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**LATHROP:** We're ready to go. Pardon me for being late, I am normally very, very careful about being on time. I-- we did have a bill this morning, then I got stopped in the hall and sometimes that happens even to me. So with that, we'll get started this morning. My name is Steve Lathrop. I got a little thing that I go through so that people that aren't familiar with the process here and those watching on NET understand what our process is in this committee. And I'm going to go through that. It might take a little, little over five minutes. So in, in that-- in any case. Committee hearings are an important part of the legislative process. Public hearings provide an opportunity for legislators to receive input from Nebraskans. This important process, like so much of our daily lives, is complicated by COVID. To allow for input during the pandemic, we have some new options for those wishing to be heard. I would encourage you to consider taking advantage of additional methods of sharing your thoughts and opinions. For a complete list or details on the four options available, go to the Legislature's website at [nebraskalegislature.gov](http://nebraskalegislature.gov). We will be following COVID-19 procedures this session for the safety of committee members, staff, pages and the public. And we ask those attending our hearing to abide by the following procedures. Due to social distancing requirements, seating in the hearing room is limited. We ask that you enter the hearing room when it is necessary for you to attend the bill hearing in progress. Bills will be taken up in the order posted outside the hearing room. The list will be updated after each hearing to identify which bill is currently being heard. The committee will pause between bills to allow time for the public to move in and out of the hearing room. We request that you wear a face covering while in the hearing room. Testifiers may remove their face covering during testimony to assist the committee and transcribers in clearly hearing and understanding the testimony. Pages will sanitize the front table and chair in between testifiers. When public hearings reach seating capacity or near capacity, the entrance will be monitored by the Sergeant at Arms who will allow people to enter the hearing room based upon seating availability. Persons waiting to enter a hearing room are asked to observe social distancing and wear a face covering while waiting in the hallway or outside the building. The Legislature does not have the availability this year of an overflow room for hearings, which may attract many testifiers and observers. For hearings with large attendance, we request only testifiers enter the hearing room.

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We also ask that you please limit, limit or eliminate handouts. Due to COVID concerns, we're providing two options this year to testify at a committee hearing. First, and this is the new option, you may drop off written testimony prior to the hearing. Please note that the following four requirements must be met to qualified to be on a committee statement. One, the submission of written testimony will only be accepted the day of the hearing between 8:30 and 9:30 here in the Judiciary Committee hearing room. Two, individuals must present the written testimony in person and fill out a testifier sheet. Three, testifiers must submit at least 12 copies. And four, testimony must be written-- a written statement no more than two pages, single-spaced or 4 pages, double-spaced in length. No additional handouts or letters from others may be included. This written testimony will be handed out to each member of the committee during the hearing and will be scanned into the official transcript. Just like if you were here in person. This testimony will only be included on the committee statement if all four of these criteria are met. And of course, and as always, persons attending the public hearing will have an opportunity to give verbal testimony. On the table inside the doors, you will find yellow testifier sheets. Fill out a yellow testifier sheet only if you're actually testifying before the committee. Please print legis-- legibly. Hand the yellow testifier sheet to the page as you come forward to testify. There's also a white sheet on the table if you do not wish to testify, but would like to record your position on a bill. This sheet will be included as an exhibit in the official hearing record. If you are not testifying or submitting written testimony in person and would like to submit a position letter for the official record, all committees have a deadline of noon the last workday before the hearing. Position letters will only be accepted by way of the Judiciary Committee's email address posted on the Legislature's website or delivered to my office prior to the deadline. Keep in mind that you, you may submit a letter for the record or testify at a hearing, but not both. Position letters will be included in the hearing record as exhibits. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents, and finally anyone speaking in the 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 spell them for the record. If you have copies of your testimony, bring up at least 12 copies and give them to

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the page. If you are submitting testimony on someone else's behalf, you may submit it for the record, but you will not be allowed to read it. We will be using a three-minute light system. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning. And when the light comes-- turns red, we ask that you wrap up your final thought and stop. As a matter of committee policy, we remind everyone the use of cell phones and other electronic devices is not allowed during public hearings, though senators may use them to take notes and stay in contact with staff. At this time, we would ask everyone to look at their cell phones and make sure they are in the silent mode. A reminder that verbal outbursts and applause are not permitted in the hearing room. Such behavior may be cause for you to be asked to leave the hearing room. Since we've gone paperless this year, the Judiciary Committee-- in the Judiciary Committee, senators will instead be using their laptops to pull up documents and follow along with each bill. You may notice committee members coming and going. That has nothing to do with how they regard the importance of the bill being heard. But senators may have other bills to introduce in other committees or other meetings to attend to. And with that, we'll have the committee members introduce themselves, beginning with Senator Brandt.

**BRANDT:** Good morning, everybody. I am Tom Brandt. I represent Legislative District 32: Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster County.

**PANSING BROOKS:** Good morning. Patty Pansing Brooks, representing District 28 right here in the heart of Lincoln.

**MORFELD:** Good morning. Adam Morfeld, District 46, up in northeast Lincoln.

**SLAMA:** Julie Slama, District 1: Otoe, Nemaha, Johnson, Pawnee, and Richardson Counties.

**McKINNEY:** Terrell McKinney, District 11, north Omaha.

**GEIST:** Suzanne Geist, District 25, the east side of Lincoln and Lancaster County.

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**LATHROP:** Assisting the committee today are Laurie Vollertsen, our hard working committee clerk; and Neal Erickson, one of our two legal counsel. Our pages this morning are Evan Tillman and Mason Ellis, both students at UNL. And with that, we will begin our hearings. And that brings us to Senator Wishart and the introduction of LB525. Senator Wishart, welcome to the Judiciary Committee.

**WISHART:** Well, good morning, Chairman Lathrop, members of the Judiciary Committee. My name is Anna Wishart, A-n-n-a W-i-s-h-a-r-t, and I represent the great 27th District here in west Lincoln. I am here today to introduce LB525. It is a bill that I see as a first step in requiring a higher level of accountability for transitional living facilities utilized by the Department of Corrections, Parole and Probation to ensure that the people who reside within the walls of these facilities are getting the support they need. The facilities are meeting local occupancy, building, and safety standards, and the surrounding community has a clear understanding of who to call if these standards are not being met. This past spring, I was contacted by a neighborhood association in my district that was concerned about a transitional living facility that was being proposed across the street from Park Middle School. For those of you that don't know, transitional living facilities are utilized by NDCS, Parole, Probation, and some private pay to house individuals leaving state supervision. I had several questions about who was in charge of oversight of these facilities when the neighborhoods came to me, but I had a lot of trouble getting answers from one person. So I introduced LR474 year to look into this issue further. Over the summer and fall, I met with neighborhood associations across Lincoln. In fact, neighborhood associations from each one of the Lincoln senators' districts here. Oh, and members of the City Council, Probation, Parole, the Ombudsman's Office, and several providers. And I learned that there is essentially no uniform oversight for these facilities that receive state dollars. Instead, the oversight follows the individual who resides within the facility. So, for example, if you have a home where you have people who are under the supervision of Parole, but you also have people who are living there who are under the supervision of Probation, you will have different sets of standards that those people are living within. But once they move out of the home and a new set move in, there are different standards then for that home. This creates an issue because if residents or neighbors

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have a complaint or issue with that transitional living facility, facility due to poor living conditions, for example, they have really no idea who to call. And oftentimes what happens is they end up calling 911. Additionally, local city governments are faced with a concerning lack of oversight over these facilities and whether they are meeting local building and safety standards. Because these facilities are mostly located in residential properties, the building and safety division should be able to ensure that occupancy limits are being met. But in conversations with City Council members, we learned that it is virtually impossible for them to, to prove a violation. This is because they would have to be given permission to enter, inspect a facility by the facility operator. And as you can imagine, imagine somebody who is breaking an occupancy code is not going to be willing to let an inspector in. So this is a genuine concern that I have. You know, we have a lot of single-family housing units that get utilized in, in neighborhoods that I represent. And my concern, and I have seen this happen, is that you have people packed in to a home that is way beyond what the safety and occupancy standard would be and also beyond a livable condition for somebody. LB525 represents lots of weeks of drafting and work with stakeholders in this area. I will be honest, this is a really complicated area. It was a steep learning curve for me and my office. And so I imagine there may need to be some, some things addressed with this bill. But I do see this as just a basic first step in terms of oversight of these facilities that are utilizing state dollars while also empowering local jurisdictions to provide their own oversight as well. You know, what happens in Lincoln is not always what needs to happen in McCook. So specifically, LB525 does the following. If-- facilities must abide by all zoning and occupancy standards of the jurisdiction in which it's located. They must provide the community supervision agency with a phone number for a manager or supervisor of the provider who is accessible 24 hours a day, 7 days a week. This is very important for residents. If there is an issue, instead of calling 911, they need to be-- I mean, obviously, if it's an emergency, they should, but they need to be able to get in touch with the person who owns the home and need to be able to get in touch with them on a 24-hour basis, there should be somebody available. Such numbers shall also be provided to each resident, shall be posted in a conspicuous place within the transitional housing unit, and shall be posted in a conspicuous place locate-- located on the exterior of the housing facility available to the public so that

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neighbors can also utilize that. Community supervision agency or its employees, agents, or designees may enter and inspect a transitional housing facility at any time without prior notice if such agency has jurisdiction over a resident in that facility paying for the housing of the resident of such a facility. This is a really critical part. If-- Parole or Probation should be able to go and enter in and go see rooms and make sure that there are sheets and pillows and that there isn't black mold and that there aren't three people living in a basement and that people are living in livable conditions. And so I think it's important that we, that we include that. I was contacted by the People's City Mission. They receive state dollars for reentry housing. They had some concerns. It's not my intent that this bill would apply to them. And so I'm happy to, to look into how we could narrow the scope of this. Additionally, LB525 does include some cleanup language requested by the Inspector General for Corrections. Because there's a natural fit with the subject matter, I included it. So to close, transitional living facilities provide a vital service for those existing-- exiting state custody. It should be an expectation that these facilities are safe, that they provide quality living spaces for individuals, have support and services to help residents, and are accountable to the surrounding neighborhood. We have many examples of transitional living facilities in Lincoln, such as those run by the Mental Health Association of Nebraska, who are absolute model programs, and I worked with them and had a lot of communication with them. They're such a model program that their neighborhood association includes their facility on the Neighborhood Association's website as one of the highlights of that neighborhood. That's how well they work with that community and how much they support the residents there. I am thankful for those stakeholders that are doing this right, because it's in the best interest of the individuals that live within these and the neighborhoods in which they reside. I believe that this legislation is one step in the right direction for ensuring that reentry living truly helps people who are transitioning back into our communities. And just to address the fiscal note, I did receive this fiscal note. It does look like Lancaster County Community Corrections estimates additional dollars needed. I spoke with our Fiscal Analyst, I really am perplexed as to why this would cost any additional money. There is no change to the scope and practice in this bill of a transitional living facility. There are just some basic requirements for accountability that I do

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not anticipate would cost additional dollars. So I'd be interested in hearing from them about that issue. Thank you.

**LATHROP:** OK. Thank you for that, Senator Wishart. Any questions for Senator Wishart? Senator Pansing Brooks.

**PANSING BROOKS:** Thank you for bringing this important bill, Senator Wishart. I guess you've mentioned the center-- oh, my gosh, I just-- out--

**WISHART:** City Mission.

**PANSING BROOKS:** The City Mission. Thank you. And I'm just wondering, what, what was their-- what were they concerned about?

**WISHART:** You know, I need to go back and, and read the email. You know, they-- I mean, they operate not in sort of a residential neighborhood. And it's a much larger sort of complex. And some-- I think they just had some concerns with, like, the notification stuff, who you would be contacting 24 hours, that kind of stuff. And so, again, I, I was not really looking at this applying to, to the City Mission. It's more-- this is more for a residential-living situation--

**PANSING BROOKS:** Yes.

**WISHART:** --where people are living in a home and it should be a home for them.

**PANSING BROOKS:** Yes, I agree. Thank you. Thank you for bringing this.

**LATHROP:** I don't-- oh, I'm sorry, Senator Geist.

**GEIST:** Thank you for bringing this. I know we did a couple of Zoom calls together with a neighborhood association in my district. And I think this is a great step forward. It's reasonable. And I appreciate you bringing it. I wish I had thought of it. So thank you.

**WISHART:** Thank you.

**GEIST:** Yeah.

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**WISHART:** And I just-- I will say one other thing. You know, we looked at licensing and, and other things that would have been a little bit potentially more burdensome. But also, you know, this committee should be aware that, you know, Senator Lynne Walz and I, when she had that task force on assisted living facilities for people with mental health issues, which is a little bit different, they don't get the amount of funding that these facilities do. We went and toured and there are some great assisted living facilities that are licensed, but there are some state licensed facilities in the state that literally we walked into rooms with hundreds of flies in them with black mold, where people didn't have pillows, comforters on their beds, where people were pleading with us to help them find a way out, where there was no super-- where people were eating iced tea with cereal because there was no-- nothing in their refrigerators. So, you know, we have a much broader issue, which is sort of like basic human rights in facilities. And I think at least in this case, there adds a layer of accountability so that neighbors can look out for the residents who are living in these facilities as well.

**LATHROP:** Many of these places are it's just some guy buys a house and enters into a contract, gets \$90 a day, may have four bedrooms and take in ten people, and then they're not doing what they've agreed to do or it's not basic decent living. So it seems reasonable to me. I do have a question, though, about the Lancaster County saying that this is going to cost them \$329. Like, that's almost an admission that they are out of compliance. Right?

**WISHART:** I spoke with-- again, I spoke with Fiscal this morning when we got this fiscal note. I honestly don't even know how to read this. What, what would, what would be the issue? We-- we're literally asking for some notices to be posted in and outside and for facilities to meet local standards for occupancy rates, which are basic necessary standards for, like, fire and safety, just public health. So if facilities are already doing this, this absolutely should not be an issue. And as you'll see, there are other facilities like the Mental Health Association, in their facilities they already, they already do this.

**LATHROP:** Well, maybe you can run the traps on that fiscal note and let us know.



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**WISHART:** Yeah, I-- well, I tried to-- I'll talk with the Community Corrections, but I did talk with the Fiscal Office and they-- he did not understand. He did not read into this bill, as well, that it would be an issue.

**LATHROP:** OK. Senator Pansing Brooks.

**PANSING BROOKS:** So do you think it's because they think they're going to have to do more inspections, Senator Wishart, or because they're supposed to be doing them anyway but?

**WISHART:** We did not-- in this legislation, there is nothing that requires more inspections. All it allows for is that someone with Probation or Parole or an employee could walk in at any time and make sure that their client is getting, you know, the services they need. Other than that, there's nothing else that, that should add any additional dollars unless facilities are not meeting local building and safety standards.

**PANSING BROOKS:** OK, and also I see the pastor's here from the City Mission, so I'm sorry that I, I momentarily lost the words for that [INAUDIBLE].

**LATHROP:** It's OK. We understand.

**PANSING BROOKS:** OK.

**LATHROP:** OK. Thanks, Senator. Are you going to stay to close?

**WISHART:** Yes.

**LATHROP:** OK. So that we can alert the next introducer, can I see how many people are going to testify in support of the bill? OK. This always happens, somebody's cleaning the table and then I can't see around them.

**EVAN TILLMAN:** Sorry.

**LATHROP:** How many people are testifying for the bill in favor? Anybody opposed? One. Anybody in the neutral capacity? One. OK. Looks like we got two or three testifiers, Laurie. OK. Proponents may come forward,

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if any. Proponent? Seeing none, anyone here in opposition? Well, opponent testimony, welcome.

**SPIKE EICKHOLT:** Thank you. Members of the committee, my name is Spike Eickholt, S-p-i-k-e, last name E-i-c-k-h-o-l-t, appearing on behalf of the ACLU Nebraska in opposition to LB525, at least as introduced. I did talk to Senator Wishart's office yesterday. I haven't had a chance to talk to her this morning. But what I heard in her introduction, I think she's acknowledged that perhaps there's some work to do on the draft of the bill. The concern that we have is that as written, particularly on pages-- on page 2, lines 22 through 25. The bill as introduced would seemingly delegate the power to a local county or city to at least potentially zone out a lot of these different providers that do offer reentry services for people who are leaving prison or people who are on probation. As this committee knows, when we look at Corrections-related issues, there's a real problem with transitional housing, with people reentering the communities when they leave from prison. I don't want to speak for the Board of Patrol. I think there's an appointee tomorrow. But one of the common concerns that they've had when they've denied someone parole is they don't have a place to go where they'll be supervised. They don't want to just let them go back home where they were living before they got arrested for whatever crime they're serving their sentence for. But there's a lack of suitable reentry facilities in the state. Having said that, I understand what Senator Wishart is, is explaining, what Chair Lathrop asked about, and that is that there really doesn't seem to be a lot of clarity regarding oversight. If someone's on parole or someone's on probation, their supervising officer has the ability to go into their home to make sure that they're conforming with the conditions of parole or probation or something like that. They probably don't have the authority or even maybe the knowledge to know whether the building they're living in is in compliance with whatever the local occupancy standards might be or whatever the local jurisdiction has regarding zoning and that kind of thing. But as written, it would seemingly provide for the ability of a local jurisdiction to, to thwart, or however well-intentioned, make it more difficult to set up these transitional places. So that's a concern that we have. The other part of the bill that deals with the Inspector General we don't take any position on. But that's-- I just wanted to state that on the record and be here to explain and articulate our concerns.

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**LATHROP:** Any questions for Mr. Eickholt? I do have one that maybe you can answer. In the bill it talks about being able to come in without notice to do an inspection, is that a way around the Fourth Amendment?

**SPIKE EICKHOLT:** Well, it might be, you know, but as a practical matter, the people who are on probation or parole, a standard condition of that supervision is they agree to let their home be searched and their property searched, but that's usually limited to law enforcement and they're supervising officer. I don't know the wisdom, frankly, of allowing a building inspector just to be able to come and go and to residents all the time in providing that sort of authority in statute. That caused me some concern too. I know that Senator Wishart said that's a critical point. Presumably, local jurisdictions already have people who can make sure that buildings are in compliance either with occupancy standards or just general health standards, and there's some authority for those people who work in those departments to enter buildings already somewhere. And I don't think giving them special sort of super authority is maybe the right thing to do. People still have some expectation of privacy.

**LATHROP:** OK. Any other questions for Spike? I see none. Thanks for your testimony. Anybody else here in opposition? Anyone here to speak in the neutral capacity? Good morning and welcome.

**DOUG KOEBERNICK:** Good morning, Senator Lathrop and members of the Judiciary Committee. My name is Doug Koebornick, spelled K-o-e-b-e-r-n-i-c-k, and I work for the Legislature as the Inspector General of Corrections. During discussions with Senator Wishart before introduction of this bill, I was asked if, if the office of Inspector General had any oversight role over complaints related to parolees who may be living in transitional housing facilities. In 2015, the, the answer to that would have been very clear. It would have been yes. But because of some changes in the Office of Inspector General of the Nebraska Correctional System Act in the last few years, language is really needed in LB525 to clarify that my office still has that oversight role. So I'll give you a little background on that. When the Act was first passed in 2015, the Division of Parole Administration was actually within the Department of Correctional Services. However, after that, the Division became independent, but the Act did not accurately capture that change. So everywhere in the Act where it says department, originally that would have meant the Division. So now that

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kind of got left out as things changed. And, and the language in this bill would just clarify by adding Division in the right places and everything. So I would continue to have that oversight, oversight role. I was going to ask for an interim study last year to kind of dig into this a little bit more so we could set the stage for, for revising that Act and making it more applicable to what actually happens in with my office and, and reflect these changes in the past. We didn't get that done. You know, it was an interesting year and everything, but I do plan on, on moving forward with that. I think the Inspector General of Child Welfare might kind of piggyback on that because she probably needs some changes in her Act as well, since that was introduced quite a long time ago. In the meantime, these changes in, in this bill just make it clear to Senator Wishart that the answer would be yes to her question. One last thing I do want to make clear, because there has been some discussion by people interested in this bill that the office would not be an entity that has regulatory authority over transitional housing. We would not be involved in any way of approving or disapproving any specific housing providers. This would be up to state and local officials to sort out. The-- this office's role would be open to-- would be to open investigations or review-- or reviews if complaints alleging misconduct are made related to active parolees in those settings. So that's my neutral testimony.

**LATHROP:** OK. Any questions? Senator Geist.

**GEIST:** Thank you for your testimony.

**DOUG KOEBERNICK:** You're welcome.

**GEIST:** Do you have the manpower in your office to perform this duty?

**DOUG KOEBERNICK:** Yes, I think, yeah. Yeah, I'm, I'm, I'm glad you asked that, because the Legislature has provided me with funding now to hire an assistant. And so Zach Pluhacek that was in Senator Lathrop's office is the Assistant Inspector General now. And, and he was hired in December. And by adding just that one body, it's opening up the ability of my office to do more of what's expected of it. So I think I'm in good shape.

**GEIST:** Thank you.

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**LATHROP:** Doug, I'm really glad that we're doing this. You know, I've, I've had people telling me that these folks open up a transitional housing place, they buy a house in usually an older neighborhood. A big one, has five bedrooms, and they try to fill it with people at \$90 a day. But they're also supposed to be providing service-- services while they are in a transitional housing unit. If I'm right?

**DOUG KOEBERNICK:** Correct.

**LATHROP:** What typically, what-- besides a place to live, what are the parolees or probationers, supposed to be post-release supervision people. What are they supposed to get in one of these transitional houses besides a bed and warm meal?

**DOUG KOEBERNICK:** You know, it depends. I mean, there are some where really that's-- they just need a place to stay in some kind of a support system. You have other ones that would have employment support services provided at those. Some would have programming where you might have some intensive outpatient substance abuse programming or maybe some cognitive programming, things like that. A lot would be what the conditions of parole are for that individual. So you might have one house that has, you know, five different people, but they might have five different needs really too, so.

**LATHROP:** You'll be able to ensure that these transitional housing contractors or vendors are actually not only providing a decent place to live, maintaining, you know, a habitable place, but also that they're performing the services they're contracted to perform.

**DOUG KOEBERNICK:** Yeah, if my office would receive complaints alleging misconduct or anything like that regarding the parolees in those places, then I would be able to go in there and, and check on that. My office does not have any oversight, though, over people who are on post-release supervision with Probation. So if the, you know, you might have John, who's a parolee, contact me and Joe, who's a post-release supervision person, contact me about the same issue or similar issue. I wouldn't be able to look at Joe's situation, just, just John's.

**LATHROP:** Got you. Makes sense to me. Any other questions? Senator Brandt.

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**BRANDT:** Thank you, Chairman Lathrop. Thank you, Mr. Koebernick, for testifying. So what is the current state of transitional housing in the state of Nebraska?

**DOUG KOEBERNICK:** I think you-- we definitely need transitional housing. We need quality transitional housing. That's one thing that's been identified, I think, by all the, the individuals or the players involved in this, whether the Department of Corrections or community providers of Parole or Probation and everything. So that's why we've seen kind of an increase, because Probation started funding more of these facilities and offering that \$90 a day in some instances and, and that. So you, you started seeing more of those. But there's definitely a need. As far as what kind of need, I'd have to ask Parole and Probation. They would be the right ones. But there's always going to be a, a, a need for quality transitional housing.

**BRANDT:** So is this, is this housing spaced equally across the state or it tends to be in Omaha and Lincoln?

**DOUG KOEBERNICK:** You know, it does go across the state. I, I don't know as far as how many communities it's in, but I, I know that as you move west, you're going to see fewer facilities and everything. There-- I was out at one this past summer in Kearney that is an old motel that they converted into about a 50-bed transitional housing facility and that receives funding from Parole, Probation. I think the Drug Court and I think somebody else, too, out there. So they have a kind of a mix of population. But it started out as just a five-bed operation. It was-- they were, they were just going to use five motel rooms. And there was such a demand that boom, the next thing you know, they're a 50-bed facility and everything. So there's definitely a, a need out there.

**BRANDT:** OK, thank you.

**LATHROP:** Senator Pansing Brooks.

**PANSING BROOKS:** Thank you for being here, Mr. Koebernick. What percent of people who come out of Corrections use Corrections-- or transitional housing?

**DOUG KOEBERNICK:** I don't know that.

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**PANSING BROOKS:** Do you have a guess?

**DOUG KOEBERNICK:** Not a good guess, but I could probably try to find out for you.

**PANSING BROOKS:** Half, do you think?

**DOUG KOEBERNICK:** I really have no idea.

**PANSING BROOKS:** OK. I-- I'd like to know that. And also is that available for all ages, is that available to come-- people who come out of the juvenile justice system too?

**DOUG KOEBERNICK:** I think you-- if, if, if you are under 18 coming out or 18 or under, I would think you'd be in a different type of transitional housing setting. I don't know that they're going to want to mix those populations.

**PANSING BROOKS:** Yeah,--

**DOUG KOEBERNICK:** But I can--

**PANSING BROOKS:** --I'd be interested if--

**DOUG KOEBERNICK:** --I can check with the, the other Inspector General on that.

**PANSING BROOKS:** OK, yeah, I could ask her. OK, but I would love that information for the committee if we could know how many.

**DOUG KOEBERNICK:** OK, I'll get on that.

**PANSING BROOKS:** Thank you very much.

**DOUG KOEBERNICK:** You're welcome.

**LATHROP:** Great. I don't see any other questions. Thanks for being here,--

**DOUG KOEBERNICK:** You're welcome. Thank you.

**LATHROP:** --Mr. Inspector General. Any other neutral testimony? Seeing none, Senator Wishart, you may close. We do have four position

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letters, all proponents. And we have written testimony from Jane Raybould, councilperson with the Lincoln City Council, who is a proponent; Sandra Washington, Lincoln City Council is a proponent. Also a proponent, Jasmine Harris with RISE. And those-- that's the written testimony we received in the proponents, and you may close.

**WISHART:** Well, I'm pretty bummed out. First of all, thank you for, for hearing this bill. Pretty bummed out that I think my record of never having the ACLU testify against one of my bills is ruined. Thanks, Spike. [LAUGHTER] I think I can definitely work with them on this. Again, you know, this is-- there are parts of this that obviously they don't have an issue with. It is not my intent at all to make it harder for transitional living facilities to exist. It's my intent to actually make it better because there will be more quality homes in our communities that serve the residents and, therefore, also become good neighbors. And, you know, in Lincoln, we ended up this past year with a moratorium, a short moratorium on building transitional living facilities. The city did, because there-- they had concerns that there was really no state oversight. And so this was my response for them and assurance that we will get some basic standards in place so that everybody can feel comfortable and so that we have a livable space for people.

**LATHROP:** Very good. I think it's a very consequential bill in dealing with a-- when I talk to Parole, when I talk to Probation, transitional housing is like the-- one of their biggest concerns, trying to find a decent place for people to, to go. And I will say this, that people who are coming out of prison, who are sex offenders have, and this committee's heard their challenges, it's really, really hard to find a place for these folks to live after they've come out of their period of incarceration. So thanks for bringing LB525. That will close our hearing on the bill and bring us to LB335 and Senator Flood. Welcome, Senator Flood.

**FLOOD:** Thank you.

**LATHROP:** Good morning.

**FLOOD:** Good morning, Chairman Lathrop, members of the committee. My name's Mike Flood, F-l-o-o-d. I represent the 19th Legislative District. As a member of the Legislature, if I wanted to spend \$10,000



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or \$1 million, whether it was a study for \$10,000 or early childhood education for \$1 million, the process in our branch of government is to introduce a bill, hold a hearing where members of the committee and the general public may examine the fiscal note and determine whether or not it's in the state's best interest to spend the money. Third, if forwarded to the full Legislature, there are three rounds of debate General, Select, and Final. Obvious in our system, the Governor has a chance to weigh in and then, of course, there's an opportunity to override. So potentially, if you count that up, there are six opportunities for the general public and members of this body to consider whether spending is warranted and appropriate. It is from this perspective that I have introduced LB335. Prior to returning to the Legislature, like many Nebraskans, I'm mystified as to why 200 more men are incarcerated each year, potentially necessitating the construction of a \$200 million facility and ongoing operating costs of \$30-plus million a year. The reality is that the answer for our prison overcrowding has something to do with all three branches of government. I had my office prepare this and I think you'll find it very interesting. And I'm doing this in part because I think our branch of government has played an equal role in some of the issues that we have now. And so I have a document here that shows pretty much every new offense created since 1997 and the penalties. And I was here for eight years and I'm sure I voted for every single one of these things. And I don't know that I would take those votes back at all. I mean, you look at the new penalties, they meet with the times and the technology. But there's no doubt that this body, by and through its creation of new penalties, enhanced penalties and new offenses, has resulted in some more offenders being incarcerated. So while I'm speaking, I'll ask the page to hand these out. The executive branch, by and through its operation of the prisons, certainly has a role to play and is an active participant in everything that we're talking about here, but the branch of government that makes the actual decision as to how much time and an offender spends in the Department of Corrections doesn't have the transparency that we do in our branch. Let me be very clear. This bill should not be seen as a referendum on judges, nor was it introduced because I feel one judge over another is spending money recklessly. That is not the case at all. I have an extreme amount of respect for judges and I can't imagine sitting there as sentencing with the victim's family and the defendant's family and the defendant sitting there and having to make a decision to take

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someone's liberty. Like, that is a, that is a situation that judges face every single day. And far from the truth, or I should say judges apply the penalties and the range of penalties allowed by us in the Legislature based on the facts in each case. This bill is intended to provide a fiscal note of sorts so that the general public and all Nebraskans can have the opportunity to think about whether the offender's conduct warrants the amount of money being spent to incarcerate him or her by simply introducing this bill. This concept has garnered a healthy discussion. So what does this bill do? It would essentially say, and it would-- it needs a technical amendment to make sure that we're clear on how the costs are calculated. It would essentially say if you're, if you're a judge and you're in the truth and sentencing act, you're sending somebody to prison for three to five years. The judge would disclose at the time of sentencing that this cost of incarceration will cost between \$123,000 and \$300,000. And the reason we're doing this. The reason I proposed it, proposed this is not to put literally any more pressure on the judge. The reason I'm doing this is to say in that situation, as the community finds out the cost to send somebody to prison, are there-- does the community want to pay that for this crime? Does the community want to do something different? In 2005, when I was first elected, the number one issue in my county is methamphetamine. And we pursued a study at that time to look at what could be done. And the reality is that the study came back and said a methamphetamine treatment center would have been in the state's best interest. Sometimes I see people going to prison and you know that because of the backlog, they're not going to get any treatment. The police chief in Norfolk told me recently as he was talking to me about a number of the bills that you're under, you're considering. I said, well, what's driving crime? And he said, methamphetamine. He said, once someone takes that drug and their brain gets a dose of that, they can never match that high. And when they go off it, it takes them two years for their body to return to what it was before and to fight off those urges effectively. One of my thoughts is how do we get somebody into the right treatment to be able to treat the underlying cause before they go on to burglary and all sorts of other crimes? I guess my point here is that if we're willing to spend \$200,000 to incarcerate somebody over the term of five years, should we consider some alternatives at times? And we need the public's buy-in. As somebody in media, I will tell you, seatbelt usage goes up when we and the radio and TV business read the end of the

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press release that said seat belts were in use at the time of the accident. That's part of the media's job. I see this in the same way, people need to know what it costs to send somebody to prison. Now, a couple of things that I want to say. My bill, in its current form, introduces, I think, a straightforward approach to transparency. I do have some reservations with my own bill. Justice is blind. Victims deserve justice. I don't want judges to consider the cost of incarceration as much as I want them to consider protecting the community and the four principles and theories of criminal justice itself. I'm not talking to you out of supporting my bill. I'm just saying that as much as I like the transparency, I balance both of these things. And I assure, I assure you, as I hand this bill over to your committee, you have to balance those two things. And I don't know that this is the perfect solution. Maybe it's not the judge's job to disclose at the time of sentencing what the cost is, but getting the public to understand how much money we're spending is the goal and however we can get to that. And we can, we can make the point that we're spending \$2 or \$300,000 on some of these nonviolent offenders. That's the goal. It's not to embarrass judges. It's not to impair justice or to do anything to compromise the process. That's where I'm trying to get to. And so if, if I can leave you with that, that's the harder job here. The last thing I'll say is I got a call this morning from a sheriff in rural Nebraska, and he, he said, if you pass this, they're going to put more people in the county jail. And I thought, well, that isn't the point. But he went on to say when they closed the regional centers, my jail and almost every jail in the state has become a mini regional center. And I fought tooth and nail to keep that inpatient facility open. And I think that we are treating a lot of-- we are not treating, but we are housing a lot of the mentally ill in our jails. And this sheriff told me that the Douglas County Jail is probably the state's largest mental health facility in Nebraska. And if something comes out of this, it's that I am open to making sure that we have the right level of locked secure care for the mentally ill at all places in the continuum. And maybe that's what's driving this. With that, I appreciate your time. You can tell I've given this some thought so much that I can talk myself out of my bill in the same sentence. And I, I have the feeling that I'm going to break my record. The ACLU is going to support one of my bills. [LAUGHTER] So with that, thank you.

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**LATHROP:** Well, I think the only other person that sat down or stood up and then been for a bill and talked themselves out of it during the middle of the introduction would be Senator Ashford, but. Senator Geist.

**GEIST:** I appreciate the conversation. And to the-- to your point, at the end of your conversation, I 100 percent agree. We need to figure out how we can better house those who are mentally ill. But, but to those-- but to the question that I have, because I understand what you're trying to do and make the public aware, but in that, how could the public respond? What would their avenue of response be?

**FLOOD:** Well, I, I think that I've never seen a government spending problem get worse with transparency. And I think the people at the end of the day are, are exceptionally bright and they will say this makes sense to us, that we-- I don't think anybody is going to object to somebody that commits a horrific crime and they get sent away to life in prison without the possibility of parole. The facts dictate that. I think that just the cost of incarceration are such that if you have, if you have somebody in your community that ends up going to prison for all legitimate reasons, knowing that we're going to spend a couple hundred thousand dollars on their incarceration may make somebody say, you know what, I am-- I'm going to take my time and advocate to the Legislature and my elected officials that we could do something different with this money. I think it just gets more buy-in.

**GEIST:** You don't think it will come back on the judge?

**FLOOD:** I-- well, I would-- I think to their-- the judges would say, well, it, it may come back to the judge in, in the form of a retention vote or something. I think that's the concern. That's certainly not-- and one of the things I thought about was could we have the Department of Corrections listed on the inmate locator so that if the media wants to do it. The problem is that the story is at the time of sentencing.

**GEIST:** Yeah.

**FLOOD:** And that's, that's why I included it in the, in the sentencing part. But I totally think that if, if you're-- I can see the concern. But I think we have to put the spending at the front and say, where is the money going?

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**GEIST:** OK, thank you.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Senator Flood, for bringing this bill. But we are really putting spending at the end rather than at the front with this bill, are we not, because it is not announced until that individual is sentenced?

**FLOOD:** Well, I-- you know, it's, it's at the, it's at the time the decision is made. I think that it would be reckless to have the prosecutor to do it at the front end because--

**BRANDT:** Right.

**FLOOD:** --not only could it taint the jury's opinion of the outcome of the case, but oftentimes there's plea agreements and--

**BRANDT:** So--

**FLOOD:** --maneuvering.

**BRANDT:** OK. So I guess how I sort of see this, I sort of like the idea of bringing it into the court of public opinion using the media. It gives you one more avenue. But couldn't the Department of Corrections or wherever we're getting this information on September 1 of every year, say it's \$41,000 in incarceration cost and then the media would just have access to that? Or you want that on the judicial record with that judge saying you've been sentenced to a Class II felony, two to five years, so it'll be--

**FLOOD:** This will be on the record.

**BRANDT:** You want it on the judicial--

**FLOOD:** Well, that's what the bill does. You know, I think the end goal is to educate the public on what we're spending. And so, you know, the, the idea that you had is educating people in my professional experience how to report on that, which would be something that could be done. It wouldn't require a law, I guess.

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**BRANDT:** So then the media could come in and say if this individual had gotten probation instead of being sentenced, it would be \$10,000 a year. And you could do your cost comparisons in the media, then.

**FLOOD:** That, yeah, wouldn't require a bill.

**BRANDT:** OK, thank you.

**LATHROP:** Senator Pansing Brooks.

**PANSING BROOKS:** Thank you. Along the lines of what Senator Brandt has talked about, Senator Flood, thank you for bringing the bill. I guess I, I am still torn about whether it should be coming in with county attorneys and, and that they should be posting. They're the ones that choose the charges. They're the ones that decide what's going to go before the court. It's not like the, the judge then chooses another charge that might be different or less costly than what the county attorneys have brought forward. Again, truth in sentencing, truth in charging. I don't see how that would affect the negotiations. So I don't know. Just, just a thought. I, I think it's a really important bill. I agree that we, we don't want to bring the hammer down on the county attorneys or the judges. But I do think that it's important. As you said, all three branches are responsible for this overcrowding crisis and we-- we've continued to, to say that. So I appreciate your bringing the bill.

**FLOOD:** Thank you.

**LATHROP:** Senator McKinney.

**McKINNEY:** Thank you, Senator Flood, for, for bringing this bill. I just got one question. Would you be open to a, to a amendment to require the Board of Parole to also declare the cost of denying someone parole?

**FLOOD:** I had not thought about that, mostly because I'm not as familiar with the, the process of parole. But, you know, I think that's-- everything we're talking about here, there's a transparency issue to it. And so if the committee feels that that's important, I think it should be included.

**McKINNEY:** All right. Thank you.

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**LATHROP:** I'll just make this observation that the truth in sentencing has led to the court at the time of sentencing to say, I'm going to give you ten to, ten to-- five to ten and then talk about when they're parole eligible. That stuff's getting reported in the paper. Like when they say, Adam Morfeld was sentenced to five to ten, it will say, when they're parole eligible and how much time they, they-- how little time they could actually spend there. And that gets reported in the paper. I'm using Senator Morfeld's name because we--

**MORFELD:** Thank you.

**LATHROP:** --had an earlier conversation. But I think it's a, it's a-- the victim who is in the courtroom may be gratified to know that the state is investing this much money in putting a person away that they feel like needs to be put away. It's not just, you know, people being horrified that we just spent \$400,000 putting somebody in prison for a long time. But there may be-- it may be from the victim's point of view. Oh, good. You know what? The state's standing behind justice and they're going to spend the money they need to spend. So I think it kind of probably cuts both ways.

**FLOOD:** I think it does. And that's, that's why I'm torn about the bill, because I think, I think everybody knows where we want to go. We have to figure out how to get there and not impair the justice process.

**LATHROP:** OK. I don't see any other questions. Thanks for intro-- are you going to stick around to close?

**FLOOD:** Yes.

**LATHROP:** Perfect. OK, well, we'll take proponent testimony. How many people are here to testify on this bill in total? What do we got? Three or four hands. OK, four. Somebody let Senator Wayne know we're probably four, four testifiers away. Proponent testimony.

**SPIKE EICKHOLT:** Good morning, my name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska and the Nebraska Criminal Defense Attorneys Association in support of this bill as indicated earlier. Want to thank Senator Flood for doing that. I wanted to talk to him before today's hearing, but I just couldn't.

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He's up on the 11th floor. So it's difficult for me to track him down. But this is a good bill and both the Defense Attorneys Association and the ACLU support really everything that Senator Flood said earlier today when he introduced the bill. And I was so pleased and pleasantly surprised that he passed out the listing of all the new felonies, new crimes that have been passed by the Legislature over the last 20 years or whatever he distributed, whatever the time was for that. Because that has a cost, that has a cost, that's step by step and it's incremental and it's not always realized. And his bill, Senator Flood's bill, at least would have some sort of marker or a, a bill or some sort of notion where the public could at least get a glimpse of what that would cost. It reminds me of something that Senator Morfeld said earlier, either this week or last week on a Zoom thing that I watched, that the public seems to be understanding that when you come to criminalizing activity, there's a distinction between crimes that we are really frustrated with and angry with people about. And there are crimes where we're generally also angry, but also terrified of the crimes they commit. And I think what Senator Lathrop said earlier, I think that people are willing to pay for locking up really bad people. I think the public might be somewhat more understanding of why it wouldn't necessarily make sense to lock up somebody, for instance, who commits-- I've got a case sentencing at 11:30. He could very well go to prison. I'm not sure he's really on the edge. But essentially what he did was pass a number of forged checks that resulted in a loss to a bank and to a store of about \$5,000. That's frustrating. That cannot happen. That costs the community money. But locking somebody up like that for \$41,000 a year just confounds the cost to society. There's an alternative. There's a better way to do that. And I think what Senator Flood is getting at is absolutely right on. I understand it's kind of awkward, perhaps, to put this on the judge and the judges probably don't want to do that. But like Senator Lathrop said, they already have a standard script that they do when they impose sentence at 29-2204, where they announce the sentence, explain the sentence on the record and good time and acknowledge any kind of credit they have. Additionally, judges regularly announce other collateral consequences, duties to register onto the Sex Offender Registration Act, it's a possibility a civil commit if they go to prison for certain offenses. So adding this would not necessarily be unprecedented for them to sort of have the statement given at sentencing, although it is a little bit different. And one other maybe proposal might be or another way around



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it is that the Probation Office creates presentence investigation reports for serious misdemeanors of all, all felonies and perhaps putting a duty in the presentence investigation report process to quantify what a possible sentence of incarceration might cost. So at least it's on the judges and the parties sort of an idea when they are looking at a sentencing.

**LATHROP:** OK. Any questions for Mr. Eickholt? I don't see any. Thank you for being here. Any other proponents? Good morning.

**ALEX HOUCHIN:** Good morning, Senator Flood, Chair Lathrop, and members of the Judiciary. My name is Alex M. Houchin. That's A-l-e-x M. H-o-u-c-h-i-n, and I'm here representing Nebraskans for Alternatives to the Death Penalty. NADP's a nonpartisan, 501(c)(3), and we enjoy support from Nebraskans across the political spectrum and from every legislative district across the state united behind the belief that the, the death penalty is bad public policy. Today, NADP announces its support for LB335 and strongly urges its smooth passage into law. In 2016, during the pitched battle over whether to undo the 104th Nebraska State Legislature's successful passage of LB268. A bill which abolished the death penalty in our fair state. An organization called Retain a Just Nebraska commissioned a study by a conservative economist, Dr. Ernie Goss of Creighton University. While I will be happy to provide copies of both the study itself and the executive summary to any and all committee members seated before me, the gist of the findings is that due to a variety of factors, maintaining the capital punishment system in Nebraska adds approximately \$16 million per year, adjusted for inflation to our NDCS budget versus its replacement with a sentence of life without possibility of parole. There are several reasons for these added costs, which include not only the increased complexity of trials in which prosecutors choose to pursue the death penalty, but the years-long expense of the state and federally-mandated appeals process, specialized housing costs, maintenance of execution infrastructure, personnel costs of the execution team, periodic acquisition and storage of lethal injection drugs, and beyond. Setting aside for a moment the larger moral argument over whether the state should even have the power to take a life, these findings provide indisputable evidence that the capital punishment system in Nebraska is outrageously expensive to maintain. Let me be clear. It is our sincere hope as an organization that as more and more Nebraskans learn just how much of our tax revenue gets

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funneled into propping up this ineffective and wasteful policy, they'll start to realize that there are much better ways we can invest these resources than on further suffering and death. We applaud LB335's goal of publicizing the costs of incarceration we're all expected to bear. And in fact, we would urge an increase of specificity in the section that begins with line 29 of page 3 of the bill as introduced in order to reflect the true costs of our states insisted adherence to this failed policy. Thank you for your time, and I'd be happy to try answering any questions.

**LATHROP:** OK. Any questions? I don't see any today, but thanks for being here. Appreciate you taking the time to come down. Are there other people here to testify as proponents? Welcome.

**REID GAHAN:** Hi, my name is Reid Gahan, R-e-i-d G-a-h-a-n, and I'm a community member here in Lincoln. I'm here to support LB335. I believe that in general it is just good to have this data out there and accessible not only for the public, but also for the people in charge of making these decisions. Philadelphia, the district attorney there, has actually asked all of his junior attorneys to make, like, make these statements when they're presenting the charges to the, to the judge. So it-- it's not something that happens at the end, but it's actually something happens at the beginning and they are required to do so just to put it out there and make it, make it clear and obvious the costs that they're associating with these "sentencings" that they're trying to put on people. I also agree with Senator McKinney that it should be used in things outside of sentencing, whether it be denying parole or denying someone bond, but just actually put the true cost out there and also think it would be helpful to mandate, say, instead of like mandating the cost of the alternatives as well so that it would be X number of dollars to go to jail for this drug offense, or it would cost the state Y amount of dollars to go to a drug rehabilitation center just to really put the costs out there. I think it would be complicated to include all of the specific costs. I think that there could be some interesting research there to see. It's obviously not just the cost of how long it takes to keep someone in prison, but the additional lawsuits or additional, like, appeals and some of those things that go on. And there's costs incurred by the community that aren't incurred by the state, but are still a drain on the state's resources, such as, like, paying for phone time and stuff like that within the prisons. But I think this is a good start. It

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wouldn't be a unique thing to do because there's other examples already going around, around the country that are doing this. And yeah, I just think it would be beneficial for the state, in general, for this to, for this to happen.

**LATHROP:** OK. Any questions for this testifier? I see none. Thanks for being here this morning. Anyone else here to testify as a proponent? Anyone here to testify in opposition to the bill?

**TIM HRUZA:** Chairman Lathrop, members of the Judiciary Committee, my name is Tim Hruza, H-r-u-z-a. Appearing today in opposition on behalf of the Nebraska State Bar Association. Let me begin my comments by simply stating at the outset that almost all of what Senator Flood said this morning, I agree with. The, the intent of the bill, the idea of informing the public of these costs. We have, we have no reservations about even the mechanisms in the bill with regard to reporting and collecting information aren't, aren't what give us pause. The Nebraska State Bar Association takes positions on bills generally with two ideas in mind and the, the first technical implications, things that affect the practice of law, things that affect specific interest areas for our attorneys. But then also we do look at with a mind to ensuring the application of justice, access to the courts, and those sort of issues. And that's kind of where this one falls. Our opposition today comes from, as best as I can say, a principled position about a concern related to injecting yet another factor for a judge to consider and trying to decide how to mete and dole justice at the sentencing phase. So from that position, I guess I would just say that there are often times that we give judges discretion in sentencing. I know I've watched this committee for years. I know that is something that you grapple with on a, a yearly basis, year in and year out in, in determining how much discretion to give judges, how often minimum, maximum sentences are set, how, how we apply mandatory minimum sentences. All of those factors instruct a judge as to how they're going to apply the law to a specific set of facts and defending in front of them and protect the community. And, and I think that's where we give pause. I've had good conversations with Senator Flood about the hesitations of the attorneys that have looked at this. We've grappled with the same concepts that he is. And I think our concern is just simply the idea that a judge sitting on the bench looks at the defendant in front of them, the crime as defined by the state statute, that the, the defendant has violated,

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the circumstances attendant upon both the defendant and the victim, as well as the threat to the community. And we have some concerns about giving a judge pause in applying the appropriate sentence to those facts because of the idea that they might get tagged with a cost, right, with an amount and specifically too, I guess, pointing the citizens to that judge as being the person who's in best control of that. With that, again, I am absolutely supportive of what Senator Flood is trying to do. I think the conversation that you're seeing today is, is incredibly valuable. I agree with, with your comments, Senator Lathrop. I think that Mr. Eickholt made some very good points, too. And I don't think, I don't think we take any of that lightly. I think our pause is just with the idea or the hesitation that this is an appropriate consideration for a judge in, in trying to, trying to administer justice at this phase of the, of the trial or the, the situation. With that, I'm open to questions and would be happy to answer them.

**LATHROP:** Senator McKinney.

**McKINNEY:** Thank you for your testimony. In your opinion, who should make this consideration? If not the judge, then who?

**TIM HRUZA:** Yeah, that's an interesting one. And I would tell you that it's something that we discussed at almost every stage of consideration of this bill at our committee level, as well as up into the House of Delegates, and with our executive council members. You may give me a-- I'm not trying to ditch your question when I say that I think our members would disagree about where that should be. Obviously, county attorneys as Senator Pansing Brooks put forward, have, have some role in some of this. I, I think defense attorneys may not, I suppose. But I suppose there, there would be some disagreement maybe about where the most appropriate place is. And that's where I say, too, we don't oppose the reporting requirements. None of that part of the bill, to the extent that it can be calculated by the court or by somebody and, and put out in an aggregate basis. I think our concern is just with the idea that, that judges are going to be concerned about the political aspect of multiple millions of dollars when they're trying to deal with each defendant that comes before them, right, as those costs rack up. I mean, I don't, I don't mean to downplay the fact that those costs are real and that I, I, I also personally think that Nebraskans generally don't have a good sense of

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what that number is. But I-- but from a, a principled how the justice system should operate standpoint, we believe that injecting this sort of consideration or factor into the sentencing phase may not be the best way to operate our court system and our, our application of justice either.

**McKINNEY:** Thank you.

**LATHROP:** Senator Pansing Brooks.

**PANSING BROOKS:** Thank you. Thank you for coming here, Mr Hruza. So maybe, maybe you solved it. Just have the public defenders announce to everybody in the case and make it clear from the beginning and, and mandate that it come from that. I mean, you're talking about a threat to society and I understand that physical threat. But this is also an economic threat to our society. And the fact that we have-- that most people have absolutely no idea how much is, is going to be spent on a kid who, who has a trace of, of drugs in a-- in paraphernalia or I mean, we have lots of cases where drugs are being overcharged. And I don't think that generally society would be happy about spending that money on, on those cases. Again, the people we're mad at versus the people we're afraid of is what the concern is. And we're sentencing a lot of people we're just mad at. And that-- that's tipping the scale towards overcrowding. And I just-- I, I think something should be done. I think it's a really good idea to be transparent. And do you have any other suggestions? Did the bar have any other thoughts on--

**TIM HRUZA:** I don't know. Maybe I'll, I'll take my bar hat off and just personally comment too in response. Senator Flood mentioned the legislative fiscal note approach. I don't, and correct me if I'm wrong, I don't remember in all of my years seeing an estimate on a fiscal note of a new crime and what it will cost in terms of incarceration or potential felonies or potential years in jail. We pass those things. There are fiscal notes with those typically. I mean, county jails will do it, counties will put it on. But I don't remember, you know, an estimated extra 30 will be, you know, three to five years under a new felony offense. I mean, it's something to consider. To the extent we're throwing out options, there is that possibility as well.

**PANSING BROOKS:** Thank you for coming today.

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**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Mr. Hruza, for showing up today. So justice is administered when that judge sentences that individual. Is that correct?

**TIM HRUZA:** I think that's fair. Yeah.

**BRANDT:** OK. So really, the statement is post justice. And they can structure that statement to say the state of Nebraska requires me to say that this cost X and that would give them the cover I think that they are looking for. I think that is how you [INAUDIBLE] the question from the Bar Association, is the fear that a judge would succumb to the pressure of the cost of the sentence.

**TIM HRUZA:** Thank you, Senator Brandt. I, I don't, I don't disagree with you, I think you're spot on. And I think the intent of Senator Flood is, is probably, again, I, I, I trust and we don't believe and we've had good conversation about this, that he's singling out judges or anything. And I'm certainly not here to defend judges either. I think the, the concern is that simply placing that factor out there at this point in time does pin it to the judge and, and enter into the analysis or the decision, an additional factor that's, that's separated, divorced from different from the facts of the case, the particular defendant, the threat that they pose to society. And to the extent that rehabilitation and those sort of things and, and protecting society are, are out there, you put in this other cost thing, cost consideration. And even if it's, even if it's just an announcement, it's intrinsically there for the judge as the local media racks up the tally of, you know, however many tens of thousands or millions, hundreds of millions of dollars we're, we're spending on incarceration, a political or a separate consideration that's outside of the facts of the case, the situation, and the person in front of them. And so to that extent, we have concerns about whether that results in or has the potential to result in the person being treated the way that they should be under the law and more potentially treated with a mind for that external factor. And again, the judge has no control over those costs either. Right? So it might be more expensive to go to [INAUDIBLE] to if somebody gets sentenced to prison and placed in Lincoln versus Omaha or versus Tecumseh. A judge doesn't

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make a decision about placement for that individual either. They just sentence them.

**BRANDT:** OK, thank you.

**LATHROP:** Senator DeBoer.

**DeBOER:** So I'm coming in halfway through the, the movie here. So we've maybe already gone over this plot point, but wouldn't the judge already be considering these factors, at least somewhere in their mind? I mean, I imagine that judges read newspaper articles like everyone else and see that we have a prison overcrowding problem. I imagine as members of the Bar that they would have seen that throughout their career for as long as we've had it. So don't you suppose they would already have to consider the, the fact that when they do this-- I mean, if, if I'm a judge, I think I'm sentencing someone to prison, I, I at least recognize-- imagine I'm fairly smart. I recognize that there's a prison overcrowding problem. I'm putting another person in prison. There's going to be a cost associated. So do you think-- what I hear you saying is that it's prejudicial, that this information is going to be prejudicial somehow in the judge's mind when they're making this decision. Is that kind of the argument?

**TIM HRUZA:** There's at least a fear of that. Yeah. And, and again, too, that, as well as it being sort of divorced from the calculation of what you take into account or what you should be taking into account with respect to the person standing before the judge.

**DeBOER:** Well, I think that's where the prejudicial aspect would come in, right? If the, if the person standing in front of the judge gets a high ticket, then you think, oh, maybe the, the, the judge is going to get sticker shock. I just-- I don't know, I have more faith in our judges' discretionary abilities to, you know, go through the process and not think about it any differently than they would now already knowing we have an overcrowding problem.

**TIM HRUZA:** Yeah, I, I mean--

**DeBOER:** And I mean--

**TIM HRUZA:** That's why I say I don't, I don't think I'm standing here vehemently opposed to--

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**DeBOER:** You're technically--

**TIM HRUZA:** I'm definitely not opposed to the information or anything like that. It's just--

**DeBOER:** You're technically opposed.

**TIM HRUZA:** I am opposed. It's-- it is with, it is with a mind toward the idea that it, it injects an outside factor into these considerations, that, that is-- it's something different and it hangs indirectly on the judge.

**DeBOER:** So-- I mean, there are lots of outside factors that come into the judge that doesn't allow them to just blankly see sort of the list of things that have happened. Right? I mean, you think of all the kind of implicit biases that you might have as a judge that might come into that. So it doesn't seem like we have said in the past, OK, you know, judges are some pristine thing in an ivory tower that don't get interaction with the world. So I'm not really sure how this will, will be particularly more prejudicial than some of those other things. But couldn't a nonprofit or some watchdog-- watch group, whatever they're called, couldn't they just compile this information themselves and put it in the newspaper if they wanted to? And wouldn't that sort of be the same thing is this your concern that judges will get reputations as being big spenders in the Corrections system?

**TIM HRUZA:** I sure think that you're right. Right? I mean, I think, I think that this-- the information is, you know, we've already had multiple testifiers throw out a \$40,000 figure. That's the number that I've heard generally for somewhere in that range for an estimate of a year in a, in a prison. I, I don't see why somebody couldn't do that. I think there's a difference, though, between an outside person having access to the information or even the public having access to the information and our statutes telling and instructing a judge what to announce and what to consider. And, and to that point, too, I, I think that-- and again, I don't, I don't-- I, I go back and forth with this in my mind, Senator Flood and I have gone back and forth with it too, it's-- I'm kind of in the mindset of him. There's times when, when parts of this make sense and there's times of it-- times when it, it really does just, just give you concern. And to that last point or, or to, to the question, I mean, Senator Flood passed out a list of the



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sentences that we impose-- or the, the sentences, the crimes that we create and the sentences that we impose here in this building. And I, I think that at that point, you're-- when you give a judge a range, you're giving them that sort of discretion. And, and I guess in the judges-- from the judges' position, they're assuming or able to assume, he or she assumes that the Legislature's contemplated that this sort of crime justifies a three-to-five-year, five-to-eight-year, or five-to-ten-year range, and that they're comfortable with what that costs based on how, how long I feel this person should be confined to rehabilitate and to keep society safe. So-- I mean, I don't-- like I said, I don't mean to pass the buck back to the Legislature by any means, because I know you guys have this struggle year in and year out, but it really does sort of--

**DeBOER:** I get, I--

**TIM HRUZA:** --they're applying the law to the situation in the law. The law gives them a certain amount of discretion.

**DeBOER:** I get what you're saying, but I just think, you know, judges don't live in a vacuum.

**TIM HRUZA:** Sure.

**DeBOER:** They don't operate in a vacuum. So, you know, I don't think we think that they operate in a vacuum in other circumstances. Anyway, thank you for your testimony.

**TIM HRUZA:** I, I appreciate the-- appreciate your thoughts and the discussion, too.

**LATHROP:** Senator Morfeld.

**MORFELD:** Thank you for coming today, Mr. Hruza. I, I kind of want to go back to Senator McKinney's question on if not the judges then who? And I realize that it's clear to me that the Bar Association has not taken a position on who should be responsible for this. But what I'm hearing from you and the Bar Association is we're not opposed to transparency and the concept behind the bill or the intent anyway. But, yet, we don't have any solutions or alternative. So if the bar association is not opposed to the concept and the intent, then I guess as a member of this committee and as a member of the Bar Association,

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I would like to hear from the Bar Association, who is in the best position to be able to, to do this. Because I think, in general, from what I've heard from around the committee table here, we all think that this should be happening somehow. And so I, I would like guidance from the Bar Association on who is best positioned to do that, because I think the Bar Association is in the best position to give us that guidance.

**TIM HRUZA:** I appreciate it. I, I, I think our members, who-- I will press it to the-- to our members to have a discussion about it. What I can tell you pretty confidently is I think we would have different ideas about how that should be. To the point we could come to some consensus, I'll do my best.

**MORFELD:** Yeah, even if you give us a, a top two or three thoughts on that. I think that that would be useful because-- and I'm not being facetious about this, I, I really think we need to do this somehow. But I'm interested in who's the best positioned person or people to be doing that, if not the judges themselves.

**TIM HRUZA:** Sure.

**MORFELD:** Thank you.

**TIM HRUZA:** Thanks, Senator.

**LATHROP:** You know, I have to tell you, here's what I'm hearing, Mr. Hruza, we at the Bar Association-- by the way, I'm a card carrying member and I pay the extra due.

**TIM HRUZA:** You are.

**LATHROP:** OK. We at the Bar Association believe in transparency. If somebody wants to calculate this and then get the ear of Todd Cooper at the World-Herald after a sentencing, they can do that. We just don't want the judge to have to say it. This bill doesn't ask the judge to consider the cost. It doesn't say that at all. All it says is you just got to say how much it is. I suppose we could just have the judge say, I'm going to sentence you 10 to 20. And by the way, it costs \$41,000 a year to house a prisoner. I don't know. I'm struggling with your opposition. I understand where it's coming from, and I don't think the whole Bar Association cares about it. I think the judges do.

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And if we made it the county attorneys, the county attorneys would tell you they got a problem with it. And if we made it the Parole, Parole Board, the Parole Board would be in here saying, no, don't, don't do that. Because, you know, we like transparency. Just don't want anybody doing the math right in front of a reporter.

**TIM HRUZA:** To your last observation, I think that's why I struggle to give Senator McKinney or Senator Morfeld a direct answer. I think you're going to have-- I, I think there are-- and to--

**LATHROP:** Nobody wants to do it.

**TIM HRUZA:** --to your point, too, the bill, the bill doesn't require consideration. No, it does not say a judge shall take into account whether this will cost \$1 million or \$500,000 for this person who committed the crime. But in-- intrinsically, I don't-- if, if you have the judge announce it from the bench, they're knowing as they're making their sentencing decision, whether they knew that the night before or whether they're doing it in the weeks before or as they're looking at it, whatever, they're contemplating, what that number that they're going to announce is going to be. Right? And so, and so to the, to the extent that that impacts the way they apply the law that the state has put in front of them and the sentence that the state has given, whatever discretion they've given him, sometimes they don't have discretion. Right? As you well know, but it's--

**LATHROP:** But there's a disconnect. And by the way, within the next year or two, you will see a fiscal note on the, on the cost of increasing penalties. That will be a bill because now the Crime Commission's capable of telling us what that looks like. At some point, you know, when, when the mayor says we're going to spend \$2 million filling potholes, everybody says, hooray, that's money well spent, you know. Or we're going to spend money plowing the side streets, they'll get done within 24 hours. And everybody says, great, that's a good expense. I'm glad you're spending the money. Everybody wants to talk about the money they're spending on the things that people want and like. Right? But then the politicians say, I'm going to be tough on crime, send me down to the Legislature or-- well, that's primarily it. And then, then there is a disconnect and people have no idea. They read that we have an over-- overcrowded prison system. Something needs to be done there. But they don't have any idea

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that it's \$41-- approximately \$41,000 a year to house somebody. You know, I've had a lot of conversations with the Douglas County Attorney. I shouldn't out, out anybody. I will just say this. I'm told that there is a disparity between what will get you time in Douglas County versus what will get you time in greater Nebraska. Right? That in, in western parts of the state, people will get a far heavier sentence or maybe get a sentence for prison that the person in Omaha won't get. I think people need to understand what this is costing. What it's costing them as taxpayers and I don't know how else to do it other than at sentencing. I really don't, but I do think that if, if the judge says you're going to get five to ten and it's going to cost this to this and that's in the paper, people are going to go, man, that's expensive. That's where my money's going, because right now they don't. The only thing, the only thing people running for the Legislature and for Congress are talking about is getting tough on crime. Not saving money. This is obviously a frustration that's-- that we experience on this committee and I've experienced for a long time, but that's all I have. Senator Pansing Brooks.

**PANSING BROOKS:** Just-- sorry. Mr. Hruza, one more thing. I just couldn't let that go that, of course, I think juveniles are about \$56,000 a year. So I want to add that to the story and make sure--

**LATHROP:** OK.

**PANSING BROOKS:** --we're aware of that.

**LATHROP:** OK.

**PANSING BROOKS:** Thank you.

**LATHROP:** All right. I think we're-- we'll look forward to your input.

**TIM HRUZA:** Thank you, Senator.

**LATHROP:** Anyone else here in the neutral capacity? Seeing none, Senator Flood, you may close.

**FLOOD:** Thank you, Senator Lathrop. The people only have so much money and sitting here watching you discussing this, there's-- and I, and I come from the Revenue Committee where we spend every day trying to funnel as much money into the property tax fund to deliver property

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tax. And then we have political subdivisions that don't want any changes. And I see this disconnect going on between what the Legislature's trying to accomplish in property tax funding. And, and then you've got these political subdivisions that have property tax authority and they're, like, just leave us alone, everything's fine. I think what's happening here is that one branch of government is telling another that we are at wit's end with the Rubik's Cube that we're trying to solve and we need to educate the public about what it costs and we need the help of the judicial branch to get there. Now maybe this isn't the right way to do it, but I've never seen a government spending problem get worse with transparency. And I will tell you, as somebody that comes from the media, the moment when somebody who's shackled with their legs and their hands heads off to prison and gets 10 to 20 years, that's the story. But the reality is the real story, the continuing story because that's not insignificant, is that we are handling that person's medical care or potentially paying for their dependent children. We are incarcerating somebody at \$40,000. There's another story that happens there. And the taxpayer needs to know the whole regime. And I will be the first to say that there are people that absolutely belong in prison. And probably, you know, I probably would agree with a lot of, you know, everything, but I think when you know what it's costing, we make some progress. And I'd be up for figuring this out. I feel like I, feel like I had a grenade and I pulled the pin and I rolled it into the same room that I'm in. [LAUGHTER]

**LATHROP:** Oh, we don't see it as a grenade.

**FLOOD:** You know, I-- and the last thing I'd say is when it comes to money, I'd-- I would still value justice and truth before money. And I, I don't want this effort to compromise someone's to, to find justice. And to be fair, I don't want the-- that to-- this to do anything negatively there.

**LATHROP:** By the way, I don't think anybody on the committee does either. So I--

**FLOOD:** I know.

**LATHROP:** --I very much appreciate your comments and bringing the bill here today. Any last questions for Senator Flood? I see none. Thanks

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for coming in today. Before we close the hearing, though, I should for the record indicate that we do have position letters. Four of them. Three of them are proponents and one of them is an opponent position letter. And with that, we'll close the hearing on LB335. And that brings us to Senator Wayne and LB334. While we're waiting for Senator Wayne to come in, I'll, I'll just let you know that four of us also serve on the Exec Board and that Exec Board has a hearing that begins at noon. So if you see a, a bunch of us stand up, it's not because we don't regard this as a consequential and important bill if we're still going at it at noon, but because we have another engagement. Welcome, Senator Wayne.

**WAYNE:** Good midmorning, Chairman Lathrop and the Judiciary Committee. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District 13, which is north Omaha and northeast Douglas County. As many-- well, I'm looking around, I think Senator Pansing Brooks is probably the only one who-- and who will recall, I was on the LR127 Prison Oversight Committee, 2017-2018. And part of that process-- oh, Senator Geist. Yes, you're right. And so part of that process was we toured all the facilities, had multiple conversations. And one thing that stood out to me was in my district, which is down by the airport, we have Omaha Corrections and we also have Omaha Community Corrections and the disconnect that was there with the local industry. I met with many industries down there from those years to Airlite Plastics and other like manufacturers who were looking for third-- second and third shift workers. And we had a facility down the street who was claiming that they couldn't connect those people with jobs and that's why they were sitting all day. So essentially, I began for the last four years trying to figure out a way to develop a partnership or a way to increase the idea of services for people who get out of prison. We want to make sure they don't jam out. That'll be a term you will hear over and over when you talk about prisons. But when somebody jams out they're just basically, they're walked out the door with the stuff they came in. And what happens is they typically call the same people who they got in trouble with when they first went in. So this bill is an attempt to solve or be an alternative, LB334, to be an alternative to the new prison system, or new prison facility that is trying to be built and is also a stairstep of a bill that Senator-- Chairman Lathrop introduced regarding Omaha having more community beds. And what's slightly different about Omaha-- the bills

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between Chairman Lathrop and myself is we are trying to establish community beds throughout the entire state. And we have to look no further than one of the handouts that I provided to you, which is Bristol Station down in Hastings. The reason why I think this can work throughout the state is because, one, there are some of our colleagues who are familiar with Bristol Station who are, we would say on the conservative side, who believes in Bristol Station and believes that it works. Two, there are some of our colleagues on the floor who are looking for ways to grow their economy and fill some of the workforce shortage in the area, particularly around Norfolk, Sidney, Hastings, Grand Island. What this bill will allow is for those community beds to be placed in other areas. I am looking at an amendment because there will be a couple amendments that we'll have to do. One will be-- I did not know the scope of work for the FOP, so they will be here in opposition to how the bill is written. But there will be an amendment that will keep them, the workers who are part of the current bargaining unit with the FOP, because I believe this is part of the same similar work. We will have an amendment making sure that those people stay, the people who are part of the Nebraska Protective Services will stay a part of the FOP. So that will be one amendment to address their concerns that I really didn't know about until last night and it wasn't their fault of their own. I just had four bills yesterday I was introducing and I didn't, didn't, didn't prepare for it. So there will be that. The other thing to ensure that we have beds outside of Omaha and Lincoln, is I will be bringing an amendment to have a minimum of three in first-class cities, a minimum of one in primary class and a minimum of one in metropolitan class. The reason I want to do that is because Hastings already has a place that I think we can model after, and that's a class, a first-class city. But I know Norfolk and I know Scottsbluff or Sidney are also looking at workforce gaps. So what we're talking about is about 900 people here, talking about 900 people who have been deemed by the department as minimum risk, lowest level that could and should be in community beds that are close to jamming out where they could go work, get in a halfway house. And that's essentially what we're talking about, a halfway house ran by nonprofits to build that transition to a different life. It doesn't make sense when I was on that tour talking to folks in Omaha that we have a Community Corrections in Omaha when three of the people I talked to are going back to Scottsbluff, Sidney, and Chadron area. So, yes, they get a job and they're working or they're doing some kind of

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treatment in Omaha, but then when they're jam date is up, they go back home, they have no connection back. They've been gone for seven or ten years. So it makes no sense for us not to have some type of community program in the communities in which they're going to. They can get the clinical treatment. They can get the vocational treatment in their own community. And it does another thing, it solves the labor shortage for many of these small growing areas who are looking for laborers. You have manufacturing of steel plants up in Norfolk who are looking for people. You have people in Omaha who are looking for second and third shifts. And the crazy part about it is, it is less than a mile away. Literally, they can walk there and some of them do. But I have gaps in my community where they're looking for people to work and we have a labor pool that's being confined. And part of this, which is the big impetus of this bill, is part of this is because right now Pardon-- Pardon Board is underneath Corrections. I mean, sorry, Board of Parole is underneath Corrections. And so by moving them out, which is what we did years ago, and James will testify after me to tell you more about that experience. It actually flourished, that people were actually getting the services they need because it wasn't the same mentality of being incarcerated underneath the Department of Corrections. It was a, a wall put up that allowed people to think differently in the department that instead of dealing with people just on the inside, we're actually talking about people on the outside who are transitioning to the outside. And believe it or not, where you sit oftentimes influences how you think. Just think of how we are on the floor. And if you are sitting inside the Department of Corrections, it is a bleed-over mentality that happens to your department whether you want it to happen or not. So that's the big part of what this bill is about. And when you look at the fiscal note, we're talking about \$2.2 million. We're talking about \$2.2 million to potentially move possibly 900 people out of our prison system. That takes the problem of having to build a new prison away immediately. It provides local communities the opportunity for some labor force. They estimate 20 people in here. I think it's more about 40 per, per area. And again, I will just emphasize that I'll bring an amendment to deal with the FOP situation because I did not know about that. Two, I'm going to bring an amendment to make sure we spread this out so it isn't stuck in Omaha and Lincoln that we actually spread it out. But we're also going to have the benefit of providing workforce and working with private industry to get it done because that nonprofit is not connected to the



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department in the sense and can build those bridges and not be hindered by the bureaucracy of the Department of Corrections. The last thing I'll note is, I passed out a-- another amendment, AM178. This is an amendment about if my bill goes nowhere, I would at least like to have this amendment be attached somewhere. Because what this essentially does is move the Pardons Board, the Probation Office, and the Department of Corrections out of Lincoln and into Omaha. I got this idea from Senator Erdman so take that for what it's worth. He's trying to move the Department of Game and Parks to Sidney. And I thought when I listened to the reasons in that hearing, it's not as crazy as an ideal about initially thought it was because it's about getting the department in the communities that they serve. And most of the people are from the Omaha and Lincoln area. But it's also about removing that department from the confines of the Department of Corrections and from the bureaucracy of Lincoln. That kind of resonated with me when I look at the people that are served in north Omaha by these institutions that maybe if they are in north Omaha and seeing the community they represent are the people they're putting back into the community, maybe they'll have a different idea of how to think and how to deal with it. It's a conversation that needs to be had among this committee. But in no way should this amendment take away from the, the main purpose of my bill, which is to make sure we have community corrections throughout the state to solve a labor shortage. But more importantly, transition those individuals back into the community that they serve. And with that, I'll answer any questions.

**LATHROP:** Very good. Senator Geist.

**GEIST:** Thank you, Senator Wayne. Thank you for bringing this. I do have a couple of questions about your bill on page 6, if you go to Section 12, paragraph (2) and (3). Sometimes what happens when an individual is on work release, a crime is committed. So in, in your scenario, who, who is liable for that individual should they commit a crime? And would that individual then go back to Corrections if this is taken out from under Corrections?

**WAYNE:** So there's just-- the answer is a little more complicated than who is just liable. The answer would be, if there was a crime committed, that local jurisdiction would prosecute. That would be a violation of their parole in that situation. So it would go back to

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Corrections for him to finish-- him or her to finish out their term. But the local jurisdiction would obviously prosecute that crime. If it's a violation of policy and conditions of the parole, such as in Bristol Station, they have-- I handed out their guideline, they have a list of things. If you violate those things, then you would no longer be qualified for their program. So you would have to go back to Corrections. So there will be a, a give and take there--

**GEIST:** OK.

**WAYNE:** --in that situation. But, but the local jurisdiction would obviously prosecute the crime.

**GEIST:** OK. Thank you.

**LATHROP:** Any other questions? I see none. Will you stick around?

**WAYNE:** Yes. I just want to point out this works way better at the federal system with halfway houses. So this isn't a foreign concept. And if anybody-- I don't know if Bristol Station came up with testify, but I would-- they do a lot more with the federal, that kind of work. Thank you.

**LATHROP:** Senator Wayne, there's four of us that have Exec Board so if we bug out of here, it's not because--

**WAYNE:** Understood.

**LATHROP:** OK, good. All right. Proponent testimony. Welcome.

**JAMES DAVIS:** Welcome. Hey, good afternoon, Chairman Lathrop and the Judiciary Committee. My name is James Davis, and I'm the deputy ombudsman for Corrections. First of all, I'm going to get this out. I hate testifying. So I'm going to do my best.

**LATHROP:** You're fine.

**JAMES DAVIS:** But a couple of things I want to clear up. Senator Wayne communicated that Pardons Board, it's Parole Administration. And when we moved the Parole Administration from up under the Department of Corrections, it did flourish. So when he said Pardons Board, we want to focus on Parole Administration. Secondly, he said minimum is the

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lowest. So I want to make sure we get this corrected, too. Minimum is not the lowest because he was talking about 3A, 3B, so we're talking about 4A and 4B, which is community. So we want to move those guys over into community up under the Parole Administration. And third, was the question posed by Senator Geist about who, if you're on work release and you commit a crime, who is responsible? Well, we have people on work release right now that commit crimes and they are prosecuted by the jurisdiction. But technically, sometimes when a, a crime is committed, the department has its own internal investigators to do those things, too. So it depends on how high the crime will rise up to. But right now, we have people in the community up under the Department of Corrections that are on work release that have committed crimes. So third, with this, with this community-- Nebraska treatment community, we're talking about spreading it throughout the state. And we're talking about putting 40 to 60 people in those housing areas, which is not run by the Department of Corrections. We're not even asking for the Department of Corrections building. So it would be entered into sort of like a private like Bristol Station. So that would shoot down the cost. Senator Wayne also mentioned back in March 19, 2020, it did-- it was reported that we had 923 minimum custody. So what we're saying if we can move those guys into community and put them on work release, that will be great. The fact is, there was some misunderstanding that they would be on parole, but that's not true, they'd be on work release. And basically how things move in the Department of Corrections, we just have enough beds for community. But if we create this here, we can take it down so we have overcrowding and, and get that down and move these guys into community, not on parole. And basically, when they go into community, that's a one-stop station. What, like-- for example, like Bristol Station, where you have vocational education and also clinical. And just one other thing. It would also follow with Senator Pansing Brooks's bill, which was LB625 where she was trying to put \$5.8 million into clinical program that could be put into the Community Work Release Treatment plan.

**LATHROP:** OK.

**JAMES DAVIS:** I'd be open for any questions.

**LATHROP:** Very good. Thanks, Mr. Davis.

**JAMES DAVIS:** Thank you.

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**LATHROP:** Senator Brandt has a question for you.

**BRANDT:** Yeah, thank you, Chairman Lathrop. And, and thank you for your testimony today. To clear something up for me. So are we-- are you equating the beds in Hastings with Bristol Station with the, with the beds that we have in community corrections run by the department? Are those equal?

**JAMES DAVIS:** I think, in my opinion, the beds that are run in Bristol Station is a little bit more sophisticated than we have at community. That's just my opinion. But that's based off of my observation. When I went up and looked at that program where they had working with the community, the private sector, and also providing programs that basically the department didn't have.

**BRANDT:** So we aren't, we aren't moving people out of our existing community corrections. We're just creating more, maybe Bristol Stations out there just to increase the total number of beds in community corrections.

**JAMES DAVIS:** Well, not only that, yes. But also we're giving them an opportunity to do well when they transition back into the community. We're giving them at least 12 to 18 months to transition. So when they get out, it won't be a high recidivism rate for them to come back in. So, yes, to your question, but also we're, we're creating a better system.

**BRANDT:** OK. Thank you.

**JAMES DAVIS:** You're welcome.

**LATHROP:** I see no other questions. Thanks for being here this morning.

**JAMES DAVIS:** Thank you.

**LATHROP:** Any other proponents? Welcome.

**AL RISKOWSKI:** Good morning, Al Riskowski, A-l, and it's R-i-s-k-o-w-s-k-i. I'm on the board of People City Mission. And here in regard to that today just to explain the fact that I do have some experience in Corrections and I served on a community corrections committee at the Nebraska State Penitentiary for around 15 years,

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especially when Warden Mike Kenney was there, and had many conversations about the pluses and minuses of what was happening in our state penitentiaries at that time and some of the frustrations that were being experienced. I think one of the greatest frustrations I had was to listen to what was happening in our state penitentiaries without any power to do anything about it. As the idea came forward of more work release being placed in not-for-profits, I took Tom Barber and I, the executive director of People City Mission, to our local Lincoln work release facilities for men and for women to get a good idea of what was exactly happening in those facilities. And I'll let Tom talk more about that. But I do feel that as a not-for-profit, we can do an excellent job of working with individuals placed in work release. And I just wanted to highlight a few things as far as advantages to a work release program. Obviously, number one is cost. I don't believe there's any doubt. And I listed-- actually a reference put out by the United States Department of Justice on a not-for-profits done in the Midwest, a study that was done and they very much verified that it's cost effective to place individuals in work release at a not-for-profit. So we certainly can do it cheaper. Secondly, community programs obviously ease up jail time. Thirdly, it's a very flexible program. It can be done in pretrial. It can be actually a sentencing or it can be done as later in their actual process of being jailed. And finally, you're not really exposing people to the criminal system. I would just like to refer you again as I close to the study from the United States Department of Justice, as well as the American Psychological Society, all stating the advantages of work release programs that have been happening across the country. So thank you.

**LATHROP:** Very good. Any questions? I see none, but thanks for being here.

**AL RISKOWSKI:** OK. Thank you.

**TOM BARBER:** Hello, my name is Pastor Tom Barber, T-o-m B-a-r-b-e-r. I am the president of People City Mission, have been so for the last 17 years. And in that capacity, I, I worked with literally thousands of men and women who have been incarcerated at some point in their life. And more recently, we have worked in the last couple of years with Corrections to house between 30 and 40 men and women in probation and parole. We have also have a program there at the Mission. And so we've

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got some experience at it. I guess I'm here just to testify quickly on a couple of things. One, it's true that we can do it for less cost. Here's why. Our programs are already in play for different reasons. They're like fixed costs. There's a number of programs that share it. So, so we can do things that Corrections can't do because you've already got the resources there and that allows us to do a lot more. But, but, but in addition to cost and overcrowding, as I've been listening to, I think there's something else in play here, guys. It was already alluded to and that's the opportunity at second chances. You know, when I work with people, the first thing you have to do is get them to believe in themselves. If you can't give them to believe in themselves, all the other stuff we're doing doesn't really matter. And I had found that a, a majority of the people I worked with, they, they will take that second chance if, if they have the opportunity to do so. But environment matters and resources matter in that process. And I'm here to share that I think there are nonprofits across the state of Nebraska that can provide superior environments and have more significant resources than Corrections do to really work on this issue that we're all facing. I'll use the People City Mission as an example, and there are other groups that obviously can do as much or more than the we can. We went and saw the facility that, that the state has. And it's a dormitory, but we can offer people their own private room. We can offer them not just three meals a day and sack lunches, we can give them employment. We employ people all the time and find a plan for them. We offer them one-on-one counseling. We can give them all the clothing and shoes and personal care items they have. We can give their families all the personal care items and shoes and clothing they need. We can do all this and we can do it for about \$20 to \$30 a day less than the state. And, and so there, there, there are nonprofits that can really help out. And even though I know this is not your concern, you're helping us, too. Because in our case, we're here to take care of the homeless in Lincoln, Nebraska. This helps us to better take care of the homeless in Lincoln, Nebraska. It's mutually beneficial. It helps the state. It also helps, it helps the city in the case of the homeless. And the other nonprofits would have the same thing to say. So, you know, guys, I'm a big believer in second chances. You know, I'm a pastor. I'm a big believer in second chances. And Lord knows I had and needed my share of them. And maybe some of you have too. But, but I think in planned addition to money, an additional thing is how do we give these folks second chances to

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really make it? And I, I think this is one way to do it. It's just by changing the structure. So anyway, I'm not going to pontificate, I know I got three minutes, but--

**LATHROP:** OK.

**TOM BARBER:** --thank you, guys, for listening.

**LATHROP:** Let's see if there's any questions for you. Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Pastor Barber, for everything that you do. You do a lot for the community. So you have a program in place today? You are--

**TOM BARBER:** Yes, have for a couple of years.

**BRANDT:** So how many beds do you allocate for this?

**TOM BARBER:** We have 60. Yeah, I was listening to some on the prior bill about needing capacity. There's, there's still a lot of capacity open. We have 60 transitional housing units. We built them initially for guys on the street because it took two years to get Section 8 housing, but we, we couldn't fill them and so the VA took 30 of them for a, for a 6 or 8 years [INAUDIBLE] homelessness. They built the new facilities and then the state of Nebraska came and asked us to use it for, for parole and for probation. We also worked with Lancaster County on their diversion program. Yeah, there's young men there, too. And we have 60 transitional housing units, beautiful units with TVs, and, you know, you get your own bed and refrigerator and everything in it, and we've made that available to probation and parole. And we've been doing it for a couple of years. We have between 30 and 40 guys. We still have another 20 rooms we could fill if we wanted to. Part of our problem is there's been a lot more people getting involved because of the \$90 a day. And some of those are great and we like great competition, but some of them and you've alluded to other bills, they're trying to make a quick buck and they open up a little house and they really don't provide the services. And so we, we get nicked-and-dimed by some of those guys, too. But we do have, we do have rooms available and we've been doing it now for two years.

**BRANDT:** So you feel that the state needs to provide better oversight on all this transitional housing so everybody's on the same footing?

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**TOM BARBER:** I'm not-- I, I don't want to step on that one. I don't know. All I can tell you is that there are people out there who are not doing their job and they're just filling up houses. And you have the Mission sitting here. And I know there are other groups, they mentioned some in other places that provide significant services, overwatch, and everything else. And they still have beds available because of some of these little homes that are being popped up, so.

**BRANDT:** OK.

**TOM BARBER:** It is true. That's going on. But--

**BRANDT:** Thank you.

**TOM BARBER:** Yeah.

**LATHROP:** I just want to be clear about one thing or, or make sure everyone's clear. You have transitional housing, but you're not doing work release at this time.

**TOM BARBER:** Correct, probation and parole. Right. But we can make them available the same houses for it. Yes, sir.

**LATHROP:** Right. I get that. I just wanted to make sure the committee didn't think that somewhere--

**TOM BARBER:** Thank you.

**LATHROP:** --you were in some kind of a pilot program. OK.

**TOM BARBER:** Thank you, sir.

**LATHROP:** Thank you, Pastor. I don't see any other questions.

**TOM BARBER:** OK. Thanks.

**LATHROP:** Thanks for being here. We will take the next proponent or any other persons that care to testify in support of LB334. Anyone here in opposition? Welcome, Director.

**SCOTT FRAKES:** Gets all sticky. Good afternoon, Chairman. Well, no, not quite yet. Good morning, Chairman Lathrop and members of the Judiciary Committee. I will do this. It's a little easier. I'm Scott Frakes. I'm



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the director of the Nebraska Department of Correctional Services, spelled F-r-a-k-e-s. I'm here today to provide testimony in oppos-- in opposition to LB334. In 2015, thanks to funding provided through the Nebraska Legislature, NDCS issued the first Vocational and Life Skills grants to community partners. Those funds, which have continued since, enabled selected organizations to provide individuals with education, behavior, life skills, and hands-on vocational training. The program is a success story. Our correctional system is the envy of many for being able to make this type of offering a reality. The VLS program includes dedicated reentry specialists, social workers, mental health staff, and others who all serve a common goal to facilitate the process of getting people connected to the resources they need in order to help them reintegrate into the community. The Nebraska Center for Justice Research at UNO regularly evaluates the program to ensure short, mid- and long-term goals are met. I've shared a copy of their annual report, which includes descriptions of the programs and the progress made so far. As far as we've come, the full, the full potential of the VLS program is yet to be realized. LB334 will move the management of VLS under the Division of Parole Supervision. We are six years into building the VLS program. Separating it from NDCS is akin to cutting off a limb. At NDCS, our driving focus beyond keeping people safe is the premise that reentry starts at intake. It's the motivation behind everything we do. The resources used to make that happen are critical to the totality of this agency, not only community corrections. Many inmates, regardless of where they are in their sentence, are able to take advantage of the programs offered through VLS. Stripping it away will severely handicap NDCS and this important mission. We work hard to provide individuals a seamless transfer back to the community. That's not a process that starts when somebody is ready to walk out the door. It begins when they are committed to NDCS and they have their first orientation with a reentry specialist. In FY2020, 1,428 individuals were deemed appropriate for community custody. Of those, 1,371 or 96 percent transitioned through a community corrections work release center prior to release. The people that can be safely housed in community corrections settings are receiving the opportunity to do so. Expanding community corrections beds will not increase the number of people classified for community custody. Our community corrections centers provide an essential link from higher custody to complete freedom. People there have the security to make mistakes without being failures. They can benefit and

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learn from daily structure and rules while working towards their educational goals, identifying job or career opportunities, and reconnecting with family. Approximately half of our inmates do not discharge through the parole process, but 93 percent of our prison population will transition back to our communities. Keeping VLS under the capable direction of NDCS ensures every inmate releasing from prison has access to the programming and resources needed for successful transition. And I'm happy to answer questions.

**LATHROP:** Yeah. OK, perfect timing. OK, any questions for Director Frakes? Senator McKinney.

**McKINNEY:** Thank you, Director Frakes. My question, this program has been in place since 2014 and we still have an overcrowding problem. Is, is there something that can be improved within the program to decrease the prison population?

**SCOTT FRAKES:** Well, what we have seen is an increase in the number of people that are leaving on supervision. A significant increase in the number-- sorry, significant decrease in the number of people that are jamming out of prison, nearly a 50 percent reduction. And now the next test will be recidivism, as you can best measure how VLS in concert with everything else that we do, both us and the people that do community supervision, whether or not you can-- will we see any reduction in recidivism? But again, making those cause-and-effect arguments is difficult because VLS is one component, our education service is another component, our clinical treatment services are another component. So many different factors that weigh into that. So if you go through-- if you have the opportunity take the time, certainly not at this moment, but if you go through the report from UNO, you will see some of the interim measures of success and then they're continuing to build the data that would-- it's going to take ten years of good, solid data before you can make some really strong assumptions about whether or not a specific program treatment or other activity has some measurable impact on bed space.

**McKINNEY:** I guess the, the problem for the state is that we don't have ten years where the state is trying to build a prison soon-- sooner than the ten-year span would come, come about. So I don't see issue with that. But my, my other comment, I get a lot of calls in my office since I've been in the Legislature from individuals inside. And the

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number one thing I hear all the time is opportunity, a lack of opportunity and a lack of adequate programming for individuals, which is forcing them to jam out because the department is not providing the services they need to be released. And I've heard this from a lot of individuals, so it's not like-- it's not an isolated incident. What are you doing to increase access to quality programming so individuals aren't forced to jam out and they're able to access to programs they need in order to be released?

**SCOTT FRAKES:** So I'll first respond by saying, while that is a common refrain, it's mythology. It's not true. And I provided documentation at the hearing a couple of weeks ago and I showed the progress the agency has made in terms of programming over the last five years. And it is substantial, significant movement in terms of it. And specific to those things that would prevent someone from getting access to parole, which is clinical treatment, we have moved from getting people assessed at their PED, which was our practice in 2015, unfortunately, to people being offered opportunities to do clinical treatment as far out as three years from their PED, which is pushing the boundaries of what the science says is a good practice because ideally, high-level clinical treatment, residential clinical treatment, should be delivered as close to return to the community as possible to get the maximum benefit. So I, I didn't bring copies again today, but what I shared at the hearing a couple of weeks ago demonstrates what this agency's done to address those issues. I'm going to go a little farther. Part of the problem, Senator McKinney, is we do have a substantial part of our population, well over 1,000 inmates, probably closer to 1,500 that are doing a lot of time. And no system can address that challenge of how do you keep people engaged in a wide variety of things over a 5-, 10-, 15-year period of incarceration. So we provide programming. We provide clinical treatment at the time it's appropriate. We provide work opportunities and pro-social activities which have been greatly impacted, unfortunately, by COVID. But we're going to get back to that. But when you have a large number of people that are doing a lot of time, from their perspective, it absolutely feels like there's just not things.

**McKINNEY:** I understand that. One, one comment that has stuck with me for a while when speaking with somebody that's currently inside of our prison system. He said that your department, instead of providing opportunities and things to keep individuals occupied and assist with

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making sure that once they are released, they're not coming back, your department continues to take away. And that's probably the biggest issue, especially with the younger inmates, that there is a lack of opportunity within the system. So we're locking individuals up, but there's nothing in place currently from the opinion of multiple, multiple individuals that are inside and very knowledgeable that your department is providing. I guess my next question, my final question, I think. Do you think it would be a better investment to invest-- for the state to invest in providing-- expanding more community, community programming and community alternatives than building a \$230 million facility?

**SCOTT FRAKES:** I think the answer lies in both sides. You know, if you're specifically talking about community custody beds for incarcerated people, we have the right number of those beds right now for the population we serve. If the population continues to grow, then mathematically the number of beds we need will grow. And that is addressed in my proposal for new construction. At the same time, because we are significantly under build as a system and we have an aging infrastructure that's got to be addressed no matter what we do. One way or the other, we will have to continue to invest significant money in prison system. I'm sorry, prison systems are expensive. We know that. And as we talked about it a couple of weeks ago, there are costs associated that are just part of the cost of incarcerating people. So we've got to address aging infrastructure issues. We've got to address getting our capacity in line with the number of people that we collectively as Nebraskans choose to incarcerate. And we ought to make sure that we have the right beds at the right level. And then again, I would-- I, I will continue to say the best solutions I still think are on the front end. What can we do to provide the opportunities in the community that direct people on the other pathways than incarceration? And once people are incarcerated, let's make sure we continue to invest the right amount of resources on the front end, because preparing people at community custody or at parole, in some cases, we've, we've missed the boat to a great degree. And we've got to have the right spaces, the right infrastructure, the right tools to be able to do that.

**McKINNEY:** OK, this probably is my last question. When you speak of doing things on the front end and preventing individuals from going in, I would ask you that during your time as director, when have you

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went in front of the Appropriations Committee, the Revenue Committee, Business, Business and Labor, and any other committee to advocate for providing more economic opportunities for the individuals that are disproportionately represented in, in the prison system? When have you done that?

**SCOTT FRAKES:** As we talked about a couple of weeks ago, I have a specific role within state government and I need to work within that role and that's what I do. So I address--

**McKINNEY:** But--

**SCOTT FRAKES:** --the issues that I'm responsible for.

**McKINNEY:** I guess my question is, if you have a specific role, then why come opposed? If you can oppose, why can't you be a proponent?

**SCOTT FRAKES:** In this case, if you listened to my testimony or if you have the opportunity to go back and read my, my testimony, I focused very specifically on the language about moving the Vocational Life Skills Program out of my agency. I'm not saying that there isn't a need for resources for people that are doing community supervision. And probation, I know has substantial resources. Parole Administration, perhaps not all that they could use. But don't take away my resources to do the work that I need to do to prepare people for release so that we can then, again, focus those resources after they've already gone through the, unfortunately, often debilitating experience of prison. I don't care how will we run our prisons, how nice they are, how clean and sanitary and safe they are. There is a debili-- debilitating factor to incarceration we need to address. And I've got to have the tools to do that.

**McKINNEY:** Thank you.

**LATHROP:** Senator Geist.

**GEIST:** Thank you. Yeah, thank you for your testimony. I, I am intrigued by this bill in the sense of spreading things out across the state and giving opportunity to other cities and towns and locations to serve the work release inmates as well. Is that something that-- could you speak to that?

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**SCOTT FRAKES:** Yes, so not philosophically opposed. We've had-- I've talked in testimony before. I certainly had many conversations with Doug Koebernick. He and I have gone back and forth on the model that I left behind in Washington State that uses a combination of state-run community custody and contracted community custody beds. There are upsides and downsides. There's not any good, solid research that says one approach is significantly better than the other. There's opinions, but there's not good, clear resource, resource. There is assessments that say community corrections is a good investment bottom line. So, yes, there's the potential that if you get people into work release in the areas where they ideally are going to release to, it can increase the odds that they might, in fact, stay with that work, especially in smaller communities. It's much more challenging for our Douglas, Sarpy, Lancaster County folks who often get a job here in Lincoln, get a job in Omaha. But when they've been moved to their new location, it's still too far away. There isn't public transportation and they have to go find a new job. And Scottsbluff might be much more likely that someone could. So philosophically not opposed. But again, I have the right number of community custody beds for the number of people that can safely be there. And if you saw the article in the Journal Star a few weeks ago, you know, we push the boundaries in terms of risk. That's how we manage our population as well. We place people at the lowest, less restrictive custody possible based on the risk that they present to themselves, to others, ultimately, the community. And especially to the community in a community custody setting that is not secure. And because we want to give people that opportunity and that chance, unfortunately, we've had pretty substantial level of people that have-- some of them failed small and they can fix it, some have failed pretty largely and they end up back at a higher security level. So if there were additional resources spread out in locations, that's going to reduce my community custody population numbers. That's not a bad thing in terms of bringing down the total number of people that we house in those facilities. It won't-- I'm not going to be able to backfill it. I don't have more inmates that qualify for that. Knowing how the system works, those people that would qualify for these more remote community custody settings would be the cream of the crop. They would be people that the Parole Board would say if it wasn't for your date, we probably could put you on parole because they, they also have to do this by risk management. So I'd have a-- could have potentially a little less crowding in the community centers, not a bad thing. It

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drives up the cost of operation per inmate. So it's also an efficiency factor. And that's one last thing I'm going to say to that issue. While there is this belief that private sector can do that cheaper, that's not my experience. And the math that I have worked with says that's not correct. We-- our average cost in our community corrections centers is about \$40 a day per inmate. I don't know how you can trim \$20 or \$30 a day off of that cost. In another state that I'm aware of, they're paying closer to, depending on the contract, somewhere between \$75 and \$90 a day for that same bed. So undoubtedly some additional services are provided. So I'll recognize that and acknowledge that. But to say that it can be done significantly cheaper than how we're able to operate, I don't agree with that either.

**GEIST:** Do you think that's significantly cheaper? Probably weighs or looks at the \$90 that they receive if they're in transitional housing versus maybe what they could supply with--

**SCOTT FRAKES:** I think, again-- yes, I don't want to use \$90 as the right number because with the right economics, you know, in a 100-bed private facility, you may be able to bring that cost down to \$60 a day and offer all the services described in this bill. Well, but again, I'm currently doing it at \$40 a day, but not providing the level of clinical treatment and other things that are described in here. So I'll acknowledge that.

**GEIST:** OK. Thank you.

**LATHROP:** I have two questions for you. One is, is a person a suitable candidate for community corrections if they've yet to complete their clinical programming?

**SCOTT FRAKES:** Not residential. If they have residential recommendation or violence program-- violence reduction program recommendation. No.

**LATHROP:** OK.

**SCOTT FRAKES:** But we can do outpatient and other [INAUDIBLE].

**LATHROP:** So I have some members here that have not been into the facilities at the Department of Corrections. And clearly, we don't want to be there before it's safe.

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**SCOTT FRAKES:** Soon, I hope.

**LATHROP:** So before, what's the plan to vaccinate your workers and your inmates? When is this going to be safe, for example, for us to go to take a tour of the Pen or, or any of the other facilities?

**SCOTT FRAKES:** So it would be safe now, but not without risk. We-- you know, we monitor COVID extremely closely. If we have an active case in the population, then we would say it's not safe. But right now, I believe--

**LATHROP:** Well, why don't I establish the standard,--

**SCOTT FRAKES:** Yeah.

**LATHROP:** --when you have people vaccinated.

**SCOTT FRAKES:** OK. All right.

**LATHROP:** When is that all going to be happening so we'll know when we might be able to get over there?

**SCOTT FRAKES:** Our healthcare staff are done. We are now starting the process to vaccinate staff and inmate population over 65. Based on the current delivery schedule for vaccines, which is-- ours will allow us to start doing 200 people per week. We're probably looking at 25 to 30 weeks depending on--

**LATHROP:** Say it again.

**SCOTT FRAKES:** Twenty-five to thirty weeks.

**LATHROP:** Oh.

**SCOTT FRAKES:** Based on participation. We saw 60 percent participation with our healthcare staff. We had really high participation with the flu vaccine with the inmate population, so.

**LATHROP:** OK.

**SCOTT FRAKES:** Yeah, but right now,--



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**LATHROP:** You're a half a year away from having everybody-- you're a half a, half a year away from having everybody.

**SCOTT FRAKES:** Yes, at least.

**LATHROP:** OK.

**SCOTT FRAKES:** But I also believe, as many of us do, that the vaccination at the national level-- the vaccination delivery at the national level is going to continue to increase. And as it increases in the state, my numbers will go up. And when we can start doing 400 people a week, you know, we cut the time frame in half.

**LATHROP:** OK. Any other questions for the Director? I see none. Thanks for--

**SCOTT FRAKES:** Thank you.

**LATHROP:** --being here today. Any other opponents? Good morning.

**MICHAEL CHIPMAN:** Good morning. My name is Michael Chipman, M-i-c-h-a-e-l C-h-i-p-m-a-n. I represent FOP 88. That's the union that represents all the people in protective services. So corrections officers and corporals and case workers at the Community Center. The, the big issue we have with this bill is exactly like as Senator Wayne described. The bill as written would make it so that workers at the community centers would then go under parole, which would, in our opinion, force the-- our workers to go under NAPE/AFSCME, which is the union that we decertified representing us two years ago. That'd be a huge conflict. I work at the Community Corrections Center of Omaha personally, and I've talked to workers there and almost every single one of them said they would just jump ship because they'd lose their step raises and everything else that we've worked really hard to get. So that would create a catastrophic problem for this Community Work Release Center. So that by far is a labor issue. Senator Wayne says he's willing to add an amendment and, and discuss that. So we're happy to work with him on that issue. And then we've also discussed with Senator Wayne of setting up a meeting to have a couple of our people that work at Community Corrections Center, talk to them and discuss other concerns to exactly what would this would look like is there-- what's-- is there going to be any safety concerns? I just don't have

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enough knowledge on the bill and exactly what it's going to look like to, you know, further testify on that. So as long as those criteria are met, where our workers are safe, where we aren't going to be losing a bunch of workers, I think, you know, we'd be definitely willing to work and make it amendable. That's pretty much it for us.

**LATHROP:** OK. Thanks, Mr. Chipman. I don't see any questions for you.

**MICHAEL CHIPMAN:** All right. Thank you.

**LATHROP:** How many more people are here to testify? OK, unfortunately, I'm going to have to leave. We'll have Senator DeBoer run the committee after I step out. But if you are an opponent, you may come forward.

\_\_\_\_\_ : [INAUDIBLE]

**DeBOER:** No, we said opposed. Is there any other opposition testimony? Then we'll take neutral testimony.

**BOB DENTON:** Members of the Judiciary Committee, my name is Bob Denton, B-o-b D-e-n-t-o-n. I'm the deputy administrator for programs and services and employed by the Nebraska Supreme Court. I testify today in a neutral capacity on LB334. My intent today is to provide this committee an update and overview on post-release supervision as it currently stands. And I just wanted to clarify that LB334 on page 30, Section 31 would require the transfer of post-release supervision oversight to parole. And so, again, I'm, I'm just-- my intent is to provide this committee an update and overview of post-release supervision. In 2015, Justice Reinvestment through LB605 expanded the use of probation. This included ensuring lower level felons receive community supervision upon release from incarceration, including prison and jails. The courts and probation were selected to provide post-release supervision upon recommendation from the Council of State Governments and passed by the Legislature based on a successful track record, which included a full transition and implementation of evidence-based practices. While still incarcerated, probation officers engaged with inmates to collaboratively develop a reentry plan, which is then approved by the judge. Probation officers also prearrange with community partners needed services to begin immediately upon release, which includes substance use and or mental health evaluations,

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treatment, life skills, and supportive housing, for example. In addition to preparation and planning for reentry by order of the court, probation officers currently supervise over 1,500 post-release supervision-- excuse me, post-release supervision individuals throughout all 93 counties. The vast majority of these individuals are assessed at a high to very high risk to reoffend. Supervision involves frequent engagements, conduct an employment, home, and treatment visits, and includes an average of 24 drug and alcohol tests per individual. Another strategy for post-release population has been the development of reentry courts available in Sarpy and Hall Counties. Reentry courts operate similarly to drug courts but are designed explicitly for the reentry population. Post-release supervision individuals also have access to Probation's 17 reporting centers, which serves as a one-stop shop for needed life skills like employment, enhanced supervision opportunities for added accountability. From 2019 until present, post-release supervision individuals attended programming or services at reporting centers on over 13,000 occasions. Probation officers engage family members and other pro-social supports to help the individuals eventually transition off supervision and maintain their success as contributing taxpaying citizens. Currently, the cost to supervise an individual on post-release supervision is approximately \$9.34 per day. Length of supervision can range from 9 to 24 months, depending upon the offense. In fiscal year 2019-2020, probation officers supervised 1,995 individuals under post-release supervision, with 72 percent of these individuals released from supervision or in other words, they did not receive a revocation and return to a correctional facility. I would be happy to answer any questions at this time.

**DeBOER:** Are there any questions from the committee for this testifier? Seeing none, thank you for your testimony.

**BOB DENTON:** Thank you.

**DeBOER:** Are there others who would like to testify in the neutral capacity? Good afternoon.

**ROSALYN COTTON:** Good afternoon. Good afternoon, members of the Judiciary Committee. My name is Rosalyn Cotton, R-o-s-a-l-y-n C-o-t-t-o-n, and I am the chairperson of the Nebraska Board of Patrol. I'm here as an individual Board member to testify in a neutral

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capacity on LB334. And I thank the committee for the opportunity to testify. The purpose of this testimony is to provide insight for the committee on how the subject matters of LB334 currently operate and some potential complications that could arise if LB334 were to advance as is currently drafted. I read the bill as seeking to accomplish four main objectives: (1) Enact the Community Work Release and Treatment Centers Act, Sections 1 through 22; (2) Transfer responsibility for reentry planning and vocational life skills grant administration to the Board of Patrol's Division of Parole Supervision, Sections 24 to 29; (3) Begin the process of transferring responsibility for operating community corrections to the Board of Patrol; and (4) Begin the process of transferring responsibility for post-release supervision to the Board of Patrol. LB334, is a very consequential bill, and while I appreciate the vote of confidence in the Parole's abilities and track record, operationally, LB334 would be a heavy lift for our agency and staff. I will address the logistics of each of the bill's main four objectives in, in turn. First, the Community Work Release and Treatment Centers Act for the most part reflects existing practices. For individuals who need it or would benefit from it, the Board paroles those individuals to transitional living facilities that address the risk and needs specific to each parole client, including seeking out employment and other services as needed. Under Section 4, the Act would only apply to parole-eligible, committed offenders. The Board and Division already contract with private providers for the purposes outlined in the Act. Movement restrictions are in place as conditions of parole when deemed necessary, including curfews and exclusion zones as appropriate. Failure to abide by the rules of a transitional living facility can lead to a range of consequences up to and including revocation of parole. In short, I do not see a need for the Act as it is written. There are, however, some potential complications that could arise from LB334. The Board is not equipped to make custody-level classification decisions. Additionally, reclassification and movement to, from, and among work release facilities, if needed, could be accomplished with relative ease by NDCS. This would not be true for the Board or the Division. Under the Act, the Board would be set up with potential inconsistent votes if the Board were to say that someone is ready for work release in a community setting, but not yet ready for parole, which in some cases is essentially a mirror image of the proposed Community Work Release Act. The Act could also give rise to due process claims for when an

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individual is awarded community work release, which looks a lot like parole with the possibility of immediate return to the custody of NDCS without any due process provided for in the bill. I am happy to discuss with Senator Wayne the current practices and safeguards in place as it pertains to individuals who are paroled to community transitional living facilities or treatment centers and why this aspect of the LB334 is not needed at this time. Second, transferring reentry planning and vocational life skills grant administration in these entirety could create a conflict between the Board, independent noncode entity, NDCS, and the courts. The Board's primary purpose, mission, and vision is deciding whether the individual is ready to be supervised in the community. This is a guiding light of parole decision-making. Having responsibility for reentry plans for individuals who discharge directly on the community without supervision creates an onerous burden on the Board and would be essential reentry planning for nonparole clients could result in either duplication effort of the PRS clients on the part of probation and courts or create conflicts for probation and courts when there's a disagreement on what is an appropriate reentry plan or plan in these cases.

**DeBOER:** OK, I'm sorry, your red light is on.

**ROSALYN COTTON:** All right. Thank you.

**DeBOER:** I appreciate your testimony. Is there-- are there any questions? Senator McKinney.

**McKINNEY:** Thank you, Miss, Miss Cotton. Sorry. I, I just have a question. Do you ever come across the issue of not being able to grant parole to an individual because they haven't access to program or the program hasn't been offered? Do-- does the Parole Board ever come across that issue?

**ROSALYN COTTON:** As an individual Board member, I do not have that conflict. What we do is we look at the parole plan. We speak with the individuals prior to considering them for parole. So we kind of like, you know, manage all that prior to them actually paroling.

**McKINNEY:** OK, thank you.

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**ROSALYN COTTON:** Um-hum.

**DeBOER:** Are there other questions? Senator Brandt.

**BRANDT:** Thank you, Senator DeBoer. Thank you, Miss Cotton, for your testimony today. I sort of get the vibe-- I know you're testifying in the neutral capacity, and I really appreciate that. Is there anything Senator Wayne can do to fix this bill to your satisfaction?

**ROSALYN COTTON:** Well, I think-- and I-- again, I always speak for myself as an individual Board member. I, I think the biggest concern would just be the fact that we are not in the position to be able to take on the responsibility at this time. But as I stated in my testimony, I'm more than happy to speak with Senator Wayne about his bill.

**BRANDT:** But when you say take on the responsibility, it sounds like if, if you have the resources, you would be in a position to take on the responsibility.

**ROSALYN COTTON:** Again, I going to speak for myself. No, that's just for me.

**BRANDT:** OK.

**ROSALYN COTTON:** It's a lot of work.

**BRANDT:** I appreciate it. Thank you.

**ROSALYN COTTON:** No problem. Thank you for asking.

**DeBOER:** Other questions? All right, thank you very much. Oh, Senator McKinney, had one at the last second.

**ROSALYN COTTON:** No problem.

**McKINNEY:** This is more related to work-- an individual seeking work release and not parole. Do you have issue with that?

**ROSALYN COTTON:** Work release?

**McKINNEY:** Yes, the, the bill is more centered around individuals that'll, that'll be on work release.

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**ROSALYN COTTON:** Work release is basically a NDCS function, not a Parole Board's function. So most of the individuals that we support for work release or we support for parole, many of those individuals will have an opportunity to seek work release if they are within their time frame.

**McKINNEY:** All right.

**ROSALYN COTTON:** Sentence structure.

**McKINNEY:** One last comment. A comment was made earlier from a testifier that when parole wasn't under NDCS, it functioned a lot better. Do you know why?

**ROSALYN COTTON:** I-- no, I do not. Only thing I know is we have our function as a Parole Board and then the Division of Parole Supervision has their function as a supervision piece in the community. But as far as which is which, it's just the fact that we work closely together just to make sure that things are working efficiently.

**McKINNEY:** All right. Thank you.

**ROSALYN COTTON:** Um-hum.

**DeBOER:** Thank you, Senator McKinney. Are there any other questions? Thank you for your testimony.

**ROSALYN COTTON:** Thank you.

**DeBOER:** Anyone else like to testify in the neutral position? OK, I've received a note from Senator Wayne that he's going to waive closing. I do have some position letters to announce. There were three position letters; two in the proponent position and one opponent. As well as we had a-- in lieu of in-person testimony, written testimony dropped off from Jasmine Harris, H-a-r-r-i-s, and she was in the neutral capacity and represents the organization called RISE. And with that, that will end our hearing on LB334 and our hearings for this morning.

**LATHROP:** If you could turn the camera on. Can you shut that door, please? Good afternoon and welcome to the Judiciary Committee. My name is Steve Lathrop, I represent Legislative District 12 in Omaha and I Chair the Judiciary Committee. You may notice that I don't have my

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committee here yet. They know that this takes about five minutes to read. And so they usually come in about the time it's complete. Committee hearings are an important part of the legislative process. Public hearings provide an opportunity for legislators to receive input from Nebraskans. This important process, like so much of our daily lives, has been complicated by COVID. To allow for input during the pandemic, we have some new options for those wishing to be heard. I would encourage you to strongly-- hey. I would encourage you to consider taking advantage of the additional methods of sharing your thoughts and opinions. For complete details on the four options available, go to the Legislature's website at [nebraskalegislature.gov](http://nebraskalegislature.gov). We will be following COVID-19 procedures this session for the safety of our committee members, staff, pages, and the public. We ask those attending our hearings to abide by the following procedures. Due to social distancing requirements, seating in the hearing room is limited. We ask that you enter the hearing room when it is necessary for you to attend the bill hearing in progress. Bills will be taken up in the order posted outside the hearing room. The list will be updated after each hearing to identify which bill is currently being heard. The committee will pause between bills to allow time for the public to move in and out of the hearing room. We request that you wear a face covering while in the hearing room. Testifiers may remove their face covering during testimony to assist the committee and transcribers in clearly hearing and understanding the testimony. Page-- pages will be sanitizing the table and chair in between testifiers. When public hearings reach seating capacity or near capacity, the entrance will be monitored by the Sergeant at Arms who will allow people to enter the hearing room based upon seating availability. Persons waiting to enter a hearing room are asked to observe social distancing and wear a face covering while waiting in the hallway or outside the building. The Legislature does not have the availability this year of an overflow room for hearings which may attract many testifiers and observers. For hearings with large attendance, we request only testifiers enter the hearing room. And we also ask that you please limit or eliminate handouts. Due to COVID concerns, we're providing two options this year for testifying at a committee hearing. First, and this is the new method, you may drop off written testimony prior to the hearing. Please note that the following four requirements must be met to qualify to be on the committee statement. Number one, submission of written testimony will only be accepted the day of the hearing between



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8:30 and 9:30 in this hearing room. Number two, individuals must present their written testimony in person and fill out a testifier sheet. Number three, the testifier must submit at least 12 copies. Number four, testimony must be written-- a written statement, no more than two pages, single-spaced or four pages, double-spaced in length. No additional handouts or letters from any others may be included. This written testimony will be handed out to each member of the committee during the hearing and will be scanned into the official hearing transcript. This testimony will be included in the committee statement only if all four criteria are met. And of course, and as always, persons attending a public hearing have the opportunity to give verbal testimony. On the table outside the door, you'll find yellow testifiers sheets. Fill out a yellow testifier sheet only if you're actually going to testify before the committee. Please print legibly. Hand the yellow testifier sheet to the page as you come forward to testify. There are also white sheets on the table if you do not wish to testify, but would like to record your position on a bill. This sheet will be included as an exhibit in the official hearing record. If you are not testifying or submitting written testimony in person and would like to submit a position letter for the official record, all committees have a deadline of 12 noon the last workday before the hearing. Position letters will only be accepted by way of the Judiciary Committee's email address posted on the Legislature's website or delivered to my office prior to the deadline. Keep in mind that you may submit a letter for the record or testify at a hearing, but not both. Position letters will be included in the hearing record as exhibits. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents, and finally anyone speaking in the neutral capacity. We will be finishing 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 spell them for the record. If you have copies of your testimony, bring up at least 12 copies and give them to the page. If you are submitting testimony on someone else's behalf, you may submit it for the record, but you will not be allowed to read it. We will be using the three-minute light system. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning. And when the red light comes on, we ask that you wrap up your final thought and stop. As a matter of committee policy, I'd like to remind everyone the use of cell phones

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and other electronic devices is not allowed during public hearings, though senators may use them to take notes or stay in contact with staff. At this time, I'd ask everyone to look at their cell phones to make sure they're in the silent mode. A reminder that verbal outbursts or applause are not permitted in the hearing room. Such behavior may be cause for you to be excused from the hearing room. Since we've gone paperless this year in the Judiciary Committee, senators will instead be using their laptops to pull up documents and follow along with each bill. You may notice committee members coming and going. That has nothing to do with how they regard the importance of the bill under consideration. But senators may have bills to introduce in other committees or have other meetings to attend to. And with that, I would like to have the members of the committee introduce themselves, beginning with Senator DeBoer.

**DeBOER:** Good afternoon, everyone. My name is Wendy DeBoer. I represent District 10, which is the city of Bennington and parts of northwest Omaha.

**BRANDT:** Good afternoon. I'm Tom Brandt. I represent District 32: Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster Counties.

**PANSING BROOKS:** Good afternoon. Patty Pansing Brooks, Legislative District 28, right here in the heart of Lincoln.

**McKINNEY:** Good afternoon. Terrell McKinney, representing District 11, north Omaha.

**LATHROP:** Assisting the committee are Laurie Vollertsen, our committee clerk; and Neal Erickson, one of our two committee counsel. Our pages this afternoon are Ashton Krebs and Samuel Sweeney, who we appreciate, they're both students at UNL. And with that, we will take up the first bill of the afternoon. I, I do got to tell you, I have to introduce something over in the Health Committee shortly. So if I get up and leave, that's why. LB44 [SIC], and Senator Matt Hansen, welcome.

**M. HANSEN:** Perfect. All right. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Matt Hansen, M-a-t-t H-a-n-s-e-n, and I represent Legislative District 26 in northeast Lincoln. I'm here today to introduce LB444, a bill that would amend

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Nebraska law regarding credit for good time for jail sentences. Under current law, an inmate serving a jail sentence can earn good time for compliance with jail rules and not engaging in prohibited conduct. Like the ratio for state prison inmates, jail inmates earn day-for-day credit towards their sentence. However, unlike state prison sentences, jail inmates cannot earn any good time on the first 14 days served. LB444 amends the good time rate for jail sentences to match the rate for state prison sentences for providing those serving jail sentences received day-for-day credit towards their sentences starting with day one. LB444 also provides the judges with the authority to apply any unused jail credit if a person is arrested on one charge and prosecuted on another charge growing out of conduct which occurred prior to such person's arrest. This provision is identical to the authority judges already have to impose on state prison sentences, which is already established in our law. To me, it is not good policy to discount an entire two weeks of a jail sentence from being eligible for good time. Would argue the first two weeks are a time when this tool would actually be most useful to jail staff. At the same time streamline shorter sentences at jails to match those with our prisons. With that, I'll close and be happy to take any questions from the committee.

**LATHROP:** OK. Any questions for Senator Hansen? I see none. Thank you, Senator Hansen, for your introduction. We will take proponent testimony. Oh, yeah, how many people are going to testify on this bill? Did you have your hand up, Spike?

**SPIKE EICKHOLT:** No.

**LATHROP:** OK, then we should alert Senator McCollister. Welcome.

**GEORGE DUNGAN:** Good afternoon, Senators. My name is George-- I'll take this off for now, George Dungan. It's G-e-o-r-g-e D-u-n-g-a-n. I am a deputy public defender in the Felony Division here in Lancaster County. I'm here today on behalf of the Nebraska Criminal Defense Attorneys Association to support Mr.-- Senator Hansen's bill. Senators, as a practitioner, I think there's a number of reasons that it's incredibly important to support and pass this bill. First and foremost, I mean, what it does and I think Senator Hansen touched on this well in his introduction, is it really harmonizes the law with, with the state, with the state time. As it currently stands, the

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calculation in jail time, and when you're looking at jail credit is incredibly complicated. There are math equations that have to be done. And really, you're discounting an entire 15 days before an individual starts earning good time. From a pure logistical perspective, creating that harmonization between the law as it currently stands for the state time, as well as for the county time, which just makes sense for judges, attorneys, and defendants and prosecutors who find themselves in front of the system. It simply makes things a little bit easier to understand what exactly that all is going to, is going to come out to in terms of the credit they're going to be getting-- the good time, rather. In addition to that, I think from a policy perspective, as Senator Hansen also touched on, good time is an incentive. Certainly, we want to be encouraging individuals who are in custody to maintain that good time. And if we are going to be making sure that individuals are cooperative and working inside the jails, I think it makes sense to let them start earning that good time from the very, from the very first day that they're in custody. In addition to that, if, if we as a state or the Legislature has decided that a one-for-one calculation makes sense for good time with regard to more serious crimes, felonies, people who find themselves in state custody, simply make sense from that policy perspective. The same calculation should be afforded to individuals who find themselves at the county level in the jails. So certainly I think it makes sense in all those logis-- pardon me, logistical perspectives. Judges obviously know how to calculate time. They know how to calculate a sentence that's going to make it so that individuals are in custody the amount of time they want to. And I think that we should trust judges with that to know exactly how to formulate or craft a sentence that's going to result in an individual or a defendant being held in custody for the amount of time they intend. So I don't think this is going to affect that. I know I'm running short on time here, but I would like to briefly just touch on the second provision as well as it pertains to the credit for time served. Obviously, very much support that. I just wanted to give sort of a brief practitioner's perspective of when that might apply. There are certain times that individuals are being charged with multiple cases, multiple counts, or different, different cases. One could have a personal recognizance bond so they could be in custody on one case the percentage bond and have a PR bond on the other matter. If a plea deal is worked out where an individual is "pleaing" to a case that they did not have a bond on, they might not have any credit on that

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case. But let's say they've been in custody for 100 days on a completely separate matter. If that case that they had the credit for-- do you mind if I finish my--

**LATHROP:** No, go ahead.

**GEORGE DUNGAN:** Thank you. If the case they've been in custody for is the one that is dismissed as part of a plea agreement, as the way the law is currently written, the judges don't have to give them that credit. And in fact, in my experience, having worked in the courts here, there's many times they don't. This law modifies that create shall language. So if an individual is serving in time in-- serving time in custody for a case that's ultimately dismissed and they plead to another case, they're going to be afforded that time. Simply, it's fair to make sure that they're getting credit for the 100 days, 150, 190 days they spend in custody on that. So obviously, we support this bill, both of its provisions. And I'm happy to answer any questions that the committee might have.

**LATHROP:** Any questions? Senator Pansing Brooks.

**PANSING BROOKS:** Thank you very much for coming, Mr. Dungan. I guess I was just-- do you know any of this history of why they weren't given credit for the first 14 days?

**GEORGE DUNGAN:** I did some research and tried to figure that out, and I couldn't. I-- I'll tell you, I did some research about good time in other jurisdictions and I couldn't find anything that matched that kind of calculation. I don't know if it's some antiquated reason, but it, it simply didn't, it didn't make sense to me. And I don't think it serves any logistical purpose I can tell you, other than creating complication when you're trying to figure out what that actual credit is.

**PANSING BROOKS:** Yeah, it doesn't make sense. Thank you very much.

**LATHROP:** I see no other questions. Thank you for your testimony and being here today.

**GEORGE DUNGAN:** Thank you.

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**LATHROP:** Any other proponents of LB444? Anyone here in opposition? Anyone here in the neutral capacity? Seeing none, Senator Hansen waives close. Before we close the hearing however, the record should reflect that we do have one position letter as a proponent and that is-- will be included in the record as previously described. That will close our hearing on LB444, and bring us to Senator McCollister and his introduction of LB624. Welcome, Senator McCollister.

**MCCOLLISTER:** Thank you, Senator Lathrop and members of the committee. I am John, J-o-h-n, McCollister, M-c-C-o-l-l-i-s-t-e-r, and I represent the 20th Legislative District in central Omaha. LB624 is designed to grant earned time credits toward parole eligibility in addition to the current statutorily provided good time credit applied to the minimum and maximum terms of a criminal sentence. Those incarcerated should be able to further reduce their minimum term calculation for parole eligibility by engaging in prosocial behaviors and rehabilitative activities such as work, education, self-betterment groups, peer support, misconduct reduction, drug treatment, spiritual awareness, entrepreneurship courses, restorative justice training, and other programs offered by the Nebraska Department of Correctional Services, NDCS. The provisions of this bill offer reductions in the amount of time an incarcerated person must serve before they're eligible for parole based on their activities and conduct while serving a sentence of confinement. This will offer an incentive for all those incarcerated to participate in programs and maintain good conduct while in custody. This hugely benefits NDCS in that more of those in custody will be programming, rather than engaging in destructive or negative behavior. The idea of granting prisoners earned time credit is not new, but is not currently used effectively in Nebraska. LB191 in 2011 attempted to introduce the same concept as this bill, but the amount of earned time granted was negligible and failed to impact the prison overcrowding emergency that we face with-- are faced with today. This is in part due to the fact that LB191 did not provide a retroactive application and reduced the maximum term of a sentence rather than the minimum term of a sentence. In effect, LB191, at its best, reduced a maximum term by one year for every ten years of earned time credit. This approach will never lower the prison population because a person would expect to be paroled prior to reaching their maximum term, which in all practical ways negates the usefulness of the current framework of earned time credit. For this

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concept to work and to have an immediate impact on prison overcrowding, we must provide these benefits retroactively. There are a significant number of prisoners who have spent years and in some cases many decades using their time in a productive, prosocial manner and have proven themselves ready to return to society. These are the people that should-- we, we should parole. They've earned it. And, therefore, they have earned a reduction of their parole eligibility date. AM174 that I've distributed to the committee today begins the conversation about applying these earned time credits retroactively. In this amendment, any prosocial and rehabilitative activities completed on or after January 1, 2017, would be considered for earned time credit as outlined in this bill. With support from NDCS, the Board of Pardons, and the Board of Parole, I would propose an earlier date. This amendment requires that all retroactive earned time credits completed after January 1, 2017, and before the operative date of this Act are subject to the Board of Pardons' approval. Ideally, every committed offenders' prosocial and rehabili-- rehabilitative activities would be eligible for the earned time credits granted in this bill. But I recognize that the process of calculating every prosocial and rehabilitative activity for every committed offender may be difficult and time consuming for the Department of Corrections. I am seeking any and all constructive input towards altering this amendment. Due to inaction, our prison population overcrowding is currently the second worst in the nation. By enacting an earned term-- an earned time credit provision, we will place the best candidates for parole in a position to succeed and reward good behavior in the process. This will ultimately change the entire culture of the NDCS, where those incarcerated have a means by which to redeem themselves through rehabilitation and parole and can be granted parole based on merit. This is a win for NDCS in the short term, society in the long term, and the individual under sentence for a lifetime. Thank you, Mr. Chairman.

**LATHROP:** Thank you, Senator McCollister. Any questions for Senator McCollister? Let's start with Senator DeBoer.

**DeBOER:** Thank you, Senator Lathrop. Thank you, Senator McCollister. I-- I'm just not seeing here and maybe you said it and I don't know. But you can answer my question quickly, I imagine. What-- does this apply to your jam out date or is it just the parole eligibility date?

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**McCOLLISTER:** I'm having a hard time understanding.

**DeBOER:** Does this just apply to the jam-- to the parole eligibility date, or does it also apply to your jam out date?

**McCOLLISTER:** Just the parole eligibility date.

**DeBOER:** So it will make you eligible for parole earlier, but it won't affect your, your sentence.

**McCOLLISTER:** Your [INAUDIBLE] date.

**DeBOER:** OK, thanks.

**McCOLLISTER:** I think that's correct. But those behind me could--

**DeBOER:** OK.

**McCOLLISTER:** --either correct me or affirm.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Senator McCollister, for bringing this bill. It's, it's interesting. So currently, Nebraska doesn't have earned good time?

**McCOLLISTER:** No, it's, it's a different system they currently employ.

**BRANDT:** So is this something another state is currently doing and we're copying or this is from scratch?

**McCOLLISTER:** I'm assuming it's come from other states, but those behind me can't answer for sure.

**BRANDT:** OK, well, maybe I'll wait then to ask specific questions.

**McCOLLISTER:** I, I, I will close.

**LATHROP:** I'm going to ask you a question. I suspect you don't know the answer to it, John, not because you're not deep into this topic, but it will allow the testifiers that come up as proponents to answer it. We had a bill dealing with earned good time, and I think it was Prenda that showed up, the deputy county attorney that said you don't want to



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go down that road because then you get caught up in litigation. Like, our current process lets people-- basically it knocks every sentence in half and then you get time added on. And the testimony of a-- one of the prosecutors, which I actually thought they would be supportive of earned good time versus our current system, suggested that it would lead to litigation and the inmates would be suing because they can't get into the RISE program, for example.

**McCOLLISTER:** I have not heard that to be a factor.

**LATHROP:** OK.

**McCOLLISTER:** We will see if they testify to that effect on this bill.

**LATHROP:** OK.

**McCOLLISTER:** But the, the issue that really we had to deal with was the, the fact that retroactivity and, and apparently that's caused litigation in the past. But the fact that we've asked the Parole Board, Pardon Board, and NCSDS [SIC] to, to approve this, this approach, I think takes care of any issue.

**LATHROP:** OK. Any other questions for Senator McCollister? I don't see any. Thanks, John. We will take proponent testimony.

**SPIKE EICKHOLT:** Good afternoon, members of--

**LATHROP:** Good afternoon and welcome.

**SPIKE EICKHOLT:** Thank you. Members of the committee, my name is Spike Eickholt, S-p-i-k-e, last name, E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in support of LB624. We want to thank Senator McCollister for introducing this bill. I think he explained the bill pretty straightforward. What this does is it provides for additional credit that can be earned toward reduction of a sentence on top of the good time. To answer your question, Senator Brandt, we do have a provision in law that does allow for additional earned time. It's not in the bill. I was looking, but it's at Section 83-1,107. And that was the bill that was passed in 2011 that Senator McCollister referenced. It was actually done, I think, at the request of the then director of Department of Corrections. I think Senator Council did the bill. What it would have provided for is after an inmate serves their first year

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in prison, they can earn an additional-- I think it's three months-- or three days off a month in addition to the day-for-day rate that they get as long as they don't have any significant write-ups. And it has a consequence after your first year, a subsequent year is not actually six months, it's four months, about three weeks. It was it figures out to be. And I know that just from advising clients. So we have a modest earned time, if that's considered earned time. In other words, you can lose good time and people lose good time for all kinds of reasons. But if you stay extra good under the current system, you can get additional time off your sentence. In other words, if you don't get any sort of disciplinary noncriminal write-ups or violations then you can earn additional good time. Other states have a mixture of good time, earned time, and those, and those types of things, and you even heard from the earlier bill that we have a good time calculation for jails, which is even different than the state rate. A couple of things I just want to-- the general point about good time, you know, it's, it's got a political kind of thing to it because I think a lot of people object to it. When they hear somebody gets ten years prison, they think that should mean ten years. So a lot of people sort of characterize it as some sort of trick or scam that the defendant has figured out game the system. But that's not it at all. If you look at the Section 29-2204, when the judge imposes a sentence, the judge is to tell the offender what that sentence means with good time. In other words, it's explicit in the sentencing order. The judge knows how good time works, the prosecutors know how good time works. And they consider that when they make offers or when they make charging decisions, the defendants attorneys know how it works and the judges do. And it's meant to-- good time is meant to sort of assist jail and prison administration just to how to manage a population. I mean, you, you can always charge people with subsequent crimes if they actually commit a criminal offense and hurt somebody, do something really bad. But if they're just being obstinate, difficult, uncooperative, unproductive, then you can take good time. And what Senator McCollister's got here, he's got an opportunity to further incentivize people who are in prison to get programming, to go to class. You've heard from earlier bills in earlier sessions, maybe even earlier this year, that there's a certain segment of the prison population that just doesn't do programming. They don't see any reason to do it. They refuse to do it. Whether they get in it or not is not necessarily the issue. They just refuse to do so. And I think what Senator

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McCollister's got is a way to sort of encourage those people to do that. Because as a practical matter, most of those people are going to be out of prison at some point in their life.

**PANSING BROOKS:** Thank you, Mr. Eickholt. Any questions for Mr. Eickholt? Senator Brandt.

**BRANDT:** Thank you, Chairwoman Pansing Brooks. So to continue our conversation, you read page 13 and 14, which is the bulk of the bill. This seems pretty generous. Because if I look at line 15, it says: One month for each month it takes to complete any prosocial or rehabilitative activity that requires 90 days or longer to complete. Does that mean that's how long it should take to complete or the guy's a slow learner and it took him more than 90 days to complete?

**SPIKE EICKHOLT:** I mean, I see the point, I suppose ultimately it's a policy decision of how generous or how much credit they should be able to get. And that's maybe a decision this committee could get. I think as a practical matter, though, you know, the, the, the inmates don't get to choose their own curriculum, right? They've got classes they can sign up for. And they're-- that's set by the, the department, the program instructor, and that sort of thing. So I don't think they can sort of drag their feet and make their own made-up program and say they-- and make their own made-up certificate and demand six months off their sentence. And as Senator McCollister alluded to earlier, if this is implemented progressively, which means that it's going to be for sentences here on out, saying things I said about good time, the judges will be aware of it because the judges also advise on that Section 83-11,110-- 1107, whatever the statute is, they advise that at the time of sentencing as well, in addition to the day for day. So I just mention that, that it's just something that will be on people's minds as people go through the criminal process.

**BRANDT:** It, it just seems we're going to put this into statute, these specific--

**SPIKE EICKHOLT:** Right.

**BRANDT:** --things. I mean, you get one year for successful completion of a GED, three months for each college course. I mean, we have set

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this in stone without the ability of management to adjust this for, for new and different things. It's a possible concern.

**SPIKE EICKHOLT:** Right.

**BRANDT:** OK.

**SPIKE EICKHOLT:** And that might, that might be. I mean, you want to have some latitude for the department to be able to work this without putting it in such detail in statute. But I think what Senator McCollister proposes is certainly a good start looking at that.

**BRANDT:** Yep. OK.

**PANSING BROOKS:** Thank you. Senator DeBoer.

**DeBOER:** Thank you, Vice Chairperson Pansing Brooks. So is this the sentence so that would include the jam out date, as well as the parole eligibility date?

**SPIKE EICKHOLT:** Generally, good time includes both numbers.

**DeBOER:** And this earned would as well, right?

**SPIKE EICKHOLT:** I think so. I was looking when you asked that question to Senator McCollister earlier, I think his intent is to apply for the parole eligibility. So maybe earned time with just be for the bottom number, the first number, and not impact the top number. In other words, they would be able to get that lower number down, which is their parole eligibility now for doing earned time. But I'll have to look and see how that works in the bill. I, I guess I, I didn't look at that very carefully. It could affect both numbers. But if you just want to affect the bottom number, you want to state that explicitly. But I think that's Senator McCollister's intent to have earned time applied to the lower number, the parole eligibility number.

**DeBOER:** OK, because that's something that changes things quite a bit. And yeah, I also have a concern about having, you know, all of these things listed specifically with this kind of specificity in here, particularly thinking about college courses, three months for each college course. I mean, there's a big difference between types of college courses. I see this having taught many college courses and

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some of them are maybe not worth three months. And I have taught those. I have taught ones that were not worth three months. So the, the other piece is the piece that Senator Lathrop mentioned, which is about the litigation. And, you know, if I'm an inmate and I complete one of Senator DeBoer's worthless college courses and I don't get my three months, or if I have a question about whether it's a 90 day or it's not a 90 day, I mean, I, I foresee this could potentially lead to a lot of litigation. Would that be better if we don't specify and we leave it to a rules and regs process or is there a way to ameliorate that sort of litigation issue?

**SPIKE EICKHOLT:** I mean, that, that issue may be there because the concern with having it discretionary in some capacity, whether it rules and regs or statutory discretion, is that will potentially invite people contesting their good time rate. I'll tell you that the state-- or the earned time, whatever you want to call it, the state good time rate has changed over the years. And I think it was last changed to what we have now, maybe in the late '90s. And there was just a case, a Court of Appeals case published about six months ago where somebody who was serving a earlier sentence tried to argue that they are entitled to the good time rate now in effect, but they were sentenced in the early '90s and they're not-- the early '90s is not as generous as it is now. So I think you're always going to have that risk that somebody might file something. I don't know how much actual court time that it's going to take up. As a practical matter, a lot of these claims are just sort of Hail Marys that people file. But you might be right that if, if you're going to provide for this and be discretionary, there may be a slight increase in claims for, I'm entitled to more earned time because I did this course and that sort of thing. But that's one advantage actually putting in statute to make it clear. Right?

**DeBOER:** The other thing I wonder is, and maybe this is a question for Director Frakes if he happens to testify, is about the difficulty in sort of managing and calculating all these different changes and trying to-- I know one of the things when I've talked to Director Frakes before, you know, he wants to kind of time things so that the programming is coming towards the end of a sentence. But if the end moves, that might be difficult. Do you have any ideas for how to assist in that problem?

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**SPIKE EICKHOLT:** I can't speak for Director Frakes, obviously, and it wouldn't be fair to him if I try to answer. But having said that, maybe I'll just throw something out there on the record. The advantage of it being automatic is that there's little administrative work for a-- for Director Frakes to have to worry about. Right? Unless somebody gets in trouble, and then there's usually a discipline action filed and proceedings related to that. And it's easy to delegate the loss of good time. If you have it clear in statute for how much people earn as far as earned time or what they need to do, that would probably make it easier for him to calculate that, I'm guessing, than rather delegating it to him and making it kind of amorphous, if you will.

**DeBOER:** OK. All right, thank you.

**PANSING BROOKS:** Thank you, Senator DeBoer. Any other questions?  
Senator Geist.

**GEIST:** I did just have one short question. You, you mentioned earlier about there's already earned time that's in statute.

**SPIKE EICKHOLT:** Right.

**GEIST:** And you explain that as being good or really, really good. Is that, is-- I, I just wanted clarity on if this is something that would be similar to that.

**SPIKE EICKHOLT:** It, it is in a certain extent. As a matter of fact, if you look at the bill on page 13, lines 29 through 31, that phraseology is very similar to the three days per month that inmates can now earn in addition to the good time, for what I will call earned time, because you have to earn it. You have to not get in trouble for any sort of Class I, II, or III offense.

**GEIST:** OK.

**SPIKE EICKHOLT:** That's in Section 83-1,107. That was passed in 2011. And it was meant to provide for an additional earned time on top of good time.

**GEIST:** OK.

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**SPIKE EICKHOLT:** So we have that to a certain extent. They have it basically, the inmates have to stay-- you can probably get in some trouble and, again, Director Frakes might be able to speak to this if he does testify, but you can get in some trouble in the prison system, not making your bed, being rude verbally to other people and maybe not lose good time, but you can earn additional earned time if you're sort of extra good, right,--

**GEIST:** OK.

**SPIKE EICKHOLT:** --if you don't even do those things, is the way I understand it.

**GEIST:** So if you do get in trouble now, and I'm sorry, this is elementary and a little aside from the bill, but if you do get in trouble now, big trouble, do you lose good time?

**SPIKE EICKHOLT:** Yes, you can. And again, Director Frakes can speak to this. And it varies according to what incident. Obviously, if you commit a separate criminal offense, not only can you be charged criminally for that,--

**GEIST:** Right. Right.

**SPIKE EICKHOLT:** --but in addition--

**GEIST:** But you're going to lose--

**SPIKE EICKHOLT:** --you'll lose good time on your underlying sentence as a consequence.

**GEIST:** But you can't earn good time, you can only earn this type of earned time. Right? Because we don't have earned good time.

**SPIKE EICKHOLT:** Right, we have-- right. I mean, that for a while when they were-- when different interests of trying to do away with our automatic good time, they wanted to call it earned time. And that's kind of got a-- anyway, I mean, that, that was the argument. We have good time now, which is automatic unless you violate a rule and then you lose it.

**GEIST:** OK.

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**SPIKE EICKHOLT:** And then we do have that sort of three days off per month after you serve your first year in prison that I called-- and I don't know if it's called earned time, but it's something closer to earned time--

**GEIST:** OK.

**SPIKE EICKHOLT:** --that people-- that argue why earned time is good. That's something closer to that.

**GEIST:** OK, thank you.

**PANSING BROOKS:** Anybody else have anything? I, I have something. So thank you for bringing this or coming and speaking on this, Mr. Eickholt. I presume that-- I mean, the thing that I love about this is that it gives incentive, incentive to take classes, incentive to, to be good, to comply with directions. And, and we know that, that the incentives aren't necessarily there and that people do jam out. And I, I just-- what about the fact that they don't offer the programs all the time that-- I mean, so then does that give somebody a right, again, a right to sue? What-- what's going to happen on all of that?

**SPIKE EICKHOLT:** I mean, that may be a concern. I think what you're saying is that if somebody wants to do the earned time programming but they can't get into it because it's not available,--

**PANSING BROOKS:** Yes.

**SPIKE EICKHOLT:** --then they are going to complain that they had the opportunity, but they didn't have the means to do it or something like that. I mean, that could be a concern. But again, I mean, I think that, like, what you just said is that you want to-- something like 90 percent of the people in prison are going to be out.

**PANSING BROOKS:** Yeah.

**SPIKE EICKHOLT:** So you want them coming out better than what they were going in and if there's any way you can do it.

**PANSING BROOKS:** They could be so much safer.

**SPIKE EICKHOLT:** Right.



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**PANSING BROOKS:** Yes.

**SPIKE EICKHOLT:** And this is a step toward that way. And it's certainly whether--

**PANSING BROOKS:** And of course, we did try to give money in, in a bill to promote programming, but that wasn't really necessary, I guess. OK, well, I, I really appreciate your thoughts on this. What about the fact that I presume we're going to hear if somebody is coming against it, that it's too cumbersome, we won't be able to keep track of all of these things?

**SPIKE EICKHOLT:** I, I, I can't speak for the other side if they're going to make that point.

**PANSING BROOKS:** So-- I mean, my, my response would be, well, then, you know, get somebody keeping track of all this so that we can make our communities much safer because that's what it's doing. It-- it's making sure that the people who return to our society are safer and more prepared to come back into our society. So there's my answer to my own question. Thank you for being here, Mr. Eickholt.

**SPIKE EICKHOLT:** Thank you.

**PANSING BROOKS:** OK. Any other, any other questions for Mr. Eickholt? Nope, I don't see any. Thank you for being here. Any other proponents? Proponents? OK. Any opponents? Opponents? Welcome, Director Frakes.

**SCOTT FRAKES:** Good afternoon.

**PANSING BROOKS:** Good afternoon.

**SCOTT FRAKES:** Good afternoon, Senator Pansing Brooks, members of the Judiciary Committee. My name's 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 opposition to LB624. This bill creates three distinct issues for NDCS. The first and second issues are somewhat related and that the timeline required to bring this process to fruition cannot be completed by the operative date of the bill. Additionally, establishing a process for tracking, calculating, and assigning credit to individuals would require significant programming changes to our current sentence calculation system. After

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undertaking the sentence calculation technology project when I first came to NDCS, I know that a project of this nature would take substantial time to integrate even with the existing system improvements that we've made. The final issue this bill raises is one of disparity. Those currently incarcerated will not be eligible for earned time-- I realize there's now an amendment, but I haven't seen it, so I don't-- I can't speak to it, creating perceived disincentives for program and prosocial engagement. For those eligible for earned time, the bill creates disparities between inmates who have access to certain programs and activities and those who would not. It's also not feasible to replicate programming and prosocial activities at all facilities, nor does it make sense to try to do so. Timely delivery of clinical treatment will become more difficult. Treatment cohorts are conducted in a way that maximizes staff resources, class participation size, and most importantly, in concert with the person's PED or discharged date. This bill has the potential to not only create scheduling issues, but it will also increase the number of people past their PED because that PED date will now be a constantly moving target. This bill could have the unintended consequences of de-incentivizing participation in essential, in essential programs and treatment. We want inmates to focus their efforts on the recommended treatment and programs that have the greatest potential to help them achieve success upon return to the community. In short, this bill will create problematic disparities among inmates, inefficiency in providing programs and activities, and levels of complex-- levels of complexity that will need to be managed not only at an operational level, but also electronically through significant upgrades to the sentence calculation system. And I'd be happy to try and answer questions.

**PANSING BROOKS:** Thank you, Director Frakes. Any questions for Director Frakes? Senator Brandt.

**BRANDT:** Thank you, Chairwoman Pansing Brooks. Thank you, Director Frakes, for appearing today. You've got experience with other systems and you've served on national committees within your expertise. Do other states employ a program like this?

**SCOTT FRAKES:** I haven't seen any that have this kind of specific identified programs down to that level. Wouldn't be surprised if somebody out there, though, has something that is, is reminiscent of

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it. There's 50 states and there are 50 different ways to manage good time and earned time, including some that have very little of either one. Having come from Washington State, we had both. And in total, best case scenario, I don't think you could get 50 percent off, but it's been a while, but that would definitely have been the max. So the combination of good time, which is that time given up front that's yours to lose, and earned time, which is that time that through behavior, programming, engagement, whatever the defined requirements are, is yours to earn. In Washington, at best, you can get 50 percent off. The earned time piece is very generic because of some of the issues that you discussed in the last testimony. It is pretty much if you engage in programming, doesn't say prosocial activities, you engage in programming, education, or work, or you are available and ready to do so. Because in many situations there's not an immediate opportunity and it's not-- and there's also ADA components that have to be addressed as well. So to make sure that there's not that disparity in that legal issue, because it does have the potential to be a liberty issue [INAUDIBLE].

**BRANDT:** And that-- and you're describing Nebraska's current earned time?

**SCOTT FRAKES:** No, I jumped on you. I'm talking about Washington State, where--

**BRANDT:** Oh.

**SCOTT FRAKES:** --they have a combination of the two, but the earned, earned time piece is a very generic. You engage in programming or work or you're available to do so. And when we say--

**BRANDT:** Because--

**SCOTT FRAKES:** --here's a job then you [INAUDIBLE].

**BRANDT:** Yeah. Mr. Eickholt described we have a quasi earned time today.

**SCOTT FRAKES:** It's-- I, I can't remember the exact language in LB191, but I call it earned time because you have to behave to get it. As opposed to standard good time, you have to misbehave and then have it taken away from you. So the LB191 three-day-a-month credit happens

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each month that you go without getting a specific list of misconduct reports, levels of misconduct report.

**BRANDT:** So basically the, the earned time they get today is from not misbehaving. It's sort of an automatic, you look every monthly, your staff looks at the reports and, and credit.

**SCOTT FRAKES:** Yes.

**BRANDT:** And it's fairly straightforward. Whereas, with this system you would have to get pretty granular and go down and see that I completed a college course so the next guy's about ready to complete a GED and, and so on and so forth.

**SCOTT FRAKES:** Yes. And it's doable. It'll just take us a while because not only do we have to figure out the systems to track all of those things that we don't track today like prosocial activities and clubs and things. We don't, we don't roster and track those. They're voluntary. People go if they want to. Now, there'll be an incentive or could be an incentive and a value to it. So we need to track it. And that data has to be entered, has to be a sentence-- I'm sorry, a system to enter it into. And then the sentence calculation software that we have has to be able to speak to this. Because the key issue around all of this is, as we learned seven years ago, we've got to calculate sentences absolutely correctly to the day. We can't, we can't make mistakes.

**BRANDT:** When an inmate comes into Diagnostic and Evaluation, does your staff sit down with that inmate and do a dashboard or a calculation and say you're here for five to ten, but this is how, if you did everything right, this is how you can get out sooner? Or do they figure that out for themselves? At some point does somebody work with that individual to say you behave and, and you take these courses, you could move your date up?

**SCOTT FRAKES:** Well, we don't do-- everything except you take these courses. There is conversation if they ultimately have a clinical treatment recommendation that could delay their parole. But generically, every single person gets a release sheet. Gets a document that's gone over with them that says, if you get all of your good time, if you get all of your LB191 credits, this would be your parole

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eligibility date. If they're post-release supervision, it's a little different because then that date is-- well, I take that back, it's really not different. It's the same thing because they can lose good time and they could also not earn their LB191 days.

**BRANDT:** OK, that helps. Thank you.

**PANSING BROOKS:** Another? Yes, Senator DeBoer.

**DeBOER:** Thank you, Director Frakes, for testifying. So one of the things, I think, you point out here is one of the things I was asking about whether the, the movement of the parole eligibility date, what sort of the consequences of that would be within your, within your department. And on the one hand, I guess, you have indicated before that you try to sort of backload all the programming to?

**SCOTT FRAKES:** Clinical treatment.

**DeBOER:** Clinical treatment.

**SCOTT FRAKES:** I've actually moved their cognitive behavioral work. Some of it is starting closer to the front end of the sentence. Because as the science grows and the understanding grows, there's an acknowledgment that that may be the more effective place to deliver cognitive behavioral. But clinical treatment, the science still says the closer you do that before return to the community or at least community transition, the greater likelihood of success.

**DeBOER:** So arguably, you could say we know we're going to offer these classes to them, we're going to suspect that they finish them, so you probably meant-- I mean, it's at least feasible that a person could manage that even with earned good time to say, OK, well, they're probably going to take this class. So that would probably bring it down to this much. And they're probably going to do that. But is this-- do you think this is feasible to manage in terms of getting that clinical treatment at the right time?

**SCOTT FRAKES:** Well, I'm really confident in my staff and proud of the fact that we've been able to take every challenge so far and figure out the solution. So short answer's yes, but the longer answer is we won't be as good as we're headed towards right now, especially around things like that. With a shifting PED date, then hearings won't

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necessarily shift as quickly because the Parole Board can only be so responsive. So the one thing that I think definitely will happen is more people missing their PED. Could still also mean, though, that they still ultimately release sooner than they would have under the current system. I won't deny that. But, you know, that, that stat and our goal to get everyone ready and available to leave on their PED, that's the one I think's going to get-- would definitely get messed with. I'm really more concerned about just the level of complexity, all of the tracking that needs to be required, and the significance of it. So it's one thing to say that you failed to enter their attending a club meeting and so they didn't get a certificate or they didn't get, you know, an attaboy, so to speak, or an attagirl. It's another thing to say, oh, we failed to record when you went to your club meeting and now you're not getting your three days of earned time. Much, much higher bar, much, much higher significance. So I think not only would we have the potential for significant increase in grievance activity and then trying to unravel and find out where the truth lies, but I am also very much concerned about the litigation issues that potentially come out of it. So that's where I go back to again, the Washington State approach was really broad brush. It's just basically you're either in one of-- you're in programming, just programming, education, work. That's it. That's the umbrella or you're ready and available to do that and you get your earned credit even if you're not there, because there's only enough jobs for 50 percent of the inmates and there's only X amount of, you know, all these other different things. And some of that came from, I think, litigation pre-me or at least, you know, in my early days. And some of it was just an acknowledgment that to try and not create a system that has great disparity. You kind of got to go with a much broader brush.

**DeBOER:** So would you object then if there was a broader brush version of this bill?

**SCOTT FRAKES:** So I'm not-- definitely not philosophically opposed to earned time. I think, though, the other broad part of this conversation is what I just described to you in Washington with good time and earned time in combination, they still don't get as much time as we give in Nebraska today, so.

**DeBOER:** They don't get as much--

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**SCOTT FRAKES:** We are generous. We are really, really generous in terms of our, you know,--

**DeBOER:** Discounted time. We'll call it--

**SCOTT FRAKES:** Yeah.

**DeBOER:** --for a broader--

**SCOTT FRAKES:** Yeah.

**DeBOER:** --broader term.

**SCOTT FRAKES:** So--

**DeBOER:** The one, the one last question. I'm sorry to take so long, everyone. Is, is there something to be said about the dynamic ness of your parole eligibility date in terms of if I'm an inmate and I'm, I'm in the Department of Corrections and I don't know exactly when it is, but I know that I can affect it. So it feels more like I have control over my life. And, you know, what I do sort of changes things. Does that-- is there a, a kind of benefit of having that ownership in terms of the rehabilitative effect of that and whether or not someone would be involved in their rehabilitation?

**SCOTT FRAKES:** Conceptually, I see some potential. I don't know that is as significant as it might seem. Because, again, with a robust good time system, I can earn half my sentence and three days a month off just by not getting in serious trouble. So that's a pretty good starting place and a relatively low bar for a good part of the population. It could incentivize some people to look at it and go, wow, OK, there's the extra payoff I need to engage in education. There's the extra payoff that I think I need to do clinical treatment. Even though I really don't want to do it.

**DeBOER:** And, and not just--

**SCOTT FRAKES:** I don't know that it'll be as profound as we might want to think that it is.

**DeBOER:** And not just that, what I'm really thinking about is the fact that it's movable and the kind of ownership that a person has, because

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I imagine that, I would suspect that one of the things that happens when someone's incarcerated for a significant period of time is that they feel like I'm not in control of my own life. And if this would allow them some measure of that back, I don't know, I ask you because I know--

**SCOTT FRAKES:** Yeah.

**DeBOER:** --you're more involved.

**SCOTT FRAKES:** You know, and again, is the potential for some of the people that are with us? Absolutely. The flip side would be we can look at the huge part of our population that has this pile of good time that engages in bad behavior, loses that good time, and they're in control of that. They, they make those decisions. So I think the biggest challenge, Senator DeBoer, for a lot of my population is if it's more than a year away, it's just too far in the future to really lock their head around. It's not for everybody. I've got people that come in with 20 years to do and start thinking about what they're going to do to prepare for the day they leave. But a big part of my population is thinking about tomorrow and that's kind of where their focus is.

**DeBOER:** All right, thank you.

**PANSING BROOKS:** Done?

**DeBOER:** Um-hum.

**PANSING BROOKS:** OK. Anybody else have a question? I have, I have a question, I'm looking at the fiscal note and the fiscal note shows that we'd be saving money and have you seen that?

**SCOTT FRAKES:** Yeah, I did it.

**PANSING BROOKS:** Yeah, you did it.

**SCOTT FRAKES:** I signed it anyway.

**PANSING BROOKS:** I know, it sort of looked like you didn't remember it for a moment.



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**SCOTT FRAKES:** Oh, no, no, no. But it's, it's legitimate in terms of we, we estimated the possible potential impact. I think. I can't remember if we tried to come up with a number around that. Did we do some calculations on shortening? OK.

**PANSING BROOKS:** Yeah, it's going to cause, you know, the, the population to decrease and everything that we're sort of hoping for.

**SCOTT FRAKES:** Right. So there's a best case scenario and a worst case scenario. And if we fall somewhere in the middle, the cost of redoing, of doing all the programming would ultimately be paid for. Agreed.

**PANSING BROOKS:** Which would be perfect.

**SCOTT FRAKES:** Yeah.

**PANSING BROOKS:** That would just be excellent. And I have great faith in your ability to figure out the--

**SCOTT FRAKES:** OK.

**PANSING BROOKS:** --computer program to keep track of all this.

**SCOTT FRAKES:** But I need the money to do it up front because, you know, no free lunch and--

**PANSING BROOKS:** Tried to that last year.

**SCOTT FRAKES:** --couple years. I, I think we could get it done. I think we can get the programming done from design to, you know, actually launching it in probably 12 months, maybe a little bit longer.

**PANSING BROOKS:** With this bill?

**SCOTT FRAKES:** Yeah, the sentence calculation software project which really was just doing this-- a version of this was a 16-month project. So maybe we could do it quicker. But my programmers say this is really real-- especially because of the complexity and the specific things in this bill. It's not just a straight good time calculation. And LB191 calculation, it is a multitude of calculations and a lot of variables. And I'm not a programmer, so and, you know, so.

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**PANSING BROOKS:** So why didn't you come in neutral?

**SCOTT FRAKES:** Huh?

**PANSING BROOKS:** I, I can see that, that you didn't support it. But why didn't you come in neutral?

**SCOTT FRAKES:** Because I don't think it's the right approach in terms of a good earned time--

**PANSING BROOKS:** OK.

**SCOTT FRAKES:** --bill. So that's why.

**PANSING BROOKS:** What do you think is a better approach, then?

**SCOTT FRAKES:** I think it would be good to get a number of stakeholders together and do some more research across the country about things that are being used and approaches that are being used. And take a look at our current situation, figure out is there a way that we can apply it to those that are already incarcerated that's legal. And if not, and that hasn't been the case with good time law. So I'm not so sure that there's a good answer for that either for this. So I don't think it's a piece of legislation that comes to life this session because there's just no time to bring together all those things and really take it apart and put it back together. That's, that's my opinion. I--

**PANSING BROOKS:** Clearly, you could organize that group yourself. It wouldn't have to be a legislative [INAUDIBLE].

**SCOTT FRAKES:** Now we start to get into that pathway of where is my piece of it, you know.

**PANSING BROOKS:** OK, so we'll--

**SCOTT FRAKES:** I'm not here to testify for or against sentencing. I'm here to talk about trying to operationalize a bill that I think is very, very challenging and will create problems for the system. That's why I'm in opposition.

**PANSING BROOKS:** But saves money and decreases the population, so.

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**SCOTT FRAKES:** Potentially, so, yeah. We said best case scenario and worst case scenario.

**PANSING BROOKS:** Well, what was the worst case, that it increases the population?

**SCOTT FRAKES:** No, that wouldn't have any effect, if I remember correctly on this one.

**PANSING BROOKS:** Yeah, well, the problem is, if you do nothing, we're going to continue increasing that population.

**SCOTT FRAKES:** I agree. But we need to make sure we do the right thing, not do something that just creates yet more problems--

**PANSING BROOKS:** Yeah.

**SCOTT FRAKES:** --and burns up more resources and doesn't get us the outcome that we really want.

**PANSING BROOKS:** And I, and I try to bring that one-third rule, which I'm now bringing as the one-half rule, which then also attempts to again decrease the population, make sure that people aren't jamming out, giving incentives. Right now, we are not providing enough incentives to stop people from jamming out in my opinion, so.

**SCOTT FRAKES:** Well, we reduced jam outs by half since 2016, so something's changing.

**PANSING BROOKS:** What was that?

**SCOTT FRAKES:** Was 617 and it was 316 in 2020.

**PANSING BROOKS:** What changed?

**SCOTT FRAKES:** LB605 had a lot to do with it, as well as the increases that we did in terms of programming and resources and improvements to the system. So, you know, but PRS contributed to that because it took a good part of the population that was parole eligible and put them in a, in a determinate sentencing bucket, so.

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**PANSING BROOKS:** OK. Thank you very much for coming today. Oh, Senator McKinney has something.

**SCOTT FRAKES:** Hi, Senator.

**McKINNEY:** Thank you, Director. Just one question, could you provide the committee with a list of possible maybe suggestions within a scope of your job that may help decrease the population and also make it easier for you to operate?

**SCOTT FRAKES:** Hmm, I'll have to give that some thought, Senator, I think I have done that in terms of the pieces of the world that I control, but I'll give that some more thought.

**McKINNEY:** All right. Thank you.

**PANSING BROOKS:** Any other questions? Thank you, Director Frakes, for coming today. Appreciate it. Any other opponents? Opponents? Welcome.

**MICHAEL CHIPMAN:** Hello, my name is Michael Chipman, M-i-c-h-a-e-l C-h-i-p-m-a-n. Excuse me, can't talk today. I represent FOP 88, which represents the people that work in the prisons, particularly sergeants, case workers, corporals, and officers. And so the frontline staff. We have significant concerns with LB624, namely with how much time it would take off sentences regarding violent crimes. Specifically, like when one of our staff members are assaulted. We've seen a lot of times where they'll only get-- the inmate will only maybe a year worth of time. With this bill if they went to-- if I'm reading it correctly, if they went to school for three months, then they'd have an extra three months of that sentence already taken out on top of the half of the good time, which is six months they're getting out of the deal anyway. So, I mean, in essence, for a third-degree assault on a peace officer in, in our corrections system, that'd be-- you could be looking at three months sentence for that. We think that would make it pretty detrimental to our staff morale. I think staff would-- I mean, it's hard enough getting guys to get prosecuted when they do attack our staff. This would, would be just catastrophic, frankly, to our staff morale and would even further exacerbate the staffing crisis that we have. And so another issue we have is that this bill creates a lot of pressures on the department to monitor this earned time, I believe is what they're calling it. And I

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know even with the current misconduct reports, that we have such a flow of them. That's, that's something that there's a lot of them that get dropped and missed because of deadlines. My concern would be that, you know, if you do have an inmate that is not meeting this criteria, that he would then because of us missing deadlines and stuff, he would-- he'd get the credit even though he didn't earn the credit. It just creates further headaches and nightmares for our staff. And frankly, I think it'd be extremely difficult for it-- for NDCS to accomplish that piece of the mission. Like I said, with misconduct reports, we already have issues of that. So adding even further layers of checks would, would be very difficult on us. So I think that's why we're against this bill.

**PANSING BROOKS:** OK. Thank you, Mr. Chipman. Questions? Senator McKinney.

**McKINNEY:** Thank you. Thank you. Are you, are you guys currently understaffed or it's adequate right now?

**MICHAEL CHIPMAN:** Oh, I'd say we're understaffed for sure.

**McKINNEY:** Do you think that probably leads to more why incidents between staff and individuals inside end up in situations?

**MICHAEL CHIPMAN:** I mean, it definitely is a part of the problem. I'd definitely say that. I mean, especially like overcrowding and other pieces. There's many pieces to that puzzle, but yes.

**McKINNEY:** So my question is, if this bill in theory reduces the population, which would, would actually, in my opinion, help because you guys are understaffed, it reduces the amount of individuals you have to oversee. Why wouldn't you be for that?

**MICHAEL CHIPMAN:** So the specific pieces we're concerned with is the, the violent crime pieces against-- like, our staff would be included in this bill. They're-- those guys' sentences would also be going down. And when you have-- and then we believe it would probably increase in assaults, because if you have someone who knows that if they assault one of us and they might not even get three-- they may only get three months as long as they meet certain criteria. There's

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really no consequence to the severe consequence. So that's the piece that we're against.

**McKINNEY:** How often does assault occur?

**MICHAEL CHIPMAN:** Frequently. I mean, depending on your facility, like, Tecumseh has a lot of assaults, NSP some. You know, like, where I work at the Community Corrections Center, we have almost none.

**McKINNEY:** OK. Is-- because I've talked to many individuals inside, a lot of the issues that I hear as well is that your staff isn't culturally competent, don't know how to speak with the inmates, and really don't understand them and treat them less than human in a lot of cases. So what type of training do you take to--

**MICHAEL CHIPMAN:** So we have a lot of training we go through. I mean, we have-- when we are hired, we have five week of STA. One thing we specifically go through, is we go through what's called CICR. And I'll actually have my vice president speak on that, he's actually an instructor for them so that's a good, good talking point, and that teaches us how to, you know, talk to people and especially in intensive situations. I don't want to steal his thunder on this because he knows a lot about it, but, you know, in high stress situations, it, it teaches us how to de-escalate. You know, I would say that the assaults are not because of staff, I mean, talking down or whatever to inmates. To say that's the main reason of a staff assault, I would strongly disagree with that.

**McKINNEY:** I wouldn't say that's the main reason, but I know it's part of the reason. I guess, that's it, that's it. Thank you.

**MICHAEL CHIPMAN:** Yep, no problem.

**PANSING BROOKS:** Any other questions? Senator Brandt.

**BRANDT:** Yeah, thank you, Chairwoman Pansing Brooks. Thank you for your testimony today. I appreciate what you guys do. Maybe to allay your fears a little bit, on page 16, it does say: In cases of flagrant or serious misconduct, the chief executive officer may order that an inmate's reduction of term as provided in, in the section that gives the, the good time being forfeited or withheld. So if somebody is

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acting out, they can take the time granted in this bill away from them again.

**MICHAEL CHIPMAN:** Yeah, like I said, one of our concerns of that is, like, we currently kind of have something like that with misconduct reports, like you, you get hit with a Class I, you can lose up to two years [INAUDIBLE]. That's for a serious assault. I've seen MR's for Class I's, not assault, we're pretty good about that, but drug and tox offenses and things of that nature. And they get missed. We're just-- because we're so backlogged or things in the system. My concern would be that we're adding another checks and then more of that would get missed and cause issues just because, you know, it's creating a lot more work for the system that's already stressed.

**BRANDT:** OK, thank you.

**MICHAEL CHIPMAN:** Yep.

**PANSING BROOKS:** Thank you. Any other questions? Thank you for coming, Mr. Chipman. We're grateful for all that you all do.

**MICHAEL CHIPMAN:** Appreciate it.

**PANSING BROOKS:** Our concern about your safety as well.

**MICHAEL CHIPMAN:** Yeah.

**PANSING BROOKS:** Any other opponents? Opponents? Welcome.

**JERRY BRITTAIN:** Thank you. My name is Jerry Brittain, B-r-i-t-t-a-i-n. I am the vice president for FOP 88. Again, we represent the, the line staff in our prisons. I also work at the Omaha Correctional Center, and I've been directed to make sure you understand that I'm not testifying on behalf of the department. However, I think I can speak to some of the experiences due to my seven years in the facilities. And I want, I want to kind of address some of the things you've said. First off, as far as communication with our inmates, I am a crisis intervention and conflict resolution instructor. We go through three days of training on exactly that, treating them like people, making sure that we manage them ethically and how to combat attacks and, and lessen their effects so that we don't have to use physical or chemical agents or restraints of that nature. Right? So they, they have a

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significant amount of training in that field. Now, as with everything, you may have a few eggs that need a little more. I can't make you perfect. Right? I can't make you the perfect CO. I can't make you the perfect senator. Right? That just doesn't exist. So I can't say that there's never been a case where somebody said something out of hand and it led to violence. But I could-- I can testify that we train very hard to make sure that we minimize that risk. As far as how this works, realistically, OK, whether you call it earned or given time, the expectation is when you come into our facilities that you will take advantage of our opportunities, whether that be schooling, programming, whatever you want to call it. OK. The only time these guys lose that benefit is when they've grossly misbehaved. OK. We can take up to two years nonrestorable. But that does almost never happen. It, it only happens when there is violent assaults or, you know, repetitive drug use that can lead to dangerous situations in our facilities. As far as them being charged on the outside, that is very rare for their crimes committed inside. Frankly, the counties, particularly at TSCI, don't have the funding to try every time one of these inmates tries to assault our staff or gets caught with a significant amount of drugs, it's just not realistic. You're, you're giving them a day for a day plus this three-day system. I don't know. How are you going to hold violent offenders accountable? At what point are we going to say, OK, we've sent you to this time and that's what you need to do? We give them plenty of opportunity. Some of them just won't take it. You can't force somebody to attend a drug program and then that's going to stick no matter what. Right? You, you can-- we can give them all the opportunity in the world to get better. You can't, can't force the issue, so. And I'd happily answer questions. I've, I've held court, our version of court in the system and I know what the realistic outcomes of, like, drug cases and assault cases are.

**PANSING BROOKS:** Thank you, Mr. Brittain. Any questions? Yes, Senator McKinney.

**McKINNEY:** Yes. Thank you for your testimony. I'm just curious, how, how does drugs get inside the facility?

**JERRY BRITTAIN:** Where there's a will, there's a way. Everything is in the system that's outside the system, whether that'd be visitors



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sneaking it in, whether it be over the fence, and in rare occasion, staff members that don't share our values, bring it into the system.

**McKINNEY:** Because I've, I've always seen that as an issue with individuals I know personally that, you know, they go to jail, they're supposed to be rehabilitated and come out a better person. But in a lot of cases, the same drugs they were taking on the streets, they're taking inside. So in theory, they're never recovered and never rehabilitated. And I'm just, just curious to know, what are you doing to decrease the amount of drugs that are flowing through our prisons because it's a problem?

**JERRY BRITTAIN:** So here's, here's your ultimate issue is how much freedom are you willing to give up, right? Kind of like when you fly, TSCA searches. We, we search our visitors coming in with canine, with pat searches. How invasive do you want to be on a civilian? OK. So that's part of the issue. The other thing is we implemented a, a randomizer button, is kind of what we call it, that can be set to different percentages. And when that button goes red, the pat-- the staff get pat searched, OK, and we still-- even with that, there are days where we just pat search every staff coming in. We do perimeter patrol to make sure it's not coming over the fence. We have towers that watch that. The, the fact is, where there's a will, there's a way, particularly when you're talking about methamphetamines, where it takes very little to deliver a high, you can sneak it in quite easily. So how much freedom are you going to give up as a, as a visitor to combat that? We also do search our inmates pretty regularly and their cells to help the flow of-- stem the flow of contraband. But there's no perfect system. You, you-- there's been drugs inside prisons since the creation of prisons, and there will continue to be. It's how do we minimize that?

**McKINNEY:** OK. Would you say instead of building-- devoting \$230 million to a new prison, we should devote some of that money to drug treatment inside of all the facilities currently?

**JERRY BRITTAIN:** So we do have-- at least I can speak for OCC, which is the Omaha Correctional Center in Omaha, we have a drug treatment program there. We, we encourage people to go there and the Parole Board encourages people to attend. The, the problem with drug treatment is you can't make someone change if they don't want to.

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Right? You can give them all the opportunity in the world, but you can't make them take advantage of the system. And unfortunately, there's ways to kind of game the system, just go through the motions of the-- particularly, the individuals-- drug, drug offenders tend to come back pretty often, their recidivism is high. Once you go through-- we used to call it the SAU program. I know they've just changed it, kind of soften the language, but it's still drug treatment. Once you go through, you know what they're expecting. Right? And so you can go through those motions and still pass the class, if you will, and not take advantage of the opportunities.

**McKINNEY:** I under-- I understand that and there will always be outliers and there will, there will never be a perfect system for anything. But I think in this bill, if someone, someone was incentivized to go through the drug treatment, I think that would be very helpful and probably would, would reduce recidivism. It's, it's never going to be perfect. And we always would point out the cases of people gaming the system or, or, or doing something out of the ordinary. That-- that's just the, the world we live in. We're all human. But I think something like this bill to incentivize drug treatment is probably a great option going forward for our state.

**JERRY BRITTAIN:** I agree, agree, but against that saying, they are already incentivized. Part of their parole, particularly if they have drug offenses or, or a, a history that says they may be prone to a drug habit, they are already told we need you to go through this program so that you can attend your parole. So they are incentivized. If you want to participate in parole and you have a tendency to have drug issues or, or that kind of history, you're already incentivized. If you want to get out on parole, you need to conduct-- go, go through a, a program. And so it just gets to the point where how, how much incentive or incentive do you need? A day for a day plus three for every month, most inmates get that unless they choose to act out violently in most cases There are a few that are repetitive drug offenders that may have good time taken away and even when it's taken away, in most cases it's not-- it, it will be restorable. So there is a way where if they behave themselves and, and don't conduct any of the things that lead to those I's, II's and III's misconduct reports, that they can get it back. We only make it nonrestorable in the most heinous of crimes. If you take a, a padlock and, and beat someone's head in to the point where they need a metal plate, then we might take

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away two years and make it nonrestorable. But in most cases it is restorable. So I, I would just argue, we give them opportunity. The problem-- you're not going to solve overpopulation in the prison system by, by more opportunity. They have-- I'm telling you, they have more programming, more opportunity, they got more time in the day to participate in schooling than I do because I have to work.

**McKINNEY:** I, I guess my question is, you say they have more opportunity, but almost everyone I talk to inside says otherwise. And it's, it's the prison officials and the individuals inside both saying two different things. So there's, there's some type of issue somewhere where somebody's not telling the whole truth. I don't-- I'm, I'm not sure of which side.

**JERRY BRITTAIN:** And you'll have-- you'd have to choose to take the word over a, a working Nebraska citizen, over somebody who has clearly already decided to disobey our laws. And, you know,--

**McKINNEY:** But that doesn't--

**JERRY BRITTAIN:** --I'm, I'm not going to discount every one of them.

**McKINNEY:** --but that doesn't mean their opinions-- just because somebody is incarcerated, it doesn't take away their rights and their opinions and things like that.

**JERRY BRITTAIN:** Again, I can show you evidence. I, I don't have it prepared today, but I know Director brings it regularly of the programs we have available, the GED programs, the Metro Community College programs. We have a CDL simulator at our facility. We have a welding simulator. We give them opportunity. Some of them just choose not to take advantage of it. And you can, you can bribe them all you want. You can hang whatever carrot you want in front of them, there-- there's some of them that just aren't going to follow that path. We want them to. Of course, I do. They're going to be my neighbors. They're going to be working in our community. I want them to be successful. That's why I do the job I do. But you can't make every one of them choose that path.

**PANSING BROOKS:** Anybody else have a question? I just, I just have one more. I have-- I understand that working in the system, you get pretty

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jaded about who you're working with and what's happening. But we do not have sufficient programming in the prisons right now. And part of it is the whole-- I've talked about the vicious circle with overcrowding and we have understaffing. And with understaffing, there's not as much ability to go to the programming because you don't have enough guards to release them to take somebody to programming. And so then what happens is that people aren't ready by their parole eligibility date. And so then they get towards the end of the sentence and they may finally get the, the programming offered to them. But at that point, they figure, well, I'm just going to jam out because I don't have to be supervised then afterwards. And once they jam out, it leads to recidivism, which then causes the overcrowding crisis. So we have information here that this will save money, that it will help reduce the prison population. We haven't tried this effort to-- and, yeah, I understand that, that we, we need to protect you guys. There's no question that we need to protect you guys. But if we add incentives in programming and prosocial behavior, isn't that better or do you just not believe any of the programming works?

**JERRY BRITTAIN:** So I'd like to say about two things on the subject. First off, I'm not jaded in the work or the people I work for or with.

**PANSING BROOKS:** OK.

**JERRY BRITTAIN:** I do this job for the betterment of the community. There-- I get close with inmates in a professional way to help guide them down that path. That's how it works, right? You can offer all the programs you want, but if you can't help them down that path, you're not going to be successful. Secondly, it is true that if you give an inmate a get out of jail free card, the population will go down. But will that help the citizens?

**PANSING BROOKS:** Well, it isn't--

**JERRY BRITTAIN:** You know, if you're letting these guys out early and they're only participating in these programs so that they can get out early, you're not going to solve the problem long term. But I think we're going to have to agree to disagree on this. I just don't-- I don't see this as a valuable option. We already give them good time, whether you call it good or not. They, they get it. It's available. We don't take it except for extreme cases. If, if you want to offer more

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programming, great. I don't know what more you can offer. We have schooling. We have, again, welding program. We have lots of programs. We have construction programs. If you tour TSCI, they have a beautiful shop where they learn all kinds of hands-on skills where they can use that after the fact and it's in skills where they can be employed in the community. A lot of places won't hire a felon. Construction, truck driving, some of these more hands-on laborers tend to be lighter on that. And so--

**PANSING BROOKS:** So--

**JERRY BRITTAIN:** --I think we're doing a lot in this department.

**PANSING BROOKS:** I, I, I agree there's a lot we've done. I think more could be done. And having somebody sit in a cell, not using their time or not being able to do much doesn't seem like a, a very positive or productive way to bring that person back into our, our community.

**JERRY BRITTAIN:** I would agree with that. But I would say that we do encourage them to have out-of-cell time and be productive. We give them opportunity to participate in sports and, and literally award them for doing so. We encourage schooling. If you go down the halls in our education facility at OCC, you'll see inmates in a full gown holding a diploma. And when I see that, I take time to congratulate that inmate, you know, for bettering themselves, being a better member of the community, so.

**PANSING BROOKS:** I, I, I think, you know, there's no question that your, your ability to work with them is integral to their success as well. That's as important as some of the programming. But I think it all works together and we've got to work to make sure that our inmates are safer, not more isolated and confused about what's going on, so.

**JERRY BRITTAIN:** OK.

**PANSING BROOKS:** Anyway I really appreciate all of your work and for coming down here today, Officer Brittain.

**JERRY BRITTAIN:** Thank you, Senators.

**PANSING BROOKS:** Thank you. Any other questions? Thank you for coming.

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**JERRY BRITTAIN:** Yep.

**PANSING BROOKS:** Any other opponents? Nope. Anybody in the neutral? OK, nobody here in the neutral. And so we have-- had 17 letters in favor of LB624, zero in opposition, and zero neutral. There were two written letters that were dropped off in lieu of testimony: one from Fran Kaye from the Racial Justice Policy Committee; and then also one from Jasmine Harris from RISE. So Senator McCollister to close. Thank you.

**McCOLLISTER:** Thank you, Madam Chair, members of the committee. I've been here for a six and a third years, and I think this particular bill is the most emotionally impactful bill that I've ever introduced. And I've introduced some good bills during my, my time here. We talked about the, the fiscal note, and, boy, it's huge. I don't think I've ever brought a bill, bill to a legislative committee that had such a favorable fiscal note. In one year, it's a quarter of a million dollars. Next year, it would be a half a million dollars. And that's real money. That's real money. And that's something we need to strongly consider. We talked about the fact that we're in a vicious circle with our prison population, and I would contend that's a negative feedback loop. The more overcrowding you have, the more difficulties you have. And the way to deal with this is to parole or at least give those people doing a good job in prison, get them out sooner. That is an obvious solution. And I think that's something we need to strongly consider, can consider. Can you ever have too many incentives? I don't think so. Incentives are good. And the more incentives you can provide those people incarcerated in our prisons, the better off we're going to be. And if you can get them to take programs or at least not, not misbehave, I think we're way ahead. No, I think we need to act on this bill, move it forward. I am happy to work with Director Frakes. You'll notice in the bill, there's no prescriptive action for Department of Corrections. And philosophically, he said he agreed with the bill, philosophically. It's just the operational difficulties that he perceives in this bill that makes him object. And happy to work with it at their own speed. You may recall that four or five years ago, they wrongly calculated good time efforts. So I would contend that they can and should, you know, make this program even better to include this, this earned good time provision that, that we, that we have brought here today. I'm grateful for this committee, your consideration. I think this is a good bill. I think we need to advance it. If there are some

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refinements we need to make with the, the Corrections system or Parole or the Pardon Board, we're happy to do it. Let's make this work and, and do some good for the inmates, the Correctional system, and for society as a whole. It's a win, win, win. Thank you, committee members. And thank you, Madam Chair.

**PANSING BROOKS:** Thank you, Senator McCollister. Any questions for Senator McCollister? No, I'm, I'm pleased with the bill. I, I just want-- I, I had one bill that brought this kind of positive fiscal note as well. And we have got to do something about this. And I appreciate your, your willingness to bring this. And it looks like there's enough savings that it can help the department pay for any kind of computer programming that's necessary, so.

**McCOLLISTER:** Thank you all.

**PANSING BROOKS:** Thank you. OK, that closes the hearing on LB624. We will now go to-- OK, LB559, Senator Vargas. Welcome, Senator Vargas.

**VARGAS:** Thank you very much, Vice Chairwoman Pansing Brooks. Members of the Judiciary Committee, for the record my name is Tony Vargas, T-o-n-y V-a-r-g-a-s. I represent District 7 in the communities of downtown and south Omaha, here in our Nebraska Legislature. LB559 builds on the work that I've done with this committee over the past few years around the use of [INAUDIBLE] I have a document to pass out which is just a one pager. A couple of years ago I introduced LB739, which was a comprehensive overhaul of how the Department of Corrections would be allowed to use solitary confinement and restrictive housing. Part of that bill dealt specifically with vulnerable populations, meaning inmates who are under 18, pregnant, or diagnosed with a serious mental illness and prohibited the department from placing these individuals in restrictive housing. That part of LB739 was amended into a committee omnibus, LB686, which many of you voted for and supported. That bill defined the term "serious mental illness" to match what is in (5) (b) of Section 44-792. Part of that definition reads, "Serious mental illness means...any mental health condition that current medical science affirms is caused by a biological disorder of the brain and that substantially limits the life activities of the person with the serious mental illness." The part of the sentence that is causing an issue is the part that reads "that substantially limits the life activities." What I learned over

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the interim is that the department continues to place certain individuals with diagnosed serious mental illnesses in restrictive housing and justifying the decision by stating that their illness does not substantially limit their life activities. My intent and I believe the committee's intent when we passed this and the Legislature passed this, when advancing this bill was to ensure that no one with a serious mental illness would be placed in restrictive housing. I introduced LB559 to close the loophole that the department uses and ensure that the Legislature's intent is fully carried out. There are individuals behind me that want more specific information about the department's process, but I'll go ahead and outline my basic understanding. My understanding the Department of Corrections determines whether or not someone with a serious mental illness requires a specific level of care, ranging from their own scores of one to five. Now, if somebody falls within, let's say, the one or two range, that means that their serious mental illness does not substantially limit their life activities or I suppose, choices in these cases. As a result, I have made aware-- I've been made aware that there are multiple individuals in restrictive housing with a serious mental illness, which is contrary to what we tried to pass. We passed into law the other just last year, year before that. LB559 copies most of the language of the definition of serious mental illness that is found at 44-792 and just leaves out the problematic language about life activity being substantially limited, closing the loophole that the department has been using. This committee knows how well the department feels about these kinds of limitations. They justify this practice and have by stating it is necessary to deal with overcrowding issues. I do have sympathy for those challenges they are facing. I have supported increased funding in every single funding request for the appropriations for more staff and whatever they were needed for addressing overtime pay, reappropriations, even the extension of the high-security beds this last year, the last biennium. However, there are bad sentencing requirements, a systematically racist justice system and decades of politicians who won't act to address the root causes of many of these crimes and would instead prefer to spend \$230 million on a new prison and forget about the people whose lives were affected. The quality of life for those inmates are important, too, and I heard that from some of the questions and merits consideration. At the hearing for LB732 and many times before and after, we heard directly from people who have



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suffered serious irreversible consequences to the mental, emotional, and physical health after being placed in restrictive housing. There are plenty of accounts and studies that demonstrate how quickly a person who was otherwise relatively mentally stable without a serious mental illness can become unstable and how quickly their health could deteriorate when they're placed in solitary confinement or restrictive housing for even just a few days. We have people in restrictive housing for months on end right now. LB559 doesn't tell the department that they can't use restrictive housing at all. It merely states that the Legislature's feeling that they should be placed already vulnerable inmates with diagnosed serious mental illnesses there. With that, I'll close and allow some of the other testifiers to come and talk more about specifically the issues we're seeing and the current definition of serious mental illness in 83-173. And just want to thank the committee for supporting this bill in the past, being part of the omnibus, the original intent was clear. We want to make sure it's clear so that we can ensure that there isn't an overuse of solitary confinement. And I will continue to support outside of this our individuals that are working in the corrections system. We fought for increased pay. We fought for increased staffing, better appropriations, ensuring we're meeting those appropriation needs and I'll keep doing that. But that means we can still do reforms in this committee as well. Thank you very much.

**PANSING BROOKS:** Thank you, Senator Vargas. Any questions for Senator Vargas? No. Thank you. Are you going to stay here?

**VARGAS:** Yes.

**PANSING BROOKS:** OK. OK. Proponents.

**LATHROP:** So we're just starting LB559?

**PANSING BROOKS:** Yeah.

**LATHROP:** OK.

**PANSING BROOKS:** Proponents.

**LATHROP:** Proponents.

**SPIKE EICKHOLT:** Thank you. My name is--

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**LATHROP:** Giving the Vice Chair a bad time.

**SPIKE EICKHOLT:** My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in support of LB559. We want to thank Senator Vargas for introducing the bill. As Senator Vargas indicated or Senator Vargas said earlier, this bill really is a small but yet important bill that simply clarifies what the Legislature and this committee has already decided it should be state law. As he explained, last year, actually 2019 the Legislature passed what became LB686, which provided that certain vulnerable populations or people who are designated as vulnerable populations, would not be subjected to restrictive housing. And one of those categories, along with people who are under 18 years of age, pregnant women, people with serious traumatic brain injuries, another category was those people who are diagnosed with a serious mental illness. And the bill that was passed referenced a statute that already exists in law that defined serious mental illness. And apparently the department is interpreting that perhaps differently or more narrowly than the Legislature intended. If you look at that statute that's actually referenced and it's on page 3 of the bill in line 4 it's actually stricken but the statute, section 44-792, it reads very similar to the new language that's on page 3, line 7-12. It just drops that phrase that Senator Vargas talked about earlier, that qualifier, "substantially limits the life activities." In other words, you're still talking about people who have been diagnosed with one of these recognizable serious mental illnesses where you don't have this limitation or interpretation that somebody could have a serious mental illness, yet it doesn't substantially limit their life activity. So this would modify that definition of statute to more clearly, explicitly state what the Legislature [INAUDIBLE] intended to mean or stated a couple of years ago when you passed LB686. How many people would this affect? If you look at the fiscal note, the department estimates that there's about 44 inmates who would meet this definition. Now, I don't-- that's not all the inmates who are in restrictive housing necessarily. I think that's 44 inmates. But I assume that somebody here from the department can speak to that. So I don't think it's that broad. I think it's completely consistent what the Legislature's already spoke to and voted on a couple of years ago. And I would urge this committee to advance this bill. You know, this committee, we talked about this in other contexts, but this area, this restrictive housing reform,

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solitary confinement reform, is really an area that this Legislature and this committee has done some significant work and a lot of that has been led at least in cooperation with Director Frakes. But things have gotten better on this front from report in 2014 and 2015. And this is a consistent step toward improving that situation. And I'd urge the committee to advance this bill.

**LATHROP:** Thank you, Mr. Eickholt. Any questions for Spike? Senator Pansing Brooks.

**PANSING BROOKS:** Thank you. I'm just-- thank you for coming, Mr. Eickholt. I'm trying to find the part that talks about under 18 and pregnant. Are you just referring to different statutes or have I just skipped it here somehow? Oh, here it is. I'm sorry, line 3 on page 3. Sorry.

**SPIKE EICKHOLT:** That's right. Yeah, that's right.

**PANSING BROOKS:** I've got it. Thank you.

**SPIKE EICKHOLT:** Thank you.

**PANSING BROOKS:** I don't have anything else.

**LATHROP:** Any other questions? I see none. Thank you for your testimony. Any other proponent of LB559? Anyone here in opposition?

**SCOTT FRAKES:** Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Scott Frakes, F-r-a-k-e-s. I'm the director of NDCS. I'm here today to provide testimony in opposition to LB559. For the nearly 5,300 people currently incarcerated in NDCS, and actually we went just over 5,300 this morning, approximately 23 percent have a diagnosed serious mental illness or SMI. Of the 230 people assigned to restrictive housing, 60 or 25 percent have an SMI. So you'll note that's a number, it fluctuates just depending on the makeup of the population. But last week there was 60 in restrictive housing that have an SMI diagnosis. Not only has the agency taken steps to reduce overall numbers of people assigned to restrictive housing since the passage of LB686, we've also put considerable effort into identifying individuals with SMI, categorizing their level of care, and managing them properly. Establishing a level of care system was a natural response to our ongoing improvement of service delivery

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to our population. Ensuring that all inmates all across our system receive the necessary follow-up interventions and assessments prior to an increase in symptoms is a best practice. Through the use of evidence-based assessment tools, mental health and "saychiatric"-- psychiatric professionals develop effective treatment plans, meaningful interventions, and engage patients who are often difficult to reach. The NDCS level of care system allows for consistency across departments with regards to the needs of those who have an SMI. We have mental health staff assigned to all of our facility restrictive housing units. They work with individuals to develop behavioral programming plans to assist their clients in gradually stepping down to less restrictive environments. LB686 helped frame the parameters by which people with an SMI are successfully managed in restrictive housing. LB559 would strip those parameters away. The fact is, most individuals, including those in the community, function quite well despite an SMI diagnosis. Their condition does not impede or dictate their behavior. If it does, appropriate action is taken to intercede. Someone who decompensates in a restrictive housing or general population setting is moved to a secure mental health environment where they can receive the additional treatment and resources they need. Although states differ on what is considered an SMI, most look at how substantially the condition impairs someone's life activities. LB559 would make Nebraska's definition of serious mental illness significantly broader, but only in relation to the use of restrictive housing. As reflected in the fiscal note, the bill will require substantial staff resources to comply with the proposed changes. We've identified a location that can serve as a secure mental health unit, although it means losing the most effective space we have for people transitioning from a longer term restrictive housing. It will be staff intensive to safely operate and it will be staff intensive in terms of providing the mental health staffing needed as well. My agency did the extensive work necessary to comply with the requirements of LB686, not through loopholes, through following the statute as written, legislation that went into effect less than one year ago. The changes driven by LB686 have improved our practices and made us even better. We have stated-- we have a state-of-the-art high-security mental health housing unit scheduled to open in the spring of 2022. This new complex, in concert with the existing residential mental health units at LCC, will allow us to create a mental health center of excellence as we open the new reception and treatment center. We also have two

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high-security living units of the RTC that will open by June of 2022. These units will allow us to safely manage a significant part of the current restrictive housing population and hopefully as different people. But the people that we house in restrictive housing will allow us to manage them in conditions consistent with general population. We're on track to achieve the outcomes desired by this legislation in less than two years. A December 2022 implementation date is attainable and avoids an expensive, less effective and difficult to implement temporary solution. I'd be happy to try and answer questions.

**LATHROP:** Senator DeBoer.

**DeBOER:** Thank you, Senator Lathrop. Thank you, Director Frakes. First, I do want to commend the progress that you've made on restrictive housing. I think we've all seen that that has been very good and gone in the correct direction. Just so I'm saying the number right, would this affect 44 people or 60 people, I'm trying to--

**SCOTT FRAKES:** Well, I think that 44 number was that point in time. And when we looked at it a week ago or 10 days ago, it was 60--

**DeBOER:** OK.

**SCOTT FRAKES:** --because it's a population, you know, that moves.

**DeBOER:** So we'll say 60.

**SCOTT FRAKES:** Sixty at the moment, yes.

**DeBOER:** So we're clear on what we're talking about, these 60 people. So are you saying that the department could not comply with this bill?

**SCOTT FRAKES:** No, I can comply. It's in the fiscal note what it would take to do that under the typical implementation--

**DeBOER:** OK.

**SCOTT FRAKES:** --date of September.

**DeBOER:** And these folks are going from restrictive housing, which I imagine is that more? In the past on other bills, I thought that was a

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more staff intensive type of housing than-- than not restrictive housing.

**SCOTT FRAKES:** In general, yes.

**DeBOER:** So why are there so many more people you would need to hire to put people into a less restrictive housing?

**SCOTT FRAKES:** Well, it's really not necessarily less restrictive in terms of-- it's less restrictive in terms of out-of-cell time and movement out of restraints and opportunities for some very controlled interaction. But it's still really staff intensive because it takes that many more staff to manage these same people that are "demonstratably" highly dangerous and not because of their SMI behavior, but just because of their behavior, as well as the mental health staff that it takes to provide that high security, residential mental health care that we set for, you know, as a requirement. So that's the big difference. While restrictive housing is staff intensive compared to the general population, because we control all the movement, there's much less movement than there is in a secure mental health unit.

**DeBOER:** So you would transfer these folks to a secure mental health unit?

**SCOTT FRAKES:** We'd create the unit and that's where we'd house them, yes.

**DeBOER:** OK. You know. It's not typically-- I don't typically like to make these comments, but I'm going to today because this one, it really strikes me that you've been telling Senator McKinney over and over again, it's not your lane to be involved in policy. It's not your lane. If we're telling you that this is what this bill meant, then I don't really know why you're objecting to whether or not what we meant is really what we meant. And--

**SCOTT FRAKES:** I don't-- I don't appreciate the word loophole. We follow-- we didn't interpret the statute. It's very clear. It says SMI and-- and their level of care.

**DeBOER:** So, OK, loophole-- fine. OK, loophole, let's throw that aside. But I think if-- if what this body is saying is this is how we'd like

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to treat these individuals, then that's a policy question. It's not so much a putting it into effect. As long as you say you can do it, then that is a question for the body I would suspect.

**SCOTT FRAKES:** And again, I outlined how I can do it now.

**DeBOER:** Great.

**SCOTT FRAKES:** And the cost associated. And then I put forward the fact that we are on a pathway to get to the same outcome and do it the right way, the best way. But we're still, you know, I said December of 2022 because I want to make sure the living units and all the space is fully functional and we can achieve that. So I offered two options.

**DeBOER:** OK, I'm just a little confused why you're in opposition and I, I'm sorry, I don't mean to be combative. That just [INAUDIBLE]

**SCOTT FRAKES:** You know, I think that's a good, you know, and maybe in time we can collectively decide what's neutral and what's opposition. But based on how I approached it, I felt opposition was the more genuine term.

**DeBOER:** OK, thank you.

**LATHROP:** Senator McKinney.

**McKINNEY:** Thank you. Director Frakes, can you clarify why you continue to place SMI, seriously mentally ill, individuals in segregation?

**SCOTT FRAKES:** Because that is consistent with the language in the statute. It doesn't just say that an SMI diagnosis automatically prevents someone from being in restrictive housing. It says and I don't have it in front of me to read exactly what it says. But there is a very clear statement in the current statute that defines a combination of their diagnosis and their level of care. And if their level of care is-- again, our society is filled with people with SMI diagnosis that are highly functional members. My agency employs people that are SMI and are very-- they're in leadership roles within my agency. Statistically, there's probably members of this body that have an SMI diagnosis and are doing a wonderful job as a state legislator. Just having a diagnosis in and of itself is not the debilitating factor. It's what is your treatment level? What is your treatment

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compliance? What are the symptomology or the symptoms that are, you know, being demonstrated? And we have a system that's in place that if people are either nonsymptomatic or treatment compliant, then they're level two and they exist throughout our system without any intervention except just regular checkups. If they then begin to decompensate, no matter where they're housed in the system, then we look at what the level of intervention is. Sometimes it just can be an adjustment in medication or some other treatment protocol, or we move them to a residential mental health setting and provide additional levels.

**McKINNEY:** What-- what specifically is level two?

**SCOTT FRAKES:** Level two means that you have an SMI diagnosis and you're either not symptomatic or you are-- your treatment regime, whatever that might be, is working, which basically probably means you're not symptomatic. So, you know, you're functioning at the average level of a human being. I'm going to say something and it's going to end up sounding wrong or cruel. That's not my intent. I'm not a mental health professional, so I know enough about what our system, how it's set up, how it works. And I know the people that I employ know what they're talking about. And, you know, and I've worked in concert with others as well to make sure that what we're doing is consistent with best practices for mental health care.

**McKINNEY:** What's the average length of stay on segregation for individuals with an SMI?

**SCOTT FRAKES:** I don't-- I'll have to get back to you with a number. I don't know, I don't have an answer for that question.

**McKINNEY:** Are there individuals on segregation long term for long periods of time, or do you think it's short stints on segregation?

**SCOTT FRAKES:** Well, I think it's across the board for everyone that comes through restrictive housing. But, yes, there are some people that are long-term restrictive housing that have an SMI diagnosis.

**McKINNEY:** Do you think that's-- so if that individual is set to be released, do you think long-term segregation is good for society or bad for society? Because some of those individuals are coming back



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into our communities, do you think it's detrimental to stay on long-term segregation or do you think it's beneficial?

**SCOTT FRAKES:** Our goal is to move every person to the least restrictive level of housing as is safe for all involved and to do that as soon as we believe that that's true, that it's safe. And for the majority, they're spending-- they're either not going to restrictive housing, that that's truly the majority are not going to restrictive housing. But of those that do, I think we're at a place now where we've got that down to a pretty low level. But I don't have my restrictive housing report in front of me. It is on the website. It is available. And again, we can circle back around any of those kind of questions. So the goal-- the goal is to get people least restrictive level as possible. If they end up in restrictive housing, to make that stay as short as possible. If they are scheduled for return to the community, to do everything possible to try and make that transition come from a general population setting and-- setting and not restrictive housing. We're good at that. But we're never going to be perfect. I've had a lot of conversations about why that is. But overall, the goal is to get people out of restrictive housing as soon as possible. And in a perfect world, everybody would transition from the lowest custody level that we can offer.

**McKINNEY:** Thank you.

**LATHROP:** I do have a question for you, Director. When this bill passed, was it two years ago?

**SCOTT FRAKES:** It passed two years ago. It was effective March 1, 2020.

**LATHROP:** OK. How many people did you have to accommodate? I get that there's 60 people who have serious mental illness. But in-- in your understanding their activities of daily living or--

**SCOTT FRAKES:** That's a good term. There's a different term used, but that's what I think of it as-- as well.

**LATHROP:** Substantially limit their life activities, which I would think happens anytime you're in restrictive housing, by the way. But you're making a distinction between the people who have their-- substantially limiting life activities as a result of their SMI versus

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people that have an SMI who have a problem that-- that shows up in their activities of daily living.

**SCOTT FRAKES:** Yes.

**LATHROP:** How many people do you actually have to accommodate as a consequence of Senator Vargas' bill?

**SCOTT FRAKES:** Well, today or when we wrote this testimony, it would be 60.

**LATHROP:** No, you're-- if I understand your testimony, you're saying I got 60 people who have an SMI but their activities of daily living aren't affected by it, either because they've-- they're medicated or they're--

**SCOTT FRAKES:** And they're pulled into restrictive house, you know, that's something that varies.

**LATHROP:** Well--

**SCOTT FRAKES:** We've had 10 I think that were in that loop at one time.

**LATHROP:** So once this bill passed, how many people-- I guess let me put it differently. How many people did you think met the definition of SMI as it exists in the current statute that you had to accommodate and pull out of restrictive housing?

**SCOTT FRAKES:** I'm going to say a number around 10 and that it fluctuates greatly.

**LATHROP:** See, I'm remembering back when we had this debate and that wasn't what was in the fiscal note. That wasn't your estimate.

**SCOTT FRAKES:** But I didn't get anything from the fiscal note in the end. I didn't receive any funding to do anything different.

**LATHROP:** Well, that's a-- that's a whole different problem, isn't it?

**SCOTT FRAKES:** Well--

**LATHROP:** If you're giving us fiscal notes, but you're not getting the money for it--

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**SCOTT FRAKES:** I think when--

**LATHROP:** --and all it's doing is setting up a barrier to [INAUDIBLE] legislation--

**SCOTT FRAKES:** When-- my memory is, you know, it's been two years, but I think when we created the fiscal note, we believed that it was exactly what this bill talks about, that if you had an SMI diagnosis, you couldn't be in restrictive housing. And then after further review, that was not the conclusion. So that's why--

**LATHROP:** So at the end of the day, whatever you said, whatever you predicted before, you accommodated 10 people with mental illness as a result of Senator Vargas' bill and the remaining people who have a serious mental illness, you've concluded are medicated or following a treatment regime such that it's not-- their serious mental illness isn't substantially limiting their life activities.

**SCOTT FRAKES:** That's correct. And as soon as we identify an issue that suggests that it is, then we move them to the appropriate setting. If we reestablish them at level two and there's still a need for level of two care and there's still a need for a restrictive housing, then they do return to restrictive housing.

**LATHROP:** Well, that's-- I just wanted to understand, at the end of the day, how many people, because I remember talking to you on the phone. Senator Vargas and I were trying to figure out how to get this thing pulled together. And I talked to you on the phone because you had some information you were putting out about people with serious mental illness. Then we had a fiscal note and then we were trying to get to the bottom of it. But my recollection is you were predicting a lot more than 10 people.

**SCOTT FRAKES:** Yes. Again, because that initial-- at the point of delivering the fiscal note, the initial belief was that if you had an-- that it was exactly what this bill now says: If you had an SMI diagnosis, you couldn't be in restrictive housing. And so--

**LATHROP:** OK.

**SCOTT FRAKES:** --the current fiscal note is a reflection of what we need to do that now. If we delay implementation, pieces are under

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construction that will address the issue and get to-- get us to this outcome of, you know, we're a ways away.

**LATHROP:** And that's another point. Maybe not everybody on this committee understands this, but you've done some building over at the LCC campus, right?

**SCOTT FRAKES:** Yeah.

**LATHROP:** So between the Diagnostic and Evaluation Center and the Lincoln-- Lincoln Correctional Center, we have this sort of-- I'm not-- you have a name for it, an annex or whatever it is.

**SCOTT FRAKES:** Reception. It's become-- it is becoming the reception and treatment center.

**LATHROP:** And-- and in there you're going to have the cafeteria and--

**SCOTT FRAKES:** Everything you can think of.

**LATHROP:** --laundry and all kinds of common-- common services. But that also includes some beds for--

**SCOTT FRAKES:** 32.

**LATHROP:** --the mentally ill.

**SCOTT FRAKES:** Yes, 32 high-end behavioral health, mental health beds set up in nice pods of eight.

**LATHROP:** So--

**SCOTT FRAKES:** --very treatment or--

**LATHROP:** That actually was one of the recommendations of the 2014 Dewberry report. Am I remembering that right?

**SCOTT FRAKES:** Yeah. Yes. Except that they had suggested a much larger number of behavioral health beds.

**LATHROP:** I was just going to get to that. They had-- how many did they recommend?

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**SCOTT FRAKES:** Oh, I think it was 180 to 200, somewhere in there.

**LATHROP:** It was a lot.

**SCOTT FRAKES:** It was, yes.

**LATHROP:** And instead of building 180 mental health unit beds, you built 32?

**SCOTT FRAKES:** 32.

**LATHROP:** OK, that's all I have. Senator Pansing Brooks.

**PANSING BROOKS:** Thank you. Thanks for coming, Director Frakes. So I'm just trying to make sure I understand. You think there are mental illnesses that don't limit people. And that's why you can choose to put some of these people that with a designated mental illness into solitary? Is that correct?

**SCOTT FRAKES:** It is.

**PANSING BROOKS:** And is-- is this by some medical theory or is this just you've seen how they work and so you're determining that about that person or who who's making that?

**SCOTT FRAKES:** Mental health professionals.

**PANSING BROOKS:** They're saying to you, this person can really handle solitary.

**SCOTT FRAKES:** Yes, that's right. Just like our criminal justice system says that same person could be convicted of a crime, put in jail in settings that are often identical to restrictive housing and then transferred to my system. Their mental illness in and of itself did not stop that process.

**PANSING BROOKS:** But we have been battling on. I mean, you've basically admitted that restrictive housing is not the top priority or best practice for taking care of people with mental health. You've said that in previous hearings that in the best world you would not be doing that.

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**SCOTT FRAKES:** And have laid the groundwork to move away from it. So if-- if this had been a focus in 2015, I asked for the original RTC, it would have probably been 100 or 128 beds. I think there would have been an adjustment at that time. But here we are today. So-- but we have beds under construction. They're going to allow us to achieve the same outcome. But--

**PANSING BROOKS:** It doesn't sound like--

**SCOTT FRAKES:** --the bulk of those beds aren't going to be live until June of '22, and then we have to get them running and everything,

**PANSING BROOKS:** And it doesn't sound like there's enough.

**SCOTT FRAKES:** There is. We don't just have to have-- we have residential mental health treatment. We have a small unit at Tecumseh. It's within the restrictive housing unit. That's a small short term. And we have long-term acute and crisis beds at LCC. And we have a residential-- it's like a general population residential mental health unit of 90-some beds. It's been there for a long, long time. And now we're in the process of building 32 of the highest end, best designed current design. So we'll have this ability. And then with the new other high security units, we're going to be able to shift populations. One of the big missions for the reception and treatment center will be mental health care. That's what I talked about center of excellence will have the pieces we need to be able to do that.

**PANSING BROOKS:** So are you against this bill because of timing? If we put it off to 2022, would you be neutral?

**SCOTT FRAKES:** I'm-- yes.

**PANSING BROOKS:** You would?

**SCOTT FRAKES:** Yes.

**PANSING BROOKS:** Thank you.

**LATHROP:** Would you still need money?

**SCOTT FRAKES:** No. If we can wait until stuff that's under construction is operational and we continue to do what we're doing, it remains, our

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goal to-- first of all, it remains, bottom line, our goal to not put people in restrictive housing and we continue to make progress. You know, the numbers are going to get-- the reductions are going to get smaller because we've done some of the easier stuff already. And we're going to continue to work hard around our mental health components. I think as a system we're seeing some pretty significant improvements in our delivery of mental health care. Again, this level of care system isn't just about restrictive housing. It's applied across our agency and is helping us give clear direction to everybody that has mental health needs in the system.

**LATHROP:** OK.

**PANSING BROOKS:** So when in 2022 would you--

**SCOTT FRAKES:** I'm asking for December because if the building-- if the high-security unit is open in June of '22, which allows us to shift their population and free up the space that we would need to make further residential mental health beds, it's going to take us a few months to get everything going the way it needs to be.

**PANSING BROOKS:** So if Senator Vargas changes this to 2022, I have no idea if he's willing to do this, but to 2022, you would pull your opposition.

**SCOTT FRAKES:** I would.

**LATHROP:** And the fiscal note?

**SCOTT FRAKES:** Yes.

**LATHROP:** All right.

**PANSING BROOKS:** Thank you, Director Frakes.

**LATHROP:** That was constructive.

**SCOTT FRAKES:** Yes, it was.

**LATHROP:** Senator McKinney.

**PANSING BROOKS:** I asked the right question.

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**McKINNEY:** Director Frakes, I got a couple of questions. One, does custody staff have the option to override clinician decisions and still put individuals on segregation?

**SCOTT FRAKES:** No.

**McKINNEY:** No.

**SCOTT FRAKES:** No. We work a team. The-- the decision-making team includes representation by both the security, the classification, and the mental health staff, and they work together and make those decisions.

**McKINNEY:** OK.

**SCOTT FRAKES:** Immediate segregation is a process that happens by the shift lieutenant and reviewed by the board within 24 hours. But if there is an identified mental health issue and it is apparent that there's-- and there's an assessment, a health, an initial mental health assessment at that time of that placement, so it's apparent that there's a level of care need, they'll go down the mental health pathway and not restrictive housing.

**McKINNEY:** All right. In LB686, you are also required to adopt rules and regulations to address risk for inmates and vulnerable populations. Can I get a copy of those rules and regulations that you adopted or can the committee?

**SCOTT FRAKES:** Yes.

**McKINNEY:** All right. Thank you.

**LATHROP:** I don't see any other questions on this bill. Are you going to be on the next one too?

**SCOTT FRAKES:** Yes.

**LATHROP:** OK. Any other opposition testimony? Seeing none--

**SCOTT FRAKES:** Thank you.

**LATHROP:** --anyone here in a neutral capacity? Welcome back.



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**DOUG KOEBERNICK:** Thank you, Senator Lathrop and members of the Judiciary Committee. My name is Doug Koebornick, spelled K-o-e-b-e-r-n-i-c-k. I have worked for the Legislature as the Inspector General for Corrections. Senator Vargas asked me today to testify in a neutral capacity on this bill so that I could provide you with more information related to it and specifically how the current practice is of the Department of Corrections when it comes to placing these individuals in a restrictive housing setting. I think that was covered actually fairly well. But I wanted to come up here and give you this handout because I think it sheds some light more on the practices and on the levels of care that the department has. The first part of that handout is an excerpt from their recent restrictive housing report that just kind of lays out their philosophy on this. And then the other part are the five definitions for the five levels of care. And I thought that would be very helpful for you to have as you discuss this bill, though, maybe there's a deal struck. But the only other thing I would have is Senator McKinney just asked about those rules and regulations. I would like to get a copy of those as well, because the last rules and regulations that I'm aware of for restrictive housing were adopted in 2016. And I would strongly suggest, unless I missed something and they exist, I think that the director and the department need to promulgate those and get those updated to reflect what was in LB686 and reflect their current practices in the restrictive housing units. Back in 2016, the director said we would be back in 2017 with an update on those rules and regs. And that didn't happen. And we've been kind of pushing for those. I've given suggestions a few times on how to make those better and more accurate. And so I would hope that, like I said, maybe I missed something and I hope I did. But if I didn't, I'd like to get them to get those promulgated and amended this year. Thank you.

**LATHROP:** Any questions for the Inspector General? I don't see any. Thanks--

**DOUG KOEBERNICK:** All right.

**LATHROP:** Mr. Koebornick.

**DOUG KOEBERNICK:** Thank you.

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**LATHROP:** Anyone else here in the neutral capacity? Senator Vargas, you may close. We do have four position letters from, pardon me, four position letters and they are all proponents. And we have one written testimony by James Davis III in the Ombudsman's office. It was received this morning and will be part of the record.

**VARGAS:** Thank you very much, Chairman Lathrop, members of the committee. First, I want to-- I'd like to sort of state it's helpful to hear that there's a 2022 outset date. There'd be neutral and we'd be able to offset some of the costs, obviously. And I'm happy to work-- we worked on this two years ago, happy to work on that too. You know, the hard part about this is obviously while we're making and offsetting this, there are still people even in the improved system, still in solitary. If you haven't been to solitary, which I have, it is harrowing. It is very difficult to see. They are there for a very long time. People are serving their time. But if we think that there is a serious mental illness that does not debilitate somebody and that putting them in a cell for days on end, in some instances, months on end, that that's helping them, we have a real big problem. The original intent of this bill and I see the intent is and I use the word "loophole" and let me clarify. The original intent of this bill is that we would look at vulnerable populations as stated in Vera Institute, in the bar, National Bar Association, that identified vulnerable populations that in their recommendation need not be in solitary confinement. It's where this all came from. That's why I think Senator Lathrop remembers this. He referenced this a little earlier. When we were talking about numbers, we were talking about, both off the mike, about 60 to 90 were some of the ballpark numbers on how the bill would be affected. That was what we were discussing. When you look at the, you don't have the fiscal note in front of you from 2019, the fis-- and I had to pull it up on my phone, the fiscal note in 2019 stated that there was no cost associated on that component of changing that specific component. The cost of the \$1.5 million, which is-- the cost at \$1.5 million was associated with the out-of-cell time in the original larger bill. So when we amended out that piece and only put it in, there was no fiscal cost. It was surprising to me when I saw this fiscal note because this assumes the same bill that was introduced largely two years ago. So two years ago when this bill was introduced, we had the intent of making sure vulnerable populations aren't in solitary. It was stated to us that there's X amount of

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individuals somewhere between the 50 to 90 range that would qualify would change. And there was a cost associated with it. And we, maybe I disagree with the cost, but that we dealt with it and we figured out a way to get the-- the fiscal note down and we made it really narrow. And now we're moving forward here. And during this time where we outset the date a year so that they can get some of their ducks in order, so that they can put an implementation, outsetting it in a year, we heard that there was maybe 10 people that weren't in solitary confinement and we gave a year to implement it. I'm happy to work on this. I'm happy to make it reasonable. But I also want to say for the record that every single month and, you know, six months, a year is more individuals that may not be getting out of vulnerable populations. And we've seen from some of the other testimony on other-- on other bills that it's been particularly hard to then find some of the right size reforms that are going to try to help the system. I was a proponent of expanding the behavioral health beds and the high-security beds in Appropriations. Reluctantly, we have to figure out ways to find more beds. I've always supported the budget requests, the Corrections that is brought in my time in the Legislature. So this shouldn't be an issue of money. I believe that the intent of this committee, in all the conversations that we had and the testimony in the-- that were supportive of this was that we identified the vulnerable populations and it's those with serious mental illness. This clarifies it. I ask that you support this. If we have to figure out the outset date, I will work on that, happy to. But the original intent was clear and we should follow through on that. Thank you.

**LATHROP:** OK. That will close our hearing on LB559 and bring us to LB620, also Senator Vargas. And you may open on LB620.

**VARGAS:** Thank you very much. Chair Lathrop, members of the Judiciary Committee, my name is Tony Vargas, T-o-n-y V-a-r-g-a-s. I represent District 7 in the communities of downtown and south Omaha here in Nebraska Legislature. LB559, which we just discussed, is the reason why these are two separate bills. I largely view this LB559 we just did as a cleanup and clarification when we sometimes have to make sure that something, the original intent of what we, we meant to do is carry it out. And so it's updating it. This is different. LB620 amends statutes relating to restrictive housing and solitary confinement. As the committee is aware, restrictive housing is a term that our

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statutes and the Department of Correctional Services uses to describe what many might commonly refer to as segregated housing or solitary confinement. And the last several years, our Legislature, in particular this committee, has demonstrated tremendous, great leadership by passing a number of bills intended to enact meaningful, significant, and comprehensive reform, specifically the department's use of restrictive housing. To his credit, Director Frakes has been actively engaged implementing these reforms that we have passed. And I do commend him for that. The Legislature passed LB598 in 2015, which ultimately led to some reform within the prison system relating to reforming the use of restrictive housing. In response to those reforms, the frequency of use and length of time for inmates to be placed in restrictive housing has dropped in the past few years. Now, in 2019, I introduced LB739 and portions of that were amended in this committee's omnibus LB68-- 86-- 686, which we were just discussing. Those provisions require that beginning October 1, 2019, members of vulnerable populations were not to be placed in restrictive housing. As we discussed just in this previous bill, members of vulnerable populations was meant to include inmates who are 18 years or older, those who are pregnant, diagnosed with serious mental illness, those who have developmental disabilities, and those who are for traumatic brain-- or those who have a traumatic brain injury. This bill seeks to provide further reform related to restrictive housing. LB620 does two things in general. First, it would redefine restrictive housing and to provide that inmates in restrictive housing be provided with at least two hours each day of out-of-cell time. Current law provides that a person in restrictive housing should have at least 24 hours a week in out-of-cell time. This bill would slightly modify the definition to require regular and consistent out-of-cell time of at least two hours each day. Second, the bill provides that no individual could be kept in restrictive housing or solitary confinement for more than 15 consecutive days. I understand there will be opposition to this. I fully expect that. A 15-day limit on restrictive housing conforms with the international human rights standards set forth the United Nations standard minimum rules on the treatment of prisoners commonly referred as the Mandela Rules. One of the principles of the Mandela Rules is that no individual will be held in prolonged solitary confinement and prolonged is characterized or categorized as beyond 15 consecutive days. Admittedly, we in Nebraska are nowhere near such limitation. In fact, there are a number of people in our prisons who have been in

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restrictive housing for years, sometimes three to four years, which is longer than many of us have even served in this lawmaking body or even in a committee. A number of other states have implemented limitations on the length of time that inmates may be kept in restrictive housing or solitary confinement. In 2019, 28 states introduced legislation to ban or restrict solitary confinement, and 12 states passed reform legislation that which limited the length of time that some inmates, particularly those members of vulnerable populations, could be kept in solitary confinement. New Jersey passed the strongest law in the country, which limited the length of solitary confinement to 20 consecutive days for all inmates in prisons and jails. Finally, and related to the two general changes I've outlined, LB620 also modifies the definition of solitary confinement to further distinguish it from restrictive housing. I want to again recognize that we have made gains in reforming the conditions of restrictive housing in the state and hopefully will once we pass-- address this as well. This bill is intended to build on that progress and push us to consider-- continue to consider the conditions of our prisons and strive for continued improvement. With that, I'll close and be happy to answer any questions. Thank you.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Senator Vargas, for bringing this bill. Do you want to comment on the fiscal note?

**VARGAS:** Well, I'm happy to comment on the fiscal note.

**BRANDT:** Say what?

**VARGAS:** I'll comment on the fiscal note. The fiscal note states that there's about a cost of \$3.5 million in FY'22 and \$3.37 million in FY'23. And it states corporal, sergeants, unit caseworkers, lieutenants. Again, I don't have a reason necessarily to dispute it. I still think that it tends to be high. In my time in the Legislature, we've had anywhere between, let's just say \$5 million to \$18 million and reappropriated carry over each year. We give money for staffing and there's either recruitment or retention issues. And we have a lot of carryover. If this is the need, I get it. We're still going to have to make sure we have the staffing for it. I would support making sure they have what they need to then do this. However, what this doesn't

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account for are efficiencies that do exist. And somebody stated this earlier, I think it was Senator DeBoer, efficiencies that already exist within the system when you're not having to staff solitary confinement to really not accounted for here, in my opinion. And so those efficiencies are not in here. I think we'll find more of them and it will offset some of the costs.

**BRANDT:** OK, thank you.

**LATHROP:** Senator Vargas, I do have a question.

**VARGAS:** Um-hum.

**LATHROP:** And, and I'm trying to decide whether it's you're the right person to ask or if I should wait until Mr. Eickholt gets up here, but when you-- on page 3, in paragraph 14, beginning on line 3, when you change the definition of solitary confinement, are you creating the same kind of problem we have with the current definition of mental illness so that the department can say, well, solitary confinement used to mean basically a cell having solid, soundproof doors, which deprives an inmate of all visual and auditory contact with other persons. We do that. But now, now to be solitary confinement, it's got to be these other four things, like are you adding more things that have to be found to be true in order for something to be found to be solitary confinement. Do you understand that question?

**VARGAS:** I do understand your question. My intent is not to make it a little bit more an unintended consequence of, you know, creating a new definition. And if we have to sort of address that, we can. I don't want to be back here next year should this pass and then have to, you know, address another issue. But I think the intent is that we are minimizing the use of solitary confinement, restrictive housing, trying to find a common definition to a set number of consecutive days. And I'd be happy to work on making things clearer.

**LATHROP:** Yeah, I'm looking at the definition of solitary confinement and, and I think I understand your purpose. But it feels like before we add the language that you're amending into the definition of solitary confinement for the purposes of your intent, it should say or instead of having a list, because it seems to me the Department of Corrections could say they can't hear, there's no communication, but

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there's a little bit of light that comes in. So it's not solitary confinement. You follow me?

**VARGAS:** Yeah, I do.

**LATHROP:** That's the only point, I guess that's a drafting thing and maybe something, maybe other people wouldn't read it that way. That's the way I read it. It seems to add more conditions that need to be present in order to meet the definition of solitary confinement. And I'm not sure that's your intent.

**VARGAS:** Yeah, that's a good point. Thank you very much.

**LATHROP:** OK. Any other questions for-- oh, I'm sorry, Senator Pansing Brooks.

**PANSING BROOKS:** Thank you. Yeah, I just want to add to what Senator Lathrop said, because we found that at the YRTC, remember, for the girls we found that-- I mean, they did have a light, but they were just totally isolated. They-- one did have a book and a pencil. But there were others that didn't so again-- and the other thing that we learned about was that room confinement can sometimes be used. If you confine them to a room 24 hours a day with no contact with anyone, then that's a type of solitary confinement. So you have broadened it a little bit, but I still think that, you know, just by adding a light, I agree with Senator Lathrop that the light could let them off the hook and so could-- we haven't talked about room confinement, which is what we found out they were using, well, we weren't confining them in a solitary padded cell, we were just confining them in their room. So thank you.

**VARGAS:** Yeah, we'll look at that and Senator Lathrop's and then I'll also follow up with Senator Brandt, because you did mention about the fiscal note. And one other thing that's stated here is that at least Fiscal does believe that this is pretty high measure. They don't understand why it's as high as \$3.5 million and are kind of unclear on a couple of different asks within this. But those are all good points.

**LATHROP:** So, hey, I'm going to take a little bit more of your time, Senator Vargas. I've been around the [INAUDIBLE]. I did a little bit of criminal work in my early days, and I've been around enough

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sentencings. The judge will, when sentencing, say you're going to do 5 to 15, no part of which shall be served in solitary confinement. And in fact, on page 4 of your bill, it has the original language, "No person shall be placed in solitary confinement." What your, what, what your amendment does, it would appear to me is say, for more than, more than 15 consecutive days. Right now, there's a total and complete 100 percent ban. And you seem to be opening the door to 15 days of solitary confinement where it is now completely, completely and statutorily prohibited. So that may be something you want to work through, because I don't-- I'm, I'm not sure that this is doing what you're, what you're after. We do in this--

**VARGAS:** Yeah.

**LATHROP:** --committee and even, even this committee, which is deals with these issues all the time, we sometimes use or members use solitary confinement as synonymous with restrictive housing. The two are completely different things. Solitary confinement is literally being deprived of all sensory, right? You're-- it's like sticking people in the icebox in the, in the, you know, the World War II movies where they, they don't see people, they don't see light. They don't have any communication. It is literally solitary and there's no stimulation whatsoever. The law right now prohibits that. And you seem to add more conditions on what it takes to be solitary confinement and then authorize it for 15 days. And that could be a problem for the, the sentencing orders that say no part of which shall be served in solitary confinement. So for whatever that's worth.

**VARGAS:** No, that's-- makes complete sense to me. I understand.

**LATHROP:** OK. Any other questions or sermons for Senator Vargas?  
[LAUGHTER] OK, I don't see any. Thanks, Senator. Anyone here as a proponent of LB620?

**SPIKE EICKHOLT:** Good afternoon, members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in support of LB620. We want to thank Senator Vargas for introducing the bill. A couple of things, as Senator Vargas indicated before, this state has made some gains with respect to restrictive housing and solitary confinement. You may have remembered when other former inmates have testified in front of this committee



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and they talk about the time in custody, they talk about being in the hole or being in solitary confinement or restrictive housing almost as a condition of their term of sentence. In 2014, 13 percent of the population had some time spent in restrictive housing, and we dropped that down to 4.5 percent, which is pretty commendable. But there's still a lot of people who are in restrictive housing. One of the things this Legislature did in 2015 was require the department to make an annual restrictive housing report. In the 2020 report list that in 2020 fiscal year, a total of 1,793 individuals were held in restrictive housing for at least a day. Now, at least almost half of those people were released that same day, 46 percent. But as Senator Vargas indicated before, there's still a number of people who have been held in restrictive housing for years. And the average length of time spent in restrictive housing is 34.28 days. So what Senator Vargas' bill does, LB620, or at least what the intent was when we proposed to him to introduce it, was to sort of limit that down in a couple of ways. One was to provide for minimum out-of-cell time. It's-- they had the cumulative 24 hours a week. There's instances that we've heard regularly where people are not getting-- they're getting close to that or sometimes less than that. But what's happening is they're getting days on end where they're not let out of their cell. And this would provide for a minimum two hours a day. I understand the point that Senator Lathrop brought about the definition of solitary confinement and the seeming permission to allow someone to be placed in there. I'll take that responsibility. That's something I didn't mean to introduce. We are trying to tighten up the definition and not make additional conditions necessarily for the definition of solitary confinement, but sort of exclude some of the existing-- not-- I want don't to use the term loopholes because somebody is going to take exception to that, but that term sort of like what Senator Pansing Brooks talked about when she tackled the problem with juvenile room confinement, solitary confinement. The 15 days consecutive is something that Senator Vargas conceded the state is so far from. But that is really, in many respects, the gold standard or the best practices or was expected under the Mandela Rules and what the international community of human rights is recognized as being aspirational and, and important. And it's important to recognize that we are still, even though we made gains, far from that goal. I would point out you're probably going to get a letter from a former director from Colorado, Colorado Department of Corrections that essentially

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has, has done away with restrictive housing. If you look at the report I mentioned earlier on page 32, they compare our state to the neighboring states with respect, with respect to restrictive housing. Colorado has something like, I think, almost 20,000 prison inmates. They had 10 inmates in restrictive housing for 15 to 30 days and no inmates beyond that length of time. So I'll answer any questions that the committee might have.

**LATHROP:** Senator DeBoer.

**DeBOER:** So what do you do with a really bad dude, right? You got somebody who's in there and he is roughing up guards and he is or she, she is, you know, constantly getting into trouble, drugs, assaults, whatever. Take your pick. So they put this person into restrictive housing for the safety of the community, arguably.

**SPIKE EICKHOLT:** Right. Because in theory, at least, restrictive, restrictive housing is not supposed to be for punishment.

**DeBOER:** Right.

**SPIKE EICKHOLT:** It's not supposed to be for discipline purposes, it's supposed to be for the risk that they pose to the other--

**DeBOER:** Right.

**SPIKE EICKHOLT:** --inmates or the facility or what have you.

**DeBOER:** OK, so for the safety of the community, they put them into restrictive housing, 15 days isn't really going to change this very violent woman, so what do you do then?

**SPIKE EICKHOLT:** Well, if there's-- assuming there's no related criminal proceeding relating to her violence or related to the drug activity or whatever it is, you could do what Colorado and other states have done and have, like, a robust, individualized plan for that person. In other words, you don't shut them in a cell for months or years at a time. That-- we've, we've-- if we've learned anything from restrictive housing, the impact that it has on everybody and people who are-- not just people with serious mental illness, but I, I-- at an earlier hearing, somebody presented a study or a quote from a psychologist, talked about that every person in solitary confinement

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suffers some sort of adverse psychological impact just for being there.

**DeBOER:** I mean, there's no doubt. I mean, 2020, people could walk all the way around their house and they were losing their minds.

**SPIKE EICKHOLT:** Right.

**DeBOER:** So, I mean--

**SPIKE EICKHOLT:** And that's with TV, Internet,--

**DeBOER:** Right, that's with every--

**SPIKE EICKHOLT:** --and phones, everything.

**DeBOER:** --every other thing and you can drive your car out of it and go somewhere just in the car if you wanted to. Members of this committee might remember that I was in quarantine for a while and made some interesting phone calls. But I mean, there is still the safety concern, right? I mean, we seem to be having this discussion a lot in this--

**SPIKE EICKHOLT:** Right.

**DeBOER:** --committee is we don't want to put people away, whatever, but there is a kind of a, a need to prevent violence at some point. I think a-- maybe in time a specific program with someone would work. You know, they have an individual, they get some therapy, they get whatever it is, drug treatment, whatever. But I don't think in the-- I, I just--

**SPIKE EICKHOLT:** No, I, I--

**DeBOER:** What's the, what's the way to handle those situations? What have others done to handle those situations?

**SPIKE EICKHOLT:** What you don't want to do, and I think what Senator Vargas is proposing with this bill, is not to-- the solution is not to lock them away in a cell whether you want to call it restrictive housing or solitary confinement. If it's a special mental health housing unit, what I think Director Frakes is talking about some sort

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of specialized facility in there that would be not just the humane, but really the preferable, better choice to do societally. Again, you have to operate on the presumption that-- or the expectation that most of the people we're talking about are going to be out. I mean, a lot of this is triggered by that-- the Nikko Jenkins case where you had somebody walk out of--

**DeBOER:** Yeah.

**SPIKE EICKHOLT:** --a solitary cell into the community, literally. And that was an extreme example, but that is just an expected consequence. I don't, I don't think that-- I've never seen any statistics that say that people who are in restricted housing, solitary confinement, are those people who are doing life only.

**DeBOER:** Right.

**SPIKE EICKHOLT:** I mean, you've heard from some of those people come and testified in earlier bills and LRs.

**DeBOER:** Is there something where we could do like a hybrid where they're mostly-- because I, I remember talking about this last year where somebody was talking. I don't remember if it was one of the employees or if it was the Director who was talking about dog runs and things like that. I mean, is there a way to set this up so, so long as they get out for a certain number of days, they're no longer-- or a certain number of hours a day, they're no longer considered in restrictive housing so they might have a special housing unit that's for everyone's safety, but--

**SPIKE EICKHOLT:** I think that was the definition and they came up with the 24 hours a week.

**DeBOER:** Uh-huh.

**SPIKE EICKHOLT:** I think that was the, the reasoning for that statute that we have now.

**DeBOER:** So then arguably someone could be in what we would now call restrictive housing, but have a few more hours of their cell a day, and they would comply with this 15-day limit?

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**SPIKE EICKHOLT:** No, the, the intent of the 15-day limit was to not allow anyone in restrictive housing beyond 15 consecutive days as written with the bill probably would comply with that. But that was not necessarily the intent as it was proposed to Senator Vargas.

**DeBOER:** OK, thank you.

**LATHROP:** All we have to do to have no-- nobody in restrictive housing is just let them out of the cell enough on a given day or a given week, and, and we don't meet the definition of restrictive housing.

**SPIKE EICKHOLT:** That's right.

**LATHROP:** OK. All right, thank you for your testimony. Anyone else here to speak as a proponent? Good afternoon.

**BRAD MEURENS:** Good afternoon, Senator Lathrop and members of the committee. For the record, my name is Brad, B-r-a-d, Meurens, M-e-u-r-r-e-n-s, and I am the public policy director at Disability Rights Nebraska. We are the designated protection advocacy organization for persons with disabilities in Nebraska. And I am here today in support of the intent and the language of LB620. I will be brief. Solitary confinement places all of the prisoners exposed to it at grave risk of harm. Inmates in solitary confinement often develop multiple significant adverse psychological impacts. Many prisoners gradually lose the ability to control their own behavior, ability to cope with social interaction, or they disassociate from reality altogether. Extended use of solitary confinement renders many people incapable of living anywhere else, which will then complicate or prevent successful reentry or transition back to the community. Disability Rights Nebraska supports restricting the duration or the intent of restricting the duration of solitary confinement in the bill. And we recommend that the bill be advanced but recognize Senator Lathrop's point about the language. We agree with the intent that this practice should be limited. I'd be happy to answer any questions that you may have.

**LATHROP:** OK. Any questions for Mr. Meurens? I see none. Thanks for being there.

**BRAD MEURENS:** Thank you.

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**LATHROP:** Anyone else here to speak as a proponent? Anyone here in opposition?

**SCOTT FRAKES:** Senator Lathrop,--

**LATHROP:** Good afternoon.

**SCOTT FRAKES:** --my test-- my testimony would probably go a minute or a minute and a half longer, can you grant me that time? Thank you.

**LATHROP:** Yes.

**SCOTT FRAKES:** Well, I'm going to go ahead and start while they're handing it out.

**LATHROP:** You may.

**SCOTT FRAKES:** Good afternoon, Chairman Lathrop, members of the Judiciary Committee. My name is Scott Frakes, F-r-a-k-e-s. I'm the director of NDCS. I'm here today to provide testimony in opposition to LB620. NDCS has been, and remains committed to not only reducing the use of restricted housing, but also improving conditions within restrictive housing. Restrictive housing is a custody level within our system, the highest custody level in maximum custody. It's designed to house and manage people who cannot safely be housed anywhere else due to the risk they pose to themselves, other inmates, and staff. The agency does not utilize restrictive housing for punishment. There are multiple levels of review and approval that must be undertaken when someone is assigned to restrictive housing from the initial holding process throughout the long- term restrictive housing process. Over the years, I've been able to report to you on the progress NDCS has made in the assignment to and management of restrictive housing. Some recent highlights include that in fiscal year 2020, the average daily population in restrictive housing was 292 people. This was a decrease from 372 people in fiscal year 2019, as I mentioned. Since 2:30 this morning we were at 233 people in restrictive housing across our system. That trend line has continued to go down since 2014. We've closed two archaic restrictive housing units. We created a 64-bed controlled movement unit at Tecumseh State Correctional Institution. This unit is operated as transitional housing from longer term restrictive housing, as well as an option to avoid putting people in

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longer term restrictive housing. Repurposing the old restrictive housing unit at the State Penitentiary into a 36-bed, minimum custody, incentive-based housing unit that is in high demand. It is single cells with a bathroom and privacy and connected right to their work. Very popular place. We've got full compliance with current statutes concerning the use of restrictive housing with members of vulnerable populations. Increasing the platform of program options available to those in restrictive housing. I provided a handout that shows the details of the programs and the locations where they're offered. And we just recently deployed digital workbooks that utilize videos, educational materials, games and other activities to help keep minds active and focused on positive pursuits rather than engaging in disruptive or destructive behavior. Plus, we do provide televisions to everyone as well. And if you're in longer-term restrictive housing, you can have access to parts of your personal property, to commissary, and to other amenities. Restrictive housing is the option of last resort. The current process allows NDCS to consider the unique circumstances and risk factors involved in each assignment. The second handout I'm providing illustrates some of that progress. We've seen a decline in utilizing restrictive housing, especially assignments to immediate segregation. When it comes to placing individuals in longer term restrictive housing, the primary reasons for placement include serious acts of violent behavior or serious threats of violent behavior. About 66 percent of the placements are tied to violence. The two columns in the middle demonstrate the purpose and effectiveness of the multidisciplinary review team as it relates to reviewing assignments to longer term restrictive housing and how that group functions to ensure that alternative placement options or alternate placement options are utilized whenever possible. And finally, the agency conducts classification reviews every 30 days for people assigned to longer term restrictive housing beyond one year. And I personally review and sign off on every one of those 30-day reviews. I also personally review all appeals of longer term restrictive housing assignments and other issues tied to that and answer and sign those as well. You won't find very many directors that have that level of hands-on involvement in restrictive housing. I am passionate about this issue. Nebraska's, Nebraska's among a few states that define restrictive housing by out-of-cell time, and the only one I'm aware of that sets the bar at nearly 4 hours a day, 24 hours a week. Our efforts to increase programming and treatment within restrictive

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housing have increased the amount of out-of-cell time on average, but attaining a minimum of over two hours of out-of-cell time will be challenging to meet. We can do it, but it's going to be challenging. Our fiscal note had seven days a week, two hours a day, seven days a week. Our fiscal note accurately reflects the resources required and constraints we would deal with to achieve two hours of out-of-cell time, seven days a week. To do that, we've got to run 24 hours a day. That's just what our physical plant requires, even if we doubled the amount of staffing on the normal operational 12-hour shift, there's just no room to put people. There's no dayroom space. There's no-- there's inadequate dayroom space, inadequate yard space, etcetera. So we need to do 24-hour operation to get every single person that two hours of out-of-cell time. I've done that in the past. I've worked in Washington State at a time when we had 700 people in restricted housing. We were running 24 hours a day. It's not good, but it functions. LB620 would also create a rigid and arbitrary 15-day deadline on the use of restrictive housing. Imposing time limits without already having alternative housing and management practices for those who pose the greatest risk is both dangerous and unmanageable. Creating an arbitrary deadline for restrictive housing does not take into account the circumstances or behavioral risk that resulted in the placement. Risk is always the basis-- risk is always the basis for assigning people to longer term restrictive housing and ultimately ensuring that they are safe to leave to promote the less restrictive settings. The reality is, is that prisons house dangerous individuals. Their behavior is such that to not only constitute a risk to themselves and others, it's also a disruption to the good order of the institution. A small percentage of people, perhaps 10 percent, have the potential to disrupt the activities and well-being of the 90 percent who want opportunities, opportunities to engage, go to work, attend programming and treatment, participate in prosocial activities and ultimately, for that 93 percent of the population, return to our communities. I'd be happy to try and answer your questions. Thank you.

**LATHROP:** OK. Any questions for Director Frakes? Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Director Frakes. And I'm a little confused, in our statement or in your testimony, Nebraska's among the few states that define restrictive housing by out-of-cell time and the only one I'm aware that sets the bar at



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nearly four hours a day. So you're saying that's the goal is four hours a day today and we're doing one hour or--

**SCOTT FRAKES:** Flip it around. If I don't provide 3 hours and 45 minutes or whatever the math is, 24 hours a week of out-of-cell time to a person than that is the first qualifier for restrictive housing. So if I can't get people out of cell for close to four hours a day, then I have to say they're in restrictive housing.

**BRANDT:** Oh, OK.

**SCOTT FRAKES:** Yeah. And we talked about Colorado comes up so often. I know why Colorado is able to do what they do. I'm friends with Rick Raemisch. If you've got 3,000 high-security, single-person cells that you can access, if you've got little pods of 16 or 12 cells where you can bring a few people out at a time and handcuff them to a table, you can get people out-of-cell time and you don't have a statute that says out-of-cell time defines restrictive housing, then your restrictive housing numbers can in essence be zero. That's not my reality and, and it shouldn't really be my reality.

**BRANDT:** So what exactly is out-of-cell time?

**SCOTT FRAKES:** It's just that, that you're out of your cell.

**BRANDT:** So--

**SCOTT FRAKES:** You are either-- you're in a, a dayroom space, you're in a programming space, you're at one of the yard spaces, something outside of that cell, which then leads to, at the very least, engagement with the staff that move you back and forth. And depending on what's going on, especially in the programming that we now do, the potential to have interaction with a few other people in a very confined setting.

**BRANDT:** OK, thank you.

**LATHROP:** I don't see any other questions. Thanks for being here.

**SCOTT FRAKES:** Thank you.

**LATHROP:** Any other opponent?

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**MICHAEL CHIPMAN:** My name is Michael Chipman, M-i-c-h-a-e-l C-h-i-p-m-a-n. I'm the president of FOP 88 and I represent the Nebraska Protective Services, which represent the officers, corporals, sergeants, and caseworkers in these prison systems. I am here to oppose LB620 because, because of it makes it extremely unsafe for our staff, frankly, by the 15-day arbitrary, the arbitrary deadline of having someone out of restrictive housing after 15 days. I-- you know, there's no solution, what would we do if someone is extremely violent? You know, point in case we've had a staff member in recent history who was punched over two dozen times in the head and viciously assaulted. If this bill is to go through, they wouldn't be able to spend more than two weeks in restrictive housing and they'd be back, in theory, in to general population. A lot of talks about this bill has been regarding comparing to Colorado. As Director Frakes says they have a completely different infrastructure. This bill doesn't address our current infrastructure, which is not set up for anything like this. We have-- a lot of our facilities are very old and getting older. Tecumseh's our by far our newest facility. To just create these rules and not create the infrastructure and no other real planning on this, it-- all it's going to do is get staff hurt and possibly killed. So, you know, I know I've been here testifying against a lot of bills. I'm always happy to have these conversations with people drafting these bills. And I encourage people to discuss with us because I'm-- we're not against limiting restrictive housing, but it has to be done safely so our staff aren't put at risk. This bill as written, it definitely puts our staff at high risk. That's it.

**LATHROP:** Any questions for Mr. Chipman? Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Mr. Chipman, for testifying. The new facility we're constructing at, at the Lincoln Correctional Center, that will address a lot of these problems, will it not?

**MICHAEL CHIPMAN:** It, it will address, to my knowledge, the-- for mental health housing. You know, I don't know if so, let's say, like I don't know anything about the guy that just attacked that-- our officer a while back. But I don't know, if he doesn't have a severe mental health issue, then I don't think he'd qualify to go into that housing. I might be wrong and Frakes can correct me, but we don't have anywhere for people who aren't, you know, because you're going to have

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people who are, well, are bad. Right? And they're just committing horrible crimes and, you know, hurting our staff and they're not necessarily mentally ill. So what would that-- I don't think that housing would qualify.

**BRANDT:** And I guess I should have asked Director Frakes that when he was up here, but I was sort of under the understanding with that design that that would maybe be closer to what happens in--

**SCOTT FRAKES:** It will definitely help bring down restrictive housing numbers.

**BRANDT:** Yeah.

**MICHAEL CHIPMAN:** Yeah. Yeah.

**SCOTT FRAKES:** Not just [INAUDIBLE] numbers.

**BRANDT:** Right.

**MICHAEL CHIPMAN:** Right. And, and like we said, we're, we're all for lowering restrictive housing. Sorry, getting feedback there. But our concern is, is completely getting rid of it, rid of it after 15 days. That wouldn't be-- I don't-- you know, because you'd have some extremely violent individuals.

**BRANDT:** OK, thank you.

**LATHROP:** I don't see any other questions. Thanks for being here, Mr. Chipman.

**MICHAEL CHIPMAN:** Yep.

**LATHROP:** Anyone else here to testify in opposition? Anyone here to testify in the neutral capacity? Senator Vargas to close. We do have six letters, position letters, five of them are proponent and one of them is in opposition. Those-- that'll be made part of the record. Senator Vargas, you may close.

**VARGAS:** Thank you very much. Appreciate members of the committee and thank you, Chairman, Chairman Lathrop. Just a couple of points I want to make sure to make. We are talking about restrictive housing. The

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intent of this, I think we can all agree, mental health of individuals in restrictive housing isn't the solution. It further exacerbates mental health unless they're getting all the treatment resources they need. But still, that, that level of restriction is difficult. It's-- research continues to show it's not the best way that we should be treating inmates. But the statistics still matter here. The 2019 report that Corrections put out on restrictive housing, I know you've seen it, so I'm re-referencing this. Of those in restrictive housing, about 60 percent of the individuals are people of color. On average number of days in restrictive housing, according to the definition, the average number of days in 2019 was 41.76. We're getting better, but that's the most recent data that I'm, I'm referencing, 41.76. On average, when we're looking at the 15 days, that seems arbitrary. But if we did it to 15 days, we would essentially, and I'll try to do my math here, 15 days and above is around 30 percent of the population. There's a significant population that's still significant, and that's-- it's a number. We have people that are in there for a month or more. There's people about 3 percent a year or more. I understand there's incidences in safety. But if it's not 15 days, then what is the right amount of days that is lowering how often we rely on this. If 45 days is the average, well, then maybe we look at 30. The point is, we should be trying to lower the number of days that we-- that the Corrections-- Department of Corrections is utilizing restrictive housing in some way, shape, or form. And it's good practice. Now, there may be stipulations that, that Director Frakes stated that other states have been able to work around it. We continue to support expansion of all the efforts. In Appropriations, Corrections has been asking for, specifically in regards to expanding alternatives. We can do that and in tandem also look at what's better policy that can begin to sort of right size back down overuse and not overuse necessarily intentionally, but still using solitary-- well, restrictive housing in this, in this manner. These numbers, again, are very important for us to remember. And if it's not 15, then what are the right number of days where we can lower it down? I appreciate your time. I'm happy to work on this. Definitely look at those changes. But the reason I am focused on that sort of restrictive housing no more than 15 days is because, on average, we're at 41.76 days for unique individuals that are in restricted housing at any given time throughout the year. Thank you very much.

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**LATHROP:** OK. Senator McKinney.

**McKINNEY:** Thank you. Senator Vargas, my question, because I think we've had like a one-sided view of the situation from the department and from the staff. I'm just curious if it's possible-- I probably should ask Director Frakes this, if we could get testimony from individuals inside that have been in restrictive housing and solitary confinement because I think their perspective is missing. And we, we to me, we've only got a one-sided view of the picture. And I would love to hear some of their, their testimonies on how it has affected them because I think that's being left out of the conversation. But I probably should have--

**VARGAS:** No, and I-- again, I agree with you. That's why I went to, to the restrictive housing units and, and two of the different institutions in our Corrections system. I actually talked to them. They were very frank with me. Like, I've been here for months on end. I've done all the packets of work. I've done everything I'm supposed to do. I'm still in here. They tell me I have to go through a due process. I don't know the due process. I don't know how to get somebody to listen to me. Now, again, that's anecdotal, but it still matters. And I don't know how to get that information out, which is the reason why we're pushing better practices and lowering the number of days. But great point.

**LATHROP:** And just to add or maybe to respond to what Senator McKinney said. So a number of us at two or different facilities and we're able to go in when it's safe. I'm not sure with COVID if it's safe for anybody to be going in and out of that place right now. And I, I don't mean that in a disparaging way, but I've gone in there with the Inspector General and they'll, they'll open a door and you can go back into the alley, into the galley and speak to people that are in restrictive housing. They'll bring him into a, a sitting area. They handcuff them to a chair or something, and you can sit down and have a conversation with them. You're able to do that as a senator. We can set those up once everybody's been vaccinated and, and we can get in there. Last-- two years ago, we did that just sort of a baseline, take people into the facilities. I've been in every one of them. But once you get in there and I've done it with Koebernick. Koebernick can tell you, here's the guy you want to talk to. When you're in here, here's somebody that's representative of one of your concerns. Once you--

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they'll usually come out and sit down and have a conversation with you. The guards aren't standing over you while you have it either. They might be outside the door, but it's not like they're listening in and you can ask them anything you want and that is available to you as a senator. You can go to the Beatrice State Developmental Center any time you want. Just show them your ID, walk in. And, and I'm looking forward to when, when it's safe to do that, because I'd be happy to go with you and show you just how easily that's done. And tours, I've done a million of those-- these tours. You go in, you meet with the warden, the warden walks you around. I've never felt, I've never felt concerned for my own safety inside of any one of these institutions that I've visited. And when I've done it with the Inspector General at my side, then he could kind of take you to the people you want to talk to. That's available to you, Senator McKinney. But, you know, whether you go in there now during COVID or not is a different matter.

**McKINNEY:** All right. Thank you.

**VARGAS:** It was very helpful to do and especially and I did mention the 60 percent people of color because, like, there is some long-term individuals in restrictive housing that are black and brown individuals. And so it's important to get their perspective, too.

**LATHROP:** It's hard to drag them in. We can't bring them in here to testify. But the former inmates will frequently come in and testify, but otherwise you kind of have to go out and meet them where they live. Anyway. With that, any other questions for Senator Vargas? I see none. Thanks, Senator. That'll close our hearing on LB620 and end our hearings for the day.