10 nights in jail. That's the revolving door, in concrete terms, that we're all talking about here. This research also constructed a quasi experimental pre- and post-test designed to measure individual level changes. I could tell you more about that, if you have questions. But what was important is that this individual level study showed a statistically significant reduction in both bookings, the number of bookings, and the overnight stays for jail divertees. LB669 is the first step to bringing this solution to the rest of the state. Without this viable solution it will only be for your largest urban centers, and it will not grow into the rural areas of Nebraska that need it. Qualitative process research demonstrates the necessity of collaboration in these ventures for success. This bill is the first step as it establishes the collaborative arrangements that are necessary to foster behavior health jail diversion initiatives. Thank you for your time. [LB669]

SENATOR ASHFORD: Thanks, Jim. Any questions? Senator Pirsch. [LB669]

SENATOR PIRSCH: Just briefly. Is there...the way you are executing the program now is there, based upon your screening procedures, is there a type of mental illness now that is to such a high level that you're not accepting those individuals into your diversion program? [LB669]

JIM ADDY: I am not quite sure what you mean by a mental illness... [LB669]

SENATOR PIRSCH: I'm sorry, let me rephrase that. Are there certain levels of mental illness with respect to prisoners or with respect to individuals you are screening now such that you would not accept them into your diversion program? In other words, is there severity so great that they wouldn't qualify for your diversion program now? [LB669]

JIM ADDY: I might actually let Travis answer that. I can tell you we accept certain diagnoses, if that's what you're actually looking for, and individuals are stabilized in the screening process and then moved to the program. If you're looking for specific diagnosis is it...Travis stepped out. I believe it's... [LB669]

SENATOR PIRSCH: Well, no, I mean they must be stabilized to enter your program, is that correct? [LB669]

JIM ADDY: Yes, that is part of the screening that goes on at the jail. And if they're not stabilized, often they will remain in jail for a day or until stabilization occurs. And that would happen anyway. [LB669]

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SENATOR PIRSCH: Okay. Thank you, appreciate it. [LB669]

SENATOR ASHFORD: Yes, Senator Pedersen. [LB669]

SENATOR PEDERSEN: Thank you. Nothing more than, thank you. Very good job. [LB669]

JIM ADDY: You're more than welcome. [LB669]

SENATOR ASHFORD: Thank you, Senator Pedersen. Thanks, Jim. [LB669]

JIM ADDY: Absolutely. [LB669]

SENATOR ASHFORD: Next proponent. Good afternoon. [LB669]

PAT TALBOTT: Good afternoon. My name is Pat Talbott, T-a-l-b-o-t-t, and I volunteer with the Mental Health Association of Nebraska and I also volunteer with the Lancaster County Mental Health Jail Diversion Project, with Travis and that group. And my reason for being here today is to talk to you on a more personal level because I am in recovery. I am grateful to be in recovery, I'm blessed, from serious mental illness as well as substance abuse issues. And so I've been able to work with people and to be able to share on a different level. And I've been able to do interviews with persons in the jail diversion program, and I'm able to see from the beginning not only, you know, the progression and the excitement and the hope that people are getting as they're starting to say, yes, there is a possibility of recovery, and yes, I can get my life back, like I've been able to do, and yes, I can get a job and these wonderful things can happen for me. And when you were talking, Senator, about the seriousness of mental illness, for many, many years I was so severely mentally ill that my family and friends really had no hope that I would be able to recover. And it's taken a lot of help from a lot of really good people, as well as hard work on my part, and I always consider the grace of God to be able to be in recovery today. So I think that the limits aren't based upon age, they aren't based upon, you know, a lot of things, they're based upon giving people hope that there is a possibility for a future and that you don't have to keep going in and out of jail. So I am...and I'm seeing people that I am able to work with, my friends and different people. I have one friend who was facing jail, and she said, I can't, I cannot do this. And she had mental illness, as well as substance abuse issues. And we had talked for a very long time. And it was obvious to me that, if she had not received help, that she was going to kill herself. And then yet I see so many people that are getting out to work, and paying taxes and just turning whole lives around. So jail diversion works, and we can't continue building prisons and putting people in jail over and over again. This isn't the solution. The proper case management and help really, really makes a difference. I wanted to share with you just briefly, this is from Alan Paton, who is author of Cry, The Beloved Country and this kind of speaks to what we need to do, this is another of his writings.

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And he said, I think as I write this of a man who is leaving prison to return to the world. During these years he has paid more attention to religion than ever before in his life. As he leaves, the prison chaplain assures him that the past is done, the past is forgiven. But when he returns to the world he finds that the world has not forgiven and that it has not forgotten his past. So hope changes to despair, faith to doubt. It seems that God has not forgiven him after all. It is here that a grave duty falls upon us all, to be the bearers of God's forgiveness, to be the instrument of His love, to be active in compassion. This man's return to the world is made tragic because we were not there. God moves in his own mysterious ways, but a great deal of the time He moves through us. And it is because we are not there that so many do not believe in God's love. And I believe that jail diversion works, and we need to really support these programs, and thank you. [LB669]

SENATOR ASHFORD: Thanks, Pat. Any questions of Pat? Thank you. Thanks for sharing that with us. Next proponent. [LB669]

BILL CRAWFORD: (Exhibit 12) I am going to do the best I can with this. I'm in support of Senator Hudkins' bill for jail diversion. I'll give you a couple of reasons why, some of which you've already heard. My name is Bill Crawford, that's C-r-a-w-f-o-r-d. The reason I'm in favor of Senator Hudkins' bill, I believe, as has already been said, jail diversion works. Prisons are costly, they cost a lot of money. And 17 percent of all prisoners in the state of Nebraska are basically mentally ill in the state. I think we've had some testifiers that said the recidivism is decreasing. But I think access to medication, social programs, you know, Social Security, that kind of thing does work. I think if we can support Senator Hudkins' bill that we will, in the long run, not have to build as many prisons, and prisoners with mental illness will have options other than going back into the prison system. They'll get what they need and they'll get the medications they need, then they get employed and be productive members of society. And that's always a good thing rather than being put back into jail. I'm going to say one other thing before I close. I've had two relatives, both of them uncles, that were on both sides of my family. Both of them were manic depressives. And they couldn't access their meds properly. One of them is dead, and one of them is in California. He got into a car accident and he was blinded because he hit a parked car. And I think he might be in a facility. But I think this bill is real important because I think it's very humane to treat people who are mentally ill. And as I understand it, the majority of people in prisons don't commit violent crimes, they just need proper treatment. And people who need proper treatment don't necessarily need to be locked up, they need the treatment that they need to have. So I am in support of LB669. I'm just your average citizen, but I think this is a real good thing in place of building jails, because I think the state pays enough money to build jails and prisons, they need to come up with some alternatives other than that. Thank you for your time. [LB669]

SENATOR ASHFORD: Thank you for your time, Bill. Do we have any questions of Bill?

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Thanks so much for coming down to the Capitol today. [LB669]

BILL CRAWFORD: Could I enter this into... [LB669]

SENATOR ASHFORD: Yes, you may. Thank you very much. Any questions of Bill? [LB669]

BILL CRAWFORD: That's my testimony. What you've got in your hand is my testimony. This is my name and address. [LB669]

SENATOR ASHFORD: Thank you very much. [LB669]

BILL CRAWFORD: All right. [LB669]

SENATOR ASHFORD: Thanks, Bill. Any other proponents? Okay. [LB669]

BRAD MEURRENS: (Exhibit 13) Good afternoon, Senator Ashford, members of the Judiciary Committee. For the record, my name is Brad Meurrens, M-e-u-r-r-e-n-s, and I'm the public policy specialist and registered lobbyist for Nebraska, Advocacy Services, Incorporated, the Center for Disability Rights, Law, and Advocacy. We are the designated protection and advocacy organization for persons with disabilities in Nebraska. When the services and supports for persons with mental illness who live in the community fail, corrections is the system most likely to absorb those individuals, which is why I am here today to offer our strong support for LB669. For a number of reasons, which I will keep very brief, developing diversion programs for persons with mental illness in the corrections system is a beneficial alternative; for people with mental illnesses tend to fare worse under the traditional punitive model of corrections, for example, they serve longer sentences, they have more disciplinary actions, sort of the revolving door that we've heard about today. First, rather than simply locking up persons with mental illness, diversion programs redirect these persons to systems which are premised on treating the underlying disorders. Two, diversion programs can relieve some of the overcrowding pressure on our current correctional systems. Three, diversion programs are, as we've heard today, a cost-effective alternative. Research shows that people living with mental illnesses who were diverted from jails and prisons into the mental health system spent more time in the community rather than in the hospital or incarcerated, received significantly more mental health treatment, and were no more likely to be rearrested during the follow-up year than persons who were not diverted. However, we would recommend that LB669 be amended to include language specifying that the membership of the advisory council created by LB669 include at least one current or former recipient of behavioral health services from each of the six behavioral health regions. This concludes my testimony this afternoon. I'd be happy to entertain any questions the committee may have. [LB669]

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SENATOR ASHFORD: Any questions of Brad? Senator Pirsch. [LB669]

SENATOR PIRSCH: Brad, not so much a question. But I'd be interested, the three points you had made help the individual with treatment, but then also the second point or third point, relieves overcrowding and is cost-effective. Do you have any kind of studies or objective findings on that? I'd invite also the gentleman from Lancaster to, if you could submit those to at least the committee chairman, I'd appreciate that as well. [LB669]

BRAD MEURRENS: Sure, sure, you bet, you bet, be happy to. [LB669]

SENATOR PIRSCH: Okay, thanks so much. [LB669]

SENATOR ASHFORD: Thanks, Brad, very much. Any further proponent testimony? Opponent? Neutral? Senator Hudkins. [LB669]

SENATOR HUDKINS: Thank you, Senator Ashford, for hearing this bill today. You may have received, or probably will receive a letter in opposition from Christine Peterson, with HHS. She talked to me this morning off the floor, and she said she really hated to oppose the bill. But she did not want HHS to have control over this. She said that she would much rather have it be in the corrections system. I visited with Travis Parker earlier, after he spoke, and I asked him if this could be done, moving it from HHS to corrections. And he said, yes. So if you would like to make that change, that would be terrific. [LB669]

SENATOR ASHFORD: Actually, I was going to even ask that question as to whether or not...as to where this properly belongs? Whether it belongs...where does it belong really. [LB669]

SENATOR HUDKINS: Don't ask me (laugh), I'm just going by what the experts said. Christine, I think she's got enough to worry about right now. And so... [LB669]

SENATOR ASHFORD: Well, she's certainly has quite a bit. [LB669]

SENATOR HUDKINS: And since Mr. Parker said that this could be done in corrections, then that would be a good place. [LB669]

SENATOR ASHFORD: Okay, thank you, Senator. [LB669]

SENATOR HUDKINS: I would finish up very quickly by just telling you a couple more statistics. People with behavioral health issues are a significant portion of a jails population. In Lancaster County 29 percent of the corrections, between November 2003 and January 2005, were persons with mental illness, 29 percent; and in Douglas County

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20 percent of inmates had some form of serious mental illness. Want to emphasize to you again that jails and prisons are not designed to be a mental health, substance abuse treatment facility. A few years back, there was a case in Lancaster County, a gentleman was arrested, he did have a mental health issue. The treatment facilities at that time were not forthcoming. He remained in jail and he sued the county. So we don't need that either. And so if we have a program like this, where there is a diversion program where these people can get treatment, can get help, that's what we need to do. Thank you. [LB669]

SENATOR ASHFORD: (Exhibit 14) Thank you very much, Senator Hudkins, for your testimony. Senator Pedersen LB406. How many testifiers do we have on LB406? [LB669 LB406]

SENATOR PEDERSEN: They're all for it. [LB406]

SENATOR ASHFORD: Great. (Laughter) Thank you, Senator Pedersen. [LB406]

SENATOR PEDERSEN: Thank you, Senator Ashford and colleagues on the Judiciary Committee. For the record, I am Senator Dwite Pedersen, representing the 39th District, and I'm here to introduce LB406. LB406 will provide that the Board of Parole set a presumptive parole release date for each committed offender. This date would be based upon objective parole guidelines that would be developed and published and then utilized by the board in evaluating committed offenders in setting such a date. In setting this presumptive parole date, the board would be able to take into account all of the considerations currently listed in statute, including reports prepared by institutional caseworkers, prior criminal record, presentence investigation reports, recommendations made by the sentencing judge, the results of physical, mental and psychiatric reports, relevant information submitted by the offender, his or her attorney, the victim of the crime, and the risk and needs assessment required by law. The purpose of setting a presumptive parole release date is to give the committed offender an idea of the tentative date when his or her release on parole is likely. When an offender who is eligible for parole is sentenced, they are given a parole eligibility date. The parole eligibility date is one-half of the bottom number of the person's sentence. For example, a person who is sentenced to a 2- to 4-year sentence by the court would be eligible for parole after 1 year. A person who was given a 10- to 20-year sentence has a parole eligibility date in 5 years. In that particular scenario, with a top number of 20 years, it is highly unlikely that the person would actually be paroled on their first eligibility date. The idea of having a presumptive parole date is to make that a more realistic date and to have that date set based on the criteria that is already outlined in our statutes and the newly created objective parole guidelines. This would be done at the time of the offenders first required parole review. Under the provisions of LB406, that presumptive parole date could not be changed unless such a change is based on conduct by the offender which is relevant to the parole guidelines and which took place after the board

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set the original date. That means that the seriousness of the crime, the need for treatment or vocational training, the offenders employment history, past substance abuse, prior criminal record, and attitude would all be taken into consideration when determining a realistic time line for incarceration and setting the presumptive parole release date. That date could then only be changed based on behavior that occurred within the prison system such as assaults, excessive misconduct reports, refusal to do programming, and other issues that indicate an unwillingness on the part of the offender to address the issues that brought them into the system. This holds the offender accountable for their institutional behavior and prohibits going back to things which cannot be changed as the reason for denying parole. While the bill maintains the Board of Parole's discretion by clearly stating that simply setting a presumptive parole date is not a commitment by the Board of Parole or the Department of Correctional Services to release an offender on that date. It is designed to give the inmate a degree of certainty as to their eventual release date. At the present time, many inmates are under the impression that because they are eligible for parole after 1 or 5 years, that is when they will be paroled. And that is not the way it is. When they come up for a review near their parole eligibility date and are deferred, many are so disappointed and disillusioned that they simply give up and resolve to just jam their time, which means they will do all of their time, which in most cases is one-half of the top number they are sentenced to serve. In examples listed above, an offender would do 2 years on a 2- to 4-year sentence, or 10 years on a 10- to 20-year sentence. They would then be released without any supervision in the community. I believe very strongly in parole. And if I had my way, every offender would do at least a portion of their time at the end of their sentence on parole, because I believe it gives offenders a good transition back into the community and keeps them accountable to someone while they are readjusting to life on the outside. If an inmate is given a presumptive parole date, even if it is three years out rather than one, it gives them something to shoot for. And if inmates find that they are actually being released on this date, barring (inaudible) because of prohibited behavior inside the correctional system, I think it would go a long way towards helping offenders to prepare for release. If they know that in order to get released on that presumptive parole date they must complete substance abuse treatment, go through anger control classes, have an institutional record, and have a solid parole plan, they will be much better able to prepare for their release. I view LB406 as providing another tool for the Parole Board in making the opportunity for parole available to more inmates. I also view it as a way to provide a more realistic date for inmates as they look at their parole eligibility date versus their actual release date. I hope that this bill will open the discussion on how we can get more people than we already have on parole and make our system more open and understandable to the offenders and their families. Thank you for your time. And if you have any questions, I'd try and answer them for you. [LB406]

SENATOR LATHROP: And it looks like we do. Senator Schimek. [LB406]

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SENATOR SCHIMEK: Thank you, Mr. Chairman. Senator Pedersen, where did you come up with idea of a presumptive parole date? [LB406]

SENATOR PEDERSEN: It was...you know I work a lot with the inmates, Senator. And (inaudible) a lot and I've worked with the Parole Board. We've got an excellent Parole Board. The idea...I've been seeing so many of them that come in with their sentence, and again if they got a 2- to 4-year sentence, their eligibility date is 1 year, so half. And most...very, very seldom does that mean they ever get out. So the law doesn't say they have to get out, obviously, a presumptive date would give them...say, this is more that the Parole Board says, you know, if you're good, we're probably going to give you this date. Just because you have an eligibility date doesn't mean you're going to get out, very few do. [LB406]

SENATOR SCHIMEK: And I understand that. But I guess the question I'm asking, I didn't ask it very well, do other states use this kind of a system at all or is this kind of your own idea? [LB406]

SENATOR PEDERSEN: No, there is different states that use different things. We have tried so many different things. Now, mandatory parole, well, mandatory parole is used in some states, and they still have a Parole Board. I do not want to ever take our Parole Board out the situation. So we've looked at different bills, and this is just another way that we decided to come up, to look at it, and maybe get the Parole Board, who would also be interested in giving the inmate more of an idea. [LB406]

SENATOR SCHIMEK: Okay. I appreciate that, thank you. [LB406]

SENATOR LATHROP: Any other questions? Senator Pirsch. [LB406]

SENATOR PIRSCH: How is the...who develops this or goes over the checklist, as it were, in setting this presumptive parole release date then currently? [LB406]

SENATOR PEDERSEN: This has been developed, basically, just by what we do ourselves, I mean by our current law. You know, what we have for a tentative release date, and just basically going from that working backwards. [LB406]

SENATOR PIRSCH: It would be the Parole Board, though, that would set it? [LB406]

SENATOR PEDERSEN: The Parole Board has to approve of all of this. They are the ones that help set it up, they are the ones that, you know, hopefully, it will be a tool for them to use with the inmates. [LB406]

SENATOR PIRSCH: Not all people who are convicted of the same crime would have...take two inmates sentenced for the same crime, face the same range of possible

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penalties, may have two different presumptive parole release dates? [LB406]

SENATOR PEDERSEN: Two different inmates, yes, they would...each inmate would be handled individually. [LB406]

SENATOR PIRSCH: Okay. Based upon that checklist, correct? And is there, and I haven't really gone over the checklist, but is that a pretty comprehensive list of all factors such that if something...well, let me ask it this way, I'll break it down. If after the point in time they're given their presumptive parole release date, you have to have some sort of...to justify change in the date you'd have to see some sort of behavior demonstrated by the person, correct? [LB406]

SENATOR PEDERSEN: If I were the Parole Board, I would say yes, any bad behavior, misconduct reports, that changes it right away. Or if they have good behavior and they get all the way through it, that would help the Parole Board say, you've done...basically, you're doing quite a bit the same as you're doing right now. This is just another tool to basically let the inmates know that you're probably not going to get out on your tentative release date. [LB406]

SENATOR PIRSCH: I see. And so it's board...and I apologize,... [LB406]

SENATOR PEDERSEN: No problem. [LB406]

SENATOR PIRSCH: ...I haven't had time to look at the facts. But it's a broad enough and comprehensive enough list that they're able, the Parole Board is able to look at so that they can...it doesn't seem likely... [LB406]

SENATOR PEDERSEN: And the Parole Board can add to that list. [LB406]

SENATOR PIRSCH: Okay. [LB406]

SENATOR LATHROP: I do have a couple questions, if you don't mind. You've told us how you would arrive at a first eligibility for parole, which is one-half of the lower end of a range. [LB406]

SENATOR PEDERSEN: That's the way it is now, Senator, yes. [LB406]

SENATOR LATHROP: Right. And to jam out, it's one-half of the upper number. [LB406]

SENATOR PEDERSEN: Yep. [LB406]

SENATOR LATHROP: I appreciate that by way of background. So what are we going to do with a presumptive parole date? Are we...is the Parole Board going to say when a

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person comes in for that first hearing, we're not going to parole you, but if you behave yourself and you do all the things you should, then two years from now, one year from now... [LB406]

SENATOR PEDERSEN: By setting a...if you are the Parole Board or I'm the Parole Board and you are the person in front of me, and you've got a 2- to 4-year sentence, your TRD, temporary release date, tentative release date is going to be 1 year. But we're going to get, you know, from experience and everything else, you're not going to get out in a year, but we've set up a program, we the Parole Board have set up a program and we'll give you a more realistic date, we're going to basically set this date for you. [LB406]

SENATOR LATHROP: How is that arrived at, I guess? [LB406]

SENATOR PEDERSEN: They make that decision through all the tools that they have. [LB406]

SENATOR LATHROP: It's not a formula? There are considerations and they just, through experience and... [LB406]

SENATOR PEDERSEN: Considerations, you bet, programs they might need, you come in, you have a substance abuse background, you need substance abuse treatment. You've got an anger problem, you've got some psychiatric things, you know, the different areas that you need to work on. And that is set up through the caseworkers, and the Parole Board uses all that information. [LB406]

SENATOR LATHROP: How is that different than what's going on right now? I trust that presently and without your bill that the Parole Board has some similar conversation on the first review? [LB406]

SENATOR PEDERSEN: The only difference is that it gives the inmate themselves, or the parolee more of a date to shoot for than the tentative release date that they now have. [LB406]

SENATOR LATHROP: Will that typically be one, or two, or three more reviews later? [LB406]

SENATOR PEDERSEN: That would be entirely up to the Parole Board. [LB406]

SENATOR LATHROP: I'm just wondering if you don't discourage them? I mean, if they get reviewed every year...are they reviewed every year after the first review? [LB406]

SENATOR PEDERSEN: Yes. [LB406]

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SENATOR LATHROP: And if you give them a date... [LB406]

SENATOR PEDERSEN: Sometimes more often. [LB406]

SENATOR LATHROP: Okay. If you give them a date that's two reviews away, are they going to be discouraged and are they going to try maybe not quite as hard as they would if they thought they had a chance of getting out on the next review? [LB406]

SENATOR PEDERSEN: I would personally think they would probably try harder, because you have...you know now that the date they have isn't going to work. [LB406]

SENATOR LATHROP: Okay. I'm just trying...I don't know what's going through the inmates mind under those circumstances. And I just wonder if the consequence is they would be discouraged if it wasn't the next review? [LB406]

SENATOR PEDERSEN: It's more discouraging to go up there the first time and you know you've been told by the judge, if you're good, young man or young lady, in the correctional system, I'm giving you 2- to 4-years, you'll be out in 1 year. And they go in front of the Parole Board, and the Parole Board says, no, you're not coming out. Now, so many people take that as another resentencing, especially if they're in the system. They know by the time they get out of D&E, the Diagnostic and Evaluation Center, the Parole Board is not releasing people that often on their tentative release date. So this, I think, gives them a little bit of a realistic number to work for, and it gives Parole a chance to give them the things that they want them to work for. [LB406]

SENATOR LATHROP: Okay. Good, appreciate your answers. Wait a minute. I think Senator Pirsch has a question. [LB406]

SENATOR PIRSCH: Just one more quick question. Some of the factors then at the time would be, your first encounter would be unknown, wouldn't it, about with respect to rehabilitation and a persons complying or going to...would you make that dependent or conditional then? If we're assuming, for the date that we're giving you now, that you do complete, over the next 4 years, these programs, and so here's the date. But if for some reason you didn't complete it, then the date we give you, don't listen. [LB406]

SENATOR PEDERSEN: That's right, that's right. [LB406]

SENATOR PIRSCH: Don't bother. Okay. That's all I have. [LB406]

SENATOR PEDERSEN: Thank you. [LB406]

SENATOR LATHROP: Okay, thanks. Proponents? Those in favor? Opposition? Come

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on up. I thought he said everybody was in favor of this; maybe he was just kidding. (Laughter) It was in jest. It was in jest. Okay. Welcome back. Good to have you back here. [LB406]

ESTHER CASMER: Thank you. Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Esther Casmer. Last name is spelled C-a-s-m-e-r. I am the chairperson of the Board of Parole. I appear before you today in opposition of LB406. While the board understands the bill was formulated with a positive purpose in mind, we have concerns. The board believes that LB406 will take away incentives to participate in treatment. Because of this, we feel public safety could be compromised. We also view presumptive parole as an infringement on the Parole Board's constitutional authority. We also believe current initiatives have been effective in significantly increasing the number of parolees. This has been accomplished with the new programs that have been formulated through the Department of Correctional Services and the Community Corrections Council, of which both I and Senator Pedersen are members. I will briefly explain the new programs. The Parole Violator Program provides more flexibility to the board when the parolee fails a urinalysis test. Upon screening, parole is revoked...upon the screening when a parole is revoked and the offender is admitted into the 90-day intensive inpatient program, and then reparaoled to a transitional living facility for at least 90 days. With the program and the advice of a parole officer, we have permitted a community program as an alternative to parolees re...rather than returning them to the institution for treatment. The Probation Administration, supported by the Community Corrections Council, has formulated a Specialized Substance Supervision Program, designed for felony drug offenders. When an offender is paroled he or she submits to an assessment, and as a result of this assessment a plan is formulated, and they follow the formulated plan during the period of parole. LB83, recently passed, could provide the board with access to the McCook Work Ethic Camp and the opportunity to parole offenders effective upon completion of the 180-day program with intensive management in substance abuse treatment. The Department of Corrections has recently celebrated one year of positive service with the reentry program, which is offered to certain offenders who have been identified as high risk. Without the specialized program those offenders may not have an opportunity to be granted parole. Finally, the Department of Corrections has updated mental health programming, and is currently formulating a specialized program that will target the aged and disabled to assist in their transition to parole. All of these programs will enable the Parole Board to continue to increase the number of offenders who are paroled while keeping public safety in mind. Thank you for the opportunity to be part of this discussion. I'm willing to address any questions you may have at this time. [LB406]

SENATOR LATHROP: Thank you very much. Senator Schimek. [LB406]

SENATOR SCHIMEK: Yes, thank you, Mr. Chairman. Esther, thank you for being with us again today. Something you said right at the beginning caught my attention. Maybe

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you could explain it a little bit more. When you said the inmates, if they knew the date, the presumptive date, they might not be encouraged to complete certain treatment programs or whatever. And I just was thinking wouldn't that be one of the conditions that you set for their presumptive release? [LB406]

ESTHER CASMER: What occurs when a new rule is implemented or law, they test... [LB406]

SENATOR SCHIMEK: Maybe you better get closer to the microphone. We're near the fans over here, so it's a little hard to hear. [LB406]

ESTHER CASMER: I'll give an example. The example that Senator Pedersen indicated, he stated that sometimes judges will tell an individual that upon a certain date, good behavior, and you'll be paroled. With this program, they would take it the same way, this is my presumptive parole date, this is the day I'm leaving. They don't always hear what we're saying, they hear what they want to hear, it's selective listening. [LB406]

SENATOR SCHIMEK: So you think it might be misleading to the prisoners? [LB406]

ESTHER CASMER: Yes, yes. [LB406]

SENATOR SCHIMEK: Thank you. [LB406]

SENATOR LATHROP: Oh, Senator Pedersen. [LB406]

SENATOR PEDERSEN: I had a very important phone call. I want to apologize for leaving. And I know this lady has come up to testify in favor of my bill. (Laughter) [LB406]

SENATOR LATHROP: You left a little too early. [LB406]

SENATOR PEDERSEN: I do want the committee to know that Ms. Casmer is the chairman of the Parole Committee, and I respect her very, very much. She's done a beautiful job along with the rest of the Parole Board. We don't always agree, but neither do my wife and I agree. (Laughter) So, thank you. [LB406]

ESTHER CASMER: You're welcome. [LB406]

SENATOR LATHROP: Thank you very much. [LB406]

ESTHER CASMER: Okay, thank you. [LB406]

SENATOR LATHROP: Any other opponents? [LB406]

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SENATOR PEDERSEN: You sit down. (Laughter) [LB406]

SENATOR LATHROP: Anybody in a neutral capacity? Would you like to close? [LB406]

SENATOR PEDERSEN: No. [LB406]

SENATOR LATHROP: All right. Senator Pedersen is going to waive closing on LB406. So that will end our hearing on that bill. And we're now to LB680, Senator Pedersen. [LB406]

SENATOR PEDERSEN: I do not want to keep you people here any longer than you have to be here, but this introduction is going to be real long. (Laugh) The entity that asked me to carry this bill asked me to tell the committee to kill it. Thank you. (Laughter) [LB680]

SENATOR LATHROP: Geez, two days in a row. [LB680]

SENATOR PIRSCH: I'd like to ask you a question, but I'm afraid they may kill me. (Laughter) [LB680]

SENATOR LATHROP: Okay. Well, terrific, we're done for the day. Do we have some books to hand out on the (inaudible)? [LB680]

(VOICE FROM AUDIENCE): We will bring them by. Ann's got them in the office. [LB680]

SENATOR LATHROP: How soon do you suppose you could... [LB680]

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Disposition of Bills:

LB406 - Held in committee.  
LB540 - Advanced to General File, with amendment.  
LB541 - Held in committee.  
LB669 - Held in committee.  
LB671 - Held in committee.  
LB680 - Held in committee.

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Chairperson

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Committee Clerk