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Judiciary Committee
March 17, 2017

[LB424 LB491 LB562 LB585]

The Committee on Judiciary met at 2:00 p.m. on Friday, March 17, 2017, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB585, LB491, LB562, and LB424. Senators present: Laura Ebke, Chairperson; Patty Pansing Brooks, Vice Chairperson; Ernie Chambers; Steve Halloran; and Matt Hansen. Senators absent: Roy Baker; Bob Krist; and Adam Morfeld.

SENATOR EBKE: Okay. Well, good afternoon. We have a couple of senators who have bills in other committees first up, so we're going to start sort of short-staffed today and I think some will join us eventually. My name is Laura Ebke. I am the Chair of the Judiciary Committee from Crete, representing District 32. Other members who aren't here: Senator Baker will not be here today; Senator Morfeld is on a plane to New York; Senator Krist I think will be here at some point, as will Senator Chambers. Senator Halloran is right there, Senator Hansen and Senator Pansing Brooks have bills in other committees and will join us in a bit. Assisting the committee today are Laurie Vollertsen, our committee clerk; and Brent Smoyer, our legal counsel. Committee pages are Kaylee Hartman and Toni Caudillo. On the table over there by that pillar is a...are some yellow testifier sheets. If you're planning on testifying on any of the bills today, please fill one out and hand it to the page when you come up to testify. This helps us to keep an accurate record of the hearing. There is also a white sheet on the table if you do not wish to testify but would like to record your position on a bill. We'll begin with bill test...begin the bill testimony with an introducer's opening statement. Following the opening, we'll hear from proponents of the bill, then opponents, followed by those speaking in a neutral capacity. We'll finish with closing statements by the introducer if he or she wishes to give one. We ask that you begin, okay, we ask that you begin your testimony by giving us your first and last name and spell them for the record. If you're going to testify, I ask that we keep the on-deck chair filled, which is basically that front row. If you have any handouts, please bring up at least 12 copies and give them to the page. If you do not have enough copies, the page can help you make more. We'll be using a light system. Can I see a show of hands of how many people are planning on testifying on any of the bills today? Okay. We're going to use a five-minute light system and when you begin your testimony the light on the table will turn green. The yellow light is your one-minute warning. And when the red light comes on, we ask that you wrap up your final thought and stop. As a matter of policy, I'd like to remind everyone that the use of cell phones, talking on your cell phones, is not allowed during public hearings. If you need to take a call, please just step out into the hallway. Senators may use their computers or phones to keep in contact with staff, so I would remind everybody to please look at your cell phones, make sure they're on silent mode. One other thing: As I noted, we will have people coming and going. Has nothing to do with the importance of the bills being heard here but some senators do still have bills that are being heard in other committees. Question? [LB585]

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SENATOR HALLORAN: No, Madam Chair. May I explain what area I represent as a senator? [LB585]

SENATOR EBKE: Oh, I'm sorry. [LB585]

SENATOR HALLORAN: No, that's fine. [LB585]

SENATOR EBKE: Okay. [LB585]

SENATOR HALLORAN: Steve Halloran. I represent everything west of Omaha and Lincoln. (Laughter) [LB585]

SENATOR EBKE: Today he does anyhow. And there's Senator Chambers, (inaudible) standing ovation. [LB585]

SENATOR CHAMBERS: Oh, hold the applause. (Laughter) [LB585]

SENATOR EBKE: Okay. So we will begin today's hearings with LB585, Senator Linehan. This is your maiden voyage before the Judiciary Committee? [LB585]

SENATOR LINEHAN: It is. [LB585]

SENATOR EBKE: All right. Well, welcome. [LB585]

SENATOR LINEHAN: Thank you, and congratulations again. [LB585]

SENATOR EBKE: Thank you. Oh yes, I should note and thank publicly my colleagues, especially Vice Chair Pansing Brooks, for pinch-hitting for me yesterday as I was in Omaha meeting my new granddaughter, so. [LB585]

SENATOR LINEHAN: First grandbaby. [LB585]

SENATOR EBKE: My first grandchild, yes. Now I feel really old or something. [LB585]

SENATOR LINEHAN: (Laugh) Good afternoon, Senator...Chairman Ebke and the rest in Judiciary Committee. My name is Lou Ann Linehan, L-o-u A-n-n L-i-n-e-h-a-n. I'm here today

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to introduce LB585. The Nebraska Humane Society brought this bill to my attention and I'm pleased to introduce LB585. This bill makes minor changes that would allow for smoother action of three animal offenses dealing with animal ownership restrictions, animal impoundment, and dangerous dogs. First, animal ownership restrictions: 28-1019 allows a sentencing court to impose animal ownership restrictions on a person convicted of animal abuse. In 2015 the Legislature adopted and the Governor signed LB605, the Justice Reinvestment Act. Among the many changes made by LB605, there were several revised penalties for animal cruelty. Unfortunately, these changes did not synchronize all the criminal statutes pertaining to animal cruelty and animal ownership in 28-1019. Section 3 of LB585 will harmonize these statutes. Second, animal impoundment: In the case of a seized animal, the time frame in which a county attorney must file for hearing would be expanded from 7 to 30 days. Since adoption of this section in 2015, it has been the experience of prosecutors that seven days is not always sufficient time in which to file for a hearing to determine the disposition and the costs for the care of the animal. LB585 simply extends that deadline to a more reasonable 30 days. Finally, regarding dangerous dogs: Revisions to Section 4 would allow a sentencing court to determine if a dog that has severely bitten or injured a person shall be humanely euthanized or confined under current statute to protect the public. The bill also eliminates the instance that the Nebraska Humane Society calls a "free bite" before action can be taken. Mark Langan of the Nebraska Humane Society will follow me and have more, actual questions about the legislation, probably far more prepared to answer them than I am with technical questions, and also the Sarpy County prosecutor's office will be here to testify on behalf of the bill. So, happy to take any questions. [LB585]

SENATOR EBKE: Senator Chambers. [LB585]

SENATOR CHAMBERS: This Mark Langan, how long have you known him? [LB585]

SENATOR LINEHAN: Not near as long as I bet you have, sir. [LB585]

SENATOR CHAMBERS: Is he a man of good character? [LB585]

SENATOR LINEHAN: He seemed to be and he came highly recommended that I could trust him. [LB585]

SENATOR CHAMBERS: And I would add to that recommendation. [LB585]

SENATOR LINEHAN: Okay. Thank you very much. [LB585]

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SENATOR CHAMBERS: That's all I had. [LB585]

SENATOR EBKE: Okay. Any other questions? No? Yes? Okay, thank you. [LB585]

SENATOR LINEHAN: Thank you, Chairman. [LB585]

SENATOR EBKE: First proponent. [LB585]

MARK LANGAN: (Exhibit 2) Thank you, Senator Ebke, Senator Chambers, for the nice comments. Still amazes me that we can talk like that. [LB585]

SENATOR CHAMBERS: Yes. [LB585]

MARK LANGAN: Good afternoon. My name is Mark Langan. I'm the vice president of field operations for the Nebraska Humane Society. We provide animal control service for the Omaha area. And I'll spell my name too: M-a-r-k, last name L-a-n-g-a-n. We provide animal control service for the Omaha area, and in 2016 we responded to over 35,000 calls for service in the Omaha area. LB585 deals with changes to three current state statutes dealing with animal ownership restrictions, animal impoundment, and dangerous dogs. First, in 2008, LB1055 passed by unanimous vote. The bill established Nebraska State Statute 28-1019, which allowed a judge to impose animal ownership restrictions of up to 15 years for individuals convicted of a Class IV animal cruelty charge, and up to 5 years for the conviction of a Class I misdemeanor. In 2015 the Legislature passed LB605, which changed the penalties for animal cruelty and added the charge of a Class IIIA felony for cases involving torture, repeated beating, and mutilation; however, Nebraska State Statute 28-1019, the animal ownership restriction law, was never changed so it does not match the new penalties enacted in 2015 for animal cruelty. This portion of LB585 does not change the intent of Nebraska State Statute 28-1019. Rather, it simply allows a judge to impose animal ownership restrictions to persons based on the updated crime classifications in Nebraska State Statute 28-1009, the animal cruelty statute. Secondly, in 2008 the Legislature unanimously passed LB360, which dealt with the impoundment of animals on a cruelty case. Based on that bill, current State Statute 28-1012.01 allows for the lawful seizure of animals when a violation of the animal cruelty laws occur. The law sets out a procedure for a prosecutor to file an application with the court to have a hearing to determine disposition of the animals and also for the court to make a decision on who incurs the cost for the care of the animals during the trial process. LB360 set out a seven-day time limit for a prosecutor to file for such a hearing. That's the current state law in the state statute. I have, however, been advised by several prosecutors, one who will testify after me, that the seven-day window to file the paperwork with the court is not sufficient time. Police officers have to prepare reports and forward them to the prosecutor, who then has to prepare legal documents to file for the hearing. Based on issues

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raised by the prosecutors, we are asking for the 7-day provision to be increased to 30 days. Other than this, there is no other change to Nebraska State Statute 28-1012.01. Lastly, LB585 makes changes to the dangerous dog statutes in the 54 code. These changes are being made to better ensure the safety of the public. In 2016, the Nebraska Humane Society investigated over 700 dog bites in the Omaha area, some of which caused severe injury to the victim or the death of other dogs. We have strict ordinances in Omaha that cover these cases. However, the current state statutes dealing with dog bites make it difficult to impound dogs that have severely bitten a person or mauled another animal. For example, the definition of a dangerous dog in 54-617 states that: according to the records of an animal control authority, a dangerous dog is one who has, one, killed a human being; two, has inflicted injury on a human being that requires medical treatment; or three, has killed a domestic animal without provocation. In other words, dogs are allowed a free bite if there's no past history on file with the animal control authority. LB585 takes out the words "according to the records of an animal control authority" so that action can be taken on a dog's first bite. It adds the term "serious bodily injury" that requires medical treatment to either a person or an animal in the definition of a dangerous dog. Also, nowhere in the 54 code statutes dealing with dangerous dogs is there a mention that it is actually illegal for a person to keep or harbor a dangerous dog that bites somebody. LB585 includes the verbiage on page 9, lines 22 through 24, that "No person shall knowingly, recklessly, or negligently own, keep, or harbor a dangerous dog without complying" with certain sections of the 54 code dealing with confinement of the dog and other regulatory matters. Adding this clause allows law enforcement and the animal control authority to issue citations to the owners of dogs to get that case into the judicial system so a judge can order what the disposition on the dog will ultimately be. Thank you to Senator Linehan for introducing LB585. I thank you for listening to my testimony today. I forgot to give this to the pages to hand out. Also attached to my testimony is a letter written by Douglas County prosecutor Amy Jacobsen supporting LB585. And Sarpy County prosecutor Nicole Hutter will follow me in regards to her testimony on LB585. Does anybody have any questions? [LB585]

SENATOR EBKE: Any questions for Mr. Langan? Guess not. [LB585]

MARK LANGAN: Thank you. [LB585]

SENATOR EBKE: Thank you. Next proponent. [LB585]

NICOLE HUTTER: (Exhibit 3) Good afternoon. My name is Nicole Hutter. That's N-i-c-o-l-e H-u-t-t-e-r. I am a deputy county attorney from Sarpy County, Nebraska. I am currently assigned as a Criminal Division team lead and carry a felony caseload between 135 and 150 cases at any given time. My office prosecutes violations of the laws of the state of Nebraska, including animal abuse-related crimes. Although I support all changes proposed by LB585, I will address a

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specific change to Nebraska Revised Statute 28-1012.01. That statute currently requires the state must file an application with the court to determine disposition of any animal seized by law enforcement within one week or seven days of the seizure. LB585 proposes that the time frame for filing be extended to 30 days, and I support that change. Currently when law enforcement seizes an animal after it has been abused, for example, the state, via the local prosecutor, has seven days to file an application with the court to request a hearing wherein a judge will decide if the animal goes back to the alleged abuser or will be forfeited to the state for appropriate care. The hearing must be held within ten days of the initial filing, unless otherwise directed by the court. I can tell you that in my experience when the Legislature provides a preferred time frame for hearing, the courts adhere to that time frame if remotely possible. This leaves the state with 17 days, at most, to hold an evidentiary hearing to determine the disposition of animals seized. That time is insufficient and can create a scenario where an animal may have to be returned to its abuser simply because the state was not able to file the paperwork in the proper amount of time. Upon seizing an animal pursuant to an abuse investigation, law enforcement will generate reports regarding the incident. Our office generally has those reports within two weeks. Officers must draft the reports, review them, have them approved, and then have them sent to my office. Upon receipt, our office opens a file, reports are printed, and the file is given to a prosecutor to review for possible charging. If the suspect was arrested on a felony or a warrant was requested, that process can happen much quicker. Worst-case scenario in terms of timing is where we have an animal seized pursuant to a misdemeanor animal abuse investigation and our office does not even receive reports of the seizure until after the deadline for filing has passed. Regardless of the level of offense, full police reports are not available for us until several weeks after the seizure. This leaves the prosecutor without access to all relevant information by the time the disposition hearing must be held. Consequently, a prosecutor is required to determine whether we need to attempt to have the animal permanently removed from its home without the benefit of knowing the full circumstances. Quite frankly, there may be instances wherein we file the application quickly per the statute, only to realize, upon receiving full reports, that it is in fact not warranted. In one recent case in Sarpy County, we were able to properly file the application because the suspect was under investigation for other crimes when the warrant to seize the dogs was signed. I was aware in advance that law enforcement was undertaking an investigation of the animal abuse allegations. By the time the animals were seized, the investigation had been ongoing for many weeks, and our office already had much of the necessary information. We knew the animals were going to be seized before it happened and were able to obtain a hearing regarding their disposition. Unfortunately, with five law enforcement agencies in the county and 11 criminal attorneys, this was an anomaly. The disposition hearing was scheduled within the ten days as set forth by statute but was continued by defense counsel. While the state was familiar with the facts, there was insufficient time for the defendant to obtain counsel and have that counsel obtain information about the allegations. The disposition hearing was held in two parts and took many hours as it required the testimony of law enforcement, a Nebraska Humane Society veterinarian, and an animal control officer. The preparation for the hearing was significant and would not have

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been possible but for the continuance that was requested by defense counsel. Ultimately, the current time frame does a disservice to the animals and the owner. I certainly understand a citizen's property interest in their animals and the necessity to afford them an opportunity for a hearing in a timely manner once they have been deprived of that property. However, when forced to act in haste, no one benefits. The seven-day application deadline and subsequent ten-day hearing deadline do not afford the parties an opportunity to be prepared. I support the changes proposed by LB585, allowing the state to file the necessary application within 30 days after an animal has been seized, as it is in the interest of justice to afford all parties a full and fair hearing. I appreciate Senator Linehan's work on this bill and your attention to my testimony. I'm happy to answer any questions you may have regarding the time line at issue in the filing process.
[LB585]

SENATOR EBKE: Thank you. Any questions? I see none. Thank you for being here today.
[LB585]

NICOLE HUTTER: Thank you. [LB585]

SENATOR EBKE: Are there any other proponents? I see nobody standing. Are there any opponents to this legislation? I see nobody. Are there any in the neutral capacity? I see nobody. Senator Linehan, you're going to...or you want to go? [LB585]

SENATOR LINEHAN: Unless you have any questions, (inaudible). [LB585]

SENATOR EBKE: (Exhibit 1) Anybody have any questions for Senator Linehan? We have one letter in support from Melissa Money-Beecher. I think we're good. Okay. Thank you for being here today. That closes the hearing on LB585. We will move to LB491. Senator McCollister.
[LB585 LB491]

SENATOR HALLORAN: Just one? [LB491]

SENATOR McCOLLISTER: Yeah. [LB491]

SENATOR HALLORAN: Okay. [LB491]

SENATOR EBKE: Welcome back, Senator McCollister. [LB491]

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SENATOR McCOLLISTER: It is good to be back, particularly since I'm an honorary member of the committee, made by Senator Halloran. [LB491]

SENATOR EBKE: Yes. Exactly. [LB491]

SENATOR HALLORAN: (Inaudible). [LB491]

SENATOR EBKE: Been here a lot. [LB491]

SENATOR McCOLLISTER: It's dog day in the Judiciary Committee today. [LB491]

SENATOR EBKE: It is. [LB491]

SENATOR McCOLLISTER: Good afternoon, Chairwoman Ebke and members of the committee. I am John, J-o-h-n, McCollister, M-c-C-o-l-l-i-s-t-e-r, and I represent the 20th Legislative District in Omaha. Today I'm introducing LB491. I wish to remind you that I spoke with each of you yesterday about the bill. LB491 is not meant to hinder the ability of individuals who require the use of service animals or support service animals but to continue to occupy their current rental property or secure a new rental agreement in the future. LB491 addresses dishonest individuals who take advantage of the legal protections that are afforded to these individuals who need them. Current law creates a misdemeanor offense of violence on service animals and interference with service animals. LB491 would expand the service of these Criminal Code provisions regarding service animals by creating new offenses concerning misrepresentation, either by misrepresenting an animal as a service animal when that is not the case or by representing one's self as a service animal trainer when that is not true. As the use of service animals increases, landlords and business owners find that they are confronted with situations in which certain individuals abuse the deference we afford to individuals who depend on service animals. The Americans with Disabilities Act has protections for the disabled who depend on these service dogs. These dogs are trained to assist the disabled with certain activities. These federal protections do not extend to other animals, nor do they extend to dogs who have not in fact been trained to assist persons with disabilities. LB491 would incorporate the federal definition that limits the term "service animal" to individually trained dogs. This would eliminate the uncertainty about the type of animal that is subject to protections of the current law in Section 28-1009.01. LB491 would also bring a measure of clarity to current law. As it extends now, a person can make the claim that an animal is a service animal in order to receive a benefit, such as renting an apartment without paying a pet deposit. If in fact it is not true that the animal is a specifically trained animal, the landlord currently has no recourse. Also, the property or business owner would have a measure of assurance that other animals, such as cats, monkeys, or even birds, could not be defined as a service animal. Finally, an individual would face a penalty

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for falsely claiming to be a trainer of a service animal. This would protect the disabled from being led to believe that their animal has been trained when that is not true. Landlords are not allowed to charge pet deposits, higher monthly rents, or restrict certain units from use or to ban the use of service animals. They are also not allowed to ask questions about the valid training or use of a service animal. They cannot ask for documentation of the dog or its training, cannot ask to see a dog perform its trained task, and cannot ask about the nature of the individual's disability. There are only penalties for landlords when it comes to issues surrounding service animals, so the purpose of LB491 would be to create penalties for those who use laws incorrectly to support their own selfish interest. Thank you, Madam Chair. [LB491]

SENATOR EBKE: Thank you, Senator McCollister. Do we have any questions? I see none. Okay. [LB491]

SENATOR MCCOLLISTER: Thank you. [LB491]

SENATOR EBKE: First proponent. [LB491]

LYNN FISHER: Thank you, Senator Ebke. My name is Lynn Fisher, L-y-n-n F-i-s-h-e-r, and I am a landlord, a property manager. My company is Great Place Properties. I'm also a member of the Real Estate Owners and Managers Association. And I'm for this first step in trying to give us some help in what I see as a more and more frequently abused federal law in that we have people that come to us to rent properties. We are a no-pet company and that's our policy that we don't allow pets, but more and more people are claiming that they have a disability. And learning more about the law I think as it's becoming more apparent to people through word of mouth and through social media, folks come to us. Where they used to ask if we allow pets, now it's no longer ask. They simply make a statement that they have a service animal, a therapy animal, or an emotional support animal. So this is becoming really epidemic in our business in that we see so many folks making the claim that they're disabled. The biggest concern that I have is that it's becoming an industry where you can go on the Internet and you can simply Google therapy animal or service animal documentation and I have a list of them here: TherapyPet.org; EmotionalSupportAnimalCo.com, and they have a big \$99 ad on the Internet; CertaPet.com; MyPetSearch.com for just \$79. And most of these pertain particularly to emotional support animals, but again I say I'm in agreement with this bill because it's a first step in trying to make headway towards trying to rein in some abuse that we see in our industry. You'll be happy to know that I qualify as being disabled. Just today before the meeting I went on-line and I went to MyPetSearch.com and answered some questions. And just answering in the affirmative, do you often feel sad or depressed for unknown reasons, if I say yes, I qualify. Recently, have you been frequently worried about big or small events in your life? I don't know how many people in this room would necessarily answer in the negative. Have you ever experienced a sudden, unexpected

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anxiety? Do you have an intense fear that you may say something wrong in front of others that will embarrass you? I mean I feel that way right now. So all these questions are so simple and so easy to answer in the affirmative that these companies, for \$79 in this case, will provide me documentation that says that I'm disabled and I'm qualified to have an emotional support animal. We had a tenant recently that came to us. She applied to rent, knowing full well that we were pet-free and that's the way that we operate our business. And within a short time, within two or three weeks, she pulled up to the front door of my office with a brand new puppy in the arms of her boyfriend, bringing to me a letter that came from Louisiana from one of these companies that said that she is now disabled and that she should be afforded the ability and the right to have this animal live in the apartment. We had no choice. We had to allow. And she told us up-front that she knew that this was a pet-free apartment and she wished that she didn't have to live under those restrictions. But she found out that she could go on-line and get one of these letters. I know my time is short, but I have other instances where we know of folks that, in order to fly on an airplane with their small dog or animal or go into a restaurant, well, they can go on-line and do the same thing. So I think it's really becoming an abusive thing. And we fully support people that truly need and have a need for an animal that can help them if they're disabled, that they certainly should have that. We have tenants that are truly in need and have that disability, and we accommodate them every way that we can. But I think it's unreasonable to think that all of a sudden so many people are suddenly disabled. So I'd be happy to answer any questions that you have. [LB491]

SENATOR EBKE: Questions for Mr. Fisher? Senator Pansing Brooks. [LB491]

SENATOR PANSING BROOKS: Thank you. Hi. [LB491]

LYNN FISHER: Hi, Patty. [LB491]

SENATOR PANSING BROOKS: I'm glad you're here. Why is it that...why did we...I mean is there anything in the statutes that says you need a doctor's prescription or something that says that instead? [LB491]

LYNN FISHER: My understanding is that we cannot deny someone their right to have their animal, even if they have a letter from a clergyman or a counselor of any kind. [LB491]

SENATOR PANSING BROOKS: Okay. [LB491]

LYNN FISHER: It's that wide-open. [LB491]

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SENATOR PANSING BROOKS: Well, it just seems like that might be one thing to go after in the law a little bit rather than creating penalties necessarily. [LB491]

LYNN FISHER: Well, anything that could be done would certainly be a help. [LB491]

SENATOR PANSING BROOKS: Okay. Thank you. [LB491]

SENATOR EBKE: Other questions? Thank you for being here, Mr. Fisher. [LB491]

SENATOR PANSING BROOKS: Thank you. [LB491]

LYNN FISHER: Thank you. Appreciate it. [LB491]

SENATOR EBKE: Next proponent. [LB491]

MIKE DENNIS: Thank you for your time. We appreciate having you listen to our complaint. Obviously, it is a complaint, so it's not easy to deal with. I'm a pretty positive guy. [LB491]

SENATOR EBKE: Could you give your name and spell it for us, please? [LB491]

MIKE DENNIS: Oh, you're going to get that, yes. [LB491]

SENATOR EBKE: Okay. Okay. [LB491]

MIKE DENNIS: I handed in the sheet though so I'm not sure who I am. No. (Laugh) [LB491]

SENATOR EBKE: Okay. [LB491]

MIKE DENNIS: I am Mike Dennis. I am here with the Real Estate Owners and Managers group and also the Statewide Property Owners' group. I'm vice president of that group. We have...I live at 1845 South 48th Street, Lincoln, Nebraska, 68506. We have...is there any other information that you would like to have? Okay, you're good. Thank you. All right. What is happening is that today we have a lot of fraud, just ridiculous fraud. I appreciate the opportunity to rent to people that have obviously whatever issue because that's what we do. We are prohibited from renting to people that have issues. This is called the Fair Housing Act. We also have the Americans with Disabilities Act. The thing is that these are meant to protect those who need protection, but it

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doesn't say anything about protecting people who are just frauds. And what I would like to say is that I really believe that it's very important to have a qualifier for the pet. The people are covered under the Fair Housing Act and the ADA, but there's no word about what this pet might have in special quality to make this person a service animal. I can remember way back when we used to have a lady in the statehouse here that had a Seeing Eye dog and she delivered mail throughout the statehouse, and this was a wonderful circumstance. And I recognize the value of a Seeing Eye dog. It was obviously very apparent. But it wasn't a rottweiler or pit bull but a rather gentle breed. If I remember right it was a black lab. But what is happening is today that the circumstances have been abused. Yes, we do have people with real issues and, by the way, I do take pets in my property, but not all the properties, particularly the multiple units where the people may live with certain allergies, asthma and other things that...or conditions which make it less desirable if you have a pet in the property. You know, I can well imagine that we have a need to care for people. That's what we do. The industry cares for everyone. We furnish very clean, fine properties. We have carpeting in these units. Usually it costs us \$2,500 a unit to carpet the units today, and it's nice carpet. But it's really disappointing when you find the only special talent of that dog is to leave large yellow spots on the carpet. I'm not really sure what the large yellow spots are because I really haven't gotten down to examine it, but the reality is it does happen. And so, you know, in the multiples particularly where yards are limited and other things, we probably would say no to a dog. And we have other reasons to protect ourselves. There are certain breeds that are not insurable. There's probably five that my insurance company tells me they'd like to have out of our properties, and you can pretty well imagine what the five are. So what we need to do is simply qualify the dog as a therapy dog. Thank you. [LB491]

SENATOR EBKE: Thank you, Mr. Dennis. Any questions? Thank you for being here today. [LB491]

MIKE DENNIS: It was a pleasure. [LB491]

SENATOR EBKE: Next proponent. [LB491]

KENT ROBERT: (Exhibits 2, 3, and 4) Good afternoon, Chairman Ebke, members of the Judiciary Committee. My name is Kent Rogert, K-e-n-t R-o-g-e-r-t, and I'm here today representing the Statewide Property Owners' Association. And while it's always my pleasure to be here, I hope it's my last for the year. It's time to be done with these things. A gentleman that...my client, the president of the association, was not able to be here today because of a funeral, but I'm handing out a letter that he wrote out and wanted to submit. And I had a couple of items left through the clerk for you before you got here and I just wanted to draw your attention to one of them for sure. There is a sheet on your desk from...it's a printout from Amazon that it shows how pretty easy it is to get the vests and cards and all these things. And I

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highlighted the advertising piece on one of them. It says, "Give them to people that don't know your rights to allow you to bring your dog anywhere." So that's really kind of what's happening. On the letter I just handed out, this is an example, not necessarily of a service dog but of a support animal. On the back side the paragraph says: Recently, an Omaha area apartment complex received a test call from someone posing as an applicant, asking whether the caller could have a pit bull. During the conversation, a Texas-based agency, according to the caller ID, were informed of the company's policy, the rental company's policy, against such breed. No rental application was ever submitted to the property manager and the manager never saw any documentation in support of the need for an assistance animal. Nevertheless, a Fair Housing complaint was filed with the Nebraska Equal Opportunity Commission. After several hours of work and considerable legal expense by the apartment manager to comply with this investigation, the manager was informed that they could simply make this go away with a check of \$1,600. And our association is not at all trying to limit the ability of people who need the animals to get it, but in this case it was a complaint that was filed merely for the purpose, it appears, of trying to fund their organization. We'd like some protection in that regard. That's all I have. [LB491]

SENATOR EBKE: Okay. Thank you, Mr. Rogert. Any questions? [LB491]

KENT ROBERT: Thank you, and happy Friday. [LB491]

SENATOR EBKE: Thank you. You too. Are there any other proponents? I see none. Any opponent testimony? Come on up. [LB491]

ROXANN HAMILTON: It will take me a second to (inaudible). [LB491]

SENATOR EBKE: That's fine. [LB491]

ROXANN HAMILTON: How many minutes? I couldn't hear. [LB491]

SENATOR EBKE: Five. Five. [LB491]

ROXANN HAMILTON: (Exhibit 5) Five? Okay. Good afternoon. I'm Roxann Hamilton, R-o-x-a-n-n H-a-m-i-l-t-o-n, and I live in Bellevue, Nebraska. I have my service dog with me today. His name is D-a-r-t. He has been my working dog for three years. I've used a service dog for about 17 years. His task training includes hearing, balance, forward momentum, depth perception on stairs and curbs. All of my dogs, as my medical conditions and disabilities have worsened as I have aged, their training has also changed and increased in the activities that they perform. I have

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three experiences to share with you and at the end of those experiences I'll explain why I shared them with you. Dart and I were at Walmart one day, a south Walmart, the new one, and I noticed a small dog in a cart, in one of the electric carts, raising a ruckus, yapping, barking; the handler not paying attention, you know, the operator of the cart not paying attention to it or making any attempt at hushing the dog or leaving. And I brought this to the manager's attention because when a service dog misbehaves, business owners, be they a landlord or be they a hair salon or a Walmart, they have rights too. And part of those rights is to limit the access of a dog that does not meet federal or state compliance for their conduct when they are out, not in handler control. The Walmart manager told me that he didn't have a choice; he had to let the dog in. It was corporate policy. If the handler says that's a service dog, then that's a service dog. So that dog stayed in the store and I could hear him barking from, you know, clothing to refrigerator goods. Another time I was shopping at the Salvation Army and when I came in the store the cashier yelled at me: Get that dog out of the store; we don't allow dogs in here. And I said, he's my working dog, he's my service dog, and I need to shop for something. And she said she was going to call the police and have me arrested. So I told her that I would be over in the blankets, because I was looking for blankets, and just direct the police over to where I would be. So a few moments later the police came and they found me and asked where's the dog, because they were looking around. And I said he's at a "down, stay under" where I'm shopping. And they looked and, sure enough, there was a dog under the blankets, you know, the hanging blankets, just like Dart is under the table right now. This is what he does when...as part of his job. So the police did correct the cashier and I had no more problems there. Then I was living in an apartment building and I had to fight to get in there with my service dog because it was no dogs allowed. The pets were out of control that had been allowed because of senior citizens saying they were emotional support animals, and they were not trained or under control. My dog was attacked, bitten. His behavior changed and he had to be retired. That's when I got Dart to replace him. But I wanted to let everyone know that disabilities aren't always prevalent...or present and there's a difference between an ESA, a service dog, and a therapy animal. Therapy animals have no bearing at all on anything that was discussed or presented today since they have to be invited into a business before they can be allowed. And emotional support animals are covered under HUD, not the ADA. And I oppose this bill only because it was not well-thought-out and well written, and I think that it should be tabled until it has been corrected. [LB491]

SENATOR EBKE: Thank you, Ms. Hamilton. Any questions? [LB491]

ROXANN HAMILTON: Okay. Thank you very much for listening. [LB491]

SENATOR EBKE: Thank you for being here today. Do we have other opponents to LB491? [LB491]

BRAD MEURRENS: (Exhibits 6, 7, and 8) Good afternoon, Senator Ebke, 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 the public policy director for Disability Rights Nebraska, the designated protection and advocacy organization for persons with disabilities in Nebraska. And I am here in opposition. Just to be clear, our opposition is not an endorsement of misrepresentation of service animals. The importance that service animals play in the lives of some people with disabilities is undisputed and actions that may serve to harden attitudes toward accepting service animals in public places and housing does a disservice to people with disabilities and to retailers and landlords themselves. However, our position is that this legislation has some significant flaws concerning compliance with existing federal law that define disability and spell out the parameters of service animals. We feel that this bill is not needed, given the existing avenues that landlords and retailers already have under federal and state law to curb misrepresentation and bad behavior. Service animals are used by people with disabilities other than those who are blind, visually impaired, or have a physical disability, and the definitional language in LB491 is far from the definition of disability contained in federal law, primarily the Americans with Disabilities Act, or the ADA. What this bill does is essentially criminalizes behavior which people, businesses, or landlords truly may not be aware. The distinctions between what is federally defined as a service animal and an assistance animal, as well as the responsibilities attending to each are not readily understood by the general public, many landlords, or many businesses. So a person could intentionally claim that an animal is a service animal but not understand truly that a service animal has a very specific and limited meaning under the ADA, and under this bill would be penalized for it. There is a distinction between federal...between a service animal, which falls under the ADA, and an emotional service animal...or emotional support animal, excuse me, or companion animal, whatever you want to...whatever term or label you want to use, which falls under the Fair Housing Act. Service animals are defined explicitly as an individually trained dog or miniature horse under the ADA and they are allowed to be brought in public places. Assistance animals are excluded from this definition and are defined in the Fair Housing Act as a reasonable accommodation for a person's disability, which means that that is a negotiation between the individual and the landlord for assistance for emotional support animal. These animals are not granted the right to be brought into public places but only in the individual's home. Since LB491 only addresses service animals, it appears that LB491 would not apply to assistance animals and, thus, may not achieve its true intent. We do not feel this criminalization is necessary as landlords and businesses already have alternatives in the status quo. Nebraska law says that a person who has a service animal is already liable for damages to property, and federal law says that a landlord or business can only inquire if the animal is required because of a disability and what tasks the animal has been trained to perform, under the ADA. Under the Fair Housing Act, as a reasonable accommodation, they can inquire...make some more inquiries about the nature of the disability or nature of the reason behind having the animal. It's a negotiation. Federal law does allow a service animal to be removed or excluded under certain circumstances, for example, if it would fundamentally alter the nature of the goods, services,

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programs, or activities; nor does it overrule legitimate safety requirements. If a particular service animal is out of control and the handler does not take effective action to control it or if it is not housebroken, that animal may be excluded. Finally, it seems that the need lies not in using a hammer to reduce misrepresentation but more awareness and education by all parties about the rights, responsibilities, and recourse already spelled out in federal and state law. Much of the consternation giving rise to this bill is due to a misunderstanding about what is already in place for people with disabilities, without disabilities, landlords, and businesses. So perhaps LB491's silver lining is that it demonstrates a need and provides an opportunity to increase awareness of service animals, assistance animals, and the law. I have included a few documents in my handouts which I think will give you a really good...a better understanding of the distinctions between service animals, assistance animals, and the law. And I would also suggest checking out Disability Law Colorado's Web site. They have exemplary materials on what the distinctions, rights, and responsibilities are under the law. While we're opposed to LB491, we would be glad to engage in further discussion on this issue with any and all interested parties to see if there is some activity or effort that can be initiated or recharged and how we can help so that problems giving rise to this bill today can be successfully prevented or resolved in the future. And with that, I'd be happy to answer any questions that you may have. [LB491]

SENATOR EBKE: Thank you, Mr. Meurrens. Questions? Guess not. Thank you. [LB491]

BRAD MEURRENS: Thank you. [LB491]

SENATOR EBKE: Are there other opponents? Do we have anybody testifying in a neutral capacity? We have some letters. Senator McCollister, is he still here? [LB491]

SENATOR MCCOLLISTER: Thank you, Senator. [LB491]

SENATOR EBKE: (Exhibit 1) Oh, there he is. Okay. We have a letter in opposition from Amy Miller of ACLU Nebraska. [LB491]

SENATOR MCCOLLISTER: Next hearing? [LB491]

SENATOR EBKE: Are you done? [LB491]

SENATOR MCCOLLISTER: No. No, closing. [LB491]

SENATOR EBKE: You don't want to do...you're waiving? Okay. [LB491]

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SENATOR McCOLLISTER: I waive. Going to waive closing. [LB491]

SENATOR EBKE: Okay. Well, then that closes the hearing on LB491 and we'll move to LB562. Welcome back again. [LB491 LB562]

SENATOR McCOLLISTER: Doubleheader. [LB562]

SENATOR HALLORAN: We've got some empty seats here, Senator. [LB562]

SENATOR McCOLLISTER: Good afternoon, Chairwoman Ebke and members of the committee. [LB562]

SENATOR PANSING BROOKS: Sir, you dropped your phone, just...you dropped your phone in front of you, in the chair in front of you. Sorry, Senator. Sorry, since people...sorry, John. [LB562]

SENATOR McCOLLISTER: We're good. My name is John, J-o-h-n, McCollister, M-c-C-o-l-l-i-s-t-e-r, and I represent the 20th Legislative District. Today I'm offering LB562. This bill would require the Nebraska Department of Correctional Services to prepare a monthly report that would be provided to the Appropriations and Judiciary Committees of the Legislature, as well as the Inspector General for Corrections and the Office of the Public Counsel. The report would include: number one, the number of committed offenders at or past their parole eligibility dates who have not received appropriate programming; two, the number and type of vacant positions for behavioral health staff employed or under contract with the department, both for the entire department and for each correctional facility; and finally number three, the number of inmates who have achieved community custody status but are still not in a community custody facility. While I'm not committed solely to these three information categories and would certainly be open to expanding the data provided to the Legislature on a regular basis, I do think these three requirements represent a great place to start. Ultimately, I would like to see a dashboard kind of presentation like we saw with ACCESSNebraska. That is a very good start and we should consider something like that with the Department of Corrections. Programming plays a huge part in inmate success, not only when they leave the department but also in inmate behavior while they are in a prison. Asking the department to provide data about individuals who are past their parole eligibility dates and have not yet received the appropriate programming would not only keep the issue in front of policymakers. It would serve as a reminder that the department needs to provide programming, especially since they are required to do so in state law. It's also important that the department communicates with policymakers regarding vacancies of behavioral health staff. As Director Frakes testified two weeks ago, filling these vital positions can be difficult but they are desperately needed in order to have success in the department. As inmates near the end

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of their sentences they can be classified as having community status...custody status opportunities. Then they are eligible for work detail and work release jobs while they live in a Community Corrections Center. Obtaining these key jobs is necessary for a successful transition back into the community. As the department implements its new classification instrument, the Legislature and other stakeholders need to know if the flow of inmates into these facilities is actually taking place. While I understand that we already ask for this information and data from the department on a regular basis, I think requiring them to do it in statute, even if it's only for the next few years, is important. It would also provide transparency, so policymakers and members of the public would have a better idea what is happening in the department. Thank you. [LB562]

SENATOR EBKE: Thank you, Senator McCollister. Senator Pansing Brooks. [LB562]

SENATOR PANSING BROOKS: Thank you. Thank you for bringing this, Senator McCollister. Who...were you working with anybody on this bill or is this just out of your own brainchild? [LB562]

SENATOR McCOLLISTER: No, I testified...I attended a hearing and asked some of the people for this information and they didn't readily give it to me, so that's what motivated me to start this report and I think it could be a beginning of something that we could utilize, similar, very similar to what we used in ACCESSNebraska. [LB562]

SENATOR PANSING BROOKS: Well, I appreciate your thinking of this and bringing it. As you know, programming is interconnected with the whole problem of overcrowding and getting people out, recidivism, everything is all tied together. So this might be just a little cog in the wheel that might initiate some things. So thank you very much for bringing it. [LB562]

SENATOR McCOLLISTER: Certainly hope so. Thank you. [LB562]

SENATOR EBKE: Thank you, Senator Pansing Brooks. Any other questions? I have a question. Have you seen Director Frakes's letter in...it's a neutral letter? [LB562]

SENATOR McCOLLISTER: We saw it just before we walked in,... [LB562]

SENATOR EBKE: Okay. [LB562]

SENATOR McCOLLISTER: ...so I haven't had a good opportunity... [LB562]

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SENATOR EBKE: Okay. [LB562]

SENATOR McCOLLISTER: ...to review it. [LB562]

SENATOR EBKE: Yeah, and they...the department chose not to object to it, obviously. They have some suggested changes. Line 4 of the bill, suggest amending the reference to "appropriate programming" to "recommended clinical programming," and things like that. So...there we go. [LB562]

SENATOR McCOLLISTER: Oh. [LB562]

SENATOR EBKE: So we might, you might want to think about that and talk with (inaudible). [LB562]

SENATOR McCOLLISTER: I would be amenable to anything that Director Frakes wants to include or anything else this committee would care to include. [LB562]

SENATOR EBKE: Okay. Any other questions? [LB562]

SENATOR PANSING BROOKS: Do we have that letter? [LB562]

SENATOR EBKE: We have the front of the letter. We don't have the back of the letter. [LB562]

SENATOR PANSING BROOKS: Oh. [LB562]

SENATOR EBKE: But the page is getting that for us. [LB562]

SENATOR PANSING BROOKS: Okay. [LB562]

SENATOR EBKE: So I don't know what's on the back. [LB562]

SENATOR PANSING BROOKS: I didn't know who this was from so... [LB562]

SENATOR EBKE: Yeah, I didn't at first either, but it's Director Frakes. Okay. Any other questions? Okay. [LB562]

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SENATOR PANSING BROOKS: So you'd be willing to work with Director Frakes. Is that what you were saying? I'm sorry, I missed it. [LB562]

SENATOR McCOLLISTER: I only have the first page as well, so... [LB562]

SENATOR EBKE: The department dropped it off without the second page for everybody, so we'll get you the full letter. [LB562]

SENATOR PANSING BROOKS: Okay. Here it is. [LB562]

SENATOR McCOLLISTER: I want to thank the committee. I've enjoyed my time with the committee this year and this should be it. [LB562]

SENATOR EBKE: We're going to give you a special pin,... [LB562]

SENATOR PANSING BROOKS: We enjoyed you, Senator McCollister. [LB562]

SENATOR EBKE: ...frequent flier pin or something. [LB562]

SENATOR PANSING BROOKS: Yeah. [LB562]

SENATOR EBKE: Okay. Okay. First proponent. [LB562]

ROBERT BRYAN: Good afternoon. My name is Pastor Bob Bryan, Robert Bryan, R-o-b-e-r-t B-r-y-a-n, and I am a pastor of Followers of Christ prison ministry of the Nebraska Synod of the Evangelical Lutheran Church in America and full-time volunteer clergy inside Department of Corrections. And I am for this bill in that it is another cog, another tool in the toolbox to help reduce overcrowding and accountability with Department of Corrections. We know that the least restrictive custody level is the least expensive level. And if we know how many people are eligible for that least restrictive level, whether it's community custody or out on probation or parole, if we know how many people are eligible but cannot be assigned that way due to whatever, lack of bed space or whatever, it will be helpful in pushing the issue to correct it to help reduce that overcrowding. So I believe this is a very good bill. So thank you very much. [LB562]

SENATOR EBKE: Thank you, Pastor Bryan. Any questions? [LB562]

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SENATOR PANSING BROOKS: Yeah, I have a question. [LB562]

ROBERT BRYAN: Sir, Senator Pansing Brooks has a question for you. [LB562]

ROBERT BRYAN: Oh, yes. I'm sorry. [LB562]

SENATOR PANSING BROOKS: Okay. What...thank you for coming, Pastor. What facility do you serve? [LB562]

ROBERT BRYAN: I'm authorized to go into all the facilities but my main programs are at the Nebraska State Penitentiary where I do a religious program on Saturday nights. I also teach a writing class at NSP and also the Dave Ramsey Financial Peace University class, teaching budgeting skills to men and women at Community Corrections in Lincoln and we also offer that at Community Corrections in Omaha. [LB562]

SENATOR PANSING BROOKS: Okay. [LB562]

ROBERT BRYAN: So we're part of the...trying to provide programming and we know that there's a tremendous need for that. And I also know from my personal contact with inmates that there's many inmates that are eligible to get out but they can't. There's either no bed space at Community Corrections or they can't get into the programming. [LB562]

SENATOR PANSING BROOKS: Okay. Good. And how many people do you normally see in each of your classes? [LB562]

ROBERT BRYAN: In the classes we've had...we started out with 15 in the writing class. We're just starting our second one and we have eight people signed up. The Dave Ramsey class, I've done 12 sessions, 12 nine-week sessions, and those averages about ten people in a class. [LB562]

SENATOR PANSING BROOKS: And who are the people that usually come into those course...into those classes? Are they people about to be paroled or do you have a feel for who they are? [LB562]

ROBERT BRYAN: At Community Corrections, some of the people, they've been recommended to take a budgeting class. Many of them have been in for financial crimes. And so they are, at Community Corrections, obviously getting close to getting out. At the inside prison at the State

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Penitentiary, we've only got one class under our belt so far. The next one starts next week and we're offering that to the medium and maximum security. Many of those men have quite a bit of time left. [LB562]

SENATOR PANSING BROOKS: Uh-huh. [LB562]

ROBERT BRYAN: The first class was to...had both minimum and medium and maximum, so some of them are already out, some of them are still in. So it's a mix. [LB562]

SENATOR PANSING BROOKS: Okay. So is there a waiting list for some of your courses? [LB562]

ROBERT BRYAN: No, there's not. [LB562]

SENATOR PANSING BROOKS: Okay. So you just say, I'll do it again, and then people sign up. Is that right? [LB562]

ROBERT BRYAN: Yeah. [LB562]

SENATOR PANSING BROOKS: So it could be anywhere from eight to what? How many people could you take in your class? [LB562]

ROBERT BRYAN: We have, at the Community Corrections, we have a limit on the class of 15 and they will only let either men alone or women alone take it. They won't allow it to be mixed. And then at the NSP they're keeping the external yard, the minimum unit separate from the internal, the medium and maximum, so that kind of limits the participation as well, so. But really there's a huge potential for more people to sign up. [LB562]

SENATOR PANSING BROOKS: And we've heard that there's difficulty and part of the reason that we don't have as many programs is because we don't have the staff to help people get to the place where the program will be held. Have you understood that to be a problem with what you're doing? [LB562]

ROBERT BRYAN: No, I haven't run into that. We will have someone escort, like I'll have another volunteer with me. I can walk unescorted in the facilities, but when I have another volunteer, without my clearance, we do need staff members to escort us, but that hasn't been a problem. [LB562]

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SENATOR PANSING BROOKS: Okay. And then do you need staff members to be...to supervise in the room as well when you're giving the class? [LB562]

ROBERT BRYAN: At the State Penitentiary, there's staff inside the high school there where the class is offered. So they're there whether we're there or not. They don't have to be present right in the classroom so that's not a limiting factor. And we're volunteer. We provide this at no cost to Corrections. [LB562]

SENATOR PANSING BROOKS: Are you part of the Reentry Nebraska group? [LB562]

ROBERT BRYAN: Yes. [LB562]

SENATOR PANSING BROOKS: Oh, are you? Okay. [LB562]

ROBERT BRYAN: I participate with the Reentry Alliance of Nebraska. [LB562]

SENATOR PANSING BROOKS: Yes. And do you know, so you do prison ministry so you do services for I presume the men at the state pen. [LB562]

ROBERT BRYAN: Yes, we have. It's technically called a worship class on Saturday nights, but we treat it as a worship service. [LB562]

SENATOR PANSING BROOKS: Okay. And is it ecumenical so all... [LB562]

ROBERT BRYAN: Yeah. [LB562]

SENATOR PANSING BROOKS: ...all faiths can come in? [LB562]

ROBERT BRYAN: Right. And since the security issues and lack of...oh, they, you know, it's blamed on lack of staffing and security. We used to meet every week for two hours, and we've been cut back to one week or one hour every other week, and it's been that way for about three years, ever since they went out to the modified operations. But there's many other programs that have been cut back, self-betterment groups, that are in that same situation where we're just waiting for...to get back and provide the opportunities that the inmates want and need. [LB562]

SENATOR PANSING BROOKS: So that's mostly, as you understand it, from the lack of staff to help? Is that why? Or what is the reason? [LB562]

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ROBERT BRYAN: Lack of staff and cutting back the opportunities for inmates to mingle from different housing unit to housing unit. That was a security issue so they kind of cut back there. [LB562]

SENATOR PANSING BROOKS: Okay. And what...we've also heard about lack of facilities. What about a lack of facilities? Do you... [LB562]

ROBERT BRYAN: Programming space like at Community Corrections, it's a fight between who gets the Parole hearing room or who has to meet in the dining room and who has to fight with the loud speakers. You know, there isn't space to have classes. You know, you're...we're fighting for space is what it is at Community Corrections, so. [LB562]

SENATOR PANSING BROOKS: Do you think...have you ever heard if there's any discussion about bringing in portables or something like that for classes like they have done for the schools? [LB562]

ROBERT BRYAN: I haven't heard that, but that would make sense. I mean I've joked about bringing in a FEMA...why don't they bring in FEMA trailers for some of these issues? [LB562]

SENATOR PANSING BROOKS: Yes. Okay. And what about other? Are there other ministers that come and do programming like you do? [LB562]

ROBERT BRYAN: Yeah, Pastor Ruth Karlsson does "Planning with Purpose." It's a reentry program and she's one of the recipients of the vocational and life skills grant and she's been allowed great access and providing some of these programs that are needed. [LB562]

SENATOR PANSING BROOKS: Well, thank you very much for your testimony today. It has been very helpful. [LB562]

ROBERT BRYAN: Okay. Well, thank you very much for the time. [LB562]

SENATOR EBKE: Are there any other questions? Okay. Thanks. [LB562]

ROBERT BRYAN: Thank you. [LB562]

SENATOR EBKE: Next proponent. [LB562]

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RONALD WHITT: Good afternoon, Senator Ebke. I like your colors. They're my sainted Mother's colors. I followed my father with dark black. My father was run out of Scotland into Ireland where they became more Irish than the Irish, okay? So my name is Ronald Whitt, R-o-n-a-l-d W-h-i-t-t. The H is silent and so is the second T. Okay. I want to thank Senator McCollister for introducing this important bill. I believe it is...it's a very important part of an important step for the penal reform system. I come to you today representing a family member of an inmate. As a close-knit family, we have experienced this journey with him. We can describe the inhumanity of the overcrowded system at every stage--cells built for one, housing for two; cells built for four now housing eight. But you've all heard this before, okay? Most of you already have probably read most of the animal studies, okay? Growing up, we raised chickens, okay? And the chickens were fine as long as there wasn't too many of them housed together. And then all of a sudden, when you start putting the chickens together, bad things start happening, Senator Brooks. They attack each other. This is especially clear when you put too many deer on an island or too many racoons together--disease, they start attacking each other or they die, okay? So this is part of the problem that I see. Today I represent an individual who has done, once he's in prison, I believe everything right, everything possible to meet his parole and still will not meet that date because of the lack of timely programming, which Senator Brooks was talking about a moment ago. I don't understand this. My family doesn't understand this. Why should any Nebraska taxpayer...by the way, I just paid my taxes and I gave a lofty sum to...so that you folks could pass some bills, okay? Why should anybody be paying to stay in prison longer? In our case, it is not because he did anything wrong during his stay. It is quite the opposite. This bill could assist in increasing accountability, efficiency, and transparency within the system while still preserving public safety. We all need to know the numbers of inmates who are past parole date and those who have qualified for community status and still aren't there. When these dates pass hopelessness can set in for the inmate as well as the family, Senator Ebke. As we understand it, achieving community status points is difficult and rigorous and is a great victory for any inmate who achieves it. There are numerous ways in which one can qualify. Some are through the nonclinical and vocational life skills available through the system. These programs work. They are transformative for inmates and set them up for success after prison. These programs and more of them should be supported and encouraged. They are mainly delivered through amazing volunteers from the community. They include religious clergy, AA programs, art, writing, music classes, as you've just heard the previous testimony. Seven habits of highly successful people: moral training and mentoring programs. It can also include the educational programs which are grant-funded, like OSHA certification, construction technology, GED programs, and working at the sew and wood shops. So please understand how debilitating and psychologically deflating it is when one achieves community status and cannot get there. It is wrong and is a huge flaw in our system and it needs to be corrected as soon as possible. Why cannot more programming be offered through community if one is qualified? And you mentioned staffing is a problem. Why cannot programming be offered more than once a week? The possibility of more positive reaction to concentrated treatment programs and increased behavioral health outside in the community can

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assist in reducing overcrowding and saving taxpayers money. We can certainly...we have certainly reached a critical mass. Please assist in getting those people out on time, getting them into community, and reducing overcrowding. This bill can assist by tracking the progress and achieving those goals. I'm open for any questions. [LB562]

SENATOR EBKE: Thank you, Mr. Whitt. Questions? [LB562]

SENATOR PANSING BROOKS: No. Let's see, and could you describe, number one, I'd like to get that study that you have. Do you have some studies? [LB562]

RONALD WHITT: All you have to do is Google... [LB562]

SENATOR PANSING BROOKS: Animals in... [LB562]

RONALD WHITT: ...studies, and it is a listing like you cannot believe. But we are humans, but we're also animals when we're crowded together, and this is debilitating. And when you cannot get out on time, things start happening. [LB562]

SENATOR PANSING BROOKS: Is the person whom you're here on behalf of, does that person work in the Nebraska Industries? [LB562]

RONALD WHITT: He's a prisoner. [LB562]

SENATOR PANSING BROOKS: I know, but they have the Nebraska Industries where they make license plates and different things. Does he also do... [LB562]

RONALD WHITT: No, he doesn't work in that industry. [LB562]

SENATOR PANSING BROOKS: He doesn't. [LB562]

RONALD WHITT: Yeah. [LB562]

SENATOR PANSING BROOKS: Okay. [LB562]

RONALD WHITT: He works in the sew shop. [LB562]

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SENATOR PANSING BROOKS: In the what? [LB562]

RONALD WHITT: A sew shop. [LB562]

SENATOR PANSING BROOKS: Okay. So, but I think that is something where they get paid for that. Is that correct? [LB562]

RONALD WHITT: I'm not sure he gets paid anything. [LB562]

SENATOR PANSING BROOKS: Okay. [LB562]

RONALD WHITT: He doesn't need the money. He needs to get out. [LB562]

SENATOR PANSING BROOKS: I know. But the reason I'm wondering is because sometimes I under...it's my understanding that people that are working in the Industries, if they have a class at the same time, they have to prioritize their job over programming. [LB562]

RONALD WHITT: Oh, I don't think...Senator Brooks, I don't know if that's the issue with him, okay? [LB562]

SENATOR PANSING BROOKS: Okay. Maybe that would be a good thing to find out if you could. [LB562]

RONALD WHITT: Yeah. But I do want you to look at the animal studies and if you do, you might recognize some stuff that's happening down at Tecumseh. [LB562]

SENATOR PANSING BROOKS: Okay. I can understand that. Thank you very much. [LB562]

SENATOR EBKE: Any other questions? [LB562]

SENATOR PANSING BROOKS: Thank you for coming. [LB562]

SENATOR EBKE: Thank you for being here today. Next proponent. [LB562]

DOUG KOEBERNICK: Good afternoon, Senator Ebke and members of the Judiciary Committee. My name is Doug Koebernick, spelled K-o-e-b-e-r-n-i-c-k. I work for you as the

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Inspector General for Corrections. And first I want to thank the folks that testified before me because they covered a lot of ground and really offered some really good insight, new information and everything. So I kind of threw my remarks away because, between them and Senator McCollister, they kind of took all my thunder there. But I support LB562 for the reasons that they stated but also really to focus in on the need for transparency, making policymakers and the public and everybody else a little bit more aware of what's going on in the Department of Corrections. For years, leading up into 2015, the Department of Corrections published something called a "Monthly Data Sheet" that had a lot of information on there. And it was put out every single month, just month after month, and it would have information about custody levels, populations, cost, recidivism, things like that. When I started this position in September of 2015, I noticed that they weren't doing that any longer and that was due to a staff shortage at the time, is what I was told. They ended up switching to publishing quarterly data sheets so it's some of that same information, not quite to the extent that it was, I believe, as the "Monthly Data Sheets." And so it comes out every quarter. It's not real timely or anything. So I think having this legislation would be of great assistance to you, to me, to the media, to members of the public to get a little bit more information about what is really going on in the Department of Corrections. So I would definitely support it. And one thing I would do or just mention is several years ago, about nine or ten years ago, I was working for Senator Lathrop and I was the staff person for the Developmental Disabilities Special Committee that looked at the Beatrice State Developmental Center. And it had had a lot of issues where the Department of Justice had come in and CMS, and they lost all their federal funding. So we had to make up about \$100 million of lost federal dollars over a few years until they got their act together. And at that time the Legislature, through the Appropriations process in their budget bill, put in kind of a list of things that they needed to provide to the Legislature on a regular basis. And what that did was really it kind of helped the Legislature or made the Legislature a little more accountable because that stuff was coming in on whether it was staffing or the cost or people moving in the community, things like that. And it was coming to us and, you know, we had to look at it and have a better understanding of what was really going on down at BSDC, in the community, and it was very, very helpful to I think the Legislature, to the special committee especially, and to people in the public. And this is kind of along those same lines. And whether it goes on for a few years or five years or forever, I really support this legislation and want to thank Senator McCollister for introducing it. [LB562]

SENATOR EBKE: Thank you, Mr. Koebernick. Any questions? I have...well, go ahead. [LB562]

SENATOR PANSING BROOKS: Have you seen the Director... [LB562]

DOUG KOEBERNICK: Just the front page. [LB562]

SENATOR PANSING BROOKS: ...Frakes's...pardon me? [LB562]

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DOUG KOEBERNICK: Just the first page. [LB562]

SENATOR PANSING BROOKS: Okay. Could you get him the second page too? Really, they're pretty neutral and they feel pretty good. They're already...he's saying that they already have created this because I was looking like, well, what's the fiscal note, and there's no...so they already do this. So... [LB562]

DOUG KOEBERNICK: Well, they do it...I mean they put together something for this bill hearing, so. [LB562]

SENATOR PANSING BROOKS: Okay. But he said that they do keep this information. [LB562]

DOUG KOEBERNICK: Oh. Well, they probably have it but they've never, like, shared it and (inaudible) put together for us. [LB562]

SENATOR PANSING BROOKS: Yeah, so I mean I can't thank Senator McCollister enough on that. So I think that would be helpful for us to have a way better understanding. What's your thought about...he does suggest on the back of the page, which you now have before you, to do it more like quarterly, which I think would be probably okay as well. [LB562]

DOUG KOEBERNICK: Yeah, I think quarterly, as long as they're going to actually put it out on a regular basis and everything. I think last fall Diane Amdor from the Judiciary Committee had to remind them a few times that they were a little late in getting that out and everything. But if you have it in statute that it has to be quarterly, then I'd hope that we would see it more often and everything and not have to rely on it being put on their Web site but actually being reported to the Legislature so we would see it as it comes in. [LB562]

SENATOR PANSING BROOKS: I love this idea. [LB562]

DOUG KOEBERNICK: And there might be a few other things you could add to it, too, I mean if you brainstorm a little bit. You guys have had a lot of experience in this over the last few years. [LB562]

SENATOR PANSING BROOKS: Yeah. [LB562]

SENATOR EBKE: Have you, as Inspector General, asked for any of this information in a form? [LB562]

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DOUG KOEBERNICK: Not on a regular basis but I mean I am...I'm really digging into the programming part and they're supposed to give me, I think on March 27, they're going to start giving me some quarterly programming information. [LB562]

SENATOR EBKE: Okay. [LB562]

DOUG KOEBERNICK: It's taken a little while to get there but they're going to start doing that. So it kind of is along the lines of this, so I was really encouraged by this. [LB562]

SENATOR EBKE: Great. Any other questions? [LB562]

DOUG KOEBERNICK: And may I throw one thing too? You asked about the portable classrooms and everything. Last year the Legislature gave Department of Corrections \$1.8 million to maybe do something along those lines. They had some flexibility with that money, but that was one of the things that the Legislature said you might be able to do with it. But what they did was took, and in a good way, they're building a building out at the Community Corrections Center in Lincoln that will house 100 people for a while in kind of dorm style housing. Eventually, that will turn into some classroom space and everything. And that's got walls and a roof and windows (inaudible). [LB562]

SENATOR PANSING BROOKS: Where is that one? [LB562]

DOUG KOEBERNICK: Right out at Community Corrections Center in Lincoln, right across the street from Pioneers Park, and you can drive by there and see it's making a lot of progress... [LB562]

SENATOR PANSING BROOKS: Right. [LB562]

DOUG KOEBERNICK: ...and it should be ready to go here in line August or September. [LB562]

SENATOR EBKE: Great. [LB562]

SENATOR PANSING BROOKS: Good. Thank you. [LB562]

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SENATOR EBKE: (Exhibit 1) Okay. Thanks. Any more proponents? Do we have any opponents to LB562? Do we have anybody in a neutral capacity? Senator McCollister. And I would note that Director Frakes did send us a letter in the neutral capacity. [LB562]

SENATOR McCOLLISTER: Yeah, thank you, Madam Chair. Thank you for the reception and the testimony from those that came here today. I'm encouraged by what I heard, both from testifiers and the committee. I would push for a monthly report. I think it kind of keeps us more in tune to what they're doing, keeps their feet to the fire, so to speak. So I would hope that the committee can attach this bill, if it's passed from committee, onto something that is more certain to pass this year. So thank you for your attention. [LB562]

SENATOR EBKE: Senator Pansing Brooks. [LB562]

SENATOR PANSING BROOKS: Senator McCollister, I can't thank you enough for bringing this bill. We have been, I believe, so mired in some of the LR34 Special Investigative Committee work and this is a very simple answer to help us along the path of trying to address overcrowding, the recidivism, the continuing vicious cycle that we are in that just really does not necessarily prepare our inmates to be safer members of our community right next to us. And I'm embarrassed that I did not think of this and I want to thank you very much for this really great idea. [LB562]

SENATOR McCOLLISTER: Well, thank you for your comments. And let's move forward together and make this happen and for the citizens of Nebraska and also for those in our correctional institutions. So thank you very much. [LB562]

SENATOR EBKE: Thank you. This closes the hearing on LB562. I'm going to make my way. [LB562 LB424]

SENATOR PANSING BROOKS: You're next? [LB424]

SENATOR EBKE: I'm next, and last. [LB424]

SENATOR PANSING BROOKS: Hey, my gosh. Laura, good job. Welcome, Senator Ebke. LB424. [LB424]

SENATOR EBKE: Thank you, Vice Chair Pansing Brooks and members of the Judiciary Committee. For the record, I am Laura Ebke, E-b-k-e. I represent Legislative District 32. You might recognize LB424 as Senator Riepe's LB425 from last session--purely coincidental that the

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bill numbers are just one off. LB424 is exactly the same as LB425 from Senator Riepe. Some of you will be very familiar with it. LB424 deals with the state's good time laws and I bring this bill on behalf of the city of Omaha. We have an obligation to all citizens of Nebraska to promote safer communities. LB424 is introduced with the intention of eliminating good time and replacing good time with earned time. There is a complicated history with good time laws. Corrections Director Scott Frakes, a number of county correction officials, city mayors, and Office of Parole Administration, the Office of Probation, the Omaha police and other law enforcement entities, and the Governor's Office have all provided input on this ongoing issue and corrections as a whole. Think one of the big concerns in light of that input and hearing from Nebraskans all across the state is that a vast majority of those currently incarcerated will return to communities and we need assurance of effective reintegration into society. I believe personal responsibility and programming can aid inmates to a more successful reentry and this can be accomplished through earned time. There are many reform ideas out there and another one of those reform ideas to consider is bringing earned time back into the discussion. What LB424 establishes is that the department may grant earned time if the department finds the committed offender is actively engaged in a vocational, educational, industrial, work, or treatment program. If the committed offender commits an offense or violates a rule of the department during the terms of the imprisonment, their department may forfeit or suspend any or all portion of the committed offender's accrued earned time...or accrued earned time. Again, this is something that I've brought on behalf of the city of Omaha. They will be talking about this in some detail behind me. I will try to answer any questions that you have. This is not a priority piece of legislation. [LB424]

SENATOR CHAMBERS: I'll save my questions for whoever follows. [LB424]

SENATOR PANSING BROOKS: Okay. I guess, well, my question is do...is there some sort of plan about how to keep track of earned time and when you think of the thousands of inmates to try to keep track of? [LB424]

SENATOR EBKE: That's certainly one of the problems and we're going to have to...we've talked to the department and they're not...they aren't necessarily against the concept but they certainly have concerns about it at this point. So, like I said, there is no priority on this legislation and we want to just keep the discussion open. [LB424]

SENATOR PANSING BROOKS: And the fact that we don't provide sufficient programming also... [LB424]

SENATOR EBKE: Uh-huh, that's another part of the problem. [LB424]

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SENATOR PANSING BROOKS: ...causes a real problem. [LB424]

SENATOR EBKE: Yeah. [LB424]

SENATOR PANSING BROOKS: Yeah. [LB424]

SENATOR EBKE: No doubt. [LB424]

SENATOR PANSING BROOKS: Okay. Thank you, Senator Ebke. Proponents, welcome. [LB424]

MICHAEL McGEE: Good afternoon. [LB424]

SENATOR PANSING BROOKS: Good afternoon. [LB424]

MICHAEL McGEE: Good afternoon. I'm Captain Michael McGee of the Omaha Police Department, M-i-c-h-a-e-l M-c-G-e-e. Thank you, members of the committee, for allowing me to speak today and I'd especially like to thank Senator Ebke for introducing LB424 on behalf of the city of Omaha. Mayor Stothert and the entire city council are united in their desire for the Legislature to consider a more meaningful definition of the term "good time." Currently, the state of Nebraska has a problem with prison overcrowding and it is understandable that the Legislature look for reasonable solutions to address these problems. However, meaningful sentence needs to be honesty in sentencing if the victims of crime, the people of Nebraska, are to be served by the laws under which criminals are sentenced. Most Nebraskans are not (inaudible) who are not engaged in the criminal justice system assume that when a judge sentences a person to 5, 10, or 20 years, that the person will in fact serve that sentence. Nebraskans don't oppose the use of good time, but good time should not be automatically given. It should be earned. It should be withheld if an inmate engages in violations of rules and displays unsafe behavior. Under the current system, an inmate can assume that, unless they commit a felony inside the prison system, they will receive some good time, even if their behavior is not exemplary, and their sentence will still be shortened. It is rare for an inmate to go into prison believing they will serve their entire sentence. Good time should be earned, again, not simply accrued. Currently, prisoners assume that a certain amount of their uncooperative and negative behavior will cost them nothing in the long run as it pertains to the length of their sentence and they will still receive early release under the good time calculation of their sentence. Crimes, victims of crimes committed by inmates of all Nebraskans deserve better. If LB424 is made into law, it will provide an avenue for the Department of Corrections to be firm, fair, and straightforward as the department addresses overcrowding while at the same time ensuring that inmates understand that they will serve full

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sentences if they fail to engage in exemplary behavior. We believe the changes contained in LB424 will increase morale across the criminal justice system and help to keep overcrowding down by incentivizing inmates to seek the errors of the criminality and reduce the likelihood to reoffend. If LB424 also tells correctional officers that we respect the work they do and will use earned good time as a tool to help create a safer atmosphere for them inside our correctional facility by insisting that inmates behave appropriately while incarcerated. It is our hope that LB424 will help the correctional system run even more smoothly. The key will be programming. With the state tackling the issues of overcrowding, we know new programming is being discussed. It is important that we engage the inmates in a path toward rehabilitation and, in doing so, they will set themselves on a path to avoid reencountering the criminal justice system again. Earned good time can be an important component to incentivizing inmates. Even though many crime categories are trending downward, we still have some bad actors committing serious crimes within our state. Every officer walking a beat will tell you that it seems like they arrest the same people over and over, who are rarely incarcerated long enough to stem their behavior, their criminal behavior. Offenders need to be held accountable, penalized when needed, and rewarded for earned good time when appropriate. The public deserves safety and security and the offenders an opportunity to make new choices to become contributing members of society when their sentence is completed. By passing LB424, judges in the correctional system will have an additional tool available to them to provide inmates an incentive to behave appropriately and learn new skills and return to society a better person. Thank you. Any questions? [LB424]

SENATOR PANSING BROOKS: Senator Chambers. [LB424]

SENATOR CHAMBERS: How much do you know about the good time system? [LB424]

MICHAEL McGEE: It's obviously an area in law enforcement I don't deal with a lot. I do know from personal experience we have a personal family who, a friend of ours, they have a son in the correctional system right now. This young man has not been an exemplary inmate, has been in solitary confinement for the last 11 months, and will be released in, I believe, one week, early in his sentence. So the specifics of it, sir, I don't, I can't explain to you how it works. And I understand from an earlier discussion that calculating it with the number of people would be very difficult. But this young man had no incentive to follow the rules, to do what he needed to do. Again, there were programming issues within the system for this young man, so it definitely... [LB424]

SENATOR CHAMBERS: So you're basing what you feel that you know on the case of this one individual that you're discussing? [LB424]

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MICHAEL McGEE: Well, in my 30 years of law enforcement, actually 34 years of law enforcement, sir, there have been people that have gotten out in many situations that we... [LB424]

SENATOR CHAMBERS: Okay. Here's what I'm getting to. [LB424]

MICHAEL McGEE: Uh-huh. [LB424]

SENATOR CHAMBERS: Would you describe to me some of the past good time law procedures, how good time was handled, or haven't you studied it to that extent? [LB424]

MICHAEL McGEE: I'll be honest with you, sir, I've not studied it to that extent. [LB424]

SENATOR CHAMBERS: Nobody in Omaha has. This is one of the silliest things I've ever seen. First of all, do you know how the good time rule works right now when you say somebody gets out early, that they don't serve their sentence, and that if they misbehave it doesn't make any difference? You said they feel they can get away with it. I'm going to explain it to you because I don't want to embarrass you. There is a sentence handed down. Let's say it's 10 to 20 years. When a person enters the prison, the good time law allows a person to get good time in this way: one day of good time for every day of the sentence. So you get the good time when you first come in. And you calculate good time for two purposes: one, to see when a person is eligible to be considered for parole, not that the person will get out. But they have to serve at least that much time before they'll even be talked to by the Parole Board. Then you subtract time from the maximum sentence to determine when they have to be released. So if the sentence is 10 to 20 years, that lower sentence is cut in half because it's day for day. The top sentence is cut in the same way. So you are eligible for parole after you've served five years, but that doesn't mean you'll get out. That cut at the bottom end is to determine when you're eligible. When you cut half off the top sentence that means ten years off. So at the end of the time that you've served with that reduction off the top end, if you didn't get parole they have to release you. It's like putting money in the bank for you. If you don't take any money out of the bank, then you have the total amount. So good time is not earned in the way the people in the city who know nothing about the use of good time as a management tool would think. You lose good time. Your sentence is not shortened if you misbehave. So judges know how to set a sentence to require a person to serve a certain amount of time. If the judge wants the person to have to serve five years, the judge makes the bottom end of the sentence ten years. That's the actual sentence. The only people who think that the sentence is unclear or that the public is being deceived are people who are ignorant of how good time operates. So if they say...if you say this guy has a 10 to 20 year sentence, it actually means 5 to 10 when you figure in good time. Well, that's true and the judge knows that's how, under the good time law, the sentences work. But in some cases, certain felonies, the

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minimum sentence may be 5 years but the maximum is 50. Now if the judge gave a flat 50-year sentence, the person is not going to serve a flat 50 years. You take 25 off the top. And after 25 years that person has to be released. But since there was no minimum, then half off the minimum would bring that up to 25. So if you have to serve 25 before you're eligible for parole and you cut 25 off the top, then the real sentence is 25 years. That's when the person has to be released and that's the point at which the person can be considered for parole. And that's what's meant by jamming out the sentence. You cannot be considered for parole until you've served half of that minimum. Since there is no minimum, you're really looking at what happens at the top end. And when you jam out a sentence, they have to cut you loose no matter what. That means there is no parole, period, when you're under supervision. You can refuse all programming if you want to because it's not going to do you any good. So the way you give incentive to people is to let them know that if you behave you're not going to serve as much time as if you misbehave. And the judges understand this. I see that Ben Gray signed this letter. He's with the city council and he knows better than to have signed a letter like this. He knows that so-called earned good time is not of any value. And I would say these things to you and I won't have to say it if there are others who are coming after you. They had a system and it was so complicated I won't even explain all of it, but the first year you...if you served okay then you get a few months. The second year you get a few more months off each year. The third year you get a few more months off each year. That was so complicated the system could not be managed. They couldn't keep track of the time. Because if you lost good time, you had to figure how many months would be taken off; and if they earn it back, what does that do toward determining when they're eligible for parole and when they must be released. So the director of Corrections came to me and asked, is there a way to simplify it, and that's when we came up with the system that exists now. But before we got to where we are now, they got away from the stairstepped system and tried to have what you all are talking about now. You're looking backward. It was called meritorious good time. You earned it as you went along. If you work in prison industries, you got more good time than if you didn't. But since the number of jobs was restricted and there never were enough jobs to go around for everybody who would be eligible, then favoritism would come in and the inmates knew it. If I like you, I'll make sure you get a job and you earn the good time. Well, this other person cannot earn the good time, so there's built-in discrimination. If you have the department, with no guidelines, able to say who gets the good time and who doesn't, the discrimination, the lack or absence of morale shows itself, the guards even complain because they said you're treating this one better than that one, and the one who's getting the poorer treatment is mad. And since I'm around, I'm the one that it's taken out on. So they decided that so-called meritorious good time had built-in discrimination. There had to be a way to put everybody on the same footing the day they walk into that prison. And it's easy for people on the outside, who don't understand this, to make the kind of comments that you made, that Mayor Stothert, now that she's in a tight race for the mayorship, will say because it sounds like they're creating safety for the public. It's not safe for the public. It's not safe for the inmates. It's not safe for the personnel. And the reason it's not safe, when you talk about earned good time, it's arbitrary. Some guard can have a role to play

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and if he doesn't like this one, no good time is extended. Then everybody starts with the same amount. They're on the same footing. And the U.S. Supreme Court has said that when good time exists, you cannot take it away without due process. So when they start out on the same footing, there can be no discrimination at that point. If they like one person and dislike the other and want to take good time, then that person can challenge the taking of that good time and can appeal under the Administrative Procedure Act. And there have been cases where they go through that process and the good time is restored because it was taken away inappropriately. People on the outside don't care about that; we who are the policymakers do. The ones who are the custodians of the inmates are imprisoned with them. If there are bad conditions existing for the inmates, they also exist for the prison personnel. So you're not going to find people who are in the prison saying, don't have good time. They know it's a management tool. The director of Corrections knows it's a management tool and without it they have nothing. Why should I behave if there's no reason? The judge gives me five years; I will do five years. I'm not going to do anything. They say do this, I say go to hell. All right, if you don't, we're going to punish you. How are you going to punish me? I'm locked up already. We'll put you in solitary. I don't want to be around people anyway. Put me in solitary. What else can you do? And if they come in here I'm going to throw feces and urine on them. And they got to feed me so then who is going to go near somebody like that? And you can't keep them longer than the sentence. You have to give that ongoing incentive to behave or else. You all need to think about what is going on before you come down here. And it's obvious to me you don't know anything about good time, but I'm not going to embarrass you. You were sent down here, as they say, you were sent into a gunfight with a knife. You thought you were going to a knife fight, but you're not. And I want this on the record so when these politicians who are running for office do these kind of things then they're not going to get the reception from the Legislature they think. When people like Ben Gray, who is currently the chairperson of the...the president of the city council, he's in a hard race to retain his seat. So although he knows what I'm talking about and would have said the same thing if he were not in this position, he's now jumped on the bandwagon and talked about good time. And this one, earned good time, it would never work. When you started out as a police officer...what is your rank now? [LB424]

MICHAEL McGEE: Captain, sir. [LB424]

SENATOR CHAMBERS: Captain? [LB424]

MICHAEL McGEE: Captain, yes. [LB424]

SENATOR CHAMBERS: Say it again. [LB424]

MICHAEL McGEE: Captain. [LB424]

SENATOR CHAMBERS: Captain? You were not captain when you started, obviously. Suppose when you started they said you're a patrolman, that's what you're going to be no matter how long you stay here, would you start after a while look for a different job? You're going to always have that salary. You're going to always be a police and there is no upward mobility. When you're in the military, and any military or paramilitary organization, there are different levels of rank and as you move up you take on new responsibility but you also get more compensation. If you took that away, you couldn't have discipline in the Army, you couldn't have discipline or morale in the police division. So just try to think in those terms. The people who are managing the prison and the prison guards, they call themselves correctional officers, are locked up with the people. And I said that to let you know why, in my opinion, this is going nowhere except to the trash can. And I don't want to deceive you or mislead you or think I'm as dumb as the mayor and as disingenuous as Ben Gray. We have had studies recently that covered months and, in fact, several years, and one of the problems that was exposed by the World-Herald was they had had such a complex way of trying to calculate good time, they didn't even know how to calculate it themselves. And the problem that created it was a mandatory minimum. When you get a mandatory minimum, that means you can't get any good time during that period. So say you have a five to ten year sentence and the minimum, which is five years, has to be a flat five years. Good time will not cut that in half. So you know that you've got to do that five years and there's no way around it. But they still have to cut that top part in half and that brings it down to five years too. So you're serving a flat five-year sentence with no chance to get good time. Nothing you do will give you good time and you become the bad actor. What they started doing, some of them, in the prison was to bestow good time anyway and everybody, even those who had a mandatory minimum, could get good time. And as a result, people were being released before they should have been. A tentative release date is when you're eligible for parole but that doesn't mean necessarily you'll get it. A mandatory release date is when they mean they have to let you go. So if I'm serving a flat five years day to day, I can do anything I want to and you have to let me go at the end of five years. Nothing you can do to keep me beyond that. That's when society is in trouble. And I'm not going to go through that with everybody, as I said. But since this kind of bill is before us, there can be some better understanding perhaps with just a cursory explanation of good time that I've offered. It's more complex than what I'm saying when you look at variables that are going to be there anyway. But this that they're talking about doesn't even make sense, in my opinion. And I don't mind if you want to respond to anything I've said or all that I've said. It would be unfair for me to say all that when you have questions in your mind or things you'd like to get into the record from your side. And you're free to express your side without any interruption from me. [LB424]

MICHAEL McGEE: Well, Senator, thank you. I think it's...obviously, it's a very complicated issue, as you have said, and this bill I think is a step in the process of looking at, reevaluating how we issue good time. Obviously, with the last 18 months of issues with the penitentiary and the riots and issues that are going on there, something needs to be done. I think this is a step.

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And bringing your knowledge and expertise, along with others, to the table and say how can we come up with a good system. Again, as we talked about earlier, programming and reentry and giving the inmates an opportunity to gain skills, to become, you know, talented and use their gifts on the outside world so they don't reoffend, it's a very complicated, very convoluted process. But we have to start somewhere and reevaluate it and take everybody's opinion and come up with the proper solution. [LB424]

SENATOR CHAMBERS: Well, if we have a director of Corrections with many years of experience, much expertise, has a track record in another location of being able to deal with problems in the prison and comes to Nebraska, and the Governor is interested in giving tax cuts to people when there's not enough money so the Department of Corrections is the invisible agency that nobody sees and nobody cares about. So the director is told when you make a budget request, don't you ask for more money than this. And now this is imaginary, what I'm saying. It's speculative. [LB424]

MICHAEL McGEE: Uh-huh. [LB424]

SENATOR CHAMBERS: The director says, but we can't provide programming with what you're allowing me to ask for; we cannot even keep employees; we cannot pay a competitive salary that's competitive with what a city jailer or county correctional officer gets, so if somebody gets experience here, they'll leave here to go where they can get more money; I can't deal...I can't do it here. Well, that's all you're to ask for and either you're going to follow your boss, the Governor's mandate, or you're going to leave. If you decide to stay there, then you have what's happening in Nebraska now. You have inadequate staff working. You can't fill the slots. You have people who are discontented because they can't get a decent salary. You have people required to work mandatory overtime because they don't have enough employees. Then what they did against my better advice, they put a major prison in a rural area where they had a lot of rural white people, who didn't like black people, Latinos, Native Americans, who would be the guards. They went there and tried to carry out their hostile attitudes and they ran into a landslide of problems and they quit. They didn't want to work there after a time. So then the director tried to draw people in from other areas and didn't have enough money to draw anybody. If they have a problem at Tecumseh and they need assistance from the State Patrol or another law enforcement agency, that help comes from Omaha or it comes from Lincoln, and it takes over an hour to get there. So even when there's an emergency situation, the location of the prison, the way it's being operated, inadequate funds makes everything aggravated. You probably were unaware of this, not because you're an ignorant man. You have duties as a Captain that will take all of your time and could take more time if you had it to give. So when they send people down here who don't understand how the system is functioning now, what they're really having people say is that the director is incompetent, the people who work as guards are incompetent and that's why you have these problems. To an extent that may be true. But there are complications that

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contribute to it all, and even the way the Legislature has passed different laws dealing with good time, trying to respond to how the public felt at a certain time. So here's what happens. You have...let's say you have five different laws. This person is under a system like what you're talking about. It doesn't work. So they try another system, day for day, but they also give additional time, meritorious good time, on top of that. But then they see the discrimination in it so they say, that's not going to work. So what we're going to do now is treat everybody the same. Whoever was sentenced under that first law cannot be given good time under any of the other laws. The good time law applies only to those who are sentenced afterward. So you have several categories of people serving time right now in the same institution accumulating good time at a different rate. They don't know how and when they're going to get out. They are now computerizing and there's a better way for the administration to know, but as far as the inmates are concerned, if I got here under this bad way of doing it and people got in after me and they get out before me and I have behaved, how can you explain to me that the Legislature passed different laws and they don't apply to you? Because you were sentenced under a law, and they were sentenced under a law that came after you, and the law that they were sentenced under is different, you create the hostility. You create the feeling that you're being treated unjustly, and in a sense you are. That's why a system had to be created that would last and survive through all of the changes in attitude of the public and the politicians on the outside. The legislators can be affected, but as long as somebody like me is here, I'm going to try to keep more arbitrariness from coming in. I'm going to ask you a question, because I don't know the answer to it but I suspect I do. If somebody were hired this year in the police department, and the rules and regulations are in place, and then somebody else was hired two years later, would that person operate under a different set of rules and regulations because he or she was hired two years later? Or would the regulations apply to everybody who is now an officer, no matter when they were hired? [LB424]

MICHAEL McGEE: The rules would apply to everyone that...because...they'd be the same in... [LB424]

SENATOR CHAMBERS: And that's the only way it could work. But suppose it were different,... [LB424]

MICHAEL McGEE: Uh-huh. [LB424]

SENATOR CHAMBERS: ...that if you were hired in five years ago and the rules change and there is more offered, you don't get this. You stay under those rules that existed then. You couldn't run a paramilitary organization like the police force and the court would not allow you to treat similarly situated employees differently. Well, you're asking--when I say "you," I don't mean you personally--... [LB424]

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MICHAEL McGEE: I understand that, sir. [LB424]

SENATOR CHAMBERS: ...that inmates be treated in a way that people cannot be treated anywhere else in society. Whatever the rules are, they have to apply to everybody who's there now. The good time rules cannot be applied retroactively. The way it was when you came in is the way it's going to be for you when you get out. If you serve 25 years, you may see five changes in the good time law, but none of them can apply to you. That's part of the difficulty. And maybe when you go back to talk to Mayor Stothert you can indicate that it's not quite as simple as it may seem on the surface. And I'm taking this time with you because you come across as a man who does have some understanding. Your experience equips you to know what it means to exercise command responsibility. There is authority but there's also responsibility, and you have to do things and know how to do things that a patrolman doesn't have to worry about, a lieutenant doesn't have to worry about, a sergeant doesn't have to worry about. If the sergeant messes up he says, Lieutenant; Lieutenant messes up, Captain; and right on up the chain. But if you're in the situation where there is not that line or that ranking, then you couldn't operate. And I know it took time, but I think in a situation like this the time would be well spent. And if you're still a captain, by that I don't mean something will happen to you, when another mayor comes here and wants to send you down here tell him: I don't want to go into that buzz saw; why don't you go down there and talk to them since it's what you want to do? And you won't find a mayor coming down here. What I want to do is see who else...do you know if anybody else is going to speak for the city of Omaha, or were you that sacrificial lamb and the only one? [LB424]

MICHAEL McGEE: For the city of Omaha, I believe I'm the only one. [LB424]

SENATOR CHAMBERS: Because I was going to say I'm going to see how whoever else comes after you speaks. Is this your first time speaking on this issue? [LB424]

MICHAEL McGEE: Yes, sir. [LB424]

SENATOR CHAMBERS: My condolences. [LB424]

MICHAEL McGEE: That's okay. [LB424]

SENATOR CHAMBERS: But, look, I have to discuss things with you in the way that I'm doing and I hope you don't feel that I tried to demean you... [LB424]

MICHAEL McGEE: No. [LB424]

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SENATOR CHAMBERS: ...in any kind of way but to let you know that it's not because you didn't give a good presentation. It's not because you are venial or you're uncaring. There is a system in place now that's complicated and, as policymakers, we have to look beyond... [LB424]

MICHAEL McGEE: Absolutely. [LB424]

SENATOR CHAMBERS: ...this particular time when a president of the city council and a mayor are in tight races so they want to change a system that is doing all it can to just maintain its equilibrium right now. But that's all that I would...Madam Chair, I am not going to apologize. That's all that I had. [LB424]

SENATOR PANSING BROOKS: Okay. I did have some but I think I'm going to pass on that. So thank you very much... [LB424]

MICHAEL McGEE: All right. Thank you. [LB424]

SENATOR PANSING BROOKS: ...for coming, Captain. [LB424]

MICHAEL McGEE: Thank you, sir. [LB424]

SENATOR PANSING BROOKS: Thank you for your service. Okay, any other proponents? Proponents. Okay, what about opponents? Any opponents? Okay. Welcome. [LB424]

ROBERT BRYAN: Thank you. My name is Robert Bryan, R-o-b-e-r-t B-r-y-a-n, and I am pastor of Followers of Christ prison ministry of the Nebraska Synod of the Evangelical Lutheran Church in America and full-time volunteer clergy in the Department of Corrections. And I am against this bill for all the reasons that Senator Chambers described. Thank you very much for the tutorial on good time. One of the men that I have visited with over the last six years, he's an inmate named Jose Rodriguez (phonetic), and he sent me a rather frantic e-mail through Access Corrections yesterday saying, please, please testify against it. And he said in this e-mail, there's no way that it will be applied fairly; plus, you can't get into programming as it is. So how can you earn something when you can't get access to it in the first place? Basically, we've talked about the lack of programming and access to the things that this bill would require to supposedly earn your good time. From what I know, if you misbehave, you lose the good time that you have. It's like everybody starts out the school year with an A and then you see where you end up at the end, see if you still have an A. If you haven't studied, if you haven't done what's required, you lose it. I wouldn't describe it as earned but it's an incentive to good behavior. So this bill is really screwed up. I'm sorry I don't have a technical term for it but I'm against it. It would be harmful to

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the safety of the staff as the inmates lose that incentive to good behavior. With all the bad things that have been going on at Tecumseh from last Mother's Day to last week to there was just a lockdown in Unit 2 at NSP the other day where they didn't want to be outdone by Tecumseh, there's too much frustration in the system for the lack of programming. So anyways, thank you very much. I don't want to repeat what's already been said. [LB424]

SENATOR PANSING BROOKS: Thank you very much for coming. I appreciate it. [LB424]

ROBERT BRYAN: Thank you. [LB424]

SENATOR PANSING BROOKS: (Exhibits 1 and 2) Any additional opponents? Anybody in the neutral? Okay, Senator Ebke, waives closing and that...let's see, there are some letters. Melissa Money-Beecher...no? Oh, sorry, I have the wrong...oh, I'm sorry. I'm on the wrong one. Sorry. We are down here. There are two letters of support: Ben Gray from the Omaha City Council, and John Wells from the Omaha Police Officers' Association. So that closes our hearing on LB424 and thank you all for coming. Happy weekend. [LB424]