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Judiciary Committee  
February 12, 2014

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[LB503 LB664 LB832 LB1001 LB1022]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, February 12, 2014, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB664, LB1022, LB1001, LB832, and AM1805 to LB503. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Mark Christensen; Colby Coash; Al Davis; Amanda McGill; and Les Seiler. Senators absent: None.

SENATOR ASHFORD: Good afternoon, Senator Krist, members of the Judiciary Committee and, hey, Aimee. Silencio. No, you can speak, Senator Krist. We have five bills today, starting with LB664. Senator Krist. [LB664]

SENATOR KRIST: (Exhibits 1 and 2) Good afternoon, Senator Ashford, members of the Judiciary Committee. For the record, my name is Bob Krist, B-o-b K-r-i-s-t, and I represent the 10th Legislative District, northwest Omaha, along the north-central portion of Douglas County, which includes the city of Bennington. I appear before you today in introduction and support of LB664. During emergency situations caused by natural disasters, terrorist attacks, or other catastrophic events, licensed architects and professional engineers are often called upon and readily volunteer their services to assist with relief and recovery efforts. These services include ensuring the safety of structures, buildings, infrastructure piping, or other systems. Nebraska, however, fails to extend immunity to licensed architects and professional engineers who provide critical resources and services in an emergency. As proven by the relief efforts following Hurricanes Katrina and Rita and the 9/11 terrorist attacks, these professionals' expertise in assessing structural, mechanical, electrical, and infrastructure is invaluable to assisting federal, state, and local governments that may have limited resources during emergencies. Therefore, it is crucial that state governments establish liability protections that provide immunity for licensed architects and professional engineers during a declared emergency so that architects and engineers can quickly volunteer their services without being deterred by liability concerns. In return, the government would be able to quickly mobilize architects and engineers to adequately evaluate threats to public health and safety. This legislation stipulates that a licensed professional engineer or architect that voluntarily and without compensation provides engineering or architectural services in response to a natural disaster, terrorist attack, or other catastrophic event shall not be liable for any personal injury, wrongful death, property damage, or other loss caused by engineers' acts, errors or omissions in the performance of their services. Immunity would not be applied in those cases of wanton, willful, or intentional misconduct. The immunity only applies during the emergency and for 90 days after the emergency. Twenty-five other states have extended good Samaritan laws to registered professional engineers and architects for their voluntary services. Architects and engineers in tornado alley, with the exception of Nebraska, have this protection. This includes Texas, Oklahoma, and Kansas. Additional

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

neighboring states that also have a comprehensive good Samaritan protection law include Colorado, Missouri, and North Dakota. To underscore the value of LB664 I would have...I'm providing a list, and it's passed out to you, of examples of natural disasters in Nebraska. I want to thank you for your time. And just for the record, these emergencies were well known: October 2 through 6, tornado in Wayne, Nebraska; 2013 summer flooding in western Nebraska; 2012 fires in north-central Nebraska; 2011 flooding along the Platte and Missouri Rivers, and people are still displaced; 2008 Little Sioux EF 3 in neighboring Iowa, 4 Boy Scout members of Omaha killed and 48 injured; June 3, 1980, Grand Island tornado F3 and F4 with 5 killed, 49 businesses destroyed, and \$300 million in damages; May 6 and 7, Omaha tornado of 1975, Omaha tornado F4, killed 3, 4,000 buildings damaged, 287 destroyed. If you talk to my instructors at Creighton Prep, they'll tell you the only reason I graduated from high school was because a tornado took the building down and we couldn't have final tests, but that's a joke, I think. [LB664]

SENATOR ASHFORD: That was good. [LB664]

SENATOR KRIST: Thank you. [LB664]

SENATOR ASHFORD: Not a bad joke. [LB664]

SENATOR KRIST: Okay. [LB664]

SENATOR ASHFORD: Do we have any questions of Senator Krist? Senator Chambers. [LB664]

SENATOR CHAMBERS: One. Senator Krist, I know you're a pilot. Are you either an architect or one of these engineers? [LB664]

SENATOR KRIST: No, sir, I'm not. [LB664]

SENATOR CHAMBERS: Okay, then I don't have any questions of you. [LB664]

SENATOR KRIST: That will be...yes, sir, thank you. [LB664]

SENATOR CHAMBERS: Okay. [LB664]

SENATOR ASHFORD: Thanks, Senator Krist. [LB664]

SENATOR KRIST: Thank you. And I will not be here for the closing. I'm presenting in another committee. Thank you, sir. [LB664]

SENATOR ASHFORD: All right. [LB664]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

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SENATOR KRIST: Thank you. [LB664]

SENATOR ASHFORD: For those who haven't been, we take the proponents, come on up, those for the bill. We have a light system. We ask you to confine your comments to three minutes. The yellow light will indicate when we'd like you to sum up and then the red light is stop, it's over. (Laugh) [LB664]

BRIAN SPENCER: Red means stop. [LB664]

SENATOR ASHFORD: Okay. Okay. [LB664]

BRIAN SPENCER: (Exhibit 3) We're good. Good afternoon. My name is Brian Spencer, B-r-i-a-n S-p-e-n-c-e-r. I'm here representing my firm, RDG Planning and Design in Omaha, Nebraska, an architecture and engineering firm, and most importantly representing the architects of the state of Nebraska and the American Institute of Architects. I'm here to speak in support of LB664 for all of the reasons we've just heard. From a personal side, I'm an architect, as I mentioned. I'm a Boy Scout. Have been to Little Sioux. I grew up in Missouri, in a tornado alley state. I've been through several tornados, have strong experiences and have lost scouts that I know at Little Sioux in the past. I'm a volunteer and have been through some minor tornados myself as a boy. Emergency management organizations in our state, cities, and FEMA have the lion's share of the critical recovery efforts, right, the immediate emergency response. They bring the chain saws, the helicopters, all of the things to get people immediately to safety, the roads open, and start the recovery process. After the chain saws come through, we think that volunteer architects, engineers, and design professionals should be helping the recovery effort with our time in a nonpaid way. We want to do these things. We would love to do these things in support of our state. And not having good Samaritan law in the way firm structures are for design professional firms means that we have a very limited ability to do so. From a professional liability insurance standpoint and as a partner in a firm, it limits my ability to do these volunteer efforts. We've already talked about the tornado alley states and pretty much everything that the senator outlined in his intro outlined everything. I would indicate we've provided a supporting document from David Levy at Baird Holm LLP evaluating the proposed legislation against the existing state Emergency Management Act. Any questions? [LB664]

SENATOR COASH: All right. Thank you, Brian. Any questions for Brian? [LB664]

SENATOR LATHROP: Is this on the immunity bill? [LB664]

SENATOR SEILER: Yeah. [LB664]

SENATOR COASH: Yeah. [LB664]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

SENATOR LATHROP: Oh. No, that's okay. [LB664]

SENATOR COASH: All right. [LB664]

SENATOR LATHROP: I think I get it. [LB664]

SENATOR COASH: All right. Thank you, Brian, for your testimony. [LB664]

BRIAN SPENCER: Thank you. [LB664]

SENATOR COASH: We'll take the next testifier in support of LB664. Welcome. [LB664]

JACKIE McCULLOUGH: (Exhibit 4) Thank you. Good afternoon, members of the Judiciary Committee. My name is Jackie McCullough, J-a-c-k-i-e M-c-C-u-l-l-o-u-g-h, and I appear before you today as the executive director of the American Council of Engineering Companies of Nebraska. We are an organization that represents the business interests of private engineering firms across the state. First off, I'd like to thank Senator Krist for sponsoring this important legislation. As he mentioned, during natural disasters, terrorist attacks, and other catastrophic events, the demand for emergency services often exceeds the capacity of governmental agencies. State and local governments rely on the private sector to assist in responding to the relief and recovery needs of the communities. The expertise and skills of architects and professional engineers are particularly needed in times of such crisis. Under their respective licensure board rules of professional conduct, they are bound to protect public health, safety, and welfare. In the aftermath of a natural disaster or a catastrophic event, architectural and engineering services and skills are needed to provide structural, mechanical, electrical, architectural, or other engineering services to determine the integrity of the buildings, structures, utilities, roads, and other infrastructure that may have been damaged by such an event. Oftentimes, those professionals render the services at risk to their own well-being. They put themselves into uncertain situations that are not within their control where they are vulnerable to secondary collapses and additional attacks. Efforts by architectural and engineering industries make it safe for police, firefighters, and other rescue workers to work on search and rescue efforts. Professional engineers and architects are willing to volunteer and assist in emergency situations; however, they face substantial liability exposure when they do so. Without sufficient protection from liability, professional engineers may be hesitant to volunteer. That's why LB664 is so important to us. This legislation will stipulate that the professionals who voluntarily and without compensation provide engineering services in response to one of those disasters would not be liable for any personal injury, wrongful death, property damage, or other loss. It does not apply to cases of wanton, willful, or intentional misconduct. It's crucial that state and local governments establish liability protections for design professionals during urgent circumstances and declared

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

emergencies so they can quickly volunteer their services without being deterred by liability concerns. In return, the local and state entities will be able to quickly mobilize the design professionals to adequately evaluate the public's health and safety, and provide immediately assistance in rescue, recovery, and building efforts. And we just really feel strongly that now is the time to propose this legislation, not after a disaster or catastrophic event happens; that we would want to be prepared for that. I also distributed a letter from Dave Jesse from the Harry A. Koch agency, who writes a lot of liability insurance for engineers and architectural firms, with his statement of support and a little more explanation about how liability coverage is applied for firms and their employees. [LB664]

SENATOR LATHROP: Jackie,... [LB664]

JACKIE McCULLOUGH: Thank you. If you have any questions... [LB664]

SENATOR LATHROP: Okay. Any questions for the witness? I see none. [LB664]

JACKIE McCULLOUGH: Thank you. [LB664]

SENATOR LATHROP: Thank you for your testimony. Next proponent, if any. Anyone else here to testify in support of LB664? Seeing none, anyone here in opposition? [LB664]

JOHN FOWLES: Hello. My name is John Fowles and I'm here on behalf of the Nebraska Association of Trial Attorneys in opposition to LB664. While the proponents may have expressed some reasons that they believe this bill may be in the interest of the citizens of Nebraska, we submit to you that it's bad policy, bad precedent, unnecessary, and the bill itself is overbroad. I'd like to begin by saying that NATA has always opposed these sorts of immunity bills for the very reason they are bad policy. It is inappropriate to excuse neglect or negligence and subject the citizens of the state of Nebraska to the consequences of negligence and neglect. And it's bad precedent for the reason that if you allow one group this sort of immunity, then this room will be full of other organizations, professions, and people seeking the same kind of immunity. And it's also wholly unnecessary in this circumstance and in almost every circumstance. If you look at the definition of negligence and malpractice, the circumstances surrounding the work done by a professional is always relevant to the determination of whether they were negligent or committed malpractice in their work or in their endeavors. I personally have tried numerous malpractice cases in the state of Nebraska and can attest that it's one of the most difficult things to do, convince a jury in the state of Nebraska that someone has committed professional malpractice. The juries and the citizens of this state are very protective of the professionals, and the circumstances surrounding the work done by a professional is always relevant. I suspect that the reason for this is that...this proposal is that under duress of a natural disaster that they may not have the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

tools, the time, and the ancillary services they need to do the work that they would normally do, and that would always be something that a jury would take into account when determining whether they were in fact negligent or committed malpractice. For that reason, I also take some issue with the statute itself. It seems to be overbroad in that it goes to a period of 90 days, which would seem excessive, and also the fact that it just says it has to be related to a natural disaster without giving any real specifics as to the nexus that must be present to provide this liability or this exemption from liability. [LB664]

SENATOR LATHROP: Very good. [LB664]

JOHN FOWLES: Okay. [LB664]

SENATOR LATHROP: Thanks, John. [LB664]

JOHN FOWLES: Okay. [LB664]

SENATOR LATHROP: Any questions for the witness? I see none. Next opponent. Seeing none, anyone here in a neutral capacity? None. Senator Krist here to close or he went back to committee? That will close our hearing on LB664 and bring us to LB1022 and our own Senator Seiler. [LB664]

SENATOR SEILER: Mr. Vice Chairman, members of the Committee of Judiciary, I bring this bill on behalf of the County Attorneys Association. It basically makes two changes. One is that it does an identical change to the hearsay law that is in U.S. Title 28, 801(d)(1)(C), which basically says one of the identification of a person made after perceiving the person, which is identification at the scene or of a lineup. And that has been barred by the rule against hearsay and federal statutes have been changed to allow that as to an admission which can be made at trial. And then the person has to be there and be cross-examined. The second part of my bill is on the speedy trial, which simply, if the person forgot about the date...excuse me. If he willfully appeared or returned to court more than 21 days...after 21 days, he is then given a new...or the prosecution is given six more months to actually try the case. This is to stop the playing of games in the getting out of the jurisdiction and trying to let the six-month period run. This is an exception. Then the other is the running of such period of time to be tolled whenever and for as long as the prisoner is unable to stand trial. That case is where he's arrested in one jurisdiction, transferred to another jurisdiction to stand trial. Does the statute continue to run? The answer is, no, because he's not able to come and be able to be in trial. Those are the changes that I have recommended in this bill. [LB1022]

SENATOR LATHROP: Okay. That's on LB1022. Thank you, Senator Seiler. Any questions for Senator Seiler? [LB1022]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

SENATOR SEILER: Thank you. [LB1022]

SENATOR LATHROP: I see none. All right, the first proponent may come forward to testify in favor of LB1022. [LB1022]

RICHARD COLLIN MANGRUM: My name is Richard Collin Mangrum and I'm here perhaps just to explain this rule and answer any questions you may have, if you have any questions first, about...this deals with a pretrial identification is a nonhearsay category under the federal statutes and Nebraska did not adopt that particular nonhearsay category. That may be because of the...well, that may be because of the historical structure. When the federal was originally drafted, it wasn't included. It was one of the first amendments. So it's been under the federal rules since 1975. I wrote an article about this particular nonhearsay category back in 1986 explaining that Nebraska...it made no sense to me to have...not have this because identification testimony is always contextual anyway so that when people come in court and give testimony, which is...this rule doesn't have anything to do with in-court testimony or primarily in-court testimony. So when people testify on the identification, one of the first things people want to know, the jury wants to know on cross-examination or even on direct, is what was the context of your identification. And oftentimes the context includes references to lineups or show ups or photo arrays. And this rule keeps that out on direct examination as conceptual hearsay. It doesn't follow the common law. It's not part of the federal statute. So it's kind of an odd rule and I don't see a lot of advantages to it, although I know Tom Strigenz, who I respect, is here to oppose it. But probably I could be most useful if I can answer questions. What I do for a living is look at evidence rules. [LB1022]

SENATOR LATHROP: Can you give us an example? [LB1022]

RICHARD COLLIN MANGRUM: Yes. [LB1022]

SENATOR LATHROP: Tell us how this would... [LB1022]

RICHARD COLLIN MANGRUM: Okay. [LB1022]

SENATOR LATHROP: Give us a circumstance,... [LB1022]

RICHARD COLLIN MANGRUM: Right. [LB1022]

SENATOR LATHROP: ...if you would, so that I understand it. [LB1022]

RICHARD COLLIN MANGRUM: Here's what happens. Someone comes in court and gives identification, let's say a bank robbery, and they said, you know, were you there? Yes. Can you identify the person who was the person who pulled the gun on you in the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

bank robbery? Yes. And could you...who is it? Well, it's the defendant over here. This rule has nothing to do with that. Can you identify an article of clothing? Could the court recognize the, on the record, the fact that they made in-court identification of the defendant. Okay, that's all subject to all kinds of constitutional constraints and everything else. Now here's what's not allowed on direct: Have you previously identified this person before? And oftentimes, oftentimes where this comes up is if there's a lineup or show up. On direct examination, in almost all courts around the country except for Nebraska the follow-up question is: Have you ever previously identified this person? Yes. In what context? Well, I did it in a lineup context. What does that mean? Well, they brought a bunch of people into a hearing room and they had me pick out the particular person. That's not allowed under Nebraska law. It's allowed almost every other jurisdiction, certainly allowed under the federal rules. [LB1022]

SENATOR LATHROP: And what's the rationale for not allowing it currently? [LB1022]

RICHARD COLLIN MANGRUM: It, you know, conceptually it's hearsay because it's an out-of-court statement. The out-of-court statement would be the identification testimony, out-of-court statement offered to prove the truth of the matter asserted, which means they're trying to prove that that's who actually committed the crime. It's odd, unless you're a...unless you understand the rules of evidence, it seems odd that that would be hearsay, because the idea is you have in-court subject to cross-examination of the person who made the statement. Therefore, how could it be hearsay? The reason why it's hearsay, because the definition of hearsay does not depend upon who's on the stand. It depends upon why you're offering the evidence. If you're offering the evidence to prove the truth of the matter asserted that that's the person who committed the crime, it would be conceptually hearsay. Now because most courts and the common law... [LB1022]

SENATOR LATHROP: But it's the declarant's previous statement. [LB1022]

RICHARD COLLIN MANGRUM: That's exactly right but that makes no difference with regard to the conceptual hearsay issue. [LB1022]

SENATOR LATHROP: Okay. [LB1022]

RICHARD COLLIN MANGRUM: So you have a right to cross-examine that witness on identification, and on cross-examination oftentimes you're going to get into the pretrial identification anyway, because part of it, there's a constitutional overlay with identification testimony. If it's unduly suggestive, that the pretrial identification was unduly suggestive, then they can't even give in-court identification testimony because the idea is unduly suggestive testimony may influence the in-court identification. So there's a series of cases requiring that if you give any in-court identification on identification has to pass a certain due process totality of the circumstances of...

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

[LB1022]

SENATOR LATHROP: And we never have to get to that because we don't allow it.  
[LB1022]

RICHARD COLLIN MANGRUM: Well, the in-court identification always has to go through the constitutional gate of satisfying the totality of the circumstances being fair. So before they can even give in-court identification, they have to satisfy the fact that their identification has gone through kind of a due process constraint. [LB1022]

SENATOR LATHROP: Okay. [LB1022]

RICHARD COLLIN MANGRUM: What is different about Nebraska, and most other states and the federal government, is that when you're done asking the question about identification, under Nebraska, you cannot ask about the pretrial identification. You can on cross, to impeach the person, you know, because now we're not asking to prove... [LB1022]

SENATOR LATHROP: You fumbled. You fumbled it in your previous chance, but... [LB1022]

RICHARD COLLIN MANGRUM: Right. And you can say that identification was based upon the lineup rather than the actual crime itself. And so many times...when I wrote the article, this article back in 1986, part of what I was saying was no one really understands this rule and so it's almost always misapplied and a lot of the evidence comes in and they're arguing it on the wrong grounds, on constitutionality grounds. So the reason why it seems counterintuitive to me to have this rule is that one of the most important things to help give context to the in-court identification is the context of their prior identification. [LB1022]

SENATOR LATHROP: Right. [LB1022]

RICHARD COLLIN MANGRUM: And if you can't do that, you're cutting out the context testimony on direct examination that will allow the jury to understand whether they've been influenced by prior identifications or otherwise. [LB1022]

SENATOR LATHROP: So I think you started out by saying you don't know if this is a good thing or a bad thing, but it's... [LB1022]

RICHARD COLLIN MANGRUM: No, what I said in 19... [LB1022]

SENATOR LATHROP: ...they're doing it in the federal rules and everywhere else but we don't. [LB1022]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

RICHARD COLLIN MANGRUM: What I said in 1986 is the Nebraska rule makes no sense and they ought to adopt the federal rules because it makes more sense. [LB1022]

SENATOR LATHROP: Okay. [LB1022]

RICHARD COLLIN MANGRUM: And the reason, to me, the reason why it makes more sense is you have in-court, subject to cross-examination, the person who gave the identification testimony, and they are able on direct examination to give the context out of which they gave the testimony. So an in-court identification that the defendant is the person who committed the crime, in court everyone knows, I mean the jury could pick that out because it's the person sitting next to the defendant (sic), so. [LB1022]

SENATOR LATHROP: Right. [LB1022]

RICHARD COLLIN MANGRUM: But one of the questions that most people intuitively would want to know, well, where did you see him before, in what context? Let's assume if it's just the crime itself, then there's no way to influence it. But let's assume in many instances you have a follow-up identification, a pretrial identification... [LB1022]

SENATOR LATHROP: Right. [LB1022]

RICHARD COLLIN MANGRUM: ...even by photo array. I'll give you an example. I don't want to be boring. But one of my law students, who happened to be the editor in chief of Law Review, got raped, over a great many years ago, and after the rape she went to the police. They did a photo array. She picked out the rapist, who happened to be also a murderer and raped and murdered other people in other places. So there's the first identification. She saw the person driving by shortly...I mean a couple weeks later, make a second identification. And then she eventually made a lineup identification. None of that testimony comes in into evidence. [LB1022]

SENATOR LATHROP: Except on cross. [LB1022]

RICHARD COLLIN MANGRUM: If it comes in on cross, it comes in only to challenge the accuracy of the testimony, not to prove the identification. [LB1022]

SENATOR LATHROP: Okay. [LB1022]

RICHARD COLLIN MANGRUM: It comes in for impeachment purposes only. [LB1022]

SENATOR LATHROP: Right. [LB1022]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

RICHARD COLLIN MANGRUM: And so what most common law courts have done and what the federal courts have provided is that if you're in court, subject to cross-examination, you can both give in-court identification: That's the person who committed the crime. Plus, they can ask on direct examination: Have you previously identified this witness? That second question is not allowed under the Nebraska rule. [LB1022]

SENATOR LATHROP: I get it. Okay. Thank you very much. By the way, I did take evidence from you about 35 years ago, so I do understand the rules pretty well. [LB1022]

RICHARD COLLIN MANGRUM: I know, I've been...yeah. Yeah. Senator, yeah. [LB1022]

SENATOR ASHFORD: Senator Chambers. [LB1022]

SENATOR CHAMBERS: That last comment you made, and maybe I missed too much while I was outside, you said...would you say again that last part you mentioned about the previous identification? [LB1022]

RICHARD COLLIN MANGRUM: Okay. Under present law, under the nonhearsay category which exists today, once they say...they give testimony, that's the person who committed the crime, I was there, I saw them, the follow-up question, have you previously identified that person before, cannot be asked on direct examination. [LB1022]

SENATOR CHAMBERS: Well, how would that be relevant? If you identified this person as the one who committed the crime, what more needs to be said? Would asking that second question give an opportunity to give additional testimony that might be more incriminating toward that person who's been identified that couldn't be brought in otherwise because it dealt with something not related to what the person is charged with? [LB1022]

RICHARD COLLIN MANGRUM: No, that's...I mean, if I understand your question, your question actually answers itself because you're saying it's unfairly prejudicial or may be probative because the jury may put more weight on that. The point of identification testimony is how reliable it is, from a psychological and a expert testimony perspective. What we want to know is when did they first identify them. Is it in court now for the first time or did they identify them before? If they did identify them before, we want to know about the context. We have all these constitutional cases that say if you have a photo array or a lineup and the witnesses in the lineup are unduly suggestive, then that testimony itself may influence the in-court identification testimony. So from a...just from a coherency standpoint, it makes sense for the witness to be able to testify about not

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

only I can identify them now, I saw them before, and identify them in other context. [LB1022]

SENATOR CHAMBERS: And that other context was him doing something that was criminal. [LB1022]

RICHARD COLLIN MANGRUM: No. It would be...the other context is typically like a lineup or a show up or a photo array. [LB1022]

SENATOR CHAMBERS: But it was in connection with a crime. [LB1022]

RICHARD COLLIN MANGRUM: Same crime. [LB1022]

SENATOR CHAMBERS: Uh-huh. [LB1022]

RICHARD COLLIN MANGRUM: They're testifying about the same thing. [LB1022]

SENATOR CHAMBERS: But why would they have to give more additional? I'm not getting it. [LB1022]

RICHARD COLLIN MANGRUM: Yeah. [LB1022]

SENATOR CHAMBERS: If this person says, I saw Senator Seiler hit Senator Christensen in the head with a club, after I get through saying bravo,... [LB1022]

RICHARD COLLIN MANGRUM: Uh-huh. [LB1022]

SENATOR CHAMBERS: ...what more is needed if the main point is whether or not you saw him commit the act that he's charged with? Let me ask it a different way. What case has been...has turned on the fact that this rule that you want put in here was not available? What cases? [LB1022]

RICHARD COLLIN MANGRUM: Well, I mean, how could I...I don't...you're asking me to answer a question that's, by definition, unanswerable because I don't know what would have happened if they would have, if they would have given the testimony. Here's the reason why it's important. The context of the in-court identification is important. If the identification in court has been influenced by a pretrial identification, the jury should know that. The jury should be aware of the fact that this person may be identifying the person they saw in the lineup, not the person they saw in the crime. [LB1022]

SENATOR CHAMBERS: Well, is that the prosecutor or is it the defense who would want to do that? And from what I understood, maybe, I say I've missed something,... [LB1022]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

RICHARD COLLIN MANGRUM: Uh-huh. [LB1022]

SENATOR CHAMBERS: ...on cross-examination, which would be by the defense, that could be brought out if the defense thought it was of value or... [LB1022]

RICHARD COLLIN MANGRUM: That's true. That would be for impeachment purposes. In other words... [LB1022]

SENATOR CHAMBERS: So why does a prosecutor need to be able to do that? [LB1022]

RICHARD COLLIN MANGRUM: They don't need to do it. They haven't been doing it. But the reason why they're doing it is...the reason why the federal rules adopted it is because most of the courts look at it as incoherent for the people not to be able to explain the bases of the in-court identification. The bases of the in-court identification almost always will be influenced by the pretrial identification process. [LB1022]

SENATOR CHAMBERS: You're a prosecutor. [LB1022]

RICHARD COLLIN MANGRUM: I am? [LB1022]

SENATOR CHAMBERS: Are you? [LB1022]

RICHARD COLLIN MANGRUM: I've never prosecuted a case. I'm a law professor. [LB1022]

SENATOR CHAMBERS: Okay. Well, are you... [LB1022]

RICHARD COLLIN MANGRUM: All I do is teach the rules of evidence. I don't prosecute. [LB1022]

SENATOR CHAMBERS: Then I have to ask differently. Whose side will be benefited by this? And I don't want it to be justice, because justice has nothing to do, in my opinion, with cases that occur in American courts. Which side would stand to gain the most from our adopting this language, the prosecution side or the defense side? [LB1022]

RICHARD COLLIN MANGRUM: Well, my answer would be truth would be served the most and... [LB1022]

SENATOR CHAMBERS: You...I don't want...yeah, okay, you're answering as a professor... [LB1022]

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Transcriber's Office

Judiciary Committee  
February 12, 2014

---

RICHARD COLLIN MANGRUM: No, I'm explaining... [LB1022]

SENATOR CHAMBERS: ...and I'm looking at it from the standpoint of a policymaker, and I think truth has very little, justice has very little to do with cases and trials in America. [LB1022]

RICHARD COLLIN MANGRUM: Well, if you look... [LB1022]

SENATOR CHAMBERS: Winning is everything. [LB1022]

RICHARD COLLIN MANGRUM: Rule 102 of the Federal Rules of Evidence and Nebraska rules of evidence explain as the rationale for all rules of evidence truth and justice. That's what I believe. I believe also that the coherency of rules makes sense. This rule, to me, seems incoherent. It seems incoherent because the very thing that the jury wants to know, is the context of the in-court identification, they're not given. And because... [LB1022]

SENATOR CHAMBERS: Well, there are a lot of things a jury might want to know but they don't need to know. [LB1022]

RICHARD COLLIN MANGRUM: Well, to me, it's probative. It's useful. It's probative because you're given the context that the jury ought to know about the identification. Will it help the defense or the prosecution? Well, since the prosecution cannot use this now and the defense can on cross-examination point out for impeachment purposes the limitations of the prior identification, then probably, as a practical matter, the prosecutors are going to be benefited this over the long run. [LB1022]

SENATOR CHAMBERS: That's all you had to say. [LB1022]

RICHARD COLLIN MANGRUM: But that's not your question. The question is... [LB1022]

SENATOR CHAMBERS: I said, which side would be benefited? [LB1022]

RICHARD COLLIN MANGRUM: Well, now my answer to that is truth would be benefited. [LB1022]

SENATOR CHAMBERS: Okay. [LB1022]

RICHARD COLLIN MANGRUM: And I answer that in part not based on a political...I'm not a prosecutor. I consult with defense attorneys and prosecutors every day. [LB1022]

SENATOR CHAMBERS: Where are you a professor? [LB1022]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

RICHARD COLLIN MANGRUM: Excuse me? [LB1022]

SENATOR CHAMBERS: Where are you a professor? [LB1022]

RICHARD COLLIN MANGRUM: Where you went to law school. [LB1022]

SENATOR CHAMBERS: And where did I go to law school? [LB1022]

RICHARD COLLIN MANGRUM: You went to law school at Creighton. [LB1022]

SENATOR CHAMBERS: And I'm glad you said it because the only thing they hate more than the fact that I went to Creighton is that I tell people I did. (Laughter) You told it this time. [LB1022]

RICHARD COLLIN MANGRUM: I've been teaching there for 35 years. But part of what I said with regard to the issue of truth comes out of the common law analysis explaining this rule before the federal rule was ever adopted in 1975. It was adopted in 1975. It's been used around the country ever since that in most states and all federal courts. And the reason why they allow it in, if you look at the rationale, and what I do is look at cases, rationale of case law, the reason why they allow it in is because it's more coherent to bring in the coherency of the rule rather than allowing the in-court identification without telling the jury whether or not that in-court identification may have been influenced by subsequent events after the act. That's, you know, that's the reason why they're letting it in. That's the common law analysis. [LB1022]

SENATOR CHAMBERS: I don't have anything else. Thank you. [LB1022]

SENATOR ASHFORD: Thanks, John (sic). Should be it. [LB1022]

RICHARD COLLIN MANGRUM: Any other questions? [LB1022]

SENATOR ASHFORD: I don't see any. [LB1022]

RICHARD COLLIN MANGRUM: Okay. [LB1022]

SENATOR ASHFORD: We had a lot of good ones though. [LB1022]

SENATOR LATHROP: Thanks. [LB1022]

RICHARD COLLIN MANGRUM: Thanks. [LB1022]

SENATOR ASHFORD: Thank you. Next testifier, proponent. [LB1022]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

PATRICK CONDON: Good afternoon, Chairman Ashford, members of the Judiciary. My name is Patrick Condon, P-a-t-r-i-c-k C-o-n-d-o-n. I am the chief deputy for Lancaster County Attorney's Office. I'm here in support of LB1022. I listened to Professor Mangrum. I am agreeing with what Professor Mangrum says in that. I think I would mention of the Eighth Circuit, Iowa, South Dakota, North Dakota, Arkansas, Minnesota, Wyoming, and Illinois all have similar statutes to what is being proposed here and basically following the federal rules. I want to talk briefly about Sections 2 and 3 of LB1022. Earlier this year in January, in a unanimous decision, the Nebraska Supreme Court said that the statutory right to a speedy trial has been used in some cases not to obtain relief from protracted criminal proceedings but to hamper the state's ability to bring a defendant to trial in an efficient and timely manner. And that is what, in particular, Sections 2 and 3 are dealing with and that is the ability to the state to bring these to trial in an effective and timely manner. Section 2 deals with 29-12...Nebraska Revised Statute 29-1207(4) and that would say if the defendant is ordered to be in court for a hearing and they missed that hearing date and they absent themselves for 21 days, when they return to court that 180-day statutory speedy right is reset. That is, it starts back at 180 days. If they were sick or they just missed court, they could come back into court within 21 days and that time would not...just the time that they were out would be tolled and the clock would continue on. So that's in Section 2. In Section 3 it's...Section 3 is really to synchronize the interstate which is when a defendant is brought from another state into Nebraska, they can file for a demand for quick and speedy. What the Interstate Detainer Act in Article VI says is that anytime that they are not able to stand trial, such as motions and things like that, that time shall be tolled. The in-state portion of...which is in 29-3801 to 29-3809, does not have that tolling of any time. So if a defendant is brought into trial or brought into...if they are lodged here in Nebraska on a...in prison and then they are brought into Lancaster County on a quick and speedy, if they file a clean abatement, if they file a motion to suppress, any motions that they file, that clock never stops. So the court is scrambling to try to fit them in to the...into their dockets to allow them to allow these motions to be heard. To amend and to add the language that we suggested in 29-3801 to 3809 would just...it's basically, well, it's not basically, it is taken from 29-765 Article VI of the Interstate and Detainer Act. And with that, I would entertain any questions. [LB1022]

SENATOR ASHFORD: I don't see any, Patrick. Thanks. [LB1022]

PATRICK CONDON: Thank you. [LB1022]

SENATOR ASHFORD: Next proponent. Do we have any opponents? [LB1022]

THOMAS STRIGENZ: Thomas P. Strigenz. I'm here on behalf of the Nebraska Criminal Defense Attorneys Association and I will say in lukewarm opposition to LB1022. Bottom line is, I mean, we had a lot of discussions about this specific bill and the reason it's kind

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

of lukewarm is many times this comes out in trial because we, as defense attorneys, will bring it out, exactly for the reason that Professor Mangrum talked about. We want to let the jury know under what context. But the bottom line is we want to have that power to be able to do it. We feel, make no mistake, this is a county attorney bill. This bolsters the in-court identification. That's all this bill does. I mean that's all this reasoning for it. It's, you know, it doesn't provide context, to be blunt, because I don't think the county attorney's office, if it's a bad identification, they're going to bring out the context. That was going to happen anyway on a cross-examination question. So I mean the question is, you know: Who's the person who committed the robbery? That person. How do you know it? I identified him previously. There's going to be no more questions from the prosecution on that. If it's a bad one, defense attorney will bring it out, and will bring it out anyway under the old rules. Probably the biggest problem we also have is we keep using the word "identification." That's not what this amendment does. It says "perceived," and I think that is a very important word in this amendment. What is perceived? I saw a guy with a red shirt. I saw...you know, is that perception? You know, so that is the...probably the biggest problem we have with the bill, the first section of the hearsay exception being changed, that the defense attorneys get to basically bring it out if it's something that needs to be brought out. And other than that, it just bolsters the ID in-court identification. Real quick on the second half of LB1022, the speedy trial time, you know, the first part does start after 21 days of willful absence, I think is the phrase. And I apologize. I just want to make sure, "willfully absent," yes, "willfully absent." You know, we always question, well, what "willfully absent," or what "willfully absent" is. Is being incarcerated willfully absent for a 21-day time period? Is being in the hospital willfully absent? We just don't like anything that starts anything over. There is enough protection in the speedy trial statutes now that give the court the leeway to extend that time frame upon exceptional cause, even by a continuance by the state. So if somebody, they need...you know, if the speedy trial's time has run to 5 months and 28 days, somebody now appears and the court says we're going to trial in 2 days, I feel confident most judges are going to give them, you know, a continuance if they've been willfully absent. [LB1022]

SENATOR ASHFORD: Okay. Tom, I don't see any questions. Thanks. [LB1022]

THOMAS STRIGENZ: Thank you. [LB1022]

SENATOR LATHROP: You know what, I do. [LB1022]

SENATOR ASHFORD: Yeah, Senator Lathrop. [LB1022]

SENATOR LATHROP: First of all, under the language that's in the hearsay language,... [LB1022]

THOMAS STRIGENZ: Yes. [LB1022]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

SENATOR LATHROP: ...so I can deal with the first section first, you talked about perceived, the importance of perceived. This is the language used in the federal rules though. You don't have a quarrel with it. [LB1022]

THOMAS STRIGENZ: And it is. And it is. [LB1022]

SENATOR LATHROP: Okay. And the second question is, after going through your explanation of your concern over Section 2, the "willfully absent," so is this a good rule, a bad rule? Do you think it's a bad rule? [LB1022]

THOMAS STRIGENZ: We think it's a bad rule. We don't like anything...I mean we have a six-month rule for a reason, I mean, and we want these trials held within six months. And things are tolled when the defendant does something. [LB1022]

SENATOR LATHROP: If "willfully absent" was defined, would you still have a problem with it? [LB1022]

THOMAS STRIGENZ: Anything that starts the six-month time frame over we would have a problem with. But again, "willfully absent" is a big problem we have. What is defined? I mean, I think definitely "willfully absent" needs to be more clearly defined in that statute. Because I didn't get to talk about the second half, and that's the extradition side, you know, when somebody is on another jurisdiction and the language in that is unable to stand trial, I think is the phraseology in that section. I mean what we have here is the extradition sections of the statute say we want a quick and prompt determination of cases, and so when somebody is sitting over in Iowa, when somebody is sitting over in Council Bluffs, I can't go get them. I cannot go get them. And they can file extradition paperwork, which then puts the burden on the county attorneys to go get them to move these cases along, and we just think that this statute is going to let them languish for an indeterminate amount of time. It's not going to put any pressure on the state to go prosecute these cases. [LB1022]

SENATOR LATHROP: If (d) was changed so that when one is "willfully absent" it stopped the running of the six months for that period of time, would you be more comfortable with it? [LB1022]

THOMAS STRIGENZ: Yes,... [LB1022]

SENATOR LATHROP: Okay. [LB1022]

THOMAS STRIGENZ: ...because we think the statute allows for that already but, yes, that would be...that would be fine. We think it tolls it already, so if that... [LB1022]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

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SENATOR LATHROP: Oh, do you? [LB1022]

THOMAS STRIGENZ: I do. [LB1022]

SENATOR LATHROP: And this just starts the counter all over again. [LB1022]

THOMAS STRIGENZ: It starts the six months. [LB1022]

SENATOR LATHROP: So you could go six months or just short of six months, be willfully absent for an afternoon... [LB1022]

THOMAS STRIGENZ: Of 22...well, 22 days, according to the statute. [LB1022]

SENATOR LATHROP: Okay, 22 days. [LB1022]

THOMAS STRIGENZ: And then it starts over. [LB1022]

SENATOR LATHROP: And it starts over. Okay. [LB1022]

THOMAS STRIGENZ: And that's the problem we have. [LB1022]

SENATOR LATHROP: All right. I get it. Thanks. [LB1022]

SENATOR ASHFORD: Thanks, Tom. [LB1022]

THOMAS STRIGENZ: Thank you. [LB1022]

SENATOR ASHFORD: Any other...anyone else in opposition to the bill? Neutral testifiers? Senator Seiler? Senator Wallman is next. [LB1022]

SENATOR SEILER: Just short, to answer Senator Chambers' question, do you have a case. I believe the case that is referred to in the appendix for the U.S. 28, 810 is Gilbert v. California, 388 U.S. 263, a 1967 case. [LB1022]

SENATOR ASHFORD: Okay. Thank you, Senator Seiler. That concludes the hearing on LB1022. Now LB1001, Senator Wallman. Norm, you're up, Norm. Good afternoon. Welcome back. Seen you once before. [LB1022]

SENATOR WALLMAN: Good afternoon, Senator Ashford, members of the committee. And for the record, my name is Norm Wallman, W-a-l-l-m-a-n. I'm here today to introduce LB1001, also known as the industrial hemp bill. When people first hear industrial hemp, they think marijuana. This bill is no way intended to be a gateway to legalize recreational use. Yes, they both come from the cannabis plant, but that is

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

where the similarities end. This bill would allow industrial hemp to be planted, grown, harvested, possessed, processed, sold, and purchased. It could only contain 1 percent or less of THC, the psychoactive drug. I came up with that number from an amendment that was drafted years ago. Recently, the farm bill passed with provisions to allow for .3 percent, and I would be supportive of an amendment to change the number down to .3 percent or less. So under LB1001, the Department of Ag would adopt the rules and regs relating to the license and testing for THC levels and documentation needed for the type and variety of seeds planted. A legal description of the land to be used for production must also be provided. A minimum fee of \$150 would be charged each licensee. The money would be used to carry out and enforce LB1001. A person must submit fingerprints and other necessary information to complete a check for criminal history. A person is not eligible if they have a prior criminal conviction. The farm bill which was just signed by President Obama has a provision in it regarding industrial hemp. It opens the door for research to be performed. Nine states have laws to promote the growth and marketing of industrial hemp--nine states. So we have a company here in Nebraska that will be testifying today. They can tell you about all the products we can make using industrial hemp. I believe there is a market for this product, and I'd like to see Nebraska jump in at the beginning and start testing it to see if it would be good for our state. It can also be used as a bioenergy. So this is a sustainable crop. It uses very little water and no pesticides. There will be others following me who can explain how this crop is grown, an economic increase for our farmers. So there will be others following here, too, that might be able to answer some of the more technical questions. Thank you. [LB1001]

SENATOR ASHFORD: Thanks, Norm. Senator Coash. [LB1001]

SENATOR COASH: Thank you, Senator Ashford. Senator Wallman, in your bill and your opening you also mention that a person with a criminal conviction would not be eligible for this license. Would it be your intent to preclude somebody who's had a speeding ticket from getting a license? [LB1001]

SENATOR WALLMAN: No. I think you'd have to have a felony probably on that. That's my (inaudible). [LB1001]

SENATOR COASH: Okay. The current language just says criminal conviction, which I think would include... [LB1001]

SENATOR WALLMAN: I understand, yes. [LB1001]

SENATOR COASH: Would that be your intention to preclude... [LB1001]

SENATOR WALLMAN: Absolutely. [LB1001]

SENATOR COASH: ...to preclude a person with a speeding ticket to get... [LB1001]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

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SENATOR WALLMAN: Yes, yes. [LB1001]

SENATOR COASH: Okay. [LB1001]

SENATOR ASHFORD: Thanks, Senator Coash. Thanks, Senator Wallman. I guess that...are you going to stick around? [LB1001]

SENATOR WALLMAN: Yes. [LB1001]

SENATOR ASHFORD: All right. I was remiss in not introducing my colleagues over here: Senator Seiler from Hastings is here; Senator Coash from Lincoln. To my left, Oliver VanDervoort is committee clerk; Jenn Piatt is from Omaha and she's my lawyer, my committee counsel; Steve Lathrop to my far right from Omaha; Amanda McGill from Lincoln; and Senator Chambers from Omaha. So, okay. Do we have those in support of the bill, those for the bill next? [LB1001]

MARK PLUTA: My name is Mark Pluta, P-l-u-t-a. I'd like to take these few minutes to share with this committee how our company, Bast Lab, sees this emerging opportunity for the state of Nebraska and why we place our full support behind LB1001. In these remarks I'll be focusing more on the industrial processing aspects and what we see as the important conditions that need to be met to grow a domestic industry off the ground successfully. Bast Lab is a small early-stage company headquartered in Omaha. For the past three years, we have been working on the agricultural processing technology for Bast fiber crops such as flax, kenaf, and high biomass industrial hemp. Bast fiber crops are low-input crops that have plant structure with bast fiber ring forming the exterior of the plant stalk. Inside that bast fiber ring is the woody core. Up to now, the biggest hurdle to producing significant amounts of uniform, high-quality bast fiber and the woody core is a lack of processing equipment that can effectively do the job of separating these two materials. This processing step is called decortication. A decorticator is the essential piece of machinery that sits at the primary processing point as the bales come off the field. It is the foundational piece of equipment that is necessary to unlocking the full economic value of these crops by gently and cleanly separating the fiber from the woody core into the two initial raw material streams. Bast Labs decorticator begins this separating action so effectively that it can increase the capacity and effectiveness of downstream processing equipment, increasing yields of high-quality fiber, and unlocking economic value. Distefano, an Omaha-based engineering company owned by agriculture machinery manufacturer Behlen, has nearly completed fabrication of our next generation decorticator. We will be collocating our pilot processing line on-site in their manufacturing facility for our initial work this year. This processing line will also consist of some specialized secondary processing machinery that Bast Lab was the recipient of from the USDA cotton ginning lab. This processing line will allow us to not only refine our engineering efforts but will give us the capacity to

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

commence commercial grade market channel sampling. For example, while Bast Lab's work isn't only focused on industrial hemp, we have legally cultivated and harvested a small crop in Canada with a licensed grower. We grew a certified low THC variety and complied with all Canadian laws. It would be great to be able to replicate this experience under the rules allowed by recently passed federal farm bill by commencing Nebraska-based research on what we believe will provide the foundation for a new industry. In summary, Nebraska is ideally positioned to capitalize on opportunities in this field going forward. From being located in the fertile Plains with the necessary logistical infrastructure to being the home of a company developing state-of-the-art industrial systems positioned to meet the processing and supply chain needs of this nascent industry. By passing LB1001, the state of Nebraska can join the federal government and other forward-looking states by best positioning themselves to not only participate in this new emerging agricultural industry, but to lead it. Thank you. [LB1001]

SENATOR ASHFORD: Thanks, Mark. Good. Any questions of Mark? I don't see any. Thank you. [LB1001]

MARK PLUTA: Yep. [LB1001]

SENATOR ASHFORD: Next proponent. Next person for the bill. [LB1001]

BILL HAWKINS: (Exhibits 5 and 6) Senator and committee members, my name is Bill Hawkins, B-i-l-l H-a-w-k-i-n-s, and I am here testifying in support of LB1001 relating to industrial hemp. I've included a packet of a production report on the Canadian hemp industry and also on the process of decortication, which the gentleman just discussed. I've lived in Nebraska all my life. I've chosen to stay here and I believe in Nebraska. I'm an organic farmer who lives 30 miles north of here, and I've been there for 30 years. And so it's something that I believe in Nebraska. And with this opportunity of industrial hemp, it provides local jobs and local sustainable products. I've worked for years with the Sustainable Ag Society and at the Kimmel Research Center in Nebraska City on revitalizing our Nebraska communities. Industrial hemp is a drought-resistant, weed-suppressing, soil-building crop that will give our farmers a much-needed rotation in their corn and soybeans. Just last year the Secretary of Agriculture stated that within 50 years corn will not be grown in the Great Plains. We need to start transitioning to more drought-resistant crops. At the moment, 30 industrial nations are allowed industrial hemp production. Our trade partner to the north, Canada, has been researching for almost 20 years without any problems hemp farming and developing products and profiting from the almost \$500 million worth of hemp products that are consumed in the United States yearly. In the farm bill just signed by President Obama, there is that provision to allow state universities and colleges to research and develop the industrial hemp industry. At this time, as stated, nine states have farming legislation in place. Colorado, our neighbor to the west, planted and harvested hemp fields last year for the first time. They're issuing licenses for this spring and buying hemp seed contracts in

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

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northeast Colorado. Hemp Clean, a soil remediation and hemp products company, and others are already profiting from the hemp industry in Colorado. And already Colorado is claiming to lead the world in hemp research and development. Industrial hemp is a seed, food, fuel, and fiber crop which consists of round bales. This is processed locally and developed locally, as you have heard, and can provide local, sustainable jobs, producing environmentally green value-added products that benefit local communities across the state. This list of products that can be made from this valuable plant is endless. From high-protein food products... [LB1001]

SENATOR ASHFORD: Bill, hold tight just a second. We might have some questions. [LB1001]

BILL HAWKINS: Yes. You bet. [LB1001]

SENATOR ASHFORD: Senator Coash. [LB1001]

SENATOR COASH: I do. Thank you. [LB1001]

BILL HAWKINS: Yes. [LB1001]

SENATOR COASH: If you're a corn and bean farmer like Senator Wallman is... [LB1001]

BILL HAWKINS: Yes. [LB1001]

SENATOR COASH: ...and you...and this became law and you wanted to rotate industrial hemp into your crops, do you use the same equipment that you've already invested in to harvest and package industrial hemp? Or are you going to have to get new equipment? [LB1001]

BILL HAWKINS: For the most part, for the drilling and preparing of the seed, it uses a regular seed drill. Some of the harvesting equipment there is, because of the density of the stalk and the fiber, it's put into round bales which uses standard equipment. Some of the mowing equipment tends to be a little beefier, but John Deere is producing hemp harvesting equipment. And so that equipment is available and 30 nations are farming it, so it's basically the same equipment. [LB1001]

SENATOR COASH: But if you're a corn and bean farmer, you're going to have to go invest in some more...some different equipment in order to harvest and plant. [LB1001]

BILL HAWKINS: You know, you've got the same seed drill that you're using for wheat and corn so. [LB1001]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

SENATOR COASH: So you may not need a new planter, but you're going to need a new harvest head or something of that nature, aren't you? [LB1001]

BILL HAWKINS: You know, there's probably a head attachment on a combine, but that, as I say, has been developed, you know, in Canada and is available. So there may be some... [LB1001]

SENATOR COASH: So there would be an investment on a corn farmer's part if they wanted to rotate this. [LB1001]

BILL HAWKINS: There certainly will be investment in the processing and the farming of this industry, you bet. [LB1001]

SENATOR COASH: All right. Thank you. [LB1001]

SENATOR ASHFORD: Where's corn going? That's going to be a surprise to Nebraska to have no corn. [LB1001]

BILL HAWKINS: Corn production is going to Brazil where they can grow three... [LB1001]

SENATOR ASHFORD: Okay. What do we call the team, I mean, what do we? (Laughter) I mean that gets somewhat of a revolutionary thing. I mean we're going to have no corn. [LB1001]

BILL HAWKINS: You know, there are probably adapted wild varieties of corn that will survive here and so we can still be I guess the Cornhuskers. [LB1001]

SENATOR ASHFORD: I don't want to, I mean I just... [LB1001]

BILL HAWKINS: No, no, I understand that. [LB1001]

SENATOR ASHFORD: ...that's an issue. Senator Chambers. [LB1001]

BILL HAWKINS: Yes, sir. [LB1001]

SENATOR CHAMBERS: But before those people who came here a long time ago destroyed the grasslands and plowed up the land, exhausted the land, corn was not growing here like it's growing now, was it? [LB1001]

BILL HAWKINS: No, no, not at all. We were a grassland prairie. And it's something that I've lived with for my whole life here. And right now our subsoils are totally dry, and we are struggling with completing a water compact with Kansas and Colorado. And

especially in southwestern Nebraska we desperately need a drought-resistant rotational crop that can...that is a high protein food product that competes with soybeans. It doesn't have the digestive or allergy problems of soybeans. It has a complete amino acid and has rare essential acids that no other grain product has. And so it is really a valuable crop for our farmers to transition to. [LB1001]

SENATOR CHAMBERS: So when you mention this healing effect, and I'll say on the ecology, you really meant that it would maybe restore something to this part of the country that used to be here originally and was taken away as a result of the way the land was abused--I'm using that term--and misused by corn growers. [LB1001]

BILL HAWKINS: You know, I certainly agree with you with our exhausted soils. And with hemp, it emerges so fast and last year the wild hemp that's growing around here that is very valuable as a germ plasma for the future industrial hemp, and that's something we need to adjust to, it was already out of the ground a foot and took two snows and temperatures into 18 degrees and still continued to thrive. And so it's out of the ground and suppressing weeds before soybeans even emerge. And as it's growing, it drops the big leafy...the big leaves, sun leaves off and continues to add organic matter to the soil as it's growing. And so grain crops tend to produce 20 to 30 percent better following a hemp rotation. [LB1001]

SENATOR CHAMBERS: If this bill were enacted, would you grow hemp? [LB1001]

BILL HAWKINS: I will research and develop the seed varieties that are out there in this deal. I do not have the farm fields. I'm more of a tree farmer and herbalist and produce farmer. But I look at helping to develop growing it. I don't have the farm fields to grow it. [LB1001]

SENATOR CHAMBERS: Because if you were, I was going to ask did you want at least one more investor? [LB1001]

BILL HAWKINS: You know, it is something that I don't think we will have a problem developing this industry. There is a grain...the grain place out in Marquette, Nebraska, who ships organic grains all over the country. They are ready to press hemp seed oil right now. He helped develop the hemp industry in Canada and his best friend in Manitoba. And so there are businesses right now that are ready to start processing, planting, and as has been talked about, we have a New Zealand company coming and putting their headquarters in Kearney right now that has patented a steam process that explodes the cell of the cellulose and produces a plastic compound, bioplastic, plant-based compound that they cannot produce enough of. And they have been researching hemp plastic for ten years, and they're coming to Kearney with their national headquarters to go off of with the KAAPA group in Kearney. They already have a bioplastics plant that uses the corn stover off the ethanol plant. [LB1001]

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Transcriber's Office

Judiciary Committee  
February 12, 2014

---

SENATOR CHAMBERS: Okay. And that's all that I have. Thank you. [LB1001]

BILL HAWKINS: You bet. [LB1001]

SENATOR CHAMBERS: I don't want you to have to... [LB1001]

BILL HAWKINS: No, that's all right. Any more? [LB1001]

SENATOR ASHFORD: Okay, thanks. You've got a lot of good information. Thanks, Bill. [LB1001]

BILL HAWKINS: All right. Thank you very much for your time. [LB1001]

SENATOR ASHFORD: Next proponent. Next person for the bill. How many do we have that wish to testify for this bill? How about opposed to the bill? Okay. Okay, fine. No, that's good. I gotcha. I understand. Okay, go ahead. [LB1001]

JASON FELDMAN: My name is Jason Feldman, F-e-l-d-m-a-n. The previous speakers took a lot of my high points so mine will be pretty short. I come as a student from UNL, previous law enforcement out of Indiana, and a future entrepreneur in this industry with interest. This past year I spent a year in New Zealand, just as he's mentioned, a company coming up from New Zealand. While I was down in New Zealand, I spent time with a company who is building homes with industrial hemp. Basically they're building homes that the...from the walls they build a monolithic wall structure, which means that, unlike the houses that we build now, they have multiple layers from drywall insulation through to the outside with siding. It creates a very poor envelope for a home, a lot of leaks, energy leaks, heating and cooling. This wall structure is solid all the way through. Basically what it looks like is it looks similar to a concrete wall. You have a standard stick frame house. You have panels on the inside and outside and this material, this hempcrete what they call it, is packed inside around the stick frame structure, has multiple benefits: creates rigidity in the structure so it's less prone to wind damage. It's rodent resistant, fire resistant. Like I said, it's very solid, tons of benefits. My interest after spending time in New Zealand meeting with this company is to introduce it to the U.S. market as a sustainable, healthy alternative to the normal building methods that we have now. As of now, the industry is expensive to build homes out of...mainly because the material has to be imported from Canada, the UK, China mainly. The U.S. is a number one importer of hemp and we get close, over...a good portion of our hemp supply from China now. The market would be transformed if we could grow the material here in Nebraska and build homes with this material, and basically that's where my stance is. From the university standpoint, if this is legal to grow here in Nebraska, me and other students are more than interested in researching more in-depth producing this as a viable market. [LB1001]

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Transcriber's Office

Judiciary Committee  
February 12, 2014

---

SENATOR ASHFORD: Thank you. Very interesting. Any questions? I don't see any. Thank you very much. [LB1001]

JASON FELDMAN: Yeah, thanks. [LB1001]

SENATOR ASHFORD: Next proponent. [LB1001]

RACHEL SABIN: (Exhibit 7) My name is Rachel Sabin, R-a-c-h-e-l S-a-b-i-n. I'm here today to support bill 1001 and to share my knowledge of industrial hemp and the benefits that it can bring to our city, our state, our country, and our world. The government does not consistently distinguish the difference between marijuana and the industrial strains. Industrial hemp is produced in many countries around the world, including Canada, France, and China. These countries export more hemp to the United States than they do to any other country in the world. Hemp is a rapidly growing plant. It chokes out other weeds. It restores nutrients and nitrogen back into the soil and matures in just 8 to 12 weeks and can be planted one to three times a season. Hemp is highly resistant to diseases and pests and can easily be grown organically with little or no pesticides. Hemp produces a high amount of oxygen when growing. One acre of hemp is said to produce more oxygen than 25 acres of forest. There's an estimated 50,000 different products that can be made from industrial hemp. I work at a local retail store who sells hundreds of products. We sell several products that are made from hemp, including clothing, bags, shoes, wallets, jewelry, twine, lotions, body oils, and lip balms. These products make up a very small percentage of our total products, but we manage to sell an estimated \$1,000 a month on hemp products alone. The vast majority of these hemp products are imports. It's actually possible to produce all of our energy with cannabis hemp. One acre of cannabis hemp can produce 1,000 gallons of methanol in a single growing season. Although any CO<sub>2</sub> released from burning cannabis hemp would be the same CO<sub>2</sub> that the plant has already taken from the environment, creating what is called a closed carbon cycle. Studies have shown that this hemp biomass can be converted into energy and could replace nuclear power in our current fossil fuels. This could be achieved by farming just 6 percent of the U.S.'s acres. Hemp grown and biomass could fuel a trillion dollar per year industry while at the same time creating more jobs, cleaning our air, and distributing wealth to our communities and away from centralized power monopolies. Biodiesel is 11 percent oxygen by weight and contains no sulphur. So instead of creating sulphur-based smog and acid rain, it actually produces oxygen. Hemp's biomass can be converted into gasoline, methanol, and methane at a fraction of the cost of oil, coal, and nuclear energy. The National Renewable Energy Lab in Colorado, the Environmental Protection Agency, and the U.S. Department of Energy have all stated that to help the environment we must produce biodiesel and bioethanol. Hemp can also be used in building composite materials such as beams, studs, fire-resistant building materials, fiberboard, and even paint, varnish, ink, and carpet. Industrial hemp can make our future roads,

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

highways, and freeways from hemp-based concrete which lasts for centuries. In France, there are bridges centuries old made out of a mixture of hemp and lime. Society could build roads and bridges that wouldn't require continuous repairs and wouldn't require endless taxpayer dollars each year. In the last 100 years alone, we have increased our CO2 levels by 30 percent with a noticeable effect on the environment. Our sea levels are rising, the global temperature is rising, our glaciers are melting, and the scientists predict further and more massive levels of destruction in the coming years. The dependence on petroleum products and fossil fuels could potentially ruin the earth, making it possibly uninhabitable in the coming centuries. The hemp plant could be humankind's savior. The more society knows, the sooner we can put it into action what we have learned and the better off future generations will be. There's an estimated 50,000 industrial uses that can benefit every aspect of our daily lives from this one humble and misunderstood plant. The facts cannot be denied any longer. Thank you for your time. [LB1001]

SENATOR ASHFORD: Thanks, Rachel. I don't see any questions. Thank you. The next testifier for the bill. Anyone... [LB1001]

LEN SCHROPFER: Do I need to sign in? [LB1001]

SENATOR ASHFORD: Well, we have a form to fill out. [LB1001]

LEN SCHROPFER: (Exhibits 8, 9, and 10) I'm sorry I didn't do it. I do have some handouts. [LB1001]

SENATOR ASHFORD: Go ahead, give us your handouts and then...go ahead. [LB1001]

LEN SCHROPFER: My name is Len Schropfer, L-e-n S-c-h-r-o-p-f-e-r. I'm a farmer in Fillmore County. I'm passing out here a brief letter that I wrote to the Legislature on January 15 and also a two-page history of the prohibition. That's what I'm passing out. I didn't have a chance to make copies of my testimony. It's very brief, and I'd appreciate it if you could also make copies of this as time goes on. So good afternoon, Chairman Ashford, members of the Judiciary Committee. I support LB1001 because any move toward ending the irrational, unconstitutional, complete prohibition of hemp is good and long overdue. The prohibition and the present laws are unconstitutional because there's been no amendment to the U.S. Constitution as there had to be with alcohol in 1919. Hemp, cannabis, marijuana does not belong on the controlled substances list in the first place because it has many uses, including medical and industrial, and it is not addictive like alcohol and tobacco. In closing, because today is the actual birthday of Abraham Lincoln, I hereby quote him: Prohibition will work great injury to the cause of intemperance. It is a species of intemperance within itself for it goes beyond the bounds of reason in that it attempts to control a man's appetite by legislation and makes a crime

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

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out of things that are not crimes. A prohibition law strikes at the very principles on which our government was founded. And I thank you very much. [LB1001]

SENATOR ASHFORD: Thank you very much. And one more. We have another proponent for the bill? Okay. Who is for the bill? We got one more right here and then somebody in the back? Come on up and sit in the front row if you can and we'll get going. [LB1001]

\_\_\_\_\_: Senator, I have a person here that would like to say something. [LB1001]

JAMIE TAYLOR: I just have a couple of questions. How resistant to hail is... [LB1001]

SENATOR ASHFORD: Okay, time-out. Let's do this. Let's have his name, have your name. [LB1001]

JAMIE TAYLOR: Okay. Jamie Taylor. I live here in Lincoln, Nebraska. [LB1001]

SENATOR ASHFORD: Okay. [LB1001]

JAMIE TAYLOR: I have a couple of questions. How hail resistant is the crop? [LB1001]

SENATOR ASHFORD: And you know, I'm just not an expert on this stuff. [LB1001]

JAMIE TAYLOR: Okay. Does anybody else know that? [LB1001]

SENATOR ASHFORD: But I'll bet you after we get done one of these individuals who talked about it, you can talk to them outside. I don't know the answer. I don't know if anybody here does either. [LB1001]

JAMIE TAYLOR: Yeah. I've wanted to bring that up and then about dryland farming because some people live on land that isn't "irrigateable." And that was the two questions I had about that. [LB1001]

SENATOR ASHFORD: Those are good questions and these guys will probably answer them for you at some point. Thank you. Thanks for your... [LB1001]

JAMIE TAYLOR: Thank you. [LB1001]

SENATOR ASHFORD: Did we get your name? Did we get his name? [LB1001]

\_\_\_\_\_: James Taylor. [LB1001]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

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SENATOR ASHFORD: James, okay. Thanks, James. All right, thank you. [LB1001]

FRANK SHOEMAKER: (Exhibits 11, 13, and 14) My name is Frank Shoemaker, F-r-a-n-k S-h-o-e-m-a-k-e-r, and I'm from southwest Nebraska. I'm a lawyer and I practiced law and farm 30 for years out there. And I support LB1001. In the handout that I've given you, there are three documents. One of the documents is a...the first document is a...let me see where I am on that first document. The first document is a letter to Senator Ashford from Dr. David West, and in that document he talks about the invaluable germ plasm we have here in Nebraska. What we call ditch weed is actually feral hemp and can provide us with...it's perhaps one of our most valuable resources we have in this state as we go ahead and develop the hemp industry. The second document is a letter from Ms. Misty Stinson in Alliance who owns a health food store there and she relates her experience. And then the third document is a testimony of Tom Murphy who is with the Hemp Industries Association. And I included that document because it sets the legal playing field that we're at right now in the United States. As I said, I'm from southwest Nebraska. I farmed for 30 years. I practiced law and now I do some other things. But I know that we can grow this crop and we can do a great job as Nebraska farmers. And it's hard. Growing hemp is hard. If you'll look at the picture on the front of that, that's called a hemp brake and it's an old tool of how hemp was made. And that was the issue we had was that we never made in the Industrial Revolution the decorticator that the gentleman talked about over here. We didn't have the machine to go ahead and harvest hemp so that we could compete with the other fiber materials and with the synthetic fibers. So hemp is a...it's a nontoxic plant. The products that come out of it are nontoxic. Being a farmer, it's local; it provides jobs. The crop itself is sustainable. It provides a valuable exportable product. And when you have a \$500 million market in the United States and we can't compete in it, we being Nebraska farmers, there's something wrong in our system. And we need to allow us to become part of that \$500 million market. And we're not here...we're here only to talk about industrial hemp, and we would really appreciate you advancing this to the floor and thank you. [LB1001]

SENATOR ASHFORD: Thanks, Frank. I don't see any questions. Thank you, sir. Next proponent. [LB1001]

JUSTIN OREM: (Exhibit 12) Good afternoon. My name is Justin Orem, O-r-e-m, of Lincoln, Nebraska. And I ask you to support LB1001 allowing for the production and marketing of industrial hemp. Section 7606 of the recently passed federal farm bill allows for the research and production of industrial hemp if the laws of the state allow it. LB1001 allows the state of Nebraska to benefit from this provision of the farm bill. Industrial hemp is perhaps the most versatile agricultural commodity on the planet, the development of which has been hindered by 50 years of needless censure. This lack of development and production infrastructure does, however, create an exciting opportunity for our state. Industrial hemp thrives under conditions conducive to growing

corn and fits very nicely into the rotational growing schedule widely used already of alternating corn and soybeans. It provides restoration to the soil when planted, aids in weed control, and reduces the need for expensive and dangerous chemicals. As a lead negotiator for the inclusion of the hemp provision into the farm bill, U.S. Senator Mitch McConnell said that they were laying the groundwork for a new commodity market for Kentucky farmers. This viable lucrative market must be available to Nebraska's agricultural producers as well. Popular Mechanics magazine of February 1938 referred to hemp as a billion dollar crop as technology was just then being developed that solved the 6,000 year-old labor intensive problem of removing the fibrous cortex from the rest of the stalk. Shortly after, the research of hemp production technology was unfortunately abandoned. With the technological miracles available today, hemp has now been referred to as the first trillion dollar crop. The first step in taking advantage of the exciting possibilities in agriculture and manufacturing offered by these provisions of the federal farm bill is the passage of LB1001. The economic benefits could be tremendous in the revitalization of our rural communities and the expansion of our manufacturing sector. Hemp has been allowed at the federal level pending individual state law. Please allow Nebraska this chance to prosper and thrive by allowing it at our state level. Thank you for your time, and I urge you to support LB1001. [LB1001]

SENATOR ASHFORD: Thank you. I don't see any questions. Thank you, sir. Next proponent. Do we have any opponents to the bill? Any neutral testifiers? One neutral. [LB1001]

SHAWN HEBBERT: Senator Ashford, members of the committee, my name is Shawn Hebbert, S-h-a-w-n. I'm the Grant County Sheriff. I'm here on behalf of the Sandhills Area Sheriffs Association and the Nebraska Sheriffs Association. We are testifying neutral on this bill in light of the recent farm bill that has passed on the federal level. We do have some...we've heard a lot of good testimony on the benefits of hemp. In law enforcement, we also see the back side of that, the negative side of hemp. In the Panhandle, living in close proximity to Colorado, which was brought up earlier, there are more problems there than what meets the normal eye. We do have hemp growing wild in western Nebraska. It grows all over the state. Some of the questions we have is: How is this going to be regulated? How is this going to affect the farmers and ranchers that already have this stuff growing? Not sure the fiscal note is going to cover the cost of it. The \$5 an acre probably isn't going to come close to covering what it's going to actually cost to regulate this program. We believe there are some unintended consequences. It is a weed. It spreads. One guy, Farmer X has it planted, has 200 acres, and his neighbor doesn't want it, doesn't want to plant it, he's probably going to end up with it anyway. So it's an unintended consequence of the crop. It is a weed. It does spread. Wildland fires was brought up. Is it at the current THC rates of...as Senator Wallman said, he would increase it, amend his bill to 3 percent or less. Is that going to be a public health hazard if one of these fields catches on fire? We're simply unaware of these situations right now. But any fireman out there with any level of intoxication is going to

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Transcriber's Office

Judiciary Committee  
February 12, 2014

---

be a danger to himself and anybody else. We also have case in western Nebraska. The farmer plants his corn and then he doesn't go out and plant the marijuana. But somebody else goes out and plants or takes his corn up and plants their marijuana in his crop. It is detectable because of the differences in the corn and the marijuana plant. However, fields of industrial hemp would be fairly easy for someone to conceal their marijuana; and we feel that this is just an easier way for other people to transport and grow marijuana in and through our state under the guise of industrial hemp. I thank you for your time and would be happy to answer any questions you might have. [LB1001]

SENATOR ASHFORD: I don't see any, Shawn. Thanks. [LB1001]

SHAWN HEBBERT: Thank you. [LB1001]

SENATOR ASHFORD: (See also Exhibits 31 and 32) Anyone else wish to testify on this bill? Okay. Senator Wallman, do you wish to waive? You've waived. All right. That concludes the hearing on this bill. So LB832, Senator Lautenbaugh is here. [LB1001]

SENATOR LAUTENBAUGH: You want me to wait until they're all...? [LB832]

SENATOR ASHFORD: Yeah. [LB832]

SENATOR LAUTENBAUGH: That's okay. [LB832]

SENATOR ASHFORD: I'm going to...I was going to say everybody be quiet, but... [LB832]

SENATOR LAUTENBAUGH: That's not your nature really, no. [LB832]

SENATOR ASHFORD: No. (Laugh) Okay. Frank (phonetic), why don't we go ahead and go...yeah, we're going to start real quick here, so get everybody settled in. Okay, Scott, LB832. [LB832]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman and members of the committee. My name is Scott Lautenbaugh, L-a-u-t-e-n-b-a-u-g-h. I represent District 18 and I'm here to introduce LB832 to reform Nebraska's good time law. Simply put, I will be here to close. I'll take your questions when I'm done with my opening; I'll take your questions at closing. Unlike many of my bills though, there are going to be a lot of people here testifying as well. [LB832]

SENATOR ASHFORD: You mean for it? [LB832]

SENATOR LAUTENBAUGH: Yeah. Well, I wasn't going to point that out, but, yes, actually in favor of the bill. [LB832]

SENATOR ASHFORD: Holy mackerel. [LB832]

SENATOR LAUTENBAUGH: And they do have expertise. I'll try to answer the questions. But this is a confusing issue and we do want to make a very correct and clear record. But again, I'll be happy to answer your questions. What this bill is designed to do is it lists an array of what I would call the most serious violent crimes and instead of having good time it shifts us to earned time prospectively for offenses yet to be committed. Instead of the good time being automatically awarded, you would have to earn it both through good behavior and following through with your program. It's a philosophical approach for me. I think it just makes sense to have it be earned rather than automatically given and then perhaps taken away. Simply put, that's what it does. Again, we're going to elaborate and I'll be happy to take any questions you have now or I'll be here to close too. [LB832]

SENATOR ASHFORD: Thanks, Scott. I don't see any questions. Thank you. Mike, then John. [LB832]

MIKE KENNEY: (Exhibit 15) Thank you. 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'm here today in support of LB832. LB832 provides that offenders convicted of certain offenses would be required to earn their sentence reduction credit, or good time, through appropriate behavior and compliance with personalized plan recommendations. This bill places the responsibility for timely discharge on the offender, which is in line with the department's mission of facilitating the return to society as responsible persons. It holds the most violent individuals to a higher standard of conduct while in prison. This segment of the prison population, probably more than any other, needs to become aware that the choices they make have consequences. Reentry begins with the choices individuals make while incarcerated, which may instill in these inmates the need for responsible choices at the earliest onset of their sentence. Earned time would help to develop in prison a pattern of behavior that is considerate of others and in keeping with good conduct in society. If these inmate continue to make irresponsible choices after prison, the consequences to society are greater. If they choose to not comply with the expectations and norms of NDCS, their sentence will be delayed and they will be incapacitated from the community for longer periods of time. Currently, inmates sentenced to NDCS are awarded credit for one-half of their maximum term at the beginning of their sentence. This sentence credit, or good time, can be forfeited due to misconduct. Inmates sentenced for crimes other than those listed in the bill would continue to receive their good time under current law. As stated in our fiscal note, a change would be required to the sentence calculation data system and would require that two separate methods of calculation be in place. Additionally, there could be an impact on the population as currently inmates would earn approximately 84 percent of

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

their credits for conduct and approximately 87 percent for personalized plan compliance. However, inmates may choose to modify this behavior in order to earn their good time. For these reasons, NDCS supports LB832. I'd be happy to answer any questions from the committee. [LB832]

SENATOR ASHFORD: Senator Coash. [LB832]

SENATOR COASH: Thank you, Senator Ashford. Thank you, Director Kenney. I have a...as I look at the fiscal note, I understand the cost of an additional records officer. But I also see an additional expenditure for operating. What is entailed in that additional operating expenditure? [LB832]

MIKE KENNEY: The software, if I understand it correctly, and I believe I do, the software to operate our calculations system, which is computerized, would required that. [LB832]

SENATOR COASH: It's \$80,000 to buy new software? Reprogram existing software? [LB832]

MIKE KENNEY: Yes. I'm not as tech savvy as I could be about that. But I understand it's for...to reprogram and for the software for...for the ability to recompute these sentences because it will be done on a far more frequent basis given the nature of the law. [LB832]

SENATOR COASH: And this bill doesn't apply to anybody currently serving time. It would be anybody convicted after... [LB832]

MIKE KENNEY: That's correct. [LB832]

SENATOR COASH: ...enacted into law. [LB832]

MIKE KENNEY: Yes. [LB832]

SENATOR COASH: What do you predict this change in good time will do to the length of incarceration... [LB832]

MIKE KENNEY: To the...? I... [LB832]

SENATOR COASH: To the length of incarceration... [LB832]

MIKE KENNEY: Well, I think... [LB832]

SENATOR COASH: ...compared to the system we have now. [LB832]

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Transcriber's Office

Judiciary Committee  
February 12, 2014

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MIKE KENNEY: I think that this bill, I think it's up to...I'm not trying to evade your question. I think it depends on the individual inmate. I think, from an actuarial point of view, from a statistical point of view, I think it could lengthen the sentences for inmates. Particularly, it will lengthen the sentences for those inmates who are in prison and misbehaving and violating rules and not programming in prison. And so I think it...that is one of the probabilities. To what degree? I don't think it would be great, but I think there would be some. [LB832]

SENATOR COASH: Okay. How do you think this change in law could impact the safety of corrections officers? [LB832]

MIKE KENNEY: I think it would have a positive impact on the safety of corrections officers and other correctional employees because it holds a stricter penalty for inmates who are not willing to...we rely on rules and regulations and policies to protect inmates from other inmates, to protect staff from inmate misbehavior. And so the consequences for that are increased, and so I believe it would have a deterrent effect and a positive effect for staff safety. [LB832]

SENATOR COASH: Okay. The department recently through rules and regs extended the amount of good time that can be taken away... [LB832]

MIKE KENNEY: That's correct. [LB832]

SENATOR COASH: ...under the current law, right? [LB832]

MIKE KENNEY: Yes. [LB832]

SENATOR COASH: What was...was it a maximum that was changed? Or what was changed within that administrative rule? [LB832]

MIKE KENNEY: We essentially doubled the amount of good time that could be taken by disciplinary committee for misconduct. [LB832]

SENATOR COASH: From what to what? [LB832]

MIKE KENNEY: Well, there's a range. [LB832]

SENATOR COASH: Okay. [LB832]

MIKE KENNEY: In Rules 5 and 6 there are ranges depending on the different violations. There's Class I, Class II, and Class III, and they have...so it basically doubled the potential for good time loss at the hands of the disciplinary committee. [LB832]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

SENATOR COASH: And what's been the effect in the short time that administrative rule has been in place? [LB832]

MIKE KENNEY: I haven't noticed any effect. [LB832]

SENATOR COASH: It's...all right, let me ask a different way. Has there been an effect in inmate behavior? Has there been an increase in good time being taken away? A decrease? Has...all things the same since this administrative rule? [LB832]

MIKE KENNEY: Well, unfortunately, I didn't try to track...I didn't research that before coming here. It's a great question and I would say it's fairly...it's pretty early on. And so if we did have a sample of the impact that change has made, it would probably be a small sample right now. But the honest truth is I don't know that there has been a significant change in loss of good time or improved behavior, either one. [LB832]

SENATOR COASH: Okay. Have you been with the department quite a while? [LB832]

MIKE KENNEY: I'm sorry? [LB832]

SENATOR COASH: How long have you been with the Department of Corrections? [LB832]

MIKE KENNEY: I've been with this agency for 35 years. I did spend about two and a half years in Washington State Department of Corrections. [LB832]

SENATOR COASH: Okay. So were you part of the department when...there was a short time some time ago, before I was here, when the proposal that Senator Lautenbaugh is bringing was part of the law for a short time. Were you part of the department during that time? [LB832]

MIKE KENNEY: Yes, I was. [LB832]

SENATOR COASH: Because it's my understanding that it went from what we have now to what Senator Lautenbaugh is proposing and then went back to what we have now. And I'm curious because there was a reason then that it changed from what it was to what it is, and I want to use your institutional knowledge to help explain why. We've been down this path before and then we changed and I'm struggling to figure out why. [LB832]

MIKE KENNEY: I really wish I could tell you. And again, I'm not evading the question. I was not part of policy formulation at that point and I'm just not familiar with the details of why that policy was changed or why that rule was changed at that time. [LB832]

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Transcriber's Office

Judiciary Committee  
February 12, 2014

---

SENATOR COASH: Could you speak to any...I don't know if you were a corrections officer or administrator at the time, but can you speak to the effect it had on managing inmates in those two systems? [LB832]

MIKE KENNEY: It would be pure...I prefer not to because I just don't want to speculate. And I don't want to make anything up or suggest...I feel badly. And we can find that out. I can research what you're asking. [LB832]

SENATOR COASH: I'm just...I was just interested in your perspective since you've been in the department a long time. [LB832]

MIKE KENNEY: Yeah. I just don't have a...right. [LB832]

SENATOR COASH: I don't have any more questions. [LB832]

MIKE KENNEY: I just don't have personal knowledge about that and I'd rather not comment on it. [LB832]

SENATOR COASH: Okay. [LB832]

SENATOR ASHFORD: Thanks, Mike. Any questions? Senator Chambers. [LB832]

SENATOR CHAMBERS: Mr. Kenney, I think that Senator Coash may have asked what I have in mind, and I didn't hear all of it. You have served under how many different directors? [LB832]

MIKE KENNEY: At least five. [LB832]

SENATOR CHAMBERS: Which of those directors brought proposals to the Legislature to make it more difficult to get good time, if any, that you recall? [LB832]

MIKE KENNEY: I don't recall any. [LB832]

SENATOR CHAMBERS: Do you recall any bringing legislative proposals to liberalize the good time laws? [LB832]

MIKE KENNEY: No. [LB832]

SENATOR CHAMBERS: You don't remember any of them bringing legislation to make it easier or make more good time available? You don't remember any? If you don't, then you just don't. [LB832]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

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MIKE KENNEY: I don't. [LB832]

SENATOR CHAMBERS: I just wanted to be sure I was... [LB832]

MIKE KENNEY: I sure wouldn't dispute it. You know, I don't have a... [LB832]

SENATOR CHAMBERS: I just wanted to be sure I was asking the question clearly. [LB832]

MIKE KENNEY: Right. [LB832]

SENATOR CHAMBERS: Here's theist that it is clear what I'm asking you, when I say "liberalize," I mean make more good time available. Do you remember any director you served under supporting legislation like that to make it easier to acquire good time or more good time acquirable? You don't remember any director supporting that? Did you serve under Harold Clarke? [LB832]

MIKE KENNEY: I did. [LB832]

SENATOR CHAMBERS: Did he bring legislation of that kind or support it, to your recollection? [LB832]

MIKE KENNEY: My problem, Senator, is my recollection. I wouldn't dispute it. I suspect, by the way this question is asked, that he did and that I was aware of it, but... [LB832]

SENATOR CHAMBERS: You don't have to speculate. My last question: Did the Governor instruct you to do what you're doing here today? [LB832]

MIKE KENNEY: I support this. I believe in this bill. I... [LB832]

SENATOR CHAMBERS: That's not what I asked you, Mr. Kenney. Did the Governor instruct you to support these...this? [LB832]

MIKE KENNEY: No, he didn't. [LB832]

SENATOR CHAMBERS: Okay. [LB832]

MIKE KENNEY: He asked me if I would support it and if I agreed with it, and I told him I did. [LB832]

SENATOR CHAMBERS: He asked you? [LB832]

MIKE KENNEY: Yes. [LB832]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

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SENATOR CHAMBERS: But you know that he's called for this to be done, don't you? Are you aware of that? [LB832]

MIKE KENNEY: Yes, I'm very aware that he supported this. He and Attorney General Bruning went together to propose this, yes. [LB832]

SENATOR CHAMBERS: And you're not about to go against the Governor once you know what his position is, are you? He didn't have to ask you whether you support it or not, did he? He just said, this is what I want, and that's your marching orders. Isn't that true? [LB832]

MIKE KENNEY: That is not what he said. [LB832]

SENATOR CHAMBERS: Is...would that be the way it goes? Would you have contradicted what the Governor said publicly? [LB832]

MIKE KENNEY: If I felt strongly that this was a mistake, I would have conveyed that to the Governor. [LB832]

SENATOR CHAMBERS: When have you recommended that something like this be done during all that time you were with the department? Whether you make the final decision or not, how many times do you recall your recommending that there be a restriction on good time? [LB832]

MIKE KENNEY: I never did. [LB832]

SENATOR CHAMBERS: Okay. That's all that I have. Thank you. [LB832]

SENATOR ASHFORD: Mike, let me just see if...first of all, this committee did...Bob Houston came in and asked us to liberalize the good time law a few years ago. You remember that? Okay, maybe... [LB832]

MIKE KENNEY: I wouldn't dispute it. I... [LB832]

SENATOR ASHFORD: I think... [LB832]

MIKE KENNEY: Yeah. [LB832]

SENATOR ASHFORD: And it had to do with inmates who had been there for a longer period of time, so forth and so on. [LB832]

MIKE KENNEY: Okay. [LB832]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

SENATOR ASHFORD: And this committee, the request was made by Bob Houston, we went ahead and approved what he wanted. So there's actually a liberalization of the good time laws for longer-serving inmates. But that's just for the record. But anyway, here's...and I very...you know, as succinctly as I can be, the rules we're talking about that are being violated theoretically that would cause someone to lose good time or not earn good time are the same rules, aren't they? I mean, you don't create new rules. [LB832]

MIKE KENNEY: You're correct. [LB832]

SENATOR ASHFORD: Okay. So if somebody violates a rule under either scheme, and I realize that states have...some states have one way and other states have another way to do it. The underlying purpose is to maintain order and compliance with the rules. Isn't that the reason why we do that,... [LB832]

MIKE KENNEY: Yes. [LB832]

SENATOR ASHFORD: ...why we have good time? And it's also an incentive, theoretically, to do better. [LB832]

MIKE KENNEY: Yes. [LB832]

SENATOR ASHFORD: I mean, you said that, so... [LB832]

MIKE KENNEY: Yes. [LB832]

SENATOR ASHFORD: And what the department has done lately...well, the Governor has issued an executive order to increase the amount of good time that could be lost, and that has been...that's what you're doing now. You've got the new rule and you're...have that in effect. So if a rule is violated by an inmate, it's potentially possible for them to lose twice the amount of good time as they could have lost prior to that order? [LB832]

MIKE KENNEY: That's correct. [LB832]

SENATOR ASHFORD: Okay. And again, I realize you weren't the director during the seven or eight years we've been here. But it's my understanding, I've been on the Judiciary Committee for many years, and that over the last 25-30 years, there have been seven or eight changes to the good time law, correct? [LB832]

MIKE KENNEY: That is correct. [LB832]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

SENATOR ASHFORD: Okay. And again, the reason for the changes were based on the exigencies of the moment, when the proposals were made, and there were changes made. So prior to this summer or fall, I mean, I never received any proposal from anybody to change the good time laws other than the proposal to liberalize the good time laws. What is it...if you know, why are we requesting a change in the good time laws now, if you know? Or why are you supporting the change now? [LB832]

MIKE KENNEY: I'd like to comment on two things, Senator. Going back to talking about doubling the potential loss of good time, if it...just I think you should know that I talked to the executive staff and to the wardens individually...well, as a group, but I went and personally talked to the wardens who would oversee that in each facility and I said that I didn't take this change to be any kind of mandate for sweeping changes. [LB832]

SENATOR ASHFORD: No, no, I'm not asking that. And I'm assuming that's true. I'm just asking...you know, the change was administratively done this summer or fall, whenever it was done, and, you know, why was that? And... [LB832]

MIKE KENNEY: Well, I'm staying...I'm probably taking too long to say it. [LB832]

SENATOR ASHFORD: No, no, that's... [LB832]

MIKE KENNEY: But the reason I said that was because I think that the 60 days' loss of good time for some of the assaults that happen in prison is too small. [LB832]

SENATOR ASHFORD: Okay. [LB832]

MIKE KENNEY: And I specifically articulated that for the most vicious, for the most violent acts that happen in prison that we're handling through that process, I was completely comfortable with increasing the amount... [LB832]

SENATOR ASHFORD: Okay, so... [LB832]

MIKE KENNEY: Okay. [LB832]

SENATOR ASHFORD: And that...and my last question is that...would you agree with me that you now have a tool for addressing the most violent types of activities within prison system? You have a tool which is more, well, it's a more difficult punishment than it was six months ago, correct? [LB832]

MIKE KENNEY: Yes, that's true. [LB832]

SENATOR ASHFORD: And that in order to have good time taken away, which adds to your sentence, correct,... [LB832]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

MIKE KENNEY: Yes. [LB832]

SENATOR ASHFORD: ...you have to break one of these rules. [LB832]

MIKE KENNEY: Yes. [LB832]

SENATOR ASHFORD: Okay. If we had a different system...and Senator Coash is right. I think it was in the early '90s when we went back to the other system for a while and then the department came in and said, because I was here, came in and said, we want to go back to the other system. And so we went back to the system we have now. But in essence, someone's sentence who is misbehaving and...can be lengthened for a significant period of time under the current law, correct? [LB832]

MIKE KENNEY: Yes, that's right. [LB832]

SENATOR ASHFORD: Okay. I guess that's all I have. I don't know. Senator Lathrop and then... [LB832]

SENATOR LATHROP: Oh, maybe just briefly. [LB832]

SENATOR ASHFORD: Senator Lathrop, Senator... [LB832]

SENATOR LATHROP: Just briefly, you were in Appropriations yesterday... [LB832]

MIKE KENNEY: Yes. [LB832]

SENATOR LATHROP: ...and had an opportunity to have an exchange with the committee about whether the programming is available. This bill would essentially say you earn your good time by participating in programming. [LB832]

MIKE KENNEY: That's...if you're a violent inmate, yes. [LB832]

SENATOR LATHROP: Okay. And the question or the exchange you had yesterday was whether that's available. So if we put this in place and made people earn it by participating in a plan, the question, I guess, or the concern I think we have as a committee is whether or not that programming is available. Do you have it in place now? If we put this in place, is it just a...become a roadblock because no one can complete those plans because the programming isn't available for them? [LB832]

MIKE KENNEY: That's not at all our intent, Senator. What the... [LB832]

SENATOR LATHROP: Oh, I get that it's not your intent. Ultimately, the question is,

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

somebody puts a plan together and let's say they have a mental illness, are they going to get the mental healthcare? If they need some vocational training before, if that's part of their plan, is that going to be there? Or are we going to put this in place and try to develop those programs and the things they need to do and complete to earn the good time at some later point in time? [LB832]

MIKE KENNEY: Under this bill, no inmate that's recommended a program that is attempting to avail himself...for example, they get a recommendation to go to substance abuse or mental health or anger management and the inmate complies with that and gets on...and even if it's a waiting list, this is considered compliance. That inmate will not suffer any loss of good time. They will continue to earn the good time, even if they're not in a chair in that therapy group, as long as they registered and got on the waiting list to be there. [LB832]

SENATOR LATHROP: Are we creating an illusion then, so that all a person has to do to earn good time under this bill is to get on a waiting list? [LB832]

MIKE KENNEY: No, it... [LB832]

SENATOR LATHROP: I mean, kind of the point of this whole idea that somebody is going to earn their way into good time, as opposed to the current procedure, is that they'll be engaged in something that would make them less likely to reoffend when they return to society, and a waiting list isn't helping anybody. [LB832]

MIKE KENNEY: I don't disagree with that at all. The waiting list in the case I just described is an indicator of the inmates taking...the inmate taking personal responsibility to follow the recommendation for a treatment need that they have and individually, as a matter of choice, applying themselves to that. And we're saying, if we can't put you immediately into that therapy, we're not going to punish you because the choice to decide to take that is responsible. And that's exactly the kind of behavior we're trying to reinforce and instill and do not want to punish an inmate if we can't provide that, and that is another issue. And, yes, we'll...we're...I mentioned yesterday, we're working aggressively to try to get everybody into treatment they need. But I want to make it clear that someone who attempts to do that and is attempting to comply with their personalized plan will get all the credit and earn all the good time under this bill just for making that effort. [LB832]

SENATOR LATHROP: Is it possible for an inmate to get all this credit for just spending time on the waiting list and never get the services? [LB832]

MIKE KENNEY: Hypothetically, I suppose anything is possible. I don't think that's going to be the case. [LB832]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

SENATOR LATHROP: Okay. Thank you. [LB832]

SENATOR ASHFORD: Thank you, Senator Lathrop. Senator Chambers. [LB832]

SENATOR CHAMBERS: Mr. Kenney, we're in a highly politicized environment, with reference to corrections right now, and you and I and everybody in his room who follows these matters knows what brought us to this. It's the Nikko Jenkins case. Isn't that what led to this talking of doubling the amount of good time that can be taken, doubling the amount, or more, of time a person can be kept in solitary, and your being here today? Isn't that, more or less, a correct assessment of what the situation is? [LB832]

MIKE KENNEY: I think the events you mentioned of last summer, and we do acknowledge them and they were tragic, I think this particular bill is designed and may be a response to that. And I agree, it is identifying the inmates with the most violent records that are the most...that present the highest risk to the community, yes. [LB832]

SENATOR CHAMBERS: Okay, I don't...I'm not asking you to explain the bill because... [LB832]

MIKE KENNEY: Okay. I'm sorry. [LB832]

SENATOR CHAMBERS: ...you know, to go into the details. I want it clear on the record, because we're dancing around it, it's the Nikko Jenkins case. The Governor said, even before the man had been formally charged, that he favored the death penalty. Before the man had a mental evaluation to determine whether he's even competent to stand trial, the Governor said he wanted the death penalty imposed. The Governor is the one who talked about how easy it is to get good time and that should not happen, and he doesn't understand things about the correctional system that you and Mr. Houston, before he left, should have explained. That's my opinion. Now here's what I want to ask you. In view of the fact that Nikko Jenkins was not receiving mental health treatment because Dr. Scott Moore said, his problem is not mental, it's behavioral, therefore, you can keep him in the hole without treatment, that's a matter of record, let's say...well, let me ask you, was Nikko Jenkins paroled or did he jam this time? [LB832]

MIKE KENNEY: He discharged without parole. [LB832]

SENATOR CHAMBERS: So he served the full amount of his sentence. And the only thing that the Governor and people could seize on who wanted to fault somebody else, other than his administration, was to say he should have lost more good time while he was in prison. That's what the Governor said--are you aware of that?--that he should have lost more good time. [LB832]

MIKE KENNEY: Okay. [LB832]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

SENATOR CHAMBERS: Okay. Let's say that he lost every second of good time that would have been available, and at the end of his sentence, serving every second of the total sentence, how would that have changed what he was and what he did and have addressed his mental problems, since they were not being addressed in prison anyway? In other words--I want those questions in the record, then I'm going to answer it--if he served every second of his good time, of his sentence, it wouldn't have changed a thing. He was not getting the mental treatment that he should have had. When his mother asked the Johnson County Attorney to seek a civil commitment, he said he had to be contacted by the prison, by the institution. That was not done. Then he was moved from Johnson County to Lancaster County and they never got that request. The department failed to follow through when his mother asked that the civil commitment come. I talked to the former director about having him civilly committed because he knew--when I say "he," Nikko Jenkins knew--that he should not be released without mental health treatment. He got none while he was in prison because Scott Moore, the purported psychiatrist, said he has no mental problem, it's behavioral. How much time did he spend in the hole? Do you know that? Of his sentence, how much of that was spent in the hole? [LB832]

MIKE KENNEY: I don't know, Senator. [LB832]

SENATOR CHAMBERS: It was years though, wasn't it? [LB832]

MIKE KENNEY: I don't know. [LB832]

SENATOR CHAMBERS: Have you read anything about his situation? [LB832]

MIKE KENNEY: I have read some brief... [LB832]

SENATOR CHAMBERS: Had you read that he spent years in solitary? [LB832]

MIKE KENNEY: I had read that. I read reports that said that, yes. [LB832]

SENATOR CHAMBERS: And your feeling was that things would be improved if you could double the amount of time that a person could be kept in solitary. Isn't that the thrust of that change you made pursuant to the Governor and the Attorney General's direction as to the policy changes you ought to make? Wasn't one of the items the right for the institution to double the amount of time, or more, that a person can be kept in solitary? There was a limit on that amount of time, wasn't there? [LB832]

MIKE KENNEY: Yes. [LB832]

SENATOR CHAMBERS: And you wanted that amount of time doubled, is that true?

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

[LB832]

MIKE KENNEY: I wanted the disciplinary sanction to be doubled, but that's only one form of restrictive housing. [LB832]

SENATOR CHAMBERS: That's what I'm talking about, that form. I'm trying to be as clear as I can. [LB832]

MIKE KENNEY: Okay. [LB832]

SENATOR CHAMBERS: That's why I said "in solitary," I said, "the hole." You wanted to be able to keep a person in the hole for a longer period of time. Isn't that what your change makes possible, the change that the Governor and the Attorney General, who is now running for Governor, signed off on? [LB832]

MIKE KENNEY: It does double the amount of time for an assault in the prison, yes. [LB832]

SENATOR CHAMBERS: And here's what I'm saying: Being put in the hole can be the way you deal with somebody who committed one of these offenses, whatever it happens to be, where more good time could be taken. In addition to that, more time could be spent in the hole. Isn't that true? [LB832]

MIKE KENNEY: It's true that we've placed all kinds of inmates in... [LB832]

SENATOR CHAMBERS: Okay. I can see Fred Astaire, what we're dealing with, and I'm not going to tap-dance with you. Have you been confirmed as the director or you're the...you've been appointed but you haven't been confirmed yet, is that true? [LB832]

MIKE KENNEY: That's correct. [LB832]

SENATOR CHAMBERS: And you can't answer the questions more directly than you're answering? And I'm trying to figure every... [LB832]

MIKE KENNEY: I'm...I would like to. [LB832]

SENATOR CHAMBERS: Then just do it. [LB832]

MIKE KENNEY: Okay. Could you rephrase the question? I really do want to answer it. [LB832]

SENATOR CHAMBERS: That's all right. [LB832]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

MIKE KENNEY: Or I could...let me take a shot at it, okay? [LB832]

SENATOR CHAMBERS: But I'm going to say something. [LB832]

MIKE KENNEY: Okay. [LB832]

SENATOR CHAMBERS: When you all put somebody in the hole for that long a period of time, you deny that person human contact, there is nothing to do with the time, and that person has a mental condition that had been diagnosed by a psychiatrist in Douglas County and was being treated for it, and all you do is keep that person in the hole, you are aggravating that person's condition, you, just as surely as if you put an animal in a cage and baited him with a stick and teased him and taunted him and then you let him loose. You're responsible for what that animal did because that's the way you did him. A human being who is handled in the way that man was handled is going to behave in a way that's predictable. But since the questions that I'm asking I can't phrase clearly enough for you to answer, I don't have any more to put to you. Thank you. [LB832]

MIKE KENNEY: I would attempt if you entertained it. [LB832]

SENATOR CHAMBERS: That's all right. I'm through. [LB832]

MIKE KENNEY: Okay. [LB832]

SENATOR ASHFORD: Senator Coash. [LB832]

SENATOR COASH: Thank you, Senator Ashford. I thought of a few more questions. How many current good time calculations are...is the department operating under? [LB832]

MIKE KENNEY: Well, we have close to 5,000 inmates and about 1,300 parolees. I'm... [LB832]

SENATOR COASH: No. What I mean is, if this bill became law, this is another...this is an additional calculation because of the change... [LB832]

MIKE KENNEY: Yes. [LB832]

SENATOR COASH: ...and it only applies to the offenders sentenced after the date. We've had some changes. How many different calculations are the total amount of inmates subject to? Would this just be two? Or is there five? Eight? I'm just... [LB832]

MIKE KENNEY: Well, this will cause a monthly. For every inmate sentenced under this

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

bill, should it pass, it would cause those inmates that meet the criteria of this bill to have their good time adjusted every month. And currently, under the current system, when an inmate comes in and their good time is awarded to them the day they walk in the door as a lump sum, there isn't any other calculation unless they lose good time or gain good time back. And I hope that... [LB832]

SENATOR COASH: Okay. So this just...so this just adds one additional calculation onto one that's already there. It doesn't...there's not other calculations already out there. [LB832]

MIKE KENNEY: Correct. [LB832]

SENATOR COASH: Okay. I want to follow up on something Senator Lathrop asked. Yesterday, I know, when the department was in front of Appropriations, you stated that there is adequate programming across the institutions for all the inmates and that there was no additional needs...money needed for programming, is that correct? [LB832]

MIKE KENNEY: Yes. I stated that it was adequate in the context of the deficit bill where we thought the most urgent need was. I didn't say we wouldn't utilize additional programming. I said it was adequate for what we had but that the crying need, in terms of our capacity issues, was for the 59 FTEs to bolster security and control within the facilities. [LB832]

SENATOR COASH: Okay, because the reason I...because I read that and that's the...hearing the department say that programming needs are adequate just doesn't jibe with what we hear all the time on this committee that...about access to programming from a variety of sources. [LB832]

MIKE KENNEY: I'm aware of that. [LB832]

SENATOR COASH: Under the current law, to lose good time the department has to define...I'm sure it's in the rules and regs. It's not in the law. What...there is current things that an inmate can do that will cause him to lose good time, right? So it's an offense. [LB832]

MIKE KENNEY: Yes. [LB832]

SENATOR COASH: So inmate hits another inmate, it could lose X amount, and that's all spelled out in rules and regs, right? [LB832]

MIKE KENNEY: Yes, yes. [LB832]

SENATOR COASH: If this bill goes into law, we have to change...or, I'm asking,

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

wouldn't we have to then change, rather than defining the bad things an inmate can do, we would have to then go define the good things an inmate would have to do to earn good time, right? [LB832]

MIKE KENNEY: That's correct. [LB832]

SENATOR COASH: And those good things, you know, the positive things that you'd want to see, those aren't spelled out in statute, those would have to be fleshed out through our rules and regs process, right? [LB832]

MIKE KENNEY: Well, I don't know if they'd have to be in rules and regs. There's what we...every inmate that comes into the system has a personalized plan. It's the treatment recommendations and things they need to do to prepare for release and the programming they need to utilize. And so if they're in...we use the word compliance. If they're in compliance with their personalized plan, then that satisfies...I think that gets at what you're asking. [LB832]

SENATOR COASH: Okay. So if an inmate is supposed to go to anger management and he signs up and gets on the list and he's supposed to go to substance abuse and he's sitting in the chair doing that, he's complying with it, so he should be earning good time, right? [LB832]

MIKE KENNEY: That's correct. [LB832]

SENATOR COASH: Well, what if, when he's sitting in the substance abuse classes, he whacks his neighbor? [LB832]

MIKE KENNEY: Well, my guess, he'd be... [LB832]

SENATOR COASH: He's complied with his plan so he should be earning his good time. But how would that work? [LB832]

MIKE KENNEY: No. Well, how that works is if you assault somebody while you're in group, you get discharged from the group. [LB832]

SENATOR COASH: Okay. [LB832]

MIKE KENNEY: When you get discharged from the group, you're no longer in compliance with your personalized plan. [LB832]

SENATOR COASH: Okay. Let's say he goes to every class that's in part of his plan but he assaults his cellmate. [LB832]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

MIKE KENNEY: Then he would...if he assaults his cellmate, I'm guessing he would go to disciplinary...suffer some kind of disciplinary movement. And if he is discharged from the group for noncompliance or for nonattendance, he would not be in compliance with his personalized plan. [LB832]

SENATOR COASH: So the way it would work is by assaulting his cellmate outside of being compliance with his group, he'd get...he wouldn't be able to go to his group, which would put him in noncompliance with his personal plan? [LB832]

MIKE KENNEY: At that degree, yes. If an inmate doesn't make his bed, he's not going to get kicked out of a group for something like that. While he may get extra duty or some...in other words, there is a span of degrees of the disciplinary process. So hugging your visitor too long or something like that would not cause you to be discharged from your group. If you are actually...if you commit a behavior that is irresponsible enough that causes you to be removed from that group, then at that point you've crossed the threshold into not being in compliance. [LB832]

SENATOR COASH: So if there are, you know, behaviors that an inmate can engage in, like hugging too long at the end of a visit, that don't put him out of compliance with earning good time, what would keep that inmate from saying, well, you know, as long as I go to my groups I can hug all I want and I can not make my bed whenever I want because all I've got to do is show up to my groups and not do anything that will get me kicked out of going to groups? [LB832]

MIKE KENNEY: Well, there are other sanctions. There are disciplinary sanctions that are attached to that. So it's not as if you got off scot-free. It's that your sanctions will not impact your stay in prison or lengthen your stay in prison. [LB832]

SENATOR COASH: Okay. So there's still a reason to tow the line, even if it isn't going to impact good time? [LB832]

MIKE KENNEY: That's correct. [LB832]

SENATOR COASH: Okay. [LB832]

MIKE KENNEY: And it might be time for me to emphasize again that this only applies to the most violent inmates, the--if I can say the word--the scariest inmates that present the highest risk to public safety when they get out. That is target group, and so all the other inmates wouldn't even be impacted by this. [LB832]

SENATOR COASH: Okay. All right. I don't have any other questions. [LB832]

SENATOR ASHFORD: Let me follow up on that a second. I agree with you that the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

offenses that are listed in Senator Lautenbaugh's bill are dangerous offenses, but they go from very, very dangerous to I think there is an involuntary manslaughter charge there somewhere. I don't have the list in front of me. So it is a...there are...so what you're saying to me is that the offense itself, whether it's involuntary manslaughter or something more serious than that, has...puts these people in another class. So involuntary manslaughter could be a motor vehicle homicide case, or something like that, which is different from an armed robbery or, you know, something to that effect. I can't recall all the different gradations, but it's not...they're various offenses. But once they're in...today, if you have somebody who commits one of these offenses in prison today and we pass this bill and somebody commits one of those offenses then and they're in for 20 years, let's say their discharge date is 20 years hence, you know, essentially, the rules that apply to them, no matter what their offense is, are the same as those rules that apply to somebody who is in there for selling methamphetamine. There's no difference in the rules, is there? [LB832]

MIKE KENNEY: You're correct, there's not. [LB832]

SENATOR ASHFORD: Okay. So if you're in there for a period of 20 years and you...you're...let's say you got a flat sentence so your parole date is, you know, the same as your discharge date. Mike, there...in my...talking to the Parole Board, talking to everybody I can talk to, tell me that if they are in that kind of a sentence environment where they're...where it's 20 to 20, that they are not going to get...their ability to get the kind of programming that you would get, let's say you're two years away from release, is literally not the same. You're not going to get the kind of programming for 10 years or 15 years if you're going to be spending that period of time in prison. I mean, that's what everybody tells me. Esther tells me that. They're just...it's just not available. And that's...so, I mean, would you agree with that? Bob tells me that, Houston tells me that. Is that just not true? [LB832]

MIKE KENNEY: Well, if I understand it, yes, I do agree with you. [LB832]

SENATOR ASHFORD: Okay. So...and maybe that's fine, or not, but the point is, if you've committed involuntary manslaughter or manslaughter or whatever it is and you're in there for 20 years and somebody is in for a similar period of time, it's not one of these offenses, they are...you know, they're going to be sitting there for quite a period of time before they really get into those kinds of programs they need to get released. Wouldn't that be a fair comment? [LB832]

MIKE KENNEY: It would, and I agree that's one of the things we have to do is triage the needs for the people as they come in. [LB832]

SENATOR ASHFORD: Okay. Okay, I got you. [LB832]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

MIKE KENNEY: Yeah. [LB832]

SENATOR ASHFORD: And they have a personalized plan and so forth and so on. Without getting into the weeds about that, I mean, essentially, if they just sit there, the two different offenders sit there, and essentially the rules that apply to them are going to be the same. And if they violate one of the rules, whatever it is, either their sentence is going to be elongated because they lose some good time; or if it's the other person under the new law here, it's going to be elongated because they've...because they didn't earn it. I mean, it's the same effect, it's same impact. What...I don't see...and that the...so...and then there are...I believe there's seven different good time laws that apply to the inmates; the 5,000 inmates that are there now, seven different good time laws apply to them. But the rules are the same. [LB832]

MIKE KENNEY: Right. [LB832]

SENATOR ASHFORD: Okay. [LB832]

MIKE KENNEY: The...if I may, the distinction is the violent offender...under this law, the violent offender has the immediate need to comply with rules and regulations from the very onset. [LB832]

SENATOR ASHFORD: No, but I'm saying they're just sitting there because what is it that they...they can't get into programming, either person, under the old law or the new law. They can't get into anything so they just sit there or they do what they do. So they both are under the same rules and the penalty if they vary from the rules is their sentence is longer somehow. It's calculated so it's longer, correct? [LB832]

MIKE KENNEY: Yes, yes. [LB832]

SENATOR ASHFORD: Okay, and so that... [LB832]

MIKE KENNEY: If they're...well, I think I understood what... [LB832]

SENATOR ASHFORD: So...well, their release date changes, their release date changes on either one. [LB832]

MIKE KENNEY: If they're not in compliance with their personalized plan. [LB832]

SENATOR ASHFORD: Correct. [LB832]

MIKE KENNEY: Right. [LB832]

SENATOR ASHFORD: Okay. Their release date...now they can earn it back or

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

whatever. But I mean, basically, their release date, if they both violate a rule under whatever law, there's seven or eight laws that they're in there...that apply to various inmates, if they do something in violation of the rules, they lose...their sentence becomes longer. [LB832]

MIKE KENNEY: Only if we take good time. I have to... [LB832]

SENATOR ASHFORD: But what's the difference? Why wouldn't you take good time for somebody who violates the rules? [LB832]

MIKE KENNEY: Well, I guess I'm looking at the big scope of rules. It's fairly rare to take good time for anything less than very serious...drug abuse, assaults, fighting, violence, those are the kinds of things people lose good time. [LB832]

SENATOR ASHFORD: So what you're saying is if you violate one of these different things that are in this bill, you're suggesting that it's going to be...your sentence is going to be longer, it's going to be easier to have a longer sentence than the other way around. Is that what you're saying, that your sentence is going to be longer than somebody over here that...? [LB832]

MIKE KENNEY: Yes. [LB832]

SENATOR ASHFORD: And you're...because you apply the rules differently or why? [LB832]

MIKE KENNEY: No, I'm saying because it's a different category of inmate because this law will apply to a certain set of inmates that have demonstrated violence. And they will be under greater scrutiny and they will have to perform better in prison to get out at the same time. If that's what you're asking, I'm affirming that. [LB832]

SENATOR ASHFORD: Okay, okay. I guess I don't understand why we treat people differently. But anyway, Senator Christensen. [LB832]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, Mr. Kenney. I guess I'm pretty simple. What is prohibiting you from taking time away now that you can't do now? Are statutes so tight that you just can't take time away from them when they're earning it from day one? I guess to me it's pretty simple. They break the rules, whatever, you pull time away. Or if you've switched to this method, you stop giving them...earning time. To me, it's extremely simple. You can use this format or stay in the same format. Either you're taking it away or you're giving it to them. I guess I'm pretty simple, but I don't understand how one way is going to be better than the other. [LB832]

MIKE KENNEY: Well, I think the distinction about this particular good time law is that it

does categorize inmates into two groups and it provides an incentive for the violent group of inmates. As they come in, they understand they're not...they're going to have to earn their time month by month of demonstrating good behavior and program plan compliance. And we thought...we didn't think it was necessary to revamp the entire system but to pick the people that presented the greatest threat to public safety and hold them to a different standard of performance while in the prison. [LB832]

SENATOR CHRISTENSEN: Okay. Now go to the other side of it. If I'm taking time away and they aren't doing their programming or they aren't being good, whatever, I just take it away, I don't understand the difference. Do we have it so tight you can't manage it? Or why do we have to flip it? To me, it's simple. Either side can operate the same. [LB832]

MIKE KENNEY: Hypothetically, you're exactly right. If we wanted to take good time away from a person with nonviolent in their record--theft, drug abuse, those kinds of crimes--and we wanted to treat them in exactly a symmetrical way like this so that we're taking good time off and extending their sentences for what we might call lesser infractions, you're right, we could do that. By the rule book we could that. As a matter of practice, we don't, because we don't think that that is necessary for us to do to be able to manage the prison with those kinds of behaviors. We want to correct those kinds of behaviors, but we don't think they rise to the level of severity that we need to make their sentences longer. This bill would put those kinds of same behaviors at different onus of responsibility on someone who is a violent person and say, you've got to perform at a different level. [LB832]

SENATOR CHRISTENSEN: But is the current statute prohibiting you from just taking time away? Because to me, one is the same as the other. Like I said, I'm pretty simple. [LB832]

MIKE KENNEY: Okay. [LB832]

SENATOR CHRISTENSEN: To me, one is the same is the other. So either I can just take it away. You guys say you don't, but can't you just write it that this is the way we're going to do it? [LB832]

MIKE KENNEY: We could change our practice. I think, of course, we can't, as we say, just take it away. That involves a documented misbehavior and due process and a hearing and all of those things, and so just taking it away would involve all of that. But let me try to...so, yes, potentially, if that was our decision that we wanted to extract good time or take away good time for inmates in the situation you described, I think that's possible for us. It's not a practice that we do right now to manage the prison. [LB832]

SENATOR CHRISTENSEN: Okay. Thank you. [LB832]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

SENATOR ASHFORD: Senator Lathrop, then Senator Chambers. [LB832]

SENATOR LATHROP: I have a concern and I'm just going to tell you. My concern is, it goes back to when we were trying to deal with the YRTC's. And it was run by Health and Human Services and the plan was to turn it over to Corrections and we weren't going to spend any more money. And my takeaway from that was...is that sometimes solutions can look like we're doing something without ever accomplishing anything. And I'm kind of getting that feel right now and I'll tell you why. The plan...this bill would say that a certain class of offender has to have a plan. And when I hear you say that you can get credit under the plan for the waiting on a list, so once we put a plan together and it says, Lathrop needs anger management and he needs AA or some substance abuse and I'm going to be there 20 years, because you also brought...injected into this triage. And the idea behind triage is that you do the plan. I need to do two or three things and now I'm going to wait, and I'm going to get credit under this bill for waiting. And everybody who is getting out ahead of me is going to, because of triage, going to get that care and those services. And I may be, like, right...a year before I leave. Now it's my turn and I get to go over to anger management and get my care, and I get to go over to substance abuse and have somebody talk to me about my dependency. That can happen under this bill. Am I right? [LB832]

MIKE KENNEY: Yes. [LB832]

SENATOR LATHROP: And here's the concern: It gets back to the idea that it looks like we're doing something and we're not putting the resources in place to actually accomplish anything. And let me ask you about the plan. When does the plan get formulated under this bill? The day I walk into the prison? [LB832]

MIKE KENNEY: I wouldn't say that day, but very, very quickly. [LB832]

SENATOR LATHROP: Okay, within the first month? [LB832]

MIKE KENNEY: When they get assigned to...some of the diagnostic work at the D&E actually detects the needs, and the needs assessment and risk assessment are done at that time, and that plan starts to be formulated, yes, even while they're at the Diagnostic and Evaluation Center. [LB832]

SENATOR LATHROP: Okay. So somebody that's going to spend, under today's sentencing, 20 years inside the corrections center, how many months or weeks pass before the plan is in place? [LB832]

MIKE KENNEY: Oh, not months or weeks at all. I would say days. [LB832]

SENATOR LATHROP: Okay. So there's some plan that says, this inmate needs anger

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

management and he needs substance abuse treatment. Is there any evaluation or does any part of that involve a mental health evaluation to determine whether or not I have a mental health condition, for example, schizophrenia or bipolar or any other diagnosable psychiatric disorder? [LB832]

MIKE KENNEY: Yes, and let me embellish a little bit. That whole diagnostic evaluation process takes 30 to 45 days. [LB832]

SENATOR LATHROP: Okay. [LB832]

MIKE KENNEY: And I think I said to you...I think I left with you the impression that they'd have their personalized plan with in two or three days. I didn't... [LB832]

SENATOR LATHROP: No, no, no, 45 days, that's fine. [LB832]

MIKE KENNEY: Okay. All right. Yes. [LB832]

SENATOR LATHROP: And I don't have a criticism that it takes that long. [LB832]

MIKE KENNEY: And the mental health assessment is part of that diagnostic work. They are tested...yeah. [LB832]

SENATOR LATHROP: Okay. So we get through the 45 days, everybody has looked at me that needs to look at me, and somewhere they roundtable it and they come up with Lathrop's plan--right?--45 days or so into it. [LB832]

MIKE KENNEY: Correct. [LB832]

SENATOR LATHROP: If I need mental health treatment for schizophrenia...because I believe, after we closed the regional centers, that you are dealing with an awful lot of people with mental health conditions, am I right? [LB832]

MIKE KENNEY: You are. [LB832]

SENATOR LATHROP: Okay. How many of those people are going to get their care on the 46th day? The day after your plan is formulated, how many of them are going to get the mental health care? Or will they be triaged and wait in line for the opportunity to treat with a psychiatrist or go through counseling and treat with a psychologist? [LB832]

MIKE KENNEY: I want to answer that question. [LB832]

SENATOR LATHROP: Okay. [LB832]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

MIKE KENNEY: There are mental health...there is a mental health referral system. And so if you're diagnosed with this, I don't know that you would go on the 46th day into a treatment, a formal treatment program. If there's one available and the resources are there, yes, but... [LB832]

SENATOR LATHROP: Exactly. How long is that going to take me? [LB832]

MIKE KENNEY: I can't tell you. [LB832]

SENATOR LATHROP: And that's my concern... [LB832]

MIKE KENNEY: Right. [LB832]

SENATOR LATHROP: ...is that if we don't put the resources so that this bill that looks like it's doing something and looks like people are earning something, and when everybody leaves this room and the Governor signs the bill and we think we've done something, all we have is a bunch of people on waiting lists until their last year before they get out, and nothing really has changed. So now I've got a question about resources. What do we have to do so that when these people go in there and you put a plan together, they're on the plan while they're there and not on the plan, on a waiting list, getting credit under this bill, and actually doing nothing that this bill contemplated and the public probably thinks is happening, except for the last year before they're discharged? Go ahead. [LB832]

MIKE KENNEY: Well, I want to respond to that first... [LB832]

SENATOR LATHROP: All right. [LB832]

MIKE KENNEY: ...by saying...I wanted to say that when that happens, even if you're not in formal treatment, staff correctional officers, unit staff, the people, there are mental health referrals. If we see Mike Kenney acting in some way or coming to you and expressing depression, suicidal, any...we train to those kinds of things. And so on a regular basis, staff that observe inmates refer these, and they are seen that day. They're seen within 24 hours by our mental health people. [LB832]

SENATOR LATHROP: Mike, I don't want to...I didn't want to turn this into Nikko Jenkins, but I read the Ombudsman's report. And I'm not equipped to decide which person is right and which person is wrong in terms of the professionals. But this guy is in solitary and somebody comes by and, I'm imagining from the report, there's a little hole in his door and somebody comes by and goes, you okay? And that was it. [LB832]

MIKE KENNEY: And I'm not able to speak to that specific case. [LB832]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

SENATOR LATHROP: Okay. [LB832]

MIKE KENNEY: Okay? [LB832]

SENATOR LATHROP: All right. Then talk to me about...I get a sense of where you're at on the...there is a waiting list for mental healthcare, yes? [LB832]

MIKE KENNEY: There is, but I...and I did want to... [LB832]

SENATOR LATHROP: Unless I may be suicidal, absent I'm going to harm myself, I'm going to be waiting in line behind others to get the mental healthcare I need. Would that be true? [LB832]

MIKE KENNEY: It is, but please let me just say this also. [LB832]

SENATOR LATHROP: All right. [LB832]

MIKE KENNEY: There are...if you understand the therapy programs, and I'm not an expert in mental health, but there are programs that people go through that are not...for example, if you have a 20-year sentence, you wouldn't be in that therapy for 20 years. There are beginning and end times, and this is what...the way I understand it, you would not...you would complete a program of therapy but it wouldn't be...you wouldn't be in that, taking up that seat, you know, at least this is my understanding, so. [LB832]

SENATOR LATHROP: I wouldn't expect our capacity to put somebody in there and keep them in anger management for 20 years if he doesn't need it. [LB832]

MIKE KENNEY: Right. Okay. I just wanted to... [LB832]

SENATOR LATHROP: But your use of the term "triage" suggests to me that people are waiting in line to get services. And my concern is that if we don't have the services and all we're doing is getting people the year before they're discharged, then this bill is an illusion because I'm getting credit for being on a waiting list when I'm getting exactly no programming except on the way out the door. [LB832]

MIKE KENNEY: I understand that. [LB832]

SENATOR LATHROP: And that is a resource issue and that's the concern because that's what's actually happening, right? People are waiting and waiting and waiting and then we prioritize them, or triage them, and say, guy is about to get out, he's inside of a year, get him over to anger management. True? [LB832]

MIKE KENNEY: I'm on record and I believe that our mental health services are

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

adequate for what we're doing now and we could use more. If it was available, I think we could utilize those. But on the other hand... [LB832]

SENATOR LATHROP: But it's not just mental health. [LB832]

MIKE KENNEY: Right. [LB832]

SENATOR LATHROP: I mean, any one of these things you're talking about...the substance abuse, these guys are waiting until the end. The anger management, vocational, whatever it is, they're all waiting until the end and you get them within a window and we could probably...each service probably has a window but it's within the last year or two of their incarceration, and that's when they actually get the service. And if they're getting credit for 18 years on a waiting list and this looks like we're making them earn it and all they have to do is say, yeah, I'll do it, then for 18 years it looks like they're in...I mean, I looked at this and I said, well, what's wrong with making guys earn it? But if they're earning it on a waiting list only to have all the services provided in the last two years, it may be good in theory, but the practice is...it works only if you have the services inside the place so that they're actually doing something. And people perceive this as a suitable approach only because they think they're getting...they're working a plan when all they're doing is waiting. [LB832]

MIKE KENNEY: I agree. But since we agree that they wouldn't be in therapy for 20 years, I guess I don't know how to answer your question. If they're not going to be in therapy for 20 years, we don't want to punish them if they're willing to be. And... [LB832]

SENATOR LATHROP: Maybe I'm talking about the substance of the bill,... [LB832]

MIKE KENNEY: Okay. [LB832]

SENATOR LATHROP: ...what does this accomplish. And what it accomplishes is the perception that people are going to be doing something to earn it when, in fact, all they have to do to earn it is sign up for something they're not going to get for their last year...until their last year or two. Is that right? [LB832]

MIKE KENNEY: We...I agree. [LB832]

SENATOR LATHROP: Okay. [LB832]

MIKE KENNEY: And we do have a number of people, by the way, that simply will not even do that. [LB832]

SENATOR LATHROP: Well,... [LB832]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

MIKE KENNEY: They refuse to sign up and... [LB832]

SENATOR LATHROP: And I appreciate that. [LB832]

MIKE KENNEY: ...you know, and so... [LB832]

SENATOR LATHROP: I appreciate that. [LB832]

MIKE KENNEY: ...we're trying to at least... [LB832]

SENATOR ASHFORD: But they could be anybody. They could have any number of different offenses. I mean, it could be somebody in a drug offense, it could be someone on a forgery offense, or whatever it is. They don't sign up, so they can lose their good time. I mean, so it's not...anyway, aside from that, Senator Chambers, and then Senator Seiler. Sorry. [LB832]

SENATOR CHAMBERS: Mr. Kenney, I've been in the Legislature a long time. I worked with more than one Director of Corrections. I've been approached and have worked with them to bring legislation to change the good time laws to make more good time available. There was a period, you call it earned good time now, they called it meritorious good time. Have you ever heard that term? [LB832]

MIKE KENNEY: Yes. [LB832]

SENATOR CHAMBERS: When you came into the pen, you were not given...like now, where it's money in the bank, and if you never withdraw from that account, then the full amount is credited to you. Every time you misbehave, something comes from that account and you have less good time to subtract from your sentence but you can earn it back, and I don't want to complicate it with that. They said that the way you get meritorious good time is to participate in programming. In those days they even had education programs, they may have had some vocational programs. All that's gone. Even then they did not have enough slots in those programs for all the inmates who wanted to participate. You could work in prison industries if you were in good with somebody. So that whole system was created to encourage and foster favoritism and what I call corruption. If you get along with a guard, the guard won't write you up, and it goes against you so you cannot get the programming. Meritorious good time was controlled by guards, who could be vindictive, by wardens, deputies, and others in the administration, and they could simply say, since you did not participate in the programming, you get no meritorious good time. So it was a discriminatory system where those who cheated up to the administration, those who served as snitches, those who did other things would get the meritorious good time and others couldn't. And the inmates saw what was happening and it was becoming increasingly difficult to manage the prison. I brought a bill that said whenever anybody enters that penitentiary,

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

everyone is going to start off on the same footing. It's not going to be where the administration says, you earn good time, you don't. Everybody starts out exactly the same. Your sentence is cut in half presuming that for every day you serve, you will get a day of good time against that sentence. That took away most of the discriminatory arbitrariness. What they are doing now is saying, go to a system that's even worse than that one, because you don't even have the amount of programming now that existed then. I don't know if this is refreshing your recollection at all. Maybe you weren't here at that time. The Governor is driving this, and the Attorney General, who is running for Governor. The Governor may not understand this is smoke and mirrors. The Attorney General does. And Senator Lathrop through his questioning and your responses have demonstrated that, in fact, no matter what the prison officials say and you say about you have enough in the way of providing mental health services, you don't. There are people who need mental healthcare and treatment who cannot get it because there's no place for them to get it. The Parole Board has even told inmates, you may be eligible for parole, but you haven't finished this programming. And the inmate says, the programming is not available. And the Parole Board says, that's not our problem. So you come back to prison where the prison officials are telling the Appropriations Committee, we can provide the programming, we can provide the mental health, and we don't need money for that, we need something for security, responding to the political interests of the Governor and the Attorney General, who is now running for Governor. And in the meantime, we get this backlog of people that add to the overcrowding. I'm taking it a step at a time because but for the absence of programming, there are people who would be paroled by the Parole Board right now. And the Parole Board, working in cahoots with you all, will tell them, you can't get it because you haven't got the programming. Senator Lathrop was asking you, by way of examples, how long somebody could be on a waiting list. Well, for purposes of acquiring good time, it doesn't matter whether he or she is in the programming because they're not losing good time as long as they've signed up and they're willing to take the program, should it become available. So over here in the good time column, no problem, because they're not losing good time due to the fact that the program isn't...programming is not available. But over here on the track where the most important thing is, getting out of there, going through the Parole Board, now it does make a difference that the programming is not there, and it doesn't help to have your name on a waiting list and express every intention and willingness to go. And having done everything that is available, the Parole Board says, well, you didn't get this, so you can't get out. It's smoke and mirrors. It's unjust. It is unfair. And when you went before the Appropriations board, did you have instructions from the Governor in terms of what you should ask for by way of a total amount or what you should ask for money for? Did he put limitations on you? [LB832]

MIKE KENNEY: We actually got more on the final request than what we had had on the previous request. [LB832]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

SENATOR CHAMBERS: I'm talking about when you went before the Appropriations Committee and you didn't need money for mental health services. That was in the paper, or is that incorrect? [LB832]

MIKE KENNEY: No, that's correct, that's correct. [LB832]

SENATOR CHAMBERS: Well, why didn't you ask for more money? [LB832]

MIKE KENNEY: For mental health services? I think they're adequate. [LB832]

SENATOR CHAMBERS: Yeah, if you're going to do like you did Nikko Jenkins, say that we'll misdiagnose his mental condition as a behavioral problem. Then you don't have to give mental healthcare and you can lock him up because you say he's misbehaving just because it's behavioral, he has a bad attitude. Are you aware that he had cut his face very severely while he was in solitary and had to get over a dozen stitches? Are you aware of that? [LB832]

MIKE KENNEY: No. [LB832]

SENATOR CHAMBERS: Okay, so there are a lot of things, even though you were at a high level, you didn't know were going on in the institution. That's what I have to take from what you're telling us. [LB832]

MIKE KENNEY: Well,... [LB832]

SENATOR CHAMBERS: There are things going on that you didn't know about. And have you been told by your psychiatric people, by your mental health people, whether they are at the level of a psychiatrist, a counselor, or whatever you're going to call them, that the mental health services are adequate to meet the needs of the inmates who are there and have mental illness? They told you that they can adequately meet the needs of those inmates right now? Is that what they told you? [LB832]

MIKE KENNEY: I don't know if they told me that or if that's just something I believe from looking at the number of staff and the number of treatment programs we have. [LB832]

SENATOR CHAMBERS: So you're basing yours on hunches and feelings, not evidence or facts. Is that true with reference to mental health services? [LB832]

MIKE KENNEY: No. [LB832]

SENATOR CHAMBERS: Well, who told you that the mental health services are adequate? I asked you, did you get it from your psychiatrist or your counselors or whoever, and you said it's just what you felt and what you observed and what you

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

believed. So which is it? Did you get that information presented to you by the people whose job it is to provide mental healthcare? Or did you just hunch your way to that and say, well, I believe there is enough here? Because you didn't ask the Appropriations board...Committee for more money in that area, did you? [LB832]

MIKE KENNEY: No. [LB832]

SENATOR CHAMBERS: That's all that I have. [LB832]

SENATOR ASHFORD: Senator Seiler. [LB832]

SENATOR SEILER: I'm just really confused about where we're headed for prison reform if this is the program. As I understand it, within 90 days or 120 days or whatever that magic is, each prisoner has a plan. But depending on what kind of crime he committed, we don't start working with him on the mental health, the alcohol, any of these reform programs that would make him a more model citizen in your prison. And so we're pushing that back but he's getting good time, because that's what we're talking about today, because he's on the waiting list, he's cooperative. But my understanding would be, if we could get those people on a training program for a career path, on the mental health or drug abuse or mental health programs, and make progress with them, there's nothing that says you can't recommend early to parole for those people to go out to a halfway house and start working at a factory or in their career path's work. And then they'd be out from under your feet, instead of keeping them for 20 years. And if you're not going to treat them on any of these programs until 18 years down the road and then push it all into the last 2 to get them out in 20, that seems ridiculous. Now maybe I misunderstood you. [LB832]

MIKE KENNEY: Well, maybe I misunderstood how they get out earlier than their parole eligibility. I'm not sure I understood fully that part. [LB832]

SENATOR SEILER: Well, I know you set up a parole eligibility when they're first in there. But we're talking about changing how things are. And if changing how things are is that they complete the programs within seven years but they're not to get out on parole for ten, if they completed a program, they've been a model citizen, they've got a career path already going, don't you think we ought to put something in the law that says you could get them to the Parole Board to take a look at them,... [LB832]

MIKE KENNEY: Well,... [LB832]

SENATOR SEILER: ...rather than feed them and...at \$35,000 a year? [LB832]

MIKE KENNEY: Well, we don't have the authority to change the sentence of... [LB832]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

SENATOR SEILER: Oh, no, no, no, no. [LB832]

MIKE KENNEY: Okay. [LB832]

SENATOR SEILER: You don't understand. [LB832]

MIKE KENNEY: You're right. [LB832]

SENATOR SEILER: I'm saying, where we would go, is that a kind of program that you would recommend? [LB832]

MIKE KENNEY: A program where if they were completely...had satisfied all the... [LB832]

SENATOR SEILER: Right. [LB832]

MIKE KENNEY: ...programming requirements and satisfied all those recommendations but they were not... [LB832]

SENATOR SEILER: ...eligible for the parole... [LB832]

MIKE KENNEY: ...eligible for release, then they would go to a program...my concern is that the...we don't want to tamper with the sentence handed out by the judge. And if you're saying, could we have a program that they could go to prior to parole eligibility and still be...in essence, we have that in our community corrections centers. We have work detail and work release programs and... [LB832]

SENATOR SEILER: Right, right. [LB832]

MIKE KENNEY: ...they are in those centers before. [LB832]

SENATOR SEILER: But if we don't start getting them on a program to get them helped, either mentally, drug abuse, or alcohol abuse, we just delay the working with those people until we push it down and they're on the waiting list. And my point is, is why not get them on the program right away? You said you have plenty of resources to do that. [LB832]

MIKE KENNEY: There would be...I think when we design the personalized plan for inmates, we don't design it...with the exception, and I'll freely admit that, with the exception of certain treatment programs that we can't get people into right away, it contains a lot more than just those. It could be educational programs, GED... [LB832]

SENATOR SEILER: GED, right. [LB832]

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Transcriber's Office

Judiciary Committee  
February 12, 2014

---

MIKE KENNEY: ...some of the vocational industries. Something that maybe hasn't been mentioned, and it's not a defense, I just want to make it clear, if someone has a 10- to 20-year sentence, no matter what we do with that time, there is a lot of years that are still going to have to be spent in the prison, and I want those to be productive years. That is...if there's any question about whether I desire to have that happen or not, I do. And I believe in programming and I believe that people who go to programming benefit and are a safer public risk when they go out. And so I don't know if I answered your question or not. [LB832]

SENATOR SEILER: I think so. I think so. [LB832]

SENATOR ASHFORD: Thanks, Senator Seiler. Mike, when Bob Houston was here, and during all the time he was here...and he came before this committee and he told us over and over and over again that there was insufficient programming to get people to a place where they could even be paroled. And in talking to the Parole Board, they're telling me they have a long list of people that they could potentially parole, but they can't parole them because they haven't completed their personal plan. So, I mean, I think at some point, and I said this early on in this debate, and, yeah, there may be mental health there, there may be other things there throughout the time, but we're talking about rehabilitating somebody to a place where they can be paroled, so when their parole eligibility date comes, they can be paroled. When we went through the budget crisis, what Mr....what Bob Houston told me was that what we were going to try to do was to accelerate parole. We were going to get people more quickly into programs. Remember that? [LB832]

MIKE KENNEY: Yes. [LB832]

SENATOR ASHFORD: That didn't happen, did it? [LB832]

MIKE KENNEY: No. [LB832]

SENATOR ASHFORD: Okay. That didn't happen so they didn't get paroled. So what happened was the prison population, when I asked Bob Houston two or three years ago...I mean, we've been through this with Mr. Houston and at that point in time we were looking at about 140 percent of capacity for the prison. And what Bob told us is that if it gets any worse, we're not going to be able...here's one of...the problem is you can't get the...the programs are not available in all nine institutions. The programs are available at different institutions. Isn't that correct? [LB832]

MIKE KENNEY: That is correct. [LB832]

SENATOR ASHFORD: So if there are...if we're at 150 or 160 percent of capacity for

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

male inmates, they are being jammed up in there. They cannot be moved around to get to the programs. So what Bob told us was they can't get the programming to get to parole, to get paroled. So what happens is the population of the prison goes up and up. But he also told me that there's been a net increase in the prison population since 1990 or 11 per month, that we get net 11 more inmates per month over that whole span of time. And that's why we went from, when I left the Legislature, when we passed Senator Chambers' bill in 1992, we went...I think it was 1992 or whatever it was that we went from about 1,800 or 1,900 up to 5,000 inmates. The simple fact is, the programs are not available for a variety of reasons. You know, he told...Bob told us the other day that they...all the money for vocational education has been deleted...was deleted. So the programming, like the welding programming and this extensive...is gone, right? [LB832]

MIKE KENNEY: No. I guess. [LB832]

SENATOR ASHFORD: There are some things. There are the contractor...the private industry thing is there. But a lot of the vocational programming is gone. [LB832]

MIKE KENNEY: A lot of it is, and I guess I'm sensitive to absolutes. When you say all of something, you know, we... [LB832]

SENATOR ASHFORD: Well, not all. [LB832]

MIKE KENNEY: Right, yeah. [LB832]

SENATOR ASHFORD: I realize that the contract, the private thing is there but it's limited. And I don't want to mince...you know, get into the weeds on it. All I'm trying to say is if we don't all agree...to Senator Lathrop's question, I think we're not trying to be adversarial. We're trying to get everybody on the same page so we can fix the problem because this committee has been asked to fix the problem by making good time more liberal, which we did when Senator Council brought the bill where...and the department supported it and the administration supported it as a means of getting people out of the institutions to stop the overcrowding. Now, after what happened this summer, we're being asked to change the good time law again. But until we all agree...because what we're trying to get at...I guess the end of this, and I'll let you go, but the...what our goal should be, your goal and my goal, and we talked about this in my office, is the same. We want people to reenter society and not come back to the institution. And quite frankly, people who jam out are, in a sense, served until the end of their sentence, come back in a much greater percentage than those that don't, right? [LB832]

MIKE KENNEY: Exactly. [LB832]

SENATOR ASHFORD: Okay. So if we...we need to all be on the same...we all have come at this from different places, you know. If we're on the prosecutorial side or the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

police side or the defense attorney side or your side or probation, everybody has a different view of this. I understand that, based on their roles. But this committee, our role is to try to fix whatever needs to be fixed. And I can't, until we all agree that we're in desperate need of space, we're in desperate need of programming, and not make it a political thing but just try to fix it, we're never going to fix it. It's not about...that's my problem with what we're doing here. But having said that, I appreciate your testimony and let's go to the next...Senator Chambers. [LB832]

SENATOR CHAMBERS: I have one more question. Mr. Kenney, this is in a little different area, but it's about the same type of matter. How long has the institution been in what you all call modified lockdown? [LB832]

MIKE KENNEY: Year and a half, maybe longer, maybe two years. [LB832]

SENATOR CHAMBERS: And that is, more or less--I hate to use a cliché--that's the new normal for the institution now, isn't it? [LB832]

MIKE KENNEY: Yes. [LB832]

SENATOR CHAMBERS: And how long does an inmate stay in the cell during this so-called modified lockdown? [LB832]

MIKE KENNEY: I would have to check with Mr. Hopkins, but I think they're out of their cells something like 12 or 13 hours a day. [LB832]

SENATOR CHAMBERS: All of them? [LB832]

MIKE KENNEY: The inmates in general population, I believe. [LB832]

SENATOR CHAMBERS: And what did they used to be out? How long? [LB832]

MIKE KENNEY: Oh, I think they could have been out maybe 18 hours a day. [LB832]

SENATOR CHAMBERS: And are there some who are allowed out fewer than 12 hours a day,... [LB832]

MIKE KENNEY: Yeah,... [LB832]

SENATOR CHAMBERS: ...not because they've misbehaved,... [LB832]

MIKE KENNEY: ...in restricted housing. [LB832]

SENATOR CHAMBERS: ...but because they don't have adequate staffing and other

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

considerations? [LB832]

MIKE KENNEY: Yes, yes. And if you're referring to restrictive housing, yes. [LB832]

SENATOR CHAMBERS: And that contributes to the dissatisfaction, the problems that develop when people are kept confined for that long a period of time, not because they've done something wrong but because they say--when I say "they," I meant the officials--there's not enough space, there's not enough staff people. Now the inmates, let's assume that each one there actually committed the crime for which he or she was sentenced. They're responsible for that, but they're not responsible for the problems in the penitentiary and these institutions. That's a matter of politicians, one specifically in the Governor's Office, and then those who run the prisons, they're responsible for that. And there was what everybody who was aware of it called a peaceful protest--I wouldn't even call it a demonstration--and people are being punished for that. Would you rather that they do like we see in some of these movies? I don't know how they get matches, but burn...set mattresses afire, break the plumbing, and have water flowing out of the cells and lighted mattresses thrown out of the cells, or just sullenly standing and glaring? See, there are things you can do to people. You all--and when I say "you all," I'm...that's the collective--you all know how to provoke people, you know how to goad people, and then, "I've got you." If an inmate says the wrong thing to what they call a corrections officer, but I call a guard, he can be written up for...you can be written up for a verbal threat, can't you? [LB832]

MIKE KENNEY: Yes. [LB832]

SENATOR CHAMBERS: You don't have to have a...and all that it takes to do that is have the guard make the allegation. Isn't that right? [LB832]

MIKE KENNEY: Yes. [LB832]

SENATOR CHAMBERS: And there doesn't have to be anybody to corroborate it, another guard who heard it. There doesn't have to be that, does it? [LB832]

MIKE KENNEY: No. [LB832]

SENATOR CHAMBERS: So a guard, if he or she had a bad day, can take it out on an inmate and the inmate suffers. Now we here don't know whether the inmate actually did or didn't do what was alleged. But the guard knows and the inmate knows. And it's like I used to tell people when I was in school and I had teachers who lied on me. I said, my parents...and I was an obedient kid, but one time I had taken more than I could and I just told the teacher, I said, when my parents were up here, you didn't tell the truth, my parents don't know what happened, but I know what happened and you know what happened, and you didn't tell my parents the truth. That's all I could do as a child. In

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

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prison, I can be sent to the hole, I can lose good time, and the guard can laugh at me and mock me and taunt me. And because you have people who are not suitable to be managing other human beings, you turn people into something worse than they were when they went in. That's not every situation, but there are enough situations where there needs to be concern. And I don't think you have that concern. I don't think Mr. Houston had that concern. I know the Governor and the Attorney General don't have that concern. But the public tends to believe that when high-placed officials say something they're telling the truth. The kinds of things that are going on in that prison, the magnitude of these problems, the pervasiveness of these problems could not all happen without you being aware of these things going on. And if you're not aware, it'd be like that...there was a movie called The Caine Mutiny. The Caine was the name of a ship. And if I've got my characters correct, Humphrey Bogart was the captain and he was somewhat demented. And as the movie progressed, it showed problems that he had. And the most famous scene was where he's sitting at this court marshal, rolling these large steel balls in his hand. And he said, oh, they were clever, but the strawberries, that's where I got them, on the strawberries. He figured that somebody had been taking a larger helping of strawberries from this big can than they should have done. Whatever happened on that ship the captain was responsible for. Humphrey Bogart was demented. I don't think you're demented at all. I don't think it's a matter of you being delusional about somebody taking strawberries. I think it's a matter of you, and Mr. Houston before you, being put in a set of circumstances that outgrew your ability to cope with them. The appointment was political. And when the one who made the appointment--namely, the Governor--made certain public representations, you cannot say anything that goes contrary to that. You have to carry out those orders. And I'm not asking for a response from you. I'm saying what I think is the only explanation for what is going wrong and has gone wrong for so long in that penitentiary. Since you're not demented, you're culpable. You knew and you know, but for some reason you cannot acknowledge it and you cannot do anything about it. I believe if you were completely free to call on all those years of experience you've had in corrections here in Nebraska, and when you went out to Washington state with former director Harold Clarke, you would have gone to that Appropriations Committee and you could have put together a plan. I think you've got more ability than you yourself think, and I think you could have shown the Appropriations Committee the nature of the problems that you're confronting--the fact that responsibilities are placed on the state to handle people who have been convicted of crimes, and that responsibility on the ground is on you--and here is what you need to carry out the responsibilities that have been reposed on you. You need so many and so many staff members per inmate, per the number of inmates. You need to have programming which is not like basket weaving, as they say in college, to keep a football player eligible, but usable skills that will help that person when he or she gets out, adequate mental health facilities and staff. And if you're told that we cannot come up with that much money, then you'd been in a position without fear of political repercussions to say, then you need to have someplace else, other than this penitentiary, to put these people who have more in the way of mental problems than

security problems. Let us handle the security issues, let us handle the bad people who were bad on the outside and who will be bad on the inside. But those people who take trips in their minds and they don't know where they're going, they wind up at a destination inside their head and they don't know where they are when they're there, they don't know where they came from or how they got there. You'd be able to tell them, we're not equipped to deal with those people, those are beyond our pay grade. You're not allowed to do that. So what we as policymakers have to do is pillory you and ask you very close questions which you cannot straightforwardly answer without being at odds with your boss, and you have to be the bad guy. Senator Christensen made a very good point when...now he's like the country lawyer who says, now I'm just a country lawyer, I don't know anything, I'm just simple. But then he proceeded to point out that whether you start out, when we're talking about good time, with saying, as we do now, that you get that full amount of good time that you'd get based on your sentence, all that is put in the bank for you, or you say, you get no good time when you initially come in, but for every day you behave we add the good time...an earthworm looks the same at both ends to anybody, including earthworms, because they don't even need a mate to reproduce. But we've got an earthworm here and you want to start from the front end, we start from the back end, but when we get in the middle we've both covered the same distance, only traveled it differently. So whether you're going to say earn the good time day for day when you come or you get it all and then we subtract it if you misbehave, essentially, there's no difference. The real difference comes in, is not in that system, but the fact of your being able to be discriminatory, play favorites when you tell somebody, the only way you'll ever get good time is if I say you've behaved and you'll get it and today I don't think you're going to get any good time. And I say, well, you dirty SOB. You say, um-hum, you're not going to get any tomorrow, either, and the next day. Now as I said, I'm not asking for a response. But I don't know that I'd be able to carry out the work that you're being made to carry out. Mr. Kenney, my memory is better than yours, and I remember you being different from the way you are now. And if you once were that way, you haven't forgotten how to be that way, you're just not allowed to be. And you know why I'm saying this to you? I intended my questions to be searching because we need things as a matter of record and there are decisions we're going to have to make, even with reference to you, and I wanted you to have every opportunity to be straightforward and forthcoming. But you couldn't be, so we've been here a long time, and some people might think too long. But we've got a comprehensive bill aimed at trying to deal with prison problems. And for my part, modifying the good time law is not going to be a part of it. That's the easiest thing for a politician, like the Governor and the Attorney General, to attack because it doesn't cost any money. They just say, change it and make it harder for them to get good time, and they never stop to think about the ripple effect in the prison where these bad laws have to be administered. This is just another one of those bad ones. You could stop it all if the Governor would listen to you. But he won't. You would have told him, don't do this to me, Governor. But you couldn't tell him that. And if you told him that, he'd say, you want to keep your job? I've been the world a long time. And if you and I were just in a room together and I were saying the same thing,

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Transcriber's Office

Judiciary Committee  
February 12, 2014

---

you could finish my sentences for me because you know as much about what I'm talking about as I do, and some aspects you know even better than I do. And I will be through now. [LB832]

SENATOR ASHFORD: Okay. Thanks. [LB832]

MIKE KENNEY: Is there...if I keep it...I know the day is long. Can I keep it really, really short? I know I made one mistake in a response to you, Senator, and I...30 seconds at the most. Senator, you categorized me and previous Director Houston in a...and I'm not thin skinned, I'm really not. One of the things you said was you didn't think I cared. You are wrong. With all due respect, you're wrong about that. The other categorization is our staff who poke and provoke and do that. I could show you a list of the people, of the employees who have been disciplined because they used harsh language, inappropriate. They were inappropriate and that's a matter of record. The other thing...I'm sorry, I just wanted to say that much. I'm very proud of our employees. I don't think we're perfect. But we're committed to professionalism and that is part of my value system. The other thing, when you talked about parole not being enough, Senator,... [LB832]

SENATOR ASHFORD: Well, not having enough... [LB832]

MIKE KENNEY: ...I kind of snorted and laughed that it wasn't enough. For the record, in that time period, paroles did double. And I don't want to make it sound like... [LB832]

SENATOR ASHFORD: No. [LB832]

MIKE KENNEY: ...that that plan didn't work at all. It didn't... [LB832]

SENATOR ASHFORD: But what it shows is it... [LB832]

MIKE KENNEY: Yeah. [LB832]

SENATOR ASHFORD: ...what it...but...that's fine. [LB832]

MIKE KENNEY: It fell short, but I wanted to acknowledge that it did (inaudible)... [LB832]

SENATOR ASHFORD: I just...all... [LB832]

MIKE KENNEY: And I...thanks for indulging this last little thing. I just wanted to say those things. [LB832]

SENATOR ASHFORD: I only meant...Mike, Mike,...and that's fine and that was this

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

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policy change that you guys did. My only point here is that we do have a comprehensive bill that's trying to address all of these issues. And my only...as I have said all along to the executive branch and everybody else, if we can't get on the same page as to what the problem is, then we're never going to get it solved. And my community and every community in the state is not going to be able to really be safer because the reentry back into prison is going to continue to be at elevated levels and the number of people getting out on parole is not going to be sufficient and that the programming is not going to be there. So my only point is, we want to fix it, whatever the "it" is. But until we can agree as to what the "it" is, we're just not going to get it. And it's going to take money and it's going to take a change in how we approach these issues and that the good time law, which can be applied today in a way to take good time away, is distracting us from trying to get to the problem here and to try to get people out into the community in a safer way so that they can be productive and have a job and have a house, a place to live, so that they won't commit more acts. And I think we would agree that that's where we should be. But until we can agree on what the problems are, I don't know how we're going to get there. But anyway, thanks, Mike. [LB832]

MIKE KENNEY: Thank you. [LB832]

JOHN FREUDENBERG: Could you distribute that letter? Okay. [LB832]

SENATOR ASHFORD: Go ahead, John. [LB832]

JOHN FREUDENBERG: (Exhibit 16) Good afternoon. My name is John Freudenberg, last name spelled F-r-e-u-d-e-n-b-e-r-g. I'm the criminal bureau chief for the Nebraska Attorney General's Office, and I appear here today in support of LB832. This bill establishes that convicted offenders who have seriously hurt or killed their victims would be required to earn a portion of their sentence reductions. Currently, all incarcerated offenders receive sentence reductions for simply following prison rules, which can shorten their incarceration sentence by up to approximately seven months for each year of their court-ordered sentence. When examining this issue, our focus should be on the victims of crime. The violent victimization of others is the reason this particular group they were talking about today has been incarcerated in the first place. The fact that this population will return to society and the need to protect future victims is the reason we need the rehabilitative programs. The hope is that the combination of specific deterrents and the rehabilitative services the violent offenders receive will modify the future behavior so they will...so that he will not continually...to violently victimize others in the future. With our current system, violent offenders have little motivation to work on individually crafted rehabilitation plans. LB832 provides such motivation. LB832 still allows this group to receive good time credits for each month they follow the prison rules. After successfully serving a month, the violent offender will then be deemed to have served the one month plus 15 days. That represents a 25 percent reduction. However, LB832 concept of earned time then acts as an incentive for the violent

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

offenders to participate in the individually...rehabilitation plans. For every month the prisoner successfully participates in the plan, he or she will receive another 15 days; therefore, after one month of good behavior and participating in the plan, the violent offender will be deemed to have served one month plus an additional 30 days. If this conduct continues throughout the violent offender's court-ordered sentence, he can cut his sentence approximately in half, which is about the same as they are receiving under current law. The LB832 plan promotes rehabilitation and establishes a level of personal accountability for the violent offender. If we want prison rehabilitation programs to be effective, there has to be a reason for offenders to participate. The mere presence of the programs is not enough. This bill provides violent offenders with an incentive for meaningful participation. My office asks for this committee to support this bill. Thank you. [LB832]

SENATOR LATHROP: Thanks, John. Senator Christensen, you're recognized. [LB832]

SENATOR CHRISTENSEN: Thank you, Senator Lathrop. For your formula to work out that you just gave us means that they have to be able to start programming right away because you're given for good time an extra 15 days and for programming an extra 15 days. But if we don't start the programming until 18 years into a 20-year sentence, then you're not going to cut it in half. We need more programming then. [LB832]

JOHN FREUDENBERG: The programming is another piece of this puzzle. You can't look at this as any one of the bills is before the Legislature. This is a complex problem. If you look at it from one or the other or the other, they're all probably going to fall short. You have to put the pieces in the puzzle together. And if they sign up, from my understanding from what he said, if they sign up, they're going to be deemed to be in plan compliance. What we want is we want them in, taking those programs, and we want them finishing those programs before release. What we're doing here is trying to protect victims. To protect victims, they need to complete the programs. They don't have the complete the program the first day; they don't have to complete the program the first year. But they have to complete the program before they're released. We want people to get the services that they need so they do not revictimize others. [LB832]

SENATOR CHRISTENSEN: But I think the problem is they can't get into programming for so long it's not working. I think we're just so far short in programming. [LB832]

JOHN FREUDENBERG: Well, that would be in, probably, addressed in another bill other than this. This is the incentive to get people to take the programs that are available. [LB832]

SENATOR CHRISTENSEN: But if I understand things right, these programs are all full anyway and waiting on them. So until we do more programming, this is a worthless discussion. [LB832]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

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JOHN FREUDENBERG: Well, I'd say if you're going to address any kind of complex problem, you have to take incremental steps in different directions to address it. And if you just ignore one step or ignore a portion that's needed, then none of those will work. There has to be incentive for any program that you have out there. If you have a program, there has to be incentive for this violent offender to take it. If they can get the exact same amount of good time by setting their bunk or doing nothing, we're going to the least common denominator. We don't want to go to the person who does nothing to try to better himself and use that as our standard for our system. [LB832]

SENATOR CHRISTENSEN: But if I understood you correctly, you said once they enroll in the programming, even if they don't get in for years, they're going to get the credits the same as sitting there doing nothing. [LB832]

JOHN FREUDENBERG: They have to sign up for the programs. What I heard is he said they will get through the programs. You need to keep moving forward in that system, as long as they're moving forward and they're showing the attempts to get there. But what we don't want is the guy who goes into the programs or just punches the instructor and punches another inmate and he walks back. Well, there's...you know, he loses that good time, that 15 percent, but he's going to get the exact same amount of time under the current system as anybody else. So, I mean, you're...if you...your theory says go to the least common denominator, give everybody the same thing no matter what kind of effort they give to try to better themselves, and I don't think that's right. I think you should want people to try to endeavor to better themselves wherever they are, including in prisons, and that's what this bill tries to do. [LB832]

SENATOR CHRISTENSEN: Well, I agree with you we need more programming. That's...thank you. [LB832]

SENATOR LATHROP: John. [LB832]

JOHN FREUDENBERG: Yes. [LB832]

SENATOR LATHROP: John, you're here representing the Attorney General's Office. [LB832]

JOHN FREUDENBERG: I am. [LB832]

SENATOR LATHROP: Does the Attorney General support an additional appropriation for more programming? [LB832]

JOHN FREUDENBERG: I do not know. I apologize, I do not know that information. [LB832]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

SENATOR LATHROP: Okay. Thank you. Senator Chambers. [LB832]

SENATOR CHAMBERS: And I'm asking you these questions knowing you're the representative, so some of the comments I made I won't address to you because I don't want you to think that,... [LB832]

JOHN FREUDENBERG: Okay. [LB832]

SENATOR CHAMBERS: ...you know, I'm blaming you. What has to be made clear, I believe, is that there is a list of crimes which, if committed by a person, would put that person in the category of those who will not be given the automatic good time when they first come in but they would earn it day for day that they behave. Isn't that correct? [LB832]

JOHN FREUDENBERG: The list would make two different systems, correct. [LB832]

SENATOR CHAMBERS: Right. [LB832]

JOHN FREUDENBERG: And the list is in Section 8 of the bill. [LB832]

SENATOR CHAMBERS: Okay. Now I was reading a case and a man was being given an enhanced sentence for something or other and one of the offenses being used by the prosecution was escape. And it wasn't too long...it wasn't a long-ago case. I can find it probably. It was in one of the Advance Sheets within the last month or so where the court said escape is not a crime of violence. [LB832]

JOHN FREUDENBERG: This is escape pursuant to a specific subsection, subsection (5)(b), and I believe subsection (5)(b) of 28-912 actually requires violence. [LB832]

SENATOR CHAMBERS: So it's not just escape? [LB832]

JOHN FREUDENBERG: No. It is subsection of escape which, I believe, requires violence. [LB832]

SENATOR CHAMBERS: Does it say violence in the green copy? [LB832]

JOHN FREUDENBERG: No, no, no. What it says is it gives the subsection number, "Escape pursuant to subsection (sic) (5)(b) of section 28-912." And I believe subsection (5)(b) of that statute does involve violence. [LB832]

SENATOR CHAMBERS: Okay. And believe it or not, that's the only question I had to put to you. [LB832]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

JOHN FREUDENBERG: Okay. [LB832]

SENATOR LATHROP: Senator Seiler. [LB832]

SENATOR SEILER: I'm wondering if we're looking at the wrong thing in good time. Follow me just a little bit. It seems to me like a better incentive, the carrot leading the parade, would be the parole date. And I know the law isn't that way now, but that doesn't mean it can't be changed, that if you set up the program in the 90 days after you submit it, and he follows it all the way through, and at the end of that carrot there would not necessarily be good time, could be good time plus, but that parole date would pop up sooner based on recommendations to have at least a hearing on his parole date at a sooner time, to move out into the community under a parole basis, and to get back to employment. If we've got all these programs for employment, mental health, abuse, drug abuse and alcohol abuse, all these programs, he sails through those, why do we want to keep him in a prison when he could be out in a halfway house and paying for his own keep? [LB832]

JOHN FREUDENBERG: I have two points to...of response, if you indulge me. [LB832]

SENATOR SEILER: I will. [LB832]

JOHN FREUDENBERG: The first one is, as you know or may not know, I don't assume, the parole date is established by the bottom end of the indeterminate sentencing, so if you get a 10 to 20. [LB832]

SENATOR SEILER: No, no. I said the date is not... [LB832]

JOHN FREUDENBERG: Right, right. [LB832]

SENATOR SEILER: ...because that can be changed by us. [LB832]

JOHN FREUDENBERG: Right, right. No, and I...the program we have under LB832 and the program we currently have shows good time to bring that back already. So it's already happening, what you're thinking, because parole is set, actually, supposed to be the ten years. But the good time under the current system, or the good time plus earned time under the LB832 proposal, already is bringing that parole date, and you can get that all the way down to half of what was originally ordered. So that's the first point. The second point is there still is two parts to incarceration and we can't overlook the second part of it. Rehabilitation is one part of it, but there still is specific deterrence through punishment that has to be another part of it. And I don't think you're saying you think violent offenders should be getting out earlier. I don't think that's the proposition you're putting forth to me today. But if somebody does something bad enough, there has to be

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Transcriber's Office

Judiciary Committee  
February 12, 2014

---

a punitive factor to it. And that's one reason why you don't want to probably bring that line back a lot further, specifically for people who commit violent offenses by either seriously hurting or killing people. [LB832]

SENATOR SEILER: Well, I have a little problem with people killing people. I do there. [LB832]

JOHN FREUDENBERG: Well, I think we all do. [LB832]

SENATOR SEILER: But for a lot of our offenders that are plugging up our system, they're not the violent people. [LB832]

JOHN FREUDENBERG: And this would not apply to them. [LB832]

SENATOR SEILER: Oh, I know, but I'm asking for where we're going with this program because it...to me, we've got a short program and we'd better act on it and get some of those people out of the prison system or we're going to be in...the current beds, where we're over bedded by...the federal government is going to take care of that for us. We don't want that. Or we need to set up a...and then we need to set up a long-term plan. And my question is on those...and I think I've made this in speeches before, that even though the person may do a robbery, robbery may not be his motive. It's the money to buy the drugs that may be the motive, and we've got to treat...get them into those programs. What I've been hearing from Mike today was, hey, they're just sitting there waiting, and that is not a good program. [LB832]

JOHN FREUDENBERG: Yeah. And I'd... [LB832]

SENATOR SEILER: That's \$35,000 every year down the tube. [LB832]

JOHN FREUDENBERG: And what I will say is you're talking about a different component of prison problems than LB832 is meant to address. [LB832]

SENATOR SEILER: Well, but I think... [LB832]

JOHN FREUDENBERG: LB832 is meant to address the violent offenders, and you're talking about the people who are not the violent offenders who are needing to be addressed, and that's not what this bill was set up to address. It's a different piece of the puzzle. [LB832]

SENATOR SEILER: Yeah, but I'm going back to the whole puzzle that you started out with. [LB832]

JOHN FREUDENBERG: Um-hum. I'm not disagreeing with, you know, there's a

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

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different problem there. [LB832]

SENATOR SEILER: Okay. [LB832]

SENATOR LATHROP: Okay. Thanks, John. Next proponent, please. [LB832]

TODD SCHMADERER: Good evening to the committee. My name is Todd Schmaderer, S-c-h-m-a-d-e-r-e-r, city of Omaha Police Chief, here on behalf of the Omaha Police Department and the city of Omaha. Last week I testified in support of LB907 because I saw it as a good start in addressing the reentry of offenders into society. It not only enhanced public safety, but it provided the offender a platform for successful reentry. Today I'm testifying in support of LB832 because I also see it as a start in improving public safety, as well as assisting those incarcerated. The city of Omaha struggles with violent reoffenders causing harm in our community. LB832 is a start, and I say a start. Just because Corrections may not have the programs, it doesn't mean we abandon a good concept. Perhaps a concept can force that programming. By requiring violent offenders to earn good time, coupled with having to carry themselves appropriately in prison before any sentence reduction, will go a long way towards public safety, as it would signify two things. One, if the violent offender has not proven themselves to be ready for release, then public safety is ensured because they won't be. And two, if the offender has earned the good time sentence reduction, then that offender is much more prepared to be successful with the post-release protocols that we talked about last week with LB907. I'll close by saying this: You know, this is a start towards addressing a problem of violent reoffenders in our community. I came here today to express that point with great respect for this committee. Be happy to take any questions. [LB832]

SENATOR LATHROP: Thank you, Chief Schmaderer. Senator Chambers. [LB832]

SENATOR CHAMBERS: Chief, you look a lot younger in real life than you do on television, and I probably look a lot older, if such a thing is possible. [LB832]

TODD SCHMADERER: You know, I was going to say that same thing to you.  
(Laughter) [LB832]

SENATOR CHAMBERS: But here's the thing: You are in law enforcement, and I can understand everything that you say and why you say it. [LB832]

TODD SCHMADERER: Um-hum. [LB832]

SENATOR CHAMBERS: But as a policymaker, I must be concerned about what happens in the penitentiary. [LB832]

TODD SCHMADERER: Right. [LB832]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

SENATOR CHAMBERS: And there's something else that happened. I haven't contacted you about any of the problems in Omaha because I'm watching to see how you handle things, and you've handled them very well, even when, according to the rules and your assessment of a situation and an officer's behavior, you fired him and he was allowed to come back on because of an arbitrator. You caused me a lot of trouble because I had to explain to people that you were not the one who let him back on, that you did what you were supposed to do. And you know what I hear? Oh, Chambers, so now you're supporting the cops, huh? But it... [LB832]

TODD SCHMADERER: Well, we wouldn't want that, Senator Chambers, would we? (Laughter) [LB832]

SENATOR CHAMBERS: Say it again? (Laughter) Okay, now here's where I'm going with this: I can't tell you or any other chief how to handle his or her affairs. I can make suggestions and mention incidents that I see which I think are very bad. There were two off-duty police officers and they fired at a moving vehicle. [LB832]

TODD SCHMADERER: Um-hum. [LB832]

SENATOR CHAMBERS: And one thing I do know, that is not in accord with the rules, unless they've changed since you've become chief. The danger of firing at a moving vehicle outweighs any other thing, especially when the person is not being menaced by the vehicle. I just thought I'd throw that out there since I have you here. [LB832]

TODD SCHMADERER: Sure. [LB832]

SENATOR CHAMBERS: But as far as your testimony, I don't have any questions on that. Thank you. [LB832]

TODD SCHMADERER: Right. I mean, certainly, an officer can fire at a vehicle if the vehicle is a threat to that officer or somebody else. But I think you stipulated that as well. [LB832]

SENATOR ASHFORD: Thank you. [LB832]

TODD SCHMADERER: All right. Thank you. [LB832]

SENATOR ASHFORD: Thanks, Chief. Chuck, let's go to Chuck, and then Aimee. Chuck, and then Aimee after that. [LB832]

CHARLES FREYERMUTH: Senator, if you'd indulge me just a few moments... [LB832]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

SENATOR ASHFORD: Councilperson Melton, excuse me. I'm sorry. (Laugh) Okay.  
[LB832]

CHARLES FREYERMUTH: If you'd indulge me just a few moments before I get started on my actual time, one, I'm thankful I'm no longer a supervisory federal agent. I'm glad I don't have to testify as an official. Respectfully, and I mean this respectfully, I don't know what's in your hearts, what's in your heads, what's in your minds. I know what was said today. So I ask you...you've had a lot of officials talk to you. I ask you to give me a moment to talk to you from a victim's perspective. Good afternoon. My name is Chuck Freyermuth, F-r-e-y-e-r-m-u-t-h, and I represent the family of murder victim Andrea Kruger. I speak on behalf of and in favor of LB832 with minimal reservations. My purpose is quite myopic. Senator Ashford, thank you for introducing and advocating LB907 last week. I opine, with the reservations aside, that LB907 and LB832 are very much complementary pieces of legislation. LB832 will address loopholes pertaining to that portion of the prison population that meets the classification of violent career criminal, the true predators. This is not an arbitrary distinction. Most states and the federal government have statutes centered on this label. There is an entire federal agency, ATF, which has as its top priority: perfect criminal cases against these offenders. Some 3,000 federal agents nationwide, including Nebraska, are searching for these predators. Specific to today's purpose, and the reason LB832 is so important, LB907 does not directly address these predatory offenders. Certain offenders will continue to offend, and will offend violently. This committee has heard and will hear testimony from last week and from today, from other senior law enforcement administrators and from prosecutors. All the while independent of one another, we've said the same thing. With LB832, good time will still apply to these offenders but, instead of an automatic accumulation, reductions will be earned. LB832 holds violent offenders accountable, yet affords redemption in the ability to accumulate actual good time days. Albeit a small percentage, and it is a small percentage, of our prison population, this demographic is the breeding ground which gives rise to violent career criminals and it is the exact population, respectfully, that you have a responsibility to protect us from. Graphically, my niece was selected because several people in a group of four who met the definition of violent career criminals arbitrarily came across her and then unilaterally decided she was going to die. Unknown to my niece while she waited in the McDonald's drive-through on August 21, 2013, was the fact that she was already dead. Instead, Andy (phonetic) would have to wait approximately five more minutes to learn her fate at the hands of two men, convicted career criminals released from prison after serving one-half of their sentence, even though they reoffended while in custody and, in one case, not once but twice violently reoffended with no loss of good time. Not appropriate to give details not yet made public, but also not to ignore what happened, Andrea Kruger was shot four times at very close range as she desperately attempted to flee from these predators, murdered after already giving her...after already giving them her car, left like trash in the intersection of 168th and Fort Street in Omaha. You have an obligation to protect your own families, you have an obligation to protect my family,

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

and you have an obligation to protect Nebraska's families. Please, don't let this opportunity slip. And this is the important part I wanted to say: If there is competing language, or conflicting language, and there certainly is, I hear that from today, and I understand your questions, they're good questions, please, simply work that out and let's move these bills forward. Something needs to be done about that very small percentage of the prison population. And it is a small percentage, the predators. Something needs to be done about those individuals. You can't ignore them because you can't identify them right now. [LB832]

SENATOR ASHFORD: Thank you, Chuck. [LB832]

CHARLES FREYERMUTH: Thank you. [LB832]

SENATOR ASHFORD: Senator Chambers. [LB832]

CHARLES FREYERMUTH: Yes, sir. [LB832]

SENATOR CHAMBERS: I'm glad you mentioned "and our families." My younger sister's son, and she was my favorite sister, was shot several times in the head and killed and the perpetrator was never caught. I'm still against the death penalty. My own son was shot two or three years ago. He didn't die, but he's still suffering from the effects of it. I'm still a public official and I separate the way I feel personally and what I may have done had I encountered the perpetrator with the feelings that I had at one time. That's not what I do my lawmaking on the basis of. I have to go outside of that and I have to see what in my mind is the appropriate law. And I will not put something in the statute for the sake of a victim, whether it's a member of my family or your family. There are people who administer these prisons and when we stack, as has happened, good time bill on good time bill and they all are different and each one of those persons' cases has to be reckoned and kept track of, then when another bad event occurs we change the good time law again and put another layer on it, people can walk away and say, well, at least I got something out of what happened, it wasn't in vain, and don't look at the problems we created for those who administer these prisons. There are more, by far, people locked up than should. That prison cannot be managed. And I don't expect victims to say, I feel sorry for whoever is in prison. Whether it's the one who did to my family member what he or she did is beside the point. I don't feel sorry for any of them. I don't do what I do because I feel sorry for people who are being punished for a crime. I do it because of what I think of myself and my responsibility as a public official. My responsibility is greater than yours. It's different from yours. I could probably sit with you and I'll do you on talking about how indignant, how angry I am, even about some perpetrators walking around and I know who they are and nothing will be done about them because they're snitches. But, see, that's a different issue. That's what I carry in me. But I still have to do the right thing and this is not the approach to take. The Attorney General is running for Governor. He knew he'd run for Governor. By attacking

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

good time, you don't...it takes nothing to do that. You don't have to hire more employees. You don't have to put programming in. You don't have to provide mental healthcare. Just say, take away more good time, and that doesn't do anything because, as was acknowledged if you listen carefully, whether you give the good time in a lump sum when they first come in or let them earn it day by day as they go along, it's still going to reduce the sentence in half. And what you want is to make them stay in prison longer, isn't that true? Isn't that what you want to see? [LB832]

CHARLES FREYERMUTH: Are you ready for me to respond, Senator? May I respond? [LB832]

SENATOR CHAMBERS: You want them to stay in prison longer, serve more of that sentence that's handed down by the court. But both of them, whether you give them all the good time when they first come in or let them earn it day by day, you heard the representative from the Attorney General tell you, it's going to wind up bringing the sentence in half. And what happens with that system? You subtract the good time from the bottom of the sentence to determine when a person is eligible for parole. That doesn't mean he or she will be paroled. That's when consideration has to be given to see if they will be. The Parole Board could turn the person down for any reason or no reason and make them serve their whole sentence until they jam it out, and they would jam it out when you subtract the good time they got from the top end of that sentence. The Parole Board can do that. So when people suggest that on the day that a person become eligible for parole he or she will be let out, that's not accurate. In some instances it happens because in some cases people are there who shouldn't be in the prison in the first place. Parole Board members acknowledge it; judges acknowledge it; others do. But they say the law is such that this person must be sentenced because not to give prison time is to diminish the seriousness of the offense. There may not have been an intent to hurt anybody. There may have been great remorse. But because of the deterrent value of the sentence, the requirement that there must be something extracted by society from this person, you've got to go to prison. But if you keep your nose clean and behave, then you can get out on parole. It's a complicated system. And I wouldn't tell you how to feel about a loss that you suffered. I wouldn't tell anybody that. But I will tell anybody what my job is and how I will carry it out, and I will say that to anybody that I'm addressing. And whatever that makes me, in that person's opinion, that's what I have to be because the only one that I sleep with is me. [LB832]

CHARLES FREYERMUTH: May I speak, Senator? Perhaps I wasn't clear when I started out. My position is pretty darn myopic; my family's position is pretty darn myopic. You know, 35 years in law enforcement, I gave death notices maybe a dozen times or so. And after I gave those notices, I got in my car, my cruiser, and I drove away, I went to dinner, I answered another call for service, I did something. That doesn't mean I didn't have any sympathy or empathy for the people. It simply means now I'm on a different side of the fence that I've never been on before. I don't want you to feel sorry

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

for me. I don't want you to feel sorry for my family. That's not why we're in front of you. In fact, I'm in front of you for the exact reason that you came up with. You need... [LB832]

SENATOR CHAMBERS: No, I wasn't mentioning you. I mentioned...what I meant was I'm not sorry for people who are serving their time, and that's not what's leading me to do this. [LB832]

CHARLES FREYERMUTH: Sure. Sure. And I very much applaud you and I appreciate that. I've followed you for a long time. We're...we both... [LB832]

SENATOR CHAMBERS: But you never got anything on me, did you? That's why I'm still walking around. I'm just kidding. [LB832]

CHARLES FREYERMUTH: Well, we can discuss an incident a little bit later that involved you and I. [LB832]

SENATOR ASHFORD: And I know about it and it is an incident. [LB832]

CHARLES FREYERMUTH: I told him. But... [LB832]

SENATOR ASHFORD: But, Chuck, let me just say this so we can proceed. I just want to thank you for all the help you've given us on LB907. And we go back several months now and your willingness to talk to me has been...is much appreciated, and the staff as well, so thank you for your... [LB832]

CHARLES FREYERMUTH: Senator, I know you've got to answer to these other...you've got to get other people here. But my point is, to Senator Chambers, there is a small percentage of the population--35 years I was an ATF agent, I chased those guys--there is a small population of this prison system that--the Chuck Freyermuth opinion--they should not be in amongst society. They are not going to adhere to any rules or regulations. They are predators. It is a small population, but it is a population that you have to deal with, sir, and that is...Nikko Jenkins is part of that population. Thank you. [LB832]

SENATOR ASHFORD: And I think what we're trying to do, Chuck, and we've talked about this a lot, I don't want to belabor it, but we're trying, at least in LB907, I won't comment on LB832, but we're trying on LB907 to identify those people within the system through a variety of different criteria and to address those very concerns. But I'm not belittling your support for LB832. [LB832]

CHARLES FREYERMUTH: I know you aren't, Senator, and I very much appreciate that. [LB832]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

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SENATOR ASHFORD: And I appreciate your help. [LB832]

CHARLES FREYERMUTH: And both of these pieces of legislation, just as our Omaha Police Chief said, they're good starts, and they are, and you've got an incredibly difficult job that now I get to get up and walk away and think, phew, I'm done. But you've got a hard job of reconciling everything that you've said and every...all the questions, all the answers that you've got. You've got a tough job ahead of you. I applaud you and thank you. [LB832]

SENATOR ASHFORD: All right. Thanks, Chuck, very much. Okay, Aimee. And how many else...how many other testifiers do we have? A few, John and...let's just go John next and then...and then, I'm sorry, the woman, the lady in the front row. (Laugh) I'm sorry. Okay. Go ahead, Aimee. [LB832]

AIMEE MELTON: Thank you, Senator Ashford. Thank you, Senators. I know this has been a long afternoon. I'll try and keep it short. I'm not going to read you anything that I've prewritten because as I've listened today I think I would like to take my time just to address some of the questions that have been raised here today. And, Senator Lathrop, you made a very good point. You stated: Why are we going to do this when all we're going to have... [LB832]

SENATOR COASH: Could you start with your name? I'm sorry. [LB832]

AIMEE MELTON: Oh, I apologize. I'm Aimee Melton, M-e-l-t-o-n, and I'm from the Omaha City Council. And also, for those of you who didn't hear me testify last week, I'm in kind of a unique position to where I'm a former prosecutor, worked for the Douglas County Attorney, and then also practice criminal defense. And now I'm a current councilmember. So as I listened today, there were a number of very, very good points made by all of the senators. But, Senator Lathrop, you stated: If these inmates are just going to simply sit on a waiting list and then maybe will get some help in their last 30 days or even a year, what's the point, why would we pass this statute? It seems, too, that the senators here, that what you were hearing is this isn't going to help anything and that most of the inmates are going to get out at the same time anyway, so why would we pass this statute? But what I would suggest is although maybe the resources are unavailable now, if you were to pass this statute for earned time and maybe, currently, the inmates are going to sit on a waiting list and they may not necessarily get the help they need, but again, it will give an incentive to them to get on the waiting list to where right now they're not even going to put themselves on the waiting list. Then it may give, well, maybe the next Legislature an idea of how many people we have on these lists and exactly what resources we need because I think that might be the problem. Why didn't we go...why didn't somebody from the correctional center go to Appropriations and ask for X amount of dollars for certain programs? Well, maybe it's

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

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because they don't actually need...they don't actually know how much money they need for each resource. And so what I'm saying is I think that this statute will be an incentive for the inmates to actually do something in order to earn it. And, I mean, I absolutely think that this is essential and this is something that we really need in Omaha to help deter crime. If they want to get out sooner, then they're going to have to take certain actions, even if it's just putting themselves on a waiting list, because I think currently they're not even doing that. [LB832]

SENATOR ASHFORD: Aimee, I think you've made...let me just follow up with your point because I think it's one of the best points made today, and that is, why hasn't the department, over the years, come to us with this problem? And I think what I said at the first hearing, and I mean it sincerely, is I think the state has dropped the ball, and I think the state has dropped the ball so that, you know, when the chief was here the other day and we mentioned...I mentioned we've...and I've talked to him about this a lot. The chief...what's happened is we've dropped the ball on the corrections side, whether it's overcrowding, whatever sort of top-line explanation you can get, it goes deep, deep into the system. And that's why, you know, in LB907 we're trying to create this collaborative model, so that this won't happen, so that we have the data. It doesn't...you know, recidivism rate doesn't matter if we don't know what the real outcomes are, what is somebody doing when they get out of prison. And so your comment about that is...I think the Corrections Department has totally dropped the ball over the years, not just now but over the last...all the years I've been here, by not really "fessing" up to the real problem, which is, whether they sit or not on a waiting list, if they're not...we just need to know the kinds of things that are going on so we can make those kinds of decisions. But let me ask...Senator Lathrop is next. [LB832]

SENATOR LATHROP: My concern is, is that I've sat here for eight years and every time something happens that turns into a nightmare, the solution that gets offered turns into an illusion. And we did it with the YRTC in Kearney. We had problems over there and the administration's solution was to spend exactly nothing on it and hand it from Health and Human Services to Corrections and then call it good, like it was going to make a difference, and it won't. And everybody who has been around here sees it. And when I see a proposal that looks like it's going to do something and the public thinks it's going to be doing something, like reforming prisoners, and no one accompanies that proposal with an appropriation to provide the services, it is an illusion. We are creating an illusion and here is how it would operate: Somebody is going to do 20 years, they'll sit on the waiting list for 18, get credit under this statute for good time, get credit for it, then when his name comes up and he goes over to anger management class, he can tell the director or the teacher to go to hell and now he's going to have a problem with...they might throw him out of the program and he gets back on the waiting list again. It is the illusion that we are accomplishing something and, I'm going to tell you, our concern in this committee runs deeper than that. It is deeper than that and we want to accomplish something and not create the illusion that we've done something. And it's not that we

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

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are unmindful of victims or that we don't want to improve public safety in Omaha, where I live and you live. We do, we want to accomplish that, but we don't want to buy into an illusion. And this, I think, is an illusion unless it's accompanied by more programming. And that's not been offered and that's...I don't blame Senator Lautenbaugh for that. This thing makes immense sense if the administration got behind it, went down to Appropriations and said, I need some money because we're going to have...we're going to implement Senator Lautenbaugh's good time law but to do it we can't have people wait until the last 18 months of their sentence to get care or whatever services they need or this is an illusion. And that's where we're at and it comes, honestly, from sitting here for eight years and listening to solutions that sound politically viable, it sounds like we're doing something, and it doesn't get anything accomplished. That's my concern and it is...believe me, we're not here trying to speak for prisoners and trying to find a way for people in corrections to get out sooner. That's not our interest. It's public safety, but it's not achieved by having people get credit on a waiting list, having people think that they're getting services and nothing happens a day sooner, in terms of their rehabilitation, than is happening under the current program. [LB832]

AIMEE MELTON: And may I just...a brief, brief response? [LB832]

SENATOR ASHFORD: Sure. Go ahead, Aimee. [LB832]

AIMEE MELTON: But I do think that this would give...I guess it's kind of...is it the chicken before the egg? I think if you pass this bill, you're giving a statutory reason... [LB832]

SENATOR LATHROP: Aimee, I am sure that they will have every incentive in the world, especially if somebody next to him says, you know what, Davis, all you've got to do is get on the list, they're not going to get to you until your last year while you're in here and you'll get all the good time credit you need. [LB832]

AIMEE MELTON: But I think this would give the Department of Corrections the ability to go and ask for more appropriations because there's now a statute that says, in order for them... [LB832]

SENATOR ASHFORD: But they have a requirement in statute today, and this is not argumentative, they have a statutory requirement to provide programs. They have a statutory requirement that they have not complied with. And as I've said over and over again, I feel personally and I...to say this to my friend, Senator Chambers, who I've served with for 16 years, I should have been asked for the money but myself more. This is ridiculous. I mean, there is a statute that says, to your point, you know, we've got to provide...you're required to provide programs to meet the needs of the inmates. That's been there for quite a while, and that is not...they are not compliant and haven't been for years. And that's the...you know, to Senator Lathrop's point, you could put any kind

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

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of...Senator Lautenbaugh is not wrong. You could put any kind of program in place you wanted to, but unless the State Department of Corrections complies, it doesn't make any difference, I mean, it's not going to get us anywhere. Senator Chambers. [LB832]

SENATOR CHAMBERS: I think something is being lost along the way. Good time is not what an inmate wants--getting out. The incentive for an inmate is to not do anything that will delay getting paroled. They try to avoid write-ups; they try to avoid all kinds of things that could stop them from being paroled. Good time is just one step along the way. But what happens--and then I'm not going to hold you here any length of time--everything is done that makes the person completely eligible for parole. The Parole Board itself says, we would parole you but you didn't finish this programming. And the inmate points out, and the institution confirms it, we don't have that programming available. Then the Parole Board says, you can't get a parole. So inmates are responsible for a lot, but I'm not going to sit here and let even inmates be blamed for things that the state is responsible for. You don't cease to be a human being, even if you commit murder. And the U.S. Supreme Court has said that there is a basic fundamental human dignity that everybody has, and that's why the Eighth Amendment prohibiting cruel and unusual punishment is there, because that human dignity is not going to be violated even by the state. So even though you may want to burn somebody at the stake, you're not going to do it. You may want to draw and quarter somebody, but you're not going to do it, and it's because of that fundamental human dignity. And when these inmates are in prison, somebody needs to make sure that their humanity is not washed away by politicians, like the Attorney General who is running for Governor, members of the Legislature who may have some higher office in mind. And people's feelings get hurt by what I say, but I'm going to say it and I'm going to act on it. And a bill like this, I'll do everything I can to stop it from becoming law, every possible thing. It's not well thought out, it's not researched. And you saw, if you were here, the problems Mr. Kenney had answering our questions. He knows what it takes to manage that prison and he knows this won't help and he would not have brought this bill. He was with Mr. Clarke when Mr. Clarke was the director and wanted changes in the good time law, he was with Mr. Houston, who was the director, and wanted changes in the good time law, and he never spoke against those things. He's in a bind. So you're an example of what happens when the public is misled as to what's going on in Corrections and what our responsibility is. It's easy to say, well, it's intuitive to me that if you tell him, an inmate, you're not going to get your good time, that's going to change conduct. If you've got somebody who is mentally ill, I don't care what you tell them, they're going to do what that mental...that demon tells them to do. And it's why I'm very offended that Mr. Kenney came here and went before the Appropriations Committee and said they don't need any money for mental health programs, everything is adequate. And Nikko Jenkins is exhibit A to prove that it's not adequate. [LB832]

SENATOR ASHFORD: Thanks, Aimee. [LB832]

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Judiciary Committee  
February 12, 2014

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AIMEE MELTON: Thank you very much. Thank you for your time. [LB832]

SENATOR ASHFORD: Thanks for coming down again, twice. [LB832]

AIMEE MELTON: No, thank you. [LB832]

SENATOR ASHFORD: Over here, and then Marty after that. Or, John, sorry, why don't we go here? She's been waiting so patiently. I don't know your name, so I have to say "you." I don't mean to be impersonal. [LB832]

BARB VARNEY: Barb. [LB832]

SENATOR ASHFORD: Barb, and then Marty and John or John and Marty, whoever...however you want to do it. [LB832]

BARB VARNEY: I'm Barb Varney from Arnold, Nebraska. And when I came here today I did have something a little different too. I do want you though to put yourselves in the place of the victims. No, that may not be your whole job, but it is part of it. If you were in my shoes, you would have been told that your 21-year-old son was brain dead after being shot by a man. He walked up to a carload of kids and pulled a gun. And in court we were forced to plea bargain. He was sentenced to 36 years. But with the good time law, he'll only serve 18, and he's up for parole in 10 years. That's ten years for my son's life. And it's not...if they're trying to earn this, then it's not just automatically handed to them the way it is now. Okay, there is an incentive to be put on that list. They're waiting to have the program. But isn't that better than just saying, you don't have to do anything, you get the good time? It's just automatically given to them and I don't think that...I personally think 50 percent is way too much. And with parenting you can't...yes, it can be dealt with this way if they do...if it's used properly. But there again, they don't deserve this good time. They deserve their sentence. They are there because they have done something horrible, and taking away good time is just going to make them angry. But if they have to earn it, then they have...they know they get the...between good behavior. My husband and I go to meetings out in Denver that are Voices of Victims with the Colorado Department of Corrections. Under "Lynn's law," which deals with their good law, good time, they way I understand, there is no good time for violent criminals and they have to serve 75 percent of their time before being considered for parole. And in...you were talking about just parole. One other thing that we've learned through those meetings is that, I can't tell you numbers, but not everybody wants paroled because then they're watched and if they do something wrong they're put back in. So they don't want that. They want to do that extra year and get out completely so they're on their own. In closing, I will say that I do feel they should...that it should be more than 50 percent that they have to earn, that they have to fulfill. And I just think that this, don't use it for the overcrowding. They're there for a reason and it shouldn't be for a free pass from jail. [LB832]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

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SENATOR ASHFORD: Thank you. [LB832]

BARBARA VARNEY: Thank you. [LB832]

SENATOR ASHFORD: Thank you for coming, Barb. Marty or John or whatever. [LB832]

MARTY BILEK: (Exhibit 17) My name is Marty Bilek, M-a-r-t-y B-i-l-e-k. I'm representing Mayor Stothert today. I did not come down here today, obviously, to figure out clever ways to increase sentencing when people are incarcerated. That would be counterproductive. I also know that that wouldn't be the sentiments that would be shared by this committee. But I will tell you that 40 years ago I worked as a guard in the county jail and I probably know more inmates, with the exception of the director that testified earlier, than anyone in this room, and I think I have a real good idea what inmates need. I think...I understand the problem of recidivism. I think I know what causes it and that's why I'm here today. Earlier I was before a subcommittee in the Legislature a couple weeks ago where we were talking about ban the box and I know a couple of senators on this committee were there and I won't go into detail what that's about, but it has to do with preventing recidivism. And there was also LB907, which has to do with supervised release. I was a proponent of that. I get it. What it does is it...like I had testified before, I think it's possible for society to set offenders up for failure. They're in prison, they don't get the help they need, they get out, they have no other choice, they can't get a job, they don't...there is no housing available for them, and it becomes almost a survival tactic to reoffend because that's the only way they have to subsist. LB832, in my opinion, is just a follow-on to all of that. I believe that LB832 would provide necessary incentives so that people that are incarcerated would have an incentive to take advantage of programs, whether they have to do with mental health or drug abuse or whether they're required to get a GED while they're incarcerated or whatever it is--it's going to be better than stamping license plates--so that when they do get out they'll be less likely to recidivate. We almost owe our society that because otherwise this problem is going to go on forever, all of the concerns that you've talked about here today will survive far into the future, our prison population will be overcrowded. So I see this as a step in the right direction. I see this as a way to help the problem that we all agree that we have. Thank you. [LB832]

SENATOR ASHFORD: Thanks, Marty. Thank you. Thanks for your comments. John. [LB832]

JOHN WELLS: (Exhibit 18) Chairman Ashford, members of the Judiciary Committee, John Wells, W-e-l-l-s. I'm president of the Omaha Police Officers Association. I want to start by thanking the Judiciary Committee for trying to start to address some of these serious issues when it comes to prison reform, very difficult problems to tackle.

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Transcriber's Office

Judiciary Committee  
February 12, 2014

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Although we all have different opinions, I think, at the end, we're all looking for similar solutions. With that in mind, the current plan before you mandates a convicted person do nothing to receive good time. LB832 focuses on the state's good time law, proposing that inmates earn their reduced sentences with the behavior instead of time. LB832 only impacts about 15 actual violent crimes. In our opinion, truthfully, these changes should be extended to all violence, sex, and gun crimes, or attempts of these crimes. This plan can serve as a foundation for all the other prison reform because it addresses behavior modification. LB832 proposes 15 days of good time for each 30 days served, based upon good behavior, plus an additional 15 days of good time for each 30 days served, based upon the successful participation in a prescribed rehabilitation plan. This places the burden on the state to implement true rehabilitation programs, such as job training or retraining programs, education, counseling, mental health, and substance abuse rehabilitation. Although this good time plan would continue to allow the reduction in sentences, it should be amended to ensure it does not reduce parole. On a serious note, caution is critical because our research has shown that the Probation Department has demonstrated a disregard for a basic legal requirement to semiannually report the caseload per officer to the Department of Administrative Services and possibly to you, the Legislature. We received these deficient reports only after pointing out that they were legally required. None of these reports contain the caseload data required by statute. We have strong reason to believe the current workload for probation officers is unmanageable and far exceeds national guidelines. The packet provided to you is our basis for this belief. We believe this is critical data you need before you make changes that will very likely increase that workload. Additionally, since your current supervised release bill, LB907, does not codify the reported 15 to 20 offenders to 1 probation officer, we believe this needs to be added to that bill. And again, like I said, I want to thank you for your efforts. I think we're all in agreement that we definitely need more money for programming because it's lacking in our prison system. [LB832]

SENATOR ASHFORD: And I agree with you about the...and we actually...I thought it was in LB907, maybe it's in LB999, but we do have a 20-to-1 caseload ratio which should be applied to parole, as well, especially for violent offenders, so. Okay, thank you. Thanks, John. Anybody else for the bill? How about against the bill? [LB832]

ALAN PETERSON: Chairman Ashford, members of Judiciary Committee, I'm Alan Peterson, A-l-a-n P-e-t-e-r-s-o-n. I'm an attorney and the lobbyist for ACLU Nebraska. Senator Christensen, before he left, said something humble and so true it was almost shocking. In questioning Mr. Kenney, he wanted to know whether there was really any difference between what we can do with the good time incentive, as compared to what could be done in this new earned time or earned good time. And he really didn't get an answer because there really isn't any apparent difference. The incentive, as it's been called in recent testimony, for inmates, I'm sure, is primarily to get out as soon as they can. And what we really need to do is look at the existing law. It says, and this is what Chairman Ashford mentioned a moment ago, on page 15 of the bill, you can find it if you

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Transcriber's Office

Judiciary Committee  
February 12, 2014

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want to, it's the existing, underlined language in 83-1,107: Within 60 days after you go in, you're supposed to have completed the evaluation and this so-called personal program for rehab, 60 days. And then the language that Senator Brad Ashford mentioned a moment ago says the department shall provide programs to allow compliance by the committed offender with the department-approved personal program plan. That's what's not being done and, because of that, this bill...Senator Lathrop kept calling it illusory and it is illusory because changing the name of the incentive doesn't do any good. Under existing law, even though under good time you can't be punished or lose good time for not complying with your personal program, what it says--it's on the next page in that bill--it says that that goes into whether or not you get parole. You know, this is gamesmanship. LB999 and LB907 make real strides, real efforts towards solution of overcrowding. ACLU is going to force us to do something in the judiciary side. Rather than doing that and rather than passing an illusory, nonsolution solution, which is LB832, we ought to pass those two bills, keep working on them. They're terrific. ACLU will support them all the way and do anything we can to help. This doesn't help. Thank you. [LB832]

SENATOR ASHFORD: Thank you. Thank you, Alan. Thank you. I don't see any questions. Anybody else opposed to this bill? How about neutral testifiers? Scott, do you want to wrap up here? [LB832]

SENATOR LAUTENBAUGH: Yes. I do thank the committee for its attention today. Obviously, you've put a lot of time into this. I don't agree this is merely illusory, and I had prepared closing on my tablet that just expired, so...but one of the comments in closing was that this was a piece of what needs to be done. I didn't attempt to address the lack of programs, but I do think it matters that this provides the incentive to sign up. I mean, you're right, if they're not being provided now, signing up isn't going to make them be provided either. That's going to have to be addressed otherwise. This bill does not address that. It wasn't meant to address that. It was my understanding that was going to be addressed otherwise, at your discretion, not by my bill. But I think there's room for both of those things to probably dovetail together. Senator Coash had some earlier questions about the...whether or not this would lose...being on this list would result in losing good time or...Senator Lathrop had the same concerns about just being on the list was enough. There's two components to it, keep in mind, two prongs, one of which is the behavioral, and the other one is the compliance with the program. So there's two paths to earn what basically amounts to a one-to-one match. It's been a very long afternoon. I'll just be happy to answer any questions you might have. I won't go on and on about what you've already heard. [LB832]

SENATOR ASHFORD: Scott, in fairness, just so...for the record, you called me up before you introduced or at the time you introduced this bill and you made clear to me, and I really appreciated it, that this was not to address the issues of LB907 or LB999. So you are clearly...I mean, there's no question... [LB832]

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Transcriber's Office

Judiciary Committee  
February 12, 2014

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SENATOR LAUTENBAUGH: It was not a substitute, no. [LB832]

SENATOR ASHFORD: There's no question in my mind that that's what you were doing. So I... [LB832]

SENATOR LAUTENBAUGH: Not meant to be a substitute, no. [LB832]

SENATOR ASHFORD: ...just to affirm that for the record. [LB832]

SENATOR LAUTENBAUGH: Right. [LB832]

SENATOR ASHFORD: Okay. Thanks, Scott. (See also Exhibits 19 and 30.) [LB832]

SENATOR LAUTENBAUGH: Thank you. [LB832]

SENATOR ASHFORD: Let's go to Senator Coash, whatever bill. It's not even a bill. Why are we here? It's not even a bill. Well, I did that, so...it's an amendment. [LB503]

SENATOR COASH: That's right. Thank you, Senator Ashford. And thank you, committee. This should only take about an hour and a half and then we should be done. I'm kidding. For the record, I'm Colby Coash, C-o-l-b-y C-o-a-s-h. I represent District 27. And this is a hearing on an amendment to LB503, AM1805; and LB503 was a bill that we heard last year and this bill had to do with alternative response. And I have a great opening written by my competent staff and I'm going to condense that for my two colleagues who are left...three. Quickly, alternative response is a different approach to child welfare's approach to dealing with families who are initially intersecting with the system. Currently, we have a one-size-fits-all approach. It is an investigatory response. When an allegation is made, the department goes in there and they look for the bad guy, and a lot of times it's not the response that is most helpful. What is helpful is an alternative response where, instead, the response of the department can be to assist the family and to help them correct whatever it was that got that initial call in there in the first place. We have come a long way in one year. Last year in March, when I introduced LB503, I would characterize the response I got as lukewarm. Admittedly, there are...and in some cases well founded, there is some hesitation when it comes to the department of child welfare, and for that reason I asked the committee to hold off on doing anything with LB503 so that I could continue to work with the department and stakeholders to put this into a form that represented a lot of hard work. In that year, there has been significant effort and a lot of work that went into making this approach the safest, the best, the most straightforward. There were conferences all over the country that people from all over the state attended. The Children's Commission, of which is a product of this body in which I serve, became intimately involved because that's what we asked the Children's Commission to do in this process, and the result of

that is the amendment which I presented to you. And I don't...I didn't need...I don't believe I needed to come here today with a special hearing on an amendment because the amendment is not significantly different than the original bill. But I wanted to have a transparent way to make sure that people in the public knew that there was work that was done, that concerns were addressed, and stakeholders were brought together to do this. And I would tell you that there were a large list of concerns that weren't necessarily brought to the hearing last year but they certainly were brought to my attention, which is why I asked that the committee hold that bill. Over the past year, we've been able to take care of those concerns and that was the result of a lot of work on a lot of folks' part. And so with that, I'm just going to leave it at that. I've asked testifiers that have come just to share with you where we are so that the committee would feel comfortable about moving this bill forward. This is a pretty important bill to the reform effort of child welfare, and a representative from the department is going to explain in better detail than I can how this effort fits into a bigger picture of some reform. So with that, I will close and let them testify. [LB503]

SENATOR CHAMBERS: Since I'm the oldest one here, you're excused. And Senator Ashford will return. So I don't know how you intended, Senator Coash, to handle this. Are you handling it like a hearing? [LB503]

SENATOR COASH: Yes, please. [LB503]

SENATOR CHAMBERS: Those who want to speak can begin coming. [LB503]

MARY JO PANKOKE: (Exhibit 20) Senator Chambers and members of the Judiciary Committee, my name is Mary Jo Pankoke, M-a-r-y J-o P-a-n-k-o-k-e. I'm here representing the Nebraska Children and Families Foundation. I've given you written testimony but I'm not going to read it. I will just give you highlights from it. The Nebraska Children and Families Foundation works with communities across the state to promote the safety and well-being of children and families by working with communities to ensure that the supports and services that families need to be successful are available where they live, work, and learn. I'm here today because we believe that more needs to be done and can be done to prevent children from entering the system through public and private partnerships and community prevention systems to prevent abuse and neglect. I want to thank Senator Coash for working on AM1805 to LB503. And on behalf of my staff and community partners involved in our prevention work, we are in support of this bill and its amendments because we believe that alternative response is a vital component to providing support to parents and connecting them to needed community-based services and supports. Through many open forum discussions that the Department of Health and Human Services has initiated over the past year, it is apparent that DHHS recognizes that they cannot implement alternative response by themselves. For this approach to be successful, families need to be connected to as many positive systems, services, and supports as possible. We're not starting from

scratch. Many communities have formed broad-based community collaborations to work across agencies to address gaps in services. We have a readiness in communities to implement alternative response, and communities can be important partners in implementing alternative response and helping us to be successful. In review of any alternative response models in the United States, there are critical elements of success, and I've included a list of some of these in my written testimony but I won't read through them now. We believe that many of these critical elements have been addressed through the Department of Health and Human Services director's steering committee and statewide advisory committee. We're also working with the department administrators in the pilot communities to ensure that these critical elements are addressed at the community level as well. As we know, the fiscal and emotional costs to families when they enter the child welfare system are high. It is time we offer better supports and services prior to the family situation deteriorating to the point children are deemed unsafe. When Protective Services needs to be involved, alternative response provides a less intrusive way to intervene and helps connect families to community-based supports and services. Implementing alternative response is sound public policy and could lead to better outcomes for children, families, communities, and our state. I appreciate the opportunity to show our support for this amendment to LB503, and thank you for your consideration of this important matter. [LB503]

SENATOR CHAMBERS: Any questions? Thank you. [LB503]

GENE KLEIN: (Exhibits 21 and 22) Good afternoon or evening, Senator Chambers and committee members. My name is Gene Klein. I'm the executive director of Project Harmony. It's Gene, G-e-n-e, Klein, K-l-e-i-n, and I am pleased to be here in support of the amendment to LB503. In addition to my work at Project Harmony, I also serve on the Children's Commission, which was an appointment through the Legislature, and the Governor's Commission for the Protection of Children. And in both of those efforts, in both of those commissions alternative response has been a priority. And I'm pleased to see this bill move forward today. In 2012 this committee, through the work of Senator Ashford and other senators, approved LB933, which was a bill that allowed for the expansion of noncourt-involved cases to be worked through Child Protective Services in...for families in the home. These are high-risk families that are served safely today through the Nebraska Families Collaborative in Omaha and Child Protective Services statewide. In a one-year period, over 2,700 children were served through that process. The reason I bring this up is because of that effort we have developed the relationships necessary to take this next step, which is a third level known as alternative response. Over the past year and a half I've worked with Senator Coash, HHS, and Director Thomas Pristow's steering committee and the statewide task force on developing the model for alternative response for Nebraska. These committees included a broad range of child welfare professionals, justice system professionals, child advocates, family advocates to work side by side. I am pleased this year that HHS has been very open and transparent in their efforts to develop the scope in this model, and in November a

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Transcriber's Office

Judiciary Committee  
February 12, 2014

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preliminary plan was submitted to the Children's Commission and ultimately to the HHS Committee of the Legislature. Alternative response is a third level, a third track that Nebraska will have now for the lower to moderate risk families. This model would serve those families in a way that is preventative in nature, engaging families to ensure the right level of service at the right time. While the steering committee has had good debate, there's not been full consensus on all the issues. Those concerns and lessons we have learned from other states included, I would say, three top critical issues. The first is we have to be clear which families would qualify or should be going down the pathway of alternative response. In our work through the noncourt cases, those families with a care provider who had serious substance abuse issues, a history of child abuse and neglect, or chronic multiple-problem families respond better in a court pathway, so those wouldn't be the types of cases we're talking about. In addition, those include serious injury, sexual abuse, physical abuse would not be eligible for this type of pathway. LB503 requires the exclusion criteria to be developed in the rules and regulations as opposed to specifically listing, right now, the 27 criteria in statute. This was a healthy debate. And personally, I support the rules and regulations approach because it allows for flexibility. This is a pilot. We think that there should be some flexibility in the model, yet with the rules and regs option we can clarify that and make a hearing possible to confirm those policies. Second lesson we learned from other states is we need to take small steps. I think that's happening here with a pilot. [LB503]

SENATOR ASHFORD: Time out, Gene. (Laughter) [LB503]

GENE KLEIN: Yes, done. [LB503]

SENATOR ASHFORD: Thank you for everything you do. [LB503]

GENE KLEIN: (Laugh) Any questions? [LB503]

SENATOR ASHFORD: No. Thank you for...no, obviously, we have your testimony, I think, don't we? [LB503]

GENE KLEIN: Yes. [LB503]

SENATOR ASHFORD: But thanks for all the work you've done for all these years. [LB503]

GENE KLEIN: Okay. [LB503]

SENATOR ASHFORD: And I'm glad we're making process. Any questions? Thanks, Gene. [LB503]

GENE KLEIN: Okay. All right. [LB503]

SENATOR ASHFORD: Next. [LB503]

KAREN AUTHIER: (Exhibit 23) Good afternoon, Senator Ashford, committee. Thank you for the opportunity to testify and thank you to Senator Coash for submitting the bill and the amendments. My name is Karen Authier, K-a-r-e-n A-u-t-h-i-e-r, and I serve as chair for the Nebraska Children's Commission. The concept of alternative response was included in the commission's strategic plan, which was approved in November 2013. The strategic recommendation was to develop a differential response system, and that remains a priority of the commission's system of care work group, which Gene Klein chairs. The commission supports the work of the department to further develop the design of an alternative response system in pilot communities as part of the IV-E waiver. The Children's Commission has been actively involved in reviewing reports from Director Pristow and members of the alternative response stakeholders group, which was referenced in LB561, passed in last session of the Legislature. Commission members provided input on specific aspects of the model developed by the stakeholder group. The commission provided feedback to Senator Coash regarding alternative response eligibility/ineligibility criteria that were included in the November 19 Department of Health and Human Services' report. Commission members registered opinions regarding the elements of the plan that addressed the need for parental consent of child interviews also, and I would want to point out that the feedback from individual commission members on specifics of alternative response model reflect some sharp differences of opinion. Because of the diverse backgrounds of commission members, it's not surprising that those different perspectives lead individual members to reach differing conclusions regarding some aspects of the design of the model. The amendments to LB503 reflect the work and input of a number of stakeholders to address some of these differences of opinion and further clarify the purpose, definition of terms, roles, requirements for sharing of information, and decisionmaking processes for implementing the model. The pilots will provide opportunity to ascertain the effectiveness of the changes that are proposed in carrying out the legislative intent that's included in the amendments, and that is to protect children whose health or welfare may be jeopardized by abuse or neglect. The amendments also require an evaluation by an independent entity that will provide data to assist in determining whether these proposed changes in the child protective system meet the expectations of the legislative intent. The amendment charged the commission with continuing responsibility for reviewing and providing feedback. The commission welcomes and accepts the role and will partner with the department regarding continuing development of this model. We're particularly interested in monitoring some aspects of the model that have not been as well defined yet, as the availability and access to services that will be needed for alternative response families. [LB503]

SENATOR ASHFORD: Thank you. [LB503]

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Transcriber's Office

Judiciary Committee  
February 12, 2014

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KAREN AUTHIER: And just as a final comment,... [LB503]

SENATOR ASHFORD: Okay. [LB503]

KAREN AUTHIER: ...I will say personally, as I read all of this, although this is a new structure, there's some good old-fashioned practice in this. These are some things we used to be able to do and I think this puts a structure in place to allow us to do them. [LB503]

SENATOR ASHFORD: And Senator Coash really kind of got us going on this and he knows what he's talking about. So do you guys. [LB503]

KAREN AUTHIER: Yeah. [LB503]

SENATOR ASHFORD: So thank you. Thanks, Karen. [LB503]

KAREN AUTHIER: Thank you. [LB503]

SENATOR ASHFORD: Okay. All right. [LB503]

SARAH FORREST: (Exhibit 24) All right. Good evening, Senator Ashford, members of the committee. My name is Sarah Forrest, S-a-r-a-h F-o-r-r-e-s-t, and I'm the policy coordinator for child welfare and juvenile justice at Voices for Children in Nebraska. I know you've all been here a long time, so I'll keep my comments brief. I just wanted to first thank Senator Coash and this committee for the role that you all have played in Nebraska's ongoing child welfare reform. We feel very strongly that this amendment and this bill take us the next step in making sure that we're strengthening families to prevent abuse and neglect and responding thoughtfully so that we get kids to that safe, permanent, loving home. Things that we particularly like about this amendment, first, it takes us down the path to slowly and carefully implementing alternative response, which has been a promising practice in many other states. Second, I think it really addresses some concerns that were brought up last year in terms of gathering data, independent oversight, evaluation, and the mechanisms for continued input and oversight of a number of stakeholders, especially in those places where maybe consensus was hard to reach. Or it may be an ongoing and evolving process to figure out what this needs to look like in Nebraska. And finally, piloting and requiring legislative reauthorization for its continuation I think will allow us to make any necessary changes as we go down the road. So with that, thank you. [LB503]

SENATOR ASHFORD: Keep you in the game, right? I mean it keeps you... [LB503]

SARAH FORREST: Sorry? [LB503]

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Transcriber's Office

Judiciary Committee  
February 12, 2014

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SENATOR ASHFORD: ...keeps you in the game. [LB503]

SARAH FORREST: Keeps me? [LB503]

SENATOR ASHFORD: In the game. Well, the whole...I didn't mean you. Keeps us all in the game, okay? [LB503]

SARAH FORREST: In the game. No, I think it will be a really wonderful thing for kids and families. [LB503]

SENATOR ASHFORD: And you, too, and everyone. (Laugh) [LB503]

SARAH FORREST: Well, I'm hoping that something like this will take me out of the game. You won't have to see me so much anymore. [LB503]

SENATOR ASHFORD: No, I mean we're...oh, that's fine. I'm sorry. [LB503]

SARAH FORREST: You're fine. [LB503]

SENATOR ASHFORD: I should have kept my mouth shut, as usual. [LB503]

SARAH FORREST: Take care. [LB503]

SENATOR ASHFORD: (Laugh) Sorry, Senator Chambers, but... [LB503]

SENATOR CHAMBERS: Don't worry. [LB503]

SENATOR ASHFORD: No, no, sometimes I go on. Anybody else would like to be for the amendment? How about opposed? Oh, okay. Yeah, they're supporting. They're not neutral. [LB503]

VICKI MACA: Not neutral. [LB503]

SENATOR ASHFORD: All right. That, in and of itself, Senator Coash, is a major...not reflecting on you, certainly, but just past experience. But anyway, proceed. [LB503]

VICKI MACA: (Exhibit 25) Good evening, Senator Ashford and members of the Judiciary Committee. My name is Vicki Maca, V-i-c-k-i M-a-c-a, and I'm the deputy director of Child Protective Services with the Department of Health and Human Services, and I am here today to support testimony in support of amendment...the amendment to LB503. I will keep my remarks brief. You have my full testimony. Nebraska currently has one response or pathway for accepted reports of child abuse and neglect received by the hot line, and that response is to investigate. This

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Transcriber's Office

Judiciary Committee  
February 12, 2014

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investigation is an assessment focused on child safety with a determination made as to whether or not child maltreatment occurred, and includes identification of who is responsible for the maltreatment. When child abuse and neglect allegations are substantiated, the responsible party's name is placed on the Central Register for Child Abuse and Neglect. This investigatory practice, which is often conducted with law enforcement, will continue in the future with the majority of reports received. The amendment to LB503 authorizes the department to pilot an alternative response to reports of child abuse and neglect. Alternative response, often referred to as AR, is a nonadversarial family assessment process that avoids determination of fault and identification of victims and perpetrators. AR is rooted in strong family engagement with assessments conducted to include assessment of child safety but also the assessment of a broader array of what the family needs are. If a child is determined to be unsafe at any point during the AR assessment, the assessment will immediately transition to an investigation pathway. AR is a pathway designed for low-risk reports of child abuse and neglect. AR is one of the strategies identified in Nebraska's Title IV-E waiver demonstration project, which we were awarded in September of 2013. The Title IV-E waiver demonstration project allows Nebraska more flexibility with the use of federal funds in order to test new approaches to service delivery and financing. Title IV-E waiver funds will continue to be used for children placed in eligible out-of-home services, like foster care, but will also be available to fund the development of services that have been missing or to enhance existing capacity. Over the past 18 months the Division of Children and Family Services has worked with over 40 members of the AR statewide advisory committee and the director's steering committee to learn how AR works in the 23 other states that have implemented it, and we are very appreciative for over...for those individuals' commitment to helping us develop the most successful AR model possible. [LB503]

SENATOR ASHFORD: Thank you. [LB503]

VICKI MACA: I'm happy to answer any questions. [LB503]

SENATOR ASHFORD: Any questions of Vicki? I don't see any. Thank you, Vicki. [LB503]

VICKI MACA: You're welcome. [LB503]

SENATOR ASHFORD: Anyone else? Opposition, Maureen? [LB503]

MAUREEN MONAHAN: Good evening, Senators. [LB503]

SENATOR ASHFORD: Good evening, Maureen. [LB503]

MAUREEN MONAHAN: (Exhibit 26) My name is Maureen Monahan, M-o-n-a-h-a-n. I

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

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have practiced in juvenile court since 2001. From 1997 to 2000, I was a legislative aide for State Senator Shelley Kiel. I was here when ASFA was passed, and ASFA was passed for a variety of reasons but the biggest reason was to ensure that the Department of Health and Human Services had a proper check on its power in child welfare. I'm opposed to this bill because some...it appears to give the opportunity to circumvent some parts of ASFA. This is completely trust HHS. The amendment has more detail in how and what the study of the program entails than the program itself. It delegates all those details to HHS. On page 6, lines 23 to 27, the amendment specifically delegates the determination of a family's rights to HHS. The right of parents to raise their children and for children to be raised by their parents is a long-held constitutional right. It can't be delegated to HHS or any state agency. I handed out a case, In re Joseph S., and in that case HHS was left to its own devices to decide what the rights were, and the Court of Appeals said they violated due process. This procedure would be a lower level, but there's no accountability. It lacks due process. You have to put those things in the bill. Mr. Klein and Ms. Maca both testified to things that won't be...they won't be able to do. It's not in the bill. So you need to have those parameters in the bill to protect due process. Basically, a state actor cannot interfere with a constitutional right without due process of law. It's like criminal. Police can take somebody in to be questioned. At some point they may be effectively arrested. At that point, all due process rights have to be in place and, if they don't, that person would go free even if they're guilty. At what point in alternative response will we have due process kick in? Are you going to completely trust HHS to protect the due process rights of these families? My experience in juvenile court is I wouldn't trust HHS to do that. That's why I filed a brief in that Joseph S. case. So in closing, I just would say that if you completely trust HHS, go ahead and pass this bill; and if you don't, don't pass it. Does anyone have any questions? [LB503]

SENATOR COASH: Do you represent a group or are you here... [LB503]

MAUREEN MONAHAN: I am an attorney. I do work with...about 50 percent of my practice is in juvenile court. [LB503]

SENATOR COASH: Could be...you came here...I just want to be clear for the record. You don't represent the bar... [LB503]

MAUREEN MONAHAN: No. [LB503]

SENATOR COASH: ...or defense attorney. [LB503]

MAUREEN MONAHAN: No. [LB503]

SENATOR COASH: You're here on your own. [LB503]

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Transcriber's Office

Judiciary Committee  
February 12, 2014

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MAUREEN MONAHAN: Correct. The bar did not take a position on this bill. I think the amendment was filed last week and it was after the house of delegates had already met regarding... [LB503]

SENATOR COASH: Okay. [LB503]

MAUREEN MONAHAN: So they do not have a position on this. [LB503]

SENATOR COASH: Okay. [LB503]

SENATOR ASHFORD: Thanks, Maureen. [LB503]

MAUREEN MONAHAN: Yeah. [LB503]

SENATOR ASHFORD: Yes, Senator Chambers. [LB503]

SENATOR CHAMBERS: Did you write your testimony or basically what you told us? [LB503]

MAUREEN MONAHAN: I wrote it out but, you know... [LB503]

SENATOR CHAMBERS: Well, would you get me something in... [LB503]

MAUREEN MONAHAN: It's all kind of...(laugh). I have some handwritten stuff. I think I have a cleaner copy I'd be happy to give to you. [LB503]

SENATOR CHAMBERS: Okay. [LB503]

SENATOR COASH: To the committee would be helpful. [LB503]

MAUREEN MONAHAN: Yes. Oh, to the committee. Yes. [LB503]

SENATOR DAVIS: Could you submit that to all of us? I think that would be useful. [LB503]

MAUREEN MONAHAN: Yes. I don't know that I have a copy I didn't scrawl all over but I... (Laugh) [LB503]

SENATOR ASHFORD: Maureen, if you want to, if you want to rewrite it and just send it over... [LB503]

SENATOR CHAMBERS: That would be fine. [LB503]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

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MAUREEN MONAHAN: That would be fine. [LB503]

SENATOR ASHFORD: ...that would be fine as well. [LB503]

SENATOR CHAMBERS: Yes, yes. [LB503]

MAUREEN MONAHAN: So...but most of my concerns are encapsulated in Joseph S. [LB503]

SENATOR ASHFORD: Okay. Thanks, Maureen. [LB503]

MAUREEN MONAHAN: Thanks. [LB503]

SENATOR ASHFORD: Okay. Anybody else opposed to this bill? Any neutral testifiers? How many neutral testifiers do we have? Oh, my. Okay. [LB503]

SENATOR COASH: I'm okay. [LB503]

VICKY WEISZ: (Exhibit 27) Hi, and thank you, Senator Ashford and other Senators for this late evening. I'm Vicky Weisz, V-i-c-k-y W-e-i-s-z, and I'm the director of the Nebraska Court Improvement Project, and I just wanted to...I thought it would be important for the Court Improvement Project's perspective to be included. I am completely in support of an alternative response and diverting out of the traditional system poverty-related, short-term family stress cases, but I share some of the concerns that Gene Klein mentioned and about making sure that it's clear about who gets diverted out and who is in the system. And right now it's not in the law and it's...there's...and I'd promise that it will be in policy but it's...I think that there is a need for a clear framework and clear rules. So I just wanted to mention a couple of populations. There are three that I have concerns about. One is parents with substance abuse problems. They are over half of the cases in child welfare system. Many of those people are addicted; to treatment they need oversight, really good treatment. When they get that they do very well. I am concerned with the current voluntary process that's in place. A lot of those families are in the system for a number of months, not necessarily engaging in treatment, and children are in a very bad situation often when they do eventually have to come into court. I also have a concern about babies, infants, and toddlers. There's been tremendous research over the last decade that shows the mechanisms of toxic stress affecting and harming the brain architecture of developing babies. So again, there's an urgency to make sure that those babies and children are not in a bad situation, and so there's a concern about those very vulnerable children being in there. One last point I'd like to make is that one of the drivers for this is the out-of-home placement ranking of the state, and I just wanted to...I think it's a little bit misleading because Nebraska includes children who are physically with their parents in that ranking. About 18 percent are trial home visits and they are children that are living

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

---

with their parents, and we would be probably about 10 or 12 slots down. So I just wanted to make sure that people had that. And I appreciate your time. Thank you. [LB503]

SENATOR ASHFORD: Thanks, Vicky. I don't see any questions, but thank you. [LB503]

VICKY WEISZ: All right. Thanks. [LB503]

SENATOR ASHFORD: Next neutral testifier. Carol. [LB503]

CAROL STITT: Good evening. I'll also be brief. Carol Stitt. I'm representing the League of Municipalities. There are a couple of concerns with just basic staffing of this issue. Currently, we have over 30,000 child abuse reports where 35 people respond to those. I think what's really good in this bill is the built-in staffing, but I think we need to make sure that's in the fiscal note. The other thing I think is really critical is the service array that's been mentioned several times. I don't think this pilot will be successful without that. I also think we need a detailed budget of what this will all cost. And I think it's important not to have five pilots. I think HHS would have a hard time managing those and monitoring those. We've seen that fail, you know, more than once. So that's really our point. And we'd also like to point out that law enforcement currently substantiates and investigates 40 percent of the cases, and I think the criteria that Dr. Weisz laid out is...I would really like to reinforce that. In the evaluation process, I would ask that you be sure and keep track of the ages of the children. I think that's really going to be a critical component for you to evaluate success because those little kids are very, very vulnerable. So we need a detailed budget. I think we need three pilot sites and I think you need to see evidence of what those array of services are to make sure this is successful. [LB503]

SENATOR ASHFORD: Thank you, Carol. One more? I think it's one more. Any other neutral testifiers? Okay. [LB503]

SARAH HELVEY: (Exhibit 28) Good evening. My name is Sarah Helvey, S-a-r-a-h, last name H-e-l-v-e-y, and I'm a staff attorney and director of the child welfare program at Nebraska Appleseed. And we also want to start by thanking Senator Coash, as well as the department, for their efforts to bring together stakeholders over the interim. Appleseed participated in the department's statewide advisory group established under LB561, and we appreciated that opportunity. However, we remain neutral on this bill at this time because we still have some unanswered questions about how alternative response would be structured in Nebraska. And that doesn't necessarily mean we think that it's not going to work. We think it's possible, with strong stakeholder involvement, agency commitment, and oversight, that there could be positive changes to the system through AR, and we acknowledge that some flexibility can be helpful. But given the history of child welfare reforms in Nebraska, we're just unable to fully support this pilot

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office

Judiciary Committee  
February 12, 2014

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without answers to some questions being decided and set out in statute. Our written testimony that's being passed out provides some more details, but in general we're uncomfortable with the unknown of directing the department to develop regulations on what is a range of what we think sort of key aspects of alternative response, including the transfer of cases from AR to the traditional response and the rights of families and the provision of services through AR. Again, we don't think all these details necessarily need to be set out in statute and it's possible that AR will be implemented well and we intend to be involved as stakeholders in monitoring that process. But without knowing some of those...that information at this time and our discomfort with that, we felt that our testimony today is most appropriate to be neutral. We also wanted to reiterate the issue that Ms. Monahan raised and we've also cited the Joseph S. case. This is an issue we've raised previously about notice of rights to families, and we think that that could be addressed by including written notice that explains what the alternative response track is and the families' rights throughout that process and an avenue for families to challenge determinations during that process. Even with the concerns that we've expressed, we appreciate several aspects of the amendment that put into place, we think, good oversight and stakeholder involvement, as well as the evaluation component. And so with that, I'll thank Senator Coash again and the department as well as the committee for your commitment to improving the child welfare system. [LB503]

SENATOR ASHFORD: Any questions of Sarah? I don't see any. Senator Coash, do you wish to close? [LB503]

SENATOR COASH: Briefly, a couple things. We had a group of stakeholders that I couldn't even get into the room with the department three years ago come together on this bill. That in and of itself is a pretty big deal. This is a pilot. It ends in two years. It can end sooner. And if I think things are going south, I'll end it. But this ends. There's also \$2 million of state and federal money in an evaluation of whether or not this works. We will know. And if it works, I'll be here and I'll extend it. If it doesn't work, I'll do nothing. There are questions that need to be answered by implementing this. We can do this. This can be done, I am convinced of that. I will still be here. The Children's Commission is all over this bill and that's a product of this Legislature saying, we don't trust HHS, we're going to put together a commission, we're going to look after them. They are all over in here. County attorneys are all over in here. I think we can address the due process issue that was brought up by the opposition, and I'll do that. [LB503]

SENATOR ASHFORD: I think Maureen's was a thought...it was a thoughtful point. [LB503]

SENATOR COASH: I think that can be addressed and I'll be glad to do that, but... [LB503]

SENATOR ASHFORD: The other thing I would say, and then we're going to close for

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Transcriber's Office

Judiciary Committee  
February 12, 2014

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the evening, is we have a tendency...and, Senator Coash, thank you very much for your incredible work on this. I mean that. I mean you've done great work. When we talk about HHS and we talk about all these agencies, we have a tendency, not Senator Coash but all of us in this area of trying to deal with juveniles, is we talk in broad terms about these agencies. In reality, there are gobs and gobs of people that work for all these agencies who are not just monolithic agencies. They're actual people. And you know I keep saying this now since this is my last...my 16th year in the Legislature, as I'm always constantly amazed at...where they work is fine, but who they are and what they actually do blows me away. And so your point about keeping tabs, that's why we're here a lot of the times is just organizing the efforts of a lot of good people who all have the same goal. As Maureen said, we want to make kids safe. And so I just...I'm always blown away by everybody, everyone in this room who I've worked with all these years. I mean they may work for agencies, but they're people and that's what's important. Anyway, that was a little bit of a divert...of something. [LB503]

SENATOR DAVIS: An "Ashfordism." [LB503]

SENATOR ASHFORD: (Laugh) But anyway, thank you all. [LB503]

SENATOR COASH: Thank you. [LB503]

SENATOR ASHFORD: And that closes the hearings for the day. (See also Exhibit 29) [LB503]