

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 07, 2008

[LB932]

The Committee on Judiciary met at 1:30 p.m. on Thursday, February 7, 2008, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB932. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Vickie McDonald; Amanda McGill; Dwite Pedersen; Pete Pirsch; and DiAnna Schimek. Senators absent: None.

SENATOR CHAMBERS: What we're going to do now is begin the hearing on the bill that Senator Ashford is presenting to us. The senators present at this point are Senator Vickie McDonald, Senator...I'm not going to call her what Brad did...Senator DiAnna Schimek--it was not bad--Ernie Chambers, and Senator Amanda McGill, and we'll start now. But before you do, how many are going to speak in favor of this bill? How many are going to speak against it? How many are neutral? Thank you. Senator Ashford.
[LB932]

SENATOR ASHFORD: (Exhibit 1) Thank you. Senator Chambers and members of the Judiciary Committee, my name is Brad Ashford, and I represent the 20th Legislative District in Omaha. I'm here to introduce LB932, a bill that would establish the Aging Prison Population Task Force. This task force would be a temporary study group to examine the unique needs of Nebraska's aging prison population. Nationwide, 4.3 percent of prisoners are over the age of 50, and they represent the fast-growing segment of the prison population. The percentage of prisoners over 50 in Nebraska is almost three times as high. Nebraska's correctional facilities housed 520 male and female inmates with at least 50 years of age at the close of 2007. The task force will study the inmate population above 50 years of age, because older prisoners experience an accelerated form of aging whereby they typically display signs of aging comparable to persons in the general population seven to ten years older than their actual age. While there is no definitive standard among states, researchers generally use the age of 50 to establish when an incarcerated person is considered aging or elderly. Explanations for the increase in the number of prisoners 50 and above include stricter sentencing, a reduction in parole opportunities, and a general increase in persons in this age group with the Baby Boom generation. The average cost per inmate in the Nebraska State Penitentiary is \$31,000 per year. Healthcare for a sick and aging prisoner can be as high as three times the cost of a younger inmate, and one recent estimate published by the Project for Aging Prisoners for the total annual cost of caring for an aging inmate was \$70,000 per year. The challenge of aging prison populations have prompted 16 states to study this issue, Kansas being one of them. Another important concern that can be addressed by this task force is transitioning an older prisoner back into society after release. The difficulty for these prisoners finding stable employment is even more difficult. Prisoners in jail who are over 50 tend to be incarcerated because of violent or sex crimes. This only compounds the difficulty. Currently, there are 568 prisoners over the age of 50 in the Nebraska Correctional

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System. Of those, 343, or 60 percent will be released within the next 9 years. Members, you can see that there are many issues raised here, and I have...we have testimonies on this bill from experts who are more familiar than I. So I would relinquish the chair to them. Thank you, Senator Chambers. [LB932]

SENATOR CHAMBERS: Thank you, Senator Ashford. Any questions? And I'll just emphasize, this is merely to establish a task force. [LB932]

SENATOR ASHFORD: Correct. [LB932]

SENATOR CHAMBERS: Thank you. Who is next? And if people who are going to testify would sign in, so that we don't have a gap or a delay in people coming up. You may proceed, and would you spell your last name when you give it, for the record. [LB932]

CARL ESKRIDGE: Yes, sir. Senator Chambers and members of the committee, my name is Carl Eskridge, E-s-k-r-i-d-g-e. I'm one of the ombudsmen in the Office of Public Counsel. Our office works quite a bit with inmates and have experienced situations where inmates have difficulties related to their conditions with aging issues, and the evidence here, I think, is true, that the cost of incarcerating inmates, older inmates, as their healthcare needs diminish, are significantly increased. Conversely, the security cost of incarcerating elderly inmates tends to decrease, because by the time you're 50-plus, you've worked out some of your issues and you don't tend to be so rambunctious. So it balances out a little bit, though probably some of the health issues are more significant. We see this as being a significant problem, possibly a way to look at a different kind of level of incarceration for older inmates and certainly support this task force. [LB932]

SENATOR LATHROP: Thanks, Carl. Senator Schimek. [LB932]

SENATOR SCHIMEK: Oh, thank you, Mr. Chairman. I didn't realize we'd switched already. Thank you for being here, Carl. The question that occurred to me, and maybe it's not an appropriate idea, but wouldn't it be good to have somebody from the Ombudsman's Office on this task force? [LB932]

CARL ESKRIDGE: I wondered that myself, Senator. It's... [LB932]

SENATOR SCHIMEK: It just would be eminent good sense to me. [LB932]

CARL ESKRIDGE: Right. I would agree. [LB932]

SENATOR SCHIMEK: Thank you. [LB932]

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February 07, 2008

SENATOR LATHROP: Any other questions? Okay, thank you for coming down, Carl. Any other proponents? [LB932]

ROBBIN OGLE: My name is Dr. Robbin Ogle. I'm a professor in the School of Criminology and Criminal Justice at the University of Nebraska, and my specialty area is corrections. And I have been looking at this, along with Dr. Masters, for quite awhile now. It would appear to me that we clearly have a problem that we need to head off. As Senator Ashford said, we're looking at, within the next ten years, 343 inmates coming out who are 55 or older. So we're talking pretty good numbers. And at present we don't really have anything in place that really addresses the issues that these individuals face, and in some respect I think we're obligated to take a good look at this because we've created it ourselves by...with ever-increasing sentences. So people are coming out later, later, and later in life. I also think that we don't have any idea what the real scope of the problem is yet. There are a lot of questions that need to be asked, and I think it's important that these agencies and experts come together in a group so that we can do that in a fairly quick manner, as opposed to taking years as an academic, trying to collect all of this information and get it where it needs to be, where it can be useful to us. So I think the task force is the best way to bring all of that information to the table at once so we can find out what we've got here to work with, and what we need to do with it. [LB932]

SENATOR LATHROP: Very good. Thank you, Doctor. Senator Schimek. [LB932]

SENATOR SCHIMEK: Yes, thank you, Mr. Chairman. My question would be a little bit of a follow up to my last question of Mr. Eskridge. Is there any group on here that is not represented that maybe would be important to have represented on this task force, or did you have any input on that? [LB932]

ROBBIN OGLE: I would...because my area is corrections as opposed to aging and that sort of thing, I would probably say that that's a better question to ask of Dr. Masters, who is coming up here next, and she might know the answer to that. [LB932]

SENATOR SCHIMEK: Thank you. [LB932]

ROBBIN OGLE: Um-hum. [LB932]

SENATOR CHAMBERS: Doctor,...oh, excuse me. [LB932]

SENATOR LATHROP: Senator Chambers [LB932]

SENATOR CHAMBERS: Doctor, would you spell your last name for the record? [LB932]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 07, 2008

ROBBIN OGLE: O-g-l-e. [LB932]

SENATOR CHAMBERS: Thank you. [LB932]

SENATOR LATHROP: Okay, thank you. Thank you very much for coming down, Doctor. [LB932]

JULIE MASTERS: Good afternoon. I am Julie Masters, and I'm an associate professor in the Department of Gerontology at the University of Nebraska-Omaha. I'm here as an individual and not as a representative of the University of Nebraska, to testify in support of LB932. As a gerontologist, I'm interested in the issues facing older adults. The challenges include managing multiple chronic conditions, finding suitable housing, and having adequate income for persons who live to 85 or 95 years of age. There's also a need to understand persons at the end of life, when death is imminent. Of particular interest is the growing number of aging inmates, both nationally and in Nebraska, who are either aging in place or who will be released into the community in hopes of receiving support through the aging network. There are several research questions which come to mind when considering the changing demographics of our correctional institutions and how this task force can begin to address this important issue. Are correctional facilities adequately equipped to handle an inmate who is incontinent, confused due to Alzheimer's disease, or unable to respond to the commands because of hearing or visual limitations? Once released, do persons who have spent a good share of their lives in a correctional facility have the necessary resources to be successful in the community due to limited or no access to programs such as Social Security. Can correctional facilities employ programs focused on prevention for persons who are incarcerated at young ages, to potentially reduce debilitating chronic conditions such as diabetes, chronic obstructive pulmonary disease, and hypertension? And to what extent are aging inmates in Nebraska victimized by younger inmates, due to things such as physical violence, intimidation, and threat? And how similar or different is Nebraska from other states in addressing the needs of aging inmates? The formation of an aging prisoner task force comprised of persons of the aging network as well as corrections is a good starting point in gathering facts and finding solutions that will benefit both aging inmates, as well as the state of Nebraska. It also creates an opportunity to identify areas requiring further research for those persons aging in place and those released in the community. Thank you. [LB932]

SENATOR LATHROP: Thank you, Dr. Masters. [LB932]

JULIE MASTERS: You're welcome. [LB932]

SENATOR LATHROP: Are there any questions? Senator Chambers. [LB932]

SENATOR CHAMBERS: Is your last name spelled the way it sounds, M-a-s-t-e-r-s?

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 07, 2008

[LB932]

JULIE MASTERS: It is. [LB932]

SENATOR CHAMBERS: Okay. [LB932]

JULIE MASTERS: Thank you. [LB932]

SENATOR CHAMBERS: Just for the record. [LB932]

JULIE MASTERS: Very good. Thank you so much. [LB932]

SENATOR LATHROP: Any other questions? Thank you, Doctor. [LB932]

JULIE MASTERS: Thank you very much. [LB932]

BRENDON POLT: Good afternoon. My name is Brendon Polt, that's spelled P-o-l-t. I'm the assistant executive director of the Nebraska Health Care Association. We're a trade association with a membership of about 400 nursing homes and assisted living facilities in the state of Nebraska. We also support LB932. We should suggest, however, that the bill be amended to include representation from the providers of long-term care services, since as the bill is created, there's an emphasis on how to deal with healthcare issues with some of these individuals. There's also representation from the Parole Board, and so naturally it would seem that one option would be to early parole and take low risk of reoffending offenders and place them in nursing facilities or other long-term care facilities. So our membership is eager to participate, and we think that there are some opportunities. We also believe there are some risks for the existing residents and the families and children of the residents of our members. So we just once again support the bill, but we ask that we might look at the providers of long-term care services to be included in the panel. We've spoken with the sponsors of the bill, and I don't believe that there's any contention on this issue. So with that, I urge your support of the bill. [LB932]

SENATOR LATHROP: Thank you very much, Mr. Polt. Any questions? Seeing none, thank you for coming down. We appreciate your input. Are there any other proponents? [LB932]

JOANNE FARRELL: (Exhibit 2) Good afternoon. My name is Joanne Farrell, F-a-r-r-e-l-l. I am a social worker case manager, and I work at the Lincoln Area Agency on Aging, the LIFE office. I'm in support of this bill and the reason why I am, because we are currently working with discharging with Corrections staff at this time. The reason why we are involved is we received a referral on a Level 3 sex offender who needed medical care and had to leave prison and had no place to go. So that was the main, large issue that brought us into this. We've been working with Corrections for about a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
February 07, 2008

year and a half to two years, so the dialogue, meetings, trainings, planning kind of on how our agency can invoke some help and change and in the discharge planning that's currently going on. One of the things...and you've heard a lot of statistics, which I had brought a little bit of the statistics for you, from what I was getting from Corrections. My specialty is with mental health and also substance abuse. We work with people 55 and older. We have a specialized program, and so part of what we're looking at is, a lot of the folks that are coming out of Corrections now are people that have substance abuse issues. When we look at the reoffending rate of about 30 percent, if we can impact these people--and we have with our program impacted substance abuse and folks that have a tremendous amount of problems, who are older--this can be a wonderful supportive program, and we would like to be more involved. However, this is such a mammoth, huge problem that we're just a small organization, and we really need more support in health, and we need to be plugging the holes in some of these programs such as the mental health programs or substance abuse programs in the community. So I would just like to say that I'm very happy to have this bill introduced, and hopefully it can go forth and we can begin to work on this together. [LB932]

SENATOR LATHROP: Very good. Thank you very much. [LB932]

JOANNE FARRELL: Um-hum. [LB932]

SENATOR LATHROP: Are there any questions? All right. Well, thank you for coming down, Ms. Farrell. Any other proponents? How about folks here in opposition? Anyone here in a neutral capacity? Seeing none, I think that will close...well, pardon me. We'll give Senator Ashford an opportunity to close, and then we'll close out. [LB932]

SENATOR ASHFORD: No, that's...I can understand your point. Anyway,... [LB932]

SENATOR LATHROP: We'll see. [LB932]

SENATOR ASHFORD: Thank you, members of the committee. I would just make a couple points. First of all, I think Senator Schimek is absolutely right that we need a representative of the Ombudman's Office to this, and I have absolutely no objection to the Nebraska Health Care Association. I also would like to thank my friend, Dr. Chuck Powell from UNO, who has been at UNO for close to 50 years, I believe, in the Department of Gerontology--a long, long time. And he put me in touch with Dr. Masters, Professor Masters, and really convinced me that this is a strikingly important issue that has been not so much ignored, but not brought to the attention of the legislative branch as it should have been over the years, and I certainly urge that we move this bill to the floor. Thank you. Wow! I didn't think it was all that controversial what I just said, but... [LB932]

SENATOR SCHIMEK: It's not, and this is just a little detail. But who's going to staff this,

Transcript Prepared By the Clerk of the Legislature
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February 07, 2008

Senator Ashford? Your office? [LB932]

SENATOR ASHFORD: The committee. Well, I think LaMont will... [LB932]

SENATOR SCHIMEK: Our committee will staff it? [LB932]

SENATOR ASHFORD: It's designed to have our committee be the staff support.
[LB932]

SENATOR SCHIMEK: Okay. And my other little dinky question here is, by the time this bill becomes law, and by the time 45 more days pass, we're well down the road, and I wonder if we couldn't put an emergency clause on,... [LB932]

SENATOR ASHFORD: Yes. [LB932]

SENATOR SCHIMEK: ...and maybe even make it 30 days or something like that.
[LB932]

SENATOR ASHFORD: Yes, yes. [LB932]

SENATOR SCHIMEK: So they have a little bit more time to work. [LB932]

SENATOR ASHFORD: Yep, it's a good point. [LB932]

SENATOR LATHROP: Senator McDonald. [LB932]

SENATOR McDONALD: Can you give us some of the issues that this task force will be looking at? [LB932]

SENATOR ASHFORD: Well, the issues of aging population are many and varied, and I alluded to some of them, and Dr. Masters and others have alluded to others. But I don't think there's been any...here's my issue. It seems to me that first of all we need to get the data. We need to find out exactly who these people are, what stage of the process they're in. We know the numbers--over 300 will be coming back into the general population. So we know that, but we don't have, I don't think, any standardized procedures on how to deal with aging populations. And for the most part, that's because of a lack of knowledge of this population and how and when they're going to be assimilated back into the community. I think establishing criteria and standards that the state should apply to dealing with this population is essential. And also, the other thing is, and that is to me, when we rush to elongating sentences, in many cases I would believe, as a knee-jerk reaction to whatever the crime of the month is, that we realize what we're doing, and that what we're doing is creating an aging population in prison, and that we understand that...what are we serving? What needs are we serving, to put

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February 07, 2008

someone in prison for a lengthy period of time, after everyone would agree that for the most part these people have been rehabilitated. So I think as we learn more about the aging population, it can go into our thinking as a committee and as a Legislature, before we start adding to sentences and before we start...continue to do this, that we understand the impact of that. So those are my concerns, Senator McDonald. [LB932]

SENATOR McDONALD: And I would hope that you would look at the part of the prisoners that won't be coming back into society and how their long-term care needs are being met, whether it's in a nursing home within the system, with outside the system, the chronic medications that they are on, and the cost of those, and how we might use the idea of a repository to maintain some of those medications. So I think there are some things that you also need to look at on both sides of where those aging prisoners will spend the remainder of their life. [LB932]

SENATOR ASHFORD: That's a great idea, and I also think that there is a community corrections piece to this, and that's why I like the idea of Nebraska Health Care Association being involved, to try to think about, you know, appropriate ways of dealing with the population, both if they need to be incarcerated for the rest of their lives, or if they are coming out. And those practices and standards can be applied to these people, as well. (See also Exhibit 3.) [LB932]

SENATOR LATHROP: Thank you. [LB932]

SENATOR ASHFORD: Thanks. [LB932]

SENATOR LATHROP: I think that will close our hearing today, and I think that completes our work for the day. [LB932]

SENATOR ASHFORD: Our work is done. [LB932]

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Disposition of Bills:

LB932 - Held in committee.

Chairperson

Committee Clerk