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Judiciary Committee
February 06, 2014

[LB785 LB907 LB999 LB1007]

The Committee on Judiciary met at 1:30 p.m. on Thursday, February 6, 2014, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB785, LB1007, LB907, and LB999. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Mark Christensen; Colby Coash; Amanda McGill; and Les Seiler. Senators absent: Al Davis.

SENATOR ASHFORD: Welcome, everyone. We have...you are in the Judiciary Committee hearing room. So if you want to be in Government for some reason, that's not here. It's somewhere else. Senator Pedersen is here; Dwite, welcome, so. We have four bills today, LB785 and LB1007 we're going to take up first, and then we will take LB907 and LB999 together. So when we get to those bills we'll go over how we will do that. But that will enable us to combine the testimony on those last two bills. LB785, Senator Lathrop, would you like to introduce that bill? [LB785]

SENATOR LATHROP: Yes, I will; and I expect this to be the shorter part of your afternoon, Mr. Chair. My name is Steve Lathrop, L-a-t-h-r-o-p. I represent District 12 in Douglas County and I'm here today for the purposes of introducing LB785. LB785 amends the statute of 40-104 to allow that a purchase agreement or a contract for the sale of a homestead property signed by both spouses does not require acknowledgment or notarization to be enforceable. This bill does not remove the requirement for both spouses to sign the document; only that it would no longer need to be notarized. Furthermore, LB785 is limited to contracts for the sale of purchase agreement and not for the deed. This is just the purchase agreement. Both spouses would need to attend and sign the final conveyance documents which must be notarized. Purchase agreements for a homestead is the only remaining real estate purchase agreement that requires acknowledgment. This causes difficulty in a world that is moving towards the use of electronic documents for the initial stage of the sale of property. Eleven states, including Nebraska, require the conveyance of homestead property to be both signed and acknowledged by the nonowner spouse; 21 states have no statutes that deal with any limitations on the conveyance of a homestead property; and 12 only require that nonowner spouse sign either the conveyance or a waiver; 4 states require that a nonowner spouse execute the conveyance including the legal requirement that a company executing a conveyance of real property; and 1 state, California, has a statute which states that the owner may convey the homestead without any signature, waiver, or execution from the nonowner spouse. Thank you for your consideration. It's pretty straightforward. [LB785]

SENATOR ASHFORD: Thank you, Senator Lathrop [LB785]

SENATOR LATHROP: They just don't have to sign a purchase agreement, or have that notarized rather, for the sale of a homestead. [LB785]

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SENATOR ASHFORD: Any questions of Senator Lathrop? I don't see any. Let me introduce my colleagues. Senator Lathrop, of course, from Omaha; Senator Davis is out of town today and won't be joining us; Senator McGill is here, from Lincoln, and she'll be here soon; Senator Chambers, Ernie Chambers from Omaha; Jenn Piatt from Omaha is my legal counsel, to my right; and Oliver VanDervoort is our committee clerk. Going to my far left, Senator Seiler, Les Seiler from Hastings; Mark Christensen from Imperial; and Coash, Colby Coash, from Lincoln. So welcome everyone. Do we have any proponent testimony, those for this particular bill? How many testifiers do we have on LB785? One. Okay. Good. Two? Katie is going to say something. Welcome. [LB785]

MATT MEISTER: Thank you, Senator. Thank you to all the senators. [LB785]

SENATOR ASHFORD: Before you get started...and for those who...many of you have been here before but we have this light system which has a red light that comes on with an ejection mechanism that ejects you from your seat (laughter) when we get to the red. So we like to...no, it's 3 minutes. We'd ask you to confine your comments, not including questions, obviously, but confine your comments to 3 minutes. And we'll start with the yellow light, we'll ask you to summarize. So go ahead and give us your name and proceed. [LB785]

MATT MEISTER: My name is Matthew Meister, M-a-t-t-h-e-w M-e-i-s-t-e-r. I'm here representing the Nebraska Realtors Association. I appreciate being in front of you today, and my comments will be brief because this is a very, very small kind of change to the law. The entire bill, as it would be changed, just says that a purchase agreement or a contract for the sale of homestead property signed by both spouses does not require acknowledgment to be enforceable. Under current law, all of the real estate purchase contracts can be signed without a notarization or an acknowledgment except for the homestead purchase agreement. So most of the purchase agreements that are out there these days are being signed and not acknowledged. The reason that we'd like to see this taken off is because the requirement that these be acknowledged has gotten to be cumbersome for consumers who have moved, say, out of state or out of the specific area. I want to be very clear: This does not convey the property. This does not transfer the ownership of the property. This is just the purchase agreement, the initial phase. All of those documents that are required to transfer the property still need to be acknowledged, and realtors believe that we want to maintain the security and the sacredness of that transference. We don't want any changes to that. When we send a purchase agreement to someone, either by e-mail or by any kind of electronic means, fax, when they need to sign it, we need to have that back in a very timely manner or we risk losing the buyer. And that is a very dangerous thing for sellers who are trying to sell their homestead property. It's a very "time is of the essence" kind of document. And the deed and the affidavits that we use for conveyance, those can be mailed, signed in front of a notary, and mailed back. Those are quite as time sensitive as the purchase

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agreement. It's important to us that we are taking care of these people and making sure that they are going to be able to convey their property properly, and having that requirement of notarization has been interfering with a lot of those kinds of things. This bill will not in any way make a transaction less secure for either spouse that owns that homestead property. It really is a situation where we are trying to just clean this transaction up for the consumer so that we can make sure that we convey this property properly. [LB785]

SENATOR ASHFORD: Any questions. I don't...yes, Senator Seiler. [LB785]

SENATOR SEILER: I have a little trouble with this, on getting an acknowledgment by fax. It just means they can go down and take their fax down, acknowledge it in front of some people, and then fax it back to you. Because here's where it breaks down: If the husband signs both places for the husband and wife, you have no knowledge of...or any party to that, sends it back to you, and then the transaction goes south and your seller wants to sue this person on this contract that signed the contract, you're SL out of luck. [LB785]

MATT MEISTER: I understand what you're getting at. I don't see that that is... [LB785]

SENATOR SEILER: The case is York...First Bank of York versus Star, (sic--Equitable Life Assurance Society of the United States v. Starr). I tried it. [LB785]

MATT MEISTER: And I would assume that those people probably were going to be doing something underhanded anyway if they're willing to sign the document. [LB785]

SENATOR SEILER: The husband was. The wife wasn't. [LB785]

MATT MEISTER: The property, the wife was then actually in a pretty secure position because the deed could not transfer without the wife's signature being signed in front of a notary. [LB785]

SENATOR SEILER: If the price of your property drops or you...then they would have lost their right to go after the difference, wouldn't they? Because if you have had a secure contract, one that was signed and notarized, so both parties, you could go after both parties. [LB785]

MATT MEISTER: I'm not exactly sure what you're getting at, Senator, I'm sorry. [LB785]

SENATOR SEILER: Well, I'm saying is, if you've got an acknowledgment that both parties signed it, you can go after both parties. If you go after...if you don't have that, one party says: Never saw it; it's not my signature. [LB785]

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MATT MEISTER: Okay, I do understand that, and I guess... [LB785]

SENATOR SEILER: And that's where the breakdown is. [LB785]

MATT MEISTER: If there is a fraud involved in the contract, there's going to be fraud involved. I don't understand how the acknowledgment... [LB785]

SENATOR SEILER: The acknowledgment makes sure that the two parties are there, or the person that acknowledges it is, all of a sudden, on the hook. [LB785]

MATT MEISTER: Okay. I understand that too then. I don't understand then if this is their second home or if this is an investment property of theirs, why we don't require it in any other situation. [LB785]

SENATOR SEILER: It might be the only property. [LB785]

MATT MEISTER: Well, it could be their only property. It could be one of ten, and we only require this one acknowledgment versus the other nine properties that they would own. They can sell them all right out from under their spouse, in your case, without any acknowledgment. And yet this homestead particular property, that's the only one that's requiring it now. [LB785]

SENATOR SEILER: You think that's the prevailing rule right now in Nebraska, that they don't require non-homestead properties to have acknowledgments? [LB785]

MATT MEISTER: No, that's the law. [LB785]

SENATOR SEILER: I know what the law is. I'm saying the prevailing practice. [LB785]

MATT MEISTER: Prevailing practice, I would tell you, Senator, is that most realtors would not have people sign anything in front of a notary that didn't need to be signed in front of a notary by law. [LB785]

SENATOR SEILER: Hum. [LB785]

MATT MEISTER: And I think that's true of most contracts, most documents. If it doesn't require by law an acknowledgment, I don't think people sign in front of a notary. I think they sign it without any acknowledgment at all. [LB785]

SENATOR SEILER: I think we have a little different practice in central Nebraska. [LB785]

MATT MEISTER: Are you from central Nebraska? [LB785]

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SENATOR SEILER: Yep. [LB785]

MATT MEISTER: I'm from Kearney. [LB785]

SENATOR SEILER: I'm from Hastings. [LB785]

MATT MEISTER: And I deal with realtors in Hastings and in Grand Island. And honestly, if there's no requirement for an acknowledgment, we don't see acknowledgments on signatures. [LB785]

SENATOR SEILER: I haven't seen many that don't, but that's debatable. [LB785]

SENATOR ASHFORD: Well, Kearney, Hastings, you know, it's... [LB785]

MATT MEISTER: Yeah, same city. All one. [LB785]

SENATOR SEILER: No, it's got that Platte River between them that's just a mile wide and ten inches deep. [LB785]

MATT MEISTER: Exactly. [LB785]

SENATOR ASHFORD: Thanks, Matt. I don't see any other questions. Thank you. Katie. [LB785]

KATIE ZULKOSKI: Good afternoon, Senator Ashford and members of the Judiciary Committee. Katie Zulkoski, Z-u-l-k-o-s-k-i, testifying in opposition to Senator Lathrop's LB785... [LB785]

SENATOR ASHFORD: Opposition? [LB785]

KATIE ZULKOSKI: ...on behalf of the Nebraska State Bar Association. [LB785]

SENATOR ASHFORD: You're opposed? [LB785]

KATIE ZULKOSKI: I am opposed. [LB785]

SENATOR ASHFORD: Oh, you're opposed. So anybody else for this bill? No. So now we'll go to the opposition. (Laughter) And you're opposed? [LB785]

KATIE ZULKOSKI: Yes, I am. I am opposed to this. The bar association feels that this would remove a formality and protection mechanism for the sale of someone's home. The requirement that this be acknowledged does provide that extra step and that

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formality for when you are selling your home. And we would be happy...I would be happy to answer any questions. [LB785]

SENATOR ASHFORD: Senator Coash. [LB785]

SENATOR COASH: Thank you. Katie, does the bar advocate for adding the notary on to the other types of purchases that are not currently required to have a notary on them? [LB785]

KATIE ZULKOSKI: The specific concern is that this is for the sale of homestead property, and so that is the reason. We didn't talk about the fact that...I mean, certainly uniformity in the statutes is something that lawyers generally like. But this is...the concern here is because this is homestead property. [LB785]

SENATOR COASH: What makes homestead property special in...with regard to requiring a notary? In the bar's mind, what is special when you transfer a homestead property that makes you want to keep the requirement of a notary? [LB785]

KATIE ZULKOSKI: That someone lives there. I think that would be the concern that if it's your home that you live in, then it would...and we agree with everything Senator Lathrop said in his opening. This is not required for other kinds of transfers. It is...if you signed this and the purchase agreement then that can subject you to specific performance action, and that's the concern. Then you could be in a court case for a specific performance on your home where you live. [LB785]

SENATOR COASH: Okay. Thank you. [LB785]

SENATOR ASHFORD: Any other? Thanks, Katie. [LB785]

KATIE ZULKOSKI: Thank you. [LB785]

SENATOR ASHFORD: I don't think we have any other testifiers. Senator Lathrop. [LB785]

SENATOR LATHROP: I'll waive close. [LB785]

SENATOR ASHFORD: Great. Senator Haar is here, and LB1007. [LB1007]

SENATOR HAAR: (Exhibit 1) Chairman Ashford and members of the committee, my name is Ken Haar, K-e-n, and I'm the H-a-a-r, representing Legislative District 21. I always feel a little intimidated coming before this committee because of all the lawyers. I am not a lawyer but I did sleep at Holiday Inn Express, and so I'm hoping that I understand this, at least, a little bit. [LB1007]

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SENATOR ASHFORD: That should qualify you. [LB1007]

SENATOR HAAR: Good, good. Okay, well, I want to start this out with a personal story. As many of you probably know, my wife was the head of Planned Parenthood for quite a few years. And at one point she had a disgruntled employee who, unfortunately, knew the passwords to her phone system and e-mail; and he not only used those when he got fired but gave them to another organization that was then reading her e-mail and listening to her voicemails. Both of those people were charged with a felony but through pretrial diversion their records no longer show up in public access. And so if either of them goes to get a new job and that little box that says, have you ever been arrested or whatever, they don't have to put a check in that box. However, I have...this bill was actually...or the reason for this bill was brought to me by a constituent who was arrested and then acquitted, but his record remains there for public access, and when he goes to apply for a job he has to check that box that says he was arrested. It turns out that this is really a loophole, and you'll hear some people coming behind me testify to the details of that. But what we're talking about here in this bill is it's designed to strengthen the privacy provisions that remove arrests not leading to a conviction from the public record, thereby protecting legally innocent Nebraskans from the stigma of a permanent public criminal record. In some ways it's a jobs bill. If you've been arrested, then been acquitted, then that should no longer show up on your record, because it has a great impact on people when they go to apply for jobs and those kinds of things. So we have some amendments that were passed out. One of the questions that came up, if you take these records out of public access when somebody has been acquitted, if...the requirement in the original bill was that you would have to go back through, basically, through history and remove those. This changes the retroactivity of that law and there are a couple other changes covered that are the result of talking to the county attorneys and some other attorneys. So with that I'll take careful notes, and if things aren't covered by some of the more expert people that are going to testify, then we can talk about that in closing. So thank you very much. [LB1007]

SENATOR ASHFORD: Any questions? I don't see any questions. [LB1007]

SENATOR HAAR: Okay. [LB1007]

SENATOR ASHFORD: Any proponents? How many proponents do we have? Okay. Why don't we bring the proponents. How many opponents? Okay. [LB1007]

KIMBERLY DUNOVAN: (Exhibit 2) Good afternoon. My name is Kim Dunovan, D-u-n-o-v-a-n, and I'm testifying on my own behalf in support of LB1007. During my seven years as a legal aid attorney I counseled many clients with a criminal record, turned down for jobs based on employer background checks. Passage of a bill introduced by Senator Chambers in 2007 has helped by directing law enforcement to

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remove arrests from a criminal record search when no charges are filed or the charges are dismissed in court. But anyone with a computer still has access to the dismissed criminal cases through the Nebraska courts' on-line electronic database, known as JUSTICE. This bill closes that loophole. The 2007 law doesn't help the 19-year-old charged with a weapons violation for allegedly shooting a BB gun in the city limits of Omaha. His case was dismissed when the prosecutor determined that the police cited the wrong person. His arrest eventually won't show up on a law enforcement agency criminal record search; but, in Nebraska, adult criminal charges filed in court remain on the public record forever, even when they are dismissed without a conviction. People convicted of some crimes can ask a judge to set aside the conviction, but even that option is not available to this young man because he was never convicted. Most of the changes in the bill are directed at removing some court records from a public search in JUSTICE. The courts and law enforcement still have access to the records. The removal procedure is the one used by courts since 2010 to seal juvenile records; so implementation shouldn't be overly burdensome. The bill also expands the category of eligible cases to include acquittals and drug court cases. And you'll hear more about that in later testimony. But in every category, when the case is closed, the defendant is legally innocent of all criminal charges in the case. Technology makes employer background checks a routine screening tool. The experience of my legal aid clients is consistent with the research showing that over 90 percent of employers rely on criminal record checks; and a criminal arrest record, with no conviction, is so stigmatizing that many employers refuse to hire solely on that basis. With unemployment a leading indicator that a person with a criminal record will reoffend, and our prisons above capacity, the public interest isn't served by widespread access in JUSTICE to dismissed court cases that hurt a legally innocent person's prospects for employment. The majority of states have some form of criminal record sealing to protect the legally innocent. Nebraska should join the majority and enact this bill. Thank you for your time. [LB1007]

SENATOR ASHFORD: Thank you very much. Next proponent. Next person for the bill. Here we go. [LB1007]

TROY HAWK: (Exhibit 4) Good afternoon, Senators. Thank you for allowing me the time to be here today. My name is Troy Hawk, H-a-w-k, and I'm here on behalf of the District Court Clerks Association. We are here in support of the bill, assuming that the amendment that was just introduced goes along with that. Our concern is with the retroactivity of the bill. If the original bill were to pass, it would require the clerks' offices to go back decades to look at every criminal record to see if we needed to seal that record or not. We are supportive of the amendments that are offered and would support the bill with those amendments. And that is our position. [LB1007]

SENATOR ASHFORD: Thank you, sir. I don't see any...Senator Seiler has a question. [LB1007]

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SENATOR SEILER: I understand that the court would put this into its order on the dismissal under the way this statute is written. And then it just says: send notice. It doesn't say the court is sending notice or it's going to fall on your head, your group's, to send out the notice, or is the attorney representing the defendant supposed to send out the notice? This bill doesn't say who does. And I...we had a bill not long ago that was before us that had very similar type language that after 90 days it just magically is supposed to disappear. And we all know that's not going to happen. So what I'm wondering is, who did they intend to have send those notices out? [LB1007]

TROY HAWK: You know, you'd have to talk with the senator's office. I'm not sure. I would presume that it was the clerk's office, but to be honest I didn't catch that in there. [LB1007]

SENATOR SEILER: Okay. [LB1007]

TROY HAWK: We send a notice...we do send notice... [LB1007]

SENATOR SEILER: It's on page 4, line 9. [LB1007]

TROY HAWK: Okay. We do send notices out in civil cases when there is a judgment; we send those out. [LB1007]

SENATOR SEILER: But this is criminal. [LB1007]

TROY HAWK: This would not be significantly different than that to say that's a requirement of the clerk's office. [LB1007]

SENATOR SEILER: Well, no, you're sending the notice of the order to the Nebraska Commission on Law Enforcement and Criminal Justice, to the Nebraska State Patrol, and to the law enforcement agencies, county attorneys, and cities referred to in the court record. It could be a lot of people. I'm just wondering who is supposed to do it. I'll...no problem. [LB1007]

TROY HAWK: All right. Thank you. [LB1007]

SENATOR SEILER: Just raise it as an issue. [LB1007]

TROY HAWK: And that's something we'd be more than happy to work with Senator Haar's office on to clarify that. [LB1007]

SENATOR SEILER: Okay. [LB1007]

SENATOR ASHFORD: Thanks, Troy. I don't see any other questions. [LB1007]

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TROY HAWK: Thank you. [LB1007]

SENATOR ASHFORD: Next supporter. Amy. [LB1007]

AMY MILLER: (Exhibits 3 and 5) Good afternoon. My name is Amy Miller; it's A-m-y M-i-l-l-e-r. I'm legal director for ACLU Nebraska. We strongly support LB1007 as a way to further the good work that this committee and the Legislature did when it passed Senator Chambers' initial bill. The problem is that because the JUSTICE Web site still shows arrests, that many employers or landlords assume that where there's smoke, there's fire; and they are going to continue to judge people if they can see arrests which never resulted in a conviction. The U.S. Department of Justice estimates that nearly one out of three Americans has been arrested by the time they are 23 years old. Most of us in the room probably don't fit into that statistic. But that means one out of three Nebraskans is walking around with a scarlet letter still hung around their neck for the employer who out of good faith uses the JUSTICE Web site, sees accurate information, but makes an inaccurate assumption about what that arrest means. The presumption of innocence is a bedrock principle in our society, and the fact that criminal justice records are being used to hurt people who don't understand that the person was, in fact, never convicted, is indication that this needs just that tiny touch-up. I've heard from so many people in my office. I'm going to tell you just one story. Jesse McGhee was arrested in 2011. He was at Native Omaha Days street festival. His girlfriend was being arrested and he stayed off to the side, but he started to film the arrest by the Omaha Police Department. They tried to order him to stop filming, and he said he thought he had a right to continue to film. So they arrested Jesse for obstruction of justice, resisting arrest; he had his camera confiscated; and he spent the night in jail. This was an easy problem to take care of at the big level, because it's clear we have the right to film police. ACLU was able to get his camera back for him, got the charges dismissed, and got an assurance that the police chief was going to work on educating his officers on the ground that they have a right...the people have a right to film police. But Jesse still has two serious-looking felonies on his record, if anyone pulls up the JUSTICE system. Those two felony charges are available for anyone, including any senator who wants to go look him up today. We need to address the right of people to move forward after an erroneous arrest has been made. There is no concern about the administration of justice. Members of the public and members of the press can still attend every court hearing. There is no concern about whether or not arrests that don't result in convictions are going to be a problem, say, for day-care providers or vulnerable adults, because we have the separate child abuse registry and adult protective services registry that capture that information. For these reasons, we support LB1007 and hope that you'll finish the good work that was started by this committee several years ago. [LB1007]

SENATOR ASHFORD: Thank you, Amy. Senator McGill has joined us. Welcome. Next proponent. [LB1007]

MARC PORTO: Good afternoon. My name is Mark Porto. I'm an attorney in Grand Island, and I'm here today representing the Nebraska Criminal Defense Attorneys Association in support of LB1007. In addition to closing a significant loophole left open after the enactment of the current expungement statute, this bill would add a number of people to the class of those who are eligible to obtain the expungement of criminal history record information. First, LB1007 would allow for the expungement of criminal history record information for those who have been tried for a crime and who were acquitted of the charges. Under current law, criminal history record information is expunged automatically after one year if no charges are brought as a result of the arrest. If charges are not brought as a result of the defendant's participation in a diversion program, then criminal history is expunged after two years from the date of the arrest. And when criminal charges are brought but the matter is dismissed by the court on a motion of the prosecution or by virtue of an order that is not the subject of a pending appeal, then the arrest records are expunged after three years from the date of the arrest. There is not, however, any recourse in place for people who exercise their constitutional right to a trial and are acquitted of the charges. Second, and perhaps more importantly to this committee, in light of its effort to encourage and expand Nebraska's problem-solving courts, this bill would allow for the expungement of criminal history record information in circumstances where criminal charges are filed but are later dismissed after a defendant's successful completion of drug court or another problem-solving court. According to a 2012 evaluation of Nebraska's problem-solving courts conducted by the University of Nebraska Public Policy Center, the state spends on average \$17,639 per drug court participant. While this is significantly less expensive than the alternative of incarceration, it is nevertheless a significant financial investment for Nebraska taxpayers. As the committee is aware, the drug court process generally requires that a participant initially plead guilty to the underlying criminal charges. At that time, the participant is referred to drug court and the program begins, and lasts approximately two years. Upon completion of the program, the participant then moves to district court for leave to withdraw the previously entered plea and the case is dismissed. A core component of the drug court program is the acquisition of skills and work ethic necessary to sustain full-time employment. This core component and, in turn, the underlying financial investment paid by Nebraska taxpayers is undermined by the fact that all the records pertaining to the case which led to the drug court participation remain available to potential employers, even after a person has successfully completed the drug court program. LB1007 would fix this problem by (1) adding to the list of people eligible for the expungement process those who have completed drug court, and (2) including court filings in the JUSTICE system within the records that are to be removed from public view. For these reasons and those expressed by the other proponents, the Nebraska Criminal Defense Attorneys Association strongly supports this bill and asks for your support as well. [LB1007]

SENATOR ASHFORD: Thanks, Mark. I don't see any questions. Any other proponents?

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RYAN HEFFNER: Good afternoon. My name is Ryan Heffner, R-y-a-n H-e-f-f-n-e-r. I appreciate your time, Senators. I'm a proponent of LB1007, just representing myself today as a person who has actually went through this, the legalities of all this. I was arrested last year, charged with a felony, went through a trial, was found and acquitted through the trial process. And now I'm standing with a record of arrest still on my record with a not guilty as well. I'm asking you senators to just strongly consider pushing this through and supporting LB1007. Thank you. [LB1007]

SENATOR ASHFORD: Thanks, Ryan. Any other proponents? Anyone opposed to the bill? [LB1007]

SHAWN RENNER: Senator Ashford, members of the Judiciary Committee, my name is Shawn, S-h-a-w-n, Renner, R-e-n-n-e-r. I am a lawyer with the Cline Williams law firm here in Lincoln. I appear today on behalf of Media of Nebraska, Inc. Media of Nebraska is a nonprofit corporation that is comprised of members of the print and broadcast news media in the state of Nebraska. It determines what positions to take on bills by virtue of a steering committee that is populated with professional journalists. LB1007 causes a couple particular problems to the news media in the state of Nebraska. The news media's...one of the primary diets that the news media has, where it obtains information from which it reports, is public records. And there are good legal reasons why the news media use public records to make their reports, and that primarily is because they are privileged to do so from the standpoint of libel law. Newspapers, broadcasters, get sued for libel on a somewhat regular basis, and the law in Nebraska and in nearly all states is, if they accurately report what is the subject of a public record, they won't lose a lawsuit. That's an advantage to the news media. I think it's also an advantage to society. It allows the news media to report on matters that will be of public interest to society and allows them to do so knowing that if they accurately report what the government tells them, they won't be hit with a large libel judgment. I understand the position of persons who have been charged with a crime and acquitted. My clients believe that when the criminal process runs its full course, that is a different situation than when the charging authorities decide to drop charges or charges are let go for some other reason. At that point, we've engaged the entire resources of our judicial system. In Nebraska, judicial records are almost without exception, except in the juvenile court instance, public records. And they have been since we started as a state. The reason for that is because we want the citizens to know what their courts do. The end of this bill, if O.J. Simpson was around in Nebraska, he would be able to tell everybody that he was never charged with a crime, no records of the one-year-long trial that took place out in California would exist as far as the public are concerned, and my clients, the news media, couldn't report on O.J. Simpson safely, at least, without taking some risk, because the ability to show what they were reporting on, those public records, would be sealed, not available for public inspection and not available for the news media to rely on. Briefly, I think you also

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need to look at mechanically the Criminal History Information Act as a whole. I believe this bill amends one particular section of that act. That act contains about 20 sections. And much of the act that remains is not amended by this bill, is inconsistent with the provisions in the section being amended. Particularly, if you look at the definition of complete criminal history information, it says that's public record. That is going to be inconsistent with Senator Haar's bill, if it passes. And if you look at the policy... [LB1007]

SENATOR ASHFORD: Shawn, time out. Do we have any questions of Shawn? I don't see any. Thanks, Shawn. [LB1007]

SHAWN RENNER: Thank you. [LB1007]

SENATOR ASHFORD: Do we have any other? Greg. [LB1007]

GREG GONZALEZ: Good afternoon, members of the Judiciary Committee. My name is Greg Gonzalez, Deputy Chief, Police Department, city of Omaha. We certainly understand the privacy concerns brought forth by the senator in the bill, but we do oppose one section of the bill that's very important to the police department. A little bit of background. The Omaha Police Department has a records unit that completes approximately 3,000 juvenile seals per year, over 12,000 public records requests each year, hundreds of subpoena requests each year, and we're asked to comply with a variety of criminal history requests from various agencies, including the Omaha Public Schools and foster care agencies. So, in essence, there's a lot of manual work being done by our civilians. This bill would seem to expand that work, just not the work but the financial impact on the city of Omaha and our budget. The language would impact media outlets, as was just mentioned, and the redaction of reports. And we have concerns for Section 1(3) which orders all records, including information or data concerning any proceedings relating to the offense, including the arrest, taking into custody, etcetera, are not part of public record. Well, that's a concern for us today because every morning media outlets do flood the front desk of the police station, looking at what occurred the prior night. And that information currently, the incident report, which is impacted by this bill, is public record. We're not talking about supplementary reports, a part of our investigation. We're talking about the incident report. I believe the intent of the bill has some unintended financial consequences in that respect. Our records unit is versed on what they can and can't release, so we do appreciate that and take that to heart when it comes to criminal history records. However, we would propose the bill is limited to the criminal history report. And once the case is adjudicated, we'll follow the law under that. However, this does currently impact public record reports, like a stolen vehicle report, which many insurance companies flood our front desk every day asking for copies. Each year, under this bill if it's passed, we would have to redact every incident report that comes across the desk of the police department, and that's over 90,000 incident reports. So based on our interpretation of the bill, we would oppose the bill as it's written for that main reason. And like I said, we

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can appreciate the privacy reasons set forth in the bill, but that's our position. I thank you for your time. [LB1007]

SENATOR ASHFORD: Thanks, Greg. I don't see any questions. Thank you. [LB1007]

GREG GONZALEZ: All right. Thank you. [LB1007]

SENATOR ASHFORD: Mark. Anybody else opposed other than Mark here? [LB1007]

MARK YOUNG: I'm neutral. [LB1007]

SENATOR ASHFORD: You're neutral. Come on up. [LB1007]

MARK YOUNG: Good afternoon, Senators. My name is Mark Young, Y-o-u-n-g. I'm from Grand Island, Nebraska. I'm the Hall County Attorney. I want to emphasize, first of all, I'm here on my own hook and not as part of the County Attorneys Association. This bill was brought to my attention by another attorney in central Nebraska that raised a concern because of some of his civic activities, and I'm here only to discuss one very limited request, and that is when under the new section (c), it says if the case is dismissed by the court on the motion of a county attorney or as a result of a hearing. My concern is that cases can be dismissed for any reason, oftentimes as a result of a plea agreement or a plea bargain. And I would ask you to consider amending this LB to reflect that all charges within a case or a file would have to be dismissed before this provision would kick in. A couple reasons for that is (1) it's going to be difficult for people to sort out what happens when you have four counts of information and three counts are dismissed. Particularly for law enforcement, they have to figure out what to do with the police reports, which are in a narrative fashion rather than the linear by charge. And also for individuals who have a very legitimate reason to be looking into this, into a criminal history, to be able to decipher if the entire record is being sealed or not. And I would ask you to consider making that change to this bill. I'd be happy to answer any questions or get out of here. [LB1007]

SENATOR ASHFORD: Get on up, Mark. [LB1007]

MARK YOUNG: Thank you. [LB1007]

SENATOR ASHFORD: Okay. Is there anyone else? Senator Haar, would you like to say a few words here? [LB1007]

SENATOR HAAR: Yeah, thanks very much for your attention. An arrest should not destroy a life. I'm sorry if it creates problems for certain people, but an arrest should not destroy a life. We do feel that the concerns raised by Mr. Young just expressed are covered in the amendments. And I guess I would just like to say that, you know,

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sometimes we come up with our own bills and...but I'd like people to know that when they talk to their senators that we do work for constituents. And this bill was brought to me by a constituent whose life is being ruined by an arrest. So I hope you'll bring this out of committee, carefully consider it. An arrest by itself should not destroy a life. [LB1007]

SENATOR ASHFORD: Any questions of Senator Haar? Thanks, Ken. [LB1007]

SENATOR HAAR: Thank you very much. [LB1007]

SENATOR ASHFORD: We're going to take up the next, the last two bills. Obviously, most of you are here for that, LB907 and LB999. What we would ask you to do when you come up, there are a few people that have to go soon, and so we're going to...there are five or six witnesses that are going to have to come up first. But then we will just go in order. When you come up to testify, we'd ask you to indicate whether you're for LB907, for LB999, or both. If you're opposed to one or the other, you can state that as well. Or obviously, when we get to the neutral testimony we can handle the neutral testimony for both bills after we do the proponents and opponents. And you can divide your testimony if you wish by indicating you're for one or against one or for both. So with that, I'll introduce the bill. Senator McGill will be in charge. [LB907 LB999]

SENATOR MCGILL: All right, great. [LB907 LB999]

SENATOR ASHFORD: Which gives me some trepidation, but. [LB907 LB999]

SENATOR MCGILL: (Laugh) Welcome, Senator Ashford. [LB907 LB999]

SENATOR ASHFORD: (Exhibit 6) Thank you, Senator McGill. It's great to be welcomed. Let me hand out to the committee members, I...we've been very fortunate to have Diane Amdor, our new legal counsel, on staff in the last four months to help us with this bill. And she has developed a sheet--let me keep one for myself--a fact sheet and a flow chart for these bills. So hopefully that will help you guide through it. My name is Brad Ashford. I represent District 20 and I'm here to introduce both LB907 and LB999. And as this committee knows, we have been engaged for many years now in criminal justice issues, with a focus on juvenile justice in the last few years. And it has now become critical and essential, in my view, that we turn our attention to the adult corrections system. Let me just...I'm not going to go into great depth because there's so many people here that want to testify. But let me just give you some of my thoughts. Number one, and you'll hear testimony on this, Nebraska is dramatically behind the curve in this country. We have...there's a reform movement in the corrections industry, so to say, or in corrections across the country, that has resulted in the significant reduction in incarceration rates in states as diverse as Pennsylvania, Kentucky, Texas, South Dakota, Iowa, and many others. And we have had the opportunity to study those

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states. As you recall, The Council of State Governments came in here and gave us a review of where Nebraska stood as it related to other states; and clearly, we're not...most states are showing a reduction in prison population along with the reduction in violent crime. Nebraska is no different in that we have experienced, as has literally every state and the nation as a whole, experienced a reduction in violent crime. But at the same...and at the same time we've seen an increase in our prison population. Our prison population now is beyond the critical level, at 160 percent of capacity for the men's facilities, somewhat less for the women's facilities and the youth facility in Omaha. But altogether, we're at 153 percent of capacity. That is a level that is far beyond the 125 percent of capacity, which is an acceptable level. When we last took this issue up it was, I believe, June of this year; and Director Houston came to our committee. We had an Exec Session. And I asked him, as you recall, whether he felt that we were...he could manage through the situation that he was in, in June. And it was the first time, at least that I heard Bob Houston say no, no, that the situation in Nebraska is getting to the point where it not manageable. So having heard that, there are obviously short-term, mid-term, and long-term solutions to our prison issue. What I am suggesting to this committee is that we look at what is critical and important now to address, and we put into statute those changes--and many of those are laid out on your fact sheet--but those changes which will result in immediate relief to the prison system and to the individuals who are incarcerated in the system. And then as we develop that platform, develop expertise, much of which exists in our state, and organize that expertise around ongoing reform. I'm very hopeful. I appreciate the support of the Chief Justice and of the Exec Board of the Legislature, their support for asking The Council of State Governments to become...to do a permanent...well, a two- to four-year study of our prison system and to help us execute on many of these reforms. We're not going to get this all done in one day or one session, but I do urge that we make the kinds of shifts in our thinking from simply incarceration to reentry as an integral part of our system, and we make those sort of systemic changes as much as possible this first year; and then bring The Council of State Governments in here and rely on the other experts, many of whom are here today, to help us as we address these issues. One...there are some...in addition to prison overcrowding, there are some immediate issues that must be addressed, and the most immediate, in my view, is the number of inmates who walk out of our prison system every day without any supervision whatsoever. And the numbers vary but we're somewhere between 35 and 40 percent of the 5,000 inmates who are incarcerated in our system, walk out of our system, not on parole, no supervision, no...in many cases, nowhere to go, no housing, no transition services, no mental health services whatsoever. That is absolutely a recipe for disaster. Many of those individuals walk out because they have been incarcerated for a very short period of time. In fact, what's interesting about our prison population is a very significant number of our inmates are incarcerated for less than three years; in some cases, less than one year. Which brings to mind the next basic point, and that is we must find alternatives to incarceration for nonviolent offenders. We have luckily...and I always compliment my good friend Kermit Brashear for the work he did in community

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corrections. We have an infrastructure in place in the community corrections area. It's just not extensive enough. We have community corrections in I believe seven locations. Community corrections needs to be in place throughout the state of Nebraska. People reenter our...leave the prison system and come into our...back to our communities, not just in Omaha and Lincoln or Grand Island, but all over the state...or Hastings. So we must have community corrections facilities throughout the state. Those community corrections facilities can be enlarged. They can be utilized to help offenders as they come out of the institutions or as we develop alternatives to incarceration...I know Senator McGill has been a great advocate for mental health courts. Mental health courts are becoming a prevalent practice throughout the country, and I've had the opportunity to visit one in Hennepin County in Minnesota, where we really focus on mental health issues of individuals who have been charged with a crime but possibly incarceration isn't the place for them to be, and looking at those kinds of mental health issues. But alternatives to incarceration is the second rung of this initiative; the first rung being reentry to make sure that we give these individuals, who have paid their debt to society, an opportunity to succeed. And we are terrible at this. We are abysmal at this, in my view. And we are so far beyond the norm as to be it's totally unacceptable, and it's not consistent with our values in Nebraska. It is absolutely not consistent because we have communities, as we have seen in the juvenile justice system; and I was so impressed when we went through our juvenile justice reform, at the community of Geneva, Nebraska, and how they embrace the young women who are at Geneva as a community. And Hastings, for example, I've had great conversations with Senator Seiler about the facilities that could be made available for transition from prison to the community. We have communities throughout the state that will help, but they need resources and they need coordination. So that is the second rung of this reform. The third rung is the prison experience itself. We had an occasion to meet with Bob Houston the other day, and one of the most...and I apologize for not knowing this, but one of the most alarming things that Bob told us was that vocational education has basically been cut out of the prisons. We don't have vocational. How are people supposed to get a job when they get out and have served their sentence if they don't have vocational training? We need to build our programs back. Anger management; I believe the number is somewhere around 3 percent of our inmates actually avail themselves of anger management. Thirty-one percent of our inmates have been diagnosed as mentally ill--have been diagnosed as mentally ill; so programs around that are critical. There are many solutions. What this committee will do, as we always do, is we will hear from all of you out here today. We will look at what's in LB907 and LB999, and we will craft a Nebraska solution. It isn't going to be the Texas solution, it's not going to be the Kentucky solution; it's going to be the Nebraska solution. And as this committee has done consistently for all these years, there will be one. There will be a solution. It's going to take funding. It's going to cost additional funds. But remember, it costs around \$25 million a year, or \$30 million, to operate a prison, not counting the cost of a new prison, which is \$110 million or \$120 million in new spending. So we have an opportunity to invest resources, significantly less than that, that will make such a

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tremendous difference to our state. And most importantly, we will be helping inmates transition; but most importantly, we will be keeping our state safer. So rather than go on...I do want to direct your attention to Diane's really quite interesting schematic drawing of the prison system. What we want to avoid, as we did in the juvenile justice system, is this sort of siloing of how we deal with offenders, and the top part here shows our current system. It's one agency after the other agency dealing in a not collaborative cohesive way with offenders. What Diane is suggesting we should have is a reentry system and a corrections system and a probation system that flows together, that takes an offender at the very earliest stage of their connection with the system and develops a plan for them, continues to monitor that plan; and most importantly, within a period of time, whether it's 6 to 9 months prior to their release, they have a release plan and they know who to contact. They know where to go to find housing. They know where to go to talk to people about work. It is so critical, in my view, in all the 16 years I've been here, there is nothing that I have seen more critical than to find a solution to these issues. Thank you. [LB907 LB999]

SENATOR MCGILL: I've got a quick question for you, Senator Ashford, or really an opportunity for you to talk a little bit more actually... [LB907 LB999]

SENATOR ASHFORD: Oh, I don't want to. [LB907 LB999]

SENATOR MCGILL: ...about the rural areas and how so many of our folks going to prison are from rural counties because they don't currently have the diversionary programs. [LB907 LB999]

SENATOR ASHFORD: That's a huge issue and it's an issue that surprised me about the juvenile justice system. And, for example, the number of incarcerated youth in Kearney and Geneva from rural Nebraska, it's disproportionate to the population. So we have more rural youth proportionate to the...relative to the population at Kearney and Geneva than we do...than in the urban areas. The same goes for the urban areas. In Omaha and Lincoln, for example, we do have some or more community-based alternatives. For example, in Douglas County, we have a reentry council. And I know that in Lancaster County they're doing some very innovative things in reentry. That does not occur across the state. This is a 93-county issue and needs to be addressed in that manner, in my view. [LB907 LB999]

SENATOR MCGILL: All right. Any other questions? Senator Coash. [LB907 LB999]

SENATOR COASH: Thank you. Senator Ashford, do you know...I'm speaking on LB907 here. [LB907 LB999]

SENATOR ASHFORD: Okay. [LB907 LB999]

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SENATOR COASH: Do we know with any degree of certainty which inmates who are in prison as we sit here today would not be in prison if LB907 were passed in 2000?
[LB907 LB999]

SENATOR ASHFORD: Let me answer it that way...this way. The...51 percent of our inmates are nonviolent. I cannot say that or have an offense which would be thought about or considered to be nonviolent. We have to be very careful, as Diane reminds me, of talking about violent and nonviolent, because that's really an outmoded way of looking at these kinds of offenses. But be that as it may, certainly on the nonviolent side that we all can...fraud or some check writing, check-kiting or whatever it may be, or some drug and alcohol offenses, that's a substantial number of inmates. And I am confident that we can reduce our prison population on the front end. Of course, these people are in there now, so it would have to be prospective. But I think it would be...we could certainly moderate our prison population down to an acceptable level if we do these alternatives to incarceration. On the back end, though, here's...the real problem there is that parolees recidivate or reenter at a much lesser rate, as you can imagine, than those who walk out or jam out, so to say. If we can supervise that group of, let's say, 2,000 a year come out of our system every year, and 900 or 800 or 900 of those walk out without supervision, that...every piece of data I've seen around the country would indicate that that's where we can make the biggest impact. That reoffending occurs within a very brief time...if it's going to occur, and oftentimes, especially violent reoffending, occurs within a relatively short period of time after release. If we can address that effectively, I think it not only will keep the public safer, for sure, but it will reduce recidivism. There is no...you're going to hear some testimony today about a unique program in Oklahoma that talks about voluntary supervised release for those inmates who are currently incarcerated. It's an interesting idea. But if we don't make these corrections, you know, Bob Houston told me on several occasions that our prison population would go to 175 percent or 178 percent of capacity within a few years, and we would be up at 200 percent...we're actually...at the D&E Center, believe it or not--this is unbelievable--at the Diagnostic and Evaluation Center in Lincoln, we are at 240 percent or 250 percent of capacity. People go into the Diagnostic and Evaluation Center and then leave prison before they're ever sent out to where they're supposed to go. Those individuals should be in their communities, either in a county facility or some other facility, so. And because there are...the other point to your question. If our parole system was working effectively, meaning if we had sufficient number of programs in place, then you would see parole start to get going. And I don't remember, I'm sure, when we were going through our...we were going through the budget issues, years ago, you know, Bob came in and told us, you know, what we really need to do is accelerate parole by bringing in more resources. Well, the exact opposite happened. We starved the prison system. And now we have what we have. So I don't have an exact answer but every other state--and there are several states that have adopted many of these reforms, supervised release, you know, we have alternative courts and we have drug courts, but expanding that and more programming in prison has resulted in a

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moderating of the prison population. I don't see why we can't...in fact, I'm sure we can do that here. We have the...lastly, we have the people here. We have employees at the Department of Corrections who are...do a great job with what they have. We have prosecutors who are trying to make a fair call. We have probation officers. We have parole officers. They aren't properly working together or coordinated so that we can start to address this problem. [LB907 LB999]

SENATOR MCGILL: Any other questions? I don't see any. Thank you, Senator Ashford. While he's sitting back down, first, is there a list? [LB907 LB999]

SENATOR ASHFORD: Yeah, I have a list. We'll just go through (inaudible). [LB907 LB999]

SENATOR MCGILL: Okay, we'll hold on one moment. [LB907 LB999]

SENATOR ASHFORD: Is Ben here, Ben Steiner (sic--Ryan Spohn)? Is that...do you want to come up? You're first on the list I was told. [LB907 LB999]

BEN STEINER: I didn't think I was first on the list. [LB907 LB999]

SENATOR ASHFORD: Oh, maybe you aren't first on the list. Well, come on up anyway. Ryan, sorry; not Ben. Excuse me. Go ahead. [LB907 LB999]

BEN STEINER: I think it is Ryan. [LB907 LB999]

SENATOR ASHFORD: Is it Ryan? [LB907 LB999]

BEN STEINER: I think Ryan is testifying on (inaudible). [LB907 LB999]

SENATOR ASHFORD: Okay, I'm sorry. I'm sorry. You're good at what you do too, though, I mean. [LB907 LB999]

BEN STEINER: Thank you. [LB907 LB999]

SENATOR MCGILL: He's like, oh boy. [LB907 LB999]

RYAN SPOHN: (Exhibit 7) Good afternoon, members of the Judiciary Committee. My name is Dr. Ryan Spohn, spelled R-y-a-n S-p-o-h-n. I'm director of the Consortium for Crime and Justice Research at the University of Nebraska-Omaha. I direct the research units in the nationally ranked School of Criminology and Criminal Justice in UNO's College of Public Affairs and Community Service. I am testifying today as an individual and not as a representative of UNO. And this is for LB907 specifically. With the goal of increasing the capacity of our justice system to use data, evidence, research, and

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evaluation to reduce recidivism and promote public safety, I am specifically in support of the following aspects of the proposed legislation: the use of risk needs assessments as outlined in the bill--and I'm going to paraphrase a little bit from my written materials for brevity; the utilization of evidence-based practices as outlined in the bill; the use of assessment scores to determine the risk level and program needs; the development of case plans for supervised individuals; the evaluation of all supervision and treatment programs at regular intervals; the creation of a permanent Nebraska Center for Justice Research in order to assist the Legislature in making informed judgments about important long-term issues facing the state of Nebraska. The mission of the Consortium for Crime and Justice Research is to collaborate with federal, state, and local agencies, as well as the public and private social service organizations, in research, evaluation, and implementation related to the promotion of public safety. In practice, this is exactly what we do. Our goals are to reduce recidivism and promote public safety that will directly benefit from the implementation of the practices and the activities listed above. Working in conjunction with UNO's Juvenile Justice Institute, CCJR conducts research and evaluation in the areas of juvenile justice and criminal justice, and provides training to justice administrators and practitioners across the state of Nebraska. A primary goal is to build and coordinate internal capacity for research and evaluation in the areas of juvenile justice and criminal justice. I'll skip ahead a little bit. The creation of a permanent Nebraska Center for Justice Research will allow research, evaluation, and training activities to occur statewide across domains of the justice system. In the summer of 2013, our college leadership recognized the need to upgrade CCJR into an interdisciplinary research center at the University of Nebraska. This center was to be founded on the strengths of the nationally ranked School of Criminology and Criminal Justice at UNO, as well as the existing infrastructure of the Juvenile Justice Center and the Consortium for Crime and Justice Research, which were established in 2002. We also looked to incorporate the strengths of faculty across UNO, UNMC, UNL, and UNK in research collaborations aimed at securing external funding and promoting public safety. And I'll skip forward. We have moved this center through the process, through the university system, and it's been approved by the School of Criminology and Criminal Justice. It's been approved by the College of Public Affairs and Community Service at UNO. And we've been working in close contact with UNMC on this and are finalizing a memorandum or understanding that will specify the duties and responsibilities of the center, if this bill were to pass. Thank you and I will answer any questions. [LB907 LB999]

SENATOR ASHFORD: And just for the record, both the Chancellor of UNO, John Christensen, and Hal Maurer at UNMC, have really been so very supportive about the idea of a joint center, a statewide center on this matter. So thank you for your testimony. I don't see any questions. Chief; Chief Schmaderer and then we're going to Jim Vokal from the Platte Institute. [LB907 LB999]

TODD SCHMADERER: Good afternoon to the committee. My name is Todd

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Schmaderer. I'm the chief of police for the city of Omaha. It's S-c-h-m-a-d-e-r-e-r, here representing the Omaha Police Department and the city of Omaha specifically. As chief of the state's largest city, I'm in support of LB907. Supervised release when not in replacement of incarceration but as an additional component of the sentence has been evaluated to be effective at reducing recidivism. In addition, GPS monitoring for 90 days of violent offenders after release will assist the Omaha Police Department in addressing violent crime. Studies have shown that if an offender is going to recidivate, they're going to do it within the first 90 days. For starters, we all benefit when an offender has the proper resources and oversight upon release from incarceration. It gives this individual the best chance at success, but also as an aggregate it can decrease recidivism, and that is the goal of this bill for the state of Nebraska. My top priority as chief is to reduce violent crime in the city of Omaha. In Omaha, last year, alone, most of our violent crime was centered around shootings and homicides. We had about 200 shootings and 41 homicides. Over half of those homicides, and we estimate a far greater portion of the shootings, had some gang element or gang tie related to them. And in addition, we seized 865 firearms last year. What has plagued our city is repeat violent offenders willing to do shootings over and over again. I'll give you an example. One particular gang member who wants to every night go out and do a shooting, over and over again, that shooting causes several retaliation shootings. And can you imagine the unrest and the disruption of peace that causes the city of Omaha? These repeat offenders, based on our analysis, based on our investigation, is a very small, small percentage. But those offenders can affect the overall violent crime rate for the city. For the last two years we can identify two or three offenders that had a very significant impact on the overall violent crime rate in the city of Omaha. The GPS monitoring component of this bill not only provides a deterrent value but gives detectives the investigative leads needed to identify a shooter without a reliance on a witness who may face intimidation or who is reluctant to come forward right now in the city of Omaha. This cuts off the opportunity to commit the next shooting. GPS also interfaces nicely with our ShotSpotter program which triangulates the location of a gunshot in real time. If you combine the two of those, it gives us even more evidence to identify a shooter early on. Our attempt here is to stop it at one, rather than let it give to five, six, and seven. If we can get a handle on repeat offenders of this nature in the city of Omaha, it's our belief we can reduce violent crime in the city, and that will extrapolate itself to reducing violent crime in the state. I do ask the Judiciary Committee, and I urge on one front, if you would consider adding two offenses to the violent crimes list that mandatory subject to GPS: that is felon in possession of a firearm and use of a weapon to commit a felony. These offenses tend to be staples of our repeat violent offenders. I'd be happy to take any questions. [LB907 LB999]

SENATOR ASHFORD: Chief, thank you for everything you're doing and for your entire division. [LB907 LB999]

TODD SCHMADERER: Thank you very much. [LB907 LB999]

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SENATOR ASHFORD: Great work. Thank you. Jim Vokal and then Marc Levin and John Cavanaugh. [LB907 LB999]

JIM VOKAL: (Exhibit 9) Chairman Ashford and members of the Judiciary Committee, my name is Jim Vokal, J-i-m V-o-k-a-l, and I am the CEO of the Platte Institute for Economic Research, a Nebraska-based nonpartisan free-market think tank. I'm here today to support both LB907 and LB999. LB907 would provide for a period of supervised release to address the problem of high recidivism among inmates currently discharged without supervision. LB999 would create the Reentry Programming Board which would consist of representatives from each of the key stakeholder groups in the criminal justice system. Government often grows far beyond its traditional core functions, but most people in Nebraska would acknowledge that public safety is a legitimate and core governmental function, and taxpayer funds are necessary to sustaining the government's role in it. Because public safety is one of the few core functions of government, it is especially critical that policymakers hold criminal justice agencies accountable for their performance and seek to maximize taxpayers' return on their investment. According to the data in our policy study released and delivered to you today by Marc Levin of Right On Crime of the Texas Public Policy Foundation. We partnered with the Holland Children's Movement. And according to that data within that policy study, Nebraska's nine prisons were built to accommodate 3,175 inmates, but currently hold about 4,730, putting them more than 40 percent over capacity. Moreover, they are expected to be 188 percent over capacity by 2020. Such overflows make it more difficult to operate effective recidivism reduction programs behind bars due to budget and space limitations. Locking up dangerous violent offenders for long periods, though costly, is undoubtedly a sound use of taxpayers' dollars. The cost of constructing the most recently opened prison, the Tecumseh State Correctional Institution, was \$73 million. A new prison is estimated at over \$150 million. The growth in Nebraska's prison population and costs, however, is largely the result of increased incarceration of nonviolent offenders for short periods of time. As of December 31, 2013, 50.7 percent of those in Nebraska prisons were incarcerated for sex or violent offense, leaving a significant number locked up for nonviolent offenses, such as illegal drugs and theft. As seen in other states, there are better solutions to this challenge than simply to build another maximum security prison. These solutions include but are not limited to restructuring post-release supervision, increasing drug courts, performance-based funding, opportunity probation with enforcement, graduated sanctions for probationers, and mental health courts. These evidence-based practices have shown not only to decrease crime in other states, such as Texas, but also helped taxpayers avoid significant costs in constructing additional corrections facilities. In conclusion, we cannot "brick and mortar" ourselves out of this criminal justice predicament. The Platte Institute believes that both LB907 and LB999 are the right steps forward to reform the criminal justice system in Nebraska. The Platte Institute also encourages the Legislature and the Governor to carefully examine the other recommendations within our policy study.

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These recommendations are based upon successful data-driven approaches of other states that have resulted in more efficiently allocating limited correctional resources. [LB907 LB999]

SENATOR ASHFORD: Thanks, Jim. Do I have any questions of Jim? Thanks for participating... [LB907 LB999]

SENATOR COASH: Wait, I do. [LB907 LB999]

SENATOR ASHFORD: Yes, Senator Coash. Sorry. [LB907 LB999]

SENATOR COASH: Thank you, Senator Ashford. Thank you, Mr. Vokal, for being here. And I'm just going to use part of your testimony as a sounding board for some questions that I have, and you can respond to them if you want or maybe...I wanted to get it out early in case somebody else wanted to respond with later testimony. But in your testimony you said that there's about 50 percent or so who are incarcerated for a violent offense, which means another 50 are there for nonviolent offenses. And I certainly agree with that. But I spent some time talking to judges who sentence both violent and nonviolent offenders. And one of the things that I've come to realize is that even with the nonviolent offenders what I see is that the judge doesn't really have a choice in a lot of these cases. In other words, there's an offender who is before them, maybe it is for a nonviolent offense like possession of a lot of drugs, but by the time they get in front of the judge they've picked up an extra charge, they've been on probation and violated the terms of their probation once, twice, three times. And all of sudden the judge is sitting there with an offender that, I would agree with you, in not violent, but the judge has said, well, you know, probation didn't work; you violated it; put you on some supervision; that didn't work; what else do you want me to do, inmate, or offender, other than put you to jail for a while, because everything we've tried isn't working. And I think that's something I'm looking at because I don't know if we're giving judges any other option other than to put an offender in jail even though it's nonviolent. So you can respond if you want, but it's something I've been considering as we look at these issues. [LB907 LB999]

JIM VOKAL: Well, I encourage you to ask those same questions to Marc Levin, the expert within our policy...or that drafted our policy study. But certainly there are examples that fall within outside of the realm that we're talking about. And certainly maximum sentencing requirements give judges no other choice. But as I said before, Marc Levin can give you some specific examples from other states and how they have addressed that issue. [LB907 LB999]

SENATOR COASH: Thank you. [LB907 LB999]

SENATOR ASHFORD: Did we hand out the new nice cover? [LB907 LB999]

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JIM VOKAL: The studies have been delivered to your offices, at least those on the first floor. Those on the second floor we're going to do after this hearing. So yeah. [LB907 LB999]

SENATOR ASHFORD: Okay. Yes, Senator Seiler. [LB907 LB999]

SENATOR SEILER: I know you've done a great deal of research with the Platte Institute. But there's one set of researches or factors that I have not seen. Maybe...I hope you've done it. Is taking the nonviolent prisoners (inaudible) Nebraska and sorting out their educational background--how many of them have GEs, have nothing, dropped out at the seventh grade--and then put together a career path that we could set up training for and then the types of training that would actually be taught in the prison. Have you seen anything like that? [LB907 LB999]

JIM VOKAL: We haven't, but that's sounds something...you know, correlating the education as it relates to the crime and those in an offense, we'd certainly be willing to look at something like that, Senator. [LB907 LB999]

SENATOR SEILER: Okay, thank you. [LB907 LB999]

SENATOR ASHFORD: Thank you, Jim. Marc Levin. Marc, why don't you start out and give us a little bit of your background so people know who you are. And I already know, so I'm going to be right back. [LB907 LB999]

MARC LEVIN: Sure. Marc Levin, director of the Center for Effective Justice at the Texas Public Policy Foundation and also policy director for our Right On Crime initiative, and I'm here to testify for LB907 and LB999. I also came, of course, for the tropical weather here in Nebraska. But let me just make a few points. First of all, with regard to the supervised release, I agree with Senator Ashford that that's one of the most pressing issues here, and it's also a challenge confronting many states. Forty-nine percent of the inmates in Nebraska are released without supervision, and that means there's nobody to hold them accountable through things like drug testing, through electronic monitoring, through treatment, curfews, and so forth. Also as a condition of parole, people typically can't associate with antisocial peers, i.e., gang involvement, for example. And there's also the issue of a lot of mentally ill inmates who are on many psychotropic drugs; there's no follow-up or leverage to make sure they have a continuity of care. And when they tend to go, cold turkey, off those medications, you have a lot of violence and potential for recidivism. So one...so, of course, the bill does provide a supervised release option, and we would also suggest that you look at, as Senator Ashford alluded to, having a situation where inmates can choose, and again this would only be certain inmates, not those in high-security prisons or on disciplinary status, but where they could choose to forgo the last four months of their prison term in exchange for eight months of supervision. It actually has to be voluntary from a constitutional standpoint,

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because then you'd be extending the term. Oklahoma just passed this bill out of committee earlier this week. And, of course, that would also give you some instant savings to help pay for some of the justice reinvestment parts of this legislation, like expanding the day reporting centers that we've heard about earlier that I think are very important. So one of the advantages of that is you'll find a self-selection, those inmates who are likely to accept a longer period of supervision where they would have none previously, in exchange for being out of prison four months early; those are the ones who are confident they could succeed on that supervision because there would be consequences if they don't, of course. So you'll actually have a positive self-selection there. One of the other things that I think is very positive about this legislation is the pretrial risk and needs assessment, which will help judges better match the right offender with the right program. Also, of course, the local reentry councils and the state reentry council, there are, as has been alluded to, many stakeholders involved in reentry, not just the corrections system but also law enforcement, treatment, personnel who will all be represented in this in developing holistic plan for each offender, identifying the resources in the community and also evaluating reentry programs as to whether they're cost-effective or not. Certainly there's some other things that do need to be addressed and that perhaps can be added to the legislation as it goes along. Certainly the property thresholds for offenses in Nebraska have not been adjusted for inflation since 1992. So, for example, bouncing a \$1,500 hot check is a mandatory minimum of one year in prison, up to 20 years in prison; and \$1,500 in 1992 is now \$2,500. So that needs to be looked at. Also we've recommended two of the bills we've done in Texas to help with reentry deal with immunizing employers from being sued for hiring an ex-offender and also enabling ex-offenders to obtain provisional occupational licenses. We had a situation in Texas we were paying to train inmates in prisons to be barbers, but then they couldn't get a license to be a barber when they got out because of a... [LB907 LB999]

SENATOR ASHFORD: Marc, let me stop you for a second. One of the questions...you talk about a holistic approach, which is I call it the Amdor chart here, which explains what our end goal is, is to create a holistic flow of assets or...we started out in our juvenile justice reform with you, Marc, almost at the very beginning. I remember meeting you years ago. And, you know, we talked about the different points of connectivity into the system. And your thought at that time on the juvenile side was, create a flow of, you know, in the system so that as an offender, or in this case, a juvenile violates, that there's these various assets are brought to bear. What do you think about that? I mean, do you understand...holistic is just a word, but in practice, what does that mean to you? What does a holistic approach mean as you go around the country and look at these various states? How does that work? [LB907 LB999]

MARC LEVIN: Well,... [LB907 LB999]

SENATOR ASHFORD: And how does it work and how does it differ from the more

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traditional view of corrections model that we've had? [LB907 LB999]

MARC LEVIN: Well, certainly, for one thing, it involves treatment resources in the community. I mean, one of the things we did in Texas was, now, when a parolee tests positive for drugs, they're instantly sent to a treatment program that day. And, of course, we also changed the testing mechanism so it's instant instead of taking a few weeks. And, of course, here you have the day reporting centers. And so those are obviously used for people that are having difficulties on probation, and as you alluded to, Senator Coash, who need more structure, who a judge needs to put them somewhere because the basic probation or the basic parole isn't...they're continuing to commit technical violations, for example, missing appointments and things. And, of course, GPS is very valuable for that, as the officer alluded to. But it's also certainly, for certain individuals, they may need to go to a residential program or they are needing to go somewhere during the day, but they don't necessarily need to go to the state prison system. And in Texas, one of the things we did in the parole system was intermediate sanction facilities where they go for 90 days, get some treatment, and, you know, then that gets the message across and they don't actually have to be revoked from parole back for their entire sentence. And one of the other things, Ohio implemented a graduated sanctions grid for parolees and probationers which basically...so a guy misses appointments and things, you don't wait for a bunch of violations to pile up; you have a swift, sure, and commensurate sanction. And that's what the Hawaii HOPE Court is built around, which we talk about in the report, has reduced reoffending by two-thirds. So certainly it's a combination of having the resources available, and that also goes to the same thing for behind bars. We have a waiting list here in Nebraska--and I guess I'm a Nebraskan now--of 700 inmates to get into treatment programs. And so, again, that's one of the functions of the prison crowding you have, is you're not able to get all of the inmates who need programming into those programs. And again, then they create a greater risk when they're discharged. [LB907 LB999]

SENATOR ASHFORD: Let me just ask another follow on that, getting to what Senator Coash...I think Senator Coash's question is one of the salient ones, and that is, when we're doing something like this, we're actually bringing into the process really everybody: county attorneys, counties. In Nebraska, we're fortunate we have a statewide probation system, where most states have county probation. So that's something that gives us, and we saw in the juvenile system, gives us a leg up on many other states. How did you, in Texas, in 2007, how did you do that? How did you bring all these various groups together to get to a point where reform was possible? [LB907 LB999]

MARC LEVIN: Well, you know, I think everyone has an interest, obviously, in reducing recidivism and making sure that the resources are in the right place. I think what we've heard...what really helped in Texas was, and this was back in 2007, when we had a projection that we would need to build 17,000 prison beds, but we had judges and

prosecutors come up to the legislature and say, we're sending a lot of low-risk nonviolent offenders to prison because we don't have anywhere else to put them; there's not enough drug courts, there's waiting lists for programs; and so if you expand those things, we will use them. Now, you know, it's turned out that really has happened. In virtually every jurisdiction in Texas, obviously our commitments to prison are down, our recidivism is down, our revocations from probation and parole are down. Now I would tell you that certainly it's important to think about as you're, for example, expanding the day reporting centers, to think about maybe you should create, as I said, kind of a grid of alternative sanctions or presumptive use of those in certain circumstances, because there is a danger in that widening, and that is that individuals who wouldn't have been necessarily need a day reporting center but could be successful on basic probation or nonetheless put in a drug court or a day reporting center rather than people being diverted from prison. And that may not be entirely a bad thing, because it certainly could benefit public safety if they truly have a risk and needs profile that indicates they could benefit from that. But also oversupervising people who are low risk on probation actually leads to worse outcomes. You've got a guy spending all his time going to a probation office or a day reporting center and losing his job, and that's one of the reasons he's low risk because he has a job and a family and such. So again I would say that, for again if you create, like, a graduated sanctions grid or you have a presumption that certain, for example, first-time low-level drug offenders who don't have anything prior on their record shouldn't be sent to prison. They should presumptively, unless the judge makes findings they're a danger to public safety, go to your SSAS program or day reporting center, you know, get the voucher, etcetera. So that helps you ensure that the new resources you put in place are going to be really used... [LB907 LB999]

SENATOR ASHFORD: Let me ask this. On the outcome side, you know, we get recidivism numbers. And for years, the Judiciary Committee, the three-year recidivism number is X. We never get information about what's happened to these inmates once they leave prison. And certainly those that walk out, we know if they come back but we don't know what their lives are like outside of prison, especially those that walk out with nothing, no help from the state or no supervision on the flip side. That data, that information which we, through supervised release, we could gather, I mean, what is this person doing; do you think that's a valid...? That then can be used to develop programming that is relevant within the corrections system. Is that something that you see as a positive thing? [LB907 LB999]

MARC LEVIN: Yes, and I think there's also a real positive to having mentors, for example, volunteers, often from prison fellowship, who we work with very closely, but who can work with the inmates inside the walls and then transition and help them on the outside. So mentoring is huge. And again you can't really facilitate that if you're discharging people without supervision. You don't know where they're going, what county they're going back to, etcetera. And so, yeah, I certainly agree with that. There

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was a study that Pew did in New Jersey, last year. They compared inmates discharged without supervision versus those discharged with supervision, and that was the same risk level, offense level, and all that; and there were 36 percent fewer new offenses by those under supervision. [LB907 LB999]

SENATOR ASHFORD: And we've seen that report and it is amazing. And Pennsylvania has done reform as well, have they not? [LB907 LB999]

MARC LEVIN: Yes. Governor Corbett. They actually did a similar thing that basically eliminated most or all of their flat discharges. So it definitely is, and I'm glad that you mentioned the fact, I think you did in your opening remarks, how many states are doing things like this. Georgia, under Governor Deal, who is a former prosecutor, passed reforms unanimously that included drug sentencing reform, strengthening probation and reentry. And South Carolina. South Dakota, right above you, Governor Dugaard has been a huge champion of this, and they passed a comprehensive... [LB907 LB999]

SENATOR ASHFORD: Kansas. [LB907 LB999]

MARC LEVIN: Kansas, of course, under Governor Brownback. And so it's...Governor Kasich in Ohio led passage of these reforms. So there is a national movement in this area. [LB907 LB999]

SENATOR ASHFORD: Okay. Any other questions of Marc? Thank you. And thanks for all your work. [LB907 LB999]

MARC LEVIN: Oh, well thank you. [LB907 LB999]

SENATOR ASHFORD: So, you know, stay available. We'll keep calling you on this stuff. [LB907 LB999]

MARC LEVIN: I will. Thank you. [LB907 LB999]

SENATOR ASHFORD: Okay. John Cavanaugh, then Mark Foxall has to leave to teach a class, so. Councilman Melton, are you...do you intend to testify? Okay, well, why don't you come on up front. [LB907 LB999]

JOHN CAVANAUGH: (Exhibit 10) Mr. Chairman, members of the Judiciary Committee, my name is John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h. I am the chief operating officer of the Holland Children's Movement, 1700 Farnam Street, Omaha, Nebraska. I am here today in support of LB907 and LB999. I want to commend Chairman Ashford for his diligence, perseverance. He actually brought us together with the Platte Institute, late last year. They had initiated this study of Nebraska penal incarceration policies in 2011, and Mr. Levin had created the study at the time. And the discussion that we had was

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updating that study and using the findings of that study to create a comprehensive response. After reviewing the study, we found ourselves in complete agreement with the observations and with the conclusions and the direction that the study provided a road map for Nebraska. We found that our incarceration rates are too high, growing too fast. The population growing at 7 percent a year and an incarceration rate growing at 15 percent a year is simply not sustainable. As we approach 5,000 incarcerated inmates and \$200 million a year in expenditures and a trajectory of growing at a continuing rate, that's not sustainable. So we commend you, Mr. Chairman, for taking on--and this committee--for taking on one of the great challenges. We commend the Platte Institute for its leadership and our partnership in joining with them, and commend Mr. Levin for his insights to help guide the state in the right direction. The Holland Children's Movement is a nonpartisan not-for-profit organization established by our founder Richard Holland for the express purpose of seeking and supporting public policies designed to assist the children of Nebraska to succeed in their education and society from birth onward. And with the help of this Legislature and a host of public and private partnerships across the state, we are beginning to make strides in the critical first five years in improving the preparation of children of low-income families to succeed in school. But we are starting late with these programs and the products of our previous failure are the people that we see in our incarcerated system today. Unless we can change both the back end and the front end, we will continue to see the kind of failure that we're experiencing today. So we are strong in urging you to support LB907 and LB999. [LB907 LB999]

SENATOR ASHFORD: Thanks, John, and thank Mr. Holland, as well, for his leadership. [LB907 LB999]

JOHN CAVANAUGH: Thank you. [LB907 LB999]

SENATOR ASHFORD: Mark Foxall and Councilperson Melton, and then, let's see, then Senator Pedersen. [LB907 LB999]

DIANE AMDOR: Marty (inaudible). [LB907 LB999]

SENATOR ASHFORD: Is Marty here? [LB907 LB999]

DIANE AMDOR: Yes. [LB907 LB999]

SENATOR ASHFORD: I didn't see Marty. You're all together, aren't you? Well, then Marty, you come on up here. [LB907 LB999]

MARK FOXALL: Good afternoon, Senator Ashford, committee members. I'm Mark Foxall, director of the Douglas County Department of Corrections. We are a 1,453-bed correctional facility. Like other jails and prisons around the country, we too have

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experienced a dramatic rise in the number of mentally ill inmates being booked into our facility. Not only is the number of mentally ill inmates coming into our facility on the rise, but the acuity level of those who are mentally ill is also on the rise. We at Douglas County have reviewed LB999 and we are in support of this bill with the following conditions. First, adequate funding. LB195, last session, removed \$15 million from the behavioral health aid budget; \$10 million was redirected to a contingency fund, \$5 million was removed from the budget completely. Adequacy of the \$15 million proposed in the LB999 budget is a bit of a concern in that \$7.5 million of those dollars are going to community corrections for the entire state. We need to work, and would like to work, with the state to better understand what the real number is in order to... [LB907 LB999]

SENATOR ASHFORD: And that's a great question, Mark, and I think your help would be greatly appreciated and arriving at a budget makes sense. [LB907 LB999]

MARK FOXALL: We would certainly like to contribute and we have some experience based on what we've done with the Reentry Initiative Council in Douglas County. But we need to know...those needs are more than just medication management. Also it's critical that adequate funding for this effort would be there, otherwise we'll take a further step backwards in the treatment of the mentally ill who are coming into our facility. Also adequate county representation is important also. Incarceration at the state level begins at the county level. We have a Reentry Initiative Council and there are a number of different organizations that are represented on our Reentry Initiative Council: the University of Nebraska at Omaha; Omaha Housing Authority; Douglas County Housing Authority; Omaha Police Department; state senators; DOC--Department of Corrections; Sherwood Foundation; Heartland Workforce Solutions; Douglas County Housing Authority--I've already said that; the mayor's office; the Learning Community; Region VI; Omaha City Council, so just to name a few. But I think a more robust committee is imperative here. Finally, the creation of a discharge planning to include a multidisciplinary team; a multidisciplinary team that sits and meets with...or is comprised of public and private agencies of housing, substance abuse, mental health providers, law enforcement, and corrections. We have a homeless review team that meets every week that is comprised of a multidisciplinary team that also addresses homeless populations in our facility, in our community. And many of the homeless also have mental illness issues and they're incarcerated at a high rate. In conclusion, we in Douglas County support LB999. It's a move in the right direction. We encourage you to consider the three issues that we've raised today. [LB907 LB999]

SENATOR ASHFORD: Good points, Mark. Thanks. Senator Seiler. [LB907 LB999]

SENATOR SEILER: Sir, on your cutback, was that strictly in mental health, your...? [LB907 LB999]

MARK FOXALL: In the LB195? [LB907 LB999]

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SENATOR SEILER: Right. [LB907 LB999]

MARK FOXALL: That was money that, in looking at LB195, was cut out of... [LB907 LB999]

SENATOR ASHFORD: That's the Medicaid. Is that the Medicaid, Mark? [LB907 LB999]

MARK FOXALL: That was cut out of the behavioral health aid budget. [LB907 LB999]

SENATOR SEILER: So that was your behavioral...? [LB907 LB999]

MARK FOXALL: Yes. [LB907 LB999]

SENATOR SEILER: Did that include your drug rehab too? [LB907 LB999]

MARK FOXALL: That's...that hit...that's going to impact Region VI, not necessarily me at Douglas County Corrections; but that's going to impact Region VI. [LB907 LB999]

SENATOR SEILER: Okay. What I'm wondering, if you're seeing a combination of mental health problems with drug and alcohol addiction as kind of a lockstep problem. [LB907 LB999]

MARK FOXALL: Yes. Absolutely. We call it cooccurring disorders. You have a mental health condition with an underlying drug abuse issue. That's probably the lion's share of the mental health population in our facility. They have both a mental health condition and a drug abuse...and a drug problem. [LB907 LB999]

SENATOR SEILER: Okay, thank you. [LB907 LB999]

SENATOR ASHFORD: And I think there is an effort undergoing...being undertaken right now to reinstate a good portion of that \$15 million. But that's an excellent point. It's a real issue, so thanks, Mark. [LB907 LB999]

MARK FOXALL: Okay. Thank you. [LB907 LB999]

SENATOR ASHFORD: Councilperson Melton. [LB907 LB999]

AIMEE MELTON: Thank you, Senator Ashford. Thank you in giving us the opportunity to come today. My name is Aimee Melton, M-e-l-t-o-n, and I am here from the Omaha City Council. I'm a member of the City Council but I'm also in the unique position of being a former Deputy Douglas County Attorney and also a criminal defense attorney; so I've see both sides of the issues. I've spent a number of time working with victims

and their families but I've also spent a significant amount of time with defendants and defendants who have become incarcerated. So I think I have a unique perspective on these bills. We are...the Omaha City Council and myself supports LB907 and LB999. I would also like to piggyback a little bit on Chief Schmaderer's request that we would include in the definition use of a weapon and also a felon in possession of a firearm as a term...I think that they should qualify for this supervised as well, because of the number of shootings. Chief Schmaderer spoke about the 200 shootings we had and 41 homicides. So I think it would be very important to add those definitions. I would also...I have not gotten all the support of my city councilmembers, but I think it would be important to expand the time for the GPS beyond 90 days, and perhaps give the district court judge at least the ability or the discretion to extend that time or make it part of the sanctions if the inmate violates the supervised probation. I think that GPS is an essential tool for the Omaha Police and for the probation officer to know who they're hanging around with. What we need to do is stop these violent offenders from going back into the same life that they were in before they were incarcerated. And the gang problem that we have in Omaha and the number of shootings, that's exactly what's happening. If we could educate and we could have all of these other programs, that would be great. But I want to think about essentially if they're not going to educate themselves, there's nothing that we can do and there aren't any programs that we can pass. If they don't want to participate in those programs, they're not going to. So I'm a little bit more concerned with tracking them and making sure that there are sanctions if they violate and they choose not to take advantage of the programs. I think most importantly the victims of these violent crimes deserve this. But more importantly, the potential victims deserve this, because it's the potential victims that are going to be violated if we are not supervising these defendants upon their release. I also think coupling it with the other bill, LB835, and recalculating some of the good time, making that good time earned while they're in. But we won't go into that today. [LB907 LB999]

SENATOR ASHFORD: Well, that's for another day. [LB907 LB999]

AIMEE MELTON: That's for another day. Maybe you'll see me back. (Laugh) [LB907 LB999]

SENATOR ASHFORD: Aimee, you're in a unique position because you've been on both sides of the table. One of the...in my time here I have one component to stopping the violence...there are lots of components and parts to it, effective law enforcement. And we have effective law enforcement, I believe, in our community. And violence doesn't occur just in Omaha, but we're talking Omaha here at this point. This sort of holistic view or this continuum of supervision and treatment and services for inmates to try to stop them from coming in and reoffending, I think you've said this and the Chief said it, but do you believe this to be a significant part of stopping the violence or reducing the violence in Omaha? Is that something that you would pine to? [LB907 LB999]

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AIMEE MELTON: Absolutely. Not every defendant that even commits a violent act is necessarily a bad person. A lot of times these are young adults who, as children, did not have proper supervision. There's no excuse for the crime that they committed, but I think giving them some direction and showing them that there is another way other than going back and joining gangs. I see the problem as the gangs that a lot of these violent criminals belong to, that's their family. That's where they feel that they're getting love and support that we actually get from real families. We need to give them another way of life. I don't think it will work for everybody. I think that there are criminals out there--Nikko Jenkins--there are some people that just can't be helped. I don't believe it's mental health. I believe some people are just evil and we need to work on just keeping them incarcerated. But there are a lot of violent offenders that, given the chance and given the right tools, I think that they could be helped. But again, I think the important part about this bill is the supervision when they get out to deter them from going back into that life. Even if they don't choose to take advantage of the programs, perhaps it will deter them from going back into the gangs or picking up a firearm or going in and shooting somebody, because we can find the casings and we can see where they are. So I think this is a tool that I believe the Omaha Police Department needs. We can put more officers on the streets but we need to give those officers the tools to help them with their jobs; and that's exactly what this does. [LB907 LB999]

SENATOR ASHFORD: Well, and what's interesting to me, and then I...we have a lot of people here so I'll make it very short. But what's interesting in all my experience in working on these issues as I ran the Housing Authority and would go to the shootings, and so I've seen a lot of it, not anything near what most people have or certainly the police division who has to work with this every day. You know, we try a lot of things to try to stop the violence. Nobody...I don't know of anybody that wants the violence to continue. They want it to stop. They want Omaha to rid itself of this. I mean, one of the things...when I got into this issue, one of the things--over the last kind of coming out of the juvenile stuff and then looking at the adult side and we look at the continuum--what really triggered me was the 1,100 young adults, 25 and under, who are in our prison system, and--1,100. And of those, 634 of them had actually been in some form of probation, and so some...that got...you know, it sort of triggered my thinking, is, well, wait a second; it's the young adults. Every prison expert that I've talked to and law enforcement expert has said it's that age group on reentry back into the community. They are the highest risk to reoffend. If their initial...if you've been there for 25 years in prison, you're older; you're less likely to do that. So I think this will make a big difference to our streets. That's my belief. I mean, there are other things we have to do. Housing and jobs are integral to this. But I think your points are very well taken and I appreciate it. [LB907 LB999]

AIMEE MELTON: Thank you, Senator. [LB907 LB999]

SENATOR ASHFORD: Thanks. Okay, Marty. And then we're going to shift a little bit of

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our...I know there are lots of...but I want to start thinking about, talking about what's going on in prison, and that's why I want to get the Ombudsman's Office and Senator Pedersen. I know there are others here that want to talk about...and then we can talk about anything you want, but I'd like to kind of now refocus on programming, what's going on in the prison system right now. Thank you, Marty. [LB907 LB999]

MARTY BILEK: (Exhibit 11) My name is Marty Bilek, M-a-r-t-y B-i-l-e-k. Today I'm representing Mayor Stothert and the city of Omaha. And I guess two things that I just heard that really impressed me a lot and I think are very pertinent here. Senator Ashford, you mentioned this is a multifaceted problem and it has to be addressed from a lot different angles. That's absolutely true. Councilwoman Melton just mentioned about how key family is, or the lack thereof. I think that's crucial. But I also feel like today what we're talking about is just one little segment of the overall problem. What that segment is, is simply recidivism. You've heard it many, many times today. And that's just another small step that we can take in the right direction. And I think the reason why is simply because we as a society, if we're not careful, can actually set returning offenders up for failure. And basically that's what you're doing. If an offender gets out of incarceration and then tries to get a job but can't, and I'm also going to dovetail LB932 in a previous subcommittee where we were banning the box on employment applications... [LB907 LB999]

SENATOR ASHFORD: We appreciate your support on that and the mayor's support. [LB907 LB999]

MARTY BILEK: Right. And it's just another small step but it's in the same vein as this. It's just one way that we can take away the stigma of a person returning from incarceration when they go out to look for employment. Because without employment then there's no housing; then you can't subsist in our society; you're not able to eat; so sooner or later you decide, well, a life of crime is all there is ever going to be me. And so we have to do what we can to make sure that that isn't the mind-set when a person steps out of prison. Therefore, if there is supervised release then there's somebody there that can say, hey, you're heading in the wrong direction or there's options or programs available for you; if you really do want to make...turn your life around, then there's programs, government programs and private programs, available to help you do that. So somebody at a previous subcommittee meeting mentioned that, in a way we actually give these folks, no matter what their crime is, we give them a life sentence, because once they're in they can't get out. And that gave me pause. That's an exaggeration but there's a lot of truth in it. That's all I have. Thank you very much. [LB907 LB999]

SENATOR ASHFORD: Thank you, Marty. And thank the mayor for her support. [LB907 LB999]

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MARTY BILEK: I will certainly do that. [LB907 LB999]

SENATOR ASHFORD: Thank you. Let's see, let's go to Senator Pedersen. Dwite, can you...? And then the Ombudsman's Office. And then I know probation is here and there are a lot of others here, so let's do these two testifiers and then open it up. And if you have something to say about what's going on programmingwise in the prison and then we'll start, go back and talk about probation and those types of programs that are available prior to prison. Kind of structure it that way. Dwite, welcome. As always it's great to see you. [LB907 LB999]

DWITE PEDERSEN: Thank you, Senator Ashford, Senators. My name is Dwite Pedersen. I live in Elkhorn, Nebraska, known as Omaha--the Elkhorn neighborhood now; 21440 Shamrock Circle. I'm here today representing myself and my years of working in the criminal justice system and as being a senator for 16 years, sitting in that same seat for all 16 years on both committees. [LB907 LB999]

SENATOR ASHFORD: You're tieless today, though. Where's your tie, Senator Pedersen? [LB907 LB999]

DWITE PEDERSEN: I don't have to wear a tie anymore, thanks. (Laugh) I do wear a tie from time to time, but it's...I'm just here to make some comments about what I have experienced and what I have seen and some things I've done. It was about 15 years ago that we had Tecumseh on the line, and I was a state senator. Myself and Ernie Chambers did everything we could to stop Tecumseh. And it wasn't to stop the beds; it was to stop the maximum security facility. We were wanting to build more work release centers, which the department has two work release centers and they are very good. Right now, they're not having a good time with running them because they're overpopulated. But they have...their theory is good, the people that work there are good, and the program works. Douglas County recently, the last few years, opened a work release center. I'm a drug and alcohol counselor in private life. I've worked with several of the people who have come out of them work release centers and who make it. Not because I'm a therapist and not because of all that fancy therapy that's out there, does all this work. In fact, my understanding is the last number is about a third of the people, if we get real cocky about the fact of how many people we get well or help get well, about two-thirds of them don't get well. And we're talking about dependency. But you know what I've discovered that works better than anything else? A job. Going to work. Having a check in your hand. Paying taxes. Governor Morrison said, who was on my first committee the first year I was in the Legislature: How can we expect these people to change when we can't even give them the dignity of a job? You are not going to be... [LB907 LB999]

SENATOR ASHFORD: Governor Morrison had great common sense, didn't he? [LB907 LB999]

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DWITE PEDERSEN: All the wonderful programs in the world are not going to work if we don't all come together. If you work in corrections, that's your job. You need to do that and you want to keep your jobs, so you don't want to farm everybody out. But there are other things you can do. Work release is one of them. And for the nonviolent offenders, that would have worked fine, and it will work fine now. I compliment you on taking a look at what we need to do to cut the population in prison. [LB907 LB999]

SENATOR ASHFORD: Dwite, let me ask you this question. One of the pieces of our bill, it's very simple; it adds the word "offender" to community corrections. And I know you were there with Kermit...well, you were there with Kermit when you did the community corrections bill. In fact, I think you were there when... [LB907 LB999]

DWITE PEDERSEN: I prioritized that bill. [LB907 LB999]

SENATOR ASHFORD: Right. And... [LB907 LB999]

DWITE PEDERSEN: The Community Corrections Council was working. It was doing well. [LB907 LB999]

SENATOR ASHFORD: But let me ask you this. Let me ask you this. By...and we're proposing a council similar to that here. One of the differences is we're adding the word "offender"... "ex-offender" to...so that we can expand the role of community corrections both on the front end and the back end. What do you think about that? [LB907 LB999]

DWITE PEDERSEN: I support that. [LB907 LB999]

SENATOR ASHFORD: Okay. [LB907 LB999]

DWITE PEDERSEN: I support that. But don't forget that hopefully they're going to look at jobs and working... [LB907 LB999]

SENATOR ASHFORD: And how would you do jobs? If you were...how would you...and for many years you did a lot of this, but how would you suggest we do vocational...how should we do jobs for offenders? How would you structure their lives around finding a job? [LB907 LB999]

DWITE PEDERSEN: When I'm stating we've got to come together, it's got to be more than those of us in these rooms. Those of who have worked corrections, those of us who have been policymakers, we've got to get the chamber involved. We've got to get employers, people who have jobs. When you get out of prison, and let's say you get out of the work release center, and you go down to apply for a job, even at a fast food restaurant, in most cases, and you fill out the application, it's not that little box you

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check, whether you check that box or not; they're going to check your...they say, we don't want you because you have a felony on your record. We have to do more about educating in that field and working with them people. We have to get out of the fact that everybody is dangerous. There are dangerous people. The ones I work with on an individual basis go to...today; I still work in the Douglas County system with the kids that are being charged as adults. They come to prison for a long time, and they should for what they did. And that...we need maximum security. But we don't need maximum security for 100 percent of our inmates when we only have about a third of them, or a little bit less, that are classified as maximum security. [LB907 LB999]

SENATOR ASHFORD: Okay. Senator Seiler has a question, Dwite. [LB907 LB999]

SENATOR SEILER: Senator, I have a small problem with my career path which I championed a couple years ago in the high schools. But what I have a problem with is I can't get anybody to tell me what the educational basis is for the people we want to employ. I mean, if they can't operate a computer, how do they weld? Because a welder is now a computer operator. [LB907 LB999]

DWITE PEDERSEN: The corrections department has a good program as far as GEDs. Douglas County has had a good GED program. [LB907 LB999]

SENATOR SEILER: I understand. But nobody can tell me how many prisoners have GEDs, don't have GEDs, have high school, don't have high school. How do we know what kind of a job to even recommend that a career path be placed in the prison? [LB907 LB999]

DWITE PEDERSEN: Well, that's another part of the bill I like, the study to bring in the university into it, and it says implement, not just study this time. [LB907 LB999]

SENATOR SEILER: That's right. Right. [LB907 LB999]

DWITE PEDERSEN: I like that. (Laugh) It makes a big difference. And there's some people who choose not to move forward and go forward. Then we have to stay more strict with them. [LB907 LB999]

SENATOR SEILER: Thank you. [LB907 LB999]

SENATOR ASHFORD: Dwite, thank...I mean, I...you've done this work for 40 years. And when I was with you in the Legislature, I listened to you, when you...and maybe you had a...hopefully, you've had some influence on me that we're still... [LB907 LB999]

DWITE PEDERSEN: I love what I do. I have a passion for what I do. [LB907 LB999]

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SENATOR ASHFORD: Yes, you... [LB907 LB999]

DWITE PEDERSEN: The people who work in the system are very, very good. But beware as policymakers, that the...don't let the bureaucracy grow into more and more and more money. You need to have... [LB907 LB999]

SENATOR ASHFORD: We need to have more strategic application of some of these new reforms. We've got to really...and we've got to know what...how do we know, Dwite...and you did this at the Community Corrections Council level. We've got to...you had data collection as part of the Community Corrections Council when you did it. How...we've got to know what these people are...how successful we are; not just whether they reoffended but what are they doing. [LB907 LB999]

DWITE PEDERSEN: And not just police them but help them. [LB907 LB999]

SENATOR ASHFORD: Right. [LB907 LB999]

DWITE PEDERSEN: You know, and get the outside involved. I'm working with a major employer in Omaha, right now, on an individual basis of what type of inmate could come out of the system and, you know, they don't want work...this particular business handles cash so you don't want somebody who steals money to go to work for them. But there are people who, you know, can drive safely without a DUI at this point, or has had some other problems in their life that they could work in retail and do a good job. [LB907 LB999]

SENATOR ASHFORD: Thanks, Dwite, very much. [LB907 LB999]

DWITE PEDERSEN: Thank you. [LB907 LB999]

SENATOR ASHFORD: Marshall, and then we're going to hear from probation and then kind of open it up, because I know I'm not...a lot of you are here to talk and I don't want to make you feel like I'm cutting you off. [LB907 LB999]

MARSHALL LUX: (Exhibits 12-14) Good afternoon, Senators. My name is Marshall Lux, M-a-r-s-h-a-l-l L-u-x. I'm the Ombudsman for the state of Nebraska and I am here to testify in support of both LB907 and LB999. I think these bills are both valuable and important because they address two extremely important issues in our criminal justice system right now: number one, programming and making programming better both within the correctional system and for those who are on probation and parole; and it also addresses the overpopulation of our correctional system, which in my opinion has gotten to a crisis point. One of the documents that I'm having distributed to you shows you my computation of the situation with regard to our adult male facilities in our corrections system. Earlier, Senator Ashford said that we are at 160 percent of design

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capacity in those facilities. My stats show that it's 158 percent. I think probably Senator Ashford's number is closer to being right because my statistics are about six weeks old. The interesting thing though, at least I think so, is that in less than a year that number for those facilities has gone up from 148 percent of design capacity to 158 percent of design capacity. So it's growing at an alarming rate. It's important to get that under control. The other part of both of these bills that I think is important is the effect that I think that it will have on providing much better programming for people, not only those who are on probation and parole but also for those in the corrections system. One of the handouts that I had distributed is a statute, 83-1,110.01, which relates to the obligations of the Department of Corrections with regard to providing programming for its inmates. It has been the policy of this state, as expressed in that statute, that all inmates are to have their programming completed by the time they reach their parole eligibility date. To the best of my knowledge, that standard has never been met by the department. They have never been in compliance with that standard. That is probably the case for a number of reasons. The reality is that programming within the Department of Corrections is ragged, I think would be a good word, and it needs attention. And I think that particularly LB999 will help us to get a little better control over how that is done in the department. And I'd be happy to answer any questions that the committee might have. [LB907 LB999]

SENATOR ASHFORD: Any questions of Marshall? Seeing none, thanks, Marshall. [LB907 LB999]

MARSHALL LUX: Thank you. [LB907 LB999]

SENATOR ASHFORD: Probation. I know probation is here. I know we ask a lot of you. [LB907 LB999]

DEBORAH MINARDI: (Exhibits 15 and 16) Good afternoon. Chairman Ashford and members of the Judiciary Committee, my name is Deborah Minardi, M-i-n-a-r-d-i, and I'm the Deputy Administrator for the Office of Probation Administration and an employee of the Supreme Court. I'm testifying in a neutral capacity today, but I want to be clear that we are generally supportive of this bill. And similar to what Senator Ashford said that... [LB907 LB999]

SENATOR ASHFORD: This is an outlier neutral testifier. Don't everybody, this could be neutral, start streaming up here. I called on Deb. I didn't realize you were neutral. I thought you were for the bill. No, go ahead and continue. [LB907 LB999]

DEBORAH MINARDI: Well, we want to be clear about the fact that for the same reasons that Senator Ashford pointed out, we would like to point out as well in terms of highlight some of our concerns. First of all, in relationship to our support, we are very supportive of the aspect of increasing sentencing alternatives for the courts. Sentencing

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alternatives are a critical component as we consider justice reform in Nebraska. The bill also includes judicial oversight. And judicial oversight is equally important, especially when it comes to individuals transitioning back into the community. We have proven that for our problem solving courts and through, most recently, our juvenile justice reform. Should LB907 become into law, the Probation Administration is confident and prepared that we can take on this new role, knowing that change is never easy. But I'd like to point out three aspects that do concern us. The first aspect has already been mentioned, is the absence of front-end sentencing alternatives. While this supervised release is a new sentencing alternative that addresses the back end, we also believe that alternatives are needed to serve as an effective and efficient sentencing option for nonviolent offenders at a much lower cost. Probation knows this business. We are confident that we can do it and we've been doing it for many years successfully. A poll taken of the district court and county court judges last summer overwhelmingly expressed the desire to increase sentencing alternatives. Specialized substance abuse supervision, known as SSAS, problem solving courts, and reporting centers ranked highest when the courts wanting to be expanded. Our second concern lies with arming probation officers. National discussions around this topic remain divided. We do not believe that it's in the best interest of probation officers to arm them. When some officers are armed while other officers are not armed, the general public will perceive that all officers are armed. We believe that that will put unarmed officers at a greater risk. We also believe that employing highly skilled, highly trained officers who are equitably compensated for their job is our best strategy toward not only their safety but the safety of our community. And last but not least, as the issue again has been already addressed: adequate resources. It is going to be fundamentally important that we have both mental health and substance abuse treatment services statewide. This also means adequately providing staff resources and salary compensation. It should be noted that in a recent study by the National Center for State Courts, court and probation salaries were shown from 2 percent to 20 percent under market compared to similar positions in county government and in surrounding states. In closing, I just want to say that the goals of public safety, accountability, and recidivism are similar to those of probation's. We are prepared to take on this challenge with the necessary elements in place. I'd like to thank the Judiciary Committee and I'd be happy to answer any questions. [LB907 LB999]

SENATOR ASHFORD: Thank you. Senator Chambers. [LB907 LB999]

SENATOR CHAMBERS: Ms. Minardi, there are so many people who want to testify I deliberately have not asked questions when I was here, and I'm not now. But at some point I'd like to discuss in greater detail with you your testimony and your overall views. [LB907 LB999]

DEBORAH MINARDI: Absolutely, Senator. [LB907 LB999]

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SENATOR CHAMBERS: Okay. [LB907 LB999]

SENATOR ASHFORD: Yes, Senator Seiler. [LB907 LB999]

SENATOR SEILER: Do you have reporting centers? [LB907 LB999]

DEBORAH MINARDI: We do. As a matter of fact, I have attached to your testimony today a map of where our reporting centers are currently located. [LB907 LB999]

SENATOR SEILER: That why I was asking. [LB907 LB999]

DEBORAH MINARDI: There are seven sites located in the state of Nebraska... [LB907 LB999]

SENATOR SEILER: For just the record, would you tell us about the map so it's on the transcript so that your map probably won't be made a part of the transcript, and then how many there are and where they're located? [LB907 LB999]

DEBORAH MINARDI: Currently, reporting centers are located in Omaha, in Lincoln, in Sarpy County, in Dakota County, Lexington, Kearney, and a brand-new center that we recently opened in Scottsbluff. These reporting centers have a dual purpose where they offer both rehabilitative programs as well as enhanced supervision. And we have been running reporting centers now since 2006, and have been extremely successful in doing that. Reporting centers serve both probation and parolees, and they are...and they can access any of the 143 different services that we offer throughout those reporting sites. [LB907 LB999]

SENATOR SEILER: Thank you. [LB907 LB999]

SENATOR ASHFORD: Thank you, Senator Seiler. Thanks, Deb, very much. [LB907 LB999]

DEBORAH MINARDI: Okay, thank you. [LB907 LB999]

SENATOR ASHFORD: Thanks for all the hard work. Who would like to testify next? Yes, ma'am. And then over here in the front. And then Alan, are you wishing to testify? [LB907 LB999]

ALAN PETERSON: I would like to. [LB907 LB999]

SENATOR ASHFORD: Okay. And then over...are you neutral, Mike? You're neutral? [LB907 LB999]

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MIKE KENNEY: Yes, neutral. [LB907 LB999]

SENATOR ASHFORD: I think we've lost total control. Jane. [LB907 LB999]

JANE MEZA: Thank you. Good afternoon. My name is Jane Meza. I'm interim dean and professor in the College of Public Health at the University of Nebraska Medical Center, and I'm here in support of LB907. And I'm speaking today on my own behalf. The proposed Nebraska Center for Justice Research, as part of LB907, will be a critical resource to Nebraska's criminal and juvenile justice systems. Access to timely and current data and analysis, utilizing the expertise of the University of Nebraska Medical Center, is vital to ongoing assessment in order to provide innovation in our criminal justice system. We look forward to collaborating with our colleagues at the University of Nebraska-Omaha in achieving the goals of the center. UNMC can assist the new center achieve its goals, which include developing and maintaining a repository of relevant data and policies, educating all relevant personnel on existing data and policies, and providing data and support to legislators and policymakers as well as members of the criminal and juvenile justice systems, so that they can make informed, evidence-based decisions. UNMC's College of Public Health and the Department of Psychiatry have the expertise and experience to conduct detailed evaluations of systems, examine and recommend health policy, and provide medical expertise relevant to mental health and substance abuse. The center will collect data and connect research using the expertise of public health researchers, including bio statisticians and faculty experienced at evaluation of the criminal justice systems. The College of Public Health will conduct this research collaboratively with the University of Nebraska-Omaha, with legislators, and with policymakers. Our bio statisticians and epidemiologists have expertise in the analysis of complex data, which is required for this type of research. Utilizing our expertise in health policy analysis, we will conduct rigorous analyses and examine current and potential policies and make recommendations based on our data-driven research. UNMC faculty can also provide content expertise in mental health and substance abuse issues, which are critical topics requiring attention in the justice system. The UNMC Department of Psychiatry faculty can provide consultation regarding best practices and assessment in treatment, explore issues pertinent to access to care, and provide input on relevant policies and legislation. The University of Nebraska Medical Center is uniquely qualified to collaborate as part of the Nebraska Center for Justice Research due to our expertise in data analysis and interpretation, program evaluation, health policy, and clinical expertise in mental health and substance abuse. UNMC's research draws upon and integrates diverse methodologies and frameworks, including qualitative and quantitative techniques to address the complexity of modern-day public health issues, including the criminal justice system. If you advance this legislation to final passage, you can count on UNMC to fully participate in the center. Thank you. [LB907 LB999]

SENATOR ASHFORD: Thanks, Jane. Any questions? I don't see any. Thank you.

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[LB907 LB999]

JANE MEZA: Thank you. [LB907 LB999]

SENATOR ASHFORD: Alan...no, right here first, ma'am, in the brown coat. And then...how many are here that are for the bill? For the bill. Okay. Well, we've got a ways to go, so that's good. [LB907 LB999]

RUTH KARLSSON: (Exhibit 17) Good afternoon, committee, Senator Ashford. I'm Ruth Karlsson, K-a-r-l-s-s-o-n, executive director of Released and Restored. I come to testify in strong support of LB999 and its recognition of the need to provide programming to inmates while they are incarcerated to prepare them for their productive release once they are returning to our neighborhoods and community. To give you a little bit of background on Released and Restored, we are a local community and faith-based nonprofit organization that has been providing structured programming of the type indicated in LB999 at six of Nebraska's ten facilities since January 2005, and also to Lancaster County Corrections since March 2011. I have included letters of support from DCS Director Mike Kenney; and Cathy Gibson-Beltz, administrator of Adult Parole. I've also included the results of the analysis of our first survey instrument designed to measure the effectiveness of our programming by Dr. Lisa Kort-Butler, associate professor of sociology at UNL. As you will note from our brochure, Released and Restored recognizes, as does this bill, that public safety is increased and taxpayer cost is decreased when individuals who are released from prison and jail do not reoffend. Individuals are far less likely to reoffend if they have access to the tools and programming while they are incarcerated so that they are better prepared to live productive lives when they return to our local neighborhoods and communities. Our programs specifically address two of the five stabilizing factors for productive successful reentry. They are jobs and relationships or prosocial peer groups. Our programs focus on teaching critical thinking skills, such as problem solving, goal setting, and conflict resolution, especially within the family and within the work environment. In addition, our programs also prepare women and men to obtain and maintain gainful employment post-release. They teach money management and budgeting skills and landlord/tenant rights and responsibilities. In addition, our safe haven program, which is provided in the community and facilitates prosocial relationships, provides an opportunity for those individuals post-release to enjoy a time of fun and fellowship and encouragement in an intentionally safe and sober environment. Within our measurement tools, our students repeatedly state how valuable and helpful our programs are to them. One recent statement from an inmate at the Nebraska Correctional Center for Women comprehensively sums this up. Quote, I can be a certified welder or certified in other things, but if I don't know how to apply for a job, so don't have the courage or confidence to go out and do it, or to go to an interview, then it doesn't really matter that I know how to weld or have some other type of certification. End quote. I commend you, Senator Ashford and those who introduced this bill, for your foresight and understanding

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that the state cannot simply build its way out of prison overcrowding; that instead, the most cost-effective and fiscally responsible way to reduce prison overcrowding is to prepare inmates for their productive release while they are still incarcerated, thereby reducing rates of recidivism. Therefore, on behalf of Released and Restored, I testify in strong support of LB999. [LB907 LB999]

SENATOR ASHFORD: Thank you, Ruth. Do we have any questions of Ruth? I don't see any. Thank you. [LB907 LB999]

RUTH KARLSSON: Um-hum. [LB907 LB999]

SENATOR ASHFORD: Alan. And then over here, somebody else. Father...and then...(laugh). It's the toughest part of my job. [LB907 LB999]

ALAN PETERSON: Mr. Chairman...yeah, members of the Judiciary Committee, I'm Alan Peterson, A-l-a-n P-e-t-e-r-s-o-n. I represent ACLU Nebraska. What we do is try to protect the civil liberties, primarily in the Bill of Rights and the Fourteenth Amendment of the U.S. Constitution and in the Nebraska Constitution. I come here today with a little different story and perspective than most of what you're hearing. It's wonderful testimony. ACLU Nebraska is totally in support of both LB907 and LB999. But the perspective I want to bring is that the crisis or risk situation in which Nebraska now sits mired with regard to its criminal justice system is not only horrible just to hear it described and to hear the lax and the concerns and to read the reports from the Ombudsman's Office of what has happened, not only in the Jenkins case but generally the lack of healthcare and mental healthcare, lack of programming, and so forth, and the crowding. We're way overcrowded. So what? Well, from ACLU's standpoint, one thing we do is try to lobby, try to help fix things that affect civil liberties. The other thing we do is litigate. The Eighth Amendment of the U.S. Constitution, and the Ninth Section of Nebraska's Bill of Rights and its Constitution both prohibit cruel and unusual punishment. It's not just a cliché. When conditions reached the similar kind of crisis in California, some 15-20 years ago, litigation there started with big lawsuits, because of the lack of physical healthcare and mental healthcare. And those two lawsuits expanded. The state and the lawyers on both sides spent years litigating, and it ended up with the Supreme Court affirming what the federal courts had ordered California to do: reduce or else; we turn our prisoners loose or you must build, etcetera. You don't have to do that. But the ACLU in Nebraska, we're pretty little, that we do take on these cases and we have hundreds of complaints from inmates at the institutions in Nebraska asking us to litigate, the lock-down, or some of them there about. But all of the other concerns, even down to lack of ventilation, lack of enough air to breathe comfortably, as well as the lack of healthcare. We hope these two bills pass. They're wonderful starts. But if they don't, we are there and we do mean business, and it is our business. And we hope that will help get them passed. Thank you. [LB907 LB999]

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SENATOR ASHFORD: Thanks, Alan. Thank you for your testimony. Ma'am. And then Father if you want to come next after that, and then the director has to come because he has to leave soon. And then if Mike could be after that. He has to leave, so. [LB907 LB999]

MARGE SCHLITT: (Exhibits 18-22) Okay? Okay, Senator Brad Ashford and members of the Judiciary Committee, I am Marge Schlitt, S-c-h-l-i-t-t. I strongly support LB999. It's a good step toward resolving the problems of recidivism in Nebraska. I should start by saying that I am testifying only for myself. This problem of recidivism produces overcrowding in most of our prisons and causes unnecessary expenditures. In addition, society is disrupted by putting so many people in prison and keeping them there far longer than they are needed for punishment or rehabilitation. The Legislature has the ability to solve some of these problems. I would like to speak primarily for the many volunteers who lead programs in the Nebraska prisons. I have volunteered for 25 years, both in Nebraska and in New York State, plus several other states. The primary program I have been active in is the Alternatives to Violence Project, also known as AVP. This program helps participants to find ways to solve conflicts in ways that do not lead to violence. Starting in 1995, at OCC, a group of volunteers have led 18-hour workshops at LCC, NSP, and CCC-L. We are part of an international organization which offers about 1,000 workshops per year in about 30 states in this country, plus many workshops in the 50 countries on six continents. These AVP volunteers are eager to offer these workshops to people in prison, knowing that most of them will be released and become our neighbors. We hope that they will be able to control their anger, enjoy good personal relationships, and have successful reentry to our taxpaying society. One tool for successful reentry is the ability to participate in the many programs brought into the prison by all these volunteers, not just our program but many others. Except for some security and supervision, these valuable opportunities are essentially free to the system, and sometimes they are most helpful. People in prison are aware of which programs are useful to them and take advantage of them. Cutting back on the number of times the programs can be offered and the number of hours available is counterproductive, in my opinion. There is always a waiting list for AVP programs and many people leave prison before they are able to take advantage of it. My hope is that the system places a greater value on the contribution of volunteers and their programs as part of the solution to the reentry and recidivism problems. Thank you. [LB907 LB999]

SENATOR ASHFORD: Thank you, and thanks for all the work you do for all these years. [LB907 LB999]

SENATOR CHAMBERS: One question. [LB907 LB999]

SENATOR ASHFORD: Yes, Senator Chambers. [LB907 LB999]

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SENATOR CHAMBERS: Are you familiar with a lady named Madame Defarge? [LB907 LB999]

MARGE SCHLITT: Oh, yeah. [LB907 LB999]

SENATOR CHAMBERS: Okay. That's all I have. [LB907 LB999]

MARGE SCHLITT: My knitting, you mean? (Laugh) [LB907 LB999]

SENATOR ASHFORD: And then Director Kenney is after this because he has to leave, so let's...yes, sir. [LB907 LB999]

ROBERT BRYAN: (Exhibit 23) My name is Robert Bryan, B-r-y-a-n, director of prison ministry for the Nebraska Synod of the Evangelical Lutheran Church in America; full-time volunteer clergy in the Department of Corrections; and pastor of Followers of Christ Prison Ministry. In August 2013, the churchwide assembly of the ELCA, one of the largest Christian denominations in the world, approved a social statement: "The Church and Criminal Justice: Hearing the Cries." And you are receiving copies of that for your reference. In this document the church affirms the goals of LB999, the Criminal Justice Reentry and Data Act, in changing the focus of corrections from incarceration to transition and reentry programming for the purposes of enhancing public safety, reducing cost, prison overcrowding, and recidivism. Committing the Department of Corrections to data collection and evaluating programs on evidence-based best practices is the right thing to do. We applaud the expansion of the parole reporting centers and vouchers for mental healthcare for those on probation, and I hope that it includes those who are on parole as well. We applaud the emphasis on community-based alternatives to incarceration and allocation of funds for nongovernmental reentry programs. As pastor of Followers of Christ Prison Ministry, working with Bridges to Hope and the FEAST at Our Saviour's Lutheran Church in Lincoln, and Crossroads Connection in Omaha, I know the challenges that ex-offenders face as they try to find housing, employment, and supportive communities upon release without adequate preparation and limited resources. I know the huge financial challenges community and church-based transitional ministries face in providing support for the inmates on the inside, and ex-offenders upon release, especially when so many people just want to lock them up and throw away the key. There is a huge need for financial support of these community and volunteer-based programs that assist inmates in becoming responsible members of society. Further legislative work needs to be done regarding sentencing reforms and specialized courts, especially in regard to nonviolent offenders with drug and mental health issues and juveniles. The social and economic costs of our current drug laws, the failed so-called war on drugs need to be reevaluated in light of prison overcrowding. Also, systemic racism within the criminal justice system is reflected in disproportionate numbers of incarcerated people of color and needs to be addressed. Standing on the social statement of the ELCA and as director of Prison

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Ministry for the Nebraska Synod, I urge the Legislature and the people of Nebraska to hear the cries of those affected by mass incarceration, both the victims, offenders, their families, and communities. I urge them to be hospitable to those in prison and reentering society, to accompany them on their journey of transition, and to continue to advocate for progressive criminal justice reform. The Criminal Justice Reentry and Data Act is a step in the right direction. Thank you very much for your time. [LB907 LB999]

SENATOR ASHFORD: Thanks, Reverend. Any questions? I don't see any. [LB907 LB999]

ROBERT BRYAN: Thank you. [LB907 LB999]

SENATOR ASHFORD: Mike Kenney is next because he has to leave. He's hurrying up here, so. [LB907 LB999]

MIKE KENNEY: (Exhibit 24) Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Mike Kenney, K-e-n-n-e-y. I'm the director of the Nebraska Department of Correctional Services. I am here today to provide neutral testimony for LB907. The reason for my neutral testimony today is, as drafted, there are some unanswered questions as to how the bill will affect the department and the existing parole system. This bill, along with LB999, seeks to improve the criminal justice system and enhance public safety, a goal to which NDCS is also committed. The intent of the legislation seems to be to create a seamless criminal justice system with data systems that can interface with each other. NDCS is committed to working together with the Judiciary Committee to improve the criminal justice system. LB907 places great emphasis on the use of evidence-based practices. NDCS fully supports the need for evidence-based practices and strives to implement them in all our programs. Adult Parole Administration uses programs that are proven effectively in other systems and is currently using a risk assessment developed internally by then-DCS Research Director Hank Robinson. This risk assessment is based on stability factors for the Nebraska parole population. Parole Administration is gathering data to validate this assessment and norm it to this population. LB907 requires the use of the electronic monitoring for violent offenders. The Parole Administration currently utilizes active GPS units on known gang members, sex offenders, and other high-risk offenders, often for longer than 90 days. DCS has reentry parole officers who go into the facilities and work with the offenders prior to parole. They work to assist the inmate in developing an appropriate parole plan, which includes residence, employment, and treatment. Reentry officers also include DCS social workers when additional services are needed. NDCS does have some minor concerns with the overlap between parole and community supervision. I would like the committee to know that NDCS and the Parole Administration are willing to work with the committee on these issues. I believe that the Parole Administration, if the Legislature desires, could be the agency in charge of community supervision, similar to our role with certain sex offenders. LB907 provides for

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mental health vouchers for community supervisees and probationers, but does not provide the same for parolees. This may be an oversight, but I wanted to mention it because this is a population that will need services as they reenter the community. These issues are minor in view of the overall benefit derived from the bill. I would be happy to sit down with you and your staff and go over the items we have questions about and anything we can do to improve the criminal justice system. Thank you. [LB907 LB999]

SENATOR ASHFORD: Thanks, Director Kenney. Senator Chambers. [LB907 LB999]

SENATOR CHAMBERS: Mr. Kenney, I had said that I wasn't going to ask questions in order to leave time for people to testify who came here. But since you or I or both of us may die before we meet again, I have to ask you one or two questions. Are there inmates currently locked up who but for the fact that they could not take certain programming would be eligible for parole and likely to have been paroled? [LB907 LB999]

MIKE KENNEY: I would speculate, because that's a Parole Board question, I think, and I don't want to speculate what the Parole Board would say. [LB907 LB999]

SENATOR CHAMBERS: No, I'm not saying what they should, but have you heard of instances where if an inmate had certain programming, he or she would be... [LB907 LB999]

MIKE KENNEY: Yes. [LB907 LB999]

SENATOR CHAMBERS: ...and the programming is not available for one reason or another, so the lack or absence of the programming is what keeps certain people from being paroled. [LB907 LB999]

MIKE KENNEY: Yeah, I wouldn't dispute that. I don't know how many but I wouldn't dispute that that happens. [LB907 LB999]

SENATOR CHAMBERS: And see, neither of us is being judgmental or critical, but just for the record. And that can contribute to overcrowding because we're not talking about people now who are held there because they have misbehaved, they haven't finished their sentencing, but rather an absence of programming which in the presence of more funding, more employees, we could get some people out right now without violating any rule, any principle, or putting somebody out who would be a danger to the public. Generally speaking, is that a correct statement? [LB907 LB999]

MIKE KENNEY: It is. It does assume the Parole Board cooperating with that, and I believe that they would. [LB907 LB999]

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SENATOR CHAMBERS: Yes, I assure you. Thank you, Mr. Kenney. [LB907 LB999]

MIKE KENNEY: You're welcome. [LB907 LB999]

SENATOR ASHFORD: Thanks, Mike. I don't see any other questions. Thank you. Yes, sir. Mike. [LB907 LB999]

MIKE KENNEY: I just wanted to mention, Senator Seiler, we have contacted...the research people are looking up the number of GEDs and we'll get that data to you right away. I know that was an interest to you. We have had over 300 GED graduates in the last year, and I'm sorry to take up time. [LB907 LB999]

SENATOR SEILER: No, thank you. [LB907 LB999]

MIKE KENNEY: I just...I knew you were interested in that. [LB907 LB999]

SENATOR SEILER: I am. [LB907 LB999]

SENATOR ASHFORD: Senator Seiler's question is important, so. [LB907 LB999]

MIKE KENNEY: I'm sorry. [LB907 LB999]

SENATOR ASHFORD: No. Yes, sir. And those who are going to testify, kind of move up forward so I can see. No, you're far enough, Mike, but others that want to testify, so just so I see who is going to want to testify. Go ahead, sir. Yeah. [LB907 LB999]

JAMES CARROLL: Thank you very much, Senator Ashford. My name is James Carroll, J-a-m-e-s C-a-r-r-o-l-l. I'm here representing Crossroads Connection, a multidisciplinary...multidenominational rather, organization in Omaha. Crossroads Connection has a decade of experience offering transitional housing and programming to those on parole and in OCC who need the spiritually based counseling and employment assistance that we can offer. Over two-thirds of those who have come through our program have stayed free. Crossroads was a 2012 Department of Corrections "Partner of the Year." Most of those who have come through this program were familiar with us from support we gave them while they were in the Community Corrections Center-Omaha. We'd like to be able to be more responsive to those who apply to parole to us from facilities without work release, from OCC, from NSP, from D&E. And we feel the resources offered by LB999 would give us this option. We're a community-based organization ready and able to improve outcomes both for transitioning inmates and for the state of Nebraska. Thank you very much. [LB907 LB999]

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SENATOR MCGILL: Thank you. Do I see any questions? I do not. Thank you. We will take the next supporter. [LB907 LB999]

MIKE MARVIN: Senator McGill, members of the committee, my name is Mike Marvin, M-i-k-e M-a-r-v-i-n. I am the executive director of the Nebraska Association of Public Employees. We are the union representing the vast majority of state employees. We do represent quite a few of the correctional officers and corrections employees. I'm here today testifying generally in favor of both bills. We...I will not cover everything because some of it has been covered already, but we do have several points we would like to make. We do support the issue of not earning good time while in segregation. We believe that this is a tool for our corrections officers to keep the control of the inmates and then keep things from happening. But also it creates for much safer conditions when we put some of these people in segregation; and if they're misbehaving they shouldn't earn good time, is our belief. We have great concerns about the overcrowding. That's been hit on over and over, and but I need to reiterate that. We believe that getting a program that gets them out, the people that we can, it gets them out into the community with a supervised release creates a much safer condition not only for the inmates but for our employees that work in the Department of Corrections. Overcrowding leads to a lot of issues, tempers flaring, not being able to watch everyone at all times. We think easing overcrowding in the prisons is vital to be done. We want to talk a little bit about the programming there in the corrections and our mental health people who work in the corrections. Our mental health people, we do not have enough of them on staff. They are paid a poor wage. If any of you are interested, a mental health practitioner II who has a master's degree, their minimum hourly salary is \$9.30 an hour. That's not much for somebody who has a master's degree and practices in mental health; and they also don't receive a lot of the benefits that they would receive out in the community, such as their continuing ed classes paid for, those types of things. We also believe that our correctional officers, we really need to look at the wage scale that we're being paid for them to bring those up, because we have a great understaffing of correctional officers right now. And how you interpret those numbers is kind of crazy. You may ask the department, how many officers are we short at this facility, and they may give you a number of 30. Now, that includes people that are not on the job yet, that are in training, that have not started training. So we think that those things need to be done. But in closing, if we can get more of these people out and into the community who pose no danger to the community, we believe that will help with some of the staffing levels too. With that, I'd be happy to answer any questions. [LB907 LB999]

SENATOR ASHFORD: I don't see any, Mike. Thank you. [LB907 LB999]

MIKE MARVIN: All right. Thank you very much for the opportunity. [LB907 LB999]

SENATOR ASHFORD: Right. Thank you. Yes, ma'am. Then after...then Ben, I am going to ask you to come next because I know you have to...so would you come up

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here in the front? [LB907 LB999]

MOLLY McCLEERY: (Exhibit 25) Chairman Ashford, members of the committee, my name is Molly McCleery, M-o-l-l-y M-c-C-l-e-e-r-y, and I'm a staff attorney in the Economic Justice Program at Nebraska Appleseed. Nebraska Appleseed is a nonprofit organization that fights for justice and opportunity for all Nebraskans, and I am here to testify in support specifically on LB907. We've talked about a number of the issues that I've addressed in my written testimony but I do want to just touch on a couple things. A number of the proponents have mentioned significant health issues that ex-offenders are facing when they are reentering the community. I refer to you a study by the Urban Institute in my written testimony that surveyed ex-offenders reentering the community and the health issues that they were facing. And it found that the vast majority of these folks were facing chronic health issues, whether those were physical, mental, or substance abuse issues. The survey respondents also noted that they frequently utilized expensive emergency room visits and hospital care, and that treating their health issues posed a significant challenge in terms of reentering their community. And so LB907 provides an important piece of addressing the health issues for these individuals, especially the Medicaid enrollment piece. However, we'd like the committee to consider that many of the individuals participating in LB907's supervised release program may not be eligible for Medicaid under its current eligibility categories. These would be adults without dependents between 0 percent and 100 percent of the federal poverty level, and working parents between 47 percent and 100 percent of the federal poverty level. They would fall into a coverage gap. Additionally, we would like to note that expanding access to other programs, like the Supplemental Nutrition Assistance Program or SNAP--formerly food stamps; or TANF, Temporary Assistance for Needy Families, known as Aid to Dependent Children in Nebraska, would further help ensure that ex-offenders have transitional support and increased success when reentering the community. These programs are truly work supports. And in 1996, federal welfare legislation imposed bans for certain drug offenders in these programs. Nebraska has modified the ban in SNAP but the permanent disqualification does remain in TANF. And so through expanding access to these programs Nebraska could provide even greater stability for folks reentering the community and a greater chance of success. And with that, we'd like to thank Senator Ashford for bringing the bill and we'd like to ask the committee to consider some of these public benefits eligibility pieces when considering the bill. Thank you. [LB907 LB999]

SENATOR ASHFORD: Those are good points. Thanks, Molly. I don't see any questions, however. [LB907 LB999]

MOLLY McCLEERY: Thank you. [LB907 LB999]

SENATOR ASHFORD: The young lady in the purple scarf, and then Ben; and then who else? How many other testifiers? Okay. Okay, well, John is very patient over there, as

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you all are. Okay. [LB907 LB999]

SARITA PENKA: (Exhibit 26) My name is Sarita Penka and I live in District 6 in Omaha. I am here today as a leader of Omaha Together One Community, OTOC, which is a coalition of 25 congregations and organizations from Gretna to north Omaha. Last fall, OTOC formed a mental health action team because we had heard from families in our member congregations that many individuals found great difficulty obtaining the mental healthcare they needed for struggling family members. We have met with Douglas County officials and learned that many prisoners receive little or not therapy until they are about to be released from prison. A woman recently told me that her son, incarcerated in Tecumseh for an alcohol-related felony, is still waiting after one year to begin an AA program that will only last six months. This prisoner has been ready. But there is waiting list for AA? Is recovery from alcohol dependency a six-month endeavor? OTOC leaders have spoken with numerous people who have been in Nebraska prisons or to their family members, and we have heard repeatedly about three key elements that help a person reenter successfully from prison into society. All of these elements are also identified in the Douglas County reentry strategic plan which we endorse. First, an individual must be able to find employment sufficient to sustain themselves and their dependents. This is made difficult by the stigma of having been incarcerated and the hiring practices of many employers. We have talked to several people with criminal backgrounds who did find employment, but all of them found jobs through networks of family and friends or they worked in industries that needed low-skilled workers and which paid low wages. Such work is in packing plants, construction, and landscape business. Second, it is also necessary to find safe housing. This is made more difficult by the stigma or legal requirements imposed by law or parole boards. OTOC found people with criminal backgrounds need family, friends, or community to obtain safe and affordable housing away from bad influences. Third, people reentering from prison often need support networks of all kinds, 12-step groups, mental health therapy, and various support groups to help the former inmates recover from the addictions and behaviors that have led to or enhanced their criminal behavior. If these individuals don't have a practice of self-help strategies and finding support networks, OTOC's research shows that the individuals are much more likely to reoffend. Therefore, OTOC supports Nebraska bills LB907 and LB999. [LB907 LB999]

SENATOR ASHFORD: Thank you, Sarita, for your testimony. [LB907 LB999]

SARITA PENKA: Thank you. [LB907 LB999]

SENATOR ASHFORD: Ben, and then Willis and Sean after that. I think, where is Willis and...Willis and Sean, are you going to testify? Can you come after Ben here? [LB907 LB999]

BENJAMIN STEINER: Good afternoon. I'm Dr. Benjamin Steiner with the University of

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Nebraska-Omaha School of Criminology and Criminal Justice. I had not prepared to testify but I'm willing to testify on behalf of LB907, certain aspects in the bill, including the use of risk needs assessment and the use of risk needs assessment information to inform treatment decisions, supervision decisions, caseload sizes, and so forth. In addition, the use of evidence-based practices, not only in supervision and PSI recommendations, but also in treating offenders both in and then outside of prisons. All of these strategies have been proven to be effective in other states and jurisdictions, and could assist Nebraska in lowering recidivism rates and ultimately reducing prison populations as well. I would also encourage the committee to adopt some of the other recommendations in the policy study sponsored by the Platte Institute, specifically those that address front-end sentencing, such as the reevaluation of mandatory minimums and property offense thresholds. As the committee I'm sure is well aware, reducing the flow coming in at the front end of the prisons would also help with alleviating the crowding problem as well. And finally, I would also say that the creation of the Center for Justice Research at the University of Nebraska System, which we would house at UNO, would be very helpful I think going forward for this committee and others in terms of providing solid social science-based evidence that the committee could then use to make more informed decisions about, you know, subsequent efforts in the future. You know, as many people have testified and the committee has suggested, this is sort of an initial step in kind of a long road ahead of reform, I'm sure, for Nebraska, and we could assist that with creating that center. [LB907 LB999]

SENATOR ASHFORD: Thanks, Ben. I don't have any...see any questions. Thank you. [LB907 LB999]

BENJAMIN STEINER: All right. Thank you. [LB907 LB999]

SENATOR ASHFORD: Willis and Sean, and then Chuck after that. Either one. [LB907 LB999]

SEAN MILLER: Good afternoon. My name is Sean Miller, S-e-a-n M-i-l-l-e-r, and I'm testifying in a neutral position for LB907 simply because it really does not talk about the collateral consequences that affects convicted felons, such as not being able to participate on a jury or any other governmental activities that other citizens are allotted even after being released and maxed out their time. I come from this standpoint because I am a convicted felon. I moved to Nebraska about three years ago after serving five years in New York...between New York and Pennsylvania. And I was immediately released after I maxed out and came out here for a new life. And even after that, I still find it hard to maintain employment due to my criminal history. An example of that is I used to work for VITA program, which I was doing taxes. And right in the middle of that I was laid off because they did an extensive background check. I mean, these types...these are examples that I know a lot of felons go through and it's very frustrating, especially trying to get into the new job force. So that's where I stand. And I believe that,

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like someone said before, there's a long road into prison reform. And as I sat back and I listened to some of the testimony, I heard the terms of inmates and prisons, but what is not being considered is these people are human beings too, you know. And I'm pretty sure that some people, even sitting on this panel, if they was caught of doing some of the things they did, you know, they would probably be felons as well. But, you know, that needs to be a fair playing field when it comes to trying to do right. And I believe, you know, from being not really a part of a gang but affiliated with members of gangs, that a lot of people don't want to go out there and shoot people. You know, that's not easy to do to pick up a gun and just kill somebody. You know, this comes from a lot of history of, you know, generational, you know, racism, discrimination. These are things that really wasn't...I mean, it's being addressed now but it really needs to be talked about, and that's an issue in regards to...that's a very serious issue in regards to when we are talking about solutions, practical solutions to prison reform. So that's all I have. Thanks for listening. [LB907 LB999]

SENATOR ASHFORD: Thank you, Sean. Thanks for your testimony. Willis is next and then John and then Chuck, I guess. We've got Willis, John, and then Chuck. And then Robert. Why don't you just get in the front here? Or not. Willis. [LB907 LB999]

WILLIS SANDERS: My name is Willis Sanders, S-a-n-d-e-r-s. And I was released from prison after doing 23 years and then I was returned after five years and did three more. The second time I returned was for technical violations by definition of the Parole Board, missing an evaluation appointment and falling behind in my fees, those kind of things. So whatever the yearly costs, three times that for those kind of things. When I got out in '04, after doing those 23 years, I created--and I began building it while I was in prison--a nonprofit organization, the name of "I AM/I CAN." The mission statement and the vision statement were this--and it wasn't really hard for me to come up with it. The mission statement: Rebuilding our community, ourselves, and each other, one relationship at a time. The vision statement is: Investing in the promise, the potential, the success of a community, its people. LB999 especially I'm adamant about, I'm passionate about, because that position for offender or an ex-offender, probation officer, I wrote the job description about two years ago because I was trying to create a job for myself, and I asked the question, what would I want the person who represented them themselves to help me in my transition? And all of those things are those things that I was or that I am. So in one context I'm an anomaly because maybe out of ten people, two people come out of prison like myself having harvested everything at that time when I went in, in '81 that was there. You could get a degree in culinary arts, mechanics--auto mechanics, building maintenance, welding, any number of things. Now you can get an ABE GED and that's tragic, in my opinion, because I understand what education and the value of it is. The classification system is absolutely one of the things that I would change because the assessment and how it is applied when you come into prison, a person may come into prison with a degree or some skill level that supersedes they're being assigned to the kitchen, and then they come out. And I've just created a whole mechanism, a

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five-tiered or five-core hearts of this organization, I AM/I CAN, that's going to address in a very realistic and a very honest way all of the concerns of everybody who sits at the table. I had an opportunity to sit at the Community Corrections Council and I sat silent for the first several meetings while everybody talked about what I needed, nobody asking me what I needed and what doesn't work and what won't work. Right now, I'm still plagued and beat up for my 32-year-old convictions when I go for jobs. I just got a job today after 30 days. I got an ankle monitor on, because for those 30 days from my last job ending--it was seasonal--I didn't replace it with another job. Now I have to pay my parole fee times two, \$50, then I have to pay for the ankle bracelet. And if I keep it...excuse me, two weeks after I get the job, I have to pay. And then I may get it off. And then 90 days from now they may credit back what I paid. I think that especially the position of ex-parole...excuse, parole, probation officer, is one that can put a lot of people to work and all the other concerns can be addressed. And I'll challenge anybody to ask me what I think as to what will work, because I absolutely believe and I would bet you the next 14 years of my parole on it. Thank you. Any questions? [LB907 LB999]

SENATOR ASHFORD: Thank you, Willis. Any questions? You have provided us with a lot of information, so. [LB907 LB999]

WILLIS SANDERS: Yes. Three minutes was short, and I talked fast. [LB907 LB999]

SENATOR ASHFORD: I know, I know, but you said a lot, so. [LB907 LB999]

WILLIS SANDERS: Thank you. [LB907 LB999]

SENATOR ASHFORD: We're going to...I don't see...does...Senator Chambers, do you have a question? [LB907 LB999]

SENATOR CHAMBERS: Do you live in Lincoln or Omaha? [LB907 LB999]

WILLIS SANDERS: I live in Omaha. I was in Lincoln when I initially got out. [LB907 LB999]

SENATOR CHAMBERS: I'm in the phone book. I'm...some people are high-tech, some low-tech. I'm no tech. But my phone does have a little answering device on it. Call that number, leave yours, because I want to talk to you. [LB907 LB999]

WILLIS SANDERS: Thank you. [LB907 LB999]

SENATOR CHAMBERS: Okay. [LB907 LB999]

SENATOR ASHFORD: Thanks, Senator Chambers. What we're going to do...Chuck and then John Krejci. So, Chuck, do you want to come next? And then Willie and Rob,

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just get up there. [LB907 LB999]

CHUCK FREYERMUTH: (Exhibit 27) Senator, thank you for affording me the opportunity. My name is Chuck Freyermuth, F-r-e-y-e-r-m-u-t-h. I appear before you as an uncle to Andrea Kruger, representing her parents and other family. Up until now I hadn't heard any testimony about victims of the crime. We've heard testimony from other participants in the criminal justice system, so I hope to change that a little bit. I also sit here before you as a 35-year law enforcement veteran, having testified in federal and state courts as an expert in law enforcement use of force, criminal investigations, tactical protocols, testifying on behalf of LB907 and in favor of LB907. It's a good start at addressing general correctional reform yet it does not go quite far enough to correct the actions, the lack of actions, and the circumstances which led to the deaths of four people and the wounding of three others in the first 24 days of August 2013, in Omaha, Nebraska. The following is a direct quote from the current language of LB907, page 3, section (1). "The primary objective of sentencing is to maintain public safety and hold offenders accountable." Some of that is worth repeating again. "The primary objective...maintain public safety and hold offenders accountable while reducing recidivism and criminal behavior and improving outcomes for those offenders who are sentenced." You have a supplemental target document in front of you that first lists deficiencies and then offers solutions and rationale to current language in LB907. There are three primary themes as a result of the review of LB907. They are covered in detail in the document in front of you and I welcome the opportunity to address your questions, if any. (1) Correctional executives. Prior use by correctional executives to minimize or curtail good time. Even though the authority and the power to do so was created by statute in 1992, it's rarely used. Senator, I've heard you twice in the last three weeks essentially say the same thing. (2) Post-release parameters. It may be a typographical error, but conditions and parameters of post release must be in place prior to the release of the offender and not within 30 days after the offender releases. Go back to August 2013. Jenkins and his family embarked on a killing spree in the first 24 days after release. (3) The whole criminal justice system. This has to be an entire criminal justice system solution. Data cannot just remain within the Department of Corrections or court services. It must be made available to the agencies tasked with investigating the crime, responding to the calls of service, similar to the Omaha Chief of Police's opinion. Had Jenkins been fitted with a GPS device and that data immediately being known to Omaha police detectives, in all likelihood he either would have been deterred or he would have been caught after the first two murders. Thank you. [LB907 LB999]

SENATOR ASHFORD: Go ahead, Chuck. Do you have anything more you want to add? [LB907 LB999]

CHUCK FREYERMUTH: I do have one last point, please. To that last point, had good time, in this particular instance, been interrupted or curtailed in any fashion, had a

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proper release date been calculated, circumstances--and that's the fact--circumstances of the criminal cases would have been changed. And it's doubtful that any of the victims would have been victims at the hands of this perpetrator and his family. Thank you. [LB907 LB999]

SENATOR ASHFORD: Thank you. Thank you, Chuck. Do I have any questions? No, I don't see any questions. Thank you. [LB907 LB999]

CHARLES FREYERMUTH: Thank you. [LB907 LB999]

SENATOR ASHFORD: John, Willie, and...Willie next and then your buddy there next to you. Okay. Okay, John. [LB907 LB999]

JOHN KREJCI: Good afternoon, Senators. My name is John Krejci, J-o-h-n K-r-e-j-c-i. I come in support of LB999 and LB907 and I'm speaking for the Nebraskans for Peace, NAACP, and the newsletter Nebraska Criminal Justice Review. I'm a member or a contributor to all these groups. I'd just like to hit a couple quick points. What the Reentry Programming Board does, and I think does very well, is promote cooperation and coordination. I remember Judge Icenogle used to rail against the silos, everybody in his own silo, and this does some of the same things that the Community Corrections Council did and that's a wonderful thing. We also need community support because we know that people don't care a lot about inmates and they don't really care about the correctional system that much. So I hope that that education is part of that. We know that inmates need housing, employment. They have inadequate resources. Matter of fact, I was going to have a man I'm working with who's been incarcerated 22 years come and talk about how hard it is. But after two months, he finally got a job, so he's working now. But it's terrible. It's really, really hard for inmates. And I agree that we need more alternatives, you know, drug courts, electronic monitoring, community corrections, etcetera. I support that very much. I'm working with a group called RAN and the problem that we've got, Omaha's got, which I think Table Talk have a number of people that...organizations. But they're underfunded; they're volunteer. And I saw in one of the bills that you want to help fund some of these private groups and that's really, really, really important because we need more resources here because there's lots of groups but they don't have a whole lot of funding, and that's true in Lincoln and in Omaha. Interestingly--and somebody had talked about all there is, is a GED program--some of us have got some money and they're teaching a pilot program, college-level courses in the State Penitentiary, and we're trying to get money for York. But this isn't a private thing. In other words, the department and the state should help because GED isn't enough. We need college. And we're teaching those in the prison now. The women at York really want that, and so that's something that we should, you know, keep thinking about. [LB907 LB999]

SENATOR ASHFORD: Well, educational furloughs, too, can be used. [LB907 LB999]

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JOHN KREJCI: (Exhibits 28 and 29) Yeah, absolutely, yeah, yeah. Another thing, this is kind of on a side issue, but the partial lockdown, they call it the "new normal," has cut programming significantly--religious programming, clubs, self-help groups, treatment groups. And Marshall Lux in his report said only 7 percent of inmates at one time are getting any of these, and they've cut those back 75 percent. And I've got letters, just a pile of letters this high from inmates saying, you know, how difficult it is, the ones who want to help themselves with education, self-help, programming, and whatnot. So that's, you know, that's not helping for attitude towards good reintegration and prohibiting...oh, I'm done. Thank you. I support LB999 and LB907. [LB907 LB999]

SENATOR ASHFORD: Thank you, John. I don't see any questions. Okay, right over here. Okay, and then Willie, and then...how many more supporters of the bill do we have? Okay, and then we'll go to the opponents. [LB907 LB999]

JIM HANSON: (Exhibit 30) Good afternoon, Senator Ashford, Committee. I'm honored to be here. I'm Jim Hanson, H-a-n-s-o-n, 65 years old, and there's a purpose to that age. I never give up. I'm an educator, a builder, and an ex-con. I'll have my doctorate in December in reentry. I'm not an expert yet, but I'm getting pretty close. I've had a lot of people supporting me. It's kind of nice when I have professors from both universities kind of vying for the position of being my advisor in education administration. I got covered on the mentoring and the coaching. Gentleman by the name of Coach Osborne, he's agreed to be part of my committee and give some advice and things. I grew up in Lexington. Thanks...any...I made a mistake, a white-collar crime, I guess, in some respects. Got set up on a deal and...anyhow, I got a felony out of the deal. I was in charge of a big project and things. They wanted me out of the way. Recovered the cash right away but, nonetheless, I still had a felony. So through the years I had to get my...kind of like in Shawshank Redemption: Either get busy living or get busy dying. But I've listened to a lot of people and kept going forward. And so I had to get my teaching credentials back, did that. By gosh, I'm on my way. I went and got a full pardon, did 30,000 hours' community service, needed 250 hours. Gosh, I'm on my way. Even Governor Johanns, Jon Bruning, John Gale, at the time they said, you're pardoned with honors. I said, wow, I'm on my way--wrong answer because of the felony conviction. I've got the full pardon. I've got my credentials back. I'll have my doctorate back. But I can testify on behalf of these other folks. Kind of cold outside. They don't have a snowball's chance in Hades for what I've had to deal and whatever. So I think it's great for what you all are doing. And this isn't about me. It's to help make a difference while I can still take my last breath, listen to you all. And I guess the bottom line is to help give these guys purpose. That's the bottom line because I know they need to find purpose, they need to find self-empowerment when they get out, vocational education, longer probation, mentoring, and coaching. So I think you're all on the right track. There has been some great things that I totally agree with where you're headed under Brad's, Senator Brad's, leadership. And, altogether, I applaud you. Thank you very much.

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[LB907 LB999]

SENATOR ASHFORD: Thanks, Jim, very much. Willie. And then Region 6. Patience, sorry. (Laugh) [LB907 LB999]

WILLIE BARNEY: (Exhibits 31 and 32) Willie Barney, 12333 Cuming Street, Omaha, Nebraska. I'm the president and facilitator of the Empowerment Network but I'm speaking on behalf of participants that we've worked with over the last few years and specifically the last six months. We sat in the overflow and listened. And I want to thank you, Senator Ashford, and others that are pushing this forward. But the more I hear and the more I learn about this, I'm hoping and praying that everybody in this Legislature has the same sense of urgency that you do because it's shocking to me, as a resident of the state of the Nebraska, for us to be now at, what, 160 percent. It's shocking that we have individuals that are sitting in prison right now, and one of the reasons they're sitting in prison right now is they can't get into classes that are supposed to be offered. We have individuals in residence that could be back in the community. They've served their time and they're waiting on an opportunity to get in classes and, on top of that, classes that were once available through job training and others to help them get rehabilitated and actually come back into the community, to be prepared for employment or an opportunity, they're not even available anymore. So we sit...when I hear people say the system is broken, this system is broken. It is broken and needs to be fixed. We...I wanted to...I've shared information with you. There's a letter there but, most importantly, I wanted to represent...we had forums on reentry, prison reform, and those are some of the direct comments and priorities that came from 250 individuals in our community, some of them ex-offenders, some of them former gang members, some of them single mothers and others that are struggling just to get their lives back together, others are elected officials, but a polling of them, as far as what the priority should be when it comes to the interaction of this bill. So we are prepared individually and collectively to work with this committee to move this forward. We really though want to send that message of the sense of urgency, and that there are solutions. As an example, we have initiatives and programs and partners that are able to hire individuals and have anywhere from \$10 to \$12 an hour, pay them 20 to 30 hours a week, help them get certification, and have the support services that they need for \$22,000 to \$24,000 a year. That's \$5,000 less than what it would take for them to be locked up for a year. So there are reliable, evidence-based solutions in the communities. There are organizations that are prepared to work with this body to really put these into motion. But again, I just have to pause and say, it's shocking to hear what...the state that we're in right now within the prison system and the reentry system. And I'm hopeful that people are really looking at this. I know this committee is, but I'm hopeful that the rest of the state senators realize the sense of urgency around this. And we cannot wait any longer. This needs to be fixed. There are solutions and the research that you've done. You've heard from probably hundreds of people what needs to happen. And again, we're very hope...not just hopeful, but it's time to move this. I know there was an effort

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years ago to try to get to the reentry reform and prison reform. This cannot stop. I can't imagine that our state is satisfied with having the level of prisons...folks in prison that we have and the lack of services and lack of training that should be available to people. So thank you for taking this on, and I'm hoping that you'll push it forward. [LB907 LB999]

SENATOR ASHFORD: Thank you, Willie. Thanks for your good work. Region 6, not the entire region, but... [LB907 LB999]

PATTI JURJEVICH: (Exhibit 33) Good afternoon, Chairman Ashford, members of the Judiciary Committee. My name is Patti Jurjevich, P-a-t-t-i J-u-r-j-e-v-i-c-h. I'm the regional administrator for Region 6 Behavioral Healthcare, the regional behavioral health authority representing Cass, Dodge, Douglas, Sarpy and Washington Counties in eastern Nebraska. I'm here in support of LB999, in particular as it relates to the proposed change in approach from a focus on incapacitation to a focus on offender transition and reentry, promoting the rehabilitation of offenders by making community-based facilities and programs available, and the role that behavioral health treatment and rehabilitation has in addressing the needs of individuals leaving the prison system and reentering the community. The Nebraska Justice Mental Health Initiative needs assessment, issued by the University of Nebraska Public Policy Center in June 2008, identified that of the inmates at state correctional facilities, 31.4 percent have a mental health diagnosis and 87.7 percent have a substance abuse diagnosis. This, and other research, is widely available to demonstrate the extent to which behavioral health needs exist in the offender population and importance of accessible, appropriate behavioral health services in the community to meet those needs. My concern from the publicly funded behavioral health system perspective is the community's capacity and ability to respond to the needs of this population which will be hampered by the impending reduction in FY '15 funds. As you heard Mark Foxall mention earlier, the legislative appropriation for community-based aid to support behavioral health services is scheduled to decrease statewide by \$15 million starting July 1, 2014, to reflect projected savings in state aid due to implementation of the Affordable Care Act. This \$15 million includes a \$5 million reduction and another \$10 million moved to a contingency fund should predicted savings not be realized. It is unclear at this time if ACA revenue will replace previously appropriated state aid. It will be challenging to meet the needs of the population addressed in this legislation with the current appropriation of funds, let alone fewer dollars. My testimony also reflects some historical information about reform efforts that we've had in our community starting in 2004 with the Behavioral Health Services Act. But while I'm not questioning the importance of funding for programming, training, and housing in the bill, given the prevalence of behavioral health issues in the prison population, inclusion of additional funds in this legislation for new and expanded community-based services is critical to meeting the needs of the individuals as they return to the community. In conclusion, I urge you to consider two points as it relates to the behavioral health needs of the population: support legislative efforts to restore any and all of the \$15 million scheduled

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to be cut from the behavioral health aid appropriation in FY '15; and include an additional appropriation for the development and expansion of community-based behavioral health services based on a comprehensive assessment of needs. I appreciate your time. Thank you. [LB907 LB999]

SENATOR ASHFORD: Thank you, Patti. I know you've talked to Senator Mello and I'm... [LB907 LB999]

PATTI JURJEVICH: Yeah. [LB907 LB999]

SENATOR ASHFORD: ...assured by Senator Mello... [LB907 LB999]

PATTI JURJEVICH: Yeah. [LB907 LB999]

SENATOR ASHFORD: ...that those replacement funds are going to be there, at least for part of that, so... [LB907 LB999]

PATTI JURJEVICH: Yeah, we're very hopeful and appreciate any support you can give us that way. [LB907 LB999]

SENATOR ASHFORD: Yeah, and we have to keep working at that. So thank you very much. [LB907 LB999]

PATTI JURJEVICH: Thank you. [LB907 LB999]

SHERRY GLASNAPP: Chairman Ashford and committee members, my name is Sherry Glasnapp, S-h-e-r-r-y G-l-a-s-n-a-p-p. I am the director of Douglas County Community Mental Health Center. Please accept this testimony supporting LB999. It is essential that Nebraska take a proactive approach in addressing the systematic needs of the prison system. In conjunction with systematic needs, structured oversight of reentry into community-based services is imperative. It is my understanding that one goal of LB999 is to provide a system that will assure a transition period for individuals prior to reentry with a strong emphasis on the establishment of all services and supports needed to be within the home community. The establishment of support services in a timely manner will assist in the reduction of recidivism. My experience with behavioral health reform and the Clinical Review Team is a model that has been very successful in Nebraska. Members of our community, service providers, in addition to housing, mental health, substance abuse treatment programs, worked very strong in conjunction with staff at the regional center. This approach was extremely successful and should be modeled or considered in this initiative. We want to collaborate on reentry. When considering this, please do not forget the behavioral health, the mental health, and substance abuse needs of individuals returning to our communities. It is my understanding that the state of Nebraska is considering removal of \$15 million from behavioral health services

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across the state of Nebraska. This is in conjunction with thinking that the Affordable Care Act will take care of the indigent and underserved in our communities. I do not believe this is going to be true at all. Region 6 Behavioral Healthcare service providers will be impacted by approximately \$5 million if this action is not overturned. Alone, the Douglas County Community Mental Health Center will decrease services to such individuals by \$1.5 million to \$1.7 million. Medication management, therapy, and acute psychiatric inpatient services stand to be closed or dramatically decreased. Without continued funds, doors to our Community Mental Health Center services, along with other community services, will not only be closed to our current individuals, but will certainly not be able to serve individuals who are reentering our communities from prison or any other correctional system in general. This travesty will impact our local emergency rooms, correctional facilities, and the prison system. While there is...while we have significant support for LB999, please understand that we must look at all pieces of the puzzle and return the \$15 million to behavioral health services. Thank you. [LB907 LB999]

SENATOR ASHFORD: Thank you, Sherry. And we are working on that. [LB907 LB999]

SHERRY GLASNAPP: Thank you. [LB907 LB999]

SENATOR ASHFORD: Any other supporters? This may be the last one. [LB907 LB999]

DENISE FROST: I bet you thought I was going to oppose it, didn't you? [LB907 LB999]

SENATOR ASHFORD: No, I didn't. I would never think that. [LB907 LB999]

DENISE FROST: Thank you. [LB907 LB999]

SENATOR ASHFORD: The guys in the corner are the ones that... [LB907 LB999]

DENISE FROST: (Exhibit 34) (Laugh) Good afternoon, members of the committee. My name is Denise Frost, F-r-o-s-t. I'm here on behalf of the Nebraska Criminal Defense Attorneys Association. Obviously, the length of this hearing tells us there's a lot of people that feel passionately about the many topics that are covered in these two bills. I want to give you, I guess, maybe more of a legal...a few things to think about. And, Senator Ashford, we've given some materials to your office. [LB907 LB999]

SENATOR ASHFORD: Right. [LB907 LB999]

DENISE FROST: And I can supply more if you like. [LB907 LB999]

SENATOR ASHFORD: Right. [LB907 LB999]

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DENISE FROST: You're aware, of course, that in the federal system they've had supervised release programs in place for quite a long time. I've provided you with a copy of a July 2010 comprehensive review. Sixty-seven percent of the people that go on supervised release in the federal system succeed at it. That's a good number because you've got to look at the numbers in this, besides the passion and the human stories. I think also, frankly, it's important to know...you don't want to get mission creep on this. I... [LB907 LB999]

SENATOR ASHFORD: No, this is...we want action creep or mission action or whatever. [LB907 LB999]

DENISE FROST: Mission action creep, okay, that's good. [LB907 LB999]

SENATOR ASHFORD: Or no creep. [LB907 LB999]

DENISE FROST: No creep, no. On LB999, specifically, I'm asking you to add one additional thing to it in Section 16. In the Reentry Programming Board you should have a criminal defense attorney on... [LB907 LB999]

SENATOR ASHFORD: Thought we did but maybe we don't. Okay. [LB907 LB999]

DENISE FROST: We do not and I'm sure it was just an oversight. But a criminal defense attorney is important, I think, because we know probably better than most folks what that process is going to be, if there's a failure, and we can also probably...most of us have a greater rapport with our clients, you know, going in, and I think we can bring some good insight to that process. The other thing that I would ask you to think about...and in the interest of time I'll probably just submit something to you again in writing. We've shared with your office...I think you've got to be real careful about some of the things that you're proposing here. I heard a number of folks saying, gee, they'd like to expand that GPS. You really have got to be careful about that. That's Fourth Amendment protected. I think you can probably do some moderate stuff. But to the extent that there were folks up at the beginning of the comments that said, gee, let's just make it go, go, go, this is... [LB907 LB999]

SENATOR ASHFORD: Well, I think we realize that people that already have been sentenced have been sentenced. [LB907 LB999]

DENISE FROST: Yeah, well, that's right, and so I think you've got to be careful about that. The one other thing I think you need to be very...I guess you've got to get your folks invested in this process. The bill doesn't provide, and I respectfully suggest you probably intended it to but it should so state...to give the offender a copy of these risk assessment reports and give it to defense counsel is important. The defense lawyer can be your best friend, frankly. [LB907 LB999]

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SENATOR ASHFORD: But a lot of times the defense lawyers don't want that assessment made available to the court. [LB907 LB999]

DENISE FROST: Well, and respect... [LB907 LB999]

SENATOR ASHFORD: That's a problem. [LB907 LB999]

DENISE FROST: And, Your Honor,...or, sorry. Well, I'll call you "Your Honor" if it helps me here. [LB907 LB999]

SENATOR ASHFORD: No, don't. That's my brother. [LB907 LB999]

DENISE FROST: No. (Laugh) I think that, again, frankly, since you're talking about supervised release, you know, we don't have to reinvent the wheel here. And if you take a look at the way it is done in the federal system, it's, frankly, a lot more disclosure. Everybody gets a copy of the information so there's no game of "gotcha." I think it provides a lot more...I think I speak for every criminal defense attorney I know when I tell you that we uniformly urge our clients: When you get inside, take advantage of everything that there is. The risk assessment programs are really important. The offender may know about some of his needs; he may not or she may not. And so get them invested in it, but you've got to let the lawyer know what's going on. I guess the other thing that I want to maybe talk at a later date with you about is the sanctioning authority. I think Senator Seiler and I visited with...about this a little bit. You can drift into ex post facto problems. I know, Senator Seiler, you mentioned that some states actually allow a reentry probation officer to impose a sanction, such as jail time. I don't know that that would fly under Nebraska law. It might in other states. I don't know that it would here. But again, if you take a cue from what is already in place, you've got it. [LB907 LB999]

SENATOR ASHFORD: Okay. And I interrupted you, so you had a...but the...you know, just so you know, much of what we have in there comes from Judge Gerrard. [LB907 LB999]

DENISE FROST: Um-hum. [LB907 LB999]

SENATOR ASHFORD: And we've spent a lot of time with him, with John, talking about the federal system and how it may or may not apply, and he's a pretty good expert on that. [LB907 LB999]

DENISE FROST: I would say he is. [LB907 LB999]

SENATOR ASHFORD: But we can...obviously, your input is very important, as is

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everyone's, so... [LB907 LB999]

DENISE FROST: And we will help you in any way that we can. [LB907 LB999]

SENATOR ASHFORD: I know you will. Thank you, Denise, very much. [LB907 LB999]

DENISE FROST: Thank you. [LB907 LB999]

SENATOR ASHFORD: Okay. Any other proponents? Opponents? David. I was wondering what those guys in the back of the room were doing. (Laughter) [LB907 LB999]

DAVID PARTSCH: They were hiding out. [LB907 LB999]

SENATOR ASHFORD: They were huddled together back there. [LB907 LB999]

DAVID PARTSCH: (Exhibits 35 and 36) Chairman Ashford, members of the Judiciary Committee, good evening. My name is David Partsch, P-a-r-t-s-c-h. I'm from Nebraska City. I'm the Otoe County Attorney and I am the chair of the legislative committee of the Nebraska County Attorneys Association, on whose behalf here I testify today. First, I want to express the gratitude and appreciation to the work that Chairman Ashford and legal counsel and the committee have been putting in on improving public safety in the state of Nebraska. The association, however, at this time opposes LB907 in its current form, even though we do support the concept of supervised release and the apparent intent of the bill to ensure that offenders get the programming that they might need before being reintroduced to the community, rather than just being locked up and then released. However, the County Attorneys Association does have several specific concerns with the bill as written. We have provided those previously to legal counsel and I appreciate your acceptance of those. I'm going to address a couple of issues and then there are two additional county attorneys here to address a couple of other specific issues. The first that I want to address and that...I was pleased to hear at least one testifier here today put more emphasis on the victims of crime. Even though the bill seeks to increase public safety, I think this bill does lack the focus that it needs to have also on the victims of crime. Specifically, it's a 39-page bill and none of the new language to the bill includes the word "victim" anywhere throughout the language. I would submit that it does need to be included in Section 1 as the primary objective of sentencing that there be a reference in that primary objective to also bringing justice to the victims during the sentencing portion of a criminal trial. Another concern that we have are the types of consequences that we might see for noncompliance here. We want to make sure that that is clearly outlined and that the consequences will have teeth. The bill currently leaves it up to the determination of the probation administrator to determine through rules and regulations. Typically, on a probation order we may have administrative sanctions, but we currently have a process for county attorneys to bring a

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revocation of the probation. In this particular instance, we don't know what similar teeth sanctions might have and whether there would be a revocation process allowed where there might be a chance of reincarceration during that term of supervised release. [LB907 LB999]

SENATOR ASHFORD: Yes, Senator Chambers. [LB907 LB999]

SENATOR CHAMBERS: What do you think the bill should say with reference to victims? You can just tell me. [LB907 LB999]

DAVID PARTSCH: Senator, in the...in Section 1, the primary objective of sentencing as it's written now is to maintain public safety and hold the offenders accountable, reducing recidivism and criminal behavior. I think that's all appropriate. It also says, "and improving outcomes for those offenders who are sentenced." I think we should also add, "and bringing justice to the victims." [LB907 LB999]

SENATOR CHAMBERS: It should add what? [LB907 LB999]

DAVID PARTSCH: "And bringing justice to the victims." [LB907 LB999]

SENATOR CHAMBERS: That's not the...that's not what the criminal justice system does. That's why the action is brought not in the name of an individual but the name of the state. [LB907 LB999]

DAVID PARTSCH: One of the primary objectives of... [LB907 LB999]

SENATOR CHAMBERS: The state is the one who is bringing the charge for the state. [LB907 LB999]

DAVID PARTSCH: I agree that... [LB907 LB999]

SENATOR CHAMBERS: Then do you think that we ought to in a criminal case include the name of the victim as the one bringing the action? [LB907 LB999]

DAVID PARTSCH: I don't think the victim should be included as a party to the action. But current law does allow for victims to have a say at sentencing hearings through submissions to the judge through a presentence investigation report. It's actually required. It's required that the county attorney contact the victims and seek their input before reaching plea agreements. The victims are an important aspect of a criminal case. [LB907 LB999]

SENATOR CHAMBERS: What does "justice to the victim" mean? If they think that a nail should be driven through somebody's head, is that what should be done? [LB907

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LB999]

DAVID PARTSCH: Not necessarily. [LB907 LB999]

SENATOR CHAMBERS: Is the sentence to prison and deprivation of freedom the punishment that is attached to a crime? [LB907 LB999]

DAVID PARTSCH: The punishment aspect of a criminal case is important to the victims and it needs to address that there were serious crimes committed and that there needs to be serious accountability for those crimes. [LB907 LB999]

SENATOR CHAMBERS: Is the purpose of a sentence which is attached to a crime to mollify the victim or to provide a punishment for the wrongful conduct? [LB907 LB999]

DAVID PARTSCH: I think it's a combination of both, Senator, I think. [LB907 LB999]

SENATOR CHAMBERS: I don't. [LB907 LB999]

DAVID PARTSCH: And that's where we disagree. [LB907 LB999]

SENATOR CHAMBERS: So we disagree with that. [LB907 LB999]

DAVID PARTSCH: Yes, sir. [LB907 LB999]

SENATOR CHAMBERS: And I don't think you're going to get into this bill what you want, based on what I've heard you say. And it's not clear to me exactly what you want. Should the bill say, "to make the victim happy," "make the victim feel that an adequate punishment has been imposed"? And if the statute does not call for an adequate punishment, the victim should be allowed to add to that and the judge should be empowered to add that as a part of the sentence? Is that what you think it ought to say? [LB907 LB999]

DAVID PARTSCH: That's not what I think it ought to say. [LB907 LB999]

SENATOR CHAMBERS: I'm trying to find out something. [LB907 LB999]

DAVID PARTSCH: I told you what I think it ought to say, and I think the subsection as it's written also has similar problems that you're discussing here to hold... [LB907 LB999]

SENATOR CHAMBERS: I can read that. I want to get... [LB907 LB999]

DAVID PARTSCH: It says: to hold the offenders accountable. [LB907 LB999]

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SENATOR CHAMBERS: I want to get from you while you're here what you have to say. What's in writing is there and I can see it. [LB907 LB999]

DAVID PARTSCH: Okay. [LB907 LB999]

SENATOR CHAMBERS: I want to get from you. If it says that a person who steals a certain amount of money can get three years in prison and that theft occurred against a person who has worked very, very hard to get that which was stolen, the victim may not be pleased that only three years would be the penalty. [LB907 LB999]

DAVID PARTSCH: I agree. And the victims aren't always pleased when we contact them to get their input about what the ultimate outcome of the case might be. [LB907 LB999]

SENATOR CHAMBERS: So why do you have them give what you call input when they get the impression that that's going to have something to do with the length of the sentence? I don't think he should have anything to do with it. The facts of the case, the circumstances of the case, the details relative to the offender are the things that the sentencing judge ought to look at. When victims are trotted out and made a spectacle, I think it's wrong because you know and I know that they are not going to determine the sentence. It's there in the law. So that's why I'm asking you, when you say "justice for the victim," exactly what do you mean? [LB907 LB999]

DAVID PARTSCH: I believe justice for the victim means that offenders are held accountable, and that is included in the language as written. I think "justice to the victim" also ought to be expressly stated in there so that there is focus that these crimes impact real people, not just the offenders, that we have language in here saying that the improved outcomes for the offenders who are sentenced. I certainly want offenders who are going through a sentence to be able to get the programming that they need. But I also think that if we're going to include in the primary objective of sentencing is to improve an outcome for an offender, I certainly think there needs to be some focus that there's victims in these cases, too, and that these cases... [LB907 LB999]

SENATOR CHAMBERS: But you haven't told me what that justice would consist of. In addition... [LB907 LB999]

DAVID PARTSCH: What does... [LB907 LB999]

SENATOR CHAMBERS: ...to the sentence, what ought to be given to the victim? [LB907 LB999]

DAVID PARTSCH: And what does "improving the outcome for an offender who is

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sentenced" mean? [LB907 LB999]

SENATOR ASHFORD: We have accountability in there, David. That's why we put the word "accountability" in there. I mean, what we're trying...sorry, Senator Chambers. [LB907 LB999]

SENATOR CHAMBERS: When the sentence is imposed, that is what society through its Legislature has determined ought to be imposed for the purpose of making the perpetrator accountable. The sentence in the statute, that's all anybody can look for. And prosecutors and others who have talked about letting the victims come to these proceedings and say what they want to say and somehow that's supposed to alter what the law said, either it's going to be a law based on what the statute says or you're going to throw that out and say we will listen to what the victim says and then determine the sentence based on that. That's not the way it's supposed to be, in my opinion, so you and I differ. That's why I wanted to get from you what you mean by justice to the victim. In addition to the sentence called for by the statute, which the court imposes, what more than that do you want in order for you to say there has been justice for the victim? [LB907 LB999]

DAVID PARTSCH: And I'm not seeking to change the way the sentencing hearings are handled in any regard. But when we say the primary objective of sentencing, I think when we're talking about public safety, we're talking about reducing recidivism, it's all in the name of public safety. And the reason we're concerned about public safety is because we want to reduce victimization in our society. [LB907 LB999]

SENATOR CHAMBERS: Well, people like you can talk to victims and say things like that because you have that direct contact. The criminal law punishes. The punishment is set out in terms of what can be assessed against the person by the court, not saying all of these things that a person like you who might serve as somewhat of a counselor. And I still don't know what more you want than the sentence that is called for by the statute. Are you saying you'd want harsher penalties or punishments imposed? [LB907 LB999]

DAVID PARTSCH: Not at all. I'm saying that when the state of Nebraska uses language to define their primary purpose and policy in sentencing and eliminates any reference to the victim, then it's...you're... [LB907 LB999]

SENATOR CHAMBERS: Because that's not the point of the law. The law states what its point is. [LB907 LB999]

DAVID PARTSCH: The point...well, that...and that's where we disagree. That's where we disagree then, Senator, because I... [LB907 LB999]

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SENATOR CHAMBERS: Then why don't the county attorneys draft a statute or whatever it is you all have talked about and lay out what you think... [LB907 LB999]

DAVID PARTSCH: We... [LB907 LB999]

SENATOR CHAMBERS: ...is justice for the victim in addition to the sentence set forth in the statute? Have you any idea, based on all the work that has gone into this, what the purpose of this law is? [LB907 LB999]

DAVID PARTSCH: I hope it's to increase public safety. [LB907 LB999]

SENATOR CHAMBERS: That's all that I have. [LB907 LB999]

DAVID PARTSCH: Thank you. [LB907 LB999]

SENATOR ASHFORD: David, and listen, I...let me just follow on just a bit because I have...you know, you can be opposed to this if you want, and that's fine. But if you're a policymaker and you look at the situation that we have now, which is a significant gap in the way our corrections system works, both lack of programming, lack of supervision when someone is finished with their sentence and walks out, inadequate parole system, 1,000 people waiting for parole, what we're trying to correct is that problem. That puts more people back in your, you know, back in your bailiwick where people are...have committee another crime. We just look at the data. I mean, we've looked at data until it's coming out of our ears. And every single place we look it says that if you don't have proper supervision, if you don't have programming within the institution, if you don't have alternatives to incarceration that are meaningful, if you don't have trained probation officers with, you know, a narrower, lower caseload, you're going to get more people offending. I don't think there's anything, nor is it intended, anything in this bill to say people ought not to be sentenced pursuant to the law. I mean, we haven't changed a sentence, we haven't...the only sentencing we're looking at really are proposals that have come to us from various people that have said things like thresholds on, you know, check...cases should be increased because they haven't been changed since 1962. I mean, the county attorneys come to us, the Attorney General Comes to us with all sorts of proposals to increase penalties and, you know, we've done it. We've done it. We've increased penalties. We put mandatory minimums on gun crimes. We do all these Internet crimes. We do all this. What we're asked to do we do. But then if we...but this committee looking at a situation that exists in our state where...why do we want people to reoffend? Why do we want...we're taking people that have elements of dysfunction or they wouldn't be there and we're trying to get them the resource...I'm not...we're trying to get them the resources that they need so that the public will be safer... [LB907 LB999]

DAVID PARTSCH: And... [LB907 LB999]

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SENATOR ASHFORD: ...and other victims won't occur. [LB907 LB999]

DAVID PARTSCH: Right. [LB907 LB999]

SENATOR ASHFORD: Just like Chuck was talking about, if we'd had adequate, if we'd had adequate programming, if we'd had a way of interfacing with certain individuals so they didn't get out when they did, we might...there might not have been other victims. I mean, the point is, we're trying to correct, not take away your power. I don't understand how you guys are opposed to this. I mean, I could understand... [LB907 LB999]

DAVID PARTSCH: Senator, if I could... [LB907 LB999]

SENATOR ASHFORD: No. Time out. [LB907 LB999]

DAVID PARTSCH: Sure. [LB907 LB999]

SENATOR ASHFORD: I can understand constructive...I...the bill is not perfect. And we want your input. I mean, we haven't had any input from the executive branch. We've had a little bit of input from the Attorney General on having more prisons built basically. That's all the input we've had from the...we've been doing this for four months and I don't see anything in this bill that's designed to negate, take away, restrict your authority or your responsibility, which I respect. So I don't get it, other than it's...other than the word "victim" isn't in there, which... [LB907 LB999]

SENATOR CHAMBERS: And I want to say one more thing. And there are four people on this committee who agree. When a lawyer drunk drives, that's a danger to the public. The bar association is opposed to making that an ethical violation. They oppose it. Lawyers should not be called to ethical account for that and four people on this committee agree. So the county attorneys come here, talking about these kind of things. But when it comes to lawyers, their group, who have put together a code and written it in such a way that lawyers are placed on a pedestal, they are held to a higher standard. They are to be examples in their personal life as well as professional life. I'm talking from that code itself. And they can be held accountable for what things they do in their personal life that bring disrepute to the profession and the judiciary and the system of justice. And drunk driving is something that's constantly being fought--the number of accidents that lead to death, injuries, property destruction. But the bar association says, if a lawyer does it, that should not be an ethical violation, although failure to pay child support can be, failure to pay your taxes can be. But when you're in that several-ton vehicle hurtling down the street and you are drunk, that should not be an ethical violation. I find it disgusting that the bar association would take that position, that four of my colleagues on this committee will take that position, and then we come to something like this, where people are put in prison pursuant to what the state has said, and then be

opposed to doing something to rehabilitate those people. The Supreme Court has said that the idea of human dignity has to be recognized even if a person's life is to be taken by way of execution. Those are things I believe in. Lawyers talk it but they don't believe in it. When you take a person...let me use an animal because maybe lawyers can understand that. If you put an animal in a cage--it's called baiting--and you take a stick and you poke that animal, you tease the animal, you make it vicious, you make it react in an aggressive way, and then you open the cage and the animal comes out and does something, then you blame the animal for behaving in a way that can be predicted based on the way that animal has been mistreated. Those who work in rescuing animals that have been abused have what they call "resocialization." Before they allow anybody to adopt one of those animals, they actually give that animal some healing experiences to show that not every human being is going to mistreat that animal as others had done. Then when they think the animal is sufficiently rehabilitated, they will let somebody adopt him or her. When it comes to human beings and you deprive them of human conduct...contact, you don't let them do anything that engages their mind, you isolate them, you have people called guards who can antagonize them, who can bait them and provoke them into uttering something then write them up and have good time taken, all of these things that do the baiting, then there is no resocialization process provided for. We have people like the county attorneys who come in here and say, forget that, that's not enough, something else has to be done. Not everything can be done. The criminal justice system cannot heal a victim. The criminal justice system cannot take away the hurt, the pain, the sense of loss, the feeling of a hole in your soul when you've lost a loved one. And for county attorneys and others to give the impression that that is the role of the criminal justice system, it's a disservice to everything and everybody, including the victims. The king said that we are not going to have feuds where if your family member is hurt you get your group and go wreak vengeance. And you know why the king said that? Not out of a sense of compassion. The king was losing too many men who could no longer serve the king in a military role. So he said, from now on the king is going to punish and the state is going to move against the offender because the person who offends did not really offend directly this person but offended against the king, offended against the state, deprived the king of the services of these people that you went out and killed. So now the king is going to establish the punishment and from now on these actions are going to be brought in the name of the king or the crown, versus the offender, because the offense is against the state, against the king's interest, and that's what it is that has been brought down to today. You can have a civil action where somebody responds in damages, but you will no longer be allowed to inflict your own sense of justice because you're angry. You can't cut off an ear because your loved one lost an ear or even because you lost one. You feel like I'm attacking you. You are speaking for the county attorneys and I think...look, I pay attention to what happens in this society. I watch when politicians do things to placate the public. This idea of letting victims make statements during a criminal trial is one of the worst things that ever was done. Excuse the whole idea of justice. Justice is designed to give a person his or her due. The Legislature determines what that due

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consists of. No conduct is criminal unless the state makes it so. And when the state makes conduct criminal, it immediately annexes a punishment which the state feels is adequate to obtain recompense in a way of punishment for what this person did, not money, but deprivation of your freedom. And when you are deprived of your liberty, that is the punishment, and you're going to be deprived of your liberty for a certain number of years. There can be no torture; you cannot be put on bread and water; you cannot be deprived of food; you cannot be put in a cell where the lights are on all the time and loud music blares to torture and torment you. Now that is done. But when it's found out that it's done, the court will intervene and say you crossed the line and you cannot do that. That's the orientation I'm coming from. And you may disagree, everybody in this room may disagree, but I will stand alone against all these kind of things that I'm hearing. I deliberately, as I stated, didn't say a lot while there were many people here who came from distances to speak because the committee was accepting their input. You're different. You represent the sovereign. That code I was mentioning said that the prosecutor has a higher duty because the prosecutor represents the sovereign and, as such, the goal is not to win a case but to see that justice is done. If there is not adequate evidence to convict, the prosecutor should dismiss. The prosecutor should not withhold exculpatory evidence. And when it is found that a prosecutor has done that, the conviction obtained in such a way will be reversed, and you know that. And the reason I'm speaking in this manner: You all don't do a service to society or anybody else when, in dealing with the criminal justice system, you talk about justice to and for victims. The justice occurs when the sentence is imposed that the Legislature said should be imposed because this conduct is criminal only because the Legislature said so. If you don't like the penalty, then you can come to the Legislature and fight for that. But to suggest that the law which imposes a certain penalty is not giving justice to victims is a mistake. [LB907 LB999]

DAVID PARTSCH: And I didn't mean to say that. [LB907 LB999]

SENATOR CHAMBERS: They're not in the equation at all, in my opinion. [LB907 LB999]

DAVID PARTSCH: I think we agree on a lot of the things. Probably, we agree on a lot more than we disagree on. And, Senator Chambers, if I can, you state that the sentence imposed by the state through the Legislature is the justice, and I agree with that. And that's why when stating the policy of the state of Nebraska in sentencing, I think it ought to state, even if you don't want the word "victim," state "to bring justice." And, Senator Ashford, and... [LB907 LB999]

SENATOR ASHFORD: And I just...what I just want to... [LB907 LB999]

DAVID PARTSCH: ...we do agree on the overarching principles of what you're trying to do. [LB907 LB999]

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SENATOR ASHFORD: I...but...I just can't...I can't...and I...we'll hear from the other two county attorneys, but... [LB907 LB999]

DAVID PARTSCH: Thank you. [LB907 LB999]

SENATOR ASHFORD: And you have a perfect right to be opposed. I just...how any citizen of the state of Nebraska with any professional capacity or authority can look at the system we have in criminal justice and what's left to the...you know, the Director of Corrections, totally underfunded, not having the resources that he needs, the prior director not having the resources he needed, and we're trying to fix that. We're not trying to solve every single...or...we can't accommodate Denise Frost on her objections; we can't accommodate the county attorneys on all your objections. We just...if we don't solve this problem, more people are going to become victims, and that's...that, to me, is sinful, not... [LB907 LB999]

DAVID PARTSCH: I agree. [LB907 LB999]

SENATOR ASHFORD: The result of it is sinful. That's... [LB907 LB999]

DAVID PARTSCH: I agree, and we agree with the direction you're taking with the bill. And we come in opposed at this time because we have a list of about 15 concerns with it. [LB907 LB999]

SENATOR ASHFORD: Well, let's get... [LB907 LB999]

DAVID PARTSCH: And we think if those are addressed...and most of them I think can be addressed without a lot of angst. [LB907 LB999]

SENATOR ASHFORD: Okay. [LB907 LB999]

DAVID PARTSCH: And so I would hope that if those things can be addressed that we could get behind it and support it. [LB907 LB999]

SENATOR ASHFORD: Thanks, David. Thanks very much. Joe or Mark. [LB907 LB999]

MARK YOUNG: Good afternoon again. My name is Mark Young, Y-o-u-n-g. I'm the Hall County Attorney and I'm here on behalf of my office and the Nebraska County Attorneys Association. I am a current prosecutor and was a defense attorney practicing in central Nebraska for a number of years. There are a few things that I think need to go into this bill about victims and witnesses. One of them is there should be in the statute something that says part of the reentry time should be no contact with a victim or a witness. The way the bill is written, and I understand why, it's going to include people

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that have committed crimes against children. It's going to include people that have committed very serious acts of domestic violence. It's going to include people who have multiple other types of serious criminal behavior who may want to exact further retribution, because of what happened to them, on the victims and on the people who had the courage to testify against them. That's one thing that I think would be very important to place in this bill. Secondly, the bill should also, in my opinion, make it clearer that restitution has to be part of the...payment of restitution has to be part of supervised release and that the court shall consider, in terms of the restitution, ability to pay, the time that they may be ordering for supervised release. Crimes do, as, Senator Chambers, you've mentioned, leave...take a terrible toll, financial and emotionally on victims. The very least we can do I think as a society is to make sure that people who have committed a crime are held responsible for making at least partially whole the victim. My primary purpose, however, here today is to address the fact that the bill as drafted leaves unclear how much of this process is going to have to be paid for out of the local property taxes. And that's a very serious concern, particularly after our experiences with LB561. For example, it would appear, I'm assuming, I think there should be something in the bill that sets forth what type of sanctions you envision being available for somebody on a supervised release, but I would assume one of those sanctions are going to be some jail time, maybe 10 days, maybe 15, maybe 30. But that's going to be on my county's dime. If there is some sort of provision for due...for some sort of hearing, that should also be...is going to come out of my cost and I think there needs to be more definition in here as to the...who is paying what cost so that this can be successful because, without that, I'm afraid you're going to take great ideas, they're going to get underfunded, they're going to be on property tax, and we're going to be in a really bad position. Thank you. [LB907 LB999]

SENATOR COASH: Okay. Thank you. Mr. Young. I have a question. [LB907 LB999]

MARK YOUNG: Yeah. [LB907 LB999]

SENATOR COASH: When you talked about an order or no contact or to pay restitution, couldn't that already be part of a judge's order? [LB907 LB999]

MARK YOUNG: Well,... [LB907 LB999]

SENATOR COASH: I mean, you were asking to have it put into statute. [LB907 LB999]

MARK YOUNG: Yeah. [LB907 LB999]

SENATOR COASH: Can't a judge already say, as part of your condition of release,... [LB907 LB999]

MARK YOUNG: I think... [LB907 LB999]

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SENATOR COASH: ...we don't want you talking to these five people and you...? [LB907 LB999]

MARK YOUNG: I think if they're on probation, yeah. [LB907 LB999]

SENATOR COASH: Okay. [LB907 LB999]

MARK YOUNG: I think if they're on...if they're sentenced to prison, I've never had a judge, at least in the counties I've practiced in as a defense lawyer, in about 18 counties, you know, I've never had a judge as part of the sentence of incarceration, whether it's county jail or prison, say, you can't talk to these people, and that becomes a concern, you know, the letter from prison. And the supervised release, I think it just needs to be made clear that that should be part of the order because there's nothing in the statute right now, I think, that we give a district judge or a county judge...a district judge, I guess, a clue that they could say, as part of the supervised release, you can't be dealing, you can't go after the...you can't contact your witnesses, you can't talk...contact with them. The same on restitution, the problem we're having in Hall County is--and there was a recent court case that I think sort of spurred at least part of the Supreme Court case--it's about the ability of the offender to pay the restitution and the argument about what that means. And I would think as part of this you ought to have in there that the judge shall consider the fact...the guy, if they're going to put him on supervised release, that that should be included in the calculation to decide whether or not or how much restitution to pay. [LB907 LB999]

SENATOR COASH: Thank you, Mr. Young. [LB907 LB999]

SENATOR ASHFORD: Thanks, Mark. [LB907 LB999]

SENATOR CHAMBERS: Mr. Chairman. [LB907 LB999]

SENATOR ASHFORD: I'm sorry, Mr...Senator Chambers. [LB907 LB999]

SENATOR CHAMBERS: Mr. Young, those kind of issues, like property tax, they're legitimate. There are issues that can be raised with reference to the bill and there can be very genuine disagreements. Mine went to this idea of putting the victims in the middle of it. And the only thing that I would take issue with you on is where you talk about restitution. People come out of prison impoverished because the state created a system whereby you lose everything when you go to prison. You have no job, you have no income, you can't own anything. Then while in your state of impoverishment, they send you out and say, now you've got to find a way to pay some money that you don't have. And the only way you're going to get it...because if you don't pay this restitution you're going back to the joint. Then the only way you know how to get money is to hit

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somebody in the head, break into a house, put on a mask, and rob somebody. The court has said that the law cannot require a person to do that which is impossible, and these are the things that I think people like me have to be around for, because county attorneys make the law a bloodless, punitive operation. And I have to be the one who said there's going to be some realism. Some people call it mercy. Some people call it compassion. I call it just being realistic. Did you by chance see news about this rich white kid out east who was drunk and killed four people? [LB907 LB999]

MARK YOUNG: Oh, that was in Texas. [LB907 LB999]

SENATOR CHAMBERS: And the argument was...the lawyer called it "affluenza."
[LB907 LB999]

MARK YOUNG: Yeah, yeah. [LB907 LB999]

SENATOR CHAMBERS: He was so affluent he got away with everything; he didn't know he was going to be held accountable, so don't you hold him accountable. And the judge said, you've got a point, so he's in rehab. The way ordinary people look at that is, if he has not been called to account for what he did, now is the time to show him that that's not the way it is outside of your house. When you deliver yourself into the hands of the law, the law treats you the way the law says it should. People like me watch that and feel great bitterness because I can hear people saying, throw the book at this person. The more impoverished a person is, the less attractive in physical appearance the person is, the worse the person's so-called attitude is, the more harshly he or she is treated. But it's not a crime to have a bad attitude; it's not a crime to be poor; it's not a crime to be friendless; it's not a crime to be bitter; it's not a crime to speak with broken English. But those are the things that often people are sentenced for and those are the things that will cause a person to be violated when it comes to parole--when you appeared here your attitude was bad, so you go back to prison. And we do have people in prison for things like that, which contribute to the overcrowding. You don't have to worry about that because you're a county attorney and your job is to put people there. I have to be concerned about what happens to a human being as long as that person is alive. And if I see an injustice, whether it's one person doing it to another or the system doing it, I have a responsibility to do something about it. Maybe nobody else does, and they act in accord with their standard of values and their standard is different from mine. But what they have to understand that in the same way that their orientation leads them to say, punish, punish, punish, retribution, retribution, retribution, mine says somebody has to stand and draw a line and say, this far will you come and no farther, if I can stop you. So I am the humanity that should be found in the law. And if you ran afoul of the law, you would wish and hope that what I'm talking about now should be accorded others would be accorded you. Or if you had a loved one or a family member fall into the clutches of the law, you would not be saying, throw the book at the person, and nobody would expect you to. I'm doing what I think I have to do because others won't do

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what they need to do. So I have to have my foot in numerous circles, any one of which is enough to take all of the time and emotional capital that a person has. But that cannot apply to me. I cannot watch injustices and say, well, let somebody else take care of it. I can't take care of all of them. And, unfortunately, when people in your position who have a job to do under the law, and it is to see that when crimes have been committed the perpetrator is to be punished, I'm not going to talk about false witnesses or unjust convictions. I'm leaving that all out and now looking at it strictly on the basis of the theory. Somebody has to see that justice is done. That's you and other prosecutors. But there are other people out here who are going to ride herd, if possible, to make sure that they don't cross the line. And when the Nebraska Supreme Court struck down execution by electrocution, the judge said: Even as we punish we cannot resort to torture. If the perpetrator killed a victim by torture, those who try to write laws that punish without pushing society back into barbarism, without loosening the bonds of civilization, will say that you cannot torture; you can no longer burn people at the stake; you cannot cut off limbs; you cannot hitch a horse to each arm and each leg, then hit the horses and make them draw that person apart. That might be what the one who suffered feels like, and it's why the state is going to say it can't be done. One of these days you might understand what it is that I'm talking about and why I do it. I've been in this game, in this Legislature, now going on 40 years, and I've watched people come here and talk about justice, but they don't do justice. They talk about punishing ordinary people but don't punish lawyers the same way. And there is continuity with me because I get to see it all and I do judge them. But you have a job to do and it has to be done. So if this bill is analyzed and there can be shown where maybe the division of responsibility is going to create a problem, that's what we need to hear. And I pay attention to all of it. And that last man who was here that I talked about may think I paid no attention to anything he said, but I bet I can play back to him more accurately what he said than he could himself. I listen, I hear, I analyze, I evaluate, and I judge. But I won't let the record be fashioned without certain things being said that will take issue. So any objections you have to this bill--because you can't get it all said here, you might think I'm just saying it for words--I want to hear it, especially when you're talking about duties that are placed, changes that are made which in a way are seismic in consequence. It might make what you do almost impossible, and I'm maybe overstating it. But I don't want us, when we try to put together a comprehensive piece of legislation, to ignore how it's going to impact the real world and people who are going to have to administer it. We're going to be here a short time at best. But the law that we put in place, if it does damage, is going to be here long after we're gone and the consequences will reverberate, the ripple effect will go on, just as we're overcrowded in the prisons now. Senators came here and they were tough on crime because the Attorney General and some prosecutors wanted that. And now that we've got that problem, those of us in the Legislature who formulate the policy have to address it and that's what we're trying to do. And we don't want to put anything out there that's going to make it worse. We've got old people in prison. We've got old people that nobody in prison can deal with because they have physical, psychological needs and problems that cannot be addressed. And it didn't have to be

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that way, and in the beginning it was not so. So don't think that everything you've said, because I criticize some of it, I'm rejecting and criticizing all of it. [LB907 LB999]

SENATOR ASHFORD: Thanks, Mark. [LB907 LB999]

MARK YOUNG: I understand and appreciate that. If could respond to just one... [LB907 LB999]

SENATOR ASHFORD: Well, I...sure, I...let's go ahead and let Joe talk and then... [LB907 LB999]

MARK YOUNG: Okay. [LB907 LB999]

JOE KELLY: (Exhibit 37) Mr. Chairman, members of the committee, my name is Joe Kelly, K-e-l-l-y, Lancaster County Attorney. I'm here to oppose LB907. I would like to speak directly, in my letter, to page 3, page 3 of my letter, the second item, and it has to do with the bill taking what is a state population and making that a local county jail population. The last four pages of what I've given you are some documents from the very poorly executed effort to do this in California when the courts said, you've got 18,000 too many people in your prisons and you need to get rid of them, and it really amounted to a dump on localities. It was, if ever there was a way to do all of this incorrectly, they did so in California, paid for it, surprisingly, not so much in an increase in violent crimes but a great increase in property crimes and a great increase, in particular, in auto thefts. Be that as it may, this committee has not modeled anything after California. In fact, you're looking at those states where this is done with...done well and on the federal level. But here's four different ways I think you're taking people who otherwise would be in the penitentiary who may be spending time in the county jails unpaid. The first... [LB907 LB999]

SENATOR ASHFORD: It's not unpaid. Where do you think it's unpaid? [LB907 LB999]

JOE KELLY: If somebody...our county jail doesn't receive any reimbursement from the state when somebody is sanctioned under supervised release... [LB907 LB999]

SENATOR ASHFORD: Yeah, but...well,... [LB907 LB999]

JOE KELLY: ...and serves 30 days, I don't think. [LB907 LB999]

SENATOR ASHFORD: Well, I'm...okay. [LB907 LB999]

JOE KELLY: Do they? [LB907 LB999]

SENATOR ASHFORD: I don't know. But, I mean, what you're saying here is that there

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are issues involved in this, in the bill, related to supervised release. That's what you're basically saying? [LB907 LB999]

JOE KELLY: That's...I think you're going to...I think the second part of that is you're going to expect the judges are going to use...you are enticing them, and properly so, to use some jail sentences, 364 days. Where they might previously have said, I'm going to give you a one to two, or an 18 months to a three, now I have the option to give you 364 days in jail on this felony because I have three years of supervised release and, if properly funded, I have three years of supervised release with all of this assistance to keep you from coming back into our prison system. I think judges will be enticed to use that option, and so I think that's a portion of the people who otherwise would have gone out to those short stays, where they really don't do anything other than get out of D&E, and be in our county jails. The third way I think the jails end up with some population, I think we're encouraging parole, to have the ability to parole more, to parole earlier, and shorten the parole terms. Again, if they...I'm not sure how the concept works where you can be on parole and supervised release. Nevertheless,... [LB907 LB999]

SENATOR ASHFORD: Well, you wouldn't be. [LB907 LB999]

JOE KELLY: Okay. I thought the bill said there's nothing that keeps you from being on parole and supervised release. [LB907 LB999]

SENATOR ASHFORD: Well, go ahead. I'm sorry. I didn't mean to interrupt you. [LB907 LB999]

JOE KELLY: In any event, after that point, you're going to be paroled earlier, I believe. And, finally, I think it encourages...by express language, you're encouraging the judges to use deferred sentencing. In other words, a judge can say, I'm finding you guilty today, I'm accepting your guilty plea, but we're going to defer sentencing for six months; now normally, I might have given you a short prison term; but now that I have these options available I'm going to give you a deferred sentencing and I'm going to sentence you in six months and at the end of that six months I may give you some jail time. And perhaps that's part of the sentence. In other words, I think... [LB907 LB999]

SENATOR ASHFORD: If it's a nonviolent offense. [LB907 LB999]

JOE KELLY: Yeah, yeah. So I'm not accusing anyone of trying the dump that was done in California. I'm simply saying I haven't the slightest idea what sort of an increase in our jail population in Lancaster County this will cause. [LB907 LB999]

SENATOR ASHFORD: Joe, look it, what...as Senator Chambers said, and he's absolutely right, we've been working on this since June, when Bob Houston said the prisons were unmanageable, they were underfunded, programs were not available. I'm

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not criticizing your concerns here because we can address those concerns. That's why we have Diane, who has worked every day, every day, all...in the evenings to get this things done, by herself, without any assistance from anybody around the administration, is that we have a problem in front of us. We...you may be absolutely right in your concerns, but that's not a reason...to me, to be opposed to something, to say...if you look at the problem that we have, and you can come in opposed or neutral or whatever, but if you come in and we look at the problem that we got, nobody in your business could ever think that the status quo is acceptable to our state, nobody. And I don't think you're saying that, I mean, but, you know, these are things we can work out. But every other state we've worked with, and I've talked to directors, I've talked to experts, I've talked to as many people as I could find, and they all say, in all these states...the county attorneys, the Attorney General was on board from the beginning with these reforms. We want it...we don't...we want to make your job easier, not harder, and we don't want to dump on the counties and we don't want to disregard victims and we don't want to do any of that stuff. What we want to do is try to rectify a very broken prison system which...this is a big...we tried to cover a lot of ground by ourselves. If you have some...and I know you do because you always give us constructive stuff. But help us through this. Don't come in and oppose. And if we...it's like the old Oklahoma offer: You did this, this, this, and this, but you didn't do that, therefore, we're opposed. We can't leave this body this year and have the system be the way it is. We...it would be a dereliction of duty to the nth degree. It'd be legislative negligence for us to do that. So we need... [LB907 LB999]

JOE KELLY: I don't have a voice on the floor and... [LB907 LB999]

SENATOR ASHFORD: No. But you're not opposed to the bill. You're...you have...you've raised questions about how the county might have to pay for these deferred sentences, which is a legitimate concern, and we've been trying to think about how to do that for months, not...we don't want to get...what we want to do is get these people better. What we want to do is get them back so that they don't recidivate, so that they don't reoffend. That's our only goal. Our goal is not to give the counties more responsibility financially than they should have. I mean, you know, that's what we're trying to do here, not try to make it easier on anyone, except to try to stop reoffending from happening. So I...that's all I have. [LB907 LB999]

SENATOR COASH: Senator Ashford. [LB907 LB999]

SENATOR ASHFORD: Yes, Senator Coash. [LB907 LB999]

SENATOR COASH: Thank you. Thanks, Joe. I know you've been waiting all day. You know, I hear from...I've talked to some law enforcement, and especially law enforcement...and I think Chief Schmaderer is gone, but law enforcement out of Omaha continually says, look, we're struggling with the most violent guys jamming out in our

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community. And during one of our interim hearings, or meetings, you know, they...I think it was the chief came out and said, look, if you could just keep these guys in, buy us some more time, you know, just keep them in longer in their sentence, that would be helpful. And I'm...I don't have any judgment on that. But one of the comments you had, and I'm just trying to figure out how the language in the bill addresses this,... [LB907 LB999]

JOE KELLY: Can I... [LB907 LB999]

SENATOR COASH: ...but your comment was how it would result in these more serious offenders jamming out earlier and I'm not...can you expand on that? Because I'm challenged by it. [LB907 LB999]

JOE KELLY: Here is an example, and I do not think it will be a majority of the violent offenders because the majority of the violent offenders have multiple charges with multiple felonies ranging up to 60 years on the top. If you have a violent offender though who has only a Class III felony, 1 to 20, this law says you can't give him 20 unless you're going to do on top, thinking that he might jam and not parole, unless, unless you're willing to say no supervised release. Bottom line is, if I'm a sentencing judge, on that violent offender I'm going to put 17 on the top and take... [LB907 LB999]

SENATOR ASHFORD: Well, that's what they do now. I don't...that's what they do now. I mean, they go 17 to 20 or 19 to 20 or...don't they? I'm... [LB907 LB999]

JOE KELLY: I'm saying I can't go to 20 anymore because I've got to leave those 3 for supervised release at the top. That means I'm jamming in eight... [LB907 LB999]

SENATOR ASHFORD: That's a...we can talk about that. I mean, that's not a reason to be opposed to the bill. I mean, we're not trying to get somebody out who is violent and is going to go out and commit a violent...we're trying to get them better so they won't commit a...three months out of 20 years... [LB907 LB999]

JOE KELLY: I understand that but I don't have a voice on the floor. [LB907 LB999]

SENATOR ASHFORD: I know. [LB907 LB999]

JOE KELLY: This is my last chance to say this. [LB907 LB999]

SENATOR ASHFORD: No, it isn't. You...we can talk every day, Joe. We talk at the Y; we can talk every day. I'm not being flip. I'm just saying I respect your opinion, obviously, and have done for as long as I've known you. I just want to make this work, okay? And if there's something in there that doesn't work, let's get it to work, because what we have now is not working for you or me or anybody or any citizen or anybody.

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And if somebody is there for 20 years and they get a 19 to 20 or whatever it is, or whatever the sentence is, and they have...and the bill calls for three months' release prior to their end date, they've been there for 17 years or 15 years or whatever it is, and if they're...if they've complied with...right now they can't get access to programs on a regular basis. But if they have a program for them to follow throughout their incarceration and they do that in a positive way and we can get them supervision for three months and then another six months or whatever it is, they're...every piece of data I've seen across the country says we're safer, we're safer for that. It doesn't put a violent offender back out on the...if someone is violent or mentally ill or needs further help, we've got to be able to do that within the system. And I...and not...so they aren't placed in a position where they're going to be violent to somebody or somebody else, which does...you know, and so I get it and I know you've got a tough job to do. But let's work it out because I'm not going to leave this place until we get this done if I have to stand up until midnight every night, and nobody is going to want me to do that, because I think we're unsafe. [LB907 LB999]

SENATOR CHAMBERS: May I ask one question? Mr. Kelly, I'm going to read very carefully what you presented because I can't go through it now. Are you available for me to call you and talk to you about issues that I might see in here that need further discussion? [LB907 LB999]

JOE KELLY: Sure, yes. Yep. [LB907 LB999]

SENATOR CHAMBERS: Okay, because you've got quite a bit here and I just kind of scanned it. [LB907 LB999]

JOE KELLY: Sure. [LB907 LB999]

SENATOR ASHFORD: Thanks, Joe. [LB907 LB999]

JOE KELLY: You bet. [LB907 LB999]

SENATOR ASHFORD: Anybody else? [LB907 LB999]

DARRELL FISHER: I'm neutral, Senator. Does that count? [LB907 LB999]

SENATOR ASHFORD: Sure, you can be neutral. How many other testifiers do we have? Okay, this will be the last one. [LB907 LB999]

DARRELL FISHER: Chairman Ashford, members of the Judiciary Committee, my name is Darrell Fisher, D-a-r-r-e-l-l, Fisher is common spelling, F-i-s-h-e-r, and I am the executive director of the Nebraska Commission on Law Enforcement and Criminal Justice. I am here today in a neutral capacity regarding LB999. LB999 makes some

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changes to the Crime Commission, including the elimination of the community corrections division. The Community Corrections Act established data collection relative to various populations and from related agencies. This was called the Uniform Crime Data Analysis Reporting System and the Crime Commission remains charged with this under LB999. This system deals with collecting and maintaining data relative to populations such as probation, parole, corrections, etcetera, as well as related activities. There has been several activities and efforts related to this, in addition to describing the basic populations, two efforts that have recently proven significant and involve partnerships established with agencies identified by the statute, the courts, probation, and correctional services. We have established a data feed from JUSTICE, the state's automated court management system, which allows for management...which allows for examination of filing and sentencing. This has been the basis for much of the data provided to the Judiciary Committee and we see this as a valuable data set. Additionally, we have worked with our partners to establish an analysis of data from probation, corrections, and the courts to allow a description of the populations as they cross between agencies. While not completed, this is a significant effort that should be very fruitful. The commission's work for these initiatives has been done primarily due to the work of the community corrections division and a data analysis position. This position was created due to the original Community Corrections Act requirements. While the position was created under the Community Corrections (Act), it was not funded through an agency appropriation but, rather, through the Uniform Data Fund, per directives related to the statute. Under LB999, the Uniform Data Fund would no longer exist and would transition to the Reentry Programming Board Cash Fund. With the shifting of this cash fund, the Crime Commission is concerned about the proper funding of positions necessary for the agency to continue on data-related duties. With that said, I look forward to working with the committee as LB999 and other propositions continue to evolve. And I thank you for your attention and I would be happy to answer questions that you may have. [LB907 LB999]

SENATOR ASHFORD: I don't see any questions. I...we've talked about this. [LB907 LB999]

DARRELL FISHER: Yes, sir, we have. [LB907 LB999]

SENATOR ASHFORD: And that's a reasonable concern and I think we can work through the data cash fund issue. [LB907 LB999]

DARRELL FISHER: Very well, sir. [LB907 LB999]

SENATOR ASHFORD: So thank you. [LB907 LB999]

DARRELL FISHER: Thank you. [LB907 LB999]

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SENATOR ASHFORD: That concludes the hearing. Thank you. (See also Exhibits 38-44.) [LB907 LB999]