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Transcriber's Office

Judiciary Committee
February 19, 2014

[LB839 LB962 LB988 LB1044 LB1089 CONFIRMATION]

The Committee on Judiciary met at 11:00 a.m. on Wednesday, February 19, 2014, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on gubernatorial appointments. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Colby Coash; Al Davis; Amanda McGill; and Les Seiler. Senators absent: Mark Christensen.

SENATOR ASHFORD: Go ahead, Esther. And do you have some prepared remarks?
[CONFIRMATION]

ESTHER CASMER: Yes, I do. [CONFIRMATION]

SENATOR ASHFORD: Why don't you go ahead and give us those. [CONFIRMATION]

ESTHER CASMER: Okay. [CONFIRMATION]

SENATOR ASHFORD: And then we may have...well, I'm sure we'll have some questions for you. [CONFIRMATION]

ESTHER CASMER: (Exhibits 1 and 2) All right. Good morning, Senator Ashford and distinguished members of the Judiciary Committee. My name is Esther Casmer, E-s-t-h-e-r... [CONFIRMATION]

SENATOR ASHFORD: Peter, would you push the microphone up a little bit because it's hard to hear Esther. [CONFIRMATION]

ESTHER CASMER: Oh, sorry. [CONFIRMATION]

SENATOR ASHFORD: That microphone doesn't do a very good job so.
[CONFIRMATION]

ESTHER CASMER: My name is Esther Casmer, E-s-t-h-e-r, last name spelled C-a-s-m-e-r. I'm the current chairperson for the Nebraska Board of Parole. Again I sit before you reflecting the past 38 years of employment with the great state of Nebraska, the last 19 years specifically dedicated to the Board of Parole. I have participated in countless offender board reviews, parole hearings, and violation hearings during those 19 years. I'm very proud to add I have personally signed numerous discharge certificates reiterating my belief: parole works. I will continue to collaborate with the Department of Correctional Services and other entities in an attempt to share ideas and implement workable procedures that will continue to enhance the members set for parole hearings and placed on parole. Parole is beneficial to all, as it provides an opportunity for an incarcerated individual to serve the remainder of his or her

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court-imposed sentence in the community with the supervision of an assigned parole officer. Also, parole encourages programming and self-betterment courses to address criminal thinking and addiction. Many come into the system lacking basic education; therefore, GEDs, high school diplomas, and college courses are recommended. I possess a dedication and drive to continue to support the parole process and those who offer themselves as viable candidates to be released in our communities without risking public safety. I humbly ask for your support that I may continue to serve as chairperson for the Nebraska Board of Parole. Thank you. I will answer any questions you may have. [CONFIRMATION]

SENATOR CHAMBERS: I have a leadoff question. [CONFIRMATION]

SENATOR LATHROP: You may...you're recognized. [CONFIRMATION]

SENATOR CHAMBERS: And I have to acknowledge that I've had conversations with the Chair, so this question I already know the answer to. Madam Chair, have you had discussions with Department of Corrections about the difficulty created with reference to programming maybe not being available? And the way I'm presenting the question is not artful, but I think you know what I'm asking you. So however way you want to answer it, feel free to go into that detail. [CONFIRMATION]

ESTHER CASMER: Approximately two weeks ago the Board of Parole met with several... [CONFIRMATION]

SENATOR CHAMBERS: And could you speak a little louder? I want everybody to hear this. [CONFIRMATION]

ESTHER CASMER: Sure. [CONFIRMATION]

SENATOR ASHFORD: It's that microphone, Esther. It's terrible. [CONFIRMATION]

ESTHER CASMER: All right. Approximately a couple weeks ago, the board met with the Department of Correctional Services and we pinpointed specific programming that we felt needed to be placed back into the institutions so that these individuals could be considered for parole rather than sit. [CONFIRMATION]

SENATOR COASH: Could... [LB962]

SENATOR ASHFORD: Go ahead, Senator Chambers. [CONFIRMATION]

SENATOR CHAMBERS: The only thing... [CONFIRMATION]

SENATOR ASHFORD: Do you have a follow-up question? And then Senator...

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[CONFIRMATION]

SENATOR CHAMBERS: Without...if that programming had been in place and these individuals had taken that programming at the time they came before the board, they would have been paroled, all other things being equal, is that correct?

[CONFIRMATION]

ESTHER CASMER: Yes. [CONFIRMATION]

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

SENATOR ASHFORD: Senator Coash. [CONFIRMATION]

SENATOR COASH: Thank you, Ms. Casmer. I want to follow up on that question. And what was the recommendations of the Parole Board as to the types of programming you felt was important? [CONFIRMATION]

ESTHER CASMER: We requested domestic violence be placed back into the institutions. We also requested information regarding the violence reduction program and we were informed that another program...so it'll be two programs will be put into place. [CONFIRMATION]

SENATOR COASH: So the two programs that the Parole Board recommended you were given feedback that they would be reinstated? [CONFIRMATION]

ESTHER CASMER: Yes. [CONFIRMATION]

SENATOR COASH: Okay. Thank you. [CONFIRMATION]

SENATOR ASHFORD: Senator Lathrop. [CONFIRMATION]

SENATOR LATHROP: I got a whole bunch of questions. We are struggling in this committee with the overpopulation in corrections and trying to determine the role of parole and alleviating the overcrowding. It is our understanding, or at least mine, that many offenders who would otherwise be suitable candidates for parole are not being paroled because they haven't had adequate programming by the time that becomes your consideration. Is that a fair statement? [CONFIRMATION]

ESTHER CASMER: To some degree, it is. We have the options of which we utilize in some situations to parole them providing that they secure the programming in the community. However, if...may I give an example? [CONFIRMATION]

SENATOR LATHROP: Sure, sure. [CONFIRMATION]

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ESTHER CASMER: If a person is recommended to participate in domestic violence, and there are different levels of domestic violence, per se, if it's one that's truly outrageous and they are able to transition at community custody and they still haven't gotten into the programming, we take a look at that--how interested is this person to secure this programming? They come up for parole, they have made no effort to get the programming...we're not looking at creating new victims. We will hold them, make them accountable for getting that programming before they are released on parole. [CONFIRMATION]

SENATOR LATHROP: Okay. And when you say "domestic," you want to get them into domestic violence, you're talking about a program that addresses somebody's propensity to engage in domestic violence. [CONFIRMATION]

ESTHER CASMER: Yes. [CONFIRMATION]

SENATOR LATHROP: Give me the types of programming besides that. So domestic violence, you said, violence reduction was another program. [CONFIRMATION]

ESTHER CASMER: That is the... [CONFIRMATION]

SENATOR LATHROP: What are the other things that are...that need to be available so that people can...that are inclined to take advantage of those programs, have them available so that they're suitable candidates for parole? [CONFIRMATION]

ESTHER CASMER: Intensive outpatient substance abuse programming. Not all individuals are recommended for residential treatment, so out...what is considered outpatient would be sufficient. But... [CONFIRMATION]

SENATOR LATHROP: That happens within the facility. [CONFIRMATION]

ESTHER CASMER: Not at this point. [CONFIRMATION]

SENATOR ASHFORD: Are you talking about people that are, Esther, that are getting out or out, or are we talking inside? [CONFIRMATION]

ESTHER CASMER: We're talking...we're speaking of inside. [CONFIRMATION]

SENATOR ASHFORD: Okay. [CONFIRMATION]

ESTHER CASMER: There is a program at the Work Ethic Camp that specifically deals with intensive outpatient, but not everyone can get to it. [CONFIRMATION]

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SENATOR LATHROP: What we're trying to...what I'm trying to get a fix on is when we look at alleviating overcrowding, parole is certainly one of the tools that we have to alleviate overcrowding and what we're...what I understand from the conversations we've had and the testimony we've heard from people that have been in that chair is that we could parole more people if they have the adequate programming. Okay? And for me to understand what adequate programming is or for them to have been through the proper programming or work their plan, I don't know what that means. Does that mean we need three programs for substance abuse, violence reduction, and domestic violence, or are there others, depending upon the inmate? [CONFIRMATION]

ESTHER CASMER: From my...it depends upon the inmate. In a perfect situation there would be programming available in each institution. We need to prepare these individuals on how to live outside of the iron bars. Many do not have skills, employable skills. I think it would be a service if that was provided. GEDs and... [CONFIRMATION]

SENATOR LATHROP: So some vocational training. [CONFIRMATION]

ESTHER CASMER: Definitely. [CONFIRMATION]

SENATOR LATHROP: Anything else? I'm going to ask you what our capacity is now and what we need to do, but I'm trying to get a full list or a full idea of what the programs are that we don't have or don't have the capacity for that are the problem or that are the need. [CONFIRMATION]

ESTHER CASMER: There's always a need. In order to prepare an individual to live harmoniously with society, they have to be able to provide for themselves within the legal limits. If they've never had a job, they have no idea how to fill out an employment...go on a computer to seek employment, they have no skills, they haven't...have never worked, we're sending them out there and chances are, unless they have support systems, there is going to be some stumbling blocks. [CONFIRMATION]

SENATOR LATHROP: Unless we had all these programs available to them before they're discharged, and I'm trying to get a sense of what that...if you...let me put it differently. If you could wave a magic wand over corrections and the programs that you want to see in place before someone is discharged on parole were all there, what do we need to do differently? [CONFIRMATION]

ESTHER CASMER: Magic wand, it would be skills training. [CONFIRMATION]

SENATOR LATHROP: Do we do any of that now? [CONFIRMATION]

ESTHER CASMER: No. [CONFIRMATION]

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SENATOR LATHROP: Okay. [CONFIRMATION]

SENATOR ASHFORD: What does that mean, Esther? Just... [CONFIRMATION]

SENATOR MCGILL: Yeah. What does "skills" mean? [CONFIRMATION]

ESTHER CASMER: I'm looking at...per se, the sewing factory is fine. But how many are going to discharge and find employment within a sewing factory? We need some technical skills. We need... [CONFIRMATION]

SENATOR SEILER: Excuse me, if I may. Are you talking personal skills, like doing a checking account, renting a house, buying groceries? [CONFIRMATION]

SENATOR COASH: I think she's talking vocational. [CONFIRMATION]

SENATOR ASHFORD: She...about jobs. [CONFIRMATION]

ESTHER CASMER: Vocational. [CONFIRMATION]

SENATOR LATHROP: Being a welder. [CONFIRMATION]

SENATOR SEILER: Oh, vocational. Okay. Thank you. [CONFIRMATION]

ESTHER CASMER: And also, those skills would be of service because a lot of individuals, they don't know how to budget their money at all. I've worked with them and they get that check and they're like a kid in a candy store. [CONFIRMATION]

SENATOR LATHROP: So personal finance. [CONFIRMATION]

ESTHER CASMER: Personal finance; substance abuse programming; continue to enhance the violence reduction program, which it isn't a large number. However, it is enough that it takes almost a year for them to get to that program, and I guess the reason that it takes so long: You're reprogramming these individuals. They didn't get this way overnight, so it's not going to be a short program. Also, life skills, technical skills... [CONFIRMATION]

SENATOR ASHFORD: How about computer skills, Esther? [CONFIRMATION]

ESTHER CASMER: Oh, definitely computer skills because I have seen an individual come back, one in particular stands in my...sits...stands out in my mind, an older individual who was seeking employment. He had never operated a computer before and it was so frustrating for him. [CONFIRMATION]

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SENATOR LATHROP: We don't... [CONFIRMATION]

SENATOR ASHFORD: Don't name names because (laughter)... [CONFIRMATION]

SENATOR LATHROP: You get the program set up, let us know. [CONFIRMATION]

ESTHER CASMER: But basic computer skills, I think, would be suitable because you don't go in and fill out a job app anymore. It's all done on computer. [CONFIRMATION]

SENATOR LATHROP: So what are we doing now in corrections? Do we have...you've given us a list --skills, personal finance, domestic violence, violence reduction, substance abuse, vocational training,... [CONFIRMATION]

ESTHER CASMER: And sex offender programming. [CONFIRMATION]

SENATOR LATHROP: ...sex offender programming. So do we have any of that stuff there now? Or is it just that our capacity to have people complete the program is so limited? [CONFIRMATION]

ESTHER CASMER: Because of the waiting list. [CONFIRMATION]

SENATOR LATHROP: The waiting list. Are all the programs there, we just need to expand their capacity? [CONFIRMATION]

ESTHER CASMER: There are some programs that are there, capacity could be expanded, and there are some that need to be implemented. [CONFIRMATION]

SENATOR LATHROP: And which of these things need to be implemented that... [CONFIRMATION]

ESTHER CASMER: The Department of Correctional Services at this time is looking at implementing domestic violence, implementing another class of violence reduction programming, implementing outpatient substance abuse programming in some of the facilities, vocational training at all. [CONFIRMATION]

SENATOR ASHFORD: Are there...is there any welding? I'm sorry, Steve. Is there...I know... [CONFIRMATION]

ESTHER CASMER: Welding is at the Work Ethic Camp only. [CONFIRMATION]

SENATOR ASHFORD: That's only there and it's my...Mark isn't here, but I want to say... [CONFIRMATION]

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SENATOR LATHROP: I don't think they're doing it anymore. [CONFIRMATION]

SENATOR ASHFORD: Well, I want...yeah, they...it's only five or... [CONFIRMATION]

SENATOR LATHROP: They had a deal with Valmont. [CONFIRMATION]

SENATOR ASHFORD: I went to see the program at McCook a few years ago before it became a correction...I mean, it was...had probation people in it and it was done with the community college there. And Valmont, actually, Valmont Industries from Omaha actually helped fund that and there were...they helped...they took some of the people from there and employed them. But I think there were 6 to 12. [CONFIRMATION]

SENATOR LATHROP: I think they quit that partnership with Valmont though. [CONFIRMATION]

SENATOR ASHFORD: They stopped that program. [CONFIRMATION]

SENATOR LATHROP: So what would it take...we look at this and we say we'd like to be able to give you the...have in place the programming so that the people that do what they need to do are better candidates and more likely to be paroled, right? [CONFIRMATION]

ESTHER CASMER: Right. [CONFIRMATION]

SENATOR LATHROP: Can you give us a sense of what needs to happen? Do you have a sense? Is it double the capacity? Is it in dollars or in capacity? [CONFIRMATION]

ESTHER CASMER: We're looking to you for those answers. [CONFIRMATION]

SENATOR LATHROP: I have to tell you, I don't do criminal work and I don't do corrections stuff and so I'm looking...we really are searching for answers. And I appreciate where the Chair has taken us in terms of trying to get to some reforms. But it seems like they're concepts and nothing is black and white for us in terms of what can we do to improve the programming because if we say, you shall have programming that is evidence based, I don't know if that's enough direction for these guys. [CONFIRMATION]

ESTHER CASMER: As far as speaking for the Department of Corrections, I don't think I should. However, from my own personal standpoint, if they have the finances to enhance the programming, it would be a far better situation. [CONFIRMATION]

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SENATOR LATHROP: What would that mean in terms of the number of people we'd be paroling or the rate at which we would be paroling inmates, versus how we're doing right now? [CONFIRMATION]

ESTHER CASMER: More hearings would take place. At this point in time the Board of Parole has done everything that we possibly could. We're still looking into other ideas to increase the numbers. We're paroling individuals in some instances hoping that they will get the programming in the community. We make that a special condition. We're looking at short-term offenders who come in. We're setting them on paper. We refer to them as "paper reviews." These are strictly nonviolent situations. We do not do this with any violence, but nonviolent situations. We have collaborated with Adult Parole Administration and... [CONFIRMATION]

SENATOR ASHFORD: Adult probation, you mean. [CONFIRMATION]

ESTHER CASMER: No, Adult Parole... [CONFIRMATION]

SENATOR ASHFORD: Oh, adult parole, okay. Oh, administration. I'm sorry. [CONFIRMATION]

ESTHER CASMER: ...Administration. [CONFIRMATION]

SENATOR ASHFORD: Okay. [CONFIRMATION]

ESTHER CASMER: And we have collaborated with them. The officers, I am very proud of what...the job that they're doing as far as making every effort, using graduated sanctions to keep individuals out on parole. We at this point are doing everything we possibly can as far as the numbers. [CONFIRMATION]

SENATOR LATHROP: But we'd have more people and better outcomes if we had more of the programming you've mentioned, and I still don't have a sense of how much more capacity we have or need. [CONFIRMATION]

ESTHER CASMER: That...those numbers would need to come from the Department of Corrections. [CONFIRMATION]

SENATOR LATHROP: Okay. [CONFIRMATION]

SENATOR MCGILL: What about programming that's more relationship based? Last year we learned a lot about a program for fathers to connect with their kids. How important are those on the scale of vocational skills and... [CONFIRMATION]

ESTHER CASMER: It's very important. When you have a unified family, a healthy

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family, that is a deterrent as far as the children walking in the parent's footsteps, whether it be a male or a female inmate. Family is crucial. A good, structured family is crucial.
[CONFIRMATION]

SENATOR MCGILL: And maybe they'd be less likely to repeat crimes if they had that bond and wanted to stay out. [CONFIRMATION]

ESTHER CASMER: Exactly, yes. [CONFIRMATION]

SENATOR MCGILL: How much of that kind of programming are you seeing?
[CONFIRMATION]

ESTHER CASMER: We refer them to that type of program in the community.
[CONFIRMATION]

SENATOR MCGILL: Okay, not as much of it happening when they're still incarcerated.
[CONFIRMATION]

ESTHER CASMER: The Fathers For Life, that is the only one that I'm aware of at this time. [CONFIRMATION]

SENATOR MCGILL: Okay. And I know that had a huge waiting list. [CONFIRMATION]

SENATOR LATHROP: It sounds like what you're doing with parole is when it functions well, everybody has done what they need to do before they're paroled. And now you're paroling people and going, I'm telling you, you need to go get this programming, and you're hoping that they will and you're holding the hammer over their head, hoping that they'll go get stuff that they used to get before they were ever released.
[CONFIRMATION]

ESTHER CASMER: Yes. [CONFIRMATION]

SENATOR MCGILL: Hmm. [CONFIRMATION]

SENATOR ASHFORD: Let me...Esther, let me first of all...does anyone else have...I just want to first of all compliment you. As long as I've been in state government you've always been here, so you're a brick and, quite frankly, I think what you're attempting to do with the limited resources that you have is absolutely incredible and you're serving the state in an incredible way. And I can't wait to vote to bring you back to your position or keep you in your position. We had a conversation the other day, but...regarding some of these issues and I want to focus just on a couple. One was, is your...and you're right to say you have to rely...the Department of Corrections, I think, the director said the other day, my jurisdiction ends as soon as they walk out the door, which was an

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alarming statement to me a little bit because we have to work collaboratively. And I think you are that bridge; you work collaboratively with the communities. Hopefully, we can get out of...out from under this, whatever this...we have in Nebraska thinking about corrections that it's an isolated agency that just sort of incarcerates people and doesn't think about the other parts of it. And I think you are that bridge so. But let me just ask you about community-based services because Senator Davis and Senator Seiler have brought this up to us so many times on the juvenile side. The community-based services that we're talking about are not...I mean, they are...you've got to find them, correct? I mean, they have to be there in the communities where these offenders go once they're released. They have to have adequate community-based services.
[CONFIRMATION]

ESTHER CASMER: That's true, and they also have to have the funding to pay for it.
[CONFIRMATION]

SENATOR ASHFORD: Right. And how do they do that? I mean, my...one of...how do they do that? They don't have a job or if they do...some of them do, obviously. They don't have adequate housing in many cases and they have still lingering issues, whether they're mental health driven or substance abuse, I mean, they still have lingering things, dysfunctions in their lives. You know, to transition, it's difficult, isn't it, because they have to pay for these services. There's no money available that I know of. They can't get healthcare because there's no Medicaid. They can't access healthcare. Is that...I mean, that's right, obviously. [CONFIRMATION]

ESTHER CASMER: That is, um-hum. [CONFIRMATION]

SENATOR ASHFORD: So what do you do administratively on how to...I mean, you know this is happening. What...you use your parole administration. But how do you find these community-based services and how do you get them willing to help with these inmates? [CONFIRMATION]

ESTHER CASMER: We had a meeting last spring with the adult parole officers, and that was one of their questions. And my response at the time: If you have an individual who is paroled, we have placed the requirements of intensive outpatient substance abuse programming, GED, and they have...once they come out, if they are not employed, they have 30 days on paper to secure employment. We don't want to overwhelm them so that they give up. We rely on the parole officers to use positive judgment. So what is the priority at this time? It's a job. [CONFIRMATION]

SENATOR ASHFORD: Oh, what happens at the end of 30 days if they don't have...
[CONFIRMATION]

ESTHER CASMER: It depends on how active the individual is as far as looking for

employment. It...in most cases, they will extend that time, but we don't want anyone out there three, four, five, and six months without a job. That only leads to negative situations. But if a person is really looking for work, we know that they need to understand and we make it very clear: You may not get a job that's going to be full time so, if you can't get a full-time job, what do you do, you get two part-time jobs.
[CONFIRMATION]

SENATOR ASHFORD: Right. But it's hard if they don't have transportation. I mean...
[CONFIRMATION]

ESTHER CASMER: And that's another thing. Bus service or public transportation, there's some in Omaha, there's some in Lincoln, but that's it. They're relying on their own resources to be transported to jobs and that's a problem. [CONFIRMATION]

SENATOR ASHFORD: I think one of the most amazing statistics--not amazing, but certainly I understand the statistic and it reflects so terribly well on what you do--is the number of inmates who the recidivism rate for parole, versus those who just walk out or jam out or whatever the term is, and it's significant difference. I mean, you do a good job and your recidivism rate reflects that. What do we do with people now who for whatever reason can't make it through the parole system, either they're...been there too short a period of time or whatever? How do we address that? Or how would you recommend it? Or do you have a recommendation on how to do that? [CONFIRMATION]

ESTHER CASMER: Not everyone wants parole. [CONFIRMATION]

SENATOR ASHFORD: Okay. [CONFIRMATION]

ESTHER CASMER: And that needs to be something that everyone take a look at. Not everyone wants to be supervised. They will tell us to our faces, I don't want your parole.
[CONFIRMATION]

SENATOR ASHFORD: Okay. What would...what...but they have the same issues that they need a job, they need a house. [CONFIRMATION]

ESTHER CASMER: It can be many issues or factors involved in that. Say, for instance, that an individual...I'll just throw a number out. A year ago we set him for a hearing and by that we're looking at his hearing date is tomorrow. If the population was as it...not the overcrowding situation, this person would transition to Community. From Community they would go on work release. Work release would provide financial stability prior to getting out. Okay, this person finally gets to work release. He has no family or she has no family. This person is relying on themselves to make it so they get a job. For the first three months that they're at Community--and that's an approximate, depends on what the wages are--this person is going to be what is referred to "in the red," because the

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minute they start earning money it goes towards their room and board until they are caught up. This person has six months left on their sentence. They're going to stay there. They're not going to want to be paroled. [CONFIRMATION]

SENATOR ASHFORD: They don't have any money, right, that... [CONFIRMATION]

ESTHER CASMER: They don't have any money. They've got a job but they don't have any money. Hundred dollars' gate pay isn't going to go very far. So what we will offer them--well, would you like to have your hearing deferred?--because we don't want them to just say, I don't want parole. We want to get them out of the system. How long is it going to take you to get somewhat ahead? I mean, we will talk to them, converse with them to find out what's the better situation for them. Sometimes they'll say, defer my hearing a couple months so I'll be able to get a place to stay. Okay. Some will just tell us, I'll jam,... [CONFIRMATION]

SENATOR ASHFORD: I'm not going to make it. [CONFIRMATION]

ESTHER CASMER: ...I'm not going to make it, this is what I will do so I have financial stability before I leave. We can't force parole on them and... [CONFIRMATION]

SENATOR ASHFORD: Two other quick topics, one on...you mentioned one of the concerns was that...this sort of leveling of sentencing where they don't have a parole eligibility date that's shorter than their release date or, if it is, it's only a few months. Do you run across that? I know you do. And how does that work? [CONFIRMATION]

ESTHER CASMER: We have seen higher numbers of flat sentences than I have ever seen. [CONFIRMATION]

SENATOR COASH: What do you mean by "flat" sentence? [CONFIRMATION]

ESTHER CASMER: There is no eligibility date for parole; they will do that number in its entirety. [CONFIRMATION]

SENATOR COASH: And that's part of the judge's... [CONFIRMATION]

ESTHER CASMER: That's the judge's decision. [CONFIRMATION]

SENATOR LATHROP: That's just giving somebody 20 years and they can jam out in 10. [CONFIRMATION]

SENATOR ASHFORD: Twenty to 20 or... [CONFIRMATION]

ESTHER CASMER: If they say 20 to 20, there's no parole eligibility date.

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[CONFIRMATION]

SENATOR ASHFORD: And that...and here's my concern, Esther, and you mentioned it the other day and it's...and I...there are lots of concerns. This thing is, as Steve Lathrop has suggested, is a massive problem that we're going to have to take a lot of, probably, years to correct. But this one problem, these are...they're...for some reason, I mean, they've either had a consecutive...they've committed some sort of a dangerous offense, a serious offense, and they get 20 to 20. They're...that group is very unlikely to get parole or they won't get parole. That's the group that could be the most dangerous because if you just base it on the offense it could be that; or they, because they're never going to get paroled, they don't go through the programming to get paroled because they're not going to get paroled. And we discussed this the other day, how that's the group that's just going to walk out with no support system. So to me that seems like a dangerous...dangerous for the inmate and for the community. Would you think that's true? Each case is different but... [CONFIRMATION]

ESTHER CASMER: Each case is different when you're looking at large numbers like that. But the majority of what we see are short numbers, like a year to a year or two to two, and we're seeing more of that. [CONFIRMATION]

SENATOR ASHFORD: Okay, but even on the... [CONFIRMATION]

ESTHER CASMER: If it's a nonviolent situation on the short sentences that are not eligible for parole, we can put them on the reentry furlough program. The Department of Corrections submits that and these are nonviolent individuals. [CONFIRMATION]

SENATOR ASHFORD: Right. [CONFIRMATION]

ESTHER CASMER: And they can be placed outside of the facility until their discharge date. [CONFIRMATION]

SENATOR ASHFORD: Do you do that or does the... [CONFIRMATION]

ESTHER CASMER: We're the last signature that goes on that. [CONFIRMATION]

SENATOR ASHFORD: Okay. [CONFIRMATION]

ESTHER CASMER: We're the final deciding factor. [CONFIRMATION]

SENATOR ASHFORD: Okay. Then Senator Seiler had some questions that could...could you...Senator Seiler, do you...? [CONFIRMATION]

SENATOR SEILER: I just have a couple. I've been reading about some of the states

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have where their parole officer has the right to reincarcerate for violation of rules and regulations of the parole, like two days in the county jail. I don't believe we have anything like that in Nebraska. [CONFIRMATION]

ESTHER CASMER: No, we don't, and that has... [CONFIRMATION]

SENATOR SEILER: We bring them all the way back to the State Pen if they violate. Is that right? [CONFIRMATION]

ESTHER CASMER: It depends. There are times when they are housed in the jails at that county until DCS can pick them up. [CONFIRMATION]

SENATOR SEILER: Right, right. Do you have any idea or thoughts on whether a...like authorizing a parole officer to have a quick slap on the hands as a...and then get the guy back in the program again before he's shipped all the way back here? Is that something that's appealing to you? [CONFIRMATION]

ESTHER CASMER: That is something we have tried. [CONFIRMATION]

SENATOR SEILER: Oh, you have, okay. [CONFIRMATION]

ESTHER CASMER: We have. When it comes to employment, we had...an individual was paroled in two months, no job, and it...they really weren't putting forth the effort. We were bringing them back in and keeping them at Community and allowing them to go out during the day to look for employment. But it became comfortable. [CONFIRMATION]

SENATOR SEILER: Oh, yeah. [CONFIRMATION]

ESTHER CASMER: And it wasn't working. [CONFIRMATION]

SENATOR LATHROP: You said it became comfortable? So they had a place to sleep and a meal and they'd go out and mess around all day long. [CONFIRMATION]

ESTHER CASMER: Um-hum. They were held accountable as to where they were. If they did falsify their pass, then there were consequences to that and they were looking at a revocation at that point. [CONFIRMATION]

SENATOR SEILER: The last question I had is I've heard from some halfway houses that they, like you said, these people don't have any money, transportation is a major issue, even getting from Lincoln to, say, Hastings, and then getting to and from their jobs. Any thoughts on how we can correct that? [CONFIRMATION]

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ESTHER CASMER: I wish I did. The transportation situation I think for all of these individuals is a major factor. The public transportation system just doesn't provide what's needed, it really doesn't. [CONFIRMATION]

SENATOR SEILER: Thank you, ma'am. [CONFIRMATION]

ESTHER CASMER: You're welcome. [CONFIRMATION]

SENATOR ASHFORD: I don't believe there are any other questions, Esther. But again, I was very...we all are--I am, certainly--most...very appreciative of your service to the state. [CONFIRMATION]

ESTHER CASMER: Thank you. Thank you. [CONFIRMATION]

SENATOR ASHFORD: Thank you. [CONFIRMATION]

SENATOR CHAMBERS: I'm going to tell her how she escaped. When Senator...I can't sing at all. But when he said you're the bridge I almost broke into a chorus of "Like a Bridge Over Troubled Water," but I spared everybody. [CONFIRMATION]

ESTHER CASMER: (Laughter) Okay. All right. [CONFIRMATION]

SENATOR LATHROP: Thank you. [CONFIRMATION]

ESTHER CASMER: Thank you. [CONFIRMATION]

SENATOR CHAMBERS: (Laugh) You're welcome. [CONFIRMATION]

SENATOR LATHROP: Thanks to both of you. Yeah. [CONFIRMATION]

SENATOR ASHFORD: Do we have any other testifiers on this nomination?
[CONFIRMATION]

SENATOR LATHROP: Thanks for coming down. [CONFIRMATION]

ESTHER CASMER: Thank you. [CONFIRMATION]

SENATOR LATHROP: Good to see you again. [CONFIRMATION]

SENATOR ASHFORD: Okay. That will close the hearing. [CONFIRMATION]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, February 19, 2014, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a

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public hearing on LB1089, LB839, LB988, LB962 and LB1044. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Colby Coash; Amanda McGill; and Les Seiler. Senators absent: Ernie Chambers; Mark Christensen; and Al Davis.

SENATOR LATHROP: Okay. It's 1:30. Apparently Senator Ashford is going to be a few minutes late, so we're going to start our afternoon. Welcome to the Judiciary Committee. My name is Steve Lathrop. I'm the Vice Chair and the state senator from District 12 in Douglas County. We have five bills today, starting with Senator Conrad. I think everybody who is here has been through this, maybe not, so I'll take a couple of minutes. If you have a cell phone, please turn the ringer off. Bills are introduced by the senator sponsoring the bill or introducing the bill, followed by proponents, opponents, and then those who are here in the neutral capacity. And then the senator is given an opportunity to close. If you are going to testify we need to have you fill out a testifier sheet. They're over on that table, I think. Just hand them to one of the pages when you testify. You can testify; just indicate the bill. And then when you sit down, we'll ask you to give us your name and spell your last name so we make a good record of the hearing today. You will have, is it, three minutes to speak? We have a light system and what that means: For two minutes you'll have a green light and of course you're free to talk and say whatever you came here to say; you'll have a yellow light for one minute, so you should be thinking, wrapping it up. And then when you get to a red light, if you'll stop, if there are any questions the committee members will ask them at that time. Okay. And with that we'll start our afternoon with Senator Conrad who is here to introduce LB1089. Welcome to Judiciary Committee. [LB1089]

SENATOR CONRAD: (Exhibit 1) Hi. Good afternoon. I've got a handout here if the page wouldn't mind. Hi. My name is Danielle Conrad. That's D-a-n-i-e-l-l-e Conrad, C-o-n-r-a-d. I represent the "Fightin' 46th" Legislative District of north Lincoln. I'm here today to introduce LB1089. Here's why we need this legislation: Recent studies have indicated that access to justice in Nebraska is a serious issue; in fact, only about 15 percent of our citizenry...citizens' civil legal needs are currently being met. Colleagues, we can and we must do better. Current state resources to address this problem are derived primarily from filing fees and filing fee revenues are in a significant downward spiral. I've asked the page to pass around a handout detailing this issue. Dwindling revenues affect many important programs, including civil legal services. Raising court fees is always contentious. For a variety of reasons, both substantive and strategic, it did not seem like the right time to address that issue this session; thus, LB1089 is a creative solution modeled after successful efforts in other states to allow Nebraska continued progress on expanding access to justice without increasing fees and with zero state fiscal impact. What this legislation does is really twofold. It provides a disposition of residual funds from class action litigation and charitable trusts to the Legal Aid and Services Fund. Both of these actions are accomplished on the cy-pres theory. Cy-pres is a legal term meaning "as near as." It explains an equitable doctrine under which a court may approximate the use of settlement or charitable trust funds or a

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similar charitable endeavor if the original intent cannot be effectuated or to prevent a sheet. This was the same theory that the Legislature utilized last year. During my leadership on an issue to secure \$4 million and the \$8 million received by Nebraska as part of the National Mortgage Settlement, we utilized this theory to provide those funds for affordable housing, homelessness, and the provision of legal services. We did that together and we did that over a gubernatorial veto. This is an evolution of that theory and that action. Let's continue to work together to make a positive difference and ensure more Nebraskans in need can access critical legal services. With that I am happy to answer any questions. [LB1089]

SENATOR LATHROP: Any questions for Senator Conrad? I see none. Crystal clear, Senator, as always. [LB1089]

SENATOR CONRAD: Very good. Well, I would hope so. And just to let the committee know, it's not for lack of concern or attention, but I am triple booked today, so I'm running to two additional hearings this afternoon so. [LB1089]

SENATOR LATHROP: We certainly understand. We'll take good care of your bill while you're gone. [LB1089]

SENATOR CONRAD: Very good. Thank you very much. [LB1089]

SENATOR LATHROP: All right. Thanks, Senator. [LB1089]

SENATOR CONRAD: Appreciate it. [LB1089]

SENATOR LATHROP: The first proponent may step forward to testify. Good afternoon. [LB1089]

DAVE PANTOS: (Exhibit 2) Good afternoon, members of the Judiciary Committee, Senator Lathrop. My name is Dave Pantos, that's P-a-n-t-o-s. I'm the executive director of Legal Aid of Nebraska and I'm speaking in favor of LB1089. I want to thank Senator Conrad for introducing this vitally needed bill. As you may know, Legal Aid of Nebraska is a nonprofit law firm that provides free civil legal services for low-income and poor people in Nebraska. In 2013 we helped over 13,000 people with legal advice and representation in cases involving domestic violence, foreclosures, bankruptcies, elder financial abuse, and other important areas impacting the poor. As Senator Conrad indicated, state and federal funds have been cut that have gone to Legal Aid in the past. As a result, that has prevented Legal Aid from meeting the increasing need for legal services to the poor. For example, the state of Nebraska interest on lawyer trust account fund has fallen from over \$500,000 a year in 2007 to only \$50,000 a year in 2013 and 2014. So as a result, the number of unrepresented or pro se litigants in our state's courts are ever increasing. There is a crisis of access to justice. We think that

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LB1089 helps to reverse this trend by providing for Nebraska a well-established funding mechanism for access to justice. As the senator said, the LB1089 will direct, where appropriate, cy-pres funds for...to the Legal Aid and Services Fund. And so you know, the Legal Aid and Services Fund is not just directly given to Legal Aid or any particular organization. It's managed by the Nebraska Commission on Public Advocacy. They administer these funds through a grant process that's audited so the funds are very well taken care of and so it's a great way to get these funds to legal services programs. And I just wanted to list a few states that are also doing this kind of work, so just to give you a sense that it's not just happening here in Nebraska or on the coasts. South Dakota has a very similar bill or legislation that...similar to Senator Conrad's. Illinois, Indiana, North Carolina, Tennessee, and many other states have taken the similar approach of directing cy-pres funds from either charitable trusts or class actions and directing them to free legal services for the poor. And this bill creates no new fees, establishes no new taxes, but it innovatively helps provide funding for low-income litigants who have nowhere else to turn but Legal Aid. So I strongly urge your support and thank you so much. [LB1089]

SENATOR LATHROP: Thanks, Dave. I see no questions. [LB1089]

DAVE PANTOS: Okay. Thank you. [LB1089]

SENATOR LATHROP: Next proponent of LB1089. [LB1089]

DAVID PIESTER: (Exhibit 3) Good afternoon. Mr. Chairman and members of the committee, my name is David Piester. I'm from Lincoln. I am also the president of the board of directors of Legal Aid of Nebraska. As you know, Legal Aid is a statewide, nonprofit that provides free legal services to indigent people in civil cases. It is governed by a board of 21 directors, 13 of whom are lawyers and retired judges from across the state; 7 members of the board are community members, meaning they represent client-eligible populations; and one member is a community philanthropist who is a liaison with funding organizations. As the president of the board, I can assure this committee that should any funds from LB1089 find their way to Legal Aid of Nebraska, the board will ensure that they are efficiently and effectively spent. The board engages in strategic planning every three years to adopt goals for the coming three years. In that process it solicits input from client groups, staff, other organizations serving poor people, funding sources, and the community at large. The board considers that input and engages in a priority-setting process that ensures that the dollars placed in the hands of Legal Aid are spent in the most effective way possible to further the interests of individual clients and low-income people generally. While it is unknown whether any substantial funds from cy-pres awards or undistributed class action funds may be realized, when there are any such funds they should be channeled in ways to provide equal access to justice on behalf of those otherwise excluded from the judicial system. There is a dire need for this money. As our executive director has related to you,

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funding for Legal Aid is always a challenge and particularly in recent years because, among other things, of the reduction in available IOLTA funds from practicing attorneys in Nebraska. For the past 40 years, legal services programs nationally have striven to achieve a funding level sufficient to provide two attorneys per 10,000 poor people in each service area. In Nebraska there are over 300,000 people living at incomes that would qualify them for Legal Aid services. To adequately serve that client population would require at least 60 attorneys. Legal Aid now has only 36 attorneys providing those services across the entire state, far below that requirement. In contrast, the ratio of private practice attorneys in Nebraska is one attorney per approximately 450 possible clients. Obviously, there is a huge discrepancy. What that means on the ground is that eligible clients who have claims or legal problems outside Legal Aid's priorities must fend for themselves, either representing themselves or finding other ways to make their claims heard. That situation is simply not acceptable in today's society when a lawyer is necessary to have one's position adequately presented. Allowing cy-pres and class action funds to be directed to Legal Aid of Nebraska won't solve the funding crisis by itself, but it is a sound investment in providing low-income people a greater chance to be heard in our justice system and on behalf of Legal Aid I urge your support of LB1089. [LB1089]

SENATOR ASHFORD: I don't see any...thanks, Judge. [LB1089]

DAVID PIESTER: Thank you. [LB1089]

BILL MUELLER: Chairman Ashford and members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association in support of LB1089. We thank Senator Conrad for bringing this bill. The bar strongly supports what this bill would do. By way of background, the civil...the Legal Aid and Services Fund was created in 1997 by the Legislature. It is funded with a court cost that is assessed on cases filed in the state courts of Nebraska. The Commission on Public Advocacy is charged with administering the fund, and again this fund is used for civil legal services of those Nebraskans who qualify. The Commission on Public Advocacy awards grants to about 14 different providers who provide civil legal services. These include the mediation centers in Kearney, in Lincoln, the Creighton Legal Clinic, the University of Nebraska Legal Clinic, the Nebraska State Bar Association. The bar association funds part of our volunteer lawyers program with these monies and this is a program that refers clients to a lawyer and we also fund part of our self-help desks that are in courthouses throughout Nebraska. This committee has heard a lot this year and in past years about the growing number of pro se litigants, litigants who cannot afford a lawyer, and this bill will address that issue. We support it. We think that it is a good funding source. I'd be happy to answer any questions that you may have. [LB1089]

SENATOR ASHFORD: I don't think...I don't see any. Thanks, Bill. [LB1089]

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BILL MUELLER: Thank you. [LB1089]

SENATOR ASHFORD: Any other proponents? Opponents? Neutral? Senator Conrad. [LB1089]

SENATOR CONRAD: Briefly. I want to thank the committee for their attention and careful consideration of this important topic. Just on a personal note, public interest law is a passion for me. It's where I practiced before I joined this prestigious body. I knew I wanted to be a public interest lawyer the...my first day of law school because I recognized the awesome power that those individuals have to help so many people in our society and I'm very privileged to have had the opportunity to serve in that capacity. In full disclosure, as part of, I think, maybe some recognition or a thank-you for my work on these issues last year, I did join the Legal Aid Board of Directors in January 2014. So even though they are one recipient of this fund, you heard very clearly that this is a statewide program that affects many important public interest endeavors that are happening all across our great state. This is truly a win-win. There is no cost to the state. It provides guidance to judges and litigants about how to utilize these funds. It helps us to make some forward progress on access to justice. Thank you. [LB1089]

SENATOR ASHFORD: Good idea. Thanks. [LB1089]

SENATOR CONRAD: Thank you. [LB1089]

SENATOR LATHROP: Great. Thanks. [LB1089]

SENATOR ASHFORD: Okay. LB839, Charlie...Senator Janssen. [LB839]

SENATOR JANSSEN: Thank you, Mr. Chairman and members of the committee. For the record my name is Charlie Janssen, C-h-a-r-l-i-e J-a-n-s-s-e-n. I represent District 15, which includes all of Dodge County, Fremont, and even Snyder, Nebraska. I appear to introduce LB839. LB839 would change from 90 days to one year the effective period for continuing lien and extension of lien relating to garnishments. A constituent from District 15 asked me to introduce a garnishment change proposal. He is with us today so I don't want to steal his thunder, but I believe his experience is helpful as we consider our current garnishment provisions and possible changes of how this has impacted him. I did contact a representative of a group of attorneys who specialize in garnishments through a referral by the Nebraska State Bar Association before finalizing the bill draft. I'd like to thank them for their feedback on the idea of increasing the effective period of the garnishment lien. And I appreciate your time today. [LB839]

SENATOR ASHFORD: Thank you, Senator Janssen. I don't see any questions this very instant. [LB839]

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SENATOR JANSSEN: Thank you. It's the quickest I've ever gotten out of this committee. [LB839]

SENATOR ASHFORD: You're welcome... [LB839]

SENATOR JANSSEN: I'll stick around but I probably won't close. [LB839]

SENATOR ASHFORD: You're welcome to...okay. All right. And the proponents, those for the bill. [LB839]

BRYAN FELT: Hello. My name is Bryan Felt, B-r-y-a-n F-e-l-t. The reason I brought this up is I feel that it is counterproductive to somebody who has won a garnishment when you have to go and keep applying for extensions to have your garnishment fulfilled and costing you money each time. I don't think it represents the public well that we keep forcing somebody who was given the judgment and then has to basically fight to keep it going to get anything out of it. I understand that people don't like having their checks garnished. But if they don't pay their bills, they should have to follow what the court has to say. And being that I won it, I filled out the paper for the...the garnishment paperwork which is good for three months, and then I had to go and fill out a notice of extension for another three months; and then I had to go and fill out an applicant and order of continuation. After all of that you have to turn around and refile for a garnishment again. Doesn't make any sense. The garnishment has already been judged on. Why should I have to go and refile for a garnishment? I don't really have too much else to say. I'm not good at public speaking. And if you have any questions I'd love to answer them. [LB839]

SENATOR ASHFORD: Well, I think you've made your point clearly, so don't worry about that. [LB839]

BRYAN FELT: Okay. [LB839]

SENATOR ASHFORD: Any questions of Bryan? I don't see any, Bryan. I think it's pretty straightforward. Thanks. [LB839]

BRYAN FELT: Okay. Thank you. [LB839]

SENATOR ASHFORD: Anybody else wish to talk about...for LB839? Opposed? Neutral? All right. Moving right along to Senator Schumacher. Senator Schumacher is next to LB988. [LB839]

SENATOR MCGILL: That probably went quicker than he was expecting. [LB988]

SENATOR ASHFORD: Probably. It was a bit quicker so. How many testifiers do we have for Senator Schumacher's bill? A couple. And then Senator Schilz's bill, how about

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that? A couple. Okay. I'll bet he's at Revenue, Revenue Committee. That's my guess so. [LB988]

SENATOR LATHROP: He could be stopped at Senator Nordquist's. [LB988]

SENATOR ASHFORD: Yeah. Do you want to stop down and see if you can find him in Revenue? Oh, my gracious. [LB988]

SENATOR SCHUMACHER: (Laugh) Look what the wind blew in. [LB988]

SENATOR MCGILL: Yay. [LB988]

SENATOR ASHFORD: Everything...every kind of...you know, the whole...the air went out of the room. Everybody was kind of relaxed and so... [LB988]

SENATOR SCHUMACHER: Thanks for the update. [LB988]

SENATOR ASHFORD: Yeah, you bet. No, we will have time, actually, so. [LB988]

SENATOR COASH: We'll see. [LB988]

SENATOR ASHFORD: Okay. Go ahead, Paul. We're going to introduce LB988. [LB988]

SENATOR SCHUMACHER: Senator Ashford, members of the Judiciary Committee, my name is Paul Schumacher, S-c-h-u-m-a-c-h-e-r. I represent District 22 in the Legislature. I'm here today to introduce LB988 which was brought at the behest of the Nebraska Bar Association. As some of you know, and who are lawyers, at least, that when somebody passes away, if they have property that's not in a trust or in a joint tenancy, they have got to tell the court whether they have a will or not. And oftentimes the lawyer or the heirs figures that they have a will and that it's probably in the safe deposit box. And the law requires, at least prefers but most likely requires in most cases, the original of the will. And so you've got to get into the safe deposit box, but the only signature on the safe deposit box is six foot under, so that doesn't work very well. So in most cases, certainly it's been my experience, that you go to the judge with an application, you say, hey, Judge, we think so and so is the personal representative and we think the will is in the safe deposit box at XYZ bank, would you sign a paper creating a special administrator so that it basically says that so and so has got the authority to take the safety deposit box key and check through the safe deposit box. And in most communities, that's a fairly simple, easy procedure. The judge says yes, the banker says yes, and life goes on. But as is the case in all of life, there are times when things do not work as slick and when people have different readings of what should be done or what they're required to do. And apparently in some areas the banks and lawyers don't see eye to eye as to whether or not that procedure is adequate enough. So this

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particular bill was drafted in order to set out a specific procedure that everybody who is uncomfortable with the present procedure can feel comfortable with and get into the safe deposit box that's...where the bill is...where the will is thought to be and, if the will is there, bring out the will and present it to the court. That's the long and the short of it. The...I understand the folks from the bar association are here to testify about the details and how they arrived at the wisdom of the particular procedures in this bill. I'd be happy to take any questions. [LB988]

SENATOR ASHFORD: It is a whole new procedure, isn't it? [LB988]

SENATOR SCHUMACHER: Yeah, it, quite frankly, it seems to be very complicated to accomplish a very simple thing. But apparently what's simple is not working in all cases. [LB988]

SENATOR ASHFORD: Yeah. [LB988]

SENATOR LATHROP: Can I ask just one question? [LB988]

SENATOR ASHFORD: Yes. [LB988]

SENATOR LATHROP: Paul, and I was trying to read this as you were introducing it, but if a family member comes in and says, Mom died, she's got a safety deposit box, we're wondering if she's got a will, so does the bank custodian or the person that works at the bank go...after I fill out the affidavit and say I'm one of the sons, does somebody go with that person to the safe deposit box to make sure they don't take the will that excludes them out and destroys it? [LB988]

SENATOR SCHUMACHER: You watched J.R. Ewing, too, also, on... [LB988]

SENATOR LATHROP: I didn't know they did that on Dallas. [LB988]

SENATOR SCHUMACHER: Well, I think they changed the pages in the will there. [LB988]

SENATOR LATHROP: But I am generally suspicious. So is there some safeguard so the person doesn't go in and clean out the safe deposit box? [LB988]

SENATOR SCHUMACHER: Under the present thing or under the bill? [LB988]

SENATOR LATHROP: Under the bill. [LB988]

SENATOR SCHUMACHER: Let's see. I think there's something in... [LB988]

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SENATOR LATHROP: Somebody behind you is nodding yes so perhaps they'll address that. [LB988]

SENATOR SCHUMACHER: Okay, well, then I'll let them explain it rather than find it here myself. [LB988]

SENATOR LATHROP: It just seems to me that they...nobody should be taking anything out of there, they ought to be looking. [LB988]

SENATOR SCHUMACHER: They shouldn't be digging out the diamond earrings and the gold bars either. [LB988]

SENATOR LATHROP: Exactly. [LB988]

SENATOR SCHUMACHER: So...okay. [LB988]

SENATOR LATHROP: Okay. Thanks, Paul. [LB988]

SENATOR SEILER: I will tell you, that's the normal practice. [LB988]

SENATOR LATHROP: That they go with them? Okay. [LB988]

SENATOR ASHFORD: Very good. Thanks, Paul. [LB988]

SENATOR SCHUMACHER: Thank you, and I'll waive closing. [LB988]

SENATOR ASHFORD: Okay. First proponent, first person for the bill. [LB988]

SENATOR LATHROP: Good afternoon. [LB988]

ANDREW LOUDON: Good afternoon. Mr. Chairman, Senators on the Judiciary Committee, my name is Andrew Loudon, 1248 "O" Street, Suite 600, here in Lincoln. I am an attorney with the Baylor Evnen law firm where I specialize, like Senator Seiler, in trusts and estates work and appear on behalf of you as a member of the Nebraska State Bar Association's real estate, probate, and trust law section, which did request that this bill be drafted and is before you for consideration. As the senator said, we have an issue and to give you some historical context, this is really a post-9/11 issue. Before...and lots of things changed after 9/11 and this is one small little thing that changed that impacts attorneys and estates in Nebraska. Prior to 9/11 it was pretty common practice that if you simply had a key to a safe deposit box after somebody died, that would in most instances be enough, and that is just absolutely not the case anymore because many terrorists laundered money through safe deposit boxes. So there are portions of the Patriot Act which specifically direct that safe deposit boxes

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cannot be opened by anyone unless they are the owner or somebody who in the presence of a bank officer has presented their identification and signed on the dotted line during the owner's lifetime. So what has happened is, especially in our larger communities and especially when dealing with national banks, it is very difficult to next to impossible to access an original will out of a safe deposit box after someone has died because in many instances these were purchased prior to the change in the federal laws and maybe 20 years ago grandma had the safe deposit box and given a key to somebody and she thought that would be enough. So oftentimes, especially in Omaha and Lincoln, we are having to go to court to...it's a pure Catch-22. The bank won't let us in unless we're appointed as the personal representative or the executor, but in Nebraska, in order to informally be appointed as a personal representative or an executor, you have to have the original document to take to the court or else you have to go through a formal process which is more expensive for the individuals. So it's...it has delayed a lot of the state administration and, therefore, this bill, I believe, will address that but also has the safeguards that Senator Lathrop was wondering about. And you'll see that it provides for an affidavit that's signed by an interested person, which would be presented to a bank, the custodian or a bank officer, and then in the presence of that bank officer the contents of the safe deposit box would be inventoried; and if the original will is found, a copy would be made. It would remain with the bank. There would be a copy for the interested individual and then, most importantly, the bank itself would hand-deliver or by certified mail send that original will to the court with jurisdiction over the probate. So we're not handing over a will to the person who is asking for it but we're getting it to the court, which is...which may sound complicated but I think will actually act...will actually be a pretty simple procedure. So I will tell you that this is not a big issue in greater Nebraska because everybody knows the child who comes in and has known them for 20 or 30 years and maybe questions aren't asked. But especially in the metro area and in Omaha, banks are not letting anybody in safe deposit boxes. [LB988]

SENATOR LATHROP: Okay. Any questions? I do have one as I look at the bill. [LB988]

ANDREW LOUDON: Um-hum. [LB988]

SENATOR LATHROP: I'm doing kind of a quick read, but on page 3: If a person described in (2)(a) desires access to the safety deposit box but does not possess a key to the box, the custodian at the bank may open the safe deposit box by any means necessary at the person's request and expense or the custodian may require the person to obtain a court order for the custodian to open the safe. What's the point in the bill if we give the bank the option to require the court order again? [LB988]

ANDREW LOUDON: This is in the instance when the person who is presenting the affidavit does not have a key, which means that the bank would have to drill the box open because they don't have a physical means to open the safe deposit box. So in that

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instance there's going to be some expense. And maybe if the person presenting doesn't have a key it rises or it would raise some suspicion in the mind of the custodian. So this provision is saying, first, we're going to charge the person, because it costs money to hire somebody to drill a box, we're going to charge the person requesting; and then unlike a person who presents with the affidavit and the key, they don't have to automatically do the examination. The bank can request that a court get involved at that point. And I think the purpose of that is twofold: one, to make sure that someone else is paying for it and then not the bank; and second, if the person does not have a key, then giving the bank the option to make that person go to court and do, in essence, what we're doing now. [LB988]

SENATOR LATHROP: So the...or the custodian may require the person to obtain a court order. [LB988]

ANDREW LOUDON: Right. [LB988]

SENATOR LATHROP: Do you think that only applies in the event there's no key? [LB988]

ANDREW LOUDON: Yes, sir. [LB988]

SENATOR LATHROP: Got you. Okay. I think that's all the questions there are. The guy who does this work has no questions so. [LB988]

ANDREW LOUDON: He's also my former boss so. (Laughter) [LB988]

SENATOR MCGILL: That's right, that's right. [LB988]

ANDREW LOUDON: I was waiting for one so. Good to see you, boss. [LB988]

SENATOR LATHROP: Thank you for coming down today, Andrew. [LB988]

ANDREW LOUDON: Yep. You bet. [LB988]

ROBERT HALLSTROM: Senator Lathrop, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist for the Nebraska Bankers Association in support of LB988. The bar association was gracious enough to share their draft early this summer and fall with the bankers, so we have had an opportunity to vet the bill thoroughly and have no objections and support the bill and would be happy to address any questions of the committee. [LB988]

SENATOR LATHROP: I see none. [LB988]

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ROBERT HALLSTROM: Thank you. [LB988]

SENATOR LATHROP: Must be clear. Thanks, Bob. Next proponent. Seeing no one here left as a proponent, anyone here in opposition to the bill? Is there anyone here in a neutral capacity to testify? No one? No opponents? No neutral testimony? That will close our hearing. Did Paul leave? Okay. I guess he's not here to watch us so that will close our hearing on LB988 and bring us to LB1044 and Senator Schilz. You don't look anything like Senator Schilz. [LB988]

MELISSA HILTY: Sorry. It's me again (inaudible) for Senator McGill. It's me again. [LB1044]

SENATOR MCGILL: Yes. [LB1044]

MELISSA HILTY: Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Melissa Hilty, M-e-l-i-s-s-a H-i-l-t-y. I am Senator Schilz's legislative aide. He's actually speaking at the Cornhusker right now, so you guys went really fast. So I'm here to introduce LB1044 on behalf of one of our constituents from West Central Development District. State statute currently requires that mobile homes have a title. When communities are working code enforcement on nuisance properties that involve dilapidated and vacant mobile homes, the owner and title may not be available when the governing body, per local ordinance, moves forward with the abatement of the property. A titled vehicle may be towed as an abatement action to an impound lot. The VIN is researched and all parties are properly notified. If the vehicle is unclaimed after 30 days, another notice is sent stating that the vehicle will be deemed abandoned after an additional five days if it is not claimed. Mobile homes pose a problem in that it is not practical to tow the mobile home to an impound lot pursuant to the municipal ordinance and then wait 30 days for it to be considered abandoned and then move the mobile home again to a landfill or a recycling center. LB1044 allows the mobile home to be considered abandoned in place after the 30-day period as stated in 60-1903 and then after all proper notifications have been made. State statute 76-14,109 allows the same 30-day abandonment in place for landlords. Also, LB1044 provides a way to clear the title since the community could not receive an abandoned vehicle title and then surrender it to the county when the mobile home has been properly disposed. Other sections of current statutes only pertain to an owner surrendering the title. It was recently brought to Senator Schilz's attention that there may be an issue with the definition of "manufactured home," and he is willing to work with the committee and interested parties to make any appropriate changes. Thank you for your consideration of LB1044 and I'll be happy to try to answer any questions. [LB1044]

SENATOR LATHROP: Thanks, Melissa. [LB1044]

MELISSA HILTY: Um-hum. [LB1044]

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SENATOR LATHROP: I see no questions for you today. [LB1044]

MELISSA HILTY: Thanks. [LB1044]

SENATOR LATHROP: First proponent of LB1044. [LB1044]

KARL ELMSHAEUSER: (Exhibit 4) Good afternoon, Judiciary Committee members. [LB1044]

SENATOR LATHROP: Good afternoon. [LB1044]

KARL ELMSHAEUSER: My name is Karl Elmshaeuser, K-a-r-l E-l-m-s-h-a-e-u-s-e-r. I'm the executive director for the West Central Nebraska Development District. There is a letter being passed around. It's a letter of support also from the Nebraska Regional Officials Council. It's a coalition of the Nebraska development districts. The issue for mobile homes, it's not...it's about the title--a mobile home has a title--and how do you clear the title. So even if abatement action has occurred and the mobile home has been removed as a result of abatement action, there is no way to currently then dispose of the title or obtain the title to clear it. What we're asking for in this particular bill is a method then in order for the mobile home to be deemed abandoned that would allow the village or municipality then to get an abandoned vehicle title and then clear the title with the clerk's office and the treasurer's and the assessor's office to then...if the mobile home was...during the abatement was demolished, then there would be a crush or a disposal certificate that would go with the abandoned vehicle title and it would clear it from the books. So in my mind the only issue here is trying to clear the title of the mobile home. [LB1044]

SENATOR LATHROP: Very good. Any questions? I do have a question. And when the bill was introduced, Melissa said that after proper notice has been given to everybody. Do you know what that looks like... [LB1044]

KARL ELMSHAEUSER: Correct. Under a... [LB1044]

SENATOR LATHROP: ...because I don't see this bill addressing that. It does say... [LB1044]

KARL ELMSHAEUSER: Correct. Under...when it references... [LB1044]

SENATOR LATHROP: ...last registered owners but... [LB1044]

KARL ELMSHAEUSER: I'm sorry, sir. Under 60-1903, when you would tow a vehicle, once the vehicle is towed from the private property, then the VIN number is researched

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and then any...the actual property owner of that vehicle would need to be notified because you could have a case where you have a tenant renting the property and they use the...they were going to fix their friend's car and now the car, because he hasn't been notified, has been impounded as a result of the nuisance, the VIN number is then researched so that the owner can be properly notified, as well as any... [LB1044]

SENATOR LATHROP: And that's all mandated by the section that we can't see or don't see. [LB1044]

KARL ELM SHA EUSER: Correct, number 60-19...correct. [LB1044]

SENATOR LATHROP: Okay. Very good. I see no other questions. Thanks, Karl. [LB1044]

KARL ELM SHA EUSER: Thank you for your time. [LB1044]

JOE KOHOUT: (Exhibit 5) Vice Chairman Lathrop, members of the Judiciary Committee, my name is Joe Kohout, K-o-h-o-u-t. I appear today on behalf of our client, the Metropolitan Area Planning Agency, or MAPA. I'm presenting a letter to the committee that details the support of the...of MAPA, signed by our executive director, Greg Youell. Mr. Elmshaeuser detailed the nature of that support, and so I would try to stand and answer any questions that you might have at this time. [LB1044]

SENATOR LATHROP: I don't see any, Joe. [LB1044]

JOE KOHOUT: Thank you. [LB1044]

SENATOR LATHROP: Thanks for your testimony. Anyone else here as a proponent for LB1044? Seeing none, we'll move to opponents. Anyone here to testify as an opponent? Seeing none, we'll go to neutral testimony. [LB1044]

ROBERT HALLSTROM: Vice Chairman Lathrop, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m, and I appear before you today as registered lobbyist for the Nebraska Bankers Association in a neutral capacity on LB1044. As we have indicated to Senator Schilz, we have some technical concerns with respect to the bill. And without getting too technical in that regard, what it relates to is the bill defines "manufactured home," as well as "mobile home." A number of years ago, traditionally, mobile homes and manufactured homes have been subject to certificate of title requirements and there was a Supreme Court case that indicated that the lien notation was the only way to perfect a lien against a manufactured or mobile home. As a result, the provisions of Section 60-169 of the Nebraska Statutes were adopted to provide an alternative mechanism by which a manufactured home or mobile home can be converted to real estate, since they are traditionally affixed to the real estate and we

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have an affidavit of a fixture process and an affidavit of detachment to undo that process, and I think all of those issues need to be taken into consideration from a technical perspective before we have abandoned motor...mobile homes or manufactured homes and the process that is set up under LB1044. And again, we would be more than happy to work with Senator Schilz in trying to address any technical changes that need to be made to the bill. [LB1044]

SENATOR LATHROP: Bob, are you satisfied that the banks that would loan money against one of these homes would be getting notice in the event it were abandoned in the process that's apparently under a different section? [LB1044]

ROBERT HALLSTROM: Under I think 60...yeah, 60-1903 provides for specific notice, I believe, to be given to the owners and the lienholders. I will double check that, but most of the abandoned property statutes we have tried to make sure that both lienholders and registered owners have notice. [LB1044]

SENATOR LATHROP: Very good. I see no other questions. Thanks for your testimony. [LB1044]

ROBERT HALLSTROM: Thank you. [LB1044]

SENATOR LATHROP: Anyone else here on...to testify in a neutral capacity on LB1044? Seeing none, Senator Schilz's office will waive a close, and that will take us to our last bill of the day and Senator Brasch who is making another appearance here. Welcome to Judiciary Committee. [LB1044]

SENATOR BRASCH: (Exhibit 6) Thank you. Thank you, Chairman Lathrop, and good afternoon, members of the Judiciary Committee. My name is Lydia Brasch, L-y-d-i-a B-r-a-s-c-h, and I represent the 16th District in the Nebraska Legislature. I introduced LB964 at the request of attorneys who practice bankruptcy law in Nebraska. One of the biggest issues these attorneys have encountered is that the bankruptcy exemptions in Nebraska are outdated. Section 25-1556 of Nebraska's statutes was last revised in 1997 and almost 20 years later we look to revise it again with LB962. LB962 is simple in its scope. It increases the "household items" exemption from \$1,500 to \$3,000 and the tools of the trade exemption from \$2,400 to \$5,000. The household items exemption includes household furnishings and goods, computers, books, musical instruments, and other similar items. The tools of the trade exemption applies to items used in the debtor's principal trade or business. Initially, the bill removed a debtor's interest in a motor vehicle from the tools of the trade exemption and created a separate category for an interest of up to \$5,000 in a vehicle, regardless of intended use. However, I have submitted AM1983 which reverses this provision of LB962 and keeps vehicles in the tools of the trade exemption. Because the tools of the trade exemption is increased, a debtor will potentially be able to claim more of an interest in his or her car,

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assuring...assuming that it is still considered a tool of the trade. For a vehicle to be a tool of the trade it must be used in conducting one's principal business...principal trade or business. Generally, it is sufficient for a debtor to use the car to get to and from work, but the protection does not apply for those who are unemployed, retired, or work as a stay-at-home parent. As with LB964, which was heard before this committee on February 7, LB962 will have no fiscal impact and it has no effect on taxation. The effect of changes are really quite simple. They allow debtors to keep more household items and furnishings, as well as those items they must have to continue their job or carry out their trade. The exemptions under 25-1556 at 17 years old are outdated and have not even kept up with the rate of inflation, \$1,500 in 1997 adjusted for inflation equalling approximately \$2,200 today. Seven hundred extra dollars may not seem like much to a group of creditors, but it may allow the debtor to keep a few more home furnishings when he or she must start anew. Bankruptcy attorneys who will follow me in testimony today will be able to answer questions about the details of these increased exemptions. I have also received words of support from those who represent the interest of the creditors, assuming that AM1983 becomes effective; therefore, it is evident that debtors and creditors alike support the idea of increasing bankruptcy exemptions addressed in LB962. Accordingly, I urge you to pass LB962 out of committee and through to General File. Thank you for your time and consideration. [LB962]

SENATOR LATHROP: Thank you, Senator Brasch. Any questions for Senator Brasch? I see none. Are you going to stay to close, Senator? [LB962]

SENATOR BRASCH: I will be available but may not need to. [LB962]

SENATOR LATHROP: Okay. We'll see if it's necessary. [LB962]

SENATOR BRASCH: Thank you. [LB962]

SENATOR LATHROP: Terrific. First proponent of LB962, please. [LB962]

GREGG NEUHAUS: Good afternoon. [LB962]

SENATOR LATHROP: Good afternoon. [LB962]

GREGG NEUHAUS: Senator Lathrop, members of committee, my name is Gregg Neuhaus, G-r-e-g-g N-e-u-h-a-u-s. I'm here in support of LB962. I was more excited about it before the amendment because it would create a new exempt status for people who are unemployed for some reason or another. But as it exists with the amendment, it is a catchup. It gets us up to where we should be. I wish there was an inflation provision within the statute, but that's impossible, I suppose. So it catches us up and it still leaves us well behind many, many states in the country as far as what we do allow to be exempted from collection. So I'm in favor. Thank you. [LB962]

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SENATOR LATHROP: Okay, good. I don't see any questions. Thanks, Gregg. I appreciate your testimony... [LB962]

GREGG NEUHAUS: Thank you. [LB962]

SENATOR LATHROP: ...and for you taking the time to come down here and... [LB962]

BRAD EASLAND: (Exhibit 7) Good afternoon. My name is Brad Easland, E-a-s-l-a-n-d, and I'm an attorney in Norfolk with Morland, Easland and Lohrberg. I've been practicing law for 17 years and about 40 percent of my practice is bankruptcy law, so I'm well familiar with these exemptions. It is my opinion that these changes are necessary. They have not been increased, as was said, for 17 years so it's certainly time to look at an increase. I was...I just found out today that an amendment was going to be regarding the motor vehicle. It would be my opinion that a motor vehicle ought to be exempt without any qualifications. You leave out a large segment of the population if you don't do that, for example, a retired person or a person that's disabled. And the fact of life in rural Nebraska, and particularly in my area, is you have to have a vehicle to live, just to get to the doctor or go get groceries. There's not public transportation, per se. And so perhaps that will be something that will be brought up next year. But the information I passed out looks at the different exemptions in the states that surround Nebraska. So for example, federal government has an exemption, it's \$3,675 on a vehicle; Iowa is \$7,000; Missouri, \$3,000; Kansas is \$20,000; Colorado, \$5,000; Wyoming is \$2,400; and South Dakota is \$6,000. And all of those, with the exception of Kansas, allow a motor vehicle to be exempt with no qualification that it be to drive to work. It's just you get exemption, period. Also, Colorado's exemption increases to \$10,000 if you're above 60 years old or are disabled, whereas in Nebraska essentially there is no exemption for a motor vehicle if you're retired or disabled because the qualification has been put on there that it has to be used for work. In any event, I would support the bill that the increases be made. They're well overdue and I support passage of the bill. [LB962]

SENATOR LATHROP: Very good. Any questions for Brad? I see none. [LB962]

BRAD EASLAND: Thank you. [LB962]

SENATOR LATHROP: Thanks for coming all the way down from Norfolk. Anyone else here to testify in favor of LB962? Anyone here opposed to LB962? Anyone here in a neutral capacity? [LB962]

SARA BAUER: Good afternoon. [LB962]

SENATOR LATHROP: Good afternoon. [LB962]

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SARA BAUER: My name is Sara Bauer, S-a-r-a B-a-u-e-r. I'm a creditor's attorney. I'm here today mostly in my personal capacity but I do work in creditor's rights. And I do take a neutral position today on this bill. But I do want the committee to remain mindful for LB962 is also when you come into consideration, which has not been yet said, for LB963. I think that these are good catchup provisions for the specific exemptions for consumers. But as a creditor's rights attorney, this bill also will practically be impacted by the passage at some point or the discussion for the LB963 that's not before the court...before the committee today. So I'm here in neutral. I do think it is a good catchup. But the overall exemptions for Nebraska need to be more specific as a whole, and so I'm...that's why I'm taking a neutral position today. Thank you. [LB962]

SENATOR LATHROP: And you think this does a...goes some distance towards making the exemptions more specific? [LB962]

SARA BAUER: Yes. I think it will help consumers particularly. I don't do as much bankruptcy work anymore, but I do, do...I do a lot of regular commercial retail collections in state courts throughout the state. I've been in practice almost 17 years now. Currently I'm with Gurstel Chargo out of Omaha. I was previously with Brumbaugh and Quandahl. So while this provision specifically provides for the increase for the motor vehicles for tool of trade, I actually thought the regular motor vehicle and the personal capacity was also a good provision prior to the amendment. But it gives people more guidance. Household furnishings aren't generally \$1,000. I think everybody would agree with that. But when you look into LB963 that's...I apologize if I'm breaking form. [LB962]

SENATOR LATHROP: No, not at all. [LB962]

SARA BAUER: That's going to become for the overall catchall provisions on the exemptions which often entails cash and other collateral that's not accepted, and you're looking to increase that to a period of \$5,000. That to me becomes more questionable when you are increasing these exemptions because these are specific. They give consumers expectations of what to protect when they're going through a bankruptcy or going through difficult times. [LB962]

SENATOR LATHROP: Okay. I don't see any questions. [LB962]

SARA BAUER: Thank you. [LB962]

SENATOR LATHROP: Thank you for your testimony. Anyone else here in a neutral capacity? Seeing none, Senator Brasch waives close and that will wrap up our hearings for the day. Thanks, everyone, for...(See also Exhibit 8.) [LB962]