

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

FOLEY: Good morning, ladies and gentlemen. Welcome to George W. Norris Legislative Chamber for the fifty-eighth day of the One Hundred Seventh Legislature, First Session. Our chaplain for today is Senator Lowe. Please rise.

LOWE: Please attain a attitude of prayer. Lord God, give us more of your love that we might crave fewer material possessions. Grant us a sense of fullness, not emptiness, as we have been discussing our Nebraska budget. Especially protect us from wanting to allocate all of our revenue to continued spending and other ways that may sabotage our future Legislatures and our children and grandchildren. Remind us we are your beloved children, with whom you are well pleased, so that we may-- may keep our finances on track, Lord, for all we have is yours and we are in our positions this day because of you and you alone. In your loving and precious name, amen.

FOLEY: Thank you, Senator Lowe. Senator Halloran, could you lead us in the Pledge of Allegiance, please?

HALLORAN: Good morning, colleagues. Please join with me in the Pledge of Allegiance. I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

FOLEY: Thank you, Senator Halloran. I call to order the fifty-eighth day of the One Hundred Seventh Legislature, First Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

CLERK: I have a quorum present, Mr. President.

FOLEY: Thank you, Mr. Clerk. Are there any corrections for the Journal?

CLERK: Mr. President, on page 920, strike the word "return" and insert the word "adjourn." That's all that I have.

FOLEY: Thank you, Mr. Clerk. Are there any messages, reports, or announcements?

CLERK: Just an acknowledgment of reports received available to members on the legislative website and the report of registered lobbyists as required by state law to be inserted in the Journal. That's all that I have, Mr. President.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

FOLEY: Thank you, Mr. Clerk. We'll now proceed to the agenda, Select File, appropriations bill, Mr. Clerk.

CLERK: Mr. President, LB322A. Senator McKinney, I have no amendments to the bill.

FOLEY: Senator McKinney.

McKINNEY: Mr. President, I move that LB322A be advanced to E&R for engrossing.

FOLEY: You've heard the motion to advance LB322A to E&R for engrossing. Those in favor say aye. Those opposed say nay. LB322A advances. Mr. Clerk.

CLERK: Mr. President, General File, returning to budget deliberations. Speaker Hilgers offers LB383 at the request of the Governor. It's a bill for an act relating to appropriations. It appropriates funds for capital construction and property acquisition. Introduced on January 14 of this year, at that time referred to the Appropriations Committee, advanced to General File. I have committee amendments and other amendments to the committee amendments, Mr. President.

FOLEY: Mr. Clerk, before proceeding, I think I'd like to recognize Senator Williams for a personal announcement. Mr.-- Senator Williams.

WILLIAMS: Thank you, Mr. President, and good morning, colleagues. Today is our fifty-eighth day, April 9, and this is a very special day for a very special Nebraskan. You may remember that the Banking, Commerce and Insurance Committee submitted a legislative resolution, LR84, on behalf of retiring director Bruce Range of the Department of Insurance. And there's a couple of things that I would like to take just a minute this morning to highlight with Director Range. And the resolution states that Director of Insurance Bruce Range is the longest-serving Director of Insurance in the Nebraska history, having served in that role for the past ten years. Director Range began his career in public service at the Nebraska Department of Insurance in 1984, working in the market conduct division, accepting the position of chief of marketing regulation in 1999 and becoming the deputy director in January 2008 prior to becoming appointed Director of Insurance in November of 2010 by former Governor Dave Heineman. In January of 2015, he was reappointed as Director of Insurance by Governor Pete Ricketts. Director Range has made many notable accomplishments over his years of service to the Nebraska Department of Insurance, which include facilitating the regulatory process for

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

the formation of 12-- that's 12-- new Nebraska insurance companies and the move of 20-- 20 insurers from other states' locations into Nebraska. Bruce Ramage also had the consumer liaison representative of the National Association of Insurance Commissioners recognized him for his work on behalf of insurance consumers and awarded him the excellence in consumer awards for that organization. "Whereas, after 36 years of service to the Nebraska State Department of Insurance, Bruce Ramage will retire on April 9"-- that is today, this is Bruce's last day-- "therefore, be it resolved by the members of the One Hundred Seventh Nebraska Legislature, First Session: That the Legislature recognizes Director of Insurance Bruce Ramage for his longstanding and distinguished service to the State of Nebraska and wishes him the very best upon his retirement." And personally I would like to say it's been an absolute joy and very rewarding experience working for Bruce as Chairman of the committee and I think you would find that from all the committee members. Let's give a resounding rouse [SIC] of applause to Bruce Ramage, our retiring Director of Insurance. Thank you, Mr. President.

FOLEY: Thank you, Senator Williams. Now, Senator Stinner, if you can get us started on LB383, your opening statement, please.

STINNER: Thank you, Mr. President. Members of the Legislature, LB383, introduced by the Speaker at the request of the Governor, is part of the Governor's biennium budget recommendation. This bill appropriates funds for reaffirmed and new construction projects recommended by the Governor for the next biennium. Reaffirmed projects include these pro-- those projects currently underway that have already received approval and funding previously, but were funded over several years. In addition to the new and reaffirmed appropriations set forth in the bill, language is included providing for reappropriations of unexpended June 30, 2021, appropriation balances for 2021-22 to continue or complete projects. This legislative bill contains an emergency clause and is operate-- operative on July 1, 2021. With that, I would request, Mr. President, to move to AM395.

FOLEY: Please proceed.

STINNER: Thank you, Mr. President. The amendment contains the Appropriations Committee's recommendation for reaffirmed and new capital construction projects recommended for funding in the forthcoming budget biennium. Please refer to the budget book on page 86 under the heading "Capital Construction" for a detailed construction-- detailed discussion of the committee's recommendation. And I do want to start with the committee and thank the committee for

their work, certainly throughout this biennium. And as I mentioned before, prior to even this session, I was asked, because of the COVID situation, what could I do in terms of compressing the dates to bring the budget. So I had done it-- we did an analysis, Tom Bergquist and myself, and came up with mid-March to late March. And so that was what we were really committed to doing, meeting every day, all day, all-day hearings and then final. But also part of our early discussions was a briefing by Senator Frakes-- or by Director Frakes, excuse me, and that meeting really was about the replacement of the current prison. And we were given two options and the reason that this even comes up as a subject material, you have to remember the last time a major renovation of the Nebraska State Pen was done is 1980. And in that document, if you go back and look at it, they had indicated that this was a useful life of 50 years. So if you add 50 to 1980, it gets you to 2030 and we're sitting here today with less than ten years to make a decision about the useful life of the State Penitentiary. So there were two options that were presented to us in that meeting and it was a joint briefing between Appropriations and Judicial-- Judiciary Committee. Those two options, first one was renovation of the State Pen as it is today. Those renovation costs were-- were estimated to be \$195 million and I can tell you, I've renovated a lot of old buildings in my life-- lifetime and I get these estimates. There's always surprises. The other thing about the renovation of the current State Penitentiary, it presented a lot of logistical problems: moving prisoners around, finding beds for prisoners, finding jails to put prisoners in. And so the construction would take-- in order to complete the construction if they started today, it would take seven years, which pushes you right up against the date of the useful life. And I can tell you about useful life and toward the end of a useful life of a building, you incur a lot more cost associated with that. So there is some compelling factors to say, you know, we need to probably start planning and making decisions relative to that. The other option, obviously, was the replacement of the-- of the State Pen with a actual new prison facility, and that would have to be sited somewhere else and the estimated cost was \$235 million. So when we left there, as Appropriations Committee, we started our appropriations process, had our heads down during that whole entire process, and when this came up, we-- we voted to sequester these dollars, put \$115 million in for the prison and not appropriate anything, because we didn't know what the plan was or what it was going to be. So those dollars are out of the General Fund. We paid cash for that first part of this renewal process or-- or replacement process. So those dollars stayed sequestered, and in the preliminary budget it was demonstrated we're not appropriating anything. Well, as COVID started to abate and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

we looked at the-- the schedule, that provided some time and we actually moved the date of the appropriations and the budget process to April, couple weeks. And in that time, we formulated a-- a group. We had some briefings with the Governor and the director. We had some briefings with UNO. We had some briefings with our own Ombudsman. We brought in CJI. We actually had a conference with them. So we did a whole lot of work, and "we" meaning a group, Steve Lathrop from Judiciary because they have-- they are the policymakers, we're the appropriators. Steve chose Senator McKinney and Senator Pansing Brooks. I chose my Vice Chair, Senator Wishart, who had done a lot of pro-- projects, and Senator McDonnell. So the next amendment will be the amendment that I'm going to present as it relates to the prison. But as the committee amendment, there is an emergency clause and I would ask for a green vote on the committee amendment and would ask that I could then go to the amendment and discuss the-- the proposal that we're-- we're going to try to make.

FOLEY: That's AM911, Senator, is that correct?

STINNER: Yes.

FOLEY: Please proceed.

STINNER: Thank you very much. So anyhow, given a little bit more time to take a look at what we had--what we should be looking at, there's three different lanes that we're-- we're trying to present here and trying to-- to address. One of those lanes is obviously from CJI, who now have-- we have a contract with, will come in and take a look at our data and then recommend a-- a list or a menu of reforms that we can-- that we can incorporate. That will be a really invaluable tool as it relates to a master facility plan, and we've appropriated in this amendment \$350 million for the updating of the master plan. The last time it was updated was 2014. Dewberry was the-- was the author of that document. And actually, if you look at phase one, we've actually followed phase one fairly closely. So that will be your decision-making tool. That will be your guiding tool. But you got to do the C-- CJI kind of first or in conjunction with that so that you get the proper mix of the brick and mortar that's needed and the type of beds that are needed. The second thing is the overcrowding situation. That's the second lane of this. And I will tell you this, since the day I walked in here, we were second in the country in overcrowding. I'm sitting here seven years. We're second in the country. It's a stain on the soul of the state of Nebraska, and we need to remove that stain and we need to get busy on the overcrowding situation. But since we do not have a master plan, we've kind of went

back and looked at the Dewberry report. We looked at what we have done and we tried to figure out what universally can we do. And so I put together an analysis for the committee that dealt with just beds. Current beds are at 3,635 beds. Maximum-security beds, 384 are coming on in the late spring of 2022 and 100 minimum-security beds in January of '22, so that gives you 4,119 beds. The population at the end of the year was 5,315 average daily prisoner count, and that was about 146 percent of capacity based on what we have today. I actually took a look at and looked back. Our average prison population is more like 5,500. We obviously had some slow down on the intake part. So then we take a look at where is the choke points at, and I call them choke points because these are the highest level of where we're overcrowded. And obviously, DEC, at 225.5 percent, sticks out and in order to get it to-- to a goal set-- and-- and I should probably go through this. I did set a goal: 125 short-term-- 125 percent overcrowding would be a short-term goal to hit, and so that would require 350 beds. So anyhow, we looked at the choke points. DEC and the cu-- community custody beds in Omaha were the two highest choke points that we have. We went back to Dewberry. We looked at phase one. We're actually adding 64 beds for mental health and behavioral health and geriatrics. The plan actually includes another 96 beds. These are pods that go out. They're like little arms that come out of the, out of the main facility. Those can be put in for about \$5 million. So that was an estimate back when we started this project. We put an inflation factor and you can see that \$18 million will be committed to that project and appropriated if we pass this bill. The second thing we looked at is community custody beds and actually we're-- we're not referring to those just as community custody beds. I think Senator Lathrop will enlighten you a little bit more on what we're trying to get done there. And what we've done is appropriate, because we're landlocked where we're at-- and 96 beds, I believe, is where we're at-- and we're in a floodplain. I don't think you want to build in the floodplain. You're landlocked and you're not really close to jobs. So it made a lot of sense that if we're going to do community custody beds in Omaha, which Omaha represents Douglas and Sarpy County, 40 percent of the population in prison comes out of Sarpy and Douglas County, so it makes some sense that you'd want to locate that. But the halfway house, along with the community custody beds, was a thought that we put together. All we're doing is allocating \$500,000 for an option on the land to site-- to site this, not build it, site it. So those-- with those numbers, we're-- actually get to about 124 percent, but again, that is a stagnant number of 5,500. We've got to do prison reform so that we can take that 150 to 200 people coming in every year and we can lower that trajectory, hopefully to zero, but might get to 50. So that's the

planning side of things. The third part of this track that we're on is we've got to do something about the useful life of the State Pen, and that's the \$14 million that we put in there and that is for planning design, option on the land, and also I'm asking for an engineering study that will give us validation that the useful life is indeed 2030. It might be 2027, it might be 2032, but that's what we need to have, to have that empirical evidence that that is the useful life. So with those three tracks going on at the same time, we have the universal beds that no matter which way we go, we still need the med-- the-- the 96 beds at DEC. We haven't committed to the-- the formation yet of what we need in halfway house beds and community custody beds, but we'd like a location that is by jobs, by transportation, possibly by medical facilities. So that's the thought process of this amendment. It starts a process. I would call it a barbell approach. The barbell is short term. We're going to try to take care of this, buy us some time, drive us down to 125 so we can get off that naughty list, and then long term make some decisions about what the configuration should be. And I want to emphasize this. This is planning, design, and looking for a site. You have to have a site in order to do it-- the appropriate amount of computation as it relates to dollars associated with it because you've got infrastructure to put in, whether it be roads, whether it be sewers, whether it be electrical. Those things have to be sited. There is no site plan. We're providing option money only, and I emphasize option money only. This is the start of a process and when we talked to the-- to the architects and the engineers, they said just planning and design is going to take them from a year to 18 months to do. That's just putting the blueprints together, setting them out and, you know, trying to calculate what the cost should be, doing the engineering study so you got the infrastructure right, and then you go out for bids and that's a process by itself. So that-- that time [INAUDIBLE] framework really kind of takes you into the next probably 24 months to 36 months to really start executing before a shovel goes into the ground. Now, if the useful life is 2030-- and I'm telling you, as you approach the useful life, we're going to be throwing a lot of money into a-- a burned-out prison situation that really could be utilized in other areas. So is there an immediacy of this? Is there an urgency? There's an urgency on the overcrowding. There's an urgency for-- for reforms. Let's take a look long term about a master facility plan. That's what the amendment is about and I would encourage everybody to vote green on this amendment. Thank you.

FOLEY: Thank you, Senator Stinner. Debate is now open on LB383, the Appropriations Committee amendment, and the Stinner amendment to that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

amendment. Nine senators in the speaking queue. Senator Wishart, you're first. Please proceed.

WISHART: Thank you, Mr. President. Good morning, colleagues. I have a lot to say on this amendment, so I plan on taking some time just to walk you through my thought process, but I will be supporting AM911. First of all, I want to be really clear with everyone who's tuning in today and with my colleagues that in no way does this amendment change the course that the Appropriations Committee has been on and laid out in building a replacement facility. We, and I will say especially me, continue to take an approach that there is much more due diligence that needs to be done before we would ever, if ever, allow for a shovel to hit the dirt in building a new facility. Part of what this amendment does and part of the due diligence-- and we've done this before in the Appropriations Committee and I'll give you an example-- is that it is important for us if there is an end-of-life issue with the Penitentiary-- and that's an emphasis on "if" because we don't have an independent engineering analysis to know that, which is included in this amendment-- if there is a need for us to replace the old Penitentiary, then we will need to know what is that going to cost, what is the site going to look like for that, so that's what is part of this amendment. Let's go out, let's do some extra due diligence, let's see what the total cost of this would be. In the past, our committee has allowed agencies to move forward on design and-- and looking at a site. For example, with the Department of Administrative Services, they wanted to build a new private office building by the Capitol. We said, fine, go ahead, do what we're-- what we will allow Department of Corrections to do, go find out how much this is going to cost through the designs, find a site. When they came back to us, we said, this is way too expensive, it doesn't make sense, this is not going to happen, and we didn't move forward with it. So I just want to tell you all that's the thought process that I'm having and the history we have in Corrections-- excuse me, on Appropriations of dealing with these types of issues. The other due diligence that is included in AM911 is a refresher of our 2014 master plan. And I know this is-- can be somewhat dry, but I encourage everyone to look at this. This is the plan for our correctional facilities that was done in 2014. We are very much due an update of that, which is included in LB911 [SIC]. That will look at all of our facilities and what the needs are. We also need an independent engineering study done of the Nebraska State Penitentiary. We need to know what the useful life is. You know, we've actually had two penitentiaries on this site. The first one was built in the 1800s. It lasted 100 years. The second one that is built on top of the old one was built in the 1980s. It's

coming on 40 years. Potentially, it is ten years till end of life, but we don't know that and we need to know that before we would ever look at a replacement. We also need to do a staffing analysis. We cannot staff the current facilities we have. We are in emergency situations in at least two of our facilities that have lasted far longer than the Director of Corrections had told us they would last. This is a huge problem and we need to look at staff salaries and we need to look at overall morale and climate in Corrections to try to address the turnover we're experiencing. We also look at-- need to look at our inmate risk classifications, make sure that when people come into our Corrections system, that they are receiving a classification that gets them the best treatment that they need. That's something where we have expertise at the University of Nebraska-Omaha who can help us do that over the summer. And then--

FOLEY: One minute.

WISHART: --finally, and most importantly, in the short and long term, we need to address prison overcrowding and mass incarceration. And so we have included in this amendment funds for mental health beds and also funds-- siting and planning opportunities for more community corrections-style beds in Omaha, which are very important and will help us in the short term address the overcrowding issue and support a more humane way of-- of dealing with Corrections. Thank you.

FOLEY: Thank you, Senator Wishart. Senator Walz.

WALZ: Thank you, Mr. President. I yield my time to Senator Wishart.

FOLEY: Senator Wishart, 5:00.

WISHART: Thank you. I am really excited, and Senator-- Chairman Lathrop will speak more to this, that we are going to launch into a overall criminal justice reform task force and work this summer with the expertise of CJI, which is a-- basically, I call them federal experts who will coach states on how to better manage their criminal justice system. And through that approach, I'm very excited that we will come with some overall goals on how we reform our Corrections system to make it sort of relevant to the twenty-first century when we have many opportunities for alternatives to correction. And I will talk in more detail about sort of these five items that I want to list that are observations that have come to me as I've done my research on this issue. First and foremost, we cannot build our way to criminal justice reform, not possible, nor should we have the goal of doing that. Every time you put someone within an incarceration system, you

take a parent away from a kid, and I want everybody to be thinking about that when we are talking about potentially building new. Secondly, decisions that should be made around Corrections, especially when it comes to building, should not be politically motivated, ever. These should be decisions that are made out of intense scrutiny, which I am very proud of our Appropriations Committee for doing, stakeholder collaboration, which we are going to experience this summer with the CJI Institute, and utmost transparency for the public because when we make investments in Corrections, they are long-term investments that will affect our grandchildren and their grandchildren. And I will talk a little bit more about this past Legislature making politically motivated and expedient decisions about Corrections building that in the past have gotten us in this situation that we're still struggling with today. Three, we should learn from what other states and countries are doing, what they're doing well, and we should avoid the mistakes that other-- that other states have made. Four, our problems in our Corrections system go well beyond overcrowding. We have a staffing pay turnover and morale crisis that threatens our ability to function safely as a corrections system and that's something we have to address in the immediate. And five, and this is the most important issue to me and something I vow to be committed to moving forward, mass incarceration is steeped in systemic racism. From the creation of the first penitentiaries in the 1800s, including ours, it's steeped in racism. Our country imprisons more people than any other country in the world and a disproportionate number of those prisoners are black, and that statistic-- that statistic holds true in Nebraska. We have pronounced racial and ethnic disparities in our Corrections system, and that impacts the families and communities from which the inmates come from for generations. We cannot fix our Corrections system without acknowledging the expanding role of penal institutions in the lives of poor and communities of color. We have an opportunity this summer to move forward with CJI--

FOLEY: One minute.

WISHART: --on work to help change this and right a historic wrong. I plan to do that and I hope you'll join me. Thank you.

FOLEY: Thank you, Senator Wishart. Senator Lathrop.

LATHROP: Thank you, Mr. President. Good morning, colleagues. I am in full support of AM911. I think AM911 is consistent with the approach we are taking, which is more holistic, and I'll, like Senator Wishart, have much to say about it this morning. What I would like to start out with is this observation. We find ourselves at a crossroads. We are,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

as Senator Stinner said, the second worst in overcrowding in the country. That's been true for a long time. We have been in an overcrowding emergency since last July. We have two prisons that are in staffing emergencies. That was supposed to last six months. We increased the pay and they're still, 18 months later, give or take, still in an over-- still in a staffing emergency. We also have CJI coming in. We-- we will-- I will talk about that momentarily. And I believe that what AM911 does is it tees us up to-- through the CJI process, to develop a long-term plan for Corrections in this-- in this state. And why is that important? For generations, politicians got elected by talking about being tough on crime. That was a response to the people's need and demand for public safety and it was an easy line to say, I will go incarcerate more people and they will stay there longer. And people voted for them and when they got in office, they made good on their campaign promise and we have more people being incarcerated for longer periods of time. And that is true not just in Nebraska. It was true across the country. And now we find ourselves at a crossroads. Are we going to try to build our way out of this or are we going to try to make reforms that other states are making along with some-- some building that will happen as we do a full assessment of the Department of Corrections and the way forward? I want to talk about the CJI process so that you understand what that means and how it dovetails with AM911. CJI is a group that yesterday, by the way, gave us a formal letter that they are coming to Nebraska. That is a big, big deal. That is a collaboration between myself, as part of the legislative branch, the Governor's Office, and the Chief Justice, invited these folks in. It will be funded with a grant and CJI will come in and do a deep dive into our data. They will look at our Parole, our Probation, our Department of Corrections data, as well as the Crime Commission data, and be able to tell us where our problems are. They are not coming here to tell us how to fix it. They are going to come in and tell us what the problems are and where the difficulties are in our process and why are we experiencing this overcrowding. It is a data-driven process and it is a process that has, as its North Star, public safety. The CJI process isn't weak on crime. It isn't a liberal idea. It is an idea where we look at sentencing. We look at how we treat people from the time they get in trouble until the time their freedom has been restored and ask, are we rehabilitating? Are we getting the best outcomes? How can we do it better for cheaper? I'm very excited about that process. They will do a dive into our data, they will analyze our data, and then we will form a working group. That working group will look at the information about Nebraska and we will look essentially at a menu of options. CJI

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

will be able to demonstrate, because other states have gone to Smart on Crime, and tell us--

FOLEY: One minute.

LATHROP: --if you choose this option to try and alleviate your overcrowding, to make reforms, this is what's happened in other states and-- and it has improved public safety. That process is going to inform the way forward. If we take full advantage of it, it will inform the way forward. It will inform what building, if any, is necessary in terms of a plan developed for a long-range proposal. LB911 [SIC] fits into the idea that before we come back in the next session, we will have a long-range plan and it may well include building more beds. It may well include mothballing the Pen or it might not. We will know more when we get through this process. What AM911 does is tee us up--

FOLEY: That's time.

LATHROP: --for developing a long-term plan.

FOLEY: That's time, Senator.

LATHROP: Did you say time?

FOLEY: That's time.

LATHROP: Thank you.

FOLEY: Thank you, Senator Lathrop. Senator McKinney.

McKINNEY: Thank you. I rise to kind of give my feedback on this amendment and how I just feel about prisons overall. Fundamentally and morally, I think we should never build a prison again in this nation, in this state, and in this country. I just don't think it should happen. We have a mass incarceration problem, but at the root of it is racist policies, oppressive policies, and not addressing the root issues to why an individual would even end up in our prison systems. We don't invest in communities where these individuals come from. We have proposals for a prison instead of proposals for investing in people and making sure that they-- making sure that their needs are met. Why do we refuse to address the root issues? I grew up poor. I've been arrested before. I got family that has been in and out of prison and waiting to get sentenced right now. I visited my father as a child in NSP. And the one thing that I remember as far as growing up in North Omaha: a lack of investment in the community from this state.

People will get up and say that, oh, if you commit a crime, you should be in prison and that's it. That's-- that's just a horrible way of thinking. We had this war on drugs in this country that disproportionately affected black people, black men and women and kids because I was a kid that sat through raids and things like that where officers are speaking to my mother like she's less than a human, pointing guns at kids. It's just hard to ever, you know, even be in this position, to consider a prison, because I don't think a prison should ever be built. When we talk about--people will get up and talk about public safety and things like that. Public safety is taking care of people. That's what public safety is. The public will be safe if we take care of people. I'm not advocating for people that commit crimes, but when you put people into a box, I'm just saying, what options do we have when we don't devote resources to create more opportunity and investment in people? The system has failed, our country have-- has failed, and we have to do more to invest in people. There's things in this amendment that I-- I do like. I think we should let-- look at behavioral health, mental health, and substance abuse treatment. I also think we should have a halfway-back house or community corrections in Omaha. The part of this that I struggle with is where-- I-- I still don't have a clear understanding of where this \$14 million is going. They tell us we should wait for a program statement, but they want to-- but we're supposed to take a vote. It's hard for me to take a vote on something when I don't know what I'm voting on as far as the \$14 million. And that's my issue is we-- we ask these questions and we ask for answers and the Department of Corrections spends everything, they don't fully answer questions, and they come in and oppose everything. They want us to act in good faith, like they're going to try to do the right thing. And I think the CJI process is-- will be great, but then what scares me, and it-- I think it scares other senators, is we'll go through the CJI process and there's a possibility that we'll get these recommendations. And then Director Frakes will show up in Judiciary, the AG, county attorneys, the Omaha Police, and the rest of these people will--

FOLEY: One minute.

McKINNEY: --say no. And that's-- that-- that's what I have a hard time with is we're supposed to act in good faith, but it's still a heavy potential for these people to say that, no, we don't need to do this, no, we don't need to do that, no-- no, we don't need to do this, no, we don't need to do that. Let's just continue to lock people up, have oppressive policing policies, and go along like it's-- it's supposed to happen. Again, I'm just morally and fundamentally against building any type of prison. It's-- it's-- it's just not the right decision.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

I-- do-- do I think we should invest in mental health? Yes. Do I think we should invest in substance abuse treatment? Yes. I-- I think we should do those things, but a prison, in my opinion, is just the wrong way to go and-- and that's where I'm at with it and I don't know. Thank you.

FOLEY: Thank you, Senator McKinney. Senator McCollister, you're recognized.

McCOLLISTER: Thank you, Mr. President. Good morning, colleagues. I rise in support of LB383 and the amendments on the board. We should remember that in 1980, 1980, 40 years ago, we had 1,400 inmates in our prison system, 1,400. Look at it now, over 5,500, a rapid increase. Why has that occurred? Because three strikes, you're out, you know, get tough on crime, lock somebody up and throw away the keys because we are concerned about public safety. Well, public safety, in fact, has improved. Since that time, crime rates have actually dropped, but yet our prison population is increased by over 4,000. That's just inexcusable, but I think help is on the way. We conducted a Zoom call in December and involved many senators in this body. It involved Senator Lou Ann Linehan, Suzanne Geist-- Senator Geist, Senator Mike Hilgers, and Senator Steve Lathrop. And what we did and discovered, it involved organizations from CJI, American Legislative Exchange Institute, Texas Public Policy Network, Council of State Governments. This issue, prison overcrowding, is something that's going on around the entire country. Thirty-four states have undergone similar process to remove and change some of the prison situations that we have, the overcrowding. And as so many people have mentioned, we are second only to Alabama in terms of overcrowding. So it's a-- it's a big problem in Nebraska. Point is that prison reform covers a wide political spectrum. I mentioned the-- some of the organizations on-- included in this. And I think we need to make certain that we approve the policy recommendations that CGI will recommend. It's not going to do us any good to engage in this study and then not follow the suggestions that they make. This is a good program. I hope you will support it and also support the recommendations that comes from CJI because import-- it's important for us to follow those recommendations. Thank you, Mr. President.

FOLEY: Thank you, Senator McCollister. Senator Pansing Brooks.

PANSING BROOKS: Thank you, Mr. Lieutenant Governor. I rise in support of AM911 from Senator Stinner. I was on the-- the prison work group to look at what is happening with the prison, what is going to go on. This amendment does not indicate that we for sure are going to build a

new prison. And I hope that you'll take a second to read this amendment. I appreciate what Senator Stinner has done to make this all-- and the whole committee, to-- to really look at-- at how to go forward on this thing. And part of the reason I feel positive about it is it does talk about an update to the master plan report. That's the Dewberry plan and that's refreshing the Dewberry plan. But also, while we're doing that, we're also going to be going through, as Senator-- Senator Lathrop talked about, going through the CJI study. So those two studies and reports, the refresh of the Dewberry master plan report and the CJI report, will give us a-- a way better feel of what's going on and what's necessary. Now many of you may know that we currently do have a Department of Corrections plan that's supposed to last from-- let's see, I think it's-- yeah, 2019 to 20-- 2023, and that describes the capital needs for the Department of Corrections. And you know what's interesting? In no place in that plan is there a mention of-- of NSP being dilapidated or needing major renovation or even cut-- or even razing it to the ground, which is some of what I've heard, that we need to just completely get rid of it. So Senator McKinney is correct. We need to take care of our people, our needs. And it's interesting. I hope-- this-- this is a-- this is a-- an issue that is across the board and bipartisan. The Koch brothers in our country have worked tirelessly to work to close prisons, to make us smarter on crime. And Senator McKinney is right again that when-- when we get done with CJI, we're going to have the same people with the tired trope of, no, no reform from the county attorneys, the police, everything. We had that before in-- in 2015 on-- on the big bill that C-- that came-- was a result of CG-- CGS, CGS-- CS-- CSG-- no, CSG in 2015. So anyway, I want to point out, too-- I-- I have a couple of things to say. I do like a number of things in this amendment, again, updating the-- refreshing Dewberry, examining the demand for mental health and behavioral health and substance abuse, that we're going to compare actual treatment capacity and take into consideration the physical condition of the-- of the facilities. You know, I mentioned to our prison group, including the Governor, why would we build a prison when we don't even have a plan of what to do with the previous prison? That's like, who-- who go-- who in here-- raise your hand if you go out and you build a new house and don't even take any-- don't even-- aren't even concerned about what in the heck is going to happen with the previous house-- with the State Pen. This is not reasonable. It is not reasonable to think about building a prison yet. We aren't there. It's the largest amount of money our state has spent on anything. And I want you to know that Utah, a conservative state, Utah, just went through a similar situation. They had a plan to build

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

a new prison, but they had an older prison and that prison was working fine. Yeah, it could be updated--

FOLEY: One minute.

PANSING BROOKS: --but they went through to determine whether there should be a prison replacement and CJI came in and they-- they reduced the-- they reduced the needs by 70 percent with the knowledge of what came out of this. They replaced the old-- old penitentiary with fewer beds. That's what's possible by all of this. So I am wholeheartedly in favor of AM911. We can do the study. We can determine what is best for our state, for the use of our tax dollars, and move forward and be smart on crime and take care of our people. Thank you, Mr. Lieutenant Governor.

FOLEY: Thank you, Senator Pansing Brooks. Senator John Cavanaugh.

J. CAVANAUGH: Thank you, Mr. Lieutenant Governor and colleagues. This is an interesting conversation. At this point, I'm rising in opposition to AM911, which I suppose is aptly named. There are a number of things in it that I like. I agree with other folks about the fact that we should spend money to update the master plan. I think that spending more money for expanded mental health and behavioral health beds I think is important. But when we're talking about building a new prison, I feel like this is where the-- the frog in the pot where this is the first step of turning up the knob and just give a little taste, a little bit of a site plan, a little bit of preparation, and then we come back in a couple years and-- or the next biennium, and then we're allocating more money and eventually we're too far down the road to stop. I know there's been a lot of conversation about this isn't committing us to anything, this is just getting a plan and getting ready. But my concern is we're just doing this in a small step to make it more palatable to do something that we shouldn't be doing. Senator Stinner talked about at that hearing when Director Frakes came and presented them with two options, which that is the problem in this conversation. The options are not renovate or build a new prison. The options are renovate, build a new prison, or change how we do the system in a way that will decrease the number of people going into prisons. These people, the people advocating for this, the-- the Governor and the-- the Director of Corrections, are not engaging in an honest discussion about how to actually solve the problem. They're on a one-track mind, which is expanding capacity, because they have no interest in addressing the problem. And so I am obviously somebody who doesn't want to see more people go to prison. I obviously think that we've done something wrong and that we need to

change what we're doing, but there are-- I-- I do recognize that we may need to build additional space at some point in time, but that conversation should be coupled with an honest discussion about how we remedy the-- the fundamental problem we have in our system of increasing people going into the prisons. So that's the conversation I want to have, I want to engage in, around how do we solve all of these issues at once, not just the-- the binary choice of renovate or new prison. We need to have the-- the conversation about all of the parts. And I know the folks on the Appropriations Committee recognize that. I know they're willing to be willing partners in that conversation, and I think all of us should be, but we need partners on the other side before we give them money, before we start giving them opportunities to get us further down, because the conversation narrows at that point, it doesn't broaden, and we need to broaden the conversation about our-- our solutions right now. And I just thought it was interesting. I did the math. On the 96 beds, at \$5 million, is \$52,000 per bed. I know it's not a one-to-one, but we had a conversation yesterday about, I believe it was, \$38,000 a person to fully fund the DD services waitlist. Additionally, the conversation around this prison, when we go to \$235 million prison, I think, would be another \$34 million a year to staff that prison. So this conversation is not just \$235 million of our money that could go to property tax relief, friends, but it's a conversation about where the \$34 million is going to come from going into the future. We couldn't fund the DD services waitlist because we couldn't commit to \$54 million a year going into the future. But when we have this conversation, when we build a new prison, that's a conversation about where is that \$34 million going to come from for the foreseeable future too. It's not just this. So when you think about we're going-- we're giving up \$235 million in property tax relief, we're also giving up--

FOLEY: One minute.

J. CAVANAUGH: --\$34 million a year in property tax relief as well. So this is a con-- conversation that needs to be had. I appreciate the work Senator Stinner is doing to get us to another place. I appreciate the work that Senator Lathrop and the Judiciary Committee is doing to get the study that we need to have to address all of the broader considerations. Maybe we will need to build more capacity. We probably will, but it needs to be coupled with sentencing reform. It needs to be coupled with services reform and not just in the criminal justice system, but in our society at-large. So thank you.

FOLEY: Thank you, Senator John Cavanaugh. Senator Machaela Cavanaugh, you're recognized.

M. CAVANAUGH: Thank you, Mr. Lieutenant Governor. Good morning, colleagues, "frenemies" all. I hope you're all doing well today. I am. I went home last night. I got home late, as I think everyone did, and I walked in the door and my youngest was still awake and he ran up to me and gave me the biggest hug, and he doesn't usually do that. He's actually usually asleep, but it was-- oh, it was everything. I am loved and I have people that I love and I am just fine. Several of you have asked me and checked in on me today and I am just fine. And here's one of the reasons that people have been checking in on me. And I'm going to talk about cyberbullying in just a moment. Yesterday at 5:52 p.m., the Young Republicans of Omaha posted a media release: The Omaha YRs care deeply about the mental health crisis facing our community. We encourage everyone to check in with their loved ones to make sure they are healthy and happy. When we saw the senator from District 6 total-- in all caps-- meltdown on the floor of the Legislature yesterday, we became deeply concerned. Our choice to check in with her to see if she was OK shows our commitment to mental health. So thank you, young men. I'm so pleased you care about my mental health so much. Interesting that you thought that me being upset with people being terrible was a total meltdown. You didn't seem to have any concern about the moral bankruptcy of this body, but me being upset was a total meltdown. So I suffer from anxiety and I take medicine for it and I think that's important for people to know. I take medicine every single day when I get up for anxiety and it helps me be better, a better version of me that doesn't get into circular thinking, which is a problem that I have, that-- that lets me engage in the world more fully, and I am not ashamed of that. It is shameful to play partisan games like that and I understand. It's in the title. They're young, young Republicans. I understand that, but this is an opportunity for them to learn a lesson. There's a movement in the Omaha school area called Be Kind. It's an anti-bullying movement. And I can only assume since these young people-- and I say young men because they've all commented back and I haven't had a young woman commenting back that are part of the group, so if there's young women, I apologize for not being inclusive. But these young men live in Omaha, are from Omaha, and this Be Kind movement is a thing that parents started because they lost a son-- a child who committed suicide because of bullying. And I'm just asking the parents in Omaha right now to talk to your children because these are children doing this. I am a grown woman with a wonderful family. I struggle with mental health, just like so many other people, but I can handle this, but they didn't know that. They didn't know if I could handle this or not. That could have been devastating to me. Additionally, there is a staff member, and I-- I won't-- I don't think that it's appropriate

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

to-- to call out staff, but I will say that there is a staff member in this building that works for a senator in this building who is the chair of the statewide Young Republicans, and no one from the Republican Party has reached out to me. No one who's a Republican in this body has--

FOLEY: One minute.

M. CAVANAUGH: --apologized to me. Cyberbullying is a real thing. It's a real issue. It shouldn't be treated so flippantly, not by our young people, not by our elected officials, and not by our staff. I'm going to talk about cyberbullying more this morning. I have some information and resources to share, but I just wanted to share that with you all and thank you for those that are being attentive.

FOLEY: Thank you, Senator Cavanaugh. Senator Blood.

BLOOD: Thank you, Mr. President. Fellow senators, friends all, I rise in support of both the-- Senator Stinner's amendment and the Appropriations amendment and the underlying bill. And I'm only going to speak once because I do want to address what Senator Cavanaugh just had to say and-- and and shared with us. And I unfortunately took time out of my busy morning to read some of those posts and this is what I have to say about it. So jokes about mental health, it perpetuates and stigmatizes an already really difficult topic that we deal with all the time in the Legislature. So calling people who offend you or make you angry are not mentally ill, but it-- it-- it does make you look ignorant. However, when you make bad jokes publicly about others, it not only makes you look ignorant, it makes you look ill informed and it hurts people. I know we have people watching right now that are dealing with mental health issues, heard the ones that always call us and email us when we deal with those bills here on the floor. So when an entire group from any particular party, by the way-- I'd be doing the same thing if I heard that Young Democrats did it or Young Libertarians did it. This is just wrong, guys. People need to-- to speak out. One in four people deal with mental health issues, one in four, and it's pretty darn likely that you have family members or friends dealing with the same serious stuff. Divisive politics is all about emotional invalidation nowadays and it drives me crazy. When you disagree with somebody who presents their case with raw emotion like Senator Cavanaugh does, it's OK to disagree with what they say, but it's really not OK to take issue with how they say it. Emotional invalidation is a type of gaslighting that's unfortunately a pretty common tool used right now by individuals whose only goal is to be abusive and make the recipient feel small. So I'm not here to parent

the young adults who thought they were clever when they cyberbullied an elected official and stating that they were officially a-- a political group, by the way. I mean, I've been the brunt of their stupidity as well and, frankly, I believe you reap what you sow and that if you believe politics is about being genuinely bad to people, you do you, but know that there are others of us that believe in boundaries when it comes to how we speak about others. And it's not OK to purposely be "asshats" at the expense of others, especially when you use mental health issues as your opening joke. It's shameful. As Senator Cavanaugh just said on the floor, she is loved. The people you tear down are loved by friends and family and it's not OK to hurt them, especially through your actions. Hurting others is not OK. Instead of sending out faux press releases on a truly painful and serious issue for many, you can just take the energy and maybe go volunteer at a local food bank, clothe the homeless, pick up some garbage, take your energy and make a difference, because you've not done anything in the last 24 hours except for making yourselves look ridiculous. I stand here a lot and I talk about divisive politics because I want to go back to the Nebraska that I grew up in and I know that social media has magnified the stupidity that's been brought upon us with divisive politics. I know that. We can't make social media go away--

FOLEY: One minute.

BLOOD: --but we are complicit when we are silent. There are a lot of people on this floor that I respect-- and that's why, Senator Stinner, I'm only talking once, because I respect the hell out of you-- who are letting this happen because they don't stand up. And if you're worried that you won't get your paycheck the next time you run for reelection, then that's on you. But if you're really the ethical people you claim to be, I would like to start seeing some people step up to the plate and say enough is enough because, again, this is not acceptable. Thank you, Mr. President.

FOLEY: Thank you, Senator Blood. Senator Hunt.

HUNT: Thank you, Mr. President. At this time, I stand in opposition of AM911. If we fund this prison, we're going to be making a huge ongoing commitment to the financial cost of the staff, of the upkeep, of the maintenance, of the building, of the contracting, all at the expense of taxpayers, and it's likely to be the most expensive project that our state has ever funded. And I understand that this amendment does not fund the prison. It doesn't mean we're going to build a prison, but-- but it's a-- it's a stop along the way. It's a stop along the

way on the track of starting the new prison, of-- of building that. And I have questions about the \$14 million that have been appropriated to, you know, collect the data and do the studies and talk to the structural engineers and make up the plan to see if it's feasible, to see what the lifespan is going to be of the current State Penitentiary. And I have some questions about the significance of the \$14 million; \$14 million seems like a lot of money to commit to a-- a project that we're not necessarily going to build. If we don't have a commitment to build, why is it \$14 million? Why not \$10 million or \$5 million or \$1 million? And I also have questions about who's going to do the oversight of that work. So talking about the life cycle of the current Penitentiary, talking about the feasibility of building a new one, siting for it, staffing, all of the research that's going to be-- need to go in to make sure that we make a good investment with taxpayer dollars, who will be overseeing that? Is it Corrections? Is it the Legislature? And if it's us, who? And I spoke to some members of Appropriations with these questions and I-- the answers did not assuage my anxiety about the \$14 million spend. When we spend this much money for a project that we have not committed to doing, we really need to have oversight because, in my opinion, if Corrections is-- are the ones overseeing the whole \$14 million budget to plan the new prison and get all the data that we need to decide if this is what we need to do, then, I mean, that's as good as giving them zero million dollars or \$400 million. Like, there's no evidence that at any point Corrections is going to say, oh, you know, well, we did the research and we looked at the numbers and we looked around and talked to people, it turns out we don't need a new prison. Like, there's no realistic reason to think that that's going to be the outcome, that no matter what type of check we give Corrections, that they're not going to come to the conclusion that, yes, we need to build a new prison. What we really need is reform in our state that's rooted in our values. The problem we have with incarceration is systemic. Here in the Legislature, we own a lot of that. Director Frakes has said himself that the legislator creating new crimes has helped drive this overcrowding. And in my time as a lawmaker over the past couple years, I've actually evolved quite a bit to, you know, oppose a lot of bills and stop bringing policies that would create new crimes. I introduced one this year that I actually asked the committee to IPP after I introduced it because I-- I'm just starting to kind of change my mind and my views around creating new crimes in Nebraska. It's the new crimes in this state that have driven overcrowding. It's the not-smart drug policy that has committed-- contributed to overcrowding. And the solution isn't going to be giving up and writing a massive check. And

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

again, I think this is a term limits problem. It's us saying, well, we want to have a legacy--

FOLEY: One minute.

HUNT: --we want to say that we did something to address the problem, so let's give the check to Corrections and tell them to figure it out. They already tried to figure it out with this-- this Dewberry plan, you know, that we've been talking about, and nothing in the plan that's supposed to go until 2023 said that they thought we would need a new prison. So they're not even following their own plan and they're not following it with regard to recommendations for a new prison and they're also not following it with regards to beds for mental health. Corrections never put together the amount of beds that were recommended for mental health, so, no, that obviously isn't a priority for-- for that department in our state. So the solution isn't giving up and writing a huge check. The solution is getting smart on justice, investing in prevention, investing in rehabilitation, not locking more people up. We are way behind in this state on investing in what works.

FOLEY: That's time, Senator.

HUNT: Thank you.

FOLEY: Thank you, Senator Hunt. Senator McKinney.

McKINNEY: Thank you, Mr. President. I rise again to speak to what I think is something that also assists with driving the mass incarceration problem in this state and in this country, and that is horrible policing practices from law enforcement, especially the Omaha Police Department, which is why we need LB51 from Senator Lathrop, which is why we also needed the public database, and which is why we also need LB515, which would create a municipal police oversight, because the police cannot police themselves and the police are inherently doing what they've always been set out to do since the first slave patrols in this country, and that's to oppress black people. There's a trial going on that I'm happy I'm in the Legislature and I don't have to sit and watch it. And I don't want to watch it because it's traumatic and it's-- it's horrible. It's a horrible situation where a police officer killed George Floyd by kneeling on his neck. I barely can watch. I-- I think I may have watched that video once and I didn't watch it in full because it-- it was a traumatic and horrible situation. I myself was jumped by the Omaha Police Department in the past and had I not been a wrestler, it could have been worse. And I eventually surrendered and they proceeded to beat me up and, you

know, I still have scars on my forehead because of that. Got into the car and they asked me, did I want some more? But these are the same people that come to this Legislature and say no to reforms. These are the people we're talking about. I just ask all of you, what if a disproportionate amount of your constituents was in the prisons right now? Would you stand up and support a prison or would you think about maybe we need some alternatives, maybe we need to look at why these individuals are ending up in our criminal justice system? Maybe we need to address poverty. Maybe we need to improve our schools and especially in District 11, who has some of the lowest graduation rates. A kid right now in OPS could probably graduate high school with a D average, literally, but we don't talk about these things. It's-- it's just sad. A prison is not the solution to why we have a mass incarceration problem. The solution is looking at the front end and looking at the root causes. That's where we need to go, but I felt it was definitely-- it's definitely important to point out that the police and their policing practices need to be addressed, as well, in this Legislature this year and going forward. We also-- you know, New Mexico just did it. We need to end qualified immunity in this state. They have to be held accountable. They are a huge part of the problem. There are some that will stand up and say we have-- Omaha has the best police department, we're doing great, we're-- we're-- they're-- they're so amazing. But I would beg you to walk down the streets of North Omaha and ask that question to-- to my constituents and Senator Wayne's constituents and ask them, do they think the Omaha Police Department is perfect and does an amazing job in the community and they don't beat up people weekly and they don't do all these horrible things to people? You never been pulled over and searched and the only reason you got pulled over for was they were looking for guns because they saw three black males in a car.

FOLEY: One minute.

McKINNEY: And once they didn't find the guns, they said, you could go, but you got pulled over, handcuffed, and had to sit outside of a car. That has happened to me. You never been walking on the street and had police just hop out of vehicles and put you on a wall just because you're walking with three of your friends, searching for guns and just leave. I don't have a gun. Like, I didn't have a gun. I own a gun now, but that-- that's-- I was a kid. I remember walking from a pool in west Omaha with my brother and my cousin and we get pulled over and they say we look suspicious. We're literally walking from a swimming pool and they said they got a call that we looked suspicious. My brother ended up getting arrested because of this, because he decided to defend himself and say, what are you doing, you're-- you're

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

violating my rights. We have to point out the horrible policing practices of the Omaha Police Department in this Legislature and address those issues if we ever are going to really get to the bottom of this issue--

FOLEY: Time.

McKINNEY: --because they are a huge part of the problem. Thank you.

FOLEY: Thank you, Senator McKinney. Senator Groene.

GROENE: Thank you, Mr. President. I'm going to speak from the perspective of rural Nebraska, Lincoln County, a blue-collar railroad town. We have crime out there and the majority of the race is Caucasian. It's meth. It's child abuse. It's the same crimes that mankind does no matter what your race is. We have a high crime rate, worse than what we need for a town that size. Yes, we need to fix the problem, but I'm confused. I've been here just long enough to see that study came out on the prisons, Ebke study, and then nothing really happened. But one thing I believe out of that study said we have-- we can't have overcrowding over 140 percent. We're there. We were supposed to fix that. We have not fixed it yet. We need to address it. Just being nice and saying you're sorry after somebody commits a crime, is addicted to meth, doesn't work. Not everybody saw and seen the light on the road to Damascus. You have to separate them from society-- the public safety-- for a while. Yes, treatment needs to be there, but you can't force treatment either. Same individuals who revolted and are mad at the world and they've got a right to-- I agree, Senator McKinney. A lot of people have a right to be mad at the world because the way they've been treated, but you can't force them to take treatment. You can't force them to change. But we have that duty to public safety. We need-- need to separate them from society until-- separate them from their peers who are causing them the problems. That's part of incarceration too. So let's get this rolling. Maybe by then, the next Legislature who addresses it treat-- creates a huge treatment center on that spot, but we got to get it rolling. We have the problem. You just can't kick it down the road. We need to start. There's other things that-- frustrating with me. Bring them up in the way they should go is what the good book says, but when we try to get legislation passed in our public schools so that old-fashioned Mike Groene and others understand that teachers used to teach boundaries to young individuals when they were small, we can't get legislation passed to give them the authority to do that anymore. It starts there. LB364, opportunity grant, the same people don't want this, don't want to give those kids in poor areas the opportunity,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

their parents who want to get their kids out of that poor public school and go to where they're going to learn values, Christian values or whatever, Baptist, Lutheran, or whatever, give them an opportunity. We can't get it passed. Those are things that need to pass. And I am so glad Senator Wayne and Senator McKinney are here because the last guy was just an angry man. You two are trying to do something for your community. People say you and Wayne get along because we're doing the same thing. He's looking for opportunity for blue-collar workers, the kind of jobs most people need, not because they're not smart enough. They don't want to work in a-- in a cubicle. They want to work with their hands in a packing plant, in a construction company, and that's what Senator Wayne is trying to do for his community and I'm trying to do for mine. But we need to pass 3-- LB364 and give opportunities for those kids instead of just complain about the public schools or to complain that people were treated badly. And we need to build a prison, call it what you want, call it a mass treatment center, and hopefully somebody finds a magic cure. And we don't need to pass marijuana. That's another crutch people who are-- who are having bad times in their lives lean on.

FOLEY: One minute.

GROENE: You can't have it both ways. We need to give these co-- we need to allow teachers to teach boundaries in the schools. We need to make sure the classroom is safe. We need to give them opportunities to get out of that public school if it's a bad one. LB364 is for poor children. That's what it's for. By the way, folks, Senator Flood said I-- he seen me in the country club. I admit that, but I took it more of as a-- as an employee appreciation. They allowed me in and then I got caught up with it so bad, I came to the floor the next day and I voted for the arts instead of voting for the poor people with disabilities I gave money to. I gotta quit being seen in country clubs. It affects my thinking. I hope you heard that, Senator Flood. But anyway, no, we need to build a prison. We got room in McCook, Nebraska, hope Senator Hughes agrees. We can expand that for these-- these beds, these minimum beds--

FOLEY: That's time. That's time, Senator.

GROENE: Thank you.

FOLEY: Thank you, Senator Groene. Senator Brandt.

BRANDT: Thank you, Mr. Lieutenant Governor. And I'd like to thank the Appropriations Committee for the two amendments and the bill. I

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

absolutely support AM911, AM395, and LB383. What I have to say will not take long. We have a \$230 million proposed prison, which I think probably will cost more than that. You divide that by 1.92 million people in the state of Nebraska, that is going to cost every man, woman, and child in this state \$120. In addition, maintenance cost on a prison is 30 percent a year, so that's going to cost \$36, ongoing cost for everybody in the state of Nebraska. Now, if they're all right with that, that's fine. Is there a better use for the money? That will be debated. I guess let's let the process work. We've got a CGI [SIC] study coming. Let's make sure we involve all the stakeholders. Let's get buy-in from all the stakeholders. I'm in year three on Judiciary. We see a lot of the same people coming in and I can tell you a week before they get there how they're going to testify. I can tell you what they're going to say and they need to be challenged. How do you change that? How do we make this better for everybody in Nebraska? I do agree we need to secure the site for the next prison. That needs to be done as soon as possible and AM911 does that. And with that, I would give the rest of my time to Senator Stinner.

FOLEY: Thank you, Senator Brandt. Senator Stinner, 3:25.

STINNER: Thank you, Senator. I just wanted to get back on the mike. I forgot to correct Martha Stoddard. Martha Stoddard didn't show up at my Exec Committee, Martha. She put in the paper that I'm going solo on this. I-- we actually had an Executive Session on the-- this amendment, took a straw poll, 9-0, so I got full support. I can stand here and tell you I got full support of my committee. The other thing, in terms of total cost, normally when you're doing a new construction project, your planning and design piece of that, you can figure on 10 percent, so it's like \$23 million. The request is for \$14 (million). The request is for option money only. There is no moving forward until we have all the pieces put together and we have confidence in a long-term plan, but we have to get started now. It takes five years. If we started today, it would be five years in order to do a prison replacement, but we need to have CJI weigh in, too, because that will really kind of dictate what that master plan is going to look like. So I-- I don't know how to-- to address some of your concerns. I get the fact there's a group in here, no matter what we say, no matter what we do, nobody wants to build a prison. But you got one that's wearing out. It's going to cost you a ton of money to keep it going. So you make the decision over the next year. CJI comes in. Master plan gets done. We have confidence in what-- what the numbers are, so \$235 (million) is just an estimate at this point. Might be \$220 (million), might be \$250 (million), but we've got to get started, folks. AM911 is the appropriate number for this. We're on fire. We need to do

something with the prison overcrowding. That's in the plan. We need to have guidance and confidence in what we're doing. That's in the plan, with the master facility plan. We need to start building and designing a replacement because putting money into the current facility at almost the same amount as new makes no financial sense. So that's the decision points, that's where we're at, and with that, I'll yield the rest of my time to the Chair. Thank you.

FOLEY: Thank you, Senator Stinner. Senator Machaela Cavanaugh.

M. CAVANAUGH: Thank you, Mr. Lieutenant Governor. Appreciate the conversation we're having on our prison system, and I want to go back to talking about bullying because it really does play into our prison system. Our prison system is built on a-- a structure of systemic racism and-- and bullying. And-- and we heard Senator McKinney just illuminate for us how he was bullied by police and things could have easily gone in a different direction for him because of that moment in time and he wouldn't be gracing us with his delightful presence every day. So I am eternally grateful that things turned out differently for Senator McKinney, but there are so many others out there that it didn't. There are three core elements included in the definition of bully: unwanted, aggressive behavior, observed or perceived power imbalance, repetition or high likelihood of repetition of bullying behaviors. We see that in this body, we see that on social media, and we see that in the police. Police reform is important and prison reform is important and lack of creativity is detrimental to progress. I would encourage this body to take the time to listen to what your colleagues are saying about how we could approach this differently. Get outside of the box, stop thinking about how we've always done things and start thinking about how we can do things differently. I've been listening to this podcast about a-- a specific public school in Brooklyn and it takes-- it goes over the whole "spanse" of the school starting in the '50s and talks about the different iterations of segregation, desegregation, integration, segregation again, all the different things that they keep doing at the school because they just keep doing the same things over and over and over again and expect a different result. And that's what we're doing here today, the same things over and over and over again and expecting a different result. Only difference is I don't expect a different result. My eyes are wide open now. This body is not interested in progress or change. This body is not interested in making this state better for anyone that looks different from this body. This body likes the status quo. The status quo works for you. The status quo benefits you. Doesn't benefit me, doesn't benefit Senator McKinney, but it benefits you. So I can see why you would stand up here and argue in favor of building more

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

prisons, because that's maintaining the status quo; that's requiring us to change absolutely nothing about how we do things except for to put more money towards it.

FOLEY: One minute.

M. CAVANAUGH: Thank you. I spoke-- I've spoken actually with a few people in this body and-- about the budget and I said the budget is fine. It is fine. It's a fine budget. It has a few things here or there that need a little tweaking maybe, cleanup amendments, E&R, etcetera, but it is fine. It holds harmless. It doesn't do anything to improve the lives of the most vulnerable. It does not make a significant creative, bold investment in changing the "projectory" of lives from birth through high school. Instead, it builds another prison. And you can argue the semantics--

FOLEY: That's time.

M. CAVANAUGH: ---all day long-- thank you.

FOLEY: Thank you, Senator Machaela Cavanaugh. Senator Wayne.

WAYNE: Thank you, Mr.-- thank you, Mr. President. I do want to spend some time. I think we need to have a-- a conversation. I know it's hard for people to change their minds on the floor and sometimes-- I mean, the question I'm getting asked is how long-- how long are we going to go so people could just plan their day and not necessarily sit in here and listen. But I-- I do think this is probably the defining moment for me in this Legislature, this body. I always tell you that there's different moments and I try to be transparent about it, but this one is because it's-- it's tied to a lot of things. And I think this particular one is tied to term limits and the Groundhog Day that we just continue to do around this issue of prison. Shortly, you'll be getting the front cover-- you can pull it up yourself: Nebraska Prison's [SIC] Capacity Crisis, April 1989. And this was done by the Department of Justice, who came in and looked at all the data and provided recommendations. In the '90s, we had another study, then in 2000s we had another study; 2015, CSG came in and did all this stuff and provided recommendations, and our prison system continued to go up. And if you talk to people about that process, which we're going to start having conversations with Senator Flood and Senator Lathrop, who weren't necessarily here but kind of, when the process started, was here. And we're going to talk a little bit more about how, at the end of the day, the body doesn't have the will to implement the recommendations truly to reduce the overcrowding of the prison, going

back to 1989, because it is political. There is elections coming up. And I just think it's false for us to sit here and say we're going to have another study and we're not going to build a new prison. If we truly said we weren't going to have-- we were going to wait to build the prison, then why not appropriate the funds maybe next year or the year after for the \$14 million when the study comes back? But we're not doing that either. The fact of the matter is-- is there's three things that go into prison reform, and I'm not even talking about necessarily crimes themselves, but what I'm talking about is there's entry, there's incarceration, and then there's reentry. And the two places we can have the most impact, in my opinion-- some will argue it's the entry part by the crimes that we have and the sentencings that we have and drug courts and those things. But the two focuses that I always try to focus on is the incarceration piece and the reentry piece, and this year I even tried to talk about it from a economic standpoint. We jam out, roughly every year, 2,400 to 2,500 people. That's either they get out on parole or they literally jam out. We release almost half of our prison population on an annual basis; 30 percent of those individuals reoffend within the first three years of being released. That is part of the gap that we can do to actually change the prison population. Not only that, there are currently 900 people in minimum or correct-- or community corrections-type security. We can move those individuals back out to the community and-- and release all the pressure that we have on overcrowding. And I don't mean release as in they go home and go free. I mean actually halfway houses and programs that they can work at, attend, go to work, start building some bank account, so that when they are done with their prison sentence, they don't go back to the same area that they just came from. But we don't want to talk about that. To me, this is a approach that is limited to building something new.

FOLEY: One minute.

WAYNE: We aren't talking about the other aspect of reentry or how people get there. And to set aside \$14 million, to set aside \$14 million for a new prison study and to sequester \$100 million for a potential prison reform, isn't solving the actual issues of why people are reoffending. And how do I know that? I can look at the bills that we voted on and I look at the bills that are stuck in committee. There is a felon voting right bill that study after study shows you can reduce your recidivism rate anywhere from 5 to 10 percent. Florida did it. Actually, Florida found 20 percent reduction over a three-year period. I can't get that bill out of committee. It came to the floor

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

my first year, got Gov-- vetoed by the Governor. That is one way we can--

FOLEY: That's time, Senator.

WAYNE: Thank you, Mr. President.

FOLEY: Thank you, Senator Wayne. Senator Vargas.

VARGAS: Thank you very much. Actually going to agree with Senator Wayne on certain aspects here, but I have a hard time with this. I do stand in support of AM911 and there's a couple reasons why. First, I do want to say, I don't want to build a prison. I don't think anybody really wants to build a prison. I think we're all in different spectrums regarding whether or not we need to build a prison. The most important thing is, are we doing the other things that need to happen to reduce our prison population? The answer to that is a very resounding no. We just aren't. We've had several bills, some in committee that Senator Wayne was just referencing. Over the last couple of years, we've had some bills to try to deal with juvenile justice, some that have to deal with-- and we are not where we need to be. If I had-- every time where there is a conversation and a bill introduced and I hear Corrections talk about the fact that there is-- it's not my responsibility to influence or change policy, my job is to make sure we are managing and managing the prisons and managing the population, it is disheartening. But at the same time, I'm also looking at the reality of what's facing us right now, which is I don't think plans solve everything, but I do think right now, in the face of not enough information, people telling us why we need to build a prison, a plan for alternatives and utilizing our current buildings and our current beds or making sure we create some more of these beds will actually do us some good. There's been enough times where we've debated on issues and we don't always get necessarily what we want. If I got what I want, we wouldn't build a prison, period. But I also don't think-- there isn't enough support right now in this body, unless somebody tells me otherwise, to pass some of the reforms that Senator Wayne just brought up. Well, let me repeat that actually. Let me change that. We haven't even had the debate on many of these things because they haven't gotten to the floor yet or we won't let them out of committee yet. We have work to do. There is a lot that we can do in the juvenile justice system to make sure that more youth don't get in the justice system. There's a lot more we can do to make sure that more individuals have a high school diploma. There's 50,000 adults right now that don't have a high school diploma in the state of Nebraska. There's more that we can do to make sure that people aren't

reoffending. There's more that we can do on-- on sentencing reform. There's more that we can do to address some loopholes that we see in sentencing and charges. We've had these conversations in Judiciary before. There are some things that we can do. There's more. The issue is not whether or not we have the bills; it's whether or not we can get enough votes on this body to do that in tandem with these other things. This amendment still provides us a pathway to then look at these alternatives so that we can make sure we have enough beds in place. I don't want to build a prison, but I also don't want us to lose sight of part of the bigger picture. We have a responsibility that we need to do on other bills in this body. I'm co-chair of the Juvenile Detention Alternative Initiative. I sit on many juvenile justice commissions. The issue that we're in can be solved earlier on, upriver, if we have the political will, but we're not there yet. And most of us will be gone in three, four years. Some of us, this is our last biennium and there is an opportunity to do more, because after this administration and after this package is passed in some way, shape, or form, we're still going to have a prison problem unless we reduce our numbers. That's just math, so we have to be smart about what reforms we are willing to do. And we don't have--

FOLEY: One minute.

VARGAS: --enough of that will yet, but I am asking you to have more of that will. There should be a convening work group on how we should be reducing. And we-- we have the policy analysis. Somebody handed out a sheet with reforms that we can do, so it's not a question of the reforms. It's what we can do. We have to do those over the next several years. And in this year, we can and we should too. But at the end of the day, we do have something in front of us that I do support. AM911 is not everything that we necessarily need. It's what we can do to pass. It's our best opportunity right now. That's why I'm asking you to support it as a member of Appropriations, and also the fact that many-- all of us are going to be here next year to follow through on what does and does not happen in regards to this. Colleagues, we have a real opportunity to actually work on more policy reform to reduce what is happening across our state. We cannot accept that the data just says that we need to continue to have more spaces available--

FOLEY: That's time, Senator.

VARGAS: Thank you very much.

FOLEY: Thank you, Senator Vargas. Senator McDonnell.

McDONNELL: Thank you, Mr. President. Good morning, colleagues. I rise in support of the amendment. I appreciate the Appropriations Committee and we-- because of the process, of course, it had to be Senator Stinner's amendment, but we supported this unanimously as Appropriations Committee. The subcommittee that we've been working with, with the Appropriations, a few of us, and-- and Judiciary and-- and the Governor and-- and others, I've learned some things on that subcommittee. I've been honored to serve on that subcommittee and I'll-- I'll still continue, of course, to-- to learn as I go. But the way I've looked at this, we need brick and mortar. We need brick and mortar. We also need programming. We also need to look at-- at pay. We also looked-- we need to look at the-- the correction officers' pay. And then during the process of having the subcommittee, I also said I would add-- I was saying it was a three-legged stool. I'd add a fourth leg now and-- and we would look at sentencing reform, similar to what they did possibly with LB605 in 2015. I don't-- I don't know how that's done. Where-- where has that helped? And-- and let's-- let's give credit where credit's due. If it's helped in certain areas and it hasn't, then-- then let's look at that. But we have currently the Nebraska State Penitentiary that was built in 1869, renovated in 1981. We have people that are working there that are coming to us saying we need a better facility for their safety, line of sight, the ability to also have true programming. You talk about reducing recidivism, programming will reduce recidivism, now by how much we don't know, but with having a current facility that needs to be replaced, that is my feeling. With what we replace that and where, we don't know. With what we add to it with programming, we don't know. With the idea of what we're going to do with pay, hopefully, because you can look at basically being 18 percent under pay and you're-- you're working in a facility where possibly the Douglas County and-- and Sarpy County could come in and say, well, we're going to you guy-- use you guys as a-- a farm team here and take the correction officers we want because we know we're paying better. We have to look at that. That's-- that's part of-- of-- I think 25 percent of the solution. But let's give credit where credit's due right now with everyone that's working on this and not exclude the Governor because the Governor proposed \$230 million in his budget to build a new prison. We, as the Appropriations Committee, cut it in half, \$115 million. Then we put it in a construction account. Then the Governor came back and said we don't want to lose eight, nine, ten months in this process, even though he knows, I believe, how-- how we feel and we want to address a number of-- of different areas to help at the same time. So he says, OK, can I-- can I have \$19.2 million so we can con-- consider a site, not purchase, not purchase property, not purchase-- purchase land, but

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

continue to move the project forward so we don't lose 8, 10, 12 months? At the same time, if we all agree today and said we were going to build a new facility, it's going to take us approximately three-and-a-half to four years. If we say we're going to take the current facility that was built in 1869 and remodel it, that's going to add another 18 months with less capacity, less places for-- for programming. So we have to weigh that, but this amendment doesn't give the ability to anyone to build a prison. What it says is we will continue the discussions, appreciating what the Governor has done on this issue--

FOLEY: One minute.

McDONNELL: --by saying-- one minute?

FOLEY: Yes, sir.

McDONNELL: --thank you-- appreciating what the Governor has done based on saying, OK, fine, I started off at \$230 million, you guys cut it in half, you put it-- put it aside, but can we at least keep this part of the process going as we continue the discussions on sentencing reform, on programming, on pay for the people that are working there? I believe that's-- that's fair. I believe that that's-- that's-- that's negotiating in good faith and I-- I believe that gives us all an opportunity to continue to learn and develop a-- a long-term plan, but also not losing eight months approximately before we-- we come back in-- in January. Thank you, Mr. President.

FOLEY: Thank you, Senator McDonnell. Senator Matt Hansen.

M. HANSEN: Thank you, Mr. President, and-- and good morning, colleagues. I rise today-- I'm going to speak kind of broadly about how I view Corrections and how I look at this because, unlike some of my colleagues who have spoken today in opposition, I-- I share similar hesitancy and fear of moving forward blindly to just think we need a new prison and not considering all sorts of other options. I don't necessarily have a complete aversion to building new beds, to building new facilities, to new construction. If that's something that we truly, ultimately need with the growth of the state, the growth of our population, that's something we consider. However, I think, throughout at least my tenure in this Legislature and in recent history, we-- collectively as a state, we, the executive branch, the Legislature, and so on, have not shown ourselves to be good stewards of the facilities that we do have and we've not shown ourselves to be good employers of our correctional officers and we've not shown ourselves

to be good stewards of our incarcerated population. And so that's my hesitancy when we see these lingering and latent problems in terms of not being able to provide the minimum amount of services and inside the Corrections, that there are people going their entire tenure for drug- and alcohol-related crimes and not being eligible for a drug- and alcohol-related class and jamming out without programming, as has been mentioned before. At the same time, we're having massive turnover in our employees and mandatory overtime and days and days of time. And we have these lingering issues and we have these issues that we have not been able to solve and resolve and get forward. I have no idea how we as a state expect to drastically grow our facilities and not just make those problems worse and drag those problems to a new city, a new county, and just continue the absolute stress on this system. It's a little bit of just moving around and moving around different problems. I know many others in here have worked on a variety of these issues. I personally have worked on correctional officer pay and brought a bill on that in the past and worked with other senators who have had interest, and that's just one aspect of a manyfold aspect of the problems we have. You know, I think looking forward, there probably are things we can do, you know, obviously designing a-- designing a facility, making a facility that actually has adequate services, that is actually safe for staff and incarcerated persons isn't something that-- I think it's something we should, could consider, but without knowing that we're actually going to fund it adequately, without knowing that we're actually going to have staff willing to work there, without knowing that we are going to have, you know, the bare minimum of treatment inside the facility, this is the epitome of putting the cart before the horse for me. I don't know when we look at having a series of troubled facilities spread across all the state, a very clear answer being, oh, let's just build another one. I don't know if you build yourself out of institutional problems that were within the Department of Corrections, that are within our state government, which is not to say-- I didn't even touch upon all of the other issues that I think are very valid and very needed to look at in terms of the systems that lead to incarceration. We talk about the school-to-prison pipeline.

FOLEY: One minute.

M. HANSEN: Thank you. Talk about the school-to-prison pipeline and for that to not even be a recognition or a mindset of so many people in this Legislature worries me that just any sort of attempt to just build new beds is just going to fill new beds, not because there's actually an increase in crime or an increase in threat or an increase in public safety, but just because we have new beds, all of a sudden,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

you know, valid alternatives, valid other treatment won't be considered and won't be seen as a priority. I had way more-- I was initially choosing to not turn on my light because I thought I wouldn't be able to get all my time done in one speech, so I'll turn it on again here in a moment. Thank you, Mr. President.

FOLEY: Thank you, Senator Hansen. Senator Groene.

GROENE: Thank you for reminding me to push the-- with my voice, to push the mike away, not closer when I speak. But anyway, thank you, Mr. President. I stand against, again, LB-- AM3911-- no, not AM911. I stand for LB383 and the Appropriations amendment. I'm not real happy with the budget myself. I see too much spending in it. It's-- made a mistake yesterday and misinformed myself about how many bills were added into it. And again, most of those bills, the 14 or so, was added in by members of the Appropriations Committee. You seen something yesterday that was done correctly. I was asked why did I vote for the endowment of the arts, the arts bill by-- that Senator Flood brought forward on Senator Stinner's bill. That was a bill that we should have debated on the floor, not debated in Appropriations Committee, a hearing, and then automatically put into a budget without in-- involved in a huge floor debate of \$10 billion for \$200,000 or a million. It should have been 80-- what happened when Senator Flood brought that. Most of these bills that are included in appropriations should be debated on the floor individually. That's got to change. Appropriations Committee funds existing programs. They shouldn't be rewriting them. They should not be changing the qualifications to gain HHS programs. That should be done on bills debated on the floor. They look at the statutes, they see about the fundings, they hear the testimony, they fund the existing language. They don't start rewriting the language and then add more money. I'm-- I'm concerned about that. If it's an HHS program, it should go through HHS Committee any time the language is changed. So anyway, maybe you guys will look at that in the future. I just don't understand why we put \$4.5 million into public health departments when the COVID-- we don't even know for sure how much money they got from the COVID money or how much more they're going to get from the \$1.5 billion coming from-- from Biden. So why do we put \$4.5 million in there? Customized job training fund, why did we put \$2.5 million in that? If we're going to-- why aren't we focusing that money? We're not a rich state, folks. Can't have it both ways. If we're going to-- let's use that money for your programming to teach con-- inmates how to weld or something. Everybody's got their little private thing, we all do, but anyway, the-- the budget is-- we're getting too big for our britches. And we're not growing our population-- I should say we're not growing our population of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

taxpayers in this state where we can be growing our programs, our spending. You just need to back off a little bit because we're-- you guys are going to have to do it after I'm long gone, somebody will. They're-- you're going to be cutting. Anyway, that's what I wanted to talk about. And as I said earlier, we need to look at instilling boundaries, working with our children, not giving them excuses for behavior, because excuses for a 5-, 6-year-old turn into excuses for a 20-year-old and a 19-year-old and they end up in the State Pen. So you can't hug them then. You can hug them when they're five.

FOLEY: One minute.

GROENE: It's hard to hug them when they're 19. One minute? Yeah. So we'll be debating that later in the session here again, and-- but remember that. Let's give opportunities to kids when they're little, instill boundaries when they're little, then they're not in the State Pen. They're not in the State Pen. So I'll leave it at that. I'm going to support the overall budget when it comes on Final Reading. I will be supporting it. But let's quit putting extra bills into the-- into the budget before we even have a chance to debate them here. We're-- we're debating 14 bills. You know how much time that would have took on the floor? And it's just been mentioned a few times here about some of these 14 bills, more than 14. There's actually about 20 or so.

FOLEY: That's time, Senator.

GROENE: Thank you.

FOLEY: Thank you, Senator Groene. Senator Dorn.

DORN: Thank you, Lieutenant Governor. Just wanted to get up and talk a little bit, too, this morning about all the discussion going on. I do stand in favor of AM911, AM395, and the bill itself, LB383. Part of what happened in Appropriations this year was, again, I talked yesterday about long-range planning. And I call this aspect of what is happening today here again some long-range planning. Generally, the Legislature doesn't do a real good job of planning and looking into the future. This proposal that has been brought forward by Chairman Stinner was discussed in the-- in the Appropriations Committee. It was discussed at length about should we or should we not build a prison. I think that was also discussed when we talked about putting, I call it, the \$115 million in a capital construction fund, \$50 million the first year, \$65 million the second year. We put that in there and then specifically did not allocate those resources. We put it in a fund, set it aside in the possibility of looking into the future that we

might build a prison. This proposal here today is in no way saying that we will build-- build a prison. Senator McKinney, others have talked about the need for a prison and that we don't need a prison. Senator Lathrop has talked about-- at length about his proposal that he has worked out with the Governor to have the CJI commission and that study done and that that will be done by the end of the year. So when we come back in next session, we will be able to, I call it, incorporate a lot of other things into our discussion as we go forward. I think it's very critical that we look at the big picture of this all, not just at one specific aspect and say we need this or we don't need this. This state has had issues for many years with prison, with prison reforms. I often have heard you're not getting anything done. I've often heard you drag your feet. The part I really like about AM911 is it starts to lay some of the groundwork as we look out into the future and as we start to develop a plan or start to develop different things that we can, I call it, pull into a package and as we go forward next year, particularly when we will most likely have a really robust, another discussion on this, what some of our long-term goals are or some of our long-term vision is for the Correction Department, for the Correction system we have. We know the State Penitentiary was built down here right now 40 years ago. We know that that only has so long a life. That issue is not going away. Our prison reform issue is not going away. It's like some other things we do here. We kind of nickel and dime stuff to death. We don't never really, I call it, develop a plan and then move forward with that plan. To me, this lays the groundwork for us starting to pull those various aspects-- aspects together to start to lay some of that groundwork so that we can continue working on a plan and that we can do what is best for the state and what is best for, I call it, the inmates that we have, because we know that things, as they sit today, we all would like to improve them. Thank you very much and I'll yield my time.

FOLEY: Thank you, Senator Dorn. Senator Wayne.

WAYNE: Thank you, Mr. President. Would Senator Lathrop yield to some questions?

FOLEY: Senator Lathrop, would you yield, please?

LATHROP: Yes, I will.

WAYNE: I know you weren't here, I believe, at the time, but can you walk us through the CSG process and how that went back through in 2014 and '15, if you know anything about it?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

LATHROP: Actually, I was not involved in CSG, Senator Wayne. That was more Senator Mello and Ashford. They worked on it in 2014 and then we were all term limited. Mello wasn't, I was, Ashford was. And then I think you guys picked it up in 2015.

WAYNE: Correct. I was just seeing if you knew as Judiciary Chair what those reports said and-- and, if anything, you knew anything about the process. But if you don't, then I understand that. Will Senator Flood yield to some questions?

FOLEY: Senator Flood, would you yield, please?

FLOOD: Yes.

WAYNE: Senator Flood, when you were down here previously, did you ever deal with the prison population issue or have conversations on it?

FLOOD: Well, it's interesting. So when I arrived in 2005, Senator Kermit Brashear had-- at the time was the Speaker. He had been the Chair of the Judiciary Committee, and he had assembled a whole community corrections council and was working on community corrections. And I didn't participate on that, but I participated kind of with some different initiatives as it related to like methamphetamine treatment. And I would say that from 2005 to 2013, I saw the state's funding and the Legislature reduce its funding for that after Senator Brashear left. And I guess I'm not super surprised that we're here.

WAYNE: Thank you. Colleagues, that's what I meant by kind of the term limit gaps and things that happen is that we lose some knowledge of what we're doing in this body. And we kind of just need to ask some of our-- in our fraternity, in my fraternity, we call them our older heads who've been around and know this stuff and maybe had conversations. But I just want to remind people that we've put 64 beds in D&E, 160 female beds in CCL-- CC-- CCCL, 100 male beds in CCCL. We did 100 beds in NSP and by 2023 we will have done 834 beds. That's over 800 beds in the last six and going forward three more years. We can't build our way out of this. And what concerns me about this is the department really gave us no other option. If you look at the plans that were done from 2000, 2012, 2014, 2014 and '15, the bill that was done in 2015 and '16; 2020 there was a new JSA [SIC] that came back and redid some things that gave us some updated projections, which I'm going to ask Senator Lathrop about those projections in 2020. Will Senator Lathrop yield to a question?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

FOLEY: Senator Lathrop, would you yield, please?

LATHROP: Be happy to.

WAYNE: So in 2020 JSA [SIC] came back and updated from their 2012 review. Can you give the body some information on what that was and how-- or what the conclusions were?

LATHROP: Sure, sure. One thing I will tell you is almost every projection since 2006 that I've seen has been spot on. JFA came in in 2020 and did a population projection. It's basically an increase of 250, average daily population increasing by 250 a year.

WAYNE: And that's without any reforms, correct?

LATHROP: Absolutely, that's with current-- current statutes.

WAYNE: So if they're-- if they're currently doing 200-- thank you, Mr.-- Chairman Lathrop. So if we're projecting 250 per year going up, well, it won't take that long by the time they finish the new prison that it'll be full. So we'll be looking at a new prison. Colleagues, I don't think we're understanding what mathematically--

FOLEY: One minute.

WAYNE: --what we're talking about here. By the time, according to Senator Stinner's timeline, when I was driving down listening to, that this is a seven-year process, even if today we wanted to start a prison, 7 years times 251 puts us over capacity at that prison. So what are we doing? We're building a new prison that's going to be overpopulated by the time it's handed to the state and substantially completed. That's just wasting money. So when we talk about property tax relief and we talk about things going forward, this \$14 million is the start of where I am deviating from a lot of bills that I said I would support because we're wasting money without changing anything,

FOLEY: Time. Thank you, Senator Wayne. Senator Lathrop.

LATHROP: Thank you, Mr. President. Colleagues, you know what? I agree with Senator Wayne. I agree with Senator Wayne that we cannot build our way out of this problem. I have stood on this floor since I got back. We cannot build our way out of this problem. Even if we built this new prison, it would be-- we would still be overcapacity. We cannot build our way out of it. That's why-- that's why-- and by the way, since I've been back, this is my third se-- the third session, we have introduced bills to this floor. We've introduced bills to this

floor that are-- fall in the realm of criminal justice reform: indeterminate sentences, habitual criminal, mandatory minimums, parole. We've-- we've offered those bills. They don't go anywhere and they don't go anywhere because we don't have the data to show they work. We don't have the data to show they work. Bringing in CJI and why I am supporting AM911 is between CJI and allowing some of the work to go forward, we will find ourselves in a position in the November-December timeframe approaching the next session where we will have information on a structure if we want to go that way, or to the extent that's part of the plan. We will also have information on what kind of reforms will work, what kind of reforms should we adopt in this body, and CJI will be able to tell us something that we have not been able to bring to the floor in the past. And that is, what experiences have other states had that did this? Did they preserve public safety? Did they lower recidivism? We'll be able to look at data and say, here is a plan. I know we've run it for three years in a row. You wouldn't buy into it. But guess what? They've done this in five states and CJI just showed us that their crime rates went down or that they didn't have to build a prison. What we're doing with AM911 and the CJI process, colleagues, is putting us in a position where we have options and we will choose from the menu in November and December to develop the legislation we need for a long-range plan. May-- might it involve building these 1,500 beds? It could. It might not be necessary too. We'll know all of that. We should know all that in the fall. November and December we'll have an idea. A group of us will be working on those policy proposals, and we'll be able to come to the body and say this not only saves the state money, it's --it reduces overcrowding. And guess what? When other states have done this, it's worked and it's lowered their recidivism, or public safety hasn't been compromised and the state saved, as Utah did, \$500 million by avoiding construction of a new prison. Today, we're not committing in AM911 to building a new prison. I feel strongly about that. I feel strongly about that. And I would say everyone in the working group felt the same way. But we're allowing that process to take a small step forward, not-- not a step that will inevitably lead us to that prison, but a small step and allow these processes to go side by side to November and December when we can make some policy judgments and prepare a long-range plan so that we don't find ourselves in a place where we're trying to build our way out of it. You look like you're about to tell me I'm done.

FOLEY: One minute.

LATHROP: Oh, thank you. Colleagues, I would encourage your support of AM911. It is not a commitment to build. Senator Wayne is exactly-- he

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

is exactly right. He served on Judiciary Committee with me my first two years back. And he's exactly right. And he's seen what I've seen. He's seen what Senator McKinney has seen. We have these proposals that come before the Judiciary Committee and the usual crowd comes in and opposes them. And we have no way to say that they will improve public safety. We don't have the data to show they'll save money without compromising public safety or that they'll lower recidivism. And I'm telling you, in November and December we'll be able to share that with you and develop a long-range plan for corrections that is smart on crime. Thank you.

FOLEY: Thank you, Senator Lathrop. Items for the record, please.

CLERK: Thank you, Mr. President. Confirmation reports from Retirement Systems Committee. Have a notice of hearing from Natural Resources. Enrollment and Review reports the following bills as correctly engrossed: LB40, LB40A, LB83, LB92, LB197, LB322, LB322A, LB324, LB324A, LB371, LB390, LB487, LB544, and LB544A, those all reported correctly engrossed. Enrollment and Review also reports LB379, LB381, LB382, LB384, LB385 to Select File. Mr. President, returning to LB383, Senator Cavanaugh would move to bracket the bill.

FOLEY: Senator Machaela Cavanaugh, you're recognized to open on your motion.

M. CAVANAUGH: OK, sorry, those that were in the queue. I-- I guess I jumped the gun. So I put up a bracket motion to re-- to postpone this until which date? May 4? OK, till May 4. So didn't mean to take steam out of the prison conversation, but I just wanted to make sure that I got this up before we adjourned for the day. So if you want to continue the conversation about the prisons, I would encourage you to do so. I am going to continue discussing cyberbullying. So child abuse, this is from the American SPC-- and my goodness, my eyes are not very good. I can't read what SPC stands for, Society of Patient Care-- oh, Positive Care of Children. They say after you turn 40, your eyesight starts to go bad and I'm 42, so. OK, so the American SPCC impact of cyberbullying, child abuse needs to stop and education is the key. The following free resources are essential to driving change and are made possible through your contributions. Thank you. So I guess go check that out. Sorry, I didn't mean to read that advertisement. The impact of cyberbullying: What happens to kids during childhood shapes who they become. Bullying is often written off as a rite of passage as kids just being kids. However, bullying can have lasting physical, mental, and emotional effects: experiencing in-person bullying, alcohol abuse and drugs, skipping school,

receiving poor grades, having low self-esteem, having health problems. Impact of cyberbullying on the victim: Research reveals that there are many negative consequences sustained by victims of cyberbullying. These include high rates of depression and anxiety, reduced feelings of self-worth, difficulty sleeping, and increased bedwetting events, higher number of physical issues such as headaches and stomachs, increased suicide attempts. A Yale study found that victims of bullying are thought to be two to nine times more likely to report suicidal thoughts than other children. Other-- another study also found that for girls specifically, eating disorders are more often-- are often more prevalent when they are involved in a bullying relationship. Effects of cyberbullying: Cell phones and computers themselves are not to blame for cyberbullying. Social media sites can be used for positive activities, like connecting kids with friends and family, helping students with school, and for entertainment. But these tools can also be used to hurt other people. When done in person or through technology, the effects of bullying are similar. Kids who are cyberbullied are more likely to use alcohol and drugs, skip school, experience in-person bullying, receive poor grades, have lower self-esteem, have more health problems. Why do people cyberbully? What causes a person to bully another online? According to Joseph Magliano, Ph.D., professor of psychology and director of the Center for the Interdisciplinary Study of Language and Literacy at Northern Illinois University, the answer to this question involves factors that are multiple and complex. A 2010 study published by the Archives of General Psychiatry also found that cyberbullies tend to be more hyperactive and have conduct-related issues. Interestingly, many cyberbullies also reported not feeling safe while at school. However, based on research in the field, Magliano says that people who cyberbully often have difficulty feeling empathy for others, use cyberbullying to feel more powerful than they think they are, bully online in an attempt to gain popularity, think that their peers are engaging in this behavior so they do it too, have poor parent-child relationships, are not monitored by a parental unit while online. So I think what that's really telling us is that when somebody is-- is the-- the bad actor in cyberbullying, that there are some serious underlying issues that need to be addressed for that individual as well that we should be concerned about, and not just dismissing them as-- as cruel, but also consider that they might also be dealing with something that is causing them to act out in such a way. And I think that having empathy for others is really important, an important thing to keep in mind, especially it's-- it's hard. It's hard when somebody is bullying you to have empathy for that person. But people don't bully without having some other underlying issue going on in their

lives. And I always think that's important to keep in mind. Cyberbullying, learn the signs. Is a child being cyberbullied or cyberbullying others? Cyberbullying is hard to notice because teachers and parents may not overhear-- I'm sorry. Oh, no-- overhear or see cyberbullying taking place. It's harder to recognize. Some signs to notice include more computer and tablet use, more texting, overly emotional, hiding activity, sitting isolated. Mr. Lieutenant Governor, how much time do I have?

FOLEY: 3:20.

M. CAVANAUGH: Thank you. What a parent should know: Many of the warning signs that cyberbullying is occurring happen around a child's use of their device. Some of the warning signs that a child may be involved in cyberbullying are: noticeable increases or decreases in device use, including texting; a child exhibits emotional responses, laughter, anger, upset to what is happening on their device; a child hides their screen or device when others are near and avoids discussion about what they are doing on their device; social media accounts are shut down or new ones appear; a child starts to avoid social situations, even those that were enjoyed in the past; a child becomes withdrawn or depressed or loses interest in people and activities. Parents play a key role in preventing and responding to bullying. If you know or suspect that your child is involved in bullying, there are several resources that may help. Utilize tips and tools to talk to your child about cyberbullying. Open lines of communication before your child is involved in bullying makes it easier for them to tell you when something happens. It's also important to work with a school to prevent bullying before it starts. What kids and teens should know: Never respond to harassing or rude comments. Save or print the evidence. Talk to your parents or guardian if you are harassed. Get help reporting this to your ISP, school or local law enforcement. Respect others online. Only share your password with your parent or guardian. Change your passwords often. Password protect your cell phone. Use privacy settings to block unwanted messages. Think before posting or sending photos. They could be used to hurt you. Contact the site administrator if someone creates a social networking page in your name. So, again, I think that cyberbullying is a really important issue and just bullying in general and this website has some great other resources related to ACEs, or otherwise known as adverse childhood experiences, which contribute a lot to the prison-to-preschool pipeline. And I think that that's a really important conversation for us to be having around this budget--

FOLEY: One minute.

M. CAVANAUGH: --and building a prison. Thank you, Mr. Lieutenant Governor. I really think that compassion and empathy are important qualities in a person. And I am sorry to the young people that feel that it is appropriate to make bullying comments about mental health online. I'm sorry that that is an outlet that you feel you need. Mental health is not a joke, and no one should be fearful of seeking help when they need it. I sought help when I needed it about five years ago and it changed my life.

FOLEY: That's time.

M. CAVANAUGH: Thank you.

FOLEY: Thank you, Senator Cavanaugh. Speaker Hilgers.

HILGERS: Thank you, Mr. President. Good morning, colleagues. Just want to give a brief scheduling update for today since I've had a few of you ask. We're going to continue to work through lunch. Cloture on LB383 will be approximately 5:15 if needed, so approximately 5:15. So we'll work through lunch and we will go to 5:15. This is the last piece, these are the last pieces of the budget bills. We'd like to keep them together going into the weekend so that our Revisors have the time to do their work in preparation for debate next week. So that's why we're doing that. But we will continue our work. If you have any questions, please let me know. Thank you, Mr. President.

FOLEY: Thank you, Mr. Speaker. Senator Matt Hansen.

M. HANSEN: Thank you, Mr. President, and thank you for the update, Mr. Speaker. When we first read the items into the record, I thought we were adjourning and I thought even 11:15 was leaving a little early for us on a Friday. With that, I do rise to kind of continue my thoughts from earlier on, rise to continue my thoughts from earlier on kind of the correctional system, the criminal justice system here in the state of Nebraska. And fundamentally, as I said before, I don't necessarily-- I could be persuaded, I suppose. If we have a capacity issue, we have a capacity issue. If there's a safety issue, there's a safety issue. I can get there. But I need to be assured and be shown that future investments, money that we as a Legislature are appropriating, is actually going to be used well. We're going to have good stewards of-- be good stewards of the money; the facilities that we end up enabling are going to be adequate, they're going to be modern, they're going to be well staffed, they're going to be safe for both people incarcerated and the staff. These are things that I think need to face a high level of scrutiny. And based on our past history

of the facilities that we run in the state of Nebraska, I just have to have a healthy amount of skepticism. That is why I understand the tiered approach. I understand the steps. I understand what's being proposed here, or at least I think I understand. And I-- I'm working through it. But that's something that I think it's not as simple as just to say-- get up and some of the people in support, some of the people in the media who have just kind of banged their fist on the table and just say, we need more. It's like, well, part of the reasons the current Corrections system isn't working well is we can't staff it because we can't hire enough people and we can't keep them there because we're paying less than when the county corrections pay at the jails. We are-- built a prison in a small town that didn't turn out to be the economic driver we thought it was. There's all these layered problems that we have built ourselves into that are baked into our system. And frankly, we really need to see some progress, some advancement on those issues before I have any hope that building a new prison won't just turn into another quagmire that is understaffed, that doesn't have programming, that is locked down a significant amount of time sheerly because we're forcing people to do days and days and days of 16 hours mandatory overtime in a row, and enough people quit and walk off the job that we start getting into safety issues again. These are all things that we've heard repeatedly and repeatedly and repeatedly. And I know there's been some moderate increases. And I understand there's been some things that have moved the needle. And I'm not dismissing that anything has happened. But that's taken years of effort by some of the staff at Corrections to even just move to a modicum of progress. And to all of a sudden just act like we can drastically increase the amount of facilities, the amount of staff, all of the things connected to it and that it's actually going to work and that we're actually going to have people willing to work there and it's actually going to be constructed of quality and safe and not immediately run into repairs is a-- quite simply, a concern I have. I mean, think about what happens at what we've seen just in the past year at the YRTC, you know, different agency, different population and whatnot. But I mean, it was basically a sewer main and a water main rendered a relatively new building just uninhabitable just by lack of communication, coordination between Department of Administrative Services and DHHS. That's the level of care. That's the level of duty we've seen with--

FOLEY: One minute.

M. HANSEN: Thank you, Mr. President. That's the level of care. That's the level of commitment we've seen with a lot of buildings and just in our state. So this rush to we have to have a new one, even if you

convinced me in public safetywise, numberswise that it made sense, there's still the concern that are we actually going to be able to staff it? Are we actually going to be able to maintain it? Is it going to be built somewhere that makes sense? These are all things that I think before we just wantonly throw money at the problem, we're going to have to figure out some more assurances and more-- and more solutions. I understand the stake and the weight, and I've talked with Senator Stinner, I've talked with Senator Lathrop, I've talked to some of the people on this, and I think I know where I'm going. But before we commit and just act like this is a no-brainer or before we act like just the numbers prove it, we don't have to have any second guesses, I mean, we could barely staff some of the places we have now.

FOLEY: That's time, Senator.

M. HANSEN: Thank you, Mr. President.

FOLEY: Thank you, Senator Hansen. Senator Flood.

FLOOD: Thank you, Mr. President. Good morning, members. I don't know if anybody here had the chance to hear Senator McKinney speak this morning, but it was, for me, a reminder how more-- how important perception is. And I, you know, I-- I believe that Department of Corrections understands how important it is to maintain public safety. And if there's going to be a prison built, there's going to be a prison built. But I'm totally invested in the process that we're going through here today. But one thing I think that is very important is that for the first time in my service, we have two senators from an area of Nebraska that are focused on growing jobs, increasing economic development, and making a change for people that, as Senator McKinney said, are all too familiar with the criminal justice system, that they don't buy into, that they don't believe in. And that perception is something that had my full attention when he said it, because it's easy to forget about that when you-- you don't intersect with a system. And so I guess as long as we're going to talk about prisons, we should also be talking as a Legislature about how do we take the invitation that Senators Wayne and McKinney have given all of us to say, what is it going to take to create the opportunities that are going to keep people out of prison? And if it's a weeklong focus from every member in the Legislature to talk to Senator McKinney and Senator Wayne about what could be done to find meaningful investments, to unlock capital, a good friend of mine said one time, everybody's a lot happier with a little money in their pocket, I shouldn't say a little money, some money in their pocket. They can meet their basic needs and expenses and they can enjoy their life. And if we have

people that are living in a cycle of poverty and the-- and the issues are far more complicated, and I would never pretend to know what is the right thing to do in another person's district, in another senator's district, and I may not agree with every single idea that comes out from a single senator, but I'm telling you, if we're going to have this conversation about prisons, let's be talking about what can we do in this area of the state where we've essentially been invited in by a brand-new member of District 11 and Senator Wayne that say we want jobs, we want opportunity, we want investment. That's what impresses me. When Senator McKinney came to the Revenue Committee, he basically was asking how are the funds being spent for-- from the turnback tax on the CHI Health Center? He wanted a ten-year plan. He wanted to see investments that aren't just investments to keep nonprofits going, but investments to get people jobs, to grow businesses. And I think if Senator Wayne and Senator McKinney want to lead the way, we would-- we would be as benefited as anybody else if we could spend the same amount of time on figuring out a way to pour our attention into District 13 and District 11 and say, where are we going? What can we do? How do we unlock private investment? What are the things that are necessary to do? And we should spend time there. I'd spend as much time on that as I would on building a prison. If that's what we have to do, that's what we have to do. Let the studies happen, look at it, do everything you've got to do. But if-- if we really want to make this a meaningful change, let's look at areas of the state that need that kind of attention and that kind of investment. And so with that, I'd say I appreciate the conversation today. The comments that I've heard got my attention. And I'm-- I am driven by economic development. I think that is the way to solve a lot of problems in the state, putting money in people's pockets that are working for it and are getting the job--

FOLEY: One minute.

FLOOD: --done. That's the way to prosperity and that's the way to reduce the prison population. And I think both of those two senators are interested in doing that. So let's accept the invitation and let's figure out how to get there. Thank you, Mr. President.

FOLEY: Thank you, Senator Flood. Senator Wayne.

WAYNE: Thank you. Thank you, Mr. President. Thank you, Senator Flood, for those-- those comments. And I guess, colleagues, that's been the purpose of-- of this discussion and the purpose of, I guess, going till 5:15 is that at some point maybe we won't engage at all. Maybe people will go to their office and not have a conversation and that's

fine. Or maybe we can start a conversation about alternatives to building a new prison, because that's what we're talking about. And you heard Chairman Lathrop say none of the projections that have been done over the years, at least the last couple years or last decade, two decades, have been wrong. And if you think about that and you say 250, we're going to grow our prison population by 250 a year, according to Senator Stinner's timeline, which I believe is right, as somebody who is in construction and how long it's going to take to do the permitting, the planning, the environmental impact studies and then actually the construction on a prison. And looking back at Tecumseh, it was actually authorized in 1998 and it didn't break ground or they broke ground-- it was authorized in 1997. They broke ground in 1998. And it was actually finished in 2000 when they finally kind of started opening doors, late 2000, almost 2001. So if you think about that time frame, we are going to build a prison that will be overpopulated, based off of current projections. So we are wasting \$230 million because when that prison opens, we'll be back down here saying we have to figure out how to do another prison; because if the projections are the projections, the only way you reduce the projections, kind of the same argument we're talking about user fees, is that you start now and over time it's going to grow and that's what's going to fund the retirement. If you start now with changes, those changes will take more effect over the next five to seven years. And maybe our prison population doesn't grow at 250 and we spend \$230 million to build a prison that is overpopulated. Nobody's pushing their buttons behind me, colleagues. Nobody from the Appropriation Committee is going to stand up and say what I just said is not true. Nobody from Judiciary is going to stand up and say the numbers that I just said are false. So we are building a prison that will be overpopulated by the time we finish building it, and this isn't new. It isn't new because it started in 1989 when the Department of Justice came in and basically through their report said there are other states who are going through complex litigation, Nebraska, you should get ahead of this and you should do something. So we started adding beds. That's what the answer was, was adding beds, just like we're talking about today. Then in 2016, here's the amazing part. The first page of the study: After a six-months review, we have found that NDS-- NDCS uses several state-of-the-art, risk-reducing programs. However, the people who need these programs face clear and persistent barriers to access them. Every year since Senator Lathrop has been here and prior to Senator Lathrop, we've been talking about this barrier issue and it hasn't changed. It hasn't changed. We even had court cases, Ebke, where we're trying to subpoena stuff, go all the way to the Supreme Court, try to find out information based off of what we've already

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

paid for a study. So, again, we're going to do another study to give us the same answers that we've already had in the previous five studies to build a prison that'll be overpopulated before it opens. I love the circular reasoning. Current approaches to programs-- to program delivery at NDCS silo program assignments and unnecessarily stretch programs deliver out over time, leading to inefficiencies that increase costs to the state and delay people--

FOLEY: One minute.

WAYNE: --parole readiness. One third of the people in that year eligible for parole were denied parole due to lack of programming, which means they jam out, that's what it says, leading to numerous people just jamming out without any services. My next time I push my light, we're going to ask questions on whether that one third has dropped. And what you'll find out: it hasn't changed. In fact, it's increased. And there's a big picture in this and-- and Sen-- and Director Frakes and Governor Ricketts talking about how they're going to make changes. We already did this study. We're going to do another study to build a prison that's going to be overpopulated by the time we're done. But we need 40 thou-- \$40 million for broadband. We need to do four-lane highways. We-- there is so much we could do with \$230 million instead of building a prison that's going to be overpopulated when it opens. Thank you, Mr. President.

FOLEY: Thank you, Senator Wayne. Senator Machaela Cavanaugh.

M. CAVANAUGH: I've-- already have. Thank you, Mr. Lieutenant Governor. I-- I am going to talk about prisons once-- I do want to let everyone know I realize that we're going to 5:15 and I am going to spend eight hours on every single bill for the remainder of the session or four hours on Select or an hour on Final. And I can do that and I can do that without recourse, because there is none, because I have no idea what you could possibly do to me at this point. You literally have no recourse except for to sit here or not and listen to me. So I'm going to talk and I'm going to share things with you all. So I pulled up the agency budget, but before I got-- get to that, I want to-- I want to connect these conversations, the cyberbullying conversation and the prison conversation. So there's this article on developmental disabilities and criminal justice. I guess this also is bringing into the conversation about funding for developmental disabilities. Overrepresentation of cognitive disabilities: According to the Bureau of Justice Statistics, 30 percent of jail inmates reported having a cognitive disability fire-- far higher than among the general public who were less than 5 percent of people self-report of a cognitive

disability. This statistic was arrived at by asking inmates, because of a physical, mental, or emotional problem, do you have serious difficulty concentrating, remembering, or making decisions? Obviously, there are limitations associated with this method. The report notes BSG's-- JS's prevalence estimates may be underestimates because some inmates may have been unable to participate due to serious cognitive limitations that preclude them from fully understanding the informed consent procedures of the survey questions. To understand how we wind up with overrepresentation of cognitive disabled people in the correctional environment, we must back up. The criminal justice system is like a funnel, like a funnel. And I know, I think everyone here drives a car. You have to use a funnel to get various fluids into your car without it splashing all over the place. So we all know what a funnel works like, I believe. And our criminal justice system is like that funnel for your car. Individuals are arrested and they're at the top of that funnel by law enforcement. Then they move through the court system before ending in jail. What leads to higher rates of people with intellectual and developmental disabilities? Certainly some cognitive disabilities could increase an individual's propensity for crime. For example, a person with a low IQ may not realize that taking food from a store without paying is illegal or that their unreturned expressions of affection border on harassment. However, the vast majority of those diagnosed with developmental disabilities never become criminals. People with low IQ and other developmental disabilities can engender suspicious-- can engender suspicious because they lack the necessary social cues that other adults understand, resulting in inappropriate responses. Instead, one likely reason for higher arrest rates lies with the law enforcement officers. Now this is an interesting thought. It lies with the law enforcement--

FOLEY: One minute.

M. CAVANAUGH: --officers. One minute? Thank you. Before you curse at your screen and stop reading, please understand I am retired now, but was a patrol deputy and more importantly, I am the father of a special needs child. My wife and I adopted our son before welcoming-- before welcoming and-- and before welcoming into our home, he spent the first two and a half years of life in a crib. In reality, the crib was a cage. Being confined during those integral years created some, what some researchers called institutionalized autism. He struggles with social norms and at times reacts inappropriately in social situations. So I recognize the difficulties of interacting with developmentally disabled people, both as a retired deputy sheriff and a father. I think I'm almost out of time so I will pause there and come back to this, because I think it is important when we're talking about

developmental disabilities and we're talking about bullying and mental health and the things that lead to a prison being overcrowded. And we're not talking about funding behavioral health.

FOLEY: That's time.

M. CAVANAUGH: Thank you.

FOLEY: Thank you, Senator Cavanaugh. Senator McKinney.

McKINNEY: Thank you, Mr. Lieutenant Governor. I rise again because, you know, I think it's important to talk about our current-- or our current-- the current state of our prison and the Department of Corrections. So in hearings, Director Frakes comes and I asked him questions like, you've been in your role for, what, six, seven years, when have you, you know, worked with the Governor, worked with other senators to find ways to decrease the population or find ways to decrease the overcrowding problem? He tells me that it's not in his job description to work on policies, but he will come and oppose a bill. So isn't that working on policies? It makes no sense to me that we have a Director of Corrections that isn't taking an active role in finding ways to decrease the-- the population and the overcrowding. But he comes to this body and just asks for \$230 million to build a prison. What sense does that make? Thank you, Senator Flood, for mentioning that this state has neglected District 11 and District 13 and a lot of rural districts as well. But I'll point out my district because my district has the lowest poverty in this state-- well, the highest poverty in this state. Graduation rates are horrible. Our life expectancy is worse than the rest of the state. And I could go on about all of these things. But it just goes to this issue that this state, instead of investing in north Omaha in the '90s and the early 2000s to address the issues that we were dealing with, our state just decided to build prisons and be tough on crime. And that was the solution for this state. And now we're in this problem and our state would like us to just fund a prison to solve this problem when the state created this problem. And the state is still not doing anything to address the root issues of this problem, and that's investing in people, providing more opportunities and jobs and things like that, more access to capital, addressing redlining, building more infrastructure, because there were riots in my district before I was born because of racism, oppression, a cop killing a young black girl in my community. We haven't even addressed those issues. Instead, we would like to be tough on crime. You talk about, you know, in the-- in the late '80s, early '90s when-- when my community was dealing with the crack epidemic, most of the individuals that were dealing with--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

with the issue and, you know, being addicts and things like that, they were criminalized. They weren't offer-- offered treatment or anything like that. They were, oh, you smoke crack, oh, you need to go to prison or you need to go to jail. Let's overpolice these communities. The state created this problem and the state is still not proposing anything to solve this problem. They're just putting up this \$230 million bill and that's it. What real solutions is this state going to do to address this problem? That's-- that's the issue here. At the heart of all of this, what are we going to do to address this issue? Are we going to invest in jobs in north Omaha? Are we going to invest in infrastructure in north Omaha? Are we going to invest in people in north Omaha or are we just going to try to build a prison, say no to reforms, still say the Omaha police are perfect and let them continue to oppress my-- my constituents? What are we going to do? Because we're--

FOLEY: One minute.

McKINNEY: --going to be back here eventually with this problem again about a prison. But you don't solve it by building. You don't solve it. You solve it on the front end. What are we going to do? That's on us. When you say you're an ally, be an ally. And being an ally doesn't mean support a prison. Being an ally is being an advocate in your committees and-- and saying, hey, we need to give something to this community because we've neglected them for so long, we haven't provided equitable opportunities for residents of this community, which is true. We-- our state hasn't. You get these other people from the county attorneys and the police. They crowd the Judiciary Committee. But I would ask all of you in those other committees, how many times have the county attorneys or the Omaha police walked into Revenue or Business and Labor or the Appropriations Committee-- Committee and said, hey, to solve these issues and to reduce crime in north Omaha--

FOLEY: That's time, Senator.

McKINNEY: --could you please--

FOLEY: That's time.

McKINNEY: Oh, thank you.

FOLEY: Thank you, Senator McKinney. Senator Wayne.

WAYNE: Thank you, Mr. President. And I know, I don't like to ask for people to give me time, but if people want to join in, I think we

should have a real conversation. Let me be clear of where I'm at. I'm not necessarily saying I'm where Senator McKinney is, against any prison. That's not where I'm at. I'm saying that before you build a prison, we also should put in programming and make sure we have a understanding and a plan of how that programming on reentry is going to happen. And then while we're planning for possibly a new prison, we start looking at sentencing reform and jobs. So I'm not a hard no. I'm just not a yes at this point, because we haven't done the other things that go into prison. So what I'm trying to do is at least have people start a real dialogue because I think there's ways we can go about this differently. You have a prime example in Senator Halloran's district of Bristol Station that works with individuals who are in a halfway house from the federal program, help them find jobs. They have a very, very tight schedule, so they're not out running the streets, and it works. In fact, I believe Senator Halloran used to be on that board, if he's still not. It works. Why aren't we taking that same motto and taking 1,000, basically 900 to 1,000 people who are minimum risk or who are in community corrections, and saying nonprofits across the state who work with reentry and businesses across the state who are looking for individuals? In my community, we are looking for second and third shifts on many jobs right now, many light manufacturing jobs. That way, they're people who are getting ready to get out, have money, they can pay rent, they can have a job that they can build off of when they do get out so they don't actually pick up the phone and call the same people they got in trouble with to come pick them up because they have nothing else. That's what happens when people jam out. We can take that exact same model in Bristol Station and we can start applying that across the state. And the fiscal note on that bill wasn't even \$14 million. And the projected savings on that bill, based off of 5 percent reduction, was \$2 million a year. Those are the conversations we're supposed to engage in. But rather, we're worried about how long is it going to go till 5:00, we check out, we go to our desk, but nobody really wants to engage. But then at the same time, you guys are going to come ask Senator McKinney and I for a vote on property tax or some other thing that you might need help with. And we're like, hey, this is the biggest issue right now as far as how it will directly impact our community. And we're leaving out an entire topic of programming and reentry programming in this discussion. I don't understand how \$14 million or how this amendment can even happen while you're only giving \$500,000 to community corrections. That's not even balanced, but everybody on this floor gets up and says, our prison systems, our jails are pretty much our mental hospitals in the state of Nebraska, but the dollars we put

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

behind it don't equal what we're saying on the floor. Our Constitution is number one. But I've always said--

FOLEY: One minute.

WAYNE: --our budget is our moral document of what we believe in. But we get up and we talk a good game, but nobody has engaged about how do we build Bristol [INAUDIBLE] across-- across the state? Blair can use it. Norfolk can use it. Any place who has-- I hear Friesen talk about-- Senator Friesen talking about we need workers. We have workers ready, available, who are looking to get out and become members in their community. But instead, they're sitting in a cell because we can't offer them programming to allow them out. So let's study it again, colleagues. Let's do another study, come back with the same issues that we've had since 1989. And by the way, we built a new prison during that time. We built Tecumseh and now it's overcrowded. We're walking the same path we walked before. We really have to think about this--

FOLEY: That's time, Senator.

WAYNE: --colleagues. Thank you, Mr. President.

FOLEY: Thank you, Senator Wayne. Senator Machaela Cavanaugh, you're recognized, your third opportunity.

M. CAVANAUGH: Is this my-- this is my second time speaking then I have a close or this is my close?

FOLEY: You-- you also have a close.

M. CAVANAUGH: Oh, OK. Thank you. OK, so I was reading this deputy-- retired deputy sheriff who was talking about behavioral health and institutional and-- and the prison pipeline with behavioral health. And I am, for those that are looking for the context of why I am talking about this with this bill and this amendment, is because I believe that we can do better than just build another prison. That-- that great movie, we can use this quote for a lot of different things. We can use it for developmental disability services and we can use it for prisons. It's Field of Dreams: Build it and they will come. If we-- if we keep building prisons, we'll keep filling them. We have to stop filling prisons and building prisons and start funding resources for developmental disabilities, resources for training on diversity and equity. I was going to bring a bill this year, but time got away from me. And a few of us senators, I'm going to say lady senators, were talking about this bill-- and I'm sure it will be coming-- about

putting a-- an ID on your driver's license that you have maybe a verbal disability or autism-- there's-- that's part of the reason that we didn't do it this year is because we have to figure that out-- so that if you are pulled over and you hand a police officer your-- your driver's license, it has that on there so that they know that they are interacting with somebody who is diagnosed with autism and might not emotionally interact with them the way that they expect, which shouldn't actually be a thing, because we should be investing enough resources in behavioral training for our law enforcement that they understand that. But we find fixes where we can and we do what we can when we can. So back to the story: As a deputy sheriff, I never witnessed intentional bias. But the arrest process starts with us, and several factors can lead into higher rates of arrest for people with cognitive disabilities, including: People with low IQ and other developmental disabilities can engender suspicion because they lack the necessary social cues that other adults understand, resulting in inappropriate responses such as becoming overwhelmed by the police presence and running away or hiding. When questioned by police or other authority figures, they often smile inappropriately, fail to remain still when ordered to do so, or act agitated and fur-- furtive when they should be calm and polite. People with cognitive disabilities may say what they think the police want to hear, even to the point of confessing to crimes they didn't commit. They may waive Miranda rights without realizing the repercussions of doing so, while saying they do understand. As one police officer put it, they are the last to leave the scene, the first to get arrested, and the first to confess. After arrest, the problem worsens, though all those prosecutors-- all those prosecutors to arrest listed above continue to haunt special needs offenders in the court system. Cognitively disabled people may fail to understand the seriousness of their situation and often lack the resources to post bail, which brings up another great topic, cash bail, everybody. What? It is disproportionately impacting people with developmental disabilities and the poor. During court hearings--

HILGERS: One minute.

M. CAVANAUGH: One minute?

HILGERS: One minute.

M. CAVANAUGH: During court hearings, they struggle to comprehend abstract legal concepts and to assist in their own defense. They may alienate juries by smiling, sleeping, or staring, giving a false impression of callousness or lack of remorse, resulting in higher

rates of conviction than the nondisabled. Colleagues, I have stated it before, and I just want to make my intentions clear, I don't-- I don't have anything. I don't have a bill coming up. My priority was the Saint Francis Ministries resolution. I'm not angry. I'm free. I am free to be me, and, boy, do I like being me. So welcome, everyone. Machaela Cavanaugh is aggressively tenacious.

HILGERS: Time, Senator.

M. CAVANAUGH: Thank you.

HILGERS: Thank you, Senator Cavanaugh. Senator Matt Hansen, you're recognized.

M. HANSEN: Thank you, Mr. President. And thank you to Senator Cavanaugh for mentioning cash bail. I'm going to yield my time here in a moment. But just a reminder that when we talk about this, it's not necessarily a straightforward path to-- from crime to prison. There are steps along the way that there could be a diversion, there could be a street-level diversion, i.e., getting a, you know, a verbal warning rather than getting arrested. There can be diversion. There can be plea deals. There can be trials. There's all sorts of steps, and not every criminal defendant goes through them equally. And one of the things that is very disproportionately impacting people is cash bail in the sense that when you're not able to afford cash bail, you're much more likely, even on the same crime with similar facts, to plead guilty and ultimately be sentenced to jail time than if you were able to afford the cash bail. So this is a series of systems and things that layer on top of each other that, you know, a tweak or two to allow more judicial discretion, more flexibility, more diversion programs could impact this on the front end, not to mention, as Senator Wayne was pointing out, the lack of investment in systems inside the prison in terms of, you know, any sort of rehabilitation as opposed to just keeping them boxed up for a number of years then jamming them out. With that, Mr. President, I'll yield the balance of my time to Senator Wayne.

HILGERS: Senator Wayne, 3:20.

WAYNE: Thank you, Mr. President. Thank you, Senator Hansen. So we're talking about jobs and everything else. And again, I'm going to keep talking to you about this Bristol idea for a little bit, and then we'll go back to this idea of the Governor and the-- and Department of Corrections wanting a prison and we'll talk a little bit more about what these studies say. But-- so part of what this Bristol Station

kind of idea is, so you have a nonprofit or a local community and they can be placed everywhere. For example, it doesn't make sense, and it's never made sense to me, that if you commit a crime in Scottsbluff and you go to prison and you finally get to community corrections, your choices are Omaha or McCook. So you come out with no job to the community that you're going back to, like Scottsbluff, Chadron, or anywhere else. That-- that fundamentally doesn't make sense to me. So what happens at Bristol Station is they often work with local businesses and they-- they run a tight ship. And what they do is they work with these businesses to make sure that they have job openings that they can fulfill them with individuals. So I started looking around just for-- for giggles. So Clarkson, Nebraska, is looking for general laborers. Grand Island has a whole bunch of manufacturing and-- and construction jobs from second-shift shipping and manufacturing at Overhead Door Company; quality manager, CNM machinists, specialist, temporary people, material handler at KAAPA Ethanol holdings in Ravenna, Nebraska. I mean, we can go out here and Norfolk is the same. You have more jobs than you can-- general labor at Farmers Union Coop station. I mean, there's just jobs everywhere that are general entry-level jobs throughout Nebraska. So here's what I envision, since we're talking. I envision a nonprofit in Grand-- Grand Island contracting with Department of Corrections for 20 individuals. Before those 20 individuals come there, they go to these local manufacturers or construction jobs and say, we're-- we got 20 individuals we're going to help out with. Why is that important from a company's perspective? In the state of Nebraska, we don't have a tax credit. That-- that bill is still in Revenue. But at the federal level, you'll get a tax credit, so you're incentivized to actually recruit these individuals and fill the gap that you need. It's-- it's-- it's a tax credit.

HILGERS: One minute.

WAYNE: So then they work at these places. They start making money, putting money in their pocket. But you also fulfill a business need. That's how we grow Nebraska using these people right here who are already going to get out in the next 36 months, who are already going to get out, some of them, in the next six months. We fill the job gap, provide them with skills so when they get out, they can actually function in the community and have a place to live. That's how you solve the reentry problem. And if we solve that just by 5 percent, the state saves \$2.5 million. That's just facts. But nobody's going to push their button and say, let's get this done. Nobody's going to put their-- push their button and say, how do we get this done so the jobs

in my community looking for general construction can be solved today, because we're not engaged.

HILGERS: Time. Time, Senator.

WAYNE: Thank you.

HILGERS: Thank you, Senator Wayne and Senator Matt Hansen. Senator Wishart, you're recognized.

WISHART: Thank you, Mr. President. Well, I did push my button and, Senator Wayne, let's get this done. I strongly support the legislation that he's talking about, which is, frankly, why I've worked so hard on AM911 with Chairman Stinner and the rest of the committee. Colleagues, I just wanted to be really clear with what this amendment does. First and foremost, it has us update this master plan report. And I recognize reports can sit on a shelf and they can gain dust. But actually a lot of the decisions, the good decisions that we have made where there has been due diligence done, have come out of this master report. This report is why we are putting mental health beds into AM911. This report is why we are pushing to build out community corrections similar-- and we should be doing what Senator Wayne is talking about with the bill that he has introduced this year. That's in this master plan. And so we need to keep moving forward on making sure we have a revitalized master plan so that future Legislatures understand the direction that we need to go with Corrections. The second thing that I wanted to say is, with AM911 and the underlying bill, we are setting aside over \$100 million to address overcrowding. And I want to be really clear, colleagues. We are setting this money aside to address overcrowding, depending on what comes out of the CJI discussions, the task force recommendations, legislative approval, and the other reports and plans that we've asked for, then we'll decide whether we move forward on a replacement facility. But we're setting aside dollars that we could use for a lot of the things that Senator Wayne is talking about as well. These dollars are to address overcrowding. So for anybody who's listening still and really determining whether they're going to vote on this and for the public listening, I-- I want to be very clear that these dollars are not specifically to build a replacement correction facility. They are to address overcrowding in our capital fund. And we will decide next year how to move forward when we have more information. I wanted to walk everybody through kind of timing of what we've been talking about as an Appropriations Committee and how all of this would work. And I think Chairman Stinner and Senator Lathrop did as well, but just sometimes repetition is good. So over the summer, we're going to be

working with CJI. They should be able to do a pretty significant data dump to-- to look at our entire system by June. And then the task force will be comprised. And I'll be honest. This task force needs to reflect the people who deal the most with our Corrections system. So definitely Senator McKinney, definitely Senator Wayne, Senator Vargas should absolutely be included as senators on this task force. The task force will then be given a menu of items of what CJI will be able to tell us are kind of our points of contention as to why we are seeing a continued increase in-- in our incarceration rates that are then leading to us dealing with an overcrowding issue and give us then a menu of items on how other states have addressed that. Ideally, we come out of this situation, we have a new facilities master plan where we understand all of our facilities' capacity, and we have some legislation to do prison reform, including ideas similar to Senator Wayne's. Frankly, if we're not able to do that this year, which we should just do it this year, I agree. What's stopping us? And then we decide how we move forward. We decide where we invest that \$100-- \$100 million.

HILGERS: One minute.

WISHART: What is the best use of dollars for that? And for me, ideally, and I'm speaking just as myself, I want us to move down the path of Utah. I want us, if we ever in the future have to look at replacing our old penitentiary, if the engineering report says that we do need to replace that, I want us to have worked so hard and figured out a way to slow the growth of people in incarceration that we're actually replacing a penitentiary with fewer beds and less maximum security beds and we're working more in community corrections and reentry and all the things that we've heard today that frankly are twenty-first century approaches to a-- to an issue and-- and the more humane way of addressing criminal justice. Thank you.

HILGERS: Thank you, Senator Wishart. Senator Wayne, you're recognized and this is your third opportunity.

WAYNE: Thank you, Mr. President. And, colleagues, what-- what we're talking about here today, it's not just about my bill. It's not about-- my bill is LB334. It's not about that. If somebody has a better idea for reentry, I'm all for it. This is just one idea. And the reason it's important to me is because in the fiscal note in that bill, it's \$2.2 million. And in there they say \$2.2 million will put 300 people back in the community. Parole Board says right now \$2.2 million will put 300 people back in the community. That's-- that means out of our prisons. That's 300 people who we have on a schedule. We

have people making sure that they are going to chemical substance abuse, whatever programming they need. That's how much it will cost. That's 300 jobs that we could fill in rural Nebraska tomorrow. But I'm actually taking this playbook out of the playbook that I watched the rural senators use for years down here, is that a bill that's somewhat unrelated but impacts dollars, which our budget does, they say, hey, I'm not really opposed to the amendment that much, there's parts of it I don't like, but you're missing this whole other piece over here that we need in order for us to move forward. And that's what I'm saying. There is a whole nother piece that needs to be added here before I'm willing to move forward, because it is that important. It is that critical. And why is it that critical? And here goes out of this study we had in 2016. An individual arrives in NDS-- NDCS with a four-year sentence and is eligible for parole after two years. He is assessed for violence and substance abuse and found only to need residential abuse programming. After nine months, he is transferred to a facility which offers residential substance abuse treatment at the request-- and the request to be put on the waitlist. While attending-- while waiting, the Parole view-- actually reviewed his case and notified him that he would not be able to because he's on a waiting list. At the same time, they ask that maybe he needs cognitive behavior programming to address his criminal thinking before being granted parole. As another result, he's put on a longer waitlist because the second program will not be available before he jams out. So this person jams out, goes back into society without getting the necessary programs that he needs. And he could have been eligible if the programs were available two years prior to that. Now what's interesting, again, and we start talking about the Governor building a prison that will already be overpopulated before we actually open it up, that is important because, according to the study, the biggest problem programming delays are "axcerbated"-- exacerbated by capacity limitations. So the biggest problem to programming is capacity. We're going to build a prison that won't solve our capacity issues so we're still dealing with programming. That makes absolutely no sense. Now, while I appreciate everything the Appropriations Committee has done to work out this \$14 million with all the parties involved, the difference between myself and many on that committee, who may even agree with my ideas on prison reform and everything else, is the historical context in which the government has always put the area I represent in. And here's what I mean by that. If we continue to grow at 250 people per year after two years of planning and they come back and say the number is \$500 million, what alternative do we have at that point?

HILGERS: One minute.

WAYNE: What alternative in two years, when we are more overcrowded, what alternative do we have at that point, even if it's \$500 million for the cost? Because we'll be so far behind the curve, we'll be backed into a corner where the only answer is to build a prison because reforms take a little time. Reform will take another year, but then we have 2,500 people who are jamming out or getting on parole, and we know 30 percent of them are going to turn around and come back in within three years. It's a cycle that's not stopping because we haven't addressed the reform issue of reentry. This is a perfect chess match that is being played by our Governor to build a new prison. And I haven't even said I'm opposed to it being built. I'm saying you can't build a prison without doing any reentry reform first or at least parallel. That's not a complicated question or a position to be in.

HILGERS: Time, Senator.

WAYNE: Thank you, Mr. President.

HILGERS: Thank you, Senator Wayne. Senator Matt Hansen, you're recognized and this is your third opportunity.

M. HANSEN: Thank you, Mr. President. I'd yield my time to Senator Wayne.

HILGERS: Senator Wayne, five minutes.

WAYNE: Thank you. Thank you, Senator Hansen. Thank you, Mr. President. So, again, I just want to rehash this real quick before Senator Cavanaugh closes and we move to another amendment or another motion. We've built and are planning to build over by 2023, since the basically last ten years, 800 beds. We are looking at building a prison that will do 200-- 2,000 to maybe 3,000. So we've already built that in the last ten years, projected to-- to 2023, 800 beds, and we're saying that's not enough. That is not enough because we are on the plus side of 250 per year. It's going to take seven years to build the prison if we keep going down this path. The numbers are the prison will be overpopulated before we turn a shovel or before we turn it over to the state and open it up. We cannot build our way out of this. The problem I'm having right now is there have been no alternatives presented to building a prison. All we're going to do now is take two paths where we're going to do a study over the next year. We're not even going to wait a year till that study comes back. We're just going

to keep going along and we're going to set aside \$14 million in addition to the \$115 (million) we set aside to sequester or we-- we sequestered aside for prison reduction. It just so happens to be half of what the Governor asked for of 230 over one year, so it kind of adds the same. But we're going to sequester that and what we're going to say is we'll figure out next year what's going on here, but we're going to go ahead and start designing and purch-- or putting the option down for a new prison. Now, I just heard yesterday Senator Flood had an amendment that he withdrew requesting to remove this money for a new basically healthcare database inside the prison. And the argument for the withdrawal was, we've already invested a million, so we-- we need to keep going on. That's going to be the argument two years from now. We've already figured out everything. We put \$14 million in. We're overpopulated. We gotta solve it. NPS [SIC] is going to not be able to function because it's too old. There's no other option but to build a prison. That's why today is the stand that I'm taking, because once we cross this bridge, as much faith as my colleagues may have and everybody else, historically, that faith has not come through for north Omaha. We had LB605, talked about all these reforms, halfway implemented, prisons still rising. The population is still rising. I don't have faith, when we can't even allow people to vote, when they get done with their prison sentence and off paper to vote, in this body that they'll move any type of thing as far as prison reform because every two years there's going to be an election and that's what we're talking about. It's hard to run a campaign being smart on crime. It's hard to look out and say, yeah, we're going to release these individuals back in our community to help the-- Nebraska's jobs grow, to help companies grow. And there may just be one who makes a mistake, and that'll be the poster child that goes on your card of you voting yes. But at some point, we have to lead, colleagues. We have to lead and say enough is enough. We've been looking at this issue since 1989 and we haven't deviated from being number two in the country in the prison population since then. 1989, I was in middle school.

HILGERS: One minute.

WAYNE: I was in middle school. Actually, I was in elementary school. I didn't start school until 1986. So my whole life we've done nothing to address this problem. But we're going to study it again and we're going to start building and design and put options and hope next year we might not release the funds to actually build. Senator Briese, we're going to delay your bill. We're going to see how the economy goes and we'll hope next year property tax goes down. Senator Blood, maybe next year there won't be any dark campaign money, next couple of

year, we're going to hope that changes. Even though all the data points that it hasn't changed, we're-- we're just-- we're going to hope this study shows something else.

HILGERS: Time, Senator. Thank you, Senator Wayne and Senator Matt Hansen. Seeing no one else in the queue, Senator Cavanaugh, you're recognized to close on your motion.

M. CAVANAUGH: Thank you, Mr. Speaker. Good afternoon, colleagues. I'm going to close and then I'm going to pull my motion because I have another motion coming. I appreciate Senator Wayne's passion on this issue. I've actually heard quite a few of our colleagues today be passionate on the microphone today. I've heard Senator McDonnell be passionate on the microphone. I've heard Senator Wayne be passionate on the microphone. I've heard Senator Groene be passionate on the microphone today and Senator Stinner. And I bet no one is saying that they had a meltdown. Wonder what you all think. Do you think anybody said that they had a meltdown on the microphone because they raised their voice? I also guarantee nobody said that they were crying because they raised their voice, I would not want to be in a closed room with whoever accused Senator Stinner of crying because he raised his voice. Well, maybe I would. That would actually be kind of entertaining. So we're going to keep this going and we're going to keep talking about prisons, because it's important, and we're going to keep talking about who our prison population is, because when we talk about building prisons it's not an abstract construct. It's people. People make up prisons. And who are those people, and why are those people going to prison? So we're going to keep talking about prisons and prison reform and we're going to be here until I guess we're not. That's up to the Chair. But there is a lot to be said and a lot to get on the record when it comes to prisons. And I am excited to have those conversations with you all, to listen to those conversations from you all. And I-- I'm going to start looking at sharing some resources with you about prison reform. I was sent something by colleague John Cavanaugh from the American Legislative Exchange Council. I-- I think it's otherwise known as ALEC. And I'm going to read some of that and share that with you now. Now I haven't read this. Senator Cavanaugh informed me that it was an interesting resource on criminal justice reform. So 2016, a successful year for criminal justice reform and a path to the future. And I am-- apologize. I have stated before my eyes are not what they used to be, even with my glasses, so I gotta make my screen bigger here. OK. In 2005, Texas officials noticed the alarming rate at which their state's corrections budget was growing. By 2007, the Texas Department of Criminal Justice wanted the state legislature to provide \$523 million in additional funding for three new prisons,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

which would have allowed the prison population to grow to more than 168,000 by 2012. The department had reasons to expect the positive response for a funding request. After all, Texas was well known for its tough-on-crime stance. Members of the Texas Legislature, such as Republican Representative Jerry Madden and conservative Democratic Senator John Whitmire, decided on a bold strategy. You know what they did there? They had a bold strategy, but they made sure that it was two men that had a bold strategy. That is-- that's smart, gentlemen, very smart. I can't do that.

HILGERS: One minute.

M. CAVANAUGH: One minute. Thank you. They teamed up to convince the members of the legislature and then Governor Rick Perry-- sorry, just remembering that he couldn't remember all the departments-- Governor Rick Perry to spend \$241 million on treatment, mental health, and rehabilitation rather than on new prison facilities. Three years later, Texas prison population declined by 15,000 inmates. Whoa. Senator Cavanaugh, this is a good resource. Thank you. I'm going to read that sentence again. They teamed up to convince the members of the legislature and then Governor Rick Perry to spend \$241 million, which is very close to what we are trying to spend, to treat-- on treatment, mental health, and rehabilitation, and then they declined by 15,000 inmates.

HILGERS: Time, Senator.

M. CAVANAUGH: Thank you.

HILGERS: Thank you, Senator Cavanaugh. Did you say that you wanted to wi-- withdraw that motion?

M. CAVANAUGH: Yes, I wanted to withdraw that motion.

HILGERS: Without objection, that motion is withdrawn. Mr. Clerk for a motion.

CLERK: Senator Cavanaugh would move to bracket the bill until May 5 of 2021.

HILGERS: Senator Cavanaugh, you're recognized to open on your motion.

M. CAVANAUGH: Thank you. I will continue on where I was. OK, so Texas had two legislators, a Democrat and a Republican, and a Republican governor, all men, come together and agree and get the legislature to agree to spend \$241 million, not on a prison, not on a prison but,

instead, on treatment, mental health and rehabilitation. And three years later, which I believe is a shorter timeline than when we would have a prison built, three years later, prison population declined by 15,000 inmates and probation recidivism fell by nearly 25 percent. In addition, by the time Governor Perry had left office in January of 2015, the crime rate declined to its lowest rate since 1968. Ultimately, under Perry's leadership as governor, Texas shut down three prisons, saved taxpayers \$2 billion. Texas shut down three prisons and saved taxpayers \$2 billion. The movement to reform underperforming and wasteful criminal justice programs has begun. Wow. Now I should look at ALEC more often. I actually have never looked at ALEC before. I have gone to NCSL and CSG's websites. But this-- this is great. This is a great resource. This is a great article. This is a great program. But we won't do it. We don't-- we don't like to be creative. We don't like to think outside the box. We don't like to do things that actually improve the quality of life in Nebraska, unless it's property tax relief that individuals don't even understand how to get their property tax relief because it's so complicated. I shouldn't say that. Some people do understand. I had to-- I mean, it took me a while to figure it out, but I guess probably most people are smarter than me or can afford a tax accountant. So I can't, as everyone knows. I make \$12,000 a year, well, before taxes. So with a little creativity, a little special sauce of three male legislators, public officials coming together, Texas was able to save \$2 billion and keep 15,000 people out of prison. And I think the thing that isn't here, and maybe if I read further will be here in this article, is 15,000 people not in prison, in addition to saving money by not having them in prison, presumably they would be in the workforce, so then they would also be contributing to the economy. This is just bananas, it's such a good idea. And I know that this body is uncomfortable with being a leader in innovation, as Senator Blood has come up against with our compact issues. We can't be the first to do something. But Texas did this 15 years ago. So don't worry. We're really slow to the dance, real slow to the dance. We're not first. The proof is in their pudding. And we could do this, not be first, not be innovative, be a follower, not a leader. That could be maybe a new Nebraska slogan: Move here. We follow other people. We don't lead. Criminal justice reform in many states across the country has shown that conservatives have followed Texas's lead and strongly supported the issue. What? Have you all been playing a trick on us? Conservatives support criminal justice reform and investing in mental health and rehabilitation? Senator Blood said it earlier, I feel gaslighted. I thought you all just wanted to build prisons. I am delighted by this news. This-- this should take this entire conversation in a new

direction, conservatives support criminal justice reform. Nebraska wants to be like Texas and save taxpayers dollars and get 15,000 people back into the economy and out of prisons. What a headline that would be. Nebraska's for everybody. Wouldn't that be amazing. As of fiscal year 2010, the average annual cost of incarcerating a state prisoner was \$31,000, with the costs ranging from \$14,000 in Kentucky to \$60,000 in New York. Ultimately, taxpayers deserve the most efficient use of their funds. Yes, I might be a conservative. I actually think I might be a conservative. If this is all true, sign me up. Enacting certain criminal justice reforms would save taxpayer funds while simultaneously ensuring public safety. I am-- that's it, everyone. It's my official announcement. I am a conservative. This article has solidified for me what I've been missing my whole life. I am a fiscal conservative. I don't think that our pr-- that it is the function of government to be wasteful with spending. I think that the function of government is to serve the people of the state-- I firmly believe that-- not to be wasteful with tax dollars. And we are so wasteful with tax dollars all of the time. How much time do I have left?

HILGERS: 3:15.

M. CAVANAUGH: Great. And am I the only person?

HILGERS: Senator Wayne is next.

M. CAVANAUGH: Thank you. OK, so appears this article has come to an end and I am just like, oh, there's another one. Criminal justice reform saves money and freedom. I mean, I-- I think I've discovered two things: I'm a conservative and I like ALEC today, so very excited. OK. In 2005, James V. Taylor was arrested for having a crack pipe in his car, an unweighable amount of crack, roughly half a gram. He was sentenced to prison for 15 years. In 1995, John Alexander Wood shot and killed an unarmed prostitute in the back. He was sentenced to 10 years of probation for a crime that resulted in the death of an individual. Well, I'm making some presumptions about these two cases already in my head. During his probation, Wood tested positive for crack cocaine five times and was even arrested for possession of cocaine. The judge allowed Wood to remain free and he ended his parole without any sort of reprimand. Unfortunately, there are many examples of harsh sentences, as well as lighter sentences for more serious crimes. Excessive disparities in sentencing can occur without limits on possible punishments. This problem can be traced back to the 1960s when many states and the federal government adopted tough-on-crime stance. As a result, state prison populations increased dramatically.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

Alabama's prison population, for instance, rose substantially from 6,000 in 1978 to roughly 28,000 today. Not only does this add a strain on the state budget, more taxpayer dollars spent on the-- on incarcerations rather than-- than education-- ooh, education, we could be spending this money on education, how amazing-- but that the act has also been shown to have no effect on recidivism rates.

HILGERS: One minute.

M. CAVANAUGH: So to summarize, spend less on prisons, spend more on people. It will ultimately cost us less, we'll gain more, people will be happier, healthier, we all can go home, and we can start educating people. What? This is just-- now I'm wondering if ALEC is actually a really progressive liberal blog based on my readings here. Am I a conservative or is ALEC progressive? Let's have that debate. I think I'm almost to my time, so I will sit down and punch my light. Thank you.

HILGERS: Thank you, Senator Cavanaugh. Debate is now open on the motion to bracket. Senator Wayne, you are recognized.

WAYNE: Thank-- thank you, Mr. President. And I still want to keep having this conversation. I think it's a worthy conversation. And what I will say is, for many of my rural colleagues, I think we both agree on jobs. That's like number-- like a big important issue, top three. We got to have jobs and economic development. Where we differ is property taxes and prison reform. That's probably in your top three; prison reform, as far as reentry, is in my top three. So I understand that if this was a property tax issue, I would expect you to-- if we didn't put money or we put money somewhere else in the Property Tax Credit Fund that you fundamentally disagreed with, I think you would be standing up here doing the same thing. With that, Mr. President, I'd like to see if Senator Lathrop would yield to a question.

HILGERS: Senator Lathrop, would you yield?

LATHROP: Yes, I will.

WAYNE: Senator Lathrop, over the years, our overcrowding has fluctuated. Can you kind of give us a general estimate of where we are as far as capacity related now?

LATHROP: Right now, I think we-- as of the end of the year, I saw a statistic. It's like one-- 146. I think it's been as high as 150. It's down now because I think COVID has resulted in fewer convictions

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

because we can't have the jury trials, we don't have the pleas, and so our number is down to 146.

WAYNE: Thank you. Thank you, Senator Lathrop. Colleagues, this is a fascinating number. And the reason that number is fascinating, because in 1989, the front page I handed out, the study done by the Department of Justice, Nebraska's system is operating at 134 percent capacity and shows no sign of relaxation. That's on page 3. I didn't hand you the whole report because I was trying to save some trees, but you can Google it, on page 3. We haven't moved the needle hardly at all, and in fact it's increased since 1989, and during that time we did additions. We built an entire new prison in 1996, 1998 to 2000. We've doubled the number of beds. We put over 2,000 beds in during that time and we're still at the same number. So at what point do we not understand that we are doing something wrong? It hasn't changed since 1989 and it says, 1989, "and shows no sign of relaxation." Certainly, the court will look at the prison system, which operates at 150 percent of its capacity and might determine that it violates the Eighth Amendment. That was in 1989. Nebraska, current situation, on page 4, is "unprecedented." The prison population has doubled in the past seven years. For the first time in its history, the population at the women's facility is exceeding its capacity. The state's rate of admission is at the highest level in the-- in ten years. The average length of stay is increasing and the average age of the individual has increased by two years. I don't think what I just read is any different than what I heard when I was on Judiciary Committee. It's nothing different than what I heard this year when I listened to prison talks in Nebraska. I'm not engaged as I used to be because I'm not on the committee. My point is we're doing it again. This isn't like, you know, the once-in-a-lifetime opportunity of climbing Mount Kilimanjaro. This is like every day when I drive down to Lincoln we're just doing it again. So--

HILGERS: One minute.

WAYNE: --we can continue to keep going down this path, and then we'll keep asking about property tax. We'll keep asking about all these other things, and I do agree with Senator Wishart. There is money on the floor to solve these problems. There has to be a will in the body to solve these problems. And so the question I'm bothered with today is, what level do I keep pushing? Going to 5:00 isn't a problem. I have some motions after this. I have some floor amendments. That-- that's simple. The question is, do I let it bleed over to the next one and then that starts at 5:15 and we have to go eight hours on the-- on the claims committee and that will bleed over and then they won't

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

stick together. And do I want to burn all the political capital because people will be upset by that? But at some point, we kind of pick and choose what is really, really important.

HILGERS: Time, Senator. Thank you, Senator Wayne. Senator Lathrop, you're recognized.

LATHROP: Thank you, Mr. President and colleagues. I very much appreciate the conversation that's happening here this afternoon. I'd, of course, much rather be in my car headed back to Omaha right now. But I-- but this is an important topic. And-- and I have to tell you, I was concerned about this when-- when I served in my first eight years, we had folks that came to us and told us that we had an impending problem, that we were going to see a problem with overcrowding. Alan Peterson used to come in front of the Judiciary Committee representing the ACLU and talk about these issues and warned us this was a problem. And I came to the floor and warned everybody that it was coming and it's here. And Senator Wayne is exactly right. This is a problem that will not be solved by building our way out of it. I-- I will suggest this. We've tried a number of bills on this floor, members of the Judiciary Committee. Senator Wayne was on the committee for the first two years I was here. We'd bring those bills to the floor. And today he talked about we don't have the will. That's what I experienced, like, few phone calls, a couple of texts and, boom, 30 people are off of it. What we're doing with the CJI process is not just another study. This isn't-- this isn't a-- an LR. This is a group that's coming in to do a scientific assessment of our information. If we get that information, if we develop policy and can't pass it, I-- I would stand opposed to any new construction. I think it's important that we realize that these processes, this CJI process, as well as what construction, if any, needs to be accomplished next year, that has to be done in an informed way. And the thing that I believe will make a difference is we will be able to demonstrate that the solutions that fall in the category of corrections reform or sentencing reform will not affect public safety and they will result in savings. So the measure for whether we adopt something in the next session after we go through the CJI process is, does it save money, does it adversely affect public safety, and does it lower recidivism? Those are going to be the guideposts for those things that we choose off of the menu of ideas implemented in other states to adopt in this state, because if we don't at least flatten the curve, that 250-person increase, or 200, 250-person increase in our average daily population, if we don't flatten that curve at least with our reforms, then we are-- we are headed down a course where we are going to adopt this idea that we can build our way out of it. The

problem with that, colleagues, I'm telling you, the problem with trying to build your way out of this is it's really expensive and we can't even staff what we got. We can't staff what we got. This CJI process has to result-- has to result in some reforms that we can take a look at what other states have done, learn from what they've done, continue to protect public safety, make that our North Star as we go forward. But we have to have reforms. We have to have reforms. Senator Wayne is absolutely right, absolutely right. We cannot build our way out of this. I think we will find ourselves in a position where we are informed, we have ideas--

HILGERS: One minute.

LATHROP: --and we can have a healthy debate about what the way forward will be for the Department of Corrections. And it may well involve building some additional capacity. It may not require additional capacity or it may require more capacity than we even think so right now. The idea of Bristol Station, something I went out and looked at. The people out in Hastings embrace Bristol Station. It is a-- it is a wonderful concept. I also agree completely with Senator Wayne on the value of community corrections. Community corrections provides an opportunity for someone to make a transition. They can put some money in their pocket. They can land on their feet and leave the Department of Corrections with employment and an opportunity to move forward and get on with a new life instead of going penniless with a gate check of 100 bucks and no future. I'm on board. I think we're-- I think AM911 will position us to be informed--

HILGERS: Time, Senator.

LATHROP: --going into the next session. Thank you.

HILGERS: Thank you, Senator Lathrop. Senator McKinney, you're recognized.

McKINNEY: Thank you. I'm standing up again just to try to point out why it's important that if AM911 goes through, we go through the CJI process, why it's important for our state to heed to the recommendations and see them through and not do what we have done in the past and not fully implement these recommendations. Over the past decade, more than 30 states have significantly improved their criminal justice systems through the Justice Reinvest-- Reinvestment Initiative. This data-driven policymaking approach makes those systems more effective and redirects funds into high-performance strategies that increase public safety. The Crime and Justice Institute, with support

from the Bureau of Justice Assistance, helps states use-- use the JRI process to identify and understand drivers of crime and-- and criminal justice costs and to develop and implement more effective strategies. CJI works with a variety of stakeholders to address each state's unique challenges, political landscape, and opportunities. CJI's intensive tech-- technical assistance involves building buy-in, fostering collaboration, installing new policies and practices, and increasing agency capacity to sustain those changes. The states CJI has worked with have successfully controlled prison costs, allowing for investments into strategies that strengthen prison alternatives for nonviolent offenders and reduce recidivism. For example, you know, some examples of the imple-- implementation that's taken place in other states, one year into implementing JRI, Louisiana saved \$12.2 million by focusing incarceration on serious and-- and violent offenders. CJI helped state leaders establish a grant program to distribute a portion of these savings to community-based programs to reduce recidivism and improve reentry. As a part of its JRI law, Alaska created a pretrial enforcement division to supervi-- to supervise defendants on pretrial. CJI developed and helped institute a pretrial risk assessment to focus bail decisions on risk rather than ability to pay, which is why we need to end cash bail. At the request of Maryland's Division of Field Support Services, CJI conducted a gap analysis of prison programming with the goal of increasing the availability of effective recidivism-reducing interventions. In Oklahoma, CJI convened the Department of Corrections and Board of Parole and Pardons to create a streamlined administrative parole process and a method for tracking performance. Utah was legislatively required to improve community supervision practices. CJI trained on effective case management and the use of graduate-- graduated responses to increase the chances that individuals will successful-- successive-- successfully complete supervision. The JR-- JRI legislation in Mississippi required the use of risk assessment to inform decision making and case planning. CJI developed a new and more accurate risk and needs assessment for instructional community corrections population. What I'm getting at is I know we like to say we're all acting in good faith and things are going to happen, it's going to be positive and everybody's going to be on board, but that needs to happen. We can't just give 14 point, what, 9 million dollars and then we go through this CJI process--

HILGERS: One minute.

McKINNEY: --and the usual suspects line up outside the Judiciary Committee to oppose the recommendations. That's what I fear. And that's what we cannot allow to happen. If-- if we're going to stand up

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

here and say we're acting in good faith, we have to make sure that when we get these studies done, those recommendations are passed through and implemented in full and not in half. We have to make sure that happens. And I just wanted to say that. Thank you. I yield the rest of my time back to the Chair.

HILGERS: Thank you, Senator McKinney. Senator Wayne, you're recognized.

WAYNE: Thank you, Mr. President. And again, I understand the purpose behind AM. I understand that this is for planning and design. I-- I get that. The disconnect for me is the faith in the process after that. And maybe it's because I'm-- this is my fifth year, I only got three years left, or maybe it's because I've seen how hard it is just to get bills through. Maybe it's just because I've watched the property tax debate. I watched the ImagiNE Act. I watched how when the body says they want to do something, it sells and nobody can really stop it. And what I'm trying to lay-- raise the level of consciousness around is we can't build our way out of this, that there are small things that we can do to improve the reentry. And the reason I'm not focusing on the entrypoint, which I think we need to have that discussion, too, is because that involves the prison pipeline; that involves education; that involves economic development; that involves so many broader issues that eight hours on a General File is not enough time. It would literally take me and this body days and weeks to have that conversation. But we can't keep putting it off. We can't keep putting it off. I mean, there was a challenge yesterday in which I said, well, let's figure it out. There's bills out there right now. We can spend, right now, time on the floor talking about how to solve education funding for rural Nebraska right now. Senator Friesen pushed his button and that was about it. We-- we don't want to engage in these complicated conversations because it's easier to work in our committees and move forward. But in order-- when TEEOSA was passed, it was two separate bills, one in Revenue and one in Education. And it became a huge floor discussion for a while because it was a huge topic. But when it comes to prison reform, which is a huge topic, we're talking about 5,000 people, of which 25,000-- 2,500 keep going in and out every year. We're talking about a significant budget issue, \$230 million. I mean, there's so many things we can do with \$230 million. I see Senator McDonnell walking up. You know, \$230 million, we could build Lake Ashland. He-- he said stop talking about it, that's not what we're supposed to do. OK. Well, we can build Lake Wayne, I don't care. [LAUGH] I look at a spot just north of here. No, and I'm joking right now because I'm trying to just remember I can't take this so seriously. But it's serious because my community is

heavily affected and people I know. But I have to be able to function through this body without becoming angry and bitter because every day it's getting harder and harder when I look at this budget and look at what we're spending money on. So back to the prison: The following graphs, on page 10, depicts the impact of construction and diversion. Adding 386 bed at this time for the completion would reduce the overcrowding population following the peak ex-- expected in 1990. And basically they said if we add 383-- 386 beds and that we add a new prison, we only operate around 131 percent, a mere 4 percent reduction. If we add diversions, programs--

HILGERS: One minute.

WAYNE: --that are linked to construction and everything, we might be able to reduce it to 122 percent. Again, this is 1989. And we added, in 1989 to basically '96, 150 minimum-security beds in 1990 at Omaha Corrections. We added 200 beds in Lincoln Corrections in 199-- 1991. We added an additional 80 beds in 1991 and we added an additional 40 beds in 1990. So there is roughly another 500 beds that we added in 1990 and guess what? Didn't solve the problem. We built a new prison in 1996 to 2000. Guess what? Didn't solve the problem. So the new prison, which would be a five-year, not a seven-year timeline, would be almost at capacity. I thought it was seven years, but I went back and Senator Stinner corrected me.

HILGERS: Time, Senator.

WAYNE: Thank you.

HILGERS: Thank you, Senator Wayne. Senator Matt Hansen, you're recognized.

M. HANSEN: Thank you, Mr. President, and good afternoon, colleagues. I know earlier in the day there was some hope to get this all done and voted on before noon. And so I initially kept my light off out of deference to that. But now that it's pretty clear we're going to go the distance or at least go for a while longer, I don't mind getting up and kind of talking a little bit more and talking a little bit more in depth. And one of the things I kind of wanted to talk about, since we're having just kind of a open conversation about criminal justice and how we should view it in the state, is I want to reframe and kind of talk about some of the broader issues. I'm sure-- I'm sure, no surprise, I'm sure some of you are getting these emails. I'm sure some of you are-- maybe you agree with these emails. But, you know, I've gotten some kind of trolling emails saying, why don't we just execute

DUI offenders, that will solve prison overcrowding, and it's, you know, I think that's some of the attitude we have in the state and maybe unfortunately in the government where it's this just drastic overreaction. When I want to say I want to have something criminal-- I want-- like, I want a criminal justice system that works, that people who commit similar crimes get similar punishments. I am on board with punishing people for their crimes to stop them from doing that, to be a deterrent, like, yes, this-- this isn't-- I don't-- I don't not believe in punishment. But when we see these cases drastically go in different directions and you have people who, you know, you have people who get diversion, some of the stories that, you know, Senator Cavanaugh read that we see that all the time. There's people who, for the underlying base crime, you know, never serve a ja-- day-- day in jail and somebody else gets 15 years because that's how elements of our criminal justice system work. And to say we want more consistency, to say we want more-- this system to make more sense is not to be dismissive of the fact that crimes do happen and the state should have due recourse. I've-- part of the reason I'm not opposed to necessarily more facilities is I think just as a state we have kind of negligently underfunded our whole system. I've always been on support of more judges because I think our-- there's-- the court system backlog is problematic. I think probably counties should invest in more prosecutors and more public defenders just to-- you need the judges to kind of make the whole formula work, but should invest in that, just so you're not dealing with months and months and months of unneeded waits. I know sometimes trials drag out because one of the sides wanted it. Sometimes trials drag out just because the judge isn't free, there isn't time, there isn't a courtroom, and that's time people are sitting in jail and it happens all the time where somebody, you know, gets sentenced to a crime and they've already served more time in jail than they got sentenced for. And there's things like that that we just know are out there and we just know are happening and we see time and time again and prosecutors will acknowledge them, judges will acknowledge them, defense attorneys will acknowledge them. Just kind of community advocates, the media all recognize this has happened. And then there's kind of this thought that or worry that any sort of tweak to that or any sort of change to that is some sort of kind of problem that-- that there's just this-- not a recognition by some in this body, in government broadly, that just don't recognize this is a problem. It's like, well, they did something, who cares if they sit in jail too long? And I know I'm talking about the county jail at the-- at the outset, but that's something, you know, we see these disrupt-- disruptive cycles where--

HILGERS: One minute.

M. HANSEN: --thank you, Mr. President-- where somebody who is in the county jail for way longer than they need to be, who's in the county jail way longer than they're ever sentenced to by a judge. I mean, that causes them all sorts of problems in terms of getting evicted, getting laid off, so on and so forth. And so what is something that somebody else had the privilege or the luck or whatever, you know, to be-- have the cop tell them to pour out the beer and go home, as opposed to the cop that arrested the other person who were both, you know, having open containers, you see totally drastic outcomes and differences. And to say, hey, there maybe should be some more sense, there maybe should be some more coordination, is not necessarily like a completely rejection of like the norms of crime, you know, criminal justice, the norms of punishment, the norms of rehabilitation. It's saying, like, the system doesn't make a lot of sense in a lot of cases and we time-- say them time and time again, and it just should work better. I think at the end of the day, having systems that work should at minimum be something we could agree upon, even if we have different ideals and different outcomes.

HILGERS: Time, Senator.

M. HANSEN: Thank you.

HILGERS: Thank you, Senator Hansen. Senator Machaela Cavanaugh, you're recognized.

M. CAVANAUGH: Thank you, Mr. Speaker. Oh, it's 1:00. Gosh, need some lunch. So some of our constituents have been reaching out to me today about this discussion about the prison, prison population, and who that population is. And to bring it once again back to my passion area, people with developmental disabilities, so the cost estimates-- cost statistics for entrance to DD waivers and S fiscal year 2018 by priority in Nebraska. First, emergency DDCA priority, the number of individuals is 32. The cost was-- the actual cost was \$1.2 million; the estimated cost was \$4.3 million; the average cost per individual was \$134,000. The second tier was transition of institutional persons, and that was four individuals. The actual cost was \$184,000; it was estimated to cost \$439,000; the average cost per person was \$109,000. The third, transition from foster care system, now keep in mind, this was 2018 when we did not have Saint Francis Ministries but we had PromiseShip, so I can only imagine what the cost would be now. But it is-- was 24 individuals for \$584,375 was the actual cost; the estimated cost was \$2.3 million; the average cost per child or

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

individual was \$97,408. Fourth, the transition from-- for high school graduates, again DD waiver, so 138 were on that list in 2018 and it cost \$1.197 million; the estimated cost was \$2.7 million, so it's \$1.7-- \$1.6 (million) more than what was initially-- or than what was actually spent; and the estimated cost per person-- so we've gone \$134,000, \$109,000, \$97,000-- \$19,000. Wow. OK. The average cost of putting someone with a disability in prison is \$134,657 per person per year. Putting them in services as they transition out of high school is \$19,595. If we want more money for appropriations for a prison, we could work to eliminate the waitlist to open up more funding. According to the Bureau of Statistics-- Justice Statistics, 32 percent of federal prisons and 40 percent of people in jail have at least one disability. Using such sources and limited data, we estimate that more than 750,000 people with disabilities are behind bars in America. Wow. It really makes it seem like my appropriations for \$54 million was just bonkers, right? Why appropriate that money when we could just incarcerate more people? Instead of approp-- appropriating \$54 million for DD, why not add \$54 million to this appropriation? If our intention is to continue doing what we're doing, then let's put more money towards prisons and less money towards--

HILGERS: One minute.

M. CAVANAUGH: --disabilities. I mean-- I mean, that's what we're doing. The priorities of this body are so fascinating to me. They certainly don't align with mine and I hope they don't align with Nebraska's. People, not prisons, those are my priorities. That's the role of government. And Texas has done it. They've proven it can be done. They've proven that it can be done in a way that actually increases safety in the state, keeps fewer people incarcerated and lowers crime. If Texas can do it, why can't Nebraska? Thank you.

HILGERS: Thank you, Senator Cavanaugh. Senator Wayne, you're recognized. This is your third opportunity.

WAYNE: Thank you, Mr. President. I'm just going to ask a general question to colleagues and hope somebody can shout out the answer to me because I really don't know. But what was an interesting stat that I found was from 1970-- or actually from 1980 to today, we've had a 283 percent increase in our prison population. And I don't know what that means to you all in the body, but to see a 283 percent increase in a population either means as a society we are just getting more violent in Nebraska. At the same time, other states have not grown as quite as fast. We were fourth in the country during that time period to grow that fast. So either other states are-- are investing in other

things that we're just not doing or Nebraska is inherently more dangerous, like I'm-- I'm really trying to understand that stat. But what was interesting is there were two counties that overall jail population during that time increased dramatically too. And I'm trying to find that stat again. But who represents Colfax County? Bostelman. Who represents Hamilton County? They saw some of the largest increase in jail population. In fact, Colfax during that period saw an increase of about 183 percent of people incarcerated are spending time in jail. So my question is, when-- is Senator Bostelman on the floor? I don't see him. I'm going to have to ask him, did his property taxes go up? Because those are typically county jails that have to feed people three times a day and go through the process of the court. So my-- my guess is the property taxes went up significantly during that time and that's why he is probably one of the propo-- is a proponent for property tax relief. I can probably point to some of the issues in rural Nebraska, and actually it was rural Nebraska whose population-- prison population increased during that time more than anyone. And Colfax and Hamilton County actually were one of the top ones under Douglas County, which was kind of surprising. So let me be clear of what I-- what I would like to see. If nobody else wants to pay attention, that's fine. I would like to see, if you want to have money set aside for prison design going forward, let's just not set aside money for a program that many of my colleagues want to have investigated and want to get data and want to-- want to get all that. That's fine. Set aside money for that. But why not set aside money and implement programs that we know that actually work today? That's the part I'm not understanding. We got worst-case scenario, build new prison. Let's look at more data to look at more data. And I get that Senator Lathrop has faith in this. And he knows a lot more about it than I do. I'm a little skeptical because I'm not on the committee anymore. And naturally, we-- we have a lot of studies, but we've already had a lot of studies on this issue. We've had at least ten that I know of since 1989. That's one every decade. And yet we haven't put a dent in our prison population. We've built over 200-- 2,500 beds during that time, almost 3-- actually, almost 3,200 during that time. And yet we still haven't moved the needle really at all.

HILGERS: One minute.

WAYNE: That's just odd to me. So what I-- what I'm really confused on, or my conservative colleagues are, if we're this conservative and we believe in small government and we believe in all these things, then why are we wasting \$230 million over the next two years for a prison that'll be full again? I don't know. I just-- it boggles my mind. So, again, 1989 study says we should build new beds, we should add

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

reforms. We didn't do it and we built a new prison literally ten years later. In 2016, we do a study, say we need reforms, we need to change how we do things. We're literally going to build a prison ten years later; 2026 is when the prison could be open. We're repeating the cycle. And it's-- it's-- it's amazing to me that my conservative colleagues are OK with this. When they want to limit government in every other way, when it comes to local spending, local education, we don't want to limit--

HILGERS: That's time, Senator.

WAYNE: Thank you, Mr. President.

HILGERS: Thank you, Senator Wayne. That was your third opportunity. Senator Moser, you are recognized.

MOSER: Thank you, Mr. Speaker. Appreciate the opportunity to talk about prisons and the construction budget. I was just having a discussion with Senator Lathrop about the options of where we go from here. A story I'll tell about a member of my family, I'm not going to get into who it is exactly because if I give you too many clues, you'll figure out who it is. But this person was looking for a job, so they decided where they wanted to work. There was a job opening there. It was a-- a good job, but there were seven or eight people applying for the same job and somebody else got the job. So then they went to the next inspiration they had and they applied for a job that they thought they liked. And again, there were a dozen applicants. It was a great job and somebody else got the job. So I think eventually they lucked out, they got a job. But what I told this person who will remain nameless, you-- you need to approach getting-- getting employed from multiple angles. You can't just go and say, I'm going to apply for that job, I'm going to get that job, and then when you don't get it, start all over and go somewhere else. And I think that's kind of where we're at today with prisons. Some senators are saying, hey, we don't want to build a prison. We need to, we need to have programs to keep people out of prison and to help them make a living when they get out and then others who say, hey, they did something wrong, they belong in prison, we need to build a prison, and however many people we have to put in it, that's how big the prison needs to be. So the process we have, I think, is-- is better that we're looking at all the options. We're looking at possibly building a prison. We're looking at what type of building we may build, where we may build it. And as a parallel path, we're looking at prison reform to reduce the number of people who have to be incarcerated. So I understand some senators who, you know, they're trying to stop this process because they think we're

going someplace that can't be reversed. But I disagree. You know, just because you apply for six jobs doesn't mean you can take them all. You're only going to do-- you're only going to take one job. But if you apply for a job one at a time and you don't get them, you could be unemployed for a year. And I think that's where we are here. If we don't move forward on several fronts, we don't know exactly where to go, we're not going to get anything done, because I know several senators have said, well, we've studied this before and we didn't get anywhere or, you know, we expanded the number of beds and we filled them up right away. So the answer's over the hill. It's around the corner. The sky is a little gray, I'll agree. But we need to move forward on all fronts to try to move the process forward. Thank you, Mr. Speaker.

HILGERS: Thank you, Senator Moser. Senator Machaela Cavanaugh, you're recognized.

M. CAVANAUGH: Thank you, Mr. Speaker. I think we are headed down a wrong path, and I would love to see more people than just those of us that have been engaging in it, engage. And I appreciate Senator Moser for getting up and engaging in the conversation, because that's what we're supposed to be doing is having a conversation and talking about different ideas and doing it in the public, which is-- this is the public, so that we can come to some sort of resolution. Instead, we have about a dozen people checked out at the moment, like not mentally checked out, physically checked out. I think we have more than a dozen people mentally checked out. But we have people checked out and we have people completely disengaged from this conversation that's happening. Even though they want to get to a vote on this, they don't want to engage in the conversation, so-- but I'm here for this conversation. I love this conversation. How can we do things better, smarter, and save the taxpayer dollars? This is a fantastic conversation. So I'm looking at the budget, the agency budget for Corrections, and it's on page 191. It's Agency 46, Department of Corrections. And it looks like we are, which is interesting, we're doing salary increases. It looks really like we're really only increasing a little bit over each year. I suppose if we're overcrowded, I don't know how this budget is reflective of-- of-- which I know we are, I'm not questioning that we're overcrowded, but it seems like we should be putting more resources into this. But I guess that's not for me to decide. Oh, but we do-- we do have-- I'm sorry, page 192 at the bottom, bargaining unit pay increases for protective services staff, Program 200 Adult Services. Based on the session pause from March 17 until July 20, the FY '20 appropriation was moved into FY '21. The FY '21 appropriation before this was

moved-- this move was \$5.7 million, which was for the full-year salary raises for FY '21. I'm not sure that that's an explanation as to why it's a decrease of \$23-- \$2.3 million over two years. I'm sure there's an explanation, but-- and I would normally ask members of the Appropriations Committee to yield to questions, but I don't think that they're interested in this conversation, so I'll do some research when I'm not on the microphone to see if I can figure it out. The staffing for the Lincoln Correctional Center high-security housing project, we are increasing 15 FTEs, 59-- wait-- for FY '22, we're increase-- we're giving 15 FTEs, which is full-time spots, so 15 people essentially, and 59 FTEs are being req-- requested for the following year. So that's going to be \$925,000 for FY '21-22, and then \$3.5 million the following year and it is now making sense to me--

HILGERS: One minute.

M. CAVANAUGH: --thank you-- why the budget looks like it moved less than it actually did, because there are some negative items in here, like the one that I just mentioned, the \$2.3 million over-- and over two years. So we are increasing the budget. It just doesn't look like we're increasing it by as much because we are decreasing some line items within the budget, which is interesting. Staffing for the Reception and Treatment Center, the issue provides funding to staff phase one of the RTC construction is estimated to be completed in January 2022. Partial funding is being requested, 3-- 33.5 FTEs, and full funding is being requested, 66.5 FTEs for the following year. Staffing added will include cu-- custody staff and supervisors, corporals, sergeants, mental health security specialists, and a case and unit manager.

HILGERS: Time, Senator.

M. CAVANAUGH: Thank you.

HILGERS: Thank you, Senator Cavanaugh, and you have your close remaining. Senator McKinney, you're recognized.

McKINNEY: Thank you, Mr. President. I yield the rest of my time to Senator Wayne.

HILGERS: Senator Wayne, 5:00.

WAYNE: Thank you, Senator. Thank you, Mr. President and Senator McKinney. So, yeah, this is an interesting study that I was looking at. So Colfax County actually increased their jail population during that time, 843 percent from 2005 to 2015. I'm pretty sure your taxes

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

went up with that big of increase. And actually, there are a couple counties who went down during that time from 2005 to 2025-- 2015. But for the most part, rural Nebraska had about a 1 percent to 58 percent increase, and I just gotta believe that has to contribute. Fifty-five percent of the state-- of the state's 80 rural communities saw an increase of 68 percent. It's interesting when we start talking about property taxes and how all that fits and now how I look at it is my-- my view on property tax relief might start changing when I'm starting to dig into these numbers, because maybe we could do some things where we actually make a difference. And I understand what-- the one thing I like about Senator Moser is he-- he always wants to go between the people and try to figure out like, hey, is there something we can agree on, is there something we can figure out, and I-- and I really respect that about him because he's one of the few people in here, when somebody brings up an issue, will come directly, not just to me but to other senators, and try to understand what we're saying and try to get some clarity if-- if we might have misspoke on something. And not a lot of colleagues do that and that's why I don't think I've been opposed to any of his bills, because I think we talk about them and we just got, I think, have a good relationship that way because we talk about things. But what's interesting is how many people are not engaged on this. I just find that amazing. We-- we will stop a bill on this floor that costs \$100,000. We-- we will stop a bill, sometimes it don't cost anything, and that's because we-- we object morally or ethically or something like that. I get that. But we would stop a bill on the floor because of \$100,000 fiscal note because we feel like we shouldn't spend it on X, Y, or Z. This year has been so interesting because we have so much money on the floor and in the budget and our revenues are up, that it seems like everybody is getting something. And so everybody's kind of afraid-- do we speak up, do we not speak up-- because we got this other bill and we got this other bill we're working on, we got this other issue we're working on, and you're worried about, you know, burning bridges or causing strain. And that's what's been the most interesting part about this year for me is that, that dynamic of money on the floor and bills and asking for dollars and going to Revenue as many times that I did and listening to the con-- the bill before me or the bill after me and just listening to this conversation. But it doesn't change there are some fundamental things about this bill, and I think it's a morality issue for me, about just opening up a checkbook to figuring out how to plan, which is fine, but we're not including a part of that plan, how to reduce the prison population. And what's interesting to me about that is we say, yes, we got money on the floor, we can do it, and I can walk around and I can find 35 to 40 senators who will tell me privately

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

they agree with what we're talking about, but yet my bill is still in committee. And it's not just my bill; there are other bills in committee.

HILGERS: One minute.

WAYNE: And yet we're not setting aside dollars to do it. We're not actually moving it forward. I haven't heard anybody, actually, on the record cosign to the idea of let's do something different. And again, it may not be my bill. There's a clean slate bill that Senator McKinney, my-- myself, and Senator McCollister all introduced versions of it. There are things out here to help people be engaged in the economy and make capitalism work for everybody, which is what I thought many people believe, that if people have opportunities and people are engaged and people are connected to their communities, that's a better Nebraska. But when it's time to talk about it, everybody goes to their office, everybody goes to the sidelines, and it's one or two, maybe three or four people talking, but there's no real moving the ball forward. There's real no negotiation. There is no consensus building that I used to see this body do.

HILGERS: Time, Senator.

WAYNE: Thank you, Mr. President.

HILGERS: Thank you, Senator Wayne and Senator McKinney. Senator Geist, you're recognized.

GEIST: Thank you, Mr. Speaker. I decided I'd just weigh in on this discussion a little bit and-- and mainly kind of leaping off of one of the things that Senator Moser said, and that is taking a multipronged effect-- approach. So one of the things that hasn't been discussed in-- very much today in light of-- in light of incarceration is mental health and how that-- how years ago shutting down the regional mental health centers and hospitals has been sort of a pathway of feeding into our correctional system. So taking a look at that and then also what Senator Wayne was talking about in-- in transitioning out, I think we have a huge problem with the ability for people to successfully transition and stay out of prison. The recidivism rates are so high when we don't have surrounding supports for those that are exiting our correctional system. We need to talk about reentry in many aspects, whether that's housing, treatment, beginning treatment within the walls of the prison, and helping people transition out successfully with support, with jobs. Senator Wayne has a bill that I'm very interested in. I should even put my name on, Senator Wayne. I

think we've talked about it off the mike. And it's-- it's setting up many community correctional systems like Bristol Station. And I know we've spent quite a bit of time talking about that already today in-- in many communities. What that does is gives all those wraparound services and successful reentry back into the population with a-- the population-- out of an incarcerated environment and into an unincarcerated environment very successfully, with money in their pocket, with a job, and in a community that they have relationships, not just in Lincoln and Omaha but possibly across the state, a very effective vision and one that I can really get behind. However, I'm also going to say that-- that I think we need to do a "both and" or "all and" approach. It has been presented that the rehabilitating NSP currently would cost us \$117, probably plus, million where if we-- to get that up to code to where it could support the population without building a new prison, and yet we would still not have the right number of beds. It would take away from some of the beds there and we would be out \$117 million, and probably more than that, and still not address the problem that we're trying to address. I do like the idea of changing that into a minimal incarceration facility. I like that vision and then using a new facility that has more programming space, has more beds, is more modern, and is a more hospitable place for people to transition into and out of more successfully than what we can do in the place we have now. So going forward, I think we need to look at juvenile justice. We need to look at really pouring good resources there so that we're giving good treatment, counseling, family-- gathering the families in of juveniles who are at risk and looking at that population with a high degree of intentionality, talking about recidivism and reentry, talking about mental health, all of those things. We need to have a-- raise the bar and raise consciousness, not only of those of us here in the body but those of us out in just the general population, so that they understand we're-- this is something that benefits us as a society, not just as a Legislature, but to the degree that we help those who are in-- who are incarcerated to rehabilitate, to get better, to be more successful. That is the-- to the degree that we'll have a better public safety and more successful adults all around.

HILGERS: Time, Senator. Thank you, Senator Geist. Senator Dorn, you're recognized.

DORN: Thank you, Mr. Speaker. Was up in my office trying to get a little something to eat here a little bit ago. Senator Wayne started making some comments about some of the counties or whatever. I know Colfax County and other counties like that. Came back down, I wanted to make some comments. I did sit-- I know most of you know I sat on

the Gage County Board for eight years. I want to give you a little history of what their jail-- what has happened down there in that county. I know I've spoken to some of you about that out-- basically out-- the numbers have definitely outgrown where we're at down there. About 20 years ago, the county board down there decided to come forward with a bond. Had an old jail. At that time, it was going to be \$11 million bond. I don't remember how big of beds it would have been. They promoted that, tried to get a new-- an \$11 million bond for a new jail. That proposal was beat so bad, only had 18 percent of the votes in favor of it, 82 percent of the votes against it, that when we sat on the board, one thing we knew that we should not do is never bring up to build another jail. Gage County has 32 beds for their jail. When I came on the board ten years ago, the average population in Gage County in their jail was in the low 20s. I don't know what it was when they proposed to build the faci-- the new facility that did not get built. During those eight years-- and what a lot of people don't realize is we up here in the Legislature, and we talk about, I call it, reform, there is a lot of bills, there's a lot of things we do that trickle down, and what that does is that also affects the county jails. Gage County, in the eight years I was on the board, went from an average population of the low 20s to an average population of the low 40s, which can't fit in a 32-bed facility. So as I was on the board, part of what we did was we started, I call it, transferring prisoners out; when they had a court date, you had to bring them back, but transferring prisoners out to other facilities. I know we took some out to Lexington. We did at one time-- I don't want to bring up Saline County because Saline County, I think, is an example of what happens when you maybe build a facility. We took them to Saline County. It was costing the county \$50 a day. As I was on the board, we then developed a plan to have a facility in Kansas, Washington County, that would house-- we wrote a contract up with them that would house ten inmates at a time at a lesser cost. We knew what our cost was going to be. Many of these increase in prisoners comes from the programs, the reform, lack of reform that we do in this body. Like I said, Gage County went from an average of 23 up to 43. In that budget-- we talk about property tax savings, but in the county budget, when I left the last year, we budgeted over \$320,000 for housing outside inmates for a county the size of Gage County. That was about 3 to 4 to 5 percent of the total property taxes collected by the county. I sat on that board and a lot of times I said to myself, they should have built that prison. And here's an example, Saline County over here did. They built a new facility, I don't know, maybe 10, 12, 15 years ago, built a 90-bed facility. Saline County does not need 90 beds.

HILGERS: One minute.

DORN: The last time I talked to their people over there, they maybe needed 20 beds. They house outside prisoners. Their jail is always full. It got so that Gage County could not get any of their inmates into Saline County. Saline County now has, as part of their budget, the revenue from that jail. And I sit on the county board and I always said this is a positive, we should have built a jail, but I also look at the other side. Why are we having that increase in inmates? We went from-- in eight years, we went from 23 to 40--some inmates because of programs, because of prison reform, lack of prison reform, that we do not have and does not come down from this Legislature. Gage County, we talk-- like I said--

HILGERS: Time, Senator.

DORN: --we talk about property taxes. Gage County-- time?

HILGERS: Time-- yes, time, Senator.

DORN: [INAUDIBLE]

HILGERS: Thank you, Senator Dorn. Senator Ben Hansen, you're recognized.

B. HANSEN: Thank you, Mr. Speaker. Thought I'd give Senator Wayne a break and talk myself a little bit, share some of my thoughts about the bill and the-- the amendment and some of the topics of conversation we've been having already today. Going to piggyback a little bit off of maybe what Senator Geist was talking about when it comes to a multipronged approach to how do we look at our current prison system? What's it going to look like in the future? How do we prepare for that? What changes can we make? Because I am in favor, if that's ultimately what the end goal is here, of building a new prison. I am in favor of that with the intention that we also look at many other aspects of our prison reform when it comes to mental healthcare of our prisoners, recidivism rate, and the underlying or kind of root cause of why we keep seeing our population who get out of prison, go back in there. And I-- and, again, I-- I don't think it's a simple answer. I think it's a multifaceted, you know, question. And I think one of the biggest things we can look at is programming of our prison system. And so with the underlying intent, if we are going to, you know, and I'm hoping that's kind of what the amendment is also going to be just, you know, that's the goal of the amendment, AM911, with the study is to see how best we can make this work in modern society,

what other states have done, maybe not completely reinventing the wheel. Sometimes I know as Nebraskans we're a little stubborn and we like to stick with what we do, which is not a bad thing all the time. And so I think it really comes down to a lot of when it comes to the programming, especially with nonviolent crimes. You know, why do people who have-- who commit nonviolent crimes come-- go back into jail? I think a lot it has to do with addiction, maybe the-- the community they growing-- they're growing up in. And so I'm hoping that's one of things that if we end up do building a new prison, that's one of the things-- one of the main things that we can kind of incorporate into it is making sure that we have-- have good programming to address a lot of the health concerns sometimes that are involved in the-- in the prison population. And also, with the transition out of prison, what-- what can we do then to help them to make sure that, you know, they don't go back in right away? Again, not an-- not an easy answer to not an easy question, and so I do appreciate Senator Wayne, you know, even though he's, you know, talking over my lunch hour, his passion, you know, because it's important to him. It's important to his constituents. It's always been important to him for the last-- ever since I've known him, and so I appreciate him getting up here and talking as long as he wants. And so one of the-- well, it's not really quite off the subject. One of the concerns that's also been brought up here is maybe the policing of our communities, and so I just want to get up here and do-- and do mention that I do support our police. And with any kind of profession, there's good and there's bad. And I do believe with our-- with our men and women in uniform that there are a lot more good than bad. I just want to make sure we don't forget that. Sometimes it gets lost in translation when we're talking about prison reform. So-- so with that, I will yield the rest of my time to Senator Wayne if he wants it. Thank you, Mr. Speaker.

HILGERS: Senator Wayne, 1:25.

WAYNE: Thank you. And I'll-- I'll make this quick because we started tying in some property taxes. And I want-- I want you to understand how the lack of prison reform and the-- and the-- and the lack of successful recidivism rate dropping. So when somebody gets arrested, they sit in county jail. That's a cost to the county. And they often, if they're sentenced over a year, it goes to the State Penitentiary. Under a year, they sit in county; they do their whole time in county. So when your prison population keeps increasing, that means your local population is also increasing. That means your county courts, your district courts in your county, have more people sitting in jail, clearly, because they're doing a year or more because our prison

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

population is growing, so that means they've been convicted of or at least charged with a felony, which means they probably don't have a bond or a very high bond, which they can't afford, so they're literally sitting in your county jail. Your county jail is paying more. So I would ask all my rural senators to go talk to their county officials over the last 15 years and see how much their county jail budget has increased. And you will see they have-- it has increased. That's how this is all connected. And that's why I said earlier I have to start rethinking my property tax position because I'm being ignored on this bigger issue that it directly affects property tax.

HILGERS: Time, Senator.

WAYNE: Thank you, Mr. President.

HILGERS: Thank you, Senator Wayne and Senator Ben Hansen. Senator Friesen, you're recognized.

FRIESEN: Thank you, Mr. President. Would Senator Wayne yield to some questions?

HILGERS: Senator Wayne, would you yield?

WAYNE: Yes.

FRIESEN: So I was-- I was listening while you were talking earlier. You talked about Hamilton County and 168 percent increase.

WAYNE: I was wrong. That one actually went down. I read the map wrong. It actually went down 77 percent over that time, so you did really good.

FRIESEN: OK. Well, and one of the things I wanted to talk about, I guess, is that LB605, when we did pass that, it did push more prisoners into the county jails. And it was part of our justice reform bill back then. And I think you were here then, too, for that one.

WAYNE: I wasn't here for that, but I watched it.

FRIESEN: OK, you weren't here for that one. So, I mean-- thank you, Senator Wayne. So, I mean, I-- I want to point out, too, that some of the things we've done has-- has driven some of that, you know, and-- and again, I don't think anyone will say having a-- a jail in their county is a good thing. But we have, you know, this one was remodeled a couple of times, but it's-- it's been there since the '70s. But, yeah, it's a-- it's-- it's not full. We have a-- I think average daily

attendance is around 17 now and they currently have 11. But it does-- some of the things we do here at the state does drive some of this. One of the issues I had a couple years ago that I couldn't get out of Judiciary was a bill where they have a-- a person who has some mental health issues that they could take him somewhere else where they're qualified. And I, you know, not being on some of the committees and maybe having other focuses has not led me to pursue that further. But over and over, I've talked to people and we keep saying we need some mental health treatment facilities back in the state again. We have-- we are lacking space to do that. And what's happening and that-- this is what happened in the Hamilton County jail, is that an inmate with mental health issues was kept there and ended up assaulting an officer and-- and-- and now is in the Penitentiary. So, again, it all could have been solved by being able to take that person to a mental health facility, which there was no room, so ended up being in jail and, therefore, you just keep that path moving into the court system and they end up down the road in the Penitentiary. So I-- I think over and over we've-- you know, I'm just visiting and-- but I've not carried other than that bill, which would have forced them to take mental health clients. We still have not looked for facilities where we could open up some mental health facilities across the state. We've heard over and over from the counties that just the transport time of-- of clients that need mental healthcare is tremendous cost. So especially in-- when you get to the juveniles, there's no place to take them. So I-- I think it's something that needs to be addressed. We've talked about facilities maybe in Hastings. There's buildings there, but it's going to take money, it's going to take people, it's going to take a plan, and I don't think there is a plan either. I-- I'm-- I-- I think that would be a-- a good start. It wouldn't have to be a large number of clients, but there needs to be a place to take these prisoners that do have these severe mental health issues. With that, I'll yield the rest of my time to Senator Wayne if he wishes to use it. Thank you, Mr. President.

WILLIAMS: Senator Wayne, you're yielded 1:30.

WAYNE: Thank you. Thank you, Senator Friesen. Thank you, Mr. President. Colleagues, I agree with Senator Friesen that when we did LB605, we pushed a lot more misdemeanors into play. We created a Class IV felony, which allows for the presumption of probation, which means counties are bearing that cost. And that's the whole point. If we have a reentry, a recidivism rate of 30 percent and we can reduce that, we know from a state's perspective it's-- 5 percent is equal to about \$2.5 million--

WILLIAMS: One minute.

WAYNE: --million that we'll be able to save. That could equal hundreds of thousands to the counties. And so the last data on our Crime Commission is actually from 2017. I'm going to pass this out and have a conversation about arrests and offenses per a county map. And you'll notice a lot of the arrests are along the I-- I-80 corridor. But we do have increases or rates per thousand across the state where we are seeing more arrests everywhere. If the prison population is going up, that means the local arrests are going up. That means the counties are bearing that cost for property tax purposes and have to raise your property tax. This is all connected and it's all systems. And I hope, now that people are getting engaged these last couple hours, we actually get engaged and talk about solutions. And even if it's in concept, we talk about solutions and before the second round, maybe we don't have to wait eight hours on-- or six hours or whatever the rule is--

WILLIAMS: Time, Senator.

WAYNE: --going forward. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Wayne, Senator Friesen. Senator John Cavanaugh, you're recognized.

J. CAVANAUGH: Thank you, Mr. President. Well, colleagues, I haven't talked in kind of a long time. I've been listening to the conversation. I appreciate a lot of the points everyone's been raising. And I-- seems like there's a pretty good consensus that people don't want to build more prisons, but people want to focus on how we actually answer-- solve these problems. So I just want to kind of, I don't know, I guess, bring my perspective to this conversation. And, Senator Wayne, you were talking about the-- the price that the local counties pay for incarceration. I brought a bill this year to work on cash bail. And on the day that I brought that bill to the Judiciary Committee, Douglas County Corrections had 900 people incarcerated there who were awaiting trial, which meant that there were 900 people who had not been convicted of a crime, who were being held in custody. And that price is borne by Douglas County and the taxpayers of Douglas County. We have, I think it was, about 1,100 people in Douglas County, which meant that there were only about 200 people who were serving time. And of the 900 serving, I believe it was 800 were in on felonies and about 100 were in on misdemeanors. So we do-- this is a property tax issue. And that is one of the reasons that I, I guess, feel so strongly about making appropriate steps in our

criminal justice reform. But there are long-term problems, systemic problems. And so I was sitting here and I was thinking about this and I said, well, to myself, how-- how do you kind of walk somebody through the crowding issue? And obviously, anecdotes are helpful. And so I brought another bill this year that was to constrain the habitual criminal, which-- a statute which essentially means if you've been twice previously convicted of a felony and served a year or more, that on the third offense you get-- you can get a minimum of ten years. And so when I brought that bill, people started sending me letters of the examples of their incarceration stories. And I got one letter that stuck out to me that was rather shocking. So my bill would have limited which offenses could have the habitual criminal added to them. And specifically, I was attempting to stop the use of the habitual criminal or-- on Class IV felonies, which are the lowest level felony, for which you can do up to two years in prison. And those are drug possession, third-offense shoplifting, and criminal impersonation is one of them, which criminal impersonation is if you give the police a fake name of a real person. So if you give them Mickey Mouse, that's a misdemeanor, false information. But if you tell them that your name is John Smith, whose birthdate is 10/6 of whatever, then you-- that is a real person and that's criminal impersonation, which is a felony. So this individual sent me a letter and said he was in prison on-- that my bill would have affected him. And so, of course, I looked it up and saw that he was doing 15 to 25 years on a criminal impersonation Class IV felony that he went to trial on. The reason he had-- they had the habitual criminal offense added to him was because he took that case to trial. His prior convictions were both theft-related offenses, meaning that he stole property from somebody else, and he did just over a year on those. So this is a person who met the statutory requirements for the application of the habitual criminal. And if he had entered a plea to the criminal impersonation, being that he told the police he was somebody else when they pulled him over, that he would have done about two years. But because he chose to litigate that and take it to trial and lost, he was subjected to the habitual criminal, for which he could have gotten ten years at the minimum. The judge had no discretion to give him less than that. But in the exercised discretion of the judge, they gave him 15 years.

WILLIAMS: One minute.

J. CAVANAUGH: So there's a lot of other issues in our criminal justice system and overcrowding, but their sentencing is, of course, one of them. And I-- I probably will push my button to talk about some of the other parts too. But we have these structural problems where we have offenses where people are doing disproportionate sentences and that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

starts to fill up our jails too. So we need to look at that as part of the holistic reform and I-- with that, I will yield the remainder of time and push my button again.

WILLIAMS: Thank you, Senator Cavanaugh. Mr. Clerk, for announcement.

ASSISTANT CLERK: Mr. President, the Education Committee will hold an Executive Session in Room 1525 at 2:00; Education Committee, 2:00, Room 1525.

WILLIAMS: Thank you, Mr. Clerk. Senator Dorn, you're recognized.

DORN: Thank you. Thank you, Mr. Chairman. Wanted to continue a little bit where I left off earlier there, talked about the cost of-- for counties. Thankful that-- want to piggyback a little bit on Senator Wayne's here, though. The costs for the counties, they-- when somebody is arrested, as they go through trial, if they're sentenced a year or less, then they do sit in the county jail. The decisions we make here as this body, as far as sentencing people, the length of time, different causes and all of that, that has a ripple-down effect. I think Chairman Stinner talked about we had about 5,300 inmates in our state prison now. I know a year ago or sometime in the last year, we were at 5,600. I don't know how many more you could actually classify as in the county jails-- John Cavanaugh just talked about 900 in Douglas County-- once you started adding up all the other county jails, how many more. This body is essentially responsible for them serving their time or them being there and the length of the time they are there. That-- the state does not bear that cost. The state-- usually the counties have some of the cost or quite a bit of the cost of the prosecution and all of that. When you increase those numbers at the lower levels of government, you also have increased that cost for those entities. This for certain counties can be huge; it can be a tremendous part of their budget. I know in Gage County we knew that dollars we paid out for housing outside-- inmates outside of the county, we had budgeted over \$300,000. When we sat down and as a board talked about all of the other cost in there, the cost of having an extra deputy or two to be able to transport those inmates now from the other facility back to the county to have their trial or to have their day in court, you also have all the other health issues with that. There are many, many things that go on. I made the comment earlier that I thought at one time Gage County did not do the proper thing by not building. That is part of what we're talking about here. Should we or should we not build? The whole big picture, though, isn't just the building part; it is also all of the other pieces that will fit in that pie. It is the study that is going to be going on. It is other

reforms that we as a body will have opportunities to make our decisions about making and how those things are enacted, how some of these decisions we come to in the next year or years, they not only affect the state and the state's budget, they affect many of the lower entities' budgets and the costs they have in operating and performing those duties that we as a state are directing them to do. I thank you for this conversation this afternoon. I thank you for Senator Wayne and others bringing forward this conversation. I appreciate the opportunity to speak and I yield the rest of my time.

WILLIAMS: Thank you, Senator Dorn. Senator Arch, you're recognized.

ARCH: Thank you, Mr. President. I-- I just wanted to comment, since we're having a multifaceted discussion on these issues in a multifaceted issue. I wanted to comment on something that I came across last fall 2020 and it involves the state of Kentucky. And the state of Kentucky has applied for a Medicaid 1115 waiver for a-- a-- to-- to test something, and that is substance use disorder treatment in incarceration. So currently, Medicaid does not pay if-- if an individual is incarcerated, Medicaid does not pay for treatment. So that is-- that's on-- whatever jurisdiction is incarcerating, that's on them to pay for this medical care and in this partic-- in this particular case, substance use disorder treatment. The thing that interested me when I saw the article was that Kentucky was struggling, and that's not the situation here necessarily, but Kentucky was struggling with a situation where their reincarceration rates were actually higher than their new incarceration rates and they traced it down to substance use disorder problems. And so they've-- they identified perhaps an 1115 waiver as a way to address that. And let me read you-- let me read you an article from a-- an or-- a publication called Kentucky Policy. It says, there are two main aims of the-- of the Medicaid proposal. The first is to provide substance use disorder treatment to eligible individuals who are incarcerated to ensure this population receives needed treatment before release, as Medicaid does not currently provide federal matching funds to people who are incarcerated. This would significantly expand current substance use disorder treatment in prisons and jails paid for by the state. The second aim is to allow the [INAUDIBLE] of treatments, chosen Medicaid care organization, MCOs, which we have, to coordinate services in the community with a Medicaid provider 30 days before release. Services provided during incarceration will be fee for service. So they're trying to address something that I think all states are experiencing, and that is that substance use disorders is a-- is a large portion of the population that are struggling with that. We want them to be successful. So I've raised this issue with the Department of Health

and Human Services. We're in-- we're in discussions as to whether or not something like this could-- could be used in the state of Nebraska, yet-- yet to be seen. But previously I've also talked about Sarpy County and what they're trying to do with mental health. And I think with substance use disorders, with mental health issues, I think maybe there can be some innovative things that we can do to address some of these issues because we understand they're real. And so with that, I will yield the balance of my time back to the Chair.

WILLIAMS: Thank you, Senator Arch. Senator McCollister, you're recognized.

McCOLLISTER: Thank you, Mr. President. Good afternoon, colleagues. I want to take this opportunity to announce that the 36th Annual State Campaign Against Hunger starts April 12 and will run through April 29. Cash donations may-- may be brought to the Legislative Accounting Office in addition to contributing to the State Campaign Against Hunger website, along with many other ways to contribute to the website. And this first year, the first annual Stuff the Truck for the Food Bank in Lincoln is on May 3. The truck will be parked in the horseshoe north of the Capitol from 11:00 to noon. Nonperishable items may be dropped off during this time. It's interesting we're having this drive at this time because perhaps next week my SNAP bill be coming up. And I think we have seen, through the food drives that we've been in contact with, the demand for food is doubled, doubled during this pandemic. And I think that as we introduce LB108, you'll see that there is a need to improve eligibility for SNAP benefits. Secondly, I want to talk about this-- this effort to Right on Crime. I became interested in this situation back in the 2010 era when I was at the Platte Institute. And we discovered that-- that the crime situation and the-- the penal situation is something that bridges all political concerns. Everybody from ALEC to Right on Crime, CSG, CJI, those are the groups that I think will help us correct our-- our prison situation in this state. And we-- we have not done it well. We did not take the recommendations of CSG when we completed that study in 2014, and that's unfortunate. Mr. President, I yield the balance of my time to Senator Wayne.

WILLIAMS: Senator Wayne, you're yielded 2:48.

WAYNE: Thank you, Mr. President. And thank you, Senator McCollister. So what is the thought process, people are kind of asking me, or-- and what's the thought process, what am I trying to accomplish, what-- it's-- it's very simple. It's not just about my bill, LB334. It's about whatever we can do, whoever has bills out there on reentry and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

making sure that we can reduce our recidivism. There's a couple things we could talk about on the-- on the front side of entry, but I think that gets a little more complicated. So what I'm trying to figure out is the incarceration period and the reentry period and I'm open to it. And so I was just having a conversation with a senator, Senator Briese, and I was like, you know, my model is real simple. I follow the model that the conservatives built for me over the last three years. If you don't tie it together and they don't walk in lockstep, then people fall off. And we saw that every year the first four years of the property tax debate and then the last two years with the Imagine Act was if one got out ahead and the fear was, rightfully so, if that passed, then the-- they would fall off the other side. So you have to walk them together through the process, and right now there are no reentry bills on the floor. There are no reform bills on the floor. And I'll-- I'll be directly honest. I didn't prioritize that bill because I thought many people in this body in the newspaper spoke out against the new prison and even going down that path, and then I heard about the joint commission grant of a new study.

WILLIAMS: One minute.

WAYNE: So I just assumed, incorrectly, everything was kind of put on hold for a year. Then I read in the paper that we're putting aside or sequestering \$115 million and this amendment comes. So I assumed some things when I heard about the study coming that we were just putting all the prison stuff off for a year, we weren't going to do anything for a year, we were going to get the data. But now we're actually making cash decisions that are leading us down the path of potentially building a prison. There's still an emergency stop button, maybe. But here's what I just told Senator Briese. Here's my concern. You design for a year, year and a half. If you go two years, that's 500 more people, based off of the projections. That locks us in, in my opinion, to building a new prison. If we don't add the reform-- reform to reentry right now, we're locked in. So if we're going to have dual paths, let's have dual paths.

WILLIAMS: Time, Senator.

WAYNE: Thank you, Mr. President.

WILLIAMS: Thank you, Senator Wayne, Senator McCollister. Senator Matt Hansen, you're recognized.

M. HANSEN: Thank you, Mr. President. And good afternoon again, colleagues. I-- I kind of am in a similar boat to Senator Wayne just

laid out. You know, those of you who've known me, who've seen what I've worked on this year, these-- over these years, know that even just last year I had-- my personal priority was a bill on criminal justice that had a variety of new things and a var-- offered it to be what ultimately became a package, a Christmas tree, whatever you'd like to call it, to have a lot of good criminal procedure things find a home, including things that we worked on, you know, with the counties, with the county attorneys, with the defense attorneys to try and bring some updates and some modernization. That was something certainly that was on my mind. I've still worked on bills in this area. And one of the bills I've been talking about under the balcony to some people this morning was something that was in my consideration for personal priority. But it seemed like we had reached a spot where I didn't know how much the body was interested in focusing on criminal justice or how much we were going to do this year, so I went a different direction. Knowing that, I wish there was a vehicle that we could have some of these bills come on, because like-- I, like others, I'm not necessarily focused on reentry from Corrections. A lot of my time has been spent working with the counties and the county jail populations to try and stem the unneeded influx of people into the correction-- Corrections if that's not the appropriate spot, and a lot of cases, if that's not even necessarily what we as a Legislature picked out as a punishment. And I bring that up in the sense that we've talked about county jails, and-- and I know this is kind of a recurring thing, but we've talked about county jails. Just to remind everybody, you know, it varies from county to county, but a considerable portion of your county jail are people who have not been sentenced to the county jail or at least haven't been sentenced to jail sentences. A lot of them are pretrial detainees who are waiting, who-- who either don't-- don't get a bail, don't get a bond, or can't afford it. And those-- or they are people who are sitting out fines and fees. And I think this got mentioned briefly at one point. There was-- under LB605, there is a new custodial sanction for parole violations where you go spend a couple days or whatnot in jail. But these are all people who are not necessarily sentenced to jail. There hasn't been a formal court hearing in which we as a state under the laws of Legislature have said, like, you get a jail sentence, go there. A lot of them are at varying steps in the process where jail is an option or an outcome, but is not necessarily the only sentence, the only punishment. And they get there kind of sometimes for lack of alternatives, lack of options, sometimes lack of awareness or lack of advocacy, and a lot of times, and especially on the bail and-- and bond side, lack of money. We've seen this time and time again where, you know, there's people who've posted bails and bonds of \$50,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

\$100,000. They have the means. They have the resources. You know, they could post that and walk out. There's other people who can't come up with \$1,000 and have to sit there, you know, six, eight weeks for trial. And again, sometimes people sit-- sit eight weeks for trial, get sentenced to ten days in jail, get credit for time served and leave or plea somewhere in the middle when they realize if you plead guilty, regardless of whether or not you feel you're guilty, you get out of jail the day you plead because you've already hit the maximum sentence. That is something we worked on with Senator Wayne last year in the priority bill that I mentioned to try and stem that, where people who were serving in jail longer than they could possibly serve, even if they were convicted of everything, so hopefully that problem is stemming, but that's one we've been dealing with and the counties have been dealing with for a long time. And again, that's something that I know Senator Dorn's mentioned it, I believe some others have talked about, where, you know, we are requiring the counties to pay for a lot of things that we--

WILLIAMS: One minute.

M. HANSEN: --thank you, Mr. President-- that we as the state create as state crimes and they might be heading to the State Penitentiary, but during the trial process they are in the county jail as pretrial detainees if they do not have some sort of alternative. And-- and keep in mind, if you get a bond, no matter how big it is, if you post the money, you get out. So some people get out just because they have the resources. And again, this is something that is an expense we then dump on the counties and there's layers and layers and layers to this. And we could make an entire day, a legislative session resolving this. I've spent much of my career talking about this. Just yesterday, Senator Flood brought up the competency restoration and I talked about it for a few minutes. But that was a situation where, for lack of beds at the Lincoln Regional Center, there were people waiting hundred-- hundreds of days in county jails who were supposed to be in state custody, and we as a state basically said we don't have room for you, counties, you got to hold them in probably a secure mental health cell if you have one and we'll deal with them later.

WILLIAMS: Time, Senator.

M. HANSEN: Thank you, Mr. President.

WILLIAMS: Thanks, Senator Matt Hansen. Senator John Cavanaugh, you're recognized.

J. CAVANAUGH: Thank you, Mr. President. Well, I'm going to rise to talk about another, I guess, anecdotal situation. Senator Wayne made a reference earlier, probably hours ago now, about access to services. And I think Senator-- I just heard Senator Ben Hansen talking about this, that programming is important. And so in my career, I've had a few people who have been specifically sent to prison to get access to programming. And actually that's a portion of LB605. In terms of the consideration of LB605, there's a presumption of probation on those lower-level offenses, and one of the criteria to consider is whether services are going to be more readily available inside or outside of custody. And of course, in the last several years, it's been easier and easier to make the argument that there are almost no services available inside of custody and that we should always place people in community corrections. I'm of the belief that the-- the services are more readily available in community corrections for a number of reasons, but they're also better in community corrections in that people are going to be able to avail themselves of the services. As Senator Wayne pointed out, we do have people that get into this cycle where they're in custody. They get sent to prison, and I've had people have this judge tell them, I'm going to give you a two-year sentence because I want you to take this specific program and it's going to take that long for you to get into that program-- program. And so they give you a longer sentence because they want them to get into programming. And then, of course, they get sent to the prison and we have problems with them getting into programming, and so people are not getting the programming that they're specifically getting sent to prison to get. So we have to remedy that problem, of course, but the real answer is not services in custody. Of course, when people are in custody, in-- incarcerated in prisons and in jails, we should have-- make sure that they have services available to them. I-- I commonly say, and I know a lot of people do, that the largest mental health provider in Douglas County is Douglas County Corrections. And that was my experience. The easiest place for somebody to get a mental health evaluation or a drug and alcohol evaluation was in Douglas County Corrections. It was harder-- it's harder for a poor person to get an evaluation on the street than it is in Douglas County Corrections because we have a service set up to get them those services. So that's good. But it's hard to get the services that it recommends in Douglas County Corrections. And so we need to make sure that we are not incarcerating people for mental health and drug-related issues. We have far too long criminalized that conduct and those issues and we are not adequately addressing them through our mass incarceration system. And so we get to this point where people are getting sentenced to prison terms to get treatment and to-- to help them "dry out," is

sometimes one of the phrases when people have a drug issue. They want them to get into the treatment, they want them to get some time under their belt of sobriety and-- and services, and then we basically send them out into the street, either on parole or with no supervision. And they have no access to programming. They don't have a place to stay. They don't have a job. They can't vote. And they are just back at square one. And we don't help shepherd them through getting back into society and breaking the cycle. So we do put-- we have put effort into making sure there are-- there are programs in the-- in the prisons and they're currently, you know, not readily available, but we don't bridge that gap on the outside and make sure that people continue down that positive path. I think Senator Wayne was mentioning a program where we would have some sort of softer reentry for people, and I know that was part of the intention of LB605, was the community-based corrections portion with the mandatory post-release supervision. I can tell you that, in my experience, the mandatory--

WILLIAMS: One minute.

J. CAVANAUGH: --the mandatory post-release supervision didn't function as intended. I did appreciate it as an objective at the time because I do support that idea that having that step-down approach as opposed to just having people get thrown right back out into society without any-- any help is problematic. I'll push my light again because I'm going to run out of time here to talk about the other idea that I wanted to address. But I do think we need to have a fundamental reimagining of how we are doing these things. And I think that is part of this conversation today. So I appreciate it.

WILLIAMS: Thank you, Senator John Cavanaugh. Senator Matt Hansen, you're recognized, and this is your third opportunity.

M. HANSEN: Great. Thank you, Mr. President. And thank you again, colleagues. So I've kind of been hitting on the same point, and I'll tie it to the budget here. There are a wide variety of things that we can do to-- to handle this issue. And it's been frustrating throughout my career, just like everybody who has a problem they've been trying to solve with the state of Nebraska. In the seven years we've been here, we've had, what, two years that there's been any money for the floor, and it's hard to always project when those years are coming. So to think about the amount of-- the amount of things we could do that would-- could be consensus, the things that-- things we could do that could be buy-in from all different aspects of our criminal justice system to just have-- they are there. They are out there. There's been bills before. Many different senators have had an idea, had a-- had

a-- had a concept. We've heard from counties, county attorneys. All sorts of different people have brought something to the table at varying times that could help or be supportive. And then that's why for me, to all of a sudden have this shift that, as Senator Wayne points out, we've been looking at this issue. I think Senator Wayne talked about going to grade school in 1989. I was one in 1989. We've been looking at this for so long that somebody has, you know, gotten to the point where they are a term-limited state senator since we started looking at this plan. And so for me to finally just be we're considering or it's on the near horizon or what have you, or we're starting to take the first steps towards we're going to spend \$200 million on a new facility that's going to not move the needle much, it's going to be full day one, when we've for years had all sorts of different things we could do to pri-- primarily support our counties and support our, you know, county courts, our county jails to just process people and get them better outcomes sooner and faster, and those things exist there. There are things like, for example, like-- like rather than people sitting in jail with pre-- with-- as a pretrial detainee because they can't afford bond, there's things like, for example, giving them an ankle monitor and getting supervised relief-- release, saying you can go to a job, you can go to work but, you know, by 6:00 p.m., you need to be home and we'll be monitoring you because you've got GPS. That's something where you keep somebody engaged in the community, you keep somebody being a productive member of society. Studies have shown that's as likely for them to return to jail, to court as, you know, posting a bond, because, remember, when you post a bond and you skip court, you just lose the money. It's not necessarily guaranteed, as opposed to, you know, having a good ankle monitor where they-- where if you cut it, you know, people know immediately, as opposed to, if you're going to skip bond, people don't know until you don't show up to the court hearing. Those things exist and those things have proven to be effective and those things generally are well-liked by prosecutors, judges, whatnot, because it's an effective tool. It's just there's some up-front costs. And depending on the size and scope of the county jail, the county court, the county, you can-- can and cannot make those investments. And that's something we see again, time and time again, where there's somebody who-- and this is the thing that always gets me, is there's somebody who, for want of a single break, gets in a situation where, you know, somebody else might get a ticket, they might not spend a night in jail, and all of a sudden this person's spending six weeks, eight weeks in jail waiting for trial, just because the trial court, we don't-- because we don't have enough judges in that district and trial calendar is so stretched out over the course of months. And

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

this-- and this person can't afford, you know, \$5,000 for bail, you know, and then all of a sudden they get sentenced to-- to, you know, ten days, they get sentenced to probation, they get sentenced to a fine, and it just doesn't line up. It's not--

WILLIAMS: One minute.

M. HANSEN: Thank you, Mr. President. It's not an effective use of resources. And simply putting, honestly, just more judges, more courtrooms, more prosecutors, more defense attorneys, we just overhauled our court system with \$200 million, I cannot imagine how much better and quicker and more equitable outcomes. And so for me, that's the-- kind of some of the fundamental frustration with looking at a proposal of this size. I know there's some tweaks and some changes and some negotiations to kind of give us some steps. But just imagine if we, you know, had state-of-the-art court system, state-of-the-art-- you know, enough judges, because that's something that I think we acknowledge that we don't have. Just imagine if we looked at that and the outcomes we could provide, including helping to relieve some of the burdens that really do fall pretty heavily on our counties and our county jails. So with that, I'm out of time. I'll maybe speak again later this afternoon. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Matt Cavanaugh. Senator John Cav-- or excuse me, Matt Hansen. Senator John Cavanaugh, you're recognized, and this is your third opportunity.

J. CAVANAUGH: Thank you, Mr. President. I think there are about three times that I can think of this year where "Matt Cavanaugh," Senator "Matt Cavanaugh" has been addressed, and so every one of those I mark in my head as I need to get that framed for my brother for his birthday or something. [LAUGH] And it kind of made me lose my train of thought, but I kind of-- I appreciate what Senator Matt Hansen was saying. And I wanted to circle back to Senator Machaela Cavanaugh was addressing earlier my-- well, not my study, but the study from ALEC about the state of Texas. And I shared that study with her, and I appreciate that study and I would hope that everybody would take a look at it. We could probably even circulate it for people. But basically what happened, the state of Texas was where we are now about 15 years ago. And they looked-- they were looking down the barrel-- obviously, it's a much bigger state and it was a big price tag, but it was actually not much bigger than we're talking about. It was half a billion dollars. And they said, that's too much and that the cost of incarceration, continuing down the path that we were following at that-- that they were following at that point in time, became evident

to them that they were doing something wrong and that they weren't addressing the real reason that we're incarcerating people. Ultimately, the criminal justice system serves a couple of purposes. One of them is deterrence, to say, if you do something wrong, we will lock you up, and so don't do that. That works for a number of people. One of them is safety of the community, which, of course, we can all imagine those celebrity cases that you see in the paper that we're all thankful for those people being incarcerated because we think our community is safer because that person is incarcerated. But the other one is rehabilitation, and that's really the part where we're falling down and failing. And that is where the-- the problem, the rubber meets the road of-- of what we need to fix. I don't think we have a problem where it comes to getting people off the street who are dangerous. Obviously, we-- there's some people who we can't find sometimes, and that's policing, is working on that. But the reason we have a recidivism problem, the reason we have a mass incarceration problem and the-- the reason that we are spending so much money on this is because we are incarcerating people that we don't need to incarcerate. When you actually successfully achieve the goals of a criminal justice system, you will have the decreased crime, not continuing to increase crime, not continuing incarceration, because the real objective is to have no crime. And so if the-- the way to get to no crime is investing more in treatment, investing more in job opportunities, investing more in housing, investing more in transportation infrastructure, all of the things that lead people to put them in a-- a-- the precarious situation that leads people to-- to break the law in one way or another, whether it's to turn to substances or to turn to violence or to turn to theft, property crimes, those are-- a lot of people like to think of those as choices, people are choosing to do those things, but for many people those are a choice of last resort and they find themselves self-medicating on mental-- mental health issues with substances. They find themselves stealing to either feed a drug habit or to get by or-- and people engage in violent activity a lot of times because of an undiagnosed or untreated mental health issue or because they are-- have used substances. And so all of those things are related and all of them are identifiable and addressable if we choose--

WILLIAMS: One minute.

J. CAVANAUGH: --if we choose to do that. And so this is-- I appreciate Senator Wayne and Senator Machaela Cavanaugh slowing down this conversation today, because I think it is a good conversation about what is the nature of our criminal justice system, what are the objectives, and why are we doing it the way that we're doing it. And

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

so when we're talking about whether we need to build more capacity, more-- we need to talk about how do we prevent people from flowing into that system. And it is a big question and it needs more debate. And so I appreciate that and I-- and I hope to be here and be part of that debate going forward. Thank you, Mr. President.

WILLIAMS: Thank you, Senator John Cavanaugh. Senator Hunt, you're recognized.

HUNT: Thank you, Mr. President. The kernel of what this conversation is about is the portion of AM911 on page 2, lines 2 through 17, which appropriates about \$5 million to the Department of Corrections for site selection and planning. It's clear, from conversations with colleagues under the balcony, over the interim, throughout this year, that I don't think most people in this body support building a new prison. From the progressives to the conservatives, a lot of us have our reasons for saying this type of appropriation isn't something that we actually support or think is best for our communities. But appropriating this \$15 million for research into site selection, research into the structural integrity of the prison we have, to me, this type of compromise-- which it is, it's a compromise with the executive branch-- we might as well consider it going to the prison. I don't understand what the significance is of the nearly \$15 million that we have to work with in our budget, giving that to Corrections, as, you know, we'll be able to provide some oversight, but to my mind it's basically a blank check to them to begin the process of site selection and engineering work and whatever to build this new prison when we have not yet committed to building the prison. We see our prisons as de facto homeless shelters, detox centers, mental hospitals, instead of actually investing in housing, healthcare, education, etcetera. And so I respect the work of the Appropriations Committee. I hope that they know and understand that and that I've said that enough to them. And I also understand the political reality of where I sit, left of center, and the people I represent in midtown Omaha for the most part. I get-- I've gotten dozens of letters encouraging me to oppose the construction of a new prison. And so I'm in a very comfortable, safe place saying not one dollar for incarceration, not one dollar for more prisons, that we need to "decarcerate" and rehabilitate. And that is what I believe and that's what I'm going to stand for, that's what I campaigned on, and it should not be a surprise to anybody that I'm saying this, just as it's not a surprise to me that the people on Appropriations, who have made a commitment to be a team player, that they are doing their best to make a compromise. They could have appropriated the whole amount to the prison and they didn't. Instead, they are giving this small \$15

million amount to work on site selection, to do a study, whatever. As many people have said throughout the day here, I don't think that what we need in Nebraska is another study. I don't think that what we need is more research into what we can do to decrease our prison population instead of building a new facility. We cannot build our way out of this problem. But there has not been the will in this Legislature to pass policy that will address this problem. And I would also say, perhaps, if Director Scott Frakes is so desperate for funds for this prison, maybe some of it could come out of his obscene salary. Scott Frakes received-- received a 30 percent raise this year. It upped his annual pay from \$192,000 a year to \$250,000 a year, and that increase makes Frakes, who's had this job for five years, one of the highest paid correctional officers in the entire country. And I can't conceive of a reason to give somebody like Scott Frakes a \$60,000 raise when our prison staffing is out of whack--

WILLIAMS: One minute.

HUNT: --when our prisons are one of the most overcrowded prisons in the entire country. I'm sure if you ask the staff of these prisons, they could certainly take a raise. We have so much trouble attracting and retaining people to work in our prisons and staff them, to say nothing of an entirely new prison, but we give a \$60,000 raise to the-- to the guy who's running it. I don't have any budget to spare for a prison, but I have plenty of money to spare for prevention. And we know that a lot of prevention that we can do doesn't even cost anything, but we still can't get support for it in the Legislature. I would suggest to Senator Arch, in particular, who stood up and talked about, you know, we're all open to compromise and I would like to hear solutions, we don't have to reinvent the wheel, folks. We don't have to invent the wheel. There are places and countries and--

WILLIAMS: Time, Senator, but you are next in the queue. You may continue.

HUNT: There are countries and there are cities and there are states and municipalities that have figured this out. There are academics and researchers who have gathered the data, who have made this their life's work, to study what we can do to "decarcerate" people and lower the number of people in our prisons. And we can apply that to Nebraska. So what am I talking about? Well, one free way that we can reduce the prison population in Nebraska, free, zero dollars and zero cents, is we can allow people who are formerly incarcerated with drug convictions to apply for food assistance, to receive SNAP benefits. This is something specifically that Health and Human Services Chairman

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

John Arch has blocked and will continue to, I have no doubt, despite that speech. In 2019, this was my priority bill. And if we had passed that in 2019, all of these people over this past year who applied for food benefits in Nebraska during the pandemic and were denied-- which I hear all the time from organizations like Together Omaha, that they've had to turn people away or-- or they've had to give services to people who were turned away by Health and Human Services because they have a drug conviction from like 1998 or something, so now that they're in a dire consequence, they're not eligible to receive food assistance. And, colleagues, year after year after year, we have the opportunity in this body to do that for these people so that they don't recidivate, so that they don't turn to crime in order to support themselves and their families. In 2021, my bill to do this is LB121. It's on General File now and we are going to have plenty of opportunities to take it up. Senator McCollister's priority bill, I want to say it's LB108. I think his priority bill is LB108, and it's-- it addresses the SNAP cliff effect. My bill to help people who have been incarcerated and help them receive SNAP benefits could easily be amended onto that bill. If people like Senator Arch and Senator Moser and Senator Dorn and others who have said, well, we want solutions, but you just got to bring them to me and I'll support them, here's one that you can support. Let's get that passed this year. And we know that this is going to help people from becoming incarcerated again. Expanding SNAP access for formerly incarcerated people, instead of pushing them toward reoffending, it'll also result in cost savings for the state. We know this because a person in Nebraska who is convicted of a drug felony typically spends an average of 1.6 years in jail. This is a figure that's knowable, that we know. The average cost to incarcerate a person in Nebraska is \$35,950. So that's a total savings to the state of almost \$60,000. According to the fiscal analysis provided by the Department of Health and Human Services, this regulation change would result in costs that were so minimal that the department could absorb them. And of course, we already pay taxes to the federal government to fund Supplemental Nutrition Assistance Program, SNAP, so it wouldn't cost anything to the state taxpayers either. By not implementing policies like this, not only are we putting people on the path to reoffending, but we're leaving federal money on the table. Our neighbors in Kansas, Missouri, South Dakota, Iowa, Kansas, Colorado, they're taking these federal funds that we're leaving on the table. And by doing that, we are actually doing a disservice to our taxpayers, who are paying the taxes to get these benefits. And then our Governor and our Legislature says, no, no, no, we don't need those benefits, give them to Missouri, give them to Kansas, give them to Colorado, give them to Florida.

WILLIAMS: One minute.

HUNT: That is fiscally irresponsible. We all want to make research-based policy decisions and it's clear where the research is urging our state to go. It's wrong that someone who could get convicted of possession of cannabis at age 18 would be unable to receive SNAP benefits 15 years later if they needed them, and this bill would correct that. You know, you'll have the opportunity to-- to support this bill, on Senator McCollister's SNAP bill, if you want to do something to address our prison population and advocate for smart justice solutions. We all agree that this is going to take many pieces of the puzzle. I have a seriously impactful, measurable, proven piece of that puzzle and I'm holding it up for you. And, colleagues, I would like you to take advantage of the opportunity. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Hunt. You are next in the queue. You may continue.

HUNT: Thank you. Expanding SNAP access for formerly incarcerated people, instead of pushing them toward reoffending, will result in so many savings to the state. And this is measurable and we know this. And it also becomes clear what a great injustice this is when you realize that someone who could have served time for robbery, burglary, murder, rape, any other type of offense at all, bank robbery, child molestation, that those people are eligible to receive food assistance once they've served their time, but if they have a drug conviction they cannot. We feed our prisoners. We feed the people who are incarcerated. We make sure that they get food, breakfast, lunch, and dinner when they're in the prison, so the ban on food assistance for drug offenders who are released must not have to do with their status as a criminal. It has to do with their status as a drug offender. And if that's the case, we have to ask ourselves, what is it about having a drug offense that makes them so morally reprehensible, more than any other crime, that we are going to allow everybody else to receive food assistance, apply for food stamps, get SNAP after they've served their sentence, paid their debt to society, but not drug offenders? A collateral consequence of this is a legal disadvantage or a disability that occurs by operation of the law because of a conviction but is not part of the sentence for the crime. These consequences, like ineligibility for SNAP, are basically an invisible punishment. Courts are not notified to tell people when they get convicted that not only are you going to have to serve time for the drug offense, but you are never going to be eligible for SNAP after this. It's like another punishment that people don't even know about. So for many drug

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

offenders, it comes later and they find out the hard way that they're going to continue to pay for this crime for the rest of their life by being unable to access food assistance, even though other formerly incarcerated people are allowed access. And of course, we're talking about drug crimes. South Dakota, Colorado, of course, it's going to be a blink of an eye until all 50 states have legalized recreational cannabis. Don't get me started on that, because I don't have enough time. But how are we denying these basic rights to people who have been convicted of a crime that in most states in the country is no longer even a crime? This is all to emphasize how the choices we make in here snowball until we get here, until we get to AM911, when we have to apply for \$15 million-- or not apply, we have to appropriate \$15 million for site selection, for planning, when we don't even have a commitment to build a prison. We're saying we're not committing to build the prison, to say nothing of the money set aside. It's not putting Senator Cavanaugh on her committee that she did the work to start. It's not passing bills like my LB169 or my LB121 to support drug offenders to receive food assistance so we can stop recidivism. We're-- people in this body say we don't want a new prison, no new prison, but here's \$15 million for you to think about it, on top of your 30 percent raise, Director Frakes, because you're doing such a good job thinking about it. This is not conservative, this is not even tough on crime, because we know that so much recidivism is a direct result of our policies that we pass here in the Legislature, so we own this problem just as much as anybody else.

WILLIAMS: One minute. And, Senator Hunt, this is your third opportunity.

HUNT: Thank you. What this is, colleagues, and what this is, Nebraskans, most importantly, is this is politician behavior. It's politicians saying we're going to do a study, we're going to gather the data, we're going to do the research, and once we find out what's best to do, we'll convene a committee and we'll come to an agreement about the course of action that we need to take. What that is practically is it's kicking the can down the road when we have the power and the information and enough data to act today. We don't need to collect any more information. I don't have any questions about whether or not it's the right time to build a new prison. For me, I have no budget for a new prison. I have lots of budget for prevention. But that's not the conversation the rest of you are willing to have. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Hunt. Senator Kolterman, you're recognized.

KOLTERMAN: Question.

WILLIAMS: Senator Kolterman, you're the last in the queue. We'll move forward with debate. Do you wish to speak, Senator Kolterman? Senator Cavanaugh, you're recognized to close on your bracket motion.

M. CAVANAUGH: Thank you, Mr. President. Colleagues, I understand that you're frustrated with today. I would encourage you all to pause and maybe reframe how this day is. You see my name up there and you think that I am stopping you from doing something. I'm not stopping you from doing something. I'm forcing you to stay here and engage. I'm here doing my job, and you have a choice to do-- stay here and do your job or to complain that it's 2:39 on a Friday and you want to go home. That's your right. Please stop complaining to me. I want to go home, too, and I will go home when the day is done. This isn't about yesterday for me. This is about why I came here. I came here to make change. And I tried to do it by your rules, even though your rules, by their very nature, are meant to work against me. But I tried. And you continually showed me who this body is and who I am to this body, and that's fine. I just-- I'm a little confused why people are so upset that I learned the lesson that you've been trying to teach me, that it doesn't matter what I do or how I speak or how collegial I am. It doesn't matter. You're never going to let me accomplish anything. And the thing that I've been wanting to accomplish since the first day is change. And I was getting in my own way of accomplishing change because I was trying to play by your rules. And now that you have shown me that there is absolutely, positively, hands down, no way that I can accomplish change in this body by playing by your rules, I'm going to do what I've wanted to do, not because I'm angry or my feelings are hurt, but because I can, because you all gave me a gift yesterday. Senator Lowe, Senator Geist, Senator Hughes, Speaker Hilgers, and Senator Slama gave me and this body that gift. They made sure that I didn't get on the committee that I created, so I didn't have to mind my Ps and Qs anymore and I didn't have to pretend that this isn't right how we do things. I don't have to pretend that any of this is OK. I can call out hypocrisy. I can put sunshine on it all and I will. And if you don't like that, then do things better. Be better. That is not on me. I have nothing to fix with you all. And you have nothing to fix with me. All I want to see is change. So if your precious Appropriations bill is the most important thing to you, then why don't you try a little bit harder--

WILLIAMS: One minute.

M. CAVANAUGH: --to be a better human being, a better legislator? Why don't you stand up for the hypocrisy yourselves? Why don't you talk about the complete inappropriateness of the Speaker working with me for months and then voting against me and not even having the decency to tell me in advance and not having the decency since that moment to talk to me? You all want to be mad? Be mad at Speaker Hilgers. He hasn't spoken to me since yesterday afternoon. He's in charge of us, right? I withdraw my motion.

WILLIAMS: Motion withdrawn. Mr. Clerk.

CLERK: Mr. President, some items, if I may, before we proceed. Senator Bostelman would like to print an amendment to LB338 and Senator Wayne to LB156. Enrollment and Review reports LB260, LB451, and LB423A to Select File. Mr. President, returning to LB383, Senator Cavanaugh would move to bracket the bill until May 6.

WILLIAMS: Senator Cavanaugh, you're recognized to open on your bracket motion.

M. CAVANAUGH: Thank you so much, Mr. President. OK, so I have ten minutes left on this. I'm in the queue to speak. I'm going to do that. And you all can do whatever you want. Fifteen minutes from now, you can do whatever you want. You can decide to do your jobs and engage in the conversation that several of your colleagues have been having today while a dozen or so of you checked out, or can just go to a vote, your prerogative. OK. And just for the people at home, everyone behind me, all these gentlemen in the last two rows, they're so mad that I'm talking, but they're not mad enough to talk to me about it. They're mad enough to have other people come and say, hey, can you get off the mike, can you stop what you're doing? Why I would do that, I don't know, because there are people getting in the queue talking about the bill itself, so clearly there's a debate to be had here. I'm just facilitating the time allotted for it. So, OK, criminal justice reform, since some of you missed this last time, I'm just going to give a-- a brief re-overview of the ALEC article on criminal justice reform. ALEC, again, for those who aren't familiar, is the American Legislative Exchange Council. In 2005, Texas officials noticed the alarming rate at which their state's corrections budget was growing. By 2007, the Texas Department of Criminal Justice wanted the state legislature to-- to provide \$523 million in additional funding for three new prisons, which would have allowed the prison population to grow to more than 168,000 by 2012. The department had reasons to expect a positive response for a funding request. After all, Texas was well known for its tough-on-crime stance. Members of the Texas

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

Legislature, such as Republican Representative Jerry Madden and conservative Democrat Senator John Whitmire, decided on a bold strategy. They teamed up to convince the members of the legislature and then-Governor Rick Perry to spend \$241 million on treatment, mental health, and rehabilitation, rather than on new prison facilities three years later. Three years later, Texas prison population declined by 15,000 and probation recidivism declined by nearly 25 percent. So for those who have been missing the entire debate today, multiple senators have been talking about prison reform and should we be putting money into building more prisons or should we think outside the box like Texas did and-- and invest that money instead in treatment, mental health, and rehabilitation. They've already-- we don't have to do a study. Somebody else already did it for us. They did the pilot project. I don't think that the human beings that live in Texas are that much different from the human beings that live in Nebraska. If we invested our resources in a red state like a red state, Texas, did, I think we-- we can extrapolate that we're going to have some pretty similar results, especially since there is already data that shows that investing in mental health and treatment and rehabilitation pays dividends on reducing prison population and recidivism. Again, this comes from ALEC, not NCSL or CSG, from ALEC. So Texas shut down three prisons and saved taxpayers \$2 billion. The movement to reform underperforming and wasteful criminal justice programs has begun. Criminal justice reform in many states across the country has shown that conservatives have followed Texas's lead and strongly supported the issue. Criminal justice reform in many states, I'm saying this again, in many states across the country has shown that conservatives have followed Texas-- Texas's lead and strongly supported the issue. So the problem here today with the conversation is the people that are leading the charge. I put up the motions that started the conversation and Senator Wayne and Senator McKinney have been doing a great deal of the heavy lifting on the conversation. Now, yesterday, I put up a motion to appropriate funds and it was deemed inappropriate and people came around and asked me to pull my motion because people didn't want to go to a vote on it. And I did this outrageous thing. I was collegial. I did what was asked of me. I pulled my motion. And then Senator Flood did the exact same thing after me and you all went to a vote. Who's collegial here? Because it certainly isn't you all. So today we have female Democrat who's taking time on a really important issue and two senators of color who are leading the charge on the conversation, and there has literally been no compromises negotiated in this body, but people have left the floor instead. It is so disrespectful. And it is important because the people at home can't see all of these dynamics all of the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

time, like we have empty chairs doesn't necessarily mean the floor is empty because people sit off to the side. Sometimes you don't want to be on--on camera because somebody is talking, so you might go sit off to the side or something or you're just doing work in your laptop off to the side. So empty chairs don't mean empty Chamber, but today it meant pretty empty Chamber. And when senators don't check out, they're just like out of the room, they could be watching this in their office or in the Senators' Lounge. But when they check out, they probably are not doing those things because otherwise, why would they have checked out? So I have no delusions of ever changing the hearts of minds of the men of this body or the women. As I started today, I said good morning, colleagues, "frenemies." As the day has progressed on, the "frenemies" has certainly leaned into the enemy side of things. I'm here. I have left this floor to go to the restroom once and to go into the lounge about 15 minutes ago to eat something because I was getting lightheaded, I was so hungry, and otherwise I have been here. And the only conversations people have had with me are for me to change what I'm doing. No one's having conversations about how they want to change what they're doing or how we do business here. And no one has gotten on this mike, no one who is a member of the Republican Party has gotten on this mike and talked about that cyber-bullying is wrong. And no one who isn't already a friend of mine has gotten on the mike to talk about how what happened yesterday is wrong, which is fine. You don't have to, but don't come to me and ask me to be collegial when I was collegial yesterday and you still do what you do to me. Don't ask me to be collegial. I'm going to work hard and I'm going to be the advocate that I was sent here to be for the people of Nebraska. And if you take that as some sort of affront to you, then you should reevaluate who you are and your role in the Legislature. I'm not here for you. I'm here for the people of Nebraska and I-- that's how I'm going to operate from now on, because for the first two years I didn't do enough for the people of Nebraska. I did too much for the people in this building. How much time do I have left?

WILLIAMS: One minute--

M. CAVANAUGH: And am I--

WILLIAMS: --but then you're next in the queue.

M. CAVANAUGH: Thank you, Mr. President. So there's this organization here in Nebraska. It's called RISE. I'm sure a lot of you are familiar with it. I know that they have come and testified in front of at least Government and Judiciary Committee, and I'm trying to think, I-- probably HHS on the felony SNAP bills as well. RISE's public policy

work: create opportunities for system-impacted people to have their concerns and ideas voiced and heard during the legislative process; bring together people impacted by the system, organizations, and other individuals to create a coalition to work in solidarity to advocate for changes in the Nebraska criminal justice landscape and the economic and social empowerment of people impacted by the system; lobby successfully for policy and legislative changes at all levels of government that impact the daily lives of people impacted by the system--

WILLIAMS: Time, Senator.

M. CAVANAUGH: Thank you.

WILLIAMS: But you're next in the queue. You may continue.

M. CAVANAUGH: Thank you-- daily lives of people impacted by the system and their families for economic and social outcomes that include employment, housing, transportation, education, living conditions and civic participation; have the resources, skills, training, and built capacity to maintain policy and advocacy efforts. Thank you. RISE public policy goals are: decrease incarcerated population in Nebraska's correctional facilities at the state and county levels with limited entrypoints into the system. That's great. Why are we not focusing our conversation on that goal? Why aren't we partnering with RISE to achieve that goal? Was RISE included in this conversation? Was RISE at the table when discussing building another prison? No. I guess-- OK, well, I'd ask people to yield to a question, but-- Senator McKinney, would you yield to a question?

WILLIAMS: Senator McKinney, would you yield?

McKINNEY: Yes.

M. CAVANAUGH: Do you know if RISE was included in the conversation?

McKINNEY: Not that I'm aware of.

M. CAVANAUGH: OK, thank you.

McKINNEY: No problem.

M. CAVANAUGH: So maybe we need to be better at our jobs; maybe we need to be better; maybe we don't just acquiesce to what another branch of government tells us to do; maybe we be better. Am I next in the queue or are there others between my next time?

WILLIAMS: You're next in the queue, Senator.

M. CAVANAUGH: OK, great. And how much time do I have left?

WILLIAMS: 2:50.

M. CAVANAUGH: Thank you. OK, well, everyone, we are coming to the end of your torture, as it were. OK, this is the first day of the next 40-odd days. You all don't need to talk to me at all anymore. It's fine, but you should start talking to each other. You should start talking to each other and make some decisions about who you want to be as a body. I will be here to give you that time to do. I will be here every day for the next however many days are left in session to give you the time and the space to have a conversation with one another about who you want to be in this body and how-- who you want to be to this state. I want to be a person that effects change, and until I see change, I'm going to continue to make space for you all to get change. There's some great advocacy organizations in this state that we could be partnering with to effect change in our prison system, in our criminal justice system. There's national resources. There's models in other states. We aren't even a leader in this. If we were to go down this path, we would be a follower--

WILLIAMS: One minute.

M. CAVANAUGH: --something that we are obviously very comfortable with, and I guess I've just never been very good at following. I normally-- I'm the kind of person that loves to collaborate and brainstorm and strategize on a path forward. But I was never given the opportunity to be seen that way in this body because it was decided when I entered here who I was and how I was going to be treated. I used to work in government. I also worked in nonprofit and I worked at the university. I've managed many extraordinarily complex projects and budgets.

WILLIAMS: Time, Senator. Senator Cavanaugh, you're next in the queue, you may continue, and this is your last time to speak before your close.

M. CAVANAUGH: Thank you. So I used to manage complex projects across multiple departments within the university system. I used to work with national entities. Many reports that have grazed the desks of people in this body have been produced by me. But for some reason, the moment I walked into this floor, none of that mattered. The only thing that mattered was that I was passionate and outspoken. Nothing else mattered. I was passionate and outspoken at my job. I was also

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

respected. I always challenged leadership. And sometimes I was wrong; sometimes I was right. Thank you. I-- and I think that-- that I am not singular in this. I think that a lot of us came into this body and the body decided who you were and the body decided that they weren't going to let you be anything other than who they decided you were. And I am tired of pretending and trying to be who you think I am, so I'm just going to be me: aggressively tenacious, fiercely loyal, always going to be pushing everyone around me, including myself, to be better. I'm a learner, a thinker, a strategizer. I love to socialize. I'm fun. I'm silly. I am a terrible singer and I sing a lot. And I know that all of you have your own unique, terrific qualities as well. I wish you would show them more often. I am going to pull my motion. Thank you.

WILLIAMS: Motion is pulled. Mr. Speaker-- or, excuse me, Mr. Clerk.

CLERK: Mr. President, we're back to consideration of Senator Stinner's amendment to the Appropriations Committee amendment, specifically AM911.

WILLIAMS: Thank you, Mr. Clerk. Senator McKinney, you're recognized.

McKINNEY: Thank you. Thank you, Mr. President. I rise to point out some more information from the Equal Justice Institute. It's a-- it's an organization, I believe, in Alabama. They have a lynching museum there that I visited a couple summers ago, and they also have-- another part of the museum goes through the history of, you know, mass incarceration from slavery on to now. On their site, I thought it was important to point these things out: The United States incarcerates its citizens more than any other country. Mass incarceration disproportionately impacts the poor and people of color-- it's something we all know-- and does not make us safer. Again, just being tough on crime does not increase the safety of communities. The U.S. has 5 percent of the world's population, but nearly 25 of its-- 25 percent of its incarceration population. Our spending on jails and prisons reached \$87 billion in 2015, an increase of 1,000 percent from \$7.4 billion spent in 1975. Sad. In 1972, there were only 200,000 people incarcerated in the United States. Today, that number has grown to 2.2 billion. From 1980 to 2017, the number of women in jails and prisons in the U.S. grew 750 percent. Over 225,000 women are incarcerated today. In the American criminal justice system, wealth, not culpability, shapes outcomes. Many people charged with crimes lack the resources to investigate cases or obtain the help they need, leading to wrongful convictions and excessive sentencings, even-- even in capital states. Racial disparities persist at every level, from misdemeanor arrests to executions. The tough-on-crime policies that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

led to mass incarceration are rooted in the belief that black and brown people are inherently guilty and dangerous, and that belief still drives excessive sentencing policies today. More incarceration does not reduce crime. Using pri-- using prisons to deal with poverty and mental illness makes these problems worse. People leave overcrowded and violent jails and prisons more traumatized, mentally ill, and physically battered than they went in. Today, nearly 10 million Americans, including millions of children, have an immediate family member in jail or prison. More than 4.5 million Americans can't vote because of a past conviction, and each year we lose \$87 billion in GDP due to mass incarceration. But we're always talking about saving money and finding ways to save and keep dollars, but we still want to, you know, overly incarcerate our community members. Some things that I think in the future, going forward, we need to look at: One, we need to get rid of the death penalty in this state. We need to decrease the amount of children in adult prisons, and we also need to look at wrongful convictions. We have a man in our state right now, Ernest Jackson, that is seeking to be released, but because of laws in our state, he's unable to be released or have his case looked at again because the evidence is clear that he didn't do what he's sitting in prison for. And Senator Wayne has a bill-- I believe it's LB28-- that he's trying to get passed this year so we can help Ernest. I think that would be great.

WILLIAMS: One minute.

McKINNEY: When we talk-- when we talk about solutions, let's get LB28 passed to get Ernest Jackson out of prison and many others in our state. We also need to look at excessive sentencing and our prison conditions. I get calls and mails throughout the week about the problems with our prisons, literally. I don't know how many of y'all get those, but I could go upstairs right now and pull up a stack and I've only been here since January or a stack or more and the calls just keep coming. But I just thought it was important to point these things out when we think about mass incarceration. It's a-- it's a complex issue and there's many things to it that we definitely need to address in the near future. Thank you.

WILLIAMS: Thank you, Senator McKinney. Senator Stinner, you're recognized to close on AM911. Senator Stinner waives closing. Members, the question is the adoption of AM911. Those in favor vote yea; those opposed vote nay. Have all voted? Have all voted? Record, Mr. Clerk.

CLERK: 32 ayes, 3 nays on the amendment to the committee amendments.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

WILLIAMS: The amendment is adopted. Mr. Clerk.

CLERK: Mr. President, I now have-- Senator Wayne, just so you and I are on the same page, I'm going to-- you've asked me to move the last amendment you gave me to the front of the line since the only remaining amendments are yours. So I have in front of me FA21. Is that what-- what you want to have happen? OK. Mr. President, Senator Wayne would move to amend with FA21 to the committee amendments.

WILLIAMS: Senator Wayne, you're recognized to open on your amendment.

WAYNE: Thank you, Mr. President. This is a simple amendment. This is a amendment that basically says we're going to amend AM935 to insert a new section, Agency 15, Program 358, from General Funds. And I know it will require a different-- something on mainline budget, but I want to get a vote on this because it says these funds shall be used for programs or grants for individuals ri-- residing in community work release and treatment centers. I heard a lot of people today talk about that they're in favor of that. It's only \$3.2 million, and so we'll see if people actually talked on the mike and agree that we should put some General Funds around-- around community release and treatment centers or not. There is a bill in Judiciary. This is not uncommon in this budget. Senator Erdman has a line-item budget for depredation in which the bill is still not out of committee, so it's not foreign, an idea. So it's a real simple but-- simple request. I heard a lot of people talk about it today on the mike. I think this should pass pretty easily. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Wayne. Seeing no one in the queue, Senator Wayne, you're recognized to close. Senator Wayne waives closing. Members, the question is the adoption of FA21. All those in favor vote yea; those opposed vote nay. Members, there's been a request to place the house under call. The question is, shall the house go under call? All those in favor vote yea; those opposed vote nay. Record, Mr. Clerk.

CLERK: 21 ayes, 5 nays, Mr. President, to place the house under call.

WILLIAMS: The house is under call. Senators, please record your presence. The unexcused senators outside the Chamber, please return to the Chamber and record your presence. All under-- unauthorized personnel, please leave the floor. The house is under call. The house is under call. Senators, please return to the floor. Senator Vargas, Senator Hilkemann, Senator Morfeld, Senator Bostar, please return to the floor. The house is under call. Unexcused senators, please return

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

to the floor. Senator Vargas. Senator Hilkemann. Senator Wayne, all members are now present. How would you like to proceed? Mr. Clerk, there has been a request for a roll call vote. Please call the roll.

CLERK: Senator Aguilar not voting. Senator Albrecht. Senator Arch not voting. Senator Blood not voting. Senator Bostar voting yes. Senator Bostelman not voting. Senator Brandt not voting. Senator Brewer not voting. Senator Briese not voting. Senator John Cavanaugh voting yes. Senator Machaela Cavanaugh voting yes. Senator Clements voting no. Senator Day voting yes. Senator DeBoer voting yes. Senator Dorn not voting. Senator Erdman voting no. Senator Flood voting no. Senator Friesen not voting. Senator Geist not voting. Senator Gragert not voting. Senator Groene. Senator Halloran voting no. Senator Ben Hansen not voting. Senator Matt Hansen voting yes. Senator Hilgers not voting. Senator Hilkemann voting no. Senator Hughes not voting. Senator Hunt voting yes. Senator Kolterman voting no. Senator Lathrop not voting. Senator Lindstrom. Senator Linehan. Senator Lowe voting no. Senator McCollister not voting. Senator McDonnell not voting. Senator McKinney voting yes. Senator Morfeld voting yes. Senator Moser not voting. Senator Murman. Senator Pahls voting yes. Senator Pansing Brooks voting yes. Senator Sanders not voting. Senator Slama voting no. Senator Stinner not voting. Senator Vargas not voting. Senator Walz voting yes. Senator Wayne voting yes. Senator Williams not voting. Senator Wishart not voting. 13 ayes, 8 nays, Mr. President, on the amendment to the committee amendments.

WILLIAMS: The amendment is not adopted. Mr. Clerk. Raise the call.

CLERK: Senator Wayne, I now have pending, Senator, your FA18.

WILLIAMS: Senator Wayne, you're recognized to open on FA18.

WAYNE: Thank you, Mr. President. Well, I got two amendments and I got a couple motions. We'll go to 5:00. And it becomes really apparent that I-- it-- just talk is cheap. Nobody even spoke out against the amendment, which was interesting. So this amendment is pretty simple. It strikes the idea of a prison development site plan. This is going to, again, build a prison at this point that we know by the data absolutely will be overcrowded when it's opened. So we're going to spend a little time talking more about the prison, talking about the studies until it's time for cloture. That was not my intent. I heard a lot of people on the mike say that they support a idea. All that did was allocate some dollars to a-- an idea, not necessarily a program, kind of like sequestering \$115 million for construction of a new prison that we aren't really going to build, but we're going to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

sequester it. So we'll just figure it out and that's just kind of how it goes. So again, going back to the 2016 study, current approaches to delivering programs and [INAUDIBLE] deliveries just create insufficiencies and--and creates cost and delays people for parole. Not only do it delay people for-- for parole, I think it actually harms our state by making sure that we are only allowing people to jam out, that we are not actually fixing, providing resources to individuals. That's a problem. We are not trying to look at the whole community. We're not trying to make sure we can actually grow, what I would say, grow Nebraska through jobs and by providing employment. We are just simply building a new prison. And while my colleagues think this doesn't matter, it does. I'm comfortable in silence and I'll wait till people get quiet around me. I have no problem just standing here with the camera on me, doesn't bother me.

WILLIAMS: Members, let's give attention to the speaker.

WAYNE: I never asked for a gavel and I never will. If people want to listen, they can. If they don't, that's fine. But I have a ten-minute opening and I don't want to just keep repeating myself, so I figured a little meditation, self-meditation might help some people out here today. Senator Hansen, will you yield to a question?

WILLIAMS: Senator, is that Matt Hansen or Ben Hansen?

WAYNE: Can I do both at the same time? No, we'll do-- we'll do Matt Hansen.

WILLIAMS: Senator Matt Hansen, would you yield?

M. HANSEN: Yes.

WAYNE: Senator Matt Hansen, what are your thoughts on that vote that just took place?

M. HANSEN: I thought it was unusual to have almost half the body be present, not voting. It must have indicated that people didn't know what the amendment was.

WAYNE: So it probably means that throughout the six hours, nobody was really listening to floor debate, which I thought was a pretty good conversation around prisons, wouldn't you agree?

M. HANSEN: Yeah. I would--

WAYNE: So how do we fix that going forward? Do we just do calls of the house periodically or how do you think we should make sure people are engaged when we're having a conversation about a \$230 million project?

M. HANSEN: I am not sure. I wish I had left myself in the position to reconsider that vote. I wouldn't have voted yes had I realized so many were going to be blank.

WAYNE: Thank you. So we-- for those who didn't listen about property taxes and how our prison system actually impacts our property taxes, because if we're arresting more people, then that means at the first level, they're being arrested at the county level, which means they're sitting in jail, of which the county is increasing their costs and we have documentation to show how that adds, but that's neither here nor there. Senator McKinney, will you yield to a question?

WILLIAMS: Senator McKinney, would you yield?

McKINNEY: Yes.

WAYNE: Senator McKinney, what do you think about that last vote?

McKINNEY: Honestly, it-- in my opinion, I-- I didn't understand it. You know, many people have stood up and said that they're for solutions and ways to decrease the mass incarceration issue in our state and willing to be an ally to address this issue and stand with both of you-- me and you in trying to solve this problem. And I think personally, community corrections is something that we should be investing in, so it's kind of like, OK, a lot of people stood up and didn't hold true to their words.

WAYNE: I agree with that and I think that last sentence you just said, hold true to the words, is probably going to affect how we go forward and how this exact prison conversation is going. There are some who believe that once we've already appropriated and set aside \$115 million for a prison, that somehow we're going to stop that train from running. What's the pain of this body next year when they say we have to build it, when it's already been appropriated into the budget? There is no additional cost. We've already set it aside. How easy is it going to be just to move it from se-- sequestration to appropriation, to actually being appropriated? We talk time and time again-- and-- and-- and that vote actually is going to go on my scorecard because people always want endorsements. People always want to talk about they're for north Omaha, Terrell. We hear that a lot, Senator McKinney, and they always show up down in north Omaha during

election season. But when it comes to votes that we really care about, they're always on the opposite side. We're-- we're not going to let that go. And if people feel like I'm burning political capital and I'm-- and we don't want to reward bad behavior, this isn't bad behavior. This is something that I fundamentally believe. I supported it with data. It was not personal attacks and nor will it ever be personal attacks. I supported it with data and data behind it. Many people got up and said, yeah, we should do something about it. When the amendment was offered, nobody stood up and said, let's do it a different way, maybe we got to have a different process. In fact, nobody spoke against the bill, but we all sat quietly. And I did that on purpose because hardly ever do we come out to this floor and on this body, listen, and change our minds on a vote, hardly ever. If it's a topic that you're not familiar with, maybe; but if it's a ag topic, most ag people are not going to come out here and listen to Senator Wayne or Senator McKinney or, for that matter, anybody not in ag that's really going to change how they felt. But I heard a lot of talk. I heard a lot of talk, and out of a \$4 billion budget, we're talking about \$3 million. By the way, that's just two more million that we already gave Senator Flood yesterday for arts. We're talking about economic development in the sense of people being in their community, getting jobs, and saving the state money because we're going to reduce recidivism. We said that for five hours today and many people got on the mike and said it's a great idea, we should do it, but when it was time to put dollars behind it, present, not voting. And it wasn't one-- one side of the aisle. It was people who come over and chat with me on the balcony and saying they're supporting, they're on our side. You don't get to escape from that vote. There is no redo. I'm not going to pull my bill out of Judiciary. That was it. That's the vote that you're going to have--

WILLIAMS: One minute.

WAYNE: --to live with, i.e., Dems who say they stand for north Omaha. That's the vote, when you talk about prison reform, your money is not where your mouth is, no matter how much you talk about it. Senator Stinner, I didn't need to explain what it was. I read exactly what it was. I say we're moving money, two point-- \$3.2 million for this purpose, for this purpose. Either you support the purpose that you spoke about on the floor seven or eight times or you don't, out of \$3.2 million, but we can give \$14 million to design a prison and put land option on, but we can't give \$3 million for community programs.

WILLIAMS: Time, Senator. Senator Matt Hansen, you're recognized.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

M. HANSEN: Thank you, Mr. President. I initially punched my light just to say I regretted not engaging on the debate in the last amendment. Normally when things move quickly, I assume it's because there's consensus and apparently was not the case here. With that, Mr. President, I'd yield the balance of my time to Senator Wayne.

WILLIAMS: Senator Wayne, you're yielded 4:40.

WAYNE: Thank you. Thank you, Senator Hansen. And unlike any other thing, this isn't going to carry over to the next bill. It isn't going to-- but every time this bill comes up and every time a bill comes up with LB51, every time a bill comes up, we're going to go. And if that means that bill dies and I actually support that bill, that's fine, because we're not being true to what we're talking about. We're not being true to who we are. We set aside \$5 million for land depredation when the bill wasn't out of community-- committee. I've never seen that before, but we'll set aside \$5 million and remove it from Game and Parks and-- and basically earmark it for Game and Parks to do one thing, which is just to [INAUDIBLE], of which most farmers have insurance on it and they have to read a-- I'm not even going to get into that debate, but we always find money just to feel good. We gave \$3 million for urban development. Let's feel good. But we're giving \$50 million for rail in-- in rural. Let's feel good. We're going to-- we're going to build a new prison, do all this site-- we're not going to actually build it. We're just going to add some site developments and do some things here to make it look like we're not all the way going there. But we're going to give you the land option, we're going to put \$14 million there, but, hey, we all like community corrections. We all like the idea of work release, but we won't put any money behind it. Every day I have a conversation with Senator McKinney, every day, and we laugh about it. I'm, like, man, you glad you're down here? And every day we're like, yeah, we're going to keep fighting, we're going to keep fighting, but this wasn't even a fight. Everybody who pushed-- pushed their light today said they supported it. Everybody said they supported it. I've often crossed way-- ways with the Democratic Party a lot and most people know that. But over the last two days, I don't know what it means to be a Dem in this body. I don't know what we actually stand for. Supposed to be nonpartisan. Clearly we are, but I don't even know what values we have. It's just real interesting how conveniently--

WILLIAMS: One minute.

WAYNE: --and how easy it rolls off of people's tongues that we have to do something, that we have to do something about prison reform, we

have to do something about getting more people engaged when they come out, yet we intro-- we're scared of-- of-- of felons being able to vote. But if they go get their hunting license, they can carry a-- a sword and a-- archery and-- and have multiple what we would deem illegal weapons, but-- but Groene brought that bill because somebody wanted to hunt in his-- in his district and it sailed right through. So right when they get out, even if they're convicted of a felony, they can go purchase a hunting permit and-- and carry a long knife and-- and hunt, but we're scared of a two-year gap to allow them to vote.

WILLIAMS: Time, Senator. Thanks, Senator Wayne. Senator Hunt, you're recognized.

HUNT: Thank you, Mr. President. Senator Wayne has made some excellent points about the hypocrisy of the effects of different policies that we pass here in the Legislature. When we say formerly incarcerated people shouldn't be able to vote, but they can carry a sword or a long knife or a bow and arrow and that's something that all of us agree on is something that that's their right; when we say that formerly incarcerated can't vote, but they can have a bow and arrow and a sword and a knife and a gun, but they can't get food assistance either, ask yourself, on what planet does any of this make sense and on what planet is any of this tough on crime? I don't care if your constituents want you to be tough on crime. I don't care if you put that on a mailer. I don't care if you sit up at a dinner with the Governor and he goes oh, congratulations, Senator so-and-so, he's very tough on crime. Say whatever you want. Like, what you say doesn't matter and it doesn't mean anything to me and it doesn't mean anything to the people. What matters is when you push the little button you have over here and what happens after you push it. When you say that you want to do something-- we got to do something about our overpopulation, we're finally going to get down there and-- and make a di-- difference and make a change, that's like clicking like on Facebook. It does nothing. It's indicating what you think about something with zero action behind it. And I wouldn't be surprised if Senator Wayne reintroduced the last amendment that we voted on and maybe it passed after we had some time to talk about it and get around and whip some votes up on it. But people have got to pay attention and you have to put your votes where your mouth is. You have to put your votes where your mouth is. By the way, I think that our political process would be better if elected officials had to regard incarcerated people as a voting block. We'd probably have some very different outcomes and some very different policies here. But I would like to talk about this amendment and I would like to talk about the

new prison. People say, well, don't say we're going to build it, don't say we're proposing to build it, we're not officially proposing to build it. That's true. We have not said that we're going to build it, but we have said that we're going to appropriate nearly \$15 million to Corrections, which is run by Director Frakes, who just got a gigantic 30 percent raise so he can have \$15 million to think about doing it. To me, that's the same thing as doing it. We're on the road and it's not the road that I want to be going down. I want to talk about the cost of the new prison, the process that we've gone through to get to this place where we're talking about \$15 million to Corrections, and the reform that we actually need to be doing in this state. And then I want to talk more about the hypocrisy of the policies that we have and the opportunities that we're going to have as a Legislature to correct some of that so that when you go to your little dinners or you send out your little mail, you can actually say that you did something, and maybe that would make you feel better about yourself, which would be great. This \$230 million prison is a huge sum of money. A lot of people don't understand that this amount of money is almost as much as the entire Department of Corrections appropriation each year. The Omaha World-Herald has said that if we build this prison, it will likely be the most expensive construction project that this state has ever undergone. And by funding this prison, we would be making a huge, ongoing commitment to funding this at taxpayer expense. It's not a one-time appropriation, obviously. It becomes another point of debate, another problem every single year that we have to talk about of how we're going to get staff in for the new prison, how are we going to get programming in for the new prison, when we don't even have staff and programming for the prison we have.

WILLIAMS: One minute.

HUNT: Every dollar that we commit to this new prison and the ongoing expense of staffing and maintenance is a dollar that we're not investing in property tax relief, in economic development, in mental health, in healthcare and education. For the last 20 years, state spending on Corrections has outpaced the growth of the overall budget. It's growing an average of 6 percent every year, not as much as Director Frakes' salary, which grew by 30 percent, but that's too much to be growing. We're also probably going to increase property tax relief significantly this year, and I'm proud of that. That's great. That's going to help people. They want this. But here we are talking about approving a massive, ongoing expense that taxpayers are going to be on the hook for, and that's going to prevent us from being able to do more of this relief in years to come. And it's not just property tax relief that people are going to be needing.

WILLIAMS: Time, Senator.

HUNT: Thank you.

WILLIAMS: Thank you, Senator Hunt. Senator Dorn, you're recognized.

DORN: Thank you, Mr. Chairman. One-- one quick thing about what Megan Hunt's-- or, excuse me, Senator Hunt just talked about there, it will be one of the most expensive things that we've done as a state. I sat there and I just remembered the South Beltway is over \$300 million, so not to correct you or anything. Would Senator Wayne yield to a question?

WILLIAMS: Senator Wayne, would you yield?

WAYNE: Yes.

DORN: Senator Wayne, the amendment-- not to make any excuses for me, it kind of, I guess-- didn't look at it ahead of time-- caught me off guard. But I have some questions for you about that amendment. The little bit we talked here before we voted quick, you said you have a bill basically doing some of that or appropriating some of that money currently in committee?

WAYNE: Correct, yes, LB334.

DORN: And what kind of funding and does it do the same thing that your amendment did here?

WAYNE: The amendment was just to allocate funds. My bill-- and I won't use your time and talk about the fun part, but my bill actually allocates funds and creates a-- a program.

DORN: Your bill was creating this program where this funding would have went to? Or in other words, I call it allocating it to-- and I don't have the bill--

WAYNE: Correct.

DORN: --I don't have the amendment in front of me, but allocating it to specifically helping cert-- certain type of issues in our prison?

WAYNE: Yes and no. So my bill only costs \$2.6 million. The amendment was \$3.2 million because my thought was there were other people's bills out here who are dealing with reentry that we could incorporate and not just use all of my bill.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

DORN: Did your bill specifically deal with this same type of issue with the inmates?

WAYNE: Correct.

DORN: Correct?

WAYNE: Yes.

DORN: Was it also the same program? I mean, was it the same program? Was it a program that you were looking to start-- not start, but maybe fund so that we can help sort-- some of our issues that we have in the jails now?

WAYNE: That I don't know the answer to as far as exactly this exact program, which when I'm up, I'll-- I'll explain to you why.

DORN: Thank you.

WAYNE: I don't want to take your time up and explain.

DORN: OK. Well, no, I'm-- I'm-- I'm done. I-- I wanted to ask some of those questions and I'll yield the rest of my time to Senator Wayne.

WILLIAMS: Senator Wayne, you're yielded 2:40.

WAYNE: Thank you. So here is part of the hypocrisy of what amendment-- this amendment, AM935-- or AM9-- AM395 is about. The reason I had-- and I hope people are listening. The reason I had to use General Funds, because the \$217 million, \$230 million is Cash Reserve Fund to the Nebraska Capital Construction Project. On the mike, we were being told over and over by Appropriations this was about prison reduction, but I couldn't use that fund for programming for prison reduction because it's for capital construction only. That is a prison. That's why I had 14 different versions, because I was trying to figure out how to use that fund. If this was for prison reduction in general, I shouldn't have had to use General Funds. I should have been able to use it from that exact same fund, but, no, when you read the budget on page 4, it says Cash Reserve Funds to Nebraska Capital Construction Fund, NCCF, over the next five years. Look where the money is actually at. It can only be used for capital construction. This isn't about programming, Senator Lathrop. If it was about programming, I should have been able to use that fund. This is about building a prison. That was the purpose of my amendment--

WILLIAMS: One minute.

WAYNE: --twofold. The purpose of my amendment was to see if people would put their money where their mouth is. The second was, if it failed, I get to have this conversation about where the money actually came from, which was General Funds, because I couldn't use the prison reduction fund, even though the whole point of the program was to reduce prison recidivism. So those who are going to vote for this bill, who already voted for the amendment, you are voting to build a new prison. You are setting the pathway to build a new prison. You are setting the pathway to what I agree to, community corrections. I like that idea. I really do. I love the idea of site development for more mental health centers. The poison pill in this is that this money of \$115 (million), where it's at right now can only be built for construction projects. It is not generally used and cannot be generally used to reduce the prison population.

WILLIAMS: Time, Senator. Thank you, Senator Wayne and Senator Dorn. Senator John Cavanaugh, you're recognized.

J. CAVANAUGH: Thank you, Mr. President. Well, Senator Wayne, I apologize. I made the same mistake that Senator Matt Hansen made, I guess, by not getting up. I actually almost pushed my button and then we moved on and I thought, well, I guess every-- everybody must agree that this is a good idea. I thought it was the conversation we were having all day. Would Senator Wayne yield for a question?

WILLIAMS: Senator Wayne, would you yield?

WAYNE: Yes.

J. CAVANAUGH: You showed me that amendment before you dropped it, right?

WAYNE: Yes.

J. CAVANAUGH: And what did I say to you?

WAYNE: I can't remember.

J. CAVANAUGH: It wasn't enough money.

WAYNE: Oh, yeah, you did say that.

J. CAVANAUGH: Yeah.

WAYNE: You did, sorry.

J. CAVANAUGH: Or it was-- I asked you if it was enough money.

WAYNE: Yeah.

J. CAVANAUGH: My issue-- I mean, obviously, I don't know the answer to that question, but I kind of saw that amendment as on track of the conversation we were having and that it was a relatively modest amount of money to get what we-- we are trying to achieve here, which it doesn't solve a lot of the problems that-- you know, the front-end problems we were talking about. It doesn't solve, you know, the over-incarceration, but it does cut down on recidivism. And I was just sitting here pulling up a study and I-- I saw that when we invest in these types of programs, you see that people who participate in post-incarceration intensive programs will have about a 90-- I think it was 95 percent reduction in reincarceration within three years. And we-- I think we had-- the Chief Justice came and his State of the Judiciary talked about that. I've had conversations with the Parole-- folks in Parole and Probation about that exact-- the success that they have when people actually participate in these programs. And so I voted for that amendment because I-- it-- it is a step in the direction of what I think we should be doing. I don't-- I-- I think that we need to have a bigger conversation where we put all of these things together and put that type of community corrections, the pre-incarceration access to mental health and drug treatment as part of it. I'm glad Senator Hunt made reference to a lot of the other community issues that come along with this. But the conversation, I think, and I-- I will give people the benefit of the doubt that they didn't know what we were talking about. And granted, some people knew and they would vote against it or-- or would not vote on that issue, but the return on investment, when we're talking about where we should spend our money, how we should spend our money, and what we should do with it when it comes to the criminal justice system, we should find these smart ways to spend it that get us the results, better results which are going to save us money in the long run. Those are the types of things we should be doing. It's not just about figuring out the cheaper way to warehouse people and incarcerate them, which is ultimately a more efficient prison will do. It'll probably be cheaper per person to incarcerate people if-- if we built a new facility, but it will not save us money in the long run because we will just fill it up and fill up another one. I've heard a number of people today say we can't build our way out of this crisis and that is true. The way to get out of this crisis is to change how we look at what we're doing, and one of those is increasing access to these types of services that Senator Wayne brought up on that amendment. And that is a bigger conversation that we should be having and that we should be working

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

on. So at this point, obviously, I think it's clear that I do not want to build a new prison, but I want to be part of that discussion about how we do this and where we go in the next year when we get the study back from CJI and see what they have to say. But we need to-- and the-- the problem we have right now and what Senator Wayne is hitting on is we have a crisis of trust between the people involved in the-- in the negotiations. People do--

WILLIAMS: One minute.

J. CAVANAUGH: People do not trust that we will actually go with the best ideas, the right ideas. We'll go with the ones that are most familiar and are in the same vein that we are-- that we have gone down before, which have gotten us to this place. And so really, to me, this conversation today-- and I appreciate-- I've said this before-- what Senator Wayne is trying to do here. He's trying to shock us into paying attention and to think about this differently. He's trying to say we all agree there's a problem and we all agree on the solution; we just are disagreeing about how to get there; and really, the problem is people don't want to look at the alternatives of how we get from point A to point B. And so I think it's good that we're having this conversation. I think we have about an hour left today and maybe we could keep talking about some of this and get people's buy-in on where we should go from here and how we get there. Thank you.

WILLIAMS: Thank you, Senator John Cavanaugh. Senator Geist, you're recognized.

GEIST: Thank you, Mr. President. And, Senator Wayne, I will let you know I was standing on the mike-- I know you know that-- speaking about community corrections and I, too, was caught off guard. I did not read your floor amendment before it hit, and then I tried to read it as you were speaking and I wasn't listening to what you were talking about because I was trying to read your floor amendment. And you have to admit it's not an easy amendment to read. I did read the money amount, but not exactly what we were talking about. So in that sense, I apo-- I apologize for my vote, which I usually do when I have no clue what's going on. But I will stand here and say, if the vote were taken again, I would be a yes, except if that was LB334, and that is because I've given you my word that I support that bill and I do and I'll tell everyone that. I support that bill because I believe community corrections is a great plan. But that said, I believe we need to have a plan and I'm committed to helping work on a plan to make that happen. I think that's important. I wasn't expecting out of this to have to make that decision this moment, not whether I support

it or not, but having a plan and what is that plan. So for me, that's the-- I'll plead ignorance and no plan. On another note, one of the key reasons I think that the administration has given for a new prison is space. One of the key things we don't have in our current prison is space, thus the overcrowding. So overcrowding as we have it makes rehabilitation incredibly complicated, trying to help people get on their feet in a better way with a huge lack of space, Lack of programming space, lack of treatment space, lack of space between inmates and staff is incredibly difficult. So who do you want to let out? If you don't want a new prison, then who are you going to let out? Right now we're letting people out early, quickly, because we have no space. That ends up becoming a public safety issue. So how many are you going to let out who aren't ready because you don't want to build a place with space? Who are they? What are they in for? How long have they been in? Have they had their programming? How are they doing? Are these the individuals that we want to let out so we can get to 100 percent capacity rather than 146 percent or wherever we are at today? Who are we going to let out? That's the question. There are so many things that we could be doing, but we need space. So again, I'll go back to what I said earlier. It's a both and all of the above resolution, but we need space. Again, I will renew my commitment to working on community corrections. I think it's an important part of the puzzle, an important step to take. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Geist. Senator Wayne, you're recognized.

WAYNE: Thank you, Mr. President. I am going to own that I made an assumption that people were actually listening and I knew better than that. So here's what we're going to do from my perspective. I asked a couple people shut off their lights if they want to-- if people want to talk, that's on them. I want to vote on this because this amendment is specific. This says we are taking out the portions regarding the prison. That's all this amendment does is remove the portions of the prison, if I'm reading this right. Now I'm going to read it again, page 2, page 2 line through-- 2 through 7, page 2, line 2 to 7 is the correction-- 17-- correction facilities, all the way down. So we can vote on that. If that's what you guys want to vote on and we can say that-- you can vote against this if you choose to. That's fine. But if you believe that a prison is needed now, vote for it. If you believe that we should step back and have a little more conversations about alternatives and everything else, you'll vote for it. If you believe a prison is built-- needed now, because that's where I believe we're going, regardless of what everybody else is thinking, you'll vote against my amendment. I'm going to have a straight up or down vote. I'm going to get a record vote and I'll know where people are. As far

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

as the community corrections, I'm just going to assume nobody were paying attention and nobody knew what they were voting for. I disagree that, but I'm going to assume that because I really get along with Senator Geist and if you want me to vote a certain way, Linehan and Geist are probably the two people you can get me to do that, so I'll do that. That's where I'm at. I want a straight up or down vote and everybody can go home. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Wayne. Senator Pansing Brooks, you're recognized.

PANSING BROOKS: Thank you, Mr. President. Thank you. I-- I'm standing on a couple things. And I did vote on that last floor amendment. I was feeling rushed. I-- I know-- I know what it was about, but it was-- it's a long amendment and Senator Wayne talked about it for a little bit, but not long. It's a bill-- I can-- reading-- looking at it and trying to figure it out, it's a bill that we had in Judiciary that was never prioritized. No one came to us to say start getting this out. We were told it needed amendment. It's a-- it's a bill that we care about, but it was dropped like a lead balloon and now we're skipping over the process to pull it out of committee in a way. This is the same thing we've had in other bills. So I-- I get the aggravation by Senator Wayne, but again, we have a process and that process doesn't work well for me on some of the bills I really care about and it clearly doesn't work well for Senator Wayne on some of the bills he really cares about. There is no question that we need to support community corrections. I'm all in favor of that. And if we have the plan for that money, I'm all in favor of that, too, and I-- what I stand up to-- because I voted for it, I wasn't broadly painted with the brush that all of you say that you care about, about our communities, but then you won't vote for it, and I think that is an unfair statement. This came quickly on the heels of another extended debate. And, yes, some people may not have gotten the chance to read it or even understand after the very short introduction and the fact that it's such a long bill, may not understand that that's a bill that's in Judiciary Committee right now and has not been moved out of committee for whatever reason. That's a process. That is our process, Nebraskans. I want you to understand the people who didn't vote were not doing it because they weren't supportive of the communities of which Senator Wayne and Senator Justin-- or Senator McKinney speak and which we all speak about. It's not fair to paint that broad brush because I sure as heck don't want other bills that I am completely against jumping the queue and coming forward like this. If you-- maybe we meet and try to pull it out of committee. There's never been-- I'm Vice Chair of Judiciary. I've never had one comment to me about could

you help me get this out of committee? So I appreciate Senator Wayne's passion and his brilliant mind and how he fights for what is correct and right, but I-- I don't think this was the exactly right way to do it. The other thing is there's continuing angst about LB383. LB383 is not about building a prison. That's why we were standing strong on that, on that prison group. There was no agreement that we would build a prison. Senator Wishart and I and Senator McKinney and others were stand-- and Senator Lathrop were standing strong, and so was Senator Stinner, by the way, standing strong that no decision would be made about any prison, even though it seems like a steamroller, even though we have a train--

WILLIAMS: One minute.

PANSING BROOKS: --sort of coming from the executive branch. We've said, no way, we want to hear what-- what the Dewberry report says, we want to see what CJI says. We heard what Utah is doing. They completely changed what they're doing to be able to go forward and save money and-- and build beds more wisely. So again, voting for LB383 does not mean you're voting for a prison. It means you're voting for information that will give you either the information to support what goes ahead or information to help you battle against it. Right now, we know very little and we need to go forward and make sure that these, these plans, these studies go forward so we have information in front of us. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Pansing Brooks. Senator Hunt, you're recognized.

HUNT: Thank you, Mr. President. Good afternoon, Nebraskans. I will support LB383, the underlying bill. I will support the budget if we take out what I think is this poison pill. FA18 from Senator Wayne, which strikes Agency 46, which is Corrections, from the amendment that we just adopted, this removes that nearly \$15 million that goes to Corrections to allow them to do all this research about siting the new prison. I understand that LB383 is not appropriating funds for a new prison. It's not about supporting a new prison, but it now contains this appropriation of nearly \$15 million to look into where that prison is going to be and how it needs to be built. And to me, that's step one. We're on the path. And unless we take that money out of the budget and get off that path, I will not support the budget. The narrative around the construction of this new prison has changed so many times that Nebraskans should be very cynical and question and skeptical about what the state is really trying to do. The first announcement about this massive new prison popped up without any

dialogue from key stakeholders just within the last year. And I say that because that's what the news reported. That's what was said in the newspaper when they talked about it just kind of came out of nowhere and blindsided them. And it was hasty, it's a misguided proposal, and it was pitched as a project to bring in private prison contractors, which in Nebraska, we're one of few red states that doesn't have any private prisons and we should all be very proud of that. But when it was pitched as a way to bring in a private prison to Nebraska, that was really poorly received because people had legitimate concerns about civil rights around that, around human abuses, around corruption and how that money would be appropriated and how we would have transparency around funding a private prison when, again, we cannot fund the prisons we already have and the staffing and programming that we need for them. And then in the summer of 2020, after the idea was so poorly received by local communities-- and that was widely reported on as well-- the narrative shifted again from we need to start a private prison to we need to update the Nebraska State Penitentiary. And still to this day, the department has no plan to staff the prison if it's funded. They thought they would come in here and ask for the funding and the Governor would ask for the funding and we'd give it to them and they don't even have a plan to staff it and our prison system suffers already from a huge lack of staff. As of September, the Legislative Fiscal Office said that we have over 200 vacancies for caseworkers, for guards, for sergeants, for all the people who need to work in our prison facilities. And the Department of Corrections also continues to acknowledge that this plan won't address overcrowding. So I'm disappointed in how the department and the Governor have tried to circumvent the process by pushing through what's likely to be a private prison and here we are in the Legislature considering doing the same thing. And I thank the Appropriations Committee for not outright appropriating funds for this prison that's on the wish list, but this \$15 million, nearly, to think about the prison, it's not diverting the train off the track. It's not like when a child is playing with something dangerous and you give them something soft and safe to play with so they forget about the dangerous thing--

WILLIAMS: One minute.

HUNT: --and get diverted. This is not a diversion. What this is, is keeping the train on the track and adding fuel to the fire to help it move more quickly. We are not diverting the process by giving them \$15 million to site and-- and do research about where the prison should be. We're supporting them in building it. So please support FA18. This is a place you can vote green. We can take this poison pill out of the

budget. We can pass the rest of this budget, which was so thoughtfully put together. And I'll-- I'll end my time there. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Hunt. Senator Stinner, you're recognized.

STINNER: Thank you, Mr. President. I just want to make a few comments to clarify a few issues. We are not allocating or appropriating \$115 million. Do you want me to repeat that so you get it in your heads? We've started a process here. This is what the process is. It's about overcrowding. And I talked about 96 beds and the potential to do something in Omaha. I also talked about sentencing reform. That's a big piece of this. It may not be in big, bold letters in this, but it has to get done before you do the major facility analysis. And that will give you an idea and confidence going forward as it relates to an aging facility that either you replace or you're stuck with and the operating cost of that facility ongoing will eat your lunch. And believe me, a new facility isn't my great idea either of using taxpayer money, but we have to have sentencing reform with this. That lowers the trajectory. We are allocating \$14 million. And I'm going to tell you this. You vote this in, this kills the bill. This kills the bill. There isn't going to be a CJI process. There's not going to be a-- a facility process. There's not going to be 96 beds being built. You better understand that. And to sit here and put your hands in your pocket and watch an aging facility with a useful life of ten years, you're sitting here with-- with-- 2021, five years to build the damn thing? Wake up. The other thing that I'm going to-- and this is something that I talked about yesterday, the idea that we can pop up and say we need to do this in this bill. Now I'm all for what Senator Wayne was talking about, community programming, but there's a process. There's a process. This community-- this bill was not even prioritized. It's not out of committee. It's not fully vetted. But here, look, \$300 million of requests that have gone through the process that have-- is prioritized. Which one of these you want me to cut? You got \$211 million. That's a finite number. Which one do you want to cut? And that doesn't even include all the revenue stuff that-- that is in here. We got a big job to do. We got to get serious about stuff. I'm trying to deal with overcrowding. All of us should be over-- dealing with overcrowding. You want to give that up? Vote this in then. And if-- you know, when I leave here in two years, the clock is ticking on that, that facility and, believe me, it's going to eat your lunch with maintenance. You're going to throw good money after bad just trying to keep it going, trying to keep it safe, when you could have done something proactive. And believe me, I am not an advocate of moving ahead until I got all the information that we can.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

This is not, not a rubber stamp, we're going to go build a new facility. That is not the case. This is planning and design and an option on a site so that you could actually do your engineering studies and cost studies. You've got to get that right, guys. This Legislature--

WILLIAMS: One minute.

STINNER: --has a big, big responsibility. That's keeping people safe. That doesn't just mean the general populace. That means the people inside the prison. That means the workers in the prison. In any event, I will not vote for any pull motions like the ones that Senator Wayne was advocating for. Might be the best plan in the world. Bring a bill, prioritize it. And anybody else that jumps up that wants to throw in a nonprioritized bill or even jump ahead of everybody, I am not going to vote for it. I'm committed to that. And, yes, I am talking really loud because I want you to listen. This is a bad idea. There's no forward thinking in this whatsoever. In any event, I-- I would hope that everybody understands that this gets voted in, this is dead. Thank you.

WILLIAMS: Time, Senator. Thank you, Senator Stinner. Senator Vargas, you're recognized.

VARGAS: Well, I don't have as loud of a voice as Senator Stinner. Colleagues, I just wanted to get on the mike because-- well, two reasons. One, I came up when there was a call of the house. I was checking in with my staff and I missed not the debate, but what we were actually voting on. And I do know what we're voting on, more so now, and I do support the idea that is inside the bill. People that have served on Appropriations with me understand something. I get really frustrated in Appropriations when we appropriate money when we don't have programs. I just-- or we don't have a grant process or we don't have a way for them to make sure they do it. Part of the reason I do that is because I want to make sure the money is actually going out to do the purpose. For those of you that know this, and I think Senator Hunt brought this up, we appropriate money to Corrections every single year. For the last ten years, the amount of money that's been appropriated has not been spent for a variety of different reasons. A large part of that is staff. When we can't staff programming, programming doesn't happen. We had a growth from nearly \$2 million to about \$16 (million), \$18 million reappropriation, a large chunk of that which was staffing that was unfilled. When I've gone to Tecumseh and I go into-- and this-- I know this is for different-- this is for-- for pardons and post-release, but I'm going

into classrooms and they don't have classrooms filled, they don't have the teachers there because they don't have enough staff to be able to sep-- separate and segregate different groups, it's a clear cause for concern. I 100 percent support LB335, which was Senator Wayne's underlying bill. And I know we didn't have a debate. I came in right at the end or when we were doing call of the house. But I do support further reforms in this area. I also want to know that the money is going to go for a specific purpose that it-- that the-- the institution or agency can handle because otherwise we're giving money to an agency. And in this instance-- and I can't remember the exact number-- we have about \$7.5 million in that program right now and giving it \$3.5 (million) also would have to include people, PSL, FTEs, which is not accounted for. So I want to make sure that we have the people to be able to do the programming, or in this case, for at least LB334, the private providers that would be able to provide this information, this-- this support. There still needs to be some oversight and management and I 100 percent support that. And actually, if it was coming up again, I'd probably vote for it, even though I don't really want to touch our budget that much more because of the many things that have been shared. I didn't vote for the other added-- the addition of the amendment that Senator Flood brought on for that same reason. But I really want to see the program have the guidelines that are in this bill so that we can fund it. I would like to do that. I think we need to do something. And for those of us serves in Appropriations, and Senator Stinner would probably corroborate this, for the last four years, I've been talking about and questioning how Corrections uses their money and why we can't staff our facilities, why we can't afford better pay, why they can't take more responsibility for more sentencing reform, pardon reform, parole reform, and we're still not doing enough. Now, I know in a second we're going to talk about this floor amendment, and I've been very, very clear with my Appropriations members that I don't want to build a prison. I don't want to go down a pathway, period. I really don't, not at all. I know negotiations that happened and I understand that there's a process. I still don't want to do anything--

WILLIAMS: One minute.

VARGAS: --in that regard. I think it gives an excuse for them to not do enough. But as regards to these other proposals that are coming up, I support them and I will try to do what I can. We don't have a priority bill for it. I think I-- hopefully we can do something with it here in the future and I hope we have that conversation again on what we can do, maybe moving that bill out, finding a vehicle for it right now, but that's largely what I'm looking at right now. So,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

colleagues, I appreciate it and I hope we can do more in this space. And I know we're going to talk about this amendment a little bit more and then get to a vote on it, and I've made myself clear I don't want to do anything with prisons in that direction, but I also know it's-- we're faced with a decision right now on how can we make sure that we also--

WILLIAMS: Time, Senator.

VARGAS: Thank you.

WILLIAMS: Thank you, Senator Vargas. Senator Lathrop, you're recognized.

LATHROP: Thank you, Mr. President and colleagues. We've spent good part of the day talking about the Department of Corrections, sentencing reform, the way forward. I do want to mention Senator Wayne's bill. I offered the same bill last year. I certainly don't have a problem with it, the idea. We didn't put a bunch of Corrections reform bills out this year intentionally because we-- I knew CJI was coming. I started that process back in October and we're not going to try to do sentencing reform when we have the people who can come in and give us the data that will tell us what the proper and the best sentencing reform. I happen to agree very much with the concept of having small community corrections centers around the state. That's not the issue. On FA18, I'm asking you to oppose it. It is not a personal thing, but you should understand that I am not new to this debate. This is the result-- the-- AM395 is the result of negotiations. So there was a group formed after Senator Stinner went to the Governor and said, I don't want to approve any money for the prisons. I can tell you I went to their budget hearing. That committee was against putting money into a prison. The Governor wants a prison. By the way, he has a lot of luck on this floor, OK? And you ought to keep that in mind while you're about to vote on this amendment because we put a working group together and we've had several meetings with the Governor. Every one of them has been, I want my prison, I want my prison. He started out wanting the whole \$115 million. What we have in AM395 is a compromise. It's a compromise. Now, FA18 would blow it up, as Senator Stinner said. And-- and-- and incidentally, he wants the money to start the process. It's not like it is inevitable once this money is appropriated because we have-- Senator Wishart, Senator Stinner, and others-- have ensured that we will have a point in time where we can do our due diligence. This bill requires that they do a master facility study. It requires that we get an independent evaluation of the Penitentiary. Those things need to happen before we

should spend another nickel on building another prison and the CJI process needs to continue. But here's the risk. You want to blow up AM395, you can blow up AM395, but don't expect the Governor to not do anything. So the next thing you know, we have no beds for the mentally ill at LCC, which are in this bill; we have no head start on a halfway back house in Omaha; we have no master facility study; and we have no engineering study. Instead, we get an amendment on Select File for \$115 million to build the whole thing. Now, that doesn't make sense. That's because this is a compromise. It's like the budget you heard yesterday. I don't like everything in it. I'd like to not give him the \$15 million or the \$14 million. I really would. I'd really like to make him wait until we get through a facility study and get through the CJI process, but we had to give something and we got something, and we don't want to lose it because we still have the opportunity, colleagues, in November and December, to develop the way forward, not just for the next year, but for the next ten or 20 years. That's what's at stake in--

WILLIAMS: One minute.

LATHROP: --in this vote. It is not personal. This is not personal. I appreciate Senator Wayne's strong feelings about a new prison. I feel the same way. I feel the same way. FA18 is going to cause problems. That \$14 million isn't a poison pill. It is part of an agreement. It is part of an agreement. It is part of the way forward. And I can tell you, I have not, in my time since I've been here, since the-- since the time I came in here in 2007, have we had an opportunity to bring the people that want to build and the people that want reform to come together next November and December. That's what's going to happen. This is not inevitable, but it may be necessary, but it should be informed by the CJI process and the policymakers.

WILLIAMS: Time, Senator.

LATHROP: Thank you.

WILLIAMS: Thank you, Senator Lathrop. Senator Matt Hansen, you're recognized.

M. HANSEN: Thank you, Mr. President, and good afternoon again, colleagues. I'm going to rise and talk a little bit about process right now because I think we've had some accusations and some misstatements coming on in the last few minutes. If you-- and I know we've had plenty of time, plenty of discussion about it right now. If you pull up Senator Wayne's FA21, the one that got about eight or nine

votes, maybe a little higher, it is not the text of any bill in Judiciary Committee. It is a four-line amendment that appropriates two amounts over two years for one line, to provide "grants for individuals residing in community work release and treatment centers." The bill everybody's accusing it of being is a 30-page bill in Judiciary Committee that creates a new act and changes a bunch of duties. Yes, they are targeted at the same thing, but, no, it is not necessarily somebody just stapling a bill to the budget. I understand that Appropriations Committee-- I'm actually kind of appreciative that they're doing it this year. I think it's a good norm and good tradition-- has the agreement that when the nine of them agree, the nine of them stand together and defend things. And I think it's an important role in our body and I really appreciate the Committee on Committees' process for being so thoughtful and picking nine different committee members who can work together and build things. But if we're going to talk about what we're talking about on the floor, let's make sure we have some accurate details. So bringing an amendment to the budget is something that has been done. I've supported some. I've opposed some. I'm generally skeptical, but when there seems to be a willingness and a mood and an aptitude for the body, I think that is an entirely appropriate thing, especially in a year, especially in a year where we have so much available for the floor. And I know some of you have alleged that it's a bit of a mirage based on federal dollars, and I don't disagree with that, but that's not stopping us from passing all the bills anyway, so it's not like we're just banking all of that. That being said, Senator Stinner also did rise up and give the challenge of, if we want to appropriate \$3 million to something, where's it going to come from? There-- there's either money available or not. We either have the ability as a body to make these decisions or we don't. There's no obligation for us as a body to leave a certain amount of money for-- to all the tax bills in two weeks. We could leave less. We could leave none. I doubt we're going to do that, but we could. There's-- there's-- there's no obligation, there's no agreement, there's no vote I've taken to commit a certain amount of money left for the floor. So I have the option, as things are presented to me, to vote and say, is this a worthy expenditure or not? And that was one where having-- to me, having a pretty clear debate about how good some of these things and how good some of these programs were, just even as a symbolic General File, "we'll have to fix it on Select" kind of thing, voting for LB21 [SIC] was a simple thing. And as Senator Wayne explained it, he read the whole thing verbatim. I understand people weren't in the room and I don't begrudge anybody who comes in on a call of the house and is present, not voting. I get that. I get that. I-- I do that all the time, too,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

especially when I'm un-- unsure of what's going on. It was a very bizarre situation and kind of significant-- significant and signified some of the allegations of today in the sense that rarely, rarely do you see, outside of a true filibuster, a true nonsense amendment, half the body or at least half the body who is present and voting be present, not voting on something. That means that we as a body have done something and gotten to a place where the process is goofy.

WILLIAMS: One minute.

M. HANSEN: Thank you, Mr. President. We've already seen some odd things today and I get that some frustrations are hitting high on both sides and I get that. I-- I totally expected to be at home working on-- working on my other job at 4:00 today too. I get that. But if we're going to start being-- doing some of the things we're doing, let's be mindful. Let's take a break. Not a break, we can't take a break, but let's take the moment to actually read the things on the paper that we're arguing about. And I think that's a pretty clear one here for the moment. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Matt Hansen. Senator Wayne, you're recognized.

WAYNE: Thank you, Mr. President, and I'm actually feeling good and not-- not even emotions running high. I think it's kind of interesting of the hypocrisy that I continue to see. LB468 is in committee, not prioritized, but yet it has a line item budget that is depredation for animals or the damaged crop. So the idea that bring a bill, go through the process, that process jumped the line of everybody else and that was voted on by everybody in Appropriations. So the process is the process, but clearly it's OK to deviate the process for certain people. Second thing is the amendment Senator Pansing Brooks talked about was a FOP amendment that we don't really-- we decided we don't even need. But the reason, Senator Pansing Brooks, we haven't talked about it, because this whole prison thing has been fluid and confusing. So I'm going to walk through the timeline. Now I know that back in October Senator Lathrop knew about CGI. I was on the committee still, still didn't know about CGI coming. Will Senator McKinney yield to a question?

WILLIAMS: Senator McKinney, would you yield?

McKINNEY: Yes.

WAYNE: Senator McKinney, when did you find out about the CGI process?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

McKINNEY: I think the day they announced it.

WAYNE: So you and-- you found out the same time you-- I called you into my office and we were re-- we were watching the press conference?

McKINNEY: Yes.

WAYNE: And at that point, I said there's going to be no prison thing this year because we're going to put everything on hold.

McKINNEY: Yeah, you said that.

WAYNE: Thank you, Mr.-- thank you. Thank you, Senator McKinney. So I found out and person who's currently on the committee found out in a press conference during my hearing in which I left the committee because I always go back to my hearing room and I actually pulled Senator McKinney out because I wanted to know if he knew, and the consensus was we're not going to do anything this year around prisons. They're not reading the paper-- we're setting aside \$115 million, Senator Pansing Brooks, so I immediately sent an email out on March 16 to the entire Legislature and said here are two bills, one in Revenue and one in Judiciary. If we're going to have a prison discussion, let's be thoughtful about alternatives. But I'm still not sure what's going on because the only thing I'm hearing about is from the press. Fast-forward to this amendment where we're actually allocating dollars, I find out about this amendment, this amendment, when it comes to the agenda because I knew what the appropriation book said, that we were moving \$230 million, \$115 (million) to the Capitol Construction Fund. Not really sure what that meant, but I was just believing what the committee said. So there was no reason for me to push this, but what's ironic is this bill, my bill has actually been around for numerous years and it never went anywhere. So, Senator Stinner, you're right, we got to get serious, but when is that? After we pass your bill, your compromise? And let me tell you something, Senator Lathrop. Not all deals are good deals. Sometimes you've got to walk away from the table and if that means you get railroad, you get railroad, but you got to stand on principles. And the fact of the matter is we don't need a new prison. And if the Governor wants to do that, then-- then why don't we all just go home and let the Governor do everything? I'm cut from a different cloth and that means if I get railroad on this body, like I did last year, the last three days, that's just what happens. But I'm going to stand up for the things that I believe in because I knocked on doors, people sent me here. They didn't send me here to give my voice to Senator Lathrop to negotiate with the Governor on my behalf without them being there to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

understand what's going on. That's what this vote's about. This vote isn't about killing the deal. I'll be happy to add it back in. I'll be happy to add it back in when we got a balanced approach that includes community resources and putting-- making sure we're focusing on reentry.

WILLIAMS: One minute.

WAYNE: So we can fix that. You take this out, vote green on it, come back with a compromise that includes everything, and everything moves forward. But, no, that's not what we're going to do. We're going to vote it down and we're going to keep moving forward because we made an agreement. I guess we got certain people who are elected to-- to make negotiations, to make agreements. That's fine. But I'm not one of them, nor do I ever pretend. Any agreement that I talk about, just like today, that amendment, I met with people over in the corner saying, what do we want, let's try something. That's how I negotiate. I try to bring everybody into the table and have a conversation. So, yes, vote green on FA18. It's not going to kill the bill. They just got to bring back something that's comprehensive that we can all support. And I think community corrections and I think community treatment centers are the way to go. And this is a critical vote. This is a huge vote.

WILLIAMS: Time, Senator.

WAYNE: Thank you, Mr. President.

WILLIAMS: Thank you, Senator Wayne. Senator Hunt, you're recognized.

HUNT: Thank you, Mr. President. This floor amendment to strike the portion of the Appropriations amendment that includes funding for site selection and planning for Corrections is important to me too. What the amendment says is with the \$14.9 million, "the Department of Correctional Services is hereby authorized to prepare designs and plans for a new multi-custody-level correctional facility with capacity to house approximately one thousand five hundred twelve inmates, with a mix of maximum, medium, and minimum custody beds, including site selection and an option to purchase." Yes, I can read. Yes, I understand that that doesn't mean we're building a new prison, but we're appropriating nearly \$15 million when we can't get \$3 million for community issues to prevent the pipeline that's getting people into this prison anyway. And at some point, colleagues, we have to say no. We have to say no and we're not going to give one more dollar for prison construction. Whether it's actually laying, you

know, cinder blocks and mortar in the ground and building a foundation and doing the thing or whether it's putting together the plan and site selection, those are all steps along the way. And I appreciate compromise as much as anybody else. If you all think that I get anything done in here without compromise, you're dreaming, but I'm not sold on this compromise. And folks can go outside the body here and compromise with stakeholders, with private prisons, with Corrections, with the Governor, but then we have to come back in here and we have to compromise in here too. People have to come compromise with us and nobody at the table has been willing to compromise with me on things like LB121 to allow people with drug offenses to receive SNAP, which costs zero dollars and zero cents. And so if you're angry that I'm against this amendment, it's really a waste of anger because everybody in this body knows that we're going to get out of here at 5:15. This floor amendment is going to be defeated. The rest of the budget is going to sail through because we know the time. We all know the vote count. But it is something that we cannot let go through without having some things said. Not only do we need to follow the process, but agencies need to follow the process and we can't keep rewarding agencies like the Department of Corrections with more money, more money, more money for their little wish lists when they themselves are not following the process. In 2015, we passed LB33, which required Corrections to use a strategic planning process for future budget requests and the whole purpose was to provide a framework for future construction and renovation decisions. But instead of being reflected in the strategic plan that Corrections put together, the first time we heard about this new prison was through a news release last year talking about public-private partnerships and private prison. Then just a few days before the Appropriations Committee's agency hearing, it became part of some new plan that also involves remodeling the State Penitentiary. So Corrections does have a strategic plan, they just don't want to follow it, and that is not them following process and I don't want to be part of something in the Legislature rewarding them for flouting the process. The 2019-2023 strategic plan that Corrections has, they talk about capital construction needs and they request money for the State Pen, but it doesn't say anything about the Pen being dilapidated--

WILLIAMS: One minute.

HUNT: --or needing any renovation. It also, of course, doesn't say anything about needing a new prison. So the-- the department itself is not following its plan, but they have their hand out for more money so they can do, you know, planning for this new prison they want to build. Our job is to make responsible fiscal decisions on behalf of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

our constituents and we cannot do that if agencies are ignoring the process. We've heard a lot about the Nebraska State Penitentiary's age. Governor Ricketts has said in interviews that it's, quote unquote, crumbling, but most of the footprint was built in the '80s. It's not crumbling and all of this talk about the NSP's age is just an attempt to confuse Nebraskans and froth up public support for a new prison because the Governor knows what we know. The Governor knows that Nebraskans don't want a new prison. Nebraskans want better outcomes and they want reforms that keep people out of our prisons.

WILLIAMS: Time, Senator.

HUNT: Thank you.

WILLIAMS: Thank you, Senator Hunt. Senator Wayne, you're recognized to close on FA18.

WAYNE: Call of the house.

WILLIAMS: There's been a request to place a house under call. The question is, shall the house go under call? All those in favor vote aye; those opposed vote nay. Record, Mr. Clerk.

CLERK: 21 ayes, 3 nays to place the house under call.

WILLIAMS: Members, the house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. The unauthorized personnel, please leave the floor. The house is under call. Senator Wayne, your time is running for closing. You have 4:15.

WAYNE: Thank you. So everybody is clear on what this is, this is to remove the \$14 million from this amendment for prison planning, a site planning, and land options. Now, I am all favor-- if my amendment was to be successful, I am all favor with bringing back an amendment to roll it back in as long as we roll it back in with some type of treatment facilities, some type of community-based facilities so they move in tangent. This is not an idea that I came up with, Senator Erdman. This is an idea that rural senators showed me on how to get property tax relief done, that there were people on the business side who wanted tax credits, there are people on the property tax side who said they have to move together. And I remember two years ago, we tried that in separate bills, right? We tried to move one and then one of them stalled on Select and it blew up both bills. So the only way it got done was making sure it was in the same bill. So this is a playbook out of your book, Senator Halloran, not mine, that we should

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

remove this portion, because we already tried to add it in and I don't believe in bringing the exact same amendment on everything. I just-- it's the rules in me, but we can roll it back with both things in it. I don't think this is a deal killer or a deal breaker. We're talking about on Select File, bringing a bill to add back-- or amendment to add back \$14 million plus \$3-- \$3 million. But I'm-- I want them to move together. That way, we can ensure we are starting to address the reentry problem at the same time we are planning for a, maybe one day, if we approve, prison. That makes sense and what I heard from many colleagues, that makes sense. That's exactly what-- this-- this amendment removes it. I am committing to you, everybody on this floor, that we can add it back as long as we add back the other portion so it moves together. I think that's a fair compromise. All the other arguments about skipping the line and all-- this is not-- to add it back in is not adding my bill. It's adding whoever can-- whoever has ideas about reentry. I only know mine because that's the one I introduced. But to say I'm trying to skip the process when I know Senator Erdman's bill is in the committee because I'm in the committee that it's in and it wasn't prioritized and there is a budget allocation for that same issue, so you, Appropriations, created the opportunity for me to do this, not me. If that wouldn't have been done with Senator Erdman's bill, I wouldn't try this, but it was and it was voted on and the whole committee stood up here, 9-0, defending the budget. I'm with that. Whatever the rules are, I will play by and I'm playing by the exact same rules.

WILLIAMS: One minute.

WAYNE: I have a concept. He has a concept. His is in the budget. I'm trying to put mine in the budget. Is my bill out? No. Is his bill out? No. But everybody said the issue is important. Everybody says we have to do both. This is a way to ensure that we do both. Remove it on General, add it back with all the things we talked about and all the things that my colleagues agree to on Select, and by the time it gets to the Governor's Office, your deal is still intact. Please vote green. Roll call vote.

WILLIAMS: Thank you, Senator Wayne. Members, the question is the adoption of FA18. Mr. Clerk, call the roll.

CLERK: Senator Aguilar voting no. Senator Albrecht. Senator Arch voting no. Senator Blood voting yes. Senator Bostar not voting. Senator Bostelman voting no. Senator Brandt voting no. Senator Brewer voting no. Senator Briese not voting. Senator John Cavanaugh voting yes. Senator Machaela Cavanaugh voting yes. Senator Clements voting

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

no. Senator Day not voting. Senator DeBoer voting no. Senator Dorn voting no. Senator Erdman voting no. Senator Flood voting no. Senator Friesen voting no. Senator Geist voting no. Senator Gragert voting no. Senator Groene. Senator Halloran voting no. Senator Ben Hansen voting no. Senator Matt Hansen voting yes. Senator Hilgers not voting. Senator Hilkemann voting no. Senator Hughes voting no. Senator Hunt voting yes. Senator Kolterman voting no. Senator Lathrop voting no. Senator Lindstrom. Senator Linehan. Senator Lowe voting no. Senator McCollister voting no. Senator McDonnell voting no. Senator McKinney not voting. Senator Morfeld not voting. Senator Moser voting no. Senator Murman. Senator Pahls. Senator Pansing Brooks not voting. Senator Sanders voting no. Senator Slama voting no. Senator Stinner voting no. Senator Vargas voting yes. Senator Walz not voting. Senator Wayne voting yes. Senator Williams voting no. Senator Wishart not voting. 7 ayes, 27 nays, Mr. President, on the amendment.

WILLIAMS: The amendment is not adopted. Mr. Clerk. Raise the call.

CLERK: Senator Wayne, I now have FA19, Senator.

WILLIAMS: Senator Wayne, you're recognized to open on FA19.

WAYNE: So I got how many more amendments?

CLERK: On General File, you have-- this your last on General File, I believe.

WAYNE: All right, I'm going to keep my word to Senator Geist and I'm going to withdraw my amendment.

WILLIAMS: The amendment is withdrawn.

CLERK: I have nothing further pending to the committee amendments.

WILLIAMS: Senator Stinner, you're recognized to close on the committee amendment to LB383. Senator Stinner waives closing. Members, the question is, shall AM395 be adopted? All those in favor vote aye; those opposed vote nay. Have all voted? Record, Mr. Clerk.

CLERK: 37 ayes, 3 nays, Mr. President, on the adoption of committee amendments.

WILLIAMS: The amendments are adopted. Moving to the bill. Seeing no one wanting to speak, Senator Stinner, you're recognized to close on LB383. Senator Stinner waives closing. Members, the question is the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

advancement of LB383. All those in favor vote aye; those opposed vote nay. Have all voted? Record, Mr. Clerk.

CLERK: 37 ayes, 3 nays on the advancement of the bill.

WILLIAMS: The bill advances. Mr. Clerk.

CLERK: Mr. President, LB666 is a bill introduced by Senator Ben Hansen as Chair of the Business and Labor Committee, a bill for an act relating to claims against the state. It appropriates funds for the payment of certain claims. It provides for payment of the claims. It authorizes agendas [SIC] to write off certain claims. Introduced on January 20, referred to Business and Labor, advanced to General File. There are committee amendments.

WILLIAMS: Thank you, Mr. Clerk. Senator Hansen, you're recognized to open on LB666.

B. HANSEN: Thank you, Mr. President. What I know everyone has been waiting for is the State Claims with LB666. The Business and Labor Committee holds the responsibility of handling the State Claims bill. I'll provide background on the process for these claims and then go through each claim in the bill. As you know, the state of Nebraska employs thousands of people and sometimes their actions cause injury or problems to others that result in lawsuits against the state. The state is subject to liability under the State Tort Claims Act or the Miscellaneous Claims Act. Claims against the state pass through the State Risk Manager's Office. These claims can either be settled or through court judgments. Also included are workers' compensation claims when an employee of the state is injured on the job. All these claims go through the Risk Manager's Office and any claim exceeding \$50,000 has to go through the Legislature for approval. The Risk Manager pays claims below \$50,000 and the first \$50,000 of claims above that, which means that claims in the-- in this bill are the amounts above the \$50,000 that the Risk Manager has already paid. Just for your understanding, the amounts in this bill have all been agreed-to settlements or court judgments reviewed and litigated by the Attorney General's Office or relevant state agency so the numbers in this bill come from those decisions, not anything decided by myself or the Business and Labor Committee. Also included in the state's claims are the agency write-offs. There are-- these are any uncontrollable debts that agencies have that they've not been able to collect. As such, we were asked to write them off in order to keep the books balanced. I will now go through the claims briefly to-- briefly to provide you with a brief explanation of each of them. The committee

amendment becomes the bill, so if you're following along, I will go through the claims in-- in the order they are listed in the committee amendment. Section 1 is the miscellaneous claims section of which there are two. The first claim is for \$318,140.37 payable to the Nebraska Press Advertising Service. The Nebraska Press Advertising Service was hired to create and distribute the legal notice of measures voted on at the general election occurring on November 3, 2020. These notices are required by the Nebraska Constitution, Article XVI, Section 1, and by Nebraska Statute-- Statutes 31-1416 and 49-202. The amount is the cost of putting notices in the paper across the state and has tradi-- traditionally been done through the State Claims bill. The second claim is for \$101,143.68 payable to a former employee with the Department of Corrections. Said former employee reached a settlement agreement with the state of Nebraska from a claim of religious discrimination and harassment. Section 2 of the committee amendments contains workers' compensation claims of which there are three. The first claim is \$115,000 payable to a state employee that filed a lawsuit asserting she was injured in the course of her employment while breaking up a fight between two juveniles on November 27, 2015, and when she was repeatedly punched and kicked by a juvenile on March 30, 2017. The second claim is for \$150,000 payable to a state employee in accordance to a settlement agreement. The employee filed suit asserting she was injured in the course of her employment when she fell on the ice in her office building parking lot. And the third claim is for \$26,617 in accordance to a settlement agreement for a state employee who allegedly-- who alleged he sustained an accident, an accidental injury to his neck and cervical spine arising out of and in the course of employment on or before June 27, 2016. And now Section 3 is for tort claims. There are two tort claims. The first claim is for \$70,000-- \$70,000 payable to an individual that was injured in a motor vehicle accident on July 19, 2017, at the intersection of Highway 57 and Highway 32 near Stanton, Nebraska. A state of Nebraska truck was involved in the accident, which caused injuries and damages to the individual. The second tort claim is for \$18,717.50 payable to an individual who was injured in a motor vehicle accident on June 18, 2020, at the intersection of Saint Mary's Avenue near South 26th Avenue, Omaha, Nebraska. A state of Nebraska vehicle was involved in the accident, which caused injuries and damages to the individual's vehicle. Section 5 is for agency write-offs and there are 16 of them. The first is \$2,982.24 from the Nebraska Board-- Board of Educational Lands and Funds. It's the result of lessee that failed to pay his 2-- 2017 agricultural rental and was forfeited from his lease. Forfeited-- forfeited lessee attempted some resolution, but has no further funds and all further attempts to collect have been exhausted.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

A new-- a new lease was issued to a different tenant and rental has been paid since 2018. The second is for \$25.46 by the Legislative Council that was described-- that was described as individual uncollectible debt for nonpayment. Third is for \$23,325.75 by the Department of Corrections Services as a result of Cornhusker State Industries declaring bankruptcy without sending noncollectible receivables. The fourth is for \$115 by the Supreme Court pertaining to numerous debts deemed uncollectible. Three contacts have been made with the last being a letter signed by the Chief Justice of the Nebraska Supreme Court. The fifth is for \$306.70 by the Commission for the Deaf and Hard of Hearing as-- as the result of an agency audit revealed items which were noted as unable to collect or posted incorrectly. The sixth is for \$783,112-- excuse me-- \$783,188.12 by the Department of Health and Human Services because the debtor has passed away and the debt has been discharged in bankruptcy or because the applicable statute of limitations has passed. Most of the debt and persons who were-- are needs-based assistance at the time and-- and overpayments made to their aid or dependent children account. The seventh is for \$10,343.76 [SIC] by the Department of Veterans' Affairs. It's the sum of two debts from their member/residents. One is from Norfolk Veterans' Home and the other is from Eastern Nebraska Veterans' Home. The eighth is for \$86,827.45 by the Department of Labor as an aggregate of businesses that have ceased operation, employers have passed away, or employers have declared bankruptcy. The ninth is for \$4,758.79 by the Game and Parks Commission, consisting of uncollectible checks from permit vendors 2019 to present. The tenth is for \$18,350.50 by the State Fire Marshall for debts deemed to be uncollectible and includes debts from the mechanical safety division. Last page, the eleventh is for \$172,318.19 by the State Treasurer Office. This number represents write-offs due to overpayments, deaths, bankruptcies, and others that cannot be reached. This is a result of the Treasurer acting as a state clearinghouse for support payments. When the recipient is located in another state, each payment is put together and sent as a batch. Often it's not known there was an overpayment for several days later and it's near impossible to find the specific payment in the batch that caused the problem. The twelfth is for \$637,508.42 by the Department of Labor as a result of outstanding unemployment benefit overpayments. The thirteenth is for \$37,056-- \$37,056.74 by the Department of Environmental Energy as a result of an uncollectible loan due to the borrower filing for bankruptcy. The fourteenth is for \$25 by the Department of Insurance deemed returned fee for an administrative fee. The fifteenth is for \$2,067.95 by the Nebraska Public Employees Retirement System for overpayments due to death of the recipient. And finally, the sixteenth

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

is for \$202,748.22 by the Department of Transportation resulting from the uncollectible debt relating to state property damage. Thank you, Mr. President, and that concludes my opening for LB666 and the Business and Labor Committee amendment.

WILLIAMS: Thank you, Senator Hansen. Members, you've heard the opening on LB666 and the committee amendment. Debate is now open. Senator Hunt, you're recognized.

HUNT: Thank you, Mr. President. Colleagues, Nebraskans, the Business and Labor Committee has the opportunity and the responsibility to bring the State Claims bill every year, and we fulfilled that duty by bringing this down to the floor. Each standing committee also, of course, has the responsibility and opportunity to select two priority bills for the committee. The Business and Labor Committee is the only one whose Chairman, Ben Hansen, opted to select no committee priorities at all, so I would yield the rest of my time to Senator Ben Hansen so he can explain to the body and to Nebraskans why he chose not to select any priority bills, that he thought there were no bills in the committee worth prioritizing this year. Thank you, Mr. President.

WILLIAMS: Senator Hansen waives speaking. Seeing no one in the clue-- queue, excuse me, Senator Hansen, you're recognized to close on AM906. Senator Hansen waives closing. Members, the question is the adoption of the committee amendment to LB666. All those in favor vote aye; those opposed vote nay. Have all voted? Record, Mr. Clerk.

CLERK: 36 ayes, 0 nays on adoption of committee amendments.

WILLIAMS: The amendment is adopted. Seeing no one wanting to speak, Senator Hansen waives closing on LB666. The question, members, is the advancement of LB666. All those in favor vote aye; those opposed vote nay. Have all voted? Record, Mr. Clerk.

CLERK: 37 ayes, 0 nays, Mr. President, on the advancement of LB666.

WILLIAMS: LB666 advances. Next item.

CLERK: Mr. President, LB386 was a bill introduced by Senator Lathrop at the request of the Governor. It's a bill for an act relating to judges' salaries. It changes judges' salaries; provides an operative date. Introduced on January 14, referred to the Judiciary Committee, advanced to General File. I have no amendments to the bill at this time, Mr. President.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

WILLIAMS: Thank you, Mr. Clerk. Senator Lathrop, you're recognized to open on LB386.

LATHROP: Thank you, Mr. President. Good afternoon once again, colleagues. LB386 establishes a salary for the Chief Justice and the justices of the Supreme Court for the next biennium. As you may know, other just-- other judges of the state of Nebraska, district court judges, juvenile court judges, the Courts of Appeal, and the county court judges are all a percentage of the Chief Justice's salary. So when we set the Chief Justice's salary, we are effectively establishing the rate of pay for the members of the judiciary. The salary set for the Chief Justice is \$192,647.09. That represents a 3 percent increase from the current salary. A similar percentage of increase will pass down to each of the judges in the state of Nebraska and I would appreciate your approval of AM-- or, pardon me, LB386.

WILLIAMS: Thank you, Senator Lathrop. Senator Pansing Brooks, you're recognized.

PANSING BROOKS: Thank you, Mr President. I just stand in support of LB386. I want to thank the judges and the work that they've done for our state. They have been integral in-- in helping attain justice. I've worked with a couple of them on-- on the court rules for indigent defense this year and I really appreciate the work that they're doing to help kids and help support those in need. I also want to thank Senator Hilgers because people were aggravated that some people were extending debate and clearly we were intending to extend debate as it was, so we didn't need to be aggravated at the people that were extending debate. It was going to go till 5:00 anyway. So I just wanted to point out that there's no need to be aggravated at anybody at this point. Senator Hilgers made that clear by having us ex-- go on with more bills. And so I hope everybody has a really good weekend. I hope that we can all come back with a positive attitude about compassion and kindness for one another and understanding we each represent our 40,000 and we have different ways of doing it, but we can move forward together for the best and for the good of our state. Thank you, Mr. President. Happy weekend, everybody.

WILLIAMS: Thank you, Senator Pansing Brooks. Senator Hunt, you're recognized.

HUNT: Thank you, Mr. President. Thank you, colleagues. I am going to be a red vote on LB386, which would increase the salaries for the Supreme Court and indirectly would increase the salaries for all judges in our state. I understand that state-- state judges are state

employees because they're part of a separate branch of government and their pay raise is in a separate bill rather than the pay raise bill for the general state employees. So as a consequence, when I'm deciding whether to support this bill, I have to ask myself, do the judges deserve a pay raise? I have specific and I have general reasons to oppose this bill. Last fall, just days before the general election, the Nebraska Supreme Court issued an order prohibiting the placing of a constitutional amendment on the ballot which would have provided for the legalization of medicinal cannabis, bringing Nebraska into 1996. Supporters of the ballot initiative had gathered 190,000 signatures from across the state to put that question on the ballot. This represents 10 percent of the population of the state, not of the voters, but of all the people. The signatures were gathered in about six weeks' time during a pandemic. Despite the clear, broad, and strong support for placing this question on the ballot, the Supreme Court held that the ballot question violated the state's constitutional single-subject rule. Supporters of the measure, including my colleagues Senator Morfeld and Senator Wishart especially, were stunned by this decision. After years and years of advocacy, years and years of standing up for mothers with epileptic children who face seizures, of cancer patients, hundreds of hours getting the issue placed on the ballot, the court disregarded an unequivocal request from the people of Nebraska, who pay the taxes that pay their salaries. In response to the court's decision, Senator Wishart introduced legislation to address the single-subject rule, which I am proud to cosponsor and avoid a repeat of that court's last-minute decision to keep the marijuana initiative-- initiative off the ballot. Those bills were heard before the Government Committee, of which I am a member. And at the hearing, we learned a lot about the single-subject rule. Specifically, the standard for the application of the single-subject rule is largely created-- it's judicially created. It's up to the courts whether they think it's a single subject or not. Oh! Oh, my gosh, there's a bird in here. Coincidentally or otherwise, the Governor has appointed many of the people on the Supreme Court and the decision had the consequence of silencing a very clear expression of will from the public. My opposition is not just limited to this Supreme Court decision either. Since I've been a state senator, I have received so many emails, regularly contacted by my constituents or others who are unhappy with judges' decisions regarding criminal cases, custody cases, divorce actions. And after the decision striking the medical marijuana question from the ballot, I made up my mind that we-- we can't reward the judges for this decision. At this point, the body seems comfortable with funding the judges' retirement fund with court fees, which we nickel and dime people who are prosecuted in the

courts or who use the court system to seek redress and we make them pay a user fee for the judges' retirement fund. So this body obviously always looks out for judges, but we are so quick to say no to other people, like some of you did yesterday when Senator Cavanaugh brought up the developmentally disabled issue or when I bring my bill to increase the tipped minimum wage from \$2.13 an hour. We are so quick to say no to a salary increase for them, yet here we are giving--

WILLIAMS: One minute.

HUNT: --an increase to the judges and seemingly more willing than ever to give them an annual salary that's close to \$200,000 a year while we continue to say no to everybody else. I have been an employer. I am an employer. I've had to review my employees' performances for determining pay raises and, in my opinion, our judges do not deserve a pay raise based on their performance in the past year. I will not be supporting this bill. There are so many people in the state of Nebraska who deserve a pay raise. We have not been here for them, and so I will not be here for the judges on this issue. Thank you, Mr. President.

WILLIAMS: Thank you, Senator Hunt. Senator Machaela Cavanaugh, you're recognized.

M. CAVANAUGH: Thank you, Mr. President. I just wanted to rise in support of what Senator Hunt was just talking about and also to acknowledge to the people at home that there is a pigeon in the Chamber, and so we were all a little bit distracted by a bird flying around in here. We had to open up the windows because it was really hot the other day, and so apparently a little bird has gotten in and we're all just kind of watching it up on its perch. So you'll probably see some pictures on social media, for the folks following along at home, But I just wanted to-- to rise in support of Senator Hunt's comments because we do keep sort of giving a pass on certain things for funding, like, oh, of course, judges are public servants and they do an important job, and there's no disputing that, but so do caseworkers and social workers and respite care workers. And we trifle quite a bit over provider rates and-- and the people that are the working poor working in those jobs, but also qualifying for SNAP at the same time as those-- having those jobs and we trifle over their qualification for SNAP. That bird just flew over my head. I hope it doesn't poop. It's just making a big circle. This is very entertaining. I hope the-- a historian for Nebraska-- the Nebraska Chamber or Legislature can document how often birds have been flying around. It probably used to happen more often than this. Anyhow, I

just-- again, I wanted to reiterate that I support Senator Hunt's comments and I think that we should be doing better with how we are strategically thinking about how we are spending our dollars. And just because this is well worth-- worthwhile job that the judges do for us, that doesn't mean that they deserve to be having a compensation increase when we aren't increasing the pay for others on a much lower pay scale than them. So thank you. I yield the remainder of my time.

WILLIAMS: Thank you, Senator Machaela Cavanaugh. Senator Pansing Brooks, you're recognized.

PANSING BROOKS: Just for clarification to Nebraskans, I think it's a-- it's a dove, a bird of peace. So it's perfectly here, flying all around us, reminding us about our collegiality, our multipartisanship. It's now sitting up in the COVID area of the Legislature. So what a great way to end this week. Thank you, Mr. President.

WILLIAMS: Thank you, Senator of Peace. Senator Lathrop, you're recognized.

LATHROP: Am I the last one in the queue, Mr. Speaker?

WILLIAMS: Yes, you are. You can use this as your close--

LATHROP: I'll-- I'll use this as my close. Colleagues, I want to-- I hope I have your attention. I know it's unusual to have a bird flying around here. This is a serious bill and Senator Hunt has spoken against it and so has Senator Cavanaugh, and I got something to say about it. We are one of the two political branches of government. There is the executive branch, the Governor, and there is the legislative branch, both political branches. The judiciary is not a political branch. They rely on us to do the right thing. And believe me, I've had adverse rulings. I've walked out of courthouses upset with decisions that I didn't agree with, but that's not the-- that's not the measure of whether we're going to take care of judges in this state. It is important, if we are going to attract and retain good, quality lawyers typically coming from the highest-earning years in their practice, giving up the practice they have built to serve the state, that we, every two years, fix their wage at a-- at-- and provide for a raise in their pay. This is a serious bill. It requires our approval. I very much ask you, strongly urge you to support LB386. Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Floor Debate April 9, 2021

WILLIAMS: Thank you, Senator Lathrop. Members, the question is the advancement of LB386 to E&R Initial. All those in favor vote aye; those opposed vote nay. Have all voted? Record, Mr. Clerk.

CLERK: 37 ayes, 1 nay.

WILLIAMS: LB386 advances. Mr. Clerk.

CLERK: LB386A, by Senator Lathrop, appropriates funds to implement LB386.

WILLIAMS: Senator Lathrop, you're recognized to open on LB386A.

LATHROP: Thank you, Mr. President. Colleagues, thank you for that last vote. LB386A is simply the A bill to provide for the judges' salaries. I would appreciate your support. Thank you.

WILLIAMS: Members, you've heard the discussion on LB386. Senator Lathrop, would you like to close? Senator Lathrop-- Lathrop waives closing. Members, the question is the advancement of LB386A to E&R Initial. All those in favor vote aye; those opposed vote nay. Have all voted? Record, Mr. Clerk.

CLERK: 36 ayes, 1 nay.

WILLIAMS: LB386A advances. Mr. Clerk.

CLERK: An amendment to be printed to LB338, Senator Bostelman. Senator Wayne to LB383. Senator DeBoer would like to add her name to LB51. Senator Flood would move to adjourn the body until Monday at 10:00.

WILLIAMS: Members, you've heard the motion to adjourn. All those in favor say aye. Opposed say nay. We are adjourned.