

SENATOR EBKE: Good afternoon. Welcome to the Judiciary Committee. My name is Laura Ebke. I chair the committee. I'm from Crete, Legislative District 32. I'd like to start off by having my colleagues introduce themselves starting with Senator Morfeld.

SENATOR MORFELD: State Senator Adam Morfeld from the "Fighting" 46th Legislative District.

SENATOR CHAMBERS: Ernie Chambers, 11th Legislative District.

SENATOR HALLORAN: Steve Halloran from the "Fighting" 33rd District, Adams County and Part of Hall County.

SENATOR EBKE: Okay. And assisting our committee today are Laurie Vollertsen, who is our committee clerk; Dick Clark, one of our two legal counsels; and the committee pages are Rebecca Daugherty and Sam Baird. On the table over there you will find some yellow testifier sheets. If you're planning on testifying today please fill one of those out for each bill that you're planning on testifying on and hand it to the page when you come up to testify. This helps us to keep an accurate record of the hearing. There's also a white sheet on the table if you don't wish to testify but would like to record your position on a bill. Also, for future reference, if you're not testifying in person on a bill and would like to submit a letter for the official record, all committees have a deadline of 5:00 p.m. the day before the hearing. We'll begin bill testimony with the introducer's opening statement. Following the opening we'll hear from the proponents of the bill, those who are in favor of it, and then the opponents, followed by those speaking in a neutral capacity. We'll finish with a closing statement by the introducer if they wish to give one. Just as a matter of policy, in this committee, when one of the introducers is a member of the committee, they can opt to come and sit at the table. They generally won't engage with other testifiers but we let them come up and sit and have a table to write on and so forth. We ask that you begin your testimony by giving us your first and last name and spell them for the record. If you're going to testify, I would ask that you keep the on-deck chair, which is one of those yellow signs on those two chairs over there, filled. If you have any handouts, please bring up at least 12 copies and give them to the page. If you do not have enough copies, the page can help you make more. We will be using a three-minute light system. When you begin your testimony, the light on the table will turn green. The

yellow light is your one-minute warning. And when the red light comes on, we ask that you wrap up your final thought and stop. At three minutes and 30 seconds you will hear an audible beeper. Okay? And at that point I'm going to actually step in and ask you to stop. So when you see the red light, you better start winding down. As a matter of committee policy, I would like to remind everyone that the use of cell phones and other electronic devices is not allowed while you're in the public hearings. Senators may use them to take notes or stay in contact with staff via text messaging. At this time, I would ask for everyone to take a look at your cell phones and make sure that they're on silent or vibrate mode. Also, verbal outbursts and applause aren't permitted in the hearing room. Such behavior could be cause for you to be asked to leave. One more thing, you notice that we have several members who aren't here. They will be joining us in a little while and others may be coming and going. That really has nothing to do with the importance of the bills that are being heard but, rather, senators may have bills to introduce in other committees or they may have meetings that they have to step out for. So with that in mind, let me just make one more comment. We had a hearing on LB487 on Friday and, as a result of that, during the course of that hearing, the Assistant Attorney General misspoke. I just want to put it in the record that he has acknowledged the misspeaking on the state of cannabidiol in our laws and has submitted a letter that we will have put in the public record as a letter, as part of the public record. So with that in mind, we want to thank the Assistant Attorney General for doing that and we will begin on LB852. I think it's Senator Bolz, right? Hey, Senator Chambers. You keep trying to just jump right in.

SENATOR MORFELD: Senator Chambers [INAUDIBLE].

SENATOR EBKE: Jumping in, huh? [LAUGHTER]

SENATOR MORFELD: It's the word of the day.

SENATOR EBKE: Yeah.

SENATOR BOLZ: Well, good afternoon Senator Ebke, Senator Chambers, and esteemed members of the Judiciary Committee. My name is Kate Bolz; that's K-a-t-e B-o-l-z. I represent District 29 and I'm here to introduce LB852. As many of you know, I serve as a member of the LR127 Special Oversight Committee, and one of the things that made this most recent oversight committee different was that we studied

not only the Department of Corrections but also their interactions with Probation and Parole and community-based services. So all the committee members visited facilities and had conversations with the individuals performing those services, worked with stakeholders. And at the conclusion of our study, a report was prepared with the committee's observations and impressions. The report and the recommendations were unanimously supported by the committee. LB852 addresses recommendations that were found in the LR127 Committee report. There are three provisions of the bill, all of which were reflected in some way, shape, or form in the recommendations [INAUDIBLE] LR127 report. I will at this point offer you an amendment and I guess what I'll say about that is that it's a recognition that I can be taught because some of the provisions of LB852 are similar to the bill that you heard from Senator Krist a week or so ago. And we learned from the commentary from that piece of legislation and tried to incorporate lessons learned into the amendment that you see before you. So the three pieces are: (1) goal-specific community participation, so it provides for supervised release of committed offenders for the purpose of participating in evaluations or treatment, rehabilitative program, or to seek employment or housing; (2) peer and family support, which expands the definition of programming permitted by the Parole Administrator to include evidence-based peer and family support programs; and (3) medical release which allows for the medical release or parole of terminally ill committed offenders which no longer pose a threat to the public. A little bit about each of those: The goal-specific release is intended to assist the department in overcoming the challenges associated with the increased demands for services within the Department of Corrections and to ensure that eligible inmates are parole ready and parole successful. Inmate programming requirements are intended to be rehabilitative, and this is particularly true for inmates who are considered by statute to have reached parole eligibility based on the amount of time served in incarceration. Generally inmates who have served half of their sentence become eligible for reentry to the community subject to supervision on terms and conditions of parole. Before the Board of Parole grants an inmate's request for parole and reentry, the inmate may be required to complete programs or treatment. If these programs are not completed prior to an inmate's parole eligibility date, the inmate may be deferred or denied parole and may keep and remain incarcerated beyond the date they are eligible for parole or release. Keeping-- pardon me, parole release. Keeping these inmates exacerbates

overcrowding. According to the department, as of September 2017, there were 967 parole-eligible inmates in Nebraska's facilities and there were 263 inmates on a waitlist for some form of behavioral/mental health programming or treatment whose parole eligibility dates had already come to pass. So as long as there are inmates eligible for reentry into the community who are unable to do so because they have not received the requisite programming, the department will continue to lose opportunities to alleviate overcrowding, and inmates who are held in prison longer than required will not be able to access the opportunities they need to reenter and contribute to the community. So LB852's supervised or goal-specific release provision would add additional opportunities to engage in supervised release and reduce the bottleneck related to programming waitlists, as well as to expedite parole review in circumstances where all other requirements for parole have been met. Next, the peer and family support provisions are evidence-based models of rehabilitation that are shown to increase the likelihood that individuals will be successful in maintaining healthy behaviors. Research indicates that paroled individuals with substance abuse and behavioral health challenges could specifically benefit from these evidence-based interventions. The third component is medical release. Following the hearing for Senator Krist's bill, we spent some time coordinating with the Ombudsman's Office and the Inspector General. I thank them for their cooperation, and you'll hear from those experts after my introduction. So the related amendment creates some fixes. Medical release would allow committed offenders diagnosed with terminal illnesses and determined to be of no long-- no risk to the community to be considered for medical release or parole regardless of whether he or she is parole eligible. "Terminally ill" is defined as an incurable condition that would result in death within six months, as determined by a qualified medical professional, that is so debilitating that the inmate does not pose a public safety risk. Under LB852, applications from inmates eligible for parole would be reviewed by the Parole Board. The Parole Board would then determine any terms or conditions of parole. Applications from inmates not otherwise eligible for parole would be submitted to the Board of Pardons and the Parole Board concurrently. The Board of Pardons would review the applications and make determination regarding the commutation of an inmate's sentence in its entirety or for the purpose of parole consideration. Upon commutation to parole eligibility, the Parole Board would determine terms and conditions, and applications for denied commutation by the Board of Pardons would

be denied medical release or parole. Please note that LB852 does not include provisions for consideration of relocation in the event of a positive change in medical condition or parole or a law violation. These three interventions are all intended to help safely and responsibly address our current overcrowding population and reduce recidivism upon release. I just want to make two quick comments. The first is that I have had a chance to review the fiscal note and I would reflect that the Department of Health and Human Services includes a fiscal note but the Department of Corrections doesn't reflect any sort of cost savings. And I would hope that we might be able to have continued conversations so that existing resources in the Department of Correctional Services that would otherwise be used for programming could be applied to serve this population. I am familiar, through serving on Appropriations, with agreements the Department of Corrections have made with the Department of Parole, so there is some precedence for agreements to be made with entities outside the Department of Corrections. And I hope that maybe if someone from Corrections testifies today, they might be able to speak to how we might find solutions for those-- those funding streams because, as has been reiterated by a number of people on this committee, we're not offering enough programming opportunities within the Department of Corrections. And so thinking outside the box literally is a good strategy here. Finally, I have a letter from the Nebraska Hospice and Palliative Care Association in support that I'll submit for the record. So apologies for the long-winded introduction. That is LB852.

SENATOR EBKE: Thank you, Senator Bolz. Any questions for Senator Bolz on LB852? Senator Halloran.

SENATOR HALLORAN: Thank you, Chair Ebke. Senator, where, if someone is provided a medical parole, where would you see logically they would end up once their parole-- residing? I mean is it--

SENATOR BOLZ: Sure. Sure.

SENATOR HALLORAN: We can't just assume they're going to have someplace to go, I mean, if--

SENATOR BOLZ: Right. So I think that's-- it's an excellent question. The first is it remains possible that someone could reside with family or friends or support, that there are people who certainly spend their last days in their homes in the care of their family

members, perhaps with community-based supports. The letter from the Hospice and Palliative Care Association is in support and I think those folks are willing to help us strategize about how to bring those resources to bear. But it's a fair consideration that we-- we would hope that the Department of Corrections would judiciously use their caseworkers and other resources to plan for this type of release just like they plan for any kind of other release.

SENATOR HALLORAN: Okay. Thank you.

SENATOR BOLZ: Okay.

SENATOR EBKE: So this could be something like the--okay, now what do they call them?--the folks who help people make that transition from prison to parole, you know, and-- okay, help me out. Somebody give me the name. What are they?

SENATOR KRIST: Reentry.

SENATOR BOLZ: The reentry caseworkers?

SENATOR EBKE: No, they call them something else, but--

_____ :: Social workers?

SENATOR EBKE: No.

SENATOR BOLZ: Social Workers? The--

SENATOR EBKE: I don't know. I'm out-- nevermind. There's a specific term that they're using.

SENATOR BOLZ: Sure.

SENATOR EBKE: But anyhow, but they could do something like that in-- with respect to medical release as well.

SENATOR BOLZ: Right, the reentry planning. I think that's certainly possible. The other thing I would comment on is we've tried to understand for certain whether or not existing reentry grants and resources could be applied to this population as well. And it's a little unclear whether they could or not as it stands existing. But I think that's another opportunity if we need to tweak that statute to allow these kinds of services to be offered through reentry planning

grants that are already available as it relates to LB605. I think that's another solution to this problem.

SENATOR EBKE:: Navigators?

SENATOR BOLZ:: Navigators?

SENATOR EBKE:: What? That's probation. Okay, sorry. Okay.

SENATOR BOLZ:: Okay.

SENATOR EBKE:: So thank you.

SENATOR BOLZ:: Yep. Thank you.

SENATOR EBKE:: First proponent.

JERALL MORELAND:: Senator Ebke, members of the Judiciary Committee, good afternoon. My name is Jerall Moreland, J-e-r-a-l-l M-o-r-e-l-a-n-d. I'm here today representing the State Ombudsman's Office in the capacity as deputy ombudsman for institutions. I'd like to thank Senator Kate Bolz for invitation to offer our views on the LB852 as it relates to strategies for safely relieving overcrowding and reducing recidivism within the state corrections system. Today I'll just offer a couple of remarks related to the bill for this committee's consideration that may be of value. As you know, the current system in place for commutation of sentence requires that the inmate submit an application of consideration to the Nebraska Pardons Board. It is our understanding that this bill is not intending to effect change in the area of consideration but instead formally put some framework in place for stakeholders such as the state corrections system, Nebraska Parole Board, and the Nebraska Pardons Board to follow when it is known an inmate poses extraordinary or compelling circumstances for possible release back to the community. We believe the state should-- could realize benefit from the guidelines contemplated in this bill, guidelines which could assist with identifying appropriate inmates who do not present a public risk back to the community. In fact, in the work of the Ombudsman's Office, we have on occasions assisted the department and inmates in the facilitation of getting in front of the Pardons Board for release of terminally ill inmates. Finally, in regards to expanding the tools in the Parole Administrator's toolbox, we support the concept of inmates being able to take positive steps in their transition by taking full advantage of community program offerings. Giving the

Parole Administrator the ability to provide enhanced parole-based programs should positively impact the treatment needs of parolees. With that, I can answer any questions.

SENATOR EBKE:: Any questions for Mr. Moreland? I see none. Thank you for being here today. Next proponent.

DOUG KOEBERNICK:: Good afternoon, Senator Ebke and members of the Judiciary Committee. My name is Doug Koebernick, spelled K-o-e-b-e-r-n-i-c-k. I work for the Legislature as the Inspector General for Corrections and I'm testifying today support of LB852. As Senator Bolz said, in many ways this bill is kind of a combination and very similar to LB672 and LB676 which you heard a few weeks ago. I testified in support of both of those bills. And with the introduction by Senator Bolz and the comments by Mr. Moreland, I think I can keep this pretty short. I believe that the contents of that amendment to LB852 are very well thought out and will give the department and Parole Administration additional tools and flexibility to not only manage their populations but to also provide key services to those people in their care. This bill also provides a mechanism to release people with severe medical conditions to their homes or a care facility. And this really to me boils down to treating people who are suffering in a humane manner while also freeing up valuable staff time and cell space within our prisons. I also want to share that I'm glad that Julie Micek from Parole Administration is here today and will testify in a neutral capacity. I think that she can share with you some of the innovative programs that they are implementing, including the board's intent to have people paroled to a community substance abuse treatment facility starting this month. I've been working with her and some of the recipients of the state reentry grant dollars to try to find a constant source of transitional housing beds for those that are paroled to this facility and then return to either Lincoln or Hastings. In closing, I want to thank Senator Bolz and her staff for their excellent work on this bill and that crafting that amendment, and I'm glad to answer any questions that you may have for me.

SENATOR EBKE:: Thank you, Mr. Koebernick. Any questions for the Inspector General? I see none. Thanks. Next proponent.

SPIKE EICKHOLT:: Good afternoon, Madam Chair. Members of the committee, my name is Spike Eickholt; first name is S-p-i-k-e, last name E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in

support of LB852. We want to thank Senator Bolz for introducing this bill. Even though the ACLU is involved in litigation with respect to the Department of Corrections and the overcrowding situation, as I've indicated before when I've testified on correction bills, we do-- we are still engaged in encouraging the state to come up with a legislative solution to the overcrowding problem. I'm not going to speak directly to this bill because, as you've heard from Senator Bolz and from the earlier testifiers, the concepts are similar to a couple of bills that you've already heard this year. And I think that Senator Bolz should be commended for her work on this, with others, to make the bills, at least in the concepts, a little more finely tuned so they can be implemented by the department and the Board of Parole. These are some of the innovative ways that we would encourage this committee and the body to come up with a solution or solutions or some sort of remedy to the overcrowding problem. We urge the committee to advance these to the floor for full debate and we would pledge our support in any way that we can do so.

SENATOR EBKE:: Thank you, Mr. Eickholt. Any questions? I see none. Thanks. Are there any other proponents?

DONNA McPHERSON:: My name is Donna McPherson and I am the wife of an inmate. And my husband is 60 years old. He is incarcerated. He's a diabetic at Stage 5 kidney disease. He is going to be going on dialysis very soon, probably within the next week. He does have a terminal condition. His kidney function is less than 15 percent at this time. He'll have to transfer to another facility because the one he's been at for the last 16 years does not have dialysis equipment. He will be staying within the city but he will have to transfer to another location. He also has diabetic neuropathy which is loss of feeling in his hands, feet, legs, impairing his sense of touch. He presently walks with a cane but that could develop into being in a wheelchair the rest of his life. The Corrections Department accrues a point system to be transferred to community status. He has enough points to be able to transfer but due to his length of sentence--or sentence structure, as they call it--he's not allowed to move to the community level. He would at least be able to attend an outside facility for dialysis at that point. The passage of LB862 [SIC--LB852] would possibly allow him to be released to live out the rest of his life in a home environment where he could have friends that would be able to communicate with him, family, have access to special kidney-- special-- trained kidney specialists and medical care. He also has low self-worth because in the prison system you

lose all that. They make you feel below. And having this type of kidney disease is very stressful for him. So stress level is real high in the prison, as you can tell by the recent issues with the prison system, inmates and staff, and this possibly will also help alleviate some of the overcrowding as well.

SENATOR EBKE:: Okay. Thank you. Any questions?

DONNA McPHERSON:: Do you have any questions?

SENATOR EBKE:: I don't see any. Thank you for coming today. Other proponents?

JOHN KREJCI:: Good afternoon. I'm running a little late today.

SENATOR EBKE:: Well, you made it just in time.

JOHN KREJCI:: Hi. Three things: this, this, and these. My name is John Krejci, 4402 St. Paul, Lincoln, Nebraska. I come before you to testify in support of LB852. I'm representing Nebraskans for Peace and I have appended testimony that I gave on January 17 supporting six-- whatever that-- LB673, I think it was. And it's similar so I didn't want to repeat it and bore you. I'm also passing this Nebraska Criminal Justice Review out. You all get it, but it's-- this may be the last issue because Mel Beckman, who has a son in prison, has been publishing it for 18 years, and it's got really-- it's advocacy and a voice for inmates. And actually one of-- there's a-- on page 5, Shakur Abdullah, who was a youth without parole who was released, who is now working in corrections, wrote a wonderful article in there and I encourage you to read it. This bill is similar to LB673. Compassionate release for inmates, I've talked about that before and it's temporary release. And also this adds temporary release for substance abuse, if I'm not mistaken, and other programming. Let me just say LB672--releasing inmates for compassionate release--would decrease the prison population, save money, and provide a more humane life for aging and disabled individuals. These persons could be classified as what they used to call low-hanging fruit. They could save money and it is not going to cost a lot and it would be a good thing to do. With regard to the programming and letting inmates out for substance abuse and other programming, we know there's not room nor staff to do it adequately in prison, and so it just makes sense to let them out temporarily, provide for public safety. And it provides an alternative to get that necessary program, because you

know there's a big backup with regard to parole. When the previous bill to provide compassionate release for disabled or terminally ill inmates was heard, both the Director of Corrections and the head of the Parole Board testified against it. I don't know if they're going to be here or testify against it today. Like I say, they're both really good persons, good public servants working for it, but they've both been in corrections over 30 years and they're-- I don't want to say jaded, but they're kind of stuck in the bureaucracy, so we need to give them-- you know, think outside the box, as I think Senator Krist said. If we are to solve our overpopulation problems, we need to do some things differently. LB852 does not constrain them but gives them more options. Like to thank Senator Bolz for introducing this bill and encourage the committee to vote it to the floor and have it debated.

SENATOR EBKE:: Thank you, Mr. Krejci. Any questions? I see none.

JOHN KREJCI:: I'll just fill this out.

SENATOR EBKE:: Thank you. Yeah, just fill it out and give it to the page.

JOHN KREJCI:: Okay. Thank you.

SENATOR EBKE:: Yeah. Thank you. Other proponents? I see nobody moving so that will take us to opponents. Any opposition to LB852? I see no movement. How about neutral testimony?

JULIE MICEK:: Good afternoon, Chairman Ebke and members of the Judiciary Committee and staff. My name is Julie Micek, J-u-l-i-e M-i-c-e-k, and I'm the Parole Administrator for the Board of Parole. I'm here today to testify neutral as it relates to LB852, and I would like to talk with you about the initiatives we are involved in and how I believe they match with some of the very specific legislation that's proposed in this bill. The language that discusses the participation in rehabilitative programming or treatment within the community and the enhancement of parole-based programs fits with our vision and mission and allows us to continue to do the work we began two years ago. The Board of Parole has developed a network of services and providers to offer the gold standard of treatment for clients who are returning to our communities. This effort has been statewide and the level of collaboration that we have witnessed over the course of the last year has been tremendous. We are now offering

a variety of programs in our newly established resource centers located in Omaha and Lincoln. These resource centers offer a variety of programming facilitated by treatment providers and are tailored to meet the needs of our clients. Specifically, we're offering batterer's intervention, intensive outpatient substance abuse services, relapse groups, employment classes through our collaboration with the Department of Labor, and a variety of life skills programming to assist clients who have been incarcerated and help them successfully transition to the community. Along with contracted services, parole officers will be providing cognitive restructuring groups to all high-risk clients. This program is essential to assisting clients in changing behavior and working toward successful reentry. Our most recent endeavor is a contract with Valley Hope residential treatment center in O'Neill, Nebraska. We're calling this new program PACT: Program for Alternative Community Treatment. Clients who are parole eligible and have a recommendation for residential treatment are going to be able to participate in treatment in the community instead of waiting for treatment inside institutions. Upon completion of the residential program at Valley Hope, clients will live in a transitional type of housing setting for a minimum of six months to ensure stability and find employment. As clients progress through this program they will have the ability to move into their own residence and continue to participate in programs and services with parole. I believe that this would be a good opportunity to utilize an evidence-based peer support program for clients who are returning to the community after residential treatment. Introducing them to a peer mentor at that point in their reentry process would offer them additional support. Finally, we've enhanced much of our technology in relationship to the supervision of clients. We have active GPS available, along with a program that offers GPS services and a cellular phone for each client placed in the program. This program is reserved for our highest risk individuals and allows more accountability and oversight of these clients. Drug testing is also something we've increased and enhanced for clients who are high risk due to relapse on substances. This provides another layer of accountability and also helps us intervene when someone has lapsed or relapsed. This early intervention is crucial in determining the next best step to assist that individual. By utilizing technology, we can look to supervise more individuals as the Board of Parole and NDCS work to reduce the inmate population. We have provided fiscal notes for much of the legislation that's been proposed. In order to provide parole services and supervision in the

community, it's been determined that the cost per parolee per year is \$3,347.41. This includes staffing formulas, costs of salaries, and services and miscellaneous expenses. Residential substance abuse treatment is an additional cost per each client that attends the treatment with a yearly cost of supervision to total around \$11,000. I believe it's important to note that we need to ensure we have trained parole officers ready to supervise these clients. Parole officers may have many responsibilities as it relates to supervision and case management. Thank you for the opportunity to testify today. I'm happy to answer any of your questions.

SENATOR EBKE: Thank you for being here. Any questions? Thanks for all you're doing. Thanks.

JULIE MICEK: Thanks.

SENATOR EBKE: I see none. Anybody else testifying in a neutral capacity? We have letters?

LAURIE VOLLERTSEN: No.

SENATOR EBKE: We have no letters. Senator Bolz, would you like to close?

SENATOR BOLZ: Thank you. Very briefly, I'll just make a note that the Department of Health and Human Services estimates 498 people that they would need to pay for as it relates to this bill. If only-- if only we could move that many people out of our overcrowded facilities. I can't say that I think that the bill will have that much of an impact and would tend to either agree with the fiscal analyst's assertion that the impact on HHS will be minimal and/or that existing resources could be deployed in the form of contracts or other relationships.

SENATOR EBKE: Any questions for Senator Bolz? I see none. That closes the hearing on LB852. Do you want to open on LB853 now? Okay.

SENATOR BOLZ: So again, I'm Senator Bolz; that's K-a-t-e B-o-l-z. And I'm here to introduce LB853 which is the-- which is a bill to establish some parameters around the existing county jail program. So as you've heard in multiple hearings, we have an overcrowding and understaffing challenge in our Department of Correctional Services, and this bill is a direct result of looking for solutions to that problem. And I think it's one of the only immediate solutions

available in front of the body this year. LB853 of course addresses our average inmate population of 155 percent of design capacity and staff turnover of 25 percent by leveraging resources of existing county jails. I think the county jails could be an effective release valve without the need to build additional facilities or hire more staff. The Legislature has appropriated funds for this purpose in the past and in-- the number of inmates in county jail programs last year was 87. In testimony in front of the LR127 Committee, Director Frakes reflected on the program, saying that his goal was to utilize beds as long as we need them, the county jail beds as long as we need them, in order to provide that extra space within the system and some breathing room and that was how-- he reflected that that was part of how they were keeping numbers down at the Diagnostic and Evaluation Center. So the concept of utilizing the county jails as a release valve I think is one that is important at this point in time given our level of overcrowding. One concern about this practice was that county jails were being used for a variety of inmates and that programming was not always being offered. I believe that the county jails could be an effective part of both the overcrowding solution and the programming solution with the passage of this legislation. So LB853 would authorize the department to contract with the county jail facilities, but it defines the inmates that would be eligible for participation as inmates with sentences of less than a year in duration, inmates being transferred into state custody for safekeeping, nonviolent offenders, and inmates requiring only community-based or minimum-security supervision. The bill also asserts that the department place inmates for housing in the county jail facilities that have the capacity to and agree to offer services to meet one or more of the inmate's prerelease programming requirements when those programs are needed for the offender to become parole eligible. It does provide that the department could house inmates in jail facilities that do not require programming to become parole eligible. My goal is that we provide balance with this bill, balance in terms of providing a release valve with the overcrowding, balance in terms of protecting what the inmates need to achieve parole and maintain their existing access to healthcare and other services, which would be my expectation of the Department of Health-- Department of Corrections, while also partnering with the county jails to build capacity. So I think that's it in a nutshell. I'd be happy to answer any questions. I do know that there are some concerns about the existing county jail program that will be brought up by other testifiers and I would say that in my mind it's important

to articulate and identify what the existing authority of the Department of Correctional Services should be to use the county jail program and that staying silent may allow some of those challenging circumstances to continue. So I'll wrap it up there.

SENATOR EBKE: Any questions? Senator Chambers.

SENATOR CHAMBERS: Senator Bolz,--

SENATOR BOLZ: Senator Chambers.

SENATOR CHAMBERS: -- just to put some things into the record without going into a lot of detail here because you and I can talk anytime, I have never been in favor of inmates sentenced to the pen going to these county jails. The county jails don't live up to the standards right now that are on them. And as ironic as it may seem, some people are worse off in these county jails than they were in the pen. There are-- I don't want to call them privileges. There are rights that they have as prisoners in the prison that don't exist in the county jails. I receive letters of-- about complaints relative to racism, to insults that are given, to threats made that if you say anything about this we'll make sure that you lose good time at the penitentiary. And not everybody who works in a county jail is trained in the realm of what we call corrections. So in order to have that on the record so that when we talk it's not as though I'm bringing something out of a hat without having mentioned it, that will be the extent of what I'll say because I don't want to give a dissertation today. But any way you'd like to respond, you're free to do so.

SENATOR BOLZ: Sure. Sure. I don't disagree with your analysis that there are challenges with the use of the county jail program. I think that we have a choice moving forward. We can either make some decisions about how-- what the expectations and programming requirements and access-to-healthcare expectations of the county jail program that we put into place statutorily should be or we could stay silent and allow the Department of Corrections to use its existing authority to contract with the county jails in the way in which they see fit. And I guess my preference would be to add some definitions and maybe there are additional parameters that we could put into the legislation to address some of your concerns.

SENATOR EBKE: Other questions? Senator Halloran.

SENATOR HALLORAN:: Thank you, Chair Ebke. Senator Bolz, can you-- is the contracting with counties voluntary on their part? I mean, do they have the option to opt out or not to opt out?

SENATOR BOLZ:: Sure. Not every county jail participates and only county jails that have capacity and interest in serving inmates do so.

SENATOR HALLORAN:: Okay. So Lancaster just doesn't have room?

SENATOR BOLZ:: I can't speak for Lancaster. I think there's a testifier following me from the National [SIC--Nebraska] Association of County Officials that maybe can answer some of those questions.

SENATOR HALLORAN:: Okay. Thanks.

SENATOR EBKE:: Any other questions? Okay. First proponent.

ELAINE MENZEL:: Chair Ebke and members of the Judiciary Committee, for the record, my name is Elaine Menzel; that's E-l-a-i-n-e M-e-n-z-e-l. I'm here appearing on behalf of the Nebraska Association of County Officials in support of LB853 that would authorize the Department of Corrections to contract with county jails under certain circumstances. We certainly appreciate working with Senator Bolz on offering this language and I do think she's given a good overview of what the legislation is intended to do and certainly we would be supportive of establishing parameters. Senator Chambers, we certainly would not advocate the issues in which you've raised and would hope to be able to better address those. The report that the Inspector General Doug Koebernick issued in 2016 outlined a little bit about the county jail program and at the time just prior to the release of the report he had asked us, meaning our association, to work with him in terms of surveying the counties that would have an interest in performing or continuing programs and that type of thing. And there were between six to seven county jails that were interested in doing so. There are, as you are aware, around 62 county jails but of that, there's many that would not certainly fit the programming requirements nor the capacity and that type of thing. Senator Halloran, I can't speak for Lancaster County specifically by any means, but my understanding is theirs potentially has to do with some of the capacity issues as to why they have chosen not to. With that, I'll conclude my testimony and be receptive to any questions you may have.

SENATOR EBKE: Questions for Ms. Menzel? Senator Chambers.

SENATOR CHAMBERS: Just in order that it not seem that I'm disregarding you, I don't have questions as I usually do, but I just reaffirm to you what I had said to Senator Bolz and that will be sufficient for my interaction with you. And tell Mr. Dix he should have come today when he could have gotten off easy.

ELAINE MENZEL: I will do so and I appreciate your comments. Thank you, Senator.

SENATOR EBKE: Senator Halloran.

SENATOR HALLORAN: Yes. Thank you, Senator Ebke. Can you refresh me on how the contract works? I don't want to take-- well-- with the county jails?

ELAINE MENZEL: I'm not for certain. I know that-- I believe it was in the 2015 that the Legislature appropriated \$5 million of General Funds. I believe that's-- or '15-16 fiscal year.

SENATOR HALLORAN: Right.

ELAINE MENZEL: So in terms of the specifics, I didn't work with any of the counties to establish those programs so I'm-- I can't for sure say.

SENATOR HALLORAN: You don't have an average breakdown of what it is per-- contract cost per inmate?

ELAINE MENZEL: That I do not have, no. And I believe from Senator Bolz's testimony she indicated 80 individuals had been served during those programs during that time frame. Hopefully your Inspector General will be able to better recall that information.

SENATOR HALLORAN: That's fine. Thank you.

SENATOR EBKE: Other questions? I see none. Thank you for being here.

ELAINE MENZEL: Thank you.

SENATOR EBKE: Other proponents?

JERALL MORELAND: Senator Ebke, members of the Judiciary Committee, good afternoon again. My name is Jerall Moreland, J-e-r-a-l-l,

Moreland, M-o-r-e-l-a-n-d. I'm here today representing the State Ombudsman's Office in the capacity as deputy ombudsman for institutions. I'd like to thank Senator Kate Bolz for the invitation to offer our views on LB853 as it relates to use of county jail facilities to house inmates in the custody of the state's correctional system. Today I will offer a couple of remarks related to the bill for this committee's consideration. I've also passed around a copy of my testimony. First, with the corrections system still operating somewhere around 160 percent design capacity, it appears that the additional beds that the county jail program provides may still exist. Some of you on this committee may remember the conditions of D&E back in 2015 when there were over 500 inmates on top of each other. However, leaving aside the issue of need, we want the committee to know that if it decides to continue the county jail program, that it may be desirable to address issues with how it is being operated today. Second, recently Inspector General for Corrections Doug Koebernick visited the county jails involved in the program and discovered issues that we had not expected to hear about. As many of these problems are significantly administrative in nature, they could be fairly easy to resolve. The Inspector General is planning on sharing some of those observations with you later in his testimony. But I would say that this is, in fact, a major reason for our support of LB53 [SIC--LB853], because if the Legislature decides to allow the county jail program to continue, then it would be important that a framework on guidelines be established for how the program is to be used and managed. Finally, we want to make it clear that we are not suggesting what's going on with the program cannot be easily addressed. However, attention is needed on a number of points identified. In addition, there are a few other points highlighted in my written testimony that may be of interest to this committee concerning (1) a number of unoccupied beds within the system, as discovered by deputy ombudsman for corrections James Davis, and who may or may not be appropriate for county jail placement. With that said, I can address any questions you have.

SENATOR EBKE: Any questions for Mr. Moreland? I see none. Thanks. Next proponent.

DOUG KOEBERNICK: Good afternoon again, Senator Ebke and members of the Judiciary Committee. My name is Doug Koebernick, spelled K-o-e-b-e-r-n-i-c-k. I'm the Inspector General for Corrections and I'm testifying in support of LB853. I think Senator Bolz did a really good job of explaining the history of the program and why it's

necessary to consider establishing these parameters for the program if the department decides to continue to utilize the county jail program in the future. And I echo what Mr. Moreland said, too, here about that same issue. This program has definitely assisted the department with their overcrowding situation. Having a couple hundred people at one time--now we're down to about 90-100--having a couple hundred people, though, at one time out of the correctional system probably did give them some breathing room. However, after touring some of the county jails last week, I'm hesitant to support placing state inmates in county jails if the program continues to operate in its current state, which is reason why I support LB853. During my tour, I met with county jail staff and around half of the 90 men that were in the program at that time. The concerns regarding the program were shared with me both by staff and by the men in the program. I've shared a summary of those concerns with you and I'll just touch on a few. Inmates are being threatened with the loss of good time and other restrictions if they refuse to go to a county jail. I met some men who have actually lost at least 30 days of good time for the refusal to go to this placement. Barriers exist that do not allow for the timely placement of inmate funds into county accounts. This impacts the men's ability to purchase canteen items, make phone calls, mail letters, things like that. "Kites," or requests for assistance from inmates to the state, are going unanswered. There's no programming that I found out there in the ones I visited. No caseworker contact with the inmates existed. When the program started, it had two case managers and four caseworkers; now it has none. And minimal information is shared by the state with the county jail regarding the inmates they receive. I was at one county jail and they showed me the sheet they get and it has the name and the inmate number of the individual. They don't know anything about their criminal history or their misconduct history or anything like that. I did share these concerns with the department on Monday for their consideration. I should also add that if a county jail continues in the future that they should implement a recommendation that I made in 2016 regarding the maintaining of data for this population. At the present time, data on these inmates in their information system somehow just kind of disappears. I was told in early 2016 that they were not going to address this because the program was temporary. With that said, I think having individuals who are considered nonviolent and at the end of their sentences would be better than the current situation. In fact, I've shared with you in the special committees on Corrections that the department should look at

transitioning individuals who are on work release back into county jail work release programs at the end of their sentence so they can begin to reconnect with their home community through employment and re-establishing family relationships. LB853 would allow for that practice. I would end my testimony by saying that having a county jail program has, like I said before, has provided some level breathing room for the department. Right now it would be about 1.7 percent of their population is out in the county jails. However, looking back on this program now, it maybe have been better to spend the \$5 million each year on expanding transitional housing, possibly expanding the Community Corrections Center in Omaha, building modular classrooms for programming, or even providing additional training to officers to assist inmates in successfully preparing for their return to the community. That's just a little Monday morning quarterbacking, but I think looking back or looking at what we could do in the future, those are some ideas. So with that, I would ask for your support of LB853.

SENATOR EBKE:: Thank you, Mr. Koebernick. Any questions? I see none. Thanks. Further proponents? I see nobody moving this way. Any opponents, LB853? Anybody speaking in a neutral capacity on LB853? Senator Bolz? Senator Bolz waives. We have no letters. That concludes the hearing on LB853. I don't see Senator Howard here yet. Do we want to-- [INAUDIBLE] -- is she on her way, do we know? If she's going to be a little while, we'll move-- we'll just sit, but I don't want to-- if she's on her way, I don't want to--

LAURIE VOLLERTSEN:: [INAUDIBLE.]

SENATOR EBKE:: Well, I think, yes, we could. Yeah, there's not a big-- let's see if she's on her way. If she's-- they're calling her. If she's en route, we'll wait but--

SENATOR PANSING BROOKS:: There she is.

SENATOR EBKE:: Okay. That's okay. The other day I was in here and I had a hearing and it stopped just a little faster and I hustled over there and they'd skipped over me in the two minutes.

SENATOR HOWARD:: No.

SENATOR EBKE:: And so I sat there for the--

SENATOR HOWARD: And then was that mine though? I think you were in my committee.

SENATOR EBKE: Yes. It was actually in your committee.

SENATOR HOWARD: I apologize in advance for that--

SENATOR EBKE: That's okay.

SENATOR HOWARD: -- or in-- after the fact.

SENATOR EBKE: Yeah.

SENATOR HOWARD: So thank you for your patience. I apologize.

SENATOR EBKE: Senator Howard.

SENATOR HOWARD: Good afternoon, Senator Ebke and members of the Judiciary Committee. My name is Senator Sara Howard, H-o-w-a-r-d, and I represent District 9 in midtown Omaha. Today I'm presenting to you LB932, a bill that adds to the duties of the medical director of the Department of Corrections, of the Department of Correctional Services, relating to discharge planning and substance abuse treatment specifically for opioids. Essentially it creates a protocol to assess the need for a specific type of injection that addresses opioid cravings. I'll go into that a little bit more. I won't repeat last Friday's testimony but I think all of you can imagine that opioid addiction and its prevention is very important to me. And so it's not just about looking at folks who are outside of the correctional system but also inmates as well. And so many inmates are-- who are discharged from the Department of Correctional Services have issues with substance abuse. According to the National Center on Addiction and Substance Abuse, 65 percent of the U.S. prison population is addicted to drugs or alcohol but only about 11 percent receive treatment. LB932 would allow the medical director of our correctional services to establish a protocol for the administration of medication-assisted therapy--sometimes it's called MAT--and determine if such a program would be the right choice for an inmate. It's an innovative choice that I believe would give some of the people who are looking to start over a better chance at a successful life. Like in many other states, in Nebraska we suffer from a shortage of substance abuse treatment services for individuals, especially for those released from a corrections setting who likely don't have any way to pay for them once they're released. So when a

person is released from custody, if they have-- if they've suffered from opioid dependence, it's critical to give them help so that they don't immediately lapse back into that addiction. Providing services such as these may give a recovering addict a step up when trying to reintegrate back into society. Findings show unequivocally that providing comprehensive drug abuse treatment to criminal offenders works, reducing both drug abuse and criminal recidivism. Untreated inmates are 12 times more likely to overdose in the first two weeks after they are released, but I think I've buried the lede a little bit. Essentially the protocol is for the Department of Corrections to decide if a person would benefit from a specific type of injection that addresses their cravings for one month. So it gives them 30 days where they're not essentially craving opioids or alcohol. So one of the ways that some facilities are doing this is by offering inmates who are about to be released a long-acting shot of something called naltrexone. There are a variety of these shots. The naltrexone shot lasts for a month and it reduces opioid and alcohol cravings. It also prevents anyone who uses a narcotic from getting high off of it for that period of time or it can significantly reduce their high. Some say that this treatment is better than a daily dose of Suboxone, which is a more common form of medication-assisted therapy, or methadone, which I think we've all heard about. Although these drugs are promising, both are narcotics that can be abused, Suboxone and methadone. If an inmate was to be offered an injection of long-acting naltrexone, this might enable them to have some time to find services, get enrolled in Medicaid or any other program upon release without the fear of getting high or having those cravings, because while the injection is working they can't get high. Any inmate who's offered an injection before leaving custody must be opioid free for a minimum of seven days, which is why it's very critical that we do this at discharge. So other correctional facilities have done this and my favorite one, just because I want to say the words, is Barnstable County Correctional Facility in Buzzards Bay, Massachusetts. It is a real place. Inmates can participate in the jail's residential substance abuse treatment program. They participate in behavioral therapy and drug education and it prepares them for life on the outside. And before they're released, they are offered an injection of Vivitrol, or naltrexone, and they're assigned a social worker to help with that transition. Of the 64 people who finished the program in Buzzards Bay, Massachusetts, 56 were enrolled in the state's Medicaid program, called MassHealth, and their results have been really positive and recidivism rates have dropped

significantly. While an injection protocol is not the only answer, I believe it will help inmates get ahead of a lot of the problems and challenges that they'll find with their substance use disorder outside of the walls of their prison. And just as a side note, I'm very new to corrections--you've never seen me in these hearings before--but I have become very passionate about healthcare services within our correctional facility. So I was invited to the Omaha correctional facility to see, to witness firsthand some of their challenges with health record maintenance and discharge planning. When you go there, and as somebody who worked at a healthcare clinic, it was unheard of for me to see just boxes and boxes and piles and piles of electronic health records. And I asked, how do you handle discharge? And essentially the records, the paper records, go to a central facility and then the inmate has to request them to get their medical records. It would be significantly easier with an electronic health record, which is another bill in another committee at another time. But it all works hand in hand when we look at discharge protocols that address any number of issues, opioid dependency being the one that we're talking about today. They could-- that burden on staff and the quality of care for inmates could really be significantly improved with electronic health record and discharge planning in that way. With that, I appreciate your time and attention to LB932 and I'm happy to try to answer any questions you may have.

SENATOR EBKE: Thank you, Senator Howard. Any questions? Senator Halloran.

SENATOR HALLORAN: Thank you, Chair Ebke. So it says, "should be prescribed and dispensed," and I don't expect you to necessarily have an answer for this, but they would-- would they be required to take it if the protocol--

SENATOR HOWARD: No, uh-uh, no. It's absolutely up to the patient whether they would want to take it.

SENATOR HALLORAN: Okay. Thank you.

SENATOR EBKE: Other questions? Okay.

SENATOR HOWARD: Thank you.

SENATOR EBKE: Yeah. First proponent.

DOUG KOEBERNICK: Good afternoon again, Senator Ebke and members of the Judiciary Committee. My name is Doug Koebernick, K-o-e-b-e-r-n-i-c-k, Inspector General for Corrections, and I'm testifying in support of LB932. I want to thank Senator Howard for bringing forward this innovative proposal--and welcome to the world of corrections, Senator. I think she did an excellent job of sharing the merits of it and I'm just going to touch on a few things. Numerous studies have shown that after release from prison an individual's drug overdose rate peaks in the first few weeks after that time. One study showed that in prisoners released in the state of Washington, their overdose mortality rates were 12 times higher than what would be expected in a similar demographic group in the general population. It also found that in the first two weeks after release, the risk of overdose was much greater than that. In many instances, these individuals return to environments that may strongly trigger relapses to drug use and put them at risk for an overdose. Senator Howard mentioned the results from a study in Massachusetts and I have found that this is being studied in other areas, as well, including a current clinical trial in Maryland. The clinical trial stated the following in its initial document: Extended-release naltrexone is an effective treatment for opioid use disorder-- Mobile treatment for chronic diseases have been implemented in a variety of settings, including correctional settings. "Mobile treatment may provide an opportunity to expand outreach to parolees to surmount barriers to traditional clinic treatment." And this trial will be done I think in the next-- I think sometime this year. This effort has shown-- has shown a great deal of promise and I would support adding this tool to the department's tool box through the adoption of LB932. If you would like copies of any of the studies or trials that I referenced, I'd be more than happy to share them with you. Thank you.

SENATOR EBKE: Thank you, Mr. Koebernick. Any questions? Okay, thanks. Next proponent. Do we have any other proponents on LB932? Do we have any opponents on LB932? Do we have anybody speaking in a neutral capacity on LB932? We have no letters. Senator Howard.

SENATOR HOWARD: Just one thing I'd like to note. We did have a conversation with Director Frakes about this. We were under the impression that they were coming in, in support, today. Maybe they also had a timing issue as well. And so I will maintain optimism as

to their-- as to the department's position on this piece of legislation. Any final questions? Yes, Senator.

SENATOR EBKE: Senator Halloran.

SENATOR HALLORAN: Chair Ebke, just--I'm sorry--I should have asked this on maybe the opening, but this is fine. So you're the resident expert on opioid addiction.

SENATOR HOWARD: Some days.

SENATOR HALLORAN: So I'm asking this because I don't know but--

SENATOR HOWARD: Sure.

SENATOR HALLORAN: So a prisoner is in prison for a period of time. Are they receiving any of these kind, or offered any of these kind of drugs to handle their withdrawal? Because they're away from the opioids, I mean, for a period of time. Does that addiction just go on? I mean, is it always in your system as far as the desire for opioids?

SENATOR HOWARD: So that's a really good question and Senator Ebke, with her expertise, with her husband, Russ, could probably answer it as well. Essentially opioids change your brain chemistry, so your body starts to think that they need them to function on a daily basis. So even if you're not necessarily in pain, your body is in pain because it thinks it needs those drugs. Right? So with Carrie, even after she had healed from her first surgery and her back was fine and her x-rays came back fine, she was in pain because she was in withdrawal from the drugs and so she wanted to keep taking them because of that. I think also what you're asking is, are they offered something in regards to a short-term, medication-assisted therapy to get them off the opioids before they discharge and they won't have any available to them? I believe they're also offering methadone and Suboxone inside of Corrections. However, those only last for about a week, depending on the dose, and so this opportunity would allow for those cravings to be addressed for a month at a time.

SENATOR HALLORAN: Right. But I guess my question is if someone is in prison for five years or so, that just still persists? I mean they've been off of it for a period, quite a long period of time, but that the brain is altered such that it just persists for an indefinite

period of time? I mean, is there a light at the end of the tunnel for people that have addictions to this that they can--

SENATOR HOWARD:: Folks and families who have talked to me say that the feeling, the desire never really goes away and that remains a lifetime challenge. A good question--thank you.

SENATOR EBKE:: Senator Krist.

SENATOR KRIST:: Assuming that they haven't gotten the drugs while they've been in the system and we already know that that's not necessarily the case in some cases. Sorry I wasn't here, but I was in your committee[INAUDIBLE].

SENATOR HOWARD:: You were in my committee?

SENATOR KRIST:: Yes.

SENATOR HOWARD:: We just switched places.

SENATOR KRIST:: Um-hum. Thank you.

SENATOR HOWARD:: Thank you. Thank you for coming back.

SENATOR EBKE:: Any other questions? Okay, that concludes the hearing on LB932. Senator Chambers-- did you have something else?

SENATOR HOWARD:: No. Is-- oh, you're up. I thought you were-- he was going to ask me a question.

SENATOR EBKE:: Oh, I'm sorry. LB816. I'm sorry. I'm sorry. LB816.

SENATOR HOWARD:: Okay. Moving on.

SENATOR EBKE:: I'm in a little bit of a time loop here.

SENATOR HOWARD:: Thank you for your time.

SENATOR EBKE:: Start it again.

SENATOR HOWARD:: All right. Thank you so much.

SENATOR EBKE:: Thanks. Senator Chambers.

SENATOR CHAMBERS:: Madam Chair, members of the Judiciary Committee, I'm Ernie Chambers. I represent the 11th Legislative District in

Omaha. And for those who have been in the Legislature with me for any amount of time, you know that I often will invoke a song or the lyrics of a song. I'm not a musician. I'm not a composer. I'm not an arranger. I'm not a lyricist. But I'm aware of the fact that for every element of the human condition, somebody has written a song--there may be several songs--that would be appropriate. These bills have been very straightforward. And as things go ordinarily in the Judiciary Committee, the song that popped into my mind was one sung by a young woman named Bobbie Gentry, and I'll just touch a few of the words at the beginning: It was the third of June, another sleepy, dusty Delta day. So the "sleepy" part is what I would use to characterize the way things have gone today, not that it's boring, but we generally don't have bills that are this straightforward, uncomplicated, that will deal with serious matters but not generate a lot of controversy or a lot of testimony one way or the other. I cannot say what will happen with this bill but I'm going to be as brief as I can because there will be testimony. I will close. And if there are matters that I think I should comment on, I will. For the record, I'm going to just read my statement of intent because it is brief. I've worked with the Ombudsman's Office on this bill. The purpose of the LB816 is to transfer all correctional investigators currently employed by the Nebraska Department of Correctional Services to the Nebraska State Patrol on January 1, 2019, along with all funds associated with those positions. The bill requires the Superintendent of the Nebraska State Patrol to issue a report to the Legislature and the Governor by July 1, 2019, regarding whether or not those transferred positions should become sworn officers of the Nebraska State Patrol. The bill also specifically authorizes the Nebraska State Patrol to conduct criminal investigations at all State of Nebraska correctional facilities. The testimony will speak for itself. But since the introducer of a bill, based on the rules of the committee which we have abided by so far--you all have and, to some extent, I have--the introducer will not, to use the words of the Chairperson, engage with the testifiers, I will sit at the table. But I would like to see certain things discussed--and if not, maybe I'll go into them during my closing--but whether these people have seen the work they do expand from what originally their role and function was to be; whether they can obtain and execute search warrants, arrest warrants; whether their work is confined to the grounds of correctional facilities; whether there are investigations that embrace employees of the Correctional Services Department. If so, are they simply administrative or investigational, or are they criminal

in nature? If investigations of employees have occurred, has there ever been any interference by what you might call administrative personnel if the investigation seemed to be coming too close to somebody that the administration would like not to have investigated? Have any such investigations, if they have occurred, been terminated before they reached a conclusion as would be envisioned by the one conducting the investigation? Do they currently work in conjunction with the local police wherever a facility is located, with the sheriff's department, with the State Patrol? Do they conduct any of their activities away from the territory of the Department of Correctional Services? Would any of these investigations, any of their activities involve civilians, in other words, people who are not in the custody or employ of the Department of Correctional Services? How far removed from correctional facilities may they venture, in terms of miles or however they would let us know? Have they ever left the state of Nebraska pursuant to one of their investigations or in connection with any law enforcement agency? In other words, I want to find out, by covering the waterfront, just what these people do. They used to have what were called special deputies where sheriffs who received contributions from people would deputize them. They became special deputies. This was before you could carry a concealed weapon. They would be given a badge and a gun. And some of them would go to bars and pull the gun on people. And I criticized this practice. The sheriffs that were involved did not want to bring them to heel because big shots would get these guns and play with them. One was a guy named Gilbert Swanson, of the Swanson family that produced those frozen dinners. And I put so much heat on him he put a great big sign in his yard--they were rich so everybody could see it, he lived out in the white neighborhood where real white people live, I don't think anybody in the Legislature today could/would have been able to live out there--condemning me and how I was interfering with law enforcement or something like that. So I bought a bill and it stopped that. A Governor then created some special state deputies. This was many years ago, so I'm flying by memory. And when you reach my age, there is some slippage of those cells that are supposed to hold onto memories. When I was young, like Senator Halloran and that sonny-boy over there, Krist, my brain cells were like Velcro. Now they have become like that substance that they make dishes out of and nothing will stick, so I'm doing the best that I can just by way of an overview. These special state deputy sheriffs is what they were called, and there were changes in the names of these people in the correctional facilities, although the game they

played was the same. And because there was this doing end runs around what the language of the statute did, I became very concerned about just what the role of these special deputies, special state deputies, investigators, whatever they were called, precisely what it is they do and to whom they are accountable. I will not question anybody. But from what I've said, people who are going to testify might be glad that I'm placing the restraints and constraints on myself that are placed on everybody else. But any questions you have of me, feel free to ask them and I'll answer them to the best of my rapidly fading and diminishing ability based on my advanced age.

SENATOR EBKE:: Senator Krist.

SENATOR CHAMBERS:: I'm not a septuagenarian. I am now an octogenarian, meaning 80-plus.

SENATOR EBKE:: Senator Krist.

SENATOR KRIST:: Hi. Senator Chambers, have you studied the fiscal note on this bill? And in--

SENATOR CHAMBERS:: I don't have it here.

SENATOR KRIST:: In particular, maybe during your closing, I'm interested because they already have the capability to investigate in the prison system, right?

SENATOR CHAMBERS:: Um-hum.

SENATOR KRIST:: You're transferring that responsibility to the State Patrol?

SENATOR CHAMBERS:: Yes, because there are activities they are engaged in. For example, if they carry weapons,--

SENATOR KRIST:: Right.

SENATOR CHAMBERS:: -- if they make arrests, they're serving a law enforcement function which sworn officers are to do. And as they bleed over into that area, I think it's beginning to encroach on the territory where there should be sworn, certified officers. And if such is the case and that kind of activity is needed, I'm not saying necessarily get rid of these people. If they're doing a tolerably good job, let them become qualified, certified, and do the work, but

it would all be under the auspices of the State Patrol. Law enforcement work would be done by a law enforcement agency.

SENATOR KRIST:: So if it's already happening and they feel that the job is being done adequately, and that may be a matter of an opinion between them and you, their agency and you, I'm wondering why the fiscal note details additional. Does your bill, do you think, ask them to put additional services there that are currently not in Corrections?

SENATOR CHAMBERS:: Basically what it does is turn them over to the State Patrol and testifiers may be able to comment to a greater degree--

SENATOR KRIST:: Okay.

SENATOR CHAMBERS:: -- in more detail than I'm doing right now.

SENATOR KRIST:: If you have ten people over here and they're doing their job and we're asking them to be deputized or to assume a different function with the State Patrol, the same ten people are going to move over here, the fiscal note doesn't say that to me. It says we're inventing new positions and we're going to get new manpower positions.

SENATOR CHAMBERS:: I'm sure these questions will be answered by the testifiers and, if not, I won't say anything, but I know how to do a double whammy with my eyes and my facial expressions.

SENATOR KRIST:: Or you could just pass me a note.

SENATOR EBKE:: Yeah. There's no rule against passing notes. Okay?

SENATOR CHAMBERS:: Okay. Okay.

SENATOR EBKE:: Any other--

SENATOR KRIST:: Thank you, Senator Chambers.

SENATOR EBKE:: Any other questions? Okay, thanks.

SENATOR CHAMBERS:: Thank you.

SENATOR EBKE:: First proponent.

JAMES DAVIS:: Good afternoon, Senator Ebke and members of the Judiciary Committee. My name is James Davis. I'm the deputy ombudsman for corrections. I'm testifying in favor of LB816. I turned in a statement so I'm going to give a brief synopsis or history of what Senator Chambers was referring to. So basically this-- Senator Chambers addressed this bill under LB31 back in 1999 when Director Clarke and Speaker Kristensen came to the Legislature and asked for the state deputy sheriffs to be placed under the Department of Corrections. Also, he asked for them to have police authority. At that time the Judiciary Committee voted 8-0 and then basically killed that bill in committee. So in 2003 the department went around the Legislature and convinced the Governor at the time to authorize the state deputy sheriffs for corrections to have police authority. Again Senator Chambers came back with a bill, LB757, in 2005. It was amended in 2006, went to General File, and basically a section in that bill, 84-106, indicated that deputy sheriffs shall-- or state deputy sheriffs should not be employed under the Department of Corrections. At that time we had Director Harold Clarke, in 2005, and he shortly left. And after the bill passed, Director Houston came down to the Legislature to talk to the senator. He indicated that these guys would not be going off grounds, they would not have arrest powers, and basically they would not do staff investigations, only inmate-on-inmate. So what happened basically, that--the state deputy sheriff--morphed into criminal investigators. And so the criminal investigators have the same authority as police, and so they do go off grounds, they do serve search warrants, they do arrest warrants, and they work sometimes without the State Patrol. So it has a history, the reason why the State Patrol did not want to take responsibility, because at the time they didn't have the manpower. So the Department of Corrections stepped up and said that they would do it. But each time the department goes around the law, or circumvent, as Senator Chambers said, and create their own name for criminal investigators. We do have criminal investigators. They do have arrest authority. They do have search authority. They can file for affidavits. So are there any questions?

SENATOR EBKE:: Senator Krist.

SENATOR KRIST:: How many criminal investigative folks do we have?

JAMES DAVIS:: Currently, right now, we have two criminal investigators and basically the criminal investigators at this time, in order to be commissioned, they have to work for a sheriff

department. To my knowledge, right now the criminal investigators aren't working for a sheriff department in order to be commissioned to do search warrants and arrest warrants.

SENATOR KRIST:: Only two, though, just two.

JAMES DAVIS:: Well, okay, if you look at the criminal investigators, and then if you look at the extradition and warrant officers you can add on three more, and that's five. And then if you look at the canine, I think canine they probably have approximately three or four--I mean just new additions--since 2005 because when we looked at this in 2005 it was just five: two criminal investigators and three extradition and warrant officers and maybe a canine.

SENATOR KRIST:: Senator Chambers said he worked with the Ombudsman's Office in putting this together. So if I'm looking at this 9, 10, 11 people that currently exist within the system, as you understand the bill now, would that just move all 11 of those people?

JAMES DAVIS:: My understanding of the bill, that it would transfer all resources to the department, the state department-- I mean the parole-- the Nebraska State Patrol.

SENATOR KRIST:: State Patrol.

JAMES DAVIS:: So it wouldn't create new positions. It would give the Patrol the resources that it needs because at the time the State Patrol did not want the-- to have oversight of the state deputy sheriffs, nor did they want to come in and do those investigations inside Department of Corrections.

SENATOR KRIST:: So what I'm getting at and what you just described to me is there is zero net gain here if it's transferring the 11 over into that function.

JAMES DAVIS:: Correct. What you would get is that you have a criminal law enforcement agency supervising those individuals that go out and do criminal investigations.

SENATOR KRIST:: Yep. Got it. Thank you.

SENATOR EBKE:: Any other questions? Senator Halloran.

SENATOR HALLORAN:: Senator Ebke. So would these-- these individuals likely be the same people only they would be under the jurisdiction of the State Patrol?

JAMES DAVIS:: They would be the same. But what happens, Senator Halloran, is that you would have law enforcement people who are experienced to supervise those individuals in criminal investigation. Right now you don't have law enforcement-experienced people supervising these individuals. So you could have a conflict of interest where, Senator Chambers mentioned, that if it gets too high to somebody they know, then those individuals and that person and the state deputy sheriff chain-- or, excuse me, criminal investigator chain of command could halt the investigation. And usually those investigations should go to the county attorney or a decision should be made by law enforcement personnel rather than non-law enforcement personnel.

SENATOR KRIST:: One follow up: So would you envision, as Senator Chambers in his opening I think alluded to, that these investigators would have the authority, both on grounds and off grounds, would have the authority to investigate the happenings within the institution, the incidents, accidents, violence that happens there, as well as the correctional officers off-- let's say for whatever reason there needs to be an investigation to talk about, well, what we had happened recently with supplying drugs and things inside. Would those investigators have both on- and off-site capability to oversee corrections?

JAMES DAVIS:: Correct. The bill specifically wants to give the State Patrol resources to do that.

SENATOR KRIST:: Right.

JAMES DAVIS:: Currently they don't. So if you transfer that resource over, they would be able to do that, still continue to do that but--

SENATOR KRIST:: Is it your understanding right now that if there's an assault in the system, inside Corrections,--

JAMES DAVIS:: Correct.

SENATOR KRIST:: -- that that is being investigated or being sent to the county attorney in that jurisdiction for investigation and further charges?

JAMES DAVIS:: Well, that's a tricky question because basically, if an assault occurs, you can have an internal investigator or a criminal investigator to conduct the investigation. Now the question is, do you have the State Patrol involved in it? So usually they're supposed to contact the State Patrol, but at times the State Patrol won't get involved and basically those internal or criminal investigators will do the investigation without the State Patrol as the lead investigator.

SENATOR KRIST:: You said are "supposed to," but is it in statute anyplace that it says?

JAMES DAVIS:: Well that was the responsibility of the State Patrol to look at those assaults and various inmate-on-inmate serious assaults or staff-on-inmate assaults, so that was the responsibility of the State Patrol.

SENATOR KRIST:: Okay. Thank you very much.

SENATOR EBKE:: So who do these criminal investigators report to right now?

JAMES DAVIS:: Okay. My understanding is basically their chain of command is their emergency management supervisor, and then from there they-- who is a non-law enforcement entity, and then also to the lawyers at the department and then to the deputy director of institutions.

SENATOR EBKE:: So they're purely internal and they report in the internal hierarchy someplace.

JAMES DAVIS:: That's correct.

SENATOR EBKE:: Okay, gotcha. Okay. Any other questions? If-- you have another comment?

JAMES DAVIS:: I just wanted to follow up on that.

SENATOR EBKE:: Okay.

JAMES DAVIS:: So basically if they-- if the internal investigators turn in a report of criminal element of wrongdoing, then it would go through that chain of command. So a non-law enforcement entity could halt that investigation. So ultimately the decision to send the criminal case to the county attorney would lie on the deputy director of institutions.

SENATOR EBKE:: But in that instance you haven't necessarily had, correct me if I'm wrong, you haven't necessarily had-- I mean you've had criminal investigators but you haven't had law enforcement investigation at that point.

JAMES DAVIS:: Well, those guys are commissioned as law enforcement because they work part time with sheriff department and some of those guys work to get their commission with the State Patrol.

SENATOR EBKE:: Oh, okay.

JAMES DAVIS:: So internally they are.

SENATOR EBKE:: Okay, gotcha. Other questions? Thank you, Mr. Davis.

JAMES DAVIS:: All right. Thank you.

SENATOR EBKE:: Other proponents?

BENNY NOORDHOEK:: Good afternoon, Senator Ebke and Judiciary Committee. My name is Benny Noordhoek, B-e-n-n-y N-o-o-r-d-h-o-e-k. I'm here today in support of LB816. I worked for Department of Corrections for 28 years, which I'm very proud of. I think that's a great organization. In 2003 I was one of two people that were sent to Grand Island and certified as a law enforcement officer. And from 2003 till July of last year, I was one of the criminal investigators working for the Department of Corrections. As Mr. Davis said earlier, we initially were commissioned by the State Patrol as state deputy sheriffs. We confer with them on cases all the time. They assist us in cases. I've never been told no. I mean they're an excellent organization and they're always willing to help. But in the last couple years there's been some changes in leadership and the law enforcement officers, myself and whoever was my partner at the time, would be getting supervised by civilians who weren't law enforcement and a lot of times they didn't understand exactly what we did and how we did it, which made the job very difficult. And sometimes cases just wouldn't get done because they didn't think they should be

investigated or they weren't reported the right way, things like that, that made the job very difficult. So with that being said, I'm open to any questions anyone has for me.

SENATOR EBKE: Thank you. Senator Krist.

SENATOR KRIST: Is it-- is it your opinion that this chain-- obviously you're up here supporting the bill. Is it in your opinion that this then would be a better course of action? Because I'm assuming that what you're referring to is in the last few years you had things that needed to be brought to the attention and needed to be followed through with, but they were quashed at some level within the administrative functions.

BENNY NOORDHOEK: Occasionally, yes.

SENATOR KRIST: Okay. And this is going to make it better why?

BENNY NOORDHOEK: With the State Patrol overseeing the criminal investigators--they're a law enforcement agency, and then obviously we were law enforcement officers, and the two investigators now are also law enforcement officers, certified officers to make arrests and write probable cause affidavits, affidavits for search warrants, things like that--it really helps to have their guidance. And there are certain cases sometimes that if you go, if you follow the chain of command that we were under at the Department of Corrections, sometimes, you know, it was very demanding on us. Two investigators for ten facilities, as you can imagine, we had a lot of cases. They would want charges brought against an inmate for certain crimes that were maybe misdemeanors and we could actually do our own disciplinary process, probably handle it a little better, and the State Patrol would advise us of that. But of course, when we were told by our chain of command that it needed to be taken down to the county attorney for criminal charges, then that's what we did.

SENATOR KRIST: And we talked-- you heard us talking about the number of people that could come over and be transferred in under the control, under the supervision of the State Patrol. There were just two of you for the ten facilities. Talk to me about the other five and four that Mr. Davis talked about.

BENNY NOORDHOEK: He's talking about the transportation officers. They're a group of people that, you know, haul the inmates to county jails, bring them back from McCook, maybe do transports from D&E to

Omaha or Tecumseh, wherever they've been, you know, when they've been classified and they get moved to different facilities, so they just transport normally within the state. It's not very often that they're gone overnight anywhere. In my opinion, they wouldn't have to be supervised by the State Patrol. They don't carry weapons. They do have Tasers issued to them, which they're trained on, but they don't carry firearms. Same as the canine handlers, they're not law enforcement certified. They just work closely with the investigators. When they have, you know, indication visitors are bringing in drugs or they've got good intel, they will work hand in hand with the criminal investigators, then, of course, we would step in and make the arrest.

SENATOR KRIST:: In your opinion, is the number two enough in terms of investigators?

BENNY NOORDHOEK:: Not even close.

SENATOR KRIST:: What would you think a realistic number should be?

BENNY NOORDHOEK:: A realistic number in my opinion would be 10-15 per 10 facilities. We ran-- you know, open cases I usually had between 80 and 100 open cases at all times and you usually, you know, get a few cases a week, sometimes a few a day, and so it's very hard to do a thorough criminal investigation when you have that many.

SENATOR KRIST:: So a few years ago on a different committee we authorized additional State Patrol, particularly for the purpose of increasing the Liquor Commission's observation of compliance. And they were State Patrol primarily, but they were on loan on a periodic basis with their expertise to the Liquor Control Commission. Could you see something like that work where you'd have maybe four primaries of you and then augmentation of State Patrol? Is that possible?

BENNY NOORDHOEK:: It might be, yeah. It could be.

SENATOR KRIST:: Okay. Thank you very much.

SENATOR EBKE:: Other questions? Thanks for being here today. That helped. Thank you.

BENNY NOORDHOEK:: Thank you.

SENATOR EBKE:: Other proponents?

JIM MAGUIRE:: Good afternoon, Senator Ebke and senators of the Judiciary Committee. My name is Jim Maguire. It's J-i-m M-a-g-u-i-r-e. I'm president of the Nebraska Fraternal Order of Police and we are here to support this very commonsense bill. Similar to school resource officers in the Omaha area, every Class A school in Omaha has a certified law enforcement officer that is in that school. And to be just blunt, I was surprised that there's not a certified law enforcement officer in the correctional facilities spread throughout the state of Nebraska. And we know that we have problems within State Corrections. And I have had the ability to meet a lot of these exceptional officers and a lot of their issues have to do with safety and how are they going to deal with their mental health issues and everything else. And, Senator, what I would do is maybe not so much do a study but just go ahead and implement it and then expand it into where if there is a-- if there's a criminal act inside a state facility, that the State Patrol shall go to that facility and if there is probable cause, they shall arrest that person. And then whether it be an inmate or-- or whomever, they need to be transported from that facility to a county jail. The criminal reports have to be completed and submitted to the county attorney for prosecution. What I am being told by a lot of these correctional officers is that they're being assaulted and there is no investigation, that a lot of this stuff has-- is not being investigated by a law enforcement agency and the reports are not being submitted to the county attorneys for prosecution, which is just flat wrong. What you can do-- what's happening for some of these folks is that they will be assaulted and they will come in the very next day and see the inmate who had assaulted them just basically walking free. And that affects their morale and it also affects the safety within the institution. So what we are asking for consideration is to maybe implement some of these things within the county system, especially with Douglas County, because it's-- I work for the sheriff's office. If there is a crime that is committed at the Douglas County correctional facility, we have to go and investigate that. There should be some sort of command structure saying who is going to do this. Well, just give it to the State Patrol and ensure that if there is a criminal act within their facility, that they have-- that they show up and do an investigation. Hearing that there's only two investigators for the ten institutions is shocking. As a former narcotics investigator I can tell you if I

had 80 cases involving any kind of drug-related crime, none of them would-- nobody would ever go to jail because it is so time consuming. And for those two to have to bounce from facility to facility is, in my opinion, unheard of. Thank you.

SENATOR EBKE:: Senator Krist.

SENATOR KRIST:: Thanks for coming. It's as if we have an investigator-- it's like the fox in the chicken coop. So we have an investigative group that even if they are doing the best job they can, their efforts are being quashed, as we heard from the previous testifier. At some point I don't know whether that's to limit the amount of exposure or the publicity. You and I have had several conversations--

JIM MAGUIRE:: Right.

SENATOR KRIST:: -- about the crime that is committed again in a facility by criminals and how that really needs to be investigated and reported. Is it your opinion that if we did do as you're suggesting, we made it, we put it in law, that if anything happens in the system, that they're referred to, have to be referred to the State Patrol in our state system, or to the county in the county facility, that there would be better reporting and more safer condition for both the inmates and for the corrections officers?

JIM MAGUIRE:: Yes. In my opinion, you would get a true and accurate reading on all of the criminal activity that is occurring within the state correctional facilities. And not only that, the Superintendent of the State Patrol should prepare some sort of a report and give it to the Chair of the Judiciary Committee, say, around January 1, right before the session starts, so that everybody on this committee can get some kind of idea of the problems that surround the Department of Corrections.

SENATOR KRIST:: Thank you.

SENATOR EBKE:: Other questions? Thanks for being here today.

JIM MAGUIRE:: Thank you.

SENATOR CHAMBERS:: Oh. [LAUGHTER]

SENATOR KRIST:: Hey, write it down.

SENATOR CHAMBERS:: No, that's [INAUDIBLE].

JIM MAGUIRE:: Thank you.

SENATOR EBKE:: You bet. Any other proponents? Do we have any opponent testimony? Do we have anybody testifying in a neutral position? We have no letters. Senator-- right? Okay. Senator Chambers, do you want to close?

SENATOR CHAMBERS:: As Fats Domino would say: Yes, it's me, and I'm back again--Ernie Chambers. I deeply appreciate these two gentlemen testifying on this bill, not just because it's mine, but they have experience not only in terms of what has happened, but they can make suggestions of a specific kind as to what else can be done. And I want them both to know that I have been banished to an office, whose number is 1302, next to that of another person who has been banished, Senator Halloran, but we are in the building. And anytime either of you would like to contact me and we talk, I want to do that. This bill in its present form does not have to go through as it is. I wanted to address those problems that I know are existing. Just the other day an inmate was stabbed 22 times. And things are continuing to happen and it's almost as though these things are bottled up because it apparently is viewed as reflecting negatively on the current administration. But these things have happened and will happen in all prisons. And regardless of the administration, I have been polite to the extent that I could, a watchdog. I worked with former Director Harold Clarke but we clashed. I worked with former Director Houston. We clashed. But whenever they had something that would help, I was the one they could come to, to try to get legislation, to try to get money, or whatever it was, because we still have an obligation to the people who are locked up. But the people who work in the prison are prisoners too. They can be considered in a sense--and it's just in the sense that I'm saying it--locked up also. They have not committed an offense. They're doing a job which is extremely difficult. And I think when you don't have the tools to do a job, it aggravates everything. If there's anything that somebody who is called a criminal understands, it's how to size up a situation; take advantage of a situation; know what the odds likely are that you can succeed in what you're trying to do; the odds of getting caught; and if caught, the odds of being punished; and how if you're facing punishment, you can beat those odds by becoming a

"semi-employee" of the administration. There are enforcers and there are enforcers. What we need to do is make sure that we don't have two people-- I didn't even know that. This is the first I knew of having two of these people covering ten institutions. I'm not going to go on because I think the picture has been painted of what the problem is. I hope that the two gentlemen will accept my invitation. We will do what we can. I want us to get a good bill to show that even if it's only a start, that we are serious and will address the problems the best we can as a Legislature. If you have any questions of me, I will answer them briefly.

SENATOR EBKE: Questions for Senator Chambers? Everybody's afraid to ask you a question because it's oftentimes not briefly, right?

SENATOR CHAMBERS: I didn't understand you.

SENATOR EBKE: It's-- nevermind.

SENATOR CHAMBERS: I was going to [INAUDIBLE] .

SENATOR EBKE: This closes the hearing on LB816. We're going to take about a five-minute break since we've been at it for two hours and then we'll get to the last two bills.

[BREAK]

SENATOR EBKE: Okay, we're back. Here's the hearing on LB842. Senator Pansing Brooks.

SENATOR PANSING BROOKS: Thank you, Chair Ebke and members of the Judiciary Committee. For the record, I am Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28 right here in the heart of Lincoln. I'm here today to introduce LB842 which would re-establish the one-third rule, a sentencing reform measure to help address our prison overcrowding crisis. Tomorrow, colleagues, is Groundhog Day, but I feel a little bit like today is Groundhog Day because I first brought this bill in 2015, as I was a brand-new senator, to restore an element of sentencing policy that was previously in place in Nebraska for over 20 years and worked effectively. That piece of legislation in 2015 was passed unanimously out of this Judiciary Committee--so you all may feel like it's Groundhog Day a day early, as well--and it was placed into LB605. Some of the people that I presume are here to testify against this are the reason that it ultimately got pulled. But I continue to

believe that LB605-- that the bill should have continued in LB605 and in the package created in 2015. While LB605 had important reforms, it has not resulted in the reduction in prison overcapacity that we had hoped to see. We need to do more on sentencing reform and that is why I brought this bill today. I want to first point out the fiscal note from Parole. They are estimating that 660 inmates could be placed on parole per year because of this bill, LB842. The fiscal note thus shows a cost of \$2,209,290. However, this amount of \$2,200,000-plus would be dwarfed by the cost of savings for Corrections of \$31,271 per inmate for a total of \$20,638,860, also in the fiscal note before you. So that differential would be more than \$18 million in savings to the state from this bill. According to the fiscal note, this could move our state to 136 percent of design capacity. That's exactly what we're trying to do. Now there's some language in the fiscal note talking about whether or not it will happen right away. It couldn't happen right away so I don't quite get the immediate year-to-year costs. But this is big: 136 percent of design capacity and a savings to our state of over \$18 million per year. As we know, we have until July 1, 2020, to get our prisons down to 140 percent of design capacity. If we're over 100 percent of design capacity at that time, an overcrowding crisis shall be deemed to exist and the Board of Parole shall then have to consider or reconsider committed offenders for suitability for accelerated release on parole until which time we are at operational capacity of 125 percent. Given these numbers, I wanted to offer a little background on what led to this proposal. In the 1970s, the Legislature began to change the correctional system in Nebraska, no doubt due in part to Senator Chambers, to a model that was more treatment and rehabilitation focused. The Legislature amended the criminal procedure code to provide for a sentencing framework that allowed for those inmates who were sent to prison to work toward reforming themselves and toward assimilating back into the community after being rehabilitated once they are released from incarceration. The Legislature at that time adopted the "one-third" rule which provided that the minimum sentence imposed could not be more than one third of the maximum possible for the category of penalty available. The one-- this one-third rule provided that the offender would have time and opportunity for rehabilitation in the prison system before being paroled and would also ensure meaningful time for the offender to be supervised once paroled into the community. Inmates had incentive to actively participate in constructive rehabilitation programs within the prison system so they were better candidates to be paroled when they became eligible.

Additionally, the one-third rule allows judge-- allowed judges to impose a significant maximum sentence for offenders to be supervised while on parole or incarcerated, should such inmates not comply with the terms of their parole conditions. The one-third rule was the law in Nebraska from about 1971 until 1993 when it was removed. The legislative history provides little explanation for why that particular rule was eliminated. And from what I have heard anecdotally, it is likely that the one-third rule was basically removed surreptitiously in an omnibus bill. We've had that happen before, even during our last year. To bolster that conclusion, I would add that we have been unable to locate any record of a public hearing or discussion on the floor of the Legislature concerning the removal of the one-third rule. Move forward now 25 years and Nebraska has the second-highest overcrowded prison system in the country. Judges are now imposing sentences with maximum and minimum sentences that are nearly identical, leaving very little time for meaningful parole, which results in more frequent "jam outs." According to CSG Justice Center--the Council for State Governments--in fiscal year 2013, 17 percent of people newly admitted to prison received a sentence with a parole window of one month or less or no opportunity for parole at all. The slim or nonexistent parole windows of these flat sentences ensures that these individuals will leave prison without supervision when released. In fiscal year 2013, 57 percent of flat sentences were for terms of one year, which equates to six months under good time, in prison. Especially considering that 95 percent of people incarcerated in our prisons will be released back into the communities, we should all be concerned about this short window of time for inmates to become parole ready. This makes sense. This bill doesn't purport to by itself solve our overcrowding crisis, although the numbers from the Fiscal Office are highly encouraging. What this bill does do is set a framework and resets a framework whereby people can get the rehabilitation and the treatment that they need so they don't stay in prison longer than necessary and jam out--and we're paying for those people on a daily basis--thereby then requiring them to enter back into our communities as less productive citizens, potentially more dangerous, and at a greater risk of recidivism. The Council of State Governments during its initial report that led to LB605 showed that minimum sentences have grown in proportion to the maximum sentences, which has narrowed the parole window. I submitted page 36 of the CSG report which shows that the minimum sentence length as a percentage of the maximum sentence length has been decreasing. The average inmate will have only one

chance at this point at a parole hearing, according to CSG. The Justice Reinvestment final report also says, quote: Courts frequently impose sentence structures that allow no opportunity for parole or so short a period that it provides little chance of meaningful postrelease supervision. LB868 will alleviate this problem, allowing more than-- more of those 95 percent-- allowing more of the 95 percent of individuals who are going to be released back into the community earlier access to parole so they can be required to take the programming necessary before they enter back into our society so that they can become productive members of our community and not recidivate. That's the goal. As you can see, it is going to provide substantial tax cost savings to the state and keep our communities safer. We have all heard Director Rothwell at various points--in both LR27 Special Investigative Committee and LR34 Special Investigative Committee hearings--and in those I have heard him at least in two different instances talk about the necessity of separating the maximum and minimum and how it had worked in a state where he had worked previously, and that it helps to make sure that those inmates go before the Parole Board, find out what is required of them, and then they have to go back and get these-- meet the requirements, have the programming, so that they can then be released and we aren't paying to just keep them to the very longest point that we can. Judges understand the entire good time system. They can sentence people if there's somebody truly terrible that needs to be put away for a long time. That's what we're going to hear. The judges understand that good time and they sentence accordingly. So I think this is making good sense. I'm highly pleased with the fiscal notes that was-- that were put forward. Usually we see death by fiscal note and all of a sudden we see life by fiscal note. So I hope that you will consider advancing LB842, as the same bill four years ago was done unanimously. And with that, I'll answer any questions that you have.

SENATOR EBKE: Questions for Senator Pansing Brooks? Senator Chambers.

SENATOR CHAMBERS: Just a comment: I was here when Senator-- former Senator-- I can't think of her name-- Pirsch and then Attorney General Stenberg pulled this off. It was a criminal bill of some kind, reform, and they put it in as a repealer clause. Among all of the sections being repealed they slipped that one in and they slipped it in because after it was discovered they said they did it on purpose and they were not going to change it. So the Legislature was

hoodwinked by Senator Pirsch and Attorney General Stenberg. They were excoriated on the floor for having done it. Senator Pirsch, I don't know whether she wanted to undo it, but Stenberg made it clear that they were not going to do it. He's now the Treasurer and they ought to check the till every night just to be sure. But at any rate, this committee has to stop being bullied by prosecutors who have no concern about public safety or anything else. They want to win cases. They want to win by way of plea bargains, if they can, so they don't have to do a lot of work, not just here but all over the country. And they cannot demonstrate that these long sentences do anything except overcrowd the prisons and they have no ideas for how that can be done. Then when the problem that they helped generate by bullying weak senators, the remedy for the problem that they help create through their attitudes, they'll come up and say, no, don't do that because public safety. Public safety has nothing to do with it. I wanted that on the record as to how that one-third rule was removed. And it did not create problems, but removing it did. So I will listen to what the usual suspects, as they're called, will have to say. And so that they won't have to worry and get heartburn, I'm not going to grill them like a hamburger. But if I apply any heat, it'll be rare or medium rare at worst. It's a waste of time to try to reason with them. But if they make statements that I think need to have some rebuttal, then I will do it. But I'm not going to waste a lot of the committee's time because I think we as a committee have to start doing what we think is the right thing. There have been times in the past when senators work with prosecutors from the Attorney General's Office on down, then we get on the floor and they back away or undercut this agreement that everybody thought had been made. So I'm going to listen. I'm glad you brought the bill and I will support it to the max that I'm able to.

SENATOR PANSING BROOKS:: Thank you, Senator Chambers. And you're correct. It was part of an omnibus bill that did not get full discussion. And I appreciate it. And when you think of what's happened since 1991 to our prison system and the overcrowding that has-- that this has added to, I think it's really, really sad for our state.

SENATOR CHAMBERS:: And my final remark while Senator--I forget names--

SENATOR PANSING BROOKS:: Pansing Brooks.

SENATOR CHAMBERS:: -- no-- Senator Pansing Brooks is there: We're left with having to solve the messes that these prosecutors create. They're not here trying to figure how to undo the problems generated by the Legislature knuckling under to them when they don't have any respect for principles and the science, if there is one, of penology, the purpose of it. And I'm going to do what I can to try to get us as a Legislature to see it. When people like the Koch brothers see the need to reform the prison system and other so-called conservatives--I say "so-called" because when I use the term they might not define it the way I do--even in Congress, there are federal judges who are trying to find ways to deviate from what Congress did under the same silliness that state legislatures behave. We don't have to go the way of Congress and leave it there. But now we've got to figure what to do with an overcrowded prison system, a federal lawsuit--which I'm glad was brought. And you're not going to find the prosecutors anywhere in the picture except saying the judges can't do this because it'll hurt public safety. I say, as the British used to say, fie on them, f-i-e. Okay. That's all I have.

SENATOR PANSING BROOKS:: Thank you, Senator Chambers.

SENATOR EBKE:: Senator Pansing Brooks, I've been doing a little math here. And certainly if you take the full cost per person, it's the \$20,638,000. But even without that, because that, it looks like, also includes facilities and all sorts of other things that you don't automatically find the savings, even if you decrease the numbers you're not automatically going to find-- find savings. But at the top paragraph, the "See the agency response," right below that, I think it's important to notice-- note that they do note the \$8,649 of per diem cost--the food and clothing and things like that--and that you still have a savings to NDCS of approximately \$5.7 million, which still means a \$3.3 net-- the \$3.3 million net. So this is certainly a remarkable potential here when we're trying to scrape every dollar we can and save every dollar we can that this could certainly be significant. So thank you for bringing the bill and thank you for pointing out the fiscal note.

SENATOR PANSING BROOKS:: Thank you.

SENATOR EBKE:: Other questions?

SENATOR PANSING BROOKS:: Thank you.

SENATOR EBKE: First proponent.

SPIKE EICKHOLT: Good afternoon, Madam Chair and members of the committee. My name is Spike Eickholt, first name S-p-i-k-e, last name E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in support of this bill. Want to thank Senator Pansing Brooks for introducing this bill. Senator Pansing Brooks gave a good explanation of how the one-third rule works. And she did give a good history for this state's most recent effort to reinstate it. I started working here, around the Capitol, again when the CSG--the Council for State Governments--were here helping us solve our impending prison overcrowding problem. One of the things that the CSG group noted almost immediately, and it's in their recommendation dated January 14, 2015, or at least their first report looking at our prison system, was the problem that we have with flat sentences, people going to prison for essentially one or two years, many times just for a short flat sentence, and simply getting out. The problem with people serving flat sentences is that they have a very high recidivism rate. And really, their time in prison is not rehabilitative; it's simply an interruption, a temporary interruption in criminal thinking and criminal behavior and drug-addicted behavior and that sort of thing. That's why and that's part of the reason why the LB605 model was recommended to the state by the CSG. And it has been implemented on the lower level felonies and that's why you have postrelease supervision for Class IV and Class III and Class IIIA felonies. It's true. And some of the opponents might say that the CSG group didn't say anything about one third. That is true. They did make some recommendations and they did encourage--I would use the word "encourage"--our state and the policymakers to adopt some sort of incentive for indeterminate sentences for the more serious felonies beyond the lower level felonies to provide for a meaningful opportunity at rehabilitation, because what you see now in many cases is you see flat sentences of 18 years to 20 years; you see people who go to prison for a very long time and have no opportunity at rehabilitation. They simply sit there. You've heard from people. The Board of Parole and other people testify that many times people who are parole eligible refuse parole. I can tell you, and this is anecdotally, I'll admit, but I can tell you many times people who refuse parole are people who are doing those lengthy flat sentences because they have no incentive to get parole. They can use drugs in the prison system. They sort of have a way of living and their best hope when they get out is just not to get caught again or hopefully

maybe will change their ways on their own. Having a one-third scheme, as Senator Pansing Brooks explained, provides for meaningful incentive for people to do something to themselves to be released in a positive way from our prison system. Over 90 percent of the people in prison are going to get out in some capacity. We simply just can't keep them there forever and have them come simply reoffend when they get back out. The opponents are going to argue--and you're going to hear the same arguments again--this is jeopardizing public safety. I'd have you keep in mind that if you class-- if you chair-- if you clarify or impose a one-third minimum rule, there's all kinds of crimes that prosecutors can charge people with. They do it all the time. They can overlap offenses. Even with one third, that will still be there. They oppose mandatory minimum reform. They oppose habitual criminal reform. If we're going to do something, and we would submit we need to, this is one of the opportunities that we should seize. So I'd encourage the committee to advance the bill.

SENATOR EBKE: Thank you, Mr. Eickholt. Any questions? I see none. Thanks. I would note that we've been delivered a new fiscal note. It's okay. It's over here if you would-- did you get-- did you get one? Did you get it?

JOE NIGRO: Good afternoon. Senator Ebke, members of the committee, I'm Joe Nigro, first name J-o-e, last name spelled N-i-g-r-o. I'm the Lancaster County Public Defender. I appear on behalf of the Nebraska Criminal Defense Attorneys Association in support of LB842. LB842 would restore the one-third rule. I've been an attorney long enough to have practiced law for several years when we had the one-third rule. When someone receives an indeterminate prison sentence, they are sentenced to a minimum and maximum term. The minimum is how long someone must serve to be eligible for parole. The maximum is how long someone must serve to be released if they're not paroled. For example, someone who is sentenced to serve two to four years in prison would immediately have their sentence reduced to one to two years with good time meaning they would be eligible for parole in one year and would be released in two years if they don't lose any good time. Under the one-third rule the minimum can be no more than one third of the potential maximum. I still remember the one-third numbers. Defense attorneys and prosecutors all had them memorized in those days. A Class IV felony was 20 months to 5 years; a Class III felony was 6 and two-thirds years to 20 years; and a Class II felony was 16 and a third years to 50. Late in the legislative session in the mid-1990s--I thought it was 1993--maybe it was as early as '91 or

as late as '95, but an amendment was added to a big bill that undid the one-third rule. No one caught it. It was snuck into a bill that really dealt with some other issues in criminal justice. It was never discussed in a committee hearing. It was never debated on the floor. And then as soon as it took effect, suddenly, judges started giving out sentences with the minimum equal or close to the maximum. People were sentenced to 5 to 5 years, 20 to 20 years, 45 to 50 years. Prosecutors loved it. There was a bill the next year to reinstate the one-third rule because of the way it had happened, and prosecutors and the Attorney General argued against changing it back. The only change they made was that they reinstated the one-third rule for Class IV felonies, but Class IIIA felonies were created and violent Class IV felonies were then reclassified as Class IIIA felonies. And since that time, we've only had the one-third rule for Class IV felonies until-- until the LB605 was-- until LB605 was enacted. The rationale behind the one-third rule is that a large gap between the minimum and maximum terms motivates inmates to behave in the institution to get paroled. It motivates inmates to seek parole instead of just doing a short amount of additional time in prison before they discharge or "jam" their sentences, the slang term for it. And it motivates parolees to behave so that they don't have to go back into prison for a significant amount of time. Let me give you some numbers to illustrate this. Under an old Class III felony someone faced 1 to 20 years. LB605 changed that to Class IIA felonies that carry zero to 20 years but the maximum is the same. Under the one-third rule the maximum was 6 and two-thirds to 20 years. This means that with good time someone receiving the maximum would be eligible for-- eligible for parole in 3 and a third years, so half of-- half of the minimum number, and they would be eligible for parole in 10 years, which is half of the 20. So you have a gap between three and a third and ten years. Seven years, almost seven years, that's a long time. Inmates are going to seek to be paroled. Excuse me. I'm out of time. I don't know if someone would be kind enough to ask me a question. Yes.

SENATOR CHAMBERS: I need to have that completed.

JOE NIGRO: Thank you very much. Inmates facing seven additional years in prison are going to-- they're going to want to be paroled. That's a long time. So they're going to behave themselves in the institution so that they're candidates for parole. And if they get out, they're going to behave because they don't want to go back. But under-- with no one-third rule, under the same offense carrying up to 20 years,

somebody could receive 18 to 20 years. With good time that automatically becomes nine to 10 years. If you've done nine years and you only have one more year to do before you "jam" or discharge your sentence, a lot of inmates are going to say, I know I can do another year in prison but if I screw up not only am I going to come back for that year, I may lose good time and I may do several more years, I'll just do the year. The problem is then we know by research people released on parole are less likely to offend. They're less likely to reoffend. We should all, prosecutors, defense attorneys, all of us should want people to be less likely to reoffend and we should want them released on parole. Really short paroles are less likely to be effective because they don't have enough time to work with the offender. Now you're likely to hear from opponents-- in fact, I think it's pretty-- I'll be shocked if you don't hear that they're going to say the one-third rule makes us less safe because they're basically saying dangerous people are going to be released from prison. This is not true that the one-third rule makes us less safe. The minimum is not what keeps people in prison. It's the maximum. That's not going to change. And the Parole Board, do you think they're releasing people on sexual assaults, really scary kinds of offenses? Do you think they release people who have been assaulting people in the institution or continually break rules? No. Those people don't get released. The people who get released are people who are behaving themselves, people who are availing themselves of programming and education. So this idea that this one-third rule is suddenly going to change and the Parole Board is just going to let scary people out, that's just nonsense. And I-- the one-third rule is going to increase the early release of inmates who are not dangerous. It's going to increase the release of inmates who have availed themselves of programming and behave themselves. Now since 1992 nationally the crime rate has gone down all across America. I just saw some research in the last couple of weeks. Most states have had decreases in their present prison population at the same time. So the argument that we have to lock-- the reason crime has gone down is because we lock more people up is not true. The states that have had the biggest reductions in crime rate have had the largest reductions in their prison population. We're one of the very few states that have continued to increase our prison population as the crime rate has gone down. So what are we doing? What we're doing is we're spending way more money than these other states that have decreased their prison populations. And it's not making us safer because their crime rates have gone down even more than ours. So I would like to hear the

opponents explain an answer to that research because I don't think they have one. The one-third rule is going to help decrease the prison population and it's going to make us safer by increasing the number of people who are released under supervision. And everybody who has common sense who has been involved in the criminal justice system should support those concepts and I urge the committee to advance LB842. And I would be happy to answer any additional questions.

SENATOR EBKE: Thank you, Mr. Nigro. Senator Chambers.

JOE NIGRO: Yes.

SENATOR CHAMBERS: Mr. Nigro, just for clarification, that eligibility date to be considered for parole is not a mandatory release date, is it?

JOE NIGRO: That's correct. In fact, my experience has been that Parole almost never paroles somebody the first time they're eligible. They usually want them to do a little more, wait a little longer.

SENATOR CHAMBERS: Right. And the mandatory release date, as you pointed out, has to do with the maximum. And that's when, after they've taken the bit off the top, you reach that point, then you are what they call jamming out. They can't keep you beyond that date. And as you pointed out, if there's just a short amount of time between when they're going to be released on parole and the jam-out date, if you jam out, you're through with the state. They have nothing to do with you. They cannot bring you back unless you commit another crime. But if they parole you and you mess up, then it's worse for you when you come back than if you had "jammed" out that little time. And that's what the inmates discovered. And that's why so many of them were jamming out. So the changes that are being contemplated would really benefit society, the inmate, and the criminal justice system. And this is something that people like the Koch brothers, who deal with practicality, and when you deal with a lot of money you have to be practical. It makes no sense to have these regressive-type, long prison sentences that don't do anything. So they need to modify the sentencing structure, the prisons, all of it. So there are people, not prosecutors--in some states they are more intelligent and enlightened--who are saying a change has to come. And it's regrettable that this change has to be forced from outside rather than inside, achieved by those who ought to know better, namely the

prosecutors. But I say again they want to be able to overcharge a person; they want to be able to stack up such a fear factor that some people have pleaded guilty to offenses they didn't commit. There have been lawyers, and there are studies to this effect--The New York Review of Books did a long one where judges were writing--the lawyers would admit that they told the client, I know you didn't do it, I can't beat this, you better cop a plea. Judges, when they became aware of the fact that lawyers were advising their clients to plead guilty to crimes they did not commit, they began to step in and some changes were made in New York. And as a matter of fact, they're one of the states that closed I think about three of their prisons when they got intelligent and started making some reforms. But I mainly wanted it clear on that parole eligibility. That date simply means you can now consider receiving a hearing. But that doesn't mean you're going to get out. And as you pointed out, seldom does anybody get out on the first eligibility date.

JOE NIGRO: Yes, that's correct. And I think when the law changed, I think we saw a lot of judges who just were afraid that they would be criticized as being soft on crime if they gave the old-- if they used the old one-third rule and so they started giving larger minimums because you're rarely going to be criticized for being too tough, at least over time. But I would argue that opposing the one-third rule is actually-- works against public safety because we're all better off if people get out under a reasonable period of parole supervision. The research is very clear on that. Any other questions?

SENATOR EBKE:: Questions for Mr. Nigro?

JOE NIGRO: Thank you.

SENATOR EBKE:: Thank you for being here. Next proponent. Welcome.

JASON WITMER: Hi. Jason Witmer, W-i-t-m-e-r. I was listening to him and I decided to volunteer. I was going to speak on the next one. And so the reason I'm speaking on what he was speaking of is in the past 23 years, since '95, I have 21 years of incarceration in the adult system and I can kind of validate or maybe elaborate on some of what was being said about the one-third rule and that of the effect it has on people who do 55 to 55 years, 5 to 5 years, who do 10 to 15 years, and somebody who does 5 years to 30 years. And that is, well, one, I can definitely validate, and I've heard this many, many times, guys that got like two or three years between their jam and their parole

date don't take programs because it's a waste of their time, in their opinion, which adds to, as we all know, the lack of education programming and change of mentality because, you know, you're just doing the same thing and you're in an environment that is pretty horrible. It just promotes the same mentality or worse, myself included. I did two numbers. Just for a quick background, I was a gang member. I've been in the foster system all my life. I seen my mother-- my first memory is of my mother's murder. So there's all them excuses which I used. So-- sorry. So by the time I got to the point where I put myself in the system, which in '95 was for shooting another gang member, I had a four to nine, I believe. You know, there was nothing that's going to change me. And by the time I started thinking, you know, I could actually-- because I didn't even understand parole then. And I'm sure I would have tried to manipulated [SIC] it. I thought I was just stuck. But by the time I understood I could have got out for some type of behavior or going to these programs, I done about three or four years, which was close to the jam date, and I had lost enough good time that I wouldn't jam the 50/50 time. So by the time I got paroled, I didn't care about no program. I just did what I needed to do. And by the time I got out, it only took me three months to get back in with the same people and get back incarcerated. And this is a common mentality is if-- you know, why take this if it's not going to get me out? But the flip side of that mentality is when it can get me out, sometimes I take it and it takes an effect on me when I didn't mean to, I just wanted to use it. And that's what happens when you've got enough time to realize, at least in the shallowest sense, this could get me out. This gives me-- that gives the institution or whoever an opportunity to put a person into some type of educational program that would possibly change the mentality that brought them there that they could end up taking back to the society. And the one-third rule would pretty much encourage everybody to be a part of that. And if a judge had a problem, 1 to 20 can be 6.5 to 20 years.

SENATOR EBKE: Thank you. Senator Chambers.

SENATOR CHAMBERS: Did you finish your thought?

JASON WITMER: Yeah. Well, all I was going to add on to the 6.5 to 20 years was just the statement that a maximum-- it's what you said, and you guys are well educated and it's way beyond me, is Parole Board is absolutely discretionary board. There is no law that says parole ever has to be granted, that I understand, ever. They can deny you every

single time even for reasons that seem frivolous and silly. I would hope that's not the mentality. But a judge, understanding that, understands that when I have a person that really needs something, I have a maximum sentence to give them so that he knows that when he gets that six and a half--I believe that's what you said the third is--that you can keep going and keep going and keep going until you take some changes, at least enough changes to get into these programs and perhaps change who you are, hopefully change who you are.

SENATOR EBKE: Thank you for being here. Any questions? Thanks for your testimony.

JASON WITMER: Yeah.

SENATOR EBKE: Next proponent. Any other proponents? I see none. We will move to opponents of LB842.

DON KLEINE: Good afternoon, Senators. My name is Don Kleine, D-o-n K-l-e-i-n-e. I'm here as the Douglas County Attorney and as a representative of the Nebraska County Attorneys Association. And I'm one of the opponents that the ACLU and the criminal defense lawyers talk about and I do oppose this bill and this legislation as they said I would. You know, first of all, a judge can do just exactly what you're stating should be done here. A judge who has all the facts and circumstances of the case, knows the defendant's presentence investigation, can sentence somebody if they want to put on a Class II felony to 16 and two-thirds to 50 years if they think that's appropriate. But the judges, when they see the circumstances of what happened, sometimes think otherwise. So what you're doing here is you're lessening potential sentencing perspective or penalty for the most violent offenses. We're talking about attempted murders; we're talking about rapes, first-degree sexual assaults; we're talking about robberies, kidnappings, first-degree assaults, using a firearm to commit a felony, and strangulation. That's not an exclusive list. So you're saying we don't want the judge to have the discretion to sentence that person to, if they think it's appropriate after knowing all the facts and handling that case and seeing the victim and knowing everything about the defendant that they can, to sentence them to 40 to 50 years say on a Class II felony. One of the things on your discussion about the loss-- or the original one-third rule is that it wasn't mentioned, but in 1992 there was a change also in the good time law the year that this one-third rule left originally, after the original 20 years. The good time law changed.

Originally, during that time period that the one-third rule was in effect, the good time law was about two months of good time for every year of the sentence. All right. It changed in 1992 to be day for day which means six months for a year. I don't know if that had anything to do with it but it's interesting to me to note that that law went away when the good time law became greater for offenders and it went to a day for day rather than just two months out of a year. So that's something to note. The-- the other thing is, is I think it's-- it's somewhat disingenuous when I have victims come in to me and they say, well, I looked at the book and the statute and here's the-- the potential penalty is 50 years. And then if something like this happens I say, well, no, that's not accurate because there's another statute somewhere else, not right with the sentencing, of what a Class II entails. It says the judge can only give them 16 and two thirds to 50. And so if you're going to do this, which I oppose, then why don't you place it right in statute and say here's the sentence? Okay. Eight and a third to 25 years is what somebody is going to get on a Class II felony, because that's the maximum. That's the time that we're talking about. It's not 50 years. All right. Be straight up with the people or your constituents about what the sentence is going to be if that's what you think that you-- is appropriate to do. I don't think it is. I think that, you know, when I hear judges get slammed, the prosecutors get slammed, I know a lot of judges that are very hardworking, interested people who care about the public and care about the defendant and care about the job that they do and I think they take everything into consideration. They do a very good job of sentencing. And there's a purpose for them to have the discretion that they do. And I think-- I think to have something like this that takes away that discretion from them is inappropriate. And again we're talking about the worst of the worst and we're talking about these kinds of crimes. And the person that creates these messes about overcrowding the prisons isn't the prosecutors and it's not the judges. It's the person that goes up and sticks a gun in somebody's face and tells them to give them the money; it's the person that breaks into somebody's house and rapes a woman who's in her own residence; it's the person who tries to strangle somebody. That's the person who creates these messes that we're talking about where we have people in the penitentiary. It's because of the acts that they've done and the people they victimized. I'll be happy to answer any questions. My time is up.

SENATOR EBKE: Thank you, Mr. Kleine. Senator Chambers.

SENATOR CHAMBERS: Mr. Kleine, I believe they sent you here because they know I have respect for you. You don't know, but I know your colleagues better than you do. But here's my point. I believe it may have been your office that let a guy, not good time or a one-third rule, cop a plea when he'd murdered his wife. He got out. Then he murdered three people. So prosecutors help create those messes, too, if we follow your logic. But I-- I haven't used it for that and you know the case I'm talking about, the guy who went before the court the other day.

DON KLEINE:: Sure. I could talk to you and tell you about the circumstances of that case.

SENATOR CHAMBERS: I have never said do away with the plea bargaining. When senators have talked about it, I said no. This thing has to be looked at comprehensively and here's what I'm talking about. You all shift. You always want the harshness. When it comes to something harsh like this, you say you don't trust the judges, let them have discretion, don't put the one-third rule, they can create a sentence that would do the same thing. But when we say don't take the judge's discretion, don't have a mandatory minimum, you say, oh, no, we don't trust the judges, there's got to be a mandatory minimum. So you flip so that in each case there can be more harshness. But here's the thing. The maximum sentence can still be set with the one-third rule. Let's say there's not a mandatory minimum. The maximum is 50. If the judge sets a sentence that's more than the mandatory minimum--I meant more than one third, if you have the one-third rule--rather than 16 and two thirds the judge says 25 to the maximum. The Parole Board knows that with the one-third rule that means the person is eligible under the parole system to be granted a hearing. That's what it means. You can have a hearing. It doesn't mean you're released. If you don't show adequate contrition, if you would continue to be a danger to the public, you don't get out. The Parole Board is the one who controls that spigot, not the one-third rule, not the mandatory minimum. The mandatory minimum prevents good time from being earned during that mandatory period. So there's no incentive to do right. But we're not talking about mandatory minimums right now because that would complicate it. The Parole Board can hold that person until that mandatory release date. And the one-third rule wouldn't change that. You take half off the top, half off the bottom, and the half off the bottom reaches, gets you to the point where you have the right to a

hearing. The half off the top, if you don't lose good time, means that when you get to that point they've got to let you go.

DON KLEINE:: Right.

SENATOR CHAMBERS: The space between the half from the minimum is when they can, because of your bad behavior, deprive you of good time and the half is out the window. They don't have to release you if you don't mess up. So what you're saying is irrelevant to what we're discussing. If you'd make it strictly mathematical, then it would have a plausibility. But judges can still set those sentences. As the gentleman before you pointed out, and as Senator Pansing Brooks pointed out, if you say the minimum can be no more than one third of the maximum, you're going to serve that minimum. A judge is not going to let you out before that. But when the person knows that this is when I become eligible, it's worthwhile for me to behave and do the things that will let me get out now. But if the judge can give me a 40 to 50, then at best it's a 25 at the top and 20 at the bottom. You're going to be there for 20 years. I'm going to sit here, let them take care of me. A guard say to me, I say "f" you. They say, you're going to stay here. I say, so what? Go to the Parole Board. I don't even want to come see you. You're not going to let me out of here. I belong to you now. I'm your commodity. There's no incentive. Everybody needs an incentive and the only incentive you can give somebody who's locked up is a chance to be there for a shorter period of time. And it's difficult for the public to understand things because of the way the system is structured. I had something to do with the change in the good time law and let me tell you why. When they said you earn two months per year in four months, first of all, it was so difficult to calculate the good time they could even keep up with it.

DON KLEINE:: Absolutely, right.

SENATOR CHAMBERS: But by the same token, when they said you earn the good time while you're in prison, you start in prison with no good time, the good time accumulates as you earn it, what the prison was doing was developing a favoritism system. They say if we don't give you good time, you're not going to have a chance to get out of here sooner and we determine whether you get it or not. You can be as good as Jesus and we don't have to give good time if we don't want to, and your word against ours. So here's what I said, and I worked with the Director of Corrections. We're going to make it like a banking

system. We're going to give the inmate a stake in behaving. When you come in and you're locked up, you get a certain amount in your account when you get there. It's there for you. It's there for you to lose. If you behave, you get the benefit of all of it, day for day. Every time you mess up, you diminish your account and you lose time. And a state institution is not in a position to favor you and disfavor me. We all started on the same footing at the beginning. And whether people say the public understood it or liked it made no difference to me. I didn't want to corrupt the system further than was being done. And they would also tell inmates you can earn good time if you get a job and work in prison. But there never were enough jobs to go around. So they have favorites. They get people who snitch. And this may shock some people. There were-- there were guards who liked to have sex with males. They would have sex in prison. They had girlfriends in prison. And these girlfriends would get the good time and everybody knew who the girlfriends were and a lot of times everybody was afraid to bother them because you get in very serious trouble if you kill the guard's girlfriend. All that was going on while I was in the Legislature but nobody thought to do anything about it. So with the tools that I had, I did something about it. But there are prosecutors who can undo it all. And as I said, I'm not going to grill any prosecutors today because I know what you've got to say. But a point has to be reached where we accept your testimony but then we do what needs to be done because the Legislature has followed the prosecutors. They put mandatory minimums in. They have created humongous sentences for certain offenses and the prosecutors have used them to get plea bargains. Probably more than 90 percent of cases are settled by a plea bargain. The prosecutors don't want to work. I don't say every prosecutor, you'll notice. I don't say everyone. And you know why I'm taking the time? There is-- there's going to be a transcript. If I don't say anything it might appear that I'm accepting what you say as being factual. I'm not saying you're not telling the truth. I'm saying I have a different take on it than you do.

DON KLEINE:: I understand.

SENATOR CHAMBERS: And now this gives you the opportunity to further elaborate.

DON KLEINE:: All I want to do is just answer the, you know, about the harshness part. But people here don't know what I do, and I can only speak for Douglas County. But, you know, we have a drug court with

150 people and so they never get into the system. I have a diversion program with 100 people--these are felony cases, 100 people--and that we don't ever see them get into the justice system. I have a young adult court that has 50 people in it that people don't get into the system with that. I have a veterans court that we just started to keep people from getting into the system. I've tried to do as many things as I can to keep the-- it's not about being harsh. It's what's best for people. And so I just want to point that out that we do-- I do, do things, at least in Douglas County, to make sure that we help people and we don't put people in the system that don't belong in the system. And then I think the point I'd like to say about that rule, the judges know what the rules are, too, with-- right now with regard to the eligibility of parole. And sometimes I think the judges, because of the facts or circumstances of that particular case, say, I don't even want this person to have eligibility of parole for-- for 20 years, and there's reasons for that. And that's what-- that's what I'm saying. They say look at the whole facts and circumstances and that's their judgment with regard-- and they have a difficult job, too, to make those kinds of decisions.

SENATOR CHAMBERS: Mr. Kleine, what you've just said is why your colleagues send you here. How many counties are there in Nebraska?

DON KLEINE:: I think there's 93, if I remember.

SENATOR CHAMBERS: And how many prosecutors are there, assuming that each one decides to have a county attorney?

DON KLEINE:: 93.

SENATOR CHAMBERS: Do you mean to sit there and let this uninformed group of neophytes believe that in all 93 counties they're doing what you're doing in Douglas County?

DON KLEINE:: And I said I can only speak for Douglas County.

SENATOR CHAMBERS: Oh! So there are 92 other counties.

DON KLEINE:: Yes, there are.

SENATOR CHAMBERS: Just like there's only one county that has a black-tailed, fairy-tale, [LAUGH] prairie dog management program and none of the other 92 do. That's why I say they send you here. I'm aware of things you do. And you know that I'm aware of it and I

approve of it. But I'm not going to allow these others to escape because of how you do. But even in Douglas County there are some things that happen that I think are inequitable and I've got to do what I can as a legislator to formulate policy that is not based on what might happen in Douglas County or maybe some other county that has a kind of progressive approach. We have to cover the entire state.

DON KLEINE:: I understand.

SENATOR CHAMBERS: And I don't believe in overly harsh punishments for anybody but I believe that the punishment should fit the crime. And nobody has ever heard me say that if somebody commits a crime they shouldn't do the time. I say that we have to weigh all of what they call the equities and see what constitutes a humane, civilized punishment. And one thing that helps us to do that: If it was my child, and I care about my child, how much time do I think my child should get, how much time do they think he should get, we'll split the difference. There are rich people who can get their child off altogether. There was a guy that created an offense called influenza [SIC--"affluenza"], or something, meaning that he had this influence of rich parents who never held him responsible. So he couldn't be held accountable because he didn't know right from wrong. Then the judge aggravated that by falling into the same thing by saying, since you were never held accountable then, I can't hold you accountable now, so I'm going to put you on probation. First thing he did was dyed his hair, got his mother to go with him, and they ran off to Mexico. So that's what rich people can do. We see it. I am not saying we don't need prosecutors. I'm not saying every prison needs to be closed down. I do say there should be no death penalty, no question about that. But I'm saying that when we punish we should look at what the State Supreme Court in this backward state said when they abolished the use of the electric chair: Even as we punish, we cannot stoop to do to the perpetrator what the perpetrator did; that cannot be our standard. And what somebody else did will never be my standard as long as I'm in the Legislature because we are to be the civilizing influence. I'm going to show you why judges do like they do. It's not out of a sense of justice. It's not because they care about how much time a person gets off, the-- just half of the bottom sentence and half off the top, then you can be paroled and there's a good time. They look at what the public says. How in the world is anybody going to afford to come up with one tenth of a million dollars? These bonds that are being set in Douglas County are excessive and unreasonable

and I believe they violate the Eighth Amendment to the U.S. Constitution. These judges are doing that because they have been criticized for doing their job the way their judicial temperament shows them they ought to do it. And if I were practicing law--I'm glad I'm not because I couldn't do what I'm doing here--I would challenge these bonds as being excessive in violation of the Eighth Amendment. So that's what they do in Douglas County in response to the outcry from the public.

DON KLEINE: You know, since you brought that up, I had a meeting this morning with Dr. Foxall and people from Corrections because we looked at the detainees in Douglas County Corrections. I think 900 of the prisoners in Douglas County Corrections are pre-trial who are in there because of they can't make bond. So one of the things that we were looking at is how do we fix this from a risk assessment factor and a bond factor so that, you know, we can get that population where it should be so that's--

SENATOR CHAMBERS: I know what you do. That's why I want you to stop coming here. But anyway, I said I wasn't going-- and you don't feel this is a grilling, do-- I hope. We're-- I think we're having a discussion.

DON KLEINE: Yes.

SENATOR CHAMBERS: Okay. And that's all that I have.

SENATOR EBKE: Senator Krist.

SENATOR KRIST: Thanks for coming, Mr. Kleine. I-- and I agree with Senator Chambers. It's no fair picking on you. I know what you're doing and I know what Douglas County does. It's my county and I'm pretty proud of diversion programs and all those things trying to keep people out of prison. But I also look at part of that Council of State Governments study that we went through for years and that group of stakeholders that were sitting around the table talking. And one of the things that kept coming up was the amount of a drug or a substance, the residue, and the number of people that were being prosecuted that [INAUDIBLE]. I also look at people, and I'm not talking about the violent offenders, I'm talking about the forgers, the-- I mean if we-- we had a person who was in Tecumseh who was about to be paroled or be "jammed" out--I'm not sure which--within two months put him in a prison cell with a convicted murderer and

he's dead. I'm talking about that group of people that are not violent offenders. Every time we talk about this subject, one third or mandatory minimums, we always fall to the real trouble. And you see a lot of real trouble and I respect that. There has to be a point, as this young man came up and told us, where there's an incentive for those people who are not the murderers, they're not the violent criminals, to become part because we know that 60, 70 percent, maybe 80 percent of that population is going to get back into society, and keeping them in prison. So I get your logic in terms of you see the worst of the worst and I can understand and the passion is there and I respect what you're doing. But I think we have to have a discussion, a reasonable discussion about judicial discretion and independence and what those sentences look like particularly for the nonviolent offenders, my opinion, and most of that comes from obviously not being a lawyer but being involved with--

DON KLEINE:: Sure.

SENATOR KRIST:: -- this business for ten years.

DON KLEINE:: But the IIA, the IIs and the IIAs are-- we're talking about violent offenders for the most part.

SENATOR KRIST:: Right.

DON KLEINE:: We're not talking about the theft cases and this situation on this-- in this statute.

SENATOR KRIST:: And we came to a determination I think with LB605 that we could look at this group differently, that we could look at this group, and we made those changes.

DON KLEINE:: Right.

SENATOR KRIST:: I think we came off that track a little bit at the end because we went back in and shifted some things around the Council of State Governments would have liked us to be more aggressive with. But that day has gone by. We have to keep having this discussion, as painful as it is. And I'm with Senator Chambers. Send somebody else so we can really get pissed off at them. Thanks, Chair.

SENATOR EBKE:: Senator Morfeld.

SENATOR MORFELD:: Thank you for coming today, Mr. Kleine. What's your position on LB449?

DON KLEINE:: I don't-- what's LB449?

SENATOR MORFELD:: The Black-Tailed Prairie Dog Management Act. Are you in favor?

DON KLEINE:: Is that Senator Chambers' bill? I'm for that.

SENATOR MORFELD:: I think it might be. I think it might be.

DON KLEINE:: I'm for that.

SENATOR MORFELD:: There's a correct answer to this question.

DON KLEINE:: That's recorded.

SENATOR KRIST:: Can we quote you?

SENATOR MORFELD:: No, I appreciate you coming today and I-- we have differences on this bill obviously but you do provide a model and a system in a county that I think is the exception. I think a lot of counties could follow your model. And I know there's resource concerns, too, in other counties. So thank you.

DON KLEINE:: Thank you. Any other questions?

SENATOR EBKE:: Any other questions for Mr. Kleine? Thank you for being here today.

DON KLEINE:: Thank you.

SENATOR CHAMBERS: I have one more comment. You're too good to be a prosecutor.

SENATOR EBKE:: Next opponent.

SENATOR KRIST:: There's an opening on the Supreme Court.

SENATOR CHAMBERS: And like a hound of heaven, I'm pursuing that judge because I'm getting things that are going to make me follow his

trail. He quit for a reason-- while this gentleman gets ready to testify.

SENATOR EBKE: Okay.

COREY O'BRIEN: Good afternoon. Chairman Ebke, members of Judiciary Committee, my name is Corey O'Brien; that's C-o-r-e-y O-'-B-r-i-e-n, and I represent the Nebraska Attorney General's Office. I'm the criminal bureau chief. I just want to reiterate some of the comments that Mr. Kleine had. But I also wanted to put a few things on the record. First of all, I've been a prosecutor for 20 years now, learned under Don Kleine in the Douglas County Attorney's Office, and then followed him here to the Attorney General's Office. We want to be part of the solution and not the problem. And we want to sit down at the table and try to figure out how this-- we can get ourselves out of the situation. We all recognize that there are issues with the Department of Corrections right now and we need to find some solutions. When CSG came in here, I think the bottom line that they told us is that we're going to help you get through this but we're not-- we're not going to do this at the expense of risking public safety. In all due respect, with respect to this particular bill, LB483 [SIC--LB842], that's precisely what we're talking about. We're talking about violent criminals. We're not talking about drug abusers. We're not talking about marijuana users. We're not really talking about thefts. We're talking about rapists. We're talking about kidnapers. We're talking about child pornographers. We're talking about robbers. We're talking about people that commit firearm offenses. One other aspect of the bill that I wanted to put on the record is that the bill would also prohibit now the imposition of a life-to-life sentence for second-degree murder. There are some offenders that I prosecuted myself, and I know Mr. Kleine has prosecuted, for second-degree murder. The judges found that their crimes were so egregious, their penalties were so egregious that they deserved that sentence, and we certainly object to abolishing a life-to-life sentence for second-degree murder. One other aspect that I'd like to bring up, and I don't know if I'll have time to do it, but I'd like to talk just briefly about this notion that Nebraska prosecutors are solely responsible for the situation we find ourselves in with Corrections. And I wanted to give some quick data. According to Nebraska-- I'm sorry, the U.S. Department of Justice, Nebraska currently incarcerates about 270 inmates per 100,000 residents. Unfortunately we only have beds for 172 inmates out of that 100,000 residents or per capita. If you look to our neighbors to

the south, in Missouri they have 530 people that they incarcerated per 100,000 yearly and they have beds for 529 people per 100,000 every year. If you look at all the surrounding states surrounding Nebraska, our numbers are significantly low in the number of people that we incarcerate per capita. That includes Iowa, Colorado, and Wyoming. And so I have those data and figures. So I-- I want to stick up a little bit for prosecutors that we're not necessarily way out of line with everybody else that surrounds us and incarcerating too many people. Like Don said, we look for solutions like the drug court program and diversion to try to divert people from going into the prison to begin with. If any of my prosecutors ever get excited or happy for putting anybody in jail, they'll be out of a job tomorrow. That's not what we do. There's not a good day about putting somebody in jail. But it's what we have to do with the situations we're faced with. That's all I have for right now. If anybody has any comments, I'd be certainly happy to entertain any questions they have as well.

SENATOR EBKE: Questions? Thank you, Mr. O'Brien.

COREY O'BRIEN: Thank you.

SENATOR EBKE: Other opponents?

DENNIS SEXTON: Good afternoon, Senator Ebke members of the Judiciary Committee. My name is Dennis Sexton, D-e-n-n-i-s S-e-x-t-o-n. I'm a 14-plus year officer with the Omaha Police Department and I'm, jeez, almost 10 years as treasurer of the OPOA at this time and I'm here on behalf of them. While in opposition technically to this proposed bill, I think you'll find that at the end of my statement here I may come across as more neutral more than anything. The OPOA understands and advocates for the idea that we can't continue to operate under the notion that we arrest and incarcerate our way out of issues we have both with recidivism and prison overcrowding. It's why the OPOA frequently becomes involved in programs such as ReConnect Incorporated in Omaha that allowed for job skill/life skill training for people re-entering society. But moving offenders out of the prison system more quickly is not necessarily the answer, in our opinion. One, we arguably believe it would further exacerbate the issues that have come along with good time by lowering the minimum sentencing standards. And we've been banging that drum for years that good time needs to be earned and not necessarily in the sense of additional time, longer time, but in the sense of if you're wanting to really, truly help offenders, we need to reduce the reoffending.

The answer lies in pushing-- I'm sorry. The answer lies in rehab to include alcohol, narcotics, education, recovery, along those lines, job skills training, life skills training, things that allow them to reintegrate society, having tools under their belt so that they don't reoffend and re-enter the system. Most importantly from our perspective, we believe an update and improvement to our post-supervised release system is necessary, one that includes the upper-tier class felonies, Class IIA through Class I, in addition to the Class IV through Class IIIA felony crimes that already have post-supervised release in place. In the end we believe that the investment we-- that we can make when we say we want to keep people out of prison, improve their lives via rehabilitation, shouldn't come at the expense of shuffling offenders in and out of our strained prisons just to get them out more quickly in order to save dollars. There's always potential for costs that are greater than dollars and cents to our public and our taxpayers. Be happy to answer any questions.

SENATOR EBKE: Thank you. Any questions? Senator Chambers.

SENATOR CHAMBERS: It seemed like you were talking about accountability. Why is it that police officers don't want discipline action-- disciplinary action that's taken against them made public?

DENNIS SEXTON: I'm not sure that that's why I'm here today, sir. However, there is-- there's numerous reasons why.

SENATOR CHAMBERS: You don't have to answer.

DENNIS SEXTON: It could--

SENATOR CHAMBERS: I'm making a point.

DENNIS SEXTON: I understand.

SENATOR CHAMBERS: See, they talk about accountability and then their union contracts--

DENNIS SEXTON: I'm accountable to the people I work for every day.

SENATOR CHAMBERS: You don't have to respond. In their union contracts they want a provision that discipline has to be kept confidential. The chief will say there was some action taken but we can't tell. They don't want the public to know the wrong that they have done. And

so when they come and say make people responsible, I say, physician, heal thyself. And it's not you personally. Maybe it is but I'm not talking about that because I don't know that to be a fact. But I know the way cops have it and I know it's like that all over the country. They talk about responsibility but they don't want to have to assume it for the wrong that they do. And that's why a guy is working for Omaha who got kicked off the police force in Lincoln. And if you haven't been aware of that, I'll send you the article. That's all that I have.

SENATOR EBKE: Thank you, Senator Chambers. Other questions? Thank you for being here today.

DENNIS SEXTON: Thank you.

SENATOR EBKE: Are there other opponents? Anyone speaking in a neutral capacity?

SENATOR CHAMBERS: On a bill like this?

SENATOR EBKE: Well, I've got to ask. Okay. Senator Pansing Brooks, we have no letters, so it's all yours.

SENATOR PANSING BROOKS: Thank you, Senator Ebke. And thank you, committee, for your thoughtful questions. Just a couple things to follow up. Attorney General-- Deputy Attorney General Corey--I just totally spaced his name--

SENATOR KRIST: O'Brien.

_____ :: O'Brien.

SENATOR PANSING BROOKS: -- O'Brien--thank you, sorry--mentioned the removal of the term of life imprisonment and I'm proposing to remove this from the statute because I believe that a judge shouldn't be able to sentence a second-degree, life-to-life term. The maximum there should not be the minimum on these offenses. Since our purpose is to get people out on parole sooner, then this new language would allow for the opportunity. These offenses can still be convicted as a first-degree offense which are intentional offenses with the mens rea required for an intentional offense with the option of a minimum term of life. But I would also note that this applies to all offenses. There are no attorney-- there is no incentive for individuals to plead when the minimum is too high. So again, a life-to-life for

second-degree gives no incentive. The county attorneys should like that more-- that more individuals would have incentives to plea, which would save time and costs. Again, I'm happy to talk and work with people but was not ever contacted by anybody on this bill. I want to say again for the record that this bill is exactly what we voted on unanimously in 2015 and we put it into LB605. Then the people who are here behind us got all upset and said, no, we've already decided what LB605 is going to be, you need to pull it. I didn't make a big stink about it because I was a first-year freshman senator. And people were very upset with me for bringing this bill. So now when we are seeing that LB605 isn't working as we'd hoped, it seems quite reasonable to bring this forward and have this discussion. Clearly CSG discussed the one-third rule. They talked about flat sentencing. And so this worked from the '70s to the '90s. Nobody has-- nobody has disputed that. Nobody has come forward and said, oh, we have so much more crime, this is terrible, we can't ever go back to that. No one's saying that, you notice. So we have an overcrowding problem. And the fiscal numbers, if you look at them again, yes, it's a least \$2.7-- \$5 million. But I-- I would argue that since they're talking about that it's \$31,271 per inmate and you have 606 inmates that-- or 660 inmates that are going to potentially be released, I would argue that's an \$18 million benefit to our state. So we can-- we can quibble about exactly how, how the different entities are figuring this out. But I could not be more happy with that fiscal note pointing to why this is necessary. The other thing is that, again, I tire of law enforcement and county attorneys coming up as the only ones who care about the safety of our communities, as if we don't care about that, we just want to release everybody, that we care about having open prisons and we don't care about the safety. That is insulting to me; it's insulting to all of us. That is no-- never have I heard that kind of comment from any senator on the floor, any senator in committee. And it does make me frustrated that they're the giant protectors of the safety of our community. That's not true. We are working hard about that. But we also have to balance dollars. That is our duty as legislators. So again, I think that this is one way to look at this. CSG encouraged avoiding the flat sentences. We have the second most crowded prison system in the United States. We're currently being sued. We know that 95 percent get out. I think it's an insult to the Parole Board to say, oh, well, if you have that parole date early, then they're going to just let everybody out. Where's that discussion? There's no way that the Parole Board is going to just let everybody out. So we-- we

have-- I have one more piece that I want to have passed out to everybody that was-- that I was going to pass out, and I will pass out the next bill, but it shows that-- it shows the numbers on parole and basically 67 percent--two thirds--of those who are parole eligible are in for non-violent crimes. So that discussion of all these people that are going to be let out, 67 percent when you add up those numbers, it's the very bottom graph with the semicircles at the bottom of the page. The IIAs are theft over \$5,000, burglary, forgery over \$5,000, and delivery of various drugs. So could there-- maybe something stronger? Why haven't they reached out to me to say, you know, we've got to worry about the most violent crimes? But until something is decided, we've got parole there protecting us and making sure that these people come in on the parole eligibility date and they-- and they're told, no, you can't get out, you still have your core programming of violence reduction or anger management or drug and substance abuse, those core programs, and then they are going to be directed to take those programs, not released, but it initiates the whole process. And then our communities will be safer. We will be doing our jobs and making our communities safer. So again, I mentioned that this is the day before Groundhog Day. I feel like it's Groundhog Day today and I-- we're seeing this again and I hope that we will take some significant action. That fiscal note shows that it's something that can be done. And I also had one other thing that I passed out to you that came from CSG. I left Heath Mello's signature on it when he was here. The Justice Reinvestment in Nebraska final report estimates that the prison "jam-outs" would drop as much as 70 percent if the policy framework is implemented effectively. Courts frequently impose structures that allow no opportunity for parole or so short a period that it provides little chance of meaningful postrelease supervision. Therein lies the problem. We can do something about it. Thank you.

SENATOR EBKE:: Senator Krist.

SENATOR KRIST:: For historical purposes and to put it on the record one more time, this administration came in after several years of discussion with CSG. LB605 was crafted to do what Council of State Governments and our study group needed to do. That same plan, for anybody who's listening, was actually implemented by the state of Georgia. And not only was it implemented but it was a program that was not abandoned. We've abandoned most of the things that CSG advised us to do. We've gotten off the road and we don't have a map. If we would have stayed true to that mission, would we be like

Georgia where they've closed down two or three of their facilities--I think three at this point? So I'm-- I'm with you and you need to keep fighting for it because that withdrawal, that mandatory negotiation that happened after we had LB605 drafted that was-- that was requested by this Governor, who was requested by the Attorney General, and a lot of stuff was taken out of LB605 in content, including this, is the reason we are not achieving those goals. And I'm even more offended that he has disbanded that stakeholders group, and there are a lot of people in this room who have testified, including me, who were in that group, and you. It's on him. It's all on him. And I honestly believe that LB605, if implemented the way we were instructed and we had drafted the original LB605, we'd be light years away from where we are right now.

SENATOR EBKE: Senator Chambers.

SENATOR CHAMBERS: My final comment.

SENATOR EBKE: Okay.

SENATOR CHAMBERS: I'm not like Donald Trump when I condemn the media. But here's where I condemn them. When the county attorney says we're soft on crime, when the Governor says I'm soft on crime because I'm against the death penalty, they print that. But when I point out that it's the prosecutors who are soft on crime because they're the ones who give plea bargains to people so that they don't have to serve the amount of time that the heavy sentence they say we should put on the books they should have to serve because they're dangerous. They want those heavy sentences so that they can get a plea bargain. There are-- if a prosecutor doesn't have a conviction rate in the high 90s, he's, or she, is not a good prosecutor based on the standards. A huge percentage of those are based on plea bargains. If they come in here and say we don't want the one-third rule-- and then they trick cops into coming here who don't know anything about the law because they think we're soft on crime. If they think, as Mr. Kleine said, that a judge should be able to impose a huge sentence, why will he let that very one who he says the judge should impose a huge sentence on take a plea bargain and get some time less than half of that? And you know how the prosecutors justify it? It saves time, it saves money to have plea bargains. Then why do they insist on the humongous sentences? So they can batter somebody into a plea bargain. They know that they could not take all those cases to trial, have the person convicted, and the judge place the sentence on them that they come here and lie

to us and say ought to be there because there wouldn't be enough rooms in all the prisons together to lock everybody up in. That means that if you sentence this person to 80 years, that doesn't fill up the jails, the next one by a judge sentenced to 80 years, then pretty soon they're going to stack up because all these 80 years come in but none of the 80 years are going out. And that's how it gets overcrowded. We don't have sense enough to recognize that as senators. We can count how many cattle we got tonight and count tomorrow and see if we've got that many tomorrow. And if some are not there, we know they didn't disappear. Somebody came and took those cattle. When it comes to dealing with human beings and we're supposed to be intelligent people, we check our brains at the door. Why don't we get rid of plea bargaining? Then you would see prosecutors saying, if you're not going to let us plea bargain, you have to reduce the maximum sentences then because there is no place for these people to go and they've got to get some kind of time in jail. So that means it's got to go to trial. We have to make a case. We have to say how heinous this crime was and how dangerous this person was. And the jury has to convict of the highest sentence that they can. If it's first-degree murder, if you can call it second-degree murder or manslaughter, they'll go for murder. That's the highest they can go. Then the judge got to put the maximum sentence. Then the jails get overflowing. Then who has to deal with it? We do. Do you see prosecutors coming to any meetings saying we've got to figure how to do something about overcrowding? No. They say, overcrowding, we don't-- we can't think about that because these fools in the Legislature are going to have to do it. And I think we need to put all of this together and look at it in a comprehensive manner like the Koch brothers and other so-called conservatives who were forced to look at it. It's too expensive. It's counterproductive. And in states where they were forced to implement some reforms, they've closed prisons and society is no less safe. There is no outbreak of crime. They see that it was prosecutors on this hand and judges on the others, afraid of being called soft on crime, that have created this problem. Mr. O'Brien knows it. Donald Kleine knows it. The officer back there, he's sincere, he probably doesn't know it. He's not in on these, these sessions all the time. And it seems counterintuitive to say that you shouldn't have harsh punishments for crime, but when a cop does something wrong the cops all band behind that cop and don't even want that cop punished. The union defends a cop no matter what the cop has done, and then they put into their contract that the public cannot be told what their servants were

guilty of when they were punished, and yet they have the discretion that even judges don't have. Judges don't have the discretionary right to take a human life. Cops do. Cops do. They have more power than anybody in this country, more power than the President. They can kill somebody when they think it should be done and just say, well, I was afraid for my life. [INAUDIBLE] some of the scariest people in the world. You let me shoot somebody under the circumstances they do, shoot somebody in the back and say I was-- I feared for my life, and that's what they do. And I'm saying it in front of a cop. I say it in front of the prosecutors. I say in front of the judges. And I'm serving notice publicly that I'm on the trail of that former Nebraska Supreme Court judge who quit all of a sudden and said he quit because he wanted to be with his family. He had been a district judge. He was noted for being very meticulous in his work, very dedicated. He knew what it meant to be a judge because he had been a district judge. He knew what it would mean to be a judge on the Supreme Court. He's relatively young for a judge. Why did he quit? Why? I'm going to write a letter to the Chief Justice and I'm going to tell him I believe, it is my opinion based on belief, based on information given to me, that he quit because of scandal that he did not want made public. Now who in this Legislature or anywhere in this state would dare say that on the record about a former Supreme Court judge? Nobody, not one person, except Senator Ernie Chambers, whom they all hate but whom they'd all run to if they needed help and they had a case, because I will not back down, I will not be scared off, I will not be bought off. And I have an obligation as a public official who took an oath. But the constitution doesn't require you to say "I swear." You swear, if you believe in swearing, or you affirm. You simply make the promise that I'm going to discharge the duties of this office to the best of my ability. And my oath, I'm on oath to do that and I don't do it because I'm afraid God's going to strike me dead or I'm going to hell. I do it because my word means something. And I gave my word to the people who sent me here, not to the state, not to God, to the people who sent me here but primarily to myself. And wherever Judge Kelch is, people will tell him-- is there-- are there any media people here? I guess not. See, they are limited in what they can print unless somebody is calling me something, unless somebody is accusing me of something, then they print that. Somebody accused me of living in Bellevue and they did several stories on it. I had records of paying utility bills for decades, bought my own house, have the trees trimmed. Ten thousand dollars, that's what you all don't get to hear when we talk about that bill on people's

election being challenged. We got a white senator who's claimed to live in basements and when the election people sent these cards, the base-- the cards came back. He couldn't be found. He's still in the Legislature. He admits he lives in Omaha. He was collecting expense money for going where he wasn't really going. Everybody knew it. Now the one guy who, because he's not a Christian, exercises in his life a higher standard of morals than anybody in the Legislature--not condemning anybody, making a point--is the one who has to go through a charade, and during that charade to prove that I don't live where I live: What size tank does your toilet stool have? And if you flushed your toilet this many times, you'd be using more water than that. And these senators sat up here and took that seriously. And a former judge sat up here and let that nonsense, that charade go forth. So I'm saying what I'm saying. I'm going to see. But you know what they'll say, the editors? Well, you don't have any proof, you can't print that. They don't make them get proof when they print stuff about me. I'm putting it on the record and when I do come forth with evidence, the media are not going to get it except the ones that I decide I'll give it to. So I should have a lottery and let them decide by drawing lots which one will get the story. Now I know that I'm protected when I say things during debate on the floor of the Legislature or doing it during a hearing. And that's how these Republicans are going to release that report, that bogus report. They're going to read it into the Congressional Record or read it on the floor of the House because you can commit what would be a violation of the law for what you say if it's done somewhere other than in debate. So they know that law and they are going to read that bogus report in that fashion. They're not going to say what's in it because they are giving away information that it would probably be a crime for them to give. I know you all are aware of all that because you all are as smart as I am, you all pay attention. But you all won't do what I will do. When we have a senator like Senator Pansing Brooks who will bring us a bill, we have the opportunity to do what we know needs to be done, but we lay our duty aside in order to let prosecutors do what they want to do easily. And the case I was talking about, then I'm through: In Omaha there was a man who murdered his wife in Douglas County. They gave him a plea bargain. He got out in 11 years. Then he killed his mother. He killed his father. He killed his niece. And now you know people are saying, why did he get out? They don't look at the prosecutor who made the plea bargain, do they? Some of you all may not have even known that happened. I try to look at the big picture. Even though a county attorney did that, I

would fight harder than anybody else to maintain the system of plea bargains. There can be the idealistic. There can be that aspirational. But there also has to be the practical. So in a very flawed world we have to be practical and do the best that we can to allow the world at large to clank, stumble, sputter along, and maybe move forward a half inch, backwards an inch, but we should always at least be pointing in the right direction. Most of the things I've tried to do in this Legislature I know are going to fail in terms of being successful but I'm going to try to at least point us in the right direction, like those preachers. They say, lift your eyes on high--and you look up in the sky--that's where you want to go, and then he's done his job. Then, after preaching about the spirit, he goes down to the tavern and imbibes of a different kind of spirit. That's why the tavern and the church ought to be side by side: because they both deal in spirits; they both becloud the mind, they both befuddle the people and they have less sense when they come out than they had when they went in. And I'm through.

SENATOR EBKE:: Thank you, Senator Chambers. Any other questions? Okay. That closes the hearing on LB842. We will move to LB868. Senator Pansing Brooks.

SENATOR PANSING BROOKS:: Hopefully this is clearing the room.

SENATOR EBKE:: Don't see that many people here anymore, so you might be.

SENATOR PANSING BROOKS:: Oh, the room is clearing. That's good. Okay. Thank you, Chair Ebke and members of the Judiciary Committee. For the record, I'm Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28 right here in the heart of Lincoln. I'm here today to introduce LB868, a bill that will help ensure parole-ready individuals receive the programming they need as they prepare to come back into our communities. I am bringing this bill because too many inmates are being deferred when they come up for parole due to the fact that they have not received the clinical programming that the Board of Parole requires. Further, when these deferrals happen the state is not acting in a systemic way to get these individuals into programming. The end result is that more people stay-- are staying in prison longer at taxpayer expense and then "jamming out." LB868 makes several simple changes to remove some of these barriers to parole. First, LB868 directs the board of-- Nebraska Board of Parole to inform the Nebraska Department of

Correctional Services within ten days when an individual has been denied parole based on programming and to provide recommendations on programming or treatment in which the offender should participate in order to enhance his or her likelihood of release--pretty common sense. Second, LB868 provides that the Department of Corrections shall initiate the recommended programming within 30 days or obtain written statements from offenders who refuse to participate in the program. Third, the department shall also provide reports to the Inspector General of the Nebraska correctional system on individuals who have been deferred by parole for lack of programming and whether programming took place or the reasons why programming was not received or was denied. I know from my previous work chairing the LR34 Department of Corrections Special Investigative Committee that there is a vicious cycle of problems in our correctional system related to overcrowding. Our overcrowding programs-- I'm sorry. Our overcrowding problems lead to understaffing and assaults, which leads to a lack of programming, which leads to parole-ready individuals jamming out, which leads to recidivism, which then leads again to more overcrowding. I know you've heard that, that cycle that I keep talking about. I have come to believe that we must tackle these problems on all fronts in order to alter this dynamic. LB868 seeks to tackle a part of the problem. I have submitted four information sheets for the record that were put together by the Nebraska Board of Parole that you have before you. The first sheet shows that in 2017, of the 3,552 parole deferrals, 1,200-- or, I'm sorry, 1,812, or 51 percent, did not have the required treatment. This was the total number of deferrals, not an individual account of specific individuals who are denied parole, so this means that many of these individuals reviewed for parole were likely deferred multiple times for the same reason, most often a lack of programming. I also received additional data from Parole Administration that shows how many parole hearings there were in 2017 and why they were denied. The difference in numbers is because not everyone who is reviewed for parole gets a hearing. This hearing's-- this data shows that of these hearings 308 people were denied parole for reasons categorized as "other"--you have that graph before you--which was by far the largest reason. Since I was curious as to what "other" meant, I asked Parole Board Chair Rosalyn Cotton to break those "other" numbers down and the numbers showed that they were denied parole because they didn't have the required programming. This information is on page 2 and 3 of your handout. On the fourth page of your handout, on the bottom, you will see a graph that I just passed out previously that shows the

numbers on types of offenders. And it shows that most of those before the Parole Board are nonviolent offenses. Nearly 67 percent, by our calculations, are nonviolent. Also, we know that at least 95 percent of the individuals in our prison system will be released back to our communities at some point according to the Bureau of Justice Statistics. We need to prepare them for life on the outside so we are all safer. This bill isn't meant as an indictment of any agency or any person, but it does represent measures that we should already be doing. In fact, the LR127 Committee's report in December said, quote: The Department of Correctional Services should continue to prioritize its efforts to provide adequate and timely programming opportunities to inmates to ensure they are appropriately prepared for reentry into the community and to ensure that they are parole ready to alleviate overcrowding, end quote. As of 2017 there were 967 parole-eligible inmates in Nebraska prison facilities and 263 inmates on waitlists for some sort of behavioral or mental health programming or treatment whose parole eligibility dates had already come to pass, according to the LR127 report. So LB868 is a commonsense approach and proposal to help accomplish those recommendations that have already been made numerous times in the LR127 report, the LR134 report, the bureau report, the Council of State Governments, from the Inspector General and many others. There is no fiscal note on LB868 and the Department of Corrections says they can meet the requirements of the bill using existing resources. With that great news, I ask you to advance LB868 and I'll be glad to answer any questions you may have.

SENATOR EBKE: Questions for Senator Pansing Brooks?

SENATOR PANSING BROOKS: Thank you.

SENATOR EBKE: Okay, first proponent. Proponents? Do we have any proponents?

SPIKE EICKHOLT: Good afternoon, Madam Chair and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of ACLU of Nebraska in support of this bill. Senator Pansing Brooks explained the bill. It's fairly straightforward and I think it's-- we think it's a very good bill. I think it sort of addresses a dilemma or maybe a problem or that seems kind of frustrating and elusive and that is it sets in statute a process regarding the interplay between the Department of Corrections and the Board of Parole. When you look at those quarterly data sheets you see a significant number of inmates in the prison system who are

parole eligible. There constantly seems be an issue of why aren't these people paroled. Well, the Parole Board denies them because they're not ready. Why aren't they ready? Because they don't get programming. Well, how many? We don't know. This at least has an individual process that each individual inmate can follow. If they appear in front of the Parole Board and are denied because they don't have any programming, the Department of Corrections is notified. Department of Corrections is then directed to explain to the individual inmate what he or she needs to do. And so there's at least some sort of process. So even though the concept is simple, I think it's very important and we would encourage the committee to advance the bill. It is a, hopefully, a way to address the lack of use of the parole process for many of our inmates and I'd encourage the body or encourage the committee to advance the bill from committee. It was encouraging, like Senator Pansing Brooks said, that the fiscal note indicates that they can absorb this, at least Department of Corrections can. So I'll answer any questions.

SENATOR EBKE:: Any questions for Mr. Eickholt? I see none. Thank you.

DOUG KOEBERNICK:: For the final time today, good afternoon, Senator Ebke and members of the Judiciary Committee. My name is Doug Koebernick, K-o-e-b-e-r-n-i-c-k, Inspector General for Corrections, and I'm testifying in support of LB868. I think Senator Pansing Brooks and Spike did an excellent job of explaining the bill. I did want to just go on the record to support it primarily because the more light that you can shine on the parole process, the need for programming and what's going on in the department and their ability to provide more programming, that I find no fault in doing that and I think this is an excellent bill. The Parole Administration and the department have increased their efforts in regard to programming and this would only add to that. And I think earlier today we heard Julie Micek talk about some of the new things that they're doing in Parole Administration which are pretty exciting and it kind of falls in line with that. Under the bill my office would get some additional reports from the department and I'm always open to receiving more information from them. And so with that I'd like to just ask for your support of this legislation.

SENATOR EBKE:: Okay. Thank you, Mr. Koebernick. Any questions? Thanks for being here. Next proponent.

JASON WITMER: Hi. I'm Jason Witmer, W-i-t-m-e-r, again. And as far as the-- just the generalized of the-- as far as the bill, I just want speaking of programming and the educational part of it from my perspective and view of being incarcerated. And I would like to state from the beginning because I feel it has relevance to what-- what I'm saying is I was listening to some of the other stuff and I am, or was, a violent offender. I had shot another gang member. I had got out. Within three months I was involved in robberies with my other friends. When I got reincarcerated I was very extreme, in fact, to the point of got kind of notorious in the prison system so-- and it was kind of-- people use me as an example of how prison makes people worse and worse and worse because, you know, I locked down the county jail when I got sentenced. I caused a lockdown in LCC, nothing of whatever's going on now degree. But with that being said, there were men in there over time who had part of the educational programs before they started disappearing and when they did start disappearing they would still get promoted in them, which some would have to learn later on, since wanting to educate themselves and then educate other people in these different aspects of-- you know, that brings about self-awareness. And them doing time and understanding some of the aspects, they had more patience to try to deal with men like me, you know, that were like grown children, really bad grown children. And it was their efforts, over and over and over, that slowly seeded in me to, long story make short, to somehow, which seems like an amazing thing to the people who knew me then, is to become like them. You know, I started reading and I started participating in things just to see what I picked up. And so for-- I went to Tecumseh when it opened. And it wasn't until like two-- it was years, years. So I was in my 30s before I was getting it to any degree and participating in some of these things. And for like the last five, six years, the more I participated, the more I picked up, the more it had effect on other people who were working their way out of the system. And with that being said, it's-- there's something amazing about the education programming that puts this thing in your mind that makes you more self-aware of other people because it makes you aware of yourself. And so when you get out, you make different choices when you didn't even think it possible. So as far as from where I was then to where I am now, you know, I haven't got out. I have a police officer. I have friends who are police officers not because they think, oh, this will be a good thing but just that's happened. That's like something that would seem-- condemn the people in there that were still in the

mentality is a police officer or friend. But you can see past that and they showed me they can do that the same. Questions?

SENATOR EBKE: Thanks for being here. Questions? Comments? Senator Chambers.

SENATOR CHAMBERS: Your Honor, I present Exhibit A for Senator Pansing Brooks's bill. Thanks for coming.

JASON WITMER: Thank you.

SENATOR EBKE: Any other questions or comments? Senator Hansen.

SENATOR HANSEN: Thank you, Senator Ebke. Sir, you stopped abruptly. Was there anything else you'd like to say?

JASON WITMER: I guess it's not necessary to add, but I would like to add. So from where I was to where I am now, and people who are still continuing to do things like-- so the bill wants to put a system into effect of programming. And I think some of you are well aware in the mid-- like 2004 or '05 the colleges got cut out, the programs got cut out, and now they're trying to put more things in but they don't have staff or room. But what I'm trying to say is I'm not, like, a good guy. I'm a regular, average guy, but that stuff has made me somebody that's not-- unless I ignore everything I've learned and discarded it, I'll never be that person of any degree again--and that's a public safety factor right there, that's making public more safe--a violent offender who was very on the course of-- because I wasn't-- I didn't think about, ooh, look what I'm doing to them. I'm just doing this, what me and the homies do, for lack of better terms. And now, as you know, when I do things, I have second thoughts about it. I have thoughts about what my daughter sees in me. I have a daughter who's a correctional officer now. Her father was in prison the whole time and she's moved up to become-- she's going towards a police officer. She's getting a criminal degree at Peru in May. And she's getting that on her resume but she's in the institutions I was. And she's trying to do her best because she feels like she can do more and she's going to do more. These things have shown effects that will affect the community. And the reason I bring up some of them men that picked up some things and what they're doing inside is showing you that when you have these programs, some of these men, who some of them are doing life, start affecting people who are not doing life, who are coming back out. So there's an effect inside of the prison

people who people dismiss. It's not about forgiving their crimes. But they-- the problem is becoming the solutions. You don't have staff but sometimes you have the population doing the things that we wish they would want-- we want to be done: rehabilitation, as the officer said; "abilitation," [INAUDIBLE], bringing some type of degree of something of understanding that may not even have ever been there, let alone re-bring about something that possibly was there. So public safety, education is probably the greatest and the biggest thing you can do in the correctional system. I'm an utterly believer in that because when you educate a person, they start educating themselves, even the smallest degrees, and becoming self-aware, and when a person becomes more self-aware they become more aware of other people being people that should have at least a minimal amount of respect of what their decisions could affect.

SENATOR EBKE: Thank you.

SENATOR HANSEN: Thank you.

SENATOR EBKE: Okay, thanks. Next proponent.

MARGE SCHLITT: I almost said good evening, but good afternoon, Senator Ebke [INAUDIBLE].

SENATOR EBKE: Oh, I think it's still evening. I still count it. I count it as evening after 5:00.

MARGE SCHLITT: Fascinating. Thank you very much, Committee. And thank you, Patty, for introducing this bill. This bill is-- comes to-- very close to my heart because it's on programming in prison. I'm Marge Schlitt, M-a-r-g-e S-c-h-l-i-t-t. I'm a-- I've been a volunteer in prisons for 30 years. I've been doing mainly a program called Alternatives to Violence Project, better known as AVP. We-- this is an international program. We give it in 30 states in this country and about 50 countries around the world, about 1,000 workshops per year. We're all volunteers, all the people who give these AVP workshops, and they're 18 hours long, each one. I give them once a month. The pay that we get is the light bulbs that go off when we see people figure out through these workshops that there's better ways of solving their problems, there are better ways of resolving their conflicts, there are better ways of making their life go better so that they will not recidivate, they will not go back to prison, and their-- the results are statistically wonderful. That programming is

something that's so more important in prisons than most people realize. People don't stop being the way they were when they went in by just sitting there, being warehoused. They changed when somebody gives them a good idea and they really need people who are going to help them figure out a better way than they grew up with. It's one of the problems that I see in our Nebraska system is that they don't start getting programs for the most part until they're just about to get out and then wonder why they have-- don't get them all in before they're supposed to be released. They should have programs the minute they come to prison. They should start right away so they can start practicing these programs and because it's a positive way to make people good and healthy. So I really hope that the-- this bill will help the Department of Corrections and the Department of Parole work harder on getting the parole-- the programming that people need earlier. Thank you.

SENATOR EBKE: Thank you for being here. Any questions? Comments? Okay. Thank you. I don't think anybody else is here to testify. So we have one letter of support from Annette Dubas from the Nebraska Association of Behavioral Health Organizations. Senator Pansing Brooks.

SENATOR PANSING BROOKS: Thank you. Thank you, Chair Ebke. Again, I just want to briefly say I'm very pleased by the fiscal note. This was a good day of fiscal notes. That-- you know, the comment that-- I want to thank Mr. Witmer for his testimony. He said that education is the greatest thing that you can do in corrections and I totally believe that and it's true not just in corrections but in every facet of our society. I want to thank him for his courage. And I thought of that word as he was speaking because that's a lot to tell. And courage, the root word for courage is "coeur," which is the French word for heart, and it's strength of heart. And because of the strength of his heart, he gives us hope in rehabilitation and he is a prime example of that hope. So I want to thank everybody who came to testify and thank you all for your time.

SENATOR EBKE: Okay, this closes the hearing on LB8--unless somebody has a question--on LB868.