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Judiciary Committee
January 18, 2018

[LB678 LB776 LB818 LB819 LB878]

The Committee on Judiciary met at 1:30 p.m. on Thursday, January 18, 2018, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB776, LB678, LB819, LB818, and LB878. Senators present: Laura Ebke, Chairperson; Patty Pansing Brooks, Vice Chairperson; Roy Baker; Ernie Chambers; Steve Halloran; Matt Hansen; Bob Krist; and Adam Morfeld. Senators absent: None.

SENATOR EBKE: Good afternoon. Welcome to the Judiciary Committee. My name is Laura Ebke. I'm from Crete, representing Legislative District 32. I chair this committee. I'd like to start off by having my colleagues introduce themselves. Let's start with Senator Halloran today.

SENATOR PANSING BROOKS: Let's do.

SENATOR EBKE: Yeah.

SENATOR HALLORAN: Thank you. Steve Halloran, District 33, Adams County and southern and western Hall County.

SENATOR HANSEN: Matt Hansen, District 26, Lincoln.

SENATOR PANSING BROOKS: Patty Pansing Brooks, District 28 right here in the heart of Lincoln.

SENATOR KRIST: Bob Krist, District 10, and I think that Halloran is on the far left of you, isn't he?

SENATOR EBKE: Yeah. [LB776]

SENATOR KRIST: Far left?

SENATOR EBKE: Yeah, that's something different, though.

SENATOR KRIST: You're welcome.

SENATOR BAKER: Roy Baker, District 30, Gage County and some of Lancaster County.

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SENATOR EBKE: And Senator Chambers and Senator Morfeld will probably be joining us here shortly. Assisting the committee today is Laurie Vollertsen, who is our committee clerk, and Dick Clark, who is one of our two legal counsels. Our committee pages, Sam isn't here right now: Sam Baird and Rebecca Daugherty. On the table at the front over there by the entrance you will find some yellow testifier sheets. If you are planning on testifying 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. Also, for future reference, if you are planning on testifying or coming to any of the hearings in any of the committees, if you are not testifying in person on a bill and would like to submit a letter for the official record, all committees now have a deadline of 5:00 p.m. the day before the hearing, so that's if you have a letter that you want to submit but you won't be testifying. We will begin bill testimony with the introducer's opening statement. Following the opening we'll hear from proponents of the bill and opponents of the bill, followed by those speaking in a neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We ask that you begin your testimony by giving us your first and last name and then spell them for the record. If you are going to testify, I ask that we keep the on-deck chairs filled. The on-deck chairs have the yellow signs right there. Hi. And let's keep those filled so that we can keep things moving. If you have 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 three-minute light system. The Judiciary Committee has quite a number of bills this year and we all hope to be home in bed before 10:00. So we're using a three-minute light system. The yellow light turns on at the one-minute warning. And when the red light comes on we ask that you wrap up your final thought and stop. At three minutes and 30 seconds, 30 seconds beyond the red light, a buzzer goes off. Just wait, (laugh) Senator McCollister. We won't do it to you, though. As a matter of committee policy I would like to remind everyone that the use of cell phones and other electronic devices is not allowed during public hearings, though senators may use them to take notes or stay in contact with staff in their office. At this time I would ask that everyone take a look at their cell phones and make sure that they are on silent or vibrate mode so that they don't disturb things. Also, verbal outbursts or applause are not permitted in the hearing rooms. Such behavior may be cause for you to be asked to leave the hearing room. One more thing, you may notice committee members coming and going. That has nothing to do with the importance of the bills being heard but, rather, senators have bills to introduce in other committees or other meetings. So with that said, we will begin today's hearing. I will note that Senator Chambers has joined us. Thank you. And, Senator McCollister, LB776. [LB776]

SENATOR MCCOLLISTER: Good afternoon, Chairwoman Ebke and members of one of my favorite committees. [LB776]

SENATOR EBKE: Well, welcome again. (Laugh) [LB776]

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SENATOR McCOLLISTER: I'm 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 LB776 to address two concerns: first, the high cost of phone service for Nebraskans behind bars; secondly, the right to have a confidential phone call with your attorney, even if you are currently behind bars. It's important for people behind bars to retain lifelines to their families and their attorneys. Studies have shown that maintaining contact with outside forces reduces the chances of reoffending, so keeping family ties strong strengthens the offender's chances of being rehabilitated, and it also improves the outcome for children who are left at home. The Nebraskans who are impacted by these issues aren't the only ones you may think. On any given day, half of the county jail detainees in Nebraska are pretrial detainees. They are still presumed innocent. But all offenders, whether they're convicted or not and whether they are charged with a serious felony or a misdemeanor, have the need to stay in touch with their parents, their spouses, and their children. Keeping them in touch with their homes is good for them and good for public safety. Of course, county jails have expenses associated with housing people, and LB776 would allow them to continue to charge for phone services. Last year a state survey of all county jails by the ACLU revealed that a 15-minute phone call might cost anywhere between \$2 and \$20. That's just unacceptable. LB776 would ensure that city and county budgets are not based on the assumption they can make a profit from their detainees. Reasonable rates would be determined by the Jail Standards Board, an independent body of state government. The other significant focus of LB776 is ensuring that the Sixth Amendment, the constitutional right to counsel, is protected by making sure phone calls between lawyers and their clients behind bars are treated as truly confidential. You will hear from one testifier how 59 of his calls with his client, accused client, were recorded by the sheriff and provided to the prosecutor. No one can prepare for their upcoming trial if we can't be sure that people are speaking to their attorney without the other side recording those calls. I've been provided with documentation from the Crime Commission that at least four more counties have written policies but were mistakenly identified as having no policy in the report. I am pleased that there are more policies enforced than originally reported, but the fact remains that far too many counties have no written guidance about how to ensure attorney calls are confidential and free. I believe that we can all agree that ensuring clear, constitutional, uniform standards across the state makes sense. The Nebraska Department of Correctional Services has proven that quality phone service can be provided without excessive charges that far exceed unreasonable cost. LB776 properly asks that the city and county jails meet the same standard. Those opponents that you will note out here today will tell you that...about scary fiscal notes, scary county fiscal notes. Don't believe the numbers. Let's take example, Douglas County. According to report, the ACLU report, Douglas County received \$617,000 in fees off of detainees and their families; Lancaster County, \$397,000; Sarpy County, \$38,000. Well, they'll still be encouraged and allowed to charge reasonable fees for phone services. So whether the Jail Standards Board comes to a conclusion that, of that \$617,000 for Douglas County, a third can be charged, that's what the amount will be. Maybe it's a half, half of that amount instead of...maybe it's two-thirds, but they can determine. So don't let them come up and tell you that they're going

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to lose \$617,000 or \$397,000 or \$38,000. They can still charge a fee. They will also come up here and plead poverty--not so, not so. You know, they unreasonably burden families and inmates with fees that are simply unreasonable. I think we can say that the counties are being disingenuous when they give that amount. Take Douglas County, for example. They have a budget of \$317 million, \$317 million. How about Lancaster County? \$141 million. Sarpy County: \$90 million. You know they can afford to at least not burden prisoners and their families with these fees. Thank you very much. Prepared to answer any questions. [LB776]

SENATOR EBKE: Any questions? Senator Krist. [LB776]

SENATOR KRIST: I just, so that some testifier...thanks, Senator McCollister, for bringing this bill. So some testifier might be able to talk to this, but many of us get phone calls on a routine basis from inside the system someplace. Recently it has been a change in the state correctional system, and I think a bad change, in my opinion. We should be able to accept a collect phone call and our system is set up so that our phones can accept collect phone calls from our constituents, not so much anymore from lockup. I have to present a personal...none of us have a state credit card. We don't deal that way. So I have to give a personal credit card in order to get a phone call from that same gentleman who, you know, six months ago was able to call me and make a collect call. And I think as long as we're talking about phone services, particularly those who are incarcerated, calling your representative, if there is an issue, particularly with the Corrections issues that we have had in the last many years, that it's a critical part of the feedback that I want to receive. So I'll be asking the Corrections Department to weigh in if they're not here to weigh in on this, both to the committee and publicly, why this change of vendor now is requiring me as a state senator to provide a personal credit card to get a phone call from inside the system. So thank you. [LB776]

SENATOR EBKE: Other questions? Senator Chambers. [LB776]

SENATOR CHAMBERS: And following the lead of Senator Krist, I will question them very closely on what right they think they have to hide behind this scheme, this scam, this extortion, adding additional fines to a person's sentence. They're not sentenced to be without contact to their family, charged exorbitant rates that are used by these institutions to underwrite costs that ought to be assumed by the governing body of which they're a part, whether it's the city jail, a county jail, or the State Penitentiary, so I want them to get ready and I hope they're wearing their asbestos trousers, or dresses as the case may be. [LB776]

SENATOR McCOLLISTER: Thank you, Senator. [LB776]

SENATOR EBKE: Senator Pansing Brooks. [LB776]

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SENATOR PANSING BROOKS: Thank you, Chair Ebke. Thank you for bringing this bill, Senator McCollister. This was part of our study this summer and I really appreciate you bringing this. And it's so important as we learn. Of course access to families is critical to helping inmates reenter and reconnect within our community when they're done with their sentencing time. And so if we are making it more onerous or precipitously stopping inmates from being able to connect with those whom they love, it just doesn't even make any sense, so...and it also has to do with access to counsel and, as you said, and I'm really concerned about this as well. So thank you very much for bringing this. It's really important. [LB776]

SENATOR McCOLLISTER: Thank you, Senator. [LB776]

SENATOR EBKE: Other questions? Are you going to stay around to close? [LB776]

SENATOR McCOLLISTER: I'll waive closing now. [LB776]

SENATOR EBKE: Okay. [LB776]

SENATOR McCOLLISTER: And I'll come back after the...I'm going to come back at the end of the hearing. [LB776]

SENATOR EBKE: So you'll close later. [LB776]

SENATOR McCOLLISTER: Yeah. [LB776]

SENATOR EBKE: Okay, gotcha. Okay, first proponent. [LB776]

FRAN KAYE: Thank you for allowing me to come here today. My name is Fran Kaye, F-r-a-n K-a-y-e. I am a long-time prison volunteer. I know a lot of people who have been in prison who get out and who, for some reason, end up in county jail or their kid ends up in county jail. And I've spend more hundreds of dollars than I want to think about in accepting those phone calls. I want to explain a little bit of things that I've seen within the system that make it even harder than it looks like for people who are in county jails to remain in touch with their family. For one thing, some counties charge more for an out-of-county call than an in-county call, although I can't see that that, anymore, that that makes sense. You can rent phone numbers from third-party companies that allow you to make a call as if you were in county, which means that people are paying money to third parties that don't have anything to do with anything and that take money away from both the county jail and, particularly, from the person who is trying to keep in touch. When you buy time so that your person may call you, you can buy it in increments, but the

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charge is the same for each increment. So if you buy \$20, it'll cost you an \$8 fee. If you buy \$100, it'll cost you an \$8 fee. If you don't have enough money to buy \$100 at a time, you are paying five extra \$8 fees just to come out with the same amount. That is in addition to whatever the...it may cost for the phone call. If a phone call is dropped? Tough, you suck it up. If that was your only phone call that week? Oh, well. If a phone call is unintelligible, it's a bad connection, tough, suck it up, that was your phone call for the week. I've been a position where I'm frantically trying to put money on my phone so that I can talk to somebody who is telling me something that I can't understand and I need to be able to get another phone call. I've also been in the position frequently of my person will call me up and say, my friend Jim (phonetic) is here, he can't get in touch with his wife, Barbara (phonetic), here is her phone number, please ask her to put some money on her phone. Then I will talk to Barbara and she says, I can't, I cannot put money on the phone, I can't even get a card from Walmart because I need a Visa card to put the money on the phone, I don't have a Visa card, I don't even have the \$3 to buy the Visa card to load. I see all these extra charges and it's just not fair so I'm extremely grateful to Senator McCollister for proposing this bill and I hope that you guys will support it. Thank you very much. [LB776]

SENATOR EBKE: Thank you, Ms. Kaye. Any questions, comments? Senator Pansing Brooks. [LB776]

SENATOR PANSING BROOKS: Can't help it. Now that you're up here, Ms. Kaye, I just want to thank you. Really, of all the people who attempt to do good work for so many years, for out of the great kindness of your humanitarian heart, I've seen you interacting with prisoners and inmates, I've seen the humanity that you acknowledge the people that are most in need with, and I just...I thank you so much for your work that's truly spiritual in its intent and what happens to others around you. Thank you. [LB776]

FRAN KAYE: Well, thank you very much. You're going to make me cry. [LB776]

SENATOR EBKE: Next proponent. [LB776]

KELLEE KUCERA-MORENO: Hi. Kellee Kucera-Moreno, K-e-l-l-e-e K-u-c-e-r-a M-o-r-e-n-o. Glad to be back again. I came and saw you guys yesterday. It looked like there were some good things to discuss here. I'm...my husband is incarcerated and I am basically supporting him on all levels. If I don't send him money, put money on his book, he's considered indigent. Still in the honeymoon phase, so I don't mind calling him and talking to him, probably costs me \$50 a month just off the top of my head. And like everything she said, I just...I ditto. You know, she was more eloquent than I am. First of all, there is an emergency right now in the prison system. People are in there that shouldn't be in there. Part of the reason in our situation is we could not

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get ahold of our attorney. He was hard to get ahold of and when my husband would call out and try to get in contact with him, his phone calls would be rejected. And so then I...on my personal time, he's trying to get me to call. You know, I mean, I can't do this. This isn't my job. Inmates and inmate families are people too. I can't believe that we're not...that we're discussing some of these things. I hope people keep an open mind and know that this isn't just their job but that there are people we're trying to get back in the community and we're not waiting for them to come out. We're doing our lives now. And so a mother, whoever, has 15 minutes to talk to their loved one a day and pay for it and then have somebody supervise the conversation. It's...I don't know if inhumane is the word or what it is, but it's not okay. So with that... [LB776]

SENATOR EBKE: Okay. Thank you. Any questions? Thanks for being here again today. Next proponent. [LB776]

JULIA TSE: (Exhibits 1 and 2) Good afternoon, Chairwoman Ebke and members of the Judiciary Committee. My name is Julia Tse, J-u-l-i-a T-s-e, and I am the policy coordinator for economic stability and health at Voices for Children in Nebraska. Voices for Children is the independent voice building pathways to opportunities for all kids and families in our state. And in the last year or so this...I've had the pleasure of testifying before this committee about the impact of our adult justice system on children in our state and I think that it bears repeating that the latest research shows that there are at least 41,000 kids in our state that have been affected by parental incarceration, which is roughly one in ten children in our state. We support LB776 because it would ease at least one form of adversity that many Nebraska children experience during parental incarceration. Last year we coordinated a series of listening sessions with Nebraskans who have been touched by parental incarceration and they shared a lot with us and one thing was consistent in nearly every experience. The loss of one parent to incarceration often sets off a domino effect of a number of other issues, a loss of income, an abrupt loss of a key figure in their life. Though everyone that we spoke to said that budgets were tighter and there were fewer hands to help with the chores, they all understood that it was important to maintain contact during incarceration, so they would make sacrifices. They would take on a second job or they would just make it work so that their kids could have at least one call a day or, if it was allowed, they could have multiple. And the research confirms what many Nebraskans told us. We can't undo the trauma that this inflicts on children but we can try our best to reduce the harm that children experience oftentimes for the rest of their lives. The brain science on adverse childhood experiences, or ACEs, is pretty clear on this. Stressful events trigger a biological response that lasts for a lifetime and produces poor outcomes in development, mental and physical health, and risk-taking behaviors, sometimes leading children down their own path in the justice system. And this, we know that this only exacerbates the everyday difficulties for children in this situation. Incarceration already disproportionately affects low-income communities that are oftentimes high in crime and violence and heavily underresourced in being able to provide the necessary services and supports that children would need. Voices for Children in Nebraska

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supports LB776 because it is a first step in a key movement to ensure that justice policy is informed by a long-term vision of what we want for children who are left behind. The financial exploitation of a child's need to be in touch with their parent is immoral and shortsighted. Instead, we must support parents in their role so that they can continue to be a source of support and love. And thank you to Senator McCollister and this committee. We respectfully urge you to advance LB776. [LB776]

SENATOR EBKE: Okay. Thank you. Questions? Thanks for being here today. [LB776]

JULIE TSE: Thank you. [LB776]

SENATOR EBKE: Next proponent. If there are any others, move on up. [LB776]

AMY MILLER: (Exhibits 3 and 4) Good afternoon, Senators. My name is Amy Miller, A-m-y M-i-l-l-e-r. I'm legal director for the ACLU of Nebraska. As you just heard, there's a lot of science out there about how families need to stay in touch with their kids. The focus on making sure that our Nebraska children are taken care of, we want to also emphasize the scientific studies that show that people who are behind bars do better when they remain in contact with their families. Recidivism rates come down for those prisoners who maintain contact with their families on the outside, meaning this isn't just good for the kids and the offenders but for public safety and Nebraska as a whole. We're distributing a copy of the report that we released this summer where we surveyed with open records requests all 64 county jails. I know what you're thinking, that there's 93 counties. Not all of them have a county facility jail and they all provided the information by open records request. It's cited in the appendix. It's rare for me to come before this committee and say that our State Department of Corrections is a model. I'm going to say that very clearly. The State Department of Corrections currently has a no-commissions policy, so whatever other problems there are with phone contact within our state prisons, under Director Frakes they've moved to providing phone service for the actual cost it costs to provide. That's all that this bill is asking we do for the counties as well. You'll see from the cost tables that the cost of phone calls varies widely, and that's because each county engages in choosing a company, entering into a contract among competing private for-profit companies, and these companies shamelessly advertise that they are looking to bring you the highest commission possible. Keep in mind that especially at the county jail half our county jail population are pretrial detainees. They've not been convicted of a crime. They're still presumed innocent. And the average nonviolent offender, someone who is not facing serious time, is going to do 48 days behind bars, 48 days with very expensive rates to call home, to call their boss, or to call their lawyer, which is the reason we need reform. Now you'll hear from testifiers coming behind me about the attorney confidentiality aspect. We think that that also is something that is very clear. Attorneys, especially in greater Nebraska, have long distances to drive, so it's hard to do in person. They

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need to be able to have confidential phone conversations, which you're going to hear some of the concerns and the real-world problems that have emerged when it turns out that attorney calls are being recorded and then provided to the prosecutor. LB776 will put Nebraska in a place where many other states have already gone. The FCC has lit the path forward, but the FCC can't govern what's happening within state borders. That could only happen from this body. It would bring us into line with other states like Illinois, Mississippi, New Mexico, that have made sure that there is not moneymaking off of the lifelines that are keeping people safe and making our communities safer. Thank you to Senator McCollister and the cosponsors for the bill, and I'm happy to answer any questions you might have. [LB776]

SENATOR EBKE: Senator Krist. [LB776]

SENATOR KRIST: So just because all of you can't see this and the public is not going to get, I'm sure, a written summary of this, I'm looking at page 7 in "Profiting Off Lifelines: Nebraska County Jail Phone Systems Lead to High Costs," published by the ACLU. And I don't see a date on this thing. [LB776]

AMY MILLER: Just (inaudible) from earlier last year, so late 2017. [LB776]

SENATOR KRIST: Okay, so this is basically a year, almost a year. It lists the name of companies by county in a color-coding system. Now if you're out there listening to this, I want you to understand that no matter if you've been...had your personal freedoms taken away or not, I think you'd be outraged if you had to spend \$7-10 for a 15-minute phone call in an age that most of us don't pay long distance, at all, for anything. Let's go to the next one, company: \$14-19 a minute for 15 minutes. Another one: \$8-14 for 15 minutes. Then there's the lucky counties that don't have any county jails and don't have the problems. But this, this diagram, shows clearly that there's...I don't know, I guess Shylock is alive and well in...from the play. But it looks like usury to me. So would you like to comment on that? [LB776]

AMY MILLER: Yes, thank you, Senator. This report is available on our Web site, so if there is someone who later, for the transcript purposes, or someone who is watching on-line, at aclunbraska.org they can see a copy of the report. We're also happy to send a copy to anyone who asks. I have a few extra copies at my desk. The...one of the shocking things, and your first testifier, Ms. Kaye, referenced it, that each company and each county sets these rates but calling down the street is more expensive than calling out of state. So unfortunately, knowing that most moms or wives or kids who are waiting to get in touch with a loved one behind bars is probably just down the street, that's where the highest rates are. The people who are going to call across county lines or across state lines will pay less. This is deliberately designed to make money and while we understand that counties should, as LB776 allows to have a revenue appropriate to the

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costs that are being expended, nobody intended our criminal justice system to be a moneymaker for county budgets. That's obscene, especially when we're talking about people who mostly are still presumed innocent. When you have then not only that the counties make a temporary dollar today, but if that increases recidivism, that means society pays tomorrow. So the for-profit companies are the ones here that need to be reined in with some regulation and, since the FCC doesn't have the authority to do that, being able to fix these rates to provide the cost so that people aren't going to get free phone calls to call home but they'll pay what it costs the county to actually provide the service. [LB776]

SENATOR KRIST: Thank you, Amy. [LB776]

SENATOR EBKE: Senator Chambers. [LB776]

SENATOR CHAMBERS: Because you are an attorney, you'll understand what I'm getting at, and that's not to say you agree with it. I've filed complaints against lawyers running from the Attorney General down to private practitioners, complaints against judges. As I read the ethical standards that the judges are required to meet, that the lawyers are required to meet, I think that the Attorney General's Office, I think the prosecutors are reprehensible, dishonest, and unfit to be lawyers if the standards they're supposed to meet are really applied. For them to be aware of the fact that people who have had their freedom taken from them by the state will be gouged in this manner, which would be considered extortion and against the law if done by others, marks them as people not worthy of respect. And I will...they know I don't respect them. They know what the law is. They know that when a person...let's say that a person is legally arrested, constitutionally charged, given a fair trial, not just technically but a fair trial before an impartial jury, and is convicted on the basis of unimpeachable, overwhelming evidence so there is no question about guilt. The judge sentences the person to a term well within the range of what obtains for that offense. Even under those circumstances, no person is to be deprived of his or her human dignity by the state and its agents. They are not to treat people in a way that itself is criminal and know that they are exempt from anything because the Attorney General has nobody he is accountable to, the Governor is not accountable to anybody, and they've raised that bugaboo about keeping the public safe yet they're more criminal in their misconduct than the ones they convict because they are not moved by circumstances where, not a justification, may feel the need to go outside the law and they're being punished for it. These rascals and rats get away with it. They know that they are wrong and they say, do something about it. Well, they can buffalo the inmates, they can buffalo their families, they can buffalo members of the Legislature, but as one person I'm going to do what I can to expose them. I'm going to use the Legislature as my bully pulpit and I'm going to get concrete examples of them, the kind of cases they bring, then see that that is not squared with the conduct they themselves engage in. Now here's the question I want to put to you, and you can disregard everything I say, I've said so far. The constitution entitles a person to

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representation by competent counsel. Would in your mind that representation include the lawyer having untrammelled, within the bounds of reasonableness, access to his or her client? [LB776]

AMY MILLER: Absolutely, Senator. One of the most important times that's important is in the pretrial period. So people who have been convicted, the courts have analyzed phone access with a slight more skepticism because they...rarely is that a pending, urgent case. But the Eighth Circuit, which is the federal circuit covering Nebraska, has held pretrial detainees' interest rights in, especially, having phone contact or confidential face-to-face meetings that are not monitored, are essential and must be protected under the Sixth Amendment. So one reason that regulation now makes sense is to not have then a wave of litigation against these counties that are either recording calls or making them so expensive that the attorney and the client can't actively speak. And for the public defenders or the attorneys who are working on these cases, they're caught between a rock and a hard place. Their ethical obligations require them to have a confidential relationship. But if you know that the sheriff is listening in, can you still go down and talk to your client or call your client? The Nebraska Supreme Court's ethics guidance have recognized, along with the Eighth Circuit, that these phone calls should be confidential. I think that's why it was such a shock for so many of us to realize, after looking at the survey, that they're not. And as I mentioned, you'll hear from one of the attorneys who was given a disc with all of his phone calls with his client behind bars. You can't run the scales of justice that way. One reason that the scales of justice balance back and forth is because both sides are trying to seek truth. But if one side has its finger on the scale and is listening in on the strategy conversations, you aren't possibly going to have a fair day in court. [LB776]

SENATOR CHAMBERS: And I'm not going to pursue this with you because, the more I talk about it, the more inflamed I become. But there are others who will testify. I'll be able to engage them. But I appreciate the opportunity to chat with you. Thank you. [LB776]

AMY MILLER: Thank you, Senator. [LB776]

SENATOR EBKE: Other questions? Senator Pansing Brooks. [LB776]

SENATOR PANSING BROOKS: Thank you. Thank you for coming, Ms. Miller. Again, it's just so aggravating when you look at the map. Again, it's justice by geography and we have other instances of that. I've continued to fight for the right to counsel for juveniles across this state and this is just one more thing where we are balancing budgets for counties on the backs of the most vulnerable. And it's so aggravating to me. And the fact that kids can't get counsel, maybe if the counties can't afford to keep those courthouses open, maybe we need to consolidate and close courtrooms if that's the problem, so, literally. And if the state needs to come in and do a better job, then let's discuss that. But to be determining out of the blue that we're going to tromp on

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people's constitutional rights, and children's constitutional rights, in the name of the almighty dollar, then we are not providing justice. And it is very frustrating to me and thank you for bringing this to light. I also want to commend Director Frakes for his vision not to do this and not to play this game with the inmates and with state dollars. [LB776]

AMY MILLER: Yeah. Senator, I would agree with you that one of the more troubling things that you see from the geography spread there is that the counties where the attorney or the family would have the longest distance to travel, possibly to visit in person if they couldn't afford a phone call, are the ones that are charging the most. And so some of the stories we've told in the report, and I think you'll hear from some people whose lives have been affected by this, they're going to talk about the fact that you're trying to choose: I can drive two hours to see my loved one or call them for 15 minutes or buy groceries. When these calls are this expensive, especially in the places that are quite far flung, you are talking about justice by geography. In a perfect world, if we could improve our pretrial systems so that more people are sent home on bond that is reasonable, rather than detain so many people pretrial, this might dry up as well, but in the meantime at least eliminating profit commissions should go a long way to improving people's access to their families and their lawyers. [LB776]

SENATOR PANSING BROOKS: Thank you. [LB776]

SENATOR EBKE: Other questions? Thank you, Ms. Miller. [LB776]

AMY MILLER: Thank you. [LB776]

SENATOR EBKE: Next proponent. [LB776]

SARAH NEWELL: Good afternoon, Senator Ebke and committee members. My name is Sarah Newell, S-a-r-a-h N-e-w-e-l-l, and I am a criminal defense attorney who travels, who represents indigent clients on a statewide basis. I'm testifying today on behalf of the Bar Association, who has taken a position supporting certain provisions in the bill, specifically line...or page 3, lines 28-31, and page 6, lines 11-14, and I'll just read them to you briefly, which basically provide...I won't read them actually. You can read them. [LB776]

SENATOR EBKE: (Inaudible.) [LB776]

SARAH NEWELL: They provide or require that in a prepaid system, that there be free, confidential, privileged accessed to counsel between attorneys and their clients. I'm also to inform the committee here that the Bar Association is also in support of changing the language

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in those specific lines from "their attorney" to "an attorney" in order to broaden the scope to acknowledge that people that are in custody are not always just talking to their criminal defense attorneys, that they may be seeking civil representation or have other cases pending, and so they might be looking for an attorney prospectively or be talking to somebody else in a different realm. So those are the two provisions that I wanted to speak to. Part of my testimony today, I guess part of the reason I'm here, is to provide some kind of insight as to what I am experiencing across the state and also why this provision is so important. As an indigent defense attorney who travels the state, I have noted...the ACLU's report mentions that there's a significant variance in internal rules regarding client communications and that varies by county, and that is my experience. I have clients in Douglas County, Lancaster County, all over the state, and there is a very significant variety of exposures and experiences that I've had. Most of the time my clients do generally get access to me that is free and unfettered, but it doesn't always come easily. Oftentimes they have to call on a prepaid call initially and then I have to call the jail and explain, no, this is a...you know, this is client communications, this should not be recorded, you should be, you know, giving him access to me whenever he wants to, he or she, and that is not always the case. Oftentimes they call collect and I often have difficulties having to call and say, no, we shouldn't, we can't be accepting, you know, collect calls on a regular basis, we need to set this up within the system. Most of the time, those companies--it's usually Encartele--most of the time they are willing to work with us, but it does take some time to get there. I also have received, and other people in my office have received, through the discovery process recorded phone calls between our...you know, people within our office, attorneys within our office and the clients. Historically those have generally been caught by the prosecutors and they've told us that they haven't listened to them, but that is a problem with not everything is getting caught and is slipping through the system that they think exists and they think is being...is sufficient to protect. I see that I'm close to being out of time and so I guess I will just say quickly that in terms of the importance, every communication I have with a client I start with explaining confidentiality and I start with explaining privilege so that they understand, you know, it's about building a relationship and a trusting relationship with clients because their lives are in your hands and they oftentimes have to talk about very sensitive...may I finish this statement, Senator? [LB776]

SENATOR EBKE: Thank you. [LB776]

SARAH NEWELL: I'm out of time. I just... [LB776]

SENATOR EBKE: You have 15 seconds left but that... [LB776]

SARAH NEWELL: Oh, okay, I just...I'm used to the Supreme Court when I get the light. I... [LB776]

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SENATOR EBKE: (Inaudible) that's okay. You can finish your sentence. [LB776]

SARAH NEWELL: Thank you. Oftentimes, you know, we're talking about very sensitive information and you're trying to build a relationship with someone and convince them to talk with you about very intimate details, whether it's a sex assault case or a murder case or even a DUI. You know, you're talking about embarrassing things with people and they need to feel comfortable and know that the things that you are...that they are telling you stay with you and are not going to be exposed and disclosed to the county attorney. And the biggest problem with receiving in discovery communications between attorney and client, means that even though...I mean I can't honestly tell my client, no, this isn't recorded, because a lot of times our clients are concerned and they're saying, hey, I want you to come visit me and I want to...I don't want to talk about anything over the phone. And I try to do that as much as possible but I'm in Lincoln and, you know, I have clients in Scottsbluff and, you know, going out there every two weeks costs a lot of money to the state as well. So those are factors I guess I have insight on if the court has... [LB776]

SENATOR EBKE: Thank you. [LB776]

SARAH NEWELL: ...or the committee has questions. [LB776]

SENATOR EBKE: Okay, so you tell a lawyer that they can finish their sentence and... [LB776]

SARAH NEWELL: I'm sorry. I (inaudible). [LB776]

SENATOR EBKE: That's okay. (Laughter) It's okay. [LB776]

SARAH NEWELL: There's nothing like saying "I'll be brief" to... [LB776]

SENATOR EBKE: That's right, yeah. (Laugh) [LB776]

SARAH NEWELL: ...make sure it's not brief. [LB776]

SENATOR EBKE: Any questions? Senator Krist. [LB776]

SENATOR KRIST: Law school, I think they teach sentence and thesis are the same thing. [LB776]

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SENATOR EBKE: That's right. [LB776]

SARAH NEWELL: There's a lot of semicolons in there. [LB776]

SENATOR EBKE: It's lots, lots of semicolons. [LB776]

SARAH NEWELL: Sorry. [LB776]

SENATOR KRIST: No. I guess when you were explaining that, I was trying to envision. There's a...first of all, the confidentiality is a concern, there is no question, but I was trying to envision with a new client, if he's only given X number of minutes on the phone, what you just did is a full one-third, probably, of his time, so, gaining trust and all of that. Are there any provisions that you've dealt with across the state that allow a conversation between an attorney and client to have more than the allotted time, at least on the initial phase? [LB776]

SARAH NEWELL: I would tell you that in general when it's clear that they're talking to their attorney, they have unfettered time limits. Sometimes they'll put them back in their cells for count or things like that, but for the most part they give us unfettered access. The real problem is making sure that their system separates out our calls from the calls that they're making to friends and family, because I think a lot of times what they do is they track it by a phone number. So they ask your client, well, what number is your attorney at? And then they separate those out. I'm not convinced that they're not still recorded. I think that they just track those numbers and then they just don't give those calls under that number to the prosecutor, which means that sometimes there's going to be mistakes. Also, the biggest problem I have seen routinely under that system is that our office has numerous phone numbers and I have a direct line, which is normally what I give to my clients, and then we have a general office number. And so also there are times when I might take a call to a client in another attorney's, like, you know, one of my coworkers down the hall, we're talking through something and I'll take the call in their office and that call might, because it's under a different number, it might not get caught, and so it'll slip through and those kind of things will be recorded. And so the tiniest little thing, I mean, even if you're just talking basic strategy with your client, if that kind of information gets through to the county attorney or the prosecutor, and even if they're not trying to listen, a lot of troubling information can be communicated that really does undermine your ability to represent your client, their confidence in you, and their confidence in the system, and also your ability to provide that person a fair trial, because even if strategy is slipping through inadvertently, the most honorable prosecutor, you can't unring the bell. Once things are heard, you can't unhear them. So I guess the...and I understand that there's more egregious situations and they'll be addressed next, but there are situations where, you know, I might be put in a position that I have to ask to recuse that

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prosecutor or recuse the entire office, depending on how deep that information has been spread, so. [LB776]

SENATOR KRIST: So your testimony is on behalf of the bar? [LB776]

SARAH NEWELL: Yes. [LB776]

SENATOR KRIST: Does the bar have an idea--let's say we go back to some kind of common base, whether it's the commission or whether it's the jails or whatever, and ask them for a fix to this situation--does the bar have an idea of what would work statewide if we have the desire to impose that kind of legislation? [LB776]

SARAH NEWELL: I would say that the Bar Association at this point has, because of the diversity of viewpoints within its membership, has taken a position that they support the language that I referenced, but they're not I think wanting to delve into the specifics of how the counties should do that. I think they're just saying this is an important right that needs to be recognized and we need to hold these companies to the fire to make sure that these rights are being protected. [LB776]

SENATOR KRIST: Thank you. [LB776]

SENATOR EBKE: Senator Chambers. [LB776]

SENATOR CHAMBERS: I think the lawyer-client relationship is one of the most important in a democracy. You cannot have a fair trial without that lawyer-client relationship and guarantee of confidentiality. I do not trust prosecutors. I think if they get information that they shouldn't have, they will lie and they will use it. And I think we need to criminalize that kind of activity. We need to criminalize the recording of conversations between attorneys and clients. We need to criminalize any in-person eavesdropping, any wiring of rooms where a lawyer might actually come on the premises and talk to a client. We should criminalize any overhearing of that kind of conversation. I'm being nice when I say overhear. They deliberately do these things and they get away with it because they know that nobody will call them to account. Their bosses know that they are lying, that they are doing things that are unethical, but they will protect them because winning cases is everything to them. If they genuinely followed ethical standards, they, for the sake of their own integrity and the integrity of their profession and the public's confidence, would put more stringent protections and safeguards than we might as legislators because they're aware of where all of the leaks, all the problems will occur, just like a plumber is aware of more problems that will occur with reference to plumbing than the homeowner. The homeowner is

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aware when water starts seeping through the walls or the ceiling or the pipe bursts. These people know how to recognize if the water pressure has gone down or any of the other things, that symbol that lets them know that there is a problem developing. So I'm looking at the criminalization. And the Legislature may not do it, but it's going to give me a chance to talk about it publicly. Maybe I can raise enough public awareness. And people do listen to our debates, I've found out, especially the debating of a particular person who, because he is too modest to identify himself, will not do so at this time. But I'm going to use that because there is nothing in this society that will call these prosecutors to account as should be the case. They're not going to prosecute themselves. Who watches the watcher? If somebody in the Attorney General's Office does wrong, you think the Attorney General will do anything about it when the courts will say that officers when they're questioning people who are accused of a crime, they can lie to them, they can say that so-and-so said such-and-such a thing to you, not just to make that person come clean but to put that person in a position to tell lies on the ones who supposedly ratted hm or her out? Then they use lying testimony from both of them to convict both and then...you know why I can say it like this? I read cases of people who have had their sentences overturned. They've had two people who were actually innocent and because of the way they were interrogated by the police, lied on each other, and yet neither one was telling the truth but was trying to save his own skin. Then, because of the perjured testimony of A against B, B was convicted. Then, because of the perjured testimony of B, A was convicted. They did not even keep faith with the ones that they were corrupting. So when it comes to a prosecutor, I have no confidence whatsoever. I think they commit worse crimes than the ones committed by people they are prosecuting. When I make a statement like that, it's going to splash over onto people who try to be as circumspect as possible in carrying out their duties. But since prosecutors, like police officers, are not going to take any steps to root out the rotten apples, I have to consider all of them to be rotten. And if those who claim to have ethical standards really mean it, they would do something to help root out these problems I'm talking about. And there are many, many sources to which people can turn to find out these problems exist. There are even judges who will acknowledge it. But they don't do anything, or they can't do anything, but as one person in the Legislature I'm going to do all I can. And when I get the names of prosecutors, I'm going to call them by name. I'm going to be like Santa Claus: He whistled and shouted and called them by name. They think everybody is afraid of them. But I wish one of them, I wish one of them would try to do to me in the way of intimidation and creating false accusations that I know they have brought against people who were helpless. And the reason I'm throwing it out there, maybe other people will be encouraged by the position I take to at least come to me with what they have if there is nobody else they can go to. And, Ms. Newell, I'm using you for a sounding board. But when you come here and testify for the Bar Association and you come before the Judiciary Committee, there's no telling what might occur, so I know you're prepared for it all and I appreciate the opportunity to utilize your presence here. And I don't have a question to formulate other than this one: If you have a client who has absolute confidence in you and that client has a conversation with you on the phone or in one of those little cubicles and it comes to that client's

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attention that something said to you got to the prosecutor, can you always be sure that the client will not believe that you're in cahoots? Might the client believe that you, indeed, were the one who gave that information to the prosecutor, or do the clients, and I'm speculating, have so much confidence in their lawyers that, when the prosecutor obtains or procures information shared only with the lawyer, the client will believe that the lawyer had nothing to do with it? Do you think that would always be the situation, or will situations arise where clients now become distrustful and think the lawyer is in cahoots with the prosecutor? [LB776]

SARAH NEWELL: I think that's always a concern. That's part of why I start every communication with a client explaining the rule and explaining when we talk over the phone they're not supposed to record anything, I'm not convinced that they...that it's not recorded, if anything gets back, then if we...if they can't identify an alternate source for the information, then we could have it suppressed. I try to explain that up front, but a lot of times my clients have mental health issues, including, you know, paranoia or delusions, and it's very hard to build a relationship with someone who has that kind of skepticism to begin with. Also, culturally there's a lot of skepticism of the legal system and defense attorneys and, particularly, public defenders. And so it is a challenge and that is something that I worry about and that I have to continually come back. [LB776]

SENATOR CHAMBERS: And I'll tell you why I speak with such assurance. I get contacted by inmates. I won't talk to them on the phone because the calls are recorded and I don't believe any of these agencies when they say they're not recording. This inmate wrote me a letter and accused...the inmate, I won't even say male or female, no gender, accused the lawyer of being in cahoots. And I have so much confidence in the lawyer that I told that inmate, whatever reputation I have with you, I stake my reputation on that lawyer not having been the one and I'm going to talk to the officials, because it occurred...the information was in a conversation in one of these (inaudible) rooms. When I approached the head of the facility, there was an acknowledgment that a conversation was inadvertently overheard between the lawyer and the client and it was not understood at that time that the person to whom the inmate was talking was a lawyer. I think all that's a lie. So that information was passed on to the prosecutor. Now the head of the institution probably knew but was going to take care of skin. In taking, protecting the one who probably was instructed to do it, the lie was told that it was inadvertently overheard and was not known by that person to be between a lawyer and a client, and I think everybody who comes in that place to talk to an inmate is known by all the people there to be a lawyer. Where I couldn't get anything done was in talking to the office of the particular prosecutor who had the information. It would neither be confirmed nor denied and that lets me know that what I had was true. So when they give that "will neither confirm nor deny," I think they're lying. And cops know I believe they lie. Courts have authorized them to lie. And I believe prosecutors are underhanded and they will use any method they will, they can, to extort information. They overcharge people. They bring false charges. They lie to people about what so-and-so has said

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and do so many things that I can understand why laypeople will say that the system is corrupt from judges on down. I think there's corruption in the system everywhere, but I don't believe everybody in it is corrupt. My problem is finding some who are not corrupt, who are not cowards. The only way I've been able to get things done on judges is that I've had people who on tape will give me information and that's how I got former Judge Jones in Douglas County kicked off the bench. There had been complaints against him before, but they always exonerated him. But when I came with my evidence, they...the court found that everything was true, because I had taped information. And something they did that they had never done before, they suspended the judge before they even made a finding. No judge had ever been suspended. Now I have the articles. The Speaker of the Legislature, who was Kermit Brashear, knew that I'd requested that the court do that and he had said to the media that is not done, the court will not make a presumption and suspend. But in my demand I said the suspension is not to be taken as evidence of any guilt but the evidence is so overwhelming that his continued presence will cast suspicion on the entire judiciary. And the records are clear on what I'm talking about. They suspended "Deacon" Jones and then they removed him. And if you look at the accusation that I brought, they went right down the line and those were the charges they found him guilty of. And I'm saying this to let people out there know if they've got something solid, I don't have people bringing me information and I sit on it, I will act on it. So again, not only did I use you for a sounding board but to at least show from a credible source that the relationship between the lawyer and the client can be destroyed when information given to the lawyer winds up in the hands of the prosecutor and the person who gave the information knows that the only one he or she gave it to was his or her lawyer. And once that lawyer comes under suspicion, the person doesn't want another lawyer. And frankly, I don't blame that person. That's all that I have. [LB776]

SENATOR EBKE: Thank you, Senator Chambers. Anything else? Okay, thank you for being here, Ms. Newell. Next proponent. [LB776]

BEN MURRAY: (Exhibit 5) Senator Ebke, members of the committee, good afternoon. I'm the lucky lawyer you've all been hearing about that had 59 phone calls recorded. My name is Ben Murray, B-e-n M-u-r-r-a-y. I'm an attorney with Germer, Murray and Johnson in Hebron. In addition to my private practice, I am the public defender in Thayer and Nuckolls County, and I accept indigent appointments in Webster, Jefferson, Clay, Gage, Saline, Fillmore County, Adams County, pretty much anywhere I'm needed. With the exception of Nuckolls County, each of those counties has its own jail. Nuckolls County can't hold them because it's essentially a dump and so they ship them out to other places. And at the first sign of any mental illness in any of my clients, they are almost immediately shipped off to either the Hall County Jail in Grand Island or the Diagnostic and Evaluation Center here in Lincoln. Most of my clients are in jail for the entire pendency of their case because they cannot afford even the most minimal bond and judges, for whatever reason, do not tend to believe in personal recognizance bonds. I'm here to talk about

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State v. Jerry Foster. I was his public defender in Nuckolls County. Jerry had been moved to Hall County. Through the discovery process I got a CD containing 59 of my phone calls. It turned out that the Attorney General's Office, who was acting as the special prosecutor, had copies of my phone calls for six weeks before they called the Hall County Jail and told them to stop recording them. And they did not provide the CDs to me for three months. When I got them, I wasn't told it was on there. I didn't discover it until I actually sat and listened to the entire CD that I discovered this. I filed a motion in that case to disqualify the Attorney General's Office and everyone in their office, along with anyone from the Hall County Corrections Center. The court disqualified the attorneys from the Nebraska Attorney General's Office that were...had been...had anything to do with the case, and their support staff. I also included an article that was in the Alaskan paper yesterday just to show that this is happening other places with attorney phone calls being recorded. I just want to say these clients that I have are up against a system that is so stacked against them. As soon as they're arrested, their lives are ripped out from under them. They're thrown in jail. They're being prosecuted by the state of Nebraska with its vast resources. They're dealing with prosecutors who overcharge them in nearly every single case in order to pressure them into plea agreements. They're stuck in county jails that are, for the most part, disgusting. They're asked to post bonds that they can't afford. It doesn't matter if it's \$50 or a million dollars. These people are poor. They can't afford anything. And they're stuck in these things for the entirety of their cases. And then they're appointed me and I have to ask them to trust me that I'm not involved in this and that I'm not part of this and to trust me as we take on the state. If I could briefly finish one sentence? [LB776]

SENATOR EBKE: Senator Krist, I think, was going to ask you to... [LB776]

BEN MURRAY: Yeah. [LB776]

SENATOR KRIST: Could you...yeah, go ahead. [LB776]

BEN MURRAY: I was just going to say the least we can do is give them unmonitored access to phone calls. I will be taking the entire day off tomorrow from my other cases to travel to Grand Island and meet with clients in Grand Island because I don't trust that they aren't recording my phone calls. While I'm here today, I will go to D&E and meet with clients because I don't trust that they aren't recording my phone calls. It is so hard to gain their trust. These clients believe that we're all in this together. They believe I'm working with the prosecutors no matter how many times I tell them that I'm not. And so I need to create that trust with them and if there's even a hint that this is happening, it's just impossible for me to do. And so I would ask you to support this bill. [LB776]

SENATOR EBKE: Senator Krist. [LB776]

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SENATOR KRIST: So the reason that I think it's so important, just for the general population to understand, it's not that a private citizen is any more or less important in terms of testimony, but when we have an expert witness basically come up here and has traveled across the state to tell us something that's actually happening, I think it's important that we get those words from you. And I also wanted to legitimately ask you a question, so there's my... [LB776]

BEN MURRAY: You can ask me anything. [LB776]

SENATOR KRIST: ...there's my excuse. [LB776]

BEN MURRAY: Fire away. [LB776]

SENATOR KRIST: Saline County is one of the places that you do business. [LB776]

BEN MURRAY: It is. I generally only take appointments there once they've gotten to district court and it looks like it might go to trial, because some attorneys don't want to try cases, so a lot of times I'll just jump in, in district court. [LB776]

SENATOR KRIST: So according to this, metrics that we're...again, the ACLU document, of the counties that they listed, Saline County--and this is on page 8, for my colleagues, if you're following--in Saline County, the monthly cost to prisoners making four 15-minute phone calls a week is \$318.24. I'm guessing that's a monthly cost because it says "MONTHLY COST" at the top of it, \$318.24. So to put that into perspective--I know where Saline is, and you do, too--you could buy 129 gallons of gas, basically, for what it's going to cost you to have four 15-minute phone calls, not to mention the fact that you don't probably trust anymore that anybody is ever going to not... [LB776]

BEN MURRAY: No. [LB776]

SENATOR KRIST: ...record. But just the fact that they're charging that much money, if you were spending time on the phone with your client, as one of the other testifiers brought up, it takes an inordinate amount of time to gain that trust and begin to move forward. [LB776]

BEN MURRAY: It does and you'll hear that a lot of people complain that they don't have contact with their lawyers. The order that you have shows I had talked to my client 59 times over three months. So when people complain about that, I just want you to know that that's not everyone either. I mean we are having contact with our clients. But it just makes it a lot harder when we have to do it in person. [LB776]

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SENATOR KRIST: So we have two different problems, at least two different problems going on here. One is the fact that there's no confidentiality between you and your client. The other one is that we're gouging the client and his family from actually having any, or you, from actually having any conversation, so. [LB776]

BEN MURRAY: And the money that they spend on phone calls could probably bond some of these people out. [LB776]

SENATOR KRIST: That's an...that would be an interesting, yeah, study as well. [LB776]

BEN MURRAY: It is. And we ask for bond on nonviolent cases and they won't release people on PR bonds even when they don't have a criminal history. [LB776]

SENATOR KRIST: Well, if you need to get to go see your client, I'm going to let you go. [LB776]

BEN MURRAY: Thank you. [LB776]

SENATOR KRIST: But thank you so much for coming and talking to us today. [LB776]

BEN MURRAY: Thank you, Senator. [LB776]

SENATOR EBKE: Other questions for Mr. Murray? Senator Chambers. [LB776]

SENATOR CHAMBERS: You were in the room when I was talking and fulminating against prosecutors in the Attorney General's Office specifically? [LB776]

BEN MURRAY: I was. I was nodding vigorously behind you. [LB776]

SENATOR CHAMBERS: You understand my indignation, don't you? [LB776]

BEN MURRAY: Yes, I do. [LB776]

SENATOR CHAMBERS: And you understand my lack of trust of these people. [LB776]

BEN MURRAY: Yes. [LB776]

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SENATOR CHAMBERS: And you're not saying it. I'm saying it. If they had the ethics that they've taken oath to uphold, what we're talking about would not occur, in your opinion, would that be true? [LB776]

BEN MURRAY: That, I believe that would be true. [LB776]

SENATOR CHAMBERS: And the reason I'm doing it this way, the way I feel, I let people know, not that I cannot conceal my emotions and sound very, very calm and so forth. I want them to know that I'm indignant and I mean what I'm saying and I have contempt for the Attorney General and contempt for those in his office. He is unfit. And they talk about doing away with sex trafficking because that's the hot issue, but there are other issues where they are as criminally, in my opinion, liable as these sex traffickers. They're against adequate representation for juveniles. They, of all people, the top law enforcers in the state, should come before the Legislature and say, we, because of our ethics and representing the state and the sovereign, want to be sure that everybody who comes before the bar of justice in the state has representation and we think if any class should have that, it should be the juveniles. They don't do that. If anything, they'll oppose anything that they think might make their job harder. So if there is anything that you can think of that I can do, any incident that needs to be looked into that you cannot find the time, and it's good information, I assure you that I will follow it. There is a song that somebody sang: To the Ends of the Earth. But, see, it won't take me that far to catch some of these rats. They are so accustomed to having things their way and getting away with it that they're careful and they don't care. And that's what "Deacon" Jones did. He didn't care. Now this was not meant to be racist, but people in the courthouse have told me, most of them women, all of them women except some judges whom he had threatened, set off firecrackers in their offices and done these kind of things and gotten away with it, they said, Senator, we trust you but we've been through this and nothing happens. I said, I'll tell you what, he's as big as a whale--that's what I said--I will go from the story of Captain Ahab but, instead of ending up like Ahab--killed by the whale--I will beach this white whale. And I've got it on tape. And when I said that to each one of them, it was like the dam burst and they gave me all this information. And that's how I was able to pursue it. I filed a complaint against the Attorney General for violating his ethics by advising the Governor to try to get drugs that the federal government had said were illegal. But there was a kangaroo judge who handled the case and said the Attorney General was not wrong for advising the Governor to violate the law. That's the kind of cover that the Attorney General has. His name is Douglas Peterson. And I wrote letters to him, I shared them with my colleagues in the Legislature, and none of them, because they know what the Attorney General might be able to do to them, was willing to come forward. And here is what I had to do to everybody who is in law, and this takes time. When we have a committee like this and these kind of bills, it takes time, I take time, but I don't take time on all of them. But when there are certain bills that need to produce a record, I will take the time. The appellate court in Washington, D.C., is right under the U.S. Supreme Court. They had a case, and they told the FDA you cannot allow this drug to be

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imported into this state, into the country, and the FDA ruled that way. The drug cannot be approved for coming into this country. Well, the Governor and the Attorney General were so obsessed with killing somebody that they were violating the law by trying to import those illegal drugs, and the Attorney General was helping the Governor to carry out this attempt to have illegal drugs brought into this country, and that would make him conspiring like any other drug dealer. And this kangaroo judge said, well, the Attorney General was not wrong for doing that. Then the Attorney General's Office should not prosecute anybody for anything, and I'm saying it in front of a great cloud of witnesses and daring the Attorney General to try to do something to me. And when you all hear these other public officials pussyfooting and hemming and hawing at the state or the federal level for that orange-colored, pumpkin-headed man in the White House, then you think about Senator Ernie Chambers, a black man who is the most hated man in this state, who, if anybody as a prosecutor could get on it, would get it. And I will not back down from any of them. And you ask them, how can a black man without a friend, with no power, speak and act in the way I do and these people, who have sworn an oath that I didn't swear, will violate that oath and nobody will do anything about it? Those are the things I want into the record. And I want my colleagues who grumble behind my back and mutter, I challenge them to be as forthright in their mutterings about me to my face as I am to judges, to prosecutors, to Attorney General. I got Paul Douglas impeached and four of the judges voted to convict him, but it happens to take a supermajority of five. So the Legislature impeached him, a majority of the judges voted for conviction, but they didn't have the supermajority so he remained Attorney General but he was suspended for some other activity. I led the effort to impeach a member of the Board of Regents, and the Republicans and others condemned what I was doing and it was personal. But not only was he impeached, he was convicted and kicked off the Board of Regents and that means, because he was convicted, he can never hold a public office in this state again. And a lot of these things are because I'm willing to stand against all criticism. When I have good evidence, I will pursue it to the ends of the earth. And when some of my colleagues, who do their muttering, want to come after me, I welcome them to come after me. Because they only mutter, I cannot publicly attack them for mutterings. But if they would say it to my face, then all bets are off. And here's what I'm working my way up to with you. I am so glad you're a man who has gone through what you have gone through, feel like he's still willing to try to see that justice is done, that there is somewhere such a thing as justice and it's worth fighting for. Even when you're alone, even when cutthroats like the Attorney General and his minions are violating the law and all their ethics and are accountable to nobody, you will still stand and you will still do what you can. Man, if there's anything I can help facilitate that you're doing, I don't care what it is, I'm making a public promise--and my colleagues know the difference between when I make a promise and just make an assertion--I promise that I will help you in any way that I can. But know this, if you once unleash a black panther, be ready to stay on for the ride or, if you're not, he's not going to stop just because you might. So I applaud you and I think you should hear these things before you're stretched out in a box and you can't hear anything, because sometimes, if people work as hard as you and some other public defenders, the fact that they are paid by the

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state does cause inmates, accused persons, and their family to feel that since they're paid by the state they work with the county attorney. They believe that. Sometimes when a person is lying in a box and all these people make these kind statements, I have said what I said when former Attorney General Bob Spire died. His family knew how much he respected me. Creighton has no respect for me whatsoever, although I got my law degree from there. They had a ceremony for Bob Spire and the person who taught constitutional history at that time--I won't call his name, but he was short--he had on a cutaway coat with the tails. He had on one of those vests that made him look like he was a barrister in England and he was reading from this all these wonderful things and what Bob Spire had to say about me and, therefore, his family wanted me to be there. And I'm...I tell people I'm not an iconoclast but sometime I'm iconoclastic, and then I'm going to stop, but I want this for the record, and other people, I hope, will take it to heart. I told them that I respected Bob, and his name was appropriate because a spire is the highest structure on a church and you all pretend to respect churches and what goes on in there. I said, now all these people in this room are here to honor Bob Spire, and that's very nice because this is what people do, but I watched that man and I worked with him and saw how many times he had to stand alone with no help; and if one-tenth of the number of people in this room would have come to Bob Spire when he was alive and said, I'll take some of that load off you, I'll do some research, I'll do some of that, I said, you would be here honoring Bob Spire and giving him an award instead of talking about a man who cannot hear what you're saying. So for my part, I want you to hear mine from me while you can hear. And you're the last one that I think I will use for a sounding board, but you're strong enough to take it, like the others were. [LB776]

BEN MURRAY: Thanks, Senator. [LB776]

SENATOR EBKE: Senator Morfeld. [LB776]

SENATOR MORFELD: This is the first time I've talked in these two days. [LB776]

SENATOR EBKE: I know. [LB776]

SENATOR MORFELD: The only thing I wanted to say is I just wanted to say I appreciate all of your work, Ben. [LB776]

BEN MURRAY: Thank you. [LB776]

SENATOR MORFELD: I think the last time that we saw each other was in state and local government class at the law school. [LB776]

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BEN MURRAY: It was. [LB776]

SENATOR MORFELD: So this is a fitting place for us to be reunited again, and I just wanted to say I really do appreciate all your work on behalf of (inaudible). [LB776]

BEN MURRAY: Thank you very much. And I should say I took these public defender positions selfishly to get experience, to start, because the public defender that was in these two counties left. So it has helped me, too, and I've grown to really enjoy it and have redone my...renewed my contract now twice. But it has been much more fulfilling than I thought it would be and I really enjoy it. [LB776]

SENATOR EBKE: Other questions for Mr. Murray, an attorney in District 32, by the way? (Laughter) [LB776]

BEN MURRAY: Proud District 32 member. [LB776]

SENATOR EBKE: Okay. Thank you. [LB776]

BEN MURRAY: Thank you. [LB776]

SENATOR EBKE: Next proponent. [LB776]

JUNEAL PRATT: Hey. Good afternoon. My name is Juneal Pratt. It's spelled, first name, J-u-n-e-a-l, last name Pratt, P-r-a-t-t. At first, you know, my...can I go? [LB776]

SENATOR EBKE: Go ahead. [LB776]

JUNEAL PRATT: Okay. When I first thought about coming up here, I thought, well, there is nothing really to say because a lot of the things that they're discussing come down to ethics, like Mr. Chambers said, Senator Chambers spoke on, eloquently. If you hire less, you're going to get less. If you hire a quality person, he's going to employ his standards, period. It's just how it is. You cannot make people behave themselves in the system and not record calls because if they believe that that's something that's in their character to have a step ahead, they're going to do it, okay, unless they have ethics to stop them. The only point that I really want to address is this because I think Senator Chambers already addressed the one pretty well, and that is to criminalize those tapes. If you criminalize the tapes, you take away the incentive to do it. But the most important thing for me I want to talk about is this. It is imperative that inmates be able to

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stay in contact with their families because when you come back out here, the only thing that's going to keep you out here is your investment in this community. And if you have nothing invested in the community, then it's easier for you to go back to old ways when things get frustrating or troublesome. It's just the more you're able to stay in touch with family, if you can make a call, you got grandkids, talk to your grandkid...you've been in prison 10-15 years and you haven't even dealt with kids. So when you can't even make a phone call readily enough so that you stay in touch with that, when you get out it's too overwhelming sometimes and it's easier for a person to go back to just doing things that, you know, that he was comfortable with before: smoking weed, drinking, whatever. Okay? The more you're able to call somebody and say, hey, I'm doing okay, how are you doing, 15 minutes here, 15 minutes there, and not be broke after you get through, because the prison wages are \$1.21, \$2.25, or \$3.78 a day, okay, don't add up to much when you buy a bag of cookies that's going to cost you \$11.95. Okay, so if you're going to continue to treat these bills up here like they're inmate bills and that the inmate is the only one winning or losing from it, society loses because the truth is this is a public safety bill. Most of the bills, when I laid around and watched the Legislature for years, these bills always come in under an auspices that they're protecting or trying to make it nicer for the inmate. And I'm laying there saying, like, duh, this is a public bill, this is protecting the public. When I come back to the community, the more I'm able to adjust to the people around me, the safer you are. And that's all I have to say on this. [LB776]

SENATOR EBKE: Thank you, Mr. Pratt. Questions? Senator Pansing Brooks. [LB776]

SENATOR PANSING BROOKS: Thank you for coming, Mr. Pratt. I love that because there are so many cases where the moral argument just does not resonate with people. And you are right. It is about public safety. It's about compassion and kindness. But it's also about public safety and having people be able to connect with the people that they are going to connect with once they're released. And I really appreciate your very articulate testimony today. Thank you. [LB776]

JUNEAL PRATT: Thank you, Ma'am. [LB776]

SENATOR EBKE: Other questions? Thank you for being here. [LB776]

JUNEAL PRATT: Thank you. [LB776]

SENATOR EBKE: Next proponent. [LB776]

JOE NIGRO: Good afternoon. I'm Joe Nigro, spelled N-i-g-r-o. I'm the Lancaster County Public Defender and I appear on behalf of the Nebraska Criminal Defense Attorneys Association. We,

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the Nebraska Criminal Defense Attorneys, support this bill and its efforts to guarantee reasonable rates. Some of the rates charged in some of these...in some counties are just outrageous. But this is a national issue that's going on. And as I have reflected on it, my own position is that I would go even further than this bill, because, as I've thought about it, the great majority of people who are in jail are pretrial detainees. Those people are presumed innocent. And what essentially happens when these people, who are presumed innocent, have to pay or the families have to pay, is it winds up being...they wind up being punished before they've even been convicted. And it's essentially a tax on poverty. I mean, why should poor people have to pay to talk to their families, because the only difference between people in jail and people out on bond is money, it's not safety, it's money. People with money get out on bond. They get to talk to their families. Obviously my clients are poor. A lot of those people wind up staying in jail. Now why should...if they were out on the streets, they could talk to their families. And so now we have this system where people are paying outrageous amounts of money to talk to their families. And the families wind up being taxed in this situation. They're not even accused of a crime, let alone convicted. I mean, the problem really is the money bond system and until we get rid of the money bond system, I mean, this is going to continue to be a problem where the poor are the ones who wind up in jail. But this unjust system of taxing the poor to talk to loved ones must end. We must stop balancing budgets on the backs of the poor. Now our office is fortunate. We have a situation with Lancaster County Jail where people in the jail can call our office. Private attorneys sometimes have issues, if they're using multiple numbers, talking to clients. And there have been occasions where we have clients who wind up at other facilities in other states or counties and they call and it's a collect call. Your attorney...if you're their attorney, you need to talk to them. We're going to accept that call. And I know that from the county board meeting this morning Lancaster County thinks there may be some sort of loophole in this bill that would allow counties to charge exorbitant rates and I...they can speak to that. I'm not clear about it. But if there's a loophole, perhaps the bill can be amended. I know that comparatively Lancaster County's rates are reasonable, but I believe the entire system must change. And I think this bill is a modest proposal because I don't think people should have to pay a dime to have to talk to their families. It's not fair to poor people and the system keeps poor people in jail, so I urge you to advance this modest proposal to the floor of the Legislature. Thank you. [LB776]

SENATOR EBKE: Thank you, Mr. Nigro. Any questions? Senator Chambers. [LB776]

SENATOR CHAMBERS: Not a dissertation. [LB776]

SENATOR EBKE: Well, thank you. (Laughter) [LB776]

SENATOR CHAMBERS: Have you heard the name Paul Manafort? [LB776]

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JOE NIGRO: Yes. [LB776]

SENATOR CHAMBERS: He's out walking around. And he even violated the provisions of his bond, but he's still walking around because they were able to argue that, well, it wasn't intentional. There's a guy named Flynn who copped a plea and another minor person who copped a plea, guilty, but they're all walking around. You ask, how can it happen? Because this is America and they talk all of that trash and tripe about justice and fairness and respect for the family and human decency and human dignity but when time comes to manifest it for the least of our brothers and sisters, out the door. But let an accusation come against them and they want every consideration, they want nothing to happen to them, even if it's found that they did it. We had a former senator who engaged in cybersex on state property and the Attorney General's Office said he didn't commit a crime because he used the state property in another state. But the crime was committed in connection with property and when he and the property came back to the state, the corpus delicti was in this state. But he and the attorney and the Governor both knew this man had done this for over a year before it became public. But they could use...his name is Bill Kintner. They used him in the Legislature to vote for various programs of the Governor and that's why I have so little respect...well, no respect for the Governor or the Attorney General and it's in line with what you said. I wouldn't be nearly so critical of them if I didn't have a standard where they're so cruel to poor people. [LB776]

JOE NIGRO: You know, Senator, my understanding was Mr. Manafort was whining because he had to put up four of his houses for collateral to be out, released on bond, and I'm sure my clients would feel very sad for him. (Laughter) [LB776]

SENATOR EBKE: Senator Krist. [LB776]

SENATOR KRIST: So in Lancaster County those four 15-minute phone calls will cost you \$50.40, and I would challenge you to, at your own board meetings, to ask how many of those phone calls in Lancaster County were actually long-distance phone calls. They were probably, most of them, local calls, no long-distance calls. [LB776]

JOE NIGRO: Oh, I'm sure that the great majority would be local. [LB776]

SENATOR KRIST: Yeah. So just... [LB776]

JOE NIGRO: There may be somebody later speaking from Lancaster County who can better address those questions, but... [LB776]

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SENATOR KRIST: Okay. Thank you. [LB776]

JOE NIGRO: You're welcome. [LB776]

SENATOR EBKE: Other questions? Thank you for being here. [LB776]

JOE NIGRO: You're welcome. Thank you. [LB776]

SENATOR EBKE: Are there any other proponents? Are you a proponent? Okay. [LB776]

KATRINA THOMAS: Hello. I'm Katrina Thomas, K-a-t-r-i-n-a T-h-o-m-a-s. Thank you. Thank you all. It's been an interesting couple days. Yesterday was quite a fun one. My...the letter that I... [LB776]

SENATOR EBKE: Welcome to the Judiciary Committee. [LB776]

KATRINA THOMAS: Excuse me, what did you say? [LB776]

SENATOR EBKE: Just welcome to the Judiciary Committee. [LB776]

KATRINA THOMAS: Yes, thank you. Well, I'm talking in the morning too. You've been quite entertaining lately, as always. My letter is very short and simple. The reason there's a picture on it is because I come and I testify in front of the Judiciary quite a bit, and I feel like I repeat my story and you guys hear stats all the time and things like that, so I wanted to put a picture to this story. This is my son right after I got out of prison. And actually, Senator Chambers, we used to come here after that and he met you when he was younger. He's now about to graduate, so that does not reflect what he looks like now, but he very much admires you and you've been a great inspiration for him, so I thank you for that, and me, as well, and several others, so. The reason I am so adamant about why this is such an important bill was when I was incarcerated so...and it does, like counties matter, because there would be one county where it would be a couple dollars and then in Custer County, where I'm from, it was a \$15, 15-minute call. So we legitimately had to figure out, because like the gentleman had said, when you're working, I only made \$1.25 in jail for nine hours of work, so I couldn't afford these phone calls. And on commissary, don't worry about the cookies, but even to get like a piece of paper or a letter or an envelope it costs so much. So my family and I would have to...we could only have two phone calls a week so that they could put money on my books. And then they would also have to, during that time when I was trying to talk to my son, which was also difficult because, let me reflect, too, my son, who I've raised him the whole time by myself, and so we were so close that having not being able to

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talk to him every day was very difficult on him, too, and we're still trying to work through that. We know how the pipeline goes. And, you know, so what I'm saying on that note is trying to figure out, like, that's what we need to be doing with all of this prison reform, with all of the things we're trying to do right now. The biggest thing that we need to realize with recidivism, it's keeping families together. I made a mistake. I will not try to make excuses for the things that I did, but I don't believe that my son should have to pay for that. And then if we don't keep children and families reunited or connected through this all, we know what possibly can happen and it has happened over and over. I was trying to go off the cuff so I don't keep repeating. But like I said, keeping family ties strong not only prevents recidivism, it also strengthens the mental health and well-being of children and their families. [LB776]

SENATOR EBKE: Thank you. [LB776]

KATRINA THOMAS: Thank you. [LB776]

SENATOR EBKE: Any questions? Senator Chambers. [LB776]

KATRINA THOMAS: Yes, Senator Chambers. [LB776]

SENATOR CHAMBERS: There's an organization that makes a lot of noise, it's called Family First, or Families First. Have they contacted you and other inmates about helping with this inability to pay for phone calls? [LB776]

KATRINA THOMAS: I should have stated that, too, I was speaking on behalf...Families First, I have spoke with them, but I know what you're talking. Also I'm with...the ACLU contacted me to speak on this and then also I'm with the Reentry Alliance of Nebraska and the National Association of Social Workers. [LB776]

SENATOR CHAMBERS: But here's my question. [LB776]

KATRINA THOMAS: Okay, Families First. [LB776]

SENATOR CHAMBERS: Since they value who...themselves as being in favor of families but you and others have shown how families are damaged by inability to maintain contact, so my question is, have they ever, to your knowledge, visited prisons or anyplace to see if they can do something about reducing the cost of these phone calls so that families could stay together? [LB776]

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KATRINA THOMAS: And to that I would have to say no because I was incarcerated ten years ago. They have not been in our reentry meetings but it's somebody that I could look into that, because that's very interesting. Do they contact other people in prison now currently? [LB776]

SENATOR CHAMBERS: I'm not aware of them doing anything of value except being against abortion. [LB776]

KATRINA THOMAS: Huh. Oh. [LB776]

SENATOR CHAMBERS: But they say "Families First" and... [LB776]

KATRINA THOMAS: I get where you're going. [LB776]

SENATOR CHAMBERS: ...we have people mentioning families, so I just wanted that in the record. [LB776]

KATRINA THOMAS: Oh. Yeah. [LB776]

SENATOR CHAMBERS: That's all I have. Thank you. [LB776]

KATRINA THOMAS: Okay. Thank you, sir. [LB776]

SENATOR CHAMBERS: Tell your son hi if you're still talking, and if you're not, he's going to have me to deal with. [LB776]

KATRINA THOMAS: Okay. Sounds good. [LB776]

SENATOR EBKE: Other questions? [LB776]

KATRINA THOMAS: I'll tell him that, actually, for sure. [LB776]

SENATOR CHAMBERS: Okay. [LB776]

KATRINA THOMAS: Thank you. [LB776]

SENATOR EBKE: Thanks for being here. [LB776]

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KATRINA THOMAS: Thank you. [LB776]

SENATOR EBKE: Are there any other proponents? Going once, going twice. We'll start with opponent testimony. And just for those who are wondering, the plan here is that we will get through LB678, then we will take a break. So we're going to finish the hearing on this one, we'll do LB678, then we're going to take about a five-minute break, so just in case you're wondering. Okay, first opponent. [LB776]

KERRY EAGAN: (Exhibit 7) Good afternoon, Senator Ebke, members of the Judiciary Committee. My name is Kerry Eagan; that's spelled K-e-r-r-y E-a-g-a-n. I'm the chief administrative officer for the Lancaster County Board of Commissioners. I'm here to testify on behalf of the Lancaster County Board in opposition to LB776 in its present form. The position of the Lancaster County Board on LB776 is set forth in the letter which is being distributed to the members of the committee at this moment. I will quickly summarize the main points of the letter. First, Lancaster County agrees on the importance of all pretrial detainees and persons serving sentences in county jail having meaningful contact with their families and loved ones. In fact, the county believes our inmate population does have adequate access to phone calls for this purpose under our current system. Second, the county believes a better way to control abuses and exorbitant rates for inmate phone systems is to take the approach adopted by the Federal Communications Commission of establishing cap rates for inmate phone calls at 21 cents per minute for debit/prepaid calls, and 25 cents per minute for collect calls. Finally, eliminating the county's ability to share in the revenue generated by inmate phone calls will result in a loss of nearly \$400,000 in annual income for the county corrections department. I'd emphasize all of this funding is used for programming that benefits the inmates. I'd be happy to answer any questions at this point. [LB776]

SENATOR EBKE: Any questions? Senator Krist. [LB776]

SENATOR KRIST: I just want to make sure I understand this second paragraph. Inmate calls are 21 cents per minute for debit or prepaid calls. Is that the rate that you're using in the system now? [LB776]

KERRY EAGAN: Yes, Senator. [LB776]

SENATOR KRIST: Okay. And then for collect calls, 25 cents a minute for collect calls? [LB776]

KERRY EAGAN: Yes, sir. We have adopted the FCC rates. [LB776]

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SENATOR KRIST: So you're charging the inmate 25 cents a minute for making the call and the person who is receiving a collect call is paying for the phone call? [LB776]

KERRY EAGAN: Well, on a collect call I think it would...no, no, no, no, we're not double charging, no. [LB776]

SENATOR KRIST: Okay, well, that's not what this says, so, I mean, what it says is that you're charging 25 cents per minute. So basically any time that guy makes a phone...that gentleman or lady make a phone call it's 21 cents a minute flat. So I'm not understanding what the 21... [LB776]

KERRY EAGAN: Well, for the debit/prepaid. If it's a collect call,... [LB776]

SENATOR EBKE: So if they have like...right. [LB776]

KERRY EAGAN: ...then the charge is 25 cents, and that's the FCC rates established in 2016. [LB776]

SENATOR KRIST: They're allowed to accept a collect call at the jail? [LB776]

KERRY EAGAN: No, they're not at the jail. The call would be placed from the jail and received by the party the call is made to. [LB776]

SENATOR KRIST: Okay, so you're double charging. [LB776]

KERRY EAGAN: No, we're not charging 21 cents plus 25 cents. It's either 21 cents if it's paid on an inmate debit card where they're paying directly out of their account with their money directly... [LB776]

SENATOR KRIST: So when you call me collect from Lancaster County in Omaha, you're not charged for the call. I'm charged the collect fee on the other end. [LB776]

KERRY EAGAN: Right, it's charged at the other end but there's not a double charge at the jail too. We're not charging 21 cents at the jail and 25 cents at the other end. [LB776]

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SENATOR KRIST: Well, okay. So when Prisoner Smith calls Senator Krist in Omaha and he calls collect and I accept the collect call, is he being charged anything at Lancaster County? [LB776]

KERRY EAGAN: No, no. The call, the collect call, is paid by the person who receives the collect call, accepts the call, and that rate is 25 cents. [LB776]

SENATOR KRIST: Okay, so there is no charge basically for a collect call for an inmate if that charge...if the person on the other end accepts the collect call. [LB776]

KERRY EAGAN: That's correct. It's paid by the other end, which still could be family members, admittedly, or loved ones. [LB776]

SENATOR KRIST: Okay. So your 40...according to the handout that we had, if I make four 15...the math doesn't check, I'm just going to tell you. If I make four...Lancaster County, according to this, a monthly cost to prisoners making four 15-minute phone calls is \$50.40. Somebody with a real math mind add this up for me. You're charging 21 cents per minute for 15 minutes. The cost for that call should be what? [LB776]

KERRY EAGAN: Well, it's about \$3.15 for a 15-minute call, so four calls a week, then it would be, you know, \$12.60, and then monthly it would probably be approaching the \$50 figure I think that's being referenced there. [LB776]

SENATOR KRIST: Okay, so 14...four calls per week, you're saying we're maxing that out then, four calls per week and four weeks in a month and you do the math and it comes out to approximately \$50.40. [LB776]

KERRY EAGAN: That's what I would assume, Senator, yes. [LB776]

SENATOR KRIST: Okay. [LB776]

KERRY EAGAN: That would make sense. [LB776]

SENATOR KRIST: All right, just checking the math. Thank you very much. [LB776]

SENATOR EBKE: Other questions? Senator Chambers and then... [LB776]

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SENATOR CHAMBERS: Oh, since I...I'll go after. [LB776]

SENATOR EBKE: Okay. Senator Hansen. [LB776]

SENATOR HANSEN: Thank you, Chair Ebke. Thank you for coming, Mr. Eagan. I'm just trying to kind of run through some numbers here. So in your letter, you said...used a couple numbers from your letter. You said there was 2,955,000 minutes? [LB776]

KERRY EAGAN: Yes. [LB776]

SENATOR HANSEN: Okay. And I did crunch the numbers real quick, so that's about \$620,000, of which the county gets to keep \$400,000? [LB776]

KERRY EAGAN: I believe it's a very healthy commission, yes, it's about 60 percent is what I've been informed by the (inaudible). [LB776]

SENATOR HANSEN: Okay, so there's some sort of private contractor that in Lancaster County is being paid approximately \$200,000 a year to provide the phone services? [LB776]

KERRY EAGAN: Yeah, and that was procured by bid. The bid stipulated the rates could not exceed the FCC amounts and then they...basically we took the calls or the contractor that was most advantageous to the county, again, with all that money going for the benefit of inmate programs. [LB776]

SENATOR HANSEN: Okay, I just wanted to make sure I had all the numbers kind of stacking on top of each other correctly, so... [LB776]

KERRY EAGAN: Yes. [LB776]

SENATOR EBKE: And I do have... [LB776]

SENATOR PANSING BROOKS: Oh, go ahead. [LB776]

SENATOR EBKE: But you go first if you want to. [LB776]

SENATOR PANSING BROOKS: No, that's okay. [LB776]

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SENATOR EBKE: Okay, maybe it'll be the same question. [LB776]

SENATOR PANSING BROOKS: It might be. [LB776]

SENATOR EBKE: Okay. So in your next to the last paragraph, next to the last paragraph it talks about the free calls to the public defender's office, opposed to extending the privilege to privately hired attorneys, but what about court-appointed attorneys? Do they fall into sort of an ambiguous place there? [LB776]

KERRY EAGAN: At they moment they do, Senator. [LB776]

SENATOR EBKE: Okay. [LB776]

KERRY EAGAN: I was asking our corrections director about that and he said, well, what about if the public defender's office conflicts out or we have an appointed counsel to take their place? Then our public defender does have caseload standards where if they get over a certain number they will opt out from the case and then appointed counsel is presented. I do not think that same privilege is being extended to those counsel. [LB776]

SENATOR EBKE: Okay. Thank you. [LB776]

SENATOR PANSING BROOKS: It wasn't. [LB776]

SENATOR EBKE: It wasn't? Well, then you go right ahead. [LB776]

SENATOR PANSING BROOKS: Thank you for coming, Mr. Eagan, appreciate it. I just wanted to ask on the other issue, are you making sure that prisoners have confidential communication with their attorneys? [LB776]

KERRY EAGAN: Absolutely, Senator, yes. [LB776]

SENATOR PANSING BROOKS: Okay. And how do you make sure that's happening? Do you discuss it with your jailers? Do you...how do you handle that? [LB776]

KERRY EAGAN: The...again, speaking with the corrections director, they try to...they work with the Bar Association to get every possible phone number of an attorney where there's multiple phone numbers or whatever, so we start with that. So any of those phone numbers,

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when it hits the system, are automatically not recorded. And we do bend over backwards to make sure that the confidentiality is never breached of the attorney-client privilege. [LB776]

SENATOR PANSING BROOKS: And I just want to give credit where credit is due because Lancaster County is giving access to counsel to juveniles, and from the judges that I'm talking to, there's some savings there because you don't have to bring the kids back again. But again, that access to counsel and those issues are really important for our state and Lancaster and Douglas County stand as examples for the whole state. Thank you. [LB776]

KERRY EAGAN: You're welcome. [LB776]

SENATOR EBKE: Senator Chambers, do you have something? [LB776]

SENATOR CHAMBERS: I was going to let everybody else go. [LB776]

SENATOR PANSING BROOKS: And Sarpy--sorry--Sarpy too. [LB776]

SENATOR EBKE: I think...I think every...has everybody...anybody...any other questions? I think you're it. [LB776]

SENATOR CHAMBERS: Lancaster County is making a profit off this operation, isn't that true? [LB776]

KERRY EAGAN: Yes, Senator. [LB776]

SENATOR CHAMBERS: And it's \$397,000, almost a half-million dollars. [LB776]

KERRY EAGAN: It was \$397,000 for the last budget year, yes. [LB776]

SENATOR CHAMBERS: If I had that much money, I'd say I got close to a half a million dollars, but you're right that a specific figure is here. And you want Lancaster County to be able to continue making a profit off these phone calls that the inmates make? [LB776]

KERRY EAGAN: No, Senator, I think our point, Senator, is that the best way to control exorbitant rates is for the Legislature to set what the cap rate is,... [LB776]

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SENATOR CHAMBERS: That's not what I asked you. [LB776]

KERRY EAGAN: ...establish what a reasonable rate is. [LB776]

SENATOR CHAMBERS: Okay. [LB776]

KERRY EAGAN: I don't think it's inherently wrong... [LB776]

SENATOR CHAMBERS: Well, let me stop you. [LB776]

KERRY EAGAN: Well, I'm trying to answer your question. [LB776]

SENATOR CHAMBERS: I want to be sure you understand English. [LB776]

KERRY EAGAN: I understood your question and I'm trying to get... [LB776]

SENATOR CHAMBERS: Wait a minute. Do I speak English, in your mind? [LB776]

KERRY EAGAN: Very clearly. [LB776]

SENATOR CHAMBERS: Do you understand the English that I speak? [LB776]

KERRY EAGAN: Yes, Senator. [LB776]

SENATOR CHAMBERS: And you are the chairperson of the county board? [LB776]

KERRY EAGAN: No, I'm the chief administrative officer. [LB776]

SENATOR CHAMBERS: Chief administrative officer. [LB776]

KERRY EAGAN: So I am not an elected official. [LB776]

SENATOR EBKE: He (inaudible). [LB776]

KERRY EAGAN: I work for the county board. [LB776]

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SENATOR CHAMBERS: But you have to understand English pretty well, don't you, to have that job? [LB776]

KERRY EAGAN: I would hope so. [LB776]

SENATOR CHAMBERS: And I think I even speak grammatical English. Maybe that's the problem. A lot of politicians don't speak grammatically. Is that the problem as to why we don't communicate and my questions are not clear to you? [LB776]

KERRY EAGAN: Go ahead and repeat your question, Senator. I'll attempt to answer it as best I can. [LB776]

SENATOR CHAMBERS: Yeah, I like that attitude: Go ahead on and repeat it, Senator. And I will. You think Lancaster County should be able to make a profit from the calls that these inmates make, isn't that true? [LB776]

KERRY EAGAN: I can't answer that question yes or no because there's more to it than just yes or no. I think it depends on what the income is used for. [LB776]

SENATOR CHAMBERS: Is Lancaster County making a profit? [LB776]

KERRY EAGAN: We make \$300...we made \$397,000 last year on the inmate phone system. [LB776]

SENATOR CHAMBERS: And that's profit, isn't it? [LB776]

KERRY EAGAN: Yes. [LB776]

SENATOR CHAMBERS: So then the answer is very easy to answer yes or no. Lancaster County is making a profit, aren't they? You now answered yes after I went all around the bush, so that's the way I'll ask my questions. If this \$397...let's call it \$398,000 to keep...make it easy--we round it up--\$398,000 profit per year, is that correct, or per what? [LB776]

KERRY EAGAN: That was for the 2017 budget year. [LB776]

SENATOR CHAMBERS: So it's for a year, just so the record is clear. [LB776]

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KERRY EAGAN: That's a one-year period, yes. [LB776]

SENATOR CHAMBERS: Okay. And you, based on your letter, want to use this money, all of which, you wrote, is placed in the inmate benefit fund. Let me stop there. Is that correct? All of it goes into that benefit fund? [LB776]

KERRY EAGAN: Yes. [LB776]

SENATOR CHAMBERS: And it is used for both mandated and nonmandated programs. What are mandated programs? [LB776]

KERRY EAGAN: I think mandated programs include some GED courses and help and I think some religious resources must be provided by Jail Standards. That is my understanding. [LB776]

SENATOR CHAMBERS: Now, so that the record is clear--you and I know what you're talking about but people may not even with what you said--a mandate is a directive or order which must be carried out and it's given by somebody who has the authority to do that. Would you agree with that? [LB776]

KERRY EAGAN: Yes. [LB776]

SENATOR CHAMBERS: Okay. Who mandated these programs that you're paying for? [LB776]

KERRY EAGAN: The mandated programs? [LB776]

SENATOR CHAMBERS: Yes. [LB776]

KERRY EAGAN: They're mandated by Jail Standards. [LB776]

SENATOR CHAMBERS: Is the Jail Standards the board that is a state appendage? Is it the State Jail Standards Board? [LB776]

KERRY EAGAN: Yes, under the Crime Commission. [LB776]

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SENATOR CHAMBERS: So that means the county must carry these mandates out and provide this programming, correct? [LB776]

KERRY EAGAN: Yes, for GED and some religious resources. [LB776]

SENATOR CHAMBERS: And if you didn't have this inmate money paying for it, since it's a mandate from the state, the county would have to pay for it, is that correct? [LB776]

KERRY EAGAN: Yes. [LB776]

SENATOR CHAMBERS: Does the county have a general fund? [LB776]

KERRY EAGAN: Yes, we have a general fund. [LB776]

SENATOR CHAMBERS: Would that be the source of the money that would go to pay for these mandated programs? [LB776]

KERRY EAGAN: Well, I'm not the budget expert, but most likely, Senator, it would come from the general fund. We do have some different funds, but most everything comes from the general fund. [LB776]

SENATOR CHAMBERS: Okay, but county funds that are...okay? [LB776]

KERRY EAGAN: Yes. [LB776]

SENATOR CHAMBERS: So you're making these inmates pay for a program mandated by the state that the counties carry out, isn't that true? [LB776]

KERRY EAGAN: We're using the money for that, as well as other unmandated programs, yes. [LB776]

SENATOR CHAMBERS: We're talking about mandated programs, my friend. I want to take it a bite at a time because some people, when I question them, don't understand when I make the question compound or complex. I want to keep it simple. [LB776]

KERRY EAGAN: Yes, you are correct that there... [LB776]

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SENATOR CHAMBERS: These programs that the state requires the county to give, you are making the inmates pay for them, aren't you? [LB776]

KERRY EAGAN: We're using the inmate benefit fund which is funded in part by the phone bank, yes. [LB776]

SENATOR CHAMBERS: And I want that clear to the public that Lancaster County is using exorbitant costs, which inmates shouldn't have to pay for calls at all, to pay for programs mandated by the state. That's a pretty nice piece of clever work. Now what percentage of this \$397,000 goes to mandated programs? [LB776]

KERRY EAGAN: I probably would need my corrections director to answer that. I could get that information for you but I do not know that off the top of my head. But I could get that information for you and the committee. [LB776]

SENATOR CHAMBERS: When you came here to speak, did you know that I'm a member of this committee? [LB776]

KERRY EAGAN: Certainly, Senator. [LB776]

SENATOR CHAMBERS: Maybe you've never been in my presence, but are you aware that I ask questions to improve my education? I ask questions of people who have information that I don't have but I think would benefit me if I had it. Are you aware that I ask questions like that? [LB776]

KERRY EAGAN: I'm aware of that, Senator, and I always try to prepare as much as I can to be able to answer those questions. [LB776]

SENATOR CHAMBERS: Well, when you come up with people who are in the custody of the state, being held against their will, when you're going to make them pay for programs mandated by the state, it didn't occur to you that I might ask you what percentage of this amount is going to mandated programs? [LB776]

KERRY EAGAN: It's information I could get. It's not information that I have off the top of my head. [LB776]

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SENATOR CHAMBERS: But here's the question. It didn't occur to you that I would ask that question? That's a yes-or-no question. [LB776]

KERRY EAGAN: Not that specific question, no, or I would have prepared for it. [LB776]

SENATOR CHAMBERS: Okay. Tell me the nonmandated programs that this money goes for. [LB776]

KERRY EAGAN: Again, our corrections director is probably the better person to answer this, but some of the other programs include enrollment fees, tuition, various monthly programs put on by the Christian Heritage program, Alcoholics Anonymous, the... [LB776]

SENATOR CHAMBERS: Wait a minute, they're paying for religious activities? [LB776]

KERRY EAGAN: There is additional programs for parenting that's not necessarily religious activities. That's the organization. [LB776]

SENATOR CHAMBERS: You said by what organization? [LB776]

KERRY EAGAN: It's the Christian Heritage organization but the classes that they... [LB776]

SENATOR CHAMBERS: Is that a religious organization? [LB776]

SENATOR CHAMBERS: It probably has a Christian orientation, yes. [LB776]

SENATOR CHAMBERS: You know it's a religious organization, don't you? [LB776]

KERRY EAGAN: Well, it's the Christian Heritage association. [LB776]

SENATOR CHAMBERS: So it's a religious organization, isn't it? [LB776]

KERRY EAGAN: Most likely, yes. [LB776]

SENATOR CHAMBERS: If I'm a Muslim and I make calls, my money goes to support the work of a Christian organization that I don't want anything to do with, isn't that correct? [LB776]

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KERRY EAGAN: That's very possible. [LB776]

SENATOR CHAMBERS: If I'm a Jew, I may not want my money going to a Christian organization, correct? [LB776]

KERRY EAGAN: The, yeah, the program is not religion based; it's parenting based is the program that they're involved with. [LB776]

SENATOR CHAMBERS: But you are taking money that the inmates are mandated to pay and they have no say-so as to where that money goes and you're making them pay for the work of a Christian organization. That's true. You don't have to comment. The record is clear. I don't believe in mixing church and state, especially when private people, who have no say-so whatsoever and are under the custody of the state, have money extorted from them to go to a Christian organization. If that money was not going to this Christian organization, where would it go? Would it go into the county's general fund? [LB776]

KERRY EAGAN: No, inmate...well, it depends on the money. The inmate benefit fund is used for the benefit of inmates. If it's not going to that program, it would go to a different program or a different expense related to inmate benefit. [LB776]

SENATOR CHAMBERS: Does this money that the inmates pay that goes to the mandated programs, does it pay the full amount of those mandated programs? [LB776]

KERRY EAGAN: The full budget I believe is about \$515,000, so the \$397,000 pays a good portion of that entire budget but not the entire thing. [LB776]

SENATOR CHAMBERS: So if that \$397,000 is going to be used for mandated programs, it's...it wouldn't pay the full cost of the mandated programs, would it? [LB776]

KERRY EAGAN: It probably would pay the full cost of the mandated programs. [LB776]

SENATOR CHAMBERS: But if it went for those mandated programs, there wouldn't be anything available for these Christian programs, would there? [LB776]

KERRY EAGAN: No, I'm really not in a position to answer that, Senator. I...no, I don't have enough information. [LB776]

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SENATOR CHAMBERS: What do you do in your job? They pay you for...to come here and say I don't know this and I don't know that? [LB776]

KERRY EAGAN: I'm the chief administrative officer for the county. I'm not the corrections director. I agreed to testify for the board, to bring the letter of the board and express this position. I am not... [LB776]

SENATOR CHAMBERS: Well, is that director here? [LB776]

KERRY EAGAN: I am not an expert on all the inner working of the corrections department, but I'm happy to gather whatever information and bring that to you. I promise I will. [LB776]

SENATOR CHAMBERS: That's not your job. You already told me it's the director. Is the director of corrections here today? [LB776]

KERRY EAGAN: Yes, he is. [LB776]

SENATOR CHAMBERS: Is he going to testify? [LB776]

KERRY EAGAN: I don't think he intends to testify. [LB776]

SENATOR CHAMBERS: I think he might intend to now. You could just, if you want to, I don't mind you having him come up here and sit next to you and answer these questions. I don't see a hand going up. I'm doing this for a reason. I want to show how ridiculous, how preposterous things are done by these counties. They're always whining and whimpering. Then when they come to a hearing, they don't send the one to testify who has the information. And there are conservatives in the Legislature who like this and they're offended that I ask these kind of questions. They think I should be polite. My job is to get the information and the county has the opportunity to send the ones to answer. You get paid enough money to be the sacrificial lamb, so you're going to function as a sacrificial lamb. And I'm going to be the one to carry out the sacrifice, but I'm going to be fair because I haven't asked you anything that deviates from what you wrote and gave to us. Every question I'm asking you is based on what you gave to us. Let me ask this question, my friend. Did you write this letter yourself? [LB776]

KERRY EAGAN: Yes, I did. [LB776]

SENATOR CHAMBERS: Did you type it yourself? [LB776]

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KERRY EAGAN: Yes. [LB776]

SENATOR CHAMBERS: You're a better typist than I am, much better. But let me see if I can find a question you may be able to answer. All right. "As written, LB776 would eliminate virtually all of this funding," that \$397,000-and-few dollars. You did write that sentence. [LB776]

KERRY EAGAN: Yes. [LB776]

SENATOR CHAMBERS: And if all of that money is eliminated, then the county has to pay for the programs that they are mandated by the state to provide. [LB776]

KERRY EAGAN: Yes. [LB776]

SENATOR CHAMBERS: Is that true? [LB776]

KERRY EAGAN: That's true. [LB776]

SENATOR CHAMBERS: And if these Christian organizations are going to operate, they're going to get money from either their Christian members or people who don't mind donating to a Christian organization, is that true? [LB776]

KERRY EAGAN: It's hard to answer the question. You mean for providing this... [LB776]

SENATOR CHAMBERS: Speculating. [LB776]

KERRY EAGAN: ...for providing the services in the... [LB776]

SENATOR CHAMBERS: Yeah, speculate with me on that aspect of it. [LB776]

KERRY EAGAN: Yeah, it would be county money that would pay for it. [LB776]

SENATOR CHAMBERS: You haven't given me, and I'm just one person, a substantive reason why this money should not be taken. In fact, you've given me a stronger reason, because programs that the state mandates that you pay for as a county was not envisioned by the people I know of who serve in the Legislature that they should be paid for by people whose freedom has

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been taken from them by the state and who are in state custody. Now I know there are some conservatives who believe that's the way it should be, but I don't because I'm not a conservative, I'm not a religious person, I'm not a member of any political party. So maybe that's why I look at the humanity of the people who are involved and the injustice that I see visited upon these people. And I don't care what kind of crime they may have been convicted of, I don't care their race, I don't care their religion, I don't care their political affiliation, they're human beings, but they're human beings whose freedom has been taken by the state. And you have decided to make those people pay bills that the county should pay for. That's extortion, to me, but nobody is going to call the county to account. And there might be some people in Lancaster County who are proud that Lancaster County is doing this, but there's going to be somebody from Douglas County and you're going to see how I deal with them, if they're pulling this kind of...I don't use the language that the President does, but, if I did, I'd have a word with four letters. Let me see if I can find something that is not so confrontational. Suppose the Legislature mandates that all phone calls for inmates shall be free. We could do that, couldn't we,... [LB776]

KERRY EAGAN: Yes. [LB776]

SENATOR CHAMBERS: ...that there will be no charge? [LB776]

KERRY EAGAN: Yes. [LB776]

SENATOR CHAMBERS: Maybe that's what you ought to be trying to stop instead of saying don't...I don't want to give you any ideas. But here's what comforts you. I'm 1 out of 49 and these 49 people are not going to agree with me. They're going to agree with you. They're going to say that these people committed a crime and the Governor and the Attorney General, waging their reelection campaigns, have to be tough on crime so make these criminals pay, make them pay. If they're in jail because they drove while drunk, I guess people go to jail for that. I'm not a Christian so I don't drink. If they're in jail for using drugs, once again, I'm not a Christian so I don't use drugs. If they're in jail for disturbing the peace by cursing somebody out, not being a Christian, I don't use profanity. Good night, what kind of guy am I? I don't fit in America. Oh, that's right, it's a Christian country so I'm not supposed to fit here. And my colleagues are probably getting tired of what I'm doing, but if they don't pay here they're going to pay on the floor. I can't make them pass a bill, but I can hinder them from passing other bills that they want. And I want them to be assured right here that I'm going to get my pound of flesh. They'll not get that pound of flesh from the inmates anymore. There was a guy who said the wager is that I will take your flesh, but then a lawyer said, well, you've said you'd take flesh, you have to take the flesh but no blood. There are people who know how to deal with bloodsuckers. If I were you, but I'm not you, I would do exactly what you're doing because I could only do exactly what you're doing if I were you. If I didn't do exactly as you're doing, I wouldn't be you. So let me phrase

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that so it fits. Were I me, and I were holding the position that you're holding--and "were" is what you should use instead of "was" because it's speculative--and I were holding the position you're holding, they couldn't send me here to make a fool out of myself. I'm not saying about you because we have different standards of what constitutes being a fool. But they couldn't make me go to a committee where I know there's a member who is going to ask me close questions and I don't know the answer and there's somebody who is paid to do this and he's not going to do it and I'm going to do it. Then give me part of his salary, prorate it. If I'm going to be flayed and embarrassed in public, you're going to pay me for it. I'm not going to be a fool and do it free. That's if it were me, but it's not me, so they got the right person for this job. I'm in favor of taking all of this money, and I'm going to look into the legality, and it's probably legal because the Attorney General will say it is, the legality of compelling inmates to ante up the money to pay for mandated duties that the county is to carry out. Where does this money that is derived from the inmates reside? Is there a separate container that you put that money in that is not commingled with any other county money? [LB776]

KERRY EAGAN: Again, I'm not the budget and fiscal officer. My understanding is it probably goes into the general fund and is accounted in a separate way, every cent, under the title of the inmate benefit fund. [LB776]

SENATOR CHAMBERS: But it is commingled with county money. [LB776]

KERRY EAGAN: Yes, you could say into the general fund and it's accounted for, every penny. [LB776]

SENATOR CHAMBERS: What is the budget for Lancaster County? [LB776]

KERRY EAGAN: I think there was testimony earlier on that. It was 140...it's more than that. [LB776]

SENATOR CHAMBERS: 129? [LB776]

KERRY EAGAN: It's more. [LB776]

SENATOR CHAMBERS: I'm a working man, so when you say "129," 129 what? [LB776]

KERRY EAGAN: No, it's probably...again, I'm not the budget and fiscal officer. It's probably approaching... [LB776]

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SENATOR CHAMBERS: Well, I mean I'll take 129, but 129 what,... [LB776]

KERRY EAGAN: I don't know the...I don't (inaudible). [LB776]

SENATOR CHAMBERS: ...\$129, 129 cents? [LB776]

KERRY EAGAN: No. I think it's about \$146 million but I'm not the person to answer that. [LB776]

SENATOR CHAMBERS: Million? You got quiet when you said that. Did I hear you? You said million? [LB776]

KERRY EAGAN: Yes, \$146 million. [LB776]

SENATOR CHAMBERS: And you're going to gouge these inmates to pay for mandated duties. That's what you're doing, aren't you? [LB776]

KERRY EAGAN: The money is used for that purpose. That's one of the benefits that's included. It's the mandated benefits. It's part of the benefit program that's provided for inmates. That is correct. [LB776]

SENATOR CHAMBERS: You hadn't thought of it in these terms, though, had you? [LB776]

KERRY EAGAN: Yes, I had thought it in terms of both mandated and nonmandated. I have, yes. [LB776]

SENATOR CHAMBERS: And you thought of it being contemptible in the way that I think it's contemptible and didn't raise an objection to it? [LB776]

KERRY EAGAN: No, I...my personal opinion isn't relevant, as you've... [LB776]

SENATOR CHAMBERS: (Inaudible.) [LB776]

KERRY EAGAN: As you've said, I'm the representative for the county board. I'm not speaking in my individual capacity. [LB776]

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SENATOR CHAMBERS: Well, your capacity is not the budget because you don't know anything about that except in general terms. Your capacity is not the corrections director, which is what we're talking about. You don't know anything about that except in general terms. The director of corrections is here. If he had any decency, he would have raised his hand and said, Senator Chambers, I'm here and I'll testify. But I'm not going to tell him how to be decent. You'll never know what this says. It's for me to know and for you to wonder about, but I'm sure glad I'm here and not where you are. How do you pronounce your last name? [LB776]

KERRY EAGAN: Ee-gun (phonetically). [LB776]

SENATOR CHAMBERS: I'm looking at the wrong thing. Oh, you didn't sign...you didn't sign this letter. [LB776]

KERRY EAGAN: No, this...signed by the chair of the Lancaster County Board, Todd Wiltgen. [LB776]

SENATOR CHAMBERS: Well, I asked you did you sign, did you type this letter. [LB776]

KERRY EAGAN: Yes, I typed the letter, I prepared the letter at the direction of the county board with the content of...at the direction of the county board. [LB776]

SENATOR CHAMBERS: So this is not his letter. [LB776]

KERRY EAGAN: It's...it...the letter... [LB776]

SENATOR CHAMBERS: He's not the author of this letter. [LB776]

KERRY EAGAN: The letter was adopted by the vote of the county board, a 5-0 vote of the county board. He's the chair. He's signing on behalf of the county board in his capacity as chair. [LB776]

SENATOR CHAMBERS: So you could have written anything you wanted to, couldn't you? [LB776]

KERRY EAGAN: No. [LB776]

SENATOR CHAMBERS: Why didn't you sign your name to this letter? [LB776]

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KERRY EAGAN: Because it was prepared for the county board's signature at the direction of the board. [LB776]

SENATOR CHAMBERS: Did they take a vote on it? [LB776]

KERRY EAGAN: 5-0. [LB776]

SENATOR CHAMBERS: And they said that you should write the letter. [LB776]

KERRY EAGAN: That's one of my duties. [LB776]

SENATOR CHAMBERS: No, no. Did they vote that Mr. Eagan write this letter? [LB776]

KERRY EAGAN: That would be in the minutes that I said, yes, I will prepare the letter at the direction of the board. [LB776]

SENATOR CHAMBERS: I'm asking you a question. Were you at the meeting where this action was taken? [LB776]

KERRY EAGAN: Yes. [LB776]

SENATOR CHAMBERS: Did they take a vote? Your name is Kerry Eagan. Did they vote on anything in connection with "Kerry Eagan" that you remember? [LB776]

KERRY EAGAN: They voted to have a letter prepared. [LB776]

SENATOR CHAMBERS: Here's what I'm asking you, my friend. Did they vote on anything and your name was a part of what they voted,... [LB776]

KERRY EAGAN: No. [LB776]

SENATOR CHAMBERS: ...your name? [LB776]

KERRY EAGAN: No, no. [LB776]

SENATOR CHAMBERS: Okay. Did they vote that a letter should be prepared? [LB776]

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KERRY EAGAN: Yes. [LB776]

SENATOR CHAMBERS: And what was the vote on that? [LB776]

KERRY EAGAN: 5-0. [LB776]

SENATOR CHAMBERS: And how was the motion framed? [LB776]

KERRY EAGAN: That it was in two parts, it was...well, it was actually one part. The letter was discussed at a regular staff meeting of the board on a Thursday, probably would have been January 11, as we discuss legislation every meeting. [LB776]

SENATOR CHAMBERS: But I want on the vote. I... [LB776]

KERRY EAGAN: This bill was discussed and the vote of the board was to prepare a letter for the Judiciary Committee and that I would draft it and then I would present it to the committee. [LB776]

SENATOR CHAMBERS: Well, you're using the personal pronoun "I." You didn't vote. You would say they voted that you would do it. Did they vote that you should do it... [LB776]

KERRY EAGAN: Yes. [LB776]

SENATOR CHAMBERS: ...or did you volunteer? [LB776]

KERRY EAGAN: No, it was a direction from the board. [LB776]

SENATOR CHAMBERS: And they named you: Mr. Eagan, you're going to write this letter. [LB776]

KERRY EAGAN: Yes. [LB776]

SENATOR CHAMBERS: Okay. And you're carrying out their authority, their directive by writing this letter and letting this dumbbell sign it, so he can't type probably any better than I can. So here's what I'm going to ask you now. Mr. Eagan, where were you on the night of February 22, 2013? [LB776]

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KERRY EAGAN: I'm thinking I might have been in Utah on a ski trip on that point. That was about the days that I could have gone on a ski trip. [LB776]

SENATOR CHAMBERS: You have a fantastic memory and I'm a very good liar. I'll tell you why I'm doing this. I know the gentleman who is here from Douglas County and he's not going to get a break. People think that because somebody is my complexion I lighten up. I am harder because we note things that others don't. And this doesn't refer to you or him. Senator Krist is a former military man. For the record, can a traitor still be shot... [LB776]

SENATOR KRIST: Yes, sir. [LB776]

SENATOR CHAMBERS: ...under the United States? Can a prisoner of war be shot by the one who captured that person? [LB776]

SENATOR KRIST: Well, then the Articles of War would say, no, he is to be treated as a prisoner. [LB776]

SENATOR CHAMBERS: A prisoner who is trying to destroy you cannot be shot but a traitor can because a traitor is considered worse than an enemy combatant, and this is why people are more angry with those of their own kind, as is said, who betray them than they are to the one to whom they betray. The one to whom they betray is expected to do certain things because you're at war. But your own is not expected to collaborate. So a traitor can be shot. And this is why black people have greater resentment for black people who go to the...not the dark side, to the white side, why Native Americans are more angry at those who work with the cavalry, why Americans were very upset with Benedict Arnold and the Norwegians were upset with Quisling, because they betrayed their own kind. You're lucky you're not my kind, because I wouldn't be so kind to you. But you're doing things to people that I consider my kind even if they're your kind. This is unfair. Now that we've had this conversation and I know you're not here to give your opinion, I'm going to ask it anyway. You're paid with taxpayer money. Some of these people who are paying for these phone calls may have paid taxes at some point, and if they make purchases of certain items they probably pay sales tax now. You're paid by these people and you are a part of the governing structure and you not only are aware of a situation like this, but you can write a letter like this and boldly, accurately, and honestly state how this money is utilized, a way that I say is misuse but you don't feel that way so you can do it in good conscience. And you probably feel the same way now because your job is intact and you might even get a raise for having weathered this little verbal exchange. But here's what I want to call attention to, then I'm going to let you alone. I, and people of my kind, suffer violence at the hands of the police, poor people of your kind also do, are harassed, are hounded, and treated unjustly. People in your position are not treated that way, and this little experience you're going through seems unfair to you. You

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couldn't live the kind of life that we're compelled to live in a society that hires people like you to do the work that you do. And there's nothing illegal about it, there's nothing unlawful about it, there's nothing dishonorable about it. This is a part of the system. But when you come before somebody like me, it's going to be put in a broader context because I'm more concerned about these people who have no voice, who are helpless and at the mercy, which doesn't exist, of people for whom you work, as far as the government. And I have to be concerned about these people, the ones who are going to be gouged, and this isn't the total amount, for \$397,569.99 a year to talk to their family. And you see nothing wrong with it. You're comfortable with it. Your county board is comfortable with it. These Christians who come there and pontificate are comfortable with it. There will be members in the Legislature who are comfortable with it. But I'm not. My job is to make them as uncomfortable as possible. And even though we're staying here late, all I'm doing is taking a little of their time. That's all I'm doing. They don't have to stay here. They can leave. These people can't leave. You can say, well, they can make the call or not make the call. That's like saying if I'm thirsty I can drink water or not drink water. I won't die if I don't drink the water. But those are not real choices and that's what we're looking at here. And if I were that head of your corrections department, I'd be ashamed of myself to sit here through this and let you go through this. That's why I have so much contempt, not you, my friend, but your kind. And I'm not kind to them. And, see, I can take the heat. Any heat that is generated from anybody for anything that I say, I don't holler uncle and I don't holler, "Save me!" I'm too busy trying to help people who can't help themselves. But that's all that I have to ask of you, and I'm glad that you wrote the kind of letter that you wrote. I'm glad you gave the information that you gave. And you've given me grist for my mill, which is specific, which I didn't have before. You may feel that your coming here was in vain. That's for you to decide. But I think you performed, maybe unintentionally, a public service today. And you know why I think you did that? Legislators and other people who formulate policy need accurate, reliable, specific information. You gave all of that in your letter. I pay attention to words. And if somebody is writing something to condemn an individual, even to die, the lawyers read those words very carefully because in the very words of condemnation may also be words that will lead to exoneration if they're carefully read and applied. So I...you may think I'm being facetious, but I'm not. I'm grateful that you wrote a letter--maybe now you might think you should have--that didn't pull punches, that didn't try to misrepresent the situation, that did not try to hide anything, that was pertinent to what you felt the discussion would be. I do not believe that any of the questions you couldn't answer because you didn't have the information was a deliberate tactic to be willfully ignorant. I don't believe that happened. But what I do fault is the ones who have sent you here not sending the people who have the information that is pertinent. And maybe your job description requires you to come here, but I still would rather those had come who could answer the questions that I have. Madam Chair, that's all that I have to ask. [LB776]

SENATOR EBKE: Thank you, Senator Chambers. Senator Halloran, and then can I...just a second. Can I see a show of hands how many others are planning to testify on LB776? Just one?

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Anybody else? Okay. We're going to finish this one and then we're going to let the...let my staff and everybody else get up and move. So, Senator Halloran. [LB776]

SENATOR HALLORAN: Thank you, Chair Ebke. Thank you, Mr. Eagan, for, I'm sure, to your pure enjoyment, being here. I think you mentioned that these were mandated programs that you're paying for. Are we positive of that? [LB776]

KERRY EAGAN: Several of the programs are mandated. We're mandated to provide GED instruction and some religious materials or reference or services or something on that line. [LB776]

SENATOR HALLORAN: Okay. So if, you know, if we allow for free phone calls, just hypothesize with me here a little, if we allowed for free phone calls and you didn't collect that \$397,000, it would have to come out of the general fund to pay for some of those programs. [LB776]

KERRY EAGAN: Correct. [LB776]

SENATOR HALLORAN: Right? So is the option that Lancaster County has to do that and do away with some of those programs? And there's quite a laundry list of programs there. [LB776]

KERRY EAGAN: Yes. The programs which are not mandated, the county board could eliminate those programs. It could not eliminate the mandated programs. [LB776]

SENATOR HALLORAN: Right. Okay. So there's a good chance that that...a possibility that that could happen. [LB776]

KERRY EAGAN: There's a possibility. They haven't had that debate and the programs are in place because they're valuable, they help reduce recidivism, it's a direct benefit to the inmate. [LB776]

SENATOR HALLORAN: And we're always ask... [LB776]

KERRY EAGAN: So it would have to be a good, healthy debate before those programs were eliminated. [LB776]

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SENATOR HALLORAN: Right, right. And we're always asking for more programming, which I think is...I think we all agree is beneficial to reacclimate people to the community. But I just wanted that for the record. Thank you. [LB776]

SENATOR EBKE: Thank you, Senator Halloran. Any other questions? Thank you, Mr. Eagan. Next opponent. [LB776]

MARK FOXALL: Good afternoon, Senators. Mark Foxall, director of corrections, M-a-r-k F-o-x-a-l-l. First of all, I'd like to say that I'm testifying in my capacity as director of corrections and I would say that the county board for Douglas has not made a recommendation yet, or a decision yet, on this bill, so that remains for their agenda. If LB776 is passed, Douglas County would realize a loss of approximately \$616,000 in revenue, which is currently utilized to pay for reentry... [LB776]

SENATOR CHAMBERS: Excuse me, could you...excuse me, could you read a little louder, please? [LB776]

MARK FOXALL: Yes, sir. If LB776 is passed, Douglas County would realize a loss of approximately \$616,000 annually that is currently utilized to pay for reentry programs at an annual cost of \$770,000. Without a funding source to pay for reentry programs, we would be...our ability to provide these programs would be greatly diminished insofar as the inmate population is concerned. We're the largest facility in the state of Nebraska in terms of correctional services, in terms of beds: 1,453 on the secure side; 214 on the nonsecure side. Unfortunately, we are also the largest mental health facility in the state of Nebraska. Last year we averaged approximately an ADP, or average daily population, of 1,255 inmates. That was the highest ADP in the history of the department of corrections, which follows an increase in 2016 reversing a downward trend in our population that began after the 2010 calendar year. On 16 January we had 1,272 inmates in custody. Individuals in our facility made approximately 1.6 million telephone calls in 2017. The funds realized from these calls were not directed to the Douglas County general fund. Rather, these funds were used to support a range of programs that prepare offenders for a successful return to the community. Examples of programs that are supported by the aforementioned funds include GED supplies and testing materials, life skills training, literacy education, victim impact classes, job readiness classes, cognitive behavioral classes, supplies the indigent during...upon their release from incarceration, and self-help video programs. Given the short-term nature of incarceration which is characteristic for our jail, our ability to address criminogenic needs of the offender through the use of evidence-based range of programs serves an irrefutable role in safeguarding the community to which the offender returns. Diminishing our ability to provide these range of programs will likely have the effect of increasing or exacerbating our growing population. Moreover, we...a lot of individuals that leave

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our facility go to the Nebraska Department of Correctional Services and I'm concerned that our inability to serve the programming needs of the inmates will also increase that population there. These funds and the programs they support are critical to the positive influence on the lives of the incarcerated offenders returning to the community. More importantly, these programs reduce a likelihood of further criminal offending which results in victimization and recidivism and have a direct impact on public safety. [LB776]

SENATOR PANSING BROOKS: Okay. Thank you, Mr. Foxall. Any questions that... [LB776]

SENATOR CHAMBERS: If others have questions, I'll wait. [LB776]

SENATOR PANSING BROOKS: Does anyone have a question? Senator Chambers. [LB776]

SENATOR CHAMBERS: Mr. Foxall, I still didn't hear very well what you said, so I'm going to have to ask some questions and get some figures. For last year, what's the total amount of money that the county brought in from these phone calls? [LB776]

MARK FOXALL: \$616,000. [LB776]

SENATOR CHAMBERS: \$615,000? [LB776]

MARK FOXALL: \$616,000. [LB776]

SENATOR CHAMBERS: Six hundred and sixteen thousand (dollars), that's the total amount of all the calls made last year? [LB776]

MARK FOXALL: That's what went into our inmate benefit account. [LB776]

SENATOR CHAMBERS: And how much per minute is a person charged? [LB776]

MARK FOXALL: Thirteen cents. [LB776]

SENATOR CHAMBERS: Fifteen cents? Okay. [LB776]

MARK FOXALL: Thirteen cents. [LB776]

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SENATOR CHAMBERS: How much? [LB776]

MARK FOXALL: Thirteen cents. [LB776]

SENATOR CHAMBERS: Thirteen cents, a flat 13 cents for all calls? [LB776]

MARK FOXALL: Thirteen cents a minute. [LB776]

SENATOR CHAMBERS: When did they start charging inmates like this? Let me ask the question differently. See, the other gentleman gave us a letter. How long have you been associated in any capacity with the Douglas County Corrections system? [LB776]

MARK FOXALL: Approximately 17 years, 17 years. [LB776]

SENATOR CHAMBERS: Okay, and this is for the record. Was there any time during that 17-year period when inmates were not charged for the phone calls that they made? [LB776]

MARK FOXALL: I'm not aware of that. I don't know. [LB776]

SENATOR CHAMBERS: So from the very first connection you had, there was a system where inmates had to pay for each phone call that they made. [LB776]

MARK FOXALL: Yes, sir. [LB776]

SENATOR CHAMBERS: If they made the call to a lawyer, is that paid for? [LB776]

MARK FOXALL: No, sir, it is not...they are not charged. [LB776]

SENATOR CHAMBERS: So during your tenure now, where you're the director, how many calls can an inmate make to his or her lawyer without having to pay for it? [LB776]

MARK FOXALL: Unlimited. [LB776]

SENATOR CHAMBERS: Unlimited. [LB776]

MARK FOXALL: And the calls in admissions are all free, doesn't matter who you call. [LB776]

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SENATOR CHAMBERS: Say it again? [LB776]

MARK FOXALL: Calls in admissions are free, doesn't matter who you call. When you come in, when you're booked into our admissions area, all those calls are free: lawyer, mom, dad, significant other, anyone, all free. [LB776]

SENATOR CHAMBERS: I'm having trouble understanding some things. But did you say calls made in the area are all free? [LB776]

MARK FOXALL: In the admissions area, when you're booked into our facility, those...there is a set of phones in that admissions area. All of those calls are free calls. [LB776]

SENATOR CHAMBERS: Where does the \$616,000 come from then? [LB776]

MARK FOXALL: Sure. Once that person is dressed in, it goes into the housing unit and that's where...then they're charged for their calls. [LB776]

SENATOR CHAMBERS: I'm getting it for the record. It'll be...I'll be able to read it later because I'm really not understanding. What is the name of the company that Douglas County contracts with? [LB776]

MARK FOXALL: GTL. [LB776]

SENATOR CHAMBERS: And I'm sure that was picked up because I didn't. Did they contact the county or the county reached out to them? [LB776]

MARK FOXALL: I don't know how that contract was first established. That was before my time as the director. [LB776]

SENATOR CHAMBERS: Now this is a question I should have asked before. Why didn't...why does not Douglas County--I won't talk about other counties--not work through the regular telephone system? You know, I pay some telephone outfit. I think it's...I don't even know the name of, even though I make out a money order for them every...Life-something. Anyway, why don't they make it, make the...their deal with a regular phone company that any civilian would make use of? [LB776]

MARK FOXALL: Senator, I do not know. [LB776]

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SENATOR CHAMBERS: Okay. [LB776]

MARK FOXALL: I'm not familiar with the other telephone companies that operate or what their ability is to provide calling services of this type. [LB776]

SENATOR CHAMBERS: How many of the...what types of calls are recorded that are made from your facility? [LB776]

MARK FOXALL: All of the calls except the attorney calls are recorded. [LB776]

SENATOR CHAMBERS: If a call is made to me, it would be recorded, wouldn't it? [LB776]

MARK FOXALL: The calls that are made to you or... [LB776]

SENATOR CHAMBERS: If a call is made from your facility to me, then that call would be recorded. [LB776]

MARK FOXALL: I can't answer that. We try to make sure that those calls are not recorded. If that number is uploaded into the software, then it's not recorded, should be free. [LB776]

SENATOR CHAMBERS: One reason I ask--excuse me--that, there was an operator or somebody who would always say this call is being monitored, and that's why I won't accept calls from inmates, because I don't want anything that I say to somebody to be listened to. And it's not that it's unlawful, but I just don't want any of my calls recorded. If this bill were to go into effect, would it eliminate that complete...let's use this figure to work with because it might vary. Would it eliminate that complete \$616,000? [LB776]

MARK FOXALL: It would. [LB776]

SENATOR CHAMBERS: And that...Douglas County's budget is \$317 million, the budget, not your... [LB776]

MARK FOXALL: It's not my budget. [LB776]

SENATOR CHAMBERS: ...the county budget. [LB776]

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MARK FOXALL: Oh, yes. I don't know what their budget is. I know what my budget is, but... [LB776]

SENATOR CHAMBERS: Right. [LB776]

MARK FOXALL: Yes, sir. [LB776]

SENATOR CHAMBERS: But if this entire \$616,000 were eliminated because it was determined by the Legislature that those calls should not be charged for, I'm sure Lancaster County...I mean Douglas County could come up with the money. Now did I hear you say that the county board directed you to come here today? [LB776]

MARK FOXALL: No, sir, they did not. The county board has... [LB776]

SENATOR CHAMBERS: Oh, they didn't. [LB776]

MARK FOXALL: The county board has not made a recommendation on this piece of legislation. [LB776]

SENATOR CHAMBERS: Oh, all right. Then that eliminated a whole lot of questions and attacks I was going to make. Because I wasn't able to hear a lot but I've got some information from the other gentleman who talked to us, I won't take you through the same thing because I don't have a letter with specific figures that would allow me to ask that kind of question. So he was smart not to give us a letter. Here's what they say: Do right--r-i-g-h-t--and fear no man; don't write--w-r-i-t-e--and fear no woman. This is one time the fact that you didn't w-r-i-t-e, you don't have to fear this man. But I will be talking to you because we've known each other, I've know him since before he knew himself. We'll be able to talk about some of these things--I'll get your thinking, I'll give you mine--but so you'll know where I am, I don't think inmates should have to pay anything for any of their calls. I think it's a cost that goes along with the county maintaining a jail system and carrying out whatever function that's supposed to carry out in terms of rehabilitating people, equipping them to come back into society, and not be one who would go back to jail again. And I think \$616,000 is a small amount to pay as a part of that overall rehabilitative program. That's my view and that's what I'm going to work toward. Now I cannot say what any of the other senators are likely to do, but I know I cannot get a majority of them to do what I want to do, because they're Christians and I'm not. And I think you have to be a non-Christian to be sympathetic to people who are in a bad way and I'll tell you why I say that. Christians think that they're being punished by God and they're not supposed to interfere with God's punishment. Well, since I'm not a Christian, when I see somebody hurting, if there's

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anything I can do to alleviate the pain, that's what I would do. And the reason I think they believe that the Bible says that when a woman has a child she is to have pain, she is to have pain, when for that reason for many, many centuries there was anybody who tried to do things to alleviate the pain of childbirth were said to be violating God's law, so if they feel that the woman who birthed them into this world should suffer pain because God wants it, I can understand why they say somebody who committed a crime should suffer pain. But since I'm a Christian...not a Christian, I hate that my mother suffered pain when I was born, unless I was one of those special children who did not cause pain. But I did not intentionally and knowingly cause my mother any pain during my entire life that I'm conscious of when I was alive. And that comes from being a non-Christian. She could have told me, honey, I'm going through this because God wants to. I'd say, well, Mama, he's your god, but he's not mine. And if me thinking more of my mother than I do of a god who is going to hurt my mother, then if the punishment for me is death, then God may as well kill me now, because I'm going to do everything I can to make sure that you don't suffer anything unnecessarily. So that kind of goes over to other people that I don't even know, people who are white, who might wouldn't hesitate to do something bad to me, but I don't know that they would. The only thing I'll know is that they're in a set of circumstances that I think are unfair, that minimize their dignity as a human being, that dehumanizes them in some way, and then I don't want to ask a lot of questions because I don't want to know certain things. I want to be able to say that person needs help, I'm able to give it, and I'm going to give what I can. So when you and I talk, you'll know what I'm...where I'm coming from and that my intent is to eliminate all these fees, if I can. And I think the gentleman who was testifying for Lancaster County may have gotten the same understanding through his being grilled. But I'll tell you what that did for him. I think today, as never before, he'll probably sympathize every time he sees a hamburger being prepared on a grill now. But that's all that I have. [LB776]

SENATOR EBKE: Thank you, Senator Chambers. Any other questions? Senator Halloran. [LB776]

SENATOR HALLORAN: Don't look so discouraged. [LB776]

SENATOR EBKE: What? [LB776]

SENATOR HALLORAN: Don't look so discouraged. Thank you, Madam Chair. [LB776]

SENATOR EBKE: Yep. No. [LB776]

SENATOR HALLORAN: I won't keep you long but I got to ask you the same question--thanks for your testimony--that I asked Mr. Eagan. If we, or if Douglas County, offered free phone calls,

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would you have to stop the unmandated reentry programs, you believe? Is that a possibility? Because you'd be losing that revenue, right, so... [LB776]

MARK FOXALL: If we lose that revenue, I would have to stop those programs. But I tell you what, to the senator's point, I'm going to figure out a way to get those programs supported. You have to. It's my responsibility to address the needs of the individuals that come into our facility and however I can do that, if it's this way or if it's some other way, I'm going to have to figure that out. That's my challenge. [LB776]

SENATOR HALLORAN: All right. Thank you. [LB776]

SENATOR EBKE: Anything else? Thank you, Mr. Foxall. Okay, do we have any other opponents? Anyone speaking in the neutral capacity on LB776? Okay, that concludes the...we had no letters. That concludes the hearing on LB7...you want to? Oh, Senator McCollister waives. I heard that you were going to. That concludes the hearing on LB776. I'm going to give us five minutes to let staff get up and move around. The rest of us have made exits but we need to let staff get in and out, so. [LB776]

SENATOR CHAMBERS: I'm sorry. [LB776]

BREAK

SENATOR EBKE: Okay, we will resume. This is the hearing on LB678. Senator Krist, welcome. [LB678]

SENATOR KRIST: (Exhibits 1 and 2) Thank you. Good afternoon, Senator Ebke and members of the Judiciary Committee. For the record, my name is Bob Krist, B-o-b K-r-i-s-t. I represent the 10th Legislative District in northwest Omaha, along with north-central portions of Douglas County, which includes the city of Bennington, and I appear before you today in introduction and support of LB678. The Legislature enacted...in 2016 the Legislature enacted LB505, which amended Sections 29-3523 to provide that certain records relating to criminal charges be sealed if the criminal case was dismissed before the person charged successfully completed a pretrial diversion program, was acquitted, or the prosecutor otherwise dismissed the case. The law provided that the records relating to the criminal case would be withheld from public inspection. The effective date of LB505 was January 1, 2017. This date was designated in order to accommodate computer and administrative changes necessary to carry out the law within JUSTICE and other places. LB678 would provide for the means by which a person who has had his or her case dismissed prior to January 1 of 2017 could petition the court to seal their records

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as provided in Section 29-3523. So let me put this in pilot terms, real clear so everybody can understand. It was interpreted by some jurisdictions that the effective date was the date at which records could be sealed from that date forward. That was never the intention of the bill, so the cleanup bill, if you will, LB678, was supposed to make it very clear that you could, indeed, petition to have records sealed prior to that effective date of the bill. Some jurisdictions are doing it one way, some the other way. Now that might be simple enough, but many of us are really embarrassed because in this bill, if you look at the green copy, if you go to page 5, line 9, you'll see something very similar in there from yesterday's bills. The Bill Drafters actually included in another bill into the copy, green copy of this. So the first thing that needs to happen is that declaring a state of emergency language starting on page...on line 9 of page 5 and to the end needs to be removed from this bill. The prior portion of the green copy is good in essence. Then, step two is complicated a little more. I have an amendment here that was given to us. Mr. Clark and I have worked with the Supreme Court, with the...Mr. Steel and company. They have a word change because in their mind striking the word, if you look on line...on page 4, lines 9 and 14, strike "expunge" and insert "seal" into...in line 14 after the comma, "including such order and petition filed under this" section. The significance of the change from "expunge" to "seal" is significant to the courts and we can talk about that, obviously, in Exec Session, but I think the lawyers among us will agree that that's probably a better use of the terminology. And I appreciate Mr. Steel coming to me. And if the page would pass these out, please, that would be great. [LB678]

SENATOR EBKE: He's got some there. [LB678]

SENATOR KRIST: And finally, and finally, there is another group represented by Lancaster County, I understand, some Douglas County concerns about sealing a record at a lower court level and then taking a charge into another level--let's say it started out being a misdemeanor but now it's charged as a felony--and not sealing that record so that the extended court can also look at the information that's there. I am having a round-table discussion with those concerned and I will come back to this committee with an amendment that I think will be, again, in terms of cleanup, will help them with the things that they found which were unintended consequences of the past bill, LB505 in 2015. So if I would have known a week ago what I found out here in the last 24-48 hours, I probably would have asked you to pull it from scheduling and we would have dealt with all those technicalities. And thanks to Mr. Clark and I, we can get together and with the interested parties and work through the issues. But for the sake of maintaining your schedule, this is a cleanup bill. It's meant so that LB505 and its unintended consequences can be cleaned up. It's meant for a clearer definition across all jurisdictions that this can be...this can happen for people before or after that date of 1 January. That was never intended to be a date, a hard line in the sand moving forward. It was always meant to be anytime before or after that date. So if that's not...no, I'm kidding. It's a little confusing. I get it. But I think if you followed my rationale, if you'll give me a time...give me the time, legal counsel and I the time to work with the interested

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parties, we can bring back to you what we would...I would hope be a change, an amendment that would be a wholesale change to the green copy and make it very clear and then we can Exec on it at a later date. [LB678]

SENATOR EBKE: So to be clear, the change, we've got the one change from the Supreme Court,... [LB678]

SENATOR KRIST: Yes, ma'am. [LB678]

SENATOR EBKE: ...page 4, and then we will need to fix that section that got added that shouldn't have from... [LB678]

SENATOR KRIST: Remove the section that had been added by Bill Drafters. [LB678]

SENATOR EBKE: Yeah. Okay. Senator Chambers. [LB678]

SENATOR CHAMBERS: Just for the sake of the record, since you mentioned, Senator Krist, this amendment, when you expunge it, that means it's taken out of the record completely, it no longer exists. To seal it keeps it there but it cannot be seen unless the court unseals it. [LB678]

SENATOR KRIST: Right. [LB678]

SENATOR CHAMBERS: And I just want that so that the record will know what the amendment...the significance of it. [LB678]

SENATOR KRIST: And I don't know how it escaped us in LB505 but I understand the significance of the recommendation, and I totally agree, so it will happen before it comes back to you in final form. [LB678]

SENATOR PANSING BROOKS: I have something. [LB678]

SENATOR EBKE: Senator Pansing Brooks. [LB678]

SENATOR PANSING BROOKS: So just for the record, as well, I think it's...there is an argument to whether it should be expunged or sealed. And expunged does make it completely disappear and seal allows all sorts of people to look at it. And so again I would argue that I'm interested in why we are changing it back and I'm not convinced that that needs to be made, so there's my

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editorial opinion. I'm not sure I agree with Corey Steel or the courts at all on that. Thank you.
[LB678]

SENATOR KRIST: Okay, and I'll take that concern forward along, Mr. Clark and I, when we talk with the courts again, because the courts will again be part of the round-table discussion dealing with the rest of this. I don't know...I know enough to be dangerous in terms of the process that the court is trying to protect in order to be able to look back on the information should there be a need to do that, and the expungement means that they have that...do not have that opportunity.
[LB678]

SENATOR PANSING BROOKS: And are these the same courts that are fighting me on right to counsel for juveniles across the state? [LB678]

SENATOR KRIST: One and the same, I'm sure. [LB678]

SENATOR PANSING BROOKS: Okay, thank you. [LB678]

SENATOR KRIST: You bet, just to be clear, for the record. [LB678]

SENATOR EBKE: Senator Halloran. [LB678]

SENATOR HALLORAN: Yes. Senator Krist, for clarity, again, I missed the...on page 5, line 9 through what is...? [LB678]

SENATOR KRIST: I believe, Senator Halloran, that it is on page 5, beginning on line 9...
[LB678]

SENATOR HALLORAN: All right. [LB678]

SENATOR KRIST: ...through line 15 on page 6, which basically is the remainder of the green copy. [LB678]

SENATOR HALLORAN: Oh, remainder of the bill? Okay. [LB678]

SENATOR KRIST: Yeah, they just tacked on a piece from my yesterday's bill onto this one. And again, I'm embarrassed that we didn't catch it before now but... [LB678]

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SENATOR HALLORAN: Okay, thank you. [LB678]

SENATOR KRIST: Yes, sir. Thank you. [LB678]

SENATOR EBKE: Any other questions? Senator Hansen. [LB678]

SENATOR HANSEN: Just a comment. I know I've talked with you about this, but I've got a constituent who was impacted by this and applied and was denied because of the confusion of the enactment date, so thank you for working to clear it up. [LB678]

SENATOR KRIST: Right. And I think if...I think this bill is very important for the...just for the clarification of before or after that date, to your point, so I will be pressing it with this committee in the near future. But as long as we have the statute open, the book is open, let's make the changes necessary, kind of have another round table. [LB678]

SENATOR EBKE: Okay. [LB678]

SENATOR KRIST: Thank you. [LB678]

SENATOR EBKE: Any other questions? Okay. First proponent. When ready... [LB678]

RYAN SULLIVAN: (Exhibit 3) Madam Chairperson, Senators, my name is Ryan Sullivan, R-y-a-n S-u-l-l-i-v-a-n. I am an assistant professor of law at the University of Nebraska College of Law where I teach in the civil clinical law program. As part of that program, I supervise what we call the Clean Slate Project. I am testifying and speaking in favor of LB678 as a citizen, not in my capacity as an employee or a representative of the university. The Clean Slate Project works with low-income Nebraskans, mostly military veterans, who struggle to obtain housing and employment as a result of items that come up on their criminal background checks. In my research, I have found those with records of charges that did not result in a conviction often suffer the most from the existence of this government-maintained criminal history; it's these innocent Nebraskans who will directly benefit from this much needed amendment to 29-3523. As Senator Krist noted, when this bill was...this statute was amended in 2016. That amendment went into effect January 1, 2017. Our program was flooded with requests to assist them in bringing these petitions to seal these records. Many of these legally innocent Nebraskans were looking forward to finally being free from the stigma of having been arrested. However, in some jurisdictions, courts interpreted the 2016 amendment as to apply only to new cases, only to cases where the individual was acquitted or dismissed after January 1, 2017, and those that were acquitted or their cases were dismissed prior to January 1, 2017, would forever be burdened by

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that criminal record. This amendment, I believe, will remove any question as to the Legislature's intent. As Senator Krist said, this is a cleanup bill for that purpose. Moreover, the amendment is going to make the law a lot more user-friendly to self-represented citizens, people who can't afford an attorney or who are not able to get into our program. The proposed amendment not only makes clear that the pre-2017 cases are eligible to be sealed, but also sets forth a clear guidance on how that relief can be sought. For obvious reasons, none of the individuals that the Clean Slate Project have been working with are here today to testify in this very public forum that would be counter to their objective of sealing their records. Instead, you'll hear today, this afternoon, from two, from the two law students who have taken over, recently taken over the Clean Slate Project this semester who are leading that program. To describe the plight of those who will benefit from this amendment, each of these students are going to share with you the story of a hypothetical citizen who is seeking the relief that this amendment will provide. Each hypothetical case is based on a composite of several of the individuals that the clinic has encountered while working on the Clean Slate Project. I want to thank Senator Krist for bringing this amendment and I'll answer any questions if you have them. [LB678]

SENATOR EBKE: Thank you, Professor. Any questions? Looks like none. Thank you. [LB678]

RYAN SULLIVAN: Thank you. [LB678]

SENATOR EBKE: Next proponent. [LB678]

ASHLEY FISCHER: (Exhibit 4) Hello. Madam Chairperson, Senators, my name is Ashley Fischer, A-s-h-l-e-y F-i-s-c-h-e-r. I am a senior certified law student and I am enrolled in the civil clinical law program where I co-lead the Clean Slate Project. I am testifying in favor of LB678 as a citizen and not as a representative of the university. This afternoon I'm going to tell you a story. Although this tale is largely a work of fiction, it represents a compilation of several legally innocent Nebraskans the Clean Slate Project has helped. This could be a very true story for many Nebraskans, but some details have been altered to protect the identities of those concerned. This story is about "Jessica," a single mother of three. She lives in Lincoln where she holds two part-time jobs and cleans her friends' houses on the weekends for additional income. She has struggled for over a decade to find a full-time job. Why: because of her public criminal history. One weekend over ten years ago, Jessica and her friend took a trip to the mall. They browsed several stores, including a fine jewelry store. There, Jessica's friend tried on several rings, very expensive rings. Presumably not finding anything she liked, Jessica's friend suggested that they leave. The two headed for the parking lot but they didn't get that far. Jessica and her friend were stopped at the door by security. Jessica's friend had tried to steal one of the rings she had tried on. Jessica's friend was arrested. And because Jessica was suspected of being involved, she was arrested too. Both women were charged with felony theft. Jessica had no idea her friend had

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taken the ring and explained that to the police. Jessica's friend also confirmed Jessica was not involved. The surveillance video showed that Jessica was not even in the store when the ring was taken. Three months after she...after being arrested, the charges against Jessica were finally dismissed. Even though Jessica was innocent, her criminal charge continues to haunt her. In fact, two criminal history reports, sold by private companies, falsely indicate that Jessica was convicted of the crime. One report simply states the case number and beside the case number it states, "felony theft." Last spring, Jessica petitioned to have her record sealed under 29-3523, but her request was denied upon the court's conclusion that this statute applied only to new cases. Even though she committed no crime, Jessica continues to be labeled a criminal. The record of these dismissed charges, if they remain public, will continue to burden Jessica. Regardless of her qualifications, potential employers will continue to overlook her for an applicant with no criminal arrest on their record. So for these reasons, for Jessica and other legally innocent Nebraskans like her, I ask that you please vote in favor of LB678. Thank you very much and I'll answer any questions you may have. [LB678]

SENATOR EBKE: Thank you for being here today. Any questions? Senator Pansing Brooks. [LB678]

SENATOR PANSING BROOKS: Thank you for coming, Ms. Fischer, and I'm really pleased that Professor Sullivan has brought all of you here. I hope you will tell your colleagues to come and participate in the legislative process that's so important for our state and this unique Unicameral. So thank you for taking the time. I know you're swamped right now and that was really good testimony. Thank you. [LB678]

ASHLEY FISCHER: Yeah, thank you very much. I'm sure we'll be back. [LB678]

SENATOR EBKE: Next proponent. [LB678]

MARK FOXALL: (Exhibit 5) Senators, hello. My name is Mark Foxall, Mark J. Foxall, M-a-r-k F-o-x-a-l-l. I'm a senior certified law student at the University of Nebraska Law where I'm currently also enrolled in the civil law clinic program, and I also co-lead the clinic's Clean Slate Project. I'm here to speak in favor of LB678 as a citizen and not as a representative of the university. This afternoon I'm going to share with you the story of a young man who represents many individuals who have sought assistance from the Clean Slate Project. His name and some of the details have been changed to safeguard identities. "Michael" is a 25-year-old African-American male. His story begins in Omaha, where he has lived his entire life. He went to high school in Omaha. He obtained his bachelor's degree in Omaha and currently Michael is completing his master's in international finance. He has been aggressively seeking many different internships but, despite several interviews, Michael has not been able to further his

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education and secure a position as an intern. One potential employer offered Michael a position pending a background check. Michael was ecstatic. He told his friends and his family and he was excited about the opportunity he was going to have. However, the day before he was to begin work, he received a call from the employer saying the offer had been rescinded. He was told it was due to the result of his criminal background check. Michael has never been convicted of any crimes. He has never even had a speeding ticket, and his entire criminal history is composed only of charges that were ultimately dismissed. He incurred two charges at age 19 stemming from allegations that were not based in fact. These charges were promptly dismissed. No evidence was ever presented that Michael actually committed a crime. Two other charges, both in 2016, were the result of mistaken identity. In both of these cases there had been a police broadcast looking for a tall, black male between the ages of 20 and 30 and Michael--a tall, black male in his 20s--happened to be out in public when the call came out. The charges were dismissed in short order but they remain on his record. The fifth records stem from an incident last year when Michael was on his way home from night class. He witnessed two gentlemen engaged in an altercation outside of a gas station and Michael approached the two gentlemen to deescalate the situation. At that moment, a police officer arrived at the scene and the officer put all three men in handcuffs. He went back to his cruiser to check for active warrants. The officer returned, arrested all three men, and he didn't believe Michael's story because of his four prior incidents on his record. The charges were also ultimately dropped. Michael's story is not uncommon of that of other young black men who live in or near high-crime areas and, by no fault of his own, Michael and others like him will be subject to more encounters with police officers. From this record alone, Michael is labeled a criminal by society and viewed as a risk to potential employers who want to pull his public criminal history. Michael's 2017 case was sealed automatically, by statute, the moment it was dismissed, but his pre-2017 arrests continue to follow him, whether it's an encounter with a police officer or an employment background check. There is no reasonable justification for keeping these records available to the public that is not...see my time is over. Go ahead and finish? [LB678]

SENATOR EBKE: Go ahead and finish up. [LB678]

MARK FOXALL: ...that is not outweighed by the severe and debilitating prejudice faced by Michael and all those in Michael's situation. On behalf of the Michaels, the Jessicas, and all other legally innocent Nebraskans who deserve an even playing field when applying for a job, for housing, or trying to further their education, I ask that you please vote in favor of LB678 so that these innocent Nebraskans can be free from the crippling stigma of having a criminal record despite having committed no crime. Thank you. Are there any questions? [LB678]

SENATOR EBKE: Thank you, Mr. Foxall. Questions? [LB678]

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SENATOR CHAMBERS: I just want to confirm the truth of what he said. [LB678]

SENATOR EBKE: Okay. [LB678]

SENATOR CHAMBERS: You may have trouble, young man. Realize that I was once younger than you. But a friend of mine and I were in a car, and it may have been around 1:30, and the car was pulled over and the cop arrested us both. And when we got downtown, I was asking, well, what did you pick us up for? He said, well, you matched the description of somebody who committed a robbery. I say, well it was dark, how did...you didn't even see what I was wearing. And so he mentioned what the guy had on. I said, man, I got on a white T-shirt, you can't even see my pants, how can you say I look like whoever this was? The charges were dismissed. But I've been arrested several times. The charges were dismissed. One time I was...I'm trying to think what all I was charged with. But there was one picture of me getting out of the paddy wagon. See, when I was growing up, "paddy" was a term for white people, because that's what they call Irish people, so if a person was a paddy, it was a white person, so I don't know why they call this semitruck-like thing a paddy wagon unless it was called that because they always picked up Irish people in it. But I was shown getting out the paddy wagon with my hands cuffed behind my back. And the charges? Oh, carrying a concealed weapon, and the charges were dropped, but before they were dropped the prosecutor asked for two years in prison and a felony conviction. I was well known in Omaha and everybody, I think, on the other side, not the dark side where I lived but on the white side, were glad I was arrested but they knew I hadn't done anything. So when the charges were dismissed, that's the way it was. I've never had...tried to get any of those charges erased because I want them to be there, based on what I've done since then, and I can confirm that I was arrested, charged, and never convicted of anything. I was even taken to federal court. And I don't know if I was charged with anything, but the letter said: You are commanded to appear. And in those days, I was so, well, you could call it arrogant and prideful, I said, these white people command me? I'm not going...they can't command me to do anything; I'm not going down there. So the lawyer said, he said, Ernie, this is the form that they send out and anybody who has to come to court, it says, you are hereby commanded. I say, oh, then I'll go. So when I went there, I talked to this lawyer. And they were trying to get me on some kind of conspiracy. So he gave me the formula and we were in federal court. There was the judge. There were two guys, white guys in suits, and they made it clear that they were armed, so they were standing back there by the door and a few people in the courtroom. And the prosecutor asked me this question. I said, I respectfully decline to answer on the grounds that the answer may tend to incriminate me. So we went through that several times. The judge, everybody knew who I was. Pretty soon people drifted out of the courtroom. Pretty soon the two guys standing by the back door, they were gone, and the only ones left in the courtroom, this is true: the judge, me, and the prosecutor. The judge said to the prosecutor, I don't think we're going to get anything out of this witness so I think we ought to just terminate this. All of those things happened then and they happen now and it's regrettable that when you have not done anything, you can have these kind

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of charges brought no matter what kind of...when I say record, I don't mean of wrong, but things that you've done that show achievement, you're a responsible citizen, you're contributing, you're on the way up, but then that can be used to keep you from going anywhere. So I'm glad that the students came here. I'm glad the professor came here. I'm glad that the person who brought this bill brought the bill, but he's becoming so notorious I don't want to utter his name. Just like in Harry Potter you wouldn't say "Voldemort," you didn't say his name. But I want all the students to know that I'm glad you're (inaudible) successful. I will support the bill and I hope once it becomes law it will really help a lot of those people who shouldn't have their name on paper anyway. [LB678]

SENATOR EBKE: Senator Pansing Brooks. [LB678]

SENATOR PANSING BROOKS: Okay. Again, thank you for coming, Mr. Foxall. Why did you all decide to...I just want to get in the record why you decided to merge in a bunch of stories into a fictitious story. [LB678]

MARK FOXALL: Well, because of confidentiality agreements. [LB678]

SENATOR PANSING BROOKS: Okay. [LB678]

MARK FOXALL: We didn't want to give any specific client information out at this testimony. [LB678]

SENATOR PANSING BROOKS: Okay. [LB678]

MARK FOXALL: So we decided to merge them into a composite client for the... [LB678]

SENATOR PANSING BROOKS: But you've had numerous clients like this, like even these cases. [LB678]

MARK FOXALL: Yes, absolutely. [LB678]

SENATOR PANSING BROOKS: Correct? [LB678]

MARK FOXALL: Yes, that's correct. [LB678]

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SENATOR PANSING BROOKS: I just...I don't want to, like, end up having people say, oh, well, you know, these were just mythical stories of what could happen at some point. So these kinds of things have all happened in the cases that you're dealing with. Is that correct? [LB678]

MARK FOXALL: Yes, that's correct. [LB678]

SENATOR PANSING BROOKS: Okay, and it was just because of confidentiality. And how long...have you been working since September in this clinic? [LB678]

MARK FOXALL: Ashley and I both started in January and the clinic project, it's...the Clean Slate Project itself started in about a year ago but it was the merger of two separate projects that worked on criminal set-asides, pardons, and sealing for veterans and other individuals. So the Clean Slate Project is, in itself, is fairly new, but we've been doing this for quite some time at the clinic. [LB678]

SENATOR PANSING BROOKS: Wonderful. And do you know how many clients, about, that you work with per semester, approximately? [LB678]

MARK FOXALL: On various civil cases it's...it could vary, but I would say anywhere from six to ten. [LB678]

SENATOR PANSING BROOKS: Okay, thank you very much, appreciate your coming. [LB678]

SENATOR EBKE: Any other questions? Okay, thank you for being here. [LB678]

MARK FOXALL: Thank you. [LB678]

SENATOR EBKE: And while our next proponent walks up, I want to just say that I'm very impressed that Senator Chambers knows the Harry Potter language and He-Who-Shall-Not-Be-Named. [LB678]

SENATOR PANSING BROOKS: Wow, oh! [LB678]

SENATOR EBKE: We're going to start referring to you that way: He-Who-Shall-Not-Be-Named, (laughter) but we all know who we're talking about, right? [LB678]

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SENATOR CHAMBERS: Yes. [LB678]

KELLE KUCERA-MORENO: Hi. Kellee Kucera-Moreno, K-e-l-l-e-e K-u-c-e-r-a-M-o-r-e-n-o. You guys have a lot of work that you do and this is just part of it. I don't know, there's...I have a saying, too...well, they have a saying, they...KISS, k-i-s-s: Keep it simple, stupid. And we complicate the hell out of things. We're talking about people whose brains aren't even developed yet. I did not have a criminal record. And it's not that I couldn't have. I really would be sad if I had to carry around the baggage that I haven't been charged with. It starts out as an adolescent and then, like my husband who shouldn't be incarcerated right now but for reasons that we can't change right now, it starts out at that level. He still identifies himself...he doesn't like people identifying himself by his past. That's why he's incarcerated now, based on his past. He got clean and sober in 2005. He changed his ways. And being incarcerated now as an adult, all that baggage comes with him. And even though he's been clean and sober since 2005, had two relapses, he ended up back incarcerated. Incarceration for chemical dependency should be illegal. Chemical dependency, it's a disease. You cannot incarcerate people for having a disease. And if they have a...if they've done a little crime while they were incapacitated with their disease, that needs to be looked at also. But I'm a proponent for not incarcerating people for their disease and I don't see anything that comes of...clean slate means maybe your brain wasn't developed and you get to start over, maybe you've changed. I don't think that people that...people don't need to judge us. And I'm sorry that this is...even has to be brought up, but there are people that think they're God and just because you are...if your job is to be a judge and it's important to you to look at all the information, then let's keep it simple. Start out with a clean slate. It would alleviate a lot of problems, probably, a lot of court cases. Thank you. [LB678]

SENATOR EBKE: Thanks for being here. Any questions? We're good. Next proponent. [LB678]

SPIKE EICKHOLT: (Exhibit 6) Good afternoon, Madam Chair and members of the committee. My name is Spike Eickholt, S-p-i-k-e, last name is E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in support of LB678. You've got a copy of my written testimony. I'll summarize because I know time is important. We supported LB505 that Senator Krist did last biennium. It was a very good bill. And I just should also note maybe for the record that Senator Krist's LB505 actually built on a bill that Senator Chambers did a couple years before that basically addressed the same fundamental issue. And I know that there are a number of other bills that have been introduced. I know Senator Pansing Brooks has one that was introduced today that deals with the fundamental issue of a person who comes into contact with a criminal law. Either they are charged, accused falsely, or they go to a diversion program, the charge is dismissed, or even if they end up getting convicted with something and they want to clear up their record. I suspect that many of you have had constituents who bring issues to you or they say, I was charged with something, I have something on my record, I can't seem to get a job, it's

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haunting me forever, and this bill builds on what Senator Krist did with LB505 and that is, for someone who is not charged, who has their case dismissed or completes a diversion program and has their case dismissed, they ought to be able to move on. Senator Krist is right. There was that date of January 1, 2017, that was...ended up in statute. And it's kind of odd when you do a law, when you pass a bill, it just sort of normally goes into effect three months from adjournment or whenever, if it's passed on emergency clause, whenever the Legislature or whenever the Governor signs the bill. But January 1, 2017, I thought it was pretty clear from the record it was done at the request of the Administrative Office of the Courts to accommodate just the technical changes that needed to be done to accommodate the implementation of the bill. It ended up in the statute, as Senator Krist explained and Professor Sullivan explained. A number of courts have interpreted that as meaning that, for cases dismissed before January 1, 2017, they can't have it sealed. And I think this clarifies the earlier legislative intent. I'm also embarrassed. I don't know how a portion of a bill we heard yesterday ended up in the bill. I should have caught it. I actually caught it about the same time Mr. Clark did. I'm not going to even speak to that. I do know that the city of Lincoln did reach out to Senator Krist. They have some concerns. I think their concerns are, frankly, over existing law and what was done with LB505. If anyone cares about our opinion, I'm willing to sit down and listen to them in light of whatever this senator--Senator Krist--wants to do or this committee wants to do, but I do know they have some concerns and I've worked with Ms. Kerkhofs before, the city attorney's office, and I've found her to be very fair and reasonable for the most part. Thank you. [LB678]

SENATOR EBKE: Thank you. Any questions for Mr. Eickholt? Okay, thanks. Are there any other proponents of this legislation? I see no one. Any opponents? [LB678]

PATRICK CONDON: Good afternoon, Madam Chairwoman, members of the committee. My name is Patrick Condon, P-a-t-r-i-c-k C-o-n-d-o-n. I am the Chief Deputy Lancaster County Attorney; I'm also on the executive board of the Nebraska County Attorneys Association. I'm here on that behalf of the Attorneys Association to speak in opposition of this bill, although I think Senator Krist, in his initial opening, took care of many of those. And again, one of the main...our problems with the bill were twofold, and that is the expungement portion, which Senator Krist did amend and said that that would be sealed. I think that's more along the lines of what we, you know, would be more easy to live with that language than the expungement. Senator Pansing Brooks, my...I would say, you know, the expungement is the deletion or obliteration of those records. Some crimes do not have statutes of limitation, so that, you know, what happens legally, if those records are obliterated and there's no statute of limitations on those, then how can we use those records at a later time if we have developed evidence of a crime or of a suspect? We would want to be able to use those records. And there could be some argument that those records were expunged and obliterated, therefore, could not be used, so that was one of our problems with the language of the statute, the language of expungement. Secondly, Lancaster County and Douglas County each have a city attorney's office and, you

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know, there are several crimes that are tried or that are charged under city ordinances and I think may be charged or may not be charged under the city ordinances and are not things that the county attorney would see. By this statute, and again I believe it's perhaps something we could work with Senator Krist on, but by this statute those petitions of all those crimes that weren't charged would go to the county attorney's office and many of them we wouldn't even see because they would be charged under the city ordinance and they would be dismissed or not charged under...pursuant to city ordinances and would be things that the county attorney's office would not have anything to do with. So that was the other issue that the County Attorneys Association saw with your bill, Senator Krist. Other than that, I would just say I've worked with Professor Sullivan and his group in the expungement or the sealing of records in Lancaster County. They do a great job, so with...I just give my kudos to Professor Sullivan and his group. With that, I'd entertain any questions if anybody has any. [LB678]

SENATOR EBKE: Thank you, Mr. Condon. Questions? Senator Pansing Brooks. [LB678]

SENATOR PANSING BROOKS: Thank you. Thanks for coming, Mr. Condon. I was just wondering, so with what you were saying about the statute of limitations and the sealing, police would still have the opportunity to see those charges. In their hypothetical where they were charged and then they get picked up again, even if it's sealed, the police can see those charges, right? [LB678]

PATRICK CONDON: Well... [LB678]

SENATOR PANSING BROOKS: I believe that's true. [LB678]

PATRICK CONDON: The police would still see those charges, but when...you know, and again, I don't want to get too much down in the weeds with this, but there's a difference between a case that's not charged, you know, the ticket comes in and there's no charges filed in a case that is charged and then subsequently dismissed. And my understanding by the statute now, with the case that is not charged after I believe a year, those are to go off of the public record. It remains on police so the police would still be able, but if there was a case that was charged or went to diversion and the...and again, Mr. Eickholt and I, we go back and forth on a lot of different things, and it's how a defense attorney may read that language, and that is, if it's expunged, it's to be obliterated, you're not to use it, you're not to consider it. I can't consider it for a later charge. Now that may not be the intent of it, but, again, I'm looking at this from a standpoint of an attorney down the road saying, okay, now how do I get this evidence in that's been obliterated or been deleted from the record? [LB678]

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SENATOR PANSING BROOKS: Okay, so I guess I understand why they want it obliterated because the number-one issue for the State Chamber is work force. So we are precipitously cutting that work force on people that have been charged and just because at some point in the future there might be something that relates to something? I still don't...I cannot understand how you need to use that information if it's...if they've dropped the charges. [LB678]

PATRICK CONDON: How a prosecutor needs to use it? [LB678]

SENATOR PANSING BROOKS: Well, anybody. Why do...you're saying that the statute of limitations doesn't run on some crimes and so you need to be able to use that, so I'm just...I'm interested in trying to wrap my head around why that is necessary. [LB678]

PATRICK CONDON: Because it would be 404 or 414 evidence that could come in at a trial and the defense could argue, no, you can't bring that up, that case has been expunged, those...that is gone, you cannot bring that up. [LB678]

SENATOR PANSING BROOKS: Okay, so... [LB678]

PATRICK CONDON: And also on a conspiracy, you know, if you look at a drug charge, I mean, individual gets arrested two years ago for whatever reason. That case was 60-some pounds of marijuana. That case gets dismissed. I then develop another case 2.5 years later where I have a conspiracy that I can show that that 60 pounds was used. If that case has been expunged or deleted, there could be evidences of, no, you can't use that, you know, the argument could be you cannot use that...you cannot use that evidence that was seized in that case. Now it doesn't mean that the person didn't have the 60 pounds with them; it means that, for whatever reason, we weren't able to go forward. And the other thing we're concerned about, too, is we do have...you know, and again, I don't mean to get back into the jail calls, but on the recorded calls that we do have, we often have calls that would substantiate a tampering charge. So a witness gets tampered with. We dismiss the charges, then later they come forward and they want to go...they want to come forward with the charges again. And that's just...it's just things that we, as prosecutors, we need to be aware of and make this Judiciary Committee and other members aware of what, you know, some of the issues that can come up. [LB678]

SENATOR PANSING BROOKS: Okay. And again, I just...I think we discussed this before. With the prison overcrowding crisis we are all to blame. The county attorneys have to take some responsibility for it. The Legislature needs to take responsibility. The executive branch needs to take responsibility. We are all to blame for this overcrowding. And if we're charging and keeping every possible infraction that somebody might have done at some point, holding it close so that they could bring it back up again, we are not helping the system to be able to keep it as safe as

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possible because we can't provide the programming. And I know you don't agree with me on this at all, but we are not providing the programming, we're not releasing safer inmates into that...into our community. So anyway, thank you. Thank you for coming. [LB678]

SENATOR EBKE: Anybody else? I do have a question, just some clarification. Do you have a copy of the bill? [LB678]

PATRICK CONDON: Yes. [LB678]

SENATOR EBKE: Okay. So on page 2, starting at line 3, I guess I'm a little confused about the whole question of whether or not this is available for police and law enforcement purposes, because it...I mean, what am I missing here if it says that you can't release it to the public if an inquiry comes out but that it can be disseminated to no person "other than a criminal justice agency." That's the way it currently reads. The...LB505. [LB678]

PATRICK CONDON: Yeah, what's your...I'm sorry, Senator. [LB678]

SENATOR EBKE: Well, I mean, Senator Pansing Brooks was talking about, you know, the question of how...you mentioned the problem with respect to law enforcement. [LB678]

PATRICK CONDON: Right. [LB678]

SENATOR EBKE: And...but this doesn't seem to keep law enforcement from being able to see anything, even if it is sealed, right? [LB678]

PATRICK CONDON: Right, but under...well, and again, if you read... [LB678]

SENATOR EBKE: I'm a layman so you're going to have to help me with this. [LB678]

PATRICK CONDON: No, no, I...that's fine. It says, "criminal justice agency, except as provided" in the subsection of...let's see if I can figure it out here. [LB678]

SENATOR EBKE: I'm not trying to trick you here. [LB678]

PATRICK CONDON: No, I know, I know you're not, and my one issue is that, and I was trying to find it here in the statute,... [LB678]

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SENATOR EBKE: Yeah. Okay. [LB678]

PATRICK CONDON: ...is it makes the...it says that the record and all, basically, all attenuating circumstances around that are not to be out there. And then what I'm saying is with the expungement of that, with the expungement of those records, the obliteration of those, I think there could be an argument that that means those are gone. And later on in the statute you say that it is to be determined that it never even occurred. [LB678]

SENATOR EBKE: With an expungement but this bill doesn't deal with that. [LB678]

PATRICK CONDON: With the...well, even with the sealing,... [LB678]

SENATOR EBKE: Yeah. Right, right. Yeah. [LB678]

PATRICK CONDON: ...they can look at this as it never even occurred, the incident never occurred. And the other thing I...and now just to...as a kind of an incidental matter on this, when I have matters with the...with Mr. Sullivan and his students and on a set-aside, I always try to tell the...when they're not represented, I always try to tell them, look, just because this gets set aside, doesn't mean somebody is not going to see it. And so I always try to tell, warn the people that, you know, they could still do a record check and your...and this would still come up because of the fact that, you know, if it was before 2017, so I always tell people that. You know, a little concern about this one is they can still get that information. With notarized document from the individual they can still get that information, and I don't know if, you know, we need to tell people that. You know, you go to your employer and tell your employer I haven't been arrested because this sets it aside and this seals it. If the employer says, okay, that's great, and then he later says, oh, here, I want you to sign this affidavit saying that you can let us get into your criminal history, they then could get into that and see that record and then that could cause a problem because then they're not...they maybe would say, well, you lied to us, you know. And again that's...it kind of goes back to Alan Peterson when he testified against this, and that is, you know, kind of, giving a legalizing....lying or not being truthful is a problem that I have with the bill in general. But again, I don't want to get into that. [LB678]

SENATOR EBKE: Sure. [LB678]

PATRICK CONDON: The bill has passed and that's...it's passed and we don't need to deal with that, but that is an issue that we have. The other issue that we have dealt with in our office is how does that affect the victim's bill of rights and can we give the victim this information, because it says we can give the information to the individual involved with it but no one else. So can we

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give that information to the victim, which under the victim's bill of rights we are to advise the victim of that, and we're working with that. [LB678]

SENATOR EBKE: Okay, well, I'm sure that Senator Krist will be happy to continue to work with you, so. [LB678]

PATRICK CONDON: Yes. [LB678]

SENATOR EBKE: Okay. Any other questions, comments? Thank you for being here today. [LB678]

PATRICK CONDON: Thank you. [LB678]

SENATOR EBKE: Any other opponents? Anyone in the neutral position? Senator Krist...oh, wait, we have one neutral? [LB678]

SENATOR KRIST: I don't mind. [LB678]

SENATOR EBKE: Okay. [LB678]

JESSICA KERKHOF: (Exhibit 7) Hi. I think we've officially gone into "good evening."
(Laugh) My name is Jessica Kerkhofs, J-e-s-s-i-c-a K-e-r-k-h-o-f-s. I'm the chief prosecutor at the city attorney's office here in Lincoln. I'm also one of the interested parties that Senator Krist mentioned in his opening remarks. And I do want to thank him again for his time meeting with us yesterday and giving us an opportunity to express some of our concerns. I'm here to testify today in a neutral capacity as it relates to the new language that's been introduced in LB678. But since the statute is before you for amendment, I wanted to bring up some of the issues that we have encountered over the past year since the passing of LB505. First I want to make clear that we're not opposed to the spirit and the intention of 29-3523. I think that we would agree with the scenarios that were presented to earlier that that's...that those are appropriate situations for the sealing of those records. I want to take an opportunity to tell you both, on the criminal recordkeeping side and on the prosecutorial side, some of the issues that we've had. With digital information today, there are so many springs that information can flow through and it's become very difficult, I know, for the Lincoln Police Department to make sure that they've got all the holes covered and are only releasing what they're supposed to be releasing. So to that effect, we were hoping to offer some ideas or suggestions on ways to make that clearer for those of us that are attempting to make sure that information is not released by accident and unintentionally. First we think it might be helpful if the Legislature would tell us what information to release, as

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opposed to what information we're not allowed to release. Even better, if possible, we would appreciate perhaps getting local criminal justice agencies out of the business of maintaining criminal justice records and perhaps leaving that to the JUSTICE system to maintain those records and release convictions, as opposed to people having to go to individual criminal justice agencies. On the prosecutorial side, we've had difficulty with the sealing language insofar as the language requires that the court immediately seal any case that we have dismissed and there's no remedy to undo that or know qualifiers that give us permission, so to speak, to refile that when we're still within our speedy trial time or statute of limitations. We have police officers who are unsure if they're able to testify in codefendant cases where one person's case has been dismissed and sealed. We have federal prosecutions that take over from our local and state prosecutions that have been dismissed and then sealed, and they have questions about whether or not they're allowed to testify in public about those matters as well. So we would just like some clarification. I do have some language. I think ultimately we're just asking for maybe 30 days for the prosecutor to go before the court and show some good cause why a matter shouldn't be dismissed, whether it's we need to refile it because our victim couldn't come that day and we couldn't get a continuance so the court dismissed our case or, you know, there are a lot of reasons why cases are dismissed and they're not always in our control. [LB678]

SENATOR EBKE: Okay. Thank you. Any questions? Guess not. Thank you. Any other opponents or neutral? I guess neutral is where we're at. Okay. [LB678]

SENATOR KRIST: So the lesson you should all learn from this is do it right the first time and don't reopen a statute that you have debated because, if you do, then you're going to get folks come in and redebate the essence of what we did last year or two years ago in LB505. And so at the point we're at right now, I don't think there's anything wrong with that because obviously if some jurisdictions are interpreting that this is not available to people prior to a certain date, then we have to go back in and make sure that all jurisdictions are treating the law the same, so our legislative intent needs to be understood. To that end, it sounds like my round-table discussion is going to get larger and larger and Mr. Clark and I will look forward to working with whoever makes themselves...avails themselves to that round-table discussion. But with that, I just want to emphasize again, Madam Chair, I am very serious about making this happen and complete as I will not have another shot or bite at this apple. [LB678]

SENATOR EBKE: Thank you, Senator Krist. Any questions? We have one letter in opposition from Scott Frakes, the Nebraska Department of Correctional Services, but I suspect that that has to do with that piece that was not supposed to be on there. Right? [LB678]

SENATOR KRIST: Right. [LB678]

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SENATOR EBKE: All right. Thank you. That closes the hearing then on LB678. We will move to LB819. Welcome, Senator Hughes, to the Judiciary Committee. [LB819]

SENATOR HUGHES: (Exhibit 1) Thank you, Madam Chairman. Good evening, members of the Judiciary Committee. For the record, my name is Dan Hughes; that's D-a-n H-u-g-h-e-s. I represent the 44th Legislative District. I am here today to introduce LB819. In 2002, LB604 created the Inmate Welfare and Club Accounts Fund. The welfare fund receives income from pop and canteen sales within the correctional institutions. Currently these funds can only be used to provide recreational activities and equipment for the inmates. This bill would allow the Department of Corrections to include programs which teach inmates skills to prepare them for reentry into the community and for family-friendly visitation activities by providing additional opportunities for inmates to interact with their families in prosocial activities and acquire skills which will assist them in preparing them for release. I'd be happy to try and answer any questions that you may have. [LB819]

SENATOR EBKE: Any questions for Senator Hughes at this time? Oh, you may be lucking out. [LB819]

SENATOR PANSING BROOKS: I've got a question. [LB819]

SENATOR EBKE: Senator Pansing Brooks. [LB819]

SENATOR EBKE: Don't think about it. [LB819]

SENATOR PANSING BROOKS: Sorry, had to. So what is the...it's being used...what do you want these funds used for? [LB819]

SENATOR HUGHES: Currently it is being used for recreational activities and equipment for the inmates. They want to expand that usage to help prepare for reentry into the community and family-friendly visitations. [LB819]

SENATOR PANSING BROOKS: Okay. [LB819]

SENATOR HUGHES: Specifically it was like the father-daughter dance that they do sponsor in some of our institutions. [LB819]

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SENATOR PANSING BROOKS: Okay. Okay, so part of it was for programming and...but I'm seeing Director Frakes so I could ask him probably (inaudible). [LB819]

SENATOR HUGHES: Yeah, probably. He would probably have a better handle on it than I do. [LB819]

SENATOR PANSING BROOKS: Okay. Thank you. [LB819]

SENATOR EBKE: Any other questions? Senator Chambers. [LB819]

SENATOR CHAMBERS: Senator Hughes, did you bring this on behalf of the department? [LB819]

SENATOR HUGHES: They brought it to me and I agreed to introduce it for them. [LB819]

SENATOR CHAMBERS: You and I will talk at another point because we can. The kind of questions I would ask would not be pertinent for you at this point, but I wanted to be sure where the legislation came from because it smacks of...it has a certain odor to it that I recognize. [LB819]

SENATOR HUGHES: Oh. (Laugh) [LB819]

SENATOR CHAMBERS: But that's all I have to say. [LB819]

SENATOR EBKE: Any other questions? Okay, you going to hang around or are you going to... [LB819]

SENATOR HUGHES: I have another commitment so I will waive closing. Thank you. [LB819]

SENATOR EBKE: Okay, thank you. [LB819]

SENATOR HUGHES: Thank you for your time. [LB819]

SENATOR EBKE: Thanks for waiting around. Okay, first proponent. Welcome, Director. [LB819]

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SCOTT FRAKES: (Exhibits 2 and 3) Senator Ebke. Good afternoon, Chairperson Ebke and members of the Judiciary Committee. My name is Scott Frakes, F-r-a-k-e-s. I'm the director of the Nebraska Department of Correctional Services and I'm here today to provide testimony in support of LB819. LB819 is the department's legislative proposal for 2018 and I would like to thank Senator Hughes for agreeing to sponsor the bill. LB819 proposes to expand the allowable uses of Inmate Welfare Funds to include family visitation activities and programs to provide inmates skills to assist in their reentry to the community. Currently Inmate Welfare Funds, which are funds generated by pop and canteen sales within NDCS institutions, can only be utilized to provide recreational activities and equipment for inmates. The Inmate Welfare Fund has a currently unobligated balance of approximately \$570,000 and brings in about \$400,000 each year. We would like the flexibility to use these funds for a variety of family reunification activities and events to strengthen supportive relationships between inmates and their families. We will be asking for input from the population and the family councils at each facility to identify activities and programs which inmates and their families are interested in. Thank you for the opportunity to testify today and I would be happy to answer any questions. [LB819]

SENATOR CHAMBERS: Go ahead. Ladies first. [LB819]

SENATOR EBKE: Senator Pansing Brooks. [LB819]

SENATOR PANSING BROOKS: Okay. I just...what I'm wondering about...thank you for coming, Director Frakes. So this is from pop and canteen sales, right? [LB819]

SCOTT FRAKES: Yes. [LB819]

SENATOR PANSING BROOKS: So I don't know if you heard some of the other communication among our...my colleagues, but there is some concern because I think the request is to go to reentry programming. So is that correct? The request would be to... [LB819]

SCOTT FRAKES: But don't think of it in terms of funded programming. Think of it in terms of activities that will help prepare people, so. And the focus is family reunification. [LB819]

SENATOR PANSING BROOKS: Which is really important, no question. [LB819]

SCOTT FRAKES: Yes. [LB819]

SENATOR PANSING BROOKS: I am totally in favor of that. But I guess my concern is, I mean, maybe we need to support you more in this area because I thought that the Tecumseh riot

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was based on something about the life skills program, about that being taken away from people. And so now we're talking about possibly...I mean, if there's less money for rec equipment and activities, then...and I know it's more for family-oriented visitation but also programming. Seems like programming is something the state should provide and not necessarily the inmates. So I don't know, I'm just...could you talk about that a little bit? [LB819]

SCOTT FRAKES: I could. So again, you know, we use program to cover...as a term that covers a spectrum from self-help activities such as the inmate clubs... [LB819]

SENATOR PANSING BROOKS: And I do want programming so I'm not through with... [LB819]

SCOTT FRAKES: I know you do, yeah, so that's one end of the spectrum. The other end would be clinical treatment. All of that falls under that umbrella of programming. Anything that is mandated by statute, that is a constitutional obligation, or it's part of what we need to do to accomplish the work, prepare people for release, and do that in an evidence-based, so clinical treatment and our cognitive behavioral interventions are work that we're doing to expand connections with community colleges, vocational education, vocational training. All that needs to be paid for by the state of Nebraska. I firmly believe that. We can then supplement, not supplant but supplement, activities for inmates that are prosocial, that provide for more skills and opportunities to practice the skills that we provide them through those funded training and programming opportunities. We do that through donations. We have great partnerships now with Defy Ventures, Christian Heritage, Prison Fellowship, and a variety of other community folks that come to us and provide resources, services, and just outreach to our population, so another important component of preparing people for release. A place where we don't have a lot of strength and a lot of depth yet is a real focus on family reunification. I've handed out an article that I wrote 15 years ago and that's a result of or a reflection of work that I'd been thinking about and working on for ten years prior to that. I'd like you to believe that that demonstrates my conviction, my belief, and my passion around this topic. I certainly wasn't alone in the work that we did in Washington State. I had some great mentors and there was a very supportive network. But part of how we were able to accomplish that, along with the sustainable practices that are a huge part of the Washington system, was through the ability to use the Inmate Welfare Fund. So it's not to supplement, it's to...I'm sorry, it's not to supplant those things that we should pay for. It is to supplement, to provide other opportunities. And I'm thinking, you know, so we have about \$400,000 a year to issue. We have a large balance. For some reason when I got here we were treating the fund as though it was a rainy-day fund and it had accumulated nearly \$2 million. I said this is ridiculous. So we went out and we built ball fields and repaired ball fields, built tracks, replaced exercise equipment, bought as many basketballs as made sense, and did all the things that counsel said I could legally do within the current rules of the inmate welfare program. And we managed to spend about three-quarters of that and there's, you know, probably a few

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more projects in the next year or two that we could use to bring that down a little more under the current language of the statute, but \$400,000 comes in each year. If I had, you know, right now, \$75,000 is the number that I'm thinking about, and the uses would be for things like hosting family-friendly events in our visiting rooms, improving the child areas within the visiting rooms, providing toys, games, and other activities that would help children have something to focus on, maybe give the parents some one-on-one time. We can look at buying gasoline cards for people so that they would be able to afford to go visit, especially an issue for our more remote facilities. We'd be able to help the people who get out to WEC and see their loved ones. There's just a host of things we can do that would really allow us to start building that culture of family reunification. [LB819]

SENATOR PANSING BROOKS: Okay, so what you're saying is...thank you for that answer. You're basically saying that you don't want it to go to the core programming, is that correct? [LB819]

SCOTT FRAKES: Correct. [LB819]

SENATOR PANSING BROOKS: So you're talking about supplemental programming, which has to do with families, but is it also other types of programming? [LB819]

SCOTT FRAKES: Well, we could...we have the ability to look at things like something...I just think back of all the different things that I did in my past life or had a part of doing: bringing in a consultant to do family counseling in a group setting; bringing in someone that can do basic home financing was one of the things we did as...there's...across my ten facilities and the family councils--some are active, some are not too active, but we have good, active inmate councils--I have no doubt I'll get ten times the ideas as I have money to spend. And so there's just all kinds of things that we can do that are meaningful, prosocial, and supportive of families. [LB819]

SENATOR PANSING BROOKS: So you feel like there's enough rec equipment and activities? [LB819]

SCOTT FRAKES: And enough incoming income to continue to maintain or increase where needed, yes. [LB819]

SENATOR PANSING BROOKS: To maintain and...okay. And do you have a feel for how much money you will...you would need per year to do this kind of programming? [LB819]

SCOTT FRAKES: So right now \$75,000 is the number I've got in my head. [LB819]

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SENATOR PANSING BROOKS: That's what you said. Okay. [LB819]

SCOTT FRAKES: And then I kind of wanted to see what came back. And typically--again, past life--we divided that by a ratio of how many inmates were in a facility, but if it was a really small facility you might give them a little bit more. And if it comes back that there's \$150,000 worth of great ideas and we think that that's the best use that would bring the most benefit to the population and their families, I'd, you know, move towards that direction without sacrificing the quality of equipment or maintenance of all the recreation areas. [LB819]

SENATOR PANSING BROOKS: Do you have a feel for whether the inmates are going to be happy about this? I know that some people would say it doesn't matter but in this instance of all the assaults and turbulence, I think it sort of does matter. [LB819]

SCOTT FRAKES: Well, I guess I'll get the final answer once we reach out to the population and look for ideas. I believe that those that have visits will be thrilled, some that don't have visits will be neutral, and there will be some that will say, well, somehow then I'm not getting my fair share of the pie. That's the reality. But from my past experience, it did not result in any kind of an outcry or...actually, there was really very little negative. Kind of hard for somebody to complain too much about a program that would allow his cellmate or his friend or someone else in the population to have a chance to spend quality time with their child or, you know, have a visit that really had meaning. [LB819]

SENATOR PANSING BROOKS: So is the plan to have a family-friendly room in every facility? [LB819]

SCOTT FRAKES: I'm not that far down the road. [LB819]

SENATOR PANSING BROOKS: Come on. [LB819]

SCOTT FRAKES: Well, I got to have the...if I don't have the money, then, you know,...got to have that. [LB819]

SENATOR PANSING BROOKS: Could you do that with this money? [LB819]

SCOTT FRAKES: Not this money, because the other challenge there is staffing so you have to... [LB819]

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SENATOR PANSING BROOKS: How much would you need for that? [LB819]

SCOTT FRAKES: Can I get back to you on that one? [LB819]

SENATOR PANSING BROOKS: I'd appreciate it. [LB819]

SCOTT FRAKES: Okay. [LB819]

SENATOR PANSING BROOKS: Thank you very much for coming. [LB819]

SENATOR EBKE: Other questions? Senator Chambers. [LB819]

SENATOR CHAMBERS: Mr. Frakes, I've been in...on various committees besides the Judiciary Committee where we discuss the rejection of offers of additional funding and you were not allowed to ask for additional money because of the Governor and what he wanted to do. And several people on various committees said, tell us what you need, we'll get you the money. And you didn't need it because the Governor didn't want it done. Now you're coming in here with a bill like this. But before I get into the meat of my questioning, why did you ask Senator Hughes to bring this bill rather than a member of this committee? [LB819]

SCOTT FRAKES: Senator Hughes is someone I work with. He's got a facility in his district. Yeah, he was willing to do it. There wasn't any...there's nothing Machiavellian about any of this, Senator Chambers. This is really a very legitimate effort to improve the world for the people that I'm responsible for, straight up. [LB819]

SENATOR CHAMBERS: To anybody else, that's an answer. To me, it's nonresponsive to the question. Why didn't you ask a member of the committee to bring the bill? [LB819]

SCOTT FRAKES: It wasn't that I didn't ask you. It's because I asked the senator that I had a relationship with and that has a facility in my district. [LB819]

SENATOR CHAMBERS: Well, yes, it is that you didn't ask. Did...I don't think you...did you ask anybody on the Judiciary Committee to introduce this bill? [LB819]

SCOTT FRAKES: No. [LB819]

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SENATOR CHAMBERS: Then it is a matter that you didn't ask anybody from the committee. [LB819]

SCOTT FRAKES: And you asked why. It wasn't because I specifically said I'm not asking Senator Chambers and I'm not going to talk to Senator Ebke. It was Senator Hughes is somebody that I've worked with. We've got...he has a facility. He's very supportive. [LB819]

SENATOR CHAMBERS: But Senator Hughes... [LB819]

SCOTT FRAKES: And to me, this is such a...I realize based on the testimony in the last...the bill around the phone revenue issues that the timing for this is probably not the best, but there are no (inaudible). [LB819]

SENATOR CHAMBERS: You are so perceptive. [LB819]

SCOTT FRAKES: I've learned a lot from you, Senator. [LB819]

SENATOR CHAMBERS: Now, is Senator Hughes going to prioritize this bill? Is he going to make it his priority bill? [LB819]

SCOTT FRAKES: I don't know. I don't know. [LB819]

SENATOR CHAMBERS: I do. [LB819]

SCOTT FRAKES: Okay. [LB819]

SENATOR CHAMBERS: He's not. And I haven't even talked to him. So if he's not going to prioritize it, it's not going anywhere, in my opinion, so we don't have to waste a lot of time on it but I want some things into the record. This kind of activity should come from the operational funds of the institution, in my opinion. You're taking this money and you're going to commingle it with operational funds of the department, aren't you? [LB819]

SCOTT FRAKES: No. [LB819]

SENATOR CHAMBERS: But it's going to do things that the operational funds ordinarily do, isn't that... [LB819]

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SCOTT FRAKES: No. [LB819]

SENATOR CHAMBERS: So then you don't provide programming for the inmates. [LB819]

SCOTT FRAKES: Yes, I do. [LB819]

SENATOR CHAMBERS: From what money? [LB819]

SCOTT FRAKES: From operational funding but... [LB819]

SENATOR CHAMBERS: This is just another arm on the octopus, isn't it? Let me read the language of the bill. Programs, you provide programs from operational funds. [LB819]

SCOTT FRAKES: I do. [LB819]

SENATOR CHAMBERS: This is a program but you just don't think it's important enough to provide the money for it. [LB819]

SCOTT FRAKES: So under that logic, would you have me then not take advantage of or accept the gifts that we receive from all of the different community providers that bring programming to us, should I also say? [LB819]

SENATOR CHAMBERS: That's not even germane to the question. [LB819]

SCOTT FRAKES: I think that it is. [LB819]

SENATOR CHAMBERS: Well, you do but you're not on this committee and you're not going to vote for it. [LB819]

SCOTT FRAKES: That's true. [LB819]

SENATOR CHAMBERS: And you're the one who rejected the offer of money from the Legislature. You forget who you're talking to. And I will also wonder why you bring people back to the institution who were either fired or forced out under former Director Houston. Why do you have some of those people here...I meant there. And I don't want to name them because...and you...I think you know that I know their names, don't you, the ones who were forced out because

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we forced them out or they were fired? Now, do you want their names in the record here? Regardless of what you want, there's another occasion and place for you and I to talk about that. Why did you bring them back? Some of them were high-ranking officials in the discredited Houston administration. Why do you now have them on the campus, if that's what you want to call it, working in programs? You do, don't you? [LB819]

SCOTT FRAKES: None that I'm aware of that I pay for. [LB819]

SENATOR CHAMBERS: Okay, so you don't know any of them who have been...who were forced out of Houston's administration. I want a categorical answer because either you're ignorant or you're lying. [LB819]

SCOTT FRAKES: Hmm. [LB819]

SENATOR CHAMBERS: You don't know any people who are functioning at your penitentiary? [LB819]

SCOTT FRAKES: They're not on my payroll, not that I'm aware of. [LB819]

SENATOR CHAMBERS: Are they at your...are they working at your institution? [LB819]

SCOTT FRAKES: I can think of one. [LB819]

SENATOR CHAMBERS: Say it again? [LB819]

SCOTT FRAKES: Yes, I know of one. [LB819]

SENATOR CHAMBERS: So you're being somewhat disingenuous when I asked you the question. [LB819]

SCOTT FRAKES: I said they're not on my payroll. [LB819]

SENATOR CHAMBERS: I've got a...I didn't ask on your payroll. I said they're on your campus, they're working at your institution. But you've got some who were discredited enough to be forced out of their jobs, isn't that true? Okay, forget it. [LB819]

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SCOTT FRAKES: Thank you. [LB819]

SENATOR CHAMBERS: Your nonanswer is an answer. [LB819]

SCOTT FRAKES: Okay. [LB819]

SENATOR CHAMBERS: I don't need the answer from you on that or anything else, not here, but you are going to answer. Are you having consultations with former Director Houston? Are you meeting with him and having discussions about the prison, the way it operates, and other related matters? [LB819]

SCOTT FRAKES: No. I see him occasionally but, no, we don't meet to have consultations. [LB819]

SENATOR CHAMBERS: But you're not having meetings with him. [LB819]

SCOTT FRAKES: No. [LB819]

SENATOR CHAMBERS: Are you having meetings with former Director Harold Clarke? [LB819]

SCOTT FRAKES: I see him occasionally but, no, we don't meet to talk about operations in Nebraska, so. [LB819]

SENATOR CHAMBERS: Are you receiving advice or consultation from former Director Houston? [LB819]

SCOTT FRAKES: No. [LB819]

SENATOR CHAMBERS: Recommendations from Director Houston? [LB819]

SCOTT FRAKES: No. [LB819]

SENATOR CHAMBERS: Suggestions? [LB819]

SCOTT FRAKES: Okay, I'll say potentially around reentry. [LB819]

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SENATOR CHAMBERS: And, see, the reason I have to question you like this is because if I don't ask with a specific word, you will deny it. A suggestion would fit among those other things I asked and you had to hesitate on that because you can tell from my questioning that I know something, don't you, or I'm suspecting something, don't you? You're savvy enough. [LB819]

SCOTT FRAKES: You seem to suspect something. [LB819]

SENATOR CHAMBERS: Now... [LB819]

SCOTT FRAKES: I'm not in consultation with Bob Houston on any issue. [LB819]

SENATOR CHAMBERS: With this language, "programs which teach inmates skills to prepare them for reentry into the community," I thought that was the main job of the institution, to prepare people to function as responsible citizens in the community. Well, you're obviously not doing that, are you? [LB819]

SCOTT FRAKES: I believe we are and we are... [LB819]

SENATOR CHAMBERS: Then why are you...then why do you want this money from the inmates' fund to do this very thing? Let me read it. You probably didn't read the bill. [LB819]

SCOTT FRAKES: I did read. [LB819]

SENATOR CHAMBERS: Let me read it for the...I want the public to know. [LB819]

SCOTT FRAKES: Yes. [LB819]

SENATOR CHAMBERS: To be used for programs "which teach inmates skills to prepare them for reentry into the community," now if you're already doing that, why do you need to take the inmates' money to do it? [LB819]

SCOTT FRAKES: Always looking for new opportunities to provide inmates tools, skills, and ability to practice those tools and skills to prepare them for release. I talked about the spectrum. At one end, self-help programs, they're not funded. I'm not going to take operating funds from the state of Nebraska to pay to supplement AA meetings or Toastmaster. The other end of the spectrum, clinical treatment, cognitive behavioral interventions, vocational training, GED and high school education, preparatory courses for college, all paid from operating funds.

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Somewhere maybe in the middle, some high-quality programming that's being paid for and provided by community sources, donated to the state of Nebraska. It's a spectrum. [LB819]

SENATOR CHAMBERS: As a general umbrella term, this money derives from the inmates or their activities, it's generated by them, isn't that true? [LB819]

SCOTT FRAKES: Yes. [LB819]

SENATOR CHAMBERS: And it has the name of the fund. [LB819]

SCOTT FRAKES: Inmate Welfare. [LB819]

SENATOR CHAMBERS: Now, when the law first came into being, it talked about providing what was of direct benefit and use to the inmates. You want to change that. Are you certified by the ACA, by the way? [LB819]

SCOTT FRAKES: My agency is, yes. [LB819]

SENATOR CHAMBERS: You are? [LB819]

SCOTT FRAKES: Completely. [LB819]

SENATOR CHAMBERS: You don't have that certification now, do you? [LB819]

SCOTT FRAKES: Yes. [LB819]

SENATOR CHAMBERS: When was the last time you got that certification? [LB819]

SCOTT FRAKES: We're accredited and we're on the accreditation cycle. It's a three-year cycle. All the facilities, my headquarters, and all operations are accredited. [LB819]

SENATOR CHAMBERS: And how long ago was that accreditation obtained? [LB819]

SCOTT FRAKES: It's current, anywhere from...as far as reaccreditation, it was anywhere from this year to a little less than three years ago on a cycle. [LB819]

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SENATOR CHAMBERS: So then you received that accreditation in spite of the riots, the murders, the attacks on inmates, the attacks on staff, the overuse of overtime, the high turnover, and the ACA gave you that golden, whatever it is, certification, didn't they? [LB819]

SCOTT FRAKES: Yes, they did. [LB819]

SENATOR CHAMBERS: It ain't worth much to me, if you ask me, but you didn't ask me, I asked you, and you think it's pretty good so I understand that. Where does the ACA get its money? Are they funded by the federal government or are they funded by the institutions that they certify? [LB819]

SCOTT FRAKES: That's part of their funding stream. There's also a membership funding stream. I imagine they have corporate support as well and I don't know if they have grant funding. [LB819]

SENATOR CHAMBERS: But membership, that means the institutions that they certify. [LB819]

SCOTT FRAKES: No, that means the...how many multiple thousands of corrections professionals that belong. I've belonged since 1986. [LB819]

SENATOR CHAMBERS: And you donate directly to them? [LB819]

SCOTT FRAKES: I pay dues every year. [LB819]

SENATOR CHAMBERS: And they certify your institution and they always give you that golden, whatever it is, award. [LB819]

SCOTT FRAKES: They don't give it. We earn it. [LB819]

SENATOR CHAMBERS: By riots, murders, and inmate attacks, that's how you earned it. They knew that was occurring, didn't they? [LB819]

SCOTT FRAKES: Yes. [LB819]

SENATOR CHAMBERS: And if they...and yet they gave you the highest certification they've got, didn't they? [LB819]

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SCOTT FRAKES: We met the... [LB819]

SENATOR CHAMBERS: Didn't they? [LB819]

SCOTT FRAKES: Yes, we met the standards. [LB819]

SENATOR CHAMBERS: Okay. That lets you know what it's worth. Now you teach inmate "skills to prepare them for reentry into the community." Tell me what you're doing right now in the way of programming to achieve that. [LB819]

SCOTT FRAKES: We provide sex offender treatment, substance abuse treatment, violence reduction treatment. We provide cognitive behavioral interventions, both Moral Reconciliation Therapy and Thinking for a Change. We provide vocational training. We have the vocational/life skills grant program. We have partnerships with Metro, don't think we have anything right now with... [LB819]

SENATOR CHAMBERS: Well, okay, with all of that, why do you need this money when you've covered the waterfront pretty well already? [LB819]

SCOTT FRAKES: Because this end of the spectrum is not...should not be funded by the taxpayers. This is the end of the spectrum where it's an opportunity for inmates to help themselves. They generate the funds. The funds are used for them to help them help themselves. And we can weave in a family component because we know, we've heard enough testimony and it's completely valid, one of the best reentry programs we can have is a family to go back to. [LB819]

SENATOR CHAMBERS: My last question...my last two questions, but like an octopus, one octopus has eight arms. I want to ask you a question. The term "octo" means eight, would you agree with that, like an octet or whatever it is? [LB819]

SCOTT FRAKES: Yes. [LB819]

SENATOR CHAMBERS: Okay. How many arms does an octopus have? [LB819]

SCOTT FRAKES: Normally, eight. [LB819]

SENATOR CHAMBERS: Eight, right. Then why are those arms called "ten-tacles"? [LB819]

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SCOTT FRAKES: I'll put that with... [LB819]

SENATOR CHAMBERS: Okay. [LB819]

SCOTT FRAKES: ...what rhymes with orange. [LB819]

SENATOR CHAMBERS: Okay. [LB819]

SCOTT FRAKES: Senator Chambers, can I ask you a question? [LB819]

SENATOR CHAMBERS: Sure. Ordinarily, no, but you and I have a relationship though. [LB819]

SCOTT FRAKES: Well, we do, and I've... [LB819]

SENATOR CHAMBERS: Okay. [LB819]

SCOTT FRAKES: And I'm really happy to hear you say that actually. [LB819]

SENATOR CHAMBERS: Yes. [LB819]

SCOTT FRAKES: So we have an Inmate Welfare Fund. We have current statute that says what we can use the funds for. It is focused around pretty much just recreational activities. I work within the law. We've had that conversation a lot of times. But I ask my counsel to tell me what my boundaries are, you know, what can I do, and they said, well, everything you're doing now clearly fits within it, but in terms of some of the ideas you want to do, the ideas of bringing in people to work with, you know, family and inmates in the visiting room and things like that, that... [LB819]

SENATOR CHAMBERS: Okay, so ask me the question. [LB819]

SCOTT FRAKES: So the question would be, is it a better...is it the best use of that Inmate Welfare Fund to buy basketballs and weightlifting equipment? [LB819]

SENATOR CHAMBERS: Um-hum. [LB819]

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SCOTT FRAKES: And that's certainly important. [LB819]

SENATOR CHAMBERS: That's of... [LB819]

SCOTT FRAKES: Activities and recreation are critical. [LB819]

SENATOR CHAMBERS: That's of direct benefit to all of the inmates who want to participate. A lot of these other programs are not. But here's the thing. The money should not be taken for a purpose other than what the law already stated. You're trying to get us to change a policy based on what you say and what you'd like. Senator Hughes did not prioritize this bill. I know it's not going to pass. And I'm going to let my colleagues know, if they put it out on the floor, we're going to spend six hours on it on General File and however much time it takes on other stages. And I don't care who doesn't like it and the more they don't like it, the more I'm determined to do it. I was just given some inspiration to do it. [LB819]

SCOTT FRAKES: Will you do one thing for me? [LB819]

SENATOR CHAMBERS: So... [LB819]

SCOTT FRAKES: Will you read the article that I sent? [LB819]

SENATOR CHAMBERS: No, self-serving, and for the ACA to say you get the Golden Eagle Award, or whatever it is, with all those...see, we live in Nebraska. We're aware of the property damage; we're aware of the murders; we're aware of the suicide--I think there may have been a suicide, I might be wrong--but the attacks that I've touched on; the fact that some inmates were affected negatively in their health by the smoke and the other things that resulted from fires and they were not properly treated; the placing of a guy who committed a relatively minor offense and was about to get out being put in the cell with a murderer who didn't want him there, made it clear he didn't want him there, and yet the administration put him there and he was murdered. And they get the gold award from the ACA which is funded primarily by the institutions that they certify, and I'm supposed to believe, while I know that senators and others who get donations from lobbyists kowtow to those lobbyists and do what they want, but I'm supposed to believe that the ACA, which gets money from the ones it certifies, is not going to be affected by those who give them their financial stream? I'm not going to keep you here. But I was so nice to you yesterday, in the same way I was frank with you then, this is a bill that you could not have gotten, in my opinion, a member of this committee to bring. You got a naive tyro who knows nothing about corrections, who is not about to make this a priority bill, and you're wasting the committee's time by bringing it and the committee is not going to waste the Legislature's time by

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advancing it. The problem that we have sometimes as senators, is people like you who make huge salaries, more than they ever made in their life, are treated with kid gloves as though they're naive, ordinary citizens coming here, uninformed. You're well informed. You know what you're doing. You knew what you were doing when you had Senator Hughes bring this bill, but you should have taken it a step further and known that it's not going to get out of this committee. You knew all of that and you put it on us anyway. And I also know that you rejected offers of additional funding that were made, and that was because the Governor wouldn't let you. And you heard me say that either you lied about your credentials or you are a highly qualified person who is not allowed by the Governor to take actions that you know ought to be taken. I believed what Senator Clarke...former Director Clarke said about you. I enthusiastically supported your being confirmed and I did it on the floor. And I don't believe that Harold Clarke was that much deceived by you that he would say the things to me that he said. And I believed the articles that I had read that were written about the work you did out there in Washington State. Then you come here and you're a complete bust. I believe the Governor has strings or chains on you and will not let you do what you know how to do. See, in a way you wish I wouldn't say this, but I think you're glad to hear me acknowledge that I know you are a competent, qualified person to do the job you're in, but you're not allowed to do the job you know how to do. And if there's ever any time you want me to be your father confessor and you want to talk to me and tell me, Senator, you're absolutely right, I'd say, well, look, Scott, since we're talking man to man, I'm Ernie, you're Scott, make a clean breast of it. You'd say, well, you already did it in the committee and all I want to say is amen and I'm thankful that you knew it and that you said it publicly, because I don't have to say it. And I'm not going to ask for a response, but that is my evaluation of you. Now only somebody who is totally incompetent could have a facility over which he has presided for the amount of time that you had, you have, and the staff morale is nothing, it's in the tank. The turnover is horrendous. The overtime that people are compelled to work is unconscionable. I won't mention all the outbreaks and things that happened that I mentioned before, the fact that a man under 24-hour surveillance can obtain the keys of an employee and swallow them, under 24-hour surveillance can obtain razor blades and severely mutilate himself, obtain razor blades on another occasion and cut his throat so that it required two dozen stitches happening on your watch, even after I called it to your attention, obtaining the badge of an employee when he can't go out of his cell and take it, and yet those things continued to happen and they continue to happen now. You wanted to put him in solitary, which is what created his problem in the first place, those years of solitary. You wanted to put him in that status again while he's been convicted and sentenced to die and death row was better than where you wanted to put him. When he was returned to death row, he was in a better set of circumstances than where you wanted to put him. Now you... [LB819]

SCOTT FRAKES: That's not true but... [LB819]

SENATOR CHAMBERS: You have your opinion. I have mine. [LB819]

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SCOTT FRAKES: No, I know the facts around that situation and... [LB819]

SENATOR CHAMBERS: Well, you're in a position to say you know and the fact that you know is why you're culpable. But for the sake of the committee, I'm not going to question any further on this. But I'm telling all of you, do what you want to do and I won't condemn you for it. But I will get my flesh on the floor of the Legislature if somebody prioritizes this bill. And if it's not prioritized, it's not going to come up, even if they send it to the floor. I want to be more direct with you than you've been with me down through the years, and that's it for me today with Director Frakes. [LB819]

SENATOR EBKE: With bill number three for the day. Let me just make one comment sort of on behalf of Senator Hughes who had to leave. He was a member of the LR127 Committee and so...and he toured all ten of the correctional facilities this summer, so while he's not on the Judiciary Committee, I think he would perhaps say that, you know, he had a sense of what was going on from a programming standpoint. And since WEC is in his district... [LB819]

SENATOR CHAMBERS: You're discharging your duty, but I've served with Senator Hughes, I know Senator Hughes, and Senator Hughes is not one with a great amount of interest in corrections. He has some interest. I'm not saying he doesn't have it. But he is not the one who should have been the logical choice to bring a bill like this unless you were looking for somebody light enough to be convinced that what he's doing is really worthwhile. [LB819]

SENATOR EBKE: Fair enough. Let me just ask one question...well, maybe a series of short questions, okay? One of the things that I have been very impressed with in the correctional facilities is the Defy Ventures program. I've seen a number. They're out there hustling money, as a matter of fact, because I happened to be at Barnes and Noble one day right before Christmas trying to get the last-minute gift cards for my family that I...(laugh) because I was too lazy to buy anything else, and they were standing there collecting, wrapping presents and taking donations. So I know that they are out there hustling money. Do we provide any contracted funds for them? [LB819]

SCOTT FRAKES: Not yet. [LB819]

SENATOR EBKE: Not yet? And so were it not for them...they are on this end of the spectrum. [LB819]

SCOTT FRAKES: They're in...I put them here. [LB819]

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SENATOR EBKE: Up there? [LB819]

SCOTT FRAKES: In the middle. [LB819]

SENATOR EBKE: Okay, because they... [LB819]

SCOTT FRAKES: Because they are a funded source, they just are doing it through a donation process as opposed to, you know, taxpayers and operating funds. [LB819]

SENATOR EBKE: So they are not, the taxpayers are not paying for it. [LB819]

SCOTT FRAKES: Yeah. [LB819]

SENATOR EBKE: So, but were it not for them, would we be a better or worse...in better or worse condition? [LB819]

SCOTT FRAKES: They are making us better. They are about to go into a fourth facility, the women's prison, February 15. They and other partners that I mentioned are invaluable and part of why we don't have a funding request yet--and we may be able to have what we need to bring that in this next biennium--is I need evidence. [LB819]

SENATOR EBKE: Right. [LB819]

SCOTT FRAKES: And so they are working with UNO and they're also working with sources in other states and they are building their evidence to provide that evidence-based component that's really important. [LB819]

SENATOR EBKE: But they're not one of those mandated programs. [LB819]

SCOTT FRAKES: No. [LB819]

SENATOR EBKE: So it's a bonus program, sort of. Okay, thank you. I'm done. Any...Senator Hansen. [LB819]

SENATOR HANSEN: Thank you, Chair Ebke, and thank you for coming, Director Frakes. I just wanted to kind of clarify. So what programming...you kind of talked about like a spectrum of

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programming and this would be at one end of the programming most directly related to individual benefit for the inmates? Is that... [LB819]

SCOTT FRAKES: I call it self-help. [LB819]

SENATOR HANSEN: Self-help, okay. [LB819]

SCOTT FRAKES: So we think about the activities that we do through our club processes: Toastmasters, AA, the other groups that have a cultural focus, typically run by inmates, often with volunteer support, normally with volunteer support, and self-funded either through dues that the inmates pay... [LB819]

SENATOR HANSEN: Sure. [LB819]

SCOTT FRAKES: ...or, where it's appropriate, other funding sources that could supplement that. [LB819]

SENATOR HANSEN: So when we're talking about funding for a program like Toastmasters or AA, what do the funds go to pay for then if it's a volunteer-run group? [LB819]

SCOTT FRAKES: In the case of AA, there would be very little--coffee, materials--there would be very little cost associated. Toastmasters has an annual dues and there I think they do subsidize it to some degree, but there's a cost associated with being a Toastmasters member, so it's an example of a cost. [LB819]

SENATOR HANSEN: Okay, so I'm just curious because I'm trying to piece this all together then. In an AA meeting, if it's for coffee and things like that, presumably run an AA meeting without the coffee? [LB819]

SCOTT FRAKES: Well, they could, right. [LB819]

SENATOR HANSEN: Okay. [LB819]

SCOTT FRAKES: So, but they...we have a system that allows them to donate funds to their activities and pay for the cost of those things. [LB819]

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SENATOR HANSEN: I guess my question is that the impact of this bill and the implementation of this funds change isn't like a requirement for, say, AA meetings, it's something you want to just, say, supplement current ones? [LB819]

SCOTT FRAKES: It's...no, it's not a requirement to make any of those things happen. It would assist us with the Toastmaster program because of that higher...but, no, really the focus is around what we could do with our visiting program, focus on family unification. That was truly the focus in my mind. [LB819]

SENATOR HANSEN: Okay. Thank you. [LB819]

SENATOR EBKE: Any other questions? Thank you, Director Frakes. [LB819]

SCOTT FRAKES: Thank you. [LB819]

SENATOR EBKE: Do we have any other proponents? Proponents of this bill? Do we have any opponents? [LB819]

KELLEE KUCERA-MORENO: And I hope there's questions too. Kellee Kucera Snell (sic)...Kellee...now, see, I can't remember my name. I wish you could have stayed. Kellee Kucera-Moreno, K-e-l-l-e-e K-u-c-e-r-a-M-o-r-e-n-o. And I am here to support inmates and inmates' families, and there's a lot of us out there. I guess I would just like...I've got a few things I'd like to say in my few minutes. My husband and I believe in being self-supporting and I know Alcoholics Anonymous is an organization that's self-supporting through their own contributions and I really...I think he's lying when he says he's supporting AA because that's not true. I know for sure that there are activities. This says inmate. It sounds like the inmate should decide what they want to do. My husband does what he can there. They do have some good workout equipment outside, but then when he has to come indoors, there's not things indoors. I guess, too, I'm here to volunteer my and my husband's help in any way that we can to better this system and we have free and cheap ways of doing that. But we have to have someone listen to us. Hopefully I would like to be on a neutral side and be able to work with Frakes on these issues. I think this is something that the inmate should decide what they want to do. I resent the fact that everybody keeps saying that the inmates...the inmates don't support themselves. Their family members do for the most part. There's \$2,000 coming out of my household because my husband is not there. So I am...I...we are living on a meager income. That money goes towards paying phone time, putting money on his commissary. I would like this noted. I spent \$88 and I bought a treatment program because he's not being offered one right there. It's a 12 step to "wellbriety" program. A member, a Native American from the outside would come in and show how that this could be run. You don't need a counselor. It's a self-support group that my husband is doing by himself

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and he's not getting credit for it. He's there to finish half of an SAU program, substance abuse, which has not been offered to him. He's been there it will be a year in February. And I...there's just a lot of things that my husband and I could do and I am sorry that you guys don't get to make these decisions. But for the other 49 people, or whoever you have to bring this to, my husband and I are available. We have all kinds of creative ideas. I go visit every week. And we're not looking for a lot of money. Maybe just let a dad...maybe let somebody's child sit on their lap more than two seconds. Maybe don't monitor my two-second kiss with my husband. I get a two-second kiss every time I see him. And if we kiss too long, we get in trouble, so maybe some more leniency on the visitations. There are coloring books there. Let them color, do whatever they need to do. This is a small amount of money. Equipment costs a lot of money. These guys wake up, they're doing nothing, they're sitting around, they need something to do. Find out what they want to do. Maybe they need more jump ropes. I don't know. Thank you. [LB819]

SENATOR EBKE: Any questions? Senator Pansing Brooks. [LB819]

SENATOR PANSING BROOKS: Thank you for coming so consistently, Ms. Moreno. What was the \$88 on the treatment program? You're paying that? [LB819]

KELLEE KUCERA-MORENO: My husband is Native American and there's a 12 steps to "wellbriety" treatment program. [LB819]

SENATOR PANSING BROOKS: Twelve steps to what? [LB819]

KELLEE KUCERA-MORENO: Twelve steps to "wellbriety,"... [LB819]

SENATOR PANSING BROOKS: Okay. [LB819]

KELLEE KUCERA-MORENO: ...w-e-l-l-b-r-i-e-t-y. I spent an hour on the phone talking to White Bison publishing. The Native American that came up with this program could offer this. Al (phonetic) is talking to people inside the institutions, saying, do you want to start this as a program? He's trying to get it so they can have a room that these guys could come together and work on this until they start their substance abuse treatment program. My husband is in there until he finishes treatment. He's already been clean and sober. He's doing his 12 steps to "wellbriety" consistently. He works three hours a day on this. He's doing treatment. So the only thing is that they've got to officially say, okay, you've come into the program, we've said that you've done what you need to do, now you can leave. A creative way of getting people in and out of the system is more treatment. They're sitting around waiting for treatment. They've got a disease and they're not being treated for it. I'm glad that Al was picked up the first 30 days

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because he was having a hard time. The rest of the time he should be back in the community, doing treatment, support...being self-supporting. You know, this is, it's just totally not okay. I would also like to say that if there is any room in here for...you know, if I have to get an attorney and do something legal for some of these things to happen, I will. And I would offer any help that I could there. Prisons are overcrowded. My husband should be home. So we'll help you guys do things free and cheap. [LB819]

SENATOR PANSING BROOKS: So what I'm trying to find out is you say that he could get out if he had the program. [LB819]

KELLEE KUCERA-MORENO: Yes. [LB819]

SENATOR PANSING BROOKS: Do you know that to be true? [LB819]

KELLEE KUCERA-MORENO: Yes, and I talked to the warden yesterday and I tried to express to her the...the guys are sitting around. The ones that get treatment usually are the ones that are getting out first, whether they want it or not. There are men in the substance abuse program that are on K2. They have to open up windows and doors at times so that the K2 can go out. They're getting treatment because they're getting out soon. Then they get out, they go to work release, they can't handle it, they get sent back: recidivism. [LB819]

SENATOR PANSING BROOKS: So, excuse me, but I just want to reclarify. So you're saying that he could get out, so he's waiting to get out, too, then. [LB819]

KELLEE KUCERA-MORENO: Yes. [LB819]

SENATOR PANSING BROOKS: Or does he have to stay a certain amount of time? [LB819]

KELLEE KUCERA-MORENO: No, he needs to finish half of this program. I talked to the person. You know, we tried to come with creative ways. He knows how to be clean and sober in the community. So for one year, I've...it's cost me \$22,000 having my husband there. And then I take another chunk of the minimal amount that we're making and I fund the rest of him being incarcerated. Corrections is not taking care of him. We are. [LB819]

SENATOR PANSING BROOKS: Okay, thank you. [LB819]

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SENATOR EBKE: Other questions? Okay, thanks for being here today. Any other opponents? Anyone testifying in a neutral position? Do we have any letters? We have one letter in a neutral position from Doug Koebernick, Inspector General of Corrections. And that will conclude our hearing on LB819. Senator Chambers. [LB819]

SENATOR CHAMBERS: May we have a drumroll, please? That's sufficient. I'm just kidding. [LB818]

SENATOR EBKE: We are now 60 percent done with the hearings for tonight. [LB818]

SENATOR PANSING BROOKS: Someone can't ask himself questions. [LB818]

SENATOR EBKE: Oh. (Laugh) [LB818]

SENATOR PANSING BROOKS: That's true. (Inaudible) that's true. (Laugh) [LB818]

SENATOR CHAMBERS: Shall I proceed, Madam Chair? [LB818]

SENATOR EBKE: Please, please proceed, Senator Chambers. [LB818]

SENATOR CHAMBERS: I'll get right down to business. [LB818]

SENATOR EBKE: Okay. [LB818]

SENATOR CHAMBERS: This is a bill that would undo something that Senator...former Senator Brad Ashford did while... [LB818]

SENATOR EBKE: Would you introduce yourself, please? [LB818]

SENATOR CHAMBERS: Oh. I'm Ernie Chambers. I represent the 11th Legislative District. [LB818]

SENATOR EBKE: Thank you. [LB818]

SENATOR CHAMBERS: I'm presenting LB818. At that time he had his motives, but he managed to get inserted into a bill on General File a provision that would remove the Douglas

County correctional facility from the jurisdiction of the Jail Standards Board. And the language that he used, if you look at your copy of the bill that shows why they're exempted, it says something about...for the record, I want to get the exact language. The Jail Standards...this is from page 2 of the green copy, beginning in line 18. "The Jail Standards Board shall not have authority over or responsibility for correctional facilities that are accredited by a nationally recognized correctional association. A correctional facility that is accredited by a nationally recognized correctional association shall show proof of accreditation annually to the Jail Standards Board. For purposes of this subsection, nationally recognized correctional association includes, but is not limited to, the American Correctional Association or its successor." That accreditation, as you heard from Mr. Frakes's testimony, means nothing. It gets most of its funding from the facilities that it accredits. And you heard me ask Mr. Frakes, do they have the highest accreditation award, and he said, yes, they do, and it's from this very facility...I meant this very organization. You heard me ask him, was this done despite having knowledge of the riots, the property destruction, the murders, the attacks on inmates and staff members, and Mr. Frakes said yes. And you know what that highest award is? It's called the gold...the Golden Eagle Award for the "highest commitment to excellence in correctional operations..." Is that the standard you think that the current Nebraska Department of Correctional Services is meeting right now with all of those factors that I mentioned, which the ACA knew about when they gave them the Golden Eagle Award? That's given out to everybody. It's like candy. This taking of the largest correctional facility out from under the kind of examination, the kind of requirements that the law imposes, Senator Ashford got them out from under the board, the Jail Standards Board. I do think, even when it comes to the Jail Standards Board, their standards need some updating. But even in their current state, their regulation is much more vigorous, much more meaningful, and they are in a position to mandate corrections of things that are not being done in the way that they should. In order not to take a long time, I've given you my reasons for wanting to have this bill enacted into law. But again, for the record, because my statement of intent is brief, it will encapsulate the justification for this bill: The Jail Standards Board--excuse me--has the authority and responsibility to develop minimum standards regarding the construction, maintenance, and operation of criminal detention facilities in this state. Criminal detention facilities includes the jails operated by the counties. Existing law provides that the Jail Standards Board does not have authority over detention or correctional facilities that are accredited by the American Correctional Association or similar nationally recognized correctional associations. LB818 would eliminate this exception to provide the Jail Standards Board with the authority over all criminal detention facilities in this state. And Douglas County is the only one that took advantage of this. There have been deaths at that facility which people question in terms of how they could occur if the people who wound up dying were properly monitored. There are other serious problems there and the only thing that this facility has to do is tell the Jail Standards Board that they were accredited by the ACA. That's the only responsibility and the state has no other control over or direction of them, and I think that is criminal and I think Senator Ashford was probably allowing this to happen as a part of his move to get into the House of

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Representatives. That could be an unfair questioning of his motives. But I cannot think of any reason why somebody who had been in the Legislature as many years as Senator Ashford had been, who had been the Chairperson of the Judiciary Committee, who was well aware of the numerous complaints we had about the Department of Corrections at the state level and problems that existed in Douglas County, for a person with that knowledge to get Douglas County exempted from the overseership of the state, is totally incomprehensible to me other than for the reason I suggested, and that could be wrong. But if that was not the reason, then it was done completely on whim for no purpose at all. If you have any questions of me, I'm prepared to answer them. [LB818]

SENATOR EBKE: Senator Baker. [LB818]

SENATOR BAKER: Thank you. [LB818]

SENATOR CHAMBERS: Except from Senator Baker--no, I'm just kidding. [LB818]

SENATOR BAKER: Senator Chambers, please give me the Reader's Digest version of who the Jail Standards Board are--who created them, who names them, who are they? [LB818]

SENATOR CHAMBERS: I wrote all that. They're created by the state. I believe people may be...by the Legislature. They may be appointed by the Governor. But down through the years, I'm aware of actions that they have taken to make jails come up to what they ought to do. And remember this, I'm not saying they are perfect in every way in what they do, and I suggested that their standards need updating. But even the way they operate now, and that's not to say they're not doing their job, I would rather have the Douglas County correctional facility under the Jail Standards Board than being certified by the ACA as though that has meaning. And I want to emphasize this again, because people don't hear me when I say things the first time. The record will show it. I questioned Director Frakes closely on the ACA. He donates to it. The Department of Corrections donates to it. The facilities that are accredited by it donate to it. And while knowing of all these things that I detailed, they, nevertheless, gave Nebraska the highest certification award that they have. [LB818]

SENATOR BAKER: May I ask another question? [LB818]

SENATOR EBKE: Go for it, yeah. [LB818]

SENATOR BAKER: So is the Jail Standards person, do they have an office? Do they exist?
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SENATOR CHAMBERS: Yeah, they might. I don't know if they operate out of the criminal...that place out in Grand Island or where they're...you know, where they're situated. [LB818]

SENATOR BAKER: Okay. [LB818]

SENATOR CHAMBERS: But if you look at the...that sheet that tells how much money is needed, that statement that everybody gets, I usually don't bring bills that cost money, so I'm not even familiar with what they're called. But the Jail Standards people have pointed out that they would at most have to make...or that they usually make four examinations a year that the work that is entailed in those four inspections, the mileage cost that would be entailed, would come to something like \$292 or something like that. But they indicated that it was so small, it's what the philosophers call de minimis, that there would be no appropriation necessary to absorb the cost of what this bill would entail. So it will have no A bill. It will not be tied up on Final Reading. It'll fly across the board. Or for those who are more down to earth, this bill should cut through the legislative process like a hot knife through butter. [LB818]

SENATOR EBKE: Do we believe that? [LB818]

SENATOR CHAMBERS: Say it again? [LB818]

SENATOR EBKE: Do we believe that? [LB818]

SENATOR CHAMBERS: Oh, yes. [LB818]

SENATOR EBKE: Okay, whatever you say, Senator Chambers. [LB818]

SENATOR CHAMBERS: Thank you. [LB818]

SENATOR EBKE: Any other questions? Okay, do we have any proponents for LB818? [LB818]

AMY MILLER: (Exhibit 1) Thank you, Senators, for the long night. My name is Amy Miller; it's A-m-y M-i-l-l-e-r. [LB818]

SENATOR EBKE: Oh, this is not long. This is not long. [LB818]

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AMY MILLER: This is not long. That's because you are Olympian athletes. We support LB818 because Douglas County is the largest single correctional facility even in comparison to our state prison system. The average number of men and women under their roof over the last year was 1,253 souls who are, essentially, without any oversight. To answer Senator Baker's question, the Jail Standards Board is underneath the Nebraska State Crime Commission, so Darrell Fisher's organization and then Denny Macomber for the Jail Standards Boards would be the ones that would now have oversight. ACA accreditation would be very similar. If you receive the same junk mail I do, you get offers to be listed in who's who of lawyers or who's who in America. It's a service you pay for and the actual certification means little or nothing. One former ACA commissioner, a federal judge who resigned in disgust after a year or two of being on the ACA board, said that this was simply a situation where in good conscience he could not continue to be part of an unbiased entity that offered no authority. There's no transparency. There's no accountability. It is a private entity that doesn't have anything for either lawmakers and policymakers or the public to engage with. Now the ACA-accredited institutions across the country have been, as you'll see on page 2 of my testimony, they have continued to accredit entities that the Department of Justice found were so egregious they'd been described as a cesspool of unconstitutional, inhuman acts. Those places were ACA accredited. It is something that does not mean anything more than the paper it's written on. Senator Chambers referenced this earlier that the state of Nebraska's Department of Corrections has currently got a high award from the ACA even while at the same time the Department of Justice has noted Nebraska's suicide rate in our state prisons is 30 percent higher than the national average. ACA accreditation does nothing. Douglas County, in the time since the Jail Standards Board authority was removed from them, has had over a dozen deaths. That may be because they need help examining their policies and their procedures. Getting them, the experts, and the Jail Standards Board back and engaged with authority to make recommendation is important. We need uniform standards across the state and it makes no sense to exempt the largest correctional facility from oversight. We see from the fiscal note that Douglas County is suggesting they may have very large expense. That suggests to me they're aware they're out of compliance with the minimum standards that we require of all other facilities in the state. People in Douglas County deserve better and we urge you to support LB818. [LB818]

SENATOR EBKE: Thank you, Ms. Miller. Any questions, comments? Thank you for being here. Next proponent. [LB818]

MARSHALL LUX: Good evening, Senator Ebke and members of the committee. My name is Marshall Lux, M-a-r-s-h-a-l-l L-u-x. I am the Ombudsman for the State of Nebraska and I am here to testify in support of LB818. I would like to start by reminding the committee that the Ombudsman's Office, since 2008, has had jurisdiction over complaints coming from jails, so we have now a background in terms of seeing how jails work and how they function. And we also have had an opportunity to have some contact with the Jail Standards Board and to see how they

do their job. And that is sort of the basis of the remarks I'm going to make and I'll just want to cover about three things very quickly. First of all, I want to make it clear that my testimony in favor of this bill is...has nothing to do with my opinion on...in terms of the management of the Douglas County facility. From everything that I've seen, the current management of that facility is outstanding. We get excellent cooperation from the Douglas County facility when we come to them with issues. This isn't about, as far as my testimony is concerned, this is not about the current management of that facility. It's really a question of Nebraska Jail Standards versus ACA accreditation. Secondly, I guess I would have to say that there was a time, say a decade ago, when I, if I'd have been asked, I would...about the Jail Standards and their status, I might have used the term "stagnant" because many, looking back ten years before now, the standards for the most part had not been revised or revisited since they were adopted in 1980. That's no longer the case. In 2014, there were major revisions and revisiting of the Nebraska Jail Standards and important changes made so that I think that we can say that the standards are now much better than they were before and they're more serious in terms of imposing good standards on the jails. As for the problems and the issues and the deficits of the ACA accreditation process, I would just commend to you what Ms. Miller just said and I would encourage you to read her written remarks because that lays out deficits of the ACA process very well. Finally, there are several other things, or at least a couple other things, that need to be thought about as you look at this question. One of them has to do with whether or not the Jail Standards people/staff need to have more resources. There are three people, as I understand it, now working in that department and they may need more resources. And I'd also suggest you might want to look at Section 83-4,124, which sets up the Jail Standards Board, to see if it might...there might be a need to change how the board itself is composed that may be a need for more laypersons on the board. And that's it. [LB818]

SENATOR EBKE: Okay. Any questions? Senator Chambers. [LB818]

SENATOR CHAMBERS: Just one: If, Mr. Lux, and we've worked together down through the years and I know that you all worked with the Jail Standards Board, but if, when I get some time, we can look at their standards and see if they might be...need updating--and I know it can be a cooperative effort, it won't be a hammer--you would be willing to work with me on that, wouldn't you? [LB818]

MARSHALL LUX: I would, absolutely. [LB818]

SENATOR CHAMBERS: Okay. [LB818]

MARSHALL LUX: I'd be delighted to do that, Senator. [LB818]

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SENATOR CHAMBERS: And the reason I'm saying that, if I raise an issue and there might be questions, I don't want to just get a bill and then drop it. There is an ultimate goal that I'm interested in and I want to be sure that the Jail Standards certification, if that's what they call it, is what I currently believe it is worth. [LB818]

MARSHALL LUX: Um-hum. [LB818]

SENATOR CHAMBERS: And then anybody next session will be able to ask me, what did you determine from looking at how they're operating now? [LB818]

MARSHALL LUX: Right. I'd be happy to work with you on that in any way you'd like. [LB818]

SENATOR CHAMBERS: Thank you. [LB818]

SENATOR EBKE: Any other questions or comments? Thank you for being here, Mr. Lux. [LB818]

MARSHALL LUX: Thank you. [LB818]

SENATOR EBKE: Other proponents? Do we have any opponents? It might not sail through. [LB818]

CHRIS SWENEY: Good evening, Madam Chair, members of the Judiciary Committee. My name is Chris Sweney. I'm the accreditation and compliance manager for the Douglas County Department of Corrections. I'm here as in my capacity as... [LB818]

SENATOR PANSING BROOKS: Did he spell his name? [LB818]

CHRIS SWENEY: ...as part of the... [LB818]

SENATOR EBKE: Hey, could you...could you spell your name, please? [LB818]

CHRIS SWENEY: Oh. Chris, C-h-r-i-s, Sweney, S-w-e-n-e-y. I'm here as an employee of the Douglas County Department of Corrections. The county board has not taken a position on this bill. I'm not going to debate the merits of ACA based on the previous conversations, but I can tell you what ACA has done, or accreditation has done, for our department. So the accreditation

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process has brought notable improvement in many areas of both the Douglas County Department of Corrections and our Criminal Justice Center. Through this process our administration has raised the expectations of staff regarding the level of professionalism required. This includes interaction and communication with inmates, clients, coworkers, and outside agencies. It has increased our level of credibility as correctional professionals. Integrating the standards into our day-to-day operations ensures the staff adhere to the best practices and provides consistency in job performance. The standards establish clear goals and objectives critical to provisions of constitutional and humane correctional programs and services. This process is not about achieving a simplistic goal of just being accredited but about making a commitment to the process and genuinely applying the standards throughout the facilities and our operations. If LB818 is passed, current Nebraska jail standards may require Douglas County to build to meet requirements in our dormitory units. A conservative estimate of the cost of a new housing unit is approximately \$20 million. So thank you. I'll take any questions. [LB818]

SENATOR EBKE: Thank you. Questions? Senator Chambers. [LB818]

SENATOR CHAMBERS: Are you aware that with the passage of this bill the Douglas County Correctional Center can remain a member of ACA? [LB818]

CHRIS SWENEY: Yes. [LB818]

SENATOR CHAMBERS: Okay. Are you aware that what the Jail Standards Board does is to set minimum requirements? [LB818]

CHRIS SWENEY: Yes. [LB818]

SENATOR CHAMBERS: But you're aware also that the Jail Standards Board has no jurisdiction over the Douglas County correctional facility no matter what kind of operation is going on there. You're aware of that? [LB818]

CHRIS SWENEY: Correct. [LB818]

SENATOR CHAMBERS: Okay. So this bill's passage will not interfere with anything that currently is being done there, will it? [LB818]

CHRIS SWENEY: The issues that we had in the past with the jail standards were in our dormitory housing units. They have a maximum capacity number despite your actual square footage that...a maximum capacity of 48 individuals in one unit, and we currently have 64

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individuals in our dormitory units. And there was no way to mitigate that. We worked with Jail Standards at the time to try and get some type of a waiver or some type of mitigating factors, which ACA allows us to do. We can mitigate those minimum square footage numbers by having direct supervision in those units and allowing for additional time and additional access to showers and those types of things. [LB818]

SENATOR CHAMBERS: Well, just so you will know, you don't come down here often and you wouldn't be expected maybe to know this, but the Legislature is not very sympathetic to gross overcrowding. [LB818]

CHRIS SWENEY: Oh, I understand that. [LB818]

SENATOR CHAMBERS: So if what they want to do is to be able to overcrowd, and that's why they're opposed to this bill, that's not a very persuasive argument. [LB818]

CHRIS SWENEY: Yeah, and we're not trying to have any more individuals in those housing units than can be fitted. [LB818]

SENATOR CHAMBERS: Well, here's what I'm asking you, not to cut you off but so you won't feel you have to answer more than what I'm asking. What about this bill would prevent Douglas County from doing anything that it currently is doing that it feels is appropriate? [LB818]

CHRIS SWENEY: We would have to reduce the current number of inmates in those dormitory units. [LB818]

SENATOR CHAMBERS: Okay. [LB818]

CHRIS SWENEY: So they would have to be housed somewhere else. [LB818]

SENATOR CHAMBERS: And the county board would be the one to come up with money if money must be expended, isn't that true? [LB818]

CHRIS SWENEY: I don't know where the money would come from. [LB818]

SENATOR CHAMBERS: Well, the Department of...your correctional department does not raise the money that... [LB818]

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CHRIS SWENEY: No. [LB818]

SENATOR CHAMBERS: The county board funds that, doesn't it? [LB818]

CHRIS SWENEY: Yeah, the taxpayers do. [LB818]

SENATOR CHAMBERS: What is the county board's position on this bill? [LB818]

CHRIS SWENEY: They have not taken a position on this bill. [LB818]

SENATOR CHAMBERS: So if they thought it was going to cost them a lot of money, maybe they would have taken a position. Does that seem logical? [LB818]

CHRIS SWENEY: I don't know what they would do. [LB818]

SENATOR CHAMBERS: And you didn't talk to anybody with the Douglas County Board? [LB818]

CHRIS SWENEY: No, just (inaudible). [LB818]

SENATOR CHAMBERS: Were you here when Director Foxall was here? [LB818]

CHRIS SWENEY: Yes. [LB818]

SENATOR CHAMBERS: But he chose to have you speak against the bill instead of speaking against it himself? [LB818]

CHRIS SWENEY: He had other appointments to meet. [LB818]

SENATOR CHAMBERS: Well, I understand. If somebody is going to put him on the hot seat, like me, anywhere would be a better place to be than here, even with the old man himself. That's what we old-timers refer to the devil as. But anyway, I understand everything you say. It doesn't sway me at all. And I think when there are things that are inappropriate in the facility, they should not be allowed to persist just because they're like that. If there's overcrowding, then it has to be rectified, and that's the county board's job to come up with the funding. They have not been opposed to the bill. I presume they're aware of what's going on in their facility. [LB818]

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CHRIS SWENEY: Absolutely. [LB818]

SENATOR CHAMBERS: So I can understand your coming down, but it's not persuasive to me. Maybe you could...persuaded everybody else on the committee, but I like to let the person know what my view is of it. [LB818]

CHRIS SWENEY: Thank you. [LB818]

SENATOR CHAMBERS: And I'm not offended with your coming. I hope you know that. [LB818]

CHRIS SWENEY: No. Thank you. [LB818]

SENATOR CHAMBERS: Oh, okay. [LB818]

SENATOR EBKE: Any other questions? Okay, thank you. [LB818]

CHRIS SWENEY: Thank you. [LB818]

SENATOR EBKE: Other opponents? Anyone in the neutral capacity? Senator Chambers. [LB818]

SENATOR CHAMBERS: Leaving well enough alone, I waive closing. [LB818]

SENATOR EBKE: Okay. Do we have any...we have no letters. So I am going to turn the Chair over to Senator Pansing Brooks and we will proceed. [LB818]

SENATOR PANSING BROOKS: Welcome, Madam Chair. [LB878]

SENATOR EBKE: Thank you. [LB878]

SENATOR PANSING BROOKS: Please proceed with LB878. [LB878]

SENATOR EBKE: Thank you, Senator Pansing Brooks and fellow members of the committee. I guess we saved the best for last, judging by the fact that we haven't cleared the room yet. (Laugh) LB878 would establish consistent statewide protections against potentially unreliable

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jailhouse informant testimony. Now for those who don't know, jailhouse informants are incarcerated individuals who offer the government testimony or information on other inmates, usually about hearing them confess to crimes, with the expectation of receiving benefits. The idea that people regularly confess to committing serious crimes to their fellow inmates is already doubtful, and the promise of leniency creates a strong motivation for jailhouse informants to lie. These inherently untrustworthy witnesses threaten the integrity of our justice system. Jailhouse informants are major contributors to wrongful convictions, which harm the innocent, allow real perpetrators to remain undetected, and leave Nebraska taxpayers to cover the costs of compensation and civil payments. In addition, when jailhouse informants have their sentences reduced or charges dropped, their victims don't get the justice they deserve. Now it's not only the lies told by jailhouse informants, but also the secrecy surrounding their use that can lead to miscarriages of justice. The tools in our legal system for weeding out perjured testimony, such as cross-examination and suppression of unreliable evidence, are only effective if there is transparency. When it comes to jailhouse informants, transparency is so critical that the U.S. Supreme Court ruled in 1970...in a 1972 case that due process requires prosecutors to disclose the benefits provided to government witnesses and other impeachment evidence to the defense. However, here in Nebraska, these constitutional obligations are not always met. This year, the Nebraska and Midwest Innocence Projects surveyed criminal defense attorneys and found that jailhouse informant impeachment materials were sometimes disclosed incompletely, inconsistently, or not at all. While some reported that their county attorney offices provided early and thorough disclosures, there is no uniform practice throughout the state. Without this evidence, the defense cannot shed light on the motivations and credibility of jailhouse witnesses, and judges and juries cannot reach a just verdict. So current Nebraska law, Nebraska was actually one of the earliest states to pass a law requiring prosecutors to disclose specific impeachment evidence on jailhouse informants before trial. A law passed by the Legislature in 2002 required prosecutors to turn over the benefits offered to jailhouse informants, their complete criminal history, and previous jailhouse informant activities before their testimony was admissible. However, the law was repealed in 2009 and replaced with a weakened version that is currently in the criminal discovery statute. The current law places this burden on the defense to request and demonstrate the need for impeachment evidence. This is problematic because defense attorneys reported in the Midwest...the Nebraska and Midwest Innocence Projects survey that in some cases the prosecution did not tell them before trial that a witness was a jailhouse informant at all, so these materials couldn't be requested. Prosecutors would have to track the use of and benefits provided to jailhouse informants, which can be done using something as simple as an Excel spreadsheet. The bill would restore requirements in the previous law for prosecutors to automatically turn over impeachment evidence, rather than placing the burden on defense attorneys to request it. Texas passed a similar law last year with the support of the County and District Attorneys Association and law enforcement because they viewed enhanced tracking and disclosure as benefiting everyone. Prosecutors would be able to easily access information that can help them decide whether a specific jailhouse informant should be

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used as a witness. The law would ensure that prosecutors meet their constitutional obligations and reduce court resources spent litigating claims the defendant's rights were violated. For defendants having access to impeachment materials 30 days before trial, will allow their attorneys to adequately investigate jailhouse witnesses and prepare an effective defense. This is the same amount of time required for defense attorneys to turn over alibi witnesses, witness information to the prosecution. The bill includes an exception if the jailhouse informant information could not have been discovered within that time. The legislation also addresses safety concerns by allowing the prosecutor to request that some or all of the materials not be disclosed to the defense if there are clear threats of physical harm or coercion to the witnesses. The bill also requires judges to conduct pretrial reliability hearings before a jailhouse informant's testimony is admissible. Judges routinely screen witnesses and evidence and understand how the incentivized informant system works. Jurors are more easily misled by jailhouse witnesses and often wrongfully assumed that they would not be offered as a government witness unless the government was certain they were telling the truth. If the jailhouse informant is deemed to be reliable by the judge, the bill requires that jurors receive instructions on the specific factors to consider when assessing their testimony. Modeled after jury instructions in Oklahoma, Utah, California, and Connecticut, the jurors would be directed to give greater scrutiny to jailhouse informant testimony and consider the benefits that have been or will be offered, their history of acting as an informant, and other issues related to their credibility. It's a big risk to use jailhouse informants at all; however, if our state continues to allow the testimony of these potentially unreliable witnesses, there must be strong safeguards in place. LB878 would establish uniform statewide practices that ensure transparency and enforce constitutional protections to ensure just outcomes. Thank you. [LB878]

SENATOR PANSING BROOKS: Thank you, Senator Ebke. Any questions? Senator Chambers. [LB878]

SENATOR CHAMBERS: Just a comment: Bless you, Senator Ebke, for bringing this, because those rascalion prosecutors, waiting until I was out of the Legislature, then they undid a bill that I had gotten on the books. And the reason they did it, it was so effective in preventing them from using this tainted testimony and they want every advantage they can get even to the point of corrupting the system. So I think this is going to help alleviate it, but there might be some additional work. And I didn't ask you, but I believe that my name will be applied as a cosponsor. [LB878]

SENATOR EBKE: I'm honored to have it. [LB878]

SENATOR PANSING BROOKS: Any other questions? Thank you. Okay, proponents. Welcome, and thanks for being here so long. [LB878]

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MICHELLE FELDMAN: (Exhibit 2) Thank you so much. It's good to see you all again. I'm Michelle Feldman, M-i-c-h-e-l-l-e, and my last name is F-e-l-d-m-a-n, and I am a policy advocate with the Innocence Project and we're a national organization and we work with our local partners here in Nebraska, the Nebraska Innocence Project, and the Midwest Innocence Project. They review wrongful convictions here in Nebraska and they also work on policies to address and prevent wrongful convictions. And I want to thank this committee for doing great work over the past couple of years in ensuring that the wrongfully...that wrongful convictions are overturned. You passed a law to improve the DNA testing statute and also for eyewitness ID reform, and I want to thank Senator Ebke for introducing this bill which addresses another leading cause of wrongful convictions which is jailhouse informant testimony. So this bill, as Senator Ebke said, it's modeled after a bill that passed in Texas last year which is really the most comprehensive in the country. And, you know, nationally there are 130 innocent Americans who were wrongfully convicted because of jailhouse informant testimony, and you'll hear from one of them, Ellen Reasonover. She came up from Missouri. She was wrongfully convicted of murder because two jailhouse informants claimed that she confessed a crime to them, but that never happened, and the prosecutors never disclosed to her defense attorneys that these two informants got deals for their testimony. So they were never able to raise these issues to the jurors and she was wrongfully convicted and that really is the problem with jailhouse informants. They're inherently unreliable witnesses. They have strong motivations to lie because they expect to get leniency or other benefits in exchange for testifying. So it's critical that there are safeguards in place if this kind of risky testimony is to be used in court, and that's exactly what this legislation does. And as Senator Ebke said, it's a constitutional obligation for prosecutors to disclose to the defense any impeachment evidence on jailhouse informants, including the benefits that they get. So to understand how that was happening here in Nebraska, the Nebraska Innocence Project and the Midwest Innocence Project surveyed criminal defense attorneys. They got responses from 32 defense attorneys from 12 different counties. And while it was a small sample size, it was pretty clear that there were inconsistent practices throughout the state. So 19 percent of the respondents said that they didn't find out that a witness was a jailhouse informant before trial. So that means that they can't use the discovery law to file a request for more information because they didn't even know in the first place that this person was a jailhouse informant. And some of them said that they only learned about it from other inmates and about one-third of respondents said that they rarely get information on the benefits that are given to the jailhouse informants and about 64 percent said that they never got information on other cases that the jailhouse informant testified in. So this bill would implement uniform procedures and protections. It's consistent with what other states have done, including Texas. Their pretrial reliability hearings is...that's something that's done in Illinois and Nevada and the jury instructions reflects what's given in a number of other states, so we hope that you all will support this bill to prevent wrongful convictions here in Nebraska. Thank you. [LB878]

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SENATOR PANSING BROOKS: Oh, yeah. Anybody have a question, from the senators?
[LB878]

MICHELLE FELDMAN: Thank you very much. [LB878]

SENATOR PANSING BROOKS: Thank you for coming. [LB878]

MICHELLE FELDMAN: Thank you very much. [LB878]

SENATOR PANSING BROOKS: You've come from so far. Welcome. [LB878]

ELLEN REASONOVER: Hi. I respect you. [LB878]

SENATOR PANSING BROOKS: Thank you. [LB878]

ELLEN REASONOVER: My name is Ellen Reasonover, E-l-l-e-n R-e-a-s-o-n-o-v-e-r, and I spent 16 years in prison for a crime I didn't commit. I almost lost my life because of jailhouse informants. In 1993, I was 24 years old, living in Dellwood, Missouri, with my two-year-old daughter. I was just married and about to move to a military base in Florida with my husband. I've never had a record. I'd never been in trouble. Then one day everything changed. I called the police to report seeing two men in a gas station where someone had been killed. I was trying to be a good citizen because my mom... [LB878]

SENATOR CHAMBERS: Would it...excuse me. Would it be appropriate to have her read it for you? Would you mind? Or you want to read it? [LB878]

MICHELLE FELDMAN: You can read it. Do you want me (inaudible)? [LB878]

ELLEN REASONOVER: I read it. [LB878]

MICHELLE FELDMAN: Yeah, you read it. [LB878]

SENATOR CHAMBERS: Okay. [LB878]

ELLEN REASONOVER: I called the police to report two men in a gas station where someone had been killed. I was trying to be a good citizen but the police decided to arrest me. In jail, two

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inmates in my cell said that they heard me confess to them. That was the only evidence against me. The prosecutor never told my attorneys that two women got deals for testifying, so the jury never heard these jailhouse informants had motivations to lie. The jury convicted me. I escaped the death penalty by one vote. Spending 16.5 years in prison was devastating. My husband divorced me. My daughter grew up without me. The only time I saw her was behind bars when she came and visited me in prison. She used to cry and reach out for me. The kids used to tease her in school that her mom was in prison. Not having a mother shaped the person she is and she still struggles today because of it. This type of law would have prevented my wrongful conviction. If this could happen to me in Missouri, it can happen to anyone in Nebraska. I can't get back those years, but I'm trying to make sure no innocent person has to go through what I went through. I pray you all, please, favor and support this bill. God bless and thank you. I'm sorry. It just bothers me. [LB878]

MICHELLE FELDMAN: You did great, you did great. [LB878]

ELLEN REASONOVER: It just bothers me when I talk about my two-year-old daughter. [LB878]

MICHELLE FELDMAN: You did great. [LB878]

SENATOR PANSING BROOKS: Thank you. [LB878]

ELLEN REASONOVER: Sometimes I pray that it was a bad dream and I could turn back the hands of time. Bless and thank you. [LB878]

SENATOR PANSING BROOKS: Thank you, Ms. Reasonover. Is there a chance that we could get a copy of your testimony so that... [LB878]

ELLEN REASONOVER: Sure. [LB878]

SENATOR PANSING BROOKS: ...we could review it one more time so that... [LB878]

ELLEN REASONOVER: Sure. [LB878]

SENATOR PANSING BROOKS: ...because it was hard to hear sometimes. And does anybody have a question? We really appreciate your coming and... [LB878]

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ELLEN REASONOVER: Anybody have any questions? [LB878]

SENATOR PANSING BROOKS: ...and we're sorry about all that's happened and we really appreciate your bravery coming forward on this and coming from out of state. Thank you. [LB878]

ELLEN REASONOVER: Thank you so much. [LB878]

SENATOR PANSING BROOKS: Okay. Next proponent. [LB878]

AMY MILLER: (Exhibit 3) Amy Miller, A-m-y M-i-l-l-e-r. One person being convicted on a jailhouse informant is too many. Nebraska can join the commonsense reforms that have been done in other states. We can ensure that this does not happen. The statistical likelihood, if you missed it from the Innocence Project, 15 percent of those who have been exonerated by DNA evidence, not because somebody changed their story, not because of some technicality, 15 percent of wrongful convictions where DNA proved the person was innocent involved a jailhouse informant. We can't have that happen in Nebraska. LB878 is such a wise balance, any prosecutor or police officer who is currently working with one of these informants can continue to do so. It just shines some light into the process to ensure that there's not anything happening that's going to result in another life being ruined. Happy to answer any questions. [LB878]

SENATOR PANSING BROOKS: Any questions for Ms. Miller? Thank you for coming today. We appreciate it. Next proponent. [LB878]

TIMOTHY NOERRLINGER: Timothy Noerrlinger, last name N-o-e-r-r-l-i-n-g-e-r. I am here on behalf of the Nebraska Criminal Defense Attorneys Association to testify in support of this bill. My main area of practice is here in Lincoln where my office is located, though I do cover most of southeast Nebraska. I've been in criminal defense for five years. Before that, I was a prosecutor both in Otoe County, which is in the southeast corner of the state, as well as in Jefferson County, which is Fairbury. And I practiced as a prosecutor under the old bill that the senator mentioned, as well as Senator Chambers mentioned with regard to this. To a large extent, what this bill does is already in statute and reinstates some of the prophylactic protections that existed under 29-1928 and 29-1929 that were repealed back in 2009. Having been a prosecutor that functioned under that system, it was certainly...you're required to do due diligence with regard to when you called or when you decided to call a jailhouse informant, because it required that you make some certain showings. I think that this bill attempts, in most respects, to reinstitute those kind of procedures. Additionally, it does provide some prophylactic guarantees with regard to jailhouse informants, specifically the pretrial hearing that would be conducted in front of the court, as well as the jury instructions, which I think that even the other side of this

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issue would acknowledge there are concerns and there are questions that are raised anytime you first deal with a jailhouse informant as part of a case. I would also point out that the jury instruction is somewhat similar to what we see in a different part of the code in Title (sic-- Chapter) 29. In 29-4504 there is a jury instruction that is codified when law enforcement fails to record certain types of in-custody statements that they are given that are purported confessions. In the same respect that this Legislature codified that, we believe that that would do the same thing. From an anecdotal perspective, in the last two years I've had two jailhouse informant cases that one went to trial. The one that did was with regard to a first-degree sexual assault of a child, a Class IB felony that carried a mandatory minimum of 15, on multiple counts. The jailhouse informant spoke English. My client spoke Spanish. He needed an interpreter for every proceeding that we were at. When I went to meet with him, I always took an interpreter because we couldn't communicate in English. When I deposed that individual, he indicated that he could understand the defendant well enough and that he made a full confession with regard to this child sexual assault. It was only through the course of that deposition--and Mr. Eickholt, our lobbyist, was...had a codefendant in that case--that we were able to determine that he had previously in Hall County, over ten years prior, participated as a jailhouse informant and received a benefit for that. But for that deposition testimony, we would have never found that out because the prosecution was unaware of it. So that's why we think that this is an appropriate bill to safeguard the procedure and the rights of the accused. [LB878]

SENATOR PANSING BROOKS: Thank you for coming, Mr. Noerrlinger. Any questions today? Senator. [LB878]

SENATOR CHAMBERS: What I'm going to do, I feel obliged to do this. I'm going to read the testimony, Ms.--our testifier, and for the sake of the transcribers--Ellen, E-l-l-e-n, last name R-e-a-s-o-n-o-v-e-r. I hope I'm pronouncing the name correctly. "My name is Ellen Reasonover and I spent 16 years in prison for a crime that I did not commit. I almost lost my life because of jailhouse informants. In 1983 I was 24 years old, living in Dellwood, Missouri with my 2-year-old daughter. I was just married and about to move to a military base in Florida with my husband. In my whole life I'd never been in trouble. Then one day everything changed. I called the police to report seeing two men at a gas station where someone had been killed. I was trying to be a good citizen, but the police decided to arrest me. In jail, two inmates in my cell said they heard me confess to the crime. That was the only evidence against me. The prosecutor never told my attorneys that the two women got deals for testifying. So the jury never heard that these jailhouse informants had motivations to lie. The jury convicted me and I escaped the death penalty by 1 vote. Spending 16 years in prison was devastating. My husband divorced me. My daughter grew up without me. The only time I saw her was from behind bars when she came to visit me in prison. She used to cry and reach out for me. The kids used to tease her in school that her mom was in prison. Not having a mother shaped the person she is, and she still struggles today because of it. This type of law would have prevented my wrongful conviction. If this could

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happen in Missouri it could happen in Nebraska. I can't get back those 16 years, but I'm trying to make sure no innocent person has to go through what I did. I pray you all please favor and support this bill. God Bless and thank you." I had to use you for that purpose because I wouldn't want to defame or degrade it by reading it while one of those who would testify against this bill was up here at that table. And I want them to know how I feel. And, see, they carry guns, they put people in jail, and I'm not afraid of one of them, or all of them together. But that's all I'll do on your time. [LB878]

SENATOR PANSING BROOKS: Does anybody have any questions of Mr. Noerrlinger? Okay, thank you very much for coming. [LB878]

TIMOTHY NOERRLINGER: All right. Thank you. Appreciate it. [LB878]

SENATOR PANSING BROOKS: Thank you. Any other proponents? [LB878]

KELLEE KUCERA-MORENO: Hello. Kellee, K-e-l-l-e-e, Kucera, K-u-c-e-r-a, Moreno, M-o-r-e-n-o. I'd like the time to start after I spell my name. That would be helpful. I guess in layman's terms it's called a snitch. And when you hang out with people in jail, you know that's the number-one rule--you don't snitch. So if somebody is going to degrade themselves to that level, you know that they're breaking the rules. On the outside, as a little girl growing up, it's called gossiping. You know, there's lots of different words for this, but the fact after the testimony that we had, there should be no doubt that this needs to be regulated. My husband is incarcerated because he would not snitch. It's...that's...it's just a fact. Prosecutors are vicious people and a prosecutor and his attorney, who was on his honeymoon, decided to give my husband a plea deal because he wouldn't snitch and, therefore, you know a lot of people...crowded prisons are crowded because people are snitching. That's just the bottom line. I know people on the street that should be in treatment because that's where they should be, but they snitched on a friend who knows a friend. It's just a vicious cycle. I just want to repeat again. The overcrowded prisons basically, for the most part, are because of addiction. Addiction is an illness. It just snowballs from there. And I'm very sorry that this happens. That's all I have to say. [LB878]

SENATOR PANSING BROOKS: Thank you. Any questions for Ms. Kucera-Moreno? Okay, thank you. Any other proponents? Opponents, we'll move to opponents. Welcome. [LB878]

DON KLEINE: Good evening. Senators, my name is Don Kleine, D-o-n K-l-e-i-n-e. I'm the Douglas County Attorney, here as the Douglas County Attorney and as a representative of the Nebraska County Attorneys Association, in opposition to this bill. There's no greater fear that I have as a prosecutor than somebody being convicted that's innocent of a crime. And I'm very sorry that that happened to you, ma'am. It shouldn't happen. I guess in...from my standpoint I'm

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here because the safeguards that I think we have constitutionally are already part of the system in this situation. I'm not aware of any cases, I'm not aware of our Supreme Court ever mentioning that this was a problem in the state of Nebraska or I'm aware of an overturning of any convictions in a postconviction action because of the testimony of a jailhouse informant or the rules not being followed. My office, we get contacted all the time. I get letters from people in the jail saying they have information. Most of the time we ignore those. I mean, I think it's important that any witness that ever testifies be tremendously scrutinized, I don't care who they are, but particularly somebody who maybe thinks that they can get some sort of benefit for their testimony. So before we'll even talk to somebody, we're going to find out if they can be corroborated, if the information that they say that they might have is something that they would know without it being in a newspaper, that they got it from some other source, whatever it might be. So, you know, most of the things that you talk about, the concerns that I have is according to the definition in this proposed statute, even when we have some...a jailhouse assault that takes place where some inmate beats up another inmate or sexually assaults another inmate, all those people would qualify as jailhouse informants under this statute. Okay? And I have a concern about that and our ability to effectively prosecute crimes that occur within our correctional facilities. When we particularly have a jury instruction that we have for no other kinds of witnesses that I'm ever aware of that says, in effect, ladies and gentlemen of the jury, this person is probably a liar, that's what that instruction says. And we want people to come forward. I don't care. We talk about treating prisoners humanely and treating them as citizens and here's somebody that maybe comes forward with some information and we say we're not going to...we're going to tell the jury that you're lying, even though we may scrutinize that person, and I'm not going to call that person unless I am sure that they're...they have something credible to give the jury. The description also talks about the definition of anybody that participates in any information-gathering activity, investigation, or operation. I even think that would seem to encompass tips to Crime Stoppers. If somebody calls from Corrections who has some information that they just want to tell the police about and they happen to be in a facility, then that's going to affect that program. As I said, the jury instruction I think is something that I've never seen before there. As just that last witness said, the lawyer, there are constitutional safeguards right now that deal with this issue. As he said, we have discovery. We let people know about any witness that we're going to call way ahead of time. They're endorsed. They have to be endorsed as a witness before we can call them. And they have the right to depose that potential witness and find out anything about that witness that they want to. As prior counsel said here earlier, I deposed this person and found out this information and we were able to do what we needed to do. So there are safeguards in place. I'm sorry. I've used my time up. [LB878]

SENATOR EBKE: You have. [LB878]

DON KLEINE: But I think this is very important and it's important. I wish that somebody...you said, you know, there's a survey taken of people that are criminal defense lawyers. I wish that

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somebody would have talked to some prosecutors that have had situations where we haven't used people who call themselves jailhouse informants, share the information, or that we've had situations where we have and how we've corroborated their testimony before we would use them. So I'm happy to answer any questions. [LB878]

SENATOR PANSING BROOKS: Senator Chambers. [LB878]

SENATOR CHAMBERS: Mr. Kleine, in the interest of full disclosure,... [LB878]

DON KLEINE: Yes. [LB878]

SENATOR CHAMBERS: ...the--I hate to even use the term "relationship" but let me for the sake of carrying this conversation on--the relationship between you and me has not been hostile, has it, even though we've disagreed? [LB878]

DON KLEINE: Oh, no. I think we have a very positive... [LB878]

SENATOR CHAMBERS: I have said on more than one occasion that if I were ever to be prosecuted for a crime, that I would want you to do it because, first of all, I don't think you would accept what you felt was a false accusation and use it; and if you believed it, you would not use any underhanded tactics. Words to that effect, haven't I said to you? [LB878]

DON KLEINE: Yes, you have, Senator. [LB878]

SENATOR CHAMBERS: Are you aware that I had a bill similar to this enacted into law? [LB878]

DON KLEINE: Yes. [LB878]

SENATOR CHAMBERS: Are you aware that when I was not in the Legislature the prosecutors worked, I guess, with Senator Lautenbaugh and some of the others to have it repealed? [LB878]

DON KLEINE: I know there was changes made. I don't...I didn't really have much to do with it. [LB878]

SENATOR CHAMBERS: Okay. You may not know the characters. [LB878]

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DON KLEINE: Right. [LB878]

SENATOR CHAMBERS: But they waited until I was out of the Legislature. [LB878]

DON KLEINE: Well, when you say "you," ... [LB878]

SENATOR CHAMBERS: I said "they." [LB878]

DON KLEINE: Okay, okay. I thought you said "you." Okay. [LB878]

SENATOR CHAMBERS: No, I said they waited... [LB878]

DON KLEINE: All right. [LB878]

SENATOR CHAMBERS: ...until I was out of the Legislature, and by "they" I meant the senators, because they don't like to confront me on things. When I brought that bill, it was something I thought needed to be done and I had talked with prosecutors that I knew, I thought I knew, and I asked them were they aware of any bill like this. They said they were not. I talked to defense lawyers. Don Fiedler was one that I used to work with. He wasn't aware of one. I couldn't find one so I wrote it myself. There was the opportunity for it to be debated, for it to be attacked, which it was, naturally, by the evil side, as I call them. But it was passed into law. I wish I could remember the details of this case but I think it was from Douglas County where they had a snitch and they wanted to protect him so they sent him down to Kansas or Missouri during the trial, or after it or before it, and they had paid for his transportation to and from, they had paid expenses, and the jurors had said if they had known that, then they might have done differently. You may not remember a case like that, and that's why I wish I could remember more of it. [LB878]

DON KLEINE: I remember there was one when I was not in the county attorney's office there that occurred that there was some issue about a witness like that. [LB878]

SENATOR CHAMBERS: Right, and what he had been given and how the county continued to give him money even after he had left Nebraska. So these kind of things may not have been done by you. As much as I've criticized, with a broad brush, prosecutors, maybe it hasn't been done by any of those who are currently prosecutors. But it has been done, I think it will be done, and I think it's being done now. I'm giving my impression. As a policymaker, we have to prevent things from happening and not always wait until they do and say we should have had a law. Here's what I'd be willing to do: not scuttle this bill, because I trust you, and I hope that doesn't make you fall

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out of favor with these other people, and I would talk to you about what concerns you had with the bill. And if they're legitimate, then I would transmit them to Senator Ebke. And what I mean by legitimate, I'd have to be persuaded that they don't weaken the bill or go against the bill. I don't think there are magical words in a given bill, but I think there are essential words in some bills. And because I've said that to you, I don't trust myself to question some of these other people. And I know the contempt that they have for me. And, see, I don't believe in trying to show I'm a man by calling somebody out, like the President, Charlton Heston, and these other fools, but after what happened to my sister, that's a term of love that we who share the ancestry that your President called a "shithouse" country. Don, you've never heard me use a word like that. [LB878]

DON KLEINE: Never. [LB878]

SENATOR CHAMBERS: And I use it to quote you all's President and give you an idea of what's boiling up in me now. They have sat here long enough to hear me question other people. Because I don't trust myself to behave in a way that I would not regret later, I'm not going to interrogate you and I'm going to try not to interrogate any of these other people. But I want them to know if they think it's because I'm afraid of them, there's someplace else we can go under different circumstances and you'll see how much fear I have of you or anybody else. And I don't carry guns. I don't need them. I am furious right now. [LB878]

DON KLEINE: May I speak? [LB878]

SENATOR CHAMBERS: But I'm not going to leave the room. [LB878]

DON KLEINE: You know, I would be happy to work with you on this. I don't think that we...anybody who disagrees that, sure, certainly there are concerns about whenever somebody is going to testify that maybe has something in the background that, you know, they think they're going to get or there's a reason for them to deceive someone. So I don't have any disagreement about that. I don't think anybody should. But I think, as I said, there are safeguards already here. And, you know, as horrible as it is as far as a wrongful, there's people that have been wrongfully convicted because of bad identifications, eyewitness identification. So we're not going to have a jury instruction that says, okay, there's an eyewitness identification in this case, you know, that you...this person may be not telling the truth, and then you have to...I think the words in this jury instruction say you have to look at them different than an ordinary witness, whatever...I don't know what that means. And so I think we have to be careful how we structure a jury instruction that's going to go into a trial, a criminal trial, and...but I would be happy to have a discussion about any issues with regard to this. Let's...we certainly don't want anything like that to happen here. I don't disagree with that. I just think that there's...there are current things that we have in

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the law that take care of a lot of the issues that are presented here. Any other questions?
[LB878]

SENATOR PANSING BROOKS: Well, thank you for being here. Now that you brought it up, I mean, we did try to bring a bill on eyewitness identification and jury instructions and what should be happening in those cases and the Crime Commission just wanted to put it on their Web site. So it's not in statute, you're correct, but Crime Commission has demanded that it not be in statute because it might change slightly and so they don't want to have to come back and change it. So anyway, we keep going back and forth over different areas of law enforcement that either want something in or don't want something in, and so, anyway, it's very difficult as a legislator to please everybody, clearly. [LB878]

DON KLEINE: Certainly. [LB878]

SENATOR PANSING BROOKS: Thank you for being here, Mr. Kleine,... [LB878]

DON KLEINE: All right. [LB878]

SENATOR PANSING BROOKS: ...and for waiting this long. Welcome, Mr. O'Brien. [LB878]

COREY O'BRIEN: Thank you...is it Vice Chair Pansing Brooks? Members of the committee, my name is Corey O'Brien, C-o-r-e-y O-'-B-r-i-e-n, and I am the criminal bureau chief with the Nebraska Attorney General's Office. I just want to echo some of the comments of Mr. Kleine. Those of you who know my history, know that I was deeply involved in the exoneration of the Beatrice Six and I know what it is to be involved and around people that have been wrongly convicted. So I also wanted to tell you that I grew up in Florissant, Missouri, and I actually remember your case from when I was a young teenager, so, and I'm sorry for what happened to this lady. It should never happen to anybody. I think the issue in our opposition to this bill doesn't revolve around the conveyance of information. Clearly we believe that information should be obtainable by the defense attorney so that they can do whatever they need to do to test the credibility of these witnesses. Our biggest concern with...about the proposed bill, Senator Ebke, is that related to the pretrial hearing and, in particular, there's a lack of clarity in the pretrial hearing regarding what the standard of proof is. I know it talks about compelling "clear and convincing evidence" to prove the reliability based upon factors, but there's no real instruction as to what the significance of the fact that they have a prior history, the fact that they've testified before as a jailhouse informant, so there's not really any standard for me to prove that they're reliable, and so I have some questions about that. And then more concerning, as Mr. Kleine mentioned, was the jury instruction itself. And the key problem that we have with the jury instruction is, as many of you know, my office is struggling with the investigation and

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prosecution of the inmates that were killed at TSCI. Almost all of my evidence in that case is inmate testimony. All of my...all the witnesses in that particular case have not been given anything other than moved to different locations for their safety. But with a jury instruction such as this, any of them that took the stand and testified about what happened at Corrections is immediately dubbed a liar. And more concerning to me is, is that that instruction itself criticizes me for having the audacity for putting those witnesses on the stand and makes a character assassination. What kind of prosecutor are you to put somebody of so ill repute on the witness stand? And so again, I think that that unfairly prejudices my ability to obtain justice by saying that I must be a horrible, unethical prosecutor by putting that jailhouse informant on there to testify what they heard, what they saw during these correctional incidents that resulted in these deaths of these individuals. So with...if we could address some of those concerns, certainly it might change our opinion of the bill because at this moment, at the current state that the bill is in and with the safeguards we already have in place in the state of Nebraska as brought by LB63 in 2009, I don't see a compelling reason to support this bill at this time. Thank you. I'd entertain any questions anybody has for me. [LB878]

SENATOR PANSING BROOKS: Senator Chambers. [LB878]

SENATOR CHAMBERS: In the interest of fairness, Mr. O'Brien,... [LB878]

COREY O'BRIEN: Yes, sir. [LB878]

SENATOR CHAMBERS: ...while I am seething inside, as I tell my colleagues, I still have a brain that is operational, and at a hearing our purpose is to try to get information from the people who will be directly involved in whatever action we take with reference to this bill. So in the same way that I gave Mr. Kleine an opening to say whatever he had to say, I may disagree with you, but I'm not interested in squelching what you're going to say. But before I pose a question that's open-ended, was there some legislation relative to DNA testing and so forth that made it possible for the Beatrice Six, as they're called, to be exonerated? [LB878]

COREY O'BRIEN: Yes, sir. [LB878]

SENATOR CHAMBERS: Was there somebody who got that legislation enacted into law? [LB878]

COREY O'BRIEN: Yes, sir. [LB878]

SENATOR CHAMBERS: Do you know that person? [LB878]

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COREY O'BRIEN: If that person is in the room, I certainly do. [LB878]

SENATOR CHAMBERS: And for the sake of record, would you identify that person by name? [LB878]

COREY O'BRIEN: I believe that I'm talking to that person directly. [LB878]

SENATOR CHAMBERS: And, Mr. O'Brien, I'm aware of what you all had done. Are you aware that the Attorney...the Attorney General then was Jon Bruning? [LB878]

COREY O'BRIEN: It was. [LB878]

SENATOR CHAMBERS: Are you aware that he came to me, and he also may have had somebody from the office... [LB878]

COREY O'BRIEN: That was me. [LB878]

SENATOR CHAMBERS: ...invite me to come, and thought I should have been at that hearing because of the role that my work had played? [LB878]

COREY O'BRIEN: Senator, there will not be a moment in my career that I don't remember that moment more than any other moment. [LB878]

SENATOR CHAMBERS: So it can be said, without either of us lying or exaggerating, that we were working together, although not in concert, to bring about a result which, if it had not been brought about, would have been a stain on this state's reputation forever. Now,... [LB878]

COREY O'BRIEN: Senator, I tear up when I think about it, but you... [LB878]

SENATOR CHAMBERS: ...even while I am seething, you heard the offer I made to Don Kleine. [LB878]

COREY O'BRIEN: Yes, sir. [LB878]

SENATOR CHAMBERS: I'm sure that you all talk. You and anybody else can funnel through him any ideas you have, any opinions. What I don't want is a skewing of the criminal justice

system. I, contrary to what people think, do not feel that if somebody committed a crime that person should escape. My attitude is that I guess of what you could say a defense lawyer is. My job is to defend...see, anybody in this room who would be a lawyer would defend Mother Teresa, Martin Luther King, or Mahatma Gandhi. But as a lawyer who took an oath, you know that, regardless of how you feel about it, even Jack the Ripper is entitled to zealous defense to show that if you're going to convict him there are rules, there are laws that must be complied with, and if you don't comply with those laws you are not going to convict him. And my job is to make sure that you play the game by the rules that you establish. I want there to be successful prosecutions of those who are truly guilty. I don't want the scale to be skewed. I don't want there to be perjured testimony. I don't want any of those things that will cause the public to wonder, because now people are beginning to say more and more, as they see innocent people released, that could happen to me. They used to think if a person was accused, he or she must have done something; if convicted, they must be guilty. But now they're saying that's not true. And some people have been shot by the police who had nothing to do with anything and now they believe that that can happen and they don't think that I'm crazy. I've never said disarm the police. I've never said they shouldn't be allowed to do their job. I've said they should do their job the way they're supposed to and if they don't, they should be held to account. So on a bill like this, which you might call a comprehensive piece of legislation, I'm willing to work with anybody who is sincerely interested in our reaching a good piece of legislation. We may not agree with all of the details, but we start by agreeing on the main principle, which Don already acknowledged, and you, too, that we don't want anybody who is innocent to be convicted. I know that there are times when the testimony of the worst of the worst, as they're called, might be necessary. If it can be shown to be credible, then that testimony should be allowed and it's up to the defense counsel to challenge it and poke holes in it as the lawyers are wont to do. And when I say wont, for the sake of the transcribers, that would be spelled w-o-n-t. So I'm willing. And, Senator Ebke, I'm not trying to commandeer the bill, but I'm willing to work. And naturally I'll keep Senator Ebke apprised and any meeting she wants to be included, I don't know why she'd want to, but she knows that she's welcome. I think we ought to work on this and see what we can come up with. But I'll tell you this. If I disagree with your conclusion, then I'm going to fight against your attempts to undermine or kill the bill. But I will not start with the presumption that your only intent is to kill any and every piece of...kind of legislation that might come out of this. And I think you saw me glaring at you while you were sitting there. And I talked about the Attorney General. I want him to come here one of these times. You don't control that. So you were his surrogate and you caught the stares, so tell him that you're used to it, you've been here, but if he's not really strong, he doesn't want Evil-Eye Fleegle to hit him with a double whammy. And I'm not trying to trivialize what we're doing, but some people don't understand the way I operate. We have disagreed very strenuously. But I think from this conversation, and you'll be...I'm not going to just say it and then be quiet. I think you are aware that I mean what I say, that I will approach this with an open mind, I'll hear what you have to say. That's why I wanted to open this

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opportunity so, for the record of this hearing, anything you didn't have time to say, even if it's against the bill, you'll have that chance now. [LB878]

COREY O'BRIEN: Senator, the only thing that I would say is that you and I, I think, are alike in one way, for sure, and that is that we're both passionate about what we do for a living. We may not always agree, but I think what we all agree upon is fundamental fairness. And, you know, as Don said, my biggest fear is convicting a guilty person. But I also have the fear that I balance against of letting somebody go that shouldn't have been let go and then lighting up a shopping mall or something and innocent children get hurt and killed, so, I mean, I balance those fears a little bit more so. The one case that I'd like to have maybe talked about on the record that, as I saw this bill, that gave me the greatest concern, is about five or six years ago I prosecuted a case in Franklin County, Nebraska. Franklin County is just south of Hastings...well, actually, south of Kearney. And there was a police officer and he was pulling out...he had a woman that he arrested for a drug offense and he was pulling her out of custody so that he could have sex with her and coercing her to have sex with him or else he was going to add additional charges on her. And he would do this on a routine basis and he'd pull her out on the guise of taking her around town and pointing her...having her point out other drug suspects. In the meantime, he's raping her. And in that particular case, under the way that this bill is written right now, I put her on the witness stand and under the jury instruction she'd be presumed to be a liar and that would be almost an irrebuttable presumption for me to overcome. And again, I think that it's only fair that they be evaluated the same way that the witness that's paid thousands and thousands of dollars to be an expert witness is evaluated, the same way that the defense alibi is evaluated. And so to single out the fact that you wear an orange jumpsuit and happen to be incarcerated makes you automatically less credible, is something that doesn't sit well with me and violates that fundamental fairness that you and I both are very passionate about. So I just wanted that on the record. [LB878]

SENATOR CHAMBERS: I understand what you're saying, but here's the difference between a person in...the one facing prosecution, that person's situation, and that of a defense witness or a prosecution witness. They are not facing loss of their freedom and incarceration. The incentive to lie may be there--maybe the money will influence them--but the incentive is not because if they don't say a certain thing they're going to be locked up. If somebody is facing being locked up, they might say anything to try to prevent that from occurring. And there have been more cases of that demonstrated than expert witnesses intentionally lying. So there is a lot that can be discussed, but I read the bill differently from the way you do. And I think Senator Ebke and others will have confidence that I'm not going to roll over just because I'm speaking in a civil way to you or in an almost-friendly way to Don Kleine. This is something so serious that we both have to bring our best arguments and we're not going to agree just to agree. I wouldn't even want you to do that. So I do see, to show if it's a slant, a difference in the testimony of somebody who is under the complete control and dominance of a prosecutor, who may have overcharged

that person already, and those people with the Beatrice Six who were told that they could be electrocuted, and one woman was told she could be the first woman to be electrocuted in Nebraska. Those are tools that can be misused by prosecutors. And I'll be frank. That I'm bringing with me when we talk about the bill. But I'll still keep my mind open. And that's all that I have. [LB878]

SENATOR PANSING BROOKS: Thank you. And I just...I want to add to it that I have a concern that it's not the same kind of witness. Anytime a witness is getting some sort of benefit for testifying or could be getting a benefit for testifying and they're...in either their sentencing or other things, that's a benefit and we don't expect our witnesses to be provided a benefit to be able to speak about what happened and what the truth is. So it is a concern to me. So do you want to speak to that? [LB878]

COREY O'BRIEN: Well, and I mean there are a lot of witnesses that are...that we encounter in the criminal justice system that are prone to lie. And so, you know, singling out jailhouse informers is something that I have a big problem with because who else is prone to lie? I've had people that are in domestic squabbles that they'll make up allegations against the other so that they can get custody of the kids or prevail in their paternity suits...I'm sorry, their divorces. Certainly people that are trying to provide alibis, family or friends or defendants that I've prosecuted, are prone to lie and I've caught them numerous times in lies, much more so than the jailhouse informers that I've ever encountered. But yet we're automatically presumptively saying that somebody, because they wear an orange jumpsuit, is automatically a liar and it's almost... [LB878]

SENATOR PANSING BROOKS: No, I think it's just a greater burden, again, to prove that they aren't lying. I mean, you haven't checked with... [LB878]

COREY O'BRIEN: I read that instruction far different, far, far, far different. [LB878]

SENATOR PANSING BROOKS: Okay. Yes, Senator Hansen. [LB878]

SENATOR HANSEN: Thank you, Senator Pansing Brooks. Just to go on to that, I appreciate you sharing your perspective and especially with the folks and the jury instruction and I do think it is safe to say there is a wide variety of opinions on how that jury instruction reads. I actually went back and reread it during your testimony because you were taking it in directions that I hadn't necessarily conceived. So I'm appreciative of your offer to work in a collaborative process to make it better if you choose to go forward with it. [LB878]

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COREY O'BRIEN: Okay. [LB878]

SENATOR HANSEN: Thank you. [LB878]

SENATOR PANSING BROOKS: Thank you for coming, Mr. Kleine (sic)... [LB878]

COREY O'BRIEN: Thank you. [LB878]

SENATOR PANSING BROOKS: ...or Mr. O'Brien. Any further opponents? Additional opponents? Any in the neutral? Oh, my gosh! Senator Ebke. [LB878]

SENATOR EBKE: I don't think it's 7:30 yet. [LB878]

SENATOR PANSING BROOKS: Okay, that's true. [LB878]

SENATOR CHAMBERS: Well, you're going to take care of that now, I presume. [LB878]

SENATOR EBKE: Well... [LB878]

SENATOR HALLORAN: Senator. [LB878]

SENATOR PANSING BROOKS: (Exhibit 1) So there is a letter, and Senator Ebke is going to close, but there is a letter in opposition by Matthew Kuhse, K-u-h-s-e, who is the Omaha City Prosecutor. Senator Ebke. [LB878]

SENATOR EBKE: Thank you, Senator Pansing Brooks, and thank you, members of the committee. And to those on both sides who came and testified today, I greatly appreciated it. I'm not going to say a lot, but let me just say this. What we've experienced today is, you know, indicative of one of the problems that we always face when we start talking about criminal justice especially. And the question is this: How do we ensure public safety and maximize the chances that those are truly the...those who are truly the bad guys are convicted while also adequately protecting the constitutional rights of the accused? I mean that's, to my view, that's the core problem. You know, how do we balance those things? And I don't know that I know the answer to that question. I don't know that any of us really knows the answer to the question. But I do think that our obligation as policymakers, and of course for all lawyers on both sides, is to see to it that justice is done but that it's true justice and that it's not just a conviction, and that's the real key. We want justice to be done. We don't just want a conviction for the sake of having a

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conviction, and I think that the prosecutors that were here today would agree with us on that. But what we need to keep in mind is that there are prosecutors elsewhere who might not agree with us on that or who might see it a little bit differently. So I will say, on behalf of my apparently new cosponsor, that I will be happy to be a part of any discussion but he can run point on it. I will let him do that, but I will be happy to be part of any discussion with prosecutors and with defense attorneys and see if we could hammer out some language that we can all live with and which will achieve the real desired effect. So thank you and goodnight. [LB878]

SENATOR PANSING BROOKS: Crack of 7:30. [LB878]

SENATOR EBKE: Yeah. [LB878]

SENATOR PANSING BROOKS: Thank you. And that closes the hearing on LB878. Thank you all for coming. [LB878]

SENATOR BAKER: You don't have to go home, but you can't stay here. [LB878]

SENATOR EBKE: But you can't stay here. [LB878]