

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 2, 2022

LATHROP: Are you ready to go? All right. Let's go. You'll be sure to tell me that-- when we're on and when we're not?

LAURIE VOLLERTSEN: We're on now.

LATHROP: OK. We're on now. Good. Good afternoon and welcome to the Judiciary Committee. My name is Steve Lathrop. I represent Legislative District 12 in Omaha and I Chair the Judiciary Committee. Committee hearings are an important part of the legislative process and provide an important opportunity for legislators to receive input from Nebraskans. If you plan to testify today, you'll find yellow testifier sheets on the table inside the door. Fill out a yellow testifier sheet only if you're actually testifying before the committee, and please print legibly. Hand the testifier sheet to the page as you come forward to testify. There's also a white sheet on the table if you do not wish to testify but would like to record your position on a bill. This sheet will be included as an exhibit in the final official hearing record. If you're not testifying in person on a bill and would like to submit a position letter for the official record, all committees have a deadline of 12:00 p.m. Central Standard Time the last workday before the hearing. Please note that there's a change this year and position letters will only be included in the official record-- pardon me, position letters to be included in the official record must be submitted by way of the Legislature's website with-- which is nebraskalegislature.gov. This will be the only method for submitting letters for the record, other than testifying in person. Letters and comments submitted by way of email or hand-delivered will no longer be included as part of the hearing record, although they may be a viable option for communicating your views with an individual senator. Keep in mind that you may submit a letter for the record or testify at a hearing, but not both. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents, and, finally, anyone speaking in the neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We ask that you begin your testimony by giving us your first and last name and spell them for the record. If you have copies of your testimony, please bring up at least ten 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 permitted to read it. We will be using a three-minute light system. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning, and when the red light comes on, we'll ask you to wrap up your final thought and stop. As a matter of

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committee policy, I'd like to remind everyone the use of cell phones and other electronic devices is not allowed during public hearings. That said, you may see senators using them to take notes or stay in contact with staff. I would ask that everyone look at their cell phones and make sure they're in a silent mode. A reminder, verbal outbursts or applause are not permitted in the hearing room. Since we've gone paperless in the Judiciary Committee, senators may be using their laptops to pull up documents and follow along with each bill. I say that so that people don't think they're on there horsing around on Facebook. 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. And with that, we'll have the members introduce themselves, beginning with Senator DeBoer.

DeBOER: Good afternoon, everyone. My name is Wendy DeBoer. I represent District 10 in northwest Omaha.

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

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

McKINNEY: Terrell McKinney, District 11, north Omaha.

GEIST: Suzanne Geist, District 25, which is the southeast corner of Lincoln and Lancaster County.

LATHROP: Assisting the committee today are Laurie Vollertsen, our committee clerk, and Josh Henningsen, one of our two legal counsel. Our committee pages are Bobby Busk and Logan Brtek, both students at UNL. And with that, we'd like to begin the hearing with our first bill. That brings us to Senator John Cavanaugh on LB1051. You're up.

J. CAVANAUGH: Good afternoon.

LATHROP: Good afternoon, welcome.

J. CAVANAUGH: Good afternoon, Chairman Lathrop. Members of Judiciary Committee, my name is Senator John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, and I represent the 9th Legislative District in midtown Omaha. I'm here today to introduce LB1051, which would provide for a judicial process to set aside convictions and expunge records for concealed weapons offenses. I brought this bill because of the debate this committee and the Legislature is having on whether

to repeal or modify Nebraska's concealed carry law. My belief is that if the state decides something is no longer a crime, the Legislature decides that we should not-- that something should not be a crime, we should ob-- we are obligate-- we have an obligation to those who have been convicted under the previous law to make things right. LB1051 would set a rebuttable presumption that a conviction should be set aside if the Legislature repeals Section 28-1202 or Section 28-1202 is modified in such a way that re-- that the moving party's conduct would no longer be a crime. Senator Brewer's LB773, for example, modifies this section to essentially allow any person in the state, other than a prohibited person, to carry a concealed weapon without need for a permit. So if LB773 or similar legislation were to pass, a person convicted under this section who is not a prohibited person would presumptively be entitled to relief under 10-- LB1051. I don't intend to turn this hearing into a debate about that bill, only to let you know the mind-- my mindset include-- in including that provision. I will note that Senator Brewer has added his name as a co-sponsor to this bill. Opponents of this bill note that Nebraska already has a set-aside provision in law and is not necessary to include a special category in LB1051. I know that some people behind me can testify to why current process might not be sufficient, but I think it's important to provide a special category if we change the law in such a way as to make the behavior that led to the conviction no longer a criminal act. I'd feel the same way if we were talking about the legalization of marijuana or permit-- or permitless carry. For me, the principle is the same. I want to thank the committee for your time and I'd be happy to take any questions.

LATHROP: OK. Any questions for Senator Cavanaugh? I see none. Thanks for bringing LB1051 to us and we will take proponent testimony first. Good afternoon and welcome.

DEENA KEILANY: Thank you. Good afternoon, Chairperson Lathrop and members of the Judiciary Committee. My name is Deena Keilany, and for the record that's spelled D-e-e-n-a K-e-i-l-a-n-y. I'm a senior certified law student at the University of Nebraska College of Law, and I'm currently enrolled in the Civil Clinical Law Program, where I co-lead the clinic's Clean Slate Project. I'm testifying today as a concerned citizen and on behalf of the university. I support LB1051 because it expands the pool of individuals who may seek and obtain Clean Slate relief and in turn dramatically improve their employment, housing and education prospects. I applaud Senator Cavanaugh for bringing this important bill and Senators Brewer and McKinney for signing onto it. I want to use my limited time before you today, though, to call the committee's attention to an issue regarding the

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Criminal History Act's ability to make good on its promise of giving qualifying folks a truly fresh start. As many of you know, the Clean Slate Project assists Nebraskans rehabilitate their criminal history records through set-asides, pardons, and record sealing. An integral part of our work involves utilizing the civil remedies provided in Nebraska's Criminal History Act. Generally speaking, the act includes two critical sections, 29-3523 and 29-3528. Section 29-3523 is the record-sealing statute. It allows those who meet certain requirements to seal their criminal history information from the public. These are generally folks who were innocent all along, were victims themselves, or reformed their lives to become contributing members of society. The process is complex and lengthy, but, if successful, an order is issued prohibiting the Nebraska State Patrol from disseminating these now-sealed records to third-party inquirers. The other critical section, 29-3528, or the enforcement section, comes into play in situations where the state disobeys such an order by unlawfully disseminating sealed criminal history information. The enforcement section provides such aggrieved individuals with a private right of action against the state. Unfortunately, the Nebraska Supreme Court has narrowly construed the statute to essentially nullify the act's enforcement mechanism. In 2018, the court found that the enforcement section did not constitute a sufficiently explicit waiver of the state's sovereign immunity. This means that when the state violates the Criminal History Act, aggrieved individuals have no meaningful recourse. Thus, the effectiveness of LB1051 requires also amending the enforcement section to more explicitly waive the state's sovereign immunity. I urge you to address this through a committee amendment to LB1051, if it moves forward, or by introducing a separate bill next session. For your consideration, I've distributed a memo on this issue, which includes proposed language for am-- for amending the enforcement section. I'd be happy to take any questions.

LATHROP: You did perfect with the light, which we appreciate. Any questions for this testifier? I see none. Thank you for being here and--

PANSING BROOKS: I just had-- I'll say something. Sorry.

LATHROP: Oh, I'm sorry, Senator Pansing Brooks.

PANSING BROOKS: Welcome, Ms. Keilany, and we're just happy to have you back. And you've done, I know, a lot of work in the Legislature, so it's wonderful to have you back. And we-- I-- I personally love the Clean Slate program, so I'm grateful for all your efforts.

DEENA KEILANY: Thank you.

PANSING BROOKS: Thank you. Appreciate it.

LATHROP: Good afternoon.

ALICIA CHRISTENSEN: Good afternoon. Thank you for having us here. And my name is Alicia Christensen, A-l-i-c-i-a C-h-r-i-s-t-e-n-s-e-n. I, like Deena, am a certified senior law student at the University of Nebraska, and I'm currently enrolled in the Clinical Law Program and co-lead the clinic's Clean Slate Project. I'm testifying today as a concerned citizen and not on behalf of the university. I want to support and build off the prior testimony of my colleague Deena Keilany and remind the committee that LB1051 is cut from the same cloth as recent legislation that has expanded meaningful Clean Slate relief to help more Nebraskans. In 2015, the Legislature unanimously enacted provisions that sealed court records for criminal charges that are later dismissed. In 2018, Senator Pansing Brooks brought a bill that provided a way for sex trafficking victims to set aside and seal records of convictions for crimes related to their victimization. That bill incorporated Senator Lindstrom's proposal to allow pardoned individuals to seal records for the relevant offense. That combined bill also passed by unanimous vote. Through this series of legislation, the Unicameral has recognized that it's good policy to break down barriers to employment and housing and acknowledge that a promise of a clean slate is critical to successfully rehabilitating an individual's life. Now, in 2022, Senator Cavanaugh proposes a commonsense addition to this group. However, the statute that LB1051 seeks to expand is presently unenforceable, as interpreted by the Nebraska Supreme Court. In a 2018 case, an individual brought an action to compel the State Patrol's compliance with the requirements of Section 29-3523. The Nebraska Supreme Court dismissed the claim on the finding that the statute didn't sufficiently waive sovereign immunity. In effect, this binding interpretation has absolved the State Patrol from any obligation to observe the statutory requirements. This was illustrated in a recent District Court order dismissing-- dismissing on sovereign immunity grounds allegations the State Patrol improperly disclosed sealed records. As it stands, there are no ramifications when the State Patrol violates a court order to seal an individual's records, and the wronged individual is left with no recourse. In my view, the Supreme Court's narrow reading of this statute is a misapprehension of the Legislature's intent. Thus, I urge the committee not only to advance LB1051, but also to amend the enforcement section to clearly express a waiver of sovereign immunity. This is necessary to make a-- to make good on the promise

of a fresh start for all individuals protected by the Criminal History Act.

LATHROP: Very good. Thank you for your testimony, Senator Pansing Brooks.

PANSING BROOKS: Thank-- thank you so much for being here today, Ms. Christensen. You know, when-- when you think about these-- these issues and the fact that we're, you know, not sealing-- if people comply with their punishment, everything is--- is solved, you know, we're stopping people from becoming part of our workforce. I mean, it's really affecting so much more than just whether or not somebody has a charge or not that's viewable. It affects the number-one issue in our state economically, and that's workforce development, and we are just arresting our potential employee pool. So I thank you for this, this work that you're doing, appreciate it.

ALICIA CHRISTENSEN: Thank you.

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

ALICIA CHRISTENSEN: Thank you.

LATHROP: We appreciate your testimony. Next proponent.

SPIKE EICKHOLT: Good afternoon. My name is Spike Eickholt, S-p-i-k-e, last name is E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association as a registered lobbyist in support of this bill. We want to thank Senator John Cavanaugh for introducing the bill. It's really difficult to follow the last two proponent testimony because they're both very, very effective, so I'll try to do as best I can and not duplicate. What Senator John Cavanaugh explained this bill does is it provides for an opportunity for someone to first seek to have a set-aside entered if they had a charge of carrying a concealed weapon. Under current law, they can pursue that now. But what this bill does is it provides for a rebuttable presumption that if the crime that they were convicted of would not necessarily be a crime today, assuming LB773 passes, then that would enhance their opportunity to get a set-aside. The bill also does a separate component of that remedy, which mimics what Senator Pansing Brooks did a couple of years ago on the human trafficking and sex trafficking component, and that is, after a set-aside is granted, the person can request and the court can direct that their record be sealed. If you look on page 2, say lines 15 through-- I guess 15 through 31, those are the factors the court

considers. The way a set-aside works is a person files a motion in the technically closed criminal case. The county attorney or prosecutor is notified of that motion. The court sets it for a hearing, and at that hearing the person basically pleads their case. The court has to consider a number of different factors, and that is, number one, or sub (a) on lines 17 and 18 on page 2, the behavior of the movement after completion of the sentencing or disposition. So I-- I anticipate the opposition might argue you're opening the floodgates, you're opening the door to people who shouldn't get these kind of remedies, but the person, if they-- if they have got a concealed weapon conviction and they appear with subsequent criminal charges, either pending or-- or convicted, the court's going to know that because if the judge doesn't observe it themselves, the prosecutor will certainly raise that to the court's attention. Additionally, the person is going to show that they're not likely to engage in further criminal activity, and along with any other information the court deems relevant. I've done set-asides before. They are generally granted in those cases, in my opinion, that are deserved. This just basically-- the judge will hear that person's case, if they've been out of trouble since then, why they want the set aside, they can get it. And I think what this does, as Senator John Cavanaugh explains, that the Legislature is going to narrow or repeal the concealed weapon statute in such a way. You're taught that it was a fundamental right. Those people who are convicted under the earlier version of the statute should at least have the opportunity to clear up their record, so I'd urge the committee to consider this bill and advance it.

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Mr. Eickholt, for your testimony. So if I was previously convicted of a con-- con-- concealed carry violation, does this just apply to guns or knives or brass knuckles? Because if we're referencing Senator Brewer's bill, it just pertains to guns.

SPIKE EICKHOLT: That's correct. It does apply to handguns. That's right. This, as written, would just apply to all convictions for carry concealed weapons, so that could be knives. In my opinion, there's reason to allow for that. You may remember there was a 2016 Nebraska Supreme Court case that interpreted that any knife with a blade over three-and-a-half inches is a knife; it's considered a deadly weapon for purposes of a carry concealed weapon. Now the Legislature, I think, in 2018 tried to narrow that definition a bit, but there were a significant number of people who were convicted

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under that broad interpretation. But you're right. It did-- it would allow, as written, for them to request a motion to set aside. But I would submit that the factors would screen out those, and I think that the only sort of presumption that would be available would be if Senator Brewer's passed-- bill is passed and that applies to handguns.

BRANDT: But Senator Brewer does have penalties in there for violation. They may be a little different than what they are today, but there's still going to be penalties for carrying a concealed weapon into a school or a bank or--

SPIKE EICKHOLT: That's right.

BRANDT: --or something of that. Would that nullify this--

SPIKE EICKHOLT: No.

BRANDT: --or this nullify that?

SPIKE EICKHOLT: No, because if a person had a conviction, say, from-- say Senator Brewer's bill passes and goes into law, but a person has a conviction in 2020 for carrying a handgun into a school, then this wouldn't help them at all, right, because that would not-- that would still be a violation under Senator Brewer's passed law. If they had it just in their car and the officer didn't see it originally, and that's all they were doing at the time, they weren't intoxicated, they didn't have drugs on them, that sort of thing, they weren't a fugitive from justice, then they would at least have a claim under this bill to get that past conviction set aside and sealed.

BRANDT: Last question: So as a practicing attorney, does this affect a lot of cases out there?

SPIKE EICKHOLT: I mean, set-aside helps more cases than you think because it's just a partial remedy. I did one about-- during a court session for someone for a traffic infraction case, so I think it's an important remedy. And you hear-- the record-sealing component of this bill is actually maybe more consequential for people because even if you-- you get charged with a crime, you get put on probation, you move on in your life, that conviction shows up on your record. I mean, somebody doing a background check is going to find it. And even if your charge is later dropped or dismissed or amended down to something less, the reality is, employers, landlords, other people regard that in a negative light. Getting this thing set aside and

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having that conviction sealed, it does help people make a fresh start.

BRANDT: All right. Thank you.

LATHROP: I want to ask a couple of questions just for the sake of the committee and my understanding. To get a pardon, you gotta go to the executive-- chief executive. The Governor can pardon, or the Pardons Board.

SPIKE EICKHOLT: The Governor, the Attorney General and the Secretary of State, the Pardons Board.

LATHROP: Right. And if you get a pardon, then it's as though it never happened.

SPIKE EICKHOLT: Yes, you'd get a pardon and all of your rights are fully restored and everything given back to you. I just want to add real quick, in Senator Pansing Brooks's bill, Senator Lindstrom had a bill that says after you got a pardon, you could get your record sealed because the ironic thing was you can get a full-blown pardon, everything's fine, you're put back and they do a criminal history check and they say, you got a felony conviction, we-- we asked and you said-- and then you're into that [INAUDIBLE]

LATHROP: I'm kind of looking. That's kind-- you're getting ahead of me a little bit. But-- but you make a good point, which is you can get pardoned and the-- somebody can still see it, and now, apparently, they can't from a--like, did we pass that bill?

SPIKE EICKHOLT: We did pass that bill.

LATHROP: OK. If we do a set-aside, who can see it, like does law enforcement still see it even though it's set aside and sealed?

SPIKE EICKHOLT: Law enforcement can still see it if it's sealed. But, yes, they can see it on the set-aside, anybody can, because it's still part of the public record. You'll see the conviction, you'll see the set-aside order, "set-aside" the person's conviction, and that's all still public.

LATHROP: So if I go to apply for a job at Acme Insurance Company and they got the box and the box says, have you ever been convicted of a felony? If I go through a process like this and-- do I have to check the box yes?

SPIKE EICKHOLT: 29-3523 does allow for you to say no. It sort of provides a legal fiction that sort of lets you deny that claim. That's similar to what they do for juvenile records that have been sealed, as well, which is kind of-- it's a policy decision, but you are still protected under that statute to say that you have not been. You can say as if it never had happened.

LATHROP: OK. I just wonder when we talk about a set-aside, do people-- all the things we-- this committee hears that follow people around when they get a felony conviction, can they escape any of that with any of these remedies? Clearly, they can with a pardon.

SPIKE EICKHOLT: Yeah.

LATHROP: And you're saying they can under certain circumstances with a set-aside?

SPIKE EICKHOLT: They can to a certain extent and, I mean, and that's what I think the earlier testifiers talked about, the remedy part. All these records are public. They get shared with other public agencies or out on the internet, and trying to get that cleaned up is difficult. And I think that that's what that suggested-- I haven't seen the suggested amendment. That's what the suggested amendments is to do, to provide for a way.

LATHROP: OK.

SPIKE EICKHOLT: Once people go through all that work to get their record sealed, they ought to at least have it mean something.

LATHROP: OK, I see. Pardon me. I see no other questions. Any other proponents of LB1051? Anyone here in opposition? Anyone care to testify in opposition? How about in a neutral capacity? Seeing none, Senator Cavanaugh, you may close on LB1051. We do have two letters, position letters. One came from-- actually, two opponent, one from Media of Nebraska and the other from the Omaha Police Officers Association.

J. CAVANAUGH: Thank you, Chairman Lathrop, and I want to thank our testifiers here, in particular the-- the two law students, for their contribution to the conversation. And I talked to them actually before the hearing about what some of their issues were and I'm certainly willing to try and figure out how to make sure that the intention of the Legislature is given full effect when we actually do pass laws. Mr. Eickholt did a nice job of kind of explaining the process here. I just think it's important to point out that, well,

for one, that, as Senator Brandt was asking, it's only really-- the presumption only applies to conduct that would no longer be illegal under the bill as passed, so things that would still be illegal or would still be a violation would not get that presumption. However, any illegal conduct currently, aside from this, is still entitled to a set-aside if it meets the current requirements of a set-aside, which include finishing your sentence, not being incarcerated for more than a year, and then those other steps about, you know, your conduct afterwards and-- and likelihood to reoffend and those things that Mr. Eickholt addressed. This just adds the principle that once we've decided that something is no longer illegal going forward, that that should become a presumption, in addition to all of the other requirements, that is rebuttable by, say, subsequent illegal conduct or other action. So you still have to meet the requirement of finishing a sentence. You have to have not been incarcerated for more than a year. You still have-- would have to not have other law violations pending. And as Mr. Eickholt addressed, there's a whole slew of situations under which, as Chairman Lathrop pointed out, the information is still available to law enforcement in the courts and for use in enhanceability and those sorts of things. This is more of a civil remedy on that sort of job application situation and restoring those rights, and it's just one of-- one more thing that we can do when we recognize that conduct-- when we decide the conduct should not be illegal, to kind of right the ship and give people that opportunity to get their life back on track. So I think it is, in my opinion, a simple, commonsense step in the right direction. And if we are going to start going down a path of other things, as well, I think we should establish the principle that once you legalize marijuana, previous marijuana convictions should also be set aside and sealed, like-- as we don't have the power to pardon, so this is our power in this regard. So that's why I brought this bill. I hope that other people think about that aspect of LB773 as we consider that bill and other bills when we talk about changing legal conduct. So I appreciate it.

LATHROP: OK.

J. CAVANAUGH: And I'd take any other questions.

LATHROP: I see no questions. Thanks for being here, Senator Cavanaugh. That will close our hearing on LB1051 and bring us to Senator McKinney and LB1154. Good afternoon, Senator McKinney. Welcome to your Judiciary Committee.

McKINNEY: Good afternoon.

LATHROP: You may open.

McKINNEY: Good afternoon, Chairman Lathrop and members of the Judiciary Committee. I'm here before you today to discuss LB1154, which would change provisions relating to good time, parole eligibility, and service of-- sentencing of-- of incarceration outside of a department facility. This bill acknowledges that prison overcrowding is a great concern for our state and attention needs to be given to solutions that address this issue. Overcrowded prisons affect the ability for states to provide necessary medical care and other essential services. Additionally, it can result in degrading practices like requiring prisoners to sleep on the floor. Many prisons and jails expose incarcerated individuals to dangerous environmental conditions like extreme heat or cold, contaminated food, and a lack of basic sanitation, as we saw when a water-- water main broke in September or October. One way to address this issue is to provide provisions for incarcerated individuals who are eligible to be placed in community corrections facilities to be able to be transferred. Under this bill, rules and regulations shall be promulgated to -- to always ensure that at least 80 percent of committed-- committed individuals who are eligible for placement in community corrections or transitional housing are serving sentences in such placements. This is true unless there is an objectively compelling reason that an individual incarcerated's transfer should be deferred. These reasons include but are not limited to-- but are not limited to whether the committed offender exhibits a pattern of ongoing behavior while incarcerated indicating that the committed offender would be a substantial risk to public safety, including Class I offenses under the department's dis-- disciplinary code or additional criminal convictions, or there is verified, objective evidence of sub-- substantial harm to a victim that could not have been available for consideration at the time. It's astonishing to me that in the face of, you know, the overcrowding crisis we're in, that the department is not implementing practical means to decrease or introducing practical means to decrease the overcrowding situation instead of trying to build another prison. In the 2020 Office of Inspector General report it's reported that they had heard from individuals who were on the approved list and who had been classified as community custody. The OIG reviewed the list and found that a number of individuals on-- on it who were waiting to go to CCC-O and CCC L was quite high, sometimes numbering well over 200 individuals. In addition, there was another large list of individuals who had been approved for transfer to WEC, minimal custody B, who were waiting in-- waiting in the pipeline. In August, NDC shared that on July 29,

2020, the waiting list for approved community transfers of male inmates was at 261 individuals. To illustrate, let's say we take the 261 individuals in-- that are eligible for community corrections and apply the 80 percent to it. That would mean 209 would be eligible and be-- and would be in community corrections. In doing this, I think it would be like a great solution to begin to decrease the population. It was also reported in the report that the staff who manage the wait list have-- are-- are usually put in a difficult position because they have individuals who are ready to go to community and they have done everything asked of them, programming and things like that. But they're still waiting, which creates tension. Individuals may wait for months for spots, which, honestly, I really didn't understand when I started to go through some of the facilities and talking to some of the individuals. They would say, hey, I'm supposed to be in community, but I'm stuck in Tecumseh or NSP, and I've been trying to get transferred, but it's been-- it's a difficult process and I've been waiting for months. Also, last year, Senator Wayne introduced LB3-- LB334 to adopt the Community Work Release and Treatment Center Act; to change provisions relating to the Board of Parole, the Department of Correctional Service, and the Office of Probation Administration. He introduced the bill with two goals: (1) to increase the number of offenders in the Nebraska Correctional System who are exposed to work release prior to their discharge from custody; and (2) to do so in settings that also offer therapy, programming, treatment, and/or vocational training, and educational classes. The fiscal impact of that bill was about \$2,100,060, a far cry from a \$230 million prison. We also included in the budget last session an appropriation of \$500,000 for the preparation of a program statement, site selection for a new halfway-back community corrections center; funds may be utilized for an option to purchase. And to provide some clarity about what is in LB1154, in Section A-- I mean Section 1 would require NDCS to establish a process for review of interruptions of furloughs, releases and other alternative placements. Section 2 would require NDCS to promulgate rules, regulations to ensure that 80 percent of offenders eligible would be placed in community corrections or transitional housing or placed in those placements. Three would amend Section 83-1,017 [SIC--83-1,107] to increase the amount of good time credited to each offender for good behavior, after serving 12 months of their sentence, from three days per month to four days per month. Section 4 would amend State Statute Section 83-1,114 to change the factors considered by the Board of Parole. The changes will require the board-- board to release an eligible offender unless there are-- unless there are substantial and compelling objective reasons. This

section then provides a list of circumstances that can be considered substantial and compelling. Section 6 would amend State Statutes Section 83-1,135.02 to make changes in LB1154 to apply retroactively. Section 7 would amend State Statute Section 83-962 to change the Board of Parole's standard during an overcrowding emergency. The board will be-- would be required to parole an individual offender unless there is sub-- unless there is a substantial risk the offender would commit a violent act. Section 8 would require the State Court Administrator to submit a report concerning the relationships between demographic factors and sentencing outcomes. This section would also require the State Court Administrator. To submit a report with NDCS and the Board of Parole regarding strategies to ensure sentencing decisions are informed by individual risk assessments and programming availability. To rei-- to reiterate some-- some-- something I mentioned at the beginning of my statement, these provisions apply unless there is an objectively compelling reason that an eligible incarcerated individual's transfer to community corrections should be deferred. All crimes are not created equal and this bill was not intended to circumvent the need to protect the public from danger and harm. These changes are what we need to get out of our current situation as a state. Many love the status quo, but let's be honest. The status quo isn't working for us. We spent six months trying to figure out recommendations. We're considering building a prison. We need to take bold approaches to get to the goal that we seek, which is to re-- reduce our prison population overcrowding and in-- and improve our criminal justice system in the state. If we somehow get Senator Wayne bills out-- Senator Wayne's LB334 out of committee and also find sites across the state for community corrections, we can be smart on criminal justice reform and get ourselves out of this crisis while also improving how parole operates in our state. We can do this. I'm willing to work with those that are willing to work in good faith. But you-- but if you don't want to change and stick with the status quo, then we're not-- then we are not on the same page. And I thank you and open to any questions.

LATHROP: Very good. Thank you for introducing LB2254. Are there any questions for Senator McKinney? I don't see any at this point. Thank you, Senator. We will take proponent testimony on LB1154 at this time. Good afternoon. Welcome back.

JASMINE HARRIS: Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Jasmine Harris, J-a-s-m-i-n-e H-a-r-r-i-s. I'm the director of public policy and advocacy with RISE. We're here today to show support for LB1154. We are the largest

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nonprofit organization in Nebraska focusing on rehabilitative programming in prisons and reentry support. We prepare and train people for each phase of reentry through intensive character development, employment readiness, job creation through entrepreneurship, family programming, and case management, and our mission is to break generational cycles of incarceration. We support all opportunities that allow more people to have the opportunity to parole. As we provide reentry case management services, we begin about a year before people's release to start working on that reentry plan. This includes working on housing, employment, medical and behavioral healthcare resources in the community, and even preparing them to appear in front of the Parole Board. We'd rather see opportunities available for more of our participants to become parole eligible because we know that preparation provides an increase for successful reentry. We also attend the parole hearings for our participants in a supportive capacity, so we see firsthand the interactions that the board has with our participants and hear the reasons that they are maybe not given parole. Changing the guidelines to focus on more concrete objectives will help ensure more people who have shown great strides in improving their success upon reentry are prepared and granted parole. In January 2020, we conducted a stakeholders meeting that discussed the parole process across the spectrum of incarceration. Concerns were mentioned, including having a fair hearing, which further went into talks about basing parole eligibility on a person's rehabilitation versus their crime. There have been concerns that many people were not paroled because the victim's statements were considered every time they went up for a hearing and they were considered and that-- that weighing that out. And so changing this to consider objective evidence that was not available at the time of sentencing will help alleviate those concerns that people have that those victim statements continue to come back every time they're up for parole. Ensuring that people have a transition period from incarceration to reintegration back into society is a crucial step in successful reentry. Having someone mandatorily discharged without adequate reentry preparation is a sure way to release someone into crisis. Our reentry specialists are working with individuals at the community corrections level diligently with coordinating, planning, housing, employment, transportation and more. Within the next 18 months, we should have about 97 program participants who are parole eligible, have final hearings, things like that. So by July, we'll be working with all of them on these plans. And if the 80 percent rule allowed that, then at least 77 of them would be moving into a community corrections-type setting to begin really working on that reentry and increase their

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chances of successful reentry. And so for those reasons, this is why RISE supports LB1154 and asks that the committee advance it to General File.

LATHROP: Can I ask you a question?

JASMINE HARRIS: Um-hum.

LATHROP: And-- and I'll just tip you off, Ms. Cotton. I'm going to ask you the same question. Can you talk to us, while I have you here, just broadly or generally about transitional housing? So if I'm an inmate, whether I've jammed out or whether I'm on parole, what opportunities do I have to find-- first of all, it's a challenge because I now have a felony conviction, right? Yes?

JASMINE HARRIS: Yes.

LATHROP: And a person with a felony conviction can't get into public housing? Am I also right about that?

JASMINE HARRIS: It all depends on what the conviction may be and if-- like with Omaha Housing Authority, they have like a point system. So there's a possibility, but it all depends on what those internal policies are.

LATHROP: We'll say it's a challenge to find housing if you're coming out of incarceration.

JASMINE HARRIS: Oh, it definitely is.

LATHROP: OK. Can you tell me what-- how are we doing for resources for people in terms of having a place to move to or to-- you know, I'm coming out of incarceration. I've been in the Department of Corrections, whether I'm pa-- whether I am jamming out or on parole. Give us sort of a grade on how we're doing with transitional housing in your-- in your judgment.

JASMINE HARRIS: You want a letter grade? In my judgment, we do struggle with transitional housing. We have some that's available, but there aren't enough beds. As we see with a lot of things, people are coming out, they're trying to get into some of the places, they don't have the room available for people to go into that specific housing. Some aren't up to par when it comes to if they are able to get funding, like grant program funding to pay for that transitional housing. So those are denied, in a sense, and they--

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LATHROP: If I'm-- if I'm an inmate coming out of the department, do I get some kind of a-- let's say I'm on parole, because the jam outs are kind of on their own, right?

JASMINE HARRIS: Yes.

LATHROP: If I'm on parole, do I get some kind of a voucher to go to a particular place and they'll pay the rent?

JASMINE HARRIS: There are some programs that are available, but they have to apply for them and be qualified and the--

LATHROP: OK.

JASMINE HARRIS: -- if the funding is there.

LATHROP: You said that there-- there is some limitation on capacity. By how much? Are we talking 100 units? I think one of the recommendations of CJI was to make investments in transitional housing. I'm wondering what that needs to look like--

JASMINE HARRIS: I don't have a--

LATHROP: --if you have an opinion about that.

JASMINE HARRIS: --specific number, but it needs to be increased tremendously because what we have and what we see, there are personal landlords who will say this is a transitional house, who's, you know, putting their number out there for people to call, so there's really no way to track how many places are seeing their transitional housing. And then you also see, for those individuals who don't get into the transitional housing, then where they're left, they are relegated to couch surfing from people they know, staying with family, and/or up against filling out applications for other properties who may or may not be background friendly, so spending those dollars that, you know, they barely have to apply for this other housing.

LATHROP: So how many people that are coming out are struggling to find a place to stay?

JASMINE HARRIS: I would say majority of our people do. Housing--

LATHROP: So you're not really helping me with--

JASMINE HARRIS: --like even outside the--

LATHROP: Maybe Ms. Cotton will be able to help me.

JASMINE HARRIS: I don't have specific numbers, but--

LATHROP: I'm wondering, when we make that recommendation and we try to address this, we're sort of at a place where we want to-- you know, we're dealing with, should we build and what should we build and what should that look like and when-- when should that happen? We're talking about reforms. When CJI met and they concluded-- and I think-- I think that was a consensus item-- that we need to make investments in transitional housing, I don't know what that needs to look like.

JASMINE HARRIS: I think it falls into the same purview of looking at affordable housing because it's all-- it's all the same population who are struggling to find adequate and affordable housing and safe housing.

LATHROP: OK. OK, well, I'll ask Ms. Cotton--

JASMINE HARRIS: Yes.

LATHROP: --more of that because I assume she's got trouble with some of these guys finding places to live. Anyone else have any other questions for Ms. Harris? I see none.

JASMINE HARRIS: Awesome. Thank you.

LATHROP: Thank you for being here and for answering my questions.

SPIKE EICKHOLT: Good afternoon. 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 as their registered lobbyist in support of LB1154. We want to thank Senator McKinney for introducing the bill. We just want to speak generally to the bill because we think that it addresses an important issue and that is the significant number of people who are in prison who are either close to their release state or in community corrections sort of status or perhaps are parole eligible but are still within custody. I looked up on the website, Department of Corrections, just like the last quarterly statistic that I could see. There are 902 people in prison who are past their parole eligibility date. That doesn't necessarily mean that perhaps they all should be paroled, but that is a significant number of people, in our opinion, who could be paroled, are in-- and in all likelihood are close to the end of their sentences anyway due to the structure of their sentence and the fact that they are parole eligible. A couple of these components of the

bills are ideas that have either been done in this state or at least been proposed in the state. When Senator McKinney was introducing the bill and he referenced Sections 1 and 2, it reminded me of that sort of medical release, medical furlough program that the Department of Corrections sort of developed on their own without statutory authority under, I think, the earlier director, and I don't know what the actual success of that was. It was not necessarily discovered, but it was learned the department did that. They ended that program, I think, on the theory that they didn't have any statutory authority for it, but that's something that I would submit, we would submit, that perhaps the state could consider doing. And it's similar in those bills that deal with medical release when you've got people who could possibly be released in the community under some sort of supervision, but they're close to the end of their sentence. That's something to pursue, not necessarily on parole but just released to the community. Another component of the bill is it adds additional earned time. Under, I think, Governor Heineman, you get day for day for good time. There's also this opportunity for you to earn additional good time on your sentence. After you've served at least one year, you can earn, under current law, three days off of each month if you don't get any sort of major write up or a Class I or II, or maybe it's even Class I, II or III violation. This bill would increase that to IV to kind of accelerate those people, once they start-- they've served their first year and they're going to close to their release, to encourage good behavior. And finally, the bill also has this what I would call presumptive parole, and that is, when somebody appears before the Parole Board, they should be paroled unless they somehow are either-- there's substantial and compelling objective reasons for why they shouldn't be that are delineated in the bill. So we would encourage the committee to get-- consider the concept in this bill and advance it to-- to the general body.

LATHROP: OK. Any questions for Mr. Eickholt? Senator DeBoer.

DeBOER: Thank you, Senator Lathrop. How would that presumption of par-- parole work in practice? Would-- I mean, how would you be able to test the theory of whether or not they found one of those factors, or how would that actually work and what-- would that set up a cause of action for someone who said, oh, well, I was absent all of those factors and they didn't parole me still or just-- can you take me through how that would actually work in practice?

SPIKE EICKHOLT: As far as them having a cause of action, that's the easy one. I don't know-- they-- in theory, prisoners always have a cause of action now if they're denied parole. Parole is a

discretionary body. They don't have any success in the court system trying to pursue any kind of appeal or anything like that. That's basically what the case law says.

DeBOER: Did it--

SPIKE EICKHOLT: If you look at the factors on pages 6 and 7, I think the way it works is that a person should be paroled unless there are substantial, compelling, objective reasons. This sort of shifts the-- not necessarily the burden maybe, at least the framework. You may remember, at least I kind of remember, from the CJI study, they talked about how one feature of our parole system is a bit unique. And that is a person appears initially in front of the board, not necessarily to be-- to be approved for parole, but actually sort of almost be evaluated for parole, and then they're told to come back again later for approval. And there are probably merits in arguments on both sides of the issue, but that's one thing the CJI study group noted, and that is that we are sort of an outlier in that feature that other jurisdictions, it seems like, this, if I remember reading, that when you appear in front of the parole board, it's to be paroled unless you somehow haven't done certain things that are expected of you or that you are a risk to harm for others or you have done something, have a current charge or the other factors that are listed in this bill, you've somehow had a psychological evaluation within the last three years indicating that you'd be a risk to public safety if paroled, and those kind of factors.

DeBOER: So if someone just came before the Parole Board and it didn't really fit in all-- in one of these categories, but they thought-- everybody just had a bad sense about this. There was enough smoke, but not really any fire, and they couldn't really-- like there was almost enough of these factors, then is-- is the Parole Board eligible-- are they able to say, look, this guy can't get paroled yet? I mean, how much are we tying their hands with this?

SPIKE EICKHOLT: Right.

DeBOER: And again, you said that there-- the case law says there's no cause of action, but of course the case law wouldn't have had this statute yet.

SPIKE EICKHOLT: Right. That's probably a good point. And maybe you can consider somehow providing for some sort of at least discretionary standard that the board could still have where they could weigh that, you know, yeah, he hasn't had a bad evaluation and

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he hasn't done anything that's resulted in a criminal charge, but we still just don't feel comfortable. Maybe you could add, I would suggest it'd be, a narrow opportunity for the board to at least sort of use their discretion because I think you do have to trust the system and they are a board that-- made up of professionals who do hear these requests and they ought to have some-- their opinion ought to have some deference. So I think that may be something worth considering. I'd concede that point.

DeBOER: I mean, I don't-- I don't want to undo the whole bill here--

SPIKE EICKHOLT: Right.

DeBOER: --with that. But I just-- I'm just trying to understand how-- how clear-cut this is.

SPIKE EICKHOLT: Right. No, it's a good point.

LATHROP: So LB920 actually has something called streamlined parole.

SPIKE EICKHOLT: Right.

LATHROP: And I think Ms. Cotton can talk about it because she was in the group when we-- when we formulated this idea, which is taking people that have completed their programming and two years out, when they meet the Parole Board, they enter into an agreement. If you have all your programming done and you don't have any Class Is, you will get out on a specific day without further action.

SPIKE EICKHOLT: Yeah, I was going to mention-- I had hit my notes, but I didn't mention that, but that's one thing that caught my eye [INAUDIBLE]

LATHROP: OK. I don't see any other questions. We appreciate your testimony, as always. Anyone else here as a proponent of LB1154? Seeing none, is anyone here in opposition to LB1154? Opponent testimony?

CARLA JORGENS: Good afternoon. My name is Carla Jorgens, C-a-r-l-a J-o-r-g-e-n-s. I am an employee of the Nebraska Department of Correctional Services, but I am not here to speak on their behalf. I'm currently a corporal at the Community Correctional Center in Lincoln, Nebraska. We currently have-- house an average of 575 inmates with the ability to house about 668, 100-- 160 of which would be women. In the last three years, I've seen CCC-L change from a safe facility that was successfully transitioning incarcerated individuals

back into the community to a facility that is housing inmates that are not prepared for community custody. I believe the breakdown started to occur when we watered down the classification process to allow more inmates faster eligibility for community custody, kind of like when the test is too hard, you lower the minimum score so more people can pass. We removed the idea that community custody was a right that had to be earned and turned it into a right that is automatically given, regardless of behavior prior to obtaining community custody and after-- after obtaining community custody. Once you make it to community, you were told the rules and if you didn't follow them, you were sent back to a secured facility. It was a good thing that kept me safe and kept my coworkers safe. It kept the other inmates safe and it kept the community safe. Very few inmates broke the rules. Many were paroled successfully and have continued to function well in society. Some did reoffend and have since returned to the prison system. With the change in the classification system came a whole new type of inmate, inmates refusing to work, inmates getting high on meth and K2, disrespecting staff, assaulting staff, uses of force increased, inmates returning from work and furloughs intoxicated. Inmates don't care that they're at community custody facilities. We hold onto them instead of sending them back to make it look like they're passing the test and they repeatedly get high and break every rule, refuse to work, and bring in drugs and/or cell phones until someone from central office says, OK, send them back to a secured facility, they don't belong there. This is common occurrence at community. There is no accountability for the bad behavior. Good behavior is not required. If you automatically give 80 percent of the inmates community custody because the numbers say they're eligible, you will put the employees, the other inmates, and the public at risk. We're not far from those numbers now and we're receiving-- and what we are receiving is a bunch of entitled, unremorseful, violent, drug-abusing individuals that we release out into the public daily to search for jobs or go to work, having very little confidence in them making the right choices while they are out in society. The STRONG-R is a risk needs assessment that addresses those higher risks and what they would need to assist them to be successful. We're not equipped to support the medical substance abuse and mental healthcare that these inc-- increased population would need to be successful in our facilities at this time.

LATHROP: OK, we gotta have you wrap up your last thought.

CARLA JORGENS: OK.

LATHROP: Were you done?

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CARLA JORGENS: Yeah, pretty close.

LATHROP: OK, perfect. All right.

CARLA JORGENS: Pretty close.

LATHROP: Any questions? Senator Geist.

GEIST: Yeah, thank you for your testimony. I'm curious. You said that when the-- that you started reclassifying offenders is when you started seeing this happen?

CARLA JORGENS: Yes.

GEIST: And then it also sounds like you-- you have no or limited ability to-- for enforcing any of the rules? Can you speak to that?

CARLA JORGENS: No, we do enforce them. We write the inmates up.

GEIST: OK.

CARLA JORGENS: We do what we're supposed to do on our end of it.

GEIST: OK.

CARLA JORGENS: We try to get them to do the right thing. We do the MRs. But when-- it used to be you had one chance. You came back high, you came back drunk, you came back with a cell phone, you were gone. Now--

GEIST: You would have gone back to a secure facility?

CARLA JORGENS: Now-- you went back to NSP or you went to WEC or back to D&E, wherever you came from. Now the MRs build up to the extent some inmates have seven, eight, nine intoxicant MRs before they're sent back to a secured facility. You're wasting a bed for somebody that could use-- and use the-- the bed and the programming in a positive way. It's like we're holding their hands, just trying to get them through the system. I mean, I understand we have a bed issue, an overcrowding issue. But if you have people, 80 percent, 200 and some people that are eligible that are waiting to get there and you're hanging on to people that don't deserve, that don't appreciate the fact that they are there and can make good use of it, send them back and give those others the chance that they deserve.

GEIST: Thank you.

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LATHROP: I have a question. When you say we changed-- there was a change in classification, was that just-- was that a formal change to some classification, or is this just sort of change in the criteria informally?

CARLA JORGENS: I--

LATHROP: Can you describe what you're talking about?

CARLA JORGENS: I-- honestly, I don't do the classifications. I'm a corporal. That's a case management issue. But I know that the classifications, specification-- specifications have changed. They've eased up a little bit, so--

LATHROP: OK. Is that a formal change, is what I'm driving at--

CARLA JORGENS: I--

LATHROP: --if you know.

CARLA JORGENS: I do-- I honestly do not know. I could not give you an honest answer to that question. I have no idea.

LATHROP: OK, now I want to ask you another question--

CARLA JORGENS: I just know that there has been a change.

LATHROP: --without sounding like I'm in-- cross-examining you, OK? But it's going to sound like that. You made a representation that there was a change in classification. And when I ask you, what's that look like, you're saying, I don't know, because it's not my job, so--

CARLA JORGENS: What it looks like is, instead of getting inmates coming into work release and saying, OK, here-- this is my shot, I'm going to do this and I'm going to do my programming, get it right, follow the rules-- we had that all going for us. Very few broke the rules. Classifications changed, we started seeing inmates that--

LATHROP: And you say that again. What do you mean classification changed?

CARLA JORGENS: When they classify an inmate's custody level, when they say, OK, you're eligible for community custody, I don't know what that criteria is. That's a case management issue, but--

LATHROP: So what makes you think it changed?

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CARLA JORGENS: Because the inmate population that comes to our facility has completely changed.

LATHROP: OK. OK, so it's a conclusion from the-- the people that you're seeing, from their behavior.

CARLA JORGENS: Correct. I-- I should have said yes.

LATHROP: OK. I just wanted to clarify because I wanted to get on that topic if-- if-- if that's actually happened. Senator DeBoer.

DeBOER: Thank you, Senator Lathrop. I have maybe a slightly off-topic question, but are-- is there residential in-person drug treatment at your facility?

CARLA JORGENS: There is SUA and-- or SAUs. It's kind of difficult to give somebody treatment when they work a 12-hour shift, they leave at 4:00 in the morning and they don't get back from work until 6:00, 7:00, or 8:00 at night, and your drug counselors are gone for the day.

DeBOER: So-- so are you finding that that is a successful kind of drug treatment pro-- because you said there's you've got a lot of problems with-- with folks having drug issues. So is that drug treatment turning out to be successful or-- or do you feel it's maybe not?

CARLA JORGENS: I feel like the problem is the people that need it aren't taking it. The people that are taking it are the ones that are wanting to do their programming--

DeBOER: OK.

CARLA JORGENS: --and do the right thing. We have inmates that are sitting on detail that are refusing to do-- they're re-- they're at work release and refusing to work. Why are they there?

DeBOER: So-- so-- so let me-- I'm sorry. I just-- I-- I'm really interested in this in-person drug treatment thing. So if I'm in this residential in-person drug treatment in your facility, do I go out and work every day?

CARLA JORGENS: Yeah, they all have jobs, but they have--

DeBOER: OK.

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CARLA JORGENS: --they have classes that they have to attend for their treatment, OK, at certain times. Not all of them can attend them. Some of them don't want to because they don't-- they'll lose wages if they have to lay back for half the day to go to their drug treatment.

DeBOER: So-- so they don't get like a special time frame in which they're going to go into this intense treatment so that they can make sure that they get to all of their sessions or whatever you want to--

CARLA JORGENS: I don't know how intense the treatment is. I do know that we have drug-- drug treatment there--

DeBOER: OK.

CARLA JORGENS: --and there are classes that are held throughout the day.

DeBOER: And there are classes throughout the day?

CARLA JORGENS: Yes.

DeBOER: And that may-- may cause difficulty with their job?

CARLA JORGENS: It does. I-- we've got guys that come back from-- from work on third shift, 6:00 in the morning, boom, they're over for their drug treatment class and it goes until 9:00, 10:00, in the afternoon. Then they go back, do their laundry, get their shower, get some sleep, get up and go do it again.

DeBOER: So thank you. That's helpful. When you were talking about all the people that are-- that have drug problems in your facility now, do you see those-- do they sort of have these problems when they first come to you, or do they get worse as they're in the community corrections process?

CARLA JORGENS: I-- you know, we've had them get off a van and within four hours we're picking them up off the yard because they're having a seizure from K2. We've had them where we won't have a problem with them for two or three months. and then the next thing you know, they're hot for methamphetamine. They-- they--

DeBOER: So it could be that--

CARLA JORGENS: --they have a dirty UA. It could be anything.

DeBOER: It could be either that they're started now--

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CARLA JORGENS: There's much more now, prevalent now, than--

DeBOER: Just generally?

CARLA JORGENS: Generally, yeah.

DeBOER: But they-- it may be that they are first coming with a problem you don't know and maybe that they are inheriting the problem once they're there.

CARLA JORGENS: When they first get off that bus, they swear to God they're not touching anything, they're going to-- they're going to do the right thing, and, I mean, and it-- it just-- it-- it goes in waves. It increases. The huge thing is methamphetamine right now. In the summertime, the huge thing is K2. I don't know.

DeBOER: OK.

CARLA JORGENS: It-- it just-- it goes-- but usually once they start smoking the K2, they don't stop.

DeBOER: Thank you.

CARLA JORGENS: OK?

LATHROP: Yes, thanks. Sounds like a challenge.

CARLA JORGENS: Yeah.

LATHROP: Other opposition testimony, if any? Good afternoon.

JERRY BRITTAIN: Good afternoon, Senators. My name is Jerry Brittain; it's J-e-r-r-y B-r-i-t-t-a-i-n. I represent FOP 88. Many of you are familiar with our organization, but we are the union that supports the sergeants, caseworkers and corporals at NDCS. There's just a few things we want to go through here. First off, we do feel similar to DeBoer-- Senator DeBoer that it may tie-- this bill may tie the director's hands of the department and also the Parole Board. My limited experience with the parole is that they do a very good job of making sure that those who are eligible and need to be or are ready to be out get that opportunity. We do feel that inmates should be handled on a case-by-case basis and that forcing inmates into a community center prematurely could put those inmates who are on the right path at risk by introducing K2 and other drugs into our system, as Ms. Jorgens was testifying about. And it's highly likely-- Senator McKinney mentioned boats or inmates sleeping on the floor. That's

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what they're referring to usually. If the community centers are at capacity, which I believe most of them are right now, that if-- this bill could force those inmates onto those boats just, instead of at the State Pen, at a community center due to an infrastructure issue. And lastly, this-- this bill doesn't really solve the problem of not needing a new prison. We still need to get these individuals programming in a safe and secure manner. This bill addresses kind of after the fact or the back side of their time, but it doesn't give them adequate space to have programming. So those are our major concerns with it. We usually get asked where we stand or what we could do better because you keep hearing us shutting down bills or trying to testify against bills or, you know, all we want is a prison. Something along the lines of transitional housing on the back side for parolees, that's something that is-- should probably be invested in. But we still have to have the opportunity, the space, the infrastructure to pro-- provide programming and rehabilitation for the inmates while they're under our care.

LATHROP: OK. I don't see any questions. Appreciate you being here.

JERRY BRITTAIN: Thank you.

LATHROP: Any other opponent testimony? Anyone here to speak on LB1154 in a neutral capacity?

SCOTT FRAKES: Neutral?

LATHROP: Are you an opponent or neutral?

SCOTT FRAKES: Opponent.

LATHROP: OK, we're back to opponent testimony.

SCOTT FRAKES: Apologies.

LATHROP: That's all right.

SCOTT FRAKES: Good afternoon, Chairman Lathrop. Members of the Judiciary Committee, my name is Scott Frakes, F-r-a-k-e-s. I'm the director of the Nebraska Department of Correctional Services. I'm here today to provide testimony in opposition to LB1154, specifically Sections 1 and 2. The definitions of alternative placement is broad and-- and language in Section 1 seems to suggest forms of release other than those permitted in Statutes 83-183 and 83-184. Without understanding what additional types of release to which this would apply, it's impossible to identify a formalized hearing process for

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review. Additionally, the proposed language encompasses decisions that require administrative action by the Board of Parole. A formalized review, as well as the drafting of rules and regulations around such a process, would fall outside the scope and the authority of NDCS. NDCS already has promulgated rules around our grievance process. If the intention is to create a review process that would have to be carried out while the inmate is on furlough or other forms of release, that poses its own obstacles. Hearings would need to be scheduled upon investigation of a situation, all the while the inmate remains in the community. Something occurs that necessitates revocation of parole or termination of a furlough and it is likely-- and it is likely a serious enough infraction to require a return to custody, at least until the matter is reviewed. Section 2 requires promulgating rules and regulations to ensure that at least 80 percent of committed offenders eligible for community custody or transitional housing placed in those-- are housed-- are in those placements. Currently, 90.7 percent of eligible inmates, or 760 out of 838, are housed at community corrections facilities. The onset of COVID has caused some delays in transfers to community custody, and those are being managed as soon as possible following the inmate's release from quarantine and isolation protocols. NDCS and the Legislature have already ensured that over 80 percent of eligible offenders are in community custody by adding a total of 260 community custody beds in 2017 and 2019. Additional rules and regulations are unnecessary, and I'd be happy to try and answer your questions.

LATHROP: Senator DeBoer.

DeBOER: It's tradition, so I'll ask you some questions. A long time ago, I met with you and we were talking about community corrections and drug treatment, and this-- you sort of heard a preview to this, this-- at the time you told me that-- and I could get this wrong, so you can correct me-- that community corrections is the place where you do the residential, in-house sort of treatment for drugs for a lot of folks. Do you want to--

SCOTT FRAKES: No.

DeBOER: OK, I misunderstood. So can you tell me, tell me about the relationship between community corrections and drug treatment?

SCOTT FRAKES: So we do have outpatient treatment for drugs.

DeBOER: Sure.

SCOTT FRAKES: And we do some relapse-- some relapse-- relapse prevention work and some relapse response work as well, so, but none of it is residential because, as Ms. Jorgenson [SIC] pointed out, the-- the primary purpose of community custody is either educational release or mostly work release. So the expectation is that the person is out in the community doing one of those two things, and so residential substance abuse is done in our secure facilities.

DeBOER: So the-- the drug treatment or substance abuse treatment that is done in the community corrections is done as sort of like a follow-up, make sure you're still doing well, kind of?

SCOTT FRAKES: That's primarily what it is. In some cases, we have some people that get a late assessment, or we try, when possible, to take people from intake to community custody if their sentence structure, their crime and other things support it, and if they have a outpatient recommendation for substance abuse, then we have the resources to address it. But if they need residential substance abuse treatment, then they have to go to a secure facility.

DeBOER: OK, thank you.

LATHROP: Director, you heard Ms. Jorgensen [SIC] say there was a change in classification or she's seeing a different type of inmate. Have you-- do agree with that or can-- has there been a change in classification--

SCOTT FRAKES: Yes.

LATHROP: --or in the process of classifying?

SCOTT FRAKES: Yes.

LATHROP: Why don't you address that for us so that we understand her comment? You can disagree with her comment or agree with it or just sort of pick up off where she left off.

SCOTT FRAKES: Well, what I appreciate about her comment is that that's the-- the push and pull of this situation, that I have staff who feel that we are too liberal in who we allow to go to community custody and too liberal in how we allow them to remain in community custody. And I have advocates and others that feel that we're not getting enough people into community custody. When I arrived in 2015-- bless you-- I identified what I thought was an imbalance in our classification system. I thought we were over-classifying our population, that we had too few people at community custody and too

many people in max custody. We worked with UNO to update our classification tool, which is now being reviewed and anytime in the next year or so probably will go through a validation process. So we took that opportunity to update our tool and make sure that it was effective as it could be in providing that objective side of the classification process, as classification is and has to be an objective and subjective process, much like parole, much like many of the decisions that we make. So we updated our tool to make sure that it was as effective as possible. We wanted a tool that was at least 75 percent accurate in its prediction. So that's why I say it's-- it's important and it's an obj-- objective-- objective part of the process. But in our business, I can't solely make decisions off of tools that are 75, even 80 percent predictable. That's too big a gap with what the other 20 percent might do. In conjunction with that, we increased the time frames for who could be eligible for community custody because we were pretty restrictive. I want to say we might have been-- it's been so long now. This is seven years today, by the way. It's-- I think we were at one year or 18 months. We looked at two years and then ultimately landed on three years. So if you're three years from release or parole eligibility, you can be considered for community custody, which is really generous if you looked across the country and compare us to other systems that are out there, like the one I left behind where people are eligible at one year but usually don't get there until they have six months. So we increased criteria. We opened up the pool that would be eligible. We made sure our tool was assessing people as accurately as possible, and then we added 260 beds because we recognized that we did have room and there's no question, when you go and increase the length of time people are gonna be there. And then the last piece of it is we also did look at, what's our goal? Is our goal to only send the best-behaving, most likely to succeed people to community custody? Or do we need to open up the doors for those that have challenges and that really could benefit from that transitional opportunity and that experience of goofing up a little bit but not committing a new felony. And then you work with them. You provide substance abuse intervention. You provide counseling. You provide other things. But it's definitely a philosophical change and I can respect that, as well, so.

LATHROP: In this CJI process you-- the CJI process that you participated in, in the streamlined parole for-- the Parole Board sees those people two years out, their programming is done or it will be done, and the contract that they would en-- enter into that

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provides that they will have no Class I misconducts, are the things that Ms. Jorgensen [SIC] described Class I misconducts?

SCOTT FRAKES: Some of them.

LATHROP: So if a guy-- a guy is supposed to go to work, he goes to Acme Manufacturing and comes back and you can tell that is high or intoxicated, is that a Class I?

SCOTT FRAKES: Well, you'd think I'd know it off-- off the top of my head. I believe those are IIs.

LATHROP: So a I is like fighting with a guard or something?

SCOTT FRAKES: The higher violence, but--

LATHROP: OK.

SCOTT FRAKES: But don't hold me to the-- that because that could be a IH, which would make it a I.

LATHROP: OK.

SCOTT FRAKES: So it's con-- it's serious. There's no question getting intoxicated, you know, acting belligerent, doing-- and that is also part of that whole issue is trying to figure out what occurred, not only the fact simply that someone was intoxicated, which is part of the recovery process. I'm sorry. There is-- there is treatment. There is no cure. The cure doesn't exist. There is a process of recovery. Recovery looks like this. For some people, it starts to look like this, and at some point it becomes pretty nice. For some people, the entire lifetime looks like this. And so, again, having those interventions, did they say, yeah, you're right, I'm drunk, or did they fight the staff, did they, you know, cause an incident or whatever? All those factors have to be taken into consideration. I will be following up to see if we've had anybody that had seven or eight intoxication misconduct reports, because then I need to find out why-- why, because I would be concerned about that.

LATHROP: OK. Senator Pansing Brooks.

PANSING BROOKS: Thank you. Thanks for coming, Director Frakes, and happy anniversary.

SCOTT FRAKES: Thanks. I was hoping you weren't--hoping you weren't mad at me.

PANSING BROOKS: No.

SCOTT FRAKES: OK.

PANSING BROOKS: I just was wondering, so in your opening, you talked about that in-- the Legislature added more beds in 2017 and 2019. Is that right?

SCOTT FRAKES: Correct.

PANSING BROOKS: But then the OIG reported that there were-- there was a need for about 261 beds. Can you clarify what-- what that all is?

SCOTT FRAKES: Well, of course we did go and look at that, and that's now, you know, 18 months ago, but what I recall is finding a combination of some of the, at that time, again, COVID, so it was the summer of 2020, so we had a backlog. The classification system kind of got frozen in place at different times.

PANSING BROOKS: So that was prior to COVID, though, right--

SCOTT FRAKES: No.

PANSING BROOKS: --2019, when you reported that?

SCOTT FRAKES: That was-- I thought it was 2020.

PANSING BROOKS: I think it was 20-- some of my information-- Anyway--

SCOTT FRAKES: OK. Well, then that would be even farther back. So all I can recall about that,, and I thought it was 2020, was that when we took it apart, we didn't find that the number was as significant as it appeared to be. And the other problem is, it's always a point in time. So today-- well, actually, we wrote the testimony a couple of days ago, but we had 838 people in the system that were community custody eligible, and I've got 800 and, whatever it is, 16 beds or something like that, so we're very close. And while there's-- what did it say in here? So there was about 78 people that weren't in a community custody bed out of that 838.

PANSING BROOKS: Yeah.

SCOTT FRAKES: We're in a COVID peak. We're on the right side of it now, but just a week ago, we had more units on quarantine than we did.

PANSING BROOKS: OK.

SCOTT FRAKES: So those are kind of the normal things that you see in the ebb and flow. But as I continue to assess and figure out where do we need beds, for the last four years, we've averaged about 2,000-- 1,950 people per year have moved through community custody. Unfortunately, only about 46-7 percent actually release from a community custody bed, or I guess you could say fortunately, depending how you want to look at it, but that's partially because people fail at community custody and partially because there's a part of our population that we just don't feel is safe to put in that setting. And that's a challenge for me. I've testified to this many times. You know, I'd say I don't feel that it's safe to put them in community custody and yet they're going to release. You know, I'm going to ask that they be put on parole or, unfortunately, in some cases, jam out. So that's why we have to take some risk with who we put in community custody, but we have a system that's working and to create an arbitrary number and force something to happen is problematic.

PANSING BROOKS: OK, Thank you, Director Frakes.

LATHROP: I want to clarify two things. One is the-- the decision for someone to go from population to community corrections, that's based upon a decision made by the department?

SCOTT FRAKES: Yes.

LATHROP: But if a person were to furlough under any circumstance, is that a decision made by you or is that a decision made by the Parole Board?

SCOTT FRAKES: Well, it's made by us, but the board gives a blessing, so to speak.

LATHROP: OK, so you put them up and they-- they gotta-- if-- if they say, we think that's a bad idea, it doesn't happen? So they essentially consent to it?

SCOTT FRAKES: That would be pretty unusual, right.

LATHROP: OK. I just wanted to make sure everybody understood the-- the difference in those two processes. And I think that's it. I don't see any other questions. Thanks for your testimony.

SCOTT FRAKES: Thank you.

LATHROP: Is anyone else here in opposition? Welcome.

ROSALYN COTTON: Good afternoon, Chairman-Senator Lathrop and members of the Judiciary Committee. My name is Rosalyn Cotton, R-o-s-a-l-y-n C-o-t-t-o-n. I am the chairperson of Nebraska Board of Parole, and I'm here today in an individual board member to testify in opposition of LB1154 and thank the committee for this opportunity to testify. As the chairperson of this Board of Parole, I'm very concerned that LB1154 will limit the Board of Parole's ability to consider important criteria when deciding whether to grant an individual parole, including whether a committed offender will conform to the conditions of parole. An individual's willingness to conform to the conditions of parole is critical to maintaining public safety and lowering the chances of recidivism. Keep in mind that public safety is a primary mission of the Nebraska Board of Parole and the Division of Parole Supervision. We make informed decisions based on a number of critical factors, including prior criminal history, nature of crimin-- curr-- current offense, institutional behavior, and completion of clinical programming. All of these criteria are essential to determine whether an individual will be a successful candidate for parole. The Parole Board has been taking an aggressive approach to scheduling hearings even before an emergency was declared, and we will continue accelerating reviews into the future. Those who have reached their eligibility date see the board at least once per year and, however, it is important to note that approximately 40 percent of that population has served a prior term of parole and failed to conform to the conditions of parole. The parole eligibility population has declined over the last couple of years, in large part due to better coordination with NDCS and scheduling earlier parole hearings for individuals who are nearing their parole eligibility date. This helps them get ready and thinking about engaging in critical programming. In closing, Senators, granting parole with supervision is crucial, but public safety is essential to every decision the board makes. This can be enhanced if the board releases individuals who are not an unreasonable risk to public safety. Thank you, Senators, and I'll answer any questions at this time.

LATHROP: Senator Geist.

GEIST: Thank you, and thank you for your testimony. Would you just clarify for me, where you say it's important to note that approximately 40 percent of this population has served a prior term of parole, does that mean they've-- they've offended while on parole and come back? Is that what you mean?

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ROSALYN COTTON: That basically means they basically have come back. There are other conditions that they may fail that they come back on, and not so much laws but maybe other violations as well.

GEIST: Other offenses? OK.

ROSALYN COTTON: Just kind of depends on what that-- that particular individual has done based on their revocation process.

GEIST: Is that a high number of people to reoffend just across?

ROSALYN COTTON: In my opinion, no, because one of the things that we take into consideration is that they're back, primary for the law's violation. We take into consideration the technical violations, as well, but for the most part, it's the law violation.

GEIST: It's a law vi-- violation? OK, thank you.

LATHROP: Senator DeBoer.

DeBOER: Thank you, Senator Lathrop. Are there specific-- so you've kind of heard my questioning earlier about criteria, etcetera. Are there specific other criteria that you think would be helpful to include in the-- you know, if we were going to do a list? And is there something that we're missing here that you think we should add to the list of criteria that should be considered by the Parole Board or-- you mentioned kind of. I'll just leave the question there. Is there something you think we're missing?

ROSALYN COTTON: No. I think for the most part, the board's taken into consideration that institutional behavior, the-- the realistic parole plan, and the clinical programming that they need to complete. There could be other things during that individual hearing, depending on who-- what the case is and the offense, that we may be taking into consideration, you know, the victim statement, that sort of thing. But for the most part, that's what we look at when making our decision to consider for parole.

DeBOER: I think I probably should have been more clear. I meant in this bill, are there specific criteria that you normally look at that aren't listed in terms of what the bill says are things that the Parole Board should look at? If you haven't looked at this one, that's-- that's OK.

ROSALYN COTTON: Yes, I have. No, not nothing, and again, in my opinion, not at this point.

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DeBOER: OK, so-- so you think this is a fairly exhaustive list of the things that you normally look at as a Parole Board?

ROSALYN COTTON: Yes.

DeBOER: OK. That's-- that was my main question. Thank you.

LATHROP: Ms. Cotton, can I ask you to talk about transitional housing? So as you know, because you and I were in the same working group, you were on the CJI and we were in the same working group, we spent a good deal of that talking about parole, and first of all, parole being a preferable way to have people discharged versus jamming out, right? We like that? Is it-- and you're shaking your head yes at that?

ROSALYN COTTON: Yes, sir.

LATHROP: And that mic can't record that, so I'm-- I'm going to describe that. The-- the-- with parole being the preferable way to-- to discharge. When we were working in the working group, we talked about transitional housing. And one of the recommendations that-- that found its way into the CJI report was expansion of transitional housing opportunities or-- or-- or services or something like that. Tell us where we're at in terms of accommodating the housing needs of those who are paroled.

ROSALYN COTTON: We basically are utilizing the transitional facility that's in the communities throughout the state, and I believe that there are challenges with some of those because of the quality of the transition facilities. But it's just something that we, you know, look at from an individual case-by-case parolee.

LATHROP: OK, and to be really clear, this isn't intended to be critical and it's not intended to put you on the hot seat and-- and then try to beat you up over transitional housing, but to get a-- so the committee has a sense of our capacity to assist these people as they transition out. And then you brought up quality, and I'll talk about that next. So what's our capacity in relationship to the number of people that are paroling?

ROSALYN COTTON: It's-- it's a challenge to get them in some places.

LATHROP: OK, tell us what that means. Do we need to expand that-- that transitional housing by 10 percent, 20 percent, double it? What-- what's that look like? What would it take to be doing it adequately?

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ROSALYN COTTON: You mean as far as the ones that we are considering for parole?

LATHROP: Right, the people that are paroling, right? So one of the things that-- that-- that parole does is make sure that people have a suitable housing alternative when they leave. Am I right?

ROSALYN COTTON: Um-hum. Yes, that's correct.

LATHROP: That's one of the things you're going to look at.

ROSALYN COTTON: Um-hum.

LATHROP: If I'm on parole, do I get a-- do I get a voucher that I can take to one of these facilities and use it to pay for my rent?

ROSALYN COTTON: We do pay some of those individuals.

LATHROP: OK.

ROSALYN COTTON: Yes.

LATHROP: So when we talk about expanding transitional housing options, availability, capacity, however you want to term it, what do we need to be doing differently?

ROSALYN COTTON: I think-- I'm going to speak for myself, and I know I'm not on the hot seat here. I think it's an opportunity to look at what we can do as far as assisting with that transition piece, and that would be to start looking at what we can do for those individuals that's being challenged in finding a place to stay versus going home to parents or going home just to be there and having no place to stay for the moment and then leave because the resident does not work out for them. So I think it would be in the best interest, and I'll just speak to this now, that we start something, and that start would be to invest in something that's going to be suitable for the board, and that would be starting with the whole revocation process.

LATHROP: The whole what?

ROSALYN COTTON: Revocation process.

LATHROP: OK, so tell me about the need if you can. Like, we're trying to-- we're trying to do things in this whole CJI process as we look at-- as we look at the criminal justice system. One of the pieces is

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ensuring that we prov-- provide the services or assistance to people paroling so that they have a higher likelihood of success, and housing's been identified as one of those. What do we need to do? What kind of an investment do we need to make--

ROSALYN COTTON: Well--

LATHROP: --in transitional housing?

ROSALYN COTTON: --you're going to have to-- you're going to have to invest in a transitional facility that's going to be able to house a number of individuals that have the resources at the facility to be able to help them be successful, including a 24-hour service for those individuals.

LATHROP: So are you talking about a facility, for lack of a better term, that's more like an apartment complex than a house where some people go, where they-- the guy that owns the house gets \$90 a person per day?

ROSALYN COTTON: No, I'm talking about a house that still can provide the resources, not an apartment complex--

LATHROP: OK.

ROSALYN COTTON: --a simple house that can provide the resources.

LATHROP: What resources need to be there, besides a bed?

ROSALYN COTTON: That would be your mental health, your substance abuse, you know, anything that's going to help an individual grow and be successful while they're out on parole.

LATHROP: OK, and what I'm trying to do right now asking you these questions, not to put you on the spot, but when we say we need to do these things, what do we need to be doing? Do we need to double our transitional housing? Because we can't put into a bill, and it doesn't do any good to put it into a bill, improve transitional housing for people that are being paroled, then how do we come up with a fiscal note? How do we know what capacity we need to grow by? I'm trying a little bit to-- to nail it down so that I know what it needs to look like, and Senator Geist and I are kind of on the same page on this. What does that need to look like so that we're doing it the way that it's contemplated when this recommendation was made?

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ROSALYN COTTON: Well, Senator, I actually had proposed during our subcommittee group an opportunity for the Board of Parole, the Division of Parole Supervision, to literally start what we call a prep house in order to focus on those individuals who have violated parole and do not need to be in prison. I think if we start there, then we can grow into something maybe we need.

LATHROP: OK, so you and I were on the same committee. You and I talked about that and-- and my reco-- my recollection is that's 15, 15 beds.

ROSALYN COTTON: For starts, and as we get--

LATHROP: OK, so I think the problem is bigger than that, or at least that's my understanding of the problem when it comes to transitional housing. OK? And again, not to put you on the spot, but what are we talking about outside of those people that need help because they need more structure in your prep program-- which I understand you're going to do without any legislation, right?

ROSALYN COTTON: That's correct.

LATHROP: OK, so in addition to that, that pilot, what do we need to-- what investment do you need from the Legislature in transitional housing so that we're providing the service?

ROSALYN COTTON: I think we have to-- you have to literally find places that are going to assist with the resources that are needed. And I'm not sure what kind of money that's going to involve. They need to have-- we need to have the resources for those facilities. And if we start--

LATHROP: OK.

ROSALYN COTTON: --if you start something, then where is it going to be? What is it going to look like? The only thing that I can say to you, from my perspective, in my opinion, is whatever we develop is going to have to include the resources, not just a place to lay your head.

LATHROP: Well, as policymakers, we can't go out and find a place, right?

ROSALYN COTTON: Right.

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LATHROP: That's going to be a parole function, a Parole Board function or a parole administration function, like you guys are the ones that go out and enter into the contract with the fellow that owns the house, that wants to be transitional housing, am I right?

ROSALYN COTTON: That's correct.

LATHROP: OK, so do we need an appropriation from the Legislature so that you have the means to go out and find the transitional housing that needs to happen?

ROSALYN COTTON: No, not at this time.

LATHROP: Well, how are we going to expand transitional housing opportunities if we're not giving you resources to do that?

ROSALYN COTTON: Well, I guess I'm focused right now on one thing, one--

LATHROP: Fifteen beds at a prep house?

ROSALYN COTTON: Right now, right now. I'm not go--

LATHROP: Well, I--

ROSALYN COTTON: But I'm not going to say it's not going to expand somewhere throughout our communities. It's just a start.

LATHROP: I have--

ROSALYN COTTON: I only say that, Senator, only because I can't see investing tax dollars into something that we have not been able to, you know--

LATHROP: I think you're-- I think you think I'm trying to lead you--

ROSALYN COTTON: No.

LATHROP: --into my bill from last year and I'm not. I'm just talking about places for these people to stay, and not for the guy that needs more structure. And I get the prep house. You and I have talked about that in a small group, the CJI small group, and I understand your concept and I understand you're going to do that. I'm talking about everybody else, like all these other inmates that are coming out on parole, and you tell me we don't have-- all of them don't have a place to go, or many of them don't, and as I listened to Ms. Harris, it is an issue.

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ROSALYN COTTON: Um-hum.

LATHROP: Right? And we're trying to, as part of this, and I'll call them the consensus items. We're trying to develop or put in place the resources necessary for our parolees to be successful, lower our recidivism rate, whatnot, and that involves expansion of transitional housing. I think that was one of our recommendations. In fact, I just read it, and I'm pretty sure it's one of our recommendations. And so what's that-- what's that look like?

ROSALYN COTTON: Again, you still have to-- we'll still have to find somewhere--

LATHROP: OK.

ROSALYN COTTON: --with resources.

LATHROP: So if you can find them, what do you need from us?

ROSALYN COTTON: I can't speak to that one because I don't know exactly what this res-- what this resource is going to look like. I know what the individuals are going to need. But again, from--

LATHROP: I feel like it's getting argumentative, and I don't mean for it to be, but I have to say that I'm disappointed with these answers in this respect.

ROSALYN COTTON: OK.

LATHROP: I get that we're talking about the-- the prep house, and I'm excited to see what that-- the potential of that pilot program might look like. That's 15 people that need a little more structure while they're on parole, but we don't need to violate them. One of the things we talked about was having more transitional housing opportunities, and I feel like we're talking in circles now. I'm asking you what you need for resources so that during this session, we can ensure that you, the Parole Board, have the resources, and you're saying, I don't need anything because I don't have the place. And my answer is, if we give you the resources, can you find the place, and what do you need?

ROSALYN COTTON: And I-- I'm sorry, but I'm still focusing on this one step at a time. I'm sorry. I'm just--

LATHROP: Then-- then what I hear-- what I hear, and I'm-- and now I may sound a little trial lawyer-ish, but what I'm hearing you say is,

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even though the-- the group said we need to expand transitional housing opportunities to allow for parolees to be successful, you can't get to that because you're focused on the 15 beds at a prep house pilot project.

ROSALYN COTTON: Yes, and that was one of the-- that was one of the concerns that I had even in the group, so, I mean, I'm not saying anything other than but that was my focus. That was my major focus--

LATHROP: OK.

ROSALYN COTTON: --at the time.

LATHROP: So one last question for you.

ROSALYN COTTON: Sure.

LATHROP: Is where a-- a parolee lives important in your decision of whether to parole them or not?

ROSALYN COTTON: That depends on the realistic parole plan that was presented at the time of the offender [INAUDIBLE]

LATHROP: Their-- their parole plan needs to have a satisfactory living arrangement provided to the Parole Board to be a successful person eligible for parole.

ROSALYN COTTON: Yes.

LATHROP: Am I right?

ROSALYN COTTON: Yes.

LATHROP: OK.

ROSALYN COTTON: Yes.

LATHROP: I think that's all the questions I have. All right. Thanks. As always, good to see you and we're glad you're on the mend and back to work.

ROSALYN COTTON: Thank you, Senator.

LATHROP: Anyone else here to testify in opposition? Anyone here to testify on LB1154 in a neutral capacity? Senator McKinney, you may close on LB1154. We do have three letters from proponents and one letter in opposition.

McKINNEY: Thank you. Thank you for everybody that came to testify and speak on LB1154. I know we heard that the department already has 90 percent people into community. I still see nothing wrong with setting a minimum just for purposes of just lack of trust for the department, honestly. And I think that's important. I'm open to narrow-- narrowing some of this and working the bill out to make it better. I know it may not be perfect, which is why I've said in my opening I'm willing to work in good faith with those that are willing to work in good faith with me. As far as the testimony from the individuals from the staff. I do think there is a clear lack of cultural competency and respect for the individuals that are incarcerated. It's not forcing them into community corrections. The department is classifying them as eligible for community corrections. We're not forcing them. Maybe because of that study that UNO is doing, we really need to rethink what-- how are they-- if-- if they're-- they are saying those that are being sent in community aren't prepared, then it's-- it's something somewhere that's wrong. Either the classif-- classification tool is wrong or just something else is wrong, and I'm hopeful it's identified in that study by UNO. To Director Frakes, alternative placement is broad for review, and you said some of this is outside of your scope, but then you said some stuff was within your scope, so I'm not sure what's in and outside of your scope. I do think we need more transitional housing, and one of the reasons I had the idea for the 80 percent, I went with a group to Hastings, to Bristol Station, and during that tour, it was like, we could get more people, but the department isn't really referring them. We have the space, but they're not referring them like we think they should. So that's-- that's an issue that needs to be addressed. There are-- there are entities in the communities that have beds and space. When we say we don't have enough space in the community corrections, we have facilities like Bristol Station, which is a great place that we-- we should be utilizing. So maybe there is a lack of communication somewhere that needs to be improved. But if there-- there's entities that are credible, that have space for beds, we should be utilizing them as much as possible. I'm not trying to limit the board. I just think we, as it was identified in the CJI study, we need to streamline parole process and we need to make sure it's clear and it's-- and it's fair. What else? When-- when you talk about investments into transitional housing, I have a bill that I think I have a hearing tomorrow in Appropriations, LB1111, which would appropriate money from the Prison Overcrowding Reduction Fund for transitional housing. So I hope you show up tomorrow and speak on that, as well, because I would agree with Senator Lathrop. Fifteen beds is not enough. We need more and we need-- and we can't just

continue to wait and put things off. We have to-- to get where we want to be, we can't just act as if we're turtles. We have to move at a reasonable pace to-- to get to where we need to go. We can't just slow-walk these processes. And that's it. Thank you.

LATHROP: OK. I don't see any questions. I did indicate that we had position letters. I did, three for and one against. So that will close our hearing on LB1154. Thank you, Senator McKinney. You are up next on LB880, and you may open on that when you're ready.

McKINNEY: Good afternoon again, Chairman Lathrop and members of the Judiciary Committee. Today we're here to discuss LB880, which would provide requirements for commissaries in detention facilities and adult correction facilities, prohibiting county and city jails, and the Department of Corrections from charging more than 10 percent above their purchase cost for goods sold in the-- in the jail or correctional facilities' commissaries. There are multiple layers to prison reform, and this is one that cannot be overlooked. Nationally, the Prison Policy Initiative reported that there are several reports of high profit margins by near-monopoly commissary providers that make the provisions unaffordable for those incarcerated. Some prison stores make a profit by putting selling prices at 35 to 40 percent margin over cost paid to the supplier of the product. Different states have different provisions for commissary facilities across the nation, and the prices vary from product to product. However, quite frequently it is-- it is observed that the prices for incarcerated individuals are higher than those found outside the prison in open retail markets. Despite the fact that incarcerated individuals have extremely low wages, prison stores make it a lucrative business. For example, in NDCS, the mark-up prices for food is 36 percent; beverages, 36 percent; ice cream, 36 percent; pastries, 36 percent. Prices in county jails on average has-- have higher-- have higher prices than those sold at NDCS. For example, in-- in Douglas County, coffee, which in NDCS is 7 cents, in Douglas County is 38 cents. In Lancaster County, white popcorn, which in NDCS is \$1.18, is \$2.20. In Sarpy County, cream cookies at NDCS are 55 cents and in the county it's \$1.60. Some good practices, in terms of states offering communication via phone, feminine hygiene products, and other toilet paper products free of cost to incarcerated individuals, are emerging. New Jersey's off-- New Jersey offers \$15 to indigent incarcerated individuals. Another example of posi-- positive change in commissary reform is captured by California's Senate Bill 555 in 2020, which ensures that the price limit in and caps the pro-- ensures the price limit and caps the profit margins that commissary operators can charge at 10 percent. The bill also mandates that the

selection of commissary providers be the most inexpensive option. These steps are expected to improve the accessibility and affordability of products and services for incarcerated individuals. Incarceration shouldn't be a big business. We must humanize those incarcerated because one wrong decision and that could all be us. If contracts have to be changed, then change them, but I am committed to this issue. Capping the max for up-charged prices at 10 percent is fair. And honestly, I wanted to do zero, but I wanted to be fair. If you have to rely on over-- overcharging incarcerated people, then the time for change is now. Any arguments dehumanizing incarcerated individuals and anything about contracts or-- or not necessarily setting the prices, to me, are moot points. If a company wants to do business with the state of Nebraska or our counties, then they must be willing to treat all Nebraskans as humans and not as a financial windfall. If people in prison are resorting to commissary to buy essential goods like food and hygiene products, does it really make sense to charge a day's prison wage or more for one of these goods? Should states knowingly force the families of incarcerated individuals to pay for essential goods their loved ones can't afford, often racking up exorbitant money transfer fees in a process? In the long term, incarcerated individuals can't afford goods and services vital to their well-being, society pays the price; in the short term, however, these costs are falling on families who overwhelmingly are poor and disproportionately come from communities of color. If the cost of food and soap is too much for our state and counties to bear, they should find ways to reduce the number of people in prison, rather than nickel-and-dime incarcerated people and their families. Lastly, counties seek the-- seek convenience at the expense of incarcerated individuals under the guise of efficiency and safety, building a economy on the backs of men and women who are at their worst, and it's a sad reflection of where our society is at today. For example, if you take a look at the fiscal note, NDCS will have a reduction of profits for the Inmate Welfare Cash Fund, which essentially means we incarcerated you, we'll underpay you, overcharge you, and pretend we're doing you a favor. The Department of Corrections can reallocate resources or, instead of asking for a new prison, ask the Legislature to appropriate resources for the Prison Inmate Welfare Fund. And jails shouldn't be big-- in big business, as well, and I'm open to any questions. Thank you.

LATHROP: OK, any questions for Senator McKinney? Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Senator McKinney, for bringing this bill. So what's the scope of this in our corrections? I

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mean, is this a half a million dollars a year or a million dollars a year? Do you have any numbers like that?

McKINNEY: In the fiscal note I think it said--

BRANDT: And maybe there will be somebody to testify after you that could answer that question.

McKINNEY: I think it said about \$7 million. And if this bill was to go in effect, it would take away \$1-- \$1.1 million.

BRANDT: OK, but that \$7 million was just Nebraska Department of Corrections [INAUDIBLE]

McKINNEY: Yeah, that's Nebraska.

BRANDT: That was all our county jails in there also?

McKINNEY: That's NDCS.

BRANDT: OK.

McKINNEY: Yeah.

BRANDT: All right. Thank you.

McKINNEY: No problem.

LATHROP: So the-- the money that they're making off of this stuff, I'm just looking at the fiscal note. The money-- I'm going to read this sentence. The commissary markups are the primary source of revenue for Inmate Welfare Fund, which is a cash fund for the purpose of providing recreational activities and equipment for inmates. So what they're doing is the difference between what they buy deodorant for and sell a deodorant, goes into a cash fund where they buy weights and basketballs and things like that?

McKINNEY: I agree. But when you think about situations where the-- where they're on the four-three schedule, where they're not even getting access to weights or even programming and things like that, that's-- that's another part of my issue is, yeah, you're saying you-- you're doing this to provide services for programming and recreational activities, but we have a staffing crisis, an overcrowding crisis, and they're currently restricted from even those activities. So you're overcharging them, saying, we're providing you

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these opportunities, but on the four-three schedule, I'm locked down 72 hours a week.

LATHROP: I get it. OK, any questions for Senator McKinney? I say none. Thanks for your introduction. We will take proponent testimony first. Anyone here to testify in favor of the bill? Welcome back.

JASMINE HARRIS: Thank you. Good afternoon, Senator Lathrop and member-- members of the Judiciary Committee. My name is Jasmine Harris, J-a-s-m-i-n-e H-a-r-r-i-s. I'm the director of public policy and advocacy with RISE, one of the largest organizations in Nebraska working on rehabilitative programming in prisons and reentry work. LB880 addresses a concern that many people don't know is a problem unless they or a loved one are incarcerated. In addressing the prices of products sold in commissaries and the correctional facilities across the state, Senator McKinney is ensuring that incarcerated individuals aren't subjected to unaffordable items. Jobs within the Department of Corrections are paid out in a range from \$1.21 per day to \$4.72 per day, depending on the type of job and skill level it requires. For a month, that ranges from \$36.30 to \$141.60, and out of these funds people are expected to pay any legal obligations, victims' compensation funds, required state and federal taxes, correctional services, and so forth. So as you can see, this depletes their funds pretty quickly. If a person has a-- had a balance of \$10 or more on their account for the past 30 days, whether through their job or family depositing money to their account, they are expected to pay for their basic hygiene items, over-the-counter health products, and anything else they may need. So a person can spend \$1.25 for a bar of soap, \$3.25 for a tube of toothpaste, \$2 for deodorant, and \$4 for lotion, and have already accumulated \$10.50 for basic hygiene products. You may be saying these prices sound normal, it's only \$10.50. Yes, if you go into the store and buy them individually, these prices do sound close to normal. But if you are purchasing in bulk, there should be a cost savings in buying larger quantities, and it should be passed on to individuals who are buying them. Yes, it is only \$10.50, but if you make \$1.21 per day and are paying legal obligations, that amount may not be left in-- in your account. Capping the amount that products can be marked up may not sound like a life-changing moment, but for people that are incarcerated, it can be a big difference. Money that is leftover in someone's account can be used to send money home to buy a child a gift for their birthday, support household bills-- as we've heard, some people do that, who have some of the higher-paying jobs, they'll send money home-- or put money into their savings account so they will have more than \$100 gate fee as they are released. These things that we consider small

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steps matter and help provide a sense of hope for people incarcerated because it shows that people do care, so these reasons are why RISE is in support of LB880 and asks that the committee vote it out onto General File. And anecdotally, what we've also heard is that people who participate in the county programs get paid I think like \$3 a day or something like that for being in those county programs where they go because of the overcrowding, and the commissary amounts that they're charged are not the same as what the jail-incarcerated individuals are charged because they're NDCS people. And anecdotally, I've also heard so those people who get those indigent packs say they're inadequate, at best, using travel-sized things, so just trying to encourage those who are incarcerated through passing on this and letting them know that people actually do care.

LATHROP: Senator DeBoer.

DeBOER: Thank you. This definitely shows my ignorance about this issue. I saw on this list denture cream is-- or cleaner and also the adhesive cream. So they don't-- so if I-- if I'm an elderly inmate and I have dentures, I'm just out of luck if I don't have the money to do this, or is there some way that-- is there some other means by which I can get denture adhesive cream?

JASMINE HARRIS: If they-- I think, according to the guides of the policies and things, and someone behind me can probably answer it better, if they are considered indigent, they can fill out forms to where they can have some of those over-the-counter products provided to them.

DeBOER: OK. No idea-- I didn't have any idea. Wow, thank you.

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Ms. Harris, for your testimony. Did I understand you correctly that if there's more than \$10 in the account, there's a different pricing structure?

JASMINE HARRIS: No. So individuals are considered indigent if they have a balance of \$10 or less on their account for 30 days, so which means they're not having money come in through a job in the corrections or people aren't sending money into their account, so then they can apply through the indigent process to get those basic necessities taken care of for them.

BRANDT: All right. Thank you.

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JASMINE HARRIS: What I was saying for the different pricing was those individuals who go to the county jail program, we've anecdotally heard that those county jails are charging different prices for those who are NDCS-incarcerated individuals.

BRANDT: All right. Thank you.

JASMINE HARRIS: You're welcome.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank-- thank you for coming, Ms. Harris. I guess I-- I'm surprised. It seems to me that there-- are these sort of luxury soaps? Certainly the Department of Corrections gives soap and deodorant and some of the basic needs, right, or what?

JASMINE HARRIS: They're-- when it comes to commissary, what we've heard is that there-- you can say you're a Pinto, Cadillac, and expensive luxury car kind of options, so there's different things that people can get, and with the prices we were provided, looks more of the median.

PANSING BROOKS: Pardon me.

JASMINE HARRIS: There are products that are more at the median level, so it's not the cheapest and it's not the most expensive.

PANSING BROOKS: OK, so but as far as you know, they don't just provide soap and shampoo to the inmates?

JASMINE HARRIS: For what I've understood, it's if you're considered indigent, and those products are then given; if you aren't considered indigent, you do have to pay for those products and services. But someone behind me can give you more insight.

PANSING BROOKS: OK, thank you.

JASMINE HARRIS: You're welcome.

PANSING BROOKS: Appreciate it.

LATHROP: Think that's it. Thanks for being here. Appreciate hearing from you. Anyone else here as a proponent?

DANIELLE CONRAD: Hello.

LATHROP: Good afternoon.

DANIELLE CONRAD: Afternoon.

LATHROP: Good afternoon.

DANIELLE CONRAD: Hi, my name is Danielle Conrad; it's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I'm here today on behalf of the ACLU of Nebraska. Really want to thank Senator McKinney for his leadership on so many things, but also for introducing LB880. At first blush, this is a bill that probably doesn't catch a lot of people's attention, right? But I-- I wanted to come down because I think it's just so important to so many of the different issues that you're working on and that are facing the state. And when we talk about prison reform, I know we all care about respect, I know we all care about dignity, I know we all care about basic quality of life and humane treatment, and that means a lot more things than concrete. That also means access to basic things like books, like menstrual supplies, like personal care items, like writing materials. These are probably some of the most frequent intakes that our office gets from county jails, city jails and the state prison system on almost a daily, if not weekly, basis where people have concerns about accessing these kind of basic items during their period of incarceration. So I-- I just wanted to lift up those-- those kind of bigger issues at play with this legislation. Additionally, I think it's important to note that when we provide access to some of these basic personal care items, communication tools, it helps people to have a stronger and more successful reentry when they return to our communities, it helps them maintain stronger connections, it helps them engage in positive prosocial behaviors. There's been, you know, a lot of in the news over the last year or so about how we've seen really a weakening and decimation of our state prison library, for example, and what that means for access to basic reading materials, which can be a lifesaver for folks that are incarcerated. We've seen the Department institute, I think, a very constitutionally suspect book ban across the state prison system that further limits the ability of people to access basic reading materials. We get constant complaints about JPay. You might remember the heroic work Senator McCollister did on phone calls, the heroic work Senator Patty Pansing Brooks did on providing access to menstrual supplies, but we still hear a lot of concerns and complaints about those issues. All that's wrapped up in this bill, and this bill is really important and we-- I wanted to take the time to come down to really make those connections and pledge to work with all stakeholders moving forward. Happy to answer any questions.

LATHROP: Senator Geist.

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GEIST: I'm just curious, I don't know how this works. So I, too, am going to expose my ignorance a bit, but I wonder if some of the price variants are because of purchasing power. Maybe all-- everyone does it together purchase for their commissary. So therefore, for instance, maybe Department of Corrections can get coffee-- single serving coffee because they buy more.

DANIELLE CONRAD: Sure.

GEIST: Do you know if that's part of this or, or not?

DANIELLE CONRAD: I really don't, Senator.

GEIST: OK, I'll wait to ask.

DANIELLE CONRAD: I, I will tell you when I don't know, and I don't know a lot about the back end kind of purchasing--

GEIST: Uh-huh.

DANIELLE CONRAD: --and material, maybe Director Frakes or DAS can, can speak to that a little--

GEIST: OK.

DANIELLE CONRAD: --bit more on the county level, too.

GEIST: OK.

DANIELLE CONRAD: But I, I think what it goes to show is that just, you know, how expensive it is to be poor, right? And how having really, really limited resources available makes it harder to get all these very, very basic things like toothpaste and writing materials and stamps, and we get constant intakes from people who are struggling with these issues.

GEIST: OK. Thank you.

DANIELLE CONRAD: Yeah.

LATHROP: Yeah, you don't think of a lot of the things that--

DANIELLE CONRAD: I, I, I, I wouldn't,--

LATHROP: --until you brought up writing paper and--

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DANIELLE CONRAD: --but for sitting there reading that mail. Yeah, absolutely.

LATHROP: --things and whatever, right? I assume you got to get that somewhere and they probably don't have a stack of it for you to pick up and--

DANIELLE CONRAD: Right.

LATHROP: --walk off with. OK.

PANSING BROOKS: I have a question.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you for coming, Senator Conrad.

DANIELLE CONRAD: Yes, good to see you.

PANSING BROOKS: Glad to see you. Do you have-- I don't know if you heard my previous question, and I'm wondering about whether or not they provide basic supplies of basic soap and--

DANIELLE CONRAD: Sure, and, and I, I think perhaps, and I know this bill contemplates city jails, county jails, and the state system, so there may be some variances across the way there. It's my general understanding and hopefully they'll be folks that correct me if I'm wrong is that there is some access to perhaps some materials, right? And kind of think of it as like maybe an industrial strength. Maybe it's not really the most sensitive or, or helpful for, for everybody. So maybe you'd have to pay extra for a bar of Dove soap or something like that, right? I think that's kind of my understanding of how it works out that perhaps there is some access for kind of a basic and then if you needed something else, you'd have to purchase that.

PANSING BROOKS: OK, thank you. Appreciate it.

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

DANIELLE CONRAD: Thanks so much.

LATHROP: Next proponent. Anyone here to testify in opposition to LB880? Welcome back.

SCOTT FRAKES: Thank you. Good afternoon, Chairman Lathrop, members of the Judiciary Committee. My name is Scott Frakes, F-r-a-k-e-s, the director of the Nebraska Department of Correctional Services. I'm

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here today to provide testimony in opposition to LB1154, specifically Sections 1 and 2.

LATHROP: Wait a minute. This is LB880.

SCOTT FRAKES: You know, I probably should read this testimony. Thank you for keeping me on track, Senator.

LATHROP: Well, now, I just demonstrated that I listen.

SCOTT FRAKES: And even as it came out of my mouth, I went--

LATHROP: You might think I'm just sitting here.

SCOTT FRAKES: --in my head, I was going, OK. I'm here today to provide testimony in opposition to LB880. The impact of this bill is largely, largely laid out in the fiscal note submitted by the agency. Canteen profits are the primary source of funding for the Inmate Welfare Fund. Revenues from the fund are inmate-generated and expenditures are used to provide recreational activities and equipment across all the department's facilities. This meets the statutory requirement and a standard established by the American Correctional Association, which is required, required for accreditation by NDCS. Funds help cover a variety of activities and upkeep, including materials for our institutional libraries, radio and television service, as well as maintenance and repairs, recreational equipment, supplies in facility dayrooms like the ice machines, and inmate club activities. The fund also helps pay for staff members who work directly in the canteens. Helps pay, does not pay for all. The bulk of the revenue is the result of food and beverage sales. Those items have the highest markup. Other items have little or no increase. Things like personal hygiene products, over-the-counter medications, and school supplies. This pricing model allows NDCS to ensure that funds are available for the intended purposes, yet still allows low prices on items like medications and hygiene versus food or beverages. Without this revenue, and in order to provide similar-level services for inmates, other funding sources, like general funds, would be necessary, would be necessary to make up the loss. And I'd be happy to try and answer questions.

LATHROP: Couple. Part of this can be seen as a price problem, and part of it can be seen as a, how much money do I make? How many of the guys that you incarcerate in your facilities are actually on the payroll?

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SCOTT FRAKES: Statutorily, we're supposed to try and have everyone on the payroll. And, you know, I wish I had asked before I came today to note so I could just say there's this many on indigent status right now. I don't know how many are indigent. It's--

LATHROP: Well, let's take a guy--

SCOTT FRAKES: --a small number.

LATHROP: --let's take a guy that's in long-term restrictive housing. Is that person getting-- well, he probably doesn't have access to the commissary at all, but is that person making any money sitting in restrictive housing?

SCOTT FRAKES: I believe not, although, because we now have programming it is-- could be possible that some that, that are engaged in programming are getting the student stipend.

LATHROP: Well, let me, let me just say this.

SCOTT FRAKES: In general, though, no.

LATHROP: Are there some people that aren't making anything?

SCOTT FRAKES: There are. There are people that are just unable to work physically or mentally unable to work.

LATHROP: OK. Do they get basic health and health sort of soap, deodorant, shampoo, aspirin? Are, are you charging them for these kind of things?

SCOTT FRAKES: No, they're considered indigent. They have less than \$10 on their account, and so they get base items. And then if there's any medical needs, we'll address that through medical so other over-the-counter medications, the dental [INAUDIBLE].

LATHROP: But if that guy wanted to get a cup of coffee, he's out of luck?

SCOTT FRAKES: Unless it's being served in the food service.

LATHROP: OK. The rate at which we compensate inmates, where does that money come from? Is that out of your budget?

SCOTT FRAKES: Yes.

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LATHROP: And if I'm-- let's say I'm over at the Lincoln Correctional Center, I'm not in restrictive housing, do I actually have a job or am I being compensated basically something every day because I'm over there?

SCOTT FRAKES: At the very lowest level, the \$1.21 a day, I believe it is. That's considered either half-time work or student stipend, either one. So you could be in school or in programming and get that \$1.21 or you could be doing a unit porter, unit janitor job.

LATHROP: Do I have to be doing something, though?

SCOTT FRAKES: You're supposed to be doing something.

LATHROP: OK.

SCOTT FRAKES: It's pretty minimal.

LATHROP: So now I'm going to back up. What percentage of guys are getting some compensation?

SCOTT FRAKES: Well, I think it's the same question across the-- I'd, I'd answer--

LATHROP: Is it half?

SCOTT FRAKES: --by saying--

LATHROP: Is it half?

SCOTT FRAKES: --it's more than half. It should be-- but I'd be just guessing, it's the majority of the people that are inside our facilities are getting something.

LATHROP: OK. And I assume you're like the grocery store I go to, your prices have gone up in the last couple of years.

SCOTT FRAKES: They have. And--

LATHROP: Is the level at which people receive their \$1.21 or, or whatever their compensation is, has that gone up in the last couple of years?

SCOTT FRAKES: No.

LATHROP: OK, so we can look at this as either a, a compensation kind of an issue or a price, a price issue?

SCOTT FRAKES: Yes, to some degree. Yeah.

LATHROP: Do you care which one we solve?

SCOTT FRAKES: I guess I'd go back to, I don't know that today that there's a problem. You know, we have a system that provides employment opportunities and stipends for the population. And we have a commissary that operates-- I'm sorry, the word profit was used in the fiscal note because revenue would be the right word. It generates a certain amount of revenue that then goes right back into meeting the needs of the population.

LATHROP: And it sounds like if we-- that a, that \$1,100,000 or 1.1 is going into this fund, right? I think the fiscal note says--

SCOTT FRAKES: The gap is-- with a 10 percent gap-- with a 10 percent cap, our current \$1.5 million revenue would shrink down to about \$400,000, is what we estimate. So there'd be a \$1.1 million gap in the funds that we have to distribute.

LATHROP: What's the, what's the dollar volume of these commissaries?

SCOTT FRAKES: I don't know.

LATHROP: Are they doing \$10 million a year?

SCOTT FRAKES: Oh-- again, I'm only going to-- I can't guess because--

LATHROP: OK.

SCOTT FRAKES: --I'll say it and then [INAUDIBLE].

LATHROP: That's all the questions I have, but thank you for answering them. Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Mr. Frakes, for testifying today. So if I'm an inmate and I'm earning \$1 a day or whatever, do they-- do you just have one account? So at the end of the week, I've got \$7 in my account, and that's also the same account that's used in the commissary?

SCOTT FRAKES: Yes, they just have one account.

BRANDT: OK, so any, any earnings go into the commissary account?

SCOTT FRAKES: Well, it's not a-- it's an inmate account.

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BRANDT: Inmate account.

SCOTT FRAKES: So if they get money from home, if they get money from other sources and if they-- their wages go into that or their stipend, actually, goes into that as well.

BRANDT: Do they have any control over that account? So if, if I've got 20 bucks in my account and Lathrop doesn't have anything and I'm feeling sorry for him, can I give him five bucks out of my account?

SCOTT FRAKES: Not legally.

BRANDT: OK, so I would have to purchase an item would be the way to get around that?

SCOTT FRAKES: That's how they do get around it. Yes.

BRANDT: OK. Thank you.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you. First off, thank you, Director Frakes, for working with us so that sanitary hygiene supplies for women are no longer considered luxury--

SCOTT FRAKES: You remembered.

PANSING BROOKS: --items.

SCOTT FRAKES: Thank you.

PANSING BROOKS: So I wanted to thank--

SCOTT FRAKES: I have Senator Chambers' letter on my wall.

PANSING BROOKS: Do you? OK. Well, I appreciate it and thank you for that. And that was, that was a positive thing. So what I'm understanding is that some of the goods have increased due to inflation. Is that correct?

SCOTT FRAKES: They have.

PANSING BROOKS: So but meanwhile, the salaries have not increased so it's, it's even more difficult for inmates to get the, the supplies or things that they need or want.

SCOTT FRAKES: It can be.

PANSING BROOKS: Is that correct?

SCOTT FRAKES: It can be. We-- so we're-- we are looking at and we just haven't figured out yet what the right solution is in terms of whether it's to go in for a budget request or to try and restructure the pay scale. But it is on our radar.

PANSING BROOKS: OK, do you still have some businesses like I know there was a business that did those door art pieces. I don't know if that was before you were there or not. Somebody from the community came in and the inmates would cut all sorts of different things.

SCOTT FRAKES: Sounds like tech who we still work with, so that's like a private-public partnership.

PANSING BROOKS: OK.

SCOTT FRAKES: And they pay minimum-- they pay above minimum wage, actually.

PANSING BROOKS: To the inmate or to you?

SCOTT FRAKES: To the inmate. Then the inmate pays some cost of incarceration, some, I think, Crime Victim Fund and then they would pay federal income tax because that's considered wages.

PANSING BROOKS: OK.

SCOTT FRAKES: And then we didn't talk about CSI and the almost 500 people that work in CSI that make from starting wage of 38 cents up to \$1.08 an hour. So that group is for when you're in a setting where your room and board, medical, food, and all other basic necessities are provided at \$1 an hour without federal income tax or anything else allows you to live a pretty good life inside of a prison, a prison setting. If you have to--

PANSING BROOKS: Did you say a good life?

SCOTT FRAKES: Well, if you have to be in prison.

PANSING BROOKS: OK. Thanks for that little addendum. But it seems like-- do you know how long it's been at \$1? I mean, originally when that started, I presume \$1 meant more.

SCOTT FRAKES: No, yeah, I do not know how long since the last raise was.

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PANSING BROOKS: I think-- could we find out some of the information about, about the numbers that Senator Lathrop talked about? Could you have somebody send those to the committee? And also it'd be interesting to know the history of when that program started and whether or not there have been any increases of salary--

SCOTT FRAKES: Which--

PANSING BROOKS: --since then? The program of allowing inmates to work and at what rate they're being paid and if it's been at \$1 since inception.

SCOTT FRAKES: All right.

PANSING BROOKS: That'd be great. Thank you very much. I appreciate it.

LATHROP: Senator Morfeld.

MORFELD: Thank you for coming, Mr. Frakes. One of the things that we heard and I imagine is still kind of going on right now is that sometimes the inmates are in their cells three to four days a week without getting out just because of staffing shortages. Is that the case sometimes?

SCOTT FRAKES: Two locations and they're down primarily, they're down three days a week.

MORFELD: OK. And maybe I missed it just a little bit earlier when you were having the exchange with Chairman Lathrop, but so if they're stuck in their cells, they can't do any work or anything like that to get the money to be able to purchase some of these items, correct?

SCOTT FRAKES: We run a four-day work schedule for those people and they're compensated at a higher daily rate. So in those cases, the top end is \$4.72 a day.

MORFELD: OK. So for the people that are in the cell, I'm just kind of-- OK. So they're able to get that. OK.

SCOTT FRAKES: Yeah, four days that they're able to be out and work.

MORFELD: Yeah, I guess one of my concerns is since folks are stuck in their cells, which we know have negative consequences and things like that, and I understand there are staffing shortages, their ability to be able to get these types of items I think is even more important.

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So making them more accessible is important. But just wanted to note that for the record. Thank you.

LATHROP: I think that's it for the questions. Thanks for being here.

SCOTT FRAKES: Thank you.

LATHROP: Anyone else here to testify in opposition?

JERRY BRITTAIN: Good afternoon again. I'm Jerry Brittain, B-r-i-t-t-a-i-n. And again, I represent FOP 88, which speaks on behalf of many of the line staff at NDCS. The staffing crisis conversation has been coming up a lot lately. It may be premature, but we have seen massive increases in applications and we are underway. I don't want to say exactly quote me, but I think there's 15 in class right now, and I think the next class has 75 new recruits, which is way up from the 2s and 3s and 15s at best that we had before the latest contract adjustments. And so hopefully they won't be locked down long. We want to start communication with the state on how to come off emergency due to staffing, and so hopefully those inmates can go back to earning a, a, a prison living wage and so they can afford commissary luxuries. We're not really here to represent the canteen vendors, but much like some of the previous testimony, we didn't know much about the impact of a canteen cap. So our team got together. We started doing a little digging. We found that there's not another good example in a similarly situated state, except for Illinois. They put a cap on of 25 percent on nontobacco products and 35 percent on tobacco products. And we, we didn't have time to do a full study on this, but it looks like that may be one of the factors in vendors pulling out of the canteen in Illinois Corrections. And so the concern for us is if we start taking from these inmates, if we no longer have these products available, in the past, the more we restrict inmates, the more behavioral issues tend to arise so that they feel heard and so they feel as though they can get their issues addressed and potentially reinstated. So those are our primary concerns with this. We would urge the council to maybe look at Illinois a little further and expend some resources there to see kind of into the future what a, a 10 percent, which is far over the other restrictions on Illinois, would do to our, our state system.

LATHROP: Is the canteen run by a vendor or by state employees?

JERRY BRITTAIN: It's run by state employees, but vendors can pull out, but basically they don't have to offer their services, right?

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And so if you limit their kind of margin of profit, particularly if you get into a 10 percent limit or a cap.

LATHROP: Well, we're not limiting what the department pays, you know, Irish Spring for soap, right? All we're doing is limiting how much over what the department pays they can charge the inmate.

JERRY BRITTAIN: Over, over cost, which we, we just-- when you look at Illinois, it looks like it started to cause concerns and they started pulling out. To the other point, kind of what you're talking about is, if we start limiting programs because this, this canteen fund funds so much of the inmate wellness fund, that's when we start restricting television access or, or there has to be other funds allocated to, to meet those needs. And that's what really concerns the FOP is if we start really kind of tying down their rec time or their rec equipment, weights, television, things like that, we're, we're worried about the negative outcomes caused by that.

LATHROP: That's where the, where the revenue generated from these sales go to.

JERRY BRITTAIN: Yeah.

LATHROP: Get you. I get you. You brought up something a little outside the scope of this, but it's made me want to ask you this question. You said that the applications are up and the number of people you have in training is up. Are we going to with this process solve the understaffing at Tecumseh?

JERRY BRITTAIN: That's a lot to ask, Senator, I'm not sure. We have seen an uptick in applications in Tecumseh. I know that we are hiring pretty aggressively for the detail staff, which are the, the staff that essentially get on a van or a bus in Omaha and then go down to TSCI and TSCI has relied on them pretty heavily in the, in the recent past. And so I think there's a temporary relief there. It's really a matter of whether or not we want detail to become a permanent establishment at NDCS or--

LATHROP: But you're keeping an eye on all that.

JERRY BRITTAIN: Absolutely.

LATHROP: So are we going to solve the staffing issue at Tecumseh with this \$28 pay raise?

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JERRY BRITTAIN: I think it's too early to tell about Tecumseh. I think we are leveling out or have leveled out in Omaha, where we're very hopeful that NSP and now RTC are seeing a lot of recruits. Tecumseh has, as you know, its own challenges based on location and some other [INAUDIBLE].

LATHROP: Yeah, just wondering if the \$28 would solve it.

JERRY BRITTAIN: It's helping. I don't know if it's going to cure it, but I, I am hopeful that it is going to make a noticeable dent.

LATHROP: OK.

JERRY BRITTAIN: And then this September, of course, we enter natural bargaining again if we need to address specifics for Tecumseh, so.

LATHROP: OK.

JERRY BRITTAIN: That's kind of our plan at this point.

LATHROP: OK.

GEIST: Just--

LATHROP: Senator Geist.

GEIST: I'm sorry. One more quick question. I should have asked Director this, but you've done some study, so I'll, I'll ask. And it's referring back to my earlier question about purchasing power. And when you have vendors who come and make-- you negotiate for pricing, even if we had a cap, wouldn't the likelihood that some of our pricing from location to location is going to be different?

JERRY BRITTAIN: So the bill, this bill, the way I understand it, it involves like your counties and some of your counties are quite small, particularly their, their jails. I would, and this is an assumption, I would assume that NDCS has a much better buying power than some of your smaller counties. And so I think that does play a fact here, but I am no expert in that, that field.

GEIST: OK. Thank you.

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Real quick. Are inmates allowed tobacco products?

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JERRY BRITTAIN: Not here. They are in Illinois. They were here, I think, don't quote me, but I think it was '01-ish that we got rid of it. But that was just to, to be clear on the percentage of, of kind of their cap. Nontobacco products are 25. And that's just how it's labeled in their, in their statute.

BRANDT: All right. Thank you.

JERRY BRITTAIN: Um-hum.

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

JERRY BRITTAIN: Thank you.

LATHROP: Any other opposition? Good afternoon.

JON CANNON: Good afternoon, Chair Lathrop, members of the Judiciary Committee. My name is Jon Cannon, J-o-n C-a-n-n-o-n. I'm the executive director of the Nebraska Association of County Officials, also known as NACO, here to testify in opposition on LB880. First and foremost, however, we do need to thank Senator McKinney for bringing this topic up for conversation with the committee. This is something that we, we should be talking about, certainly, and, and I think there've been a lot of good questions that have, that have been asked so far. One thing that I, I do want to say for the record on behalf of counties is that from the information we've received from our board members and other of our members, commissaries are not profit centers for the jails. They are a budget item. Every once in a while, but from what I have, have been led to understand if that budget item has any money left over, those monies are turned back in and used for purchases of things like TVs or hot pots or even therapy cats. Our opposition is primarily related to the ambiguity within the bill. And, and I, I think I've, I've heard a couple of different things here as part of the conversation. On the one hand, we don't want, and I think read plainly, the language of the bill says that the jail-- the commissary cannot charge more than their cost of receiving those goods from whatever source it comes from. However, I have heard a couple of things so far which seem to indicate that we want to get to that markup from the vendors' cost of goods sold, and that's something that we have absolutely no control over, and I think that that's something that probably needs to be resolved, certainly. Not everything is purchased on a per item basis. I believe that Lancaster County's fiscal note indicates that certainly. We would appreciate the resolution of these ambiguities. There has been a lot of

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testimony today that says, well, what we have heard from, you know, folks involved in the prison system or what we have heard from other states has been something. I don't believe that we have actually conducted a study of, of what happens in Nebraska's jails. And certainly that is, I, I think, probably a more worthy avenue of pursuit for this committee. I'd be happy to work with any, any and all stakeholders on this, and I'm happy to take your questions.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you. Thank you for coming, Mr. Cannon. I'm just interested. Do you know what is provided by the counties as far as basics? Like is soap and--

JON CANNON: Yes, ma'am.

PANSING BROOKS: --shampoo and--

JON CANNON: Hygiene product. From what I've been given to understand from the at least the sheriff that sits on our board, hygiene products are provided free of charge.

PANSING BROOKS: OK. Thank you.

JON CANNON: Yes, ma'am.

LATHROP: OK. I see no other questions. Thanks for being here.

JON CANNON: Thank you, sir.

LATHROP: Anyone else here to testify in opposition? Anyone here in a neutral capacity? Seeing none, and Senator McKinney you may close on LB880. We do have three letters, position letters: two proponents and one in opposition. Senator McKinney.

McKINNEY: Thank you, and thank you to everyone who came to testify today. Where do I start? Living a good life in prison and getting overcharged for products. That's a good life and being restricted three days out the week. I don't know if that's a good life. Then there was a mention from Director Frakes about ice machines being paid for from the welfare cash fund. On my visit to NSP one time, I walked by a ice machine and one of the incarcerated individuals says, hey Senator McKinney, come look at this, it's broke and it keeps shocking us. So if, if you're using this money for ice machines, why are the ice machines in disrepair and shocking those inside? I saw that from my, my own eyes, honestly. Why does any of this money in

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this welfare cash fund go to staff? It makes no sense to me if it's meant for incarcerated individuals. With a, with a four-three schedule, there's a shortage of programming and the lack of access, and these services are needed. And the, the conversation about luxury items, these are not luxury items. The food isn't great inside and depending on your religious beliefs and your diet, some of the stuff you can't even eat. And if you don't get access to commissary, you probably will starve. The NDCS has probably one of the biggest budgets in a state and they're literally in here fighting against overcharging incarcerated individuals. That, that, that's sad in itself. FOP pretty much argued let's continue to overcharge incarcerated individuals to appease vendors so they don't leave our state. Makes no sense to me, either. Activities are already restricted. So what, what's more than sitting in, in, in your cell for 72 hours over the weekend? That's restriction to me. Barely can see your family, especially if they live out of town. That's restriction. And from my, I believe you can buy items in county jail. Now I don't know if I'm wrong, but I strongly believe you can buy items, so I, I don't know where you can't buy items. Maybe in some other counties outside of Douglas. I know in Douglas you can buy noodles and other items. But in-- and also I got, I meant to print it off, but I got a petition from a group of individuals at LCC and they directed it to the committee, and I'll send it to you all. I meant to print it off. It says: To members of the Judiciary Committee. We are petitioning LCC business manager in regards to the continual rise in canteen prices. On November 8, 2021, LCC's population received a memo informing that the canteen prices would increase on all canteen items. We were also informed that these actions are due to the current state of global supply chain. However, the LCC population believes this decision to increase these prices on all canteen items is, is an aggressive decision that will bring in a typical hardship affecting this population. Items such as personal hygiene products, phone time units, tokens, legal and school products should be excluded, along with medical products we are forced to buy now. This population believes that these products are excluded from the price increases, especially during this pandemic, as we're trying to combat and protect ourselves from this virus. Also, the communication with our loved ones will be affected, which ultimately will affect our mental health. We believe these items without an overall pay raise, which has not been done in 30 years, is a problem. It will also affect even those who work in the shops. We understand LCC's thought process is that we're all in this together, which we have been trying to do our part, but we are the ones who find ourselves in a state of vulnerability with regards to these unprecedented changes. We want to

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make sure all are treated fairly, especially our family members, who will also be affected and not taken advantage of for being in disadvantaged stage of our lives. We the fallen, we the fallen hope to have an open line of communication with those making decisions that will affect this population as well as our family. These price increases will eventually affect the quality of life for us all and for, and for some, and for some time. For example, some of the products, such as denture seals costs already \$6.15. For a person making \$1.21, that would take six days to pay for. Pantene shampoo conditioner, \$4.29; dandruff shampoo Head and Shoulders, \$5.44; Gold Bond powder, \$6.40; regular fiber, \$4.91; Brett-- Breathe Right strips, \$5.32. Some prices, such as Nasacort nasal spray is already \$16.16. We understand what is taking place within society, which includes their pay raises and yours. We are at 2021-- we are in 2021, but we're still being paid a 1980's pay wage. This is in addition to our docked working day, which each Friday losing pay, which has even affected the, the workers. This was signed-- it was a petition signed by 139 individuals in LCC. And with that, I'll close. Thank you.

LATHROP: OK. I don't see any questions. I appreciate your bringing LB880 to the committee. That will close our, our hearing on LB880 and bring us to LB1035.

PANSING BROOKS: Welcome, Senator Lathrop.

LATHROP: Good afternoon, committee members.

PANSING BROOKS: Open, open on LB1035.

LATHROP: Thank you, Vice Chair Pansing Brooks and members of the Judiciary Committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I represent Legislative District 12 and I'm here today to introduce LB1035. I thought before I introduce this, I might describe the next two bills as my "no good deed goes unpunished tour" bill. LB1035 would allow problem-solving courts to require participants to pay fees for testing services, including drug and alcohol testing, psychological evaluation, offender assessment screens, and electronic monitoring. Additionally, the bill cleans up some language replacing references to non-probation-based programs or services with problem-solving courts. This summer, I was involved in a group that was convened to look at emerging adults in the criminal justice system. That really led to a broader conversation. It was Senator Pansing Brooks and I were at a conference in Arizona with a member of the Supreme Court, Corey Steel, some folks from Probation. It was a, it was a group of people from Nebraska and much of the conversation

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that we had there trying to work on emerging adults, those kids or those young people who are older than juvenile court and before their brains are fully developed. Well, a lot of that, a lot of the solutions relate to problem-solving courts. So much of what we focused on at that conference was improving problem-solving courts, expanding problem-solving courts. My next bill is an attempt to do that. But this bill here was intended to address an issue that we're seeing across the state, where in some counties there is no expense related to being in a problem-solving court. In another county, it can be as high as \$2,000, and so that disparity is left-- has resulted in LB1035 in hopes that we can standardize what the cost is to participate in problem-solving courts so we're not pricing people out of it and we have some uniformity. I'm happy to answer questions and I would appreciate your support of LB1035.

PANSING BROOKS: Any questions? Senator Geist.

GEIST: I do have one. I'm curious, are, are these fees that are outlined in LB1035 currently being paid by participants?

LATHROP: I think Corey Steel probably is going to be able to answer that.

GEIST: OK.

LATHROP: Because the answer, I think, is going to be it sort of depends on what jurisdiction you're in.

GEIST: OK.

LATHROP: So some will say yes, some will say no. And what we're trying to do is to establish where they can, when and under what circumstances or for what things can they charge a fee, how much are those fees going to be? And the effort is to try to standardize that.

GEIST: OK.

LATHROP: So that--

GEIST: All right. I'll wait.

LATHROP: --it's not \$2,000 in one county and nothing in the next.

GEIST: OK.

PANSING BROOKS: Thank you. Any other questions for Senator Lathrop? Nope. OK. Thank you, Senator Lathrop. Proponents. We'll take proponent testimony. Welcome, Mr. Steel.

COREY STEEL: Thank you, Senator Pansing Brooks. Thank you, Judiciary Committee. Chairman Lathrop, who introduced the bill, members of the Judiciary Committee, my name is Corey Steel, C-o-r-e-y S-t-e-e-l, and I am the state court administrator with the Nebraska Supreme Court. I testify today in support of LB1035. It is a priority of the Nebraska Supreme Court that all court services allow for full participation in the judicial process, regardless of income, race, ethnicity, gender, age, ability, language, religion, or geography. In addition, national and Nebraska problem-solving court best practice standards state those same individuals noted above receive the same opportunities as others, as other individuals to participate and succeed in problem-solving courts. The Nebraska Supreme Court Problem-Solving Court Committee identified the need to examine potential inconsistencies in locally charged county fees and collected by the Nebraska problem-solving courts and tasked a subcommittee for this review. The subcommittee was to also examine the application and utilization of local county fees to ensure uniformity and equal access by all probation problem-solving courts. Based on the information provided by the subcommittee, the Nebraska Supreme Court Problem-Solving Court Committee ultimately concluded that current statutory language in 29-2262.02 is confusing and there were different interpretations as to what was allowable. The Nebraska Supreme Court examined the basis for this determination and, and considered the committee's recommendations of adopting a court rule that there shall be no fees assessed by any Nebraska problem-solving court, except for those expressly authorized by statute. Upon the review, the Nebraska Supreme Court concluded a policy driven statutory clarification regarding the order of court base-- county court based fees for participants in problem-solving courts was the best solution. That is a basis for this proposed legislation. It should be noted that no other court type: criminal, civil, juvenile, etcetera, allow counties on their own to collect a local county fee. It is the intent of the judicial branch that upon passage of LB1035 to work through the Supreme Court Problem-Solving Court Committee to adopt court rules that each local problem-solving court will receive the equivalent of their collected local county fees that they have been assessing up to this point as part of their yearly inter-local agreement between the Administrative Office of the Courts and Probation and the County. Further, the Supreme Court rules will speci-- specifically define the parameters for utilization of these

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funds to provide consistency and accountability. I want to thank you for this time today. I'd be happy to answer any questions.

PANSING BROOKS: OK, any questions for Mr. Steel? Yes, Senator Geist.

GEIST: Well, now I'll try again. So are the fees that are delineated in this bill currently paid in, in problem-solving court right now?

COREY STEEL: So the answer to that is yes. So what we tried to do with this fee is really clarify that says problem-solving courts can collect the statutory fees that are already in the state statute for probation supervision, such as probation fees, which then are pooled and used for the fee for service to provide for services, mental health, substance abuse. So those fees would be collected. Electronic monitoring fee if there is electronic monitoring ordered, which is also currently in statute and drug testing fees. So those fees are current in statute. But we would want those continued to be collected, so we didn't want confusion, and then there would be no other equivalent county-based fee that could be assessed to the purchases.

GEIST: OK. So currently, for instance, I know Lancaster County receives fees. Is that in a-- is, is that requirement within best practices of other problem-solving courts or across the country or--

COREY STEEL: So it would differ, I think, from state to state and how, and how they are set up, whether or not there's a local fee that is attached or there's a fee to participate in that problem-solving court to offset some of those costs. What we do currently on how we fund our problem-solving courts is, as I think the committee knows, we have currently two what we call legacy courts, Lancaster County and Douglas County. Those drug courts were put in place years ago prior to Problem-Solving Court Committee in the Supreme Court and the expansion of all the problem-solving courts we have now. Outside of those two, every other, those are county based and county run, and those are county folks that run those problem-solving courts, but they have to comply with the standards that are set by the Supreme Court. All other problem-solving courts are probation based and under the courts. And so those courts and the way that those are run, we collect just the statutory fees. There were some counties that are continuing to collect small portions of those fees that are noncounty based, and those are some things that we're, we're adjusting as well. So it's-- the funding mechanism for our problem-solving courts is a combination in those two legacy courts. It is state court funded that we pass through, through the court administrator's office with an

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inter-local agreement, and we pay for a portion of that problem-solving court. And then the counties also continue to put in a portion of that funding for that. These collected funds and we have the distribution of how much has been collected over the past five years and what that amount is. But what that is done is offset some of those other types of, of things that these courts can do, such as incentives for incentives and sanctions. We know that that's a positive influence. And so for buying incentives, paying for a food handler's permit if that individual would like to get a job in, in that industry, paying for work boots, paying for transportation, possibly paying for housing if somebody does get evicted and pay for that. We don't want to exclude those funds because we think all of those things are beneficial. That's why we've pulled all the, all the local-based court fees, and we have that documentation and would add that to out of our budget to those counties. So we don't want to eliminate this fee and say that those monies are no longer going to come to the county. We actually want to pay for those out of our budget and say we have a fundamental belief that if you're in a problem-solving court, no matter where you are, if you're in Aurora or if you're in Lancaster County, it should be the same. It should be those statutory probation-based fees, drug testing fees, and monitoring fees. Aurora problem-solving solving court right now has no additional fees outside of those statutory fees. Lancaster County has a county-based fee, and by the time you go through your problem-solving court, it's an additional \$2,400 for that individual to participate.

GEIST: And my only question about that is, is, is there some value of a participant having some skin in the game so that not-- I, I understand you wanting to be uniform and I get that, but I also wonder if knowing that you have something you're going to have to pay for helps encourage one to get a job or encourage-- put a little more pressure on that participant--

COREY STEEL: So I think--

GEIST: --to have some skin in the game?

COREY STEEL: --so I think if we would take a look at a, a, a problem-solving court that charges the fee versus a problem-solving court that doesn't charge the fee, I don't think we'll see any difference in the success of those problem-solving courts.

GEIST: OK.

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COREY STEEL: There's already going to be those probation-based monthly fees that are needed to be paid, the, the other testing fees. But the real incentive for those that are in problem-solving court is the fact that if they're successful, that charge--

GEIST: Gets waived.

COREY STEEL: Yep.

GEIST: Which is a huge incentive as well.

COREY STEEL: Correct. Correct.

GEIST: So--

COREY STEEL: Correct.

GEIST: OK.

COREY STEEL: Correct. So again, we don't want to take away these fees. We understand the purpose of these fees. We want to supplement those fees with our inter-local agreement so that the counties still can utilize those for the things that they were. And we feel that we can do that through the Problem-Solving Court Committee, create a structure that allows for that. And the other thing that we have ran into with this subcommittee, which I, I cochaired with Judge Jodi Nelson, who's a district court judge and a problem-solving court judge here in Lancaster County, is as we peeled this onion back, we started finding out that not only were there fees that were being charged, but there was no accountability for those fees. We had a state auditor that came in and did an audit on the county, that will remain nameless, and this county was funding things out of that problem-solving court budget that should not have been paid for. That should not have and did not go towards the problem-solving court participants.

GEIST: Well, but typically, those go to pay for incentives within the--

COREY STEEL: Typically, and that's what we want to get our parameters around to say, here are the acceptable things that can be paid for. We want to set up a tracking mechanism as well that says if they, if they do fund these things, there is, there is tracking of those. And so that's another issue that we did see. We also have a county out there that's been collecting fees for over 10, 12 years and has over \$90,000 sitting in a fee, in a county-based fee that nobody's ever

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withdrawn any money from for any drug court or any participant issues. And so there's a big pot of money sitting there that's been collected over the years that's not being utilized. So there were a lot of issues as this committee spent over two years really researching and looking and diving into this and determining should we, should we not? And it really came back to the language of whether the authority was there or the authority wasn't and the discrepancy and belief of can non-probation-based problem-solving courts continue to collect those fees?

GEIST: OK. Thank you.

PANSING BROOKS: Senator McKinney.

McKINNEY: Thank you. I generally don't like fees, especially for anything that, you know, for individuals that are needing to go to problem-solving courts. What's the thinking behind the \$35 enrollment fee, the monthly fee?

COREY STEEL: So those are the same fees that are outlined for anybody on probation. So if you're placed on probation, there's a probation enrollment fee and then the monthly fees that go with that. Those funds are what are pooled together to pay for the fee for, fee for service voucher program that funds all the treatment for these individuals. That funds the mental health, that funds housing so that, that money that goes into there goes back and pays for those services for those individuals. And so that's already outlined in statute and has been there for, I'd have to go back and look, but for years and years that we felt because this is the same concept of the supervision to, to pay for the urinalysis tests and electronic monitoring, that would make sense to have that in this problem-solving court world, but exclude the additional county-based fees.

McKINNEY: What if, hypothetically, you have an individual that's on probation, but the only job they could find pays, let's say, \$11 an hour, but they also owe child support. So when they get their check, they're only-- they're not getting a lot back, but they're having to pay a addition of \$35 a month. How often are these fees waived for people that may be in those situations completely?

COREY STEEL: So how I'll answer that is I don't have the exact number, but we have actually tried to in, in prior years, take a look at the waiver rate and how often are probation fees being waived or other court fees being waived by the judge because a judge does have

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the discretion to waive those fees if there's indigent or if it's brought to them that they're, they're unable to pay those. And it's real tricky in the sense of the data elements, unfortunately, in our justice system to determine here was it was ordered at this date, but it was uncollected, was it uncollected because there was an approval by the judge and that was waived because that's a court order, but it's not a data element. So unfortunately, we can't, we can't coincide the collect-- uncollected amount versus how much of that was waived. Our best guess as we did some "dipsticking" at some cases was those court fees that are uncollected were waived by the judges. And we do see in some jurisdictions a higher waiver rate than others.

McKINNEY: All right, thank you.

PANSING BROOKS: Any other questions? Well, thank you for coming, Mr. Steel. Appreciate it.

COREY STEEL: Thank you. And I'm willing to provide any additional information the committee may request if they need any figures or cost figures or anything like that, because we estimate this is about \$150,000 to \$175,000 a year that we would absorb in our budget.

PANSING BROOKS: OK, that's great. Thank you. Further proponents? Proponents? OK, what about opponents? Welcome.

WEBB BANCROFT: Good afternoon.

PANSING BROOKS: Good afternoon.

WEBB BANCROFT: Vice Chair Pansing Brooks, nice to see you members of the committee. I'm Webb Bancroft. I'm the president of the Nebraska Criminal Defense Attorneys Association. And just by way of background, I have been on the statewide Problem-Solving Court Committee for over ten years. The subcommittee that Mr. Steel is referring to, I've been a member on that from the beginning, as well as now a judicial branch education for the same problem-solving courts.

PANSING BROOKS: Mr. Webb, could you spell your name for the record?

WEBB BANCROFT: Oh, I'm sorry. Sure.

PANSING BROOKS: Thank you.

WEBB BANCROFT: Webb, W-e-b-b, Bancroft, B-a-n-c-r-o-f-t. When coming here and testifying against a bill introduced by Senator Lathrop,

that was uncomfortable, certainly. Taking an opposite position from Corey Steel from the administrative office of the court is not something we choose to do. But this bill is really in search of a problem that doesn't exist. More than anything else, it's designed to get those legacy courts, Lancaster County and Douglas County, that are working so well and so efficiently under the Probation Court and the Office of Court Administrator's Office when they don't need to be. The problems that Mr. Steel identified in different courts, those are probation-based courts. Those are the ones that were without the appropriate supervision. But basically, what this bill is doing is carving out the language that allowed non-probation-based problem-solving courts to charge local fees for services and lumping it in with those probation-based courts for no reason. Just recently, our drug court in Lancaster County got named to be one of the national training courts. That's how well they're doing. That's how well they keep track of their successes. All the accounting that needs to go into those things, it's been accomplished by a court that's been in existence, I believe, for 20 years. There is no reason to bring them in under the Probation Office at this time. I don't know as much about Douglas County as I do Lancaster County, but I've been both on the drug court team years ago and I am currently on the veterans court treatment team and the veterans court treatment team has also been asked to be a national training court for other courts getting set up around the country. At this point in time, the plan for how the money would be collected and distributed, I am unclear what that plan would be, but whether or not all of the people in Douglas County who are contributing local fees under the-- under this statute, it's not clear that that money would be distributed in Douglas County. It seems to go into a pool for later decisions to be made regarding how it is expended and accounted for. The statewide problem-solving court committee, again, which I'm a member, was unfamiliar with this bill before it was dropped. Actually, it was unfamiliar with LB1036 before it was dropped, so some of these things weren't contemplated at the time the committee met the last time. I was part of the subcommittee that found all of the problems, and there were problems in terms of accounting, but this bill doesn't cure that.

PANSING BROOKS: OK, some questions for Mr. Bancroft? Go ahead, Senator Geist.

GEIST: Thank you for your testimony. Have there been complaints from the, from the legacy courts about paying, about participants paying?

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WEBB BANCROFT: The, the-- our drug court, our veterans court, the fees that Mr. Steel refers to, those fees can be waived for indigent people and they are waived. If you can't afford to pay, they do not use your inability to pay to preclude your participation in the treatment program or preclude treatment being provided to you. And, and it's been that way from the very beginning. But the buy-in, Senator Geist, that you talked about is important and obviously they're paying fees if they can.

GEIST: The skin in the game. Is that what you're referring to?

WEBB BANCROFT: Skin in the game.

GEIST: OK.

WEBB BANCROFT: And, and it's important.

GEIST: So that is a real thing?

WEBB BANCROFT: Extremely.

GEIST: OK. And, and would you speak to what you see there? I'm interested that you agree, so.

WEBB BANCROFT: Well, I think if, if-- and I know a number of you have been fortunate enough to be at a graduation ceremony, they oftentimes will make fun of me and think you've been there, I cry--

GEIST: Um-hum.

WEBB BANCROFT: --at these ceremonies because they are so life altering for these people. They reestablish relationships with their family. They are employed. They are paying child support. They're making their lives different through the assistance of our particular court. I can remember a, a story from a woman who was about 40-years-old and, and her vision of what her life-changing [INAUDIBLE] was. Her mom gave her a key to her house. She said, I haven't had a key to my family's home in 25 years because that's how far she had drifted down. These are successful courts. And if you want to create a system as Mr. Steel set out, you can accept out of those the non-probation-based problem-solving courts. And all of the accounting methods that they want to introduce for these probation-based courts can be done, but let the courts that are there already up and functioning and have functioned so successfully for so long, they're not where the problem was. And this bill is in search of bringing them in, and there's no reason to do that.

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GEIST: OK. Thank you.

PANSING BROOKS: Any other questions? Senator, oh did you? No. OK. I guess I have one. I'm just-- so you said there's no reason to bring the courts in under the-- under Probation. Are there, are there reasons not to bring them in under Probation?

WEBB BANCROFT: I think local control that we hear about on somewhat regular basis and the participation of our county commissioners, as well as the Public Defender's Office, County Attorney's Office, we have Probation people involved, the local treatment providers, that has made us a very flexible and responsive court. We can meet and immediately decide on incentives and sanctions. What we can pay for, what we can't pay for. And we have a set budget that has been in place for a substantial period of time. So it's just working the way it's supposed to work. And I guess being nationally recognized for that means something. We, we must be doing something right if we're going to be a training court.

PANSING BROOKS: OK. No questions? Thank you for coming, Mr. Bancroft. Further opponents? Welcome.

KATIE BENSON: Good afternoon, my name is Katie Benson, K-a-t-i-e B-e-n-s-o-n. I'm here on behalf of the Nebraska County Attorneys Association, as well as the Douglas County Attorney's Office. I am a deputy county attorney with the Douglas County Attorney's Office. Just-- so hopefully what I say has a little more weight. I have run our problem-solving court in Douglas County, which is the largest drug court in the state for the last eight years, so I'm very familiar with how our program runs and the, the success that we have had. I actually couldn't see this any better than Mr. Bancroft and what he said is I, I agree that this bill is a bill that's in search of a problem that doesn't exist. And I think even when you heard the comments from Mr. Steel and Senator Lathrop, there just really isn't anything in detail or directly as to why this needs to be done. And the County Attorneys Association and my office, specifically, our main opposition is with subsection (7), as Mr. Bancroft stated, which eliminates the local fee. And if you go forward and do that, you are hurting and eliminating a court that has great success. The Douglas County drug court was the first created in the state back in 1997. We've had 2,089 graduates to date from the program, 115 commencements, 141 babies that have been born, been born to drug-free mothers. So this is a very successful program in how we've been operating, and part of that operation is a minimal \$15 fee, that is a local fee. And how we operate is the Douglas County Board back in

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1997, since we were the first drug court, agreed to pay some of the costs and expenses of that because they realized what an important program it was. And that relationship between my office, the Douglas County Attorney, the public defender, as well as the county board, is strong today and it does, as testified earlier by Mr. Bancroft, it gives a sense of community to this program. I, I honestly didn't hear anything earlier that I believe requires this, as I said, it's a \$15 fee. We never sanction somebody for not paying that fee. We do not terminate anybody for failing to pay that fee, and it gives the participant a purpose that they're part of those that are paying for something that's to their benefit. Additionally, you'll see we have county board members that come to our graduations. And by us getting this \$15 fee that only goes to paying for drug court-- or drug testing costs. It goes to the materials in the testing itself. We don't use it for anything else. We're very open with what it's used for and again, it's a minimal cost. And we can tell the county board, look, we're taking this seriously. We're giving money back to the county so that we don't take more money from taxpayers and that money can be used elsewhere. I am typically here as an opponent. As the county attorney's office, I've seen many of you before and while I'm here as an opponent of the bill, I'm here as a proponent for problem-solving courts and specifically the Douglas County drug court. I would ask you not to go forward with this bill as it hurts the program. It hurts the participants and it hurts the taxpayers of Douglas County and the Douglas County Board. And so what I would say is rather than talk about an elimination of a local fee, why not impose a range if there's concerns about some court having a high fee. Ours is \$15 a month.

PANSING BROOKS: Thank you.

KATIE BENSON: Thank you.

PANSING BROOKS: Any questions? Yes, go ahead.

DeBOER: Thanks, Vice Chair Pansing Brooks. My question for, for you, you said, I think this is great, you said that nobody gets kicked out for not being able to pay the, the fee.

KATIE BENSON: Yeah, I have run or I, I shouldn't say, I don't run the drug court. I'm the county attorney. I have never in the 8 years I've been handling this, we have 130 to 150 people in there on average, and nobody's ever been terminated for that. Additionally, they-- everybody has a due process, right, if there is a termination. I've never even included that as a reason for termination. You know, among

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several, there would be numerous violations, but never have we terminated somebody for that or even given them a sanction.

DeBOER: So is there-- how, how do you make sure you get it if they aren't going to get terminated for not paying it?

KATIE BENSON: That's a great question. Well, the carrot is you want to graduate and to graduate those fees have to be paid off. And so---

DeBOER: OK.

KATIE BENSON: --what we do is we leak part of the program is working. And so phase one, a lot of people are in, you know, residential treatment. The focus isn't on jobs at that point. And so we don't say, hey, give us our money or you're out. No, you're working. And then when we get to the point, then we have services to help get jobs. And when you have that and you start making money, that's when we say, OK, start just paying this a little bit at a time.

DeBOER: So you, you never would kick someone out for it or you haven't seen that anyway,--

KATIE BENSON: Um-hum.

DeBOER: --but you couldn't graduate until you paid for whatever it was?

KATIE BENSON: That's correct, and I've never had anybody approach me saying, hey, Katie, you know, I owe \$150 because the point of this whole program is that, you know, hopefully when you leave you, you're paying for your car, you have your driver's license--

DeBOER: Yeah.

KATIE BENSON: --you're paying for also. We really don't have people in a situat-- situation where they can't pay it, you know, I mean it's a non--

DeBOER: Yeah.

KATIE BENSON: --issue. But, you know, certainly, I suppose, like, we've had some individuals that just can't get their GED, like, they're just not of a level that it's just going to happen where they test out. So we've negotiated on, OK, we could graduate them without a GED. [INAUDIBLE] fees and we had someone for some reason that they

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could not work or they're on disability, then we would certainly take that into account.

DeBOER: OK. Thank you.

PANSING BROOKS: Yes, Senator McKinney.

McKINNEY: Thank you, Vice Chair. And thank you for your testimony. Couple questions. How do you know that these participants in the drug court view it as a benefit to pay or not a burden?

KATIE BENSON: Well, I don't know how a participant views it. What I was saying, as for the taxpayer and for the Douglas County Board, how having somebody invested in this program, this is a program that allows individuals access to drug court so that, you know, they can avoid a felony. They can avoid prison. They can avoid, you know, other, you know, jail. And so to be part of that to the county board and to the taxpayer, I think having somebody pay \$15 a month for something that is to their benefit. And like I said, there's been no sanction, there's been no termination.

McKINNEY: How do you-- but, but you did say at the end that this would accumulate over time because of just how it operates. How, how do you not know that might, might become a burden?

KATIE BENSON: I think every time you have to pay something, it's a burden. I would concede that, but the program is about getting someone a job and when they have that job, you know, we know where they're working and, I mean, same thing, there's probation fees.

McKINNEY: So is, is drug court court ordered?

KATIE BENSON: No, it's a voluntary program.

McKINNEY: OK.

KATIE BENSON: I mean, it's run by the court. But if you were a defense attorney, you would come to me and say, hey, Katie, you know, my client appears to be eligible. It's a nonviolent felony. He's only had one prior, you know, felony conviction.

McKINNEY: So--

KATIE BENSON: I can't make an individual do drug court because if you do that, that's when it becomes unsuccessful.

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McKINNEY: So do you think without the fee, would you still have the success?

KATIE BENSON: Success in, in what manner? With financial?

McKINNEY: When you began, you said you graduated X amount of people, X amount at graduation. What I'm saying is without those fees, do you think you still could have pulled that off?

KATIE BENSON: I mean, we would have to get the money-- we'd have to ask Douglas County for more money because we have to do the drug testing.

McKINNEY: No, I'm saying if without the fee and you've, and you've had another way to pay for whatever you think you had to pay for, do you think you could have pulled it off without charging individuals \$15 a month?

KATIE BENSON: If we got the money elsewhere, yes. But we would have to tell, you know, the county board that we would need more money even though we've successfully been obtaining these fees. And it's not been a detriment to the extent of individuals haven't been able to pay for their housing, a car, a license which you work on education. So correct.

McKINNEY: All right. Thank you.

PANSING BROOKS: Any other questions? Nope. OK, thank you very much for coming, Miss Benson.

KATIE BENSON: Thank you, Senator.

PANSING BROOKS: Next opponent. Welcome.

TERESA BUNJER: Thank you. Good afternoon, Senator, and members of the Judiciary. My name is Teresa Bunjer, it's T-e-r-e-s-a B-u-n-j-e-r, and I am the coordinator for the Douglas County Adult Drug Court. I am here representing the Douglas County Adult Drug Court in opposition to LB1035. The legislation before you proposes two significant changes to the current state statute 29-2262.06. First and foremost, it eliminates the ability for the county courts to assess local fees. At the present time, participants in the Douglas County Adult Drug Court pay \$15 per month, and currently these fees are used to help supplement the cost of drug testing and drug testing materials. It is important to note that within the proposed legislation before you, it also provides a provision for the judges

to require participants to pay the cost of tests to determine the presence of drugs and alcohol. It is important to be aware that the costs associated with confirmation tests vary based on the substance used, but currently our confirmation tests range in cost from \$17 to \$20 per test. The cost of one confirmation test already exceeds what our clients are required to pay per month to support the cost of drug testing. In addition to precluding counties to assess legal fees, the current legislation also provides the authority to judges to require participants to pay costs associated with psychological evaluations, electronic monitoring, and offender, offender assessment screens. This presents significant ethical concerns. The current per diem rate for a psychological evaluation is \$881, and that's if a client is uninsured and using voucher assistance. If this cost was transferred to the clients, it could be financially crippling. Many of the clients who are actively struggling with mental health and are, and are in need of such an evaluation would not be able to endure the cost and the associated stress. This would serve as a significant barrier to accessing needed services. Also, the use of the term "offender assessment screens" is incredibly vague and can be justified to transfer the cost of several assessments onto the client. In order to address the aforementioned concerns regarding uniformity, a subcommittee was formed and proposed a court fee rule. The recommendations of this committee are not represented within this proposed bill. One of the recommendations made was limiting the amount a participant could be charged from local fees. Sorry, I see the light on.

PANSING BROOKS: You can go till red, so.

TERESA BUNJER: Oh, OK. What-- the limit was going to be \$50 a month and could not exceed \$1,200 throughout the duration of a participation within problem-solving courts. The current proposition in front of you does nothing to support the participants in problem-solving courts or increase access to services. It is intended solely to eliminate the ability of counties to assist in supplementing some of the costs through a nominal monthly fee, while increasing the ability of the courts to assess-- to significantly assess financial cost to the client. During a time in which the focus is to establish greater access to problem-solving courts, this measure appears to create unnecessary barriers and hardships. Thank you.

PANSING BROOKS: Thank you, Miss Bunjer. Any questions for Miss Bunjer? Senator Geist.

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GEIST: I do have one and, I'm sorry, I was-- you were reading fast and I was trying to follow you. You said when you came together as a committee, you were talking about what you, you all as a committee thought would be a good range. And I have \$50 a month not to exceed \$100 for the-- \$1,200--

TERESA BUNJER: I'm sorry.

GEIST: --for the program or for--

TERESA BUNJER: For the duration.

GEIST: OK.

TERESA BUNJER: For the duration of somebody's--

GEIST: The 18 months to 2 years.

TERESA BUNJER: Correct.

GEIST: OK.

TERESA BUNJER: So there were four measures that the court fee rule had proposed. One was to say any county has to limit the amount of local fees at \$50. Currently, Douglas County is charging \$15, but it would limit it at \$50 and say-- and no client could be charged more than \$1,200 throughout the duration of their time in problem-solving court.

GEIST: So one other thing you addressed.

TERESA BUNJER: Yes.

GEIST: And I, I hope I was tracking with you appropriately, is you're concerned that this opens up a cost amount that would be transferred to the--

TERESA BUNJER: Correct.

GEIST: --participant that's greater than the--

TERESA BUNJER: Correct.

GEIST: --\$35 fee or--

TERESA BUNJER: Correct.

GEIST: OK.

TERESA BUNJER: And so it opens up two areas of concern. First and foremost, the Douglas County Adult Drug Court because we pay for our drug testing out of county fees, not through the Office of Probation. The \$15 per month that the clients are paying is going to help supplement the cost of that drug testing. In this provision, it would allow the judges to order the clients to pay for their own drug testing to confirm drug test results. The confirmation tests that are required in terms of due process can range in cost, depending on which substances you're confirming. But for us, it ranges between \$17 and \$20 per test.

GEIST: OK.

TERESA BUNJER: And so the county is actually taking over that cost for the client. And if that fund was eliminated and the provision was adopted where judges could then order those costs, it would cost the clients more than they're currently paying based on their county fees.

GEIST: Understood. I'm just glad you repeated that. I'm making sure that I was following exactly what you said, so.

TERESA BUNJER: And if I may, the other piece of the subcommittee was adopting where counties would have to put into writing policies and procedures related to the assessments of fees. And for whatever reason, that was not what was brought before.

GEIST: OK. Thank you.

PANSING BROOKS: Senator McKinney.

McKINNEY: Thank you, Vice Chair. Thank you for your testimony. What's your annual budget to run the drug court in Douglas County?

TERESA BUNJER: The-- are you-- the question is a little bit challenging because we do receive an inter-local agreement from the Administrative Office of Probation, which funds part of our court, which is paid, which is what the clients are paying the administrative costs that are already approved by state statute. The county budget is separate from that and the county contributes, just with drug testing alone, if we just kept it there, this last fiscal year, the county contributed \$36,246 to our drug testing. What we recouped from these client fees was \$22,068. So it's not recovering even just the cost of drug testing. But the budget is paid out of the

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general county fund. And so we're looking at the expenses related to drug testing for this specifically. The other budget items I have with me, but I would need to go back and reference.

McKINNEY: So the budget is-- are you saying it's under \$70,000?

TERESA BUNJER: For what's being contributed by the county for this particular what it's going to is-- it's under \$70,000 for 2021.

McKINNEY: So--

TERESA BUNJER: It's going to fluctuate for year to year, depending on number of participants.

McKINNEY: So the fees are \$22,000, like, from the fees paid?

TERESA BUNJER: What's collected by that \$15 per month fee per client, that recouped in 2021 \$22,000.

McKINNEY: Has the county ever explored finding another way to pay for that outside of charging \$15 because it's \$22,000? And it's \$22,000-- I, I mean, every dollar is something, but \$22,000 is-- I was expecting to hear a larger number. So has the county, and I know it's probably not in the scope of your, your position--

TERESA BUNJER: Um-hum.

McKINNEY: --to say yes or no on that, but has the county ever explored-- find another way to fund the \$22,000 outside of the fee? Because it seems so low that the county could find it in another pot without charging people \$15 an hour?

TERESA BUNJER: I think that you're right and correct in saying, in totality, \$22,000 per, per year for a county is not. This is more an exercise in good faith to the County Board of Commissioners to say when you are providing and helping to support the operations of Douglas County Adult Drug Court, the clients themselves by paying this nominal \$15 per month are showing a vested interest in what they're receiving. So I'm not-- I don't imagine that the issue, per se, is the need for that budgetary item to be of primary focus. It's more of a good faith that showing that the clients in our program are supporting the program itself and what they're receiving at a nominal fee. And I, and as Miss Benson stated earlier, if a client is showing financial need, we are absolutely willing to accommodate and waive fees. We use that as one of our incentives is to waive a portion of somebody's fees. And so it's less about the actual amount accrued and

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more about the process of showing and also helping the clients have that vested interest in the program that they're receiving.

McKINNEY: Yeah, no, I get that. I just think if somebody signs up to be drug tested monthly, that's enough vested interest from my perspective then even paying the \$15 an hour. But I do thank you for your testimony. Thank you.

PANSING BROOKS: Any questions? Well, thank you so much for--

TERESA BUNJER: Thank you.

PANSING BROOKS: --coming today. Appreciate it. Next opponent. Welcome.

TIM HRUZA: Good afternoon, members of the Judiciary Committee. My name is Tim Hruza, last name, H-r-u-z-a, appearing today on behalf of the Nebraska State Bar Association in opposition to the legislation. I don't have much to add substantively than what you've heard from prior testifiers. As, as you, you know, when the Bar Association comes in, when we have a situation where county attorneys and defense attorneys both have concerns about a bill, it generally leads to our taking a position in opposition as well. Let me be very clear with me appearing here today, and I, I hope that you heard it in the testimony from the attorneys that appeared before me as well. Lawyers are invested in problem-solving courts. Attorneys care very much about how these operate and how successful they are for clients and, and even prosecutors that are appearing before you in terms of the outcomes that we receive from problem-solving courts and the work that they do across our state. The concerns that, that arise from the members of the Bar Association coming from, from both sides of the defense and the prosecution, as well as the judges who are involved in our conversations, range to account for various different topics about the future of problem-solving courts and how they continue to develop in our state. But suffice it to say that it truly comes from a place where there is a belief that these are good and, and help and need to be invested in. I appear today in opposition simply out of-- or based on those concerns that have been stated and to make a commitment to this committee, Senator Lathrop, Mr. Steel as well, that the Bar Association will continue to work on how to augment our problem-solving courts in the state. Obviously, the legacy courts that exist are models and do produce great results. So do many of the drug courts that judges are investing their time in, in different places across the state as well. So I appear today in opposition. I, I think that there's a lot of discussion that needs to happen among

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attorneys on our level, at the Bar Association level, with the prosecutors and the defendants, and with the Administrative Office of the Courts about the future of drug courts and exactly how those will, will develop or how they will-- we will continue to streamline them to have good results for the people in the criminal defense system. With that, I'm happy to answer any questions you have. I thank Senator Lathrop for the open conversation that we have started here today and I, I make the commitment to you that we will continue to work on it at the Bar Association level.

PANSING BROOKS: Do we have any questions for Mr. Hruza? I guess I have one and fortunately your last, but--

TIM HRUZA: Uh-oh.

PANSING BROOKS: --unfortunately for you. But I'm trying-- I guess I'm trying to figure out what the issue is. The people don't want the courts to be in charge of the problem-solving courts because they want local control, because they don't want to have to ask the Supreme Court for the money for their program? I, I, I really don't get this.

TIM HRUZA: So I'm a little bit new to understanding exactly what happens on the county level. But I do think that the Lancaster County Court is, is a great example of it. I know Mr. Bancroft testified earlier, those legacy courts have local individuals who have been invested in the courts since they were started, right? So at our level, we go through a process where we have a legislation committee. We move on to the House of Delegates. The House of Delegates establishes our position. We heard from a number of attorneys who have been involved, who have served on the, the Lancaster County Board that handles and manages drug courts. These individuals' attorneys have invested time in ensuring that they develop a program that's successful, right? They have a lot of pride in what they do, the services they offer, the outcomes that they obtain for people who, who complete those programs. I think the concerns that I have heard from attorneys who have spoken up and judges too is that changing the way these fees are collected, their ability to operate their program has, has the potential, right, to affect the outcomes that they receive in the long term. So I, I think there's some value in, in--

PANSING BROOKS: The outcomes they receive from the court?

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TIM HRUZA: The, the outcome that they see from the, from the drug court, for example, or the problem-solving court, whether it's a veterans court. Those are programs that have been developed by the local board, right, on that level. And I think the attorneys have concerns that if you transition the way those are funded or if you make wholesale changes to that without some collaboration, which that's what I'm committing to you, that we will continue to work on, right? But if you, if you make the changes to how those fees are collected, it can affect what they're able to do in their programs. So maybe it's a local control thing. I think that might be the best way to express what I've heard from attorneys. I-- there's a lot more work I think that needs to be done amongst the ground level before we--

PANSING BROOKS: But it's not just how they're collected, but how they're then kept and spent and just redistributed. Is that correct?

TIM HRUZA: I wish I knew enough about it to tell you.

PANSING BROOKS: OK.

TIM HRUZA: But what I have heard attorneys say is something along those lines.

PANSING BROOKS: Shouldn't have been last.

TIM HRUZA: I, I should have had somebody else come today. [LAUGHTER]

PANSING BROOKS: OK, well, Senator Lathrop will be last so that'll be good.

TIM HRUZA: Thank you.

PANSING BROOKS: Any other questions for Mr. Hruza? I don't see any. Thank you. Any additional opponents? Anybody in the neutral? And while Senator Lathrop comes up to talk about, there was one proponent from the Nebraska Association of Behavioral Health Organizations and one opponent representing the Lancaster County Board of Commissioners. Thank you. And no neutral. Senator Lathrop.

LATHROP: So what is not at issue in this bill is problem-solving courts are good, that a lot of people have done a lot of great work, and I'm OK if people want to come in and say, you should know how great things are people, we are a model. That's not the question. It's about having some uniformity in how we administer these and, ultimately, the court feels like this bill is necessary. I feel like

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I got caught in the middle of a family squabble because apparently there's some board that thinks that, that this bill is getting out in front of their ability or the work that they're doing. I got to tell you if nobody's paying anything in Aurora and they're paying \$2,000 in Lancaster County, that sounds like something that legitimately we ought to have a conversation about. And coming in and telling us how great you're doing, God bless you and thank you. You'll see that I'm very much an advocate for growing the court. And you'll notice in the next bill it gets even weirder. We'll give these people room, I think, to try to, to try to sort out how this should be reconciled. But I think the Supreme Court, who's in charge of the courts, should have a say in how the courts are run. And that's true even though the people that are trying to regulate are doing great work and work that I appreciate and everybody on this committee appreciates, and so that's my thoughts on LB1035.

PANSING BROOKS: OK, thank you. With that, that closes the hearing on LB1035 unless anybody has a question. Doesn't look like it. Nope.

LATHROP: OK.

PANSING BROOKS: Thank you. Now we'll open the hearing on LB1036. Senator Lathrop.

LATHROP: Thank you, Vice Chair Pansing Brooks and members of the Judiciary Committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I am the state senator for District 12 that includes Ralston and parts of southwest Omaha, and I'm pleased to present LB1036 and continuing with my previously described tour. LB1036 would allow the Supreme Court to use problem-solving court referees to facilitate the establishment or expansion of problem-solving courts in district court, separate juvenile courts, and county courts, and I'll pause to observe that we have heard that judicial resources is the bottleneck. We say as a committee, Appropriations Committee, who is very invested in problem-solving courts, says as a committee, what's the hold up? How come we can't expand more? And when we have those briefings, we are told that judicial resources is the bottleneck. And what that means is district court judges volunteer for this. This isn't part of their normal assignment. They say, I think these are really good thing. It's one of those really feel good things if you're a judge and you sit and listen to divorces all day and you're sentencing people to big time and you're doing all kinds of litigation and you see people graduating from a problem-solving court, feels good. And district court judges volunteer for this, but there aren't enough of them. We don't have enough judicial resources to expand our capacity

in problem-solving courts. So a group that works on this issue came up with an idea. Let's allow them-- they call them referees. I would have called them magistrate judges, but a referee would be sort of the person. By the way, they're not required to use these guys. OK, all we're doing is authorizing the court to appoint a referee. So if you're in Douglas County and the Supreme Court says we've just come up with a referee, do you want him in Douglas County? And they say, no, they don't have to take them, but we're trying to find an answer to the we don't have enough judicial resources. Using these people is completely voluntary. The chief justice is not going to dispatch a referee and say, you are now attached to Douglas County. Go in there and get yourself involved in problem-solving courts, which makes opposition that you'll hear puzzling, very puzzling. To qualify as a referee, an attorney must be an attorney in good standing and meet any other criteria determined by the court. A hearing before the problem-solving court must be conducted in the same manner as a hearing before the referring court. Referees would have the power to summon and enforce attendance of parties and witnesses, administer all necessary oaths, supervise pretrial preparation, grant continuances and adjournments, recommend the appointment of counsel for indigent parties, and carry out any other duties assigned by the Supreme Court. Testimony heard by referees would have to be recorded or preserved by other means. Transcripts of all hearings would be available upon request. Findings by referees would be orally announced to the parties in the case and submitted in writing to the referring court. So the district court judge is still in charge. The referee is doing sort of the day-to-day, if you will. In all matters before a problem-solving court referee, the parties shall have the right to take exception and have further hearing before the problem-solving court, and all findings and recommendations made by referees will be reviewed by the court, which will enter a judgment based on the court's own determination. I thought when I heard this idea that we had just unlocked the key, we just figured out how to expand problem-solving courts by providing willing district court judges with help. Hard to argue with it, but you will hear opposition testimony that is to me puzzling. And with that, I'm happy to answer any questions.

PANSING BROOKS: Senator McKinney.

McKINNEY: Thank you, Vice Chair Pansing Brooks. Senator Lathrop, I was reading the online comments and just wanted to ask you now until later, because just to kind of get your feedback. So one comment said the use of referees is not recognized as a best practice until their

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knowledge is, until their knowledge is now evident, there is no evidence to support the use of referees in problem-solving courts.

PANSING BROOKS: Senator McKinney, I think it's hard to hear you.

McKINNEY: I'm sorry.

PANSING BROOKS: Sorry.

LATHROP: No, I think I understood him. And so the--

PANSING BROOKS: Well, some of us couldn't hear it, so.

LATHROP: Oh, I'm sorry.

PANSING BROOKS: That's OK.

McKINNEY: So in the comment it said the use of referees is not recognized as a best practice and to their knowledge there is no evidence to support the use of referees in problem-solving courts.

LATHROP: Do you know who sent that in?

McKINNEY: That is from Lancaster County Board.

LATHROP: OK. So we find ourselves at a, at a-- the place where we're trying to expand problem-solving courts. The district court judges, to my understanding, who do this are volunteers so they can do as much, as little, or none of it if they choose, depending on how they, how they feel about it. And it was not intended-- this isn't a bill that's going to put one in every district court courthouse in Nebraska. This was an idea where the court would start out slowly, send one to, to someone who, who wanted a referee to participate and try it. I don't know how it could be best practices until we try it and see if it works. Honestly, I thought about this, and I suspect the opposition goes something like this, because what I've heard is that they're perfectly happy if we appointed a referee to hear divorce cases, something they'd rather not have to work on. But I think the concern, it may be described in various ways, but the concern is that if we appoint referees, we won't appoint more district court judges. Right? And so if we don't appoint, like, if we don't, if we have referees, then we're, then we're instead of appointing a new district court judge somewhere, we'll say, well, you got a referee, you don't need a district court judge. That's not the intention. That's not the intent of this. And I think it's an opportunity. I know all of us are invested in seeing these things

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grow, and we can only grow at the rate at which district court judges volunteer. And what we know is they're not volunteering fast enough. And by the way, they're really busy. I know a lot of these people. I went to school with a lot of them in Douglas County. I get that. But I don't know how that translates into opposition to an idea that might help solve the problem.

McKINNEY: And also in their online comment, it said, you know, the use of referees in problem-solving courts would eradicate one of the most important interventions a problem-solving court offers, the relationship between the participant and the judge.

PANSING BROOKS: Between what?

McKINNEY: The participant and the judge.

LATHROP: I have never run a problem-solving court, and I've never had a client in a problem-solving court, and I can't-- I mean, to some extent, you're, you're going to hear people give reasons other than the ones I've suggested may be behind all this and I can't argue with that. I just know-- I've, I've sat with Mr. Steel, I've sat with Judge Doyle, and others trying to figure out how do we expand problem-solving courts? I think everybody in this room thinks they should be expanded. The duties are voluntary. And what we know is we'd like to see them expanded. And unless people say, who are on the bench, say, I'll do more of it, it won't expand or we can have referees that help them. And a judge that wants to do this work will then have help with more of the day-to-day activities.

PANSING BROOKS: Senator DeBoer.

DeBOER: Is, first of all, is Mr. Steel going to testify after you, do you know?

LATHROP: Pardon me?

DeBOER: Are you going to have-- yes, OK. So maybe these are not the questions for you, but these hearings that these judges or these referees would be presiding over, would they be working like in conjunction with a district judge as well so that there'd be sort of a district judge in charge of maybe four or five? I mean, imagining this really gets ramped up, four or five of them so the district judge would come in if there was a problem or is that sort of how you're envisioning this?

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LATHROP: It would be similar to the relationship between a judge magistrate in federal court and a federal court judge. We have judge magistrates that do a lot of the day-to-day and then they'll hear a motion, propose an order and it'll go up to the district court judge. If someone is failing, then they're back in front of the district court judge. The magistrate or the referee is not going to impose the sanction of sending somebody to prison or, or flunking them out of the program, as I understand it.

DeBOER: So are these going to be voluntary positions as well so the referee is an attorney from the community?

LATHROP: It's not a volunteer. It would be someone who would be on the payroll appointed by the Supreme Court to serve in this function. And by the way, we already do it with child support referees. That's somebody who hears child support disputes or, or they drag people in, in front of the referee to talk about their-- the fact that they haven't been paying their child support and they sort all that stuff out. So there is some precedence for using referees in the district courts. And I think we have two child support referees right now.

DeBOER: And are these sort of perfunctory hearings that the, that the--

LATHROP: No, I think it's where the people come in and they get-- they're accountable to somebody and they have meetings. My understanding of the problem-solving courts, they come in and they make appearances from time to time that may get stretched out more the longer you're in the program, but you have to come. Right now, they're coming in front of a district court judge. That's taking time,--

DeBOER: Yeah.

LATHROP: --of course. And this would be someone before whom the person would come unless they're, unless they are at a place where first they're being sent there or if they are not doing well or some order is entered, then they go back to the district court.

DeBOER: They could escalate it back up to the district court.

LATHROP: Exactly.

DeBOER: All right. Thank you.

PANSING BROOKS: And I have a question, so, or at least a comment. The cynic in me says that the reason people are against LB1036 is because it would require the loss of local control because LB1035 would then be required. Because to pay for LB1036, right, you'd have to have LB1035. You'd have to have all that go into the--

LATHROP: LB1035 is going to cost the court--

PANSING BROOKS: --courts.

LATHROP: --LB1035 is going to cost the court money. LB1035 is not intended to pay for LB1036. LB1035 is an attempt to standardize fees and to the extent there is a shortcoming. And Corey Steel is going to come back up here and you can ask him if I've misstated this, he can correct me.

PANSING BROOKS: OK.

LATHROP: They are going to, they are going to fill in whatever shortcoming there is. They're just trying to get standardization in LB1035. It does not pay for LB1036. LB1036 would be-- simply come out of the court's budget.

PANSING BROOKS: OK. But the, the money that comes from LB1035, doesn't it go to the courts and then they will dole it out to the various courts as necessary?

LATHROP: You can ask, you can ask Mr. Steel that--

PANSING BROOKS: OK.

LATHROP: --when he comes up--

PANSING BROOKS: I will.

LATHROP: --instead of having me--

PANSING BROOKS: OK.

LATHROP: --try to draw the connection and--

PANSING BROOKS: All right, that sounds great.

LATHROP: --miss the mark.

PANSING BROOKS: Thank you, Senator Lathrop. OK. Oh, is there one more question? I'm sorry, Senator Geist.

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GEIST: No, I, I can wait. I'll just talk to Mr.--

LATHROP: Oh, no, I'll sit down and take it.

GEIST: That's-- well,--

PANSING BROOKS: I'm sorry.

GEIST: --either one is, is going to be fine. This one is a little more problematic for me just because I have been to drug court for a long time and I was just an observer. So we'll make that clear. And there's, there's a couple of reasons, and one was highlighted in the letter here, and it's because of that relationship that the participant and the judge has. And if that participant can go over the judge's head and object, I think it does erode that trust that the judge is trying to establish with the participant. The only other thing about it that causes me concern and, gosh, I just, I want to be on board. I, I want to solve the same problem you want to solve. But one of the other things that I think that this steps away from is, and we talked about this even at CJI, and this is one thing I always applauded them for. I know you didn't hear much about that, but was that they talked about sanctions being swift and proportional and related to whatever the, the incident was. And that's exactly what happens at drug court. Everybody gets the same sanction. They know it's there. If, if they step over the line, they know what the, the punishment will be. And it's not a long, drawn out process. And I think this may could potentially make that erode a bit from a direct consequence to a direct sanction. And those are my two concerns just with, with this.

LATHROP: So I don't know if we can, if we can tell if those are going to be problems or not going to be problems until we have one, right? If we had one, one, one referee to see how it works and people may go, it's a disaster, it's a disaster or that works pretty well. You know, when I started practicing law back in 1981, nobody had paralegals, right? I got to do it all myself from beginning to end, I'm going to do it all and--

GEIST: Well, and I'm, I'm not objecting to help. I'm just objecting to someone they can appeal to that they can go over the judge's head.

LATHROP: Oh.

GEIST: That's the deal.

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LATHROP: Well, I don't think that's anybody's intention, but I will let Mr. Steel talk about this because--

GEIST: OK.

LATHROP: Yeah.

GEIST: Because if it's help, if it's help, then I'm all about giving them help. I just don't want someone to be able to override their decision.

LATHROP: No, I, I think the point of saying that they have the right to make exceptions to what the referee says is just to have-- making sure there's a process in place, but--

GEIST: OK.

LATHROP: --I'll let Mr. Steel answer those questions for you. Thanks.

GEIST: Um-hum.

PANSING BROOKS: Thank you. OK. Proponents. It's all, it's, it's all about you, Mr. Steel. Welcome again.

COREY STEEL: I hope to get this in, in three minutes. I will speed and go fast.

PANSING BROOKS: OK.

COREY STEEL: Senator Pansing Brooks, Senator Lathrop, members of the Judiciary Committee, my name is Corey Steel, C-o-r-e-y S-t-e-e-l. I'm the state court administrator with the Nebraska Supreme Court. I testify in support of LB1036. The Nebraska Supreme Court Problem-Solving Court Committee in April 2020 created a 2020-2025 strategic plan for Nebraska problem-solving courts that is attached to part of your documentation and identified in Focus Area VI: Human Resources found on page 16 that Nebraska problem-solving courts are generally led by judges who volunteer for the role and who carry out regular caseloads in addition to their problem-solving court docket. This system puts a strain on judges who serve in problem-solving courts and may limit their ability to devote adequate time and attention to the specialized and intensive requirements of the problem-solving courts' cases and training requirements. Additional human resources are needed to implement many of the goals outlined in the strategic plan. A common statement has been made by the judicial branch and myself for the past few years when asked by senators, can

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the judicial branch expand and add more problem-solving courts? The answer has consistently been we are limited on judicial resources, therefore limited on further expansion. The concept in LB1036 is to add resources for problem-solving court referees within the judicial branch to assist in expansion of those problem-solving courts. The legislative concept was discussed following a presentation at an October 2021 Emerging Adults Conference, that Senator Lathrop talked about, presented by the National Center for State Courts and National Center for State Legislatures. Senator Pansing Brooks was also at that conference with us. This conference was attended by Nebraska delegate-- delegation of senators, judges, and judicial branch staff. At this conference, information was presented on a young-- young adult problem-solving court model, which was in New Mexico and another state that utilized the referee/magistrate role. It was then asked by senators if this concept could be a solution to adding more resources to expand Nebraska problem-solving courts. While in-court sessions with a judge, with a judge have been declared a key component of drug courts, there is not enough evidence on the nature, elements, and significance of the effects of the face-to-face contact between a judge and the participants to declare that only a district judge and no other kind of judicial officer produces the same effect. The National Association of Drug Court Professionals 2018 best practice standards on the roles and responsibilities of problem-solving court judges provides: The, the Drug Court judge stays abreast of all the current law and research on the best practices in drug courts, participants, participants regularly-- participates regularly in the team meetings, interacts frequently and respectfully with the participants, and gives due consideration to the input of the team members. These-- this standard states, studies in drug courts have not compared outcomes between judges and other judicial officers such as magistrates or commissioners. Barring evidence to the contrary, the standards contained herein are assumed to apply to all judicial, judicial officers working in the drug courts. The concept of magistrates or equivalent judicial officers to conduct problem-solving court proceedings is currently in place in a number of states. There are examples such as Colorado, Delaware, Florida, Louisiana, Missouri, Ohio, New Mexico, Rhode Island, South Dakota, Texas, and West Virginia. This current bill would not require the use of a referee for problem-solving courts but would provide the judicial branch the authority to do so if a problem-solving court judge would request it. I am here to answer any questions you may have.

PANSING BROOKS: Thank you, Senator-- or thank you, Mr. Steel.

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COREY STEEL: Just got a raise--

PANSING BROOKS: OK. I don't think so.

COREY STEEL: --or a decrease. I think it's a decrease.

DeBOER: Yeah.

PANSING BROOKS: OK, Senator Geist.

GEIST: Yes, thank you. OK, you have this standard states, studies and drug courts have not compared outcomes between judges and other judicial officers, such as magistrates or commissioners, barring evidence to the contrary and onto the rest. However, we do know best practices are the relationship between the judge and the partici-- that has to be a best practice.

COREY STEEL: I, I would agree that, that, that the--

GEIST: An evidence-based practice.

COREY STEEL: --that the relationship between the participant and the person presiding over that drug court--

GEIST: Um-hum.

COREY STEEL: --there is a connection, yes.

GEIST: And, and currently that is the judge.

COREY STEEL: In Nebraska, that is currently. But I think I outlined there are several states that use a different concept such as this.

GEIST: But to that--

COREY STEEL: And have the same outcomes.

GEIST: --but to, to that end, I'm, I'm just assuming you can understand that the judges then are pretty territorial about that relationship with those participants because of their good outcomes. And, and if I'm mom and saying, just wait till your dad gets home and dad is the other judge, that in my mind, diminishes the relationship between that participant and that judge because they can go over that judge's head and that right there is barring everything else, even if it wasn't immediate punishment or whatever. That challenge to that relationship is what concerns me about this. I know you have some other things from other states, but I'd really like to see the

evidence of that these outcomes are there's no difference. Because I, too, I, I guess I'm territorial about what I saw and I'm concerned about eroding that relationship.

COREY STEEL: Right. So in, in-- also in your packet is a letter from Judge Doyle, that he's given me permission, which outlines the studies. And so there's a listing of several studies that actually look at this. And, and again, the studies and the research which mentioned this and the suggested effort-- effect of participants' face-to-face contact with judges all appear to reference these resources. It's on page four at that last paragraph where you see all those resources. So there are studies that have been done and that look at that. I can-- what I can tell you is when we sat and listened to New Mexico's young adult court and they have this concept where they called it a, they called it a magistrate judge instead of a referee. But in our, our world, what we have currently is the child support referee, and that's where we mimic this, this legislation after is they were successful because they had a concept where that person was in front of there at all the team meetings and engaged. But yet if there was a sanction, yet if it needed to go back because they were failing, I would go to that judge and was immediate. We have systems put up and we have mechanisms put up in our system where it could be swift. So after the drug court meeting, that, that individual referee could immediately get an order to the judge to impose a sanction and that judge could issue it at that point in time.

GEIST: Well, I think that would be--

COREY STEEL: It doesn't exclude the authority of the judge and we want the judge, the district court judge still to oversee the mechanisms of the problem-solving court, but again to expand. And we have judges today, I don't want to mislead when you hear from others in opposition that all judges oppose this because we have judges today that have emailed and called the chief and have talked to me that said they would use this. They would use this because they want to be able to expand, double their-- they have the need to double their drug court. They have the need for a different court and they want to expand, but they can't because they don't physically, they're already working, judges are already working 60-plus hours a week. If they had somebody that could take on the team meetings and do those things, they could fill that need.

GEIST: Could I--

COREY STEEL: We also, we also have a problem-solving court that not-- it currently is not a best practice standard. There's been no research on our mental health court, that is a concept that was created and we are trying and piloting in Sarpy County that there isn't evidence that suggests it is a best practice standard.

GEIST: Well, that's true. But there is a, there is a--

COREY STEEL: So again--

GEIST: --an arm that goes with that, that is to study it and find out if there is, if it is.

COREY STEEL: And I-- and we would be willing to do that as well as say give the authority in a pilot, use it to see what the outcomes were. Are we having any different outcomes based on a referee?

GEIST: Do you find any of the limitations of, of expanding courts are also due to the lack of services available?

COREY STEEL: In certain, in certain areas. I think that that's, that's the case definitely in certain areas that we don't have resources. We, we could have a problem-solving court, so to speak, with the judge and the participants but the fact that we don't have the treatment around that. But where we currently have our problem-solving courts and we have problem-solving courts in every jurisdiction, every district in the state, there are areas that we could expand now but we just don't have the capacity to do so.

PANSING BROOKS: OK. Senator Brandt.

BRANDT: Thank you, Vice Chair Pansing Brooks. Thank you, Mr. Steel, for your testimony. Let's talk about child support referees. How many are there?

COREY STEEL: So currently, Douglas County has two county-based child support referees, Lancaster County has one child support referee, and we, we pay for two referees that travel to multiple counties.

BRANDT: So there's five referees in the state.

COREY STEEL: Currently, five child support referees.

BRANDT: If we did not have these referees, would a judge have to take those duties over?

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COREY STEEL: Yes, a judge would be hearing all of those child support cases.

BRANDT: So the reality is we probably wouldn't expand judges. We would be five referees behind in child support cases. Would that be a fair statement?

COREY STEEL: Ultimately, yes, that would go back to the district court judge.

BRANDT: And have there been any complaints on the child support referees?

COREY STEEL: No, actually, we've expanded child support referees in the last year. We used to have through my office just one child support referee in Sarpy and a few counties, and we've added a second and expanded that to over 20 counties in the state.

BRANDT: On the drug courts, how far behind are we because we do not have enough judicial manpower today?

COREY STEEL: What I can tell you is right now we have at least three or four. I'm taking-- this is not Lancaster and this is not Douglas. We have a judge-- I'll just say we have three judges right now that are asking for expansion, but they can't. They know the need is there and they have the drug court cases. But because of resources, they can't expand.

BRANDT: So if we were to do drug court referees to cover the entire state or the need that exists today, how many referees in your professional opinion do you think we would require?

COREY STEEL: We've, we've tried to kind of estimate this because originally that was the intent to say eight referees or six referees.

BRANDT: Sure.

COREY STEEL: And you know, if we were to take holistically, it would be somewhere around six to eight referees, at least to start to say we could potentially have the capacity for that.

BRANDT: And then those referees would supervise how many people in drug court? How many people are not being served by drug court because we have inadequate representation today?

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COREY STEEL: Well, it's not representation, it's presiding over that drug court.

BRANDT: OK.

COREY STEEL: So obviously any time we would expand, it also takes probation resources, which is a lot easier to ascertain than judicial resources, right? We know the struggle to get a new judge. And we know what that takes through the process. So to get a referee, I can tell you if tomorrow the Legislature said here's money for four new referees, we would have places to put those four referees.

BRANDT: But I guess my question is those referees would serve 50 individuals on drug court. How many individuals could we get through in a year?

COREY STEEL: I'll give, I'll give you an example of one of our counties, which is, which is a rural county that covers three counties. The district court judge covers three counties and has a problem-solving court right now of 35 participants.

BRANDT: OK.

COREY STEEL: That judge currently is calling and saying, I'm turning away participants because we can't expand. We don't have the capacity, the resources, both judicial. I don't have the time, nor if, if they would need more probation staff in order for the supervision. And this judge has told me I could double that expansion tomorrow if I had 30 more. And typically what we see is one problem-solving court. One judge is 30 to 35, some go up to 40, but it depends on the, the probation resources to supervise.

BRANDT: OK, speaking as a rural senator, this is usually where this has to happen. I think we would be very supportive of any help we could get out in the rural areas. So thank you for your testimony.

PANSING BROOKS: Senator DeBoer.

DeBOER: Thank you, Senator Pansing Brooks. So I want to follow up on this probation piece. So if we had these referees, could we find the necessary probation resources to match with them?

COREY STEEL: There are some areas where it's both. It is lack of judicial resources to expand and lack of probation support staff to expand so the, the drug techs and the probation supervision piece. And, and we could work on what that would look like. But we also have

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a jurisdiction that the judge has never taken on problem-solving court, has said I can't do that because I'm already at 1.12 of a judgeship in my county. If there was a referee, then I would, I would do the oversight and let the referee handle the problem-solving courts. And then they would come to me if they needed it to be expelled or a sanction, or what have you. So in that jurisdiction, we could. So it just depends, we would look-- have to look at jurisdiction by jurisdiction.

DeBOER: And would there be a cost to hiring more probation folks in order to sort of expand these courts in this way?

COREY STEEL: There would, there would potentially be a cost, yes. If we add probation resources, there would be a cost to that.

DeBOER: I suspect we would all be happy to help with that part of it. When we're talking about these actual referees and maybe part of this is people are getting caught up on the word referee. If we, if we think about them as magistrate judges or something like that, a participant who comes before this person is going to recognize that they are authorized by the court, they have all the power of the court behind them that this is an important person. I mean, all of those things are going to be in place, right?

COREY STEEL: Yes. So I'll give you the example of our child support referees. If you walk into Douglas County, Lancaster County, or our referees that are doing child support, the, the individuals in front of them are calling them judge. They wear a robe. They are, they are handling the proceeding identical to how a judge would handle the proceeding. The participants or the individuals coming in front of them don't understand that they are at a diminished capacity based on the, the legislative authority that we, we put in this bill. But they are the ones that is presiding over that case. And, and the reason we went to a referee because there are different terminologies was because we already had that concept in Nebraska. And we have clerk magistrates and we didn't want the confusion with the magistrate because prior clerk magistrates, and still statutorily we've really kind of pushed that back administratively, have authority to act as a judge in certain circumstances, and we didn't want to muddy that water and get back to that point. And that's why we went away from the magistrate terminology and went to the referee and, and the concept of because we already have referees across the state.

DeBOER: But it seems to me that someone who's coming to participate in one of these problem-solving courts in front of the referee,

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unless they're super savvy, would basically have no knowledge that they were different than a district court judge. Does that-- is that how the program is set up?

COREY STEEL: Correct. So if this individual-- so the district court judge is still there, and we, we actually have district court judges that, that rotate and so they'll do six months on and six months off. And so they are not engaged during that six month in the day-to-day, the, the two-- every other week team meetings, they're not engaged in all of those the staffing and what have you. They still come to the graduations. They still come to those events that take place or if it's their case, it would be referred back to them for the sentencing if that individual failed out of the problem-solving court. So again, the fact that a referee would be there, in my mind, would not change the thought process regarding who is presiding over that team meeting and who's presiding over those, those drug courts.

DeBOER: So something you just said struck me. So that if I'm a judge, I have to deal with my other issues. I might be six months off, six months on, six months off. If you have a referee, they're going to go through this, this whole process with the person. In fact, it might add to the continuity for the person who is--

COREY STEEL: Potentially could.

DeBOER: Yeah.

COREY STEEL: And the, and the fact of the referee and it would be a higher position and there would be, again, they would-- the goal, just like our child support referees, is they are going to be a specialist in--

DeBOER: Yeah.

COREY STEEL: --this world, mental health, substance abuse, those types of things so that they are going through all the training and being a lawyer that is trained particular to that what is taking place in the problem-solving court.

DeBOER: So they would get increased specialization, they would have the same veneer.

COREY STEEL: I wouldn't say increased. I think our judges do a fabulous job of--

DeBOER: Yes, sorry.

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COREY STEEL: --staying abreast. No, I'm just saying--

DeBOER: But just by time.

COREY STEEL: Yeah, I wouldn't diminish any of our judges in the work that they put in the problem-solving courts or the fact that they take on the extra education, educational requirements, and what have you. But this-- I just wanted to specify that this just wouldn't be any, any attorney off the street that we would bring in. This would be somebody that would be focused in that area and we would make sure they were specialized and, and the skill trained in that area with National Association of Drug Court Professionals and so forth.

DeBOER: I certainly do not want to diminish any of our judges,--

COREY STEEL: No, no, no.

DeBOER: --so apologize for my misspeaking there.

COREY STEEL: No, I, I, I, I didn't want to--

DeBOER: But, but, no, I think this is, I think this is a great idea, so.

PANSING BROOKS: Thank you. Mr. Steel, I just have a couple things, so. I think everybody in here is in favor of these specialty courts, absolutely. And I am and I appreciate the work, the information we learned on the young adult courts and how important that all is, but I-- I feel like we're sort of off target a little bit because I think we're all in agreement on that, on that. My concern is, and I-- as I'm listening to all this and trying to figure out why these people are opposed, it seems to me it's because they don't want the court to have the grip of all the dollars, and I'd just like you to talk about that. I think part of it, I mean, as I'm thinking to myself, no one has let me know this, but I presume that some of the-- the places that do have really good specialty courts, if they have to start sending their dollars to-- to the court, in capital T-H-E, then-- then that money will be distributed proportionately, even though it didn't come proportionally.

COREY STEEL: Right. So if I--

PANSING BROOKS: I'm happy to have you talk--

COREY STEEL: --if I can take a step back and kind of fill in the blanks when you were asking Senator--

PANSING BROOKS: Yes.

COREY STEEL: --Lathrop those questions, so the prior bill that I testified on, again--

PANSING BROOKS: Yes.

COREY STEEL: --it-- it does not have any bearing on referees.

PANSING BROOKS: OK, so refer--

COREY STEEL: So none of the-- none of the funds, none of those things that would be collected or come to the state would offset the costs of the referees.

PANSING BROOKS: So how are you going to pay for the referees then?

COREY STEEL: So this would be as this moved forward and as we determined the need--

PANSING BROOKS: Which one?

COREY STEEL: The-- OK, as LB1036, the referee bill would move forward and we would get to the process. We would say-- our A bill would say we want to start with one, we want to start with two, we want to start with three; whatever that is, we would talk to the judges and say--

PANSING BROOKS: From the General Fund?

COREY STEEL: --who would, and then that would be General Fund appropriations for-- for the-- the positions there. To go back to LB1035 and the funding structure for the problem-solving courts, what I can tell you is the funding structure that we currently have is-- is-- is under the Supreme Court's budget that we, for every problem-solving court, even the legacy courts, we fund a portion of those. All of the probation-based, they're completely funded through the Supreme Court budget.

PANSING BROOKS: OK.

COREY STEEL: The legacy courts are also funded portionally for that. So I'll give you an example. Douglas County, and-- and the information that I have, which is 2001, I believe it was 2001, we as the state, in our interlocal agreement, we give Douglas County \$400,000, so we give them \$400,000. Along with, we pay for the

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voucher for treatment, whether it be substance abuse evals, mental health evals, or the treatment. That's another \$200,000, so a total of \$600 is coming out of the state--

PANSING BROOKS: How many--

COREY STEEL: --to fund that.

PANSING BROOKS: Do you know about how many people that covers?

COREY STEEL: According to what I've been given, it was 121 participants that were funded in Douglas County in 2001 off of these-- off of these, so \$200,000 comes from the Supreme Court budget, one way, shape or form. The county collected somewhere around-- I think you heard from Teresa that it was about \$20,000, is what they collect for what their fees were and what have you. That offsets some of those costs. What we would do would-- we would work with them and say we'll give back, we'll add to the \$200,000 we already give you another \$20,000 or \$25,000, whatever that estimate was of what your local fees generated. So we're not eliminating those fees, and we wouldn't ask the county to pick up any more cost for those problem-solving courts. We would actually pick up, through the state's budget, more of those problem-solving court budget costs.

PANSING BROOKS: And the goal is to-- to move outside of Lincoln and Omaha and get to smaller communities, right, the ultimate goal?

COREY STEEL: For?

PANSING BROOKS: For these courts.

COREY STEEL: For-- we do-- and we do. We currently have-- we have courts--

PANSING BROOKS: I know you do, but the goal is to provide--

Right, right.

--more across the state.

COREY STEEL: Right, right. And that's what-- that's what this would do. The first bill, LB1035, wasn't trying to pay for LB1036. They're kind of separate and apart. They're two different bills on two different topic areas. So I wanted to make sure we were clear that this wasn't trying to fund this, is--

PANSING BROOKS: OK, so that is helpful. Thank you. And so there will be a fiscal note on this bill to help pay for that, is that-- I guess I didn't see that very well, so--

COREY STEEL: Correct--

PANSING BROOKS: Yeah.

COREY STEEL: --because this bill right now just gives the authority.

PANSING BROOKS: OK.

COREY STEEL: There is nothing that says you shall put six referees in.

PANSING BROOKS: OK. Yeah.

COREY STEEL: It's similar to, if you go to the child support statute, it's the same thing. There is-- it just gives the Supreme Court the authority to utilize child support referees, so that's statutorily-- like, we don't-- we can add zero. This could pass this year and we could not add a single referee. There's nothing that says we have to, but if down the road we want to or a judge comes up, we would then go through the appropriation process and ask for an additional referee in our budget.

PANSING BROOKS: I-- I can't see a problem with that, but I'll be interested to see what-- what's coming up behind you. So I-- I think referees are a great alternative or a supplement to the-- to the judges that we have now. Thank you, Mr. Steel. Now--

GEIST: And I'll just add--

PANSING BROOKS: Senator Geist has a question.

GEIST: --yes, thank you-- one more comment, and that is, is that I believe that the support referees that are in other courts, those relationships with those judges are different than the relationship a participant has with a judge here because this is every week. You see this person every week, and I'm just going to reiterate that that-- that similarity is-- is different in this case.

COREY STEEL: Right, I'm not trying to--

GEIST: That's all I have to say.

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COREY STEEL: --trying to even come close to say a child sport referee has the same effect that a problem-solving court judge.

GEIST: Right.

COREY STEEL: That's not what I'm-- I'm hoping I'm not misconstruing. I'm just saying we have a model of a referee in a different scenario--

GEIST: I understand.

COREY STEEL: --[INAUDIBLE] a different situation, different case that-- yeah.

GEIST: I understand, but I just want to make sure that the committee understands--

COREY STEEL: Absolutely.

GEIST: --that that's different.

COREY STEEL: Absolutely.

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

COREY STEEL: Thank you.

PANSING BROOKS: Appreciate it. Appreciate your being here so long. Any other proponents? Proponents? Welcome.

SPIKE EICKHOLT: Good evening, 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 as their registered lobbyist in support of LB1036. We are in support of the concept in this bill. As Senator Lathrop explained, what I think he said in his introduction was that this bill is perhaps a way to expand the capacity to have problem-solving courts in this state. You have heard me testify on numerous bills on behalf of the ACLU, where I have urged this committee to consider problem-solving courts, to consider alternatives to incarceration, to think somehow differently of how we address people who are caught up in the court system and system involved. And I think that's what this bill is aimed at doing to try to capac-- to expand the capacity for problem-solving courts in this state. And that's a-- that's a goal that we share with the introducer, assuming that's his intent. I know that you're going to hear some opposition testimony. If the-- if the

concern is with the category of referee, perhaps another alternative to a judge could be considered a retired judge, a part-time court, a part-time judge, a specialty court similar to the juvenile courts, something like that, but it's an idea that's worth considering. This is something that the CJI working group identified as a possibility to expand and build upon to lower our prison numbers and to have a different way of looking at our criminal justice system. To that end, we would urge the committee to consider this proposal. I know that Cor-- Sen-- Mr. Steel mentioned that he-- if this bill passes, the court would not necessarily be bound to appoint a referee. I don't know if that's going to happen, necessarily. I suspect, since they want the bill, they want to have actually had-- see the bill carried out in some-- in some degree, but perhaps another way to do it is to have a sunset provision on this bill and try it on a part-time basis to-- to see how it goes. We've never tried it before. We do have referees for child support purposes. I understand that is a different type of referee system altogether. It serves a different type of purpose and perhaps it's not comparable. I have heard some of the questions from some of the-- the committee members who apparently are skeptical of this idea, and I-- I see those points. But I think, to the fundamental goal or fundamental purpose of this bill has, we are in support of that. And I'll answer any questions if you have any.

PANSING BROOKS: Thank you, Mr. Eickholt. Any questions? I guess I would just have a question. I don't know if you've seen anywhere, it seems to me that maybe-- that the referees might have at least have practiced in a certain area, like if it's mental health that they practice or if it's-- it's juvenile court or-- well, we're not talking about juvenile court, but if-- if-- if they would have-- I mean, we have requirements that-- that people who represent children have some experience and-- and have worked in juvenile law, so I just-- that's one other thought.

SPIKE EICKHOLT: Right.

PANSING BROOKS: And I don't know if that's happening in other states or not.

SPIKE EICKHOLT: Yeah. I admittedly have not looked into what other states have done as far as referees for problem-solving courts. And maybe there's a way the referee and the judge could share the duties because, as you heard, they meet regularly as a drug court program, some-- often weekly. Perhaps it could be the judge once a month, the referee three times a month. I don't know, but that's something

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that's worth considering. It's something that's worth pursuing. It's an idea that we support.

PANSING BROOKS: Thank you, Mr. Eickholt, appreciate it. OK, next proponent. Proponent? OK, opponents. Next opponent. Good evening, Mr. Bancroft.

WEBB BANCROFT: Good evening.

PANSING BROOKS: Yeah.

WEBB BANCROFT: Members of the committee Webb Bancroft, W-e-b-b B-a-n-c-r-o-f-t. I'm testifying as president of the Nebraska Criminal Defense Attorneys in opposition to LB1036. It is a cheerleading function to say we're all in favor of problem-solving courts, we all want to reduce prison overcrowding, we all want to make sure that everyone is treated fairly in the criminal justice system. I share those goals. Our organization shares those goals. We believe that the county attorneys have those same goals. I have children. I-- I have grandchildren. I want our communities to be safe. When we start talking about the use of referees, I may have misheard Senator Lathrop when he described the duties of the referee contained in the bill, and if I did, I'm sorry, but as I read the bill, the referee is going to be conducting-- the Supreme Court shall promulgate rules-- this is in Section 4 to allow the referee for findings, recommendations of eligibility, terms and conditions of participation-- that would be bonds or participation contracts-- termination of participation. Such referral may require the referee to facilitate those meetings and administer oaths, have evidence introduced in front of them. Talking about child support referees, I practiced in front of a child support referee many, many years ago and, in fact, Lancaster County sued the-- the referee system because we thought that they had overextended their power, and the Supreme Court agreed with us way back in the '90s. Child support is-- is a civil matter. It is something that you can purge yourself of a civil contempt finding; if you come up with the money, you can pay your purge plan and you get out of jail. The relationship that Senator Geist is talking about, in terms of that relationship with the judge, is key. Problem-Solving courts are evidence-based courts. That means there have been validated studies that show this is successful. The groups that met in Arizona wasn't part of it. I don't believe it was the National Association of Drug Court Professionals, the people that have set the standards, done the studies. That interaction with the judge is a key component to the success of these programs. It makes a difference. And as we extend that further, if a sanction is going to

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be imposed, it's going to have to be imposed by a judge. And for those folks who unfortunately are terminated from problem-solving courts, any sentence is going to be imposed by a judge. Now that judge, when they are working with this individual over a minimum of 18 months for our problem-solving courts, they get to know that person more than anybody else, more than any kind of pre-sentence investigation could ever show. They fashion a sentence. That sentence can be to the Department of Correctional Services, and the kind of person that is getting sentenced there wants to know that they've had a relationship, this person knows what went on with them. And-- and that sentence, in and of itself, you would want a judge involved in, so you want that judge there with them as they progress through the program. I see my time is--

PANSING BROOKS: Yep, Mr. Bancroft, but we'll get some questions. Senator Geist, do you have a question? No? OK.

GEIST: I-- no, I actually don't.

PANSING BROOKS: OK, I thought you were looking as if you did. OK. Senator DeBoer.

DeBOER: Sure, I'll ask a question. So I think I heard something in what you said, which was that this is going to help judges who have to sentence folks who sort of fall out of the-- the-- the problem-solving court. Is that-- is that what you were saying?

WEBB BANCROFT: As I read the bill, it seems to me to provide for this referee to conduct hearings, administer oaths, accept evidence, and then make written findings. And then a person who may disagree with those written findings can take an exception, and that exception would go to a judge. I don't think it delineates really well in the bill what would happen for that exception. I don't know that there would be other evidence introduced or the presiding judge would read the recommendations from the referee and defense counsel would have an opportunity to say, well, here's why we disagree with the referee's findings. I can't tell that it would call through any other due process in the bill, as presented to this committee, in terms of putting on evidence, additional evidence, hearing sworn testimony, things that a judge had-- at a bench trial or hearing such as this, a judge determines the credibility of witnesses. You hold a jury, a jury determines that credibility. They wouldn't get a chance with the judge unless there is some fashion for the exception that I don't see in the bill as written at this point.

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DeBOER: So we probably could alleviate that concern with some mechanism, right, that-- that in the case there would be presented evidence in these situations. You could even have the-- I don't know, if you objected to it. So-- so this might just be a-- we need to do a little more work to-- to flesh that area out?

WEBB BANCROFT: I-- yes, I-- I think that there are things that, if people were thinking that a referee was necessary to expand problem-solving courts and use of a referee in a criminal justice system. Again, I've never practiced in federal court. So if you talk federal magistrate, to me, it goes right over my head, and I apologize. I just don't know enough about the interplay between the judge and a federal magistrate. The concerns here are that everything that we know in terms of the success of problem-solving courts and I am unfamiliar with what Judge Doyle has provided the committee through Corey Steel. I, again, find it somewhat problematic for me, and I don't speak for the whole statewide problem-solving court committee, it was never presented to us stakeholders around the state. This idea of referees was never presented to us, so I don't know what he's talking about when it's a court in New Mexico because I don't know the interplay of those parties in New Mexico to be able to address it. He did reference, and it's in the strategic plan, one of the first things that they talk about is human resources. And in the human resources section that he quoted from, it never mentions in their strategic plan referees. It talks about specialized judges and judges with dockets that-- maybe judges just designed for problem-solving courts that could involve retired judges. We have one right now in-- in Lancaster County who actually helps out in Douglas County as well.

DeBOER: So let me see if I can boil it down, because I think we're sort of-- I need a little more clarity on some things. So first, with respect to the relationship, let's just focus on the relationship between a referee and someone in problem-solving court. And I keep, I think, hearing that people say that that would be a diminished relationship as opposed to a relationship between someone in problem-solving court and a judge. Is-- am I hearing that correct or is that the assertion?

WEBB BANCROFT: I-- I think that that is a real concern when you talk about are people savvy or not savvy to whether someone's a judge or not a judge. Judges, the people that we serve, have been in courts before, are familiar with some of our judges. It is not something that they're ignorant about. The referee certainly could exercise authority over them as set out in whatever statute, so that person

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would have authority over them. So relationships that are key, as set out in-- in the best practice standards, has always talked about judges. That's why we're unfamiliar if it's somebody else, besides a judge, who ultimately has to have them graduate--

DeBOER: Sure.

WEBB BANCROFT: --do all of those things, Whether that impacts it, I-- I--

DeBOER: But-- but that's one of those things where, you know, and it's just one of those hard things in life where you can't show evidence for something until you have the first thing happen to get the evidence from, so, I mean--

WEBB BANCROFT: Agreed.

DeBOER: --you know, that's a little difficult of an argument for me. What about the-- I'm interested in this relationship. I don't know nearly as much about problem-solving courts as Senator Geist and some of the others. If-- if-- if--

WEBB BANCROFT: We spend. I-- I can--

DeBOER: If-- if a judge is, in fact, on six months, off six months, on six months, there's, in an 18-month program, at least 6 months when you're not working with that judge. So if the relationship is sort of the sacred thing that we're trying to preserve here between the judge and the-- the person in problem-solving court, it seems like we already have a mechanism where that relationship is not entirely--

WEBB BANCROFT: Well, I-- I don't know what court Mr. Steel was referring to, because that's not the practice in our court. And I don't want to say I can represent to you what happens in every other court. We have judges that alternate. It's usually about every two months. But what we're doing is we staff every week and we have the participants that are in the first three phases are in court every week, virtually right now, thankfully, as we try to protect ourselves, but that is every week and the judges often participate in the staffing. They may not handle the court session that day. It would be another court with another court reporter, but they're participating in the staffings and they're getting the staffing notes, and they switch about every two months. So 18 months is the soonest you can get through our program, so that alternating doesn't become you only see him or her for a limited period of time.

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DeBOER: OK. As a defense attorney, I'll ask you specifically these questions. Do you think that putting a magistrate judge-- or, I'm sorry, referee. I just have it in my head wrong. Do you think that putting a referee into this would in any way cause concerns about due process or something like that? Is there any-- is there any concern that way? Because you were talking about the findings and the appealing of the findings and this sort of thing, is that-- what's the nature of the concern around that?

WEBB BANCROFT: Well, I think you pointed out, Senator, that there are probably ways to fine-tune this legislation to try to address for any due process concerns.

DeBOER: OK.

WEBB BANCROFT: I--

DeBOER: It's not-- it's not, you know--

WEBB BANCROFT: There are-- there are-- there are--

DeBOER: They're not unfixable.

WEBB BANCROFT: There-- there are things that could be done to address the due process. What you won't have is that relationship with a judge who ultimately may make a decision regarding whether you go to jail or you don't go to jail, that liberty--

DeBOER: OK. So it's--

WEBB BANCROFT: --the liberty interest and-- or if you fail, you're going to prison for four to five years. You--

DeBOER: So it's-- it's not the relationship-- I think I was understanding this wrong. It's not the relationship from the perspective of the person who's going through problem-solving court needing that relationship with the judge. It's almost that the relationship of the judge needing the relationship with the person who's going to problem-solving court so that they can best exercise their discretionary function?

WEBB BANCROFT: I think it's a two-way street and it would be hard for me to separate which was more important. I think having somebody, a judge, express an interest in and pay attention to somebody who has struggled their whole life with drug or alcohol problems and find that there is somebody in the system in an elevated position, like a

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judge, is interested in concerned and checked in with them, is extremely important for the participant. I think it helps the judge in determining the types of things that problem-solving court judges have to do on a regular basis in making those decisions, having that relationship, and understanding that person as well.

DeBOER: And--

WEBB BANCROFT: And it would be hard for me to make the choice.

DeBOER: No, no, no, no. You've been very helpful. This-- I now understand the objection, which I'm sorry it so-- took me so long, colleagues, to understand, but I think I understand, yeah.

WEBB BANCROFT: It-- it is a weird animal. If you-- if you haven't been there to-- to see the interactions, we're shoulder to shoulder with prosecutors, everybody on the team. It's-- it's a collaborative effort on everyone's part. And again, fairly or unfairly, I-- I think the-- the statewide committee should have had an opportunity to weigh-- to weigh in on this because there's so many stakeholders in law enforcement as well.

DeBOER: All right, thank you.

PANSING BROOKS: OK, any other questions? I don't see any. Thank you for coming tonight, Mr Bancroft. Next opponent. Welcome again.

TERESA BUNJER: Thank you. Members of the Judiciary, again, my name is Teresa Bunjer. It's T-e-r-e-s-a, last name is B-u-n-j-e-r, I think one of the important distinctions that I want to discuss is the distinction between the populations served in each of the different types of problem-solving courts. As far as the drug court itself, the drug court is serving what is-- people or clients that are identified as high risk for recidivism and high need as far as mental health and substance use. That may not be the case for young adult court participants, mental health court participants, DUI participants, so I think in some ways the language of the umbrella of problem-solving courts as a whole is part of what is creating some of the angst, because the population served within each of these courts is coming from a different background. So for my testimony today, I'm solely speaking of the drug court population, so-- which may explain why this use of referees or magistrates was brought up in a young adult court context. It's a different population than what's served by the drug court. And what the-- the research, quoting from the national standards: Research confirms that how well drug courts accomplish

their goals depends largely on how faithfully they adhere to the ten key components. Drug courts that watered down or dropped core ingredients of the model paid dearly for their actions in terms of lower graduation rates, higher criminal recidivism, and lower cost savings. Failing to apply the ten key components has been shown to reduce the effectiveness and cost effectiveness of drug courts by as much as one half. Drug courts cannot allow new programs to drift from the original model or dilute its powerful effects. Also, in 2016, Brian MacKenzie from Wayne State University Law completed a research evidence-based study regarding the importance of the role of the judge within the drug court model and he discovered the following: After reviewing the mounting literature on the success-- the success of drug treatment courts, researchers have confidently concluded that the power of the judge-participant relationship is so immense that it may have effectively suppressed all other theoretical mechanisms that could potentially lead to desired outcomes. As one of the most extensive studies on drug treatment courts, the Multi-Site Adult Drug Court Evaluation-- the most striking finding in this research is the power of the judge and judicial interactions with offenders to promote desistance. The study confirmed that-- Dr. Marlowe's finding that the judge plays a key role in a drug treatment court and other researchers' assertion that the judge is the single-most important component in a drug treatment court. Additional research has shown that when participants were asked if they would have completed the drug treatment program without the support of the judge, 73 percent indicated that they did not believe they could have. These factors that make up a successful drug treatment court are diverse, but emerging research demonstrates beyond a reasonable doubt that the interaction between a judge and participant is central to the success. In considering the legislation before you, I would ask that the decision is based on what research has proven, rather than taking a chance with the Nebraska residents that are so desperately in need of services. I applaud all efforts to provide increased access to the problem-solving court model; however, I would encourage all expansion efforts are done prudently and with a foundation in research. Thank you.

PANSING BROOKS: Thank you, Ms. Bunjer. Anybody have any questions? I don't see any. Thank you for staying here tonight.

TERESA BUNJER: Thank you.

PANSING BROOKS: Next opponent. Welcome.

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KATIE BENSON: Hello again. Katie Benson, K-a-t-i-e B-e-n-s-o-n. I'm here on behalf of the Nebraska County Attorney Association. I won't go over my whole [INAUDIBLE] but I am a deputy county attorney in Douglas County, Nebraska. I do run or assist with running all of our problem-solving courts, drug court, young adult court, and we also have a mental health diversion court and a veterans court. I'm here-- I'd like to start by saying I understand that this is being done with good intentions of expanding something we all agree upon. I don't want to be too positive [INAUDIBLE] like last time, but I do think that this is a positive thing. And it's important to talk about how our courts are working because you-- then you think, do we need change if things are going well? I'm fortunate in that I worked in a county where we have a number of judges who have volunteered, and so we are not short of that, and I'm certain that Douglas County won't need the assistance of a referee, based on the meetings that I did have with our District Court judges. But I am here on behalf of the Nebraska County Attorney Association, which is-- obviously, has representatives from across the street-- across the state. The main concern that came out of my meeting and in reading over this bill is, with regard to county attorneys, is obviously county attorneys are short-staffed, too, not just judges, and we have to have people in these courts as well as the public defender. And when you read through this on a-- we have drug court in Douglas County twice a week, typically an hour and a half, hour to an hour and a half each of those days, and during that time judges do orders regarding bond, sending people to reentry assistance program and corrections, adding a GPS locator, you know, a day sanction. Sometimes that sanction needs to be served on the weekend, and the concern with the county attorney is, if we're having this in front of a referee and those are things that only a judge can do, and these cases evolve rapidly, you know, somebody can use and then become aggressive and-- or maybe they use and then they're clean by the time they get in front of a judge, so it changes the immediacy of what we're doing. And if it's a county where there isn't a district court judge available, which is my understanding of why they want the referees, the county attorneys' concern is, how much more time are we going to need prosecutors to spend in these courts? I mean, do we have to wait for the report to be typed up? Does the transcript have to be typed up? And by the time all that's done and we get before the district court judge, have things changed enough where the impact isn't what we want on our participants? The other part of it is, when you look at subsection (4) specifically, it allows for a magistrate to make finding on eligibility as well as termination, and that's something where all the county attorneys agree that, you know, the elected officials

whose name goes on allowing the people into the court, we follow the standards as for eligibility, in general; but as a case-by-case basis, we make the determination on who goes in, and certainly the county attorney who's running would not want to relinquish that to findings of a referee. And with regard to termination, there's Supreme-- there are Supreme Court cases on what's required for due process, and the County Attorneys Association also believes that termination is up to us. We'd bring a motion. The cer-- participant is certainly entitled to a hearing on that, but that is something that we don't think we would want to defer to a referee on. And that is why I'm here on be-- in opposition on behalf of the Nebraska County Attorney Association.

PANSING BROOKS: Thank you very much, Ms. Benson. Any questions for Ms. Benson? I don't see any. Thank you so much for staying so long tonight.

KATIE BENSON: Thank you. I appreciate it.

PANSING BROOKS: Nice of you. OK. Any more opponents? OK. Welcome. Thanks for staying so long.

TIM HRUZA: Good evening, members of the committee. My name is Tim Hruza, last name spelled H-r-u-z-a, appearing today on behalf of the Nebraska State Bar Association. I-- I don't have much else to add that hasn't been said by some of the attorneys who came before me. Again, as with the prior bill, I think some of the consternation from lawyers is that the two-- the-- the piece of legislation here that seeks to employ a referee system, it is-- it is-- it is not-- I am not here in opposition to expanding and augmenting problem-solving courts. There are serious concerns that have been raised by both defense attorneys and county attorneys, prosecutors, about kind of removing the judge from direct interaction with the participants in these problem-solving courts, and then some of the hurdles that would need to be jumped through, as the last testifier before me explained, in terms of providing sanctions or getting immediate action when that is necessary for a judge to intervene. With that, the Bar Association is committed to continuing a conversation and working on some solutions, whether that be a different approach to this type of, you know, magistrate or something like that, or whether it-- whether it be toward, you know, additional judges in the area. I think it is a-- it has become clear that there are different opinions from attorneys in terms of the best way to move forward in-- in doing this. I've-- I've talked to Mr. Steel. We are committed to working on-- on this with him and with his office. I've also talked to Senator Lathrop and

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we will do that throughout the interim as well. But thank you. I'm happy to answer any questions you might have.

PANSING BROOKS: Any questions? Senator McKinney.

McKINNEY: Thank you, Vice Chair Pansing Brooks. Quick, quick question. Do we have currently drug court navigators?

TIM HRUZA: That term sounds familiar, but I don't-- well, I'm-- you-- I'm thinking of corrections. I don't think so.

McKINNEY: Because--

TIM HRUZA: Yeah.

McKINNEY: --when I'm thinking of a referee--

TIM HRUZA: Some--

McKINNEY: --that's kind of what I'm thinking about, somebody that is in place to assist with the navigation of the drug court process, but also be a-- I don't know-- I don't know if I got the correct word, but like an advocate or something for the judge to assist participants in navigating drug courts.

TIM HRUZA: As I-- as-- as I understand the way the bill is structured, the referee in this instance would more or less stand in the shoes of the judge, for all intents and purposes, with interacting with the individual, unless there's a need for a judicial order or something like that, then they would make a recommendation to the judge to do that. So it would be a little bit different, as I understand it, not necessarily assisting the participant, but acting as the judge for purposes of--

McKINNEY: OK.

TIM HRUZA: --of administering the drug court program. So again, to Mr. Steel's point about resources, making sure-- I mean, the judges that do this are-- they have a thankless job, right? I mean-- we're all thanking them, but they're-- they're volunteering their time to make sure that these programs are successful and we recognize that. We just know that they are so successful, so there's-- there seems to be a real hesitation from attorneys to endorse moving forward with a wholesale change that might have very negative impacts without, you know, vetting it fully, I think, between all of the stakeholders. I think that's what I'm here for, right, is to tell you that-- that

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we're committed to getting those stakeholders together, vetting some of the ideas, and coming up with maybe a plan to move forward.

McKINNEY: All right, thank you.

PANSING BROOKS: Any other questions? I don't see any. Thank you so much--

TIM HRUZA: Thank you.

PANSING BROOKS: --for coming and being here so long tonight, Mr. Hruza. OK. Any other opponents? Anybody in the neutral? I don't see anybody. While Senator Lathrop comes up to testify, there were three proponent pos-- comments for the record and one opponent, so there we go. Senator Lathrop.

LATHROP: I, first of all, want to say that I appreciate all the work the district court judges put in, in problem-solving courts. The fact that we're here talking about them today and trying to find a way to expand them is a credit to the work of a lot of people who are working to make them a success, and I applaud their efforts. We recognize that we'd like to see them expanded. We've run into a wall. We can't expand them. There are people who don't get to go into a problem-solving court today because we can't expand them. We can't say that we want to expand them, but don't give me any ideas. We-- we can't have it both ways. We can't say we want to expand problem-solving courts, but the only way we can do it isn't available to us, so all the ideas for expanding problem-solving courts, even though we want to expand them and people-- people are not getting into them now because we can't expand. And so this idea of a referee, and the referee is not a navigator, it's not somebody to help them through it, it's somebody to stand in the place of the district court judge in a lot of the day-to-day activities that go on in a problem-solving court. And now we've heard, well, this will never work. You know, up in Judicial District Eight, that includes O'Neill and Broken Bow, they have this model already. They have the county court judge do what we would have to magi-- the-- the referee do. And when sanctions need to be imposed, the district court judge steps in and does it. This is-- this is in some ways novel because it's a referee, but the process isn't. They're already doing it. And I gotta say this. No one's going to make somebody take a referee. No one's going to make somebody take a referee. But if we come and sit in this chair and say, I wasn't part of the process, so the answer's no; or, this isn't been-- it isn't best practices because no one's studied it yet, so no. It is an opportunity for nothing more than let's try it.

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Let's try it. It's working up in Boyd County-- or, pardon me, up in O'Neill, and it's working in Broken Bow as the county judge and the district judge collaborate on running a problem-solving court. We can't expand problem-solving courts until we do something different. We've-- we've run into the maximum capacity we have to process and to have people participate in problem-solving courts. Something has to be different. And I'll say this, that since I've been back here and engaged in this problem-solving court thing, I've had an opportunity to work with Judge Doyle, and I-- I kind of hope he isn't watching right now because I want to say something about Judge Doyle. He is like everything evidence-based, almost to the point where you just go, God, can we stop talking about evidence-based? Everything about Judge Doyle, who is intimately involved in problem-solving courts and how they're done, I know that he's watching the mental health problem-solving court to see, is this the right thing? Everything about that guy is evidence-based. We're not going to turn people loose and throw away standards and not do it properly. And if we find out-- if we find out that it doesn't work, then we scrap it. This is not a judge who the voters have to get rid of or who has to resign. It is an employee of the court. If it doesn't work, let's do two of them. There are judges out there that want them. By the way, the bar doesn't speak for everybody. There's not a-- there's not unanimity on this topic, nor is there among the judges. Let's try it with two of them. We may find that we are at the front edge of and have set standards and figured out that it works as well or better. But I know what it will do. It will expand problem-solving courts. It'll give us that opportunity, and it will be people who will go through what we all recognize as a more dignified response to the fact that they've been, in most instances, caught up in-- in drug addiction and substance abuse. And it is a less-- least cost, more effective, lower recidivism rates, all of the things that we like about problem-solving courts. And if it doesn't work, scrap it, cut the person loose, let them go back to the practice of law, and we'll give up on it. But we may find that it's the best thing that ever happened to problem-solving courts. And all I'll say is, if the county judge and the district court judge in O'Neill and in Broken Bow can make it work, then I don't know why a referee couldn't. It's a little frustrating, while we try to figure out criminal justice reform, to have the naysayers come in and they offer, I wasn't part of this, it should have gone through a study group, and all of the different reasons why this bill shouldn't advance, and the reality is it's nothing more than a pilot program. We appoint two. Let's-- let's fund two of these. Let them go to a judge who has the energy to try to make it work. Nobody in Douglas County needs to take one. Nobody

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in Lancaster County needs to take one. We'll send them where they're wanted and see what happens. And believe me, Judge Doyle, who I've come to respect and appreciate, Judge Doyle and company and the committee will follow this and find out what works, what needs to be tweaked, how do we make it work, and if it doesn't work as well, then it can be scrapped. But we will not find more capacity. We can't say we want more and then go, oh, well, county attorneys don't like it, so we better not do it. We're the policymakers. We're the policymakers. These people don't have-- they don't have veto authority over making policy. It's frustrating. Since I come back, it's like nobody wants to say, you know what, we're a separate branch of government. We make the policy in this place and people figure it out after that. And this isn't willy-nilly, this isn't nonsense, and this isn't something that's unorthodox. I--

PANSING BROOKS: Does anybody have any questions for Senator Lathrop?

LATHROP: Yeah.

PANSING BROOKS: Yes, Senator Geist. You don't?

GEIST: I'll just say that I don't say no to everything, but I have expressed concern over something that I've watched be extraordinarily successful. And I think if you were in my shoes and had watched the enormous success of a-- they-- in drug court, they have specific tenets that they follow and this particular one goes right to the heart of what many of the judges in drug court who are in Lancaster and Douglas County, and I'm sure other counties-- I don't know, not heard from all of them or many of them. This is my own experience. And so, yes, I understand their concern, and it's because this goes to the very heart of one of those tenets they feel makes it successful. And I think if you had been involved in a program that you, as well, saw the huge success and you thought this could threaten the success, it's worthy of considering, it's worthy of speaking up about. Maybe nobody agrees with what I'm saying. That's fine. But it is my job to voice my concern. I'm not saying no to everything. I'm saying this causes me concern and I think it's worthy of voicing.

LATHROP: If you think I'm criticizing you, I'm not. OK?

GEIST: OK. It sounds like it.

LATHROP: I-- you definitely are reacting like you think I'm criticizing you and I'm not.

GEIST: OK.

LATHROP: I am frustrated because I've spent nine-- I've spent 12 years on this committee and I've put a lot of energy into trying to figure out solutions. And every time we put a bill up with solutions, people come in here and tell us why it won't work, and all it is, is a recipe for more of the same. By the way, I will-- I will also add this, that when we start talking about mental health problem-solving courts, I remember the briefing. And Judge Doyle came in and said, you know what, these things don't have the same expectations about mental health courts--

GEIST: Exactly.

LATHROP: --as others do. Right? We heard today that it's really not best practices, but we're trying. We're trying it because it makes sense and we're trying to because it's more humane than locking these people up.

GEIST: Um-hum.

LATHROP: Right? And right now we're up against the wall and whatever the number is of people that go through problem-solving courts, that's currently our ceiling. And the question, I-- I agree that there is something special about that relationship between the district court judge and the members of the problem-- that are in the problem-solving court. I agree with that. I agree with that. But we've hit the ceiling. So--

GEIST: So could--

LATHROP: So does it become ineffective to have someone, as they do in O'Neill and in Broken Bow, help the district court judge out? I don't know. But, Senator Geist, we won't know until we try it.

GEIST: But in the meantime, there are people that are participating that you're trying it with that we already know of something that works.

LATHROP: But they may never have the opportunity because we've hit the ceiling.

GEIST: Unless we can help them--

LATHROP: Let's say that there--

GEIST: --another way.

LATHROP: Let's say that we help 800 people out, but there's 1,200 people that could go through it and we never get to those people, those 400 people, because we don't have the judicial capacity. That's what this is about and the-- and this is-- this is all I'm saying. Make it a pilot. Try it. How-- how much different is having a referee appointed by the court different than having a county court judge do all of these things and turn over the sanctions to a district court judge in Broken Bow?

GEIST: I don't know.

LATHROP: Well, if-- if we looked at the data and it's not working in Broken Bow or not working in O'Neill, where they are partnering-- partnering with their county court judges, then I'd be the first one to say, if it doesn't work, then we should be faithful to a model. But nobody has a study that says this doesn't work. They just have-- they just haven't done enough to-- to say this is-- this is as good as having the district court judge. And it might be. I-- I have no doubt that the-- that the person who is our referee, and I really don't like that term but our referee, that they won't have the same relationship, that important relationship they have with a district court judge under the way we currently-- currently operate the problem-solving courts. And I'll just say let's do two. Let's do two. Let the court do it and you can-- you can be on top of it. We can-- we can have the problem-solving court commission, or whoever the Supreme Court has. I know Judge Doyle will be following that. The guy is a freak about data.

PANSING BROOKS: Sen--

LATHROP: And I mean that in the kindest terms, Judge. They really are.

PANSING BROOKS: Madam-- Madam Chair. [INAUDIBLE]

LATHROP: I think we look at it as a pilot. We do two of these people. The district, retired district court judges-- I said this for a long time. Why don't we have retired district court judges? The problem is, and I know a lot of judges over the years, a lot of them don't want to retire because they're a little bit like me. I don't know what I'm going to do when I retire and how I'm going to fill my time. And then they finally retire and the idea of working part time or coming back and hearing a case or doing problem-solving court sounds

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good, and then they start to enjoy not coming into the office and they're gone. It is-- it is an opportunity to have someone who is going to make this their profession. And-- and will it be perfect at the start? Maybe not. Maybe not. Believe me, I know you are a champion of this topic. I know you're a champion of this topic.

PANSING BROOKS: Senator Lathrop, could we see if somebody else has a question? Because--

LATHROP: Yeah, .

PANSING BROOKS: --I think we're at the-- at the point where you guys could talk more later. Do you have a question, Senator McKinney? Do you have a question, Senator DeBoer?

DeBOER: No.

LATHROP: Pardon me.

PANSING BROOKS: No. I just thought we could continue that later.

LATHROP: No, that's fine.

PANSING BROOKS: Yeah. Thank you all. I think that closes the hearing for tonight and on LB1036, and thank you all for staying so long. I appreciate it.