

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

Judiciary Committee
February 20, 2015

[LB592 LB598 LB605 LB606]

The Committee on Judiciary met at 1:30 p.m. on Friday, February 20, 2015, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB598, LB592, LB606, and LB605. 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 I'm Chairman of the Judiciary from District 33. I appreciate all you folks being on time. I'm a little disappointed that the senators aren't on time. So we got to wait a little bit, except for two, three I guess--myself. But as soon as we get a quorum we'll start. But I appreciate you being on time and ready to go. While you're all here, I guess I can go through your program. If you're going to be a testifier today, pick up one of the testifying sheets and fill it out. And as you come forward, one of the pages will take your testifier page from you. And make sure you fill that out so...before you testify, so the transcripts can stay in fairly good order. The other thing is that when you come up to testify, slide up to the desk because we want to get the transcript. It's not for accelerating your testimony. It's for purposes of recording your testimony. And the transcribers, if you're back a ways, can't pick it up. And we don't want to miss anybody's testimony. Turn off your cell phones, and I will do the same right now. We will use the light system. The light system is a three-minute system. And so you will all be treated exactly the same, whether you're for or against a bill or neutral. When the red light goes on, I'm going to, if you don't stop, I'll stop you because what I want, you to each have an equal opportunity. If one of the senators thinks that he's...he or she is interested in your testimony, they may well ask you to complete your testimony. So that we will hopefully...I was kidding the day I said, you know, then this thing gets down to about 11:30 we'll take a break tonight and start up at...at 11:30, I'm not driving to Hastings, so I'll go to my condo and we'll open again back up at 9:00. And I got some cross-eyed looks at that. Hopefully, we'll get through all four of the bills, if we ever get a state senator here. Here's one. We need at least one more. Paul, are you going to stay for closing?

SENATOR SCHUMACHER: Probably not. We got a (inaudible).

SENATOR SEILER: Okay. Why don't you give phone calls. They're on their way? Okay. Okay, we'll start. I'll do the introductions. On my far right is Matt Williams, senator from Gothenburg. Next to him will be Adam Morfeld from Lincoln. Next to him will be Bob Krist from Omaha. Next to him will be Senator Ernie Chambers from Omaha. Legal counsel this afternoon will be Diane Amdor. Starting at my far left, Dr. Laura Ebke. Next is Senator Pansing Guenzel (sic). Next is Senator Colby Coash.

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

Judiciary Committee
February 20, 2015

SENATOR PANSING BROOKS: Close.

SENATOR EBKE: Patty who?

SENATOR SEILER: Did I do it again? (Laughter) Most of you people from Lincoln know there was a law firm here by Pansing Guenzel and I have been calling her that since day one.

SENATOR PANSING BROOKS: That's good. They're...

SENATOR SEILER: It's just...but I found out that it was actually her grandfather and uncle.

SENATOR PANSING BROOKS: No, my dad and my uncle.

SENATOR SEILER: Your dad and your uncle. So it's still in the family.

SENATOR PANSING BROOKS: It is in the family.

SENATOR SEILER: And then Senator Colby Coash from Lincoln. And our clerk is Oliver VanDervoort. And our two pages are Drew and Jonathan. You may open, Senator.

SENATOR SCHUMACHER: (Exhibit 1) Thank you, Senator Seiler, members of the Judiciary Committee. My name is Paul Schumacher, S-c-h-u-m-a-c-h-e-r, representing District 22 in the Legislature, and I'm here today to introduce LB598. LB598 arose out of the LR424 Committee work, and as that committee discovered, there are many facets to the prison issue and our prison population, and many causes of the problems that we have there. One of the issues is the issue of administrative segregation, sometimes called solitary confinement, sometimes called any number of different labels, but it basically means removing people from the general population and putting them into one or more levels of confinement for, sometimes, their protection, sometimes the protection of the facility, sometimes for it's hard to tell what. And the committee, LR424, started out as an investigation of Nikko Jenkins' case where the individual spent six out of ten years in solitary confinement. And what stood out most to me, and I think some of the other committee members, was that during that time he was in the Douglas County facility because he was engaged in a crime up there while on...at a funeral while released from the penitentiary, and they were able to pretty much work with him outside of the confines of solitary confinement. But once released, he was released right back to the penitentiary where he was promptly placed back in solitary confinement. And then, in spite of a bunch of bizarre behavior, a bunch of threats, was released back into the home area of north Omaha without much of any level of conditioning, of programming, of protection for the public. So it's pretty evident that something needs to be done

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

Judiciary Committee
February 20, 2015

differently. There were two different approaches that could have been taken by LB598. One would have been to attempt a level of micromanagement of the issue of solitary confinement and trying to lay down specific rules and regulations and conditions from the Legislature. The other was to say we probably are not, as legislators, in a position to micromanage the situation but to lay down a format, trusting that the new director will be responsive to our concerns and giving him an opportunity to structure the needs of the inmates and the needs of the institution and integrate those into a program of administrative confinement, should that be necessary. So the approach is rather simple. It says after a magic date, and that...there's nothing magic about that date, it may be that the new director thinks that he needs more or less time, there shall be no solitary confinement except in accordance with the rules and regulations that need to be promulgated pursuant to the Administrative Procedure Act to establish the level of confinement; the behavior, conditions, and mental health status under which an inmate may be placed into a segregated confinement; and then some type of transition plan for back to the general population or back into society. Under the way it was and the way the LR424 Committee saw it, there were off-the-cuff rules, memos, things that were not made public, things that just happened to be kind of working documents that did not get adequate review. And that probably created some of the problem. But this allows the new administration to sit down using their expertise and develop the various levels of administrative confinement in addition to the conditions and procedures to get in and out of that status. It creates a working group comprised of the department's leadership and mental health professionals from outside of the department to offer advice on policies and procedures related to the proper treatment and care of offenders in long-term segregation. It requires reports to be filed with the Legislature regarding the department's plans for use of segregation and its actual use, including comparisons to neighboring states as to levels of segregation. And it develops...requires the development of procedures to ensure complete and up-to-date electronic records for each inmate, including programming recommendation and any time spent in segregation, and that be reported to the Governor and to the Legislature. So this is the segregation facet of much of the work that was done. Undoubtedly, more work needs to be done to integrate this into a comprehensive bill that addresses the issues that the LR424 Committee observed. And I'd be happy to answer any questions. [LB598]

SENATOR SEILER: Senator Coash. [LB598]

SENATOR COASH: Thank you, Chairman Seiler. Senator Schumacher, thanks for bringing the bill and this is going to be one of several that came out of that work that you participated in. I do have a challenge with LB598 and I going to present it in the form of a question to you. Is there anything in this bill, except for the report, that is mandated from the department to the Legislature, that cannot be done voluntarily by the Department of Corrections? [LB598]

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

Judiciary Committee
February 20, 2015

SENATOR SCHUMACHER: Almost anything that could be mandated could be done voluntarily if they were of a mind to do so, and that's the difference between mandatory and voluntary. [LB598]

SENATOR COASH: So here's my point. Everything that you're asking them to do, they could do by themselves. And when I say "they," I mean the Department of Corrections could look at the report that you looked at and helped frame and can say, you know what, I don't see anywhere in this...or I agree with this report that we don't have rules and regulations with regard to segregation, and, therefore, we're going to put some into place. They don't need legislation to do that, do they? [LB598]

SENATOR SCHUMACHER: No, but what they apparently needed--hopefully maybe do not need but may need again in the future--is a directive that you don't do it, you don't use it. [LB598]

SENATOR COASH: Okay. And I appreciate that. And I'm using you, as the introducer of the bill, because I know...I want to hear, I hope, from the Department of Corrections, either as a testifier on this bill or in some other manner, that whether or not they feel this is an appropriate way to go and if they'd do this without the mandate of the Legislature anyway. I think it's good policy to do it, so I agree with the policy. I just am challenged or have been challenged particularly with...well, with several branches of the executive where the right thing could be done and it takes the Legislature and their will to make sure the right thing is done. And so if we have to, we'll pass this bill, but. [LB598]

SENATOR SCHUMACHER: Well, even if the people with the department come forward and say, you're right, we should be doing all these things and, yes, sir, we will do all these things, I don't think it would be good policy to simply stop there because personnel changes. Governors and directors change. Circumstances and budgets change. And unless there is a mandate for this, what is true today may not be true in three years or four years. And we saw the problems festering at the penitentiary, getting worse and worse dating back to 2006 or '07 when they received a report saying you better do something on overcrowding. And it was basically blown off. And so I think we need, at least in the area of administrative segregation, and in probably all the areas of observed by the LR424 Committee, some safety net that attempts to catch the system before it falls through into Hades again. [LB598]

SENATOR COASH: Thank you, Senator Schumacher. I appreciate that response. I think it's important to get that on the record that there's a reason this bill becomes necessary, despite the fact that it could be done voluntarily. Thank you for your answer. [LB598]

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

Judiciary Committee
February 20, 2015

SENATOR SEILER: Senator Krist. [LB598]

SENATOR KRIST: I thank you for bringing it forward. We've all talked about the pieces of the puzzle that need to come together, and I appreciate you doing this. And I do appreciate the time that we spent together on the LR424 Committee. I would add to your response and to Senator Coash's question. The problem may not be that this process can or cannot be done by Corrections. The problem may be, as has been pointed out in the bill, that to violate the APA is to change willy-nilly, if you will, that's not meant to be a technical term, but change it at will. When other cultures start to look down, the culture of overcrowding became a driving factor, so there were no public hearings, there were no safeguards. And although I was not on this committee before this year, questions that were asked of people from Corrections were not answered maybe correctly in terms of asking for help. So that's an important part of this bill, is the compliance with the APA, a public hearing, and really what can be changed as internal policies, and what needs to have a public hearing when those internal policies affect human beings and human dignity and the folks who are in prisons. The other part of this that I think is important and I need...we need to make sure that the legislative intent starts right here: The public has no confidence in Department of Corrections right now. And whether they want to be told what to do or not or whether this new Corrections director is the superman that I believe he can be, it goes a long way to tell the public not only did we spend all summer looking at the issue but we want to make sure that the oversight is there so we'll put some policies and procedures in place in statute that will require them to continue to do this. And I think that public confidence is another critical part of your bill. And I would allow you to respond any way you want to. [LB598]

SENATOR SCHUMACHER: Well, basically, I think there is...the problems that I think we observed on the LR424 Committee were a product of society insisting on heavy penalties, of politicians winning elections saying that, and of society also saying, we don't particularly want to spend any money where we don't have to and try doing everything for no additional cost. And what is kind of bothersome is, in spite of the experience and in spite of what we saw go wrong because of those factors powering our society, those factors still exist today. And the very distinct possibility is that, unless we try to be active and try to intervene at this moment in time when there's an opportunity to look at the criminal system objectively and see where we can make adjustments, unless we do that, there's a great danger we'll slip right back into it because it's just such an easy place to slip into. [LB598]

SENATOR KRIST: Thank you. [LB598]

SENATOR SEILER: Any further questions of this witness? Thank you. [LB598]

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

Judiciary Committee
February 20, 2015

SENATOR SCHUMACHER: Thank you, and I'll waive closing. [LB598]

SENATOR SEILER: Okay. First proponent of this bill. I see one coming up. [LB598]

SCOTT FRAKES: (Exhibit 3) Good afternoon, Chairman Seiler, members of the Judiciary Committee. My name is Scott Frakes, F-r-a-k-e-s, and I'm the director of the Nebraska Department of Correctional Services. I'm here today to testify in support of LB598. I'm fully supportive of restrictive housing reform and led efforts to reduce the use of segregation in the Washington Department of Corrections. In collaboration with the Vera Institute and Disability Rights Washington, I developed a long-term plan for the use of segregation in Washington and I embraced the language in the bill requiring the least restrictive manner of segregation be used. I also intend to develop policies and procedures relating to the conditions, behavior, and mental health status under which inmates may be placed in segregation, regardless of whether or not LB598 becomes law. I also support the concept of a long-term segregation work group which includes representatives from outside organizations interested in segregation reform. This is something I did in Washington and planned to do in Nebraska before ever seeing LB598. I would, however, ask the committee to consider allowing me to design the membership of the work group. I welcome the inclusion of outside groups and would like the flexibility to include, for example, correctional staff who work in restrictive housing on a daily basis. I also believe it must be large enough to include diverse perspectives and reach a level of synergy necessary for change and yet small enough to make decisions effectively and efficiently. Section 1 of the bill requires that I establish policies to ensure that up-to-date electronic records are maintained. Data-based corrections is a concept that I fully support and feel is necessary for the department to ultimately be successful. I do, however, question the ability to comply with this language without first updating the department's computer systems. The budget system (sic) to the Legislature this year includes a request to bring in a consultant to review the department's existing computer systems and identify the options available for upgrading to a comprehensive electronic case management system. Without this information, identifying the cost and implementation time line is impossible. I look forward to working with this committee next year on acquiring what we need. Section 2 of the bill requires a report to the Governor and Legislature containing a long-term plan for the reduction in the use of segregation in the department and for oversight of the department by an independent third party. The department is already working on a plan for restrictive housing and appreciates the opportunity to provide input on third-party oversight. Also related to the use of segregation, Section 5 of the bill requires quarterly reporting to the Legislature on a number of data points. The department welcomes the analysis of its restrictive housing practices and will work with the Legislature to provide this and any other data requested. States who produce these type of statistics typically do so on an annual basis, and I would respectfully suggest that this information be updated annually rather than quarterly, as it will provide equally useful data. [LB598]

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

Judiciary Committee
February 20, 2015

SENATOR SEILER: Scott, I'm going to stop you, but I'll ask you, is there anything you would like to continue on? Go ahead. [LB598]

SCOTT FRAKES: Could I read one more paragraph? [LB598]

SENATOR SEILER: Yes. [LB598]

SCOTT FRAKES: Thank you. [LB598]

SENATOR COASH: I'd like you to read the whole paragraph so the record is clear. [LB598]

SCOTT FRAKES: Would you like me to finish? [LB598]

SENATOR WILLIAMS: Yes. [LB598]

SENATOR COASH: Yeah. [LB598]

SCOTT FRAKES: Thank you. I also want to express my support for the provision in Section 3 of the bill, allowing agency directors to issue directives, guidance, and operational manuals without going through the formal promulgation process. I also agree with making these documents available to the public with limited security exceptions. I do have some concerns with providing copies of the security manuals to the Executive Board of the Legislature and would appreciate the opportunity to discuss alternative options with the committee. I want to thank Senator Schumacher and the members of the LR424 Committee for introducing this legislation. I believe LB598 will assist the department in improving our restrictive housing practices and provide useful information to support future reforms. I'd be happy to answer any questions. [LB598]

SENATOR SEILER: Senator Colby Coash. [LB598]

SENATOR COASH: Thank you, Chairman Seiler. Director Frakes, thank you for testifying today. I was pleased to see you step up when we had...as the first proponent of this. One of the things that I'm always asking for from people in positions such as yours is if it can't be "yes," explain "yes, but." And as I read and listened carefully to your testimony, this is a cooperative approach that you're taking with regard to corrections reform. You brought cooperation, you brought the willingness to work with us, and I appreciate that. And I think we can make this bill, taking into consideration some of your suggestions, I think this bill can become something that

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

Judiciary Committee
February 20, 2015

will become something we haven't seen in a while, which is a cooperation between the Legislature and the Department of Corrections to make these changes. So I appreciate your testimony. [LB598]

SCOTT FRAKES: Thank you. [LB598]

SENATOR SEILER: Senator Krist. [LB598]

SENATOR KRIST: I would just add to that, that this process that we go through legislatively could allow us to give you an opportunity to put all this in place, knowing what we would want to have happen, the remedy at the end. We could let this lie in committee this year, giving you an opportunity, knowing what we think is important, and amend it to go out the first part of next year, as you've made your changes, if you felt, to Senator Coash's point, do we need to tell you what to do or are you going to do the right thing? So that's always an option too. Getting this out there is very important to me because of time that we have spent in this effort. But again, the spirit of cooperation that you bring here lends me to say either we incorporate all you amendments, or maybe we just back off and let you do your job for a while and maybe just hold it in committee until the beginning of next year, if you need to. But rest assured, I think the resolve for us is that these things need to change. And we've already talked about the APA and the policies and procedures and how they should and should not be changed, so. And I appreciate again, I echo Senator Coash's comments, I appreciate the level of cooperation, because it's not been seen around here for a while. Thank you for coming. [LB598]

SCOTT FRAKES: Thank you. [LB598]

SENATOR SEILER: Further questions? I haven't taken the time to look at the...your written statements, but if you would like to add things regarding this bill after you get home or get back to your office, please don't be afraid to dictate something and get it over to members of the committee. Thank you for your testimony. [LB598]

SCOTT FRAKES: Thank you. [LB598]

SENATOR SEILER: Look forward to working with you. Next proponent. [LB598]

BRAD MEURRENS: (Exhibits 4, 5, 6, and 7) Good afternoon, Chairman Seiler and members of the Judiciary Committee. For the record, my name is Brad, B-r-a-d, Meurrens, M-e-u-r-r-e-n-s, and I am the public policy specialist with Disability Rights Nebraska, the designated protection and advocacy organization for Nebraskans with disabilities. I'm here today in support of LB598.

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

Judiciary Committee
February 20, 2015

We conducted a literature review on selected issues surrounding mental illness and corrections. I've attached our report, that's being handed out, to my testimony. We limited the scope of our research to four issues which we believe are of particular importance, the first one of which was the use and effects of solitary confinement. Despite early enthusiasm, concerns were raised over the psychological and health effects of solitary confinement as early as the 1820s. Seeing the effects of total isolation on inmates in New York penitentiaries was enough for the governor of the state to end it in 1821. Reports from the 1840s from physicians in the New Jersey and Rhode Island state penitentiaries noted a decrease in psychotic behavior when inmates were removed from solitary confinement and were able to interact with each other. In 1890 the U.S. Supreme Court surveyed the history of extreme isolation among American prisoners and identified devastating psychological effects. They wrote: A considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition from which it was next to impossible to arouse them, and others became violently insane--their language, not mine--others still committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of service to the community. Stuart Grassian identified a variety of physiological and psychological symptoms exhibited by prisoners in secure housing units, which he called SHU Syndrome. The symptoms included social withdrawal, anxiety, panic attacks, irrational anger and rage, loss of impulse control, paranoia, hypersensitivity to external stimuli, chronic depression, difficulties with concentration and memory, perceptual distortions and hallucinations. He continues: The restriction of environmental stimulation and social isolation associated with confinement in solitary are strikingly toxic to mental functioning, producing a stuporous condition associated with perceptual and cognitive impairment and affective disturbances. Moreover, the harm caused by such confinement may result in prolonged or permanent psychiatric disability, including impairments which may seriously reduce the inmate's capacity to reintegrate into the broader community upon release from prison. We support this legislation. Solitary confinement has devastating impacts to the people who are subjected to it. And with that, I would close my testimony and be happy to answer any questions that you may have. [LB598]

SENATOR SEILER: Seeing none, thank you for your testimony. [LB598]

BRAD MEURRENS: Thank you. [LB598]

SENATOR SEILER: Next proponent. [LB598]

JOHN KREJCI: (Exhibits 2 and 18) Good afternoon, Senators. My name is John Krejci, K-r-e-j-c-i. I come in support of LB598 and actually all the other bills, but I'm not going to stay till 11:00 to testify on them. (Laugh) I represent RAND, the Reentry Alliance of Nebraska. We're a coalition of more than a dozen nonprofit groups that support ex-offenders and aid them

in reentering the community. We support this bill and the three others. We studied the report of the Council of State Governments; Lathrop Report, LR424. And we have a lot of experience because RAND works grass roots with the people coming out, and we know the huge problem it is to reintegrate. The basic issue is overcrowding, and we all know that. And oversight of Corrections, that's been addressed also. You know, segregation, he does a nice job on that; mental health; housing alternatives. D&E is way overcrowded. We all know that. These bills, as great as they are, we know the problems are so much that they're really only a start. You know, it's pecking away or chipping away at the problem. I've given three things for your, you know, before I get the red light. Marshall Lux really has a good handle on this problem. He says here in this article, he said here are some more things that need to be done. He talked about opening Air Park for community corrections. We need more in community corrections, more money and emphasis. I know Senator Seiler is talking about Hastings, opening that for 200 more people. So anyway, some of the things that he, that, you know, makes a whole lot of sense were housing people in county jails. That's okay for time being. The petition I...from a...was sent to the director, 800-and-some inmates of the state pen have signed this. They've got real...I mean it's horrible down there and he's talking about cruel and unusual punishment. He's got the attention of ACLU, and we know the federal government is looking. So you know, that's something the inmates are saying. And finally the last thing, the inmates, been in for 40 years, talks about the lack of programming and it's just...and programs have been cut back from four hours to one hour. Clubs have been cut back. Religious involvement has been cut back. That has to change really because if you want to have these guys have a chance when they get out, you know, you really need to do some programming. And that's a huge, huge problem. And Corrections has not been straightforward about how much programming they're giving. Whoops. It's the Catch-22, you know? You can't get paroled unless you get programming; programming is not available. And I see the red light. [LB598]

SENATOR SEILER: Okay. Questions? Thank you very much for your testimony. [LB598]

JOHN KREJCI: Thank you. [LB598]

SENATOR SEILER: Next proponent. [LB598]

JOHN KREJCI: I wanted to say Michelle Alexander has a book, The New Jim Crow, that tells about the impact on the black families. I didn't get to talk about that, but it's really, really important because Corrections is screwing up the black families. [LB598]

SENATOR SEILER: Come on up. [LB598]

JOHN KREJCI: Thank you. [LB598]

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

Judiciary Committee
February 20, 2015

ROBERT BRYAN: (Exhibit 8) My name is Robert Bryan, B-r-y-a-n. I'm director of prison ministry for the Nebraska Synod of the Evangelical Lutheran Church in America, one of the largest Christian Protestant denominations in the United States with over 4 million members and 10,000 congregations. The Nebraska Synod, we have 249 congregations and about 114,000 members. In 2013, our church passed a statement called "Hearing the Cries" on criminal justice, of which you have a detailed summary there. The church stands against the use of long-term segregation. It's dehumanizing and inhumane. Just this morning I met with one of my parishioners. I'm also a full-time volunteer clergy inside the Department of Corrections. I hold workshop services and do pastoral care. One of my parishioners has been in segregation in the control unit for five months. He's actually been an active member of the Alternatives to Violence Program as one of the facilitators. But possibly due to overcrowding, he was housed with an incompatible roommate who spit on him, and he punched him out, you know, in spite of his training. But so justifiably, he received disciplinary segregation, loss of good time, etcetera. But he told me as I visited with him that he didn't think he was crazy before he started, but after being in there for a while he said he started to go nuts, as the previous testifier had mentioned. He had made some comments about...that were interpreted as hurting himself. So now he's got a mental illness factor in there and he was put in administrative confinement for an additional 45 days upon that. His unit manager is supportive of his getting released to general population, but for some reason he keeps getting denied. And it appears that what is lacking is some clear objective guidelines on why someone should be in there. And if he has mental health issues, he shouldn't be in there because he has mental health issues. He should be getting treatment. And so I will not reveal his name but I'm sure he's on your mailing list and you probably have heard from him. But the ELCA stands against the use of segregation, especially for people with mental health issues. It is cruel and inhumane. Thank you very much for the opportunity. [LB598]

SENATOR SEILER: Questions? Thank you very much for your testimony. Next proponent. [LB598]

JULIET SUMMERS: (Exhibit 9) Good afternoon, Chairman Seiler and members of the Judiciary Committee. My name is Juliet Summers, J-u-l-i-e-t S-u-m-m-e-r-s, and I'm here representing Voices for Children in Nebraska in supporting this bill. We support this bill both because it would immediately affect a small number of children each year and also because it sets an important precedent in the handling of mental illness in Nebraska and the correctional system that we would eventually like to see implemented through all stages of detention and incarceration. National research shows that as many as 70 percent of the youth involved with the justice system have an identified mental disorder, and one in five suffer from a mental illness so severe as to impair their ability to function as a young person and grow into a responsible adult. Even for youth who do not suffer from a mental illness, the use of solitary confinement, also known as seclusion or segregation, has harmful and potentially devastating consequences, as you've already heard. Policy position by the American Academy of Child and Adolescent

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

Judiciary Committee
February 20, 2015

Psychiatrists has cited the links between solitary confinement and anxiety, depression, and psychosis, especially in the case of juvenile offenders. Collecting data on the prevalence of mental illness and creating a plan to minimize the use of seclusion, as LB598 requires, is the first step in addressing the needs of our inmate population, including those children involved in the system. LB598's provisions would immediately affect a small population of children in Nebraska who are charged and convicted in adult court and committed to the department for incarceration. In 2013, 144 individuals, or 5.6 percent of new admissions to Corrections, were between the ages of 15 and 19. Obviously, this number will change in coming years due to the changes in legislation about where children are charged, but that's still a substantial percent to look at. Including young adults up to the age of 24, in fact, increased that percentage to 27.3 percent. Nebraska has one facility overseen by the department that's specialized for youth, the NCYF, Nebraska Correctional Youth Facility, in Omaha, and NCYF houses young men up to the age of 21 years and 10 months, and their average monthly population was 66 in 2013. Their provisions would apply to protect...or the LB598's provisions would apply to these young people. We would also note that in 2013, 128 juveniles spent time in a Nebraska adult county jail, with an average length of stay ranging from 1 to 190 days. In these facilities, PREA requirements ensure youth safety by making sight and sound separation from adults, but that can have the functional effect of solitary confinement for some of these children. Obviously, LB598 wouldn't immediately apply to these population of children as county jails are not under the purview of the department, but we believe this bill represents a strong first step in a much longer process of ensuring the safety and mental well-being of all youth behind bars in our state. I'll wrap up since I've got the yellow light on. I would add that I'm only here today specifically for this bill, but I would ask this committee to bear this information in mind when considering all changes to the corrections system, that there are going to be some children affected by these laws. And with that, I'd be happy to answer any questions that I'm able to. [LB598]

SENATOR SEILER: Any questions? Thank you for your testimony. [LB598]

JULIET SUMMERS: Thank you. [LB598]

SENATOR SEILER: Next proponent. [LB598]

ALAN PETERSON: (Exhibit 10) Chairman Seiler and members of the Judiciary Committee, I am Alan Peterson. I am an attorney and lobbyist for ACLU of Nebraska, organization devoted solely to protecting the civil liberties that are named in the Bill of Rights of the Constitution. In this case we're talking usually about cruel and unusual punishment prohibition in the Eighth Amendment. I think lobbyists such as myself have two, probably more, functions. Number one, of course, is to represent the position of the client. Number two is to bring useful information and facts to the senators. I'm here today on that second mission. This committee knows well

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

Judiciary Committee
February 20, 2015

ACLU's position on all these bills, I believe, which is very positive on LB598, LB592, LB606, and LB605. What I bring today for this bill, recognizing that this is a bill that allows for some discretion and some time, it seems wise. ACLU are not experts in this area and this calls for the people who work with the problem to have input into what rules should govern them. That's fine. There is a need for urgent change, however. In Arizona, the disability rights organization of that state and the ACLU of that state brought a class action some years back. About \$10 million was spent on attorney's fees as of last fall, probably more by now. Yesterday the court, the federal court, Ninth Circuit, and the district, federal district court, approved a settlement. I've handed out the order, had handed out to you, approving the settlement. It doesn't include the approximately 100 specific orders as to what restrictions and rules should govern the use of segregation. Those would be available. I'd be happy to supplement, or your good Counsel can do that. But basically, instead of Nebraska going that route, why don't we cut to the chase? The order and that supplement, which is I think an Exhibit B to it, contain things that may not be right for Nebraska but a lot of them may be perfect. I'm only here to urge that this committee and our new director, who I've met and welcomed, take a look at them, see which ones fit. And in the work of whether it be administrative people or this committee or Mr. Frakes himself, consider whether we could say, okay, that's a good one. [LB598]

SENATOR SEILER: You would like to continue? [LB598]

ALAN PETERSON: Just...I'll finish pretty quickly. So I offered as a resource, in the role of a lobbyist, to present what seems to be useful information. That might help guide this committee and the department toward good answers on the question of segregation. Thank you very much. [LB598]

SENATOR SEILER: Thank you for bringing us that decision. [LB598]

ALAN PETERSON: Yes. [LB598]

SENATOR SEILER: Yes, Colby. [LB598]

SENATOR COASH: Thank you, Senator Seiler. As Senator Krist pointed out earlier, Alan, the legislative record on this issue starts today. And I want to make sure that I make the record as clear as I can with regard to how the committee may act on this bill. We don't feel segregation should be eliminated. That's a management tool that may be useful and may be necessary for the safety of the inmates and the corrections officers. And as I read this bill, this is putting some structure around how, when, where that management tool will be used. And I just wanted to make sure that your testimony is clear, is that you're a proponent of rules and regs and you're okay with using... "you" as in ACLU, see segregation as a management tool, but it needs to be

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

Judiciary Committee
February 20, 2015

handled thoughtfully and thought of before it's used. And when I say thought of, it needs to be addressed in a rules and a regulations process that can be evaluated later on as to how it's being implemented. [LB598]

ALAN PETERSON: Right. [LB598]

SENATOR COASH: I'll let you respond to that. [LB598]

ALAN PETERSON: I believe Senator Schumacher, in some conversations with him and his office, believes that people on the ground, so to speak, ought to have a good opportunity, such as through the APA process, to get the input in that may be useful. But this bill is also a, yes, trust but verify. It calls for a lot of monitoring that hasn't existed in the past, and serious monitoring. That's one thing we like about it a lot. There will be another bill and I will speak briefly with some other things. [LB598]

SENATOR COASH: But you're not opposed to the use of segregation. [LB598]

ALAN PETERSON: No. [LB598]

SENATOR COASH: Okay. Thank you. [LB598]

SENATOR SEILER: Any further questions? [LB598]

ALAN PETERSON: Thank you. [LB598]

SENATOR SEILER: Thank you. [LB598]

ALAN PETERSON: Uh-huh. [LB598]

SENATOR SEILER: Next proponent. Anybody in favor of this bill? [LB598]

TOMMIE WILSON: (Exhibit 19) Thank you. I'm Tommie Wilson, T-o-m-m-i-e W-i-l-s-o-n, and I'm here representing the mothers, the grandmothers, the kids who are...people who are incarcerated, and right now I'm presently the community liaison at Metro Community College. And I wrote things down because I'm 80 years old and I can't remember. I usually just get up here and start talking. So I represent and I approve of all of the bills. I want to let the committee know that I support all of the bills. And it's important that inmates are thoroughly evaluated

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

Judiciary Committee
February 20, 2015

before they are released from prison. The very act due to their incarceration was done because of an irrational behavior, an insane moment which the individual lost control and the violation was committed. This evaluation should begin at the onset of entrance into the prisons and monitored throughout their stay. Health services should be provided these individuals who are found to be mentally challenged throughout their sentence, and other inmates should participate in programs to keep them on stable grounds. You remember that this...these institutions, they house everybody, all kinds of characters. You got people in there with minds like Albert Einstein and Jack the Ripper, so everybody is affected by the people in the prison. This bill is necessary because it would allocate funds needed to improve mental healthcare and validate reentry programs, helping to ensure sustainable life improvement and safe communities. In LB598, which I'm supposed to be talking about, accountability is the key and it's the key for successful outcome. Inmates are required to stay in solitary too long with nothing to do, no contact with others. And isolation is dangerous. The mind is a terrible thing to waste. They need books, they need materials. That should be allowed in there so that the individuals in solitary can keep them sane. It is inhumane to treat anyone, and especially those who are mentally challenged, with improper care and especially those with long-term segregation. My minutes up? I am so happy that we are concerned with change in these laws and rules. Prison is supposed to rehabilitate, and proper care is necessary for this commitment. Again, I support LB605, which is another one that's up for you. I'm going to get it all out now before I forget it. The Council of State Governments' report to Nebraska issued recommendation for improved treatments of inmates. If these improvements are made, it will improve public safety, it will reduce the number in prison and the associated cost, and, most importantly, reduce the recidivism rate among those released from prison. I also support LB606, I'm getting that out of the way. We have seen in most recent discussions about corrections, accountability and better investigation is necessary. We are the watchdogs who can find the light in the distance for continuing to protect our communities and providing hope for those in need. I want to thank our new warden who came here today. That was good that he put it up-front, we're going to make him accountable for what needs to go on. Watch him. Thank you. (Laughter) I don't have any questions (inaudible) remember that I wrote. [LB598]

SENATOR SEILER: Ma'am. Ma'am. Ma'am. [LB598]

TOMMIE WILSON: Oh, yes, sir. [LB598]

SENATOR SEILER: Somebody may have some questions. [LB598]

TOMMIE WILSON: Oh, yes, so sorry. Oh, please don't. Okay? [LB598]

SENATOR SEILER: Senator Pansing Brooks. [LB598]

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

Judiciary Committee
February 20, 2015

SENATOR PANSING BROOKS: Thank you for coming. [LB598]

TOMMIE WILSON: Oh, you did have. Thank you. [LB598]

SENATOR PANSING BROOKS: Thank you for coming today, Ms. Wilson. And I just would hope that maybe we would make sure to put a copy of her testimony in each of the...since she's saying that she's not going to come forward,... [LB598]

SENATOR SEILER: We will. [LB598]

SENATOR PANSING BROOKS: ...that we'll put it in each of the...under each of the bills that's being presented today that she referenced. Is that okay? [LB598]

TOMMIE WILSON: Okay. That's good. That's good. [LB598]

SENATOR SEILER: Anyone else? [LB598]

TOMMIE WILSON: (Inaudible). (Laugh) [LB598]

SENATOR SEILER: (Laugh) Thank you very much for coming. [LB598]

TOMMIE WILSON: Thank you. [LB598]

SENATOR SEILER: Next proponent, in favor of the bill. [LB598]

SARITA PENKA: (Exhibit 17) Hello. My name is Sarita Penka, S-a-r-i-t-a P-e-n-k-a. I am from Omaha, District 6. I represent OTOC, Omaha Together One Community, a coalition of 25 congregations and community organizations in the metro Omaha area. OTOC's mental health action team supports both LB598 and LB592. These bills represent important steps in recognizing that it is in Nebraska's interest to provide effective mental health and addiction treatment for Nebraskans who are serving prison sentences, both while they are incarcerated and, just as important, after they are released from prison. LB598 states a need for a long-term plan to reduce the use of isolation. It appears that far too many prisoners suffering from a mental illness have been placed in solitary confinement and left to deal with a mental illness on their own. What is needed is more treatment for persons incarcerated in this state. If a person is suffering from a mental illness and is considered to be dangerous because of that, we must find ways to get treatment for those persons while they are in prison and not simply use isolation as a way to

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

Judiciary Committee
February 20, 2015

handle the problem. It appears that the bill will require a much more careful assessment of prisoners with mental illness and a much more nuanced use of isolation for all prisoners. Again, OTOC believes it is far more cost-effective for our state to assure that there are opportunities for mentally ill and addicted prisoners to obtain continuing treatment and medication while in prison and upon their reentry into society. Simply locking them away in isolation is not an acceptable solution. OTOC also supports LB592. Many studies have shown that a significant percentage of prisoners in our state are suffering from a mental illness. Mentally ill prisoners are sentenced to state prison where their access to treatment, medication, and self-help programs seem to have been quite restrictive in recent years due to overcrowding, lack of funds, and a willful ignorance of the long-term costs of not addressing the mental health issues. Prisoners, who are released without any type of mental health and substance abuse treatment while they are incarcerated, return to society in a very volatile state. To the extent that LB592 attempts to identify those prisoners with a serious mental illness and put them in a situation where they are able to get effective treatment and to be monitored for compliance with treatment after release from prison, OTOC supports LB592. For these strategies to work, the Unicameral must invest sufficient funding for mental health treatment in prison and for follow-up treatment and access to medication after release. OTOC believes we can reduce recidivism and save taxpayers money by smartly allocating funds for the treatment of mental illness. Thank you. [LB598]

SENATOR SEILER: Any further testimony? Thank you. [LB598]

SARITA PENKA: Thank you. [LB598]

SENATOR SEILER: I will rule from the chair that anybody that has written materials that refers to more than one of the LBs will be shown as in the transcript of all of the LBs that you're referring to. That will save you running back up here and saying, me too. Further proponents? You may begin. [LB598]

CAROL McSHANE: (Exhibit 16) Good afternoon. My name is Carol McShane, C-a-r-o-l, McShane, M-c-S-h-a-n-e. Today I represent Nebraskans for Peace and I'm testifying in support of both LB592 and LB598. My testimony is a little more global, and it refers to what I think you may need to have if you're going to sell this bill in the Legislature as a whole, especially when you're looking for funding. In 2004, Thomas Frank wrote a book entitled, What's the Matter with Kansas? His premise was that people in Kansas consistently vote against their own best interest. Whatever was or is the matter with Kansas, it has now brought Kansas to its knees. Kansans cannot take care of their own. So then what's the matter with Nebraska? We have not taken care of our own. We have not allowed the least among us, and God knows mentally ill inmates must be seen as the least among us, we have allowed the least among us to be treated inhumanely. It is certainly not in the inmates' best interest nor, it turns out, is it in our own best interest. In general

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

Judiciary Committee
February 20, 2015

society, treatment for mental illness has come a long way. We have even passed federal legislation requiring parity. Parity in this sense means that insurance benefits for the treatment of mental health conditions and substance abuse are funded equally with funding for physical conditions. Federal parity laws have passed, but the insurance companies quickly found enough loopholes to make them useless. But the concept of parity is on the table. The mental health and substance abuse treatment for people in our prison system is nowhere near parity. Everyone knows better. Nobody knows it better than we Nebraskans. Nikko Jenkins left our system with mental health problems equivalent to, on parity with, bleeding. He asked for band-aids and tourniquets; he left bleeding. To speak hypothetically, if we lock people up and deny them access to adequate mental healthcare, even if they beg for it, if we deny them mental health evaluations, treatments, and reevaluations, we are letting them bleed. We get this. If we tolerate mental health bleeds in prison, we invite chaos. This results in too many lockdowns and inordinate reliance on solitary confinement. We get that too. When, not if, but when we let these inmates out, still bleeding, we predictably invite chaos on the streets, and we got that. Nebraskans elected the legislators who cut the taxes, then stripped the Department of Corrections' budgets. Nebraskans elected the Governor who appointed those who head the Department of Corrections down this bad path. So what is the matter with Nebraska? Bills like these two bills say that we haven't lost complete sight of the common good; that "establish justice, ensure domestic tranquility, and promote the general welfare" still have meaning. Thank you. [LB598]

SENATOR SEILER: Questions? Thank you for your testimony. Next proponent. [LB598]

MARK DAVIS: I didn't get on a sign-in list but. [LB598]

SENATOR SEILER: Get him a sign-in list. Okay? [LB598]

MARK DAVIS: My name is Mark Davis and I'm here representing RAN, the Reentry Alliance of Nebraska, and I'm in support of both of the bills being discussed right now. The main concern is the use of administrative segregation arbitrarily and capriciously. It seems like that happens to quite a few prisoners, that because there is only in-house...there's only someone in-house that's looking at why people are in administrative segregation. So the warden wants somebody in administrative segregation and then he reviews that case as to whether or not they should be in administrative segregation. Thirty-some years ago, I was in administrative segregation. And I stopped a riot, but they wouldn't allow the video camera evidence that they had, they wouldn't allow me to present that in my defense. And it was because I was a problematic prisoner, not violent. But I proposed that people learn how to be free while they were in prison and good citizens don't make good prisoners, because good citizens make their own decisions and don't follow blindly; good prisoners do. And when you're talking about the mentally ill coming out of prison or being in prison, I think it's important that they get more medication than just two

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

Judiciary Committee
February 20, 2015

weeks' worth of medication, and they get told where to go to get more and how to get it and how to get to where they need to go pick up the medication so...particularly when people are first released, because there's a lot of learned helplessness. That's it. [LB598]

SENATOR SEILER: Senator Krist. [LB598]

SENATOR KRIST: I'm never going to miss an opportunity to follow on because I have a bill that essentially does not cancel Medicaid but it suspends Medicaid, because it's illegal while a person is in corrections facility. And to your point, every person who leaves the facility, unless we expect them to be a constant visitor of the corrections facility, they should have the proper drugs, whether it's diabetes or whether it's behavioral/mental prescriptions. [LB598]

MARK DAVIS: Certainly. [LB598]

SENATOR KRIST: So thank you for coming and thank you for presenting that perspective. If we...if you serve your time and you have no treatment and we kick you out the door without providing that medication on the backside to help you succeed, you're going to come right around that revolving door again. And I really appreciate your perspective. Thank you for coming. [LB598]

MARK DAVIS: Thank you. Yeah, I hope you consider housing as well, because when people get out of prison and don't have family, have no money and limited skills, first on the list is a place to safely go to sleep. [LB598]

SENATOR KRIST: Absolutely. Thank you. [LB598]

SENATOR SEILER: Anybody else? Thank you very much. [LB598]

MARK DAVIS: Thank you. [LB598]

SENATOR SEILER: Next proponent? Seeing nobody scrambling from their chair, next opponent. Opponent? Seeing none, neutral. [LB598]

MARTHA CARTER: (Exhibit 11) Good afternoon, Senator Seiler and members of the committee. My name is Martha Carter, M-a-r-t-h-a C-a-r-t-e-r, and I'm the Legislative Auditor, and I just wanted to take a minute of your time to put in the record some information from the performance audit that our office did in cooperation with the LR424 Committee last year, since

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

Judiciary Committee
February 20, 2015

some of the findings of that audit contributed to the work that the LR424 Committee did on this issue of segregation. Just a couple of points related to our findings. There was one that we had hoped to do a really comprehensive analysis of how long a set of inmates were in segregation and the different types that they were in. We were unable to do that because the electronic data maintained by the Department of Corrections was unreliable and inconsistent. One of the points that I just would like to make about that, the new director mentioned earlier the need for a new data system, and we don't disagree with that. But we also mentioned in the report that some of the problems that we encountered did not have so much to do with the data system as they did with inconsistencies in the way the information was entered and a lack of verification of data. It's one thing to have a good computer system, and you need that, but if you don't also have people educated and trained in a way to enter the information consistently and have some checks on the validity of the data, you're missing out on a big and important piece of ensuring your quality of data. So I just wanted to mention that one. And just two other points. One was that one of the issues that we identified was that the statutes currently require that the department make a finding that an inmate's misconduct is either "serious" or "flagrant" in order to issue a sanction of disciplinary segregation or to take good time, and those terms have not been defined in any regulations, whether promulgated through the Administrative Procedure Act or in the department's own internal administrative regulations. So one of the recommendations was that those terms need to be defined and I would assume that would take place in the process outlined in this bill, that they need to articulate the different types of segregation, how they can be used, and how people can get out of them. And then lastly, we found that for both segregation and loss of good time, that while the penalties...there are limits on how long those...on the length of those penalties, with segregation we found that the penalties were within those limits. But that if you just look at that, it gives you a little bit of an incomplete picture of how long some people spend in segregation, because you may have an episode of "disciplinary segregation" limited to 45 days, but that may be followed by months or even potentially years in "administrative confinement." And so if you're looking at generally how long people spend in segregation, if you only look at the length of the disciplinary terms, it does not give you a complete picture. And with that, I would be happy to answer questions if there are any. [LB598]

SENATOR SEILER: Questions? Thank you for coming in. Thank you for your testimony.
[LB598]

MARTHA CARTER: Thank you. [LB598]

SENATOR SEILER: Any further neutral? Seeing none, the handed...the materials that have been handed to the clerk will be made part of this record. (See also Exhibit 12.) And I believe Senator Schumacher waived, so we close the record on LB598. We will open now on LB592. Senator Bolz. [LB598]

SENATOR BOLZ: (Exhibits 1, 2, and 3) Good afternoon, committee members. Like many of you, I served on the LR424 Committee over the summer. And when I talked to constituents and stakeholders about that experience, one of the issues that I hear most frequently is, what can we do, Kate? How can we prevent this from happening again? How do we better protect the public safety as it relates to individuals with mental illness who are a danger to themselves and others? And how do we better respond to those individuals themselves? LB592 includes several recommendations that I believe strengthen our gatekeeper role in order to make better, more informed, clearer decisions and processes in order to protect the public safety and individuals who are mentally ill. The bill is based on findings and recommendations from the sources that you've heard about this afternoon: the Performance Audit report, the Public Counsel, the LR424 Committee. The recommendations relate to how we identify individuals who may be mentally ill and dangerous, how we track them through the system, how we ensure that they are provided with appropriate mental health treatment in order to provide rehabilitation and/or prevent exacerbation of their condition, how we assess and make decisions about their condition and level of risk upon release or furlough, and we ensure that, when appropriate, authorities are identified and mental health commitments occur to keep both the offender and the community safe. I'll stop here for a second to ask your forgiveness for breaking one of the cardinal rules for being the introducer of a bill. I didn't give you a one-page fact sheet; I think I gave you a ten-page fact sheet. But I wanted you to have a flow of all of the different pieces in this bill as it relates to their status quo and the justification. So I appreciate your patience with those materials. I want to first talk about the identification piece. There's a key question here about how we better identify individuals in the Department of Corrections who should be reviewed for mental health commitment, and if they are not a candidate for commitment how they should receive certain supports or services to prevent recidivism. One of the central challenges in the Nikko Jenkins case, which I'm sure you're familiar with, was the difference of opinion about mental health diagnosis and subsequently difference of opinion about whether or not he should be referred for mental health commitment. And that, of course, did not occur in the Jenkins case. This bill originally included a provision that would add the term "personality disorder" to the definition of "mentally ill and dangerous" in order to better cover that set of circumstances. In further discussion with professionals in the field, we adapted that change to use what they refer to as a functional analysis, in other words, an analysis about whether or not a person's functional capacities are compromised. And the specific language for that change is in the amendment that you have in front of you. There are mental health professionals who will speak to that in more depth. But I believe this is a more appropriate and comprehensive approach. I'll also note here that that change adjusts a couple of other pieces in the bill. Because we originally included "personality disorder" in the definition of "mentally ill," if we changed it to the amendment, we'll have to put back in some of the reference to "mental illness" and "personality disorder" as it relates to the sex offender treatment act. The amendment also clarifies a couple of pieces about how the Department of Correctional Services, the regional centers, and psychiatric hospitals should work together upon commitment. Second, I want to talk about some of the provisions

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

Judiciary Committee
February 20, 2015

related to the process of release. The bill requires improved tracking of diagnosis and treatment to better inform decision making at the time of release or furlough. The bill includes improved evaluation and risk assessment components for consideration prior to that release or furlough. The provisions in the bill provide direction for the Legislature's expectation around the evaluation and risk assessment criteria, including incidents of violent activity, self-harm behaviors, and staff input. Next, the bill articulates a clearer process for establishing mental health commitment and related notifications to law enforcement, the Attorney General, and the county attorney. I will share with you that in the hours of testimony that we heard on LR424, one of the most disheartening pieces of the discussion and dialogue for me was the lack of accountability and the lack of taking responsibility for the individuals who should have been on top of making sure that a mental health commitment occurred. The approach of not taking accountability and not having clarity in who was responsible for making sure that that happened when appropriate was discouraging and needs to be fixed. Finally, the bill creates independence for the Parole Board. Again, we heard in testimony that the Parole Board felt pressure related to overcrowding and other circumstances in the Department of Corrections. And the independence of the entity to make their decisions is essential. So the bill clarifies that in a better set of circumstances, the Parole Board would be its own entity and provide oversight of parole services in the community. I'm going to spend just a couple of more minutes discussing the fiscal note. The fiscal note first identifies approximately 46,000 individuals who may have a personality disorder but not be currently eligible for community-based behavioral health services. This may be an area that needs additional analysis to understand these needs and associated costs. But I would argue that it is important and appropriate conversation to have. What is the population of mentally ill individuals who are not receiving services in the community? How can we better serve them in the community? Is 46,000 an appropriate number? Are any of those individuals receiving help in other ways? What investments are needed that would result in fewer crimes, fewer incarcerations, less human struggle and suffering? While the fiscal note for these 46,000 individuals is significant, I would note two things. First, the fiscal note assumes that these services would be more like an entitlement when the current behavioral health services are not. And two, I think this conversation is still valid because when you look at the cost of providing treatment in the community, it's significantly less than incarceration: \$1,565 per person for community-based mental health treatment versus over \$38,000 for incarceration in an adult facility. Second, you have likely already noted that the Department of Health and Human Services estimates that this would significantly impact and expand the number of folks who would be referred to the Lincoln Regional Center. The intention of LB592 is not to commit hundreds or more new offenders to inpatient mental health treatment. The fiscal note implies that there are currently many, many individuals who are mentally ill and eminently dangerous but for the addition of the personality disorder consideration in the Mental Health Commitment Act. I don't know that that's accurate. If it is, I would say that we're in a difficult set of circumstances currently. And so I would argue that we should not necessarily assume that such a large number of folks would require facility level of care. We may certainly see an increase in the individuals

who would be referred to Lincoln Regional Center. I do think that's an appropriate conversation to have, not only the current capacity of the Lincoln Regional Center but also plans for future needs. I want to be clear that I question the need for a new facility. I think it deserves further study in the larger context of our systems and facilities. So, I want to wrap it up here, but this bill is essentially about our gatekeeper role. It's about better identifying individuals who are mentally ill and dangerous, evaluating them, evaluating their potential for risk, and making sure there's clearer paths to commitment if that's appropriate. Happy to have dialogue with you further. [LB592]

SENATOR SEILER: Senator Krist. [LB592]

SENATOR KRIST: Senator Bolz, thanks for being a part of the team and bringing this particular portion of it. And I know this is a passion for you as well. I, too, have problems with the fiscal note in terms of the massive escalation from the first two-year period into the next two-year period. So I'd like to make a statement for the record and then ask you to comment. In 2004, when we closed all the regional facilities across the state, we made a promise to the people--not we, you and I personally, but this Legislature, our predecessors made a promise--that that money was going to be reinvested into community services. That didn't happen. That money instead was turned for other purposes and we neglected our corrections facilities, our regional facilities. And we have created a mental health facility in every corrections facility across this state, whether it's a county jail or whether it's a penitentiary. Having said that, we need to remove that mental and behavioral health and sometimes substance abuse problem, as we learned in CSG, out of the corrections facilities and put it back where it needs to be. The diversion, the lack of a reinvestment, the lack of focus in the past administration has caused us to come to a point where we're going to have to make some investment in the current facilities. If that's \$214 million, which I doubt, or if it's \$65 million, which I suspect might be closer, this is...these are the dues that are due because we haven't been paying the investment in the past. This is a gross and absolute dire awakening of what lack of investment in a system can do. My opinion, and I invite you to say anything that you think you need to. [LB592]

SENATOR BOLZ: No, I appreciate that perspective. The opportunity that I think the fiscal note gives us is for me an opportunity to discuss the need for community-based behavioral health opportunities for individuals who, but for the right medication or the right services, would be living in the community rather than entering our correctional facilities. And so I do think that it's an appropriate conversation to have about what we need to do in our behavioral health systems. There are clear consequences of inaction that we saw over the summer in the special investigative committee. There are also consequences to doing the right thing. And those consequences have a price tag. So I think it's appropriate to have this conversation and step up to try to make it work now. [LB592]

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

Judiciary Committee
February 20, 2015

SENATOR KRIST: Thank you. [LB592]

SENATOR SEILER: Any further questions? Thank you very much. Are you going to be here? [LB592]

SENATOR BOLZ: I'll stick around. [LB592]

SENATOR SEILER: Okay. First proponent. [LB592]

WILLIAM SPAULDING: Good afternoon. I'm Will Spaulding, S-p-a-u-l-d-i-n-g. I'm here representing the Nebraska Psychological Association. We've been very proud to have collaborated with the special investigation committee and the LR424 group through this summer to work on these technical...or at least the technical side of these issues. I am simply here to endorse the amended version of Senator Bolz's proposal. And as a person who holds myself out as having some expertise on the topic of psychiatric diagnosis and mental health commitment, answer any questions that you may have about why we think the amended bill will solve the problem or any problem better than the original idea. Let me just tell you that for every year for the past 36 years I have taught the core course in psychiatric diagnosis in our doctoral clinical psychology training program. So I think about this a lot. And I'm happy to share my thoughts and experience with you. [LB592]

SENATOR SEILER: Okay. Questions? Senator Krist. [LB592]

SENATOR KRIST: Just a comment here, thank you for coming. And I have to tell you that your testimony was critical to some of the conclusions that we arrived at in LR424. Thank you for participating. [LB592]

WILLIAM SPAULDING: Thank you. Happy to hear it. [LB592]

SENATOR SEILER: Any further questions? Thank you. And I also echo that. Thank you for this summer. [LB592]

WILLIAM SPAULDING: You're welcome, sir. [LB592]

SENATOR SEILER: Next proponent. [LB592]

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

Judiciary Committee
February 20, 2015

BRAD MEURRENS: (Exhibit 4) Good afternoon again, Senator Seiler and members of the committee. For the record, my name is Brad, B-r-a-d, Meurrens, M-e-u-r-r-e-n-s, and I'm still the public policy specialist with Disability Rights Nebraska, the designated protection and advocacy organization for Nebraskans with disabilities. We are in support of LB592. The American criminal justice system is housing a significant number of people with mental illness, either diagnosed or not, such that some authors have deemed the U.S. prisons as "the new asylum." Research indicates that people with mental illness continue to be overrepresented within the criminal justice system. Inmates typically have significant and multiple health problems. And the incidence of co-occurring disorders, that is simultaneous substance abuse and mental illness, is common. The increasing numbers of people with mental illness in the criminal justice system places additional strains on the corrections system which histrionically has had limited tools and resources to treat or manage this particular population. As the following table shows, the GAINS Center for Behavioral Health and Justice Transformation reports in 2013 that an estimated 16 percent of adults with serious mental illness...serious mental disorders were in state prisons, 17 percent in jails, with a corresponding 5.4 percent for the general public. Increased attention to the mental health needs of inmates is needed. We did share the same concern about the language that Professor Spaulding had just talked about. And we also agree...concur that the amended language and this recommendation coming from the psychological association will...are sufficient to alleviate our concerns. Providing services and treatment for mental health needs of inmates is crucial. We support the creation of individualized treatment plans in this bill. The vast majority of persons incarcerated in U.S. prisons and jails will eventually be released. Former inmates with mental illness have significant recidivism rates, and many individuals with behavioral health issues if left without adequate support systems and treatment inside and outside the prison walls will cycle in and out of corrections. According to the prisoner reentry FAQ from the Nebraska Legislative Research Office, Nebraska has invested an insufficient amount of resources towards prisoner reentry. In fact, there seems to be no central clearinghouse for information relevant to inmates leaving prison. We support the funding of reentry planning that's described in Section 8 of the bill, and would emphasize the need to include planning for accessing mental health services in the community in that reentry plan. We do have a few clarifying language edits, but I will leave that for review at your leisure. I will just conclude by saying we support the bill. And with the improvements noted in our testimony, we would recommend that the bill be advanced. I'd be happy to answer any questions. [LB592]

SENATOR SEILER: Any questions? Thank you very much for your testimony. [LB592]

BRAD MEURRENS: Thank you. [LB592]

SENATOR SEILER: Next proponent. [LB592]

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

Judiciary Committee
February 20, 2015

MIKE MARVIN: Good afternoon, Chairman Seiler, members of the committee. My name is Mike Marvin; that's M-i-k-e M-a-r-v-i-n. I'm executive director of the Nebraska Association of Public Employees. We are the union representing the vast majority of state employees. I'm here today in general to support all four of the bills that are heard. While we believe that all of them put together are a part, along with bills such as Senator Seiler's Hastings, Senator Chambers' mandatory minimum, we think that all of them have a piece. And it needs to be a whole solution; not just one bill is going to fix everything. Having said all that and that we are here in general in support of this, I do have several concerns about this bill that I think are relatively minor. We like the parts of the bill that require an assessment within two weeks of a person being put in. But given the state of D&E today, Diagnostic and Evaluation, 300 percent of capacity, we're not sure it can be met. We'd love to see it met but we'd also like to see not only that diagnosis be done but the treatment be started and we get people moved out to where they need to be. We think it's a matter not only of the people's, who are incarcerated, safety, but we believe it's a matter of the correctional employees' safety. I wish Senator Coash was here so I could thank him for his constant talk about the correctional employees' safety. We do appreciate that. My other concern with the bill is where they move the Parole Department away from the Department of Corrections. I'm not sure where it's going. If it goes under the judiciary, I believe you lose your oversight of that already. Probation right now is under judiciary and I get calls frequently from probation officers with issues that they want us to address and we can't because we can't address things in the judiciary. So I do have concerns that it stays under the executive branch in some way. And that gives you continued oversight of it. So with that, I'll conclude my testimony except to say that I'm going to testify on one more bill, but we do support a lot of these bills. And I've sent you letters on those. [LB592]

SENATOR SEILER: Okay. Any questions? Senator Krist. [LB592]

SENATOR KRIST: The words in the statute I think don't move it outside the executive branch. I believe it makes it a separate agency not connected the Department of Corrections, which gives them independence. [LB592]

MIKE MARVIN: Okay. [LB592]

SENATOR KRIST: So just for clarification, I'm pretty sure I'm correct and... [LB592]

MIKE MARVIN: Okay. I wasn't real sure on it so I.. [LB592]

SENATOR KRIST: When Senator Bolz closes, I'm sure she can make that point as well. [LB592]

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

Judiciary Committee
February 20, 2015

MIKE MARVIN: Okay. [LB592]

SENATOR KRIST: Just for the record, we're not intending to move it someplace else, at least with this piece of legislation. Thanks for coming, Mike. [LB592]

MIKE MARVIN: You bet. Thank you. Thank you for your time. [LB592]

SENATOR SEILER: Thank you. Next proponent. [LB592]

SHANNON ENGLER: (Exhibit 5) Good afternoon, Chairman Seiler and senators of the committee. My name is Shannon Engler, S-h-a-n-n-o-n E-n-g-l-e-r. I'm here representing Bryan Health, CHI Health, the Nebraska Hospital Association, the Nebraska Psychiatric Hospital Administrators Coalition, and the Nebraska Association of Behavioral Health Organizations in support of LB592 and an amendment thereto as prepared by Senator Bolz. We appreciate the intent of LB592 as introduced. However, the groups I am representing contend that there are some complexities that require refinement of the original language. Collectively, we have worked with Senator Bolz to develop language that will achieve the goals of this legislation and simultaneously better serve the patients and providers. On behalf of these organizations, I would like to thank Senator Bolz and her staff for working with us. This amendment is critical. Without it, dangerous inmates could be released or committed to community hospitals' psychiatric units. In LB592's current form, this could occur at the inmate request voluntary treatment. It could also occur because of existing hospital contracts with the state's six behavioral health regions that specify in certain circumstances committed inmates could be placed into their facilities. The current Mental Health Commitment Act requires three elements for involuntary commitment of a person: (1) mental illness or substance use disorder (2) that causes dangerousness directed toward self or others and (3) the person is not willing to seek voluntary treatment. Pursuant to LB592 in its original form, if an inmate undergoing a prerelease evaluation is determined to be mentally ill and dangerous but requests voluntary treatment, they would be released to seek care in our community hospitals. If LB592 were to become law without this amendment, many dangerous inmates may use this procedural requirement to access community hospital psychiatric units instead of the Lincoln Regional Center. We believe this is not what the senator and her colleagues intend. The amended language to be offered by Senator Bolz requires the Department of Corrections to perform a thorough evaluation of the inmate to ensure he or she receives treatment in an appropriate secure environment if needed. Since the reduction of the number of regional center beds to 90 or less, as a result of LB1083, many community hospitals currently contract with the Department of Health and Human Services through the behavioral health regions to provide care for some committed clients in their facilities. They do this in support of the current system and to help the residents of their communities. Violent, aggressive patients are not generally placed into private hospitals but instead are placed into the Lincoln

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

Judiciary Committee
February 20, 2015

Regional Center. If placed in a private hospital, all reasonable efforts are used to move such a patient to the Regional Center. Community hospitals need to be assured that when inmates are committed they will not be placed in their units. Instead, they should be transported directly to the Regional Center. Thank you for the opportunity to provide this information. [LB592]

SENATOR SEILER: Any questions? I have just one. Have they removed the fourth segment of EPC and that being held at a minimum custody available? [LB592]

SHANNON ENGLER: No, that language is still in there. [LB592]

SENATOR SEILER: It's still in there. Okay. [LB592]

SHANNON ENGLER: Yes. That's my understanding. [LB592]

SENATOR SEILER: Thank you. Next proponent. [LB592]

A.J. SANTOS: (Exhibits 6 and 7) Good afternoon. My name is A.J. Santos, A. J. S-a-n-t-o-s. I am in support of LB592. I am the director of the family outreach team at Christian Heritage and I oversee the inmate Parenting Program for the Nebraska Department of Correctional Services. And I just wanted to submit a report of what we've done over the past year. And I just wanted to give that to you and let you know that we are in support of LB592. [LB592]

SENATOR SEILER: Okay. Since we haven't read your report, it's hard to ask you questions. (Laughter) [LB592]

A.J. SANTOS: Just wanted to give it to you. [LB592]

SENATOR SEILER: Senator Krist. [LB592]

SENATOR KRIST: Just a comment, we all miss Gregg. And you had some big shoes to fill. So thank you so much. [LB592]

A.J. SANTOS: Thank you very much. Thank you. [LB592]

SENATOR SEILER: Thank you for your report. Next proponent. [LB592]

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

Judiciary Committee
February 20, 2015

ALAN PETERSON: (Exhibit 8) Members of the Judiciary Committee, I'm Alan Peterson, A-l-a-n P-e-t-e-r-s-o-n, senior counsel and lobbyist for ACLU of Nebraska. I come again on this bill in support but mainly to bring some information that may be useful as you look at...I had the clerk receive and he's handing out the following items, which I hope may be of interest or even useful in making your decisions on what to do with this bill, but even more broadly, what to do about the mental health crisis in our prisons and jails. There's a list on the front, kind of a little table of contents. There are two newspaper stories about a man named Patrick Howley who killed himself in jail. He was on suicide watch but died and was found the next morning. ACLU is looking at that case, may well file suit on it as an individual case, not as a class action. There are two stories also from the Omaha World-Herald that some of you may have seen about a man named Chris Seaton who has spent a huge amount of time in solitary. And it kind of explains on a human basis how this stuff happens. The next thing in my table of contents, Roman numeral II, ACLU a year ago or so, not that long but several months ago, sent a request for records to the Department of Corrections. We wanted to know how many people are in segregation, why were they put there, and how much time did they get for whatever the offense was. The department has rules about what they can release, but we got a lot. I don't have copies. It's too much for that. It's available through counsel or to you. It shows the extreme arbitrariness and severity of the use of segregation as punishment and gives the diagnosis, what the diagnosis of the mental condition was. And then also on item 6 of our questions, how long did they spend perhaps with schizophrenia or whatever, it gives a lot of interesting detail. Sometimes all the arguments and generalizations don't mean half as much as the picture of the actual lives affected, the reality of the use of solitary in Nebraska. And I hope that will be of some assistance. This is a fine bill, as is LB598. It's moving forward. Thank you very much. [LB592]

SENATOR SEILER: Senator Krist. [LB592]

SENATOR KRIST: I'll take your testimony as an opportunity to put something on the record here. And I know that Mr. Frakes is still in the audience. So there's been...in a bill coming up, there's going to be a lot of disagreement with holding people's feet to the fire with policies and procedures or guidelines that are established with the APA. We subpoenaed those same kind of records in LR424, and it was devastating to see the number of inconsistencies across the board. Now I would contend that what you all have in front of you, my colleagues, is a copy of the administrative regulations, Department of Correctional Services, number 201.05. In that APA, in that set of guidelines, item 1(a), the director shall designate restrictive housing units to house special management inmates and the director who is responsible for it. They arbitrarily, in my mind, and capriciously I believe, then rescinded that. And the new number is 210.01. Each institution shall formulate policies and procedures. Is there any wonder why it varies so much in terms of the institutions? That's what I fight with the APA, with the folks who will come up in the future and talk to me about why we shouldn't make the guidelines more enforceable or more strict or more focused on the APA. Because that probably should have had a public hearing all

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

Judiciary Committee
February 20, 2015

by itself, because we're delegating that down to a level where there is that inconsistency across the board. So thank you for bringing that information to us. [LB592]

ALAN PETERSON: Yes. Thank you, Senator Krist. [LB592]

SENATOR SEILER: Anything further? Nothing further? Thanks. You may step down. Next proponent. [LB592]

ROBERT BRYAN: My name is Robert Bryan, B-r-y-a-n. I'm the full-time volunteer clergy in the Department of Corrections and pastor of Followers of Christ inside the penitentiary and director of prison ministry for the Nebraska Synod of the Evangelical Lutheran Church in America. Our social statement that we passed in 2013 regarding criminal justice would support this bill with the knowledge that incarceration of those with special needs without appropriate care decreases the safety and security of the prisons and criminalizes what would be a health problem. In 2005, a study was done--and I have the sources if desired--56 percent of state prisoners, 45 percent of federal prisoners, and 64 percent of jail inmates had mental health problems, including histories or symptoms of illness, such as major depression, psychotic disorders, and mania. Yet among inmates with a mental health problem, only 34 percent receive treatment after admission in a state prison, 24 percent in federal prisons, and 18 percent in local jails. So to summarize, over half the population of the incarcerated have mental health issues, but a lot less than that are actually receiving treatment. Another significant issue that's not addressed in this bill and I think it should be--and I have the source on this as well--is that female inmates are significantly more likely than males to experience mental health problems and have a higher rate of serious mental illness compared to males. It sounds sexist but I have the source for that as well. Given the lack of some comparable programming at NCCW compared to what's available for the men in the other institutions, this could become an issue with making sure that the women receive appropriate mental healthcare as well. It has been mentioned that since the closing of the regional health centers, it's been a real problem in Nebraska. Well, nationwide, the institutionalized population of mentally ill has dropped by 80 percent since around 2005. And those people are now in prison. One of my former parishioners from prison, he had been out. He is not on paper anymore. He had fulfilled the obligations of parole. He was clean. But he fell off the wagon, got into trouble. He was crying out for help and he called me: Pastor Bob, I don't want to go back to prison to get...to find the help I need. You know, what do I do? Well, I was able to connect him to his parole officer...former parole officer, who they were still very willing to help former inmates even if they're off paper. And he got set up with some appropriate care at the Trabert center...reporting center and so on. Follow-up care for those with mental health issues is also a significant issue. Are there any questions? [LB592]

SENATOR SEILER: Thank you very much for coming. Appreciate your testimony. [LB592]

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

Judiciary Committee
February 20, 2015

ROBERT BRYAN: Thank you very much. [LB592]

SENATOR SEILER: Next proponent. Next proponent. Seeing none, opponents. You may proceed. [LB592]

SCOTT FRAKES: (Exhibits 9 and 10) Good afternoon, Chairman Seiler and members of the Judiciary Committee. Again, my name is Scott Frakes, F-r-a-k-e-s, director of the Nebraska Department of Correctional Services. I do support some provisions of LB592, but due to significant concerns about others, I'm here today to testify in opposition to the bill as drafted. I have provided you my written testimony because I will not be able to deliver all of it in the three minutes allowed. I will summarize the key points. I'm supportive of reforms to identify and ensure that all inmates who are mentally ill receive the treatment they need and fully endorse the use of evidence-based treatment methodologies. NDCS currently provides community standard of care for all mental health and medical treatment. I would suggest this language be adopted in place of the terms "appropriate" and "adequate" mental healthcare. Redefining mental illness to include personality disorders will significantly impact the number of inmates for whom the department must provide treatment, which will require the development of new programming for the treatment of certain personality disorders. Data-based corrections is a concept I support and feel is necessary for the department to ultimately be successful. Once we've obtained a comprehensive evaluation of our case management system, I hope to work with this committee next year on acquiring what we need. The department has taken steps to ensure that inmates are reviewed prior to release through the creation of the discharge review team. And I support formally promulgating the rules of that process. I'm in support of the concept of notifying law enforcement prior to the release of offenders who are mentally ill and dangerous. Potentially mentally ill and dangerous is not defined in the bill and I'm not aware of an evaluation tool that can determine if an individual will be potentially mentally ill and dangerous at some point in the future. I would urge the committee to define or strike the term "potentially." The bill would relocate the Office of Parole Administration and vocational and life skills programs from NDCS and place them under the authority of the Board of Parole. I feel that parole administration can continue to be successful as a division of NDCS and would like to be given the opportunity to enhance its success. But I can also understand the desire to have all parole services under one agency. I am opposed, however, to the proposal to reallocate the vocational and life skills program and the associated reentry staff. I feel strongly that reentry begins at intake and feel it would be detrimental to move the reentry division out of NDCS. Reentry provides the bridge between incarceration and successful integration into the community and is a vital component of my vision for this department. I'm also opposed to moving the Division of Community-Centered Services from NDCS. This division has accrued many other responsibilities that far exceed those identified in the statute. Having been in Nebraska for less than three weeks, I'm still assessing the resources available and the needs of the department. At this time I would request that the committee allow me the opportunity to complete my assessment of the department... [LB592]

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

Judiciary Committee
February 20, 2015

SENATOR SEILER: Go ahead, finish. [LB592]

SCOTT FRAKES: ...and to make the changes I believe are necessary for its success before eliminating this division. I want to thank Senator Bolz and the members of the LR424 Committee for their work on LB592 and on corrections reform. While we may not agree on all the provisions of LB592, I believe in legislative oversight and I understand the benefit of collaborative reform. I look forward to working with the committee to improve NDCS. We'd be happy to answer questions at this time. [LB592]

SENATOR SEILER: Senator Chambers. [LB592]

SENATOR CHAMBERS: Director Frakes, I voted for your confirmation. And I had some comments that I made when you appeared before us. I have no confidence in the Department of Correctional Services. I saw how they messed up everything that was in their hands. From the director down to the guards, people did things that were vindictive, that were provocative toward inmates so that they could punish them. People with mental illness were considered by those hacks and those quacks hired by the Department of Correctional Services to have behavioral problems so then they could be sent to what I call solitary, however they nuance it. I don't trust them. I wouldn't trust the Department of Correctional Services as far as I could push a feather through a steel beam. And I sat on that LR424 Committee during the summer. And down through the years while I've been in the Legislature, I've worked on and tried to work with those people. They are dishonest, and they outright lie. And when the former Governor and Attorney General said that those wrongdoers who violated criminal statutes did nothing that was prosecutable, it was such a disgusting thing to me that they themselves should be called to account. But in this state, there's nobody who will hold the director of Correctional Services responsible. We have a new Governor so everything that you do I'm going to presume that he ordered you to do it, that you cleared it through him. And if anything goes wrong, as it has done during the time of Kenney and Houston, it's going to be right at the Governor's door. He has made certain public statements. You have made certain public representations. And I don't think you've been here long enough to draw some of the conclusions that you have. So to be fair to you, you said you'd been in this state how long? [LB592]

SCOTT FRAKES: Three weeks. [LB592]

SENATOR CHAMBERS: I didn't hear you. [LB592]

SCOTT FRAKES: Three weeks. [LB592]

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

Judiciary Committee
February 20, 2015

SENATOR CHAMBERS: And what were you doing during those three weeks, if I might be so bold as to inquire? [LB592]

SCOTT FRAKES: Meeting with staff, meeting with some stakeholders, coming here on several occasions. I've been to three facilities, reading morning, afternoon, late into the night. [LB592]

SENATOR CHAMBERS: So when you say staff, who would that embrace? [LB592]

SCOTT FRAKES: Real quality conversations would include many of the staff in central office...many. Yeah, many of the staff in central office. And a few staff at the Lincoln Correctional Center, at the Diagnostic Center, and at the penitentiary. [LB592]

SENATOR CHAMBERS: Who are some of the staff in central office...at central office with whom you had quality conversations? [LB592]

SCOTT FRAKES: That would include Dr. Kohl. That would include... [LB592]

SENATOR CHAMBERS: Who? [LB592]

SCOTT FRAKES: Dr. Kohl. [LB592]

SENATOR CHAMBERS: Now you didn't say quality people. You said quality conversations with those people, didn't you? [LB592]

SCOTT FRAKES: Yes, that was the question. [LB592]

SENATOR CHAMBERS: And what does Dr. Kohl, what did he profess to you that his role and function have been? [LB592]

SCOTT FRAKES: Director of Health Services, deputy director I think is the correct title, that he leads the health services for the department. [LB592]

SENATOR CHAMBERS: And you said doctor. [LB592]

SCOTT FRAKES: Yes. [LB592]

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

Judiciary Committee
February 20, 2015

SENATOR CHAMBERS: Does he have an academic degree or an M.D.? [LB592]

SCOTT FRAKES: I believe he's an M.D., required by statute. [LB592]

SENATOR CHAMBERS: He's an M.D.? [LB592]

SCOTT FRAKES: Yes. [LB592]

SENATOR CHAMBERS: And who else did you have a conversation with who is at central office? [LB592]

SCOTT FRAKES: I've talked with Robin Spindler in depth, the head of the administrative services, primarily budget but many other components. I've talked to my PIO, James Foster. I've talked to my legislative liaison, Jeff Beaty. I have talked to Dawn-Renee Smith quite a bit. I have talked to Larry Wayne. I have talked to Frank Hopkins. [LB592]

SENATOR CHAMBERS: Well, Larry Wayne is not going to be there for much longer, is he? [LB592]

SCOTT FRAKES: I'm still in the process of assessing and making... [LB592]

SENATOR CHAMBERS: Evaluating. [LB592]

SCOTT FRAKES: ...personnel decisions and I want to do that in a way that's... [LB592]

SENATOR CHAMBERS: And this Dawn-Renee Smith, is it your intention to keep her on in the position that Mr. Houston had her in? [LB592]

SCOTT FRAKES: Current... [LB592]

SENATOR CHAMBERS: Now the reason I'm talking to you like this, Mr. Director, is because of what you said when you came up here. There are disagreements and objections that you have. So in order for a man who is as competent as I got the impression you were when you appeared before us, you would have adequate information and background to support the statements that you made, so that's why I'm asking you these questions. If you had simply come here and said that I've been in the state three weeks. I'm still evaluating the situation. I'm familiarizing myself with the people who currently work for the department. I'm not in a position to cast a final

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

Judiciary Committee
February 20, 2015

judgment. But as I read the bill and there are directions that I want to go, here are some of the areas where I would like additional clarification or where I would like to make suggestions to the committee. But to come here after three weeks and say in so many words, I don't like this, I don't like that. The Parole Board ought to stay here. You don't even know how the Parole Board operates unless you got that from Mr. Kenney, who is totally unreliable. He did not have the luxury of complying with the law. So I'm going to presume that when you talk to the Governor and these other people, the Governor had made some very disparaging comments about me publicly when he didn't know me from Adam's house cat. So maybe some people told you that this Judiciary Committee is composed of rubes who could do very well in a Keystone Kops caper movie or with Larry, Curly, and Moe or with Laurel and Hardy. So you can go there and tell them anything and they will swallow it because you know that we voted to confirm you. And I, of all people, cast that vote. I want to be honest with you. It's not based on confidence because I don't know you well enough. And maybe if I'd heard you say some of the things then that you've said now--but you haven't been confirmed by the Legislature yet--I might have been a bit more reserved in some of the things that I said. I did not meet with you at any point. I did not want to meet with you at any point. I wanted to see what you would say and what you would do without having talked to me and tried to size me up and figure out what you ought to say to snooker me. You know why I'm being frank with you? Because you're the top man in the Department of Correctional Services. And you have to have some toughness about you because of the amount of time you spend working in corrections. And if my mere words unsettle you--and I can't fire you, I don't control you--then I have second thoughts. And I want it to be out here on the record and I say it to you because you opened the door by the way you presented your testimony. I give you credit for being forthright. But I don't give you credit for being diplomatic or understanding that you are in a set of circumstances where you are coming into a department that is thoroughly discredited. There were people in that department who committed crimes. But they knew the Attorney General would do nothing, the former Governor would do nothing. And as a result of that, some of these flunkies and underlings out there are showing an unwillingness to work with a division of the Legislature, which is the Office of Public Counsel. I have far more confidence in them than anything or collection of things in that Department of Correctional Services. And I just want you to know that with me, you don't have a cupcake. But I play the hand that I'm dealt. And I was dealt you. I was the one who said we should not confirm Mr. Kenney. My colleagues, wanting to, I guess, placate the Governor, confirmed him anyway. And they saw how incompetent, how violated and disrespectful of the law he was, how disregarding of Supreme Court decisions he was. And I hope that you're not going to look down and see the path made by his footsteps and walk in that path yourself. I want this as a matter of record. And it would have been better...well, I don't tell you how to do your business. You're a grown man. You do it the way you want to. But you chose a house full of people before whom to make your imperious declarations, your authoritative pronouncements, draw your sweeping conclusions. So I'm going to ask you another couple of questions. Some people who visit the Judiciary Committee notice that I haven't had much to say to people who come up here. I wanted to see somebody who's got

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

Judiciary Committee
February 20, 2015

some authority. And when you were talking, my colleague Senator Krist can confirm that I asked him, who is that? Is that what I asked you? [LB592]

SENATOR KRIST: Yes, sir. [LB592]

SENATOR CHAMBERS: Because you don't sound like the man whose name is on this statement. And the name here is Scott Frakes. And a person with the exact same name had appeared before the Judiciary Committee. Have you ever heard of the term doppelganger? [LB592]

SCOTT FRAKES: Yes. [LB592]

SENATOR CHAMBERS: And I don't know whether you're the good one or the bad one. But there are two of you. And I just hope that whichever one winds up filling the role of the department director will show enough knowledge and understanding to back up the words that were uttered here today. Did you talk to members of the Board of Parole? [LB592]

SCOTT FRAKES: I did meet with four out of the five. [LB592]

SENATOR CHAMBERS: And did you talk to the new people who have been appointed by the Governor, or did you talk to some of those who had been members of the Board of Parole? [LB592]

SCOTT FRAKES: One of the members was a past member. [LB592]

SENATOR CHAMBERS: Did you talk to Ms. Esther Casmer? [LB592]

SCOTT FRAKES: No, she was not present. [LB592]

SENATOR CHAMBERS: She wasn't. Did you talk to a man named Pearson that you can recall? [LB592]

SCOTT FRAKES: First name... [LB592]

SENATOR CHAMBERS: Well, with whom did you speak? And that will cut to the chase. [LB592]

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

Judiciary Committee
February 20, 2015

SCOTT FRAKES: I spoke with Roz, who is the chair, and her last name escapes me at the moment. [LB592]

SENATOR CHAMBERS: That's all right. [LB592]

SCOTT FRAKES: I spoke with Teresa--I'm going to have to guess, again, her last name--who was just appointed. And I think I might have spoke with Mr. Pearson. That name sounds correctly. [LB592]

SENATOR CHAMBERS: Then how many records of the department...of the Parole Board did you examine? Did you examine any documents or records or data that would tell you how they operated and how they've operated in the three weeks that you were here? And you were very busy during those three weeks. [LB592]

SCOTT FRAKES: I was. [LB592]

SENATOR CHAMBERS: Did you do any of that kind of examining or studying? [LB592]

SCOTT FRAKES: Not individual records, no. I asked about where we were at with hearings, did we have a backlog, were things going well, what was the relationship between Cathy Gibson-Beltz and--I'm going to say her name wrong, too... [LB592]

SENATOR CHAMBERS: But while doing all of that you were in a position where you thought you had enough information to draw the conclusions that are contained in your statement? Obviously, you felt that way or you wouldn't have put them there. Do you feel, in view of how things have turned out this afternoon, that you gave adequate study and consideration to these conclusions that you drew and expressed to us? If you do, then just say yes. [LB592]

SCOTT FRAKES: As expressed, yes. [LB592]

SENATOR CHAMBERS: I didn't hear you. [LB592]

SCOTT FRAKES: As expressed, yes. [LB592]

SENATOR CHAMBERS: Okay. You say yes. So you would stick by everything you've said in this statement. [LB592]

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

Judiciary Committee
February 20, 2015

SCOTT FRAKES: Based on what I have...the knowledge I've acquired so far and the understanding I have so far, yes. [LB592]

SENATOR CHAMBERS: You're qualifying it. You said the knowledge you've acquired so far. [LB592]

SCOTT FRAKES: As I think it's in this testimony, based on three weeks. [LB592]

SENATOR CHAMBERS: If we would draw a scale and name it knowledge, the amount of knowledge that you would need to draw the unambiguous conclusions you drew, and in order to have enough knowledge to do that adequately you would have to have a 90, between 0 and 100, what degree of knowledge would you say that you have that would substantiate these conclusions? Your opinion is one thing. Anybody can have an opinion, and not all opinions have the same validity. Everybody is entitled to an opinion, but not everybody's opinion is entitled to consideration or to be deemed credible. The example I give, if you and I were talking and I'm an astrophysicist and you are a gravedigger. And the question is this: The total number of stars, would it be odd or even? You're opinion as a gravedigger is as valid as mine as an astrophysicist because neither of us knows and neither of us can know. But if we're talking about the subject matter of astrophysics, and it takes education, experience, study, maybe even some experimentation, then that opinion is worthy of more acceptance and credibility than the opinion of a gravedigger who says, well, this is the way I feel and this is what I think. That's an opinion but it's not worth anything. You have had how many years of experience in corrections altogether? [LB592]

SCOTT FRAKES: Over 32. [LB592]

SENATOR CHAMBERS: Over 30 years. And what was the highest position you held in your last job? [LB592]

SCOTT FRAKES: Deputy director, division of prisons. [LB592]

SENATOR CHAMBERS: Deputy director. Who was the director? [LB592]

SCOTT FRAKES: When I left it was Steven Sinclair. [LB592]

SENATOR CHAMBERS: And when you came here, you had three weeks. Is that how long you've been in the state or that's how long you've been conducting your research and evaluations that brought you to the conclusions you shared with us today? [LB592]

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

Judiciary Committee
February 20, 2015

SCOTT FRAKES: The three weeks is how long I've been on the job. I have been reading and studying information about Nebraska Department of Correctional Services since probably the 29th of January, but not specific to this bill because it wasn't... [LB592]

SENATOR CHAMBERS: Well, you, as the thorough individual that you are, would consult with people who may have knowledge and information from having been here. So with whom did you discuss the question of where the Parole Board ought to be located? With whom did you discuss that issue? [LB592]

SCOTT FRAKES: I had a conversation with Cathy Gibson... [LB592]

SENATOR CHAMBERS: Who? [LB592]

SCOTT FRAKES: Cathy Gibson-, I want to say, Beltz. [LB592]

SENATOR CHAMBERS: Who is that? [LB592]

SCOTT FRAKES: She is the...her exact title I can't give you at this moment. She is the head of the parole operation for (inaudible). [LB592]

SENATOR CHAMBERS: Is it a he or a she? [LB592]

SCOTT FRAKES: She. [LB592]

SENATOR CHAMBERS: Okay. [LB592]

SCOTT FRAKES: She, Cathy. [LB592]

SENATOR CHAMBERS: But you don't know for sure of the name. You're pretty sure of the name. And what does that person do? [LB592]

SCOTT FRAKES: She is the head of the parole operations for the department. [LB592]

SENATOR CHAMBERS: Did you say he or she? [LB592]

SCOTT FRAKES: No, she. [LB592]

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

Judiciary Committee
February 20, 2015

SENATOR CHAMBERS: Okay. She's head of the parole operation. How long did you talk to her? [LB592]

SCOTT FRAKES: One specific conversation that probably lasted an hour, and a couple other conversations that might have been 15 or 20 minutes. [LB592]

SENATOR CHAMBERS: So a total of about an hour and 20 minutes. Was she the one who persuaded you that the Parole Board should be located where you gave us the location in your statement? [LB592]

SCOTT FRAKES: No. [LB592]

SENATOR CHAMBERS: Who convinced you of that? It's not based on your experienced because you don't have any in Nebraska. [LB592]

SCOTT FRAKES: And that's why my statement specific to the move of the Office of Parole, is that I'd like an opportunity to see if we can improve those services and continue a continuum...offer a continuum of care as a Department of Corrections. And then I said it. [LB592]

SENATOR CHAMBERS: Do you think... [LB592]

SCOTT FRAKES: I can understand the desire to have parole under one agency. I think this statement is more of, I'd like an opportunity to see if we can do what people want to achieve. It's not... [LB592]

SENATOR CHAMBERS: Which people? [LB592]

SCOTT FRAKES: The people of Nebraska. [LB592]

SENATOR CHAMBERS: And what do they want to see? [LB592]

SCOTT FRAKES: They want to see...they want to believe that they're safe. They want to believe that my department is doing the work they're supposed to do in safely incarcerating and treating and managing and hopefully providing programming and work opportunities to people. [LB592]

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

Judiciary Committee
February 20, 2015

SENATOR CHAMBERS: So how are you going to keep them safe, or just at least make them feel like they're safe, because you're not a law enforcement officer? So you...they need to know you're not going to be out there arresting people or solving crimes or so forth. You are an administrator as opposed to a law enforcement officer in the field. So what is it that you would be able to do that would be visible to the people of Nebraska which would lead them to feel that they're safe? Would it be making it more difficult for people to obtain a parole? Is that one of the things? [LB592]

SCOTT FRAKES: No. [LB592]

SENATOR CHAMBERS: Very good. Would you want harsher punishments for people put into the statutes? [LB592]

SCOTT FRAKES: No. [LB592]

SENATOR CHAMBERS: Very good. You're making it awfully difficult for me now. (Laughter) So I'll tell you what I'm going to do. I'm going to ask you a question and I want you to answer it. You don't have to answer it honestly. You can either answer it honestly, diplomatically, or a mixture of the two or even with a one-liner. Do you think you'll be able to work with me to make (laughter) the Department of Corrections what it ought to be? [LB592]

SCOTT FRAKES: Senator Chambers, I believe that you and I can become a very effective team. I think we're looking for the same outcomes. I think that because we haven't had a chance to really sit down and talk. I think that. I believe that. But it's based on some assumptions. It's based on listening very carefully. I really appreciate your sage counsel. This is my second testimony on a legislative bill in this capacity. And I've made mental notes to (laughter) the things that you've said. [LB592]

SENATOR CHAMBERS: And can I tell you what impressed me most about your presentation here today? You're not sweating. (Laughter) That's all that I have. Thank you. [LB592]

SENATOR SEILER: Anybody else have any questions? Thank you very much for coming. Next opponent. [LB592]

SHERI DAWSON: (Exhibit 11) Good afternoon, Senator Seiler and members of the Judiciary Committee. I'm Sheri Dawson, S-h-e-r-i D-a-w-s-o-n. I'm a registered nurse. I work as a deputy director of the Division of Behavioral Health and I'm also serving as the acting director for the Division of Behavioral Health within the Department of Health and Human Services. I'm here to

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

Judiciary Committee
February 20, 2015

testify in opposition to LB592 as it was originally presented. I have to admit I have not seen the amended language. I will certainly read that and identify and determine a position. LB592 establishes one framework to address the complex balance of behavioral health treatment with safety, protection, and detention. It makes changes to current statutes regarding the provision of mental health services to inmates in the correctional system. It changes the definition of dangerous sex offender in 83-174.01. And this bill proposes to change Section 71-907 such that mentally ill is determined to mean persons not only with psychiatric disorders but also with personality disorders. With the broadened definition, it's important to understand that many types of personality disorders, specifically antisocial personality disorder, there is no clear form of treatment. Medications have limited use. They may be used to treat coexisting psychiatric conditions but are not effective in treating the personality disorder itself. And no research currently supports long-term hospitalization for treatment. So civil commitment could essentially extend detention but, in essence, warehouse individuals. So Nebraska really must exercise caution and be mindful of individuals' due process rights as well as addressing any vulnerabilities to the U.S. Department of Justice broadened scope of review regarding Olmstead. With LB592, when a prisoner with personality disorder has served their sentence but is still considered dangerous due to their personality disorder, civil commitments could be requested. The Lincoln Regional Center is at capacity of 200 hospital beds and does have a waiting list. There could be significant fiscal impact to the Lincoln Regional Center to take on additionally civilly committed patients. These patients could be considered high risk and need a new secure building similar to what exists at the forensic building at the Lincoln Regional Center. The costs per person are higher in a hospital than they are in corrections and that is because there's necessary staffing, resources, and building costs related to hospital licensure, accreditation, and safety standards. The broadened definition of mental illness may impact community settings as well. It's not clear, for example, if the bill would now allow law enforcement to take persons who have personality disorders, for example, antisocial personality disorder, into custody that's not being dangerous due to mental illness. If the person is found to be mentally ill and dangerous due to the personality disorder, currently they would be civilly committed to community-based hospitals or community-based treatment. The existing system is not funded, trained, nor staffed for this... [LB592]

SENATOR SEILER: Ma'am, ma'am, your red light is on. [LB592]

SHERI DAWSON: Oh, I'm sorry. Okay. May I continue to the last paragraph? [LB592]

SENATOR SEILER: Senator Williams. [LB592]

SENATOR WILLIAMS: Yes. Thank you, Senator Seiler. Ms. Dawson, I'm interested in hearing the balance of your testimony. [LB592]

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

Judiciary Committee
February 20, 2015

SHERI DAWSON: Thank you. Thank you. I will hurry. My speech coach always told me to slow it down. So I apologize for that. The existing system is not funded, trained, nor staffed. And an expanded network of services would be necessary to safely address this specialized population for extended periods of time, ensure monitoring, contracting, and network management. The Division of Behavioral Health would also need to develop and coordinate the mental health board training related to any changes. So while we understand the LB592 to advance a framework that would address public safety in communities in the state, we really encourage further consideration of the opportunity to advance collaborative planning with the new administration and system partners to really effectively match risk and needs and interventions and practices. Ultimately, the decision is how best to move forward and fund Corrections and Behavioral Health to better serve individuals that have committed a crime and have behavioral health needs. Thank you for letting me share the Behavioral Health perspective, and I'll answer your questions. Senators' hands going up. [LB592]

SENATOR SEILER: Senator Krist. [LB592]

SENATOR KRIST: As your intention is to work collaboratively, did the department go and talk to Senator Bolz about this bill before you came in and talked to us? [LB592]

SHERI DAWSON: No, not to my knowledge. [LB592]

SENATOR KRIST: Oh, that's a good example of collaboration. [LB592]

SHERI DAWSON: Yes. [LB592]

SENATOR KRIST: You know, here's my deal. You've said basically in this third paragraph you can't do your job, it costs a lot money, and right now you're not capable of doing your job. And I've been hearing that from the Department of Health and Human Services for the last six years. You don't talk to the senator who's going to present. You don't find a way to come in collaboratively to do that. But then you tell us that's your ultimate goal. Really? Really? [LB592]

SHERI DAWSON: I appreciate where you're coming from, Senator Krist. I would like to say, however, that in regards to the concern about the bill, the bill for us was really about that balance of protecting people's individual rights and not having that civil commitment and the level of how many individuals would be civilly committed. And our concern... [LB592]

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

Judiciary Committee
February 20, 2015

SENATOR KRIST: I've had a concern all summer long about why we didn't civilly commit somebody and there are four people dead because of it. So your argument is falling on deaf ears. [LB592]

SHERI DAWSON: And where I was heading with that is that the LR39, for example, I believe that balance with the Mental Health Board (sic) Commitment Act, the Sex Offender Commitment Act, and the Nebraska Treatment and Corrections Act is really speaking to that complexity of trying to get to the safety and attention piece, and also what's the balance with Behavioral Health so that people can be successfully reintegrated. [LB592]

SENATOR KRIST: Thank you for your testimony. And I would appreciate it next time, before you come before I'm on a committee, before you come before me, if you don't talk to the senator, I'm going to say to everybody who's in Department of Health and Human Services the same question: Did you try to talk to the introducer? Did you try to work out the issue? And if not, you might as well just not come and testify at all. Thank you. [LB592]

SENATOR SEILER: Senator Colby Coash. [LB592]

SENATOR COASH: Thank you, Chairman Seiler. Ms. Dawson, I want to ask you about part of your testimony and see if can get some clarification. In your testimony here you say, funding an expanded network of services would be necessary to safely address the specialized population for extended periods of time, ensuring adequate monitoring, reporting, and network management. Are you aware of the budgetary request to fund the services that you testified are needed? [LB592]

SHERI DAWSON: Are you talking about the fiscal note? [LB592]

SENATOR COASH: No. I'm asking you if you're aware of what the department of Behavioral Health, through the Governor's budget request, has asked for to do what you testified needs to be done. [LB592]

SHERI DAWSON: I'm trying to understand and clarify your question. [LB592]

SENATOR COASH: Okay. [LB592]

SHERI DAWSON: There hasn't been an additional request. This is based on the bill review and the fiscal impact note. [LB592]

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

Judiciary Committee
February 20, 2015

SENATOR COASH: Okay. [LB592]

SHERI DAWSON: But there hasn't been taking that request, if that's what you're asking, based on the fiscal note to the budget. [LB592]

SENATOR COASH: Okay, because here's...this is what I'm struggling with, and it's not...maybe it's not fair to ask you since this isn't an Appropriations hearing. But in your testimony you said that the funding for...well, you said a couple things. The existing system is not funded. That's in your testimony. And that funding an expanded network of services would be needed. And I would assume that's specific to this bill. But overall, I think one of the things that I heard from your testimony is community-based settings are stretched and challenged as it is. Would that be fair to say? [LB592]

SHERI DAWSON: Yes, yes. [LB592]

SENATOR COASH: And your testimony in opposition to this bill is that it would further tax the communitiy...could further tax the community-based services for mentally ill folks. [LB592]

SHERI DAWSON: Yes. When you broaden that definition, it broadens who you're serving. [LB592]

SENATOR COASH: Okay. So I'll ask if you know, this bill aside, what was proposed from the Division of Behavioral Health to increase any kind of community-based mental health services from the Governor's Budget Office through your department? [LB592]

SHERI DAWSON: I don't believe the previous administration made a request for an increase, to my knowledge. [LB592]

SENATOR COASH: So we're holding flat as is. [LB592]

SHERI DAWSON: Well, we have...last year, the aid budget for the Division of Behavioral Health was decreased \$5 million. And that \$5 million is still out of the base budget for this year's budget. [LB592]

SENATOR COASH: So we're operating on a \$5 million decrease and there hasn't even been a request to put that back into the budget through this process. [LB592]

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

Judiciary Committee
February 20, 2015

SHERI DAWSON: To my knowledge, the previous administration, that was not a request. [LB592]

SENATOR COASH: Would it be your testimony, this bill aside, that community-based services are still sorely lacking for people who are mentally ill, who, take the prisons aside, just need the service? [LB592]

SHERI DAWSON: In serving our primary population, which is individuals with serious mental illness, we do have capacity challenges and some wait lists. [LB592]

SENATOR COASH: Okay. Thank you. [LB592]

SENATOR SEILER: Senator Chambers. [LB592]

SENATOR CHAMBERS: Ms. Dawson, before I ask you questions I want to be sure in what role you're speaking today. As an RN, you don't make psychiatric evaluations and diagnosis. Is that true? [LB592]

SHERI DAWSON: That's true. [LB592]

SENATOR CHAMBERS: Did you discuss your testimony in terms of some of the conclusions vis-a-vis a personality disorder or actual mental illness, did you discuss that with a psychiatrist? [LB592]

SHERI DAWSON: Yes. [LB592]

SENATOR CHAMBERS: Was the psychiatrist hired by or employed by HHS? [LB592]

SHERI DAWSON: It was the medical director at the Lincoln Regional Center. [LB592]

SENATOR CHAMBERS: And who is that person? [LB592]

SHERI DAWSON: Dr. Roger Donovan. [LB592]

SENATOR CHAMBERS: And since you are in opposition to this bill based on what he told...are you in opposition because of what he told you, the conclusions he drew? [LB592]

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

Judiciary Committee
February 20, 2015

SHERI DAWSON: We're in opposition to the bill based on the civil commitment piece related to personality disorders. [LB592]

SENATOR CHAMBERS: Well, you mentioned that the capacity at the Regional Center is already at its full licensed capacity. So that could have a bearing on how these state-employed psychiatrists would diagnose inmates, wouldn't it, so that they wouldn't have to be placed any place where the capacity is already reached but they can be held in a correctional setting even it happens to be in solitary. [LB592]

SHERI DAWSON: Well, I think the clarification or concern with the civil commitment to the Lincoln Regional Center based on this bill is individuals with personality disorders. There's no research that really shows the long-term hospitalization is of benefit. [LB592]

SENATOR CHAMBERS: If there is no data to establish one thing, then there wouldn't be data to establish its opposite, would there? Don't take offense at what I'm asking you because often the people that I would call line employees, meaning those on the firing line, are put in a position which is unfair. Why did not the psychiatrist come and talk to us, or is he going to speak to today? Or are you the one who is to do the speaking? [LB592]

SHERI DAWSON: Dr. Donovan is out of town, but there is another doctor, Dr. Lori Anderson, that will also be testifying. [LB592]

SENATOR CHAMBERS: Here today? [LB592]

SHERI DAWSON: Yes. [LB592]

SENATOR CHAMBERS: Is that person a psychiatrist? [LB592]

SHERI DAWSON: Yes. [LB592]

SENATOR CHAMBERS: Who told you to come testify today, was it the Director of the Department of HHS or did you volunteer? [LB592]

SHERI DAWSON: Yes. We...as the department and meeting of the directors' decision on our position on the bill. [LB592]

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

Judiciary Committee
February 20, 2015

SENATOR CHAMBERS: Did you prepare this statement or was it prepared and given to you? [LB592]

SHERI DAWSON: I worked... [LB592]

SENATOR CHAMBERS: I'm not criticizing you either. [LB592]

SHERI DAWSON: Sure. No, I worked with preparing it with other people. [LB592]

SENATOR CHAMBERS: You prepared it and you had help with this statement from psychiatrists...or a psychiatrist, at least, correct? [LB592]

SHERI DAWSON: Yes. [LB592]

SENATOR CHAMBERS: Is that the psychiatrist who's going to be able to explain questions I might have about this statement you gave? [LB592]

SHERI DAWSON: You can ask Dr. Anderson when she testifies. [LB592]

SENATOR CHAMBERS: That's what I mean. Did you talk to Dr. Anderson in preparing this statement? [LB592]

SHERI DAWSON: Yes, we did have some conversation... [LB592]

SENATOR CHAMBERS: Oh, then I'll wait. I don't have any other questions to ask of you except this one. No, I'll just wait. Thank you. [LB592]

SENATOR SEILER: Any further questions? Seeing none, you're excused. If Dr. Anderson is present, would she come up and testify now. [LB592]

LORI ANDERSON: Okay. M.D., sir. [LB592]

SENATOR CHAMBERS: Oh, no. I don't need to read that. [LB592]

LORI ANDERSON: Okay. [LB592]

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

Judiciary Committee
February 20, 2015

SENATOR CHAMBERS: And if we're going to play sarcastic games... [LB592]

LORI ANDERSON: No, sir. [LB592]

SENATOR CHAMBERS: ...then I will play that game with and you're not going to win. First of all, are you an employee of the state? [LB592]

LORI ANDERSON: Yes, sir. [LB592]

SENATOR CHAMBERS: So you get paid by the state? [LB592]

LORI ANDERSON: Yes, sir. [LB592]

SENATOR CHAMBERS: Who signs your check? [LB592]

LORI ANDERSON: I don't know. [LB592]

SENATOR CHAMBERS: Do you work for the Department of Health of Human Services? [LB592]

LORI ANDERSON: I'm a psychiatrist at the Lincoln Regional Center. [LB592]

SENATOR CHAMBERS: But you're an employee of the state. [LB592]

LORI ANDERSON: In that sense. [LB592]

SENATOR CHAMBERS: Is the... [LB592]

SENATOR SEILER: Senator, would you let her do hers first and then go? [LB592]

SENATOR CHAMBERS: Well, she started it. (Laughter) [LB592]

SENATOR SEILER: No, I understand. I want to hear her testimony, then question her. [LB592]

SENATOR CHAMBERS: I'm not playing. [LB592]

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

Judiciary Committee
February 20, 2015

SENATOR SEILER: I know. [LB592]

SENATOR CHAMBERS: If people come up here with me like that then they're going to get what they give. [LB592]

SENATOR SEILER: I understand that. [LB592]

SENATOR CHAMBERS: But since you're the Chairman, you run the committee. I will yield to you. [LB592]

SENATOR SEILER: You may make your statement. [LB592]

LORI ANDERSON: Thank you. [LB592]

SENATOR SEILER: And then I'll call on Senator Chambers. [LB592]

LORI ANDERSON: (Exhibit 12) And good afternoon, Senator Seiler and members of the Judiciary Committee. My name is Lori Anderson, M.D., L-o-r-i A-n-d-e-r-s-o-n. I am a medical doctor serving at the Lincoln Regional Center in the specialty of psychiatry. The Lincoln Regional Center is a part of the Division of Behavioral Health within the Department of Health and Human Services. And I am here to testify in opposition to LB592 which proposes to redefine the term "mentally ill." Specifically, this bill proposes to change Section 71-907 of the statutes of Nebraska such that "mentally ill" is defined to mean persons not only with psychiatric disorders but also with personality disorders for purposes of the prison system. Personality disorders would be made equivalent to such mental diseases as schizophrenia and manic/depressive disorder, which is bipolar disorder. Personality disorders are, by definition, an enduring pattern of behavior, in other words, a personality that deviates from societal expectations no matter the culture. This does not include psychosis, which is to say disconnected from reality or unaware of reality, nor is it a misunderstanding of right and wrong. Specifically, these are people who do comprehend law and societal norms and consequences. Study after study shows that a high percentage of the prison population is diagnosed with some type of personality disorder, only a few of which are concerning to the prison system, antisocial personality disorder being one of them. A systematic review published in 2002 in Lancet, which is one of the premier peer-reviewed medical journals in the world, found that amongst 23,000 prisoners, 65 percent have a personality disorder. This same study found that 47 percent of prisoners have specifically antisocial personality disorder. A more recent study published in 2010 also stated that in Iowa, a determination was that antisocial personality disorder alone was present in over 35 percent of the population. To explain, antisocial personality disorder is a chronic disregard and violation of the

rights of others. That is not to say this person does not know what rights are. It is not to say they cannot distinguish right from wrong. They do. They know what crime is. They understand the consequences and they consciously choose to go against those regulations. For this reason, they also adjust their behaviors so that they can avoid the consequences, such as police, prison, arrests, courts. Virtually every person in prison has shown in some way a disregard for the law. That's who you send to prison. Based on these past studies and actually the two that I quoted, by conservative estimates, this current proposed change... [LB592]

SENATOR SEILER: Yep. Red means stop. [LB592]

LORI ANDERSON: I'm sorry. [LB592]

SENATOR COASH: I'd like to get...I'm sorry, Senator Chambers. I just wanted to let her finish. [LB592]

SENATOR CHAMBERS: No, I was going to say, because you're trying to reach a conclusion, would you continue? [LB592]

LORI ANDERSON: Yes. Based on research, by conservative estimates, this current proposed change in the definition of "mentally ill" places more than 50 percent of the Nebraska prison population into that category of mentally ill. This newly categorized population of prisoners would demand treatment. Unfortunately, and this gets to the key of my purpose of testifying as opposed to just testifying for LRC, is that there is no clear form of treatment for a personality disorder, specifically antisocial personality disorder. They may receive medication to treat a separate psychiatric disorder which they may have. But that does not treat the personality disorder. Therapy is not...is typically not effective. In addition, no research supports long-term hospitalization for treatment but rather, in most cases, it is what we call contraindicated. In other words, it's the exact opposite of what we think would be helpful. Under the new definition of mental illness as proposed in LB592, these prisoners would also be subject to potential civil commitments, which was already addressed. Of concern to the medical field, this civil commitment appears to primarily continue a preventive detention, not be a treatment, since housing these inmates with personality disorders in DHHS facilities does not improve their behaviors. It does not make them into a different person. Beyond this impact on Lincoln's Regional Center and the prison system, this new law would have a significant impact on the entire Nebraska behavioral health system. Lincoln Regional Center inpatient civil commitment beds, which is not for legal purposes, could be quickly clogged with long-term, essentially untreatable personality disorders who are also, under this law, nondischargeable. This could then impact multiple community-based services by tying up already limited supplies. The law creates additional effects on outpatients. Upon discharge from the Lincoln Regional Center, they would

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

Judiciary Committee
February 20, 2015

likely be needing further psychiatric care for treatments which, as I've said, doesn't go anywhere. I thank you for the opportunity to further share the Division of Behavioral Health's perspective and I will answer any questions you may have. [LB592]

SENATOR SEILER: Senator Krist. [LB592]

SENATOR KRIST: So you're testifying to green copy of the bill. [LB592]

LORI ANDERSON: I know there's an amendment. I do not know what that amendment is. [LB592]

SENATOR KRIST: You see how important it is for the department... [LB592]

LORI ANDERSON: Yes. [LB592]

SENATOR KRIST: ...to get with the introducer? Because essentially what the lady before you and you have done is kind of waste our time, because what the introducer has done in working with the other healthcare facilities, in Bryan and all the...I think there were three or four people up here talking about it, they've taken your concern right out of it. So that's why it's so important I think... [LB592]

LORI ANDERSON: It is. [LB592]

SENATOR KRIST: ...that the department needs to talk to the introducer. We can cut through this chase and just say, we agree because we realize, particularly with the fiscal note, that this thing was going to be untenable. So I made my point. Thank you. [LB592]

LORI ANDERSON: So the amendment takes out personality disorder. [LB592]

SENATOR KRIST: I would take some time with the introducer and talk about the amendment because essentially your testimony has just said you agree with the amendment rather than you disagree with the green copy. [LB592]

LORI ANDERSON: Okay, okay. [LB592]

SENATOR SEILER: Senator Chambers. [LB592]

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

Judiciary Committee
February 20, 2015

SENATOR CHAMBERS: Dr. Anderson,... [LB592]

LORI ANDERSON: Yes, sir. [LB592]

SENATOR CHAMBERS: ...when it comes to diagnosing a mental condition, whether we call it a personality disorder or mental illness, for my purposes, who could better make that diagnosis, a psychiatrist or a psychologist? [LB592]

LORI ANDERSON: A psychiatrist. [LB592]

SENATOR CHAMBERS: I agree. If two psychiatrists examine the same person with the same basic information, could they arrive at a different conclusion as to whether the person has a personality disorder or is indeed mentally ill? [LB592]

LORI ANDERSON: Yes. [LB592]

SENATOR CHAMBERS: And that has happened, hasn't it? [LB592]

LORI ANDERSON: It occurs in every field of medicine. [LB592]

SENATOR CHAMBERS: Now if I, as a layperson, will acknowledge that I'm not trained to make a diagnosis, which is obvious, which of the two am I supposed to accept? [LB592]

LORI ANDERSON: That's a good question. As I said, in any field of medicine this occurs. If you ask infectious disease to speak with neurology, I used to practice neurology, we could have a different opinion of the same person. [LB592]

SENATOR CHAMBERS: And here's what I'm trying to get at. We had a rocky beginning, you and I. Have you ever talked to me before? [LB592]

LORI ANDERSON: No, sir, but you've spoken with my father. [LB592]

SENATOR CHAMBERS: And I've never...have I talked to you before? [LB592]

LORI ANDERSON: No, sir. [LB592]

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

Judiciary Committee
February 20, 2015

SENATOR CHAMBERS: Okay. So we clashed instead of discussing, would you agree? There was a clash. You were a little feisty which I'm not condemning you for. And to show that I thought you could hold your own, I responded in the way that you came. But that's water under the bridge now. When psychiatrists disagree, the policymakers are compelled to do something in the law. [LB592]

LORI ANDERSON: Right. [LB592]

SENATOR CHAMBERS: Lay that aside now. Would a personality disorder for the purposes of the law of Nebraska be what the Legislature says that it is? Remember, we're not talking about medical doctors discussing. We're talking about a definition which the Legislature would give. The Legislature is empowered under the law to define a personality disorder as a psychiatric condition which equates to mental illness. We could do that, are you aware of that? [LB592]

LORI ANDERSON: It would be ill-advised. [LB592]

SENATOR CHAMBERS: Could we do that? [LB592]

LORI ANDERSON: I actually don't know if you can. [LB592]

SENATOR CHAMBERS: Yes, we can. [LB592]

LORI ANDERSON: Okay. [LB592]

SENATOR CHAMBERS: And the Legislature...it's called a term of art in the law, and I'm not trying to trick you. And if a definition starts out, for purposes of this section, these words mean thus and so, it means that words that would have an ordinary meaning are going to have a different one when we apply it in this statute. So if the Legislature, if it wouldn't just say that a personality disorder is the equivalent of a mental illness but get a list of the symptoms that are found in a personality disorder and declare when these symptoms are present, for purposes of this bill, that is a mental illness. Then if psychiatrists are examining a person...forget all that for now. When psychiatrists make an examination of a person to determine whether he or she is mentally competent to stand trial, they are making a quasi-legal determination, aren't they, because they are saying this person is legally competent. And that's what the court is asking. Based on what the law is, would this person be culpable under the law, not a medical definition but for purposes of the law? [LB592]

LORI ANDERSON: Right, but the medical definition does factor in. If I can give an example. [LB592]

SENATOR CHAMBERS: Sure. [LB592]

LORI ANDERSON: A person under examination, psychiatric examination, can lie and they can behave as what they've been trained to behave as in order to appear mentally sick with a disease when they don't. This is the same as what we call Munchausen's disease in internal medicine. I could have a patient come in who has injected herself with a whole bunch of insulin. She will be sick. Did she do it on purpose or does she really have a problem, a medical issue? That can be faked. And when two psychiatrists evaluate one patient, that patient can behave differently or they could lie. And that's where we have to determine, is this a lie or is this real? [LB592]

SENATOR CHAMBERS: So a judge may say I'm going to have the equivalent of a panel of psychiatrists. I will have five examine and whichever direction the majority of them go is the direction the court will go. That's a valid position for a court, isn't it? How else would they make a decision? [LB592]

LORI ANDERSON: Well, I have to say it's not normal to have a big division, to have different opinions. It can happen, as we know. [LB592]

SENATOR CHAMBERS: Well, I know a case where it did happen. [LB592]

LORI ANDERSON: Exactly. [LB592]

SENATOR CHAMBERS: Right. [LB592]

LORI ANDERSON: Generally speaking, it doesn't. So to have a five panel is a lot of work for something that really does not happen very often. [LB592]

SENATOR CHAMBERS: Being realistic, and it has been written about in the literature, and when I say the literature I meant things that are written by those who practice psychiatry, that psychiatrists who work for the state have a divided loyalty. They are not completely free and objective in what they do. So it would be better, in some instances, not to have a state employee--not investigating--examining a case where the state has an interest in a particular outcome. Because whether intentional or unintentionally, the state employee is going to incline toward what the state wants. And there was judge in whose courtroom I sat who expressed doubt about what state-employed psychiatrists would say. And if a state-employed psychiatrist says this

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

Judiciary Committee
February 20, 2015

person is faking, then it's crazy to say that we're going to let this person who's already drawn a conclusion be the one whose opinion we're going to take. Let us let some other people who are not in that position be the one in whom we will repose trust. I think it is an awesome responsibility which not everybody could shoulder to be a psychiatrist when your diagnosis can be literally a matter of life or death. But that's not what I'm asking you about. If...I'm trying to phrase this delicately. If you, using your skill and training as a psychiatrist, arrive at a conclusion--forget what the conclusion is--and over here is a psychologist who says, well, I disagree, and it's a psychiatric issue, whose opinion ought to be accepted? [LB592]

LORI ANDERSON: Psychiatrist. [LB592]

SENATOR CHAMBERS: I agree. See, we get along very well. But you've got to give us a chance to reach that point, and now we're reaching it. [LB592]

LORI ANDERSON: Sir, can I say... [LB592]

SENATOR CHAMBERS: I'm not interested in undermining you or your credibility. And I'm not even discussing what my colleague did here, although his advice was good, that people should talk to the introducer. I'm trying to get at some broader issues because I don't know whether the state ought to hire any psychiatrists. Maybe they could do it on a contract basis but to have a person as an employee. With that having been said, do you have a supervisor? [LB592]

LORI ANDERSON: Yes, sir. The medical director, Dr. Donovick, medical director of LRC. [LB592]

SENATOR CHAMBERS: Is he a psychiatrist? [LB592]

LORI ANDERSON: Yes. [LB592]

SENATOR CHAMBERS: And is he employed by the state? [LB592]

LORI ANDERSON: I presume, as director of LRC... [LB592]

SENATOR CHAMBERS: I mean, he's not a contract...he is on the state payroll. [LB592]

LORI ANDERSON: He is paid. Right. [LB592]

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

Judiciary Committee
February 20, 2015

SENATOR CHAMBERS: Okay. [LB592]

LORI ANDERSON: I am a contractor for the prisons. [LB592]

SENATOR CHAMBERS: You're a what? [LB592]

LORI ANDERSON: For the prison system, and I worked in prisons in California as a contractor. I don't think I get a different opinion. I mean, I'm there for my patient, that overwhelms everything. [LB592]

SENATOR CHAMBERS: Well, if you were at a certain prison, your opinion would be overridden by the psychologist. And the psychologist would withhold your opinion and say it should not be shown to the director, it should not be shown to the county attorney. I'm going to keep it. That's what we're dealing with. And that's why there's a certain edge to our questioning. There's a person--and I won't give his name but it's been in the news--who had information, a report, a detailed report from a psychiatrist. There was a turf battle going on at that prison between psychologists and a psychiatrist, which should never happen. They can have their opinion, the psychologists. But when time comes to deal with a psychiatric diagnosis, that psychiatrist is hired for a reason:... [LB592]

LORI ANDERSON: Right. [LB592]

SENATOR CHAMBERS: ...that training, that experience, and that knowledge. And if you're going to let the psychiatrist be trumped by a psychologist, don't hire the psychiatrist at all, just keep psychologists. It's cheaper and whatever your reasoning is. But I've seen that dichotomy. I don't care what opinion a psychologist has, but a psychologist does not have the right to bottle up a psychiatrist's diagnosis and keep it from the people who are entitled to have it and who are going to make decisions and that information would be critical and crucial. But since you came to testify, there are things you're going to have to hear because we're dealing with the bill and we're collecting information. What I said to Director Frakes...and he's going to be the director. I'm like the Pope, once I give the imprimatur, that's it. And I've given the imprimatur. [LB592]

LORI ANDERSON: Okay. [LB592]

SENATOR CHAMBERS: I don't want to drag this out. But we have a harder job than yours because the extent of your job is to do the best you can. Make your diagnosis, provide that information to whomever you provide it to. We are the ones who are accountable to all the people in this state. And when we become aware of the fact that money from the state is being

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

Judiciary Committee
February 20, 2015

spent to hire people and the ones with the knowledge are not having that knowledge taken into consideration, knowledge that we paid for and we expected to get our money's worth. And in fact, the one who was hired on a contract basis did the job but the information doesn't get where it's supposed to be. We have no way of knowing that until we've subpoenaed all kind of documents. And when we subpoenaed documents, it's like the Department of Corrections got every piece of paper they could think of and put in a basket and dumped it and said there it is and hope we don't come up with the information that we wanted. So there's going to be an edge whenever we're discussing these issues. We need to make a clean break from the past so that you as a psychiatrist are going to have your expertise respected. And if it's put in the hands of the right people, meaning those who are entitled to it, and they misuse it, then we know where to go to place the responsibility. But if they never see it then we can say, well, you have an obligation to make sure that people give it to you and all those things. But the reality is that it wasn't given. And when I was questioning this psychologist, he acknowledged that he did not share that information. Under additional questioning, and he was under oath, he admitted that he should have been forthcoming with that information. He should have shared it with officials in the department, and he certainly should have shared it with the county attorney who had requested it. And had he shared that information with the county attorney, there could have been the institution of mental health commitment proceedings. But that was not done. And as a result, a man who had spent years in solitary, who had made over 30 requests by my actual count for mental health treatment himself, filed a petition with the county attorney in Johnson County to start civil commitment proceedings. He said he knew what he was going to do. He needed help. He cut himself seriously to try to get that help. And their response was five-point restraints. And the inmates who could hear him heard him crying for help even then. Then he made the final appeal. How many times have you seen a man who is about to be released from prison ask you to keep him locked up? His mother filed a petition. And when the county attorney contacted this psychologist, he fibbed and said that the man was being given counseling. But under my questioning he acknowledged that no counseling was available. There was a group down there who would make recommendations as to the kind of treatment people like that should get. And they talked about anger management. This man gave the county attorney the impression that all the treatment available he was getting, which would be counseling and anger management. So under my questioning he admitted no counseling was available. I said, well, I know that there's no anger management program at Tecumseh. It's in Lincoln. He said, well, that's right. I said where was this inmate that the county attorney was asking you about? Was he in Tecumseh? He said, well, yes. I said if the only anger management program is in Lincoln, you couldn't give him anger management treatment, could you? And he had to admit, no. So I said the information you gave to the county attorney was not accurate, was it? And like pulling teeth from a hen, he finally had to acknowledge that. And then here was the very crux of the matter. Had the county attorney, who was requesting this information from you, which they needed before they could initiate civil commitment proceedings, because, as you know, they can't just say put this person away because we want. You have to find certain...and those things were present. The county attorney would

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

Judiciary Committee
February 20, 2015

have done something, but he didn't get the information. So this man was transferred to Lincoln. I contacted the Director of Corrections. I was not in the Legislature then. I had been term limited out. He assured me that this man was going to get mental health treatment. And I said if in the few months remaining you cannot adequately treat him, I don't want him released into my community. And he assured me that's the way it would be. And you know what really happened? He was put in solitary immediately upon being sent back to Lincoln. He stayed there until the day he was released. And while in solitary in Lincoln he was still asking for help. Those are not issues you have to grapple with. That psychologist acknowledged that had that doctor's, the psychiatrist's, report been passed on and had the county attorney presented this information to a mental health board, is there a likelihood that they would have taken appropriate action and that man would not have been released? And again, like drawing hens' teeth, he acknowledged it. So then the question, had all of these things been done and that man not been released, those four people wouldn't be dead, would they? And he had to acknowledge, no, they wouldn't. That's the seriousness of the issues we deal with. It's the seriousness with which I take the work that I do. And I can't bring people back from the dead. But I want to do everything I can to make sure that nobody else dies unnecessarily because things that could be prevented by the way we operate the facilities that we're in charge of. I don't want that to happen again. [LB592]

LORI ANDERSON: I agree. [LB592]

SENATOR CHAMBERS: So you might feel that you were set upon today in a way that was unfair. [LB592]

LORI ANDERSON: No. [LB592]

SENATOR CHAMBERS: But these are things that we dealt with, some of us on this committee, for a whole summer and we kept getting the same kind of thing over and over: I didn't know, I didn't think, I should have, I wish I had. But that was not good enough. So when people come here, I want to get as much specific information as I can. Everything we say is recorded, then it's transcribed. That's why I was so direct in questioning the new director of Corrections. He is on record. He is a grown man. He is being paid for what he is to do and he's going to do it. And he doesn't...he shouldn't expect thanks or praise. When gets his check, that's all he should expect. And some of us are going to expect a lot more from him than we've gotten. And I would expect psychiatrists to continue to do their work in disregard of whether or not there are currently beds at the Regional Center or in some of these facilities in the Corrections Department. I want you all to feel free, to let your medical judgment trump, to use your term, everything else. And then if somebody else doesn't do their part, they cannot point to you and say, well, she didn't want to go this way because we didn't have any place to put the person. [LB592]

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

Judiciary Committee
February 20, 2015

LORI ANDERSON: No, that's not a part of our decision. [LB592]

SENATOR CHAMBERS: So keep doing your job, ma'am. I wish you well. And I'm glad you came today, because even though I didn't ask you a lot of those questions, you gave me the opportunity to get some things into the record and give a message also to people at HHS, which I hope that they may have picked up. That's all that I have. But our committee often meets for a long, long time. But there's some of us on the committee who will get those transcripts, who will pore over them, analyze and evaluate and make use of that testimony that we will receive. And let me speak for myself. I'm going to pay very close attention to what everybody had to say today. I will read it respectfully. But I will not soft-pedal what I think we have an obligation to do as policymakers. That's all that I have. [LB592]

SENATOR SEILER: Thank you. Any further questions? I have just one, I have introduced LR39. And basically I'm trying to get to a definitional position. I hope you're around maybe this fall when we have our hearings that you could testify. [LB592]

LORI ANDERSON: Absolutely. [LB592]

SENATOR SEILER: And my question is, and it's the mix-up of statutes that talk about mental illness. And yet when you get to the hearing, I was a mental health chairman for 15 years and did a lot of them. And when they talk about mental illness there, whoa, we're going to talk about mental illness in the criminal settings. And then we're going to talk about mental illness in a sex offender. And I don't think anybody knows what the hell they're talking about, to be right blunt about it. And I want LR39 to sort those out definitional so that we can get some semblance of law that works now. I know there's going to be gray areas. There always is in mental health cases. But I lost one summer of fly fishing to listening LR424 testimony. I don't want to lose a bunch more. Thank you very much for your testimony today. [LB592]

LORI ANDERSON: You're welcome. Thank you. [LB592]

SENATOR SEILER: I look forward to seeing you in the future. Next opponent. Oh, I thought she was going to testify. (Laughter) Seeing nobody else, the neutral. Nobody else...wait a minute, guy in the back. Yes. [LB592]

MARK DAVIS: Again, my name is Mark Davis and I'm speaking as myself now, not as the president of RAN because I haven't talked with them about this. But is it...I gleaned that the term of "personality disorder" was taken out of these statutes that you're talking about, or not? [LB592]

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

Judiciary Committee
February 20, 2015

SENATOR SEILER: I don't think it was ever in it. It's proposed to be in it. I don't think personality disorder was in there. I think they called it mental illness. And whatever it is, it is. [LB592]

MARK DAVIS: Okay. Well, the reason that I wanted to speak to it is when I was in prison some 35 years ago, I went to the mental health office there and talked with a psychiatrist who essentially told me that I had a personality disorder and so there wasn't anything that could be done for me. And when I asked him why he was working there if that's what he felt about prisoners, he said, that's what I'm talking about. So the thing is, is that I think services might be denied people given that diagnosis as well, that because they fit the diagnosis of a personality disorder, that other mental health issues adjacent to that could, and in my experience, are denied. [LB592]

SENATOR SEILER: Well, thank you for your testimony. Any questions? Seeing none, thank you. You may now close. All written materials will be made part of the record. (Exhibits 13-20) [LB592]

SENATOR BOLZ: Thank you for your time and attention this afternoon. I'll briefly touch on just a couple of points. The first is that I just want to articulate and make it clear that the mental health commitment process as it stands--and, Senator Seiler, you have more experience with this than I do--but there are requirements around initial health consultation, and there are requirements around placing individuals in the least restrictive environment possible. And so I just want to reassure folks who are part of this dialogue that those protections are in place and they are a part of the consideration. So whatever the definition that ends up in our statutes gets put into place, that's a starting point. And then the mental health commitment board reviews it, consults with mental health professionals, and looks for the least restrictive environment. I recognize there are pieces of this piece of legislation that require further discussion and analysis, and I think there are some legislative resolutions that will help us do that. But I think it's incumbent upon us, those of us who participated in the LR424 Committee, to bring to light the issues that we heard this summer and to make sure that that drumbeat continues. I would also say that there are pieces of this legislation that I think are important to move forward with quickly, including the data collection components, the evaluation and risk assessment components, and the process clarity components. So I'm happy to take any final questions and appreciate your thoughtfulness. [LB592]

SENATOR SEILER: Any further questions? Okay. Before we start LB605 and LB606, I've had a request from a member that we hear the two bills at the same time. I'd like the committee to vote on that as to...or is there any objection to hearing both these bills at the same time? [LB592]

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

Judiciary Committee
February 20, 2015

SENATOR KRIST: No. [LB606]

SENATOR WILLIAMS: No. [LB606]

SENATOR SEILER: She does. Request withdrawn. LB606, okay. You ready? You want to be Chairman for a few minutes? [LB606]

SENATOR COASH: Okay, folks. If we could have everybody settle down. And I would ask those in the audience to end their conversations. We are...we were just taking a little break. We are not going to hear them together; we are going to hear them separately. There are people here to testify very specifically on one bill versus the other. So we are not going to hear them together, but we are going to...Senator Mello has both bills. And so, Senator Mello, you're welcome to open on your first bill. [LB606]

SENATOR MELLO: (Exhibit 1) Good afternoon, Vice Chairman Coash, members of the Judiciary Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District in south Omaha. I'm here this afternoon to introduce first LB606, a legislative bill that seeks to implement a number of key recommendations from the LR424 Department of Correctional Services Special Investigative Committee. As you've heard from Senator Bolz on LB592 and Senator Schumacher on LB598, as well as Senator Chambers, Krist and Seiler know from their time on the Department of Corrections Special Investigative Committee, the LR424 Committee produced a candid and blunt report to the Legislature this past December concerning the dysfunction within the Department of Corrections. The report provided a starting need for reforms that must be undertaken to restore the public's confidence in our state government's main public safety agency. LB606 is a product of that report and would implement several of the recommendations made as a result of our investigation. Sections 1-32 of LB606 would create the Office of Inspector General of the Nebraska Correctional System based on recommendation number 4 from the report and would address the implement and recommendations that would ensure ongoing legislative oversight of the Department of Corrections. Quote from the LR424 report, "The committee recommends that the Legislature establish the 'Office of Inspector General of the Nebraska Correctional System.' The office should conduct audits, inspections, reviews and other activities as necessary to aid the Legislature in its oversight of the Nebraska correctional system." Section 33 of LB606 would require the department to provide certain information to the Ombudsman's Office based off the recommendation number 7 from the LR424 report, which is quoted: The committee adopts the opinion and conclusions of the Ombudsman, Marshall Lux, in his memorandum to Senator Steve Lathrop dated December 5, 2014. This memorandum is found in the appendix. The insights of the Ombudsman concerning the Department of Correctional Services are particularly well thought out...are particularly well thought through and, in the judgment of the committee,

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

Judiciary Committee
February 20, 2015

provide particularly good insight into the culture problems that exist in the Department of Correctional Services. The committee would also adopt the recommendations of the Ombudsman in his memorandum specifically related to the following: The Legislature should pass legislation permitting the Ombudsman's Office direct access to NI-CAM system, the Nebraska Department of Correctional Systems' (sic) computerized record system, end quote. Section 35 of LB606 would implement recommendation number 6 from the LR424 Committee report regarding a more safe and transparent process to address prison overcrowding by amending the Correctional System Overcrowding Emergency Act. Quote from the LR424 Committee report: The committee recommends that Section 83-962 be amended to mandate that the Governor declare a correctional system overcrowding emergency whenever the director certifies the population is over 100 (sic--140) percent of design capacity. The committee believes the procedure found in Section 83-962 is a far more transparent process and provides for greater accountability when the administration undertakes to resolve overcrowding by means other than developing additional capacity. In an overcrowding emergency the Governor can require the Parole Board to consider individuals for parole who would not otherwise be considered, but the Governor still cannot require the Parole Board to order the release of any individual. Even in an overcrowding emergency, the Parole Board may not consider individuals who have not yet reached their parole eligibility date; and the board can refuse to order the release of any individual who is likely to commit violent acts or otherwise violate their conditions of parole. To provide the committee with some historical context regarding the Overcrowding Emergency Act, the Legislature passed LB46 in 2003 that outlined the general procedure for the Board of Parole to follow in the event of a correctional system overcrowding emergency. The Legislature instructed the director of the Department of Correctional Services to inform the Governor when the prison population exceeds 140 percent of design capacity. At that point, the Governor may declare an overcrowding emergency. Originally, the bill had required the Governor to declare an overcrowding emergency once notified that the prison population had exceeded 140 percent of design capacity. That, unfortunately, was changed when the bill was passed. As of January 31, 2015, there was 5,228 people incarcerated by the Nebraska Department of Correctional Services, and the prison population has continued to climb over 140 percent of design capacity since March 2011. Even so, Governor Heineman at the time did not declare an overcrowding emergency before leaving office in January. The information gained through the LR424 investigation proves that it's unrealistic to expect a Governor to voluntarily declare an overcrowding emergency out in the open, and the current statutory language leaves it open to do the same thing behind closed doors. Once again, another quote from the LR424 report, pages 55 and 56, quote: This process, of course, is transparent and the Governor's involvement quite obvious. In contrast to the statutory process available to the Governor in the Correctional System Overcrowding Emergency Act, the administration--the, quote unquote, Heineman administration--chose a course that involved working in the shadows where pressure on the Department of Correctional Services and the Parole Board was applied to move inmates to the community with plausible deniability, all while maintaining that overcrowding was not

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

Judiciary Committee
February 20, 2015

influencing decisions at the Department of Correctional Services. The findings of this committee suggest otherwise. This bill will prevent future Governors from underwriting the...undermining the integrity of the parole process during a correctional system overcrowding emergency by requiring the Governor to publicly declare an emergency when the prison population exceeds 140 percent of capacity, end quote. As it's currently drafted, LB606 would require the Governor to declare an overcrowding emergency if the bill is to be signed into law. I feel that it's in our best interest, both as the introducer and as the Judiciary Committee, to work with the Parole Board and the Department of Corrections on how this provision could be implemented while work is being done to reverse the current state of our prison system. Finally, Section 36 of LB606 would change the definition of, quote, rule and regulation in the Administrative Procedure Act based on recommendation number 3 of the LR424 report. From the LR424 report, "The committee recommends that the Legislative Research Office and/or the Legislative Performance Audit Committee conduct an assessment/audit to determine which administrative regulations were promulgated in violation of the Administrative Procedure Act. The results of the audit/assessment should be provided to each member of the Legislature. If such an audit or assessment discloses the need for clarification of the Administrative Procedure Act, the Legislature should act." From the LR424 report on page 39: Like changes in parole, the RFP program, better known as the Reentry Furlough Program, was a product of overcrowding and a primary tool in the "No Cost Options." This program was developed by the Department of Correctional Services through a set of administrative procedures which were, in the committee's opinion, developed outside the law with no opportunity for the public or for the Legislature to weigh in. Perhaps the first observation to be made about the Reentry Furlough Program was that the development of the regulations for this program should have been in compliance with the Administrative Procedure Act. The committee feels strongly that the Administrative Procedure Act governs the creation of this program and the manner in which it was developed by the Department of Correctional Services was outside of the law, end quote. Based on a number of concerns that have been expressed to my office and, likely, this committee, who received countless letters by almost every agency in state government, I'd asked the committee to consider incorporating AM478 into LB606. AM478 would strike the language in Section 36 related to the Administrative Procedure Act. I've committed to work with the Ricketts administration over the interim on modernizing the state's Administrative Procedure Act and obviously would invite and encourage all senators from this committee and other interested senators to work on this issue, as well, while also trying to address the issues concerning the Administrative Procedure Act raised by the LR424 Investigative Committee report. Members of the Judiciary Committee, LB606 would implement recommendations from our LR424 Committee report regarding the ongoing legislative oversight of the Nebraska Department of Correctional Services and creating a more safe, transparent process to address prison overcrowding and begin the discussion of modernizing the Administrative Procedure Act to ensure greater transparency from state agencies moving forward. Lastly, as I close, I just want to thank Senator Bolz, Senator Chambers, Senator Krist, Senator Schumacher, and Senator Seiler for their service on the LR424

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

Judiciary Committee
February 20, 2015

Special Investigative Committee Report and for sponsoring and cosponsoring the key recommendations from our 2014 report. Thank you for your time, and I'd be happy to answer any questions you may have. [LB606]

SENATOR SEILER: Senator Krist. [LB606]

SENATOR KRIST: Senator Mello, you and your LA may be the only ones new to the room, but I made a special point earlier in another hearing of giving an example of how the Administrative Procedure Act were changed without public hearing and adversely affected not just the program itself but the continuity of the program and the administration of administrative segregation, which made the point. But because I trust your judgment and I've learned to trust your judgment, what I hear you say is that you're recommending that we take that part out, which would eliminate the countless letters that we have gotten, and that you're confident that working with the Ricketts administration that the Administrative Procedure Act will be modernized and there will be very little gray area after you're finished. Is that what I'm hearing? [LB606]

SENATOR MELLO: That is a correct assessment, Senator Krist. I've been fortunate enough over the last few years to introduce a number of bills regarding the Administrative Procedure Act. And I think, in regards to preparation, after we saw what we saw in the LR424 process of the abuse that the Department of Correctional Services had used to create some of their programs outside of the APA scope, I think it's raised, I think, enough concern amongst the legislative branch of government that I think all...it's...the executive branch has expressed their understanding of our ire, that we want to see the APA followed moving forward. And to some extent, I give a lot of credit to Senator Seiler's office and the legal counsel for providing multiple office that we could consider for the bill in front of us, LB606. We could take components of the model APA and try to incorporate it, as well. I've just kind of come to the conclusion though, in regards to hearing from it feels like every state agency in the last couple days, that there's a willingness, both from the Ricketts administration and from noncode state agencies, to want to work with the Legislature to clarify the gray areas in the current law. I think that my general understanding is, from the conversation that I've had, is that they feel there's a need to modernize the law as it is. I think what we saw from the Department of Correctional Services has highlighted some shortcomings of the existing law. And we could probably, if we wanted to with this bill, make a specific change to the APA that only affected the Department of Corrections. But you know this from serving on the Health and Human Services Committee that we've got challenges, probably, still within that agency, as well, to clarify some of the language that's in the existing law. And I think any time the executive branch, particularly with a new executive branch that wants to reach out to the Legislature to help fix what we know is kind of a problem between our branches of government when it comes to the rules and regulations process, I'm going to give them the benefit of the doubt in this scenario and want to work with them on it and, as I expressed to them, wanting to make sure that members of this committee and other members of

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

Judiciary Committee
February 20, 2015

the LR424 Committee, who really dug into the APA process over the interim, would be involved with that process, as well. [LB606]

SENATOR KRIST: So for the record, when you're term limited, some of us will still be here and we'll carry on with (inaudible). And if you're here to testify against the APA changes, you could go home now. (Laughter) Thank you, Senator Mello. [LB606]

SENATOR MELLO: Thank you. [LB606]

SENATOR SEILER: Any further questions? Seeing none. [LB606]

SENATOR MELLO: Thank you. [LB606]

SENATOR SEILER: You going to stick around? [LB606]

SENATOR MELLO: For the next bill. I'll likely waive closing though. [LB606]

SENATOR SEILER: Okay. First proponent of this bill. [LB606]

MARSHALL LUX: (Exhibit 2) Good afternoon, Senators. My name is Marshall Lux, M-a-r-s-h-a-l-l L-u-x. I am the Ombudsman for the state of Nebraska and I'm here today to speak in support of LB606 and to talk in particular about the portion of the bill that establishes the Inspector General for Corrections. That part of LB606 is patterned after the legislation that created the Inspector General of Child Welfare back in 2012. I can report to the committee that that institution, that IG for Child Welfare, has been working very effectively and very well. Julie Rogers, the IG, is...has been...has worked tirelessly and has gotten a lot done and is an asset to the system and to the legislative body. The second point I guess I'd like to stress is that if the Legislature decides that it's a good idea to have an IG for Corrections, then it is essential that it be arranged as it is in the bill as introduced--that is, that the IG is made a part of the legislative branch of government. That is important for independence purposes that the IG not be answerable to the agency involved or the administration generally. And it's also important because, from the example of the IG for Child Welfare, what we are learning is that the IG can be a tremendous asset to the legislative body in terms of gathering information, learning things about how the system works. The final thing I guess I would say on the subject of the Corrections IG is that, if there was one thing that was learned in the LR424 Committee process, it was that the Department of Corrections needs a lot of oversight, needs a lot of oversight from this institution. This IG proposal will provide that, and I'm confident that, if it's passed, that it

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

Judiciary Committee
February 20, 2015

will be an asset, another set of eyes and ears that can help the Legislature provide oversight of that system. And I'd be happy to answer any questions. [LB606]

SENATOR SEILER: Senator Krist. [LB606]

SENATOR KRIST: Quick comment: The IG Julie Rogers' position was established after LR37, which put a spotlight on Children and Family Services, and she has done a great job and you have, as well, overseeing some of those changes. And I have every confidence that this bill, that this process will work as well, as efficiently as it was projected in LR424. So thank you for coming. [LB606]

MARSHALL LUX: Thank you, Senator. [LB606]

SENATOR SEILER: Any further questions? Thank you for your testimony and your services. [LB606]

MARSHALL LUX: Thank you, Senators. [LB606]

SENATOR SEILER: Next proponent. [LB606]

JULIE ROGERS: (Exhibit 3) Good afternoon. My name is Julie Rogers, J-u-l-i-e R-o-g-e-r-s. I am the Inspector General of Nebraska Child Welfare. I'm here to just give a little bit more detail of the Office of the Inspector General of Child Welfare. It's to provide an independent form of inquiry for concerns, provide a process for investigation review to determine whether individual complaints and issues inquiry reveal a system problem which may necessitate legislative action, just as LB606 would establish for the Nebraska correctional system. Our office is to strengthen legislative oversight when it comes to the Nebraska child welfare system. We take care to ensure our role is clear, not to take the place of other investigations done for other purposes, such as law enforcement investigations or human resource issue investigations and the like. We have no supervision of any public or private entity investigated by our office but, instead, we provide oversight and accountability by and through the Legislature. As required per statute, I've been certified as an Inspector General through the Association of Inspectors General. The core values of an office of inspector general are honesty, integrity, and trustworthiness. This is accomplished through inspector general standards of independence and confidentiality. The fundamental objective of inspectors general offices is to promote accountability, transparency, good government, and high performance. As you heard from Ombudsman Lux, the...our office is within the Ombudsman's Office. Meetings and case staffings occur regularly between myself, the IG staff, the Ombudsman, deputy ombudsman for public welfare, and assistant ombudsmen who

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

Judiciary Committee
February 20, 2015

carry child welfare caseloads. The Ombudsman's staff have been very generous in assisting with the establishment of the office. Currently, our office receives notices of death or serious injury that would necessitate a full investigation through the Department of Health and Human Services' critical incident reporting. Notifying our office in this way is central to what we do. Our office also has full access to N-FOCUS, their on-line case management system. Accountability is key to maintaining public trust. Inspectors general are entrusted with fostering and promoting accountability and integrity in government. One of the crucial standards of the office is independence. The office takes very seriously that its independence and objectivity is of utmost importance. And I'm happy to answer questions. [LB606]

SENATOR SEILER: Okay, thank you. Any questions? Seeing none, thank you, Julie. [LB606]

JULIE ROGERS: Thanks. [LB606]

SENATOR SEILER: Next proponent. [LB606]

MIKE MARVIN: Good afternoon again, Chairman Seiler, members of the committee. My name is Mike Marvin, M-i-k-e M-a-r-v-i-n. I'm the executive director of the Nebraska Association of Public Employees. We are the union representing the vast majority of state employees, including the correctional employees. I want to thank Senator Mello for bringing this bill forward. We strongly support the Inspector General. We hope you go forward with that. I was very glad to hear the APA is going to be looked at, as it's been a problem with all the agencies. So I won't have any more to say about that. The important part to us as the people representing the correctional employees: the mandate that the Governor declare the emergency. Overcrowding is one of the most dangerous situations that our correctional officers face. Right now, I am just shocked that the overcrowding at the Diagnostic and Evaluation Center has not resulted in a major riot. You put human beings in a place where they're living in these little boats at night, no personal space, it creates a lot of problems, a lot of tension. Things can happen. Things can happen very quickly. We think that that needs to be addressed as soon as it comes up, that it can't be carried on like it did under the previous administration, and we would urge you to move this forward and the body to pass the mandate to declare that emergency while we're in this situation. With that, I'll conclude my testimony and if you have any questions... [LB606]

SENATOR SEILER: Any questions of this witness? Seeing none, thank you. [LB606]

MIKE MARVIN: Thank you for your time. [LB606]

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

Judiciary Committee
February 20, 2015

SENATOR SEILER: Next proponent. Seeing nobody scrambling from their chairs, next opponent. [LB606]

SCOTT FRAKES: (Exhibit 4) Once again, good afternoon, Chairman Seiler, members of the Judiciary Committee. My name is Scott Frakes, F-r-a-k-e-s, director of NDCS. While I do support some sections of the bill, I believe others compromise public safety, which is why my testimony today is in opposition of LB606. I fully support the provisions in the bill creating the Inspector General for Corrections Act, and I've expressed my intent to work closely with the Ombudsman in my management of the department. I met with Marshall Lux last week. I have another meeting scheduled for next week. I look forward to establishing a good working relationship with him and his staff. I support providing the Ombudsman and Inspector General direct computer access to NDCS databases; however, I believe medical and mental health information would need to remain protected as required by Nebraska Revised Statute 83-178. Granting direct computer access will allow these records to be accessed without inmate consent, and I would like to work with the committee to harmonize these provisions if the bill moves forward. I have several concerns with Section 35 of the bill which amends the Overcrowding Emergency Act to require an overcrowding emergency be declared when the prison population exceeds 140 percent of design capacity. This will immediately trigger an overcrowding emergency and require the Board of Parole to begin reviewing all parole-eligible inmates for immediate release into the community till the population is reduced to 125 percent of design capacity. With the current NDCS population, 1,302 inmates would need to be released on parole to reach the 125 percent of design capacity. I provided the committee a list of the 1,430 inmates who are currently parole eligible, including their crime and sentence information, so that the committee can see who would be released under an overcrowding emergency. I have serious concerns about the impact on public safety by immediately releasing this many inmates. I feel strongly that this is not the responsible way to reduce the prison population. My other remarks focused on the APA piece, and that has been resolved. And so I will close by saying thank you for this opportunity to testify, and I'd be happy to answer questions that the committee may have. [LB606]

SENATOR SEILER: Any questions? Senator Krist. [LB606]

SENATOR KRIST: The purpose of requiring the administration, the Governor, to declare an emergency is the avoidance of the behind-the-scenes trying to reduce...the culture of overcrowding created a situation and without declaring an...there's a question in here, so follow me through. Without requiring you or the Governor to declare an emergency, then everything that you do becomes almost behind closed doors--there's no transparency. It's...it is...it has been our experience in this past year looking at all the data that I...the performance audit that I gave you, the LR424, and then the CSG, is to get to a point where, when we have a problem, it becomes our problem to take care of. And how many of us have said to you, we want you to

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

Judiciary Committee
February 20, 2015

succeed, tell us what you need? I don't know how we get there. If Governor Ricketts isn't Governor Ricketts and Governor Heineman is reelected, how do we get to the point where it becomes transparency in terms of handling the situation? So I get the fact that you have a problem with what that triggers on the Parole Board, but do you understand why we're at that point? And when giving your answer, I want you to answer that, but given that, is there another way? I mean, do we amend the emergency actions and...but still declare a point? Go ahead. [LB606]

SCOTT FRAKES: Senator Chambers was...you know, hit the issue very well when he said that I haven't been here long enough to know as much as I need to know at this moment, and I appreciate that. I've had a... [LB606]

SENATOR KRIST: But it's Senator Krist asking you the question, so (laughter). [LB606]

SCOTT FRAKES: I realize that. And I'm not using that as an excuse. I want to put that out at as, when I speak, it's based on reviewing some reports, spending four hours at DEC on Monday,... [LB606]

SENATOR KRIST: Sure. [LB606]

SCOTT FRAKES: ...talking to staff, walking around, looking at that facility, agreeing without question it is terribly overcrowded, but also identifying something that I came into this job questioning, and that was the measuring things by design capacity as opposed to operational capacity. That's...the ten-year report speaks to...the ten-year plan speaks to that to some degree. It talks about operational stress, makes some interesting comparisons. Part of what I'm trying to get a good sense of is, what is the real capacity for our system? I don't think it's the design capacity. I know it's not 5,228 offenders/inmates, without a question. In walking through DEC, in talking with staff, I think the capacity there is probably around the 275-300 that's talked about in the ten-year plan. I think that's a facility that could safely operate at that level. So I'm trying as quickly as possible to get a real sense of what the real numbers are, which would help define how far we should bring things down. So my concern today would be if we trigger 140 percent, act without taking the opportunity to really look at what we have, that we may end up pushing people out the door that aren't ready to go out the door. And I'm open to any approach that will help me and help all of us figure that out as quickly as possible, and so... [LB606]

SENATOR KRIST: Well, without...when we talked several days ago and in the confirmation hearing, we said the same thing: You're going to have to look at our ideas and legislation. It's not probably in many cases going to look exactly like it is when we get to the end of the rope. But this is one of those issues that I think that within the next month or so we need to grapple with

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

Judiciary Committee
February 20, 2015

and figure out, if not this, then what, because that "what" is what guarantees transparency and that we all get to work on the situation together, regardless of the personalities involved.
[LB606]

SCOTT FRAKES: Agreed. Thank you. [LB606]

SENATOR KRIST: Thank you, sir. [LB606]

SENATOR SEILER: Any further questions? Thank you. [LB606]

SCOTT FRAKES: Thank you. [LB606]

SENATOR SEILER: Further opposition. [LB606]

RICHARD HALVORSEN: My name is Richard Halvorsen, H-a-l-v-o-r-s-e-n. I'm opposed to this bill because it's just going to add another layer of bureaucracy to our current system. Corrections has had...well, still does have...they have State Patrol overseeing them. They've got the Ombudsman overseeing them. They have the Attorney General overseeing them, and they have the Governor's Office, who are supposedly all overseeing this Department of Corrections. Now we see that didn't work, but that was more of a fault of breakdown of people we can't hold accountable anymore. The Attorney General, he didn't run for election. He's gone. The Governor, he moved on to the corporate folks. He's gone. So there is no accountability. The people involved directly were allowed to retire. Again, the oversight was there. It just didn't work. In fact, if the World-Herald hadn't brought it out in the open, it would probably still be going on. And plus, while I say it's going to add at least five...well, five major posts: the Inspector General himself and four assistant counsels, one will be a counsel for welfare, one for...a counsel for institutions, and another one for...another deputy counsel, and one for corrections. Well, I think corrections and institutions are the same thing, unless we're talking about expanding the role of this deal. I mean, when you talk about institutions, besides corrections, it refers to corrections. So there seems to be duplication. And I don't know how we get welfare, public welfare in here, this bill, welfare services, how that is roped into this bill. (Inaudible) that's going to require again...these people are all going to have assistants since...you know, receptionists like this. So I don't know what the cost is going to be, but it's probably fairly good. And again, according to this bill, like Mr. Lux pointed out, who do they report to? They report to the same people that they used to report to. Now again, we've got a different Governor; we've got a different Attorney General. So is the outcome the same? I don't know how that came out. If you're going to do it, have them...prefer to have this person report to the Legislative Council or you people. Again, the overcrowding, if you pass this bill, you immediately go into effect an overcrowding situation. And like the director of Corrections pointed out, we're talking about overcrowding by design

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

Judiciary Committee
February 20, 2015

facility, not operating facility. By design, facility is designed for a one-man cell. So you've got 50 percent. You get one-man cells doubled up, you're at 150 percent of capacity. And like I said, that's not necessary operating capacity. So again, you'll be, when this goes in effect, will be forcing releases based on that capacity. And Mr....Senator Mello's office mentioned that this might raise a red flag, one of the assistants, that this raised a red flag with Justice Department. Whether that's true or not, I don't know. Again, there you also codified--I'll finish here--you've codified here that the department is messed up. You've put in law that they're not responsible. [LB606]

SENATOR SEILER: Your red light is on. [LB606]

RICHARD HALVORSEN: Okay. So again, I...see, I don't know why you got to do that. [LB606]

SENATOR SEILER: Any questions? Any questions? Seeing none, thank you. [LB606]

RICHARD HALVORSEN: Okay. [LB606]

SENATOR SEILER: Any further opposition? In the neutral? Okay. [LB606]

ELLEN FABIAN BROKOFSKY: I'm the only neutral? [LB606]

SENATOR KRIST: Obviously. [LB606]

ELLEN FABIAN BROKOFSKY: I got here just in time. Oh, do you want these? Good afternoon. Chairman Seiler and members of the Judiciary Committee, my name is Ellen Fabian Brokofsky, E-l-l-e-n F-a-b-i-a-n B-r-o-k-o-f-s-k-y. I am the administrator for the Office of Probation Administration and I am employed by the Nebraska Supreme Court. I testify today regarding LB605 in the neutral position. While we are generally in support of this bill, we understand it is a work in process. [LB606]

SENATOR SEILER: Ma'am. [LB606]

ELLEN FABIAN BROKOFSKY: Yes. [LB606]

SENATOR SEILER: Are you here on LB606? [LB606]

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

Judiciary Committee
February 20, 2015

ELLEN FABIAN BROKOFSKY: LB605. [LB606]

SENATOR COASH: We haven't started that bill yet. [LB606]

SENATOR SEILER: Wrong bill. [LB606]

ELLEN FABIAN BROKOFSKY: I though you (inaudible)...I thought you put it together.
[LB606]

SENATOR SEILER: No. [LB606]

ELLEN FABIAN BROKOFSKY: Sorry. [LB606]

SENATOR SEILER: That's okay. (Laughter) [LB606]

SENATOR KRIST: It is a legislator's prerogative to change his mind. [LB606]

ELLEN FABIAN BROKOFSKY: (Laughter) No kidding. Well, thank you. [LB606]

SENATOR SEILER: I got overruled. (Laugh) Any further in the neutral? Once...you may close.
[LB606]

SENATOR MELLO: Thank you. [LB606]

SENATOR SEILER: (Exhibits 5-10) The written materials will be put into the record. [LB606]

SENATOR MELLO: Thank you, Chairman Seiler, and thank you, members of the committee. I'll be very brief as, no doubt, I know this committee will be having ongoing conversations about a number of correctional-related bills. But I would be remiss not to point out, unfortunately, I think a shortcoming of Director Frakes's testimony in respects to the automatic consideration or the automatic position that the Department of Corrections took, that every person would be paroled under the Overcrowding Emergency Act. It clearly states in the statute that the Board of Parole has safeguards in place not to have to release or parole inmates based on whether or not they think they will violate their parole, for whatever reason that may be, the second being that they may be violent offenders and may commit an act of violence once they are paroled, which are two strong safeguards in the existing law that ensures that the Board of Parole does not automatically just send out inmates. I think this is, once again, I think it's a...I want to give some

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

Judiciary Committee
February 20, 2015

deference to the director and the department in regards to maybe how they came to their conclusion. But the language of the law, existing statute is very clear on that. And my opening testimony I thought was very clear on that, that even if we make the Governor declare an emergency under LB606, there is not a requirement whatsoever under the law to have the Board of Parole release one individual if the Board of Parole does not feel they meet those two standards in the existing statute. And Senator Krist's question and point cannot be reiterated enough, which is what we found under the LR424 process is everything that's happening right now on the Overcrowding Emergency Act is happening behind closed doors. The Board of Parole is paroling individuals on a much higher clip than they ever have before and it's being done outside of the Overcrowding Emergency Act, because a Governor for a number of years refused to declare an emergency which raises the red flag to our branch of government that we should start paying attention to what's going on. And it's not that I don't want to put a significant amount of trust in the new Department of Corrections director and the new administration in regards to working with us to solve these problems. But simply declaring an emergency means the Board of Parole will be meeting on a more regular basis, will be considering people's parole on a more regular basis, but does not mean they automatically grant parole to everyone who is parole eligible. So with that, I'll leave that argument to the committee and I'm sure we will discuss this at a further point in Exec Sessions and/or off and on the floor. But thank you for your time, Mr. Chairman. [LB606]

SENATOR SEILER: Senator Chambers. [LB606]

SENATOR CHAMBERS: Now it's Ernie time. No. (Laugh) Senator Mello, even if the Legislature should say that no emergency exists until the population is 75 percent over capacity, we cannot do what we're doing without consideration of what the courts might declare. Isn't that right? [LB606]

SENATOR MELLO: That is correct. [LB606]

SENATOR CHAMBERS: So if the court determines that, all things considered, 33 percent over capacity, looking at the facilities and so forth, they could say, reduce that population. And as in California, where the courts gave them a lot of leeway, the officials finally said, well, the court is not going to do anything, then finally the court said, we gave you all of this time, you didn't do anything, let some people go. So I think, while we have this momentum, I hear people keep saying this particular program is evidence driven, fact driven. We have facts at our disposal that others may not have and we must act on the basis of what we know. And I think we've got to go ahead full speed, if you pardon the expression. That's all that I have. [LB606]

SENATOR SEILER: Any further comments? You may open on LB605. [LB605]

Judiciary Committee
February 20, 2015

SENATOR MELLO: (Exhibits 1 and 2) Thank you. Good evening, Chairman Seiler, members of Judiciary Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District in south Omaha. LB605 is one part of the broad effort to ensure our state's criminal justice and corrections system have prison space and other tools necessary to protect public safety and hold offenders accountable moving forward. Between 2004 and 2013, despite the fact that reported crime and arrests declined, the state's prison population increased 19 percent and it now stands at 159 percent of design capacity. If growth continues at this rate, Nebraska's prisons will be at 170 percent of capacity by the year 2020. The Department of Corrections has proposed spending over \$260 million in their facilities master plan to increase prison capacity; however, this proposal would not address the root causes of the growing prison population and the prison system would still be at 128 percent of design capacity in 2019. Taking this approach would amount to little more than essentially kicking the can down the road. Doing nothing right now is not a viable option, and the prospect of federal court intervention to reduce overcrowding is very real. Just last week, the ACLU of Nebraska announced preliminary steps towards assembling a legal team to bring such a lawsuit in Nebraska. A series of similar actions in California resulted in court orders to dramatically reduce prison populations on a very short time scale and at an enormous cost. Fortunately, Nebraska still has the opportunity, implementing reduction in prison overcrowding in a careful and fiscally manageable manner that places public safety at the forefront. In 2014, LB907 established the Justice Reinvestment Working Group to develop policy options to increase public safety and to avert growth in the prison population. This working group included state lawmakers, judiciary members, corrections officials, county attorneys, defense attorneys, and local law enforcement. The Council of State Governments Justice Center provided assistance and analysis of an extensive amount of data from across the criminal justice system. This working group was chaired by Governor Dave Heineman, Chief Justice Mike Heavican, and Speaker of the Legislature Greg Adams. The Council of State Governments conducted nearly 200 meetings and conference calls with stakeholders across the state. LB605 is the product of this consensus-driven process. The first step is to stop consuming scarce prison space and resources on short sentences that provide little or no treatment or postrelease supervision. Probation is underutilized as a sentencing option in Nebraska, despite the system's demonstrated ability to hold offenders accountable and reduce recidivism more effectively than a prison sentence in many instances. To this end, LB605 reorganizes felonies that do not involve violence or sex offenses as Class IV felonies and creates a statutory presumption that a person convicted of these lower-level, nonviolent offenses would be sentenced to probation. The sentencing judge retains the ability to overcome this presumption if the defendant is being concurrently sentenced for a more serious felony offense or some other substantial and compelling reason. Current Class IV felonies that do involve violence or sex offenses are upgraded under LB605 to a Class IIIA felony. Current Class III felonies that involve violence and sex offenses are upgraded to a new category of Class IIA felony. LB605 would also adjust the felony theft threshold from \$500 to \$1,500. Nebraska sentences about 175 people to prison each year for theft of goods in this range. Crimes that would have been considered

misdemeanors back in 1992, when the current threshold was set, are now considered felonies. This was not a reasoned policy decision by the Legislature but simply the result of inflation and the passage of time. Because of our prison...because our prisons are already over capacity, resources must be prioritized and under LB605 all misdemeanor sentences to imprisonment would be served in jail. This change helps ensure that our limited prison resources would be devoted to the most serious offenders while stopping the harmful practice of exposing misdemeanor offenses to high-risk people sentenced to prison, a practice shown to increase the likelihood of future criminal behavior for lower-risk individuals. For those offenders that are appropriate candidates and sentenced to probation, LB605 would create an additional structure for the Probation Administration to prioritize resources based on the risk to reoffend. The bill would also provide for a structure and consistency in the use of custodial sanctions for probation violations to ensure that probationers who violate the conditions of their supervision are held accountable. Obviously, not all offenders are candidates for probation. For individuals that are sentenced to a prison term, our current system fails to consistently provide for a sufficient period of postrelease supervision. LB605 would improve parole supervision policies and practices, expand parole supervision periods, and allow sentences to include periods of postrelease supervision. With postrelease supervision decided at the time of sentencing, victims and the public can know such offenders will only leave prison and return to the community if supervised. Supervision after release from incarceration has shown to reduce recidivism, improve collection of victim restitution, and prepare offenders to be productive citizens. We've worked with a number of stakeholders to draft LB605 and that process is continuing. For example, the framework of postrelease supervision system is largely in place in the underlying green copy of the bill and would function essentially the same way as our existing probation system. After speaking with both the committee counsel and the Council of State Governments, an amendment clarifying the postrelease supervision system is currently already being drafted for the committee to consider, to capture the full legislative intent of the Justice Reinvestment framework. The first of two additional amendments I asked the committee to incorporate is AM443, which is based on recommendations from the Nebraska County Attorneys Association. AM443 keeps a small number of sentence changes at the level of the new Class IIA felony, instead of converting them to a Class III felony. This compromise gives the judicial branch more discretion over specific crimes that may warrant a longer sentence than the maximum under a new Class III felony sentence. I appreciate the candid dialogue with the County Attorneys Association and Senators Krist and Seiler on honing the language in LB605 and believe AM443 is a fair and reasonable compromise to provide the judicial discretion while maintaining the foundation of the CSG justice reinvestment model. The second amendment I'd ask the committee to incorporate is AM484, which is a request from the Community Corrections Division of the Nebraska Crime Commission. As originally drafted in the green copy as Section 61, the underlying legislation would amend Section 47-624 of the Community Corrections Act. The Community Corrections Division of the Nebraska Crime Commission would like to retain their ability to report on community corrections programs and facilities within the state and to provide state oversight to

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

Judiciary Committee
February 20, 2015

these programs. Thus, AM484 simply strikes Section 61 and moves the language into Section 29-2252 of the statutes. I also intend to continue dialogue with local county officials regarding their unique role as a key partner in the justice reinvestment process. It is not my intent, nor should it be the Legislature's intent, to simply try to shift the state's overcrowded prison challenges to county governments, and I believe establishing a county justice reinvestment fund to assist with potential increases in county jails is warranted in this process. It is imperative that the Legislature act this session, enact these proposed changes to improve our correctional system and make our communities safer and quiet the threat of litigation that would place a federal judge in a position to make these decisions on our behalf. LB605 is the product of a process supported by data, evidence, and experience from states across the country. Reforms like those contained in LB605 has been repeatedly shown to increase public safety, reduce crime and recidivism, decrease prison overcrowding, and support victims while controlling state spending on corrections. Once again, I'd like to thank Chairman Seiler and Senator Krist for their ongoing leadership as fellow legislative representatives of the Justice Reinvestment Working Group and as the key cosponsors of LB605. I'd also like to thank the staff of the Council of State Governments Justice Center for their leadership over the past year in helping guide our state through the justice reinvestment process. It's truly been an eye-opening experience and a model that policymakers should consider replicating in the future on other significant issues facing our great state. Thank you for your time, and I'd be happy to answer any questions that you may have. [LB605]

SENATOR SEILER: Senator Williams. [LB605]

SENATOR WILLIAMS: Thank you, Senator Seiler. Thank you, Senator Mello, for being here and for working so diligently on this. I just want you to clarify for me a little bit the concern that we're going to see or that I'm going to get calls on about passing cost to the county. Can you just discuss that a little more than you did in your testimony? [LB605]

SENATOR MELLO: I will do my best, Senator Williams, knowing that there are some, obviously, components I...there are some amendments I have given the committee to consider, as well as in my testimony the specific issue of looking to create a county justice reinvestment fund that would, in my mind, help mitigate any potential cost that may be shifted down the county governments. It's an idea that we've been talking about with CSG, as well as with the legal counsel for the committee. It's not, so to speak, ready right now. I don't have something drafted at this moment in time due to a considerable number of legislative bills I've had to introduce over the last couple days. But I wanted to ensure to put it in my testimony today to give the committee a starting point to have a conversation. It's not part of the original bill, but it's something that we have heard about in other issues surrounding the criminal justice system of making sure that, whatever we do, we don't simply shift the costs to the county governments and the county jails with our decisions. And I think finding a responsible way to ease any of those concerns by

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

Judiciary Committee
February 20, 2015

establishing some kind of justice reinvestment fund that would reimburse counties for potentially any increased cost they may see through increased admissions in county jails I think is a promise the Legislature should consider making to county governments. I know over the last few years the relationship has been greatly frayed between our state...our entire state government and county governments for a variety of reasons and a variety of pieces of legislation. Unfortunately, that has shifted unfunded mandates to county governments. They are a partner though in this process, and I think the reality is county governments will see benefit under the justice reinvestment model by having probation be a better option for both county sentences as much as they are state sentences through felonies. So in that sense, I think I want to kind of leave it there I think right now, Senator Williams. I want to make sure to give my word to this committee as you start to process other bills, other ideas, and changes that are going to be in front of you as we deal with not just the CSG concept but other bills in front of Judiciary that involve the criminal justice system that I think we have an obligation to try to repair the breach, so to speak, that has been...that has happened with our county governments over the last few years, particularly when it comes to the future of sentencing and some of the changes that we want to see in the CSG proposal. [LB605]

SENATOR WILLIAMS: Thank you. [LB605]

SENATOR SEILER: Senator Chambers. [LB605]

SENATOR CHAMBERS: Thank you, Mr. Chairman. Senator Mello, so that it's clear on the record and clear to me, this discussion that you and Senator Williams had about perhaps shifting cost to the county, does that have reference to state prisoners being sent to county jails, or does it have to do with people who would serve that year or less in a county jail? [LB605]

SENATOR MELLO: It would be the second; it would be the latter, Senator Chambers. It's not in connection with the program that was created last year by the Department of Corrections to have state prisoners being housed in county jails. It's individuals who would be sentenced to...their sentence would be served in a county jail from the sentencing from the judge based on some of the sentencing changes that we are making in the bill. [LB605]

SENATOR CHAMBERS: And maybe a benefit will be that some of these county attorneys will be more careful about the kind of charges they bring and the people they're so quick to trump up charges on, knowing they'll be thrown into the state pen. Now the county board is going to say, hey, wait a minute, this kid is the son of a rich parent, this kid is the son of a poor parent; you're going to let the rich one go and you're going to put the poor one in jail and we're going to have to pay for it? Uh-uh, buddy, you've got to stop doing that. They're not going to do right because it's right, so you're going to have a little problem with me if/when we adopt a policy with reference

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

Judiciary Committee
February 20, 2015

to sentencing then bribe the counties to do what it is their job to do. I'm not saying I'm rock set against it, but I've got to have something more persuasive than saying the counties don't want to have to assume this responsibility. I'd like to abolish county government. (Laughter) And before I'm out of here, I might find a way to do it or substantially reduce the number of counties, because we have too many of these picayunish counties coming here due to poor administration by themselves, not on the programs that they do and can say it's an unfunded mandated. They get people in office who don't know what they're doing because in some counties nobody even wants to run for office. So I'm just letting you know that I'm going to have to have a persuasive argument made to me that the state should somehow pay the counties because we establish a state policy. [LB605]

SENATOR MELLO: Senator Chambers, just...I know the Council of State Governments will be after me to testify and will go in much greater detail than I was able to go in my testimony. Their...they have some projections based on their modeling of LB605 that shows over a five-year period they had estimated an increase in county jails of about 38 inmates. That obviously is not a significant increase statewide of county jail inmates based on our policies. But I think, just because of what we've heard and seen in regards to the last few years of unfunded mandates and to some extent the belief that some of the juvenile justice reforms that we had made had caused some ire within county governments, that I wanted to at least extend an olive branch to county governments at this stage of the process that we want...we're not discounting their ideas, we're not discounting their concerns when it comes to potential fiscal impacts that would then result in property taxes. [LB605]

SENATOR CHAMBERS: Why don't we do this: since we make the counties by law political subdivisions, take away every power they have to assess a fee or a tax of any kind and then let the state make a study and a determination of the amount of money needed by the counties to do what it is that they say the state makes them do. Now that's impractical, but that's the point that I'm reaching. [LB605]

SENATOR MELLO: I understand. [LB605]

SENATOR CHAMBERS: And I will listen to who they send to speak, and I hope it's a county official instead of a lobbyist who may not know the answers to questions. That's all that I have. [LB605]

SENATOR SEILER: Senator Krist. [LB605]

SENATOR KRIST: I wasn't going to say this today, but I'm going to say it anyway. We passed a piece of legislation that put into place a sequence of events that would have increased what we

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

Judiciary Committee
February 20, 2015

wanted to do and we increased that amount of money, and there are a couple counties that said, you know what, let's just do it all the first year. Really? Again: Really? Because that just cost us what we were going to spend in year three in year one, that's...so I think we have some give and take involved here. [LB605]

SENATOR MELLO: I would agree wholeheartedly. [LB605]

SENATOR KRIST: Okay, thank you, just for the record. [LB605]

SENATOR SEILER: Any on this side? Okay. Thank you. [LB605]

SENATOR MELLO: Thank you. [LB605]

SENATOR SEILER: You going to waive? [LB605]

SENATOR MELLO: Yes. (Laughter) [LB605]

SENATOR WILLIAMS: No. [LB605]

SENATOR SEILER: Look, excuse me, I'd like to have the drafters of this bill come forward. [LB605]

SENATOR KRIST: It's CSG. [LB605]

_____ : (Inaudible.) (Laughter) [LB605]

SENATOR SEILER: Marc. [LB605]

MARC PELKA: (Exhibits 3 and 4) Okay. Even though I'm not a Nebraskan, this feels like a homecoming, because when I first came to Lincoln in November of 2013, this was the room I went into. So I feel that it's an honor to be back in front of you all. My name is Marc. Last name is Pelka, P-e-l-k-a. And I'm a program director at the Council of State Governments Justice Center. It's a nonpartisan, nonprofit membership association. And the team of four of us--Ed Weckerly, Ellie Wilson, Chenise Bonilla, and I--have been working in Nebraska since early 2014 when the leaders of all three branches of state government, along with many state policymakers, came together to form a Justice Reinvestment Working Group charged with identifying drivers of growth in the correction population and spending on corrections, on recidivism. I think Senator

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

Judiciary Committee
February 20, 2015

Mello mentioned the trends that have been imposing greater pressures on Nebraska's prison system the last ten years. We saw spending on corrections go up, prison population go up, crowding go up, and with a desire of even greater reductions in recidivism, based on those investments. So the Justice Center has assisted 21 other states with taking this justice reinvestment approach, and you see many from the Northwest, the South, the Northeast, the Midwest, to try to identify the exact same challenge that brought together your three state leaders. And with the formation of a 19-member working group that labored over the summer from June to December, three-hour meetings at a clip, analyzing data, we were given a three-hour audience with this group to dive into the key challenges facing the system. I think why the working group spent so much time on it is because it cared about not only containing the cost of corrections but also reducing recidivism and increasing public safety. So the four principles that really underpin this policy framework are: reserving prison space for people convicted of serious and violent offenses; holding offenders accountable with probation and treatment when appropriate in order to reduce recidivism; strengthen parole supervision to provide a safe reentry for people completing their prison terms and returning to the community; and addressing the needs of victims. We tried to model the various impacts of the policy framework on your system. We were able to estimate: \$306 million in averted prison construction and operation costs over the next five years; easing overcrowding with policies that achieve a 10-percent prison population reduction; generate \$2.8 million more each year for victim restitution; reduce the number of people leaving prison or jamming out without supervision by 70 percent; and reinvesting \$33 million to expand the probation officer work force, improve supervision, and enhance treatment to reduce recidivism. There were three main challenges that the working group identified through the data analysis. The first is that a large number of low-level, nonviolent offenders are being admitted to the prison system every year. We track that back to sentences from the district courts and found that 55 percent of felony sentences exiting the courts were a felony IV, and 74 percent of those were sentenced to prison or jail. And we looked at felony IV admissions to prisons. We found they were spending on average 12 months in prison, receiving no treatment, and then one-third of them would jam out to no supervision--not a lot of accountability for somebody coming in with a criminogenic risk or a need that will contribute to recidivism unless addressed. The second big challenge involved people jamming out of prison to no supervision, and I mentioned one-third of people exit prison each year with no supervision. That's a sentencing issue that dates back to how sentences are constructed, and we found that the length of the minimum sentence was getting closer to the max, which narrows that parole window and gives the Parole Board a very narrow window of time to make decisions about whether someone is ready for release or not. The final issue is around the parole supervision. The parole super...yes, sir. [LB605]

SENATOR SEILER: Excuse me just a second, Marc. [LB605]

MARC PELKA: Yes, sir. [LB605]

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

Judiciary Committee
February 20, 2015

SENATOR SEILER: Some senator... [LB605]

SENATOR EBKE: Yeah. [LB605]

SENATOR PANSING BROOKS: Yeah. [LB605]

SENATOR SEILER: Make your motion. [LB605]

SENATOR WILLIAMS: Would you like to finish your testimony, please? [LB605]

MARC PELKA: If I may, Senator Williams, thank you, sir. The...and if I may, on the second challenge there, the second piece to it involved not only the percent of people jamming out but also the issue addressing the needs of victims involving the collection of victim restitution. You have very rich data on this area and we discovered in the analysis that a very small percentage of people sentenced to prison had a restitution order attached, and a very small percentage of people owed restitution received any while their individual who committed the crime against them was behind bars. And the final piece to the challenges involved the issue around postrelease supervision, that in the last ten years the number of people on parole supervision in Nebraska increased by 86 percent. And the parole supervision system did not adopt evidence-based practices that we know can help them to focus on the highest-risk, highest-need individuals. We know that there were not resources that were applied to the parole supervision to hold people accountable, to deliver treatment, to reduce the risk of reoffense. And we saw pressures coming back into your system almost boomerang, in terms of the number of parole violation hearings taking place and the number of people returning to prison on a parole violation. So I think that the working group labored over the summer to try to figure out: how can we both avert growth in our prison population; how can we contain the cost of corrections; how can we reduce recidivism by strengthening the supervision and the treatment that's available to work with individuals on probation and parole supervision; how can we address the needs of victims by improving the management of victim restitution; and how can we put the state on a new course for making sure that its resources are all directed at what will deliver the biggest return on investment for public safety? I'm eager to answer any questions of the committee and I apologize if I rushed through that. I was...been nervous all week about how to do this in three minutes. (Laughter) So thank you very much for the chance. [LB605]

SENATOR SEILER: You should have called. I'd have told you we had an answer. [LB605]

MARC PELKA: Oh, thank you, Mr. Chairman. [LB605]

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

Judiciary Committee
February 20, 2015

SENATOR SEILER: Any questions? Wow. [LB605]

SENATOR COASH: Thanks for all the work. [LB605]

MARC PELKA: Oh, thank you, Senator. [LB605]

SENATOR MORFELD: Yeah, yeah, it's very thorough. [LB605]

SENATOR SEILER: You did a yeoman's job all summer... [LB605]

MARC PELKA: Oh, Chairman, thank you. [LB605]

SENATOR SEILER: ...even though I couldn't go fly fishing. (Laughter) [LB605]

MARC PELKA: Ah, I'm sorry about that. We've tried to promote a lot of Nebraska tourism because I felt myself enjoying many restaurants in Omaha and your state sites around Lincoln. So I hope that we will see an increase in flights from Seattle, Austin, and New York to the state of Nebraska as a result. [LB605]

SENATOR SEILER: Thank you. [LB605]

SENATOR WILLIAMS: I do have a question. [LB605]

MARC PELKA: Thank you, sir. [LB605]

SENATOR SEILER: Yes. [LB605]

SENATOR WILLIAMS: Yes, Marc, one quick question. You know, you stated in your testimony and in the information that we're seeing that one of our issues is the low-level, nonviolent offenders being sentenced to one year or more in prison, and I hear another side of that from some other people. [LB605]

MARC PELKA: Right. [LB605]

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

Judiciary Committee
February 20, 2015

SENATOR WILLIAMS: And I'm sure we're going to hear some potential testimony on the side that that may not be happening at the same level. Have you got any additional information that you could help me with, with that issue? [LB605]

MARC PELKA: Absolutely, sir. And if I...and I'd like to just also offer...you had asked a very thoughtful question about county governments and if you'd like later, at any point, I'd be more than happy to try to fill in some additional information there. That point you raised, Senator, around the definition of nonviolent and the, you know, the felony IVs, I think the benefit of the working group this summer is that consisted of people who work on the front lines of the criminal justice system. So we had a public defender from Hall County, Mr. Piccolo. We had a county attorney for Lancaster County, Mr. Kelly. We had two district judges, one from Alliance and one from Lincoln, on the working group. And we came to the first working group meeting with those analyses that I mentioned to you that, you know, 55 percent of the felony offenses sentenced by the courts in the last two years were for felony IV offenses, and then 74 percent of them were sentenced to jail or prison, and a large volume of those were nonviolent offenses. We heard pushback. We heard frustration from those working the front lines of the system saying, I don't know what to do to work with this individual to change their behavior. And our response was, you know, in diving into felony IV admissions to prison, there isn't a whole lot of effective response being delivered currently for that population because of the relatively short length of stay of 12 months on average over the last ten years, the fact that during that time in prisons it's very hard to access any programming or treatment, and those who receive any supervision on parole afterwards is either very short or they may receive no supervision at all because of the length of the sentence. So we tried to provide some alternatives while recognizing the frustration that, you know, instant offense of conviction may be nonviolent. What that results in is the inability to get a very long sentence in prison if that's what the desire is. But what we routinely heard is that it's difficult to provide meaningful programming to change behavior. Many of the, you know, feedback that we got was, I don't want to send that individual to prison, but I'm not sure what else I can do to work with that person. So we began looking at the probation system and looked at the rate of sentences to probation and found that statewide about 22 percent of sentences out of the felony courts involved a term of probation, and we found wide variation from one district to the next. You have 7 of 12 judicial districts in Nebraska sentence to probation at the same or greater rate than the national average, but in many of the larger metropolitan areas there is a lower rate of sentence to probation. So then we looked next at what is the...you know, what's accountability that a probation sentence would serve compared to a prison term? And probation, you can put someone on probation for up to four years. When they are placed on probation, they will be assessed for risk of reoffense. They'll be assigned a probation officer whose caseload is based on, you know, whether they're supervising high-risk/high-need people or low-risk/low-need people. And so the officer is spending more time with the high risk/high need. There is a...Nebraska has increased treatment for people in the community on supervision from zero in 2006 to \$22 million this year. And those treatment resources are

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

Judiciary Committee
February 20, 2015

probably not adequate to meet the population's need, but they're getting there. And they're directing mental health treatment, they're directing fee-for-service, substance-use vouchers, providing reporting centers. And a probation officer can sanction, they can revoke back to, you know, to prison for somebody that violates. And we're reporting, the working group, is that is a much more...it's a longer period of time to work with somebody, four years compared to 12 months. You had the ability for sanctioning along the way to correct behavior that's not consistent with what the conditions are for probation. You can deliver treatment to change that behavior. And if they're not working on probation, you can revoke them to prison. And so that was one discussion we really had about what really works to change offender behavior. When we looked at who comes back to prison on a reoffense return to prison for a Class IV, we learned that within two years after release from prison, a felony IV...people with felony IV convictions, a quarter of them, were coming back into prison. It was a revolving door. And I can feel and look...I look at data, and so I look at where I can sense some frustration lies within the system. I line that up with the qualitative input that we received in the working group over the frustration they felt. So the policy framework tries to set, you know, a middle ground on probation, setting a presumption of probation for people who are convicted of a nonviolent, felony IV offense with the ability for an override in cases where there's compelling reasons why that person needs to be put on probation. Then there are a range of other policies in here regarding a split sentence that, for people convicted of felony IV, IIIA, and III, the judge would be able to fashion a...determine a period of time in prison and provide mandatory supervision. So there wouldn't be this issue involving the low-level, nonviolent offenders circulating in and out of prison with no programming, a Parole Board rushing to review them before they jam out. It would be clear up-front this person will be placed on probation afterwards, be able to have a reentry plan, receive treatment, and to have some of their reasons for committing that crime be addressed. So I think that, to answer your question, Senator Williams, it was helpful to get that input. It helped us to dig a little bit deeper. Yes, sir. [LB605]

SENATOR WILLIAMS: Help me just a little bit more though. So what your contention would be is that, with the adoption of LB605, there are new tools created, new programs created that we would have...judges would have alternatives that, even though we may or may not disagree on what level of nonviolent, felony IV people are currently in the system, this in your judgment would clearly give judges an alternative that could reduce that. [LB605]

MARC PELKA: Oh, yes. [LB605]

SENATOR WILLIAMS: Okay. [LB605]

MARC PELKA: The largest portion of the reinvestment is into treatment for probation, and that's...trying to build up that, yep. [LB605]

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

Judiciary Committee
February 20, 2015

SENATOR WILLIAMS: And then moving to the issues with the county, because I really would like to hear--and I guess it was me that awakened the resting lion, because the lion never sleeps--would you address what this in your judgment would do to the counties? [LB605]

MARC PELKA: Right. We...the benefit of the...having as rich data as Nebraska has is we were able to find through your sentencing data areas of potential win-wins for state and county. When we...I mentioned a lot about the felony IVs and the large volume of those. We learned that 34 percent of felony IV sentences actually were to a term in jail and 39 percent were to a term in prison. So addressing those felony IVs by increasing the use of probation and those treatment alternatives will have a benefit not only for state prison but also for county jail. If we had come into Nebraska without any sentencing data at our fingertips, we would not have known that. We would have looked only at state prison and not appreciated the county jails are also bearing the burden there. It tries to use probation, focusing it on people who are filing their conditions to interrupt the progression of criminal activity. The statutes currently allow courts to attach up to six months of time for jail confinement for a felony probation violator. That time can be used however it's doled out. The...there's a long period of liability for that time. So LB605 halves that amount of time that can be attached to a felony probation term for jail confinement down to three months. So it lowers the liability, but then it also provides some consistency in how it can be applied and in terms of two different options: a swift and certain stay in jail, which can help to interrupt criminal behavior when it's kind of escalating, but also putting up to one month of jail confinement time as a response. So that's going to allow the probation system to respond swiftly and certainly and proportionately to those violations. It helps counties by narrowing that liability, by providing some structure and consistency across the state. The third area where there's some win-wins here is on felony probation revocations that right now 37 percent of people revoked from felony probation serve a term in jail--again, not prison. The data helped us to appreciate that. And so by lowering the revocations which...to jail, which would be...which are longer than those violation sanctions I was mentioning, the probation can intervene earlier and provide a sanction that will correct behavior but do it without costing the counties as much as it currently is. So from the felony IV convictions, putting more of those on felony probation, from focusing and tailoring the jail confinement time attached to felony probation by reducing felony revocations, those are some of the ways that the framework helps to offset some of the concerns involving shifting to counties. [LB605]

SENATOR WILLIAMS: Thank you. [LB605]

SENATOR SEILER: Further questions? Seeing none, thank you. [LB605]

MARC PELKA: Okay. Thank you, Chairman Seiler. Thank you, members. [LB605]

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

Judiciary Committee
February 20, 2015

SENATOR SEILER: Are you going to have anybody else from your group? [LB605]

MARC PELKA: No, sir, just me. [LB605]

SENATOR SEILER: Thank you. Now you can. [LB605]

JIM VOKAL: (Exhibit 5) Thank you, Chairman Seiler. Members of the Judiciary Committee, my name is Jim Vokal, J-i-m V-o-k-a-l. And I am the CEO of the Platte institute for Economic Research, and I'm here to provide testimony in support of LB605. Nebraska's prisons are overcrowded and the state now faces the potential of costly lawsuits if action to ease overcrowding is not taken. Unless something is done to control the growth, the prison population is projected to increase further, expanding from 159 percent of capacity to 170 percent by fiscal year 2020. In addition to the threat of legal action or the potential expense of building a new prison, this increase in incarceration has costs for Nebraska taxpayers and our society at large. The Platte Institute aims to embolden a high quality of life for all Nebraskans, making public safety and smart government spending key priorities of our research and programs. That's why last week the Platte Institute released a report detailing recommendations for addressing corrections system's challenges and improving public safety in a cost-effective way that protects communities and taxpayer dollars. The policy recommendations are based upon tested best practices from other states. The Platte Institute has released two reports now in two years on this subject, and this report builds the case for securing Nebraska with a more effective criminal justice system. Our report overlaps with many of the recommendations developed by the Justice Reinvestment Working Group which are embedded in LB605. I'd like to highlight a few of these areas of agreement. We believe it would be prudent, first, to recalculate Nebraska's felony theft threshold for inflation for two very important reasons. Number one, when the penalty for felony theft was set 23 years ago, a theft in the amount of \$500 or more in some cases accounted for a more serious level of property crime than it does today. That means someone can be branded with a felony and sent to prison for an offense that once would have been only a misdemeanor. And the second reason is that these low-level property crimes are important to punish, but an overly broad felony threshold has real punishing cost to the taxpayers. We also agree with the Justice Reinvestment Working Group on the use of presumptive probation for offenders who commit low-level, nonviolent offenses, rather than short periods in prison. Second, Nebraska's corrections system also has a pervasive problem with what are called "jam-outs" or "max-outs." We think it's wise to require that all prison sentences be followed by a period of postrelease supervision. And finally, we agree that Nebraska will save more money and benefit more by investing in community-based treatment and supervision. We applaud the Legislature for passing LB907 last year which expands day reporting centers and funds mental health treatment in the community. If fully implemented, LB605 is projected to reduce prison overcrowding from 159 percent to 138 percent of capacity and avert more than \$300 million in corrections spending during a five-year period. LB605 makes Nebraska not only smarter on how its correction dollars

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

Judiciary Committee
February 20, 2015

are spent, but also more effective in protecting public safety. Reducing recidivism, which is the main objection (sic) of this bill, will enable Nebraska to achieve less crime in our communities and lower cost to taxpayers. Thank you, and I'd be happy to answer any questions. [LB605]

SENATOR SEILER: Timed that just right. Any questions? Seeing none, thank you very much for your input. [LB605]

JIM VOKAL: Thank you, Chairman. [LB605]

SENATOR SEILER: Next proponent. [LB605]

ALAN PETERSON: Chairman Seiler, members of Judiciary Committee, Alan Peterson, ACLU of Nebraska. Just two points: The target, which is lovely, is to go from a projected 170 percent overcrowded to a projected 138 percent, meaning 38 percent overcrowded. While ACLU completely supports the bill, we need to find a way to get further away from that 140 figure, for example, which by statute is deemed an emergency if the Governor declares it. We thank the senators for developing this. And the Justice Reinvestment Group has done yeoman work, receiving input from everywhere, including from ACLU, and we really appreciate having that chance. One comment we would make is, we know there was a lot of discussion of the special-needs courts, such as the drug courts which have been very successful, as we understand it; a small pilot project of a young-adult court in Omaha operated I believe through Judge Ashford, Brad Ashford's brother; and there have been mental health courts for people who, instead of being convicted, might be helped with mental health problems by use of a court. We don't understand why the bills and the reports that have been received, while they have mentioned these special-needs courts, when we still have this projected huge overcrowding, why are they not mentioned? And we would ask at least that there be a study, perhaps over the midterm or right away if you would want to look into amending one of the bills, to see if we couldn't expand these to help with the continuing problem. There may be other solutions. ACLU really means to help mostly and lend you whatever sense I have to the solutions. You know that we...that I at least continually squawk about, well, litigation is the other option. It is, and I have asked, as you know, about ten really good prison litigation lawyers to advise us, because we don't want to file a suit if we shouldn't. That's part of the advice we seek. Or when should we? When will it do some good? We're not headed that direction if we can get meaningful solutions to this huge problem, and I know we're on the way. Thank you very much. [LB605]

SENATOR SEILER: Any questions? Seeing none, thank you. Further proponents. [LB605]

FRAN KAYE: (Exhibit 6) Thank you for letting me speak to you today and for all the good work on prison reform. I really support all of these bills, but I want to speak on this one. My name is

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

Judiciary Committee
February 20, 2015

Fran Kaye, F-r-a-n K-a-y-e. I'm a professor of English and Native American studies at the University of Nebraska-Lincoln, and I have volunteered in Nebraska's prisons for approximately 20 years. I'm here to speak about the inmate self-improvement clubs and to ask that they be included as part of the programming in LB605. The inmate self-improvement clubs and the other groups that inmates organize themselves are a crucial part of programming for rehabilitation and successful reentry into the free world, as inmates call it. Change does not come from the outside in. Real change and growth has to come from the inside. The best rehabilitation programs cannot work unless there is inmate buy-in, and the clubs are populated by men and women who have already begun to change in a good way. I have studied the various bills brought before you to effect prison reform, and none of them seem to include the clubs that my experience has shown me are crucial to rehabilitation; neither have prison administrations considered the clubs of any great value, as shown by the recent decisions of NSP and TSCI to cut our club time from roughly ten hours per month to two and a half. Because of the administration's ability to cut at will, I and other prison volunteers to whom I have spoken, as well as the inmate club leaders, would, therefore, appreciate having the clubs mandated in legislation. In LB605, 83-282, which comes on pages 74 and 75 of the available version, does have a place where prison clubs would logically fit, where it talks of structured programming and cognitive restructuring. Mandate that inmates' self-improvement and cultural clubs, plus groups such as writing groups, be available to all interested inmates but not required for any individual. The ability to self-select is crucial for inmate success. The efficacy of the clubs and groups should be evaluated, along with retired...with the other programs. And then I'd like to add in a bit from an inmate, Chris Garza, currently an inmate at the Tecumseh State Correctional Institution. He says, I spent the last 24 years within the Department of Corrections, and I am serving a life sentence. Every institution that I have been in has various inmate clubs. Some are designated as self-betterment clubs. Others are designated as cultural clubs. It has been my experience that all these clubs are self-betterment. The cultural clubs focus on teaching members respect. They provide lessons. The clubs provide a community behind the walls of like-minded men and women seeking to make changes for their betterment. 7th Step focuses on reducing recidivism. Every aspect of these clubs in my personal experience is positive in nature and provides an environment that helps to offset much of the negativity that we are surrounded with. The reason I feel compelled to share this with you is because I strongly feel that these inmate clubs are an important tool for achieving one of your main objectives: the safety of our communities through preparing prisoners for their release. Thank you very much. [LB605]

SENATOR SEILER: Any questions? Thank you for your testimony. Scott. [LB605]

SCOTT FRAKES: (Exhibit 7) Once again, Chairman Seiler, members of the Judiciary Committee, my name is Scott Frakes, F-r-a-k-e-s, director of Nebraska Department of Correctional Services. I'm here today to testify in support of LB605, culmination of the work completed by the Council of State Governments and the Nebraska Justice Reinvestment Working

Group. I'm supportive of justice reinvestment efforts, having had exposure to CSG's work in Washington. This bill affects the entire criminal justice system. It does not focus solely on NDCS. In order for each of the cumulative outcomes of the CSG report to be realized, all provisions as amended in LB605 must be adopted. Many of the bill's provisions relate to changes in sentence structures and penalties. It's important to note that, while it will not decrease the population as it stands today, averting misdemeanants, for example, should have an immediate impact on reducing admissions and then reducing population. The bill's provisions will not address all of the department's capacity and infrastructure needs, but it will move us in the right direction. In addition, the time line for implementation is aggressive, and it's unclear how quickly the proposed savings for the department will occur. A particular impact to the department is the requirement that all programs receive quality assurance evaluations. I'm supportive of this piece, as I believe adherence to evidence-based practices is imperative to enhancing public safety by effectively using resources to lower recidivism and prevent future victims. The bill also requires a validated actuarial risk and needs assessment to be used by Adult Parole Administration. This requirement will enhance the supervision and success of parolees reentering the community. Parole officers currently receive some of the training required by the bill, and the additional components will further advance the knowledge and skills of parole officers and ultimately enhance supervision and success of the parolee. I'm a believer in the use of swift and certain sanctions. Allowing parole officers to make recommendations to the Parole Board to utilize 1-30 days of custodial sanctions will deter criminal activity. It will allow the parolee to maintain the stabilizing factors key to reducing recidivism. These include education, employment, prosocial relationships, housing, mental health and substance abuse treatment, as well as other special needs, such as those of sex offenders. While the department has some technical questions that we intend to work with the committee on, I believe, in order to realize the predicted outcomes of the CSG report, this bill as amended and all of its provisions must be adopted as a package. Substantially changing or eliminating any provision in this bill will adversely impact the potential savings in all others. I thank you for this opportunity to testify today and would be happy to answer any questions the committee has. [LB605]

SENATOR SEILER: Any questions? Seeing none, thank you very much. [LB605]

SCOTT FRAKES: Thank you. [LB605]

SENATOR SEILER: Next proponent. [LB605]

MARK DAVIS: My name is Mark Davis, and in this respect I'm representing Sober Houses of Nebraska. We provide a sober living environment for any individual, but 98 percent of our residents are fresh out of prison. In fact, I regularly go to prisons and pick people up. A couple things that I've noticed is that parole doesn't have the same stick attached to it that it used to and

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

Judiciary Committee
February 20, 2015

very little carrot. Let's see, the other thing is that there has been, what, \$7 million I think allocated towards prisoners being trained for jobs, but if they don't have a place to live a job isn't going to help them. And so that's particularly pertinent to people that jam their sentences. They're not on parole; they don't answer to anybody; they might leave having no family, no place to go, and \$100 in their pocket. And, you know, it's a not-very-funny joke, but you can't buy a pistol for \$100 and...you know, and crime is one of opportunity in every social strata. It occurs with the same frequency across all social strata. It's most notable in the lower socioeconomic groups. But given the opportunities that somebody fresh out of prison with no money and no place to go has, it encourages recidivism. And that's a problem, too, the idea of recidivism, because it assumes that there was habilitation in the first place. And for many people, people that I see coming to my sober house, they don't...they haven't got a clue as to how to behave, how to shake somebody's hand. They were never properly socialized in the first place. So to assume rehabilitation is an error. That's it. [LB605]

SENATOR SEILER: Any questions of this witness? Thank you for your testimony. Next. [LB605]

JOE NIGRO: Hi. I'm Joe Nigro, N-i-g-ro. I'm the Lancaster County Public Defender. I want to speak in support of LB605. I've been very impressed with the work that the CSG people did last summer, how they talked to all parties involved and did research. And clearly, when they reach...when they find that 70 percent of the people in prison are there for nonviolent offenses and we're so overcrowded, there need to be changes. I think there are a lot of good ideas in LB605: updating the dollar amounts on property crimes is long overdue, and eliminating the differences between different types of property crimes on those dollar values is important. Hopefully, you'll revisit these amounts sooner than 23 years the next time, but it's been far too long since they were last addressed. I think that setting the new penalties for Class IV and Class IIIA felonies and making presumptive probation are good ideas, especially when you combine that with supervised release and increased resources going to probation and parole. I think all of these things are going to do much to reduce the prison population and recidivism and will ultimately make our communities safer. I haven't seen this AM443 that talks about putting some of the penalties back to the way...I assume 1-20s and I am concerned about that because I...obviously, the CSG people did a lot to calculate the impact in terms of cost and prison population, and I don't know how that might change that. But I think that another aspect is that there was a tricky balance that CSG tried to achieve in their research and what they ultimately proposed in that there are things in LB605 that all sides are going to like or dislike. And I know that one of the areas I wish they had addressed were penalties on drug offenses. I had a client go to prison this week for possession of residue, and that's a Class IV felony. In my opinion, that shouldn't be a crime and...or at least possession of perhaps a small amount should be a misdemeanor. But I...when I think about the 1-20s, I don't know if delivery of marijuana is included, but I would urge you to look at perhaps delivery of a small amount, an ounce or less,

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

Judiciary Committee
February 20, 2015

being a lower penalty than more. But I am concerned about upsetting the balance on LB605. And I have a lot of faith in Senators Krist and Mello and I know that they've considered all that very carefully, but I...without having seen it, I hope you'll think about some of the issues I've mentioned. The other thing: I know that Alan Peterson talked about funding for...or problem-solving courts. I don't think there are any statutory changes required, but there is more money required. And especially since I know Senator Mello is sitting here behind me, I hope that the Appropriations Committee might consider funding a pilot program for a mental health court in Lancaster County. I think we're the perfect place to try and do that. [LB605]

SENATOR SEILER: Okay, your red light is on. [LB605]

JOE NIGRO: Yes. So does anybody have any questions? Yes. [LB605]

SENATOR SEILER: Senator Chambers. [LB605]

JOE NIGRO: Yes. [LB605]

SENATOR CHAMBERS: I would like you to prepare me a very brief memo on your concern about those sentences, because I have concern but I don't want to state mine. I'd like to get yours without any input from me, and then we'll talk. [LB605]

JOE NIGRO: Okay. [LB605]

SENATOR CHAMBERS: So it can just be a few sentences, and you can drop it off at my office or mail it, because that jumped out in my mind. And as soon as Senator Mello said the county attorneys, my mind shut down on that. So I will listen, but I'd like to hear it from you also. [LB605]

JOE NIGRO: Okay. Well, I would like to see AM443, and then I think I could address it more effectively. [LB605]

SENATOR SEILER: Okay. Thank you very much. [LB605]

JOE NIGRO: Thank you. [LB605]

SENATOR SEILER: Next in proponent. [LB605]

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

Judiciary Committee
February 20, 2015

GERARD PICCOLO: Good evening, members of the committee. I am Gerard Piccolo, P-i-c-c-o-l-o. I am the Hall County Public Defender. And I'm here representing the Nebraska Criminal Defense Attorneys Association and I'm speaking on their behalf. The Nebraska Criminal Defense Attorneys Association supports LB605. LB605, as everybody here realizes, implements what the Justice Reinvestment Committee (sic) came up with through their meetings this last summer and into the fall. I don't necessarily want to repeat, especially this late time of the evening, what has already been said, so my remarks will be kind of short. Again, I would say that LB605 is the way to deal with the prison overcrowding problem. It is a very, very specially balanced piece of legislation which should be forwarded on to the full Unicameral. With that, I don't have anything else. I tried to be as short as I can. [LB605]

SENATOR SEILER: Further questions? Thank you very much. [LB605]

GERARD PICCOLO: And, Senator Chambers, we'll try to get...the Nebraska Criminal Defense Attorneys Association will try to... [LB605]

SENATOR CHAMBERS: Good. Thank you. [LB605]

GERARD PICCOLO: Thank you. [LB605]

SENATOR SEILER: Okay. Further proponents. Seeing nobody leaving their chair, opponents. Opponents? [LB605]

SENATOR KRIST: Don't ask twice. (Laughter) [LB605]

SENATOR SEILER: Neutral? Go. (Laughter) [LB605]

SENATOR WILLIAMS: We've been here all afternoon, Chairman. [LB605]

ELLEN FABIAN BROKOFSKY: (Exhibit 8) I apologize. That's what I get for doing a meeting. I gave it to you already. I was doing a meeting and talking and didn't realize you did what you did, but, sorry, apologize. And I'm probably going to be 30 seconds over, or I'll try to cut it short. Chairman Seiler and members of the Judiciary Committee, my name is Ellen Fabian Brokofsky, E-l-l-e-n F-a-b-i-a-n, Brokofsky, B-r-o-k-o-f-s-k-y. I am the administrator for the Office of Probation Administration, and I am employed by the Nebraska Supreme Court. I testify today regarding LB605 in a neutral position. While we are generally in support of this bill, we understand it is a work in progress and we have concerns that we believe are important just to highlight. We appreciate and thank Senators Krist and Seiler, Senator Mello, of course, for their

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

Judiciary Committee
February 20, 2015

efforts to work with us and their willingness to listen to our input and revisit these issues. This office supports the work of the Nebraska Justice Reinvestment Working Group. While by no means experts, since 2005, Probation has developed and implemented evidence-based practices and programming statewide. With the help of the Legislature, we have created programs and resources that provide sentencing alternatives for Nebraska's judiciary that have proven to effectively reduce recidivism and prison populations. Having said that, we have concerns with several aspects of this bill and the potential impact of these concerns if not addressed. I'd specifically like to address the following. Number one, several prescriptive requirements of this bill as drafted present problems. First, such requirements go against evidence-based practices. For example, codifying transition requirements based strictly on time lines doesn't account for assessed risk. It also minimizes the ability of this office to make internal decisions based on what the evidence and our resources are telling us. Second, such directives raise separation-of-powers concerns in that they interfere with judicial independence. Specific dictates as to the internal operation and management of Probation, because it is part of the judicial branch, tends to interfere with the authority of the Supreme Court to manage its essential functions. Number two, no changes are proposed in this bill to existing sentencing statutes regarding probation. Thus, clarification is needed regarding probation's postrelease authority. Our postrelease individuals on probation, if a postrelease individual violates their postrelease supervision, what happens? When released from prison, from the prison portion of the sentence, has maximum time allowed been served and, if so, can custodial sanctions be employed? And lastly, it is imperative a clear transition and reentry plan is in place prior to an individual's release from custody and all pertinent information is available to make this happen. The sentencing court should have a role in the reentry. This could occur either by way of a court hearing or some sort of court-approved plan. Further, statute mandates the presentence investigation is forwarded to the Department of Correctional Services for their use in classification at intake. This must become a two-way exchange whereby DCS is required to provide information back to the court and Probation Office for similar application. A requirement for reassessment of risk should be in place and accomplished by DCS and probation officers collaboratively prior to release. This will avoid delays in classification and supervision upon release. I'd like to thank the Judiciary Committee in advance for their support and, in particular, the leadership of the Justice Reinvestment Working Group for their efforts. I appreciate your time, would be happy to answer any questions. I can't believe that was under three minutes. [LB605]

SENATOR SEILER: Senator Morfeld. [LB605]

SENATOR MORFELD: Just a quick question... [LB605]

ELLEN FABIAN BROKOFSKY: Yes. [LB605]

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

Judiciary Committee
February 20, 2015

SENATOR MORFELD: ...about your separation-of-powers issue that you bring up. [LB605]

ELLEN FABIAN BROKOFSKY: Yes. [LB605]

SENATOR MORFELD: Is probation...and it's been a little while since I've read the whole Nebraska Constitution, so you'll have to refresh my memory. Is probation explicitly a power given by the Nebraska Constitution to the court system? [LB605]

ELLEN FABIAN BROKOFSKY: I believe...cannot answer that. I believe it is not. I believe that is a statutory-driven decision. [LB605]

SENATOR MORFELD: So the Nebraska Legislature granted the courts the authority to run probation. [LB605]

ELLEN FABIAN BROKOFSKY: I believe. [LB605]

SENATOR MORFELD: Okay. [LB605]

ELLEN FABIAN BROKOFSKY: Not being a lawyer and not being a constitutional expert, that's my best shot. [LB605]

SENATOR MORFELD: (Laugh) Well, that's fair. I just...I don't believe that argument holds much weight to me unless it's specifically granted authority by the Nebraska Constitution. But I just point that out, but that's without knowing the case law. I'm willing to look into that. Thank you. [LB605]

ELLEN FABIAN BROKOFSKY: Thank you. [LB605]

SENATOR SEILER: Any further questions? Senator Coash. [LB605]

SENATOR COASH: Thank you, Senator Seiler. Thank you, Ellen. I don't want to take any of Senator Krist's thunder. I thought he might pipe up on this. But I want to make sure you shared this with Senator Mello and that... [LB605]

ELLEN FABIAN BROKOFSKY: Senator Seiler, Senator Krist, Senator Mello has been a little hard to get ahold of lately. [LB605]

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

Judiciary Committee
February 20, 2015

SENATOR COASH: Well, I know where they are. [LB605]

SENATOR SEILER: I know where he is. He's just to my right. [LB605]

SENATOR COASH: But I... [LB605]

ELLEN FABIAN BROKOFISKY: Yes. [LB605]

SENATOR COASH: These are valid. [LB605]

ELLEN FABIAN BROKOFISKY: Absolutely. [LB605]

SENATOR COASH: These are valid things, things that I want to make sure have been thought through before we take any action. But I need to make sure that Senator Mello... [LB605]

ELLEN FABIAN BROKOFISKY: Well, actually, what the senators have said to me is to work with CSG, which we are doing and we think that these are easily fixed. We just wanted to highlight them, but we don't think that these are going to be a barrier. [LB605]

SENATOR COASH: All right. Thank you, Ellen. [LB605]

SENATOR SEILER: Thank you. Thank you very much for your testimony. [LB605]

ELLEN FABIAN BROKOFISKY: You're welcome. Thank you. [LB605]

SENATOR SEILER: Further neutral? [LB605]

JOE KELLY: Mr. Chairman, member of the committee, members, my name is Joe Kelly. I'm the Lancaster County Attorney. I'm here on behalf of the Nebraska County Attorneys Association. The association is neutral on this bill, premised on, number one, Senator Mello's AM443 amendment offered today and, secondly, an acknowledgment by I think everybody who has been reading this recently that the language isn't quite there to make the enforcement work on these supervised-release cases. The bottom line is this: For somebody sent to prison for four years on the new Class III, four years and they parole in two, they may be paroled...on parole for a little bit. But then after that, under this bill the judge may have given them two years of supervised release and they're out in nowhere land at that point. That is to say, neither the judge, probation, or parole would have the ability to do anything if that person said, I don't want to be on

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

Judiciary Committee
February 20, 2015

supervised release. The committee is aware of it. You're working on it, and I know you'll reach a solution on that, that allows the judge and probation to keep the control that I think all of us would assume that goes with using a term like "supervised release." You'll get there. One particular concern with this bill is not with this bill, and that relates back to my testimony and Don Kleine's testimony last week. This is our last chance to testify on these bills before you all take care of them up on the floor. And the thought that LB605, LB172, LB173, LB483, those bills I was here on last week, would all be lumped in with this, you're really looking at gigantic sentence range reductions. So we have that concern. The money concern has already been covered. And we...I really enjoyed working with this CSG group and all of the people involved in this process. It was really...you learned a lot because they dug deep into the statistics and I think taught me, I'll say, a lot about what's really going on in the world with what we do every day. That's all I have. [LB605]

SENATOR SEILER: Any questions? Senator Chambers. [LB605]

SENATOR CHAMBERS: Mr. Kelly, this is not my bill, so I can take the gloves off. You're representing the county attorneys and you're concerned about certain sentencing changes that might result in reductions. Is that correct? [LB605]

JOE KELLY: Yes. [LB605]

SENATOR CHAMBERS: You won't even prosecute cops who committed crimes of violence, will you? [LB605]

JOE KELLY: Well, I looked at those cases and I came to the opinion that they didn't commit crimes, Senator. [LB605]

SENATOR CHAMBERS: So then, if a man is handcuffed and a cop runs his head into the wall and draws blood, that's not a crime, is it? [LB605]

JOE KELLY: Well, your... [LB605]

SENATOR CHAMBERS: But if the inmate hit the cop, then that is a crime which you would prosecute. [LB605]

JOE KELLY: Your description of what happened isn't what I saw. [LB605]

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

Judiciary Committee
February 20, 2015

SENATOR CHAMBERS: Well, I'll tell you what: When you guys come here, you don't get any consideration from me. So you're going to have to torpedo this whole bill, because that amendment you guys sent here means nothing. You've let these cops get away, literally, with crimes. You don't want to hear it, and I don't want to hear what you all have to say. So send somebody else here other than you or Don Kleine. They can't help you now. [LB605]

JOE KELLY: Do you have a question? [LB605]

SENATOR CHAMBERS: I said what I wanted to say. Do you want to make a response? [LB605]

JOE KELLY: No, I don't. [LB605]

SENATOR CHAMBERS: Then we're through, aren't we? [LB605]

JOE KELLY: Yes, we are. [LB605]

SENATOR CHAMBERS: I'll see you. [LB605]

JOE KELLY: Thank you. [LB605]

SENATOR SEILER: Any further questions? Seeing none, thank you for your testimony. [LB605]

JOE KELLY: Yes. [LB605]

SENATOR SEILER: Any further neutral? Seeing none, Senator Mello waives closing. Committee, we need just about two minutes of your time. [LB605]