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Judiciary Committee
February 04, 2016

[LB679 LB710 LB861 LB910 LB1023 LB1094]

The Committee on Judiciary met at 1:30 p.m. on Thursday, February 4, 2016, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB710, LB861, LB910, LB679, LB1023, and LB1094. Senators present: Colby Coash, Vice Chairperson; Ernie Chambers; Laura Ebke; Bob Krist; Adam Morfeld; Patty Pansing Brooks; and Matt Williams. Senators absent: Les Seiler, Chairperson.

SENATOR KRIST: Okay, we have a quorum and a long day so we're going to get started. We'll start off by introducing the senators. I'll let them introduce themselves starting over with Senator Ebke.

SENATOR EBKE: I'm Laura Ebke, District 32 which makes up Jefferson, Thayer, Fillmore, and Saline County and the southwest portion of Lancaster County.

SENATOR KRIST: Ollie.

OLIVER VANDERVOORT: Oliver VanDervoort, I'm the committee clerk.

DIANE AMDOR: Diane Amdor, legal counsel.

SENATOR KRIST: Bob Krist, District 10, Omaha.

SENATOR MORFELD: Adam Morfeld, District 46, Lincoln.

SENATOR WILLIAMS: Matt Williams, District 36, Gothenburg.

SENATOR KRIST: Senator Coash is introducing in another committee. Senator Pansing Brooks will be here shortly. Senator Seiler is out of town, so I'm going to stand in for the Chair and Vice Chair until Senator Coash arrives. Please turn off all your noisemakers, pagers, phones, whatever, or put them on silent. We operate here in the committee with a three-minute testimony. That means that your green light is on for two. When the yellow comes on you have one minute left. When the red comes on, please wrap it up. And one of the committee members will probably ask you to continue if that cuts you off, but try to be respectful of the time. If you're going to testify, fill out a white sheet. They're located outside the door...right back there and when you come up, hand it to the page. Our pages today by the way are Kaylee from Douglas, Nebraska--wave, Kaylee, there you go--and Brooke from Omaha. Thank you, Brooke. There you

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go. When you come up to testify, please say and spell your name, first and last name; that's for the transcribers. And we have a new mike system throughout the Capitol and it picks up a lot of noise. So if you don't want to be put on record, you might want to take your conversation outside. So with that, we'll jump right into it. Senator Hughes....our schedule for today is LB710, Senator Hughes; LB861, Senator Schumacher; LB910, Senator Bolz; LB679, Krist; LB1023, Ebke; LB1094, Judiciary Committee. And this is the Judiciary Committee just to make sure that you educators know you're in the right room. Okay. Senator Hughes, without further delay.

SENATOR HUGHES: (Exhibit 1) Thank you, Senator Krist. Good afternoon, members of the Judiciary Committee. For the record, my name is Dan Hughes; that's D-a-n H-u-g-h-e-s, and I represent the 44th Legislative District. I am here today to introduce LB710. This bill came directly from an issue that involved a school in my district. In visiting with the superintendent dealing with this issue, I decided to look into it further and upon investigating, came upon other incidents in Nebraska and several in other states where teenagers were engaging in activity that would fall under the definition of hazing. Current Nebraska statutes only apply to postsecondary students, though this bill would expand the law to include other individuals as well. The prosecuting attorney in this case didn't feel the current law was broad enough to prosecute the incident which was the impetus for this bill. In writing this bill we consulted with the Nebraska School Administrators Association, the Nebraska School Board Association. We also reached out for input from the University of Nebraska, the Nebraska State Education Association, and others in trying to come up with the right language. Consequently, we have an amendment we'd like to include that will make the bill better moving forward which should be handed out to you. The amendment adds the word "coercing" in the list of definitions. We felt it is important to include this to help clarify some of the activities that would be considered hazing. We also added a severability clause. This bill would just expand current law which prior to this applied only to postsecondary organizations. There is a fine for organizations which is designed to apply to organizations like fraternities and sororities. It is not our intent to fine schools or other public institutions but to make this a criminal penalty that courts can handle because most schools don't feel they have the authority to deal with it. Many of these events occur off school property, so we needed to broaden the scope to make sure we've covered as many situations as possible. My intent with this bill is more about protecting kids than it is punishing them. This will give school administrators, youth sponsors, and law enforcement more tools in their tool box to try and reinforce to our young people this behavior is unacceptable and will not be tolerated and there will be consequences outside of school in the court system should they engage in this type of activity. Under Nebraska Revised Statute 28-806: "A person, eighteen years of age or over, commits public indecency". The reason why language from the public indecency statute was included in this bill is the fact that the incident in Hastings involved acts where genitalia was exposed to intimidate. We want to make it clear that acts like these should be criminal. Even though we have public indecency laws in Nebraska, they do not apply to the majority of high school students. Part of the goal of this bill is to educate children at a younger age that this

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behavior is not acceptable and will not be tolerated. And hopefully that lesson will be learned early and will be carried through their teenage years and on to their college years should they choose to continue their education. This bill will not only send a message to older kids that such behavior is unacceptable and carries criminal repercussions, but it would also let younger children know they do not have to submit to this type of hazing from anyone. Thank you for your time and I'd be happy to try and answer any of your questions. [LB710]

SENATOR KRIST: Before we go to questions, Senator Pansing Brooks has joined us a little late. Thank you. Any questions for Senator Hughes at this point? Will you be here to close? [LB710]

SENATOR HUGHES: Yes. [LB710]

SENATOR KRIST: Thank you very much. [LB710]

SENATOR HUGHES: Thank you. [LB710]

SENATOR KRIST: We'll start with the proponents for this bill, the supporters, proponents. And just to remind you, we're on a three-minute gun. So you're green for two, you're yellow for one, and when red light comes on you need to stop. Welcome, Doctor. [LB710]

VIRGINIA MOON: Thank you. My name is Virginia, V-i-r-g-i-n-i-a, Moon, M-o-o-n, and I'm here representing the Nebraska Council School Administrators in support of LB710. My testimony will be brief because Bobby Truhe is here and will be able to give you more specific examples of how these, the statute plays out currently and could play out with the new language for schools and school administrators. I'm here basically to support the concept and to talk a little bit about the fact that schools see the horrible effects of these kinds of activities of hazing, of cyberbullying, of bullying that goes on in schools and what the consequences are, I suppose, for younger students as well as college students because sometimes the things that happen during those hazing events, well meaning, kids get excited. They think, wouldn't this be funny? Wouldn't this be funny? How about this? And pretty soon a situation that was meant to be harmless turns out to be dangerous or turns out to create a humiliation that some students never really recover from as they go through the rest of their high school career. Fortunately I suppose--schools generally, even though these events take place off grounds and without sponsors, it's usually not related to school events or loosely related to school activities--school personnel almost always hear about these sorts of things sooner or later because kids talk. And they talk around adults and pretty soon the school has knowledge or a parent comes and talks about it or a student complains about it. And what happens with that is the school administrators are very torn or confused about what they can and cannot do in terms of helping students are or interceding in the situation because the law on hazing does not really pertain to students in high

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school but only to those that are in college or 18 and above. So we are really in support of this bill because it helps to clarify for agencies outside the school how it will be handled, and therefore, to help us know how to handle them as a school. And I think in...to speak to the senator, to let kids know right away these activities are not okay. They won't be tolerated. With that, I'll be happy to answer questions. [LB710]

SENATOR KRIST: Thank you, Dr. Moon. Any questions? Senator. [LB710]

SENATOR WILLIAMS: Thank you, Senator Krist, and thank you, Dr. Moon. Before your current job, you've had the opportunity to be a school administrator in large schools and small schools. Is this is a situation that based on your experience you've seen in all school settings? [LB710]

VIRGINIA MOON: I think it happens everywhere in all kinds of situations. And sometimes it comes from long-seated tradition along schools. We've always done that. The seniors always do this to the freshmen, that sort of thing. But I don't think it's that power or whatever thrill that comes from intimidating another person seems to be universal. [LB710]

SENATOR WILLIAMS: As a former administrator in a different situations, do you feel that this would give you a stronger willingness on the part of school administrators to go through training with staff and then training down to student level, education on talking about what's right and what's not right in these situations? [LB710]

VIRGINIA MOON: I think schools, especially over the last few years, have done lots of training with staff and with students about bullying and cyberbullying and some of those. The hazing events we've stayed pretty far away from because frankly I think schools don't want to be in a position to have to police everything that happens outside of our buildings. But when it lapse over or when we know it's our students that are being involved in that, it gives us guidelines as to how and when we can intercede. We will have to...if this statute passes, we will have to spend time with our own staff talking about what does this mean to us in terms of additional reporting requirements because right now we report these situations as child abuse basically because that's the one thing that we are mandatory reporters and that's the way that we can make those reports because it's not illegal what they're doing because the statute doesn't cover students under 18. [LB710]

SENATOR WILLIAMS: Thank you, Doctor... [LB710]

VIRGINIA MOON: Yeah. [LB710]

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SENATOR WILLIAMS: Thank you, Dr. Moon. [LB710]

SENATOR KRIST: Thank you, Senator Williams. Any other questions? Senator Pansing Brooks. [LB710]

SENATOR PANSING BROOKS: Thank you for coming to testify, Dr. Moon. I've talked with a number of people about this. I am misunderstanding as I read this bill where...it was my understanding that the goal was to broaden the definition of hazing to include people that are in high school and middle school. But I don't see that in here so I'm trying to... [LB710]

VIRGINIA MOON: I'm going to defer to Bobby Truhe who's going to have that. [LB710]

SENATOR PANSING BROOKS: Okay. That would be great. I didn't know who wanted to answer that. Thank you. [LB710]

SENATOR KRIST: Any other questions? [LB710]

VIRGINIA MOON: Because that is, my understanding, the intent as well. [LB710]

SENATOR KRIST: Any other questions for Dr. Moon? Thank you. Thanks for coming. [LB710]

VIRGINIA MOON: Thank you. [LB710]

SENATOR KRIST: Next proponent. Welcome. [LB710]

BOBBY TRUHE: Senator Krist, members of the committee, my name is Bobby Truhe, B-o-b-b-y T-r-u-h-e. I am an attorney here in Lincoln, Nebraska. I'm an attorney at the law firm of KSB School Law where we represent primarily public schools in the state of Nebraska. I'm not a criminal defense attorney. But I have some experience in dealing with issues, especially those like hazing from the criminal side just because of how that impacts public schools. So while I'm here to speak to you today about a criminal statute, my experience really comes from being an attorney who represents public schools. Law enforcement officers, county attorneys, school administrators are busy folks and they're asked to do a lot and so one of the reasons that I'm here today is because I think the issue of hazing as compared to others that have been clarified by the Legislature, for example, bullying, cyberbullying, the issue of hazing is one that I see schools and especially school administrators and then relatedly law enforcement officers and county

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attorneys struggle with exactly how to handle issues of hazing. And so we...you've seen examples of hazing in the news recently. Our law firm and other members of my law firm of dealt with other sorts of examples: Freshmen are forced to eat hot peppers; everybody chugs water until somebody pukes; students being forced to soap and fondle each other; freshmen girls forced to strip naked and dance against each other in the shower; people goosing each other, you know, sticking their thumbs places that they shouldn't be sticking them; and things like the freshmen dash where we'll drop the freshmen off five miles outside of town and force them to run back into town. So these are some examples, some specific examples that we've helped schools to deal with. And the question in these cases is, what is the authority of the school to impose consequences on those students, and more importantly, the extent to which those are instances which must be reported to law enforcement? And so schools typically address hazing under the Student Discipline Act. But there are some issues with the Student Discipline Act, namely that it doesn't address hazing, that the statute before the introduction of LB710 only applied to postsecondary institutions, and things like sexual assault in the Student Discipline Act are actually limited quite a bit, for example, in the case of sexual assault to cases where a prosecutor files a criminal complaint. Principals have mandatory reporting obligations. Law enforcement and county attorneys, in addition to schools, struggle to deal with these instances of hazing. And so I'm here to support this bill because I think it will clarify for schools the obligations that they have even if it would require some additional reporting. I'm the last person that wants school administrators burdened with more reporting obligations. But I think this serves more to clarify and then that would outweigh any additional reporting obligations that those administrators might have. So with that, I'd be happy to answer any questions that anybody has. [LB710]

SENATOR KRIST: Thank you, Mr. Truhe. Senator Pansing Brooks. [LB710]

SENATOR PANSING BROOKS: Thank you, Senator Krist. Thank you for coming to speak, Mr. Truhe. Can you point in the bill where it is that...because I see the bill talking about postsecondary education institutions. I had thought that we were going to be talking about younger children. [LB710]

BOBBY TRUHE: Sure. One of the confusing aspects of this statute, if you actually go back and look at the current version of 28-311.06, the crime of hazing itself is defined by the word organization, membership in an organization. The proposal here if you look at what has been stricken out as what used to be subsection (b), you can see that organization was defined exclusively to those organizations of postsecondary institutions. So by removing the definition of organization which limited it to postsecondary institutions that then makes it just a generally applicable criminal statute. So it hasn't been specifically stated that this will apply to everybody. But what it's done is remove the definitional exclusion which limited it only to postsecondary institutions. [LB710]

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SENATOR PANSING BROOKS: Line 29 talks about operating under the sanction of a postsecondary education, so... [LB710]

BOBBY TRUHE: Sure. [LB710]

SENATOR PANSING BROOKS: ...I don't get...it doesn't seem like it's removed it. [LB710]

BOBBY TRUHE: It hasn't removed it because the statute as written now has a civil fine for organizations that are of the postsecondary nature. So that, I think, was just added down in its own subsection. So it is true that there is still a civil fine which has always existed under this statute for organizations that are organizations in a postsecondary institution. But the actual criminalizing it, in other words, the definition and then the applicability of the misdemeanor penalty, that will now apply to everybody. So it's, I think that adding that section was a way to basically keep the status quo as this would have applied to postsecondary institutions, which was part of why administrators and other folks are quite confused by this statute. [LB710]

SENATOR PANSING BROOKS: Well, it's still sort of confusing if you ask me. But okay, thank you. [LB710]

SENATOR KRIST: Any other questions? Senator Morfeld. [LB710]

SENATOR MORFELD: Bobby, thanks for coming today. One of the questions, and I know that we've talked about this a little bit but, so I'm sure there had to be analysis of there's no other things that we can charge, you know, some of these kids with. And granted, I'm hesitant to charge a young person with anything, but obviously there are some things that are so egregious that there has to be some kind of consequence for. I'm sure that you guys did an analysis of what are some things that, under current statute...I'm just...I'm a little surprised that there's nothing under current statute that there could be consequences for this type of conduct for these kids. So could you just talk a little about that, the need for this I guess in that sense. [LB710]

BOBBY TRUHE: Sure, sure. So it's a question that we get often, or least that I've gotten in answering questions I think about this bill and its intent. I do agree that if you read some of the criminal statutes, they can definitely be read in a way which, you know, an example like the one that we're talking about here that occurred in Senator Hughes's home district. Some of those things I would think, sure, maybe there's some other law out there which could apply. But the fact of the matter is in the situations that I kind of outlined at the beginning, oftentimes the school makes the call to law enforcement who runs it up to the county attorney who says, yeah, this is definitional hazing, no doubt about it. It doesn't apply to schools. Well, could it have been

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assault? Could it have been public indecency? I think those are written broadly such that the reason that I would think hopefully maybe some of those instances would be charged as under those additional crimes. It's a little bit different in that some of them like public indecency, for example, the goosing, you know, basically sexually assaulting each other with your finger, that sort of thing in terms of public indecency statute was limited to folks that are 18 and older. So what we see is just a kind of a blind spot in the law as it relates to folks to whom these, you would think, would be vehicles to charge these things. They just don't...simply don't apply to school-age kids. So then your school administrators, law enforcement officers, county attorneys are sitting there left wondering, well, if the specific doesn't apply do we try the general? Or how do we handle that? And so what we've seen oftentimes is a lot of times, you know, county attorneys not just, like I said, in this case precipitating this bill but in others just sort of say I don't really know how to apply here, not going to make any charges which then leaves the school in the position of wondering, well, if my county attorney doesn't think this violated any laws then how can I say it did for purposes of student discipline? But the parents are turning to the school to wonder what are you going to do about the fact that my student, my son or daughter was molested by one of their classmates. So I think that's sort of the impetus of it. It then makes clear that if this applies to juveniles, at least in the term...in terms of hazing, that those would be covered and then the school, at least from my perspective as a school attorney, would have authority to impose consequences there. [LB710]

SENATOR MORFELD: Okay. Thank you. That helps. [LB710]

SENATOR KRIST: Any other questions? Thank you, Mr. Truhe, for coming. Next proponent, next proponent for the bill. Okay. It doesn't look like anybody is jumping up. First opponent. No opponents? How about neutral testimony? Neutral. Senator Hughes to close. [LB710]

SENATOR HUGHES: Thank you, Senator Krist. Just a couple of clarifications for Senator Pansing Brooks. The original law on hazing was written, I believe, in 1992. And it was designed specifically to deal with postsecondary students who were engaging in hazing and the fine was for the fraternities and sororities that were doing the hazing. It specifically left out the University of Nebraska as a...the school, the institution. But the organizations were what was fined. So when we looked at doing this bill, we basically took out the language that just said postsecondary and that opens it up to include everybody basically. The incident that happened involving the school district in my legislative district occurred in Adams County. And the county attorney, a full-time county attorney in Adams County, did not feel--and I visited with her personally--did not feel she had statutes on the books to prosecute under this for this incident. So that's kind of where I came in. The school administrator came to me and says I'm getting a lot of pressure. There are certain things I can do, you know, within the school system. But I'm getting pressure that it's not enough because of the egregiousness of the activity. So that...a bit of clarification, yes. Oh, sorry. [LB710]

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SENATOR KRIST: Senator Pansing Brooks. [LB710]

SENATOR PANSING BROOKS: Thank you, Senator Krist. Thank you, Senator Hughes. We've talked about this a bunch and so it's not...as you know, I'm supportive of trying to protect the kids. And in fact, had an instance where our son was wrapped in Saran Wrap and his arms wrapped around his sides and then he was placed in the back of a pickup. And they drove him to go through a car wash which was humorous. But they had to drive on the Highway 2 get to that car wash. And there were four people on top of each other in...there were three guys on top of him wrapped in Saran Wrap. So, no question, kids can do stupid and dangerous things. Again, I still don't get why didn't...on line 29, I didn't really understand Senator...Mr. Truhe's explanation. And I thought you would say under sanction of postsecondary or secondary educational institution. So I'm sort of surprised because I thought that was in your intent. [LB710]

SENATOR HUGHES: That is my intent. And if that...and I'm not a lawyer and if that is something the committee feels would make the bill more clear, you know... [LB710]

SENATOR PANSING BROOKS: I just don't read it and get that it's, oh, well now it's clear that it is going to apply to high schools and middle schools. I don't read that and see that. So I don't...so I don't know if there was another intent or just by striking that one organization, the problem is that in line 29, it says "sanction of a postsecondary educational institution". So to me, it means that it's really relating just to postsecondary again. But I don't believe that was your intent. [LB710]

SENATOR HUGHES: No, my intent is that it apply all school-age students. But yet... [LB710]

SENATOR PANSING BROOKS: Okay, well maybe we could talk after... [LB710]

SENATOR HUGHES: ...at what point do you draw the line... [LB710]

SENATOR PANSING BROOKS: ...and somebody...maybe I'm clearly missing it. But thank you. [LB710]

SENATOR HUGHES: Okay. [LB710]

SENATOR KRIST: Any other questions for Senator Hughes? Okay. Thank you, Senator. Thanks for coming. [LB710]

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SENATOR HUGHES: Thank you very much. [LB710]

SENATOR KRIST: (Exhibits 2 and 3) That...actually I need to read in two letters of support: One from the NCCA signed by their executive director, Mr. Dennis G. Baack; and one from NSEA signed by their director of public policy Jason Hayes. Thank you. That now concludes the hearing on LB710. Just in time, Senator Schumacher, LB861. Go right ahead. [LB710]

SENATOR SCHUMACHER: Thank you, Senator Krist, members of the Judiciary Committee. My name is Paul Schumacher, S-c-h-u-m-a-c-h-e-r, here today to introduce LB861. LB861 is a follow-up bill to the Nikko Jenkins Committee and LR424 Committee. And last year if you'll recall, we had several areas we tried to address in the corrections system, among those being solitary confinement. And it is kind of an outrageous situation that we saw in context of those two investigatory committees. We have a large number of people who are in solitary confinement. I think we learned from the Nikko Jenkins situation, that while he spent something like six out of ten years with the corrections program of the state, when he did, in solitary confinement, when he went to Omaha and was picked up on a charge there, on a leave of some kind for a funeral and had to be detained in the Douglas County Jail for about a year, they were able to manage him in the traditional population and not in solitary confinement when, I believe, those proceedings went back to the state system, back into solitary confinement. And I certainly, and I think I maybe others, felt that that was a very telling lesson that perhaps things were not right with our system. So as part of trying to exercise the legislative oversight and address this issue, legislation was passed last year to try to limit it. And it was really a choice--I was assigned part of the duty of trying to come up and deal with solitary confinement--of whether we were going to try to micromanage it and write the rules and regulations ourselves in the Legislature and somehow enforce those rules and regulations, or whether or not we would extend a certain bit of credibility and opportunity to the new director to write those regulations, to come up with something that was reasonable and that would limit solitary confinement to a parameter that we could be proud of rather than ashamed of. Along with that theory was that there would be a work group. The work group would be very, very integrated into the process of developing those regulations. And as such, we would hopefully have a good regulatory product that would be implemented before a drop-dead date. I believe it was July 1 of this year, after which unless it's done pursuant to properly adopted regulations, there shall be no solitary confinement in the state. Initial reports from the work group coming out in November, December time frame was that those regulations were not maturing as fast as one might think they should in order to meet the time frame of no solitary confinement, except under regulation, by the July 1 deadline. At this point, while there are assurances and were at the of time of bill introduction that we would be seeing a very good set of proposed regulations coming forward and maybe they are on the way, I have not yet seen them. And hopefully they are very diligently being worked on or we're going to be in a bind and have to accept some type of temporary interim regulations because we're not in a position to, I suppose, really say absolutely no solitary confinement. Same people would say

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that probably need something. However, if that happens, if we do not have satisfactory regulations in place, if the work group does not report that, yes, all the issues that we raised were taken care of, then what do we do? And we're faced, I think, with over the years, in the short few years I've been here, regulatory impediments because the inertia of the various departments is to do as little as possible. And sooner or later, they still be here; we be gone. And nothing changes. So in order to have some incentive to get these regulations done and done in a very reasonable way that we can be proud of that has listened to the concerns represented by that work group and by the Legislature, in order to have a vehicle that if we have to take charge and get this matter addressed with a more hands-on place by putting regulation into statute in order to make things happen, I introduced LB861 as a vehicle for that. As written, LB861 simply says, look, if somebody is in solitary confinement for 90 days, they have a right of judicial review. They can go to the district judge, which I'm sure makes a lot of district judges happy because they've got enough to do but who else can we go to? They are the respected arbitrators in our system. And they can file an action to say, Judge, review my case, review the causes and the reasons why I continue to be in here so long. Very simple proposal, upon the 90th day the inmate may seek review. And the district judge, in order to make life a little bit easier on them, can appoint a magistrate to conduct the review and then make recommendations to the district judge who is empowered to hold further proceedings. It's an interim procedure that I hope we don't have to implement. And it is a powerful procedure because the district judge, of course, will have the ability after a hearing and after recommendations of the magistrate to issue an order on a case-by-case basis--clearly a less desirable, less efficient way of doing it by properly written regulations, but nevertheless an option. Also, this bill, as a vehicle for the issue of solitary confinement, could be amended by the committee to perhaps have an alternative mechanism for regulation to the...by putting it in statute. So this bill is a vehicle. It is a stern message that we anticipate that we will see a good work product coming out of the pending regulatory situation. And if we don't, then we're prepared to go the next step. And so I would encourage the committee to seriously consider this bill. At this particular point since we are still hopeful that we will get a really good set of the regulations that we're proud of, I won't ask the committee to advance it today but to hold it in our pocket. And if we have to work on it and we have to amend it and we have to transform it into something to deal with the reality of inadequacies in our administrative system on July 1 then we will need to do it and we will probably need to pass it with the emergency clause. So that would be my statement. [LB861]

SENATOR KRIST: Thank you, Senator Schumacher. I have a couple of points, maybe not questions but just points. The enacting date on this bill is July 1 of 2016. That's commensurate with our enactment of other legislation that calls for the plan to be put in place by the same date. So it's your intention then to leave this as a reminder to everyone that the first date should be complied with or this date will kick in. [LB861]

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SENATOR SCHUMACHER: Right, and if we don't...there's a time-sensitive process in adopting regulations. It's got to be proposed. It's got to be published. They've got to hold a hearing. The Secretary of State and the Governor and the, I believe, Attorney General have got to sign off on the regulations. And that just...you can't do overnight. [LB861]

SENATOR KRIST: Right. [LB861]

SENATOR SCHUMACHER: And so this is anticipating that we're going to have some problems and if we do, it gives us something to work with in this session on a very prompt basis to take command of the situation and to send a very strong message that we do not want or desire to see administrative drag from the department on this particular issue, nor are we going to be satisfied with something kind of patched together rather quickly and on the fly in order to meet that deadline. [LB861]

SENATOR KRIST: Second point is on fiscal note, which legislative fiscal note as you know is the one we go by and it references the Supreme Court fiscal note and the question, the overlying question is, is your intention for this to be absorbed by the state? If so, then the state would absorb the \$330,000-350,000. Is it your intention that it be swallowed by the state or that the county or the courts would take up that cost? [LB861]

SENATOR SCHUMACHER: This is a state problem, at least my intention would be it's a state problem. It's made necessary by a massive state neglect over the last five to ten years. It is something that even the numbers there on the fiscal note or the probability, reasonably cheap compared to what we're going to have to spend on corrections. It's a big, big bill that we have not been told even what the parameters are. As a Legislature, I don't know if we know it's a \$50 million bill, a \$100 million bill, a \$500 million bill. And what concerns me somewhat is in all the fervor of what's going on in the other room in this building today of tax cuts, we've got to come to reality that our state expenses are going to have to reflect these needed things, one of which is the corrections system. And we can't put this off and off and off again until we get whatever tax cuts implemented that some folks think are...have to come first. We have to make this a priority and it would be my intention certainly that this amount of money occasioned by this, if we have to implement it, be on the state's nickel. [LB861]

SENATOR KRIST: Okay. Thank you very much. Any other questions for Senator Schumacher? Senator Pansing Brooks. [LB861]

SENATOR PANSING BROOKS: Thank you, Senator Krist. Thank you, Senator Schumacher. How did you come up with the 90 days? [LB861]

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SENATOR SCHUMACHER: It was arbitrary. I mean, have...sticks...have to have some deadline: 45 may be too short if there's a real discipline problem. I certainly don't want to make it so short that you have a revolving door at the district court level. But if somebody is in there 90 days, that's beginning to be the kind of thing that one has got to ask the question, why does this condition exist? Is there some abuse of the process? Certainly in the Nikko Jenkins case there were suggestions that some of it was not for discipline but for vindictiveness. So I...if the committee feels 60 is more appropriate or 120 is more appropriate, this bill would serve as a vehicle for that. But 90 quite honestly was...seemed reasonable and was quite arbitrary. [LB861]

SENATOR PANSING BROOKS: Well, I just...in light of your bills yesterday regarding mental illness, there's a lot of information out there about how those high number of days really affect those with mental illness and that it isn't necessarily helping the situation at all. So I'm trying to sort of weigh in all of that information. The other thing is I don't know if you know that I have a bill that was about solitary for juveniles and what it was mostly doing is getting data so we know how often it's being used and when it's being used and to whom and gender, duration, and all those things. But one thing it also does is define what solitary means across the state because we had varied, quite varying definitions. Room confinement is a form of solitary. So I'm just wondering for adults is there a definition that is clear...? [LB861]

SENATOR SCHUMACHER: That was in last...that was in last year's bill, Senator,... [LB861]

SENATOR PANSING BROOKS: Okay. [LB861]

SENATOR SCHUMACHER: ...where we defined it. And as we all learned through the Nikko Jenkins thing, there's all kinds of euphemisms for it, but it basically amounts to... [LB861]

SENATOR PANSING BROOKS: So that didn't apply to juveniles though. [LB861]

SENATOR SCHUMACHER: No. [LB861]

SENATOR PANSING BROOKS: We left the...okay. Thank you. [LB861]

SENATOR KRIST: Any other questions for Senator Schumacher? Will you be here at close or are you going back to your Revenue business? [LB861]

SENATOR SCHUMACHER: I might stay for a little bit, but I might...the compulsion to go listen to what's going on over on there (laughter) might overtake me. [LB861]

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SENATOR KRIST: You need to safeguard the money, sir. [LB861]

SENATOR SCHUMACHER: I will say when they came to get me for this hearing, I was just about to start questioning the Governor and maybe it was good that they came to (laughter) get me for this hearing. Thank you. [LB861]

SENATOR KRIST: Thank you, sir. First proponent for LB861. Well, welcome back, Senator. [LB861]

DANIELLE CONRAD: (Exhibit 1) Good afternoon. Senator Krist, members of the committee, my name is Danielle Conrad; that's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I appear today before the committee on behalf of the ACLU of Nebraska. The ACLU of Nebraska is a nonpartisan nonprofit organization that works to strengthen and protect constitutional rights and civil liberties in our great state. We serve over 2,000 members statewide and 500,000 nationally. Last biennium, our position...our organization took a position on over a hundred unique pieces of legislation and our positions prevailed an impressive 68 percent of the time. Today we appear in strong support of LB861. Additionally, we are grateful for the considerable leadership demonstrated by Senator Schumacher and the distinguished set of cosponsors to this measure in addressing the policy, legal, and practical issues surrounding solitary confinement, impacts to intimate mental health, and the overall need to improve conditions of confinement within our prison system which remains in crisis. As noted just a few days ago by The New York Times editorial board, "Solitary confinement, which is often used arbitrarily and to punish minor rule infractions, is a form of torture. It is psychologically damaging even to healthy people and increases the likelihood of suicide among the young and the mentally ill." Let's take a look at the landscape in Nebraska. In 2014 thanks to the good work of the LR34 Committee, we were able to determine that Nebraska was indeed an extreme outlier in the use of solitary confinement, wherein surveys conducted by that committee demonstrated that about 18 percent of our prison population was in solitary confinement at that time. In 2014, the ACLU of Nebraska also published three groundbreaking reports detailing the conditions of confinement in this...this serious problem in Nebraska, which I've redirected your attention to if you'd like to revisit those. In 2015 we proudly worked cooperatively with this committee, with the Department of Corrections, and with Senator Schumacher to establish a process for meaningful reform and those are important first steps. But more must be done and this is a critical vehicle to bring forward increased oversight, independent judicial review, and to ensure the needs of the most vulnerable are being met. We would suggest that the committee even look to strengthening this concept by potentially providing pro se forms to ensure judicial efficiency and access for inmates who need to utilize this process if adopted and/or appointment of counsel to assist inmates who are working through this system. The current system wherein an inmate would have to challenge their conditions of confinement or segregation are limited at best. It calls for internal review, an exhaustion of remedies, there are some civil rights statutes they could be invoked. There are

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habeas petitions that could be looked at. But the fact of the matter remains is that that is a very difficult process to ensure meaningful relief. This is a forward step in the right direction. [LB861]

SENATOR KRIST: Senator Coash, you want to? [LB861]

SENATOR COASH: Please continue. [LB861]

SENATOR KRIST: Any questions for Ms. Conrad? Thank you so much for coming. [LB861]

DANIELLE CONRAD: Thank you. [LB861]

SENATOR KRIST: Next proponent for LB861. Seeing none, how about opponents for LB861. Welcome. [LB861]

SCOTT FRAKES: (Exhibit 2) Senator Krist. Good afternoon. Chairman Krist, members of the Judiciary, my name is Scott Frakes, spelled F-r-a-k-e-s, first name S-c-o-t-t, the Director of the Nebraska Department Correctional Services and I'm here today to testify in opposition to LB861. I've met with Senator Schumacher regarding this legislation and understand that he has introduced the bill as a placeholder in case that the rules and regulations on the use of restrictive housing as required by LB598 are not completed on time. The rules in question are under development. The next Restrictive Housing Work Group meeting is scheduled for February 24 and will focus solely on creating the language for the promulgated rules and regulations. The rules will be completed and promulgated in advance of the July 1, 2016, statutory deadline. My opposition testimony today is based upon the language of the bill as drafted and not my conversations with Senator Schumacher about his rationale for introducing the bill. As drafted, LB861 creates a right for inmates held in restrictive housing over 90 days to seek a review of this decision by the district court. My primary opposition to the legislation is in creating a liberty interest in how an inmate is assigned housing while incarcerated. Inmates have a due process right and the opportunity to challenge disciplinary actions while incarcerated, including judicial review, but this right does not extend to custody classification decisions of the department. The courts have repeatedly held that, absent an atypical hardship, administrative decisions related to housing assignment do not rise to the level of a liberty interest. There are also a number of questions that the proposed language does not address which create concerns including: What is the standard to be utilized by the court in conducting the review? What remedies can the court order? Who represents the state on the issue? Is the inmate entitled to attend the hearing? Do they have a right to counsel? And if so, is representation provided? As a result of these issues, I am in opposition to LB861 as introduced. In closing, the department is moving forward on implementing the restrictive housing provisions of LB598 by July 1, 2016, and as Senator

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Schumacher has indicated, this legislation is not needed if the required improvements are implemented. Thank you for the opportunity to testify today and I would be happy to answer any questions you may have. [LB861]

SENATOR KRIST: Any questions for Mr. Frakes? Senator Chambers. [LB861]

SENATOR CHAMBERS: Mr. Frakes, the Legislature has a right to create a liberty interest wherever it chooses. Do you agree with that or disagree with it? [LB861]

SCOTT FRAKES: I agree that they do. [LB861]

SENATOR CHAMBERS: So you're not saying they we're doing something unconstitutional. You're just saying that as a matter of policy based on the way you feel a Corrections Department ought to be operated, there should not be a liberty interest created in this set of circumstances, or am I misunderstanding you? [LB861]

SCOTT FRAKES: You are correct. No, you expressed it correctly. [LB861]

SENATOR CHAMBERS: Okay. [LB861]

SENATOR KRIST: Any other questions for Mr. Frakes? Thank you very much for coming. [LB861]

SCOTT FRAKES: Thank you. [LB861]

SENATOR CHAMBERS: I have one other question. I want to be... [LB861]

SENATOR KRIST: Senator Chambers, I'm sorry. [LB861]

SENATOR CHAMBERS: So if we do...if we decided to do what the bill says, what are you going to do? [LB861]

SCOTT FRAKES: Follow the bill, follow the law. [LB861]

SENATOR CHAMBERS: You're getting smarter. That's all that I have, for real. [LB861]

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SENATOR KRIST: Thank you, Mr. Frakes. [LB861]

SCOTT FRAKES: Thank you. [LB861]

SENATOR KRIST: Thank you, Senator Chambers. Any other opposition to LB861? Any neutral testimony for LB861? Senator Schumacher to close so you can get back to Revenue. [LB861]

SENATOR SCHUMACHER: I wonder if I should talk really slow. (Laughter) [LB861]

SENATOR KRIST: You could just grab one of these chairs and stay with us if you want to. [LB861]

SENATOR WILLIAMS: Ask yourself questions. [LB861]

SENATOR SCHUMACHER: Well, you know, that's an idea. [LB861]

SENATOR KRIST: I do have a legitimate question for you if you'd like to take it. [LB861]

SENATOR SCHUMACHER: Okay. [LB861]

SENATOR KRIST: Okay. Chronology might be a problem with this bill based upon priority and hearing it and those kinds of things. And I just wondered if you thought through that in terms of where you would draw a line to asking us to get it out, report it out, and then to get heard if it need be. [LB861]

SENATOR SCHUMACHER: We probably should review that in time for a Speaker priority. I would anticipate if for some reason these regulations do not come out as flavored, this may be one of those times you suspend the rules. But we've got a lot of options right up to pretty close to the end. And I don't think the Speaker would want to use a priority, nor probably would the committee. But the priority issue I have a feeling on this one may not be that big an issue because we could suspend the rules and bring it up for a vote. Hopefully we won't need that. [LB861]

SENATOR KRIST: I also think that just for legislative record for this hearing, people need to understand that it's possible to tack this on to something that does have a priority and get it to the floor. [LB861]

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SENATOR SCHUMACHER: Correct. [LB861]

SENATOR KRIST: So knowing what status we're in by the end of March would be very helpful one way or the other. [LB861]

SENATOR SCHUMACHER: Okay, and as soon as I see those regulations and get a report from the work group as to whether or not they feel they do the trick, I'll certainly let the committee know on that particular case. If we need to advance it, we'll go ahead and advance it and we'll deal with it. But I am, not only with corrections but with those things I think we got a hint of yesterday--not a hint, it's been just a continuing pattern from DHHS--the Legislature may have to get a big set of teeth when it deals with some of these agencies who, maybe even despite best the efforts of their leadership, are just run into bureaucratic resistance to doing anything any different. And we may have to bite. [LB861]

SENATOR KRIST: Okay. Thank you, sir. Senator Pansing Brooks. [LB861]

SENATOR PANSING BROOKS: Thank you, Senator Krist. Senator Schumacher, so does your...I can't really tell, did you intend your language to include current inmates and people who might currently be in? It didn't seem like it necessarily included inmates who are currently serving and whether that would apply to them as well. [LB861]

SENATOR SCHUMACHER: I would guess once a goes into effect on 90th day that may mean that some that have been in there for a while may not have it on the 90th day. But you're in there 90 days, that's all... [LB861]

SENATOR PANSING BROOKS: The intention is even if they're at 120 by the time it goes into effect, it still...it would apply. [LB861]

SENATOR SCHUMACHER: Right. No, if they're in there 90 days, something's wrong. [LB861]

SENATOR PANSING BROOKS: Or more. Okay. Thank you. [LB861]

SENATOR KRIST: Thank you. [LB861]

SENATOR PANSING BROOKS: I wanted that on the record. [LB861]

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SENATOR KRIST: Any other questions? Well, sorry, but you have to go back to...oh, I'm sorry. Senator Chambers. [LB861]

SENATOR CHAMBERS: That's okay. Senator Schumacher, we are practical people. We are result oriented. And when we set out to get a result, we don't care what means would be utilized if that result arrives. But if it doesn't, then we have many tools in our toolbox with which to bring about the desired result, don't we? [LB861]

SENATOR SCHUMACHER: I think we've got plenty and it's just a matter of the will to use them. [LB861]

SENATOR CHAMBERS: I just needed reassurance. Thank you. [LB861]

SENATOR SCHUMACHER: All right. [LB861]

SENATOR KRIST: Any other questions? Thank you for coming, Senator Schumacher. [LB861]

SENATOR SCHUMACHER: Thank you. [LB861]

SENATOR KRIST: Senator Coash. [LB861]
[LB861]

SENATOR COASH: Thank you. Okay, we are going to open the hearing on LB910. Senator Bolz. Welcome, Senator Bolz. [LB910]

SENATOR BOLZ: (Exhibits 1 and 2) Thank you. I am Senator Bolz; that's K-a-t-e B-o-l-z, and I have served with many of you on the Department of Correctional Services Special Investigative Committee. We, of course, have continued to work hard to promote the goals of justice, public safety, and common good in improvements in our corrections system. One area where more work is to be accomplished is within our Board of Parole. As a part of the recommendations of the Special Investigative Committee, I brought legislation to this committee last year which created an independent Board of Parole. And this committee along with the Legislature passed that change as a part of LB598. I think it's important to start this conversation with a discussion about the importance and value of that change. The purpose, in addition to creating a more independent-minded Board of Parole, was also to create more evidence-based practices, to seek better oversight for the services contracted by the Board of Parole, and to contribute to transparency, credibility, and efficiency. And it did so by creating a transition plan, offering additional staff members to the Board of Parole, and allowing the Board of Parole to make

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decisions independent from the oversight of the Department of Correctional Services. So with those goals in mind, I want to bring you in LB910 which I bring to you at the request of some stakeholders that I've been working with as LB958 has been implemented including the Governor's Policy Research Office. So I want to do my best to, in a fair manner, describe how we've gotten here. The bill itself would do some simple things. It would continue the ability of the Inspector General in his capacity to be an Inspector General including the Board of Parole. It would give the Board of Parole some capacity to hire and fire a parole administrator. But the heart of the issue is the time frame and the expectations for the transition to independence. There are several factors to consider as we think about those time frame issues and our expectations of the people working on the independence initiative. I would do my best to provide a fair analysis of the history here. As you know, the Department of Correctional Services and the Board of Parole have had a lot on their plates in terms of implementing LB605 and LB598. But as you also know, a transition plan was required by LB598 to be submitted to the Legislature by December 1. I have a copy of that version of the plan available for your review if you have interest. But the plan did not include several of the things I had expected it to include such as a business plan and a time frame and an organizational chart for how this roadmap would come together for transitions. There have been other challenges as well. The hiring of the employees required by the bill did not move forward on schedule and the transition coordinator, as I understand it, is in the process the being replaced. At the same time, a work group has been convened by both Director Frakes and Chairwoman Cotton and they've been in communication with me and with our branch of government. So I bring this to you and along with you I will listen carefully to the testifiers. The criteria that I think are important to think about in evaluating the progress and whether or not we need to implement LB910 are clear planning and benchmarks, appropriate staffing, and the depth of analysis being done to ensure quality implementation of the transition. So I will listen along with you and I hope to support the committee's judgment in how we move forward whether it is maintaining the original plan in LB598 or making adjustments as reflected in LB910. I'd be happy to answer any questions.
[LB910]

SENATOR COASH: Thank you, Senator Bolz. I don't see any questions. We're going to start the proponent testimony on LB910, those here to support the bill. General. [LB910]

DOUG KOEBERNICK: Sorry about that. I thought there might be somebody else jump up there.
[LB910]

SENATOR COASH: No problem. [LB910]

DOUG KOEBERNICK: Good afternoon. My name is Doug Koebernick, spelled K-o-e-b-e-r-n-i-c-k, and I am the Inspector General of Corrections. I was appointed to this position in September

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of 2015, so I've been on the job for just shy of five months. I'm here to briefly testify in support of LB910, specifically the first three sections of the bill that clarify my office's jurisdiction over the Adult Parole Administration. In December, I realized that once the Parole Administration transitioned from the Department Correctional Services to the Board of Parole, that my jurisdiction would end. I believe this to be a simple oversight by the Legislature when they passed LB598 and brought this to the attention of the Judiciary Committee and Senator Bolz. I would like to thank Senator Bolz for addressing this issue in this bill and urge your support of this legislation, at least the first three sections. [LB910]

SENATOR COASH: Thank you, Inspector General. I don't see any questions from the committee. Appreciate your testimony. Take the next testifier in support. Seeing no other testifiers in support, we'll now go to opposition testimony. Is there anyone here to testify in opposition of LB910? Okay. Is anyone here to testify in a neutral capacity? Welcome. [LB910]

ROSALYN COTTON: (Exhibit 3) Thank you, Senator Coash. Members of the Judiciary Committee, my name is Rosalyn Cotton, R-o-s-a-l-y-n C-o-t-t-o-n, chairperson of Board of Parole. I have been serving on the Board of Parole since August of 2005. Senators, I have taken my ten years of service seriously. I do consider parole a very important function of the criminal justice system. I'm here today to testify neutral on LB910. May 2015, LB598 was passed. In Section 27, 83-188 stated that employees of the Board of Parole shall consist of the following: administrative staff to be one legal counsel; one fiscal analyst, policy analyst, or data analyst; and at least one staff to assist with daily supervision and training of employees of the board. LB598 fiscal note fiscal year 2015-16 requested a transition director to be hired assist the Board of Parole with development and implementation of a strategic plan to transition the supervision of the Office of Parole Administration from Department of Correctional Services to the Board of Parole. On August 15, 2015, a transition director was hired. The transition director then provided to the Board and Department of Correctional Services an outline of deliverables. A report was submitted to the Legislature on December 1, 2015. On January 4, 2016, the contract of the transition director was terminated. Currently, the board is working on hiring a new transition director we hope to have on board and hired by February 16, 2016. Senators, the board has been working very hard on hiring legal counsel, administrative staff, and a Director of Supervision and Services. These positions are now posted. Currently, the Board is working on a personnel questionnaire for a Budget Officer II position. Since August 2015, the board has been working just as hard on creating parole guidelines. In September 2015, all board members attended a new board members training held in Denver, Colorado. The Board continued to work on preparation to hire staff while working on parole guidelines and requirements of LB605. A meeting was held on December 16, 2015 with Senator Bolz and Senator Seiler regarding the transition of parole administration. Letters regarding the transfer of adult parole administration were sent to Senator Bolz. Director Scott Frakes and I responded to a letter from Senator Bolz dated December 31, 2015, regarding the time frames of the transfer of parole administration to the Board of Parole.

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On January 5, 2016, Director Frakes and I sent Senator Bolz a letter regarding the development of a business plan for transition of the Board of Parole, budget, and other administrative plans. We also started a work group that would meet weekly until the transition is completed. As of January 19, 2016, the work group consists of three board members--Randall Rehmeier, Teresa Bittinger, and I--the Department of Correctional Services Mike Rothwell and Cathy Gibson-Beltz. We will be ready to submit a business plan by March 1, 2016. Senators and members of the Judiciary Committee, the board has been working very hard on developing guidelines, participating in work groups pertaining to custodial sanctions, matrix, and reentry. The board continues to work with Department of Correctional Services regarding the transition of adult parole administration to the Board of Parole. We now stand ready to make this transition take place by July 1, 2016, and updates will continue to be shared with the office of Senator Bolz and Senator Seiler. Now before I end this, I would like to share with members of the committee that this transition director that we're expected to hire in February 2016, bring a wealth of information and qualifications to help us with this transition, basically one of the concerns that I have as the chair is how we're going to make this transition work and so that they would be ready for July 1. And the person that we're interested in has organization structure, labor relations, salary (inaudible), personnel contracts, information technologies, and policies and procedures qualifications so that he would help us bring this on and make this happen by July 1. At the same time, I would like to add that the actual director of supervision of services will be the liaison between the Board of Parole and Parole Administration and the coordination with our agency attorney. And they're going to be responsible for organizing and directing of Adult Parole Administration's supervision and case management, program delivery, and training services in accordance with the best practices, provide oversight of behavioral health and substance abuse services developed or contracted by the Board of Parole. Also, they will be able to analyze data for transfer review of parole hearings and implement applicable changes as needed and assist the Board of Parole and Adult Parole Administration with technical support, human resources, agency budget, and fiscal control. At this particular time I would like to end this by saying thank you very much and I will be willing to answer any questions at this time. [LB910]

SENATOR COASH: Thank you, Ms. Cotton. I appreciate your service. I've got a...I'll start off with a couple questions. Well first of all, the last statement in your testimony says that you stand ready to make this transition by the date of July 1, 2016, which is the original date. [LB910]

ROSALYN COTTON: That is correct. [LB910]

SENATOR COASH: So it sounds to me like your testimony says you don't need an extension to get this done. [LB910]

ROSALYN COTTON: That is correct, sir. [LB910]

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SENATOR COASH: With regard to the transition director, I want it to be clear for the record in your testimony you said the director was hired, and then later he said that the contract of the director was terminated. Was this book person an employee of the department...of the Board of Parole or a contractor with the Board of Parole? [LB910]

ROSALYN COTTON: No, originally in August of...August 15, 2015, we actually hired a transitional director. That is the very first one. His contract was terminated January 4, 2016. We have since then been looking at trying to hire a new transition director in order to lead us and hope that we will be able to grow our... [LB910]

SENATOR COASH: But you had one. [LB910]

ROSALYN COTTON: We had one already. [LB910]

SENATOR COASH: And...but you...in your testimony you said he was hired. So he was an employee? [LB910]

ROSALYN COTTON: No, he was not an employee. He was a contractor. [LB910]

SENATOR COASH: Okay. So his contract began in August of... [LB910]

ROSALYN COTTON: 2015. [LB910]

SENATOR COASH: 2015. And his contract ended. [LB910]

ROSALYN COTTON: In January. [LB910]

SENATOR COASH: All right. I just wanted to make sure. Do you know, is it the Board of Parole's discretion whether or not this position is a hired...an employee of the Board of Parole versus a contractor of Board of Parole? [LB910]

ROSALYN COTTON: Are you talking about the transitional director? [LB910]

SENATOR COASH: I'm talking about the transitional director. [LB910]

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ROSALYN COTTON: The transitional director was, according to LB598, was only hired for nine months in order to help us with the transition... [LB910]

SENATOR COASH: Okay. [LB910]

ROSALYN COTTON: ...of the actual program. The director of supervision services will be a discretionary position that will be hired to help us with the liaison part of the Parole Board and administration. [LB910]

SENATOR COASH: Okay. You've cleared it up for me. I appreciate that. Thank you, Ms. Cotton. Senator Krist. [LB910]

SENATOR KRIST: Just want to remark and thank you for your leadership in terminating that contract. That, to me, was not a good fit for what you needed in terms of transition, so good call on your part. [LB910]

ROSALYN COTTON: Thank you, sir. [LB910]

SENATOR COASH: Thank you, Senator Krist. I don't see any other questions from the committee. Thanks for coming down, Ms. Cotton. [LB910]

ROSALYN COTTON: Thank you. [LB910]

SENATOR COASH: We'll take any other testimony in a neutral capacity. Welcome. [LB910]

RANDALL L. REHMEIER: Good afternoon. Thank you. Good afternoon, Senators and members of the Judiciary Committee. My name is Randall L. Rehmeier; that's R-a-n-d-a-l-l, Rehmeier, R-e-h-m-e-i-e-r. By way of background I've been involved in the criminal justice system in one capacity or another for over the last 40 years. And I've been on the Board of Parole for the last year. So I've been a member of that board for this past year and I'm appearing in that capacity and generally supplementing the testimony of Ms. Cotton, our board chairperson. I started a year ago January. Things went pretty simple and easy the first month. And then after that we had LB605 and we had LB598 and the contour became a little bit different. And so we've been scrambling, we've been doing a lot of hard work and spending a lot of extra hours trying to get things fit together and I think that things are moving in that direction so I'm appearing here to testify in a neutral capacity. But what I'm really saying is with regard to LB910 which is what we're talking about today, it is my belief along with that of Ms. Cotton that she just shared with you that we're going to be in a position to be able to get this thing worked out prior to and on

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July 1 of this year, 2016. So I'm appearing in that capacity. And I don't want to be redundant it to her testimony, but we did have the transitional director. Senator Krist touched upon that. There's been a change. I think that that was a good thing. And we're working, Senator Bolz testified, with regard to the business plan. And certainly I agree with that. And we've been working very diligently in that area. And since the first of the year I would share with you that we have the transitional work group that Ms. Cotton testified about and we're working on various issues--the business plan, the organizational chart, personnel issues, policy issues and procedures, support services, budgetary issues, parolees services, transfer of assets such as vehicles and furniture. So there's a lot of moving parts to this. But the work group I think is going to be of great assistance to the new transitional director. And we also have Cathy Gibson-Beltz who is the current Parole Administrator which of course she is still under the Department of Corrections. But Director Frakes has assigned her full time to helping with this transition so that is very valuable. We met earlier this week. I have another meeting tomorrow morning with regard to the transitioning. I want to touch just for a second on two little minor issues. So the main issue I want to talk about was we are of the position that we're going to be okay by that date of July 1. That's the test a central part of my testimony. The other... [LB910]

SENATOR COASH: We'll stop you there and then I'm going to ask you hit those two points since your red light is on. [LB910]

RANDALL L. REHMEIER: Okay. Okay, I'm sorry. Thank you. The two points would be the inspector general talked about and...Section 3 which is the top portion dealing with the Parole Administration. Now that basically refers to...it's a little bit confusing to me looking at it. It deals with the documents maintained by the department. And so the Parole Board is created by the constitution implemented by the Legislature in conformance with that. So there's a an issue or two with regard to exactly what we're talking about in Section 3. The other issue, and then I'll be done, would be dealing with the parole administrator and that is in Section 6, Section 6. And currently the parole administrator is hired by the director...appointed by the director, approved by the Board of Parole. So there had to be a change when that shifts over to the Board of Parole. And so it provides for the chairperson the board to hire. But then it also talks about firing or releasing and that part is the part that might or might create an issue. Currently the administrator is controlled under the state personnel system as are the employees of the Parole Board. So this would appear to be creating some type of a discretionary type of position. So currently she's protected under the state personnel system. This is changing that. And whether or not it was intended to or not I'm not quite sure. So that would be the other two parts. [LB910]

SENATOR COASH: Okay. I see Senator Bolz making notes back there. [LB910]

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RANDALL L. REHMEIER: Okay. I'd be happy to talk to Senator Bolz to share that with her. [LB910]

SENATOR COASH: I'd encourage you to do so. [LB910]

RANDALL L. REHMEIER: Okay. [LB910]

SENATOR COASH: Appreciate your testimony. Let's see if we have any questions? Seeing none, thank you. [LB910]

RANDALL L. REHMEIER: Thank you very much, Senators. [LB910]

SENATOR COASH: Is there anyone else here to testify in a neutral capacity? Welcome. [LB910]

SCOTT FRAKES: (Exhibit 4) Senator Coash, members of the Judiciary...I'm on the right page. Here we are. My name is Scott Frakes, spelled F-r-a-k-e-s. I'm the director of the Nebraska Department of Correctional Services. I'm here today to testify in a neutral capacity on LB910. LB910 proposes to delay the transition of parole administration from the Department of Correctional Services to the Parole Board from the date July 1, 2016, to January 1, 2017, changes the appointment process for the parole administrator and expands the authority of the Inspector General for Corrections to include the Office of Parole Administration. As Chairperson Cotton indicated in her testimony, the board and NDCS are working on implementing the transition of Parole Administration to the board as required by LB598. We've had discussions with Senator Bolz and the committee regarding the proposed time frame for the transition and appreciate the proposed language in LB910 to delay the transition by six months. As you've already heard, a work group has been formed. I've selected the current Parole Administrator Cathy Gibson-Beltz to coordinate the process representing me in that work group. The work group is making progress--I think making excellent progress and I will also be at the meeting in the morning--and has agreed that an additional six months is not needed to accomplish the transition. A six-month extension results in the transition occurring in the middle of the fiscal year. This creates budget and logistical issues which would offset the benefits of extending the transition date. The department and the Parole Board request that the transition date remain July 1, 2016, as currently required by statute. We're confident that such a transition can be accomplished and have committed to keeping Senator Bolz and the committee updated on the transition progress. Thank you for the opportunity to testify today and I would be happy to answer any questions. [LB910]

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SENATOR COASH: Thank you, Director Frakes. Senator Chambers. [LB910]

SENATOR CHAMBERS: A comment. There are five words in your statement, I heard it all, that really impressed me. In the third line from the bottom: "as currently required by statute". I like that. Thank you, Mr. Frakes. [LB910]

SCOTT FRAKES: Thank you, Senator Chambers. [LB910]

SENATOR COASH: Thank you, Senator Chambers. I don't see any other questions. Thanks, Director. Is there anybody else here to testify in a neutral capacity? Seeing none, Senator Bolz, would you like to close? [LB910]

SENATOR BOLZ: Briefly in closing, there are two pieces that I think are important in terms of timing and process. I think that it is important for our legislative branch to hear confirmation that the hiring of the transition coordinator moves forward as planned. And I think it's important that we receive the updated transition document, as the director has committed to sharing with me before the end of the month. So I think those two pieces are important pieces of this puzzle so that we can have a confirmation that things can move forward and ultimately so that this committee can make the decision that they believe is in the best interest of the state. So with those final comments, I'll conclude and answer any questions. [LB910]

SENATOR COASH: Senator Krist. [LB910]

SENATOR KRIST: I really admire you moving forward and keeping track of that piece of legislation. And I enjoyed serving with you on a special committee and continue to serve with you. Your attention to detail on this is going to pay big dividends for everyone and cooperatively. So thank you very much. [LB910]

SENATOR COASH: Thank you, Senator Bolz. [LB910]

SENATOR BOLZ: Thank you. [LB910]

SENATOR COASH: Okay, that will close the hearing on LB910 and we will open the hearing on LB679, Senator Krist. [LB910]

SENATOR KRIST: If this takes more than ten minutes it's because you ask too many questions. Good afternoon, Senators, my fellow members of Judiciary Committee, and Vice Chairman

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Coash. For the record, my name is Bob Krist, B-o-b K-r-i-s-t. I represent the 10th Legislative District in northwest Omaha along with north-central portions of Douglas County which includes the city of Bennington. I appear before you today in introduction and support of LB679. This is a bill to help increase data collection for an annual report of the community corrections division of the Crime Commission. It has become clear in the past five years that we need more and more accurate data reporting to all state agencies. In this statute, specifically the Crime Commission is tasked with producing an annual report on all community corrections facilities and programs in the state of Nebraska. The language in the statute is somewhat limited and this bill is needed to correct that. It makes it clear the data is to be shared between the agencies running the facilities and the programs in the Crime Commission for accurate reporting to the Legislature. The bill broadens the scope of the existing language to more accurately capture what data is needed for this report to convey the success of the programs we are funding for Community Corrections and tracking their progress. Thank you and I'd be happy to answer questions. And I'll point out to you that the only changes really, substantive changes, are on page 3, lines 17 where we very specifically list: "Services, programs, assessments, case management, supervision, and tools provided for" "in the program, or under the supervision of a governmental agency in any capacity". And that's the expansion of language. [LB679]

SENATOR COASH: Thank you, Senator Krist. No questions from the committee. We'll take the next...we'll take the first testifier in support of LB679. Welcome. [LB679]

DARRELL FISHER: Good afternoon, Senator Seiler...excuse me, Senator Coash, members of the Judiciary Committee. My name is Darrell Fischer, spelled D-a-r-r-e-l-l, Fisher is F-i-s-h-e-r, and I'm the executive director of the Nebraska Commission on Law Enforcement and Criminal Justice, otherwise known as the Crime Commission. I'm here today as the crime...I'm here today to testify support of LB679 and I want to thank Senator Krist for carrying this bill for our agency. LB679 is an uncomplicated bill. All we are looking to accomplish is to enhance the language in 47-624 of the Community Corrections Act so there is greater understanding of the data we need from the agencies providing community correctional programs and services in the Nebraska. We've had some difficulty collecting data since 2010 when LB864 created the reporting requirement. We feel the new language proposed in this bill will go a long way to helping the community corrections division staff as they work with other agencies to collect the necessary data to create a meaningful report. This report will provide the information the Governor and the Legislature needs annually to help guide the budget process. This concludes my testimony and I will be happy to answer any questions you may have. [LB679]

SENATOR COASH: Thank you, Mr. Fisher. Senator Chambers. [LB679]

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SENATOR CHAMBERS: Mr. Fisher, do you remember when you appeared before us with reference to your confirmation? [LB679]

DARRELL FISHER: Yes, sir. [LB679]

SENATOR CHAMBERS: Do you remember some complimentary remarks I made referenced to some of the views you expressed? [LB679]

DARRELL FISHER: Yes, sir. [LB679]

SENATOR CHAMBERS: You don't remember. He probably went shock and his brain shut down. [LB679]

DARRELL FISHER: Actually, sir, I kept the transcript. (Laughter) [LB679]

SENATOR CHAMBERS: Now when it comes to looking at whether or not an officer's conduct would merit action being taken by the commission, is there a statute of limitations or does...let me put it this way. I don't think that the commission when it takes action against an officer's certificate is doing it by way of punishing the officer. The design is to maintain the integrity of law enforcement and make sure that those who are certified are living up to those standards. That's my view. [LB679]

DARRELL FISHER: I would agree with that, sir. [LB679]

SENATOR CHAMBERS: So I don't know whether there would be necessarily a statute of limitations because if an inappropriate act had been committed then that act does not go away and the commission is freestanding. It's not like a court of law. It's not like...it may be analogized to the Counsel for Discipline of the Supreme Court when it comes to lawyers. There's no statute of limitations on lawyer misconduct, judicial misconduct because it's not the individual. It's the integrity of the institution that's important. So you might be hearing something from me in a few days. [LB679]

DARRELL FISHER: Very well, sir. [LB679]

SENATOR CHAMBERS: And I'm going to tell you why I remember this man. It's not just because he has gray hair and a gray beard. That helps. But I was really impressed by a comment you made about some people...some tension may have been created because you had people who

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you may have deemed your friends but when action was necessary, even where they were concerned your job and the promise you had taken to do it correctly meant that you couldn't play favorites and wouldn't even for a friend or an associate. And I never forgot those words. [LB679]

DARRELL FISHER: Very well, sir. [LB679]

SENATOR CHAMBERS: That's all that I have. Except this, if I have something to say about a person that might be complimentary or encouraging, I don't think it does that person any good if I wait until he's pushing up clover and then you say it where people who are here might hear it. But maybe if it had been said to that person maybe he or she could have been kicking around for a year or two more. [LB679]

DARRELL FISHER: Thank you, sir. I hope the pushing up daisies and the gray hair aren't synonymous with one another. [LB679]

SENATOR CHAMBERS: Okay. That's all that I have. [LB679]

SENATOR COASH: Thank you, Mr. Fisher. I don't see any other questions. Appreciate your testimony. [LB679]

DARRELL FISHER: Thank you, sir. [LB679]

SENATOR COASH: We'll take the next testifier in support of LB679. Seeing none, is there anyone here to testify in opposition of LB679? Is anyone here to testify in a neutral capacity on LB679? Okay. Seeing none, Senator Krist is waiving his closing. We will close the hearing on LB679. We will open the hearing on LB1023. Senator Ebke. [LB679]

SENATOR EBKE: Thank you, Vice Chairman Coash and fellow members of the Judiciary Committee. My name is Laura Ebke, L-a-u-r-a E-b-k-e, I represent the 32nd Legislative District. I'm here to open today on LB1023. This legislation was brought to be rather circuitously by community providers, the behavioral health regions, and Senator Pansing Brooks, to enable the behavioral health system to plan for reentry of offenders into our communities. The goal is as seamless as possible move from behavioral health services delivered inside correctional facilities to continuing those services provided by community providers outside a facility when an offender is released. All of these entities share a commitment to help offenders receive mental health and substance use treatment to successfully return to their lives. Although there have been significant efforts by the new administration to deal with treatment issues inside the correctional

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system, this legislation is critical to ensure that service continues if needed in communities and that providers in our communities are part of the planning and delivery of services. One of the key problems in the past is the release of offenders with a mental health, substance use diagnosis, or both and we have no idea whether they are accessing services, taking their medications, and keeping out of trouble. We must take responsibility for those who need these services if we really want to do something about the number of inmates in our prison system. Section 3 of the bill is language that requires a needs assessment by corrections facility so the Appropriations Committee has an idea of number of committed offenders who need services for budget planning. Testifiers behind me will go into more detail on the coordination of these services and how this framework will aid in planning. I should note that there is ongoing discussion with several interested parties and that we very well may have an amendment for the committee to consider prior to an executive session. I would thank you for taking time to be a part of this hearing and I'm available to try to answer any questions should you have any. [LB1023]

SENATOR COASH: Okay. Thank you, Senator Ebke. I don't see any questions from the committee. We'll open up to proponent testimony. Welcome. [LB1023]

TOPHER HANSEN: (Exhibit 1) Thank you. Senator Coash, members of the committee, my name is Topher Hansen, T-o-p-h-e-r H-a-n-s-e-n. I'd first like to thank Senator Ebke for introducing this bill and Senator Pansing Brooks for supporting it. My background is I'm the president-CEO of CenterPointe which is a treatment program here in Lincoln. I also serve on the executive committee of the Nebraska Association of Behavioral Health Organizations and I sit on the board of directors for the National Council for Behavioral Health. I appear here today on behalf of NABHO. As to the testimony being handed out, I'm jumping around a little bit on the paragraphs to trim the time down. So in paragraph three I'll start. From the 50,000 foot view there's a common thread that weaves through child welfare, juvenile justice, school systems, adult criminal justice and corrections, homeless shelters, and other public sector services. Mental illness and substance use is that common thread. Nebraska is fortunate to have service providers for mental health and substance use disorders across the state that understand and employ best practices for these two chronic and often complex illnesses. Using this provider expertise in an integrated approach with the Nebraska Department of Corrections to address the mental health and addiction issues while an individual is confined capitalizes on a developed work force and increases the likelihood that issues can be addressed in a way that will reduce recidivism. LB1023 requires that coordination begin 90 days before a person is released from the Nebraska Department of Corrections. In the treatment provider of community, discharge planning begins at admission. Much like a lawyer develops the closing argument before organizing the elements of their case, the outcome we hope to achieve with a person in treatment is where we start. The same is true here. Then a detailed, comprehensive assessment for all the issues is developed followed by a treatment and recovery plan. Implied in this process is that an array of services is in place that can address the various needs of the individual. These services should be

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individualized, focused on the person, integrated as to mental health and substance issues, and supported by an interdisciplinary team of therapists, medical staff, case managers, and others as indicated. If the hope is to help people get better from their mental health and substance problems then this is the state-of-the-art-approach to quality care that will help us towards that outcome. The 90-day transition discussed in LB1023 is critical to success in the community. Without an adequate transition plan people released face a very high likelihood of relapse and continued troubles. Without it, they will fall on the doorsteps of the community safety net--that is hospitals, jails, and shelters. These systems are already over utilized. With a coordinated transition, the recovery plan developed while individuals were incarcerated can be supported thereby increasing the likelihood of a successful reintegration into their home community. If we're going to develop this coordinated system of care then sufficient dollars need to be invested in the community-based provider systems that allow them to develop the capacity for the additional utilization. It does not exist now. This bill takes an important step in our investment--not our expense but our investment--in helping people recover from issues that have led to incarceration. If it is done well, we can realize greater success for those reintegrating into their home community, thus the investment. If we take shortcuts we will turn our investment into an expense and be less likely to realize significant changes in outcomes. Thank you. [LB1023]

SENATOR COASH: Thank you, Mr. Hansen. Senator Krist. [LB1023]

SENATOR KRIST: You were a were a frequent flyer in Health and Human Services when I was there and I appreciated your testimony each time. So one simple question: Where did we start losing the bubble on behavioral and mental health treatment, at what point? Can you point to a situation where things were...? I mean yesterday we heard a law enforcement officer who came in here and said it's been that way for 30 years and it's not going to get any better. Do you agree with that? [LB1023]

TOPHER HANSEN: That problem is way older than I am. In fact, we don't have time here but the roots of this go way back into centuries and our fear of mental health and substance issues and how we used to chain people to hospital apparatus to keep them from wandering around just because they had substance and mental health issues. We obviously have evolved since then. We're no longer bleeding people for fever either. But general medicine has come a lot further faster than has the mental health and substance use arenas. We are there now. Science teaches us a lot about what these illnesses are. These are brain illnesses. And we know that we have to serve this organ just as well as we have to serve these organs and so we're on the cusp of making some headway and the irony is the more we neglect, the more we spend, the worse it gets. And so the worse it gets, the worse it gets. And if we can begin to recognize the science and the best practice and begin to treat these issues then we stop having as many people go to prison, then we stop having as many families fall apart, then we stop the trauma and begin to lessen the expense to our society. It will be an illness that will always occur probably unless science takes some

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huge steps forward but those aren't on the horizon right now. But that aside, we can make progress. We can help people. It's within our grasp. We just need to get the policy and the funding around it to bring it up to par with the rest of how we're addressing medical issues. [LB1023]

SENATOR KRIST: I particularly like your comment about the thread that goes through all the issues. I think my mantra for these past few years has been if we could spend money in the playpen, we'll spend less money in the state pen. And that's that point at which we can start to really emphasize what's going on. Thanks, Mr. Hansen. [LB1023]

TOPHER HANSEN: My comment is similar. I said the youth system ought to be in the business of putting the adult system out of business. [LB1023]

SENATOR KRIST: Very good. Thank you. [LB1023]

TOPHER HANSEN: Thank you. [LB1023]

SENATOR COASH: Senator Chambers. [LB1023]

SENATOR CHAMBERS: Edgar Allan Poe was one of my favorite writers. And he wrote a poem called The Bells which I'm not going to recite. But in that poem was a statement about this creature who laid on the human heart a stone. I think and can never stop thinking about what happened Nikko Jenkins from the time he was about seven years old until now can be laid at the foot, the feet of an uncaring, cruel society. And if I had not been lied to by the former Director of Corrections Bob Houston maybe things could have been somewhat different because I have talked to him about Nikko Jenkins asking, insisting on the treatment. He wanted to be examined. And he made a formal request to be put away, so to speak, to be committed. I was told that his situation was being looked at but it was not. He was released straight from solitary where he had been literally for years into the community. And that was the specific issue I raised with Mr. Houston, that he's coming back into the community where I live and it's not advisable for a person who's been treated the way he was treated to be released in that fashion. Even when it comes to animals and a person is going to accept an abused animal from the Humane Society, they even have what they call a program to redirect this animal's actions, understandings so that when the animal came around people, that animal would know that not everybody is going to be the way the ones who had mistreated him had been. And they call that resocialization. And if this society or parts of it have enough understanding to realize that abused animals need to be resocialized, it shouldn't be hard to understand that a human being needs to go through a process when he spent a goodly portion of his life not only in prison but in solitary confinement. And when...they call it baiting an animal when you treated cruelly, to teach it to fight. And if you bait

that animal, as long as you keep it in a cage then it won't do harm. But if you open that cage door or it escape it behaves the way you would expect it to behave based on the treatment it had received. So when a human being has been abused, debased, treated cruelly as is the case with Nikko Jenkins right now, society does bear a responsibility. And this approach of trying to do something before a person is released is long overdue. But it's better late than never. And I look at that tortured, abused human being but cannot forget the human beings who were killed by him. It's a tragedy all the way around. And now a lot of anger, hostility, and hatred are directed at Nikko Jenkins and that is not hard to understand, especially if your family was victimized by him. But you should look for causes. And if we never eradicate the cause, the symptoms and the problems will continue to persevere. They have what they call this Zika epidemic, which is probably pandemic because it's breaking out all over the world. So steps are being taken to try to eradicate the cause of it which would be the breeding places that the mosquitoes find in order to proliferate. But when we create in facilities controlled and operated by the state and put human beings in those facilities under those circumstances, the fault lies with the society. And even if somehow the state managed to kill him, they haven't removed the problem, and as you pointed out, the cruelty inflicted on people who are mentally ill. One of the statements that really summarizes that is beating the devil out of somebody. It was believed that these people were demon or devil possessed and the way to drive out the devil was to make it so uncomfortable that the devil would leave. But nothing that they did could reach the devil if there was a devil. All of the pain, agony, torture was inflicted on a human being and in some cases that lasted weeks, months, and years. And the ones inflicting the torture had no problem doing it. So I think they had some difficulties, too, and I say all that to say this, I hope that the people who are advocating what this bill is talking about are in it for the long haul and that we will not be disheartened, we will not be discouraged because what is being intended, what is being aimed at is not only right, it's essential not just for the sake of those afflicted individuals but for our own sake as a society. And you just happened to be a sounding board for me today. But I appreciate what you, your colleagues are doing. And the reason I know this bill is going to be a success is because all of the sponsors are females. (Laughter) [LB1023]

SENATOR COASH: Thank you, Senator Chambers. [LB1023]

TOPHER HANSEN: Senator Chambers, we're singing in the same choir. And my hope lies in one courageous and brilliant act which is the shackles I told you about a second ago were melted down and formed into a freedom bell. And that bell rings on behalf of all the people who have been mistreated over the years for mental health especially, but also the substance issues. And it rings for their hope, for their freedom, for society to be free too. And we're not free yet. They are, but we're not. [LB1023]

SENATOR CHAMBERS: I'm old enough to say this without you taking offense: Bless you, my son. (Laughter) [LB1023]

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SENATOR COASH: Thank you, Topher. Appreciate your testimony. We'll take the next testifier in support. Welcome. [LB1023]

C.J. JOHNSON: (Exhibit 2) Good afternoon, Senator Coash, members of the Judiciary Committee, my name is C.J. Johnson, C.J. J-o-h-n-s-o-n, and I serve as the Regional Administrator for Region V. I appear before you today to testify in support of LB1023 on behalf of the Nebraska Association of Regional Administrators, which is comprised of the administrators of the six Regional Behavioral Health Authorities across the state. It is the responsibility of each of the six Regional Behavioral Health Authorities to develop, implement, and coordinate mental health and substance use services at the local level for individuals who have no form of insurance or who are underinsured. In addition, many of the services provided by each region are not covered in private insurance plans or through the state Medicaid plan. The majority of these services are provided by a network of behavioral health providers through contractual agreements. Recovery is one of the driving principles within each region. Therefore, as part of the current infrastructure, there is also supported housing and supported employment programs. Relationships with primary care providers have also been established in each region to promote efforts towards integrated care. LB1023 addresses the need for coordination between the Department of Corrections, the Division of Behavioral Health, Regional Behavioral Health Authorities, and local community providers for individuals who are reentering their local communities after incarceration. The regional administrators support the need for coordination and believe that building on the current infrastructure established in each of the six behavioral health regions is essential as part of the reentry protocols. The Regional Behavioral Health Authorities have a long history of working with community providers to develop services and programs, as well as strong relationships with other stakeholders such as landlords and employers. As additional funding becomes available to support the reentry efforts, the Regional Behavioral Health Authorities look forward to collaborating with the Department of Corrections, the Division of Behavioral Health, and local community providers in developing the needed service capacity. I would like to thank you for this opportunity to express the support of the behavioral health regions regarding LB1023 and am willing to answer any questions you might have. [LB1023]

SENATOR COASH: Thank you, Mr. Johnson. I don't see any questions. Appreciate your testimony. Take the next testifier in support. Welcome. [LB1023]

AMIE JACKSON: Thank you. Good afternoon, Senators. Senator Chambers, thank you for your comments. That was very compelling. My name is Amie Jackson, spelled A-m-i-e J-a-c-k-s-o-n. I work for the Mental Health Association of Nebraska. I once had a prison number and it was 97642. I entered the community two times after being released from prison in 2014. At that time, I had no support and didn't know much about community resources. The second time I was released from prison I had no choice but to go to a traditional transition house that was very

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unhealthy for me. My mental health was triggered daily and I was living there in psychosis. I was seriously contemplating going back to prison because the transition back into the community and society was so stressful. And then I was introduced to the Mental Health Association of Nebraska and peer support and my life changed dramatically. I was finally able to relax and focus on my recovery and become serious about life change because I was working closely with people who shared some of the same life experiences I did. The Mental Health Association of the Nebraska connected me to community resources that I never even knew existed. Now is the time to educate people working closely with those being released from prison to give them hope that recovery is possible. They cannot do it alone. If we have more people doing ground work and providing resources, connections, and supports to those being released from prison, I believe we will see more success stories and less recidivism. I am working with a gentleman now who was released from prison without his diabetic medication, no money, and no place to go. He needed much more help than he received. Mental Health Association of Nebraska is now helping get him plugged into resources and supports to get him his medications. Now I am asking you to please consider this bill as something seriously needed to provide help, hope, and support for so many who have been living without it. Thank you for your time. I'll answer any questions. [LB1023]

SENATOR COASH: Thank you, Ms. Jackson. Appreciate your testimony. Thank you. Take the next testifier in support. Welcome. [LB1023]

MICHAEL DICKEN: Thank you, Senators. My name is Michael Dicken, M-i-c-h-a-e-l D-i-c-k-e-n is how you spell it. I'm here. I do work for the Mental Health Association of Nebraska, but I also was a consumer or active participant within the criminal justice system. I did six years at Nebraska State Penitentiary. And I'm here in support of the bill simply because I feel like we need it. I hear a lot of talk about the clinical aspect and I agree that there definitely needs to be a clinical piece to it. But what I'm not hearing is peer support...well, I heard from my coworkers. And that's basically people with lived experience. I did get out and I was able, through the supports of not only like family but also the Mental Health Association, I was able to get back on my feet. And it's good to have someone there that knows where you're coming from. None of us are licensed clinicians by any means, but we do have that lived experience. And we have, for at least the last year, been working with individuals in corrections whether it's NSP, community corrections in helping them transition. But the biggest thing I hear is just having someone to talk to, be there. We deal with the employment, the housing, the health care. We do that, but I don't want it to think that I'm just pushing MHA's agenda or our agenda. Obviously I work for them. But what I'm hearing from everyone in the room ultimately is that it's not just someone else's problem, but it's our problem, like I am my brother's keeper is a good way to put it. So coming from that point of view I feel like, yes, here is a...we have a community and we have people coming into our community and if we take on, I guess, that...if we take on the thought of I am my brother's keeper then what affects him does affect me and I want my community to be the

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best that it can be. And the only way that that happens is if we do have people that are going to into the prisons and helping them out and letting them get started or giving them at least a leg up a little bit when they get out in knowing that, you know, people care for. I feel like you do your physical time with your time really, from my personal experience, starts when you get out and the stuff that you have to face and having someone there to walk with you along that journey I guess would help. So I'm definitely in support of the bill. Thank you. [LB1023]

SENATOR COASH: Thank you, Mr. Dicken. Senator Chambers. [LB1023]

SENATOR CHAMBERS: My young brother, I want to use you for a sounding board. I appreciate everything you said. But I want to make a comment to our last testifier but I didn't want to say it while she was up here because people sometimes feel a little funny when you make a comment. But she reminded me of something that George Bernard Shaw wrote. He said the difference between a flower girl and a lady is not so much in how she acts as in how she is treated. So when you treat people a certain way, you elicit a certain kind of reaction. And when people are given proper treatment, there's no telling what good things might be produced. I just...I didn't want to say it while she was here because I didn't want to embarrass her. Thank you though. [LB1023]

SENATOR COASH: Thank you, Mr. Dicken. We'll take the next testifier in support. [LB1023]

BRAD MEURRENS: (Exhibits 3 and 4) Good afternoon Senator Coash and members of the committee. For the record, my name is Brad, B-r-a-d, Meurrens, M-e-u-r-r-e-n-s, and I am the public policy specialist with Disability Rights Nebraska, the designated protection and advocacy organization for persons with disabilities in Nebraska. I am here today in support of LB1023. In 2014, we conducted research on mental health and corrections, looking specifically at four areas: the effects of solitary confinement, the mental health treatment in correctional facilities, discharge and reentry planning, and the role of community mental health services postrelease. I have included a copy of our report for your review. The findings of our research mirror some and much of the content of LB1023. I would like to share some of our findings with you today. The transition from incarceration to the community is a crucial time period to address overarching needs and supports to released inmates. A critical component of cross-system work occurs at the transition from jail or prison to the community. Reentry into the community is a vulnerable time, marked by difficulties adjusting and a 12-fold increased risk of death in the first two weeks after release. The multiple problems faced by released inmates are inextricably linked. Releasees must make prioritization of competing immediate needs, and often accessing or maintaining healthcare is a secondary priority, jeopardizing their ability to realize reentry success. A lack of institutional or financial support combined with a disconnected silo infrastructure between human service and correctional systems creates a significant barrier to the successful

reintegration into society for many returning prisoners. An integrated and comprehensive plan for reentry is critical to the successful integration of released inmates into society. The development of both a reentry plan and a discharge plan for inmates scheduled for release is a key determinant of how successful reintegration will be. Effective reentry and discharge plans can help minimize the risk of released inmates falling back on the activities that got them involved in the first place and can improve individual recovery outcomes. The absence of sufficient discharge planning and continuity of medical and mental health services leaves many prisoners without needed care. Fundamental to any effective program for discharge and reentry planning is a strong collaborative partnership between corrections and the agencies or organizations that provide the services necessary for community reintegration. The services provided postrelease must recognize the interrelated nature of multiple needs--that is housing, employment, healthcare, etcetera--and must utilize this broader perspective to provide appropriate services and supports. The Council on State Governments puts it directly: "interventions to reduce recidivism among people with mental illnesses in the criminal justice system need to not only include traditional mental health treatment, but also incorporate new multifaceted strategies." Each system has its own screening and assessment tools and research-based practices. What has been lacking is a truly integrated framework that can help officials at the systems level direct limited resources to where they can be most effective in achieving both public safety and healthcare goals. The first weeks after release is an especially vulnerable time for former inmates. Their immediate needs are particularly high and interrelated. And at that point, I'd be happy to answer any questions the committee might have. [LB1023]

SENATOR COASH: Thank you, Mr. Meurrens. Senator Krist. [LB1023]

SENATOR KRIST: Mr. Meurrens, you were also a frequent flyer when I was on Health and Human Services. And we affectionately referred to Mr. Meurrens as the tree killer because he always brought us a lot of data, all good data. This is a light load for you today. [LB1023]

BRAD MEURRENS: Well, you know, I wanted to take it easy on you in the first few weeks of the session. Wait till we get later on in the session and it might change. [LB1023]

SENATOR KRIST: Thank you, Brad. Thanks for coming. [LB1023]

BRAD MEURRENS: You're welcome. [LB1023]

SENATOR COASH: Thanks. We'll take the next testifier in support of LB1023. Is there anyone here to testify in opposition of LB1023. Seeing none, do we have any neutral testifiers on this bill? Welcome back, Director Frakes. [LB1023]

SCOTT FRAKES: (Exhibit 5) Senator Coash, members of the committee, my name is Scott Frakes, spelled F-r-a-k-e-s, Director of Nebraska Department of Correctional Services here to testify in a neutral capacity on LB1023. LB1023 proposes to require NDCS and the Division of Behavioral Health to develop protocols for the coordination of mental health and substance abuse treatment for offenders during incarceration and upon discharge. The legislation also requires NDCS to complete a behavioral health needs assessment every other year for the next six years. As I've indicated in my communication with Senator Ebke, I wholeheartedly support the concept of developing protocols to coordinate services for inmates transitioning from incarceration back into the community. Developing a culture of reentry and rehabilitation is one of the five leading goals in the department's strategic plan and significant progress has been made since the passage of LB907 and the creation of the reentry division in 2014. The reason that I'm here in a neutral capacity today is that I have questions about some of the language in the bill and its intended effect. Subsection (4) of Section 2 of the bill contains language requiring the department to use community-based services available during incarceration as well as those available at the time of discharge. As I communicated with Senator Ebke, I have questions about this requirement and how it applies to inmates other than those that are classified as community custody inmates, our lowest custody classification within the department. Those inmates currently have the ability to obtain community-based mental health and substance abuse services and I support efforts to improve coordination in this area. If the intent of the bill is to connect higher custody level inmates with community providers, it will require additional funding. Transporting inmates to outside providers from secure institutions requires security escorts which may generate significant overtime and these potential costs have been reflected in our fiscal note. I also have questions about the language providing that NDCS is responsible for coordinating care after inmates have discharged. NDCS has no jurisdiction over individuals who have discharged their sentence and many former inmates are not interested in interacting with the department after release, which complicates the coordination of services. The proper role for NDCS is ensuring that discharging inmates are aware of their treatment needs and options and to provide information on who is discharging from prison and what their needs are to HHS and community providers. A related and critical question that has not been answered is how many individuals leaving prison who require and are seeking treatment services are not receiving them? I would like to work with the committee and the Division of Behavioral Health to study the question and identify how many inmates currently discharging from prison are receiving services from the regions, through insurance, Medicaid, Medicare, disability, or private pay and how many are going without services. This is a question that I feel must be answered before we can accurately estimate the cost...before accurate cost estimates can be developed and the provisions LB1023 can be effectively implemented. My staff has communicated with Senator Ebke regarding our concerns... [LB1023]

SENATOR COASH: Please continue. [LB1023]

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SCOTT FRAKES: Thank you--regarding our concerns with the bill and will work with her staff on language to address these issues. I have also communicated with Sherri Dawson from the Division of Behavioral Health and we share the goal of improving the transition of inmates out of prison and back into community. We're committed to improving the continuum of care available to offenders during incarceration and upon release. I ask that NDCS and the Division of Behavioral Health be allowed to continue developing protocols to improve inmates' access to community mental health resources and that the committee consider holding the bill until we can report back on the scope of this issue and develop recommendations to improve services. Thank you for the opportunity to testify and I'd be happy to answer any questions. [LB1023]

SENATOR COASH: Thank you, Director Frakes. I'm going to ask a question and I will ask the same of Senator Ebke and she can comment in her closing if she wants to. As I look at this bill, I'm trying to find what in this bill needs legislative authority to actually do it. In other words, conducting a needs analysis, developing protocols, coordinating mental health treatment, doing a needs assessment, those seem to me all things that you have the power to do as Director of Corrections right now. Would you agree? [LB1023]

SCOTT FRAKES: I would agree and I do believe that we're doing work that moves us that direction. [LB1023]

SENATOR COASH: Okay. All right, thank you. Let's see if we have any other questions from the committee. Senator Pansing Brooks. [LB1023]

SENATOR PANSING BROOKS: Well, I sort of feel like it's the chicken and the egg, piggybacking on what you said because we sort of asked, well, what do you need and what kind of funding will it require? And we haven't really gotten a full understanding of that yet. And so then now we're saying well we think these are some things that are needed and now we're hearing well it would require additional funding and you don't really...you don't disagree that it might need to be done but only if there's funding, is that why you're neutral? Or am I understanding that, on the higher custody level inmates, if we determine that there needs to be some programming...? [LB1023]

SCOTT FRAKES: Yes. [LB1023]

SENATOR PANSING BROOKS: ...and then you're going to need additional...hey, we got it. We got it. You need additional funding. [LB1023]

SCOTT FRAKES: No, I think your question was... [LB1023]

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SENATOR PANSING BROOKS: Oh, oh. Shoot. Gosh. [LB1023]

SCOTT FRAKES: ...we need to know what the need is so that we can determine whether or not additional funding is required. [LB1023]

SENATOR PANSING BROOKS: Okay, so...so you don't believe the need is there for this? I mean, there's a need, I think you've agreed in your testimony, that there is a need. [LB1023]

SCOTT FRAKES: I do agree. [LB1023]

SENATOR PANSING BROOKS: And then you... [LB1023]

SCOTT FRAKES: So maybe the better answer would be the degree of additional funding that's needed as opposed to whether or not it's needed. So getting clarification on what services that we are expected to deliver or interact with, what the size of the patient base is, the most effective ways then to deliver those or make those connections to ensure the services occur, and then be able to put an estimate of the cost to that. [LB1023]

SENATOR PANSING BROOKS: It's a prod off the fence thing. Okay, thank you. [LB1023]

SENATOR COASH: Director Frakes, you mentioned that you're trying to assess mental health needs, is that accurate? Or you're currently in that process? [LB1023]

SCOTT FRAKES: We are in that process right now. [LB1023]

SENATOR COASH: At what point would the committee be able to see something on paper that says, okay, we've done an assessment and this is the needs that are out there, the needs that are being met, the needs that aren't being met, and how many fit in those categories? When would the committee be able to look at something along those lines? [LB1023]

SCOTT FRAKES: My intent is to bring that forward through the biennial budgeting process. [LB1023]

SENATOR COASH: This year or...? [LB1023]

SCOTT FRAKES: Yes, for this next biennial budget. For the budget for the next biennium. So that process that we just...we're just starting to get off the ground right now. [LB1023]

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SENATOR COASH: Okay, thank you. I don't see any other questions. I appreciate your testimony. [LB1023]

SCOTT FRAKES: Thank you. [LB1023]

SENATOR COASH: Is there anyone else here to testify in a neutral capacity? Welcome. [LB1023]

SHERI DAWSON: (Exhibit 6) Hi. Thank you. Good afternoon, Senator Coash and members of the Judiciary Committee. My name is Sheri Dawson, S-h-e-r-i D-a-w-s-o-n, and I serve as the Director of the Division of Behavioral Health and I'm here to testify in neutral position of LB1023. This bill creates a requirement to develop treatment protocols and complete needs assessments relating to committed offenders in correctional facilities. The Division of Behavioral Health collaborates with key staff from the Lincoln Regional Center and the Department of Corrections on a monthly basis to review clinical cases and discuss shared system planning related to the behavioral health system. I have visited with Director Frakes about additional collaboration related to this bill. The division embraces the opportunity to develop protocols for coordination of treatment and studying system data to effectively plan with the Department of Corrections. This work would be consistent with the division's collaboration with other justice partners on a variety of system initiatives that are similar in format. The legislation contains language requiring the Department of Corrections to utilize community-based services during incarceration and upon discharge. Section 2 (3) and (4) is unclear as to the role and expectation for service provision in prison versus upon release; therefore, it is recommended that this language be clarified or omitted, and I've spoken to Senator Ebke about this concern. Collaboration on data and determination of service needs of the correction population will be necessary to ensure there is sufficient capacity in the community to address the needs pre and post incarceration. The division recommends that the number of individuals who are potentially eligible for service provision be studied in the needs assessment that is to be completed by the Department of Corrections. We also recommend the needs assessment be completed first and data utilized to inform the development of treatment and coordination protocols. The Division of Behavioral Health will include the needs assessment and other corrections data in its Behavioral Health System needs assessment it is conducting this spring. Additional collaboration between DHHS and corrections will be necessary to determine treatment capacity needs as well as enhancing the competency of treatment providers. Both are necessary to ensure there is an adequate pool of community-based providers available to treat individuals with behavioral health and criminogenic need, especially those who may require a higher custody level. Lastly, as a concern, it is important to note that treatment of incarcerated individuals is not an allowable use of federal funding. State general funds would be needed if the expectation is for Nebraska Behavioral Health System to provide treatment services for individuals while incarcerated as well as when they're released. I appreciate the opportunity to testify before you and look forward

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to future conversation with the Department of Corrections and this committee regarding LB1023. And I'll take questions. [LB1023]

SENATOR COASH: Thank you, Director Dawson. I want to ask you about one of your last statements about the use of Medicaid funding. I understand that behavioral health treatment, Medicaid cannot be used to pay for that while a person is incarcerated. [LB1023]

SHERI DAWSON: Correct. [LB1023]

SENATOR COASH: But the day after they're released that changes, is that accurate? [LB1023]

SHERI DAWSON: If they're eligible, yes. [LB1023]

SENATOR COASH: If they're eligible, okay, because I just want to clarify your statement. You said... [LB1023]

SHERI DAWSON: I was trying to clarify. [LB1023]

SENATOR COASH: Treatment of incarcerated individuals is not an allowable use of federal funding. State general funds would be needed if the expectation is for Nebraska Behavioral Health System to provide treatment services for individuals while incarcerated as well as when they're released. But when they are released, you can do it under Medicaid, correct? [LB1023]

SHERI DAWSON: Yes, some of the services are Medicaid eligible. For example, supported housing isn't the Medicaid eligible service. [LB1023]

SENATOR COASH: Is or is not? [LB1023]

SHERI DAWSON: Is not... [LB1023]

SENATOR COASH: Okay. [LB1023]

SHERI DAWSON: ...at this current time. You know, the Heritage Health Initiative, I'm not sure what that service array will look like, but the Division of Behavioral Health funds that, some. [LB1023]

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SENATOR COASH: Okay. All right. Senator Krist. [LB1023]

SENATOR KRIST: This is a very legitimate question, I think, and would be good to put in the record. When a person is taken from incarceration to a health facility, and I'm assuming it's also a behavioral mental health facility, and they are out of the institution for more than 24 hours, that can be paid for by Medicaid. [LB1023]

SHERI DAWSON: I will clarify that with the Director of Medicaid. [LB1023]

SENATOR KRIST: Okay. I believe, in my working with a bill last year or the year before in order to suspend Medicaid eligibility so that it could be reinstated rather than go through the whole process when a person gets out, that that was the case. And I believe that we also heard that that was not being done to the fullest extent because somebody did want to spend Medicaid dollars in the past. So for the record... [LB1023]

SHERI DAWSON: I'll follow up with you. [LB1023]

SENATOR KRIST: ...I'd like to hear back from Medicaid Director and you because I believe that that is the case. I believe that if when a person is taken out of a facility for more than 24 hours that that can be paid for out of a different pot of money, not general funds. [LB1023]

SHERI DAWSON: Okay. I will clarify with Director Lynch and circle back. [LB1023]

SENATOR KRIST: Thank you. [LB1023]

SENATOR COASH: Senator Pansing Brooks. [LB1023]

SENATOR PANSING BROOKS: Thank you for coming, Director Dawson. I'm sort of confused because it seems like what both Director Frakes and you might come forward saying is, oh my gosh, we have this terrible need. We really need it. We're worried about the money. But we need to go forward and figure out as many ways as possible to deal with these behavioral health issues among our inmates and among those who are released. I'm not hearing that from either of you. It sounds to me like, well, it costs money so we aren't interested really in this. [LB1023]

SHERI DAWSON: The first statement you made is more accurate to the situation. For example, in the Division of Behavioral Health, we have data and I've shared it with this committee before, that there are individuals that have either been admitted or discharged either through referral or

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legal status within the system that have been in the justice system. So we have data, for example, on those that are paroled, corrections, or probation. And of the individuals that we serve, that discharge information is about 11 percent. So we're already serving some individuals that are coming to corrections. The question is how many are we not serving for the whole system, in addition to as the protocols get developed and perhaps things get better in terms of identification of mental health and substance use disorder, are we capturing that and how much? There are needs. We talked about yesterday and there's other bills related to behavioral health. So it's really a matter of trying to have the data and be able to prioritize and target those dollars. [LB1023]

SENATOR PANSING BROOKS: Okay, but this is asking for protocols and needs assessment, which isn't...I mean that's... [LB1023]

SHERI DAWSON: And we both are very much in favor of that. In fact our teams are already collaborating on a regular basis, so definitely support those two. [LB1023]

SENATOR PANSING BROOKS: And so are you...you're initiating that already on your own? [LB1023]

SHERI DAWSON: Yes, our teams... [LB1023]

SENATOR PANSING BROOKS: And when do you think those will be ready? [LB1023]

SHERI DAWSON: Our needs assessment for the larger behavioral health system which will get some information from corrections is due to be done at the end of June. We'll be working with corrections on other, you know, needs that they feel to be assessed on the assessment that Director Frakes talked about by his time line. We'll just stay in touch and share information back and forth. [LB1023]

SENATOR PANSING BROOKS: Okay. Thank you. [LB1023]

SENATOR COASH: Thank you, Senator Pansing Brooks. Seeing no other questions, appreciate your testimony. Any further testimony in the neutral capacity? Seeing none, Senator Ebke, you're recognized to close. (Exhibits 7 and 8) While she's closing, I will read into the record two letters of support: one from the Nebraska Psychological Association and one from the National Association of Social Workers. [LB1023]

SENATOR EBKE: Well, thank you, fellow members of the committee. And I'm just going to take a few minutes here. You know, obviously one of the things that we were trying to address

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was the question of whether there's a problem. And I think all of us here recognize that there is a problem in this transitional care. The proponents of the legislation helped us to see that even more clearly today. And then the big question is how do we address those problems in transitional care? And we want to make sure obviously that we're and that the transitional nature merges together between corrections and behavioral health. So as I mentioned when I opened we're working to clarify language. The Inspector General has been in my office and we've been talking about this as well, so there will be some discussions going on in the next few days and probably in the next week. And hopefully we will have something substantial if there's any need to clarify here very soon. [LB1023]

SENATOR COASH: Thank you, Senator Ebke. We'll close the hearing on LB1023. All right. We are going to open up the hearing on LB1094 which is a Judiciary Committee bill. And introducing the bill on the committee's behalf will be our legal counsel. [LB1094]

DIANE AMDOR: (Exhibits 1-4) Okay. Hello, Senator Coash and members of the Judiciary Committee. My name is Diane Amdor, D-i-a-n-e A-m-d-o-r. I am legal counsel to the Judiciary Committee. I am sitting on the side of the room today to provide opening remarks for the record regarding LB1094 which was introduced by the Judiciary Committee as a cleanup bill to LB605 from last session and was cosponsored by Senators Mello, Hadley, and Campbell. Along with Seiler and Krist, they make up the Legislative Justice Reinvestment Oversight Committee. LB605 enacted the changes recommended by the Council State Governments as part of Justice Reinvestment Initiative. At a meeting of the Nebraska Justice Reinvestment Implementation Coordinating Committee in December, Senator Seiler invited members of the Coordinating Committee to submit recommendations on possible cleanup language needed to ensure the success of the Justice Reinvestment initiative policies. I've distributed a list of the Coordinating Committee members to you for the record. In addition to the comments that had been coming in throughout the interim, comments were submitted in December and early January by district court judges, the Office of Probation Administration, the Lieutenant Governor, Attorney General, Department of Corrections, county attorneys, defense attorneys, and others. CSG helped to coordinate meetings with the work group to discuss early drafts of the bill. LB1094 is the result. Before I summarized LB1094, I should acknowledge several individuals who provided input on drafts of the bill. First, Sara Friedman from CSG coordinated several issue team meetings since LB605 took effect in August. Her work with assistance Carl Reynolds, Marc Pelka, and the rest of CSG team helped to generate constructive feedback which has been incorporated into LB1094. The sentencing team members spent many hours in meetings, phone calls, and e-mail correspondence. And I want to acknowledge the individuals who took time away from their busy schedules to work on this legislation. District Judge John Colborn, Deb Minardi, Eric Asboe, Gene Cotter, and Jennifer Rasmussen from Probation Administration; Jeff Beaty from the Department of Correctional Services; David Bydalek and Josh Shasserre from the Attorney General's Office; Sarah Carstensen, deputy county attorney from Hall County; and Tricia

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Freeman, deputy county attorney from Sarpy County; Joe Nigro, Lancaster County Public Defender; and Spike Eickholt from the Defense Attorneys Association; and Josh Henningsen and the other Judiciary Committee legal counsel. The Justice Reinvestment Initiative work has been a large group effort over the last two years and I hope I haven't forgotten anyone. It's been important to have input from a broad group of interested parties. You should have written testimony from some of those interested parties in front of you and you'll hear from a few of them shortly. As a result of the weather earlier this week CSG representatives were unable to attend, but they have submitted written testimony in support of the bill. And I'm not aware at this time of any opposition to LB1094. The primary purpose of LB1094 is to assist with the smooth implementation of the Justice Reinvestment Initiative. The bill is not intended to make any substantive shift in the course of the policies adopted last session with the passage of LB605. There are a few areas where some cleanup was needed. The bill will clarify the process for responding to probation violations which includes clarifying terms and defining new terms, clarifying procedures for imposing custodial sanctions for probationers, distinguish between misdemeanor and felony probation processes, distinguishing the process for probation revocation hearings from the process for custodial sanctions hearings, and clarifying when the hearing is required before a custodial sanction may be imposed. The bill will clarify the procedures for custodial sanctions for parolees by clarifying terms and defining a new term. And the bill will clarify the distinction between parole and post release supervision and eliminate the possibility of overlap. The bill will update several penalties. There are a few penalty increases, primarily to eliminate inconsistencies that were inadvertently created by LB605 and a few clarifications for penalty sections that make no substantive changes. I've distributed a document with information from CSG indicating that the penalty changes in LB1094 will have a minimal impact on the prison population. Next, the bill restore the possibility of jail time as a condition of felony probation in limited circumstances and clarify that work release is an option for individuals serving jail sections when appropriate. I have also distributed a document with information from CSG regarding the frequency of jail time as a condition of felony probation prior to the passage of LB605. Finally, the bill makes several technical changes including clarifying when the changes are intended to apply retroactively and when they're not, changing a report requirement date to align with the fiscal year, and changing a deadline to ensure smooth implementation of changes and several changes to update internal references. The pages have also distributed a brief summary of LB1094. Rather than summarizing the bill section by section, I could expand upon those topics just mentioned if you would like. [LB1094]

SENATOR COASH: We'll see if the committee has any questions. I'll start with one. Or did you have more testimony or do you want to go through the section by section because I did have a question on one, or a clarification. [LB1094]

DIANE AMDOR: Sure. Yeah, if there's anything you want me to expand upon I can. And then I think if there are further questions then we can probably discuss them in the Exec Session. There

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are some further clarifications needed that will be addressed in the committee amendment. But I figured we should get through the bill in the first stage before moving on to those. [LB1094]

SENATOR COASH: Right. Okay. Then I want to ask you for clarification on the part of the bill, you mention this in your testimony, that...and I think you said restores the possibility of jail time as a condition of probation. [LB1094]

DIANE AMDOR: Yes. [LB1094]

SENATOR COASH: So kind of just walk me through pre-LB605, now, and with LB1094 with regard to that provision. [LB1094]

DIANE AMDOR: So Section 17 of the bill would amend 29-2262 to restore the possibility of jail time as a condition of probation for felonies. Before LB605, for misdemeanors there is a possibility of 90 days as a jail sanction for misdemeanors; for felonies, it was 180 days. So that would be upfront, at the point of sentencing the judge could say, I sentence you to probation and a condition of your probation is 90 days in jail. You may or may not actually serve those 90 days. They would be kind of in the judge's pocket, so to speak, so that if they wanted to impose those as a...either as a consequence of a probation violation or just as intermediate periods throughout. An example was given of maybe someone was convicted of driving under the influence and they were sentenced to one day in jail on the anniversary of their accident or their offense. Some judges wanted the flexibility to be able to do something like that. Custodial sanctions which are an option for felonies after LB605 made it not as necessary to allow them to use jail time as a condition, as a consequence and that's why there's a reduced number of days now instead of restoring the full 180 days. [LB1094]

SENATOR COASH: What's the pedestrian difference between custodial sanctions and the jail time that you were just describing? [LB1094]

DIANE AMDOR: Custodial sanctions can only be imposed as a condition of a probation violation. And they can only be used in a manner that goes through a matrix of needs...risks, and the level of the severity of the violation has to be proportional to the amount of time that is imposed. [LB1094]

SENATOR COASH: In either case though it's the judge who makes the decision, is that...? [LB1094]

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DIANE AMDOR: It was always the judge's call for imposing jail time as a condition of probation. With custodial sanctions, it is up to the probationer to decide whether or not to contest an allegation that they have violated a condition of their probation. If they say, yes, I violated that condition and, yes, I agree to the custodial sanction then it doesn't have to go to a judge for a hearing. But the judge will still have to sign off on it. But if the probationer says, no, I didn't commit the violation and, no, I don't consent to the custodial sanction then it has to go to the judge. [LB1094]

SENATOR COASH: And I'm sure in a practical sense, probationers rarely say, yeah, I did it, I'll go to jail for a couple days. [LB1094]

DIANE AMDOR: They're brand new, the custodial sanctions are, so it is yet to be seen how often those hearings will be needed and how often they'll occur which is one of the reasons why this bill clarifies that process. [LB1094]

SENATOR COASH: I get...the reason I'm asking these questions because I want it as part of the record, in Lancaster County the estimate is that 45 percent of the people who are currently on probation will end up serving 90 days in jail. And I'm...if you have any insight into how that was calculated... [LB1094]

DIANE AMDOR: The actual number of days? [LB1094]

SENATOR COASH: Well, no, that 45 percent of the people who are on probation should this should LB1094 pass would then moving forward be sentenced to 90 days in jail which, at the county level, they're indicating a cost. [LB1094]

DIANE AMDOR: So I'm not sure about their fiscal note. But the numbers from CSG that show how many people before LB605 would have had jail time imposed as a condition of probation, I don't know if those numbers are consistent with the numbers from Lancaster County, but that would be one thing to look at. [LB1094]

SENATOR COASH: I would agree. All right. Thank you. [LB1094]

DIANE AMDOR: You're welcome. [LB1094]

SENATOR COASH: Any other questions from the committee on a provision of LB1094?
Senator Williams. [LB1094]

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SENATOR WILLIAMS: Thanks, Senator Coash. Diane, thanks for being here and again thanks for all your work on this very complicated issue. I want to ask a question just so that we are sure we're on the same page. When we passed LB605 we knew it was a very complicated and far-reaching piece of legislation that was making major philosophical changes in the directions of corrections. We also knew when we passed that that we would be back here, which we are, doing cleanup. Through the process of cleanup I want to be sure that we are answering the question that, are we doing cleanup in the form that CSG originally came with, or have we crossed the line into changing any of the substantive provisions of LB605 that would be deemed by some to be outside of what would be defined as cleanup? [LB1094]

DIANE AMDOR: And I think Senator Krist has a letter from CSG in support of the bill. The intention of this is to stay within the lines of LB605, not to scale it back at all and not to take it forward any farther, simply to make sure that the intended policy changes that you adopted last year are implemented as effectively as possible. [LB1094]

SENATOR WILLIAMS: Thank you. [LB1094]

SENATOR COASH: Thank you, Senator Williams. Great question. Senator Krist. [LB1094]

SENATOR KRIST: With your permission, Mr. Pelka has asked me to read his letter into record. I don't think the entire letter needs to be read. But to your point. So from Mr. Pelka who is the deputy director of programs, state initiatives, Council of State Governments Justice Center. He apologizes for not being here but his flights were cancelled due to our snowstorm. LB605 is the product of a data-driven process that 25 states have carried out with intensive technical assistance from CSG Justice Center staff in partnership with The U.S. Department of Justice's Bureau of Justice Assistance, BJA, and the Pew Charitable Trusts. The policy framework is projected to: (1) avert \$302 million in prison construction; (2) ease overcrowding with policies that achieve a 15 percent prison population reduction; (3) generate \$2.8 million each year for victim restitution; (4) reduce the number of people leaving prison without supervision. To achieve these outcomes, the state reinvested \$3.2 million in '16, \$12.1 million in '17 for additional probation officers, community-based programs and treatment, quality assurance measures, and financial assistance to the jails. Achieving these impacts relies on effective implementation. Therefore, last year, Governor Ricketts, Speaker Hadley, Chief Justice Heavican requested technical assistance. And we're now in phase two. Numerous Nebraska stakeholders--district court judges, county attorneys, public defenders, sheriffs, and others--participating in the implementation committees and teams helped submit changes adding clarification to the new statutes LB605 had created. In particular, the Sentencing Issue-specific Team focused on reviewing cleanup policy submissions and suggesting language. I applaud efforts among policymakers and stakeholders to participate in the implementation process and provide their

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expertise in shaping LB1094. He goes on to say that this is consistent with phase one and phase two cleanup, specifically to the LB605 effort. [LB1094]

SENATOR COASH: Thank you, Senator Krist. I think that's important to get on the record. Any other questions about a provision on the bill? [LB1094]

SENATOR PANSING BROOKS: I have just one. [LB1094]

SENATOR COASH: Senator Pansing Brooks. [LB1094]

SENATOR PANSING BROOKS: Thank you, Senator Coash. I just wanted to thank you for all your work. I know you've been really trying to knock this out. And it's really great how much you do for our committee and that's appreciated, Ms. Amdor. [LB1094]

DIANE AMDOR: Thank you. [LB1094]

SENATOR COASH: Okay. We are going to open up the testimony on LB1094. Let's start with the proponents, those for the bill. Welcome, Director. [LB1094]

SCOTT FRAKES: (Exhibit 5) Senator Coash, members of the committee. My name is Scott Frakes, F-r-a-k-e-s, Director of Nebraska Department of Correctional Services and a member of the Justice Reinvestment Steering Committee. I am here today to testify in support of LB1094, the follow-up legislation to LB605 from last year. LB1094 addresses several minor issues and unanswered questions that the department identified after the passage of LB605. The primary change was to clarify how consecutive and concurrent sentences involving the new determinate sentencing for Class III, IIIA, and Class IV felonies would be addressed. LB1094 provides that there is to be no post-release supervision in instances in which a pre-LB605 Class III, IIIA or IV felony sentence is combined with a post-LB605 Class III, IIIA or Class IV felony conviction. The bill also clarifies that parole custodial sanctions can be issued for less than 30 days and that gate pay is to be issued for inmates releasing to post-release supervision. In addition to the corrections-specific changes, LB1094 contains a number of improvements to the language in LB605 that have been identified by the LB605 implementation work groups that have been meeting regularly. My staff continues to work with committee staff and the work groups on technical changes that will be included in the committee amendment and I'm supportive of these changes and the collaborative process that led to the development of this legislation. LB605 is outstanding legislation, I believe, and LB1094 just helps move us down the road that we're on. I look forward to realizing and benefiting from the impacts of justice reinvestment in Nebraska. I

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feel LB1094 will further assist us in reaching this goal. And I'd be happy to answer any questions. [LB1094]

SENATOR COASH: Director, I'm just a little bit confused about, maybe it's just the vocabulary. How could...what would be an example of someone, an inmate who has the pre-LB605 felony combined with the post-LB605 felony conviction? How could a person have both? Or am I reading this incorrectly? [LB1094]

SCOTT FRAKES: No, you're reading it correctly and I'm going to hope that I answering it correctly. That would be that they've committed one crime prior to August 29, another crime after August 29 and were convicted of both after August 29. [LB1094]

SENATOR COASH: Okay. I think that answers my question. All right. Thank you. I don't see any other questions from the committee. Thanks for your testimony. [LB1094]

SCOTT FRAKES: Thank you. [LB1094]

SENATOR COASH: We'll take the next testifier in support. Welcome. [LB1094]

SPIKE EICKHOLT: (Exhibit 6) Thank you. Senator Coash, members of the committee, Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the Criminal Defense Attorneys Association in support of LB1094. We are in support of LB1094 because, as Ms. Amdor indicated, it does further the efforts and the purpose of LB605. You have a copy of my written statement. The defense lawyers do have three suggested changes to LB1094 that we feel are constructive and are consistent with LB1094 and I'll just summarize them generally. I think Ms. Amdor is familiar with these issues as they were debated or at least came up a number of times during meetings that we had over the interim. The first suggestion deals with Section 22 of the bill on pages 40 and 41 and that deals with the custodial sanctions. Under LB605, if a probationer is in trouble, if you will, by the probation officer and the probation officer recommends that that person do a certain period of time in jail, the probationer has the option of essentially accepting that sentence and serving it or contesting it and going to court. The proposal that we have is if there is a hearing regarding the decision of whether a person should receive a custodial sanction, that the court be limited to imposing whatever sanction was that the probation officer recommended. In other words, we don't want to have the scenario where a court could perhaps punish someone just for having a hearing. And that may need to be worked a little bit because I think the present version of the bill allows a prosecutor to pursue a sanction as well. But that's at least the concept that we'd like to see in the bill itself, to have a limit if you will and not punish someone simply for having a hearing regarding a custodial sanction. The second request also is on...in Section 22 of the bill on page 41. And that is to clarify because it's not

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quite clear in the bill, but to provide that if a court does impose a sentence of...a custodial sanction that the court can allow it to be current or consecutive to any other term of incarceration that that probationer might be serving. In other words, sometimes people are in jail for other things besides just committing a crime. Maybe sitting out a child support a purge plan, they may be sitting out fines, if you will, to satisfy a debt. And the court should allow...be allowed to have the discretion to allow a custodial sanction to be served either at the same time of those situations or maybe afterwards. The third suggestion that we have is perhaps just a stylistic change to the wording in the bill. The probation office...under this bill the probation officer has the authority to detain a probationer if that probation officer feels that the probationer may be leaving the jurisdiction of a committed crime. At that point, the county attorney has the option to either pursue a motion to revoke or to not pursue a motion to revoke probation. The bill uses the language that the county attorney is given the authority to "Order the probationer's release from confinement". And our position is that only the judge can really order someone to be released from confinement. That's not really a prerogative of the prosecutor. So we suggest, and I talked to Ms. Amdor about this, that perhaps the county attorney would be given the option of maybe notifying the probation office in writing that they're not going to pursue a motion to revoke or perhaps just filing something with the court to indicate they're not going to pursue the motion to revoke. Finally, in response to what Senator Coash mentioned, regarding pages 27 and 28 of the bill the restoration of the discretion to allow the court to impose a jail sentence for felony probation, that was a point that we debated quite a bit. LB605 took away the ability for a court to impose jail as a condition of probation for felony offenses. Prior to that the court could do up to 180 days, up to six months. Pages 27 and 28 of the bill sort of represent the compromise: up to 90 days that the court can impose, but the court has to sort of make a finding that the probation where offense is serious enough to warrant that. And at that point, I just want to mention to the committee that what's in the bill right now is really where we sort of settled for a compromise. And I think the defense lawyers would really oppose anything more as far as changing that or going beyond the 90 days. [LB1094]

SENATOR COASH: Okay. Thank you, Mr. Eickholt. Any questions from the committee. I do and then Senator Williams. On your first point here, are you concerned that a judge is going to say I am so annoyed with you that you contested this that now I know the probation officer is asking for 30 days by you're going to get 60 because you're taking up the court's time. Is that...? [LB1094]

SPIKE EICKHOLT: That was a concern of some of our members. I practice in Lancaster County and I don't necessarily see any of the judges on the bench here doing something like that, but that is the concern, that you have sort of somebody being not necessarily punished but...yeah, being punished, I suppose, for appearing in front of the court and disputing the allegation. There's also the concern of course that you never quite know what's going to happen if you have a hearing on the record, what might come out. The probation officer is more familiar with that probationer

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and the probation officer is given the ability and the discretion to decide what swift and certain sanction ought to be imposed. And that ought to mean something. And it shouldn't just unnecessarily be undone because somebody has a hearing. [LB1094]

SENATOR COASH: Couldn't it go the other way though? Couldn't, if that change were implemented that a probation officer may say all right, I'm going to recommend the judge stick you in the can for 30 days, probationer contests it. They go to court and then the judge says, all right, 15. I mean it could go the other way, isn't that...? [LB1094]

SPIKE EICKHOLT: It could, and that's why our suggestion on only limits the court to go beyond, greater than the original provisions. I mean it could. I don't know how many judges are going to be sort of encouraging people have hearings for the hope that it may go less than what the probation officer recommended, but I suppose it could. [LB1094]

SENATOR COASH: Okay. I just...I wanted to get your feedback on that because I don't...you're in the area which I appreciate your testimony. I just don't see that as a...I don't see that the bench saying...and I know they would be smart enough not to say you've annoyed me so much, probationer, that now you're going to get more than the probation officer has recommended, but... [LB1094]

SPIKE EICKHOLT: They don't and I practice in Lancaster County and I don't necessarily see that here either. But there was some concern among some of our members statewide that some of the courts (inaudible). [LB1094]

SENATOR COASH: Was that a concern based on experience of judges doing that in the past? [LB1094]

SPIKE EICKHOLT: Yes, really when it comes to all sorts of things. When you have a trial, you get a worse sentence. I mean some of our members mention that, anecdotally of course. But that is a concern that some of our members have regarding the bench. It's not that much, but we wanted to have it there. I would tell...to answer a question you asked earlier, I do practice in Lancaster County. There's been a number of custodial sanctions imposed. And most of the probationers are just accepting them. There hasn't been, I don't think, any hearings yet, or at least not that many that I've heard of where they contest those, at least for now. [LB1094]

SENATOR COASH: Okay, all right. Thank you, Spike. Senator Williams. [LB1094]

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SENATOR WILLIAMS: Thanks, Senator Coash, and thanks, Mr. Eickholt. The same question to you that I asked to Ms. Amdor about your suggestions, the three points from the defense counsel. Would they be looked at as substantive changes to LB605 or simply cleanups? [LB1094]

SPIKE EICKHOLT: I would say that in the handout I have, number two and number three are clearly cleanups because I think number two just clarifies because right now the bill is just silent as to whether a sanction is concurrent or consecutive and arguably maybe the Legislature should say whether it is or not. Number one I know...some time, and Ms. Amdor can corroborate this, many times as drafts are circulated we discuss these things and sometimes things just aren't discussed, don't come up. But there was, at least in the suggestion of one, that was a concept that we talked about. I would consider them frankly being consistent with cleanup and consistent with the purposes of LB605 and CSG's efforts. [LB1094]

SENATOR WILLIAMS: Thank you. [LB1094]

SENATOR COASH: I don't see any other questions. Thank you, Mr. Eickholt. Take the next testifier in support of LB1094. Seeing none, is there anyone here to testify in opposition of LB1094? Any neutral testimony? (Exhibits 7 and 8) Read into the record two letters of support: one from the ACLU; and the other from the Nebraska Pharmacists. What that, I will close the hearing on LB1094 and the hearings for today. Thank you. [LB1094]