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Transcriber's Office

Judiciary Committee
February 18, 2015

[LB113 LB425 LB426 LB545]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, February 18, 2015, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB113, LB425, LB426, and LB545. Senators present: Les Seiler, Chairperson; Colby Coash, Vice Chairperson; Ernie Chambers; Laura Ebke; Bob Krist; Adam Morfeld; Patty Pansing Brooks; and Matt Williams. Senators absent: None.

SENATOR SEILER: (Recorder malfunction)...and welcome to the Judiciary Committee. I'm Les Seiler from Hastings, Nebraska, and I'm Chairman. On my far right is Matt Williams from Gothenburg. Next is Adam Morfeld from Lincoln. Senator Bob Krist will be here but he's a little late. Senator Chambers will be here shortly. Legal counsel is Diane Amdor. My clerk, on this side, is Oliver VanDervoort; Senator Laura Ebke from Crete; and Senator Pansing Brooks--got it right--from Lincoln, Nebraska. Senator Coash, I haven't heard whether he's joining us today or not. If you're going to testify, pick up one of the sheets, fill it out, and hand it to the clerk...the page when you come up. Our pages are Drew and Jonathan and they'll be working with us today, and they'll hand out your materials for you if you have any extra materials you want to hand out. The...I will ask the speakers to pull their chairs up close to the mike. We left them sit back a little bit the other day and the transcription does not come across well. So you got to be up close, not for amplification but for the transcribers. Silence your cell phones. I will do the same. Senator Tyson Larson, you're ready to introduce LB113. [LB113]

SENATOR LARSON: (Exhibit 1) Thank you, Senator Seiler and members of the Judiciary Committee. Good afternoon. I am Senator Tyson Larson, T-y-s-o-n L-a-r-s-o-n, and I am here today to introduce LB113. LB113 creates an inmate copay program. An inmate who is housed in either a county jail or a state correctional facility may be charged a \$10 copay for every nonemergency, self-initiated visit to a healthcare provider. The \$10 copay will be deducted from any existing balance in the inmate's personal account. An inmate will not be denied healthcare if he or she does not have the sufficient funds available to pay the copy. However, this bill does require that 50 percent of funds deposited into the inmate's account are to be withheld until the copay is paid in full. LB113 makes several exceptions for situations where inmates would not have to make the copay. Inmates would not have to pay \$10 for any kind of emergency care, any kind of mental health or substance abuse treatment, and in any situation of staff-initiated care or for any treatment of chronic illness, among other exceptions. I would also like to offer AM276 for the committee's consideration to include treatment for injuries covered under the Nebraska Workers' Compensation Act to the list of exceptions in this bill. The idea for this bill was brought to me by a county sheriff in my district. He explained to me how expensive it is for counties to provide medical services to inmates housed in county jails. He said it is especially frustrating when inmates abuse the medical services available, offered to them. Often, inmates who are bored will use a trip to the doctor to fill time, even if there is nothing medically wrong

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with the inmate. The sheriff also mentioned that inmates will visit the doctor thinking it will help them get out of jail early. It is these kinds of unnecessary healthcare visits that this bill is attempting to deter. In the 2012 fiscal year, Nebraska spent nearly \$19.1 million on inmate medical care. There was an average daily inmate population of 4,600 inmates housed in the state's correctional facilities. When you do the math, that means the state spent about \$11 per day to provide medical care to its entire inmate population. Additionally, with an aging inmate population, the cost of inmate medical care will undoubtedly increase. Counties also spent significant amounts of money each year to provide medical services to their inmates. Douglas County alone spent \$41 million on inmate medical care throughout the 2010 and 2011 fiscal year. Lancaster County spent over \$2 million on inmate medical services, while Sarpy and Madison Counties spent well over \$55,000. This bill gives the option to help relieve the state and counties of part of their growing expenses related to inmate medical care. At least 38 other states and the federal government have seen the benefits of instituting an inmate copay program. In 2000, the federal government passed the Federal Prisoner Health Care Copayment Act, and inmates housed in the federal correctional facilities are charged a \$2 copay for self-initiated, nonemergency medical care. Nebraska's neighbors, including Iowa, Kansas, South Dakota, and Colorado, have inmate copayment programs. Right now, 3 of the 38 states with copayment programs charge a \$10 copay with most states charging anywhere between \$5 and \$10. Texas requires inmates to pay \$100 per year for medical services. In 2005, Kansas made \$269,000 from charging inmates a \$2 copay. Florida's correctional facilities brought in over \$480,000 with a \$5 copay. Florida's correctional facilities brought in over...additionally, in states that have instituted a copay program, the abuse and the number of sick-call visits made by inmates were reduced as much as 76 percent. You will likely hear opposition testimony today that will bring up the constitutionality of this bill. This bill is constitutionally sound. Federal courts have consistently held that charging inmates for medical care is constitutional and that any deterrent effect created by these programs did not violate the Eighth Amendment or the Fourteenth Amendment due process clause. In 2012, the Department of Justice issued a letter to the Piedmont Regional Jail in Virginia, commenting on the inmate copay program. The Department of Justice stated that copayment policies can rise to the level of a constitutional violation only when prisoners are denied access to necessary healthcare due to their inability to pay. LB113 and the laws found in 38 other states and the federal inmate copayment statute do not deny inmates access to healthcare due to their inability to pay. In fact, this bill ensures that they receive that care and are not unduly punished in situations where medical care is necessary. LB113 extends to Nebraska the same advantages given to other states who have initiated this type of program. In a world of rising healthcare costs, this bill can give at least some assistance to the state and counties that are providing expensive medical services to inmates. If you or I were to go to the doctor right now, it would be difficult to walk out of the doctor's door without paying something out of pocket. It makes sense to require inmates who can afford to pay some of their medical costs to do so, as well. Thank you, and I'd be happy to answer any questions from the committee. [LB113]

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SENATOR SEILER: I have one. This is a takeoff of LB246. Is that correct? [LB113]

SENATOR LARSON: From two years ago, yes. [LB113]

SENATOR SEILER: Yeah, and... [LB113]

SENATOR LARSON: It stalled 4-4 in this committee, I think. [LB113]

SENATOR SEILER: And you've made some changes? [LB113]

SENATOR LARSON: Yeah, I... [LB113]

SENATOR SEILER: Could you just briefly give us a description of the changes? [LB113]

SENATOR LARSON: The change that was off of LB246, my understanding is it used to say that counties and states shall do the inmate copayment program, and LB113, we...and from conversations of LB246, we changed it to "may." So the state or a county doesn't have to institute the inmate copay program. If they choose not to, they would have that option. So, you know, the state of Nebraska might not do it, but Holt County or Cedar County could if they wanted to. So...and then... [LB113]

SENATOR SEILER: So that's up to the discretion of the county board then? [LB113]

SENATOR LARSON: It would be up to the discretion of the county board and, obviously, the state if they wanted to implement that in their correctional facilities. [LB113]

SENATOR SEILER: Any other changes? [LB113]

SENATOR LARSON: The amendment that I offered that focuses on the Nebraska Workers' Compensation Act,... [LB113]

SENATOR SEILER: Okay. [LB113]

SENATOR LARSON: ...just to try to clarify that language. But that was the main...the main change was just "shall" to "may," which was an amendment offered two years ago, like I said, when this...when it got hung up in this committee 4-4. [LB113]

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SENATOR SEILER: Okay, any other questions? Yes, Senator Pansing Brooks. [LB113]

SENATOR PANSING BROOKS: Thank you, Senator Seiler. Okay, I was just wondering...thank you for your testimony on this and bringing it forward. I'm interested in the fiscal note. Did you see the fiscal note? [LB113]

SENATOR LARSON: Yeah, I looked at the fiscal note. And obviously, the Nebraska Department of Correctional Services said that they probably wouldn't even implement the program, which under this bill that would be their prerogative. Little, you know, fiscal notes are things that confuse a lot of us at times, the...especially judging by, you know, Kansas, when Kansas raised \$269,000 from a \$2 copay; and Florida, I'm sure, has a few more inmates and they raised \$480,000 from a \$5 copay. But our fiscal note, I don't have it right in front of me, I think was \$60,000 or \$70,000 or... [LB113]

SENATOR PANSING BROOKS: Exceed the...it says that the additional costs would equal or exceed the estimated \$47,000-\$50,000. [LB113]

SENATOR LARSON: Yeah, so...well, yeah, \$47,000 or (inaudible)...so I'm a little surprised...oh, here's...I'm a little surprised that they didn't...that that fiscal note was so low. But since we have that opportunity, the...they don't have to do it, you know, no...the state wouldn't have to do it if they didn't want. But Holt County or Cedar County or any, you know, anybody that want...any county that wanted to do it could. But, yeah, I did see that fiscal note, thought it was a little low, especially concerning what we've seen in other states--Kansas, \$269,000 from a \$2 copay. I'm guessing we could...the state facilities could probably hit that number as well. But I'm sure the Department of Corrections had their reasons for such a low copay. [LB113]

SENATOR PANSING BROOKS: Okay, and then the Nebraska Association of County Officials' note also said that potential revenues to a county provided pursuant to the legislation would possibly be offset by the expenses required for administration of setting up and managing the copay. [LB113]

SENATOR LARSON: Yeah, again, it would be up to each county. I can tell you that Holt County would do it. I don't think they'd need to hire two extra FTEs to implement this program in Holt County. You know, rural Nebraska is pretty efficient and frugal with their staff. So I think it...you know, it would make a...it would be a benefit to Holt County. It might not necessarily be a benefit to Lancaster or Douglas, but that would be up to them to decide. By no means am I...we hear a lot about mandates. By no means am I mandating that any county or the state has to do this. This is just a tool in the toolbox that they could possibly use to deter. And as I said in my opening, states that have implemented this have seen a 76 percent decrease in what they call

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frivolous attempts to go receive medical care, which...and maybe that's part of the reason that, you know, the counties aren't taking into account, you know, that that copay might not...you could say, well, it would only raise them \$1,000, let's say, one year, but that's not necessarily, you know, the ancillary cost of...you know, a prisoner might say, well, I don't want to spend my money on that copay because I want to use it at the canteen or something else. So it's saving the county a \$200 doctor visit. But that...they don't...they're not counting that. So there's other issues and...but I'm by no means mandating. I'm just giving them the option to use it if they want. And if it doesn't work out, I'm sure they could reverse that decision, but it's an option. [LB113]

SENATOR PANSING BROOKS: Okay. I was also wondering, Senator Larson, about how you came up with the \$10 copay. Is that just because most copays are \$10 or how did... [LB113]

SENATOR LARSON: Yeah. We looked at other states across the country and, as I said, most of the copays around the country are between \$5 and \$10. The federal government's is \$2. I'm open to working with the committee if they would prefer to see it be lower, but I just...looking around the country, that was kind of...that \$5-\$10 range was where a majority of the 38 states were. [LB113]

SENATOR PANSING BROOKS: Because I guess sometimes inmates pay...work and use their money to help pay restitution, correct? So that would necessarily be interfering with restitution to victims and to people that... [LB113]

SENATOR LARSON: At times, they do use some of their money to pay restitution, you know. [LB113]

SENATOR PANSING BROOKS: Okay. [LB113]

SENATOR LARSON: We use...and I think...I mean we use our money in the outside world to do many things, as well, and we budget and we pay for the health insurance and copays and everything else and, you know. And I think again the key is, is if they don't have the money, we...and they'll still get the care, even for the nonemergency. Now if money is transferred into their account, which happens many times, the state isn't even taking all of that transfer. They're taking, you know, half of it up until that \$10 or that copay was paid. So they don't even...you know, if only \$10 was put into their account to use at the canteen, then the state would only take \$5 of it and say, well, next time money is transferred in, we'll take another \$5. But they'd still get to keep, you know, the other \$5. [LB113]

SENATOR PANSING BROOKS: Okay. [LB113]

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SENATOR LARSON: Thank you. [LB113]

SENATOR PANSING BROOKS: Thank you very much. [LB113]

SENATOR SEILER: Anybody...yes, Matt. [LB113]

SENATOR WILLIAMS: Thank you. Thank you, Senator Larson. A quick question, again following up on Senator Pansing Brooks' statement. It seems like the large savings here would be to the deterrent factor of people not making the unnecessary trips. With the other states that have this, has there been any study done as to whether that dollar amount would tie to that? Do you get the same deterrent effect at \$5 that you would at \$10 or \$15 or is...maybe there's nothing. [LB113]

SENATOR LARSON: No, I don't...I can't answer that right off the top of my head where...I'll be happy to look into that, because I think you're exactly right that the large savings is specifically for the counties. You know, the state has the healthcare professionals in their facilities all the time, but for the counties, that--the deterrent effect--will be the main cost savings for them and... [LB113]

SENATOR WILLIAMS: Right. [LB113]

SENATOR LARSON: But we can look and see if we can find some of that. [LB113]

SENATOR WILLIAMS: If there is some statistic on that... [LB113]

SENATOR LARSON: Yeah. [LB113]

SENATOR WILLIAMS: ...that would be helpful. [LB113]

SENATOR LARSON: If there is, we'll try to find it. [LB113]

SENATOR WILLIAMS: Okay. [LB113]

SENATOR LARSON: But I don't have it off the top of my head. I'm sorry. [LB113]

SENATOR WILLIAMS: Thank you. [LB113]

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SENATOR SEILER: Senator Chambers. [LB113]

SENATOR CHAMBERS: Senator, I hope that I'm not requiring you to repeat something. This really is a revenue raiser, isn't it, this bill? It's designed to raise money. [LB113]

SENATOR LARSON: As... [LB113]

SENATOR CHAMBERS: Level with me. [LB113]

SENATOR LARSON: Yeah, no, I think... [LB113]

SENATOR CHAMBERS: Okay. [LB113]

SENATOR LARSON: ...it will raise some money. It's two prongs. It's to help raise money in the sense of it will raise a limited amount for the counties, or state if the state chooses to do that. [LB113]

SENATOR CHAMBERS: The state wouldn't do it if I had anything say about it. We don't... [LB113]

SENATOR LARSON: It... [LB113]

SENATOR CHAMBERS: They do a lot, but they're not going to extort money from inmates. Now... [LB113]

SENATOR LARSON: But it would also, as Senator Williams said, it would act as a deterrent effect, too, which, in turn, raises money in a different way. [LB113]

SENATOR CHAMBERS: Oh, a what kind of effect? [LB113]

SENATOR LARSON: A deterrent effect. [LB113]

SENATOR CHAMBERS: So they would not seek medical care? [LB113]

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SENATOR LARSON: I think that what the counties have faced, from my understanding, is certain inmates seek nonemergency medical care just to get out of the county facility for a while. [LB113]

SENATOR CHAMBERS: Who knows...can...who would this inmate make application to in order to go for one of these visits? [LB113]

SENATOR LARSON: County or state? [LB113]

SENATOR CHAMBERS: No, the county. [LB113]

SENATOR LARSON: The county. [LB113]

SENATOR CHAMBERS: Would the person that the inmate would talk to be a trained medical professional or would it be a jailer or the sheriff or some... [LB113]

SENATOR LARSON: To ask to go? Well, I... [LB113]

SENATOR CHAMBERS: Yes. [LB113]

SENATOR LARSON: Yeah. Essentially, my understanding of how...so they would make that application to go to a medical facility or a medical doctor and it is...if they go, and essentially the doctor, if he had a hernia, the doctor would say, well, this was an emergency, and then the county wouldn't be able to levy that \$10 copay. [LB113]

SENATOR CHAMBERS: So... [LB113]

SENATOR LARSON: But if the...if he goes to the doctor and the doctor is like, I can't find anything wrong with you, or... [LB113]

SENATOR CHAMBERS: No, but who makes the initial determination as to whether this person would be allowed to go to one of these facilities? [LB113]

SENATOR LARSON: Oh, the...I think the sheriff or the sheriff's office would make the initial determination. And they would still be able to go, even if they didn't have the money. [LB113]

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SENATOR CHAMBERS: And if a person had a very bad stomachache and wound up going and a doctor said, well, I don't see anything that makes this an emergency situation, then that copay would be due and owing. [LB113]

SENATOR LARSON: It is my understanding that that's the case. If the doctor couldn't find anything that was wrong or... [LB113]

SENATOR CHAMBERS: Suppose the doctor made a misdiagnosis. [LB113]

SENATOR LARSON: Well, and then if...it would obviously...I would hope that if he made a misdiagnosis and the inmate had to go back the next day or whatnot, they...he...they'd come to realize that there was a misdiagnosis and that the first copay would be taken off, I would hope, because we don't want to cause any undue burden on true emergency care; or, like I said, there's no copay on mental health and things of that nature. [LB113]

SENATOR CHAMBERS: This says not less than \$10, so that's the floor. What's the maximum the copay can be? [LB113]

SENATOR LARSON: We don't have a maximum in the bill. [LB113]

SENATOR CHAMBERS: And that's why it says that if the inmate does not have that money in his or her account, then as money comes into account 50 percent of it will be taken until the copay is paid. [LB113]

SENATOR LARSON: Yes, sir. [LB113]

SENATOR CHAMBERS: Suppose the copay would be \$100. [LB113]

SENATOR LARSON: Well, maybe we need to put a maximum in because I think... [LB113]

SENATOR CHAMBERS: Say it again? [LB113]

SENATOR LARSON: Maybe we do need to put a maximum in because I think you...that's a very legitimate point. [LB113]

SENATOR CHAMBERS: And if the person was released before that copay was paid, would that be a debt that follows that person out of the jail? They hadn't thought of that, had they? [LB113]

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SENATOR LARSON: I'd have to look at what other states do. Like I said, 38 other states and the federal government... [LB113]

SENATOR CHAMBERS: Well, I don't care what they're doing. I'm going to look at your legislation because they could have some things that are not working at all. So who drafted this bill, because it's been before us before? [LB113]

SENATOR LARSON: Yeah, it would have been...we drafted a bill very similar to this--like I said, we made one change--two years ago. [LB113]

SENATOR CHAMBERS: And who originally drafted the bill? [LB113]

SENATOR LARSON: It would have been my previous LA. She's now the lobbyist for Nebraska Appleseed. [LB113]

SENATOR CHAMBERS: Well, who asked for...that's what I should ask. A sheriff asked for this bill. [LB113]

SENATOR LARSON: Yeah, but he didn't draft it. The drafting, I'd have to go back to my previous LA to see if she...if this was a model, you know,... [LB113]

SENATOR CHAMBERS: Okay. [LB113]

SENATOR LARSON: ...something that she got from another...I...it wasn't the Sheriffs' Association; it wasn't...it was drafted within our office. [LB113]

SENATOR CHAMBERS: So then this... [LB113]

SENATOR LARSON: But we might have modeled it off another state. But I'm just... [LB113]

SENATOR CHAMBERS: Okay. [LB113]

SENATOR LARSON: I can't answer that for sure. [LB113]

SENATOR CHAMBERS: This bill is being sought by the Sheriffs' Association? [LB113]

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SENATOR LARSON: They're supportive. The person that brought it to me was a sheriff. The person that brought it to me was a sheriff and they're supportive of it. [LB113]

SENATOR CHAMBERS: But what about the county? What county is this in? [LB113]

SENATOR LARSON: Holt County is...the Holt County Sheriff, Sheriff Ben Matchett, was the individual that brought me the bill. [LB113]

SENATOR CHAMBERS: And what did the county board say about this? [LB113]

SENATOR LARSON: I talked to the county board about this issue in December. I was just talking about Legislature mandates in general and the costs that we are putting down onto the counties. And I don't think they took a vote, but I did talk to them about the issue and they were generally supportive. But I don't think they took an official position. [LB113]

SENATOR CHAMBERS: If the bill doesn't pass and there's no copay, who pays the cost of an inmate going to a medical facility? [LB113]

SENATOR LARSON: The county. [LB113]

SENATOR CHAMBERS: That would be the county board assuming that responsibility. [LB113]

SENATOR LARSON: Yes. [LB113]

SENATOR CHAMBERS: Yet the one who would assume the responsibility is not the one seeking this bill. Does the sheriff have his own budget? [LB113]

SENATOR LARSON: He does have his own budget and... [LB113]

SENATOR CHAMBERS: And he doesn't want his budget to absorb any of these costs. Is that what it is? [LB113]

SENATOR LARSON: I'm not sure if his budget absorbs these costs or not. [LB113]

SENATOR CHAMBERS: Is he here? [LB113]

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SENATOR LARSON: He couldn't make it today. He had a prior commitment and the hearing date just didn't work out. [LB113]

SENATOR CHAMBERS: I wonder if the prior commitment's initials were "E.C." [LB113]

SENATOR LARSON: You did question him two years ago and... [LB113]

SENATOR CHAMBERS: And he felt that that was above his...beyond his pay grade, huh? [LB113]

SENATOR LARSON: I'm not...you weren't overly hard on him, I'll say that. I remember the testimony. You asked some pointed questions, but you were still courteous and kind, so I appreciate that. [LB113]

SENATOR CHAMBERS: I'm always courteous by my standards. (Laughter) But anyway, you answered most of the questions I have. But just so you'll know, I think the state was thrown into it as a sweetener to make it appear that the state is not going to have to assume its responsibility that it has to provide medical care. There are counties right now, if a prisoner is considered a state prisoner, who will not provide medical care for that inmate, saying, well, you'll get it when you go down to the joint because we're not going to pay for it. So I don't have a lot of confidence in the integrity of county boards. But in this case, it's not even the county board. It's the sheriff. And I don't think it's appropriate--the sheriff can do what he wants to--to come here and try to raise revenue... [LB113]

SENATOR LARSON: I think... [LB113]

SENATOR CHAMBERS: ...that the county board is responsible for. [LB113]

SENATOR LARSON: And in my conversations with Sheriff Matchett, it's not just the cost. The cost is an issue to the county and I did talk to...and as I said, I talked to the county board. They didn't take any action or resolution. I guess I should have asked them to do that. [LB113]

SENATOR CHAMBERS: But he doesn't want to transport to the inmate to the... [LB113]

SENATOR LARSON: It's... [LB113]

SENATOR CHAMBERS: He's lazy. [LB113]

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SENATOR LARSON: Well, I think... [LB113]

SENATOR CHAMBERS: Does he have deputies? [LB113]

SENATOR LARSON: I think that...and you're hitting on where I was going. It's more of the concept of, when that transport happens, it's pulling a deputy off the highways, it's...you know, he... [LB113]

SENATOR CHAMBERS: They're not that busy. They don't do that much. It gives them something to do and it's not going to be that often. What's the average daily population in the jail? [LB113]

SENATOR LARSON: Of O'Neill? Or in Holt County? Average over the 365, you're probably looking at two or three. There might be up to five depending...you know, Pierce County, which I no longer represent, I did represent, used to have... [LB113]

SENATOR CHAMBERS: And... [LB113]

SENATOR LARSON: ...would usually have more because Madison County would send them up to Pierce County. [LB113]

SENATOR CHAMBERS: So we're not talking about a great flood of inmates... [LB113]

SENATOR LARSON: No. [LB113]

SENATOR CHAMBERS: ...having to be taken here and there. So it's just laziness, trifling. [LB113]

SENATOR LARSON: I think there is public safety concerns in...from the sheriff and not necessarily...he views that those deputies could be either patrolling, or we've actually had a number of thefts in the neighborhood, in the areas. [LB113]

SENATOR CHAMBERS: They might be patrolling. [LB113]

SENATOR LARSON: I'm sure they would be patrolling, but they've...or investigating thefts that we've... [LB113]

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SENATOR CHAMBERS: How far away is the nearest doughnut shop from his place? [LB113]

SENATOR LARSON: We have no more bakeries in Holt County. The nearest homemade bakery is in Verdigre, which is outside the county. [LB113]

SENATOR CHAMBERS: And about how far away is that? [LB113]

SENATOR LARSON: Verdigre would be, from O'Neill, 52 miles... [LB113]

SENATOR CHAMBERS: Fifty-two? That's a good little bit of... [LB113]

SENATOR LARSON: ...is the nearest homemade bakery. Now, I mean, we could go to Casey's or a convenience store, but if we want a true homemade bakery, it's Verdigre. [LB113]

SENATOR CHAMBERS: Now they don't have a crime wave in your...in that county that I'm aware of. I haven't read about it. [LB113]

SENATOR LARSON: Well, Holt County has suffered a number of thefts, most of it related to copper. [LB113]

SENATOR CHAMBERS: Thefts, and that keeps the whole sheriff's department busy 24/7? [LB113]

SENATOR LARSON: There's not a lot in the sheriff's department, but the...you know, Holt County is the biggest county in the area and it has had a rise in some of those thefts. Now Rock County I don't think had any felonies the past two years, so that might be a different thing. But I don't know if they house anybody in their jail either since they haven't had any felonies. [LB113]

SENATOR CHAMBERS: Okay. And that's all that I'll ask you. Thank you, Senator. [LB113]

SENATOR LARSON: Thank you, Senator Chambers. [LB113]

SENATOR SEILER: Anybody else? Thank you. You're going to stay for closing? [LB113]

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SENATOR LARSON: I'll stay. I'm...depending on the how the testimony is, I might waive it, see how it goes. Thank you. [LB113]

SENATOR SEILER: Okay. First proponent of this bill. [LB113]

ELAINE MENZEL: Chairman Seiler and members of the Judiciary Committee, for the record, my name is Elaine Menzel. That's E-l-a-i-n-e M-e-n-z-e-l. And I'm here on behalf of the Nebraska Association of County Officials in support of LB113. The costs of rising healthcare have been of concern to counties for the last several years, as I'm sure you're aware, and by allowing the implementation of a copayment of healthcare costs for inmates, there is an acknowledgment and shared responsibility of healthcare costs for the county, as well as the inmate. Inmates would not be charged a copayment in emergency situations; rather, it would be strictly the nonemergency situations and other provisions that are included within the legislation. I will address the fiscal note that Senator Pansing Brooks asked about. As the preparer of that, I relied upon information that was included in the fiscal notes from Lancaster and Douglas County under LB246 two years ago, and it showed at the time that the implementation of legislation similar to this would have resulted in about \$100,000 increase for Douglas County and at the same time about \$1,000 increase for Lancaster County, thus, the reasons that it might be offset by the implementation of a similar policy. We do like that this is a permissive, rather than a mandatory, provision as written with this...LB113 versus the prior legislation. And I will at this point offer my assistance for any questions you may have if I can do so. [LB113]

SENATOR SEILER: Senator Chambers. [LB113]

SENATOR CHAMBERS: How did they arrive...first of all, you said the county officials' association... [LB113]

ELAINE MENZEL: Who... [LB113]

SENATOR CHAMBERS: ...are the ones you represent? [LB113]

ELAINE MENZEL: I'm here on behalf of them, yes. [LB113]

SENATOR CHAMBERS: Who are they? Who belongs to this association? [LB113]

ELAINE MENZEL: All 93 counties are members of our association for purpose... [LB113]

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SENATOR CHAMBERS: How many counties? [LB113]

ELAINE MENZEL: 93. [LB113]

SENATOR CHAMBERS: Oh, I thought you said 92. I thought one of them... [LB113]

ELAINE MENZEL: Oh, no, no, no. (Laugh) [LB113]

SENATOR CHAMBERS: I thought one of them wised up and said, uh-uh, I'm not doing that. Okay. [LB113]

ELAINE MENZEL: If I did, I apologize. I didn't intend to. [LB113]

SENATOR CHAMBERS: No, that's all... [LB113]

ELAINE MENZEL: And then in terms of making the decision for purposes of the legislative positions that we take, it's comprised of...I forget the number, but I believe it's 19 board members and 1 non...or ex officio member. But those board members are comprised of county board members, as well as one person from each of our affiliate groups, which include your sheriff, your treasurer, your county clerk, and etcetera. [LB113]

SENATOR CHAMBERS: And they come, they have a meeting on the legislation that they might be interested in, and then do they take a vote? [LB113]

ELAINE MENZEL: On some of those bills, yes. [LB113]

SENATOR CHAMBERS: Do you know if they took a vote on this one? [LB113]

ELAINE MENZEL: They did, yes. That's how we...that's how I came to represent that we're in support of it. [LB113]

SENATOR CHAMBERS: But when you come, and this is not to disparage you, there's not any direct input you have in their meetings or their decisions. You just, more or less, present to the committee what their decision was. [LB113]

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ELAINE MENZEL: Correct. We identify legislation after reading all of the legislation that has been introduced by the senators and identify those issues that either we've taken an interest in before or it appears that it will impact the county in various ways. [LB113]

SENATOR CHAMBERS: So then you wouldn't have any knowledge necessarily of copays or other means by which reimbursement could be obtained by the county for this situation? [LB113]

ELAINE MENZEL: I... [LB113]

SENATOR CHAMBERS: Or do you? [LB113]

ELAINE MENZEL: I was familiar that other states were implementing it, but in terms of... [LB113]

SENATOR CHAMBERS: No, I mean in Nebraska. [LB113]

ELAINE MENZEL: Oh, well, no, I'm not aware of that, no. [LB113]

SENATOR CHAMBERS: Okay, then I don't have any questions that I'll put. Thank you. [LB113]

ELAINE MENZEL: Okay, thank you. [LB113]

SENATOR SEILER: Any further questions? Yes, Senator Williams. [LB113]

SENATOR WILLIAMS: I have a question. Thank you, Ms. Menzel, for being here. The county jail that Senator Larson was talking about is a smaller county jail with only a few inmates. The county jail in the county seat in my district has 126 inmates in it, 27-30 employees that manage that facility, and it was built in such a way that it can take inmates from other counties and house them there. [LB113]

ELAINE MENZEL: That's Dawson, correct? [LB113]

SENATOR WILLIAMS: Dawson, excuse me. [LB113]

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ELAINE MENZEL: Okay. Yeah. [LB113]

SENATOR WILLIAMS: So this issue that we're talking about is significant in that county, as compared to some other counties. Do you have any statistics from Dawson County that would help us analyze what a major county jail would be facing as far as cost associated with these--I will call them--unnecessary visits to the doctor? [LB113]

ELAINE MENZEL: I don't have specifics for each county throughout the state. [LB113]

SENATOR WILLIAMS: Okay. [LB113]

ELAINE MENZEL: But I do have the fiscal note that was prepared by Douglas and Lancaster County two years ago. [LB113]

SENATOR WILLIAMS: Yeah. [LB113]

ELAINE MENZEL: And I would be glad to share that with you. [LB113]

SENATOR WILLIAMS: Okay, it's certainly fair for me to state into the record that in conversations that I have had with the managers--in particular, Sheriff Reiber, that runs that facility, under him--that there is a significant issue here of patient abuse of...because of the difference of not having places for these inmates to exercise, get out, do these kind of things. They are intentionally using trips. And I know it's difficult because if the inmate says, I've got a really bad headache, it's hard for the jailer or the sheriff to say, well, that's not enough to go to the doctor. I think they are on the side of taking them to the doctor, but it's at significant cost to them. There was a question in there somewhere. I just forgot what it was. [LB113]

ELAINE MENZEL: I wasn't sure what it was, but (laugh)... [LB113]

SENATOR WILLIAMS: I was playing a Senator Chambers role here for a second. Thank you. [LB113]

ELAINE MENZEL: Thank you. [LB113]

SENATOR CHAMBERS: He wasn't playing it very well, I might add, since (laughter)...let me give you an example of how that's done. (Laugh) No, seriously though,... [LB113]

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ELAINE MENZEL: Is there going to be a question? [LB113]

SENATOR CHAMBERS: Well, gentle. [LB113]

ELAINE MENZEL: I'm just preparing myself. [LB113]

SENATOR CHAMBERS: He'll be very gentle. He had mentioned Dawson County. I have no knowledge of the size of their jail, but he said it's somewhat large. How do people wind up in the Dawson County Jail? Are...did he say--and I'm asking you what you heard him say--that they accept prisoners from other jails? [LB113]

ELAINE MENZEL: I don't know if he said, but I believe that they do and they used to accept federal prisoners. I don't know if that's still the case or not. [LB113]

SENATOR CHAMBERS: So they have other sources of revenue, because these other counties pay them for taking these prisoners. And if they cannot provide adequate medical care, in my opinion, they ought not take these prisoners. Prisoners wind up in county jails because their county law enforcement people send them there. And just so that the sheriff will know, and these people who voted on this bill, I'm not sympathetic to them at all. I've seen counties coming more and more...it's not against you. You're just doing what you're supposed to do. But you also can carry messages. Everywhere they think they can cut a corner or get the state to assume their responsibilities. That's what they're trying to do. And to me this is one of the worst that they've done because they're playing fast and loose with the welfare of people that they have locked up. And the state or the society as a whole, when it deprives somebody of liberty, assumes voluntarily a responsibility for that person's health and well-being. The punishment is to be deprived of his or her freedom, not to be made to suffer any kind of unnecessary ailments. And it's not for jailers or sheriffs to determine if his condition is an emergency or not. Or even some of these overworked doctors who are dealing with just some prisoner--no, he didn't need to be here--because I'm aware of cases where some inmates at the Pen went to hospitals and were sent back as not having a serious condition, and then they might have a burst appendix that would occur very shortly after that doctor had said, there's nothing serious here. So I take a much more protective role toward people who cannot help themselves who are there under compulsion and coercion, even though it's something they did that put them there. And these counties are just going to have to, as far as I'm concerned, buckle down and pay the cost of what it is they're doing. Nobody from Douglas County has talked to me about being unable to pay the cost of these people going to get these hospital visits. And I think it just says a medical facility, so I don't even know what that means for sure. Did you sit in on the meeting where they took their vote? [LB113]

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ELAINE MENZEL: I did, yes. [LB113]

SENATOR CHAMBERS: Were there any county people who gave, even if it's anecdotal, information about how it's busting their budget to have to do...to take these people on these trips? [LB113]

ELAINE MENZEL: I don't recall specifics or hypothetical situations of them expressing that concern, no, and... [LB113]

SENATOR CHAMBERS: Maybe you could...when you go back to the meeting, you can tell them the kind of questions you received and you were not expected to answer. But if there are crowded conditions, everybody knows that when you jam a lot of people into a limited space, hostilities break out, problems develop that wouldn't develop if there was adequate space. So the jails and the counties are responsible for the conditions they create. And if it's so bad there can be no exercise, nothing, then they ought to be glad that there's some way, like a safety valve, to relieve some of that stress and pressure. But I'm not sympathetic to them at all. And I told Senator Larson that I'm not going to support his bill, and I think he knows it. I didn't support it last time. I'll never support a bill of this kind while I'm in the Legislature. And I'm not upset with you. I hope you don't take it personally. [LB113]

ELAINE MENZEL: I'm not and I appreciate your comments. Thank you. [LB113]

SENATOR CHAMBERS: Okay, and that is all that I have. [LB113]

SENATOR SEILER: Senator Krist. [LB113]

SENATOR KRIST: I'm going to pose a couple questions to you and I know...I don't expect you to have the answers, or to anybody who follows you. First question is, in terms of the visits, the county, obviously, and the Penitentiary as corrections facilities know if a person comes into the facility they're either covered by an insurance, eligible for Medicaid, or they are uninsured in terms of "on the public." I'd like to know if they're tracking that information and if their insurances are being called into question or if those visits are more...hospitalization requires more than 24 hours...if the counties are aware that they now become Medicaid eligible and that shouldn't come out of the General Funds, either in the corrections facility or on the county jails. [LB113]

ELAINE MENZEL: Senator, I'm not...I'm aware of the issues which you're raising. I'm not sure to the extent that the other counties are familiar with those provisions. And in relationship to the

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legislation, LB12, that you introduced this year, we are very supportive of that measure and hope that it...I saw that it was reported out today, so it hopefully proceeds. [LB113]

SENATOR KRIST: And I think it's important, as Senator Chambers said, in your capacity that messages go back and forth. They're asking you to come here, and we really appreciate that, and the response back to them is, you know, have...are you aware of...basically that the ACA has changed some of those structures and you can already do some of these things, particularly if there's over 24 hours outside of the system, so. [LB113]

ELAINE MENZEL: I spent quite a bit of time this morning attempting to become more familiar with the ACA and its relationship to this population. I'm hoping I'm better prepared for that because I know, two years ago, I believe, Senator Seiler had a question related to ACA and how it affects the population. I certainly don't profess to be an expert on that issue. [LB113]

SENATOR KRIST: No, neither am I. [LB113]

ELAINE MENZEL: I don't know that a great deal of people are, based upon the length of the ACA and that type of thing, but... [LB113]

SENATOR KRIST: Yeah, and I guess the purpose of my question and putting it in public record, in our record, is just to simply say, have the counties done all they can do to curb their costs in terms of the new regulations? And I don't think anybody is an expert in the ACA, but we'll keep trying. [LB113]

ELAINE MENZEL: (Laugh) I do...we do frequently write articles and have a newsletter that you lend credence to a good topic for consideration for a future edition so that they do become more aware of the issues associated with... [LB113]

SENATOR KRIST: Okay. [LB113]

ELAINE MENZEL: ...their ability to do things of this nature. [LB113]

SENATOR KRIST: Thank you so much for coming. [LB113]

ELAINE MENZEL: Thank you. [LB113]

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SENATOR SEILER: Any further questions? Seeing none, thank you for your testimony. [LB113]

ELAINE MENZEL: Thank you. [LB113]

SENATOR SEILER: Further proponent of LB113? Seeing nobody clamoring from their chair, opponents, you may testify. Yep. Have a seat. [LB113]

ROBERT BRYAN: Senator Seiler, thank you. My name is... [LB113]

SENATOR SEILER: Pronounce your name and spell it, please. [LB113]

ROBERT BRYAN: ...Reverend Robert Bryan, B-r-y-a-n. [LB113]

SENATOR SEILER: You may proceed. [LB113]

ROBERT BRYAN: I'm director of prison ministry for the Nebraska Synod of the Evangelical Lutheran Church in America and full-time volunteer clergy at the Department of Corrections. I am opposed to this bill. I think it discourages good, preventative healthcare. It's punitive. I know inmates can't afford it. I know it's...the way it's written, it says no one will be denied healthcare, but it's just tacked onto their tab on top of their child support fines and other things. I do believe that it's going to discourage good healthcare. In fact, it may actually increase healthcare costs in the long-run. I know Senator Larson had said several states have reported hundreds of thousands of dollars in, you know, in accruing these copays. But how much would one undiagnosed case of melanoma cost in the long-run, just for an example, untreated because the inmate said, I couldn't go in for...I couldn't afford to go in, or were discouraged from going in to get it looked at? So I think this is just a bad bill. I get a feeling it's dead in the water anyway. But I feel, in treating the inmates as responsible citizens, we need to encourage good healthcare practices. I know there's always people that will abuse a system wherever it's at. But there's no sense in punishing everyone for the bad...few bad apples. That's all I have. Thank you. [LB113]

SENATOR SEILER: Any further questions? Thank you for your testimony. [LB113]

ROBERT BRYAN: Thank you. [LB113]

SENATOR SEILER: Any further opponents? [LB113]

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LAZARO SPINDOLA: Good afternoon, Senator Seiler and other members of the committee. For the record, my name is Lazaro Spindola. That would be L-a-z-a-r-o S-p-i-n-d-o-l-a. I am the executive director of the Latino American Commission. I apologize for not having a written testimony. I wasn't planning on testifying on this bill, but I couldn't help myself. I see things here that really bother me. I see that it says, "Except as otherwise provided in this section, for each nonemergency visit..." I can tell you that after 20 years as an emergency physician, I saw thousands of people who came into the emergency room pretending, saying, or having an emergency. And today I can tell you that defining whether the patient had an emergency or not is an after-the-fact issue that is only competent to the physician in charge. And even in those cases, if you come to me saying that you have the worst headache of your life, I would have a hard time deciding whether you are malingering, whether you just have a tension headache or a migraine, or whether your brain is bleeding. Therefore, I understand that the bill has been written specifically from an administrative point of view, but I have the feeling that there was no medical people providing input into this bill. I also see that they define care for chronic illness as of the things they do not pay a copayment. Well, let me tell you something, care for chronic illness, except when the chronic illness becomes complicated and turns into an emergency, is actually outpatient regular care, follow-up care. This is no emergency. If you go to the doctor to check your blood glucose because you have diabetes, that's not an emergency. If you go to take your blood pressure, that's not an emergency but, yet, they're not being charged a \$10 copayment. So it's confusing. And finally, I can tell you something. This bill is self-defeating. "An inmate shall not be denied access to health care as a result of not paying any copayment pursuant to this section." As an inmate, I could accumulate a million dollars in copayment bills and I still would not be denied access to medical care. So I think this bill needs to be improved upon. Thank you. And I would be happy to answer any questions. [LB113]

SENATOR SEILER: Senator Coash. [LB113]

SENATOR COASH: Thank you, Senator Seiler. Mr. Spindola, you started your testimony saying you didn't intend to testify, so I just want to make sure the record is what you want it to be. Are you testifying on behalf of yourself or the Latino American Commission in opposition to the bill? [LB113]

LAZARO SPINDOLA: Oh, on behalf of myself. [LB113]

SENATOR COASH: Behalf of yourself? [LB113]

LAZARO SPINDOLA: Yes. [LB113]

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SENATOR COASH: Okay, because your statement here says you're representing the Latino Commission because... [LB113]

LAZARO SPINDOLA: Oh, well, I am the director of the commission, but I am testifying on behalf of myself. [LB113]

SENATOR COASH: Okay. I want to make sure the record is reflected, because I don't know what process you have to follow in order to take a position on a bill. [LB113]

LAZARO SPINDOLA: Right. [LB113]

SENATOR COASH: But I just wanted to be clear. [LB113]

LAZARO SPINDOLA: Right. [LB113]

SENATOR COASH: Thank you. [LB113]

SENATOR SEILER: Any further questions? Seeing none, thank you for your testimony. Any further opponents? Seeing none, anybody in the neutral? Seeing none, Senator Larson, you may close. [LB113]

SENATOR LARSON: Thank you, Senator Seiler, members of the Judiciary Committee. I appreciate the questions. And this is an issue that is important. I think Senator Williams brought it up. These are issues facing small counties that are creating a lot of cost. I can appreciate the concern of preventative care. And especially, concerning the new Affordable Care Act, I'd be even open to allowing one preventative care visit every year for every inmate to ensure that they are getting that type of care to where they don't have to make that copayment because I believe...and I don't know how it interacts with the ACA. I know in my health insurance I get one free preventative care...or a free preventative care visit through my health insurance, so I don't think that would be unreasonable to catch those issues. This is meant to, you know, stop the individuals that have been in the county jail in which I reside that say they have to go to the doctor every week. I can understand Senator Chambers' issues. But this is something that is common sense. I think we understand it. And it can help save the counties money in the long-run, as well as it would provide small revenue. But I think that the bigger topic would be the saving money, and that's something that we're all looking to do. So thank you, Mr. Chairman, and appreciate your time in front of the Judiciary Committee. [LB113]

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SENATOR SEILER: Any further questions? Seeing none, thank you. This closes the record on LB113. And, Senator Riepe, would you please come forward to introduce LB425. [LB113]

SENATOR RIEPE: Thank you. I'm having a little issue with voice. And I'm not asking for sympathy, nor am I asking for mercy, so I simply make my presentation. [LB425]

SENATOR KRIST: Good to know. [LB425]

SENATOR RIEPE: This addresses LB425. And I'd like to thank you, Chairman Seiler and members of the Judiciary Committee, for the opportunity to introduce an important bill that affects all Nebraskans. I am Senator Merv Riepe, spelled M-e-r-v, Riepe, R-i-e-p-e, from District 12, which is Omaha, Millard, and Ralston. We have an obligation to all citizens of Nebraska to promote safer communities. As I went door-to-door campaigning this past year, many of my constituents expressed concerns regarding good time reform. I told them that I supported changes in the good time laws. I introduced LB425 with the intention of eliminating good time and replacing good time with earned time. However, I did not realize the complicated history of good time and how earned time could be beneficial. In preparation for this hearing, my office has completed many hours of research on good time and earned time, and I have met with many of the groups affected by this legislation, including the new director of Corrections, Scott Frakes, and some of his staff, Douglas and Lancaster County Corrections, the mayor of Omaha's staff, city of Omaha police, the Office of Parole Administration, the Office of Probation Administration, and the Governor's staff. My main concern after looking at the research and history of good time reform is that a vast majority of those now incarcerated will return to our communities and it is in all of our best interest to have effective reintegration into society. I believe personal responsibility and programming can aid inmates to a more successful reentry, and this can be accomplished through earned time. I wanted to bring earned time back into the discussion this year as another piece of the Judiciary Committee's puzzle. This bill may not be ready for prime time, but I believe earned time is an important component as the committee moves forward towards floor debate for corrections legislation. LB425 establishes that the department may grant earned time if the department finds the committed offender is actively engaged in a vocational, educational, industrial, work, or treatment program. If the committed offender commits an offense or violates a rule of the department during the terms of the imprisonment, their department may forfeit or suspend any or all portion of the committed offender's accrued earned time...accrued earned time. I understand the Judiciary Committee will be hearing LB605 on Friday, regarding prison overcrowding, limited postrelease supervision, and insufficient supervision, as identified by the Justice Reinvestment Working Group. Further, CSG Justice Center's January report suggested establishment of a task force to assess good time status, departmental policies, evaluate reform proposals, and generate impact estimates. I believe LB425 provides additional discussion regarding good time reform that has been addressed by the CSG report. There are multiple people here today that want to testify in support of LB425. They will

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be able to answer questions specific and you may have and linger...and any lingering questions I will answer at closing. After all of this research, I am not convinced good time should be eliminated, but I do think there is an opportunity waiting in the wings where earned time could prove to be beneficial once the programs are available to the inmate population. Thank you for your consideration of LB425 and I gladly accept any questions that you may have. Yes, sir. [LB425]

SENATOR SEILER: Senator Coash. [LB425]

SENATOR COASH: Thank you, Senator Seiler. Senator Riepe, here's the challenge that I have with a part of your bill, and I just want to give you a chance to address it. Your bill states that an inmate can get earned time by participating in a vocational or an educational program. What if, where that inmate is, that's not available to them? How would that work? [LB425]

SENATOR RIEPE: Well, this is...well, first things first, and you to have to have those...get those programs into place or it's, you know, it's not fair to the inmate as such. So they kind of go hand in glove, and I think that that's some of the stuff that you as a Judiciary Committee are trying to look at this from a big perspective. This is a part of that and hopefully, at the same time when the rest of that is coming together, through this kind of a program we can bring it all together so that we have some continuum, if you will, of services available to rehab the incarcerated. [LB425]

SENATOR COASH: Would you see that as a problem though that if we implemented this law without the availability of the programming that is contingent upon the good time, that we would be putting ourselves against the wall here where we'd be requiring an inmate to do something that they actually can't do because the state has not provided it to them? Do you see the challenge that I have with that? [LB425]

SENATOR RIEPE: Yeah. Yes, I do, Senator, and I think in here it talked about it was an option of or maybe a study, and I think that that's what you're...so we have to make sure that we don't get the cart ahead of the horse, if you will. [LB425]

SENATOR COASH: I would agree. Thank you, Senator. [LB425]

SENATOR RIEPE: And so, you know, I acknowledge what you're saying. I agree with what you're saying about first things first. [LB425]

SENATOR COASH: All right, thank you, Senator. [LB425]

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SENATOR RIEPE: Thank you. Yes, sir. [LB425]

SENATOR SEILER: Senator Coash didn't make that up. We have that problem in Grand Island right now with about 125 inmates have no programs whatsoever. [LB425]

SENATOR RIEPE: Then you...well... [LB425]

SENATOR SEILER: Yes, Senator Chambers. [LB425]

SENATOR CHAMBERS: Who drafted this bill? [LB425]

SENATOR RIEPE: This bill? And I would like to say I am not the little red hen, okay? I did not do this all by myself. [LB425]

SENATOR CHAMBERS: Oh, I know. I know you didn't. [LB425]

SENATOR RIEPE: We did...we talked with the city of Omaha. They had issues on this thing. We went out and studied on our own by meeting with a number of these people, and we did some rewriting of this bill. So we did have influence from the city of Omaha who want to have a safer community, as all places do, but I'm not carrying their bill, per se, Senator Chambers. [LB425]

SENATOR CHAMBERS: And did the Attorney General's Office have any input on this bill? [LB425]

SENATOR RIEPE: No, sir, they have not. [LB425]

SENATOR CHAMBERS: I've been in the Legislature many years, and I wrote some of the good time legislation in conjunction with the Department of Correctional Services. They used to call this meritorious good time... [LB425]

SENATOR RIEPE: I remember that discussion. [LB425]

SENATOR CHAMBERS: ...discriminatory on its face because the officials who would determine who would get it and who wouldn't, no standards. And since it was completely discretionary, if a person managed to get good time and it was taken away, there's no basis for appeal because you could not establish that you were entitled to get it, what you didn't get. So it was determined that the best thing to do is to let everybody get good time when they come in and

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they keep it as long as they behave. And if they misbehave, then there are standards that have to be met in removing the good time. And there is an appeal procedure, which I had to fight tooth and nail to get into the law, so that the corrections people couldn't just do any- and everything they wanted to an inmate. Now are you aware that a person's good time is determined on the basis of the law in place when he or she gets sentenced? [LB425]

SENATOR RIEPE: Yes. [LB425]

SENATOR CHAMBERS: So if we change the law, it doesn't affect however many people had been receiving good time under however many rewrites of the statute that had occurred. Was Omaha concerned about the difficulty of computing this good time and keeping track of it, different laws under which people were given the good time? Then if they lost it and if they had it restored, were they interested in that? [LB425]

SENATOR RIEPE: Well, we learned about the fact that if you introduce something new, that applies to those from that day going forward, not to the ones that were in prior to that. [LB425]

SENATOR CHAMBERS: So you have... [LB425]

SENATOR RIEPE: We would leave it up to...they would have to tell us the implications of individual incarcerated prisoners, if you will. [LB425]

SENATOR CHAMBERS: You have multiple standards according to which people get good time and it's a nightmare. [LB425]

SENATOR RIEPE: I think that's the way that it's always been. [LB425]

SENATOR CHAMBERS: And it's a nightmare and Omaha doesn't care. [LB425]

SENATOR RIEPE: Well, now I wouldn't say they don't care. They'd have a... [LB425]

SENATOR CHAMBERS: Look, I'm...I live in Omaha and I've heard their chief come down here, I've heard police union people come down here, and they don't even know what good time is about and they don't really care. Because when you ask them, how is this good time to be computed, they don't even know. And here's what I'm getting at: We have a responsibility as policymakers not to create a hodgepodge that's virtually impossible to administer, and we have to keep people aware of the fact; and if they ignore it, we have to keep it in mind anyway that good

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time is a prison management tool. Did they tell you that the purpose of good time is to give an incentive to behave? Did they...did Omaha tell you that? [LB425]

SENATOR RIEPE: Well, they did tell us, and I don't want to speak for them. They will be behind me to speak. But they talked first of all about it being a process of reintegration into the community, not so much focused on the behavioral thing, but with the idea that these people are going to join us all back in our communities and that there's a need for rehab and education and trying to make sure that the...and they told us, Senator... [LB425]

SENATOR CHAMBERS: Okay, but I don't want to make you answer more than what I'm asking. Are you aware then, with all this study you and your staff were doing, that good time is a prison management tool? Did you ever have good time presented to you in that context? [LB425]

SENATOR RIEPE: Yes, when it was accompanied with rehab and other services. [LB425]

SENATOR CHAMBERS: Well, that's not going to happen. [LB425]

SENATOR RIEPE: Well, it has to happen at some point. [LB425]

SENATOR CHAMBERS: So then you say, take the good time, require that which is impossible to be done, wash your hands of it and tell people in the prison system, you find a way to work out this mishmash that we gave you which doesn't make sense. [LB425]

SENATOR RIEPE: I think, Senator Chambers, that when I looked at this, when we started out, we looked at earned time only. When we looked at it more and more, we determined that it would have to be more of a combination probably of earned time and good time combined. [LB425]

SENATOR CHAMBERS: Did they tell you why they chose you to bring this bill instead of one of the experienced senators from Omaha? [LB425]

SENATOR RIEPE: Well, they did mention the word "charming," but I'm not sure that that played into this. (Laughter) No. [LB425]

SENATOR CHAMBERS: But it's...when some... [LB425]

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SENATOR RIEPE: No, I think that they had an interest. I will be real honest with you. I'm a strong fan of the mayor's, and the mayor lives in my district. And she is committed to safe communities and I am interested in safe communities... [LB425]

SENATOR CHAMBERS: I don't...I don't... [LB425]

SENATOR RIEPE: ...because of my people, when I talk to them. And maybe it was because of the time when I was going door to door. [LB425]

SENATOR CHAMBERS: Good time doesn't have anything to do with safe communities. It has to do with being able to manage the prison. But I'll...I don't have any more questions of you because you've explained basically why you brought the bill. And I think they picked somebody who was new because they've been around this track before, so I'll save my questions for the people from Omaha. [LB425]

SENATOR RIEPE: Okay, okay. [LB425]

SENATOR SEILER: Senator Krist. [LB425]

SENATOR KRIST: Hi, Senator Riepe. Thanks for coming. [LB425]

SENATOR RIEPE: Yes, sir. [LB425]

SENATOR KRIST: And thank you, Chair. I'm just going to say a few things for the record and not necessarily my own opinion but my...this past summer I spent an inordinate amount of time, by choice, on the Performance Audit report on Corrections, the LR424 Committee, which looked at Nikko Jenkins as a case study from which we should never repeat and where that went to, in terms of subpoenaing people all the way up to and including the Governor, and then participating in the CSG, the Council of State Governments, visits here. So although I am not a lawyer and I have been very vocal, both on someone else's campaign trail and in the media, advocating for good time as it is currently in statute. Now let me be clear: Good time as it's currently in statute does not mean the bastardization through the violation of the Administrative Procedures Act in terms of what our Department of Corrections did to good time. I believe that if a man strikes another man or a woman strikes another woman or vice versa, if they are an incarcerated person, we should take more than hours, potentially days, away from them in terms of good time. So the punishment needs to fit the crime. I will also tell you that from hours and hours of study and from the CSG report which Senator Seiler and I were part of and Senator Chambers was part of, the LR424 Committee, we were assured...78 percent of the judges that were asked to fill out a

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survey, of those folks who filled out the survey, 78 percent of those judges said they took into consideration good time when they were sentencing, which basically means, in some cases, they were absolutely clear: I'll double it, I'll double it because I know good time is going to take half of it away. It's not the application of the statute as it exists that caused four deaths in Omaha, that causes the police department and others to oppose it; it is the administration of these statutes. I'll go to my grave thinking that that is the case, hopefully not too soon. [LB425]

SENATOR RIEPE: Hopefully. [LB425]

SENATOR KRIST: But having worked with this during the past summer, I've got to tell you that I'm just...you don't have my vote getting it out of committee and the reason for it is that I think that we have to get tough on crime. They told us that; we did. We have an overcrowding situation. We can't get less tough on crime. We've got some issues to deal with. But this, as it exists in statute, is the fairest way to give any kind of tools that the jailers can use to keep order in our prison systems. So I'd also like to refer you to, and I'm not sure, maybe you can explain this to me, but in your green copy, on page 4, line 11. I believe that we are, if I'm reading this correctly--again, page 4, line 11--we're saying that it...what I've been working for, for the last few years to make sure that juveniles, when they enter the juvenile justice system, have an evaluation that we can baseline and take kids forward, I believe we've taken that out of the statute. And I'd just like your read on whether that is indeed the intent of this legislation. [LB425]

SENATOR RIEPE: I would...I see where we've struck through that and I think that was a matter...we were trying to clean up the legislation as we worked it through of...I think that part of that was, Senator Krist, is we also know that the Sherwood Foundation has a...I think it's a major study going on to look at the entire juvenile system, and we applaud that because we think that that needs to be studied. That would be my sense as to why we took out the juvenile part of it. [LB425]

SENATOR KRIST: Okay, so I'd like to put one more thing on the record. [LB425]

SENATOR RIEPE: Yes, sir. [LB425]

SENATOR KRIST: I believe that my work in juvenile justice over the last few years has told me that, in participation in the MacArthur Foundation and the Models for Change, which is an interesting read and there are some wonderful things in there, MacArthur Foundation has been very active trying to protect kids in the ways that they can. There are some kids who are bad kids. Most kids should be treated like kids until they demonstrate differently. MacArthur Foundation Models for Change has said--in no uncertain terms--there's a great percentage of our

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juveniles that enter the juvenile justice system that should not be there. There are statistics on...in terms of their IQs, just the IQ basis alone, where we treat people as though they have special needs with IQs of 70-80 or below. Some of these juveniles we will never be able to help. We can keep them locked up. We can keep them detained. We can then...they can go out and recidivate and we can bring them back in and do it again. But unless we have that testing and that evaluation procedure when they get into the system, I think we do ourselves a disservice. It's one of those things--damned if you do, damned if you don't. I mean, if you don't look at the problem, the root of the problem when you get a kid into the system...and I would remind everyone, at seven years old a young man presented himself in the school system with a gun in his hand and that ended up being a monster that we now have in the system. And I'm not excusing Nikko Jenkins for anything that he did, but the presentation and manifestation of that juvenile, and I'm not even sure we even could have changed the process, but that manifestation of the juvenile and studying his character's behavior and evaluating him is in a critical part of it. So even if we do go forward with this, this has brought to my attention the fact that there seems to be an end date on this that needs to be reevaluated in terms of being an end date. So for that, I thank you for that, for bringing this forward. Last thing I would just say is, I'm sure we're going to hear the reasons why and why not, and I'm sure that Senator Chambers will again talk to those folks about the way that they're being administered. But it's very difficult for me to understand how earned time could be calculated and given without discriminatory value of any kind, because when the jailer has you locked up, what's important to that jailer may not be in the interest of fairness for all parties concerned. So I'll allow you to respond in any way you want to. [LB425]

SENATOR RIEPE: Yeah. My own opinion is, is that everyone deserves due process and that you should not have unilateral action. You need to have written standards and a review process. You need all of that for fairness because anyone, even a young child or a teenager, is very sensitive to, you know, violations to their rights, if you will. I want to go back a little bit too. I think you know that my background is health administration. I have been the administrator of a psychiatric hospital on a couple different occasions. We experienced the same thing there. When you put children/adolescents into an acute inpatient setting, it's like sending them to graduate school. You drop away all their old friends. You give them a new set of friends that aren't the most desirable friends. The other one that I did want to comment on, too, Senator Krist, was over this...prior to coming down here to serve, I did meet with...I must have met with half a dozen of our judges and talked with them, and I'm keenly aware that they understand the process of automatic earned good time. So if they want five years, they give ten. So somewhere or another, if you're going to change all of that, you have to do it all at once or in a sequential...I mean you can't keep the old system and try to implement something new. This all plays to the need for reform to make for a better system. The other thing I would like to say--if I'm...used up my time, just give me one of those waves and I'll get out of here--but when talking with the county people, one of the things that they said they would like to see, that if they have someone and this individual commits a crime that they know that they're going to go to state prison, that they would be able to earn

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some time or get some automatic time so that they maybe don't sit in the county jail for a year and not earn anything. We're looking for some continuum. And maybe they don't have training programs; and if they don't, we need to address that as well. But we're just looking...from day one, if you're working with the system as best we can help you, then we need to reward you for that good behavior or good works or good whatever. [LB425]

SENATOR KRIST: Thank you. [LB425]

SENATOR SEILER: Any other questions? [LB425]

SENATOR CHAMBERS: I have just one. [LB425]

SENATOR SEILER: Senator Chambers. [LB425]

SENATOR CHAMBERS: If you accept the fact, and it is a fact, that there are not programs, there are not jobs, yet you want to put...you want us to put in place a change in the good time laws, which all the groups that have studied directly what's happening in Nebraska say don't change the good time law, you've got political hacks telling us what to do. And here's what they're saying we ought to do, to show what fools we are: require people to earn good time by participating in education programs which don't exist, vocational programs which don't exist, other programs which don't exist. And the only way they can earn the good time is by conscientious participation in those nonexistent programs, which means they cannot get good time. That's illogical; it's irrational; it is insane. Yes, I want you to respond. [LB425]

SENATOR RIEPE: I will and I would say this: As we looked at this, and I said in here, when we looked at it, we came to the conclusion that we may have to recommend this at most to be in a task force or some kind of a study. Because when we drilled down on this, we had ten days, as you know, with...as a new senator, you have ten days to get your bills in, so you're hustling pretty fast. After those days, we started drilling down, looking, talking to the sheriff, talking to probation officers, talking to everyone, and it was only at that time that we found out the deficiency in terms of the existing programs. [LB425]

SENATOR CHAMBERS: What new senators need to do is learn not to take all this trash that's given to them and tell these people, I don't understand it, find one of the senators who know. They know they couldn't get anybody to bring it. You feel complimented because the mayor, who is your friend, who lives in your neighborhood, who said she wants it, the Omaha Police said they want it, so they give you a bill that you don't even understand to deal with a system that you don't understand. You are too intelligent to tell me...wait a minute. Let me not make a

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presumption. You want us to pass this bill, otherwise you wouldn't have brought it to us. Isn't that correct? Isn't that what you want? [LB425]

SENATOR RIEPE: I want some action. I would like to see some action on this even if it's the study. And I would like to say, too, Senator Chambers,... [LB425]

SENATOR CHAMBERS: Please, if you'll answer... [LB425]

SENATOR RIEPE: Yes, sir. [LB425]

SENATOR CHAMBERS: ...the way I'm asking you. Then you can respond. [LB425]

SENATOR RIEPE: Yes, sir. [LB425]

SENATOR CHAMBERS: When you bring a bill to us, do you want us to pass it or not? If you don't want us to pass it, we're wasting time and we can just go on and kill it now. [LB425]

SENATOR RIEPE: I would like...excuse me. [LB425]

SENATOR CHAMBERS: Do you want us to pass this bill? [LB425]

SENATOR RIEPE: I would like to have you act on the bill. [LB425]

SENATOR CHAMBERS: What does that mean? [LB425]

SENATOR RIEPE: That means you may say, we will take it and with a study and get it in line with the other pieces that on Friday you're going to be looking at the big piece that the...I think it's primarily the inpatient...the prison side of this thing. [LB425]

SENATOR CHAMBERS: No, that's not what your bill says. Your bill has specific things and among the things it says, on page 12, in lines 25 and 26, "Earned time is a privilege and not a right." That means you don't even have to give it to them if they earn it. It's strictly based on whim. So here's what we would have. If we pass the bill, then we set in place an irrational, impossible-to-be-carried-out system because it says, in order to get from point A to point B, you have to walk through a solid steel wall; and if you don't walk through that wall, you suffer for it. That's what this bill says. The only way to get good time is to do that which is impossible

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because the conditions to be met cannot be met. But I'll save that for these people from Omaha with their brilliance. [LB425]

SENATOR RIEPE: I would like to say this, too, is part of this, as I started out in saying, is I carried this when I...I was interested in shopping...interested in doing something because this is what I heard in walking 9,000 doors and going in the sweat and in the cold. [LB425]

SENATOR CHAMBERS: Those people in those door...in those houses don't know anything. They're going by what they read in the paper. [LB425]

SENATOR RIEPE: But they are my voters. [LB425]

SENATOR CHAMBERS: And what they read in the paper is not accurate when it's this stuff of saying good time is the problem. Good time is not the problem. But let's...I'll wait till the Omaha people come. But I wanted to put for you the posture we would be in if you ask us to do what Omaha told you to ask us to do: pass a bill which creates an impossible situation for earning good time. So you have people currently in prison who when they first went they got half of their sentence lopped as long as they don't misbehave. From the passage of this bill, we have people who cannot earn good time at all because the conditions that must be met cannot be met. So you have some people earning good time under one statute, some earning it under another, some earning it under sentences that contain a mandatory minimum which must be served first before any good time can be earned. So all of that is on the table already. Then we're going to put something else on the table that applies to everybody after this bill passes where none of them can earn good time, period. By statute, they cannot earn good time. That's an insane system. But I'm working this up so Omaha will see. But I'm hoping you begin to get an idea of how complex this system is and how unwise it is for you to undertake something that you don't even understand. You said you worked in medic...what did you say you did? You had experience in what? [LB425]

SENATOR RIEPE: I was a hospital administrator for 30-some years and I had two different...I was the administrator of Richard Young Hospital, psychiatric hospital, and I also had a psychiatric unit at Mercy Hospital in Council Bluffs, so... [LB425]

SENATOR CHAMBERS: Now suppose somebody said, since you ran the psychiatric hospital, we're going to deem you to be a psychiatrist and we want you to perform psychoanalysis. Could you do it? [LB425]

SENATOR RIEPE: That will be after hours and there will be a substantial fee. [LB425]

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SENATOR CHAMBERS: Could you do it though? Would you feel qualified to do it? [LB425]

SENATOR RIEPE: No. I'm an administrator. I'm not a psychiatrist. [LB425]

SENATOR CHAMBERS: Well, how about if they said, we have a very important brain operation that needs to be performed and you have some association with medicine so we want you to perform this operation? Would you do it? No. [LB425]

SENATOR RIEPE: No. [LB425]

SENATOR CHAMBERS: So then they'd come to you with a complex issue and said, lacking all knowledge and understanding, we want you to give this to these senators and persuade them to pass it. That's the assignment they gave you. [LB425]

SENATOR RIEPE: Well, when I was talking about the hospital, I was trying to talk about the implications of juveniles and the need for reform in the juvenile system. I understand from what I've read, and it's not extensive, that Nebraska has a very antiquated juvenile system, particularly in comparison to a state like Missouri that I understand is very progressive. [LB425]

SENATOR CHAMBERS: Is that what this bill is about? [LB425]

SENATOR RIEPE: No, sir. [LB425]

SENATOR CHAMBERS: Oh. Based on what they got you doing, I didn't...I don't know if they told you that's what this bill does, in addition to all the other things. But that's all that I have. [LB425]

SENATOR SEILER: Any further questions? I have just...and I know your bill didn't do it, but you alluded to it a little bit and then backed away from it. Your bill really repeals the current good time bill in its...in this...in the body of LB425. And so you're taking that part out and you're hoping the judges make an adjustment from the ten years down to the five years, as the example you used. The thought, as you alluded to it and then veered away from it, I wonder if it had some merit. And here's what I'm talking about: that you grant good time for taking the programs, doing the career, additional good time--because there the warden and the officers control, pretty well on an objective basis, the fact you either took the program or you didn't; leave the other good time that, if you drop some officer with a right hook, that good time then comes under the revisions of taking it away, doesn't have anything to do with regard to the program situation. What we were talking about at one time in the LR424 hearings and in the Council of State

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Governments is, how do we stop these people from jamming out? And that...then we went off to the right, saying, well, no problem, we'll allow the judges to do supervised release and put them...ankle bracelets on them and all that. But here we have the programs...and we're going to get those programs. I think the committee has already pretty well thought that through. But once we get the programs, what if the guy just says, I don't want them, I'll jam out, then you won't have any control on me when I walk out the door? And we've got a bunch of prisoners doing that. How do we get them to take those programs if they're offered? Second issue has nothing to do with the warden, has nothing to do with the guards. They have a program already in place for this. The judge gives them half time off for good time to start with. They screw up in the management of the prison. They have a procedure where they can take the good time away from them. Is that what you intended? [LB425]

SENATOR RIEPE: Well, the intent was, as we looked at it, was to say it should not be automatic. We thought it needed to be earned with a judicious process. [LB425]

SENATOR SEILER: Now which part are you talking about, the sentencing or the attending the programs? [LB425]

SENATOR RIEPE: Well, the earned time. [LB425]

SENATOR SEILER: You were talking about the programs. [LB425]

SENATOR RIEPE: Yes. [LB425]

SENATOR SEILER: But yet you... [LB425]

SENATOR RIEPE: Well, we were talking about earned time with the assumption that those programs were in full force so that you didn't have to wait. [LB425]

SENATOR SEILER: No, let's assume they are... [LB425]

SENATOR RIEPE: Okay. [LB425]

SENATOR SEILER: ...under your program, under LB425. Let's assume they are. Where do you take away or not allow good time? Do you go back and say to the judge, I'm not taking...I'm taking your good time, or do you say he never got it in the first place, under your bill? [LB425]

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SENATOR RIEPE: Well, as we looked at this more, we moved from the idea that it would be exclusively earned time to the idea that it would be a combination of earned time and good time. I think you have to have a combination. So perfect legislation? No. [LB425]

SENATOR SEILER: Now that's exactly what I heard you say earlier and...but your bill doesn't do that. That's my point. [LB425]

SENATOR RIEPE: And I think that that's why...and I'm going back to my notes here. It said that CSG Justice Center's January report suggested establishment of a task force to assess good time statutes, departmental policies. And so in that...we're walking this back just a bit to say, out of doing due diligence, because the last thing that I wanted to do here is...and I'm not a corrections expert by any means. [LB425]

SENATOR SEILER: No, no, I understand. [LB425]

SENATOR RIEPE: So we were saying, well,... [LB425]

SENATOR SEILER: Okay. [LB425]

SENATOR RIEPE: ...these are some real challenges and this is not a simple problem and it's not a problem where you can solve this without solving the whole continuum. [LB425]

SENATOR SEILER: Okay, I understand when you made that comment then what you were talking about is combination rather than... [LB425]

SENATOR RIEPE: Yes, sir. [LB425]

SENATOR SEILER: But your bill doesn't do that. It replaces one for the other. [LB425]

SENATOR RIEPE: Yes, sir. [LB425]

SENATOR SEILER: Thank you. [LB425]

SENATOR RIEPE: Thank you, sir. [LB425]

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SENATOR SEILER: Any further questions? Thank you. First person to testify for proponent of this bill, in favor of this bill. [LB425]

TODD SCHMADERER: Good afternoon. [LB425]

SENATOR SEILER: Good afternoon, Chief. [LB425]

TODD SCHMADERER: My name is Todd Schmaderer. I'm the chief of police for city of Omaha. It's S-c-h-m-a-d-e-r-e-r. Look, I can't say I disagree with a lot of the discussion that's taken place. I like the fact that at least we're talking about the lack of programming that we have for inmates. I understand that this bill is not all encompassing, certainly bears a study. I was on the CSG committee. One of their recommendations was to study it because some of the viability that will be espoused here today can bear some fruit. I realize that there are some Herculean tasks in front of the Judiciary Committee and the Legislature this year. You have an overcrowding situation. You have a lack of programming situation for all our inmates. I look at this bill as a discussion point so that we can talk about the lack of programming that we have for some of our inmates. Maybe this will galvanize a further push towards seeing that through. Corrections has two main goals: first is to house offenders safely away from society while they serve their sentence; the second one is to facilitate their reentry into the community. Those are the two main goals. Nowhere is a goal of corrections to reduce prison overcrowding, but somehow that's become the culture in the state of Nebraska, and that's a culture that I would like to see changed. So if a study of the good time law can facilitate that culture change, I'm all for it because the reality of it is 97 percent of all prisoners are going to get out someday. They're going to get out in your community. The majority of them are going to get out in my community, in the city of Omaha. The culture, the priorities have gotten skewed. And if you go to earned good time, perhaps that puts the culture in realignment. I see it as a means to ensure that the programming is available. Certainly, it should be available, or why move forward? This might be your third or fourth step in the discussion. I see it as a fair program. Right now, stripping an inmate of automatic good time, reductions for bad behavior can be seen as subjective. I'm not there. I'm not making those decisions, but some prison guard is somewhere and that's going to be subjective to that particular guard. And the other concern I have--I see my yellow light coming on--is if we have our judges simply doubling sentences to accommodate this, then what is it doing for us? Is it helping our prison overcrowding? Is it helping reentry into society? It's really not doing any one of those. It might be the system. We have to deal with the interim, but there's certainly a foundational discussion to have on this. Be happy to take your questions. [LB425]

SENATOR SEILER: Chief, did you have anything further that you'd like to discuss, even though your time may be running out? [LB425]

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TODD SCHMADERER: You know, I'm just happy to take the questions, Senator Seiler. [LB425]

SENATOR SEILER: Okay. [LB425]

TODD SCHMADERER: It's always a privilege to come to Judiciary Committee every year. And I don't know if you look forward to seeing me, but I look forward to seeing you. [LB425]

SENATOR SEILER: Any questions? Senator Chambers. [LB425]

SENATOR CHAMBERS: Chief, I just want to say for the record I enjoyed the conversation we had a week or two ago. [LB425]

TODD SCHMADERER: I did, as well, thank you. [LB425]

SENATOR CHAMBERS: But the way this bill...we have to deal with the bill that is before us. One of the big things that bothers me is it says, "Earned time is a privilege and not a right." That means you're not even entitled to get it. We can give it to you or not give it to you. So that indicates it's sitting on a foundation built on the sand. One of the things needed in a prison setting more than anything else is certitude and regularity. What the inmate is interested in is knowing what is the date that I'm likely to get out of here and what do I have to do to get out of here. Under this bill, nobody can calculate that, at all, because there's no point at which you're entitled to have good time. You could have to serve your sentence day for day under this law and never get a day of good time. So what the prison officials would have to say, the ones who calculate the time: We cannot calculate when you'll get out of here other than to say that the judge gave you 10-20 years. And what that means under the current law that other people are serving, that when they've served half of that bottom sentence they're eligible to be considered for parole, not that they'll get it, but they'll be considered. There is a benchmark for them; for you there is none. We don't have any way of determining whether you'll ever get good time, so you have to count on serving a minimum of ten years. And they say, but these other guys...well, the Legislature did this. I'm doing this to show that we have to look at the consequences of what this is going to do to the system. If the only reason that this is brought is for discussion, then we can just kill it because it's impractical. But what I would appreciate is if you can make some of the people in Omaha understand that these people are going to come out and the programming is a must. There was a time when the Penitentiary was just for punishment. Then they changed the term to "corrections" because they said we should be correcting behavior and preparing people to come out. And for a while, there were programs. There were even education programs. They would let teachers come in from the universities who volunteered their time. All of that went away. They had programs where they could go to work. All that's gone away. They have

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classification systems now where, if you meet those standards which make you eligible for work release, somebody who is your caseworker can say, but, well, you're not going to go, and there's nothing you can do. So everything is uncertain. So I will not support any bill that lends...leads to more of that. And for those who may not be aware of it--and then you can respond however way you want to, to all of this, as you please--we got the tough sentences not because, as some...a guy with the mayor's office said, well, there was a reason for giving mandatory minimums. There was no rational reason. It was faddish to say, we've got to get tough on crime. They might have a sentence already of 10-50 years, so you can't increase the maximum. So what we'll do is make the minimum mandatory, no rhyme, no reason, no consideration of how it's going to skew everything in terms of calculating a release date. We're being asked now to do the same thing. Nikko Jenkins did some horrendous things and the quickest thing for politicians and others to jump on is good time without even understanding what the policy is, how it operates, without realizing that the Governor's appointees with the Governor's approval did not want to administer good time laws on the books right now that would have dealt with every problem that people now see as a problem. The problems are not in the law. The problems are in how these laws are going to be administered. So let's say we would put this bill in place. We don't have the programs, we don't have any way that good time can be earned, and that's the only way you can get good time. So in...under this bill we've abolished good time for everybody who enters the prison after this bill passes. Everything is left to the whim of jailers, guards, and wardens, and there is no appeal for the inmate. With all that I'm saying, I never indicate that a person should not be punished for the wrong that he or she was convicted of having done. But I say always that the punishment is to be deprived of your time, not physical or psychological torture, and nothing is more tortuous psychologically than to be told, you've got to stay in prison but we're not going to tell you how long you have to stay there; you'll just stay there until we say you can get out. And any way you'd like to respond, either with reference to the bill or your philosophy of how corrections ought to function, I wanted to make a broad enough statement to leave you...give you the leeway that you need. And the lights are not timing you now. [LB425]

TODD SCHMADERER: Okay, appreciate it, Senator. It's very hard to write a bill when two major fundamental tenets are in play and absent in the state of Nebraska. We have an overcrowding situation; we have lack of programming for our inmates. So in fairness to Senator Riepe, in fairness to everybody that had to write this bill, we had to write this bill with a handicap. We had to write this bill as if it's three, four steps down the road. Okay? My concern is this: An inmate who jams out, an inmate who serves their sentence and is released cold into society without any program, without any supervised release, anything, that inmate has the least chance of success. They will recidivate more than any other inmate. Nebraska correctional system has the highest jam-out percentage in the country. That's...I think we all agree that there are some issues there. And if nothing else, this particular bill highlighted, albeit not functional because it's two, three steps down the road, but if you had the programming available, if you had the prison overcrowding situation in check, the viability of this bill takes on a heightened sense

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of importance in creating a culture within our prison system that I think is beneficial to the inmates and, conversely, beneficial to the citizens of the state of Nebraska. You know, as Omaha chief, I've been chief for two and a half years. It's the largest law enforcement agency in the state. We take our time to come down here to the Judiciary Committee, out of respect, to voice these opinions, to have these discussions. There is...I don't see any other law enforcement entities here today. We're here as a sign of respect to this committee so that we can air out what some of our philosophies are. And if you really analyze what I have said, based on what everybody else has said, I don't know if there's a whole lot of difference to it other than we are looking at something down the road. At some point, there has to be an endgame and a vision as to what...our best-case scenarios for the state of Nebraska. And if you look at this particular bill, I would ask that maybe you entertain an opportunity to study good time, earned good time, as a component, as a mixture, once we get the other blocks in play, as what we would...a model prison would be. And those are generally my discussion points and I'd certainly be happy to take any other questions. I appreciate Senator Chambers giving me the opportunity to just kind of ad lib on that. [LB425]

SENATOR SEILER: Senator Pansing Brooks. [LB425]

SENATOR PANSING BROOKS: Thank you, Chairman Seiler. Chief Schmaderer (phonetically), is that how you say your name? [LB425]

TODD SCHMADERER: Well, you did pretty good, Schmader (phonetically). [LB425]

SENATOR PANSING BROOKS: Schmader (phonetically), oh, I did an extra syllable. Are you aware of the Nebraska Center for Justice Research that's affiliated with the University of Nebraska at Omaha? [LB425]

TODD SCHMADERER: Which one are you referring...well, give me some contents of it. I'm pretty familiar with the... [LB425]

SENATOR PANSING BROOKS: Well, they've written a whole...they've done a whole study called "Examining the Effects of Nebraska's Good Time Laws." So I just wondered if you had seen that and had read that study. [LB425]

TODD SCHMADERER: I don't know if I've read that particular study, but I'm versed on quite a few studies as associated with this. [LB425]

SENATOR PANSING BROOKS: Okay, yeah, it goes in quite...I think we have a real copy of it. I just have some extra samples, but that's what it looks like. [LB425]

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SENATOR EBKE: This is what it looks like. [LB425]

SENATOR PANSING BROOKS: That's what it looks like, yeah. And I just...I'm interested because I am presuming...or what is the purpose of...what's your number-one goal in trying to promote the earned good time? What is your goal with this? [LB425]

TODD SCHMADERER: Hmm, perhaps I didn't instill that as good as I was hoping to. But my goal to instill good time is, at some point, when overcrowding takes place and we can fix that--I assume the Legislature will take a good crack at that this go-round--when the programming is in place for our inmates, which it already should be but I'm going to guess the Legislature is going to take a good crack at bringing that into play, the inmate who receives no programming, the inmate who jams out,... [LB425]

SENATOR PANSING BROOKS: Yes. [LB425]

TODD SCHMADERER: ...the inmate that has no play in any of that is the one that's going to come back to the prison system. Every study will suggest that. [LB425]

SENATOR PANSING BROOKS: Right. [LB425]

TODD SCHMADERER: That's my goal, is to reduce the amount of recidivism. [LB425]

SENATOR PANSING BROOKS: Okay. [LB425]

TODD SCHMADERER: And if we can have that, I mean,...well, do you disagree with that particular goal? Do you have a different one? [LB425]

SENATOR PANSING BROOKS: No, I just...I didn't know if it was safety for the community or if it was to avoid recidivism. I was interested in what your number-one goal is. [LB425]

TODD SCHMADERER: Well, yeah, I mean, in the world of criminal justice, avoiding recidivism equates to safety of the community. [LB425]

SENATOR PANSING BROOKS: Okay, because we do...we did have a bill in front of the Legislature that I don't think you came to speak about that talked about indeterminate sentencing and the one-third rule, which would encourage inmates to be able to take programming and encourage them to really work to not get to a point where they're jammed out. And so I'm just

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interested that you did not show to testify on that part. And the other interesting thing, I think, is that in the study that UNO produced through their Center for Justice Research, they have some statistics that, when you compare inmates convicted of nonviolent rule violations in prison, inmates that were convicted of violent misconducts had 627 percent higher odds of losing good time. So I presume that would be the goal, and that...so it seems to me that some of that is working with good time. If we're having 627 percent of the violent misconduct being penalized, that would probably be our goal with good time. So the fact that it didn't...did not necessarily...it...Nikko...the horrible case of Nikko Jenkins is getting blamed with good time but, in actuality, the studies show that good time is being effective. It is being used to punish those that are found guilty of violent infractions in...within the prisons. And the other statistic that they have is that inmates convicted of Class I offenses had a 1,050 percent higher odds of losing good time relative to inmates convicted of Class III offenses. So I just...I think that's interesting, to look at those statistics. Studies have been going on, and I just hope that you'll look at that and be able to respond to some of that for us. [LB425]

TODD SCHMADERER: Senator, good time and earned good time could be so much more than just a mechanism to control the prison population and ensure good behavior. That's like the low-level barometer. Add a stack of few things to that and you might reduce recidivism in conjunction with it. That's why I talk about... [LB425]

SENATOR PANSING BROOKS: Exactly, programming. [LB425]

TODD SCHMADERER: ...programming, exactly. That's why I talk about, you know, maybe we do consider studying this. Maybe CSG, the Council of State Governments, has it right on. Just like they studied prison overcrowding and given a lot of avenues to the senators to chew on as to how to reduce the overcrowding, perhaps we should study this. And that's what I'm advocating for today. Let's study good time. Let's see if we can get it...similar to CSG, and let's take a look at this. Senator, I always come here in a great amount of respect. I'm sorry I can't make every legislative session, but I am actually quite busy in Omaha. And I know I had a representative come down for that... [LB425]

SENATOR PANSING BROOKS: I'm sure you are. [LB425]

TODD SCHMADERER: ...the one-third bill that you were discussing. [LB425]

SENATOR PANSING BROOKS: Thank you. [LB425]

TODD SCHMADERER: You're welcome. [LB425]

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SENATOR PANSING BROOKS: Thank you for your efforts. [LB425]

SENATOR SEILER: Any further? Senator. [LB425]

SENATOR CHAMBERS: Now I'm going to make an observation. I was interested in the problem of prisons from the first day I came here. They had a building that looked like the old Bastille. It was built on the order of castle. It was poorly ventilated in the summer, sweltering, poorly heated in the winter. It was segregated by race. They had it as the typical jail, where you had a small room, an iron bar, iron doors. So I began to work with a senator here named Terry Carpenter, but he had to be persuaded, talking about something at that time that seemed heretical, and it was called prison reform. I visited the prison practically every day. There were inmates that I'd see walking around in shackles and I'd actually asked what the inmate's name was. And then, when they gave me these names, I'd write them down. And then, when I'd go out, I'd ask for that inmate and I'd say, I want to talk to this inmate and when he comes to me I don't want him shackled like a beast, I don't want him to have the leg irons, I don't want him to have handcuffs, I don't want him to have the belt. They said, well, Senator, that's for your safety. I said, well, I'm not worried about it and I'll take responsibility for it. The word went out and the inmates wanted me to ask for them because they wanted to be treated that way. I would go there at the time they were going to eat and I'd say, I'm going to make some surprise visits to see how they treat you guys when I'm not here. They said, no, let them know. I said, why is that? They said, we always eat better when they know that you're coming. So then I'd let them know that I...that's...that was the prison reform that was going on at the time. Eventually, there were some law firms, one of them was Kutak Rock, and they became interested in prison reform. And they watched what I did and said, don't be discouraged, this is catching on around the country, so keep doing it, which I did. To shorten the story, I was able to get enough money to actually demolish that old prison, to build a new one, and there were programming...there was programming that was included. But there remained a problem that was in existence before I got there: the way they granted good time. There were so many different laws in place that I won't even try to state them now. But one of them dealt with what was called meritorious good time, which this earned good time is paralleling. If you participated in these programs, you could get meritorious or extra good time. The way good time was figured in those days, the first year, and these are arbitrary numbers, because I can't remember all of them, the first year you could get three months a year off your sentence if you were not bad, the second year, four months, until you reached the point where you could get half of your sentence forgiven. That was a nice system except that under it a lot of people finished serving their system...their sentence before they even were eligible for good time...I meant for...they would be released before they were eligible for parole. So I talked to the Director of Corrections--it was Harold Clarke at the time--and we came up with the idea of giving everybody that half time off of the lower end to determine eligibility for parole, half time off the top end to determine when the mandatory release date came. It was at least possible to figure and calculate a tentative release date, which

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the inmate and everybody wanted. But then, when they maintained this idea of meritorious good time, it became discriminatory because the guards would choose some people to allow into these programs and other people couldn't get in it no matter what. Some of the guards used it to get inmates to have contraband brought in by saying, if you can get somebody to bring this to me, then I'll get you in this program and you'll have good time, extra. All that was done away with. It would be that everybody who comes in is going to come in on the same basis, whether you were convicted of theft, murder, or whatever. You are given 50 percent off when you come in and that's like your account. Your account remains intact and it works to your benefit as long as you don't draw it down, and the way you draw it down is to commit infractions. But there also was a system where, if good time was taken, you could make them justify it. When it came to the meritorious good time, you were not entitled to that, so you could not prove that you should have gotten it but didn't, or this person shouldn't have gotten it but did. So with the system that's in place now, everybody knows what the rules of the game are. The complications with the current system developed when the Legislature decided to get tough on crime, especially drug crimes, and they said, now we're going to put a mandatory minimum on the drug crimes. Then people became concerned about gun crimes, so they said, we're going to put a mandatory minimum on gun crimes and we're going to require you to serve the gun crime time after any other time. In other words, it was increasingly complicated. The people at the prison, had they put somebody in place to calculate good time, as complicated as it was, it could have been done. But they put a person in there who had no idea whatsoever of what he was doing. There were other people who knew what should have been done based on what the Supreme Court said. But they said, we're not going to do it that way, we're going to do it the way we always did, so we're going to ignore the fact that this person has a mandatory minimum in terms of calculating good time, we're going to start letting that person accrue good time from the day they step into the prison, which was not what the law allowed. So based on that erroneous calculation, people were made eligible for parole, after they had served their mandatory minimum, sooner than they were supposed to be, because that good time they earned serving the mandatory minimum should not have been counted toward parole but it was. So they were made eligible at an earlier date. Their top part was reduced also and, as a result of that, there were people being released early because the calculation did not take into consideration what impact the mandatory minimum did. The more things we do to good time, the worse situation we create. If good time is viewed by everybody as what it's supposed to be, not a way to tell a person, if you commit a crime you're not going to have to do your full sentence--that's not what it's for--it's to say, this is your sentence, 10-20, but if you behave then the key to your cell is in your hand. You can cut that time in half as far as being eligible for parole, and you can cut the time off the top when they have to let you go. Well, there were these other complications. So some of the men said that, because of the way these parole officers and other people do, I don't want parole, I don't want it if I can get it, I'm not going to apply for it, I will jam out. They still got that cut from the top down but then, when they jammed out, they had no parole officer to report to, no supervision by the state, nothing. What we are trying to do is get a system in place where once again there is a gap between the time that

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the person gets out and will be free of state regulation, and that's that...the federal people call it supervised release or something. The feds ran into the problem because in trying to be hard on crime they did away with parole. Then they realized that was the worst thing they could do, so they created a different name for it and called it supervised early release. You are still under the control of the state, but we're going to let you out so many months early as long as you behave, but you're still being regulated. In other words, they were on parole but it wasn't called that. Any time a system has come into being where parole was taken away, it backfired. It was not based on penological principles, but getting tough on crimes. They were political decisions. Right now, at the federal level, even judges are saying, we shouldn't have these mandatory minimums, we shouldn't have these heavy sentences, and when you compel us to impose a mandatory minimum when we don't believe the person ought to spend any time in prison but should get probation, then you don't need us here. Those are problems that the federal government, the judges, are trying to work their way through now. And we're being asked to create new mandatory minimums under some bills that are going to come through, take away the chance of earning good time, and do everything that has failed. And even this idea of earned income under a different name is a failed program. It didn't work. It won't work. It can't work, because you have people as guards with no training, no accountability. They have more power than they ought to have in determining what a person's sentence will be. So I think when you, the top law enforcement person in the city, will talk about the need for programming, it will give impetus for us to get some of these things that are necessary and then good time can be tied into that. But it's putting the horse before the cart to say, do away with good time, and then build some programs so that they'll be able to earn good time later on. It's not going to work that way. So I don't want you to think...well, I can't stop you from thinking it, and from the way I talk, it may seem like I'm not telling the truth. [LB425]

TODD SCHMADERER: I'm thinking you might have just come around to my way of thinking. I almost fell over in my chair, Senator. [LB425]

SENATOR CHAMBERS: Well, what I (laugh)...what I was going to say: It might seem like there is no attention paid to what is said, but often what is said is looking at one discrete part of the system when we have to look at all of it. And we have to be careful, which the Legislature has not been, to create problems for those who have to administer these laws, run the prisons. And they're given an impossible task because we are swayed by the whims and the fads and we change the law. But because only the Pardons Board can reduce or mitigate a sentence that's final, we cannot make a good time law retroactive. We can say that it is, but it can't be, so that's why everybody who was granted good time under a certain statute, no matter what changes are made in the future, has to get good time under that statute. So we have all these different points along the way where people are being calculated on the basis of statutes. Then the method of granting the good time will be a different amount. It may have been taken and it might be taken at a different rate based on the rules at that time. You know why I'm taking it like this? It's

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confusing even to try to explain it. But we as politicians have told those people out at the prison, you figure it out and you better not make a mistake. And they say, well, can you tell me how to do it? Well, no, you're paid to figure that out. But I think we should have a rational basis for what we do, and that's what all of this that I'm saying is aiming at. I'm not going to be in this Legislature more than six years at the most. I could walk away and forget about it and say, let the other people handle it. But I'm looking at what during earlier years the Legislature, of which I was a part, over my objection, by the way, created problems that these legislators are trying to solve. Those things are what brought you here today, that brought this bill in as an offering. But somebody, and I'm going to be the bad guy, has to say, we're not going to make it any worse, we're going to at least have to hold it at status quo and then try to build from here. I appreciate the offerings, but I like you a lot better when you talk about programming than when it sounds like you're saying lock them up and throw away the key, which I haven't heard you say, by the way, but some of the people who come from Omaha say things like that. [LB425]

TODD SCHMADERER: Uh... [LB425]

SENATOR SEILER: Any further? [LB425]

SENATOR CHAMBERS: Good answer. [LB425]

SENATOR SEILER: Excuse me. [LB425]

SENATOR CHAMBERS: He said, "uh." That's a good answer. (Laugh) [LB425]

TODD SCHMADERER: I was going to ask if I could close, or is there another question for me? [LB425]

SENATOR SEILER: Go ahead. [LB425]

TODD SCHMADERER: Earned good time, as time prevails you'll see that the tenets and the advantages of earned good time will be on the right side of history. To completely agree with the committee, there are some steps in process, in play, to get done first. But the right side of history and the best way to do this, the endgame result might be a blend of earned good time, regular good time, etcetera. In complete respect to Senator Riepe, it's very hard to write a bill when you're introducing a bill into a system that's pretty dilapidated right now. Four or five years from now, let's see how egregious this discussion is. It'd be a much more viable platform to happen on. But unless we bring it forward, unless we take the time to come down here and talk about it, then

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I think you lose sight of the endgame. Senator Seiler, I really appreciate it. I want to come back up for LB426. [LB425]

SENATOR SEILER: Okay. Senator Williams, you had a question. [LB425]

SENATOR WILLIAMS: I did have a question and a comment. And first of all, Chief, thank you for being here. Your sincerity and your commitment and your candor is appreciated. I also deeply appreciate, as a new member on the committee, the continued history lesson about why we are where we are. And I think that without a doubt this group is committed and everyone in this room is trying to reach a result that is the best long-term result for our state. One of the comments that just bounces around in my head with this is that we cannot let our memories of the past be more important than our dreams for the future with where we're going with this. And my question and my concern is--I would appreciate your input for my help--we're talking about, as Senator Chambers says, making it better, not making it worse. Seems to me right now the incentive that is created with good time is to reduce your sentence, but to qualify for that all you have to do is behave--I think that's the term, Senator Chambers, that you used--and then they achieve that. But in your judgment, does that behavior then turn into reduced recidivism at the end? And if it doesn't, what could we do to incent people to use the programming that hopefully we can make available? [LB425]

TODD SCHMADERER: Appreciate the question, Senator Williams. I mean, you're really opening up Pandora's box there because you have to ask yourself, has good time been used to get the inmates to behave or has there been a pressure not to take away good time because of overcrowding? That's a legitimate debate right now. So that...so the premise is a little bit skewed. But let's say the premise is to have them behave. Isn't that the baseline function? That's the baseline function. I've said earlier to Senator Brooks, let's take that baseline and let's build upon that. There's so many things more that good time in combination with earned good time could add to a system. And you have to ask yourself, yes, it is meant to control the prison population, but to what degree? Is it actually being utilized? Is it actually being taken away? Subject to debate. If judges are doubling the sentence just to accommodate it, then what good has it done anyway? The current system is broke. It may not be time for this particular new system. But in my mind, it's simply not working and it's played out across this state as far as offenders reoffending. And that's why I'm here today and that's why you see my staff here at other times. That's what we're trying to prevent. Did that answer your question at all? Did I get too much off on a tangent? [LB425]

SENATOR WILLIAMS: And that's why it's important that we try to in the future look at other ways of decreasing the amount of recidivism, because good time itself may not be doing that. Is that correct? [LB425]

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TODD SCHMADERER: I would agree. I don't know if there is a study around that will say good time itself reduces recidivism, it...probably just the opposite. Will good time modify inmate behavior so that you can have a safer prison environment? There's some good discussion that that would be the case, yes, if it's applied evenly across the board, which is never going to be the case when you...when it falls to individual discretion. When you have hundreds of correctional officers, some have thicker skin than others, some warrant what takes away good time more than others, as opposed to having the inmate have the opportunity to sign up for a particular class where there's a ledger, where there's something in record that says, inmate so-and-so wanted to earn some good time and signed up for this vocational training. Then at least there's a record you could go back and say, why didn't you give that inmate that training when they asked for it? At least there's a record now. There's no record of any arbitrary or capricious taking away of good time or anything like that right now. It's just left to be assumed. [LB425]

SENATOR WILLIAMS: Thank you for your help. [LB425]

SENATOR SEILER: Seeing no further questions, I have just a comment, Chief, that the failure, which you and I were both on the Council of State Governments, was that we didn't get to communicate as participants. We sat and listened. And if you have...you indicated that you had some problems with that conclusion that this isn't being pushed by overcrowdedness. If you get time, I'd like to hear your other comments on the program we went through with Council of State Governments. Just drop me a note and... [LB425]

TODD SCHMADERER: Okay. [LB425]

SENATOR SEILER: ...or e-mail or...we have found out that e-mails are traceable, so (laugh)...but I... [LB425]

TODD SCHMADERER: I don't mind my e-mails being traced, quite frankly. [LB425]

SENATOR SEILER: I think that...I don't either. But I think that's...that way, if there was a failure of that program, that was the lack of us being able to sit down at a table and discuss what we heard and say, this was good or that was bad, and maybe these priorities aren't quite right. I mean, it was more of a lecture-type program than I would prefer. [LB425]

TODD SCHMADERER: Understood, will do. [LB425]

SENATOR SEILER: Thank you. [LB425]

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TODD SCHMADERER: Yep. [LB425]

SENATOR SEILER: You may step down. Next proponent. Anyone else in favor of this bill? Those in opposition of this bill, opponents. [LB425]

ALAN PETERSON: Chairman Seiler, members of Judiciary Committee, I'm Alan Peterson. I represent ACLU of Nebraska. The spelling is A-l-a-n P-e-t-e-r-s-o-n. This bill of course, as is obvious to I think everyone in the room, collapsed when the introducer admitted that it was probably a cart before the horse. He may still like getting the cart and horse together, he and also the chief, Chief Schmaderer, who I thought was both honest and, as usual, very helpful with his thinking and perspective. But, yes, it's three or four steps away. You would first have to establish the ways to earn time. I'll tell you what I think the real value of this discussion and of this bill and of Senator Riepe's efforts to contribute to the problem solving going on: Finally, I think, because of this discussion, the veneer--v-e-n-e-e-r, I believe, it is--the little coating of baloney, of false propaganda has been stripped away. The politicization of the "good time versus earned time" debate that started back with the Jenkins case and then went through the gubernatorial campaign, finally can we get rid of it and get down to looking at the honest body of the problem of prison reform. Probably, a lot of the problem came from the fact that "earned" is such a wonderful word in Nebraska. All of us probably have "earning your way" as a big thing. And good time, because it sounded like it was something free given to prisoners, was terrible. Maybe we just need a new word. Call it, if you like, incentive time, if we eventually work on using it as one of the tools to fight recidivism. ACLU opposes this bill, of course, as written. It can't work. It wouldn't work. It falls on it...of its own weight easily from the very first few questions from Senator Coash and Senator Chambers and the others. But I applaud finally bringing it forward, stripping the clothes off of it, and saying, okay, the problem is, how do you create a good incentive for good behavior of prisoners and the kind of training that might keep them from coming back? At least, we can try much better. This debate, which seemed extremely one-sided, I think ended up with Chief Schmaderer calling for a study. I think that's just fine. My time is up. I appreciate your killing this bill, but we have places to go other than this. [LB425]

SENATOR SEILER: Anything you'd like to add? [LB425]

ALAN PETERSON: Thank you, Chairman Seiler. [LB425]

SENATOR SEILER: Giving a lawyer a free rein is a little dangerous. [LB425]

ALAN PETERSON: Yeah, I know. For a long time I worked for a big law firm when I think we sold our...we got paid by the word, but not anymore. And I'm not going to take more time. It was obvious this is not the way to solve it, of course. It's a way to lay it on the table, get rid of the

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politicization, and move on to the real solutions. Many of your bills do that. Thank you.
[LB425]

SENATOR SEILER: Any questions? Senator. [LB425]

SENATOR CHAMBERS: I'd like to use Mr. Peterson for somewhat of a sounding board to maybe pour a little balm on the lacerations that Senator Riepe may feel that he got from my questioning. I kept pointing out that I want to pose as clearly as I can what the situation would be if this bill were put in place. And he is the one who happened to be bringing it, so I had to make the remarks to him, adding over and over, those who come who had more to say about why this bill is like that are the ones that I would ask the question to. But...and I'm not trying to be facetious, but to get some direct answers, to get some things into the record. Do you have the perception that with a study of the LR424 Committee, the Council of State Governments, these other entities, such as UNO and...I don't know the names of all these groups, but have...together have created a momentum that we haven't seen up to this time before? [LB425]

ALAN PETERSON: Absolutely. [LB425]

SENATOR CHAMBERS: And... [LB425]

ALAN PETERSON: I think it's terrific. [LB425]

SENATOR CHAMBERS: And you had indicated it and the chief pointed it out and underlined it. This is the first time I can remember, anyway, where we were talking at one time about all aspects of what corrections is for. Punishment naturally is there. But the programming, good time, how you get it, whether it's earned or given, but however we're discussing, all of them dovetailed into a system and not discrete little blocks which you might put together and they bump against each other but they never blend. Now the question: If we don't lose this momentum, do you think that with a new director, who seems to want to do the right thing, too, we could right this ship, even if it's not done overnight? And by the "ship," I meant the Corrections, the department itself, the culture that's out there that has developed, and put it on the road toward doing what a correctional system is supposed to do, rather than just a punitive system. [LB425]

ALAN PETERSON: It sounds like a piece of utopia, of a wonderful, impossible future dream. But there's so much momentum and you have a combination of bright people from many sides looking at it, this committee working hard on it, those two...the two committees, as well as the Ombudsman's Office, all contributing positively, and my organization, ACLU, having a role of

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saying, oh, you've got to fix it because we don't want to sue you but we will, and we repeat that and we mean it, I think we could do it. It won't be this session. It won't be all this session but, boy, we have a good start. [LB425]

SENATOR CHAMBERS: And I think I saw in the paper--in fact, I know I did--that the ACLU is putting together a battery of lawyers who will be available should litigation in this area be necessary. Is that correct or incorrect? [LB425]

ALAN PETERSON: It's correct and, I'll be honest, it was kind of my idea. I, as a lawyer, know how much work it is to do a lawsuit. It can consume you. And we have Amy Miller, who some of you know, the legal director. I'm sort of the senior counsel or some such title. We can't do it. But we know where the best jail rights lawyers are, and they all in the Nebraska Bar, when asked, said, sure, we'll advise, and if you need somebody to really file a suit, yeah, we may well want to be involved. They're a good bunch and they're volunteer for this same good cause that you folks are working on. [LB425]

SENATOR CHAMBERS: And that's all I have. Thank you. [LB425]

ALAN PETERSON: Thank you, Senator. [LB425]

SENATOR SEILER: Anybody else? Thank you, Alan. [LB425]

ALAN PETERSON: Thank you. [LB425]

SENATOR SEILER: Further opposition. [LB425]

CHRIS EICKHOLT: Good afternoon, Chair Seiler, members of the committee. Chris Eickholt, on behalf of the Nebraska Criminal Defense Attorneys Association. First name is C-h-r-i-s, last name E-i-c-k-h-o-l-t. We are here testifying in opposition to the bill. Generally, the bill's provision, the operative provisions that are proposed, are vague, they are not defined, there are no uniform standards, and that will only invite selective, arbitrary, and inconsistent application in the awards of the earned time that are proposed in the bill. Additionally, and the fiscal note of LB425 captures this, the burden, if you will, that will be put on the department to administer this earned time concurrent or at the same time with the existing good time law is likely going to be very difficult for the department itself. I had some specific instances, some specific examples I could point out, but I think that the committee, members of the committee have already voiced some of the same concerns that we identified as an organization, so I'll just leave my comments at that. [LB425]

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SENATOR SEILER: Any further questions? Thank you for your input. Any further opposition? Anybody in the neutral? Senator, you may close. [LB425]

SENATOR RIEPE: Thank you, Senator Seiler and members of the committee. Evidence-based policies are needed if there's going to be a fruitful discussion regarding changing good time or adding earned time, therefore, I request the committee consider sending LB425 to the floor with amendments to allow for a combination of good time and earned time, or suggest an interim study or a task for, as suggested by the CSG, to assess good time status and departmental policies, evaluate reform proposals, and generate impact estimates. With that, I would answer questions. [LB425]

SENATOR SEILER: Any further questions? Thank you. [LB425]

SENATOR RIEPE: Thank you, sir. [LB425]

SENATOR SEILER: The record is now closed on LB425. (See also Exhibit 1.) And you may open on LB426. [LB426]

SENATOR RIEPE: Thank you, Chairman Seiler and members of the Judiciary Committee, for the opportunity to introduce LB426. I am Senator Merv Riepe, spelled M-e-r-v, last name is Riepe, R-i-e-p-e, from District 12 in Omaha, Millard, and Ralston. We have an obligation to all citizens of Nebraska to promote safer communities. I introduced LB426 with the intent of providing an electronic monitoring program for violent offenders for that crucial 90-day period of time after release when a former inmate is most likely to reoffend. I have worked with the city of Omaha to bring this bill to you today. I've been told by the Office of Probation that they are currently able to assess the risk of whether an inmate will reoffend; however, there are no tools that are able to predict dangerously...dangerousness regarding the reoffense. They're only able to look at past offenses to determine the potential risk of dangerousness, which is why we have focused on violent offenders for this bill. As stated in the testimony for LB425, in preparing for this hearing my offices researched and I have met with many of the groups that would be affected by this legislation, including the new director of Corrections, Scott Frakes, and some of his staff, Douglas and Lancaster County Corrections, the mayor of Omaha's staff, the city of Omaha Police, the Office of Parole Administration, the Office of Probation Administration, and the Governor's staff. LB426 defines violent offenders and requires all violent offenders to be referred to the Office of Parole Administration to be enrolled in electronic monitoring program for a period not less than 90 days. For those sentenced prior to the effective date of this act, the violent offender may be released 90 days prior to release if he or she agrees to be enrolled in an electronic monitoring program for a period of not less than 90 days. LB426 also gives the Office of Parole Administration the ability to develop, administer, and operate an electronic monitoring

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program for violent offenders, and gives a parole officer the ability to call on a peace officer to assist in arresting a violent offender, with or without a warrant, if the parole officer has reasonable cause to believe a violent offender has violated or is about to violate a condition of parole. The main intention of LB426 concerns those inmates that end up jamming out without any supervision. This allows for those inmates to get out 90 days early while being monitored during those crucial 90 days when they are most likely to reoffend. I have an amendment. Further, carrying a monitoring program will address an integrated case management requirement for those violent offenders that are a part of this program, similar to the reentry program established in LB907. I understand the Judiciary Committee will hear LB605 on Friday regarding prison overcrowding, limited postrelease supervision, and insufficient supervision as identified by the Justice Reinvestment Working Group. Further, CSG Justice Center, its January report addresses concerns regarding limited postrelease supervision. I believe LB426 provides additional discussion regarding release and reintegration of those convicted by...of violent crimes back into our society. There are multiple people here today that will testify in support of LB426. They will be able to answer specific questions that you may have and any lingering questions I will answer at closing. Thank you for your consideration of LB426, and I gladly accept any questions that you may have. [LB426]

SENATOR SEILER: Any further questions of this witness? Yes, Senator Pansing Brooks. [LB426]

SENATOR PANSING BROOKS: Thank you. I just have a question. On page 12, line 19, it says, whether (sic--whenever) a parolee or violent offender is arrested with or without a warrant, he or she shall be detained...you want me to wait until you get it? [LB426]

SENATOR RIEPE: I'm sorry, it's 12, page 12 and... [LB426]

SENATOR PANSING BROOKS: Sorry, page 12, and it's line 19, section (5). So I guess I'm interested...it says whether...whenever a parolee or a violent offender is arrested with or without a warrant, he should be detained in a local jail or other detention facility. Is that at any point in their lives after they've been determined to be a violent offender, so even like an arrest on a car, like speeding, or what does that...what would that arrest include? How long? I mean is it their whole lives, that they get out of jail at 20 and are arrested at age 56? Can they immediately be put back into prison? I'm just interested in what the intent of that was. [LB426]

SENATOR RIEPE: Well, obviously, I'm not an attorney, so my assumption here would be...is they would have to have charges within a certain number of hours. And if they cannot substantiate those charges, then they're going to have to be released. I believe that's generally the way that that works. They can't put them away forever. [LB426]

SENATOR PANSING BROOKS: Well, with parole, when somebody is on parole, there are complete standards set up so that you bring somebody back in, so I...this is just saying, because it was a violent offender, I'm interested that...I'm interested in the specifics of how long you have the ability to arrest somebody and throw them in jail for...I mean there are all types of reasons that we arrest people that aren't necessarily violent crimes. A substantial period of time could happen between...if...that's okay if you aren't quite sure what... [LB426]

SENATOR RIEPE: I think that they would have a process for any violation of parole and they would immediately, in coming back in, they would be introduced and have to go through that process. [LB426]

SENATOR PANSING BROOKS: Okay, so you're just saying while the violent offender is on parole? Is that what that's saying? [LB426]

SENATOR RIEPE: Well,... [LB426]

SENATOR PANSING BROOKS: Because it says, "a parolee or violent offender," so we have a system for parolees. They're parolees for a certain stated amount of time. And this says, "or violent offender." So to me it seems like it's a whole new classification where somebody might be arrested and then...I mean, is there a time limit on that? Is that something that...it seems like you could... [LB426]

SENATOR RIEPE: I don't know. I don't know. I need to tell you, I don't know. [LB426]

SENATOR PANSING BROOKS: ...get out of prison for a violent crime and then even 30 years later be arrested for something that wouldn't even be violent and throw them back in. That's what I'm just wondering, if that was the intent. [LB426]

SENATOR RIEPE: I apologize. I'm not able to address that. I'm sorry. [LB426]

SENATOR PANSING BROOKS: Okay. All right, that's fine. Thank you. [LB426]

SENATOR SEILER: What it appears to me is they've taken the violent crime and thrown it in with the parole... [LB426]

SENATOR PANSING BROOKS: Okay. [LB426]

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SENATOR SEILER: ...and didn't do a very good job in statutory language... [LB426]

SENATOR PANSING BROOKS: Okay, that's... [LB426]

SENATOR SEILER: ...because once they're off parole, I don't think you get a...you don't get a shot at them. [LB426]

SENATOR PANSING BROOKS: That's what I couldn't figure out, quite. [LB426]

SENATOR RIEPE: Okay. [LB426]

SENATOR SEILER: I think you're right. [LB426]

SENATOR PANSING BROOKS: Okay, thank you. [LB426]

SENATOR SEILER: Any further questions? Seeing none, thank you, Senator. [LB426]

SENATOR RIEPE: Thank you, sir. [LB426]

SENATOR SEILER: First proponent. [LB426]

MARTIN BILEK: Good afternoon, Senators. Marty Bilek, Omaha Mayor's Office. First of all, I'd like to thank Senator Riepe for having the courage to introduce, after being elected in November, to introduce a bill that's so complicated and far-reaching. I see this as a starting point. I...it's clear that there's a lot of work yet that needs to be done. During my testimony last week on LB172 and LB173, Senator Pansing Brooks mentioned that being tough on crime should not be our goal and said we should be smart on crime, and I agree. That's very true and I think that's what this is all about here today. LB425 and LB426 gives us an opportunity to be smart, make wise decisions with respect to prison reform and sentencing and supervision after release. In 2013, 35 percent, or 1,006, inmates were released without...released from prison without any supervision. That means no parole, no postrelease supervision, and no monitoring. The argument for some would be they paid their debt to society, now they should be unfettered. However, after being released from prison, a person's prospects for finding employment are daunting and doubtful. As you have heard me say before, a person released from prison has basically been set up for failure. LB425--I know we're talking about LB426, I'm going to make a quick comment about LB425--provides incentives for those incarcerated to participate in programming that will give them marketable skills and treatment for such things as substance abuse, anger

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management, or mental health afflictions, whatever the case may be. LB426 provides postrelease monitoring and supervision that will guide returning offenders into programs that will increase their likelihood for success through employment and meaningful lifestyle changes. Omaha and the state of Nebraska will be a safer place if we use incentives to promote programming that will reduce recidivism. A secondary benefit will be a smaller, more affordable prison population. In addition to that, based on the testimony that I've heard over the last couple of hours, I'd also like to say that it's clear to me that maybe a hybrid is in order here, and basically I mean earned good time and also just traditional good time. They both serve a purpose. As we've heard, the traditional good time makes for a more orderly prison. Earned good time, on the other hand, would be the incentive that we would all want to encourage people to attend programs that will benefit them and keep them from recidivating. I also believe that...some had mentioned you could create a system that's so complicated that the state prison system wouldn't be able to afford to hire enough people to compute the good time and the other sorts of time that would be available to somebody, and it would be maybe counterproductive. I was thinking that maybe the state of Nebraska can't afford not to develop a system that's more sophisticated that would be more productive so that there wouldn't be the recidivism and the population would go down. And lastly, I would say that maybe the people that should be making these decisions are the judges that sentence the individual at the...after their trial, because that's the one person who's going to know more about that individual than anybody else, because the judge got...has...gets him put from the prosecutor, gets him put from the defense attorney, gets him put from the Probation Office who does the presentence investigation. And at that time the judge could say there needs to...could give a sentence and then also design programs or sentence the person to programs that would offer them an opportunity to gain additional good time. He would benefit from doing that, and I think the judge is the one in the best position to do that. Thank you very much. [LB426]

SENATOR SEILER: Any further questions? Seeing none, thank you. Next testimony for the proponent. [LB426]

TODD SCHMADERER: Good afternoon again. Todd Schmaderer, chief of police, city of Omaha. I'm going to be a little briefer on this synopsis of mine. Studies have shown that supervised release post an inmate's sentence, not in lieu of the sentence, lowers the rate of recidivism. Conversely, the inmate who jams out, which is an inmate who serves their sentence and is released cold into society, is under the greatest risk to reoffend. Nebraska has one of the highest "jam out" prison populations in the country. In short, buttressed by the analysis conducted by the CSG--Council of State Governments--study, Nebraska's felony sentencing system fails to ensure people sentenced to prison receive postrelease supervision. The evidence supports the recidivism benefits of supervised release and that Nebraska is missing this key component. The state and, most notably, the city of Omaha suffer because of it. As chief of police in Omaha, I can tell you that violent crime, especially by way of gang violence, a very small percentage, truly, a very small percentage of our population continues to affect Omaha.

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Even though we're well off our highs--in 2008, we had 197 shootings; the last three years, we've averaged around 150--it remains a priority, because 150 is way too high. The Omaha Police Department has made internal changes to address gang gun violence, as well as external changes to engage the community, attempt to make headway into bettering police-community relations. All of this helps. But I'm asking for assistance from the Judiciary Committee today to assist us in that endeavor as well. LB426 calls for 90 days' minimum of supervised release to be imposed at sentencing, imposed at sentencing by the judge for all violent offenders. The 90 days carries with it the requirement of an electronic monitoring device for that violent offender. The reason I am advocating the electronic monitoring device is it plays out well in Omaha with our ShotSpotter technology, allows us to triangulate in real time where that gunshot perhaps occurred. Triangulate that with the GPS monitoring device and you have yourself an instant suspect, freeing up the citizens from having to come forward and put themselves in jeopardy and testify. It gives us an instant suspect to follow up on. A very small percentage of our population does the shootings. Even if you have a gang of 200 members, a lot of them are just 200 members by name only, 200 potential victims. Only two or three of them will be willing to do the high-profile shootings. It's key for us to arrest them and put an end to whatever string they're going to do in the future. This is where LB426, with electronic monitorings, intensive supervised release, comes into play greatly for the city of Omaha. And because of the city of Omaha's unique characteristics of population is why I'm here advocating this specifically for Omaha. If our goal is to reduce recidivism and prison overcrowding by reinvesting our dollars into increased public safety, LB426 does provide a means to assist Omaha in that endeavor. [LB426]

SENATOR SEILER: Chief, your red light is on, but you can go ahead and finish up. [LB426]

TODD SCHMADERER: I timed it just perfectly, Senator. I wanted to... [LB426]

SENATOR SEILER: Okay. (Laugh) Any questions? [LB426]

TODD SCHMADERER: ...always be respectful to you coming in here. [LB426]

SENATOR SEILER: Any questions? Seeing none, thank you. [LB426]

TODD SCHMADERER: All right, thank you. [LB426]

SENATOR SEILER: Any further proponents? Seeing nobody scrambling from their chair, opponents. [LB426]

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ALAN PETERSON: Mr. Chairman and members of Judiciary, I'm Alan Peterson, ACLU of Nebraska. There are things I like in this bill. Our position is I guess, against it because of some what we see as problems. But the ideas of adding electronic monitoring with required supervision may well be one of the tools that this committee ought to look at. Let me point your direction...point you at two problem areas we see. On page 8 of the bill, line 13 sets the amount of time that might be used for the electronic monitoring and, I assume, some supervision in it and says that it might be as long as the original sentence. In view of the fact that you might have an original sentence of 20 reduced by good time to 10 and then parole much earlier, you might have somebody electronically monitored for that whole original sentence. I would suggest there should be a limit and the original sentence is probably an overly burdensome amount. Another concern is in the same paragraph, at the bottom. The last sentence says, "The administrator may assess a fee to the violent offender to help defray the cost of the monitoring program." Now we don't have prisoners pay rent for their cell. This is part of the punishment, part of the sentence. And while costs are frequently charged to an offender or somebody who loses a case, I think that's very questionable, to try to charge the offender for the cost of his...part of his sentence if the...in this way. I suspect that it may not be unconstitutional as written, but think how it would be applied. It may assess a fee? What, those who agree to pay a fee may get the discretionary 90-day deal off their sentence if they wear the bracelet, the electronic bracelet? That's probably a bad idea. That sentence probably ought to be struck. However, overall, there are some nice ideas in here and they have been tried in other states. And I have no criticism of the general concept of it, nor does ACLU, and hope that you might consider the good parts and kick out the bad parts. Thank you very much. [LB426]

SENATOR SEILER: Any questions of Mr. Peterson? Thank you. [LB426]

ALAN PETERSON: Thank you. [LB426]

SENATOR SEILER: (Exhibits 1 and 2) Any further opposition? Anybody in the neutral? We have two letters, one from the mayor of Omaha and one from John Wells, the president of the Omaha Police Officers Association, that will be made part of the record. You may close...waives closing. That concludes the hearing on LB426. LB545, Senator Harr. Please jump into the hot seat. [LB426]

SENATOR HARR: What's that? [LB545]

SENATOR SEILER: Please jump into the hot seat. [LB545]

SENATOR HARR: (Laugh) Mr. Chair, members of the Judiciary, my name is Burke Harr, H-a-r-r, and I am from Legislative District 8 in Omaha. I bring before you LB545. I'll read you my

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formal introduction, then I might go off a little bit. LB545 is a straightforward piece of legislation that I drafted as a result of many discussions over the last...past year on sentencing, mainly related to the issue of good time versus earned time. This legislation was brought to my attention by Ms. Jenn Piatt, who used to be attorney for the committee, and in speaking with Andrea Kruger's, who was one of Nikko Jenkins' victims, father and uncle. And what this does is it...is establishes a new state statute that would require that the minimum sentences imposed by a court for individuals who commit the offense while serving a sentence under the jurisdiction of the Nebraska Department of Correctional Services would be served as a mandatory minimum sentence. However,...and it would be served consecutive. However, this subsection would not follow the...any administrative sanctions authorized by the department, any term of parole, or any offense for which punishment is not more than one year. In other words, if you commit a crime while serving a sentence under state jurisdiction, you pay a more severe consequence as a result of your actions. And the reason I brought this was there is a great...there was a great feeling, I think it's been largely debunked, and I don't know what happened in here earlier, but this whole earned versus good time was very big on my campaign. And as a former prosecutor, I saw the good that good time does. It incentivizes. But then I was also frustrated when as a result of the hearings last summer I learned that administrative time was not often taken for people who violate the rules in prison. And so we've lost the incentive to have individuals behave because we had prison overpopulation and we had...on the one hand, and on the other side we had a director whose belief was that he didn't want to add time to anyone's sentence. So what we had to do was find a way to find...to separate the wheat from the chaff and to find out who are your, for lack of a better term, low-grade felonies that need to come in and go out, who do their time and then go home, as opposed to those people who are in prison who are a danger on the streets and they are a danger while in prison and they don't have the proper incentive to behave in prison because they knew administrative time wasn't being taken. So I had to look for another way to incentivize them to behave. My goal on this is to take the politics out of good time. I am not a fan of mandatory minimums as a general rule. I think they're overused. I signed onto Senator Chambers' bill. I like them on habitual because I think in a habitual crime that's a person who has been given chances and has not availed themselves to those chances and has continued to live a lifestyle that is not conducive for our society. And, you know, are there ways to clean up that good time, mandatory minimums on...excuse me, mandatory minimums on habitual? Yes. But I don't think we should throw the baby out with the bathwater. I think LB605, which you guys are going to be hearing next week, is a very good start. I think this works hand in glove with LB605 because what we've said is we're creating programs to incentivize individuals through parole or probation, and to a lesser degree parole, which doesn't really exist right now, as we've found out. And we need to have parole. It's...we've got to find ways to put these individuals back into society. Not part of LB545, but we have to find a way to make sure they don't...there isn't recidivism and we have to make sure that while they're in prison these prisoners feel safe. And part of that is LB545 saying, hey, you've got a heavy hammer over your head, while you're in here you better behave, because you don't just have the administrative action. You also have this

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criminal action and it's concurrent and it's consecutive, boxcar, meaning back to back. You have to finish the first one, then you do the second one. I'll address the fiscal note, which I find interesting because they somehow say this bill could add an additional 678 years. They don't tell us how they come up with that number. I have no idea where that came from. If anyone knows, that's great, but they don't say how they came up with that number. But what that tells you is we have an issue of safety in our prisons. If they're saying, if you have a sentence and you have to serve consecutive, it's 678 years, that tells you we've got a real problem, folks, and that's what I'm trying to address. Whatever we're doing now isn't working. We've got to make our prisons safer and we have to find...those who are disruptive have to be punished so that those that want to do the programming, those who want to do the right thing and turn themselves around, those individuals have a safe environment to do that, or at least safer than it is right now. What we don't want is...you know, this still gives judges a great amount of leeway, as we all hear judges kind of baking or cooking, whatever you wanted to use the term, good time, when they're sentencing somebody. This just takes away that mandatory minimum so that if you do something heinous while you're in prison, you lose your good time because you've proven that you've failed to avail yourself to the prison system. That's what the bill does, pure and simple. I'd be more than willing to entertain any questions anyone would have, but I would ask that you please advance LB545. [LB545]

SENATOR SEILER: Questions? Seeing none. [LB545]

SENATOR HARR: Worked themselves out, excellent. All right. [LB545]

SENATOR SEILER: Okay. Proponent of this bill. Do you have...were you waiting for anybody? [LB545]

SENATOR HARR: No, we...no. I'll explain in my close, yes. [LB545]

SENATOR SEILER: Okay, then we'll go to the opponents. [LB545]

ALAN PETERSON: Chairman Seiler, members of Judiciary Committee, I'm Alan Peterson. ACLU of Nebraska opposes this bill. It is a bit of an echo of the times past, from about 1990 on, when new crimes and higher punishments were added for existing crimes and for new crimes. It's exactly the kind of bill that got us where we are now. It adds time to people who commit whatever crime while in prison, maybe doubling it. It makes whatever the minimum sentence, for whatever crime it may be, a mandatory minimum. In LB172, you heard the discussion of Senator Chambers' and others' introduced bill to eliminate most mandatory minimums and all the reasons why. This goes backwards. And while it's a small step, apparently, the fiscal analyst thought that it would add 678 or so years. And the cost, they put a per diem of \$7,000-something

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per inmate year. I won't try to do the math exactly, but thousands of thousands of dollars. I'm not sure where the need for this really comes. I hope and don't think, because I know the integrity and "well-meaningness" of Senator Harr, I don't think it's political. But I think it's an unnecessary and harmful answer to what, so far as we can tell, is a nonproblem. Nobody else showed up to even say there was a need. Way, way, back in school, trying to be a debater back in high school, we were always told, first prove the need, then prove that you've got a remedy, and then prove that it's a good remedy. I'm sorry, but I don't think this one passes any of those prerequisites for good legislation. I would ask that this bill not advance. Thank you. [LB545]

SENATOR SEILER: Questions? Seeing none, thank you, Mr. Peterson. [LB545]

ALAN PETERSON: Thank you, Mr. Chairman. [LB545]

SENATOR SEILER: Further opponents. Come on up. [LB545]

ROBERT BRYAN: Thank you, Chairman. My name is Robert Bryan, B-r-y-a-n. I'm director of the Followers of Christ prison ministry of the Nebraska Synod of the Evangelical Lutheran Church in America and full-time volunteer clergy in the Department of Corrections. I oppose this bill because, as Mr. Peterson had just referred to, it is regressive. It is doing exactly the things that have caused us to fill up our prisons. Mandatory minimums takes that decision making out of the hands of judges and puts it in the hands of legislators and so on that get elected on get-tough-on-crime-type approaches. In 2013, the Evangelical Lutheran Church of America passed a social statement on criminal justice that advocates for progressive criminal justice reform and to look at laws that are doing exactly this type of thing and to stand against them. This is, I think, a regressive bill. So that is all I have to say. Thank you very much. [LB545]

SENATOR SEILER: Any questions? Thank you for your testimony. [LB545]

ROBERT BRYAN: Thank you. [LB545]

SENATOR SEILER: Further opposition. [LB545]

MICHAEL STAGEMAN: Good afternoon, Mr. Chairman and members of the committee. My name is Michael Stageman, S-t-a-g-e-m-a-n. I'm an attorney at the public defender's office in Douglas County. I'm here on behalf of the Nebraska Criminal Defense Attorneys Association. We're in opposition to this bill. First of all, this bill is unnecessary. If someone commits a new offense while they're in prison, they're already being charged and sentenced. They already have a

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new prison term. There's already a mechanism for them to lose good time. Our state has a real problem here with overcrowding in the prisons. Our facilities are already at 160 percent capacity. Council for State Governments has recommended we change our penalty framework to address overcrowding. Requiring consecutive sentences and mandatory minimums seems to be going in the wrong direction. Senator Chambers has already addressed concerns with complications, adding complications to the good time laws. And finally, this bill is just bad public policy. I think we all agree that the goal here is to have less crime in the state. Multiple studies have shown that recidivism rates drop when inmates participate in community-based supervision. We should be working toward removing those barriers to parole and community-based supervision, not adding to those barriers. And that's all I have today. [LB545]

SENATOR SEILER: Any questions of this witness? Seeing none, thank you for your testimony. [LB545]

MICHAEL STAGEMAN: Thank you. [LB545]

SENATOR SEILER: Any further opposition? Anybody in the neutral? Seeing none, you may close. [LB545]

SENATOR HARR: (Exhibit 1) All right, thank you. I obviously missed a lot earlier, but this is what I can tell you. I was a prosecutor for almost six years and I've been in the courtroom. I've worked with prosecutors. I've worked with defense attorneys. I've worked with criminals. I know how they think. I know what they want. So you want to know what the need for this bill is. I can tell you what the need for this bill is. I also ran for office, by the way, which some of you guys have also. And last summer, you want to know what the number one...when I knocked doors, no one gave a rat's...about abortion. No one really cared in Omaha about property taxes. This was the number-one issue, folks, and we have to address it. And we had a perfect storm. We had a situation where we had prison overcrowding. And we have a situation where we have an individual who got out who probably shouldn't have been out, and that then led to the, along with the newspaper article, exposure to how poorly our Corrections Department was run. And we can all debate about why, where, and when it was, or how. That's not what this bill does. What this bill does is we've found it is...the current system wasn't working. We needed to create incentives to make sure that those people in prison didn't recommit crimes and if they did they had to know there was a heavy burden. We want to make these prisons safer. That's the need, that's the want in this. You can say it's taking a step backwards. Again, I prosecute. I was never a big fan of mandatory minimums because they take power away from me as a prosecutor, take power away from the judge. And it's us, state senators, who sit there and decide to a certain degree what it's going to be, and that's right. That's what it does. It's a shift in power. But we have that authority to do it, folks. We have to figure out a way to get in those prisoners' head that while you're in

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here you can't commit a new crime. That's what I'm trying to do. Like I said, I brought this after having met with Andrea Kruger's father and uncle. They support this. They're unfortunately out of town today. I have a letter that I will pass around from them that I forgot to give earlier. Bad public policy, I don't...I can say it's good public policy. I mean I don't...that's just a judgment. I didn't necessarily understand what he was trying to say when he was saying it was bad. He was saying it was a step backwards. Not a step backwards, it's just a different view. So with that, I will close. Thank you. [LB545]

SENATOR CHAMBERS: I'd like to ask Senator Harr a question. [LB545]

SENATOR SEILER: Sure. [LB545]

SENATOR CHAMBERS: Senator Harr, people are talking about mandatory minimums. We have not talked about a maximum. What would you think of a maximum sentence on at least one of the most heinous crimes, whatever it would be, of 1,000 years, 5 years to 1,000? [LB545]

SENATOR HARR: I think that's bad...I think it's worth...I don't know what the purpose of that would be. [LB545]

SENATOR CHAMBERS: Do you think...well, what's the purpose of any of it? [LB545]

SENATOR HARR: Right. [LB545]

SENATOR CHAMBERS: Oh, good answer. (Laughter) [LB545]

SENATOR HARR: Yeah, well, you know, this...you know, you're asking 1,000 years. [LB545]

SENATOR CHAMBERS: Okay, 569. [LB545]

SENATOR HARR: Right, which is 200 years, 200 and whatever, 233... [LB545]

SENATOR CHAMBERS: Okay. [LB545]

SENATOR HARR: ...with good time. You know, you have to...it's what you're getting...I think what you're getting at is we need to have incentives out there for people to behave well in prison, and that's why we put...and we don't want to just throw the baby out with the bathwater. We want to say, hey, this crime is bad, what you did was bad, and we think you are a danger to society or

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we think you're going to recommit. That's why we give the sentences we do, to get in that person's mind what's going on. That's why I kind of...you know, drug court is great because you're expected to fail in it and you're given a day or two to kind of clean up your mind, help you refocus. My dean of discipline always used to say to us in high school, there's only one kind of discipline: self-discipline. Of course, we have ways of encouraging that, and that's what these sentences are, are ways of encouraging self-discipline upon the individual. And if you make a sentence that's so absurd and...I mean, that's basically life. So we do already have that maximum out there, and we have to reserve what we do that and who we give that to, because we want these people to come back into society. We want them to be taxpayers. We want them to raise their children. We want them to do what's right. But we also want to make sure that they do, do what's right, and we have a responsibility. So it's that balancing act. [LB545]

SENATOR CHAMBERS: When I see a bill of this kind, I think back to a case that I had when I was a freshman at Creighton Law School. And it was constitutional law. And one of the judges said that the state can make the consumption of one drop of liquor a crime, but the state may not add up the total number of drops in that glass and build a sentence on the total number of those drops because that would be cruel and unusual punishment. When we're not talking about drops of liquor but we're talking about adding time, we don't know how much time it takes to cause anybody to turn a corner in his or her mind, so we're pulling all of these just out of the air to try to make the public think we're doing something when we might know good and well it has no real connection to anything. [LB545]

SENATOR HARR: I mean that's...we could say that with any...we could say that with LB605, as well. We're pulling numbers out of the air and it's a great question of how do we determine what is right and what is wrong, because what we're also seeing is that in Omaha or in Douglas and Sarpy County they're less likely to get probation than they are in other parts of the state. And why is that? I mean, part of it is the judges. Part is society we live in. Part of it is the culture of the county attorney and the culture of the public defender's office so that even though you have same law and...across the state you're not going to have the same enforcement. What this bill does, what I'm trying to get across, is we want...by the way, a judge may give the same sentence if...I'm not...what I'm not doing is adding for new drops of...I'm not adding all the drips of water together of beer or alcohol. These are separate crimes. This is...you have committed a crime. You have been caught. You have hired...you have an attorney, you have some sort of due process, and you've been sentenced. And now you've gone and committed a new crime. And so you haven't learned from your previous mistakes. Now you may get a year and that's served consecutive with the other. Nothing says a judge couldn't give you two years and the outcome would be exactly the same. And the judge may decide, because the judge knows what a sentence is. When they go in there and they say, I want a person to serve five years, they know how to structure a sentence so that person serves five years. If they want a person to serve five years plus parole, they know how to structure a sentence to get to that result. So the fact that it's consecutive, you know, what

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it is, is sometimes that's more of a threat, you're right, to the public to say we're doing something. I could see that. But it's not meant to go to the public. It's meant to go to the prisoner and say, hey, by the way, you got a heavier...well, I don't know, it's hanging over your head, whatever object you want to use, hanging over your head if you screw up, so don't screw up while you're here. We need these places to be safe. I mean, the fact that it says 678 years, I mean, that's...that tells you they think that the prisons aren't safe right now. [LB545]

SENATOR CHAMBERS: What I think we ought to look at is how we would structure a sentence if it was for our best friend or our brother, whom we care about. [LB545]

SENATOR HARR: Yeah. [LB545]

SENATOR CHAMBERS: But we don't do that. We think of somebody that we hate, that it's somebody who ought to be punished not just for what he did but for what somebody else may do, and that's what we mean when we talk about deterrence. We're not giving you this sentence because of what you did merits it, but if we give this to you, then it'll make that person not do it in the first place. So we're not punishing this person for what he or she did. We're punishing this person for what that person might do if we don't overpunish this one. That's the reality. [LB545]

SENATOR HARR: I might disagree with you there though and...sorry, respectfully disagree. I sit there...you know, again, I prosecuted for a long time. And if you don't think the prosecutor and the public defender don't try to work with the judge to find a sentence that they like in...you know, the majority of the crimes, right, are run of the mill. I'll say 90 percent of crimes are drug or alcohol related and we all know that. And, you know, the...most people are not inherently evil. There are very few people that are inherently evil, bad people that go out to do something bad. They do it because they have lost hope and they don't think tomorrow is going to be better than today. And so they don't care what the ramifications are of what they do, whether it's a forgery, whatever it is. And so that's why they do what they do. And so...and we work together and I honestly believe I did that. And I think if the public defender from Douglas County came up, he'd say, yeah, I work with those county attorneys all the time and I think most of the time they have the person's best interest in mind. Now we're going to have cases we disagree on and then we're going to have cases where there are people who do heinous acts. And, you know, I used Nikko earlier. Look, he is the extreme, extreme, extreme. That never, hardly ever happens, right, when you have someone do that. But what we want to do is to say to...we want to be able to have a hammer over that person's head that says, you need to behave and if you don't you will be punished and you'll be punished harder because you're in a place right now that you have proven that you don't listen, that you don't understand your consequences of your actions. So we have to do ways of making sure they understand the consequences of their action. It's no different than what I do with my own kids. You know, first time, you get...I'll give you a time-out for three

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minutes. You do the exact same thing or you come out of time-out and do the exact same thing, guess what? Your time is not going to be three minutes, finish your first three minutes. Your time out now is going to be three minutes plus four minutes, served consecutively. And that's what I'm trying to get at, is the same situation. And so I'm trying to put...these people...this is someone who hasn't understood their actions. [LB545]

SENATOR CHAMBERS: But you know what? If a person has a good lawyer, has what they call a good family, and plenty of money, that person's child is not going to be punished the way this person's child...and this person is poor, no lawyer, comes before a judge. The judges are respecters of persons in this society. There was a man named Mr. Dooley and he said the good thing about American justice and the courts is that even a poor man has got a good chance, a perfect poor-man's chance, which means that if you're poor you can count on something happening to you that's not going to happen to this person over there. [LB545]

SENATOR HARR: Yeah. [LB545]

SENATOR CHAMBERS: And that's the way I think the court system works and that's the way I look at sentence... [LB545]

SENATOR HARR: Well, you know there's some... [LB545]

SENATOR CHAMBERS: ...not all sentences, but this... [LB545]

SENATOR HARR: Yeah, there's some truth to that, but there's also some nontruth to that. I can tell you I had a case, a DUI, third, where the guy hired a great lawyer, awesome lawyer, and even brought in the manufacturer to be an expert witness to try to debunk how the Intoxilyzer works. I mean it was amazing. They spent a ton of money. I still got a guilty conviction on that case, so justice still prevails. And then there's another case... [LB545]

SENATOR CHAMBERS: So the guy was found guilty. [LB545]

SENATOR HARR: He was found guilty. [LB545]

SENATOR CHAMBERS: And you had to serve the time. [LB545]

SENATOR HARR: What's that? [LB545]

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SENATOR CHAMBERS: And you had to serve his time for him. [LB545]

SENATOR HARR: No, I was the prosecutor on that. [LB545]

SENATOR CHAMBERS: I know. [LB545]

SENATOR HARR: Yeah, well, yeah, he didn't get his trial, but he didn't get the trial take... [LB545]

SENATOR CHAMBERS: Okay, now I don't want... [LB545]

SENATOR HARR: No, but I also say there was another case. [LB545]

SENATOR CHAMBERS: But you know what? I don't want to keep us here too long because I'm now... [LB545]

SENATOR HARR: Yeah. [LB545]

SENATOR CHAMBERS: ...kind of going into something. [LB545]

SENATOR HARR: Yeah. [LB545]

SENATOR CHAMBERS: Maybe you and I will talk about it. [LB545]

SENATOR HARR: Yeah. [LB545]

SENATOR CHAMBERS: I offered what I was... [LB545]

SENATOR HARR: Well, if I can just finish that thought, I had another case where, you know, Senator Williams' son cleaned my clock and he was a public defender. [LB545]

SENATOR CHAMBERS: Have you heard of a woman lawyer named Willow Head? [LB545]

SENATOR HARR: Yeah. [LB545]

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SENATOR CHAMBERS: How many times has she been convicted of drunk driving? [LB545]

SENATOR HARR: Right...I want to say four or five. I want to say five. [LB545]

SENATOR CHAMBERS: And she's still practicing law, isn't she? [LB545]

SENATOR HARR: Yes. [LB545]

SENATOR CHAMBERS: Um-hum, um-hum. [LB545]

SENATOR HARR: But again, that's... [LB545]

SENATOR CHAMBERS: That...case closed. I... [LB545]

SENATOR HARR: But that's an addiction issue. It goes back to... [LB545]

SENATOR CHAMBERS: I...the witness is entitled to step down as far as I'm concerned. Thank you, Mr. President. [LB545]

SENATOR HARR: Yeah, and that goes back to my addiction... [LB545]

SENATOR SEILER: Senator Burke, I agree with you on one thing, that the prosecutors do meet with the judges, and sometimes I wasn't there... [LB545]

SENATOR HARR: Yeah. [LB545]

SENATOR SEILER: ...as defense counsel. [LB545]

SENATOR HARR: I don't know about that, without them there. Ex parte? Never. [LB545]

SENATOR SEILER: Doesn't matter if you had it, so. [LB545]

SENATOR HARR: Yeah. All right, well, thank you. [LB545]

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SENATOR SEILER: Thank you. Any other questions? We'll make the letter that we just got from Senator Burke part of the record. And the record is now closed. [LB545]

SENATOR HARR: Thank you. [LB545]

SENATOR SEILER: Thank you. [LB545]