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**LATHROP:** Looks like we're all ready to go. Are we on? OK. You will see that my committee is not all here yet because they know I got to go through this little introduction that takes about eight minutes, but they trickle in before we get to the-- before I get to the end of this. Good afternoon and welcome. Good morning and welcome to the Judiciary Committee. My name is Steve Lathrop and I represent Legislative District 12 in Omaha. I Chair this Judiciary Committee. 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 the additional methods of sharing your thoughts and opinions. For complete details on the four available options, 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 room only when necessary 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 each bill to allow 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 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 on 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. 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 ask only testifiers enter the hearing room. We also ask that you please limit or eliminate handouts. Due to COVID concerns, we're providing two options this year to testify at a committee hearing. The first option, which is new this

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year, you may drop off written testimony prior to the hearing. Please note the following four requirements must be met to qualify to be on the committee statement. One, the submission of written testimony will only be accepted the day of the hearing between 8:30 and 9:30 in the Judiciary Committee hearing room. Number two, individuals must present the written testimony in person and fill out a testifier sheet. Number three, testifiers must submit at least 12 copies. And number four, testimony must be a written statement, no more than two pages, single-spaced or four 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 hearing transcript. This testimony will be included on the committee statement if all of these criteria are met. And of course, and as always, persons attending a public hearing will have an opportunity to give verbal testimony. On the table inside the doors, you'll find yellow testifier sheets. Fill out a yellow testifier sheet only if you're actually testifying before the committee and please print legibly. Hand the yellow testifier sheet to the page as you come forward. There is also a white sheet on the table if you do not wish to testify but would like to record your position on a bill. 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. The address is posted on the Legislature's website. Or you can deliver those to my office, but it must be done by 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 by anyone speaking in the neutral capacity. We will be finished-- 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 any 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

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the table will turn green. The yellow light is your one-minute warning and when the light comes red, we ask that you wrap up your final thought and stop. This-- as a matter of committee policy, I would remind everyone the use of cell phones and electronic devices is not allowed during public hearings, though you may see senators take notes or stay in contact with staff using these devices. At this time, I'd ask everyone to look at their cell phones and make sure they're in the silent mode. And remember, that verbal outbursts or applause are not permitted in the hearing room. Since we've gone paperless this year in the Judiciary Committee, senators will be using their laptops to pull up documents and follow along. That's not them being distracted by Facebook or horsing around, but that's how they're accessing copies of the bills and such. 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 other meetings to attend to. And with that, I'll have the, the members introduce themselves, beginning with Senator DeBoer.

**DeBOER:** Good morning, everyone. My name is Wendy DeBoer. I represent District 10, which is Bennington and northwest Omaha.

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

**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.

**LATHROP:** Assisting the committee today are Laurie Vollertsen, our committee clerk; and Neal Erickson, one of our two legal counsel. Our pages this morning are Evan Tillman and Mason Ellis, who are both students at UNL. We appreciate their help. I will tell the committee that we will have a short Exec Session after we get done with bills this morning. They're preparing an agenda with a copy of the-- any, any amendments that you'll get as soon as they can get it to you. But I don't expect that to be a long Exec Session. But I'm hoping that our morning doesn't go very long either. With that said, Senator McDonnell, you may open on LB563.

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**McDONNELL:** Thank you, Chairperson Lathrop and members of the committee. My name is Mike McDonnell, M-i-k-e M-c-D-o-n-n-e-l-l. I represent LD 5, south Omaha. LB563 seeks to codify the maximum caseload limit for specialized probation or parole officers working with populations that are high risk or very high risk to reoffend. This bill continues to allow the risk assessment of individuals to be determined by the individual agency. After meeting with the probation administration, I am also offering AM158, which amends the maximum caseload in this bill from 20 to 24. This is because 24 is their current internal caseload cap for individuals with a very high risk of reoffending, while their caseload cap for individuals with only a high risk to reoffend is 50. Since this amendment matches Probation's internal caseload standards, it logically must also minimize this bill's physical impact. As a state, we have been moving to alternatives to incarceration due to the lower cost and potential for better long-term outcomes for offenders and a lower likelihood of them reoffending. Prioritizing supervision and treatment resources for people who are at the highest risk of reoffending results in the greatest reduction in recidivism and keeps the community safe. Intensive interventions for low-risk people is simply not an effective use of resources because they are unlikely to reoffend regardless of intervention. That is why this bill focuses only on individuals with a high risk to reoffend status as determined by the agency. High-risk offenders often require specialized evidence-based training for officers so they can provide tailored supervision to the individual and have advanced understanding of the population they serve. Because of this, I am happy to hear that Probation is currently reviewing their staffing needs with a caseload study being conducted with the University of Nebraska-Lincoln. And I look forward to reading that study when it is complete. With that said, why do we need LB563 if Probation already acknowledges a maximum caseload of 24 for very high-risk individuals is proper. Well, as you know, last year we worked to increase opportunities available for people under community supervision or currently incarcerated to find high-wage employment and paid job training. Together, we increased the capacity of the young adult court to give more young people an alternative to incarceration. We also increased funding for the Vocational and Life Skills grant through the Department of Corrections to put people from Corrections, Probation and Parole directly into paid job training apprenticeship programs. Doing this has put me in direct contact with a number of service providers, probation and parole officers, the population they

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serve, as well as their family members. The one thing that I keep hearing over and over again is that the caseloads are currently way too high. Officers are frustrated that they can't have the impact they want to have because they can't give the individualized case management that they know is needed. Currently, officers have reported to me that high-risk caseloads in probation are currently over 50, while in many other states caseloads are being kept closer to 20. Officers have also reported that the range of caseloads for probation officers in Nebraska currently range from 20 to 80. To make things worse, officers with a caseload of 80 are, are being evaluated with the same expectations as officers with a caseload of 20. The reason for this bill is to give high-risk individuals under community supervision their highest chance to successfully reform. However, public safety is also a concern, and adequate supervision of high-risk individuals and their compliance with required programming cannot be guaranteed with the high caseload officers are currently facing. I hope we as a body continue to transition to alternatives to incarceration and invest in programming that aids in successful outcomes. But we cannot realistically find the success without funding these alternatives and have adequate staffing levels. I have handed you a copy of the current job description of a probation officer for you to review. I want to thank you for the opportunity today. I'm here to try to answer any of your questions. I will be sticking around to also close.

**LATHROP:** OK. Senator DeBoer.

**DeBOER:** So I'm looking at the fiscal note. Is there any help for that? Any ideas that you have? Do you think it's the right amount of money?

**McDONNELL:** Well, as I mentioned, the amendment should logically reduce the fiscal note because we went from 20 to 24. But, yeah, solving this problem isn't going to be cheap. It's going to cost a lot of money. And I think right now, giving those individuals the best chance of success, giving the people that are working with them and trying to do their job the best chance to be successful with that individual, it's going to cost more money. That, that is just the, the reality of it.

**DeBOER:** Do you--

**McDONNELL:** We're going to talk a lot this session about brick and mortar. And, and at the same time, we should be talking about the

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program. But within that, we should be talking about the people doing the work that are hopefully making a difference in these people's lives that can give them a chance not to make that same mistake again.

**DeBOER:** I, I don't disagree with that. Do you have any idea what that move from 20 to 24 will bring the fiscal note down to?

**McDONNELL:** I do not.

**DeBOER:** OK, thank you.

**McDONNELL:** But we'll work on it and get it to you.

**DeBOER:** OK.

**LATHROP:** Senator Geist.

**GEIST:** Thank you for bringing this. Do you know what the recidivism rates are for people who have-- are in that 20 to 80 caseload supervision?

**McDONNELL:** No, we just know it's higher, but we can ask that question and get that to you.

**GEIST:** And I guess I just wanted to compare. Do you know what it is, if it's 20 or 24?

**McDONNELL:** So, yeah, with the 24 and having a chance to, to meet with administration, we're not opposed to say, OK, if it's, if it's 24, should it, should it be 22 or should it really be 24 because you have high, high risk and then you have high risk.

**GEIST:** Right.

**McDONNELL:** And what we're, we're being told is there is, there is a number there of, of, of the case load to where they can, they can manage it successfully. Should that be possibly on the high, high risk 24, but on the high risk instead of 50, should it possibly be 42, 31. I, I don't know yet.

**GEIST:** OK.

**McDONNELL:** And I, I know the-- that study that I believe is going to be done in September could be very helpful.

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**GEIST:** Will it be out in September?

**McDONNELL:** Well, I'm, I'm being told that and, and possibly Chairperson Lathrop knows more about it, but that that study could be back. That's their goal would be September.

**GEIST:** OK. Thank you.

**LATHROP:** OK. Have you had any feedback on this bill from Probation and Parole?

**McDONNELL:** Yes, we, we had a--

**LATHROP:** What, what are they [INAUDIBLE]?

**McDONNELL:** Well, that's one of the reasons why we have the, the amendment going from 20 to 24, because they educated us on the idea that they have the high, high risk at 24 now. We said, OK, we don't know about then just the high risk at 50. But we said we'll put the amendment in. If your policy is, is 24, we'll, we'll put it to 24.

**LATHROP:** OK, one last question, an appropriations' question. Now that you have an amendment, will they redo the fiscal note before we Exec on this or before we look at it?

**McDONNELL:** Yes, I'm going to ask them to. Also with--

**LATHROP:** And you'll let us know then?

**McDONNELL:** --also with Senator DeBoer's question, we'll follow up on that.

**LATHROP:** OK, terrific. I don't see any other questions. Thank you. We will take proponent testimony at this time. Good morning.

**AARON HANSON:** Good morning, Chairman Lathrop, members of the Judiciary Committee. My name is Aaron Hanson, A-a-r-o-n H-a-n-s-o-n. I'm here representing the men and women of the Omaha Police Officers Association, 13445 Cryer Avenue. This is an issue that is, is near and dear to, to a lot of, of my members. It seems that, and oftentimes, two things seem to be true, a lot of our highest risk individuals are, are typically, if they're out in the community, unless they've, they've jammed on their charges, they, they will be under some form of

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supervision in the community. And number two, whether it's, it's county court, misdemeanor probation, or district court felony probation, that does seem to be the lead-in into the correctional system, into the prison. We see that progression. So that is why our membership stands so firmly in support of this concept, these young people, these young adults, they need the support. It's hard enough to juggle 20 balls, let alone 50, 60, 70, and especially when they're-- if they're high-risk, high-risk balls to boot. I mean, these are, these are very challenging cases. There was a few bills that I wanted to be here testifying on yesterday, and I wasn't because there was a young man who's on probation and one of my peers and I took him down to the driver's license office. And despite my wife's terror, I let this young man use my truck to pass his driver's license test. And why? Because no one in his family had a vehicle that had plates or insurance, not one person in his family. That's the kind of problem-solving skills, that's the kind of zeroed-in attention that we will give with high-risk and very high-risk individuals under supervision if we have case loads that are consistent with that level of risk. I did some research over the last few days. I-- I'm not an academic expert on this issue by any means, I'm a practitioner. But this is not an unheard of concept, there's many states that have implemented statutory limits on high-risk and very high-risk clients. There-- I couldn't find one study that said this is not a good idea and shouldn't be done. So I support this bill and I, and I hope you do, too. And I'll answer any questions you may have.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Sergeant, for appearing today. In the bill it said that they use the, the same metric for measurement of police department and probation for risk and high risk. Can you tell me what, what-- what's the difference between high risk and, and what the-- what your qualifiers are for the category?

**AARON HANSON:** OK, well, first of all, I'm, I'm not in, I'm not in the supervision profession.

**BRANDT:** OK, and if you don't know--

**AARON HANSON:** We work, we work with them, I will defer that. That's an intricacy that I think would be best answered by someone that works or



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manages that division. And I do think that they have an instrument that helps assess each and every individual to determine what category they fall into.

**BRANDT:** And then a second question, and, and you can probably enlighten me on this. We're asking to add 113 probation officers and 13 parole officers. In the field, does that look the same or does parole look different from probation?

**AARON HANSON:** Well, obviously, they're, they're separate and distinct departments. Our members work with all of them, whether it be parole, adult probation, or juvenile probation or even federal supervised release. They all operate within their own structure of command. They operate somewhat differently. Each of them have their own operational culture. But at, at the core, they do function similarly in terms of their interaction with us and their interaction with, with their high-risk clients that, that we deal with.

**BRANDT:** OK, thank you.

**AARON HANSON:** I don't know if I answered your question.

**BRANDT:** Well, I guess what I was looking for is, is in the field does, does parole and probation look the same on an individual or--

**AARON HANSON:** Well, typically, in my interactions in the Omaha metro area, they, they do appear to be generally similar in appearance when they're in the field. They wear similar attire. They'll wear a ballistic vest. One may say Probation, one may say Parole. They operate fairly similarly in, in many ways.

**BRANDT:** So probably the, the rules for the individual are probably the biggest difference between probation and parole.

**AARON HANSON:** That's correct.

**BRANDT:** OK. Thank you.

**LATHROP:** I do have a couple of quick questions for you. So Senator McDonnell changed or, or offered an amendment to change the number from 20 to 24, because that's the guideline in Parole. I appreciate that that may be in a policy book, but what's the number that they're actually at right now if you know?

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**AARON HANSON:** I don't have access to those specific numbers, I can tell you anecdotally that, that I have yet to have worked with, and I think my peers, my subordinates, people that I have worked with have yet to interact with, with a supervision officer that has numbers that low. I hope that's happening. But just anecdotally, it seems like the, the case loads are much higher. But I'll defer to people that have the actual data for that.

**LATHROP:** So the fact that we're moving the number from 20 to 24 doesn't mean we're right sizing the bill to what they do there, but what their policy is and they may not be at that level currently.

**AARON HANSON:** I, I think that if we had caseload standards, whether it be 20 or 24 for high-risk clients, I think that's a win either way, regardless of the number.

**LATHROP:** OK. All right. I don't see any other questions. Thanks for coming down today. Appreciate it. Any other proponents of LB563? I can't see through the glare that's coming in. Good morning.

**SPIKE EICKHOLT:** Morning. 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 LB563. We had this actually down for me to monitor the bill. But as I'm sitting here, I thought perhaps I should be on the record to at least talk to a portion of what I think the bill is meant to, to accomplish. The state's-- the state is at a sort of a pivotal moment because you're being asked to invest in a new prison. We have consistently urged this body in this committee to consider alternatives to building a new prison. And in many respects, that's what this bill is a step toward doing. Although, it deals with caseload limits for certain risk offenders and so on, I think it's important because it shows a meaningful, as Senator McDonnell explained, a meaningful investment in this type of alternative to incarceration, particularly on the probation side. And if it's, if it's a situation where some probation officers have too many cases and perhaps the judges sense that, then investing in probation officers in appropriate caseloads will hopefully encourage judges to place more people on probation rather than risking that under the current system and sending them to prison or jail. So I just want to state that point on the record and I'll answer any questions the committee has.

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**LATHROP:** OK. I don't see any questions. We appreciate your input, though. Thanks for being here. Any other proponents of LB563? Anyone here in opposition to the bill wants to be heard? Anyone here in a neutral capacity? Seeing none, Senator McDonnell, you may close. There are-- there is one position letter. It's a position as a proponent that's been received by the committee. We have no written testimony. With that, Senator McDonnell.

**McDONNELL:** Thank you. The reason I gave you the job description of a probation officer, when you read that and you see how involved they are with individual's lives from every aspect. And when they came to talk to me about this, you know, you can't, you can't manufacture passion. It's got to come from the heart. And they were so passionate about wanting to be successful in doing their jobs. I don't-- I, I think they're, they're severely underpaid. But they didn't talk to me about that. They talked to me about the idea of the long-term success for that individual, the pride they take in, in their work and having that, that opportunity to really make a difference in someone's life. And that's what they, they concentrate on. That's why I'm here today. With the numbers and looking at, and, and some of the questions that were, were asked earlier, you know, the high, high risk, if we move it from 20 to 24, well, of course, that should affect the fiscal note. It's only logical. The idea of the high risk at 50, OK, is that really the accurate number? And that's what we're trying to, we're trying to figure out. We're trying to give these people an opportunity to do their jobs and be successful. And for the people, the, the citizens that they're serving, for them to be the best version of themselves.

**LATHROP:** Senator McDonnell, this committee appreciates this bill, I think. I certainly do, and I certainly understand the, the purpose and the objective of the bill. I got to ask you, do you want us to sit on this until we see the study from UNL so we know the right numbers? I suspect you're going to tell me you'd like us to move on it. But as a practical matter, should we wait and see what the study reveals?

**McDONNELL:** It's hard for me to, it's hard for me to say sit on it, but I think that's, that's logical because of, of the study. But there's such a need right now. And, and for me to go back to the people that have come to me and say, just hang on, hang on, hang on. And possibly the, the negative effects that I think that, that will occur with people there trying to help. But logically, yes, you probably should sit on it till after the study from UNL comes back.

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**LATHROP:** All right. Let us know if that changes at all. And we'll take it up for consideration if it does. Thanks for being here.

**McDONNELL:** Thank you.

**LATHROP:** That will close our hearing on LB563 and bring us to Senator McCollister, who may open on LB130. Senator McCollister, welcome.

**McCOLLISTER:** Thank you, Chairman Lathrop and members of the committee. My name is John, J-o-h-n, McCollister, M-c-C-o-l-l-i-s-t-e-r, and I represent the 20th Legislative District in Omaha. Today, I'm introducing LB130 to start a discussion about the future of the Board of Parole. The ideas in this bill are not meant to criticize the current or former board members. It's time, however, for the Legislature to consider the current makeup of the, of the board and the appointment process for the board and to decide if any improvements are needed in our current parole system. Before I highlight the main provisions of LB130, I want to offer a brief overview of this independent agency of our state government. Current law requires the Governor to appoint five members to the board. Members are full-time employees. They shall be of good character and judicious temperament. All members are subject to the confirmation of the Legislature. Members are appointed to six-year terms. No term limits are placed on them. At least one member of the board must be in an ethnic minority group. At least one member must be female. At least one member of the board must have a professional background in Corrections. The chairperson of the board is appointed by the Governor. LB130 would make three changes to the Board of Parole. The current Board of Parole has recently taken on the oversight of the parole process and implemented positive parole guidelines. It should be noted that the current board has a high national ranking among states. And that's absolutely true. The first change in LB130 would require that starting in 2023, one member of the board must have a professional experience in treating mental illness or substance abuse. Many states like Nebraska have specific criteria in their law regarding the background of board members. Some states require individuals to have experience in the law, criminal justice, and human resources. Iowa requires one member to have a counseling background. Montana requires one member to be a mental health professional. Due to the increase in behavioral health issues in our criminal justice system and especially in our correctional system, it would make sense to have a member with training and experience with these issues.

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Second change would require the board to elect its own chairperson. At least five states allow the parole boards to choose their own chair. In 2015, the Legislature made the Nebraska Board of Parole an independent agency. This procedural change would enhance the board's independent status. LB130 would require the board members to elect a chair to a four-year term. The third change would limit each member's appointment to one term of eight years. Currently, board members are appointed to six-year terms and can be reappointed to additional terms. There have been concerns for some time, whether real or perceived that a board can face political pressure because it makes decisions that can be heavily scrutinized and politicized. Eliminating any concerns about a board member's eligibility to be reappointed based on a previous parole decision might grant members an even larger degree of independence in the performance of their duties. In closing, I want to thank the current board for its work on behalf of our state. Theirs is not an easy job to be sure. I suspect the members seldom feel their work is appreciated. My hope is LB130 will start a discussion that may result in enhancement to our parole system. Thank you, Mr. Chairman.

**LATHROP:** Very good. Any questions for Senator McCollister? I do not see any. Thanks for your introduction. We will-- oh, I'm sorry, Senator Geist does have a question.

**GEIST:** Could I ask a question? I, I just want to point out the one thing that would concern me about this is that what we experience in our own jobs, and that is the benefit, the benefit of institutional knowledge. And, and that's my, that's my concern here. I think there's a benefit in, in maybe being reappointed. I understand what you're concerned about. But on the flip side, being reappointed and knowing having reviewed a case four years ago and being able for that to come back up and review it or maybe six years ago and review it again. I think there's some benefit to remembering that and maybe being able to compare. I know it might be in the paperwork, but knowing that individual, knowing the case, I just think there's some benefit to that. Do you have a thought?

**MCCOLLISTER:** I'm amenable to any changes, Senator, that may be appropriate. There is some benefit, however, to one, one term and, and, and you're gone so. That's something we should talk about in the committee and if that would enhance the ability of the bill to move on, I would sure consider it.

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**GEIST:** OK, thank you.

**LATHROP:** OK. I don't see any other questions. Thanks for introducing LB130 and bringing it to the committee. Proponent testimony. Good morning, welcome.

**SPIKE EICKHOLT:** Thank you. 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 LB130. I want to thank Senator McCollister for introducing this bill. I just want to talk to one point or one proposal that the bill suggested because I think-- because we think it's important and that is the requirement that one of the parole board members have some sort of experience as a professional treating mental illness or substance abuse. Right now, the qualifications that I think that Senator McCollister mentioned some of them, other than the requirement that at least one member be female member of a minority group and have a professional background in Corrections, the only other real qualifications in statute is that the board members have good character and judicial temperament, which are all very good qualifications, of course. But one of the things I think that the committee is probably appreciative of, if you spend any time looking at crime, criminal justice, prosecution of crime, corrections at the jail or prison level, you'll see this reoccurring theme of a high prevalence of people who have substance abuse problems and people with mental illness. I was able to find a statistic from 2018 that 56 percent of the people in our prison system have at least a diagnosis of some mental illness. That your jail, your jail officials, your county board people will tell you the number of people we have in jail who have substance abuse and mental health problems. And that's really something that's a prevalent theme, if you will, or somehow is intertwined with our corrections system. So I think it would be natural that somebody's on the parole board that previewing people who are going to be placed back in the community would at least have some sort of appreciation and experience with that, with the issues of mental, mental illness and substance abuse. I think it's important not only for the review of the offenders appearing before the parole board, but it's important for the parole board members to understand the needs of the different people who are going to be on parole and it would also be important for the-- for our parole board to know what they could be asking for from the Legislature to better assist them in doing their job. So I just want to highlight that component of the

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bill. The other two suggestions that are contained in LB130 are also good. And we would encourage the committee to advance the bill.

**LATHROP:** OK. Any questions for Mr. Eickholt? Senator McKinney.

**McKINNEY:** Thank you, Spike. Couple questions. Have you seen any situations where there may be some type of bias from board members on, on the parole board?

**SPIKE EICKHOLT:** In my practice, I've been in front of the parole board a few times with clients, and I was thinking about that this morning. In both of those cases, my clients were really just not well positioned, really, frankly, to be in front of the board. So I can't really get a good measure. I have heard that before, though, that, that there is a trend against people of color being granted or denied parole. I don't know if the, the statistics generally show that and I have not experienced that myself directly in my practice.

**McKINNEY:** Do you think there would be a benefit to have fresh eyes on different situations in different cases?

**SPIKE EICKHOLT:** I think so. I, I hear what Senator Geist talked about the importance of experience and institutional knowledge, and that is key. But at the same time, people tend to get stuck in their conventional ways and just do things because that's way the things have always been done and having new ideas, new people at the table, you can get sometimes different solutions.

**McKINNEY:** OK. Do you think there, besides adding someone else to the board, do you think there's a need for the parole board to re-- have, have better strategic planning for the future to-- about the way they operate and the way they look at different cases?

**SPIKE EICKHOLT:** I think so. I think there could be some improvement. I know Senator Pansing Brooks has done some bills before to kind of streamline or build some efficiency between the way the Board of Parole works with the Department of Corrections as far as people appearing before the Board of Parole. I think that could be improved upon.

**McKINNEY:** All right.

**SPIKE EICKHOLT:** It's not necessarily what the bill does--

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**McKINNEY:** Yeah.

**SPIKE EICKHOLT:** --but if that's an area that could be looked at.

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

**LATHROP:** I do not see any other questions, but thank you for your testimony this morning. Anyone else here as a proponent of LB130? Anyone here in opposition? Anyone here in the neutral capacity? Senator McCollister. We do have one letter-- pardon me, two letters, position letters, one position letter is a proponent and one position letter is neutral. We have no written testimony this morning. Senator McCollister, you may close.

**McCOLLISTER:** Thank you, Chairman Lathrop, members of the committee. As I expressed to Senator Geist, I'm willing to amend this bill. I think that mental health component is the most important aspect of the bill. And, and perhaps for easy passage, maybe we would simply make that requirement only. Thank you.

**LATHROP:** I do not see any questions. Senator Geist, do you have a question?

**GEIST:** No, I don't.

**LATHROP:** OK.

**GEIST:** I don't. Thank you.

**LATHROP:** All right. That will close our hearing on LB130 and bring us to LB269, also a McCollister bill.

**McCOLLISTER:** I spend half my life here, I think.

**LATHROP:** It feels like it to us, too. [LAUGHTER] Senator, you may open.

**McCOLLISTER:** Thank you, Chairman 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 reside in the 20th Legislative District in central Omaha. It's no secret that Nebraska's prisons are past capacity. LB269 is another bill I think could help alleviate pressure on our already crowded prison system. This bill would add two duties to the Board of Parole's purview. In



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current law, the board reviews the record of all committed offenders within three years of their earliest parole eligibility date. This first duty under this bill could add to this review all those committed offenders who have been incarcerated for over 30 years, 30 years, three decades. The second duty added under this bill would require the board to annually publish a list of committed offenders over the age of 60 who have been convicted of nonviolent offenses as determined by the board, have a high-risk medical condition as determined by the board, and could, could be considered for early parole. This need-- this list need not include specifics about any committed offenders' medical conditions, and only serves as a housekeeping provision that would help the board to grant parole to more people who are unlikely to commit future crimes. The intent of these two duties is to identify committed offenders who are the least likely to reoffend and are the most likely to succeed under release under parole. It's not my intent for these committed offenders' HIPAA rights, HIPAA rights to be violated with the publishing of this list. And I am willing to work on any published list to ensure that it does not violate HIPAA. With this in mind, thank you, and I welcome any questions the committee may have.

**LATHROP:** OK. Any questions for Senator McCollister? I see none.

**McCOLLISTER:** I'm going to waive--

**LATHROP:** OK, thank you,--

**McCOLLISTER:** --waive my closing.

**LATHROP:** --Senator. We will take proponent testimony at this time.

**SPIKE EICKHOLT:** 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 LB269. I want to thank Senator McCollister for introducing this bill. The bill is fairly straightforward, and I think it touches on at least a point maybe that was, that was debated by this committee yesterday when Senator Flood did his bill with respect to the cost of incarcerations being announced by the judge at sentencing. And that is when you have people in prison for a long time, even if they commit a, a violent or a heinous crime, at some point when people get to be a certain age and they get to be older, they become less of a threat to the community. One of the things I--

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that was impressed of-- impressive about this bill is that list. I understand that Senator McCollister's been approached or is concerned about maybe violating HIPAA. But I think if the public has some sort of idea of who we have in prison and perhaps what it's costing the community and the state to house those people that might result in some sort of pressure to consider actually paroling or releasing people who are a certain age, who are no longer a threat, and are really toward the end of their life because we do have a certain number of offenders. I mean, you see on a somewhat regular basis and I know this is anecdotal, but every two or three weeks somebody's dying in prison, who's old and has some sort of mental or has some sort of physical ailment. And many times they were serving a life sentence or something close to a life sentence. And many times it's for something bad. But the reality is, I think the public would understand perhaps why it would make good policy not to let our prisons become hospice centers, necessarily, at exceeding-- at expensive cost to the state and many times not necessarily humane for those people who are at the end of their life. And I think that this bill sort of touches on that point. And I think it also addresses another sort of valid consideration. And that is when you have somebody who's been in prison for 30 years, at least they would be reviewed on a regular or prompt basis by the parole board. So I think these ideas are good and we would encourage the committee to consider them.

**LATHROP:** Very good. Thank you, Spike. I do not see any questions for you this morning. A light day for you. Thank you. Any other proponents of LB269? Anyone here to speak in opposition? Anyone to speak in the neutral capacity? Seeing none, Senator McCollister has waived his closing on LB269. We do have, and the record will reflect, we have position letters, actually, two position letters, both proponent. We have no opponent or neutral position letters on LB269. And with that, we'll close the hearing on LB269. And that will bring us to LB499. And Senator DeBoer, you are good to open. Welcome.

**DeBOER:** Been introducing bills in lots of committees this week, it's nice to-- they were nice too, but it's nice to be back home here in the Judiciary. Good morning, Chairperson Lathrop and members of the Judiciary Committee. My name is Wendy DeBoer, W-e-n-d-y D-e-B-o-e-r, and I represent Legislative District 10, which includes Bennington and parts of northwest Omaha. Today, I'm introducing LB499, which would require an annual report on active cases by the Department of Correctional Services, Office of Probation Administration and Division

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of Parole Supervision. As I mentioned last week, I've introduced a series of bills this session dealing with data collection, consistency, and transparency. This is the second and last of these bills that I will be introducing here in this Judiciary Committee. Having easily accessible and consistent data is of utmost importance for us as policymakers when drafting legislation. It's also important for advocates and citizens to have access to this data as they participate in the legislative process. This bill would require an annual report with information on each active case within the purview of the Department of Corrections, Office of Probation and Division of Parole. Information included in this report would be the age, race, ethnicity, and gender of each individual involved in an active case. The report would also include their county of prior residence and citizenship status. Finally, the report would include each individual's event-- offense of conviction, including the felony or misdemeanor classification, and the type of length of sentence-- type and length of sentence imposed. The bill also states that any individual identifying information shall be omitted from the report. Apparently, reported data collection has been sporadic and having the ability to compare one year against another will help us to see trends, especially trends related to race and ethnicity. There will be a testifier behind me who, who works in the area of data collection and research who will be able to more fully describe the possible uses for this data and its importance. But I will say I haven't had the opportunity to speak to all the agencies, so there are probably some discussions to be had there. And I also know that there is a great desire to expand the data that is reported beyond what I've even included here. Apparently, Iowa has a kind of gold standard on this. They have a unique ID for everyone who interacts with the system that they can create longitudinal studies of individuals so it stays with the individual and they can find these things rather than aggregating the data. This is apparently anonymized, but I was still a little nervous about whether there could be misuses of the data and whether, frankly, it would catch me a huge fiscal note. So I didn't go the full measure yet, but I thought we needed this much as a bare minimum to understand what's going on in our system and be able to compare between years. So I ask for your support for LB499.

**LATHROP:** Very good. I appreciate the introduction, Senator DeBoer. Any questions for Senator DeBoer? I see none. We will now take proponent testimony. Before you begin, can I ask you a question? Do you have

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about three minutes of testimony there? I'm going to-- I'm not going to put you on the clock because we have new members in this committee. Maybe you can take a minute at the front end, introduce yourself, and then tell us what you do. You know, what you, what you can do for this committee. Kind of a little bit of background on what, what you're doing at UNO, so people know the resource that you and the folks at UNO are to people interested in the topic of criminal justice.

**RYAN SPOHN:** OK.

**LATHROP:** Welcome.

**RYAN SPOHN:** Thank you. So informally, before I do my formal testimony, my name is Dr. Ryan Spohn, I'm director of the Nebraska Center for Justice Research. We were created by the Legislature and within the university system in 2014. And we're similar to the Juvenile Justice Institute. We are affiliated with the School of Criminology and Criminal Justice, University of Nebraska Omaha, and we try to work on research projects that assist pretty much anything in criminal justice and Corrections. We were created at the time that prison overcrowding was really being looked at quite seriously. So we take that, obviously, that issue hasn't gone away, so we take that as one of the most important issues that we look at. But I have, including myself, four faculty, staff, researchers that are experts in a number of areas. If you want to know about compassionate release, we can talk about compassionate release. If you want to know how high-risk offenders are determined for probation and parole, we know all about the risk assessment instruments. It's absolutely one of our areas of expertise. So the STRONG-R in Corrections, the LS/CMI in Probation, and the ORAS instrument that's used in Parole, where there is resource both for, you know, literature reviews, you know, anything in the academic literature, but also new original research in the state of Nebraska.

**LATHROP:** So just for people that are new to the committee, we can just pick up the phone and call you and chat with you about a lot of this stuff. Right?

**RYAN SPOHN:** Absolutely.

**LATHROP:** And you can, you can put us on. You have in your department the person that literally came up with the STRONG-R assessment. And,

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and you'll hear that term used a lot because the STRONG-R is used at the Department of Corrections to determine people's risk assessment. You've done studies and presented to this committee on evaluating the-- what's it-- the post-release or the--

**RYAN SPOHN:** Vocational and Life Skills Program.

**LATHROP:** --the Vocational and Life Skills Program. We have a, a grant process. Grants are awarded to different groups. For example, the 180 program at Metro Community College. The Bristol Station is one of them. We heard about that in Senator Wayne's bill yesterday. You've also done studies on the sex offender registry and a tremendous resource. And all you have to do is pick up the phone and, and give them a call. And if they haven't done research on it, they can probably tell you who does or where to find information as we try to work through a lot of the Corrections- related issues. So tremendous resource for those interested in criminal justice. So we appreciate you being here today. With that, we'll have you begin your testimony. Thanks, Doctor.

**RYAN SPOHN:** Thank you. Good morning, members of the Judiciary Committee. My name is Dr. Ryan Spohn, spelled R-y-a-n S-p-o-h-n. I'm testifying today as director of the Nebraska Center for Justice Research at the University of Nebraska Omaha. The views I'm sharing today are my own and do not represent an official position of the University of Nebraska. "No data. No change." That is the tagline for one organization called Measures for Justice, whose mission is to make criminal justice data accessible to citizens and lawmakers for system improvement. The simple phrase also applies to the proposed data collection activities outlined in LB499. Data is what allows us to evaluate the operations of our criminal justice and correctional systems so that we can hold informed conversations regarding methods for improving public safety through effective and cost-effective community corrections and institutional corrections practices. A particular concern for the just operation of our correctional agencies is the role of race and ethnicity for both processes and outcomes. Last year, at the request of the Planning Committee for the Nebraska Legislature, I collaborated with the Center for Public Affairs Research at the University of Nebraska Omaha to produce a report from available data on race and ethnic disparities in adult law enforcement, criminal justice, and Corrections. This report indicated that from 2014 to 2019, African-Americans in Nebraska were arrested at

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a rate nearly four times their representation in the population, and Native Americans were arrested at a rate three times the represent-- representation in the population. Moreover, African-Americans were imprisoned at a rate more than five times their representation in the Nebraska population in 2018. Given that data show racial inequity across multiple points of contact with the criminal justice system, we argue in that report that future data analysis and research should examine system-wide racial and ethnic disparities. We include a figure in that report that includes 15 points of contact with law enforcement, the courts, and Corrections. However, publicly available data allowed to us examined only four of those 15 points of contact. A more thorough examination of additional data points will improve the transparency of these important government services, as well as facilitate our ability to identify sources of racial and ethnic disparities in our justice systems, such as preexisting differences and individual life circumstances, implicit bias by criminal justice staff, and differential access to legal counsel. Systematic data collection will allow for tracking of trends in data and determining the impact of reform efforts on subsequent racial and ethnic disparities. In summary, data is critical for monitoring the performance of our criminal justice system, determining what is working and what does not, and identifying interventions or system reforms that are effective, cost-effective, and improve public safety. In previous trainings on performance measurement in Nebraska, I've used an analogy that resonates with many citizens. We are more than happy to judge our young athletes based on all sorts of metrics, such as kills achieved by volleyball players, yards produced or tackles achieved by football players, and we even measure progress in inches on nationally televised broadcasts towards the elusive first down marker. Just as we hold these young athletes accountable to every metric imaginable, data should be publicly released and analyzed to measure the progress of the important work of supervising and rehabilitating individuals in our criminal justice and correctional systems. Consequently, I support LB499 as one effort to increase disclosure and transparency of justice data. Thank you and I'd be willing to field any questions.

**LATHROP:** OK. Any questions for Dr. Spohn? Senator Morfeld.

**MORFELD:** This is a little bit off topic, but in terms of the research that you do, is there any data points on prosecutorial actions or discretion or anything like that?

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**RYAN SPOHN:** Not prosecutorial. I'm aware of the bill that you introduced this year. And you know, that data is rare. It's-- prosecutors have a lot of autonomy and a lot of discretion, and we do not have a lot of data tracking those activities. So, no.

**MORFELD:** OK, thank you, Doctor. Appreciate it.

**LATHROP:** I do have a question for you, and the committee has not yet been given a tour by Mike Fargen over at the Crime Commission on the data. I don't know if it's a computer or a program, whatever the work that Mike has been doing over there, that can yield a great deal of information from the justice filings. Have you had an opportunity to see that or take sort of the tour of the Crime Commission?

**RYAN SPOHN:** I have seen, like, screenshots of that system. I'm actually on the committee that would review research applications to use that data. So I'm somewhat aware of it. I think, I think it will have some good applications. It, it ties together some data systems that have not previously been, been tied together, similar to in the introduction, what they're able to do in the juvenile justice system in Iowa, where they can track an individual as they move from system to system, from the courts to probation, for instance, you don't lose that person. A difference between what is happening there and what we're thinking, how I would envision LB499 or similar bills that requires a research application and approval of that application from assume it would be a, a state-affiliated researcher. And so any, any information that came from that would be individual snapshots and requests rather than, for instance, if we had this data in place five years ago, we could look, what are, what are trends in racial disparities in our, in our Department of Corrections over the last five years? Are they going up? Are they going down? Or are they flat? What's the impact of COVID? Did that increase disparities? Lowered it? If we have that data out there publicly where each of you could just click on the Internet, and here's where that data is listed. There's those trends. And I think that's very, very useful without the need to request a study, fund a study, request-- make a data and, and research request to the Crime Commission and use that data. So I think they're both valuable. But this would be-- I think we could do more of like a dashboard with this where we could just put up here's the trends, here's where we're going.



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**LATHROP:** That was my concern, that we weren't reinventing what's already been done over at the Crime Commission. You're saying this still has value notwithstanding--

**RYAN SPOHN:** Yes.

**LATHROP:** --all the work that Mike's done over there.

**RYAN SPOHN:** Yes.

**LATHROP:** OK. Any other questions for Dr. Spohn? I don't see any. Did you hand something out with your contact information today?

**RYAN SPOHN:** I did not.

**LATHROP:** Hey, you know what, drop your cards by or have somebody drop them off. I, I just want to make sure everybody has access to you. And we very much appreciate what you and the institute do for informing policymakers. So thanks for being here. Next proponent. Anyone else here to speak in support? Anyone here in opposition? Anyone here in the neutral capacity? Seeing none, Senator DeBoer, you may close. We do have two position letters, both in support or proponent letters.

**DeBOER:** I just wanted to make one more comment, and that is that one of the things when we've been working in this area that we hear is when we see the racial disparities in the system, someone will say, well, it's because of X factor or it's because of X reason. And we don't actually know if it is because of X or Y reason, because we don't have the ability to look at the data to determine that. So what I'd like to be able to do is have the data since we can and figure out is it because of X. If we control for X, if we control for Y, what does the data say? So that was one more thing I wanted to add. That's all I have to say.

**LATHROP:** And this doesn't have a fiscal note?

**DeBOER:** Does it have a fiscal note? A small one.

**LATHROP:** OK. Department of Correctional Services, our friends at the department. OK, well, I don't see any other questions, Senator DeBoer, so thank you for introducing LB499. That will close our hearings on LB499, and our hearings for this morning.



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[BREAK]

**LATHROP:** Good afternoon and welcome to the Judiciary Committee. I have a little intro that I need to read. Some of you have heard this before, it takes about five, 10 minutes. And by the time I get done, my committee is usually in full attendance, so that explains when some of the chairs are empty up here. They have heard it before. My name is Steve Lathrop, I represent Legislative District 12 in Omaha, and I Chair the Judiciary Committee. 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 complicate-- 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 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 the [nebraskalegislature.gov](http://nebraskalegislature.gov). We will follow COVID procedures, 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 only when necessary to attend the bill in progress, the hearing in progress. The 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 each bill to allow time for the public to move in and out of the hearing room. We request that you wear 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 seating capacity, the entrance will be monitored by the Sergeant at Arms, who will allow people to enter the hearing room based on 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 of an overflow room this year for hearings which may attract many testifiers and observers. For hearings with large attendance, we ask only testifiers enter the hearing room. We ask that you limit or

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eliminate handouts this year. Due to COVID concerns we're providing two options this year to testify at a committee hearing. First, you may drop off written testimony prior to the hearing. Please note the following four requirements must be met to qualify to be on the committee statement. One, the submission of written testimony will only be accepted the day of the hearing between 8:30 a.m. and 9:30 a.m. here in the Judiciary Committee hearing room. Two, individuals must present their written testimony in person and fill out a testifier sheet. Three, the testifier must submit at least 12 copies. And four, testimony must be 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 on the committee statement only if all four of these criteria. And as always, persons attending a public hearing have an opportunity to give verbal testimony. On the table inside the doors, you'll find yellow testifier sheets. Fill out a yellow testifier sheet only if you're actually testifying before the committee. And as you fill it out, please print 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 did not wish to testify but would like to record your position on a bill. The sheet will be included as an exhibit in the official hearing record. If you're 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 a 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 today with the introducer's opening statement, followed by proponents of the bill, then opponents, and finally, anyone wishing to be heard 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 names and spell them for the record. If you have copies of your testimony, please bring up at least 12 copies and give them to the page. If you are submitting some testimony on someone else's behalf, you may submit it for the record, but you will not be allowed to read

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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 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 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, I'd ask you to look at your cell phones and make sure they're in the silent mode. A reminder, verbal outbursts and applause are not permitted in the hearing room. Since we've gone paperless here in the Judiciary Committee, senators will instead be using their laptops to pull up documents and follow along on 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 they may have bills to introduce in other committees or meetings to attend to. With that, we'll have the other committee members introduce themselves, beginning with Senator DeBoer.

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

**BRANDT:** Good afternoon, I'm Tom Brandt. I'm in the 32nd District: Fillmore, Thayer, Jefferson, Saline and southwestern Lancaster County.

**PANSING BROOKS:** Hello, Patty Pansing Brooks, Legislative District 28, right here in the heart of Lincoln. And I'm the Vice Chair of Judiciary.

**LATHROP:** It's you.

**GEIST:** It's me. Suzanne Geist, District 25, which is the east side of Lincoln and Lancaster County.

**LATHROP:** Thank you, Senator Geist. Assisting the committee today are Laurie Vollertsen, our committee clerk; Neal Erickson and Josh Henningsen, our two legal counsel. And the pages this afternoon are Ashton Krebs and Samuel Sweeney, both students at UNL. And with that, our agenda includes gubernatorial appointments, which is our obligation to hold confirmation hearings. Our first one is Ros Cotton from the parole board. And Ms. Cotton, you may come forward. I assume you have some opening remarks. Good afternoon and welcome.

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**ROSALYN COTTON:** Good afternoon, Chairperson Lathrop, 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'm here today seeking confirmation of my reappointment by Governor Pete Ricketts as the chairperson of the Board of Parole. I've had the privilege of serving the state of Nebraska in the capacity since January 1 of 2015. My service on this board started in 2005. Senators, I have taken the responsibility as a chairperson seriously. I have conducted numerous offender reviews, hearings, parole review hearings, public speaking engagements, mentoring and leadership programs while managing the administration operation of the agency. First and foremost, my decisions and efforts focus on public safety and the successful reentry of individuals back into the community to become productive and responsible citizens. I have accomplished several goals since my appointment to this position. First, I continue to make sound decisions to consider individuals for parole. I look at the individuals' institutional behavior. Does it support being paroled? Did they participate in all the recommended programs and treatment and did they provide a realistic parole plan that readies them to become a productive, law abiding citizen? Secondly, I work closely with the Department of Correctional Services to schedule offender reviews and hearings in order to ensure individuals are paroled accordingly. Lastly, I closely manage the Division of Parole Supervision. These are committed teammates who share the same mission to keep our communities safe. They support the parole board's decisions by providing services, values for individuals who are paroled. They make sure our clients are receiving community programming and necessary incentives to assist them in successfully completing parole. Together, we're dedicated to serving our clients and maintaining public safety. I strongly believe my demonstrated commitment to public safety warrants my confirmation today. In addition, the most rewarding days in this position are when, as a result of our teammates' successful efforts, the board can sign off on the completion of parole certificates. Senators, I will close and ask for your support for my reappointment and confirmation to this position. Parole is rewarding, and I am honored and humbled to have this opportunity to serve the state of Nebraska. Thank you, Senators. And at this time, I will welcome any questions.

**LATHROP:** OK. Senator DeBoer.

**DeBOER:** This is not so much a question about your qualifications. But you're here and you have expertise, so I thought I'd ask you. What

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difference did you see manifest when we had to enter the prison overcrowding emergency? What did the parole board do differently?

**ROSALYN COTTON:** Basically, I think one of the things that we looked at is back in February of 2018, one of the things that I took into consideration is that prior to 2018 we were looking at individuals for parole every year. And one of the advantages that we did was we went into looking at those individuals who were parole-eligible within two years, so we started scheduling those two year hearings out. That was the big difference for the prison overcrowding. Actually, we were already doing that prior to the overcrowding.

**DeBOER:** So when the overcrowding emergency was declared, did you all take a look back at any of those or rereview any of the, the parole-eligible folks that had not previously been paroled?

**ROSALYN COTTON:** Senator DeBoer, that's a very good question. And I will say to you, yes, that was one thing that was taken into consideration, because even though we were able to move those people that had within two years, we were able to move those hearings up in order to be able to get them prepared for transition. And that was one of the bigger things, once again, that we were already doing at that time.

**DeBOER:** I know that Senator McCollister, I think, had a bill. It was in this room, so it was probably last year, that suggested that there be more hearings, more parole hearings more often, something like that. And there was a bunch of testimony of just people from the community that said, you know, the parole board isn't meeting enough, something like that. Have you guys-- I don't think we passed that bill, but I do know that there was a good discussion about that. Have you all sought to, to meet more regularly or something based on that? There was apparently a gap in when you had met. And I know COVID probably made that difficult as well, but I just thought I could ask you how your meeting schedule is going.

**ROSALYN COTTON:** Well, our meeting schedules are going well and COVID had nothing basically--

**DeBOER:** Good. Great.

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**ROSALYN COTTON:** We were rolling. As a matter of fact, I have a mentor out of Kentucky, the chairperson out of Kentucky, and that was one of the same questions that I had. And they were on the same page. We didn't stop. We kept moving, we continued to do that. We never had to worry about the hearings. We may have been postponed due to the inclement weather, but we were able to still continue our reviews and our hearings. And based on that, there was no problem with us being able to set those hearings and those reviews accordingly.

**DeBOER:** How often do you have hearings?

**ROSALYN COTTON:** We have hearings the last two weeks of every month.

**DeBOER:** OK.

**ROSALYN COTTON:** Ten institutions, we do three of those institutions via conference-- two of those actually. But we actually meet and go to each one of those institutions except for WEC and Tecumseh.

**DeBOER:** OK, well, thank you.

**ROSALYN COTTON:** Thank you, Senator.

**LATHROP:** Senator Pansing Brooks.

**PANSING BROOKS:** Welcome, Ms. Cotton.

**ROSALYN COTTON:** Hi, Senator Pansing Brooks.

**PANSING BROOKS:** Welcome to Judiciary. So just a few things about what's been happening. In September, the Omaha World-Herald reported that the parole numbers have been falling. And do you have a reason for that?

**ROSALYN COTTON:** This is what I will say, and I always speak for myself. When you look at sentencing, when you look at those dates that we set those two years out, if they're eligible, we consider them for parole. And if they're not within that two years, we basically will view them accordingly.

**PANSING BROOKS:** OK, so you're saying that it's, it's something about sentencing?

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**ROSALYN COTTON:** Well, let me give you an example. If you have a parole eligibility date of February of 2023, we're going to set you for that February 2023 hearing. Unfortunately, we can't parole you until you're eligible for that date. So it varies, and depending on the, the number of individuals that are eligible and ready to go at that particular time. I will say to you, for this month we have 135 people scheduled for hearings. And out of those 135 people, you know, there may be one or two people that may not be eligible to walk out, but we will just defer their hearing, keep them on hearing status and then work with them according to that basic hearing date.

**PANSING BROOKS:** So are you indicating there's something about the pipeline that's caused a sudden sort of halt in, in the, in the parolees?

**ROSALYN COTTON:** I won't say that it's necessary a pipeline. I will just basically say that based on the individuals that we see and we set them for those hearings, when those dates come up and they're ready to go, they're paroled.

**PANSING BROOKS:** OK, well, how many, how many were-- do you know how many were paroled last year, last fiscal year?

**ROSALYN COTTON:** Well, I would say we probably could, I could probably get you that number, but I would say that we've been very consistent between 1,200 and 1,300 individuals. For this year, we have approximately 1,288 people on parole.

**PANSING BROOKS:** And how does that compare with the previous fiscal year?

**ROSALYN COTTON:** I think it's pretty much the same to a certain extent.

**PANSING BROOKS:** OK. What, what kind of communication do you have with the Department of Corrections?

**ROSALYN COTTON:** Department and Correctional Services is our partner. We have very good communication with them.

**PANSING BROOKS:** OK, I presumed you were going to say that. So I, I guess with that question then, I want to know do-- how do you communicate with them when you deny parole to somebody?

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**ROSALYN COTTON:** Well, one of the things that we would deny parole on is institutional behavior. For the most part, that's huge. It has nothing to do anything more with institutional behavior. For the most part, most of those individuals who even have poor institutional behavior, we still consider to work with them. So to communicate with the Department of Correctional Services, it would be that the case managers would probably review their cases and see if there's anything that they can help them with or even talk to them about their institutional behavior.

**PANSING BROOKS:** So what about when you deny it because of lack of programing?

**ROSALYN COTTON:** We very seldom deny them lack of programing. We will keep them on hearing status to, to complete the program. However, what usually happens is if the board denies them parole because of programing is because somewhere down the road they have refused that programing.

**PANSING BROOKS:** OK, but the problem is, I guess it would be nice for us to be able to know why that is happening. And so how do, how do you communicate that it is because of a lack of programing?

**ROSALYN COTTON:** We keep data on that, ma'am.

**PANSING BROOKS:** OK. And do you, can you provide that to us?

**ROSALYN COTTON:** I sure can provide that to you.

**PANSING BROOKS:** And so because I think you knew that I had a bill last year that said that we're hoping that you all communicate with each other and that you would allow-- have the Department of Corrections know what, whether they're receiving core programing, because it seemed that there was a disconnect between both of you. And maybe it's just we didn't get you both in the room at the same time. But it seemed like that was part of the problem, is that we weren't getting answers on, on the fact that if there wasn't-- if there were core programs that were required that were not given to the inmate and they were not allowed to get out because of one of those core programs, then that would affect what's going on with our, I mean, that affects the overcrowding issue and keeps people in longer.



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**ROSALYN COTTON:** No, the board works very well with the Department of Correctional Services. And when it comes to programing, we actually review the cases and at their review we communicate with the individual and say, you know, this is the program you need to complete. And there are often times that we receive letters from the individuals and we respond or else we'll follow up with the letter from one of the individuals from the Department of Correctional Services.

**PANSING BROOKS:** OK, what do you need from this committee to get more people on parole, who are parole-eligible?

**ROSALYN COTTON:** Senator, I think the best thing that the, that again, I always have to speak on my behalf only, is that we continue to do the work that we're doing. We're doing-- I think the board is doing a great job. I think the Division of Parole Supervision is doing a wonderful job in keeping our community safe. I just think that we continue to do more than what we're doing.

**PANSING BROOKS:** No room for improvement?

**ROSALYN COTTON:** Well, you know, I think one of the things that I'm actually trying to take a look at right now is there's this big thing about high-risk individuals. We are going back and looking at those individuals. And if they can become institutional ready, then we will continue to take a look at those. But other than that, I think we're doing a great job.

**PANSING BROOKS:** OK, thank you, Ms. Cotton.

**ROSALYN COTTON:** Thank you, Senator Pansing Brooks.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Ms. Cotton, for testifying today. A really simple question. So of the percentage of people-eligible that you hear on a monthly basis, what percent are denied?

**ROSALYN COTTON:** A very, very small percent. And the reason why I say that is it's the goal, it is our mission to parole those individuals who are best suitable for community placement on parole. So I would say a very, very small percentage, and I can get you that exact

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number. But just off the top of my head, it's a very small percent. I mean, like I said earlier, the worst thing that happens is an individual who is not maintaining that good institutional behavior, that's a big no-no, because if they're not doing what they're supposed to in the institution, then they cannot-- they may possibly not do that same thing in the community. So we have to monitor those, and we just continue to review their cases until they prepare themselves for transition. And most of the time, that happens.

**BRANDT:** OK, thank you.

**ROSALYN COTTON:** Thank you, Senator.

**LATHROP:** I have a couple of questions. You're not in front of this committee, I don't know that you, you aren't going to be here all year. So we do sometimes take advantage of having you here, not in a bad way, but, but it gives us an opportunity to ask some questions. We had a couple of bills this morning, and I wanted to ask you about, sort of follow up on a couple of them. One, Senator McDonnell introduced a bill on case standards for parole officers. And the bill originally said the high risk or the very high risk, whatever that highest category is, would have a 20 to 1 caseload for parole officers. It was amended to 24, or he offered an amendment because that's your standard. Can you tell us what your caseloads look like and why, if Senator McDonnell puts a bill in to establish a standard, why that would result in the fiscal note? That tells me that, that whatever standards he's offering, you're not there yet or you wouldn't be giving us a fiscal note with it. Maybe you can tell me I'm wrong about that. But talk to us about the ratio of parole officers to parolees.

**ROSALYN COTTON:** Chairperson Lathrop, this is what I will say to you. I listened to that testimony this morning. We have approximately 35 people on a caseload. The difference is, is that we have a mixture. We may have 15 people high-risk. So we have a combination of moderate, low-risk and one, one and one caseload. The only thing that I can say is, if that-- if we parole more high-risk individuals and we need more officers to do that, we would be able to manage that. But as of today, we will just continue to monitor the caseloads that we have with those individuals that are high-risk. One of the things that we have done is that we have all the officers that are specialized officers, so they're able to be able to monitor and maintain a caseload. 2024, I

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mean, that's something that's probably manageable if they're all high-risk, and we are not set up for, [INAUDIBLE] a caseload of all high-risk individuals. So we're going to do a combination, and that's the way we would address that if the bill was passed.

**LATHROP:** So are you going to need more parole officers if his bill passes or are you not?

**ROSALYN COTTON:** I would--

**LATHROP:** I would assume if all the high-risk guys go to more, I'll say they're probably more seasoned parole officers that are going to handle the high-risk people.

**ROSALYN COTTON:** They're going to be spread out. You're not going to have one parole officer supervising 24 high-risk individuals. They're going to all be spread out amongst the parole officers. So my point is, is that if we parole more high-risk individuals, then that caseload would be managed accordingly, because we're still going to have to have individuals to be monitored.

**LATHROP:** So McDonnell's bill didn't deal with getting more people on parole, it had to do with having officers, some of whom will be dealing with the high-risk people, and some of them may be dealing with the low-risk people and what the ratio of offenders to-- or parolees to officers are.

**ROSALYN COTTON:** I guess the only thing that I questioned was that is this bill more guided towards probation? Because for us, we would monitor what we have from that perspective. So if we had more high-risk individuals, then we would be able to maintain that accordingly. And if we had to hire more officers with those high-risk individuals, then that's what we would do.

**LATHROP:** OK, how are you doing on transitional housing?

**ROSALYN COTTON:** We're doing wonderful in transitional housing.

**LATHROP:** No problems?

**ROSALYN COTTON:** You know--

**LATHROP:** You got all the transitional housing you need?

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**ROSALYN COTTON:** I won't say that we have all the transitional housing we need. I will say this, the individuals who are paroling and they have a transitional place to go to, they're working on that from the inside. And then when they get to us, it's already been approved for them to transition to. The only thing that I, as one board member, think of on a day-to-day basis is that structured, that structured transitional, structured transition, those individuals who perhaps, you know, graduate from a program that they would need more structure. Those are the kind of individuals that I actually keep my eyes on.

**LATHROP:** OK, so if I'm going back to my house that's been rented while I've been inside and now I've been paroled and I'm going back to my house, no problem, right?

**ROSALYN COTTON:** Depends on who you are.

**LATHROP:** Or what neighborhood I live in, perhaps. But I'm not talking about the people that are going back home, but the people who need that structure and who need, perhaps because of, you know, the challenges with staying sober and straight or the challenges with mental health, they need to be in a structured transitional housing. How are you doing or how is-- how are you set for transitional housing?

**ROSALYN COTTON:** Because that starts on the front end, if they're parole, if they're parole-considered at that particular time reentry works with them, and then once the board sees them, we will-- the parole officers have already investigated that residence.

**LATHROP:** Maybe I'm not being clear. Do you have enough structured transitional housing for the parolees that need it?

**ROSALYN COTTON:** At this time? Yes, that I can think of.

**LATHROP:** We had a hearing a year or two ago where we had people who are on the registry, sex offenders that were coming out that talked about the challenges in trying to find housing. How are they when it comes to-- do they have housing they can rely on or go to when they're released?

**ROSALYN COTTON:** The sex offenders have a challenge. The sex offender have a challenge because sometimes certain facilities for them, they don't have that particular structure. So they have to have their own

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basically facility. And we have about two or three of them that we work with. But sometimes that can be a challenge for them.

**LATHROP:** OK.

**ROSALYN COTTON:** For sex offenders.

**LATHROP:** OK, that's, I think, all the questions I have for you. We appreciate your service. We know that the job of parole is important in managing risk, right? We can't have a zero-risk tolerance or no one will ever parole. And so I know you're over there managing risk, and we appreciate that it's not an easy job. But thanks for what you do.

**ROSALYN COTTON:** Thank you.

**LATHROP:** Any other questions for Ms. Cotton? I don't see any.

**PANSING BROOKS:** I'm looking at Senator Pansing Brooks, I think she had another question for me.

**LATHROP:** She oftentimes is on the verge of the next question. But I think we're, I think we've asked all we're going to ask today.

**ROSALYN COTTON:** Thank you, Senator.

**LATHROP:** Thank you, Ms. Cotton.

**ROSALYN COTTON:** Thank you.

**PANSING BROOKS:** Thank you.

**LATHROP:** Anyone here is a proponent of Ms. Cotton's nomination? Anyone here that cares to speak in opposition? How about the neutral capacity? Seeing none, do we have any letters? OK, that will close our hearing on Ms. Cotton's nomination and take us to Ann Ames, who is nominated to be on the Crime Victim's Reparation Committee. You may come forward, Ms. Ames, and welcome to the Judiciary Committee.

**ANN AMES:** Good afternoon, Senators. Thank you for having me.

**LATHROP:** Move a little bit closer, and if you don't mind speaking a little bit louder because the Chair can't hear that well.

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**ANN AMES:** Sure. I don't really have a prepared statement. This is the first time that I've been nominated to this committee. I'm very excited about it. I'm a lifelong Nebraskan. I currently am the deputy administrator for Lancaster County. So we do a lot of work with Corrections, obviously, it's a big part of my job.

**LATHROP:** OK, are you on there now or is this going to be your first appointment?

**ANN AMES:** This is my first time.

**LATHROP:** OK, you're familiar with what they do.

**ANN AMES:** Yep.

**LATHROP:** Tell us a little bit about your background.

**ANN AMES:** I have a degree in communications from the University of Nebraska and a master's in public administration from the University of San Francisco. Prior to working for Lancaster County, I was in nonprofit for probably 15 years, and I am the mother of a senior in high school.

**LATHROP:** You got time for this job?

**ANN AMES:** I think so.

**LATHROP:** OK.

**ANN AMES:** I mean, I'm going to have a lot of time on my hands pretty soon.

**LATHROP:** Yeah, you will pretty soon. It won't end, it won't end the worry and the concern, I can assure you of that. Are there any questions for Ms. Ames? I don't see any.

**ANN AMES:** OK, thank you so much.

**LATHROP:** Thanks for being here.

**ANN AMES:** Sure.

**LATHROP:** Appreciate you coming down. Anyone here to speak on the appointment of Ms. Ames to the Crime Victim's Reparation board? Seeing

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none, that will close our hearing on Ms. Ames' nomination and bring us to Jeff Davis. Good afternoon and welcome.

**JEFFREY L. DAVIS:** Thank you, Mr. Chairman. Jeffrey L. Davis, D-a-v-i-s. Members of the committee, I am currently the Sarpy County sheriff and I've been so since 2005. I've been in law enforcement for 47 years in Sarpy County. Back in January of 2012, I was fortunate enough to be appointed to the Crime Commission, and then shortly thereafter was also asked to serve on this committee. I think we do a great service for many of the citizens. I am currently the chairman of that committee. In my latter years, I have over time seen that law enforcement routinely we arrest people, we do the best we can and hopefully, if they've committed that crime, they're convicted. But once the gavel comes down or a jury comes out and finds him guilty or in some cases they're sentenced to death, it's not over. There are victims out there, and none of those things help those victims. I go back to Danny Joe Eberle and Christopher Paul Walden, who are two young boys back in 1983 that were murdered in our county. I'm sure you're familiar with that. Those victims still exist, those families are still torn apart. And so this committee deals with that on a regular basis. We have rules and regulations which sometimes we can't give back as many funds as we'd like to. But it is a vehicle for people that have incurred great financial stress, whether it be funeral expenses or medical expenses, a vehicle for them to come and maybe get some of that money. We give out or administer somewhere between three and four-- \$300 and \$400,000 a year back to those victims. So I look at it as very important. I'm very honored to be on that committee. If you have any questions, I'd be glad to answer.

**LATHROP:** OK, you certainly had a distinguished career in law enforcement. I know that you've watched Sarpy County go from sort of a small community to a sprawling urban area.

**JEFFREY L. DAVIS:** Getting bigger, faster.

**LATHROP:** It's getting very big, very fast. Any questions for Mr. Davis? I don't see any.

**JEFFREY L. DAVIS:** Thank you very much.

**LATHROP:** Thanks for being here. Appreciate it. Anyone here to speak with respect to Mr. Davis' appointment to the Crime Victim's

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Reparation Committee? Seeing none, that will close our hearing on Mr. Davis' appointment to the Crime Victim's Reparation Committee and bring us to Shawn Eatherton.

**SHAWN EATHERTON:** Good afternoon, Mr. Chairman.

**LATHROP:** Good afternoon and welcome.

**SHAWN EATHERTON:** Haven't seen you in a while. Shawn Eatherton, E-a-t-h-e-r-t-o-n, I'm currently the Buffalo County attorney, I've served in that capacity since 2003. I was fortunate enough to fulfill a balance of another person's term on the Crime Victim's Reparation Committee, and so although I haven't, I haven't had the opportunity to serve a full term, it has been a fantastic experience. As Sheriff Davis outlined, you know, really our system isn't set up for the, for the victim. It's just not what the criminal justice system is. But the state of Nebraska has stepped up over the years and at least give it an avenue to give something back to, to try to make the victims whole in some way, shape or form. It certainly isn't perfect, but it is an honor to try to play a role in and to put them back into the best position that they can. So I would appreciate the appointment and would obviously take any questions.

**LATHROP:** OK, Senator DeBoer.

**DeBOER:** Hi, thank you for being here. Since you said you've worked on this before, do you know-- do you usually when you get requests, are you able to handle them pretty quickly?

**SHAWN EATHERTON:** We meet, we meet, we meet quarterly. We meet and it's a-- as far as the actual processing before it comes to out committee, I think it happens fairly quickly. But obviously anything that comes to us on, you know, an appeal or, or something [INAUDIBLE]. So certainly I think if the volume would increase, our need to meet would increase. But there are times when we don't have to meet. So we seem to be able to meet the needs of the, what is available at this point. But certainly the amount of funds is not enough. If that would increase, so would our responsibilities.

**DeBOER:** OK, thank you.



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**LATHROP:** Long as I have you here, Mr. Davis said you, you manage about \$700,000 a year. What percentage does that represent and really what you need to, to take care of all the claims?

**SHAWN EATHERTON:** I can't give an exact, I can't give an exact percentage, but a small percentage. I mean, it's just the-- I mean, part of it is because that we're bound, and Sheriff Davis kind of touched on that, we're bound on some limits, you know. So the requests are way beyond even the limits that we could distribute if it was possible. And so I think there is a, you know, the fiscal reality is we could never meet all of the needs, but right now it would be, it would be a small percentage.

**LATHROP:** So if someone is the victim of a homicide and their family has burial expenses to deal with, do you, you pay those kind of claims?

**SHAWN EATHERTON:** Yes, if they meet-- and there's certain criteria, but yes, if there are, there are areas that are not met by other possible funding sources, then those are the type of resources that are available for.

**LATHROP:** And do you have a cap on what you'll pay?

**SHAWN EATHERTON:** Yes. Yes, that's what I'm saying. There are, there are limits within each category of medical or burial.

**LATHROP:** Where did the resources come from to make that \$700,000?

**SHAWN EATHERTON:** We have two funding stream, well, of course, we have a federal funding stream. And I don't want to botch this, but we also primarily a lot of it comes from prison industries. There's, there's a portion that comes from prison industries. And then I would have to double-check, I believe there's part of the court fee that comes in as well.

**LATHROP:** Is there some of that coming from the people on work release? Do they pay a percentage into the Crime Victim's Reparation Fund?

**SHAWN EATHERTON:** I do not know the answer to that.

**LATHROP:** OK.

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**SHAWN EATHERTON:** That doesn't stick with me as being-- I know a lot of it comes from the prison industries.

**LATHROP:** OK, any other questions for this nominee? I don't see any. Thanks for coming down today.

**SHAWN EATHERTON:** Thank you.

**LATHROP:** We appreciate hearing from you, and thanks for your service. Anybody here to speak in support or otherwise for Mr. Eatherton? Seeing none, that will close our hearing on the gubernatorial appointments for the afternoon and to bring us to LB124, our first bill of the afternoon. And that is a Senator McCollister. Good afternoon.

**WILLIAM HERTZLER:** Good afternoon.

**LATHROP:** You're not Senator McCollister.

**WILLIAM HERTZLER:** I am not. Good afternoon, Chairman Lathrop and members of the committee. I am William Hertzler, W-i-l-l-i-a-m H-e-r-t-z-l-e-r, and I am Senator McCollister's legislative aide, here to present to you LB124. Senator McCollister is presenting a bill to the Natural Resources Committee, so he apologizes, that's why he is not here. LB124 is a simple bill brought to us by the Inspector General that updates specifics relating to the yearly findings produced by their office. As statute stands now, each year, the Inspector General of the Nebraska Correctional System is directed to produce a summary findings from the preceding year. Under LB124, the IG would be given an extra month to complete this summary, which will be further designated as a report under this bill. And the added language would also give the IG a wider scope of material that should be included in this annual report. The Inspector General is planning to testify after me, so I would ask you to defer answer any questions to him.

**LATHROP:** We certainly will. Thank you for your introduction. We don't ask staff questions, so.

**WILLIAM HERTZLER:** Yeah, thank you.

**LATHROP:** Thank you. We will hear from the Inspector General, however. OK, before you start, Doug, how many people here intend to testify on

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this bill? OK, one would be the answer. Let's let Senator Cavanaugh know. OK, welcome, Mr. Koebernick, Inspector General.

**DOUG KOEBERNICK:** Thank you, Senator Lathrop and members of the Judiciary Committee. My name is Doug Koebernick, spelled K-o-e-b-e-r-n-i-c-k, and I work for the Legislature as the Inspector General of Corrections. I want to thank Senator McCollister for introducing this bill. I think Will there, he covered it because it's pretty self-explanatory. One thing I would add is that this idea actually came from Director Frakes a few years ago when he suggested to me that I should push that date back a little bit because they have a restrictive housing report that comes out at the same time as my annual report. And this would allow me to react more to what they have in that and, and anything else that would come up during that time. Right now that I've taken Zach Pluhacek on as the Assistant IG, we're talking about different ways to restructure our annual report to make it more responsive and provide additional information, data and insights to the Legislature and the public. And I think moving this back a little bit would also aid with that. So with that, I'd ask for your support of this bill, this monumental bill.

**LATHROP:** OK, let's see if there's any questions on this bill. Any questions for the Inspector General. Senator Geist.

**GEIST:** Yes, thank you, Mr. Koebernick. There was also an indication that it's going to widen the scope.

**DOUG KOEBERNICK:** I think what he meant was being able to react to that restrictive housing report--

**GEIST:** OK.

**DOUG KOEBERNICK:** --and any other reports that the department would put out at that time period.

**GEIST:** So not anything you don't normally do now?

**DOUG KOEBERNICK:** No.

**GEIST:** OK.

**DOUG KOEBERNICK:** No.

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**GEIST:** All right. Thank you.

**LATHROP:** There you go. I don't see any other questions. Thanks for being here. Any pro-- any other proponents of LB124? Anyone here in opposition to LB124? Anyone in the neutral capacity? Seeing none, LB124 has no position letters and no written testimony was submitted this morning. So that will close our hearing on LB124 and bring us to LB119 and our own Senator Machaela Cavanaugh. Welcome, Senator Cavanaugh.

**M. CAVANAUGH:** Thank you, Chairman Lathrop and members of the Judiciary Committee. I am running between hearings today, I guess. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. I am Machaela Cavanaugh, M-a-c-h-a-e-l-a C-a-v-a-n-a-u-g-h, representing District 6, west central Omaha in Douglas County. I'm here today to introduce LB119. You may remember this bill from last year. Do I need to speak up?

**LATHROP:** No.

**M. CAVANAUGH:** OK. You may, you may remember this bill from last year. LB119 is my attempt to improve the opportunities for women who are incarcerated and youth in the Youth Rehabilitation Treat-- and Treatment Center to bond with their newborns. Research and common sense tells us that bonding with a newborn is essential for that child to thrive and a great way and a great motivator for that mother to care for her child in a way that keeps her out of a YRTC jail or prison in the future. So it also reduces recidivism. I have visited with the women's prison and their nursery program. I commend them for having the nursery program. When I was there, I saw potential for more women and babies to be in that program. So where a facility has a nursery program, the goal of LB119 is to maximize the use of that program. Part of maximizing the use of the nursery program, I believe, is making pol-- policies public. This will better inform women and their families of the administrative policies surrounding the nursery program, the parental rights of the mother, how lactating mothers can provide breast milk for their child, and how mothers and infants may interact during incarceration. I would like to see the rooms in the nursery program used by more mothers and babies. There is no nursery program-- where there's no nursery program but the woman, woman is lactating and wants to provide breast milk for her child, LB119 aims to facilitate that situation in order for the child to receive the

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breast milk. This came out of a story that I was told about a woman who was placed in county jail overnight and she had a newborn and was not able to express her milk or breastfeed her child, which can lead to serious medical conditions, including mastitis. And that is extraordinarily painful and hard to recover from. I simply want to enhance the bonding and caring for babies and their moms who are living in a YRTC or Corrections facility. A representative of the women's facility called and visited with my office and asked a few questions. In order to address those questions, I have-- I offer AM185. This amendment does two things aimed at answering those questions and a question that was brought up in the hearing's last year's bill. So the first thing AM185 does is recognize the current practice-- practices-- practice of decisions about moms and babies staying together. It is a joint decision made by the Correction facility and personnel from the Department of Health and Human Services. A second-- the second thing AM185 does is recognize that courts or prior parenting agreements may need to be recognized in this decision process. The third thing AM185 does is rearrange some language to clarify that, that the information be made public does not require two different plans or two different sets of guidelines. I'd like to address a few things in the fiscal note. First, we thought we had language specified to eliminate city and county jails and that was a concern from last year. If further language changes are needed to clarify that, we'll do that because I did notice that Sarpy County had put in a fiscal note and so happy to work on that. They have not communicated with us a concern, but that wasn't our intention. This is really specific to YRTCs and York Penitentiary, the long-term holding spaces. OK, on page 4, line 11 of LB119 and in the amendment, we state that mothers and babies can live together as space allows. LB119 is not asking for new facilities to be built or portable classrooms to be used to house youth-- young mothers and infants. Third, nowhere in LB119 does it indicate that women can bring children other than infants born during incarceration to the facility. Fourth, LB119 does not indicate that breast milk needs to be shipped to the caretaker. The current arrangements made to have the breast milk picked up by an approved individual is acceptable. Encouraging the bonding of mothers and babies when it is available and appropriate is the goal of LB119. Bonding and breastfeeding have many benefits for both mother and baby. Less recidivism is a happy side effect. I encourage you to advance LB119 with AM185 to General File and I'm happy to answer any questions you may have.

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**LATHROP:** Very good. Any questions? There we go. Senator Geist.

**GEIST:** Yes, just one. Currently, how long can an infant stay with their mother?

**M. CAVANAUGH:** So that's one of the restrictions, is that if you have an infant while you are incarcerated, that infant has to be 24 months by the time that you are released. And this would say that the infant can stay with you for 24 months, but say you have another year on your sentence right now that you would be automatically disqualified.

**GEIST:** Oh.

**M. CAVANAUGH:** So the baby can be there for the 24 months. And then after 24 months, a transition plan would have to be made or other arrangements as opposed to the baby not being allowed at all.

**GEIST:** OK, understood. Thank you.

**LATHROP:** I see no other questions. We, we had this bill last year, right?

**M. CAVANAUGH:** Yes.

**LATHROP:** Did it move anywhere?

**M. CAVANAUGH:** I worked with the department. They had concerns and I had hoped that we-- that they would do some of these things without us moving a bill. And maybe we'll hear from them today that they will. But I, I didn't move-- I didn't push for it to be moved because I thought maybe we could resolve some of this, so.

**LATHROP:** OK. OK, thanks, Senator Cavanaugh. We will take proponent testimony at this time. Good afternoon.

**SCOUT RICHTERS:** Good afternoon. My name is Scout Richters, S-c-o-u-t R-i-c-h-t-e-r-s. I am legal and policy counsel at the ACLU of Nebraska here in support of LB119. I want to start by saying that women are the fastest growing prison and jail population, which really underscores the importance of this bill. The number of women in American prisons and jails has grown by 700 percent from 1980 to 2019. In Nebraska, we now hold the dubious distinction of incarcerating Nebraska girls at the highest rate in all of the United States. So 166 per 100,000

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Nebraska girls are incarcerated at a youth facility. And we must acknowledge that black girls and Latinx girls are far more likely to be placed in youth facilities than girls of other races. And this really mirrors what we see in the adult system as well. Girls are also disproportionately incarcerated for extremely low-level offenses, for things like truancy, missing a curfew, or running away from home. And so I think we have to talk about this, because while we talk about the overcrowding crisis, it, it may be easy to overlook this crisis in incarcerating women and girls at such an alarming rate for nonviolent offenses most of the time. Turning to the specifics of this bill, it does give the opportunity for those in custody to breastfeed or pump breast milk to feed their child. And this is important because for those who do choose to breastfeed, it's a critical reproductive justice right. And then we also note from previous open records request that we sent back in 2018 that many Nebraska facilities don't actually have policies dealing with lactation and breastfeeding accommodations. So that provision that these policies must be developed would be really important. Additionally, the bill provides that the default that infants remain with their mothers who are incarcerated or in a juvenile facility, which provides the means to keep families together during critical periods of child development. However, we do want to be clear that prison nursery programs are not a solution to our prison crisis and does not excuse the unacceptable rise in the number of women in the criminal justice system. So with that, we do want to thank Senator Cavanaugh for bringing this bill and we offer our full support.

**LATHROP:** OK. Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Miss Richters, for testifying today.

**SCOUT RICHTERS:** Um-hum.

**BRANDT:** Back when the state of Nebraska had a girls YRTC at Geneva, didn't they have a policy that addressed this?

**SCOUT RICHTERS:** I am not aware. I know it wasn't a public policy. I don't-- I'm, I'm not aware of a policy that they did have.

**BRANDT:** OK.

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**SCOUT RICHTERS:** And if they did, I don't think it, it addressed or it gave the right for the expression of breast milk and, and giving it to infants.

**BRANDT:** OK, thank you.

**LATHROP:** Senator Slama.

**SLAMA:** Thank you, Chair Lathrop. And thank you so much for coming to testify today. I've got a lot of the same concerns with this bill as I did when I saw it the last time around. So correct me if I'm wrong, because this was a major concern I had in the last biennium. With this bill, if we were in a situation where the mom was in prison or in a youth rehabilitation facility and the dad had the parental rights to the child while the mom was imprisoned, but the mom was lactating, would this then move that child from the parent or the custodial parent to the prison nursery or how would this work?

**SCOUT RICHTERS:** I think those are two separate provisions. So there's the provision about keeping the child with the parent.

**SLAMA:** Um-hum.

**SCOUT RICHTERS:** And I think there's an amendment that addresses the whether the parental rights have already been court ordered. And then I think there's a separate provision about the, the lactation. So I don't think the lactation portion would affect the placement of the child.

**SLAMA:** OK, so in a hypothetical where we have a young child, two parents, the mother gets arrested for a crime, say it's possession dealing meth and ends up being imprisoned and the father-- there's no threat to the child from these crimes supposedly, and the father is going to be taking care of the child while his mom is in prison. Would that change the family-- under the statute, would that change the family's plan? Would that move that child into the prison nursery to the mom rather than to stay with the dad or the second parent?

**SCOUT RICHTERS:** I don't, I don't-- I understand your concern, but I don't see in the bill where, where that would happen-- how that would happen.



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**SLAMA:** I see subsection (2)-- maybe I'm reading Section 3, subsection (2) incorrectly, but that's, that's the way I'm reading it, and I can follow up with Senator Cavanaugh afterwards. That's, that's my biggest concern with the bill.

**SCOUT RICHTERS:** And I haven't seen the amendment, but I think the goal of the amendment was potentially to address that.

**SLAMA:** OK. Thank you.

**SCOUT RICHTERS:** Yes.

**LATHROP:** Any other questions? I see none. Thanks for being here, Miss Richters.

**SCOUT RICHTERS:** Thank you.

**ASHLEY CARROLL:** Good afternoon.

**LATHROP:** Good afternoon.

**ASHLEY CARROLL:** My name is Ashley Carroll, A-s-h-l-e-y C-a-r-r-o-l-l. Thank you for the opportunity to express support for LB119, Healthy Pregnancies for Incarcerated Women Act. I-- right now, what is circulating is an official letter of support from the March of Dimes as I am the manager of Maternal and Infant Health Initiatives for Nebraska. And once I had an opportunity to review the fiscal note, I also wanted to kind of center my remarks around some key components of the bill, which are intended to expand access to prison nursery programs through explicit policies and making accommodations for breastfeeding. So I really want to just highlight some of the research on the benefits of such programs with regard to maternal child attachment or bonding, recidivism, and cost savings. So in Nebraska, female inmates, which comprise about 7 percent of the total prison population, are primarily incarcerated for perpetrating nonviolent crimes. Nearly half of women, or 44.7 percent, are in prison for drugs and theft. And the percentage of women, as Scout mentioned, of color in Nebraska's prison population are significantly over representative of the percentage of women of color in the state. The national data demonstrates that the average time served by state prisoners released in 2016 was 2.6 years, and the median time served was 1.3 years. Overall, prisoners served an average of 40 per-- 46 percent of their maximum sentence length before their initial release. And for

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prisoners serving time for drug possession, they served an average of 38 percent of their sentence. It is well-known that Nebraska prisons are significantly overcrowded, making efforts to decrease recidivism and successfully reintegrate formerly incarcerated individuals of paramount importance. The Nebraska Correctional System is at 146 percent of designed capacity. Nebraska Correctional Center for Women in York is at 91.6 percent of designed capacity as of December 2020, and the minimum security facilities in Lincoln and Omaha are at 135 percent and 196 percent of designed capacity, respectively. So I urge the committee to consider cost savings across the state budget in three major categories. Foster care system, cost savings could result from fewer foster placements among incarcerated women whose prison term is within 24 months after delivery. And we have a UNK criminal justice professor who has done research on the benefits of prison nursery programs in reducing recidivism. In Medicaid cost savings as breastfed babies have decreased risks of asthma, obesity, Type 1 diabetes, SIDS, and gastrointestinal infections. And then finally in Nebraska Corrections, cost savings could result from improved maternal health. So mothers who breastfeed or at decreased risk of high blood pressure, Type 2 diabetes, ovarian and breast cancer, as well as the reduced recidivism that's observed in women who participate in prison nursery programs. Thank you. Do you have any questions for me?

**LATHROP:** Well, let's see. Any questions for this testifier? I don't see any, but thanks for being here today.

**ASHLEY CARROLL:** Thank you so much for your time.

**LATHROP:** Any other proponents of this bill? Anyone here to speak in, in opposition? And can I see how many people still intend to testify just so we can alert Senator Wayne? OK. Welcome back.

**SCOTT FRAKES:** Senator Lathrop, thank you and 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 the Nebraska Department of Correctional Services, and I'm here today to provide testimony in opposition to LB119. I'm going to finish my testimony and then I will speak very briefly to some things that Senator Cavanaugh said in, in her opening. So keep that in mind. As written, this bill has the potential to significantly expand the current nursery program at the Nebraska Correctional Center for Women. The fiscal note addresses the needs that would need to be met in order to accommodate children up to

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two years old who were born prior to the mother being incarcerated. The current capacity of the existing program allows for 15 mothers and their children. If the intent is to expand the program to allow for more mothers and to permit them to bring children with them into the facility, appropriate space and staffing accommodations will ultimately be necessary. Prison poses inherent dangers even in the most secure of environments. As a parent of two daughters and a corrections professional with nearly 40 years of experience, I don't believe it's good public policy to remove children from the community and bring them into a prison environment. Nebraska is one of ten states that has a nursery program. It gives participating mothers the opportunity to bond with their newborn children and be an integral part of the child's early development. Right now, we allow pregnant women to give birth and be with their child up to 24 months prior to the mother's return to the community. This bill is tantamount to sentencing a child born in the community to a period of incarceration. Under our-- pardon me, under our certain practice, the mother must be eligible for release on or before her child reaches 24 months of age. The program is designed to avoid the separation issues that this bill will cause. As proposed, there is the likelihood that children will age out from the nursery program with the mother still having time left to serve. Children should be-- could be subjected to separation issues when they are brought from the community, and then again when at two years of age they return to the community without their mother. I'm also concerned about the separation issues that this will cause for those mothers who remain in prison while their child is returned to the community. In circumstances where the child is born to a mother who will discharge within 24 months and will continue to be the primary caregiver, the nursery program and NCCW offers a progressive, significant and supportive service. We have a successful program that works extremely well. As Nebraskans, we can be proud of our collective, collective efforts to help incarcerated mothers build strong relationships with their newborn children. The NCCW nursery program serves as a national model for achieving that goal. I understand-- or I listened to Senator Cavanaugh state that it is not the intent of this bill to bring children that were already born into the prison system to be with their mothers. We have read the bill repeatedly and I still do not feel that that language is clear. I feel the way the bill is written that it does, in fact, allow for that potential. And I would expect to be challenged on that by a, a variety of people. So that is one of my significant objections, is the idea

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that we would bring children already established in the community and bring them into the prison. And then the other piece is, as I described our current practice, we want the child and the mother to release together. We don't want to create a separation issue where the mother still has time to serve, the child then has to be taken away, put in the community. And now I've got whatever issues that creates for the child, but my responsibility remains with the mother who will definitely go through separation issues. And I see that as very problematic, so. And with that, I'll try to answer questions. Thank you.

**LATHROP:** OK. I-- you know what, I'll ask a couple of questions just because I toured York and they-- and I remember going into the area for mothers.

**SCOTT FRAKES:** Um-hum.

**LATHROP:** What's the capacity for mother and children combinations in that? What do you-- first of all, what do you call it?

**SCOTT FRAKES:** It's-- we call it the nursery program--

**LATHROP:** OK.

**SCOTT FRAKES:** --and we call it the nursery. Fifteen. There's room for 15 mothers and 15 children.

**LATHROP:** At any given time, how many do you have in there?

**SCOTT FRAKES:** I think the highest has been ten--

**LATHROP:** So--

**SCOTT FRAKES:** --and it's probably more like six on average. So we have space.

**LATHROP:** OK, and the criteria now for a mom to be in the nursery with the child is what?

**SCOTT FRAKES:** Well, first of all, that the mother is pregnant when she comes into the system. That she is eligible for release within 24 months and that it's logical and likely that that will occur. And there are some specific crimes that are identified in the operational

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procedure that eliminate consideration and I, I can't quote them off the top of my head.

**LATHROP:** Child abuse, maybe.

**SCOTT FRAKES:** That would certainly be one, and homicide. And then there's just an assessment process that they go through occasionally even having contact with HHS to see if there are prior issues and what the-- it's deemed that the mother seems to be a good fit and the mother wants to take part in it and wants that responsibility that comes with it, then we get them engaged.

**LATHROP:** OK, so I have not read the fiscal note, but apparently it's-- you must have said I need a new building or something.

**SCOTT FRAKES:** I just, I just put in-- if I remember my fiscal note correctly, I noted that with the potential ultimate expansion there could be the need, but I don't-- I didn't put an ask in there.

**LATHROP:** So where's the, where's the expense come in?

**SCOTT FRAKES:** For us--

**LATHROP:** Well, let me ask it differently. If it were limited to the criteria you provided us today, but-- well, then I guess it would be the same program.

**SCOTT FRAKES:** Well, there's another part of this bill that changes how we would determine eligibility and we would work more, even more in partnership with HHS. And we took a look at that. And we think that we might see two or three more people eligible in a little less restrictive criteria. It's a guess.

**LATHROP:** That's not-- that-- you got the capacity.

**SCOTT FRAKES:** Got the capacity. So, again, I didn't make an ask for staffing or for construction specifically today. Just noted, if-- the more we grow the program, that they could come so don't be mad at me if I come back to say--

**LATHROP:** OK.

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**SCOTT FRAKES:** The, the only fiscal note that I put forward was around the cost of managing the expression of milk, expressing milk, want to use the right term, and all the pieces that come with that. As Senator Cavanaugh mentioned, her and I did talk last year. We did actually-- we have a, a procedure that's about done and ready. Was-- I don't know if we'd have implemented it yet today, but we had the COVID outbreak at the women's prison and plus COVID in general. And then with this bill coming back, I said, let's hold off, let's see where the bill lands and let's make sure that we create a procedure that's consistent with the bill.

**LATHROP:** Are you working on a procedure that if a mother goes to York, she can't bring her child with her for whatever reason, that she can express her milk, it's stored properly, and then transmit it back to the child?

**SCOTT FRAKES:** Yes.

**LATHROP:** And that's going to be-- that's going to happen without a fiscal note, without--

**SCOTT FRAKES:** It'll change-- we would-- this would elevate the level of expectation in terms of covering the cost of transporting. It doesn't get into the details, but that's how I would read the bill. And that elevates the cost. Am I expecting that I'll get a \$40,000 appropriation if that piece pushes forward? No. But if I don't address it in the fiscal note, I realize-- we often talk about, well, you can absorb that in your budget. Well, you can absorb that in your budget. Can't you absorb that in your budget? At some point, you know, Senator, those things, you know, add up and so.

**LATHROP:** No, I know, but those things you can absorb in your budget. But we get a fiscal note and still that, that carries the, the F letter.

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

**LATHROP:** You know, makes it little harder to pass with a fiscal--

**SCOTT FRAKES:** But if-- yeah. But if I'm at the point where I'm asking for a deficit and they're saying, why can't you? Well, it's because I absorbed \$20,000 here and \$25,000 here and \$40,000 here.

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**LATHROP:** No, I get it. I get it. Senator Cavanaugh is welcome to call you anytime to sort through how to fix this?

**SCOTT FRAKES:** Anytime. Yes.

**LATHROP:** OK.

**SCOTT FRAKES:** Yeah, and I--

**LATHROP:** I'm sure you'll hear from her.

**SCOTT FRAKES:** OK.

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

**PANSING BROOKS:** Thank you. Thank you for being here, Director Frakes, again.

**SCOTT FRAKES:** Yes.

**PANSING BROOKS:** I just-- is, is part of the concern that maybe this would preempt a child custody order? Can you hear me? Sorry, a child custody order?

**SCOTT FRAKES:** I think that's one of on the litany of concerns. But really, for me, again, if it truly is the intent of the bill to not bring children already born in the community into the prison system, that reduces-- that's probably my top priority concern. Then the secondary one would be allowing mothers to give birth and yet not be ready to leave prison when the child has to leave because I see that as, as not a, you know, not a good design, not consistent with-- I'm not going to say there's great science, there is a little research. There's just not been enough of these programs across the country to be able to say definitively, allow a child to be born in prison, stay with the mother for 24 months, and then have to be returned somewhere, that we have to figure out where somewhere is, while mom stays in prison, how damaging that might or might not be.

**PANSING BROOKS:** OK, thank you.

**LATHROP:** I do not see any other questions. Thanks for being here today, Director.

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**SCOTT FRAKES:** Thank you.

**LATHROP:** Anyone else here in opposition? Anyone here to speak in the neutral capacity? Senator Cavanaugh, I see no one else here to speak on your bill. We do have written testimony as follows: the Women's Fund of Omaha, Tiffany Joekel, as a proponent; and Larry Kahl, K-a-h-l, from DHHS is opposed.

**M. CAVANAUGH:** Oh, I thought you were going to say as a proponent.

**LATHROP:** And what we'd do if they ever came in on-- in favor of something on in here.

**M. CAVANAUGH:** I think you'd have to pick me up off the floor.

**LATHROP:** There are position letters, six of them, in fact, four of them are proponents and two in opposition. Senator Cavanaugh, you may close.

**M. CAVANAUGH:** Thank you. I want to first address Senator Slama's questions. I hope that they-- your concerns are assuaged by the amendment. If they're not, we can talk through the language changes that need to happen to, to reach a, a conclusion on that. The part about building a building does actually comes from, and I, I, I apologize, Senator Brandt, if this gets your ire, but it is that the YRTC's would need a new building, wherever that is. It's not specified in the location, but they have one in Geneva. There is a mother suite in Geneva. But wherever the female youth in the YRTC end up, apparently, they would need a new building. Now we have toured Hastings and I, I-- if that is where they end up, I'm curious why they would need a new building, because they have a few. But I look forward to working with HHS on that issue. They do tend to have around one youth a year that has a child while at the white YRTC. So I feel like we can probably come to some sort of solution on that part of the fiscal note. The 15-- to your point, Senator Lathrop, about the costs and the absorbed costs, theoretically, they have 15 beds and the fiscal note reflects all 15 beds being utilized, which the goal of this bill is to maximize the program as it exists now. And this fiscal note assumes that they aren't paying for any costs for the babies currently. This is all as I read it, new costs. So that would be part of it. I do think we can come to some sort of resolution on the transportation of breast milk. They do it all over the place. Working



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moms, we figure it out. The current practice is that they're not allowed to express breast milk and put it in a refrigerator and then have somebody come pick it up. At the bare minimum, I feel like we could put it in a refrigerator and have somebody come pick it up. And, and maybe discuss options or opportunities for grants for shipping costs, because there are a lot of La Leche groups out there that want to make sure that kiddos are getting breast milk, if at all possible. And it's not always possible. But if it is, we should be doing what we can to help those kids get a healthy start. If the language is troublesome as far as allowing kids to enter into the system that aren't in the system, I apologize to Director Frakes, I think my intention-- well, I know my intention was if there's space available and you have a newborn and your sentenced and you're going to be there for 23 months or less, that you should probably be able to bring your newborn with you if you qualify. That would be very traumatic. I can't imagine having to give up a newborn. It also requires working with a social worker from DHHS on placement. It doesn't preempt any court orders or parental agreements on placement. This isn't really forcing them to do anything. It's really opening up the opportunity. And my intention is purely to open up the opportunity for more women who are just as involved to be with their child if that situation is warranted. And if it can't happen, for them to be able to express breast milk and give breast milk to their child. That, to me, is a basic human right. And to deny a woman that right is unconscionable. And so I, I hope we can come to some resolution on at least the breast milk part, so. With that, I will take any questions.

**LATHROP:** Very good. Any questions for Senator Cavanaugh? I see none.

**M. CAVANAUGH:** OK. Thank you.

**LATHROP:** Thank you for bringing LB119 to us today. That will close our hearing on LB119 and bring us to LB333 and Senator Wayne. Welcome, Senator Wayne. We're cruising right along today.

**WAYNE:** Welcome, Chairman Lathrop.

**LATHROP:** Wasn't sure we'd see you before 6:00, but here we are.

**WAYNE:** That's a good thing. Welcome, Chairman Lathrop and the Judicial-- welcome. Good afternoon, Chairman Lathrop and the Judiciary Committee. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I

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represent District 13, which is north Omaha and northeast Douglas County. This bill is a bill that was part of a package last year, and we left out the members of the Legislature and/or the Ombudsman's Office. And I think we did so because there was a little bit of controversy around it. The more I think about it, the more I don't think there's any controversy. We are adding members of the Legislature and attorneys to be able to take their cell phone in, or the public council, which is also attorney, take your cell phone into Corrections, primarily because it's used as an investigative tool. It's easier to take recordings on your cell phone when you're sitting there talking to a client and just to sometimes make notes. Just makes sense. It hasn't been an issue. They already allow them in with the director's approval, so this just makes it clear.

**LATHROP:** Would that include the Inspector General?

**WAYNE:** We should--

**LATHROP:** It says public council, an employee of the public council.

**WAYNE:** We should probably add that.

**LATHROP:** OK.

**WAYNE:** Just to make sure.

**LATHROP:** All right, any other questions for Senator Wayne?

**WAYNE:** I mean, I think it does, but we should probably add it.

**LATHROP:** Yeah, otherwise, we'll be back. I feel like, I feel like this is like every year we're doing something on this.

**DeBOER:** Right.

**LATHROP:** I don't see any questions, Senator Wayne. But thanks for being here. Are you going to stay to close?

**WAYNE:** Probably not.

**LATHROP:** OK, we understand you're a busy guy. Any, anyone here as a proponent? Welcome.

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**JERALL MORELAND:** All right, thank you. Senator Lathrop and members of the Judiciary Committee, good afternoon. My name is Jerall Moreland, J-e-r-a-l-l M-o-r-e-l-a-n-d, I'm here today representing the state Ombudsman's Office in the capacity of deputy ombudsman for institutions. I would also like to thank Senator Justin Wayne for the invitation to offer our views on LB333 as it relates to the Ombudsman's Office having essential tools in its toolbox. I think I'll just make a few remarks and my testimony will, will, my written testimony will stand. The public council has the power to investigate administrative acts of any administrative agency. The use of electronic communication tools is essential to this rule. The tools allow for the collection and aiding of relevant information to investigative cases and unannounced visits. It also supports observations which could lead to report writing. We use unannounced and unannounced visits as a tool. I'm sure many on this committee have been out to some of the facilities where that has been helpful in terms of really capturing the essence of what we observe, what we do observe when we do make those visits. With that, any questions. I thank you for your time and I'm available for any questions.

**LATHROP:** Any questions? I don't see any. Thanks for being here, Jerall.

**JERALL MORELAND:** All right, thank you.

**LATHROP:** Good to see you. Welcome.

**SPIKE EICKHOLT:** Thank you. Good afternoon, my name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of Nebraska Criminal Defense Attorneys Association in support of LB333. We want to thank Senator Wayne for introducing the bill. This is the second time this issue has been before the committee. I think it was last year Senator Wayne introduced and a bill was passed that made it a crime to bring a phone into a prison facility. In that body of that crime, there were some exceptions made. And one of those was for people who work for the Ombudsman's Office or an attorney visiting his or her client. In other words, it's not a crime for us to do that now, but we need to arrange preapproval with usually the case manager for the individual inmate and then the department director-- or the facility's director himself. And that can be difficult for some of our members to do. It's not impossible, but it does, it is time-consuming and it is somewhat logistically difficult. It is necessary for us, not so much

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to bring a phone into the prison system, but electronic communication device is defined as something more than just a phone. It could be an iPad, it could be a laptop. So much of-- there are instances in which our members represent people who are in the prison system who have pending cases. So much of discovery, so much of the police reports are in digital format. Any kind of video that may be part of the case itself that's part of discovery, you need to be able to show that with your client, so that they can make a meaningful decision regarding their case. And this would just facilitate that. I did talk to Mr. Hruza earlier today. I think he may have submitted a letter on behalf of the bar, and I think they're in support of it. And I have heard from a couple of my members who are on the legislative committee of the bar that there was some suggestion to maybe narrow the attorney bringing a electronic communication device, visiting a committed offender who is a client. Something to the effect of necessary to representation of the client or something like that. I don't have a problem with that necessarily, just as long as there's some sort of provision that affirmatively states that an attorney visiting a client can bring an electronic communication device into a prison facility. I'll answer any questions that you might have.

**LATHROP:** So you think we need an amendment or not?

**SPIKE EICKHOLT:** I didn't see the letter, so I didn't know what it was.

**LATHROP:** I'm just concerned when, when is pretty straightforward, that when we try to tweak it and say for purposes of assisting the client in the attorney/client relationship, now somebody is going to say, what are you going to do with it? And you're back to preapproval.

**SPIKE EICKHOLT:** That might be true. And I, I haven't seen the letter that Mr. Hruza authored, and perhaps I shouldn't have tried to articulate whatever he was suggesting the bar maybe wanted to see. We're fine-- we're supporting this bill as written, so I was just trying to anticipate an issue that may come up once the committee reads the written testimony.

**LATHROP:** He wants it to be only those times when you're there on behalf of a client.

**SPIKE EICKHOLT:** I don't know why else we would be there.

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**LATHROP:** Why a lawyer would ever go in there without-- for any other purpose, unless they're locking him up.

**SPIKE EICKHOLT:** Right. And then you probably can't have a phone anyway.

**LATHROP:** And then you won't be able to have a phone. All right, terrific. Thanks, I don't see any other questions.

**SPIKE EICKHOLT:** Thanks.

**LATHROP:** Anyone else here as a proponent? Anyone here has an opponent? Anyone here in the neutral capacity? All right, I think Senator Wayne left and was not going to close. As I indicated a moment, a moment ago, we do have a testimony, written testimony from Tim Hruza with the Nebraska State Bar Association that will be found in the record. We have no position letters on this bill. That will close our hearing on-- pardon me, we have one. Which one do we have? You switched you already. Oh, he was-- OK, that will close our hearing on LB333 and bring us to LB150.

**MORFELD:** Senator Lathrop, members of the Judiciary Committee, for the record, my name is Adam Morfeld, A-d-a-m M-o-r-f as in Frank-e-l-d, representing the "Fighting" 46th Legislative District here today to introduce LB150. I introduced LB150 on behalf of the Commission on Public Advocacy. LB150 would increase the court fee on all cases filed in Nebraska courts from \$3 to \$9 over a period of five years to help fund the operations of the commission. The bill was drafted this way to help mirror the same increase that's being proposed before the Retirement Committee for the judges' pension. So it will mirror that same increase. It was also suggested that instead of coming back from year to year, that it would be better to step increase this and that way it would last a lot longer and put the commission in a better financial footing. The Commission on Public Advocacy was founded in 1995 with the purpose of providing indigent defense counsel for certain crimes, thus saving the county's taxpayer money. As many of you may recall, the defense of people facing capital or serious crimes can be very, very expensive. And that cost often goes on to the counties. And there's many counties out there, particularly smaller counties, that simply can't afford it in many cases, or it puts them in a situation where they have to raise property tax levies or things like that. So in 2005, 10 years after the bill creating the commission

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was passed, a bill was introduced to make the commission cash funded via court fees. Since that time, the fees have not been raised and court filings have decreased significantly, thus impacting the commission's budget and ability to adequately fulfill its mission. Since its inception, the commission has represented many indigent clients, providing expertise and defense counsel and saving counties' property tax revenue. Since 2008, however, the commission has lost almost \$500,000 in revenue in comparison to 2008. So they get \$500,000 less a year from this revenue. At current funding levels, that cash fund could be depleted within two years. As eligible crimes increase, funding needs to match that need. Jeff Pickens from the commission will follow me with more in-depth information on the cash crunch that the commission faces and to highlight the good work that they do and answer any of your questions. I know that he's brought some pretty extensive financial documents and other things to explain the need and demonstrate. But I'd be happy to answer any of your questions. I would note that I introduced a similar bill last year. It was a one-dollar increase, but we just decided that the situation is getting worse and worse and there needs to be a more, I don't want to say permanent, but a more long-term approach. That way, they're not coming back every few years. Thank you.

**LATHROP:** OK, I don't see any questions. Thank you, Senator Morfeld.

**MORFELD:** Thank you.

**LATHROP:** We will take proponent testimony on LB150. Good afternoon.

**JEFF PICKENS:** Good afternoon. My name is Jeff Pickens, J-e-f-f P-i-c-k-e-n-s, I'm chief counsel with the Nebraska Commission on Public Advocacy. The handouts include, essentially, the first one is a summary of what we've been doing the last 24 years. And then there are some tables showing our revenue issues in a multitude of ways. I'm so happy that Senator Slama is here because Richardson County is the reason that the commission exists today. Back in the 80s, it was the Mike Ryan case, the Rulo cult murder cases that cost Richardson County a tremendous amount of money because they had to hire lawyers from Omaha and Lincoln to represent multiple defendants in that case. And then in the mid 90s, John Lotter and Marvin Nissen were charged with the murder. And again, Richardson County had to hire lawyers from Omaha and Lincoln to represent those defendants. Because of Richardson County's experiences, the Legislature decided to create the Commission

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on Public Advocacy, where there would be lawyers working for the state who could go out to the various counties and represent indigent defendants in these kinds of cases. I should say that the act that created the commission is called the County Revenue Assistance Act, which seems kind of odd, but the goal for the Legislature back then was to provide property tax relief to the counties. As Senator Morfeld said, we were created in 1995. In 1996, we were up and running. I've been there since the beginning. Since 1996, the commission has had more than 1,000 cases in 71 counties, 174 murder cases in 52 counties, and we've handled 13 cases in which the defendant has already been sentenced to death. Or sometimes we represented the person at trial and the person was sentenced to death. We provide our services to the counties for free. Oftentimes we have to hire expert witnesses. Sometimes we hire investigators, depositions have to be taken. We pay for all of that. I want to provide one example of the impact the commission has on counties that use our services. And I know this will be [INAUDIBLE] to Senator Brandt. Aubrey Trail has been convicted of murdering Sydney Loofe. And two lawyers from that community, Saline County, were appointed to represent Aubrey Trail at trial. They've been through trial, he was found guilty. And death penalty hearings are still set for the future. Regardless of the sentence, there will be appeals. Those two lawyers have already been paid \$290,000 by Saline County. We represent the codefendant, Bailey Boswell, and we're at the same stage of proceedings and we have not charged Saline County a dime. They will not pay anything for our services. If we weren't here, then I'm assuming that the, the costs for Aubrey Trail will total around a half a million dollars by the time the appeal is done. If we weren't here, then two other lawyers would have to be appointed and I think the bills would be similar to Saline County. The tables-- I know I don't have a lot of time. Does that red light mean stop talking?

**LATHROP:** Yes, it does.

**JEFF PICKENS:** It does.

**LATHROP:** Just like the Supreme Court.

**JEFF PICKENS:** I just blow by it at the Supreme Court.

**LATHROP:** We don't like robes over here, nor do we give out ten minutes at a time. Let's see if there's any questions too.

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**JEFF PICKENS:** OK.

**LATHROP:** Any questions for Mr. Pickens? Senator McKinney.

**McKINNEY:** Thank you. Thank you for your testimony. In thinking about this bill, were there any discussions to think about finding ways to not disproportionately affect individuals that are poor with the, with the increase?

**JEFF PICKENS:** Well, what I can tell you is that for indigent defendants, the judge in the case has the discretion to waive the court costs. And I'm sure that is done frequently. So there's always that opportunity. And I understand the concerns people have with filing fees. I believe that you have a letter from Tom Reilly, the public defender from Douglas County, in support of this bill. And he recognized the concern about filing fees, but said, if I have to choose between increased filing fees or the Commission on Public Advocacy continuing to do their work, I'm going with the commission. That's the best answer that I can give you.

**McKINNEY:** And--

**JEFF PICKENS:** I do understand the concern with filing fees.

**LATHROP:** Senator Slama.

**SLAMA:** Thank you, Chairman Lathrop. And thank you for being here today. Just for my reference, you outlined the cost to the county for Trail's defense. What's been the cost to this fund thus far for Boswell's defense?

**JEFF PICKENS:** For whose, Boswell's?

**SLAMA:** Boswell's, yes.

**JEFF PICKENS:** I don't understand the question. We haven't, we will not charge Saline County anything.

**SLAMA:** No, not the cost to the county, just the overall costs of defense.

**JEFF PICKENS:** OK, most of the expense, like in the, and for Aubrey Trail, his lawyers, most of those costs are attorney time.



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**SLAMA:** Yes.

**JEFF PICKENS:** So, you know, obviously our attorneys don't, you know, they're salaried. I guess I'm not still getting your--

**SLAMA:** OK. I was just trying to get the hardline comparison and cost, not just to the county, but the overall costs in defense, because I do think this program creates overall savings. I'm just trying to quantify it.

**JEFF PICKENS:** OK, for that particular case, Bailey Boswell's case--

**SLAMA:** Yes.

**JEFF PICKENS:** --it's mostly attorney time at this point. We have had and we have had to retain a psychologist to do some, some testing. That I don't think has been more than \$5 or \$10,000. If you just want to say-- if you're asking how much does this one case represent, how much does it represent our total, it's a small amount--

**SLAMA:** OK.

**JEFF PICKENS:** --is what I'm trying to get. It's, it's mostly attorney time.

**SLAMA:** Yeah, sorry, I'm just trying to quantify.

**JEFF PICKENS:** [INAUDIBLE].

**SLAMA:** Yeah, no worries.

**LATHROP:** OK, Senator DeBoer.

**DeBOER:** Thank you for testifying. One of the concerns I have is that we're going from \$3 to \$9 in a very quick period of time. I know that you've had sort of, I think Senator Morfeld said that you had to draw down a cash fund. What was that about that you drew down by?

**JEFF PICKENS:** I have tables for you on that. We've been having to draw from our cash fund since fiscal year 2014-2015.

**DeBOER:** So what's the current balance of your cash fund?

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**JEFF PICKENS:** Today? It's \$235,783.77. We haven't paid salary. It's going to go down another \$6,500. For the last couple of months, it's been hovering around \$200,000. It's been as low as \$180,000. And one of the tables I've provided you is the one that is probably the first table. It's entitled: Cash In/Out Since 2005-2006. I think this is really important. The first column shows revenue from 2005-2006 through '19-20. And if you just look at that column, you can see what's happened to our revenue. And if you go over to expenditures, you can see the expenditures have gone up. But they've been gone-- they've gone up reasonably. But if you look at fiscal year 2008-2009, and you look at the revenue we had, the almost \$1.3 million, and our expenditures, a little over a million, we have an excess of \$334,000. Now, now go down to fiscal year '19-20, where our revenue is down almost \$500,000 and compared to the fiscal year 2008-2009, our expenditures are up, of course. And look at the shortfall, \$327,000.

**DeBOER:** So what would the change from three dollars to five dollars, how much money would that generate?

**JEFF PICKENS:** It's difficult to calculate exactly how many cases have been filed. The Supreme Court administrator keeps those numbers, but they, because some of those fees can be excused. And some cases there is no filing fee, like the protection order cases, you can't look at those tables that the numbers they provide and determine how many-- you think multiplied by three, the current fee. You get-- that won't get you the answer you need. What I've had to do is look at our revenue, revenues we've gotten from cases where the filing fee was collected, divide that by three. And I can arrive at a case right now, looks like about 260,000 cases are filed each year where we get our, our filing fee, our three dollars. If you increase that by two dollars, then according to my fiscal note, the first year when it's applicable, it would generate about \$520,000 in additional revenue. And then I think the following year, \$780. That, that first year, if we have 260,000 cases filed and we're able to get that additional revenue, and if filings don't continue to go down-- it looks like they're going to continue to go down for a while-- but that would generate enough money so that we can at least cover our expenses.

**DeBOER:** So it looks like you, yeah, if you go to five dollars, you can cover your expenses. My concern here is that we're sort of building in this new appropriation to this that we're doing through these filing fees. And I'm not sure that I'm going to be comfortable with the, the

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step up. But I'm glad to know that at least the three to five dollar raise would, would at least support you for the meantime.

**JEFF PICKENS:** And the second year, the additional three dollars, that I think will provide us enough money to continue to cover expenses and to hire another lawyer. We are having to turn down appointments in cases. We are authorized by statute to do a variety of cases, any serious violent felony. We're asked to do a lot of sexual assault cases throughout the state. There are all kinds of violent crimes that we defend, but we are so overburdened right now with murder cases, and we will always take murder cases no matter what. We'll find a way to do them. But we have so many murder cases right now that I'm having to decline appointments in other kinds of cases. If I had another lawyer, I wouldn't have to turn those down, and we can provide additional property relief to those counties. With another lawyer, we wouldn't have to turn those cases down and we could take on additional cases. The judges throughout the state know the situation we're in and mostly they don't call us unless they have a murder case.

**DeBOER:** Well, I certainly appreciate all the work you do. I really do. And we'll have to talk about what the best way to do this is. So thank you.

**JEFF PICKENS:** I should say that, you know, we're, we're more than willing to work with you on those numbers. You know, my biggest concern right now is keep the doors open.

**DeBOER:** Sure, yeah.

**JEFF PICKENS:** And that additional two dollars will keep the doors open.

**DeBOER:** That's great to hear.

**LATHROP:** I do have a question for you. You and I spoke about a month ago or something, and I-- something occurred to me as I was thinking about this bill. Are there any grants that you can access?

**JEFF PICKENS:** Not presently.

**LATHROP:** Anything, any place where you can get, I mean, there's filing fees. We could nick the counties you go into because they're getting a heck of a deal when you show up. In fact, it's free. And most of those

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filing fees, I suspect, are paid in places other than where you are predominantly practicing.

**JEFF PICKENS:** Well, I was in Hitchcock County yesterday. I don't think Hitchcock County is contributing to--

**LATHROP:** Hitchcock County isn't getting a lot of filings out there probably.

**JEFF PICKENS:** But Hitchcock County had a murder recently, two, two defendants. We represented one. The other one may go to trial. We resolved ours with the plea agreement. And driving around Trenton, the county seat in Hitchcock County, I don't think that half of the streets are paved.

**LATHROP:** No, I get it. I get it. They are receiving the benefit. Let me go back to my question. Are there grants that you can access?

**JEFF PICKENS:** OK. Presently, there's nothing we can do like that because the statute says that our revenue comes solely from the indigent defense fee.

**LATHROP:** Oh, well, then let's talk about an amendment. Seriously, though, because I have a-- the next bill is mine, and I don't know how comfortable I am with my own bill, to be honest with you. We're going to increase the filing fee for the judge's retirement. Then the court who is also trying to run the place, our courts are basically run on these filing fees, which is why I'm supporting my own bill. But when we start adding things on there, Senator Pansing Brooks, I think, had a bill to add another buck on to help take care of juvenile defense lawyers. And at some point, at some point we're having a function of government try to run like it's the Department of Labor or the work comp court. And tell us what prevents you from making applications for-- because that part, I guarantee you, we can put a committee amendment on this thing and we'll get you the, we'll get that out of the way and you can try to secure grants. Are they out there for people or organizations that do what you do?

**JEFF PICKENS:** Not that I'm aware of. I don't know of any groups who are sympathetic to lawyers who represent people who are charged with the kinds of cases our clients are charged with. You know, I'm not aware of anything out there.

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**LATHROP:** Well, what I would like you to do for me is look.

**JEFF PICKENS:** OK.

**LATHROP:** OK, because if that's a barrier, if that's a barrier then we'd like-- then I personally, I feel strongly about getting that out of the way so that we can find a way to make sure you have the resources like everybody else up here. I greatly appreciate what you do and I'm happy for the people in Richardson County that they have a lawyer that can come in and do this without nicking the property taxpayers. But as a, as a lawyer committed to what you do and ensuring that people have a good and competent defense, particularly in capital cases, I appreciate what you do.

**JEFF PICKENS:** Yeah, I respect all of those programs in which filing fees are request or there's an increase. I think there's one distinction, though, with our group, and that is we provide property tax relief. And also the work we do is required by the United States Constitution and the Nebraska Constitution.

**LATHROP:** I get it, I get it. I really do, and I appreciate you being here. Any other questions for Mr. Pickens? I don't see any.

**JEFF PICKENS:** Thank you.

**LATHROP:** Thank you. Any other proponents?

**ELAINE MENZEL:** Chairman Lathrop and members of the Judiciary Committee, for the record, my name is Elaine Menzel, E-l-a-i-n-e M-e-n-z-e-l, here on behalf of the Nebraska Association of County Officials. And I think I would just like to say that Mr. Pickens, as well as obviously Senator Morfeld did a fantastic job in terms of presenting the arguments as to why we would be, be for this legislation. And it has always been since its inception on our legislative platform that we're supportive of the public advocacy commission. The property tax relief, which was brought to our attention more so because of the Richardson County cases, are what prompted us to be supportive of this in the first place. But I would like to note for the record that this is something that is available in not just the rural counties, but also in all of the counties, including Douglas as well as Arthur County. So you have all populations that are able to access this. With that said, I'll just

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make myself available to questions if you happen to have any. But certainly appreciate your willingness to listen to our--

**LATHROP:** Sure.

**ELAINE MENZEL:** --support of this legislation.

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

**ELAINE MENZEL:** Thank you.

**LATHROP:** Good afternoon.

**JOSHUA SHASSERRE:** Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Joshua Shasserre, J-o-s-h-u-a S-h-a-s-s-e-r-r-e, Assistant Attorney General and chief of staff of the Attorney General's Office, appearing today in support of LB150. Our office has enjoyed a long-standing, highly professional relationship with the commission, as would be evidenced if you looked through their, the commission's most recent annual report, specifically with regard to the Joshua Keadle case. And obviously just simply reiterate the understanding that the services that are provided by the commission are of substantial benefit to the counties involved in a similar fashion. Our office, being that it has concurrent criminal jurisdiction, includes county attorney often finds itself on the other side of the V in these cases. And we come in in a similar role in support of handling those matters when county attorneys themselves are unable by conflict or lack of requisite trial experience. So with that, we simply wanted to reiterate our support for LB150.

**LATHROP:** Senator McKinney.

**McKINNEY:** Thank you. I got a question. Why, if the county attorneys are filing these serious crimes, why, why, why aren't the counties paying a fee or a cost for the defense?

**JOSHUA SHASSERRE:** Well, my understanding is simply that in the instances in which the commission is able to provide that defense, the commission itself is the one that bears the costs or the majority of the costs, which is usually at least substantially attorney time. Not sure if I've understood your question correctly.

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**McKINNEY:** I'm just wondering that if county attorneys are filing these, these charges, why shouldn't there be a fee attached to it for the county attorneys?

**JOSHUA SHASSERRE:** I apologize, Senator, I'm not sure which fee you'd been referring to.

**McKINNEY:** So say somebody commits a horrible crime.

**JOSHUA SHASSERRE:** Uh-huh.

**McKINNEY:** They, they can't if they can't afford an attorney and you file this case. I know you don't have control of who commits what crime, but you still file the case. Why shouldn't there be a fee attached to that?

**JOSHUA SHASSERRE:** Again, I apologize if I'm not answering the question appropriately, the only fees that we're really referring to in this matter are the existing court filing fees. I'm not sure if you're suggesting there should be something on top of that. Otherwise, the cost of that prosecution is either borne by the county or in instances in which our attorneys are utilized by our office in terms of the prosecution. And then likewise, the defense, as we're talking about in this bill, is either borne by the public defender, the contracted attorney to provide the defense or the commission. Thus, as much as we could then utilize the commission because they provide such high-caliber professional defense, it's-- we feel it is of great import to ensure their sustainability.

**McKINNEY:** I get that. I'm just cur-- like if you guys like to use the commission more so than others in certain counties, instead of putting the fee on the public or somebody that files the fee, why not accrue some of the cost?

**JOSHUA SHASSERRE:** Well, if-- to Senator Lathrop's point before, if there is a need for following up as to what other options may exist, to the extent that you'd like us to engage in that, we're happy to do so.

**McKINNEY:** Does the AG have any funds that the commission could probably pull from?

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**JOSHUA SHASSERRE:** Well, that would have to involve some coordination with the Appropriations Committee, and I'd be again happy to discuss that further.

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

**LATHROP:** OK, I do not see any more questions, thank you.

**JOSHUA SHASSERRE:** Thank you.

**LATHROP:** Any other proponents? Anyone here in opposition? Anyone here in the neutral capacity? Senator Morfeld, you make clothes on LB150. We do have written testimony. And for the record, Tim Hruza with the State Bar Association wrote a statement of support. Shiela Cain with the Nebraska Collectors Association provided testimony in opposition, as Spike Eickholt with the ACLU. In addition, we have one position letter in support.

**MORFELD:** Thank you, Senator Lathrop, members of the committee. I'm more than happy to work with the committee on concerns on if this is too much, too quickly. I would say that at the very least, there needs to be a three-dollar increase to be able to meet current needs and then also, well, meet current needs for their current budget, but then there's also a high demand for at least another attorney down the road. And then you take into consideration health care costs go up. You know, staff want to have cost of living increases, things like that, to keep competitive wages and salaries. And so those are all things we need to take into consideration. Senator Slama, I think you were asking a really good question. You know, the Audrey Trail-- Aubrey, excuse me, Aubrey Trail case, so far, court costs would probably be around \$290, \$300,000 and then after appeals, probably another half a million. So instead of Saline County spending half a million dollars, they'd probably be spending about a million dollars on the defense. And the only reason why they can't cover both of them is obviously there'd be a conflict of interest. There's competing interests and things like that. So I think you bring up a good point in that sense. In terms of fundraising, Senator Lathrop, I share your sentiments. That would be very nice. As somebody who's the executive director of a nonprofit that has to fundraise \$4 million a year, I can tell you that there are no foundations in the state that would likely be interested in funding this type of work. Most of them would say something of like, well, isn't this a state function or a county



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function? And the national foundations that work in this area, they're working to figure out ways for systemic reform. They give grants to things like doing policy work so that there's less people going into Correc-- I just, I, I do not think fundraising for this type of work is going to be successful. And if I thought that way, I would totally be in favor of doing that. Now, it might defray some costs here and there. You get a \$20,000 grant, you get a \$50,000 grant. That stuff is kind of one-off things. And in order to maintain the, those types of grants, oftentimes you have to have a full-time fund raiser and person-tracking outcomes and reporting back to the foundation. So then you're looking at, you're probably going to have to hire somebody full-time then, and you'll be lucky if you recoup the cost after that. So in any case, I just wanted to kind of address that. We have to do something. I get-- I also am not completely enthusiastic about raising fees, but at the same time, I can tell you that there has been very little appetite. There's been a lot of talk. Everybody says, hey, go, go get a general fund appropriation or something like that. But there's not a lot of action when it comes to that. And in the last seven years that I've been in the body, there's only been one or two years where there's actually been money left on the floor to actually do something. So this is an odd year to be in, to be in that position. With that being said, I think that this ensures that we have high-quality legal defense for some of the most complex cases, quite frankly, many of which there are not attorneys within those counties to be able to handle, or the resources or funds. And I, I urge the committee-- I'm going to be pushing very hard to do something this year. I think we really needed to do something last year, we just ran out of time. I'm rambling on now. Thank you very much, Senator Lathrop, members of the committee. Happy to answer your questions?

**LATHROP:** Senator Slama.

**SLAMA:** Thank you, Chairman Lathrop. And Senator Morfeld, this is not a question, but a statement. But just for reference, for the record, when we're talking about costs, \$100,000 here, \$100,000 there for a murder case or a serious felony case, we're, we're talking about a pretty significant part of a rural county's budget. So much so that the cost can be at times prohibitive. So I do appreciate this fund and appreciate LB150.

**MORFELD:** OK, thank you, Senator.

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**LATHROP:** OK, that will close our hearing on LB150 and bring us to LB352.

**PANSING BROOKS:** Good afternoon, Chairman Lathrop.

**LATHROP:** Good afternoon, Vice Chair Pansing Brooks and members of the Judiciary Committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I'm the state senator from District 12, here today to introduce LB352. I'm going to say it's a little awkward after that last hearing and my comments, and I have an introduction, I'll read it in just a second. But, you know, the reason I think people are lining up for fee increases is when Senator Chambers was here, he was pretty adamantly opposed to fee increases. And the reason for that, of course, is, and as a practicing lawyer, I file plenty of lawsuits. My office files a lot of them. [INAUDIBLE] not as many as the collectors do, but we file lawsuits. Every time a lawsuit gets filed, whatever that cost is of filing, it gets passed on to a client. Whether that's an individual, we increase costs and the, and the eviction costs more and that costs gets borne by the person that loses the case. So I think it's, it's incumbent on the committee to be very thoughtful about how we increase the cost of filing a lawsuit. That said, this bill raises the fees. And it's not a new issue, the court administrators mentioned a couple of years ago at the budget hearing, the number of filings are trending down. So the money that the court uses for operations, and it's basically a cash-funded-- think of it as a cash-funded agency. They're trending down and they are, they are, as you saw in the document provided by Mr. Pickens, the revenue is down and this decline in filings has accelerated due to COVID. All rel-- revenue from these fees go to the operation of the courts. And the bill, the bill asks or would require an addition to the filing fee. Corey Steel from the Court Administrators is here to talk about why the how, sort of the same thing you probably heard in the last bill. This is about running the courts, and the court needs a certain amount of money to pay the judges and the clerks and the people that work for the court and the cost of overhead and administration. And that's our responsibility as the Judiciary Committee and a Legislature to ensure, at a minimum, that we have the money to run the courts. And so I would ask you to look favorably on our LB352 and remove it from the Judiciary Committee to the floor. Let's do it fast so they can have the means to run the court system. I'd be happy to answer any questions.

**PANSING BROOKS:** Questions for Senator Lathrop? Senator DeBoer.

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**DeBOER:** Senator Lathrop, maybe you know, what's the history behind making our judicial system sort of a pay-to-play kind of system, as opposed to funding it the way we might fund any other part of our government?

**LATHROP:** I think it happened long before I started practicing law in 1981. There was a [INAUDIBLE] back then and they've gone up a little bit since then. But, you know, there is, there is a logic to having people that are filing the lawsuits and want access to the courts to pay a fee or to at least pay for part, part of the expenses of running, running the courts.

**DeBOER:** Are you saying it's-- the logic, I assume then, is that they have some stake in what they're filing so that they're not just--

**LATHROP:** Well, they got to at least stop and think about it. You know, every time you file a lawsuit, there is a business decision that gets made. If you, if you are a cell phone company and some guy didn't pay his last cell phone bill and it's a \$20 bill and it will cost \$42 to file the lawsuit, you're probably not going to do it. So I do think that it does make people hesitate and make it part of the math that goes into does it make sense to file this lawsuit or write the bill off.

**DeBOER:** I mean, a cell phone company is not going to be deterred by \$42. So if the reason they're filing is some other reason than the \$20 fee, they're probably still going to do it. It's, it's the, I mean, it's the little guy who maybe doesn't know so much about the court. Maybe they're deterred by the \$42 filing fee. That's the, that's the person who's going to have to make that decision.

**LATHROP:** I can tell you that the fee to file a lawsuit in federal court is quite, quite a bit more than that is in state court. And my guess is that the fee that, that they don't run the courts on the, on the filing fees. I'm sure it's higher than-- they spend more money on running the Judiciary at the federal level than they do have revenue from the filing fee. But here it is the, it is the means by which the courts operate. It takes care of the costs of administration, pays the judges' salaries. And with the filings down and with expenses going up, you know?

**DeBOER:** OK.

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**LATHROP:** We're paying people more because people get reasonable raises every year that are in the court system.

**PANSING BROOKS:** OK, Senator Brandt has a question.

**BRANDT:** Thank you, Vice Chairwoman Pansing Brooks. And thank you, Senator Lathrop, for bringing this bill. My dream has finally been realized. I wanted on the Revenue Committee and we have a revenue bill in Judiciary.

**LATHROP:** That's hilarious. Well, I wanted you on Judiciary Committee, but that's not why you're here. Talk to the people in the third congressional district.

**BRANDT:** Let me ask my question. OK, so we've got, we've got three different-- we're going to raise the automation fee from eight to ten dollars. That's a 25 percent increase. We're going to raise training fees from one to two dollars, that's a 100 percent increase. And we're going to raise the dispute resolution fee from 75 cents to a dollar and a half, which is also a 100 percent increase. Wouldn't it be logical just to raise them all by a factor, the same factor of 25 percent? And I realize we aren't talking a lot.

**LATHROP:** Right. You know what? Why don't you ask that question of Corey Steel. The reason I say that isn't to dodge the question, but because each one of those represent sort of earmarked money that are going to take care of expenses. And I can tell you what we're paying in the automation fee has transformed litigation in the justice system. I can sit at my desk and look up pleadings. I can file a pleading at 11:30 at night, where I used to have to hustle down to the courthouse and get there before it closed. That automation fee has significantly changed the way we practice law. Very important, very important. And I think Mr. Steele will be able to address the purposes for each of those bills. And you would have been a perfect fit on Revenue Committee because when a, when a fee goes from a dollar to two dollars and you call it 100 percent increase, that's that's Revenue Committee stuff right there.

**BRANDT:** And I guess who's affected? If you read the letter from the Nebraska Collectors Association on our desk, they say they are the biggest users of--

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**LATHROP:** They clearly are.

**BRANDT:** --of these. And that's who's affected.

**LATHROP:** It is, it is. And understand that when the collectors get a judgment on these small cases in county court, they also get the filing fee, because when they prevail, they're awarded their fees and costs. And so--

**BRANDT:** Sure.

**LATHROP:** --that cost just gets passed along. But as a business expense, an awful lot of those collection cases result in zero. So they pay the filing fee and, you know, it's the-- you can't get blood out of a turnip. So they go without, without getting compensated on their judgment and have to eat it. The collectors are always in here every time we want to increase fees because you're just increasing their overhead.

**BRANDT:** OK, thank you.

**McKINNEY:** Thank you.

**PANSING BROOKS:** Senator McKinney.

**McKINNEY:** Oh, sorry. I'm sorry. Just a small comment. If, you know, the judges want us to increase these fees, going back to Senator Flood, Senator Flood's bill yesterday, then I think if we're increasing the fees, they should say how much their, they cost to sentence somebody. But that's just my small comment.

**LATHROP:** All right.

**McKINNEY:** Yeah.

**LATHROP:** Yeah, for for whatever reason, Senator McKinney, we've made that policy decision to run the courts, and the fuel that runs that car is the filing fees, not unlike the Department of Motor Vehicles or some other agencies that run on cash fees. And I will say this, that, and you'll hear me say this when it comes to judges' salaries, we are in the, the Governor and the Legislature and the political branch. And it's, it's a pretty important role that we have and that in the Legislative Branch and in the Judiciary Committee in particular, to

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make sure that the judiciary has what it needs to operate and do what it needs to do to, to bring justice and, and to litigants that file claims in the state. OK.

**PANSING BROOKS:** Any other questions? I just have one. Do you want me to ask Corey questions about the different funds?

**LATHROP:** Yeah.

**PANSING BROOKS:** OK.

**LATHROP:** I'm sure he's happy to answer them.

**PANSING BROOKS:** Thank you, Senator Lathrop. OK, proponents. Welcome.

**COREY STEEL:** Thank you. Good afternoon, Vice Chair Pansing Brooks. My name is Corey Steel, C-o-r-e-y S-t-e-e-l, I am a state court administrator for the Nebraska Judicial Branch, and here in full support of LB352. I want to thank Senator Lathrop for introducing LB352, which will provide needed and vital revenue from a small increase in court fees to carry out legislative intent of three court-related cash funds. First, the automation fund. This is used to operate our JUSTICE system, as you heard Senator Lathrop talk about, the Judicial Branch statewide court case, case management system. The second is our educational cash fund. This is used to provide education to both judges and court staff, and in particular, newly appointed judges. Both judges and court staff have a mandatory annual education requirement by Supreme Court rule. Third is the Dispute Resolution Cash Fund, which provides partial funding for mediation services to the mediation centers throughout the state. Why there is a need for this bill? Rates, revenues and expenditures are all part of the answer. First, the rates. The automation fee was last increased in 2009 from six dollars to eight dollars. The education and dispute resolution, resolution fees have not changed since their inception, their creation in 2003. They've stayed the same. The revenue. The decline in court fee revenue is not a new problem, court filing fees have been declining for several years for several reasons. In March 2019, Chief Justice Heavican stated to the Appropriations Committee that these cash funds were be-- beginning to struggle and being able to sustain operations. The Judicial Branch has requested new general fund appropriations for these cash funds in two different budget requests. To date, the Appropriations Committee has not appropriated

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any new funds to these three cash funds. Expenditures. Not only is revenue decreasing, but expenditures are vastly increasing, particularly on the automation fund. Rate surcharges for state computer services has risen exponentially over the recent years. What happens if this bill does not pass? The role of mediation centers has increased because of the restorative justice efforts across the state. Aid to the state mediation centers will decrease as early as fiscal year-- as soon as next fiscal year. The need to keep judges current on a variety of law-related topics and issues does not diminish, and Judicial Branch education will be cut back and limited so that judges across the state will receive less education than needed. JUSTICE, the state's court case management system is continually modified and enhanced because of new law, new legislation and changes to case processing. These enhancements will take longer to incorporate and will no longer be able to be paid for without funding or an increase in an A bill. So any time there's a bill that will affect justice, we will put that on an A bill and ask for appropriations in that manner. IT enhancements in the Judicial Branch will be slowed, if not stopped. In other words, these are essential Judicial Branch functions that need adequate funding to continue. I'd be happy to answer any questions that you may have. At the bottom of my testimony is also the revenue over the past five years from these three cash funds. And then I've also provided, just for comparison, court fees across the other states that are around us here in Nebraska, in the central United States. So I'm happy to answer any questions that you may have.

**PANSING BROOKS:** Thank you, Mr. Steel. Senator Brandt.

**BRANDT:** Thank you, Vice Chairwoman Pansing Brooks. Thank you, Mr. Steel, for your testimony. These fees on the bottom, small claims, civil and traffic, don't those stay in the counties? Or are these already getting targeted to the city?

**COREY STEEL:** That would be the total fee that would be assessed at that time. And fees are-- there are some of the fees that do stay within the county. There are some that come back to the state. And so there's portions of every fee that is collected that go to different categories.

**BRANDT:** But this, this is the total, so like small claims in Nebraska, \$26. What percent of that comes back to the state judiciary?

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**COREY STEEL:** I don't, I don't have that with me. What I can do is give you a full breakdown that's outlined in statute of exactly where those fees are. I'll provide that to the committee. So what percentage of the fees go elsewhere. And I think we've provided that to legal counsel in the past. But I'll, I'll get it.

**BRANDT:** So are these fees also set by the Legislature?

**COREY STEEL:** Correct.

**BRANDT:** OK, thank you.

**COREY STEEL:** The Supreme Court doesn't have the authority to set court fees, they are all set by the Legislature.

**BRANDT:** OK.

**PANSING BROOKS:** Other questions? OK, I, I have something to ask. First off, I want to thank the Chief Justice and the work of the court administrators, because, as you may know, we've had some meetings with judges on juvenile right to counsel, and they've been willing to work with me and come to a solution for that constitutional right for children. So I feel really grateful for that, and I do feel that the chief has at least been encouraging tangentially as well as he could. And I want to, I want to say that I'm grateful for that. The other thing I wanted to talk about, and this is not from the juvenile judges with whom I've worked, so it's from district and county court judges who talk about the fact that they feel that, that no, no fees are ever going to really support their work. And, and so I'm interested in what the Supreme Court-- what, what do you provide to these courts so that all of the counties to give them either the support they need through paraprofessionals or through-- all I can, and I'm trying to find out what it is exactly, but there are things that they are missing in their courtroom that are making, that are making it more difficult to proceed with their judicial requirements. Do you have an idea about what that is and, or if not, what do you provide to the judges?

**COREY STEEL:** No, so I would be interested as well to hear what it is that the judges are not being provided that they need. If it's things that can be provided by the court administrator's office.

**PANSING BROOKS:** OK, because, I mean, if it can't, then that's something that we should contemplate within our fees that, I mean,



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it's, it's only the things that-- and this was last year that I heard all of this from probably three, at least three judges about these concerns. And I just wondered, what, what do you provide to a judge? What do you provide to a judge to help them? You provide education.

**COREY STEEL:** Correct.

**PANSING BROOKS:** You provide help with mediation.

**COREY STEEL:** Correct.

**PANSING BROOKS:** What else do you provide? Do you provide the books, do you provide a law clerk? Do you-- what do you provide?

**COREY STEEL:** So the Judicial Branch is, is not a fully incorporated system where 100 percent is paid for out of the Judicial Branch of the Supreme Court's budget. It's kind of a hybrid approach. So let's take your county, for an example, Lancaster County. So your district court judges within Lancaster County, so what our budget that we will request for appropriation pays for, all judicial salary. So the judges are 100 percent paid for out of appropriated funds. We pay for their court reporter, and so their court reporting personnel are 100 percent paid for by state funds. We pay for the education, so all of the educational requirements that are outlined by the Supreme Court, we pay for those. And then I'm trying to think, I mean, technology needs, we pay for technology needs for the branch. We pay for, our justice system has a statewide case management system and all the things in there. We pay for all of their legal research requirements, we pay for out of the out of the Supreme Court budget.

**PANSING BROOKS:** Like LexisNexis?

**COREY STEEL:** LexisNexis, correct. So we pay for all of those types of things. The things we do not pay for across the state are bailiffs. So if a judge has a bailiff, those are paid for out of county funds. And then obviously their courtroom, anything within their courtroom or their office, office is paid for out of, out of county funds as well so.

**PANSING BROOKS:** Law, law clerks?

**COREY STEEL:** Law clerks are not paid for by the Judicial Branch as well. Those are, those are things that judges have gone to the

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counties and asked for. So your Lancaster, Douglas and Sarpy Counties are fortunate enough that their counties fund law clerks, the rest of the state judges do not have law clerks. We have one law clerk within my office that does help district judges in some venues, but it's not utilized across the state.

**PANSING BROOKS:** Supreme Court, does the Supreme Court, do they have law clerks?

**COREY STEEL:** Yes, the Supreme Court has law clerks and so does the Court of Appeals, yes.

**PANSING BROOKS:** OK, and bailiffs?

**COREY STEEL:** And then we have court staff, yes. They don't have bailiffs, but they have administrative support staff, yes.

**PANSING BROOKS:** All right, well--

**COREY STEEL:** Yeah, I would be interested to know exactly what that is. If a judge is telling you they're not receiving something, send them my way. I'm, as you know, I have an open door. Anybody can call, email and--

**PANSING BROOKS:** Well, they've been battling me so long that now they've got me as an advocate, so--

**COREY STEEL:** Perfect, you know how to get in touch with me. And if there's something that a judge needs out there, we'd-- if we can't provide it, we'd figure out ways to help provide it, whether it's with the county or what have you. But--

**PANSING BROOKS:** And these are judges across the state, these we're not just Lincoln, so I'm--

**COREY STEEL:** Wherever it may be.

**PANSING BROOKS:** --I'm trying to make sure nobody is in trouble, but I just--

**COREY STEEL:** No, no, there is no trouble. There's no need to be trouble.

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**PANSING BROOKS:** We want to support our judges so.

**COREY STEEL:** Correct. We want to supply the judges with what they need.

**PANSING BROOKS:** OK, thank you. Any other questions? Senator McKinney.

**McKINNEY:** Thank you. My question, what has been the reason that the Appropriations Committee has decided not to appropriate any more funding to these funds? Is it just no, no money or is it some other reasons?

**COREY STEEL:** So we've approached, we've been tracking these funds for several years and continue to see a decrease in these funds, as we've outlined. And we knew that we needed to get additional funding, particularly for Judicial Branch education. And that's where we started, saying that we, we have a fundamental belief that judges need to be educated and court staff need to be educated on all of the things that take place. We also, I will tell you, have a fundamental belief that I do not believe we should build a court system on court fees. I think that all fees should be appropriated and we should not. That's the rules of the game. The game was made by the Legislature, so I'm playing within those rules. So we have these court fees and these cash funds. We've gone to the Appropriations Committee saying our Judicial Branch education fund continues to decrease, we need more funds. We've outlined that. And they said you have a court fee, go get a court fee increase. So it's kind of been we're getting this yo-yo back and forth. So it's either we need to come up holistically with here's court fees, here's what court fees need to pay for or that money is directly appropriated. I've asked, I've asked three different senators to take a look at court fees and see if we can't do a, do an LR or a study project on court fees to say what should court fees-- what do they currently fund? Because there's things that court fees fund that maybe they shouldn't. What is needed? What's the policy decision on what court fees should pay for, and then how much should be allocated for those court fees? If you asked me today to revamp the court system, I wouldn't ask for a penny for our court fees. They should all be directly appropriated through the appropriations process. National Center for State Courts will tell you that's the worst way to build a foundation is on court fees. You shouldn't build a court system on court fees. It should be your government would fund your court system. We don't have that in Nebraska at this point in

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time. I've asked three different senators to take a look at it. We haven't gotten anywhere on that, so I have to come in and ask for court fee increases based on the rules that's in front of me. Otherwise, we're going to have to start cutting some of the unfortunate services that we provide.

**McKINNEY:** Thank you.

**PANSING BROOKS:** Senator DeBoer.

**DeBOER:** You haven't asked me. Ask me to do it.

**COREY STEEL:** We can talk, Senator DeBoer. Yes.

**DeBOER:** Thank you.

**PANSING BROOKS:** Any other questions? Thank you for coming in, Mr. Steel.

**COREY STEEL:** Thank you.

**PANSING BROOKS:** Next proponents. Proponents? OK, any opponents? Opponents? Anybody in the neutral? Anybody here in the neutral? Senator, Senator Lathrop, do you want to close? Senator, Senator Lathrop waives closing. And there were, as far as the letters, we had one-- we have zero proponent letters, zero opponent letters and zero neutral. We did have two testifiers who dropped off written testimony in lieu of being here to speak. One is Jon Cannon from NACO as a proponent; and Spike Eickholt from the ACLU of Nebraska is an opponent. And that clear-- that closes the hearing for LB352, thank you.

**LATHROP:** And brings us to the last bill before our long weekend. Senator DeBoer, you may open on LB471.

**DeBOER:** Since I'm the last one before we can go, then I'll try and make it quick. Good afternoon.

**LATHROP:** I didn't mean to suggest that at all.

**DeBOER:** Good afternoon, Chairperson Lathrop and members of the Judiciary Committee. My name is Wendy DeBoer, W-e-n-d-y D-e-B-o-e-r, and I represent Legislative District 10, which includes Bennington and

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northwest Omaha. Today I'm introducing LB471, which changes the termination date of the long-term restrictive housing work group from December 2021 to December 2025. The long-term restrictive housing work group was first established in 2015 by LB598, introduced by former Senator Schumacher. LB598 implemented several recommendations made by the Department of Correctional Services Special Investigative Committee. The final version of the bill passed on a vote 47-0, with two members absent. At the time, Director Scott Frakes testified in support of the bill, stating that he supported the concept of a long-term segregation work group, which includes representatives from outside organ-- organizations interested in segregation reform, and that he'd overseen a similar group in his work in Washington State. We thank Dr-- Director Frakes for his support of the group's creation. The purpose of this work group is to advise the department on policies and procedures relating to the proper treatment and care of offenders in long-term restrictive housing. The work group is required by statute to meet at least semiannually and to receive quarterly updates from the director on information related to long-term restrictive housing. The work group membership includes employees of the department, formerly incarcerated individuals and mental health professionals. I have had the honor to serve as the representative of the Legislature on this committee over the past year, and I was recently reappointed. And I believe the committee's work is vital in caring for and reducing the number of inmates held in restrictive housing. I will note that COVID in some ways suspended our activities and we haven't been getting our quarterly reports quite as much. So I felt it might be good to get a little more time so that this group could do its work. We as a state have a duty to continue to work to reduce the number of individuals held in restrictive housing and ensure that those who are in restrictive housing receive proper treatment and care. Extending the life of the long-term restrictive housing work group will assist us in this goal. Thank you for your consideration of this bill and I'm happy to answer any questions that you have.

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

**GEIST:** I have a quick question.

**DeBOER:** Yeah.

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**GEIST:** I was on the LB127 oversight committee the first or second year I was in office. And I'm wondering if in your time that you've been on this group, have you seen improvements in what the correctional department is doing in restrictive housing?

**DeBOER:** That's a complicated answer, because during the time that I have been appointed, yes, I have seen improvements. However, I was appointed the day after a meeting and then there was not another meeting because of COVID for a year. So I have attended exactly one meeting in the over a year and a half that I've been on the committee.

**GEIST:** OK.

**DeBOER:** So--

**GEIST:** Well, and I only--

**DeBOER:** --it's very difficult to say--

**GEIST:** Yeah.

**DeBOER:** --how that has gone.

**GEIST:** I only reference being on that committee earlier because I've noticed a number of changes, and I just wondered if that was the same thing you were seeing. So we can talk about it in a few months.

**DeBOER:** Yeah, I think that would be good. I think, I think there have been some progress made because of that. But again, it's been a little bit difficult because of COVID.

**GEIST:** Right.

**DeBOER:** And that has really, I think, disrupted the group and so--

**GEIST:** OK, thank you.

**LATHROP:** I don't see any other questions. Thanks, Senator DeBoer. We'll take proponent testimony. Good afternoon, Mr. Inspector General.

**DOUG KOEBERNICK:** Good afternoon, Senator Lathrop and members of the Judiciary Committee. I'm hoping that Mr. Eickholt testifies after me, so I'm not the last one keeping you from your four-day weekend. So we'll see. As Senator-- my name is Doug Koebernick, spelled

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K-o-e-b-e-r-n-i-c-k, I'm the Inspector General of Corrections. I'm here to testify in support of this legislation. I think Senator DeBoer did a good job of explaining the background and how this work group came into existence, so I won't go there. I will share that the very-- the day before my very first day on this job as Inspector General, I attended the very first meeting of that work group. It was attended by many individuals, the room was pretty full. I thought it started off on the right foot. It was led by the director of Corrections. I'm not going to go into all the details about the workings of that group, but I think that anyone involved with this group, and at one time I was invited to sit at the table and participate, I'm not any longer, I think they would all agree that it is no longer operating as Senator Schumacher and the Legislature envisioned. At the end of the day, it's up to the Legislature to decide whether or not to extend the work of this group. And I was originally going to testify in a neutral capacity to, to answer any questions you had about the workings of the group, because I've gone to every meeting. But the more I thought about the bill and kind of pondered it, I decided that I would come in in support of it. Although I do not think, as I've said, that the work group has met the goals of the Legislature, I do think it has a role. I think that it can meet those goals and I think it should continue into the future. Restrictive housing is a very important piece of the Department of Corrections, and having more eyes on those practices and more input on the future use of it and improvements can only be valuable. The department has made positive strides in some cases in improving their restrictive housing practices. But I do believe, and I think Director Frakes has said this in front of you, that more can be done. And I believe that this work group can support the current director and, and a future director in those efforts. So with that, I'm open to answering any questions related to the current work group that might assist you with your decision on LB471.

**LATHROP:** I don't see any questions.

**DOUG KOEBERNICK:** Thank you.

**LATHROP:** Thanks for being here this afternoon. Good afternoon.

**SPIKE EICKHOLT:** Good afternoon. 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 LB471. Just very briefly, I just want to echo what Mr. Koebornick said earlier, that I think the working group has produced

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some good work and has accomplished some goals. And I think maintaining it is still, is very important. We still have some need for reform with respect to restrictive housing, as you heard regarding the bills yesterday. And I would just encourage this committee to advance this bill.

**LATHROP:** You know, this is just one of these topics that when we look at, well, go back to 2014 and Nikko Jenkins and, and the circumstances of his confinement and the realization of a lot of people, and including me, as to the, the just the horrors of restrictive housing, the long-term restrictive housing. Placing some-- an individual in there and not getting them real mental health care. If you've never read that report from that special investigative committee, everybody should because you'd be horrified by what happens in restrictive housing. And we have-- we get a restrictive housing report every year. One of the reasons we're, we had that bill today was to make sure it could be incorporated into the IG's report. We have people that have been in there over a year. And if you think of the, the powder room in your, in your home or your bathroom, a small bathroom, they're living in that space with a bed and that's it. And they get out maybe-- when do they get out, an hour a day?

**SPIKE EICKHOLT:** Yeah, well, yeah.

**LATHROP:** To take a shower basically. And when we did that report, or when we had that hearing, and that was back-- we had the previous director there, Bob Houston. He, he readily acknowledged what, what restrictive housing does to, to people who go in healthy, otherwise healthy mentally. It just destroys people. And the, and the mentally ill, it just puts them over the edge. It's really, really requires policymakers to pay attention to it.

**SPIKE EICKHOLT:** That's why it's important to maintain the group itself.

**LATHROP:** OK. Any other questions for Spike or any comments? I don't see any. Thanks for being here. Appreciate hearing from you. Anyone else here to testify in any capacity on LB471? Seeing none, we do have two bills that are in proponent, proponent-- pardon me, I said bills. Position letters. It's a little late in the week for me. Two position letters, both proponents. And with that, Senator DeBoer waives and that will close our hearings.