

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Floor Debate March 16, 2022

**HILGERS:** Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the forty-third day of the One Hundred Seventh Legislature, Second Session. Our chaplain for today is Senator Clements. Please rise.

**CLEMENTS:** Thank you, Mr. President. Please join me as we pray. Oh Lord, our Lord, how majestic is your name in all the Earth. You are good. Your steadfast love endures forever and your faithfulness to all generations. We thank you for your goodness. Every beast of the forest is yours and the cattle on a thousand hills. You own all we have and we are just stewards of that which you have blessed us with. Today we look to you, Lord, for guidance and to be directed by your wisdom. Direct us as we make decisions on the state's budget and the people's money. May we not lay up for ourselves treasures on Earth, but let us lay up for ourselves treasures in heaven. Today we ask you, Lord, to be with the people of Ukraine, to help them stop the invasion threatening to take away their freedom. These people have suffered at the hands of evil before and deserve to be left in peace. Give them courage and strength to protect their families and their way of life. We ask you, Lord, to guide our nation's leaders and grant them wisdom and understanding to uphold what is right. We thank you for your guidance today. In Jesus' name, I pray. Amen.

**HILGERS:** Thank you, Senator Clements. Senator Erdman, you're recognized for the Pledge of Allegiance.

**ERDMAN:** Please join me in the pledge. 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.

**HILGERS:** Thank you, Senator Erdman. I call to order the forty-third day of the One Hundred Seventh Legislature, Second Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

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

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

**ASSISTANT CLERK:** No corrections this morning, sir.

**HILGERS:** Thank you. Are there any messages, reports or announcements?

**ASSISTANT CLERK:** None at this time, Mr. President.

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**HILGERS:** Thank you, Mr. Clerk. We will now proceed to the first item on the morning's agenda.

**ASSISTANT CLERK:** Mr. President, LB1011 was discussed yesterday. When we left the bill, pending were both the committee amendments from the Appropriations Committee as well as Senator Lathrop's FA74.

**HILGERS:** Thank you, Mr. Clerk. Senator Stinner, would you like to take one minute to refresh us on LB1011?

**STINNER:** Yes, thank you, Mr. President. Members of the Legislature, this is a special day today. It's Clark Kolterman's birthday. Clark Kolterman is twins with Senator Kolterman, so Senator Kolterman's-- happy birthday. LB1011 is a bill that was brought to the Legislature on behalf of-- by the Speaker on behalf of the Governor. And as I said yesterday, there's only really one big change in-- that the Appropriations did and that was to add provider rates and offset it with excess funding within the behavioral health and a couple other of the accompanying-- and there, there is a listing of what we offset it with as it relates to that. We did-- really kind of focused on the fact that we wanted to bring as much dollars to the floor as we possibly could in the General Funds. We knew there was some, some interest in revenue bills, and so \$453 million, which I don't know if that's a record, but it's got to be pretty close to a record for dollars to the floor. The amendment, AM199, is actually the bill, if you want to follow along with that, and obviously there is detail in the midbiennium budget. With that, thank you, Mr. Speaker.

**HILGERS:** Thank you, Senator Stinner. Senator Brandt would like to recognize Dr. Jason Bepalec of Geneva, who is serving as our family physician of the day. Dr. Bepalec is seated under the north balcony. Please rise and be recognized by your Nebraska Legislature. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign the following legislative resolutions: LR321, LR322, LR323, LR324, LR325, and LR326. Turning to debate on FA74, Senator Lathrop, you're recognized.

**LATHROP:** Is this for purposes of an update or am I just recognized on the bill?

**HILGERS:** Recognizing you on the bill.

**LATHROP:** OK, perfect. Thank you. And good morning, colleagues. I know some of you might have left a little early yesterday, so I'm going to give just sort of an overview of what we talked about in the hour

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between 7:00 and 8:00, very, very broad picture. So the amendment that-- that I filed is to provide an opportunity for us to have a discussion about what I think is a crisis in this state, and that is the overpopulation or the overcrowding at the Department of Corrections. And we began the process by handing out a chart yesterday that shows the rate of growth of our incarcerated population. And in addition to our current rate of-- our, our historical rate of growth, we also have a projection from an outfit called JFA. JFA has been doing population projections for the state. I think they've done four or five of them for the state. In addition to Nebraska, they do this in other places. They're experts at it. They projected our population and you can see that on the chart that I provided. It, it is represented by the dashed line. There is, on that same chart that we handed out last night, a blue line that represents design capacity of the entire Department of Corrections. All the facilities, you add them up in that blue line and you see that it's flat for many, many years. Those would be the Heineman years during which there was no expansion of any capacity at the Department of Corrections. The red line represents operational capacity, a different number. That's 125 percent of design capacity. That is statutory. That's right in the statute. It defines operational capacity. And you'll see that those lines start to move upward and those, those upward movements represent additional capacity that we've added. And I'll say, since Governor Ricketts came to office, this Legislature and the Governor have made the decision to expand our capacity. You will see those grow and I'll, I'll-- I'm able to tell you what those-- each one of those lines represent, but the last significant increase in those red and blue lines represents the net pickup if we were to close the Penitentiary as the Governor has proposed and build 1,500 beds at some yet-to-be-determined location. So the Penitentiary, if we close the Penitentiary and add 1,500 beds, we are effectively improving our capacity by 700 beds, 700 beds. That's the net effect. And so that last surge in those red and blue lines, colleagues, is the, is the net effect of building additional capacity and closing the Department of-- the Penitentiary. You will see-- it's plainly obvious from this-- that we have an overcrowding problem that we can't build our way out of, nor can we, nor can we-- I appreciate we're doing the donuts. I appreciate that we're doing the donuts. I hope you're-- you have a chance to listen to what I'm saying because this is really important. It is-- we are at a crisis place. We are at a crisis place. The overcrowding is a crisis. The staffing is a crisis. Our ability to manage the people that we are--

**HILGERS:** One minute.

**LATHROP:** --charged with incarcerating is at a crisis and we're here to talk about it today. And we can't build our way out of this, colleagues. If we spent \$270 million to add 700 beds to our capacity, we would need to double that just to meet the basic operational capacity by 2030. This conversation is happening during the budget debate because this is a budget issue. Whether you are concerned with the dignity of the people we incarcerate or you look at this fiscally, we have a problem with both. Today we're going to spend a little bit of time sharing with the members the information that we have gathered during the CJI process during 12 years on the Judiciary Committee and the concerns of the Appropriation Committee with the idea that we are going to begin this process of trying to build our way out of the problem.

**HILGERS:** That's time, Senator. Thank you, Senator Lathrop. Senator DeBoer, you're recognized.

**DeBOER:** Thank you, Mr. President. Colleagues, my first hearing after I was elected was about the pending, at that time, overcrowding emergency in our prisons. Director Frakes graciously came in and talked to us. At that hearing, I asked him, in all my first year, first week naivete, can we build our way out of this problem? His answer that day was no. We can't build our way out of this problem. Last night, I talked about how those of us on the Judiciary Committee feel like sometimes we're crying out in the wilderness and no one is listening. It's a very familiar thing right at this moment. Some folks say, what's the connection between this overcrowding emergency, which we have now declared and been in for several years, and the prison? They say this is a different issue. But here's why it's the same issue for me: we need a plan. I asked that day, what's the plan? What's the plan for getting us out of this overcrowding situation that we have in our prisons that's the worst in the country-- we were second worst, now we're the worst-- what's the plan? There wasn't a plan. There still isn't a plan. This new prison can't be the entirety of our plan. It can't even be the main pillar of our plan. Look at the graph. This can't be the plan. The plan has to be multifaceted. There has to be something to-- as I said last night, because I found it was sort of clever once I said it, we need to flatten the curve. We've got to find a way to change the slope of that curve because we cannot build our way out of the prison overcrowding emergency that we're in. Why should we care? I may have mentioned last night that this is an issue for our communities because the vast majority of people who go into these prisons come out. At the end of their term,

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they come out and they are next door to you. They're in the grocery store with you. And if you imagine that putting someone into a situation where for a couple of years they're in a space that's three times as crowded as is-- as it's supposed to be with a bunch of other people and they're not getting their programming and they're what we call jamming out-- jamming out means that they get to the end of their sentence and they haven't had all of the things that they need to have in order to be eligible for parole. If they jam out and they come out and they're shopping at the grocery store next to you and they've been stuck in this prison with three times as many people as they're supposed to, do you suspect that they're feeling more kindly towards society? Do you suspect that they feel more like they should respect the authority of society than they did when they went in?

**WILLIAMS:** One minute.

**DeBOER:** This is a public safety concern. I haven't even begun to talk about the people who work in the prison who are our neighbors as well, who do a hard job and who do it-- it's, it's astounding when you listen to them. They do it because they feel called to it. This is a calling for them and it's a hard job that a lot of us wouldn't want to do, although Senator Blood has done it. So I think hopefully she'll speak to us about that. We need a full plan. We need to flatten this curve, change the slope of our average daily incarceration level. This is a problem that we have to solve. We keep kicking it down the road. Somebody's got to do something.

**WILLIAMS:** Time, Senator.

**DeBOER:** We are the ones tasked. Thank you, Mr. President.

**WILLIAMS:** Thank you, Senator DeBoer. Senator Stinner, you're recognized.

**STINNER:** Thank you, Mr. President. Members of the Legislature, I'd like to get back on the budget and kind of give you a glimpse of the two major items that adjusted the budget and that is certainly provider rates, but agency salaries were renegotiated during the-- when we were off, as, as it relates to before session. In any event, right after we had met in the special session, we got out of special session, Appropriations had some IRs, which I came back for. And I was-- got a call from the Governor and he said, please come to my office, we, we need to have a meeting. And the meeting entailed, with the Budget Director, Lee Will, the head of DAS, and the Governor, and we sat down and he said, we've got a major-league problem in our

state. We can't fill critical positions. We got tons and tons of vacancies. If you-- and if you think about what, what was the problem is that we need to raise salaries, we need to renegotiate salaries because we can't attract and retain people to these critical jobs. And I think everybody remembers Corrections and the vacancies associated with Corrections. And you also need to understand we also operate the vets' hospital in Kearney, which was never full because they couldn't staff it and they were losing staff and having to turn, turn away people who needed help as far as veterans are concerned. And we have a vets' hospital in Scottsbluff-- or not a vets' hospital, excuse me, but nursing home in Scottsbluff. We have a DD facility, a 24/7 facility. These are 24/7 facilities. And so he talked about the fact that we need to renegotiate that and we've got some critical positions open. We have people that are critical to the state leaving the state because we're not paying them enough. And of course, the Budget Director and I talked about the fact we can probably arrange-- there's enough vacancy savings in the budget we can get to the end of this fiscal year. But that-- also was asked to call Senator McDonnell to help negotiate with the Fraternal Order of the Police and so he, he actually helped with that negotiation. If you saw, it's about a 30 percent increase in wages, a significant increase in wages, also renegotiated the employees' salaries, a significant increase in wages and I, I greenlighted it. I said, absolutely. We've got to have staff. We've got to make sure that we can attract and retain the people we need to run our state, so kudos to the Governor for that recognition and certainly kudos to the Budget Director for putting-- moving the chairs around so that we didn't have a fiscal disaster right at-- right in front of us. But that also carries over logically to providers and we've had several discussions with nursing homes-- and if you remember, that's a, that's a critical issue with me. We actually had a bunch of nursing homes actually fail. We actually went through a change in methodology that Senator Williams negotiated. We gave them increases in reimbursement rates, rearranged a lot of different things to make sure those dollars went out to the nursing homes, and for a short period of time the nursing homes quit failing. Now we have another crisis and the crisis is obviously the census is down.

**WILLIAMS:** One minute.

**STINNER:** You know, nobody put their, their loved ones into the nursing homes, but they also have lost staff and so therein-- therein lies a problem there as well. That's 24/7. So theoretically, they should get a bump of 30 percent as well. Well, in Appropriations, we did 15 for nursing homes; we did 15 for DD; we did 15 for child

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welfare; we also did a 15 percent increase in behavioral health, halfway to the wall. We're going to use ARPA to bridge that in. And it saddens me that somebody suggested that we-- it was too much, that we got to cut it back to 7.5 because we need to have more money for the floor; \$453 million we brought to the floor and we got to have more money for the floor. I'm sorry, that, that really does not work well with me. We have to take care of these providers. We have to have nursing homes. Certainly, in rural Nebraska, we need to have nursing--

**WILLIAMS:** Time, Senator.

**STINNER:** Thank you.

**WILLIAMS:** Thank you, Senator Stinner. Mr. Clerk for announcements.

**ASSISTANT CLERK:** Mr. President, the Exec Board will hold an Exec Session under the south balcony now; Exec Board, south balcony, now. Additionally, Mr. President, some items, if I may: conflict of interest statement from Senator Morfeld will be on file with the Clerk's Office; additionally, LR335 from the Education Committee, that will be laid over; and Senator Hilkemann introduces LR336. That will also be laid over. That's all I have at this time, Mr. President.

**WILLIAMS:** Thank you, Mr. Clerk. Returning to debate. Senator Blood, you're recognized.

**BLOOD:** Thank you, Mr. President. Fellow senators, friends all, I actually stand in support of Senator Lathrop's floor amendment and I want to say that I have nothing but respect for Senator Stinner and I agree 100 percent with what he just said in reference to our providers. So much of what we're talking about in this current budget is really about things that have festered for decades, the prisons and their staffing being one of them. And I was asked to speak and I've kind of held back-- to be really frank, I've had laryngitis all week, so I wanted to wait until I could actually be heard. I have-- I did work maximum security for six years and I also worked for a crisis center for abused women and children, both domestic violence and sexual assault, with a shelter. And I sat on and resided over the Bellevue Public Safety Foundation, so I really have a 360 degree view of everything we've been talking about. And so I want to offer some food for thought and I really hope people are listening because I know that, as Senator Lathrop has pointed out over and over again, it just seems like people kind of know how they're voting when they come

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to the floor and there doesn't really seem to be this sense of let's communicate, let's see if we can, can move things around and make it better. So what I know, based on my experience and based on my research, is that every year, when you look at statistics when it comes to our state prison system, the majority of Nebraskans say that, that our prisons are meant to rehabilitate. But the weird dichotomy is that almost the exact same number, they also say that punishment is a priority. So before the tough-on-crime crime movement of the '70s, actually, we were moving towards rehabilitation. And I, I was always taught that prisons are about rehabilitate, incapacitate, retribution, and deterrence. So when you look at the system that we have now in Nebraska-- and again, we're trying to fix something that has festered for years. I remember reading things from when Governor Heineman was here and Lathrop was carrying the flag to institute better rehabilitation, to, to try and fix the system so we would quit tunneling people to prisons that were nonviolent that could have perhaps be rehabilitated. And so the question that we have to ask ourselves when we're this crowded is, how do you rehabilitate without the needed services? Because, think about it, here's a nonviolent offender in a closed environment, and Senator DeBoer talked about this a little bit on the mike already this morning, is that you had that constant threat of physical violence when you were incarcerated. You have to worry about your store or personal items being stolen-- and store is when you like go and get yourself like the cup of noodles, by the way, for those that aren't familiar with prison lingo. So here's somebody who's a nonviolent offender, who comes into a very violent environment. And so how can you be rehabilitated when you're constantly in fear of something happening to you? And you have to understand that in Nebraska, incarceration does not live up to its stated purpose of rehab and it doesn't do that because we have three voices in Nebraska-- and again, data shows this-- tough on crime, incarcerate-- prisons aren't supposed to be comfortable, which I don't disagree with, by the way-- and rehabilitate those people, but they don't understand that you can't rehabilitate those people in the environment that we have right now, or somewhere in between where you hear both voices, which I like to put myself in the middle. I hear both voices, but you have to know that not only are we failing the inmates, but at the end of the day, our prisons are consistently failing its employees--

**WILLIAMS:** One minute.

**BLOOD:** --as badly as those incarcerated. And I'm going to get back on here and I'm going to talk about what it is to be trained and work with these inmates because I want you to have a clear understanding



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of what we go through as staff and why what Senator Lathrop is preaching this week is so important to all Nebraskans because I don't think people have a clear understanding. What you see on TV is not what you see in our prison system. This isn't some type of HBO special. You need to know what's going on, what isn't going on, what's working, and what's not working because it's got to be more about just locking people up and you have to include the staff when we talk about this issue. And so with that, I'm going to get back into the queue and talk next about staffing.

**WILLIAMS:** Thank you, Senator Blood. Senator Friesen, you're recognized.

**FRIESEN:** Thank you, Mr. President. I'm going to spend my time talking about the budget. And I know Senator Lathrop's got his issues he's working on and I'm going to be listening, hopefully, but I just want to talk about the overall budget and how I'm looking at things this year. So in the past, we've held spending down to around that 3 percent number and I thought we've passed some very responsible budgets. And what I think we're doing this year is, since we have lots of money, we're just going to spend lots of money, and we've found all sorts of places to spend it. We've got inflation hitting 40-year record highs and we're just going to push more money into everything and we're going to keep that inflation going for as long as we possibly can. If we don't cut back on our spending, we all know what's going to happen in three or four or five years when everything turns south and we're short of revenue again. We're going to build programs here that are going to keep getting funded. I know they're supposed to be one-time funding or limited amount of time or they're pilot projects, but I can only recall one program in my eight years here that we have actually cut and gotten rid of and I think it saved the state \$250,000. That's the only program we've ever gotten rid of. So we're going to keep adding things and doing more and everybody is going to get used to having that more and so down the road, you keep funding it for more. So I think it's time to look at the budget numbers and see once what we're doing. And if we can't get the spending down to around that 3 percent again this year, we all know that inflation is going to kick in in the future, but it's probably not quite here yet, but it's coming. So our costs are going to go up and we're going to create all these new programs and we're going to put money into housing. We already can't find enough builders to build houses. They can't get the supplies and the materials to build the house but, yes, we're going to throw \$40 (million), \$50 (million), \$70 (million), \$80 million. I don't know what's all-- and between the budget and ARPA, we're going to build a lot of houses and

someday that housing market is going to break and then we're going to break some more builders because there's going to be subdivisions sitting empty. We're not good at picking winners and losers. We're lousy at it. Business knows how to regulate itself better than we do. So I'm looking at the whole budget, I'm trying to sift through all those things that got plugged in there, and I'm going to start digging through them one at a time and, and the issue is that we're going to run out of time on this floor to actually spend the time that we should, like we did yesterday, talking about each and every one of the departments that's getting funding increases of 20, 30, 40 percent. So as we go into this now, I mean, I know we're-- mainly this fight is about the prison issue, but to me it's more about spending. I'm assuming that down the road, the, the prison system, we'll get that worked out. There will be an agreement made, but I'm looking at the overall spending of what we're doing. And everybody already is complaining that they're not getting enough for either north Omaha or south Omaha or Scottsbluff, Gering, Grand Island. Everybody wants a spot at the trough. And I think we need to look at the budget a little more critically at the line items and see if--

**WILLIAMS:** One minute.

**FRIESEN:** --we can't be a little bit more judicious in how we're going to spend this money. And what is our long-term goal for Nebraska? I tend to maybe look further in the future and see once what is our-- what are the issues we're dealing with and how are we solving that long-term problem of the depopulation of rural Nebraska, anything west of Lincoln, and how that's going to look in 20 or 30 years if we don't turn that around? But it's not what we're doing today, it's not what we're looking at, and nobody seems to really care. So as we whittle away our time, I'm going to be spending time talking about the budget and how we spend our money. Thank you, Mr. President.

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

**M. CAVANAUGH:** Thank you, Mr. President. Good morning, colleagues. I don't think I'm going to be supporting this particular amendment of Senator Lathrop's, but there are others that he has filed that I am very interested in. However, I do appreciate the opportunity to talk about our criminal justice system. I made some notes last night. I was in the queue to talk before we adjourned last night, so I was making some notes about some of the things that were said yesterday about the criminal justice situation. And one of the questions that was asked on the floor was about a middle-of-the-road solution, and

isn't this a middle-of-the road solution in setting aside the money? A middle-of-the-road solution for our criminal justice system requires more than one thing happening. It is such an enormous problem that it can't just be dealt with through the appropriations process. We need sentencing reform. We need investment in community programming. We need investment in social programs that elevate people out of poverty. We need investment in education and workforce. So the middle-of-the-road solution or compromise or what have you is not to just appropriate \$175 million and set it aside until certain benchmarks are met so that we can build another prison. And I think everyone agrees that a new facility needs to be built, but we-- as everyone keeps saying, we are not going to build our way out of this problem. We have to take real, strategic steps to fix our criminal justice system. It is not working. It is not working for those that are justice involved and it is not working for the people of Nebraska. It is costing us way more money than it should because we aren't doing things the right way and the smart way. I agree a lot with what Senator Friesen was saying about long-term planning and a vision for Nebraska. We have an enormous amount of money right now and there's a lot of fighting over it and a lot of, as has been said numerous times, transformative policy, transformative projects. But who are they transformative for? We've had Senator McKinney and Senator Wayne do an in-depth presentation on how their project would be transformative for north Omaha. We have not had those same presentations from anyone else. No one else has to get up and defend every single dollar that they are asking for to this body because we don't have time. Well, if we don't have time, it does not hurt to not move things forward this year. This money is not going to go away before next year. If there are transformative projects that need to happen, we should be working on them and, and being judicious and diligent and thorough and studying what is the economic impact of these projects? Who are these projects going to serve? The ARPA dollars are meant to help those most adversely impacted by the pandemic. Are we doing that?

**WILLIAMS:** One minute.

**M. CAVANAUGH:** And I understand that we have all these cash funds. We have this great amount of Cash Fund dollars that we are using for some of these projects, but are these the right things for us to be using our Cash Fund dollars for? Are these going to be transformative for the people who live under-- in poverty? Who is this transformative for and how is this going to spur a better Nebraska for everyone? Those are questions that I want answers to. Thank you.

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**WILLIAMS:** Thank you, Senator Cavanaugh. Senator McKinney, you're recognized.

**McKINNEY:** Thank you, Mr. President. After we finished up and over the night and on my drive to Lincoln today-- well, I support FA74, but on my drive, I was thinking. And I guess I'll pose this question to the body, I'm not sure if people are paying attention, but raise your hand if you would like a prison built in your district. Raise your hand if you want a prison built in your district. Nobody raised their hand, but we got a \$270 million plan to build a prison. Where is it going to go? Secondly, we cannot grow our way out of this. Again, I will repeat, even if we voted this year to build a prison, it would take five-plus years to build that prison. And in the current state of the world, globally, in the supply chain and the war in Europe, it might take ten years. So hypothetically, it will take ten years to build a prison. We still have an overcrowding crisis. The population is still going to grow. So you could say no to not passing reforms, but the reality is we have to do something. We can't just build our way out of this. Do you want the federal government to come in and take over our prisons? Because that's the route we're going to go if we elect to build a prison and not pass reforms. We really have to think about this. We have to be smart on criminal justice, not tough on crime. And Senator Friesen mentioned cutting back on spending. I think we should cut the whole set-aside for \$175 million out of wherever it's at and put it back into wherever we could put it so we appropriate it this year so Offutt could get the \$20 million that they need, so we could do the trails that are, what is it, \$8 million. There's a bunch of other projects that \$175 million could go to that don't have to go to prisons. So as we go through this day, I won't-- if, if you stand up and talk about the prison, let's have a real conversation and let's not do a bunch of fear mongering and saying things about public safety. Public-- good public safety is being smart on crime. Good public safety is making sure people have livable-wage jobs, adequate housing, food on the table, proper education; that's public safety. That's what we have to think about. And again, I repeat, if you wasn't paying attention, President Trump a couple of years ago passed the First Step Act. A lot of you support President Trump. First Step Act goes further than LB920, but nobody wants to support LB920. So tell me, what's the issue? Think about that. And then, you know, conversations about humanity and being humane, it's not humane to introduce bills that would disproportionately target mentally ill individuals in our communities to charge them with felonies. It's not humane to say let's charge people with substance abuses with felonies to hope, to hope that they

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get off the substances. That's not humane. We have to-- I don't know what it is. I don't know if it's because it's election year or what. And maybe I just haven't been in a body long enough to fully understand that a lot of times when people stand up, I don't think they're speaking with logic and really thinking through the situation. In my experience growing up, as a wrestler, I had to think through every situation, and also growing up in poverty I had to think through every situation, and I just hope that you all think through every situation. We cannot build our way out of this. There are better solutions than building a prison.

**WILLIAMS:** One minute.

**McKINNEY:** Thank you.

**WILLIAMS:** Thank you, Senator McKinney. Senator Brandt, you're recognized.

**BRANDT:** Thank you, Mr. President. I've had the opportunity to serve four years on the Judiciary Committee and in those four years, it's been four years of Corrections oversight. I appreciate that Senator Lathrop is bringing this up. This is, this is a critical discussion that we're having. Would Senator Lathrop yield to a question?

**WILLIAMS:** Senator Lathrop, would you yield?

**LATHROP:** Yes.

**BRANDT:** Senator Lathrop, we are opening a brand-new prison this year out on Van Dorn Street. Can you tell me how many beds are in that prison and, and how that affects the existing operation of the State Penitentiary?

**LATHROP:** I can and, looking at the chart, Senator Brandt, that we handed out this-- the largest increase in the red line is the proposed new prison, the net effect of the new prison. The one immediately before that is 384 beds that will be coming online. This Legislature appropriated \$50 million to add a high-security housing unit with 384 beds. A number of us toured that about a month ago and those will be coming online, I think, in about-- sometime this summer.

**BRANDT:** So then when those, those cells are maximum-security cells, how does that affect the rest of the Corrections operation?

**LATHROP:** Well, you have the opportunity to place people who are at that maximum-security classification into appropriate or suitable cells. As we-- as I mentioned yesterday, the maximum-security cell is the most expensive cell to construct. They have doors that slide. There are certain things that, that they have that, say, a minimum-security cell would not and that will, as you suggested, come online. That's on the LCC campus, the Lincoln Correctional Center campus.

**BRANDT:** So Senator Friesen wants us to reduce spending, and I'm all for that. And, Senator Lathrop, how would we do that in Corrections? What is the cost to house a prisoner right now and is there a cheaper way to handle that?

**LATHROP:** If you take the-- great question. If you take the number of inmates that we have and divide it-- that into the overall operating expenses, it's about \$49,000 per person. So the cost of Corrections, by the way, that number's gone up 50 percent. We used to be at \$179,000-- pardon me, \$179 million in 2011. It's now up to \$270 million. Our population is growing. It's getting-- well, we've already talked about the, the growth. How do we save? Senator Stinner made this point in the Appropriations Committee. If we take a long-term approach and not just what's right in front of us, let's build a prison, that will help-- if we take a long-term approach just, just to 2030 and you say, how much capacity do we need in order to accommodate the projected population between now and 2030, it's twice what we're talking about. It's twice what we're talking about. So if you want to-- and I don't have a problem fundamentally with the idea that we're going to build a facility that's more humane than the one we have, but these two topics are inextricably tied together. They're not separate issues because if we don't do some form of reform, then we are looking at spending way more than \$270 million if our effort is to build our way out of this. And, Senator Brandt, at some point, the Legislature will say enough is enough.

**WILLIAMS:** One minute.

**LATHROP:** I think we should be doing it today, this year, now, getting ahead of that and doing what other states have done to stop the growth.

**BRANDT:** Thank you, Senator Lathrop. Here's something you'll never hear in the Nebraska Legislature: I want Alabama to be number one. This has been an ongoing fight between Nebraska and Alabama to see who has the most overcrowded corrections facility. When these new

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beds come online this summer, hopefully, Alabama gets up there. When we talk about LB920, our sentencing reform bill, hopefully, that allows Nebraska to let some other states get ahead of us on the-- on prison overcrowding. It's pretty amazing when you see that the state of Texas has closed, closed eight prisons. A lot of southern states have closed prisons. We are one of the few states that wants to build prisons.

**WILLIAMS:** Time, Senator.

**BRANDT:** Thank you.

**WILLIAMS:** Thank you, Senator Brandt and Senator Lathrop. Senator Lathrop, you're recognized.

**LATHROP:** Thank you, Mr. President. I want to make this point at this point in our debate on this topic. Right now, we're trying to share with you what the problem is. It's not that we don't have a solution. We'll get to a solution. We'll spend a good deal of today talking about this topic and we'll talk about solutions that other states have adopted: justice reinvestment, sentencing reform, and they've done it without impairing public safety. And the notion, the notion of justice reinvestment, colleagues, is that you are going to look at your prison population, who's coming in, how long are they staying, how soon do they come out, and what kind of services do they get when they leave, and also whether we can divert some of those people. That's, that's the justice reinvestment process. The entire process presupposes that you're going to look at sentencing, which we did in this CJI process and I'll get into that at some length as we go through this process. But for the moment, we're trying to give you information so that you understand what the problem is, the fact that it is a crisis. We can't as, as you've heard a number of us say, we can't build our way out of this. Even if we doubled the proposal the Governor currently has, we'd still need to build 200 beds a year. The 384 beds that don't really have a kitchen or any of that stuff, just the housing units, cost us 384-- pardon me, \$50 million to add 384 beds. So we don't want to go down that road. We recognize that we have a problem. We, we are going to talk about the solutions, but I think it's important that you understand every aspect of it. For those of you who are on the floor and those of you who are watching on the television, I want you to know something that we've done in my office to try to make it easier for you to follow along with some of the things we're going to talk about. We loaded the Judiciary Committee website with documents and we're going to be talking about those documents, but if you're, you're at home and you want to read

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any of these reports, read any of these studies, read any of these proposals, see any of the things we're talking about on the floor, you go to the Legislature's website and on the left margin, you'll find a link for committees. Hit the link. Go to standing committees. Under standing committees, find Judiciary and that will link you to, at the bottom half of that, a section called "Prison, Corrections, and Criminal Justice Documents, March 15, 2022." That's going to have all of the studies, all of the things that we're going to be talking about: the CJI stuff, the, the Governor's proposal, the Alvine Engineering study. There's a number of things on there that if you want to get educated about this topic, you want to ask questions about this topic, or if we are talking about a particular report or particular work from CJI, you can follow along, you can read it, and you can ask questions because this is the time. This is too important to not be engaged. It's too important not to be asking the, the, the difficult questions so that we fully appreciate the crisis we have and the necessity to act and the solution. And, colleagues, just to preview the solutions, the solutions that came out of the efforts of the CJI work group, the CJI and justice reinvestment have been into 13 other states before they got to Nebraska. Before they could come here, we did our due diligence.

**WILLIAMS:** One minute.

**LATHROP:** These guys have been in conservative states. They've been in South Dakota. They've been in other places who-- Utah, for example, that had a very similar situation where they needed to build more capacity and they brought CJI in and it helped with that entire process to assure that they were building what they needed and not more than they needed. And they did reforms and they are doing it without sacrificing public safety. The solutions that we will talk about as the day goes on do not sacrifice public safety. It is about investing our tax dollars more wisely. I sometimes make this illustration. If we're going to have somebody spend 20 years in prison, will we get what we need out of that if we have them spent 19 years in prison and spend \$50,000 or \$49,000 on that person's rehabilitation or on their release transition services?

**WILLIAMS:** Time, Senator.

**LATHROP:** Thank you.

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



**J. CAVANAUGH:** Thank you, Mr. President. So-- well, I was-- got a couple of things to say about the prison, but I thought I would start with Senator Friesen and I feel like often we are, I don't know-- in singing terms, are singing a duet or something. Senator Friesen and I, I feel like, talk about a lot of the same topics, but not in the exact same way. But one of the things I wanted to talk about was that in the budget forecast, revenue forecast talks about the amount of federal funds that have come into the state over the last several years. A total of \$24 billion was allocated to the state of Nebraska in multiple forms. To put that in perspective, it is the equivalent of 22 percent of the total state personal income and thus is not unique to Nebraska, as most all other states are experiencing the same revenue growth. That's relevant because we're talking about the-- you know, we have more money for the floor. We're talking about spending money into the future and what is a reliable prediction about what the future holds. And obviously, we need to make sure that we are recognizing that these years with the 13 percent and the 10 percent growth are aberrations, divergence from the norm. And one of the reasons for that is 22 percent of the personal income, which means the, the basis of income tax, came from federal money coming into the state, and that as-- the downside is that the large amounts of federal funding assistance is temporary and the high revenues attributed to circulating a large amount of federal funds is also likely to be temporary, leading to a low growth or decline of revenue over the next two to three years. Those are important things to consider as we talk about this budget, we talk about investments, huge investments in the future like the canal, like the lakes, like a prison. These are huge costs that we're talking about undertaking at the moment because we have money, but they will have ongoing costs, they will have additional cost in the future, that we need to make sure that we are recognizing that we need to be more cautious. We need to be more conservative about what spending we're undertaking in the long term. Senator Friesen is right, right? We shouldn't be spending money just to spend money. We should be as conservative with the money as possible. We should only spend money that we need to spend. But really, I mean, I think this is a relevant point that we need to keep in mind as we talk about this, as we talk about revenue bills going forward, but I wanted to mention this because I was listening to NPR, the radio on the drive in this morning, and there was a story about student loan forbearance or the, the moratorium on paying student loans and about how that is another program that is set to stop-- the federal government's going to stop their moratorium sometime soon and that individuals who are not currently paying their student loans are going to have to pay them again. And that can be

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hundreds, if not a thousand dollars a month, that individuals are now being able to use for rent, for utilities, for groceries, for other expenses that they are then putting back into our economies. And so that's not factored into the \$24 billion that has been put into the Nebraska economy, so that number is actually even higher. And again, it's another amount of money that we are currently getting from the federal government, that we're putting into the state economy, that is causing these increased revenues that are temporary and that we need to make sure we are considering as we talk about these long-term outlays. And so, as Senator Lathrop said, we will get on to talking about solutions at some point here because there are a number of them that have been proposed that are reasonable, that have been undertaken by states like Texas, Tennessee, Utah. But the, the-- it is always good when talking-- having a big discussion to frame the argument around--

**WILLIAMS:** One minute.

**J. CAVANAUGH:** --thank you, Mr. President-- in the context of what is the, the problem? The, the issue presented is that we have a prison overcrowding problem that will cost us a huge amount of money going in the future if we don't take a different approach. There is an option available that is, is perhaps not the entire solution, but it is part of the solution and it's a step in the right direction, which is LB920 that hopefully we'll get to in the, in the near-- coming days. But that is, is one step in that direction to take the, the action that is necessary to prevent us from having to make further huge investments in, in building prisons, in incarceration going forward. And so it's important to understand the lay of the land as a whole as we talk about all of these issues and how they interplay with each other. And so I think that that is part of this topic and I will push my light and get back in the back of the queue. Thank you.

**WILLIAMS:** Thank you, Senator Cavanaugh. Senator Arch, you're recognized.

**ARCH:** Thank you, Mr. President. I-- I have some questions for Senator Stinner if he would yield.

**WILLIAMS:** Senator Stinner, would you yield?

**STINNER:** Yes, I will.

**ARCH:** Thank you. Senator Stinner, you and I have had, have had conversations about the percent increase for some of the providers.

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Bill-- actually rate increases. While, while the intention is that this be used for increase in wages, there's really not any way that I-- well, let me just ask the question. Is there any way that we can be assured that these dollars will go to an increase in wages or is-- are these simply to the organizations, to the provider organizations themselves, they will decide whether it goes to wages or used for any other purposes?

**STINNER:** I'm trying to think of exactly-- the way that works is reimbursement rates for different levels of care. And obviously the funding would go to an institution that is having a large-- well, it's actually toward-- structured toward institutions that have more Medicaid patients so that there's a bias toward that. With that in mind, then, their reimbursement rates are less than certainly private pay and less than Medicare, but Medicare usually only covers for 30 to 60 to 90 days.

**ARCH:** Right.

**STINNER:** I'm not sure that I have a methodology to-- or a mechanism to command them to use it for frontline pay, but that's where the weakness is today. That's where they have to have staffing in order to build their census backup, which is related to how much revenue they can produce.

**ARCH:** Right. And when, when you were approached by providers, by organizations requesting the increase in their rates, there was discussion of the state has raised, the state has raised their rates for 24/7 providers, therefore, it's extremely difficult for us now to recruit. And so the, the discussion was that it was wage inflation that was driving the-- this percent increase, is that correct?

**STINNER:** It would-- well, I'll tell you what was driving it; wage increases and competing-- well, the Mc-- the McDonald's and, and some of those other types of institutions were actually poaching some of their labor. Some of it retired and stayed home, but it really was the fact that there is tons and tons of vacancies, and I'm talking specifically about nursing homes, that they need to have a wage increase to attract and retain, retain the staff they have and then try to attract new staff so that they could bring those folks back from, from the other institution where they went, make them more competitive. It's similar to what-- and I think it has worked, if you look at what's happening to-- the Kearney hospital now is almost fully staffed. Obviously, increases in wages helped Corrections, so--

**ARCH:** Right.

**STINNER:** --that would be primary examples that you can really cite that this is, this is an effective tool.

**ARCH:** Well, I know over the, over the summer, one of the LRs that we had at the HHS Committee was on developmental disabilities and, and a provider association came in and said that they were running about 30 percent vacancy in their, in their staffing to the point that they were not able to accept new referrals off of this registry that we've talked about before on this floor. And they had to put a hold on it because they weren't able to take more, more of the individuals with disabilities. So I mean, I understand, I understand the issue. I, I--

**WILLIAMS:** One minute.

**ARCH:** --guess, I guess my question is I-- you know, my, my pause is that I would like to be able to say that this is to be used for a wage increase and-- but it's-- but what, but what happens is when you do the 15 percent or whatever that percentage is, it goes to the rate, not to the wage, unlike the state. When the state raises wages, they can, of course, direct it to their employees and raise those wages, not to the department where the department does it all and never-- the wages never trickle down. So I guess my question is, should we be building any other language into this, into this bill that, that either builds intent language in or something that, that can direct that these dollars be used for increase in wages? Because that's, I believe, what our intent is and, and perhaps we can discuss some of that off, off the, off the mike here. Thank you very much, Mr. President.

**WILLIAMS:** Thank you, Senator Arch and Senator Stinner. Senator Bostelman, you're recognized.

**BOSTELMAN:** Thank you, Mr. President. Good morning, Nebraska. Good morning, colleagues. I'll follow up a little bit with what Senator Arch is talking about and I agree with him wholeheartedly in the sense is there something needs to be done there because there is a significant need. I think Senator Aguilar had an LR this last interim, and I went out to the Kearney Veterans' Home, the state-run veterans' home out in Kearney, and my dad is in that facility right now. And the thing is, is that they have a significant need for staffing. And part of that challenge was, was how much they're getting paid. So that increase in pay has really made a difference out there for them. It really makes a change to bring more staff in

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because it is, it was a significant issue for them and this helps them out a great deal to bring additional staffing into that facility. It's needed because they can only fill so many beds if-- with the staff they have, and we can serve more veterans in the state if we have additional staffing. And when you're paying less than what the local community does in this-- in skilled nursing facilities, it's hard to fill those positions. On the second note I want to talk about on this one a little bit is I have an issue that we're dealing with, with the Kearney Veterans Home, which I think needs to be looked at and maybe we'll look at it over the interim. So they've increased the cost for a veteran to be in that home 5.9 percent this year. Why? Why are we increasing 5.9 percent for our veterans who need that care the most and the state's providing majority of the cost or for-- pay for that? What is that going to? Are we just raising it because? I don't-- I think every veteran or spouse of a veteran that's in that home is more than willing to pay their fair share. Don't get me wrong, that's not the issue. The issue is, is you're there less than a year and they're going to raise your rate 5.9 percent, 6 percent. And when we look at our budget here and when we look at other agencies, we want them to hold down their budgets, we want them to hold down their costs. Why is it that in this facility or these facilities across the state there's that much of an increase all at one time? To me, we should be in that 3 percent or less if you're going to do that. If we're going to provide, if we've made that decision as a state to provide these homes for our veterans, to provide funding and those things to offset some of those costs for those veterans, which we're very much appreciative of, why are we having such a significant increase for these? And the initial talks I know I've had with them, well, that's because industry-wise and that's what everybody else does, this is what we have to do. Well, I'm not so sure we have to. So why? Why? What are those increases? Well, if they're meds, doesn't Medicaid pay for that, Medicare or whatever? Don't-- aren't there funds, federal funds coming into that facility pay for those costs? If it's-- if it's-- it's not for upkeep and maintenance, my understanding, although we do have a problem with that, I think, in the state. And I know we have that problem. When I was on the Building Maintenance Committee, we went to-- is it Bellevue?-- to the home over there. They had problems with their HVAC system after it was newly constructed that it wasn't done right. But did we hold the contractor responsible to fix it? No. So out in Kearney we have issues with concrete, we have issues with doors, we have issues with ceiling, a roof that's leaking, do we hold the contract responsible for it-- contractor who built it responsible for it? No. So that comes. So we have to pay for that. So with that

part of it is, I think, that's maybe something in Government Military Affairs we need to take a look at is, how do we keep contractors responsible for the work? Is there some type of warranty system that we can put in place, some type of a guarantee that within a year or two or whatever we don't have problems, we don't have a HVAC system that doesn't provide heating and cooling to rooms that's--

**WILLIAMS:** One minute.

**BOSTELMAN:** --that's required, or that we don't have door-- we have doors that will open or close or lock properly or that concrete isn't heaving in areas or the roof isn't leaking? Shouldn't we have those things? But I'm-- but I'll come back to the original reason why I come up and talk. And it's, again, I think, that 5.9 percent, I think that's something that needs to be looked at and needs to be considered. I think that's too much of a jump in one year or less than one year if our veterans are in that home. If we're there to provide a service for them, if we're there to take care of them and help them or their spouses, I think that really needs to be looked at. And I don't think that's proper. Thank you, Mr. President.

**WILLIAMS:** Thank you, Senator Bostelman. Senator DeBoer, you're recognized.

**DeBOER:** Thank you, Mr. President. Well, colleagues, I'm ruining my low average for times at the mike per amendment on this one right here. The reason is we need help. We need a plan. I'm going to say that every time I get up on the mike today. We need a plan. We need a whole plan, a whole plan for how to deal with the entire overcrowding problem in our prison system. The black dotted line that we have here, we need it to be under the red line. The red line is how many beds we have. The black line is how many people are coming into our prisons. The black line needs to be under the red line. Not just once, not just dipping under there one time, we need the black line to be perpetually under the red line. We need to do that. It would take building 200 beds a year. Can you imagine that? We added these 384 or 386-- I can't remember which-- beds, but as Senator Lathrop pointed out, we didn't have the kitchens and all the other pieces to add. This was just the dormitory part. This is an expensive proposition, to add 200 beds every year for, I guess, ever. We have got to figure out a way to make our growth in our prison population slow down. We've got to find a way to make the black line, representing the growth, go underneath the red line, representing how many beds we have. What is our plan for doing so? Talk about building this prison right now, it feels a little like rearranging the deck

chairs on the Titanic. And it's important to have the right facilities. I get that. That isn't a premise that I am against. What I am against is rearranging the deck chairs on the Titanic when we know the problem exists. My very first hearing four years ago: Can we build our way out of it? No, we cannot. We talked about the things around the edges that we were doing, making sure that certain kinds of programs get done, things like that. And I remember saying-- and I remember this because I learned not to say pithy things unless I wanted them quoted by the press-- I remember saying it sounds like we are installing fireproof tiles and we're in a burning building. The time to install fireproof tiles is not after the building is halfway burned down around you. We need a whole plan. What is the plan? All we're doing right now is getting a better, better view of the iceberg as we're sitting on the side of the Titanic and that's a problem. What is the plan, the whole plan? Senator Lathrop, would you yield to a question?

**WILLIAMS:** Senator Lathrop, would you yield?

**LATHROP:** Yes, I will.

**DeBOER:** Senator Lathrop, the CJI process-- I was not on that committee. In the CJI process, did you come up with recommendations?

**LATHROP:** Yes.

**WILLIAMS:** One minute.

**DeBOER:** Thank you.

**LATHROP:** Yes, they did.

**DeBOER:** And would those recommendations help us or would they get us to a place where the black line is under the red line, the-- our prison expectation of population is below the capacity that we have?

**LATHROP:** It could. It depends on how soon the benefit of those proposals would be realized relative to the opening of the new facility. But yes, if we, if we flatten the line-- if we adopted all of the CJI proposals-- and they're, they're, for the most part, all in LB920-- it would effectively flatten our rate of growth to almost zero in terms of our rate of growth. And if we did that and built the new facility, we would be out of an overcrowding emergency, I believe.

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**DeBOER:** That sounds like the closest thing to a plan for getting out of an overcrowding emergency that I've heard since I've been in here.

**WILLIAMS:** Time, Senator.

**DeBOER:** Thank you.

**WILLIAMS:** Thank you, Senator DeBoer and Senator Lathrop. Senator Blood, you're recognized.

**BLOOD:** Thank you, Mr. President. Fellow senators, friends all, I still stand in support of Senator Lathrop's efforts, but also support both the amendment and the underlying bill because I know that we need to move forward on, on many of the issues within that bill. But with that said. Senator Lathrop has had a plan for a really long time. When Senator Lathrop was here previously, he pushed, he educated, he worked with the executive branch, and it fell on deaf ears, as many of the issues in Nebraska have happ-- have done. We've allowed issues to fester over decades. The problems that we are experiencing now that we're trying to build our way out of happened decades ago. How long are we going to wait? When I was closing the first time I was up, I talked about how, at the end of the day, prisons fail not only those incarcerated but also those that are employed. We've known for a really long time that they were underpaid there in the state prison system. And by the way, so are our state employees. We are losing state employees at a very high rate because they can get \$5 to \$10 more an hour in the private sector. So there's your next big issue that you're going to have to start looking at when we look at the budget in the future. Senator Brewer and I were just talking-- going back to staff-- about something that people have to understand in this body. So much like the military, when you are trained to work at the prison, you are trained to be desensitized and you are trained to compartmentalize, because when you run to break up a fight, you can't pause and take a step back because there are other people running with you or running behind you and you have to make sure that you complete your mission. That mission is to break up that fight. That mission is to make sure there isn't a riot. That mission is to provide aid to somebody that needs help. You don't get to think about whether you're going to be harmed or if anybody else is going to be harmed. You just have to make sure that you do your mission to try and prevent those things from happening. And so I want you to think about it: you have staff in these overcrowded facilities, worst-case scenario; inmates in these overcrowded facilities, worst-case scenario. But we're not doing anything to get people out of those facilities and so, as a result, you have inmates with PTSD;



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you have staff with PTSD; you have inmates with abuse issues. And, you know, let's be honest. We know that there is contraband that comes into the prison; otherwise, we wouldn't do cell shakedowns. And we know that staff is dealing with issues. I know from when I was at the prison that there are two people that I worked with that have been incarcerated since that time. They made bad decisions. I can tell you, when I worked there, that there was always a demographic that went out to drink every single night after we got off work because, much like the military, the only people that really understand what you, you go through are the people that you actually work with. Think about it: you're in this fishbowl all day long. And those incarcerated have nothing but time on their hands because we're not doing a good job of keeping them busy or rehabilitating them, and so they have nothing but time on their hands to figure out how to screw you over. And they're pretty smart about it and pretty clever.

**WILLIAMS:** One minute.

**BLOOD:** What Senator Lathrop has offered for, for as long as I can remember is that how do we sort out who's really dangerous and who is not? And how do we provide services to those that are not dangerous and appropriate sentencing? Pretty simple, but yet we've taken these simple solutions and we always go back to the same thing: We have to be tough on crime, we have to be tough on crime. We absolutely have to be tough on crime, folks, but if we don't rehabilitate those that are committing these crimes, these people, as you already heard Senator DeBoer say on the mike today, will one day be your neighbors. Do you want them rehabilitated or do you want them to come back into our community being better, being better criminals-- because, hey, they learn a lot when they're in prison about how to commit better crimes-- or do you want them paying taxes, contributing to society, and being good neighbors? This is the decision--

**WILLIAMS:** Time, Senator.

**BLOOD:** --that we're faced with. Thank you, Mr. President.

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

**PANSING BROOKS:** Thank you, Mr. President. Well, I'm, I'm going to have to repeat the vicious cycle again because that's what we've been talking about since 2015. The vicious cycle is that we have overcrowding, which leads to understaffing. And then we have because of the understaffing, we have a lack of programming because there are

not enough officers and staff members to be able to take the prisoners to the programming they need, and then there are also not enough rooms for the prisoners and the inmates to be able to go to that programming. So since we have a lack of programming, the inmates do not get the programming they need, and so then they end up being denied parole eligibility. And at that point then, they end up jamming out without the programming necessary to make them safer members of our community. And once they jam out without that programming, what happens then is that we have recidivism because they haven't been, they haven't been trained or helped or had any of the programming that they need. And then guess what? Once we have recidivism, they come back into the prisons and, and continue to add to our overcrowding problem. So in 2015, when I first came to the Legislature, then-Chair of, of Judiciary, Senator-- former Senator Seiler, asked me to lead a group to study both sentencing and programming and look at sentencing reform and programming within the prisons. Those are the two key issues that are affecting our overcrowding problems right now, and we continue not to address those issues. As Senator Brandt said, Texas is closing their prisons. I looked up an article about that and one article in-- let's see, it's, it's from the ambassador, Antonio Garza. As Texas prison population shrinks, the state is closing more lock-ups. And what that article says is the Texas Department of Criminal Justice's Executive Director Bryan Collier said diversion, diversion treatment-- diversion is part of re-- of se-- re-- sentencing reform, sorry-- diversion treatment-- that's included in programming-- and education programs, as well as a low rate of getting people sent back to prison, led to the decision to close prisons. This decreasing demand for secure housing and projected stability in the offender population makes possible the decision to reduce state spending through the closure of excess correctional capacity, Collier said in a statement. Quote, the agency can close these facilities without negatively affecting public safety or causing any loss of jobs. Crime rates have also decreased in Texas, according to reports from the Texas Department of Public Safety, and prison reform advocates say prisoners are being approved for parole at a higher rate this year. There, there's our issue, but instead we're just on the mantra let's just spend more money, spend more money, build more prisons, don't deal with the issue. That's like, that's like having a child and saying, quit jumping off the balcony and breaking your arm so your arm doesn't break, and instead just continue to fix the arm and let the child jump off the balcony. This is, this is folly. We have, we have done this since I've been in here. We refuse to look at the issues that caused the overcrowding and the need for building more prisons.

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**WILLIAMS:** One minute.

**PANSING BROOKS:** Those issues resolve around re-- sentencing reform and programming early in an inmate's time in prison in order to be able to solve the problems and bring people into, into our communities who are safer and easier to live by as neighbors. Thank you, Mr. President.

**WILLIAMS:** Thank you, Senator Pansing Brooks. Members, Senator Geist would like to introduce nine members all across Nebraska of the Legislative Field Experience. They are seated in the north balcony. Would you please rise and be recognized by your Nebraska Legislature? Returning to debate, Senator McCollister, you're recognized.

**MCCOLLISTER:** Thank you, Mr. President. Good morning, colleagues. I love the metaphors we're coming up with to describe our criminal justice system; rearranging the deck on the-- the chairs on the Titanic, falling off of a balcony. Maybe I'll try using the flow of water. Water comes into a dam and, and leaves the dam. If the dam is too small, the dam bursts. Maybe we could draw an analogy to our criminal justice system. I love the discussion we had yesterday about the budget. It was informative. Some of the-- my favorite senators, Senator Erdman, Senator Ben Hansen, were, you know, taking a detailed look at the budget and we talked about trails and we talked about STRATCOM. We talked about the Perkins project. But here we have a, a situation on our hands dealing with a criminal justice system that's-- is a huge problem we really haven't dealt with. We didn't deal with it during the administration of Governor Heineman and Governor Ricketts hasn't dealt with it either. When I was at the Platte Institute, we would look at problems through the eyes of federalism, federalism, and there's always a state that's doing something right. And I would contend that Nebraska is not handling its criminal justice system right. We've talked about Texas and Texas has done something right. Here we've got Texas, one of the most conservative states in the country, and they're doing-- they're dealing with criminal justice system in a positive way. How come we can't take that very same lesson and do that here in Nebraska? I don't understand. This is a smart Legislature. During the time that I've been here, the budget has been under control, 2 or 3 percent only. We had to cut \$1 billion out of the budget while I was here. Now we have an unusual situation, but we also have a problem that we just haven't dealt with in at least a couple of decades and it's now time to deal with it. There's a path forward, and that's using federalism, using the plan that we developed from the criminal justice system and, you know, looking at LB920 when it comes to the

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body, because I think that is the way we need to go. During my time here in just the last couple of years, I've put in four or five bills with-- dealt with the criminal justice system. LB114 would allow those who have received set-asides on their convictions the opportunity to petition the sentencing judge to seal the records. That's a good idea. LB130, an amendment proposed by Judiciary legal counsel to require the Board of Parole to have at least one member with professional experience treating mental illness on substance, substance abuse. LB269: require the Board of Parole to yearly review all committed offenders who have been incarcerated for more than 30 years and require the board to annually publish a list of those committed offenders who are 60 years or over. Senator McKinney had this very same idea and it's a credible, good idea that we should, we should follow up on. Another one, LB1031 to ensure reasonably priced phone call rates for inmates. Inmates need to stay in contact with their families and when we overprice that service, it makes it difficult for the families and the inmates to stay in contact. And when that occurs, when they can't stay in contact with their families, they're more likely to reoffend and end up back in jail. So, so let's, let's have this very necessary discussion, wait for LB920 to come to the floor, and make the changes that we make-- need to make. Thank you, Mr. President.

**WILLIAMS:** Thank you, Senator McCollister. Senator Walz, you're recognized.

**WALZ:** Thank you, Mr. President. I am really glad that Senator McKinney brought up who in this body would like to raise their hand and say we want a prison in our community because, as a representative of Fremont, a representative of my community, I have to stand up and tell you that Fremont does not want a prison and they have some really good reasons why. I've been working with my community economic development groups, my business community, and my mayor and it is clear to me that Fremont does not feel they have the workforce to staff a new prison. With all the investments and the incentives that we've made to make sure-- or that we've made, I think it's really important that we can assure the businesses like Wholestone and Lincoln Premium Poultry-- lots of in investment, lots of incentives were given to those businesses to come to Fremont. Don't you think we should make sure that we have the workforce for them so they don't leave? Wholestone Foods-- or Wholestone Farms will be adding-- they're adding an addition to their plant and that means that they will add a second shift by 2025, meaning they will need to fill hundreds of jobs. Lincoln Premium Poultry has been a great addition to our economy locally and across the state and they are

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still in need of employees. Lincoln Premium Poultry and Wholestone Foods, as well as many other manufacturing and businesses, have invested millions of dollars into our economy. And again, shouldn't we make sure that we are doing exactly what we can to keep them? There's also a future port authority project that my community is pretty darn excited about, bringing hundreds of jobs in. Altogether, Fremont could possibly need about 3,500 jobs that need to be filled. And what about the staff in Lincoln at the prisons? I mean, what are the staff in Lincoln supposed to do? Drive an hour to Fremont, drive an hour home? Experienced staff that we have in Lincoln. Honestly, we do not have the workforce in Fremont for a prison, and we certainly do not want a prison without a solid plan to reduce recidivism and implement quality training plans and supports and resources to reduce recidivism. I want to go to the plan for a minute and ask Senator Lathrop if he would yield to some questions.

**WILLIAMS:** Senator Lathrop, would you yield?

**LATHROP:** Yes, I will.

**WALZ:** Thank you, Sen--

**LATHROP:** I'm happy to.

**WALZ:** Thank you, Senator Lathrop. I, I've spent some time looking through the Nebraska Criminal Justice Reinvestment work group and I have to say that, you know, in the acknowledgments, there are-- it seems to me like there are a lot of experts who have given input. Can you just talk about the process of this work group?

**LATHROP:** Yes, that's certainly on my list of things to talk about I'll, I'll try to give a big--

**WILLIAMS:** One minute.

**LATHROP:** --overview. The three branches of government-- the legislative, the judicial with the Supreme Court, and the executive branch with the Governor-- invited CJI in. CJI has been in about 13 states. They go through people's data or, or states' data on corrections, probation, parole, incarceration, diversion, all those things, how long people stay, how they get out, when they get out, whether they get parole, and the-- at, at what rate, and whether they're successful on parole. They bring all that information back to the group and share it. We have two-- and it's in the Judiciary Committee's website, the two slideshows that they presented to the larger groups so that we understood the data relative to the state of

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Nebraska and the Department of Corrections and our criminal justice system. From there, the large group of about 15 split up into three different groups, each focused on--

**WILLIAMS:** Time, Senator. Thank you, Senator Walz and Senator Lathrop. Senator Machaela Cavanaugh, you're recognized.

**M. CAVANAUGH:** Thank you, Mr. President, colleagues. So I've been going through and notating the budget, this AM1999, which I just realized is a Prince song. So I'm going through and looking at this budget and I'm highlighting all the things that are new and here's, here's the rub for me, colleagues. For years, if not decades, the Nebraska Legislature has chosen not to prioritize the people that are most vulnerable over economic development, tax cuts, projects, and I look through this and I see that there are some increases to essential things like childcare reimbursements, provider rates for Medicaid, but those are things that should have been done years ago and we aren't even catching up to where they should be with this bill. We're just catching up to where they should have been years ago. And so we're still running from behind on these things and this budget, this transformational budget that has hundreds of millions of dollars going to projects-- projects that are in the interest of various members of this Legislature-- and we have not hundreds of millions of dollars going to affordable childcare, accessible childcare, housing, food banks, SNAP, minimum wage, transportation, broadband. Instead, we are spending money without being judicious about how we're doing so. Last year, I read the article from ALEC about Texas. I believe Senator Pansing Brooks was reading it earlier. I have a copy of it here. Texas made transformational reform in criminal justice by doing sentencing reform, by doing what LB920 seeks to do, and they end up saving hundreds of millions of dollars, hundreds of millions of dollars that they say that they can put into projects like building a canal or a lake or an amusement park, I don't-- whatever, trails. If we were to treat the people that are most vulnerable in our state with dignity and elevate them, we would all do better. Senator McKinney asked at the start of this morning for any senator to raise their hand if, if they would want a prison built in their district. I'd like to know, is there any senator that would like to have a hospital built in their district? I'm not going to raise my hand because I have two hospitals in my district and it's very condensed, so I don't think that we could have space for another one. But does anybody else want a hospital in their district? Because we have money to build a facility that can house 1,500 people. Why are we not talking about a 1,500-person mental health facility? That would be transformational for the state. We know for a fact that

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people who are incarcerated are much more likely to have severe mental health issues. A mental health facility would serve the state better than a new prison. Sentencing reform would serve the state better. And when--

**WILLIAMS:** One minute.

**M. CAVANAUGH:** --thank you-- and when we talk about making a new pri-- building a new prison, it is very disingenuous to talk about the old prison, the current prison. Yeah, it's an old facility. It is an old facility and the people that are there should have a nicer place to live. But we're not talking about reducing the prison size; we're talking about expanding the prison size. So saying shouldn't they have a new place to live? Sure, but you still want to be able to incarcerate more of them and do nothing about the problem and that is problematic. We need to be smarter. Thank you.

**WILLIAMS:** Thank you, Senator Cavanaugh. Senator Vargas, you're recognized.

**VARGAS:** Thank you, President Williams. Members of the committee, I just wanted to weigh in here in a couple of different things because as much as Judiciary-- and I appreciate everything that they've done-- have seen this problem, have been working on the issue, and are trying to do everything they can and, you know, look, you know, I support LB920 for many practical reasons, mostly-- I mean, mostly fiscal, and here's the reason why. For years, the Appropriations Committee has been receiving reports for our spending. Fiscal Office has been with us every single step of the way. We have grossly underspent in Corrections. It's not a question of if it's true or not. It is factual. For years, we have underspent in Corrections. The major reason we've underspent has been because of staffing. We haven't been getting out. We have many FTEs at all levels that remained unfilled. Now the importance behind this is they've been unfilled for years and what we continue to do every single year was carryover the appropriations. This is an enduring issue and problem. Part of it had to do with our salary and our pay wasn't keeping up with many of the other competing jobs that those individuals that are working in our prisons can take up. Now, the importance behind that is we on the Appropriations Committee were really fighting for this for years, Senator Wishart was fighting for, for a while when we were trying to do some competitive, competitive pay. And at the end of the day, it took this to really try to push for more pay. Now we're finally increasing pay. I think that's great. I think the thing that people need to realize is that that's in a time of inflation. We've

increased pay within time of inflation. It's only a matter of time when the pay everywhere else becomes more competitive and we're not as competitive anymore. At any given time, we had anywhere between \$15 (million) to \$19 million in reappropriations just in the prisons/Corrections budget for about four years while I've been on the Budget Committee that they were unable to spend. Up and down, from mental health facilities to, to people that are supervisors to entry level officers, we couldn't, couldn't find them. That is not a problem that is being solved yet. It's a problem that we've made a step in the right direction, but it's going to continue on. And this is kind of what Senator DeBoer is-- we don't have a plan. These things are going to continue on. So when inflation does what it's doing right now, making it a lot harder and our affordability be a lot harder, that means we're going to have a pay problem and a human assets problem with-- in terms of the number of people that are going to actually be working in our Corrections system. And now we're talking about building a new prison. The new prison is going to be about 70 percent medium- and high-security beds. We've heard many people talk on the floor and we have about 1,000 overcapacity right now. Most of those aren't medium- and high-security individuals, but we're going to build a prison that's going to meet a need that we don't currently have as much. So the only solution is going to be, in about four to five years, to build-- even sooner-- to build another prison that is going to cost the taxpayers more, that's going to cost more staff that we are not entirely sure that we can fill those staffing needs unless we also continue to increase pay a lot more. And I hope that's the continued plan of the future administration.

**WILLIAMS:** One minute.

**VARGAS:** That is the only way that we can handle this and that is just going to equal more and more dollars. We have a real opportunity to do something: step back, plan, look at reform, try to make sure to slow the curve. I don't think that part of this is rocket science. It's whether or not we invest in it. At the end of the day, every priority we want costs money and this is going to be an increasing wedge in our costs for our budget from here on in. And if we're not accounting for it, what we do now is going to decide whether or not we're allowing that wedge to continue to supersede every other major priority we have for the state of Nebraska. Thank you.

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



**M. HANSEN:** Thank you, Mr. President, and good morning, colleagues. Colleagues, this is actually the first time I've been able to get up and speak on LB1011 and I want to rise and kind of continue the discussion Senator Lathrop and others have been leading on kind of the notion of our state capacity and state priorities and state institutions. One thing that I did want to say and address is, I believe Senator Machaela Cavanaugh just asked, you know, would anybody volunteer for a new hospital in their district? And I would. I was way back by the printer, so I'm not sure if that was seen. But we've got space in District 26 and I think that's something that the state should really look at investing in. I do think increasing the amount of kind of inpatient mental health beds the state guarantees and the state provides would be very transformational. And that is something that I've been working on. I'm kind of remiss that I didn't propose an outright appropriation this year, but that's something that I think this body is going to have to seriously look at and consider, hopefully in the next few years as we learn more and more. And part of the reason for that and part of the reason I want to talk about that is, you know, in addition to the prison overcrowding, we're running into a tough situation in which we are kind of at capacity and risk of overcrowding at many of our county jails and our county facilities. And the difficulty there is, of course, is, you know, the county boards are a charge of managing and building, constructing these facilities and running them, but they're not the ones that pass crimes. They are all there on either state crimes or, in a few places, city/municipal violations. They're either pretrial detainees awaiting trial, kind of regardless of whether or not they're going to get sentenced to probation, jail, at the State Pen-- sorry, prison at the State Pen, jail in the county jail, whether it's a misdemeanor or felony, as well as people who are carrying out, you know, generally misdemeanor sentences and now, after LB605, some parole violations. And I bring all of this up in the sense of if the state continues to neglect our mental health obligations specifically for competency restoration, we are going to only exacerbate that and make that problem worse in the sense that there is a considerable portion of people waiting to go to a state-run or allocated or contracted mental health bed who have no other place to go so they sit at the county jail up until then. On competency issues alone, which, per our state law, is a state responsibility managed by DHHS, on that issue alone, we have, at this point, you know, over 70 people on the waitlists often waiting over 120 days or thereabouts. That's a cost and an obligation that the counties are picking up solely because the state has not figured out a way to provide adequate mental health capacity for those. And the difficulty there is, of

course, we have a finite amount of actual state institutions, basically the Lincoln and Norfolk Regional Centers, and those have to divide up between a wide variety of things, including Mental Health Board commitments, other issues, competencies, and other groups. And I bring all that up to say is obviously we are dealing with this layer and this lens of all different issues-- sorry, not all different issues, but all different layers of the state, certainly concerns about the obligations and continued kind of trend we see of incarceration and what impact that's going to all have on our individual counties and what all expenses they're going to have on them as well as at the state level. And so that's something that, in terms of my career and what I've focused on, I've often focused with the county board. My Lancaster County Board has been very proactive at trying to reduce some of these wait times, get people to state care faster, get people to their court date in an appropriate--

**WILLIAMS:** One minute.

**M. HANSEN:** --amount of time-- thank you, Mr. President-- and ways to kind of simply stop some of the bureaucracy that is increasing capacity at-- over at county jails. But that's not even getting to any of the potential impacts that-- any sort of reforms to our criminal justice system. This is just simply overcoming, you know, wait times for hearings, wait times for the regional center, and that is actually a considerable portion of what's happening at our county jails, which are, at least in my area, you know, getting full. And that's, I think, an issue rising across the state. Some of this issue is simply just our capacity at the state level, whether it's mental health beds, whether it's access to the courts, all sorts of things, is leading down to increased issues at the county level and that's something this body is going to have to continue to look at. Thank you, Mr. President.

**WILLIAMS:** Thank you, Senator Hansen. Senator Kolterman, you're recognized.

**KOLTERMAN:** Thank you, Mr. President. Good morning, colleagues. I thought I'd talk a little bit about the process that we've been through on this and what, what Senator Lathrop has been talking about. I've had the privilege to serve here now-- this is my eighth year and 11 of us are going to be leaving this year. Since we've been here, we've allocated 808 bed-- the money for 808 beds in the prison, 808 new beds and we haven't moved the needle. I have the privilege of sitting on Appropriations. And coming-- I come from a business background and I don't know, just because I'm retired and I'm here,

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doesn't mean you lose your business acumen. So as I think about how this has all come down, you know, we-- for two years now, we've had a-- we, we spent \$300,000 for reclassification of our prison population through UNO. We're waiting on the results of that. We, we, we've done facility study updates and we're supposed to get a new one in August. We spent \$15 million to \$18 million on design and land options. I guess the point I'm trying to make is if we really want to approach this from a business perspective and manage the taxpayers' dollars in, in a prudent way, we have to have all the information in front of us as to how we're going to fix the problem and we don't have that information. We're waiting on the information. So in the meantime, we as appropriators have given the \$15 million to \$18 million. We've put the \$300,000 out there to get the proper information. We've set aside \$170 million in a cash account and we're getting it ready so that those of you that are going to be here next year and the year after will have the ability to make prudent decisions based on facts and figures and maybe move the needle. I'm anxious to hear LB920 when it comes to the floor. From what I understand, we can't build our way out of this. I mean, we've seen that. And I'm not against building a new prison if it's going to improve the quality of life for those that are there. But at the same time, let's make sure that people are classified where they need to be and let's upgrade, but I'm not in favor of just building a prison to build a prison. So again, I just try and bring a perspective to it that's a business perspective. I believe people support the idea they-- if they have the right information in front of them. With that, I would hope that you would support the, the bill that we have up there, LB1011, AM1999, and I'd yield the rest of my time to Senator McKinney if he'd like to have it.

**WILLIAMS:** Senator McKinney, you're yielded 2:00--

**McKINNEY:** Thank--

**WILLIAMS:** --and you're also next in the queue then.

**McKINNEY:** Thank you. Again, I rise again to support FA74 and continue this discussion about this prison that is proposed for our state. Again, I'll repeat that. The \$175 million that is set aside for this prison can be used for many projects within our state, whether that's a trail or a project in-- at Offutt or, or anywhere else. The money also could go to the lake since we want to build lakes this year, but we cannot build ourselves out of this problem. It's just impossible. When you look at the data and look at the facts, we cannot build ourselves out of this. So we're either going to ignore the facts or

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look at the facts and be strategic and come up with a smart plan to address this problem.

**WILLIAMS:** One minute.

**McKINNEY:** And that's our responsibility as representatives of our districts and of this state is to take a strategic and thoughtful approach at criminal justice and at this conversation about the prison because it, it just doesn't make sense. Again, even if we were to agree to build a prison, it would take five-plus years. Supply chain is messed up. There's a war in Europe. Might take longer. The prisons will still be overcrowded, so what should we do? Just allow the prisons to stay overcrowded? And we're talking about being humane and humanity? Really think about that. I really hope you do because, if you don't, then it just shows me that you're just willing to ignore the facts because someone wants to build a prison on his way out of office.

**WILLIAMS:** Time, Senator, but you may continue on your own time.

**McKINNEY:** Thank you, Mr. President. And I guess, since nobody has stood up to say whether or not they want a prison in their district, I'll just ask a couple of people. Would Senator Clements yield to a question?

**WILLIAMS:** Senator Clements, would you yield?

**CLEMENTS:** Yes.

**McKINNEY:** Senator Clements, do you think it's a good idea to build-- because they-- they would like to build a prison supposedly between Omaha and Lincoln and I'm looking at this map and I'm just wondering, would District 2, your district be willing to accept a prison?

**CLEMENTS:** I'd have to ask them, but generally I would say most people would not invite a prison.

**McKINNEY:** All right. Thank you, Senator. Would Senator Aguilar?

**WILLIAMS:** Senator Aguilar, would you yield?

**AGUILAR:** I will.

**McKINNEY:** Senator Aguilar, do you think it would be a good idea to build a prison in Grand Island?

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**AGUILAR:** Well, the school of thought in Grand Island is they would look for anything that has to do with economic development. They very well might, but I'm sure there would be dissension on both sides of that issue.

**McKINNEY:** All right, thank you. I appreciate that. All right, well, also I was thinking about it and I heard somebody say we need to be tough on crime. Well, I've been alive almost 32 years, and we've been tough on crime in this nation for almost 32 years longer, and where has that gotten us? Prison overcrowding, tenth-highest black incarceration rate in the United States. So if tough on crime is acceptable, just say it's acceptable that we have prison overcrowding, it's acceptable that we have the tenth-highest black incarceration rate in the nation. Just stand up and say it. Please, we cannot be tough on crime. It's, it's not smart at all. We have to be smart. We have to really think about this. I don't care whether you're a Democrat, Republican, Independent. I really don't care. Let's really think about what we're doing. And just saying these things just because somebody might smack a mailer out about you or somebody might not vote for you doesn't make sense to me. I, I just don't think it's humane or morally right to continue to keep advocating for this approach and we see what the results are. We have to take \$175 million that is set aside for this prison, which I don't think is a great idea-- and we can use it for many things. It could go to Offutt, it could go to the trail, it could go to the canal, it could go to the lake. Why does it have to go to a prison that's going to take five years to build? Doesn't even help us because we'll have to build another prison. People aren't willing to even accept any type of reforms because they're scared of the police. I don't know why because they, they-- I'm, I'm going to save my words for them, but anyway, it just doesn't make sense. Let's just be smart, please. Let's have a real conversation about this. And if anybody else is willing to, you know, say that they would like a prison in their, in their district, please stand up and say it and I hope that you could explain why. Economic development doesn't have to be a prison. It could be a bunch of other things. You don't, you don't-- look at Tecumseh, for example. They have to bus people from Omaha to go to Tecumseh because they can't staff it. How is that economic development? Go talk to the sheriffs in, in that county and, and the county officials. It's not been a great idea and Tecumseh has only been online for, what, 20 years. We have to be smart. This, this is not a smart approach to--

**WILLIAMS:** One minute.

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**McKINNEY:** I, I just don't agree with setting aside money for prison when there's so many other things. We're barely coming out of pandemic. There's a war in Russia. We got gas prices going up. We got inflation. We have all these problems in society, but nobody wants to address those problems. People want to spend half a billion dollars on a prison and that just doesn't make sense. And we wonder why kids are leaving the state. And I guess the motto is true, Nebraska must not be for everybody. Thank you.

**WILLIAMS:** Thank you, Senator McKinney. Senator Linehan, you're recognized.

**LINEHAN:** Thank you, Mr.-- thank you, Mr. President. Good morning, colleagues. I actually grew up close to Tecumseh and, yes, it's been-- it's not a good situation. It's too far from the workforce, but it's there and I you think the community does their very best to make-- it was just-- this is a situation born out of crisis when we had the ag crisis in the '80s and people were desperate and they thought it would be helpful. So I want to comment-- respond to Senator Machaela Cavanaugh and Senator Matt Hansen. I was listening and I want to agree with them. There is a huge need for more inpatient, inpatient beds in Nebraska for mental health, been a huge need. There have been people that have been working on it for, I don't know-- I know that they've been working on it for at least 25 years-- very generous individuals who have contributed significant sums of their own money. Lasting Hope in Omaha was built-- I'm sure--- hopefully they got some government money, but mostly by private individuals. So I'm very hopeful, since we care so much about this, that in the Governor's budget, there was \$40 million, his ARPA budget, it was \$40 million to address mental health, inpatient, and I'm hoping we can hold onto that. So we'll get to that next week, I think, so we'll all have a chance to help with the shortage. And I think from what I'm hearing this morning, we're all in agreement that it is a shortage and we need to address it. And the rest of the time, I'm just going to talk, actually-- because a couple of my colleagues were kind enough to let me spend the night in Lincoln last night so I didn't have to drive home, so it gave me two extra hours of my life [RECORDER MALFUNCTION] when I started reading amendment-- oh, it's right here, I don't have to read the board-- AM1999. So I'm not going to ask anybody because I didn't give them a heads up, but these are some questions I'm hoping the appropriators will hear and then respond to maybe on their time. So on page 48-- I'm trying to understand this. I think page 48, line 30, it talks about the Cash Fund and it's underlined, so I'm assuming that's an increase in the Cash Fund. So I'm assuming last year when we did the budget-- it's

under the behavioral health. Last year, when we did the budget, we said we were going to spend \$13.2 million. This year in 26-- oh, I'm sorry. Last year, not underlined, we were going to spend-- that's crossed out-- \$11 million and \$11 million and now we're spending \$13 million and \$26 million in the biennium out of the Cash Fund. So if somebody can just tell me if that's accurate, I'd appreciate it. And then on the next page, 49, there's-- from line 13 to 21, there is included in the amount shown as aid for this program for '22-23, \$10 million for General Funds for behavioral health provider rate increases. And I have the same question as Senator Arch. It-- do-- how do we ensure that rate increases trans-- they become salary increases? I don't know how we do that, but I think that's something we should look at. And then it's the cash here, but then at the bottom here, line 18, there is included Cash Funds-- it talks about--

**HILGERS:** One minute.

**LINEHAN:** --the opioid. Is there a new Cash Fund coming from the opioid settlement? Because it mentions it in here and I just don't-- and then I will get up again, but I have a lot of questions on page 50 about how we're directing our people of the state that take care of behavioral health, how they're supposed to, like, be figuring out with all regions who has money and who needs it the most. I need some clarification on that language because I'm concerned about that puts our people at the state level in kind of a very difficult position, if I'm reading it right. And then also, on page 52 at the-- 52 at the top, lines 1 through 4, it's needy families, provide established code, may also be used, and then this language, which I don't know, maybe this is always in appropriations bills, I'm asking. Is it the in-- it is the intent of the Legislature to continue any--

**HILGERS:** That's time, Senator.

**LINEHAN:** OK, sorry. I'll continue.

**HILGERS:** Thank you, Senator, Senator Linehan. Senator Flood would like to welcome 36 fourth-graders from Grant Elementary in Norfolk. They are seated in the north balcony. Please rise and be recognized by your Nebraska Legislature. Returning to debate, Senator John Cavanaugh, you're recognized.

**J. CAVANAUGH:** Thank you, Mr. Speaker. So a lot of good conversation going on and a lot of context being added to certain things. And so Senator Lathrop pointed out all the reports that were on the Judiciary page and I'd certainly encourage anyone to go look at them.

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There's a lot of information to digest, but there's-- the one that I just was looking at, which is the Nebraska Department of Corrections Quarterly Population Summary, and it's about an eight-page report that has a number of different things about what the highest level of offense individuals are incarcerated on, number of individuals, number of people being released, three-year recidivism rate, but one of the things I was looking at, focusing on, is parole revocation by month. So what that means is individuals get paroled that-- which several people have talked about. But to kind of, I guess, help-- be helpful, say somebody gets a sentence of five to ten and they have-- a parole eligibility date is after they serve what is the equivalent of their five-year sentence with good time, which is two-and-a-half years and their jam date, which other people mentioned, is after their ten-year sentence, which is when you get to a point which is if-- with good time would be five years, assuming you have no mandatory minimums, as we call-- would call it hard time. But so the time in which somebody could be placed on parole is the time between the lower number and the higher number, so at two-and-a-half-year window in there where they can be on parole, which means they can be released from the incarceration in the facility and they are placed in the community but still subject to supervision, which means that if they have some sort of run-in with the law, they can be-- have their parole revoked and be sent back to incarceration. And so what this is, is this is the number of people who have been returned to incarceration after being placed on parole. And that happens and so it breaks it down by month and each quarter. So if you look at this report, I'm looking at what would be page 3 of 8 of what I said was the last report, which is October to December of 2021. In December 2021, there were 19 parole revocations; eight of those were for technical violations, 11 for-- were for new law violations. So just a little bit more than 50 percent were for new law violations. The rest were technical. But you look at November, there were 44 revocations; 24 of them were technical and 20 of those were new law violations. And if you look at October, there were 36 revocations, 23 technical and 13 new law violations. And what that's telling us is that we are reincarcerating individuals after they've served the time, met the requirements of parole, which Senator DeBoer talked about that we set out certain programs that they have to achieve and obviously they have to be-- have good behavior and they have to go through all the programming. They get paroled, they get into the community, and they start establishing a life, getting a place to live, perhaps getting into further treatment programs, getting a job. They do all those things and they have a technical violation, which can be failure to call your parole officer, failure to check in, can be failure to get



into treatment or getting kicked out of treatment, washing out of treatment. It can be a number of things that are not a new law violation. A new law violation can be anything from a traffic ticket up to an actual felony offense of some sort that would require you-- subject you to further incarceration. And so this is one of those type of things we're talking about. I know that we-- that CJI had some suggestions about increasing programming availability, those sorts of things, but we should be focusing on not just-- we talk about sentencing reform. Of course, I, I'm in support of that and this is an important thing, but we need to make sure that we are--

**HILGERS:** One minute.

**J. CAVANAUGH:** --being helpful, flexible, and, and actually making sure that people are achieving the objectives we set for them when we do put them into the incarceration system, when we do put them into the rehabilitation system, when they actually start making progress, we don't upset that progress for technical violations, and we make sure that we give them the accurate support. So all of this is a long way to say I have a bill that makes sure that when somebody leaves custody of the Department of Corrections or the county jail, they get signed up for Medicaid if they're eligible. If they get Medicaid, they can get into a treatment program. That will help them pay for it; that will help them be in compliance with what we're asking them to do. It is a smart, low-cost way for us to actually achieve the objectives that we're talking about here. This is one of those things that we can be doing, in a global perspective, to solve some of these problems. If we can cut down on the number of people who are returning to custody by 23 people a month for these recid--

**HILGERS:** That's time, Senator.

**J. CAVANAUGH:** Thank you, Mr. President.

**HILGERS:** Thank you, Senator Cavanaugh. Senator Sanders and Senator Friesen would like to welcome some special guests, including four students from the first and fifth grade from Hampton Lutheran, along with four teachers from Hampton, and among those are Senator Sanders' nephew, Chaz, Chaz Boeder, who is from Aurora. They are seated in the north balcony. Please rise and be recognized by your Nebraska Legislature. Returning to debate. Senator Blood, you're recognized.

**BLOOD:** Thank you, Mr. President. Fellow senators, friends all, when I closed on my second time, I talked briefly about pay and how important it was for employees to be paid what they're worth. I want

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to put a plug out we always have State Patrol on the, the floor here. I don't know if you guys are aware, but the starting pay for State Patrol is around \$25 an hour. I can make that in a meatpacking plant right now, so just kind of a heads up. We talk all the time about public safety. Right here in our own chambers, we have people that are not being paid what they're worth. And especially in western Nebraska, I would think you'd be concerned about that because the State Patrol are few and far between there because they've been asked to cut shifts. So with that said, I would ask that Senator Brewer please yield.

**HILGERS:** Senator Brewer, would you yield?

**BREWER:** Yes.

**BLOOD:** Senator Brewer, we had talked earlier about maybe having a dialogue on the floor. Are you ready for that right now?

**BREWER:** Let me, let me get rid of my meds here.

**BLOOD:** I'm sorry. I didn't--

**BREWER:** All right, I'm ready now.

**BLOOD:** So you and I are kind of like-minded when it comes to the prison that-- and, and correct me if I'm wrong-- that we believe that the facilities definitely need an improvement, but at the same token, why improve the facilities or build more facilities if we can never rehabilitate those that are incarcerated? Would you say that that's accurate?

**BREWER:** Well, yes, but I think we will hit a point we, we need new facilities.

**BLOOD:** We-- I'm sorry, we'll hit a point-- I can't hear because people are talking over here.

**BREWER:** We will hit a point we need new facilities.

**BLOOD:** Right.

**BREWER:** OK. I'm with you there.

**BLOOD:** All right, so you and I have both had firsthand observations. What do you think-- what observations do you think that would really

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help this dialogue today that maybe people aren't hearing on the mike?

**BREWER:** Well, I end up there for a lot-- well, before COVID-- ended up there with a lot of activities, time with the veterans, and of course, there's a veteran wing to the hospital where they-- hospital-- to the prison where they're able to maintain their own facility and paint it and do things there, kind of as a morale thing, I guess, for them, and also accountability. And of course, there's a number of tribal activities that are allowed for the Native population out there and then there's a, a lifers group. And so I'm asked to come out and speak because, well, they're desperate for speakers.

**BLOOD:** And so one of the observations that I believe you made was, even if we wanted to rehabilitate, be it education or be it support groups, what was one of the things that you noticed in reference to the facilities when it came to space?

**BREWER:** Well the, the areas that they use for programming were so small that there was just no way to ever cycle enough through to actually do the programming they needed.

**BLOOD:** So if I hear you correctly, you're saying that no matter how good our intentions are, if we want to rehabilitate, we have to have a facility that matches those goals.

**BREWER:** A way to actually do the programming. The programming doesn't mean anything if no one ever gets to do it.

**BLOOD:** Fair enough. So what is the number- one thing you hear from the inmates? Do you hear that they don't want to be rehabilitated and they want to jam out or do you hear that they want to be rehabilitated, maybe leave with skills that will help them get better jobs when they go? What kind of things do you hear with your one-on-one conversations? Not to lead you into your answers, but--

**BREWER:** No, no, you'd never lead me into answer there. I think they, they leave-- many, and-- and I suppose a lot of them are, are some of the ones that come from the reservation because that's the one I have the closest connection with. Without any skill sets in life, they are very limited on what their future is going to look like and right now, you know, we're not in a cycle where we're able to give them anything when they leave--

**HILGERS:** One minute.

**BREWER:** --except in a very limited capacity.

**BLOOD:** Thank you, Senator Brewer. I just-- the reason I had Senator Brewer yield time and speak with me is because I don't think there's anybody in this body that doesn't think that we need to have rehabilitation. And I don't think there's anybody in this body that doesn't think that we shouldn't be tough on crime, but it's not one or the other. We have to provide appropriate facilities, we have to provide appropriate programming, and we have to quit kicking the can down the road like we do with everything we allow to fester in Nebraska. Center-- Senator Lathrop has been waving this flag for well over a decade, two decades. The executive branch has ignored it; much of our budgeting process it's been ignored, prior to senator Stinner. And now we have an opportunity to do something about it. We have to decide what is that going to look like? We have a solution.

**HILGERS:** That's time, Senator.

**BLOOD:** How do we make that happen? Thank you, Mr. President.

**HILGERS:** Thank you, Senator Blood and Senator Brewer. Senator Pansing Brooks, you are recognized.

**PANSING BROOKS:** Thank you, Mr. President. So I'm appreciative of the past conversation with Senator Brewer and Senator Blood. Clearly, programming and sentencing reform are what need to be done. Building a prison is easy. We can just go build prisons. That's-- oh, here, have somebody build a prison. Sentencing reform and, and programming to make people safer when they come out and more able to participate in our community is what's necessary and we're just-- we're taking the easy way out here with this prison idea. And now I'd like to give the rest of my time to Senator Stinner, my friend.

**HILGERS:** Senator Stinner, 4:20.

**STINNER:** Thank you, Senator Pansing Brooks. I just wanted to get on the mike and respond to Senator Linehan's question on page 49 when she was asking a question about the national opioid settlement funds. Yes, we do get-- we did get \$2 million. This gives you the authorization by increasing the appropriations to actually spend the money, but the money has to be spent in, in accordance with the opioid settlement funds language. So it's restrictive language and that's why it says "for such purposes." The intent language on behavioral health, we had a problem with regions in behavioral health and many times, one region would run out of money. Well, the-- it was

the department's program that says we're not going to ever move money around between this. And this basically allows or dictates that if one region runs out of money, that you are to take money out of other regions that are overappropriated at that time and appropriate it to those regions. We had set-- we cited several instances where a region actually ran out of money, or two regions, but we still had a whole bunch of money sitting in other regions that were un-- unused, so that, that was the intent language to try to fix that. And I think that you were headed toward the childcare development block grant. Periodically-- I'm going to say periodically-- every three years, we do a wage study of, of-- for childcare. And this is in statute already. It was a 60 percent reimbursement rate based on, on that survey. We increased that-- this language increases that to 75 percent. That's that 15 percent increase, so I hope that that answers all three questions and I might have missed one, so I will be back on the mike if, if that's the case. Thank you, Mr. President.

**HILGERS:** Thank you, Senator Stinner and Senator Pansing Brooks. Senator Friesen, you're recognized.

**FRIESEN:** Thank you, Mr. President. So I've been spending a little time, line by line, going through the budget again. And I know we're talking about the prison and useful life and I'm just going to let the rest of you discuss that and I think, in the end, we'll reach some sort of conclusion. But again, if, if people would look at the budget and go through the line items and look where some of the large increases are in spending, and is this appropriate for what we need to be doing with taxpayer dollars at this time just because we have a large revenue surplus? In most cases, we're, you know, maybe keeping ahead with maintenance. We're doing a pretty good job. And in some cases, you'll see where we have to spend some money on capital improvements. We have to expand some facilities, like the State Patrol Crime Lab, things like that. But as you go through that list and we start to look at the different things that we're going to be spending money on-- and obviously I'm not near through line item by the budget yet, but as I go through there, what I'm doing is looking for those big increases and seeing if they're appropriate. And, and I'm going to ask some questions as time goes on on some of those different, different departments or those different agencies that are getting large funding increases. And it does come down to what is, what is it that we're doing for mental health? Are we just increasing provider rates or are we going to put new beds in? Those are the questions I'm going to be asking because I think we have an issue with mental health facilities in the state. We don't have enough beds. We don't have beds in the rural areas where we need them and so

those-- and we've talked about how much that is adding to our prison overcrowding. So that is going to be an issue that I want to talk about later when I find those sections in the budget. But we can increase provider rates, but if we don't increase beds, we're not going to solve some of our problem. And I'm not going to-- I don't want to stand on the floor and say whether or not we should increase provider rates. I, I don't know what those salaries are and what kind of issues they're running into there, but I do know that we don't have enough beds and we probably don't have enough staff to take care of those beds either. Those are the things that I think we should be focused on when we have resources, is, how do we keep people out of prison? And I know we've talked about treatment, but again, there is this process where we have mental health issues and that is leading to some of the overcrowding in our prison system. And it's a lot cheaper to work on that issue up-front rather than after they're in prison. So those, those are the types of things I think we as a state-- I mean, my constituents, at least, would be interested in seeing that we spend our money on wisely, and they're not so much probably interested in some of the other things we're going to be doing this year. And when we increase our spending so much year to year just because we have this huge influx in funds, I have to look at what is long term, what's sustainable, what's not sustainable? And again, I-- I've always said I think we, we spend too much on government services for the size of our population in this state. And so that means maybe there is agencies that don't need to be there; maybe just because they've always been there is not a good reason to keep funding some things. And so in order to look at more efficiencies and those types of things, we need to start digging into some of these different line items and just seeing whether that need is still there. And, and in some cases, we're offering multiple different agencies doing different things on the same issue, and let's see once how much we're spending on workforce housing through the DED and how much the federal government is putting into it through other programs. We've got a lot of--

**HILGERS:** One minute.

**FRIESEN:** --organizations out there that have helped with housing and utility bills, who receive federal funding and have helped a lot of clients that did not use the emergency housing fund that we had because we made it too difficult to use in rural Nebraska. Those are the type of things I want to have people discuss as we get further into this budget and I want to know whether we're putting too much dollars into some of these funds and whether or not they could be pulled back and revisited next year because I don't feel that we have

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to appropriate every last dollar this year. I think the next year's Legislature will be a good body that will also do a good job of appropriating funds. It doesn't have to be this body. Thank you, Mr. President.

**HILGERS:** Thank you, Senator Friesen. Senator McCollister, you're recognized.

**McCOLLISTER:** Thank you, Mr. President. Good aft-- good morning again, colleagues. I started off my comments the other day with saying that there was only 1,400 hundred people in our prison system in 1980. And even with falling crime rates, we now have 5,500 people incarcerated in our prison system. I heard a radio broadcast one time that said we need to separate those people that we're scared of, keep them in prison, against-- versus those people we are mad at, that are relatively harmless or nonviolent kinds of people. And that's true. We need to better distinguish between, between those two, two groups of people. I also said on the mike that criminal justice reform covers a wide political spectrum and that's also true. Who are some of the groups propose criminal justice reform? Right on Crime, and that's a Texas group that we've been talking about, they've closed a number of prisons; Faith and Freedom Coalition; the American Conservative Union. Americans for Prosperity, and that's a, a Koch organization, even those people are game-- aiming for criminal justice reform. American Legislative Exchange Council, ALEC, they want criminal justice reform. Americans for Tax Reform, they understand that taxes are intrinsically connected to our criminal justice system. The more people we have in prison, more expensive it is. We've heard a wide range of prison costs, anywhere from \$35,000 up to \$50,000 per inmate. I'm not sure that even includes the overtime that we pay prison employees, so \$35,000 to \$50,000. The Texas Public Policy Foundation wants criminal justice reform; and really, ACLU is a part of that group too. In December of 2020, I convened, when we were still in the midst of a pandemic, a panel discussion talking about criminal justice reform. Who was involved with that group? It included Senator Linehan, Senator Lathrop, Senator Geist, and we talked about criminal justice reform. And I think there was agreement among that group of people that we need criminal justice reform, and I think now is our opportunity to get it. We need to also talk about the economic costs of keep-- keeping people in prison. There's an economic issue and then there's a human issue. Would Senator McKinney yield to a few questions?

**HILGERS:** Senator McKinney, would you yield?

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**McKINNEY:** Yes.

**McCOLLISTER:** Senator McKinney, I came before the Judiciary Committee and brought LB269 and that required the Board of Parole to yearly review all committed offenders who have been incarcerated for more than 30 years. It also required the board to annually publish a list of committed offenders who are 60 years of age or older. I think this is similar to your sentiment, is that correct?

**McKINNEY:** Yes, it is. I introduced LB980, which would allow for individuals that are terminally ill to have a mechanism to be released, but also it has in that individuals that are serving life after 25 years can be able to go in front of the Parole Board.

**McCOLLISTER:** Is that incorporated into LB920?

**McKINNEY:** Not yet, but I would love for it to be.

**McCOLLISTER:** Was that one of the recommendations that came out of the study?

**McKINNEY:** It wasn't necessarily a recommendation. It was more of a thought of mine-- so not even a thought--

**HILGERS:** One minute.

**McKINNEY:** --just after going through the prisons and act-- having discussions and also realizing that we had to do something about the current population, is why I introduced it.

**McCOLLISTER:** And some of those people are way beyond being the kinds of people that would reoffend, don't you think?

**McKINNEY:** I would agree. A lot of the individuals that are serving long-term sentences, once released, never offend and those inside serving long-term sentences are the, are the mentors and the, the role models within the institutions right now.

**McCOLLISTER:** I've met some of those people and I absolutely agree. And when you talk to them, you know, they recognize their obligation to help those people there in the prison system and make them understand that they need to go-- fly right and go, go straight. So it's-- I agree. Thank you, Senator McKinney. Thank you, Mr. President.



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**HILGERS:** Thank you, Senator McKinney and Senator McCollister. Senator Machaela Cavanaugh, you're recognized. This is your third opportunity.

**M. CAVANAUGH:** Thank you. I would yield the remainder of my time to Senator Lathrop.

**HILGERS:** Senator Lathrop, 4:55.

**LATHROP:** Thank you, Senator Cavanaugh. I thought this would be a good time to try to talk about how we got here. So we've talked about the fact that our admissions are down, but our population is growing. And that can only mean one thing: that we're filling people-- we're filling the prisons up with people that are doing more time. And so who are those people? What does the data show?-- this is an opinion-- what's the data show? And really, I, I'll tell you, we call it the stacking effect. So if you have a fewer number of people coming in, your admissions are going down but your population is growing, it's because you're stacking people up. They're doing more time and that means before they can be released, they're doing more time than-- so you have fewer people going out than you have coming in. And CJI looked at this and so did the World-Herald. I want to talk to you about not the, not the-- the World-Herald under-- uncovered something that CJI hadn't noticed, but they took a different tact and Henry Cordez had an article a few Sundays back. By the way, it's on our Judiciary Committee website and I encourage you to read it. In 2009, we passed LB63. This was when we had a great deal of violent activity in Omaha. We passed a law that required mandatory minimums for certain gun violence. I'll say the bill, LB920, doesn't touch that, but, but it's worth mentioning that that's part of the issue. We have people who are doing things that draw a mandatory minimum. Those mandatory minimums create longer sentences for the same offenses, and so we have some of those people doing mandatory minimums and they're part of the growth in the population, but they don't explain it all. And it's interesting, colleagues, that when we look at the population going into the Department of Corrections, a lot of them are for Class IIIs, IIIAs and IVs. Those would be-- if you're not familiar with this, we have different classes of felonies. A Class IV felony is the lowest class; above that's a III or a IIIA. They carry a shorter sentence. We're putting a lot of people in the Department of Corrections on those IIIs and IVs. They-- many of them are doing consecutive sentences, so they might be-- do one dumb thing, get three felonies, and have them-- what they call "boxcared." You have to finish one sentence before you can start the next one, before you start the next one, and what you end up with is, with con--

consecutive sentences, is a longer sentence than you'd normally get for a single Class IV felony. And a lot of them are going-- half of them are going in on drug offenses. So we have two issues going on and CJI has focused on what I would call the nonmandatory minimum, nonviolent solutions to our overcrowding. These are the, these are the situations where people are being convicted for Class IV felonies. Can we divert more of them? Perhaps. But that's how we got to where we're at. It's mandatory minimums, it's consecutive sentences, and then we've also experienced something else. You guys are all familiar with inflation. We're also experiencing some sentence inflation in Nebraska and what that means is, ten years ago, if you, if you were involved in a burglary--

**HILGERS:** One minute.

**LATHROP:** --you might get this much time, but as judges, ten years later, they're giving even more than they used to give for the very same offense with the very same penalties available to the court. So that's how we got to the place where we're overcrowded. This afternoon-- and it probably won't be till this afternoon--- I'd like to start talking about the CJI process, what they found, and what their recommendations are, so that we can have a conversation about each of those proposals. And I want to be careful. When we talk about CJI, there's 21 different proposals. I think 17 of them, most of them, are what we call consensus items where everybody around the table said, yeah, I can, I can buy into that. There are four or so that are nonconsensus. Some people thought it was a good idea. They are responsive to the overcrowding, but other people just couldn't get there because--

**HILGERS:** That's time, Senator.

**LATHROP:** [RECORDER MALFUNCTION]

**HILGERS:** That's time, Senator, yes.

**LATHROP:** OK.

**HILGERS:** Thank you, Senator Lathrop and Senator Cavanaugh. Senator Flood, you're recognized.

**FLOOD:** Thank you, Mr. President. Members, I wanted to have a discussion with Senator Williams, and this is in the underlying AM1999 as it relates to program-- Agency 72, the Department of Economic Development, Program 601: Community and Rural Development. Would Senator Williams yield to a question?

**HILGERS:** Senator Williams, will you yield?

**WILLIAMS:** Absolutely.

**FLOOD:** Senator Williams, you and Senator Stinner and others have developed the Rural Workforce Housing Fund. Can you-- this predated my time in the Legislature. Can you briefly explain what the goal of this program is?

**WILLIAMS:** Well, working in economic development across the state, it became very obvious what are, what are the hindrances to growing, and workforce is the primary one. And when you dig into that, workforce housing was the primary issue. So in 2017, we passed LB518, which created the Rural Workforce Housing Act and the first Rural Workforce Housing Grant program at that time. In 2020, we reupped and allocated some additional General Fund dollars to that, built more houses. The program has been wildly successful. I would tell you that DED would tell you it's one of the most, if not the most, successful program they've ever operated.

**FLOOD:** So-- and, and you have another separate bill-- I believe it's your priority bill, LB1069-- that would reframe the Rural Workforce Housing Fund and make some minor modifications, is that right?

**WILLIAMS:** That's correct. I actually introduced three bills this year: LB1069, LB1070, and LB1071, but LB1069 is the one that extends the original program. It actually, if we don't do anything, would sunset at the end of this year. It extends it for five years and then has some other mod-- a few other substantive changes.

**FLOOD:** OK, so two more questions: one is that needs to pass in order for this language to work. Obviously, you're pleased, I'm pleased with the language on page 37 of AM1999, the funding allocated to the Rural Workforce Housing Fund, right?

**WILLIAMS:** That's absolutely correct. LB1069 needs to pass to take advantage of the funding opportunities with LB1070 and LB1071.

**FLOOD:** And the other thing I want to emphasize in, in my support for AM1999 is that we have to make sure that that Rural Workforce Housing Fund has the ability to do what communities need to do. That's one of the benefits over the Affordable Housing Trust Fund. This money would go to an NDO, a qualified NDO, in different parts of rural Nebraska. I'm interested in building housing for folks that are working and happen to be getting an education at the same time. Is that a project that would qualify under this?

**WILLIAMS:** I think one of the ver-- the beauties of LB10-- LB1069 and this whole program is the flexibility that is built in, allowing communities to fit their needs into the bill itself and do that. The definition of workforce housing in the bill is housing that meets the needs of today's working families, housing that is attractive to new residents considering relocation to a rural community, and then it's got some other descriptors. So I, I believe what you're talking about, as long as it is a, a need that is-- or a, a type of construction that is meeting that kind of workforce need, I believe it would qualify.

**FLOOD:** Last question: specifically with co-op students that are finishing their final year of college from Wayne State, living in Grand Island, Norfolk, wherever--

**WILLIAMS:** Senator Flood, I'm having trouble hearing you.

**FLOOD:** Oh, final question: co-op students living in Grand Island, Norfolk, wherever, from Wayne State College in their fourth year of college, working full time, would you think that qualifies?

**WILLIAMS:** I would think--

**HILGERS:** One minute.

**WILLIAMS:** --it would. I would think it would. You would have to look at who's going to own those. I, I don't think this is-- the, the design of this is to build a "dorm," but if it was housing that would fit under the definition of housing that meets the needs of today's working families, I think absolutely it could qualify.

**FLOOD:** Thank you, Senator Williams. I really applaud your efforts in rural workforce housing. I think it's absolutely fantastic that the Appropriations Committee agrees and I look forward to supporting AM1999. Thank you, Mr. President.

**HILGERS:** Thank you, Senator Flood and Senator Williams. Senator Matt Hansen, you're recognized.

**M. HANSEN:** Thank you, Mr. President, and good morning again, colleagues. Actually appreciative to come right after that discussion between Senator Williams and Senator Flood. I had brought a bill that had addressed, for ARPA funds, a considerable number of different housing funds, including the rural workforce housing funds. And one thing I just want to put in the record right now is yesterday, I spoke about an appropriation on the cash transfer bill between rural

workforce and middle income. After talking with members of the Appropriations Committee and seeing what the ARPA package is looking like, kind of comfortable with our overall housing investments right now, so I've already indicated to the Clerk that I won't be addressing that amendment, not that I necessarily thought we would get there at any time. I just wanted to provide that for the record. I'm glad we're doing some investments on housing and glad we are working on that issue. I do want to kind of continue discussing what I talked about earlier in terms of mental health capacity, and this is kind of an issue that occasionally we get to, is people suggest, especially for waiting for regional center for competency restoration, we get suggestions about this kind of notion of, why can't they just treat them in the jails or why can't, you know, we do things on that level? And functionally, because of our statutes, it's an obligation of the state and it is, up until very recently, an obligation that had to be accomplished at a state hospital. I believe the correct term was a state hospital for the mentally ill. Functionally, that's just the Lincoln Regional Center nowadays. We have since provided that the DHHS still has to manage it, but can contract with outpatient or other inpatient private facilities in order to address some of that need. Although it's been unfortunate, I think since the hearing, we've learned that they've issued some contracts and they've made some referrals, but I think we're in the single digits in terms of the past couple of years in terms of how well that progress has been made. But I want to go back to the notion of treating in the county jails. And I come from the fundamental position that, especially for pe-- folks in this population, which is a-- can be a considerably high-need group, that the jails are not appropriate mental health facilities. They aren't designed to be, nor should we start trying to design them to be. You know, certainly supportive of making jails have more ability and more health treatment when necessary in order to stabilize and intervene, but in terms of kind of long-term intensive care, that is not an obligation that we should be expecting of our jails because it's not an obligation we really expect of any other kind of correction facility. That is functionally a healthcare, that's functionally a healthcare procedure, which is why making sure that there's an appropriately licensed-- you know, in my mind, preferably, maybe state-run or state-managed so we can guarantee some minimums, inpatient mental health facility for addressing the capacity in the state, I think that's the way we need, as opposed to any sort of shift that we can just treat them while they're in the county jails. Working on this issue over a number of years, obviously, I come from a Lincoln perspective. I've toured the Lancaster County Jail. I've had an

opportunity to tour the Douglas County Jail, which I understand is our largest correctional facility in the state, and see what they have. And the notion that-- that that would be a good place to provide, you know, extensive, long-term mental health treatment, I think, just doesn't show an understanding of what that facility is. Having been in the medical bay of the Lancaster County Jail and seeing what their space is, and what their space is being primarily taken up, or at least largely taken up by people with mental health needs in a facility that's [INAUDIBLE] for people who have physical health needs--

**HILGERS:** One minute.

**M. HANSEN:** --you know, physical ailments, and seeing where they're starting from, you could see just by, I think, walking into that room as a policymaker looking at, you know, in one of the newer facilities in the state, what they designed and what they built and what they have and recognizing that that's not a place to provide kind of long-term mental health treatment. That's a place to, at best, stabilize and make sure they have an option to go somewhere else. But that only works if we as a state actually provide for and account for and ensure that there is somewhere else to go. And over the last many years, over my whole tenure, unfortunately, that has not always been the case. While there's been, you know, licensed beds available, the waitlist can be considerable, you know, measured in months, which puts a large burden on all of our counties to hold people-- often hold people in just holding cells or, you know, just regular cells for people who actually need kind of pretty intensive inpatient healthcare.

**HILGERS:** That's time, Senator.

**M. HANSEN:** Thank you.

**HILGERS:** Thank you, Senator Hansen. Senator Pahls, you're recognized.

**PAHLS:** Thank you, Mr. Speaker. After listening to the conversations we've been having this morning on size of jails, training, helping the individuals, it made me think a little bit about when I was back on the city council. Even though I was not directly involved, I was indirectly involved because this dealt with the county; it was under their domain. But they were looking at a new concept, the detention-- juvenile detention center, which is, if I can recall, it's the age group between 14 and 19. They were building or in the-- they-- right now, they're in the process. It will be finished, I think, in the

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middle of next year, next summer or the year '23. They're changing their idea of how to work with these young men and, and women. You just don't put them in a box and then eventually let it out. They have formed and I-- like I say, I don't have all the details, but they have formed resource centers that the family is involved with. They think if they could get the younger person to change some of those patterns that-- dealing with what we're dealing with at the state level, probably should be reduced. Again, smaller or fewer beds and more training of the-- of course, the staff and also educating the young juveniles. Seems like a novel concept, but it seems like maybe the state ought to have that same philosophy of building and not putting a person there forever, giving them skills so when they do go outside of-- and start a new life, they have, have those skills. It's not going to happen if we don't do something. And believe it or not, I think we all know that it is going to cost some money. But there's also going to be a cost to some of us on our philosophy. We may have to take a look at how we believe in helping people. Thank you.

**HILGERS:** Thank you, Senator Pahls. Colleagues, we're going to pause the debate, and if I could have your attention, please, today is Former Legislators Day. It's an annual tradition in the body in which former senators have come back and visited. We haven't had it over the last couple of years because of COVID, but today we are honored to have the presence of a number of former legislators here with us today. They are not on the floor this morning, but they are in the north balcony and I'm going to read off each of these names and when I do, if you would, please stand and be recognized by your Nebraska Legislature, Legislature. First is former Speaker Jim Scheer from District 29, Senator Flood's district, who served from 2014 to 2021. Senator Mike Gloor from District 25, Senator Aguilar's district, who served from 2009 to '17. Senator Kate Sullivan from District 41, Senator Briese's district, also served from '09 to 17. Senator Jerry Johnson from District 23, Senator Bostelman's district. Senator Tom Carlson from District 38, Senator Murman's district. Senator John Nelson from District 6, Senator Machaela Cavanaugh's district. Senator Arnie Stuthman from District 22, Senator Moser's district. Senator Nancy Thompson from District 14, Senator Arch's district. Senator Marian Price from District 26, Senator Matt Hansen's district. Senator Elaine Stuhr from District 24, Senator Kolterman's district. Senator Vickie MacDonald from District 41, also from Senator Briese's district. And last but not least, Senator Carol Hudkins from District 21, my district. Thank you all-- for all coming

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down today and for your service in the state of Nebraska. Returning to debate, Senator Kolterman, you're recognized.

**KOLTERMAN:** Good morning again, colleagues. I just wanted to give you a little bit of an insight on how-- how we placed these prisons. In 1996, we were-- in Seward, Nebraska, we had a brand-new psychia-- psychiatric hospital for children. It was called Rivendell and it was a brand-new facility south of Seward. They went broke and after, after the dust had settled and after they've been through bankruptcy, the property came up for sale. The next thing we knew, we had the state of Nebraska very interested in putting a prison in Seward, Nebraska. Some of the people in the balcony probably remember some of this. At the time, the people of Seward said, we don't want a prison in our district. We don't want a prison here in Seward. So the people of Seward fought it and we got them to back off. Well, that, that same-- in 1997, LB150 was passed and that was Tecumseh's prison and that-- they, they started building that prison in 1997 and they hired the staff for that prison three years later in 2000, so it took them three years to build that facility. So there's, there's history behind how we get to where we get and the process that you go through. I will tell you that the best-run prison that we have in this state is in my district, and that's the York prison and we have absolutely no problems there. They do a wonderful job and I don't think you hear of the York prison being in trouble very often in the press. Now, on a different note, I want to talk a little bit about some information that I received this morning and I want to compliment the Nebraska Investment Council. As you know, I'm Chair of the Retirement Committee and I'm proud to announce that at the end-of-the-year investments, under the leadership of the Nebraska Investment Council, we've had wonderful results. The state plan and the county plans, which are cash balance plans, had a, had a rate of return of 16.4 percent. Our defined benefit plans, which are the state teachers retirement, the judges' plan, and the State Patrol, had a 29.9 percent return on investment, and even the Omaha plan, OSERS plan, had a 17.8 percent return on investment. I think a lot of that is due to the fact that we've got terrific leadership in Michael Walden-Newman and I want to give a shout-out to him and his team. The people that are on that committee do a wonderful job and we owe them a debt of gratitude because they serve as volunteers, but I just thought I'd bring those bits of information up. And with that, if Senator McKinney would like the rest of my time, I'd grant it to him.

**HILGERS:** Senator McKinney, 1:38.



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**McKINNEY:** Thank you, Mr. Speaker. Before we get out of here, I just wanted to remind everybody of what language in the 13th Amendment says, "neither slavery nor involuntary servitude, except as punishment for a crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." What that basically says is slavery is legal in prisons. And also those who see prisons as a economic development tool pretty much as saying we see legal slavery as a economic development tool and we should build more plantations in the state of Nebraska. And if that's OK with you, then just say it on the mike.

**HILGERS:** One minute.

**McKINNEY:** Thank you.

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

**WAYNE:** Thank you, Mr. President, I haven't engaged in-- a whole bunch on this conversation. I just want to remind folks as we go through here, you should go through the actual bill and look line by line. I didn't think I was gonna come up this quick, so that's good to know. But I want us to really think about-- and I'm going to break it down into categories: water, trails, prison reform, investments in people, and investments in housing. And I, and I think what, what concerns me is we have-- in the urban area, we have well over 20, 20 senators and the urban and rural divide in this budget is, is real. You have to look no further than the housing piece. But then you start adding the water versus people component, you're looking at roughly \$386 million on water and trails-- \$336.8 million on water and trails. And when you compare that to the urban sector, and that's including Lincoln and Omaha, there, there is a significant, a significant less of investment. And so I just don't know how-- let me just put it out there. I don't know how Democrats can vote for this budget. And I believe in the party system because there's two-party system, I believe they're a collection of that-- that system itself is just a collection or a market basket of ideas. And so you tend to say you're a Democrat because you believe in certain things. You tend to say you're a Republican because you believe in certain things. And in the middle, there is this purple area where you, you kind of commingle some basic thoughts around economic development, around some, some basic things. But I don't know how you're going to come to north Omaha and campaign. I don't know how you're going to come to Lincoln and campaign for votes or ask for supports from other fellow Democrats when you're leaving a group of people, groups of people

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behind. I don't-- I'm just struggling with this overall budget and the cash transfers and how we're OK with voting for the budget. And then I'm going to flip the script and say I don't know how conservatives vote for this budget. When you think about--- what I've always heard for the last six years with the conservative ideals and the free markets that the conservatives versus liberals believe in, I, I don't know how either, either side can vote for this budget. If you're a progressive and you're a liberal and you believe in humanity and, and putting people over profits, I don't know how you vote for this budget. If you're a conservative and you look at the spending without real pathway forwards and you believe pulling yourself up by your own bootstraps, I don't know how you vote for this budget when we are literally growing government in areas just to make sure we take care of stuff. Like, I-- not even stuff that we need, just-- we're going to build a lake. We're going to help Lake McConaughy get more boats. We're going to help Niobrara area beautify themselves, be-- so they can somewhat compete with South Dakota. And then some of our biggest potential economic developments, we're, we're going to have-- we're not going to really invest those dollars. I know yesterday we joked about internships and things like that and there was the conversations about it, and I don't mind putting money towards interns. I don't mind putting money towards grow Nebraska-- growing Nebraska and I think a lake has that space. But when I look at the budget--

**HILGERS:** One minute.

**WAYNE:** --that doesn't-- this, this budget does not reflect humans, does not reflect humanity, in my opinion, does not reflect putting people first. And so I would like anybody on Appropriations to-- I'm not going to get into the prison conversation. I've said it last year when we talked about setting aside of stuff, that-- simple math, math 101. Based the rate we're growing, by the time we finish the prison, you're going to have to build a new prison, so that's not very conservative. That's not conservative at all. Then we're just going to have to build another prison in five more years. That's not conservative. I don't understand that, but we'll get up here and tout conservative values and be tough on crime, but you haven't told me how we stop building prisons. We're going to buy in fourth-- building four or five prisons because you can't build your way out of it and that's just truth. So I hope after lunch, Appropriations Committee members start talking about all these cash transfers--

**HILGERS:** That's time, Senator.

**WAYNE:** --and don't-- thank you.

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

**J. CAVANAUGH:** Thank you, Mr. President. So I know we're almost to lunch and it's my third opportunity, but I wanted to keep talking about what I was talking about. I know everybody's been talking about lots of different things about this and, you know, Senator Wayne just made a number of good points, but the one that struck me was about if we-- it's not very conservative to spend a bunch of money building a prison that then by the time you finish it, if you don't do anything differently, you're going to have to build another new prison. And so he's right in the actual, literal sense of conservative and I think in the political sense as well. The conservative thing to do would be to solve the problem from a supply side, I guess, as people would say. We need to stop sending people into incarceration that don't need to be incarcerated. Obviously, there are some people. If you look at the-- that same report I was reading earlier, which again is the NDCS Quarterly Population Summary, October 2021 to December 2021-- lists the number of people who are incarcerated and by offense, by highest level offense. So you have homicides at 574, sex offenses at 1,068, assaults at 1,303, and there's robberies, weapons, arson. But then you go down, 770 drug offenses, which is 13.78 percent of the population. You have 250-- 235 theft offenses, 4.2, 4.2 percent of the population; fraud, 42 people; other, 114. I guess they have so many categories, I don't know what "other" is. And then they have it by crime and they have a kind of broken out. You can all look at this yourself, but they have squares, I guess. Doesn't give you a percentage, but they were for just property and drugs. They look like they make up about a quarter of the whole population. Obviously, people can disagree about which things require incarceration and which ones don't. There's certainly a lot of individuals, if we have a good-faith conversation about actually solving these problems, we can probably find a lot of things that we agree on. And the CJI group came here, met with a lot of stakeholders. They met with me, they met with a lot of people that I know in the-- both the prosecution, law enforcement, defense bar communities and talked to them about our criminal justice system, talked to a lot of judges, I know, as well, and about issues that we face and ways-- and there were a lot of, as Senator Lathrop said, consensus items. There were some items that were consensus among I would call the stakeholder community, the people out-- outside of the, the, the Legislature and the executive branch and even the judicial branch here at this kind of higher level. But the folks out

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on the street, the ground floor of our-- of the criminal justice system, of the judiciary system have more agreement than I think it was adopted or recommended by the committee. But the con-- there are consensus items and if we have a good-faith conversation about it, people recognize that to achieve our objectives, we should not be incarcerating people just because of that, that their mental health or drug or alcohol problems have them come in contact with the criminal justice system. People do commit serious offenses that they need to be taken out of society for, for the protection of society and sometimes for the protection of themselves, and that's not what we're talking about. We're talking about--

**HILGERS:** One minute.

**J. CAVANAUGH:** --thank you, Mr. President-- some-- things like possession of a controlled substance or, in some cases, third-offense shoplifting. I know people don't necessarily know about all of the different levels of offenses, but there's what we call "enhanceability," which is you get a sub-- prior-- you get an offense and a subsequent offense, and then a third offense. In the case of shoplifting or theft, a third offense becomes a felony for which people can go to prison, can spend time in our state penitentiaries for stealing small amount from a grocery store or a convenience store. And I can tell you it happens. I've seen it happen and it is a problem and it is maybe not-- well, the theft offense is on here, like I said, 235 people. How many of those people are in there for those lower-level theft offenses, for those shoplifting offenses? Not saying that we don't want-- that we want to give people a free pass. I'm not saying that we want to encourage people to shoplift, but we need to be reasonable about how we respond to these things and then we need--

**HILGERS:** That's time, Senator.

**J. CAVANAUGH:** Thank you, Mr. President.

**HILGERS:** Thank you, Senator Cavanaugh. Mr. Clerk for items.

**ASSISTANT CLERK:** Thanks, Mr. President. Amendments to be printed: Senator Geist to LB920. Senator Albrecht, motion to place LB933 on General File pursuant to Rule 3, Section 20(b). That will be laid over. And a letter from Senator Hughes as Chair of the Exec Board stating that LB1014 has been designated as a Speaker's major proposal for 2022. That's all I have. Excuse me, sorry, Mr. President. Senator Hunt would move to recess until 1:30 p.m.

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**HILGERS:** Thank you, Mr. Clerk. Colleagues, we'll keep the queue for the afternoon debate. You've heard the motion. All those in favor say aye. Opposed say nay. We are in recess.

[RECESS]

**FOLEY:** Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. Senators, please record your presence. Roll call. Mr. Clerk, please record.

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

**FOLEY:** Thank you, Mr. Clerk. Do you have any items for the record?

**CLERK:** I have nothing at this time, Mr. President.

**FOLEY:** Thank you, Mr. Clerk. Members, we're going to move to the 1:30 item on your agenda. It's on the back page of the agenda. Mr. Clerk.

**CLERK:** Mr. President, LB1073, Select File. Senator McKinney, I have Enrollment and Review amendments pending.

**FOLEY:** Senator Wayne, you're recognized to open on LB--

**ASSISTANT CLERK:** Senator McKinney.

**FOLEY:** Oh, I, I apologize. Senator McKinney for a motion.

**McKINNEY:** Thank you, Mr. President. I move to adopt the E&R amendments to LB1073.

**FOLEY:** Members, you heard the motion to adopt the E&R amendments. Those in favor say aye. Those opposed say nay. The amendments have been adopted.

**CLERK:** I have nothing further on that bill, Mr. President.

**FOLEY:** Senator McKinney.

**McKINNEY:** Mr. President, I move to advance LB1073 to E&R for engrossing.

**FOLEY:** Members, you heard the motion to advance the bill. Those in favor say aye. Those opposed say nay. The bill is advanced.

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**CLERK:** Mr. President, pursuant to that action, Speaker Hilgers would ask unanimous consent to expedite LB1073.

**FOLEY:** Without objection, so ordered. We will move back to the morning agenda where we left off, LB1011.

**CLERK:** Mr. President-- I'm sorry, excuse me, Mr. President.

**FOLEY:** Sorry, Mr. Clerk. Members, those of you who were in the queue, we dropped the queue when we took on that other 1:30 p.m. bill, so you'll need to re-- punch in again. Thank you. Mr. Clerk.

**CLERK:** Mr. President, discussed this morning, pending is FA74 from Senator Lathrop to the Appropriations Committee standing amendments.

**FOLEY:** Senator Brewer, you're recognized.

**BREWER:** Thank you, Mr. President. I was going to stay out of the back-and-forth on this, but when Senator Blood kind of cracked open the door, I decided I would kind of pick up where we left off. So everybody understands, part of the reason I took an interest in what was happening with the prison is I was on the LB127 task force, had a chance to go around and see all of our facilities all over the state, everything from the facility in McCook, which was, I think, an impressive program they got out there, to the women's prison in York, which I think of all of the facilities is the best run. But when we get to the two primary ones that we're talking about, with Tecumseh and Lincoln, what was obvious from the tours and the time we spent there was Tecumseh was poorly built, poorly built in the fact that, for example, the doors swing instead of slide on a rail with teeth where someone can force open the door rela-- relatively easy, part of what happened with the uprising that they had on Mother's Day. So if you look at those two prisons, they've both got problems. Now I understand the desire to keep the numbers down, and I think somewhere there's, there's a way to address some of those issues. But if we just stop for a second and look at the quality of life in the facilities that we have, I have spent a lot of time, as I said earlier, between the veterans groups that I go out to speak to, to the Native American groups I go out and spend time with, bible study, whatever it is out there that I've been part of. What I've seen is that you can add a new section; you can rehab some of that prison, but it-- think of it as an old Studebaker car; leaks some oil, runs most of the time, it can get people from A to B, but it's pretty limited and it never-- and it's never going to be any better. Now there's this new Chevy van, it's got air conditioning and lots of

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nice features, and that's kind of how I'm looking at things now, is we don't have to have a system where we, we have to do both, where you're going to say, listen, we can't have a new prison because it means that we're going to incarcerate more people. Well, let's just step back for a second and say our prison system has aged or has issues that we can't, we can't fix while we got a full prison of people. Now can we take Lincoln and, say, modify it to where it's maybe the lowest risk that we have? Sure, probably could, but we're going to have to do some work to do that. We have nowhere to take everyone. Now, if you have a facility that is designed correctly-- and I have not seen the design on the new prison; I don't know if anyone has-- and it is set up so that the guards are in a contained area, prisoners can move from spot to spot with a little more ease, if it's got better lighting, if it's got better cafeteria and kitchen, if, if it's got better commissary, if everything about it makes their life better, I struggle with the idea that we will stay with what we have, because at some point we have to build a new prison. We can't let what we have degrade to the point where their life is miserable. Now, it may not be a whole lot above that now, all the more reason we, we should look, at least for the sake and the quality of life of the people there, that we don't give them no hope for the future. Now, I know that's not the view of many, but I think if we just step back from the issues for a second and look at honestly saying where are we with our prison system, we have to do something. Now, Senator McKinney is going to--

**FOLEY:** One minute.

**BREWER:** --ask me if I want to build a prison in Gordon. If we took everybody in Sheridan County, we, we couldn't staff a prison even if we wanted to, and I'm pretty sure my, my brother that's the sheriff would hang me at High Noon for the idea. So I think he's got a valid point that this isn't something everybody wants to have in their backyard. Now, I still think we have to at some point be honest about what is the best for those in prison. And, and we really do have our limited facilities right now. I remember when Tecumseh was built. It was built with a concept that it was far enough out to where you could come from Lincoln and Omaha. In reality, it's far enough out nobody wants to come from Lincoln or Omaha, so, you know, Tecumseh maybe wasn't thought through as well as it should have been. But Lincoln, if you, if you go out there, it is old-school prison. Now they've--

**FOLEY:** That's time.

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**BREWER:** --done a lot to--

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

**BREWER:** --improve it. Time?

**FOLEY:** That's time.

**BREWER:** OK. Thank you.

**FOLEY:** Thanks, Senator Brewer. Senator McKinney, you're recognized. This is your third opportunity.

**McKINNEY:** Thank you, Mr. President. Would Senator Brewer yield to a question?

**FOLEY:** Senator Brewer, would you yield, please?

**BREWER:** I would.

**McKINNEY:** Thank you, Senator Brewer. I have a question. Not that-- you kind of answered one of my questions I wanted to ask, but if we were to vote this year to build a prison, it would take five-plus years to be completed and we would still have a prison overcrowding crisis. What should we do about that?

**BREWER:** Well, we have to, we have to take an action. So I think you're on the right course there because you're right. And again, I'm not sure why it takes five years to build a prison, but we're going to use that as a guideline right now. It takes five years. We're going to have to figure out a way to sort out who can stay and who can go because you can't continue to have no, no more beds available. And your idea of looking at those that are senior, that are of a certain age, something we've got to look at because, if they're not a threat to society, I think you've got a good point in that, that we need to consider whether or not that is something that we should be eating beds and, and time up with because they're not going to be a threat to society. And then we're, we're looking at reform in the sense of, of how do we find penalties that sort those who should be in prison from those who really aren't an issue? And, and that's the part where I, I need to know more. I need to figure out what right looks like and, and so I'm not going to dive into that. Mine was a real basic question with just quality of life for those that are there.



**McKINNEY:** And I understand that and I appreciate that. I, I do believe we should be improving the quality of life for individuals inside, but I think we have to-- especially because there are multiple studies that won't be completed until the summer, that we need to really make a sound and justified decision on whether or not we go forward with trying to build a prison. And that's something we need to think about. I know some people think, yes, let's build another prison because NSP is in the state it's in, but I repeat, the department could have done a lot of maintenance over the last, I think, eight years Director Frakes has been in that position, but they've elected not to. So I'm not really too sure how much the department actually cares about the people inside because, if they did, they would have began to do something prior to coming to this body and asking us to build another prison. That's something else we should think about. Why did they defer the maintenance for so long and then come to us with a proposal for a quarter-billion-dollar prison or more, which, even if we decided to vote to build it, we still have a overcrowding crisis? So I appreciate that Senator Brewer is at least open to having that conversation because sometimes I feel like it's always, no. It's no, no, no. And I'm not saying anyone has to agree with me, but we have to have open dialogue back and forth to come to a decision. If we're a body and we're supposed to work as a team, we all can't be on our, our different sides at a table and never have a real conversation about the situation based on political views. We can't pay-- we cannot play politics with the lives of our taxpayers, the individuals inside and outside. We have to be able to get to the table and actually have real discussions about what do we do about criminal justice reform in the state of Nebraska? Because we're currently the worst and we're trending to be even worse and I don't find that being acceptable. I don't know how you attract anybody to come to our state. I don't--

**FOLEY:** One minute.

**McKINNEY:** I really don't understand. Thank you.

**FOLEY:** That was one minute, Senator.

**McKINNEY:** Well-- I'm good, thank you.

**FOLEY:** Very good. Thank you, Senator McKinney. Senator Linehan.

**LINEHAN:** Good afternoon. I'm sorry, I got something in my eye. I just have some more questions on the budget, but this is kind of general and I won't take my full five minutes. So going through the budget, I

know in a lot of the programs that they were increasing the funding with cash funds, and I think this is probably normal. I just don't know. So is there any place in the budget book where we can look and we see how many of the cash funds we're taking to increase spending in other programs? And I just have a question. On page 52 at the top, it's lines 1 through 4, it says, the Needy Families program-- did I ask this question already? Maybe I did, but I don't think I got an answer. It's the intent of the Legislature to continue to pay child care providers at the 75 percentile in '23-24 and '24-25 using the same federal funding sources. Then a couple pages later, page 54, it's the total amount-- OK, so it's page 54, line 15 and 18, and this is to do with Medicaid-- medical assistance. The total amount appropriated for Medicaid nursing facility rates for the program, number 348, includes amounts for rate enhancement and any other purpose related to Medicaid nursing facility services and shall be used-- this is the new language, I'm sorry-- and shall be used as the base for funding appropriations in '23-24. So I guess my question is, is that normal that we put in bills-- I thought there was something-- we can't tell future legislators what to do, but this says they shall be used. So I just, I just don't know if that's normal language and why it's in there. And again, the bigger question is, if we're using all these cash funds to do the increases in the rates, that's fine, but does it go into the base, which it means-- it looks like it does, so then the base is going to be a lot higher. And are we playing that out-- do we have enough cash funds to keep paying that or are we going to have to use General Funds? Because I don't know. I know I've worked enough with these numbers on Revenue and Appropriations that every time you move one number, it moves all the other numbers. So I'm just trying to figure out, not just what it does to '20-- '22-23, but are we-- what are we doing in the out-years with this budget? So thank you. With that, I'll of my time back to the President.

**FOLEY:** Thanks, Senator Linehan. I see no other members wishing to speak. Senator Lathrop, you're recognized to close on FA74.

**LATHROP:** Thank you, Mr. President and colleagues. I'm going to close on this and then pull the amendment and go on to the next one after I get done speaking and dispense with the vote and the call of the house and all that. But I do want to make a couple of points and, and I appreciate Senator Brewer's concern for the state of the Penitentiary. I have the Alvine Engineering report and I can see that the-- and, and frankly, I have visited the Pen. I-- you know, they didn't take me down into the, the mechanical rooms of the place, but I've seen the pictures in the Alvine report. I've, I've read the entire Alvine report and it is a-- it is near its end of life, and I

think that's hard to argue about. You've certainly heard the Governor talk about how it needs to be replaced. But when we, when we come into here-- this body and say we need to replace the prison, that other stuff we'll get to, we're trying to separate two issues that I think are, are absolutely tied together. You can't separate what we're going to do with the population from what we need to build, how much we need to build, where it ought to be built. Those are all questions that are, are related because, if we do no criminal justice reform, if we make no changes, then the proposal to spend \$270 million on a new prison is inadequate. You'll need at least twice that much space and you'll be talking about \$500 million instead of \$270 million and, colleagues, that will just get you to design capacity by 2030. But the problem will continue because the rate at which the average daily population is growing will continue to grow at 2.5 percent, a couple hundred people a year, and then you're going to be in a situation where you are building 200 beds a year just to keep up. The can has been kicked down the road long enough. And it would be nice if this were not our problem, it would be nice if we could hand this off to the next Legislature, but sometimes it's our turn to make the tough decisions and this is one of those, this is one of those moments. This is one of those subjects. We have a crisis and for a long time, the crisis was blurred by the crisis with staffing, which was allowed to get so bad that we still have people spending three days a week locked down because we don't have sufficient staff, even with the pay raises, and we're still shuttling people into some of the institutions because we don't have enough staff. Might we get to a point where we'll have enough staff? Perhaps, but it's a ways off. It's a ways off and we're opening more beds, 384 beds down at the Lincoln Correctional Center. We can't staff that. We're short 150 people now. It will require 200 more, and we don't have them. So this conversation about facilities and the conversation about reform have to happen at the same time. Otherwise, otherwise, we're accepting the notion that we can build 1,500 beds, we don't know which kind we need, and it won't solve the problem. It won't solve the problem. This is not new, either. I mean, this has been a long time coming. If you look at that chart, you can see we have been in an overcrowding crisis for longer than the time it was declared. We amended the statute and required the Governor to declare the emergency--

**FOLEY:** One minute.

**LATHROP:** --and I-- did you say a minute? I haven't seen any sense of urgency to resolve any of the problems that relate to overcrowding. When I introduce the next amendment, I'll begin the conversation on

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the CJI process. I want to talk to you about why we invited them in, how they came in, what the process was, and then we'll talk about the ideas for our consideration that have come out of that process. And with that, I will ask to pull FA74.

**FOLEY:** Thank you, Senator Lathrop. FA74 has been withdrawn. Before proceeding, items for the record, please.

**ASSISTANT CLERK:** Thank you, Mr. President. Amendments to be printed: Senator Wayne to LB1011, as well as LB29, and Senator Erdman to LB283. Communication from the Speaker referring LB335 [SIC--LR335] to the Reference Committee for referral to the appropriate standing committee; pursuant to that, Reference Committee report referring LR355 to the Education Committee. That's all I have at this time, Mr. President.

**FOLEY:** Thank you, Mr. Clerk. Next item, please.

**ASSISTANT CLERK:** Mr. President, next item, Senator Lathrop would move to amend with FA75.

**FOLEY:** Senator Lathrop, you're recognized to open on your amendment.

**LATHROP:** Thank you, Mr. President, and good afternoon once again, colleagues. As I've suggested, the problem with overcrowding has been evident for many years. The emergency was declared by the Governor July of 2020 because he was mandated to by statute. Our current population is at 152.3 percent of design capacity, 152 percent of design capacity. The Diagnostic and Evaluation Center, colleagues, where people-- where men go for their first stop and on their way to the Department of Corrections, as of the latest data from the Department of Corrections, is at 355 percent of design capacity. People are sleeping on things they call boats. They call them boats at the-- they're little-- they look like little children's toboggans. They drop them in the-- in common areas and sleep on those. OCC, 195 percent; LCC, 169 percent; Community Corrections in Omaha, 192 percent; the WEC center in McCook, 186 percent of design capacity. We have an overcrowding issue, and as a consequence of what was obviously an overcrowding issue and attempts that I made last year to pass legislation that were, were vetoed, I initiated the process of inviting CJI into the state of Nebraska. CJI is the Crime and Justice Institute. They have been in other conservative states. Understand, this idea of criminal justice reform is a conservative movement. It's about, it's about the cost of corrections. Ours has gone up 50 percent in ten years. We're at \$273 million a year from \$179 million

a year before we build this facility. This is a conservative movement. Senator McCollister read the organizations that support this kind of work. We brought in CJI. I encouraged the Governor to participate and the Chief Justice and they agreed, and we brought them in because we have a problem. And understand, when we brought in CJI, when we brought in CJI, it's criminal justice reform, and by definition, by definition, colleagues, criminal justice reform means instead of being tough on crime, which we've done for a generation as we've packed our prisons, being smart on crime. Where do we get the best bang for our buck when it comes to reform and keeping our communities safe? And a lot of states have done this and it's been a conservative movement because they see the mounting cost of the departments of correction across the country. And while other states who have bought into the dep-- to criminal justice reform have seen their populations go down, ours is one of two states in the country that have watched it go up over the last decade. We're out of step and we're not spending the taxpayer's dollar wisely because, at the end of the day, the measure isn't, did somebody spend 19 years or 20 years in prison; the measure is, are we keeping the people of Nebraska safe, safer, or less safe? These reforms that have been enacted in other states have not resulted in increase in criminal activity, and that information is available on the Judiciary Committee website in the form of a report from CJI. It doesn't. That's a talking point and it's misinformation. They were invited to this state by the Governor, the legislative branch-- myself, and the, and the Speaker-- as well as Chief Justice Heavican. They came to Nebraska and they went through our data. They went through all of our data. They went through Parole-- Probation, Parole, Corrections, court data, and they told us where the problems are. They told us where our trends are and they shared that information and they didn't come with a solution. They didn't come and tell us, you have this problem, here's your solution. Once they spent two days presenting the data to the working group of about 15 people that included three senators, three members of the judiciary, the Governor, some public defender, prosecutor, some law enforcement, those three-- that large group broke into three different groups and they each looked at different aspects of the process: before you get brought into the department, how long you spend there, and what happens on your way out. And they've made recommendations, and the recommendations, some of them, you will hear called consensus recommendations, where everybody says that makes sense to me. And I'm just going to say something about the consensus items, colleagues. They're not the ones that move the needle. I'll go through them all and we can talk about them today, happy to answer any questions, but where, where we change

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the trajectory of our population is in the nonconsensus items. There are things that affect sentences, how long somebody spends there. And I want you to know, before we even get into these, that the nonconsensus items don't affect mandatory minimums for violent crimes; they don't affect mandatory minimums for gun violence. That-- we didn't touch it. We touch a lot of things, and I'll go through them in my opportunities to speak. I wanted you to know what the process looked like and I want you to know that it's data driven. When CJI came in, this isn't speculation. It's not opinion. It's not philosophy. It's not perspective. We got data and we, we also had the benefit-- and CJI, when they come in, they also tell you what works and what doesn't; that will make a difference, that won't make a difference. It's data though. It's data. So when you take somebody who has got a drug problem and you violate them and put them back in prison, do you have a better outcome or, or are they more likely to recidivate? Turns out they're more likely to recidivate. Putting them back in prison doesn't help. That's an example of information that they brought with them and was available to the CJI working group. I'd like to start by talking about the first option. And I'll call them options rather than recommendations because it's hard to call something that wasn't a consensus item a full recommendation, but it was a recommendation of the committee that they at least be available for our consideration. And the first one is to establish a streamlined parole process for certain eligible individuals. And so let me explain what that looks like. Nonviolent individuals will be released on their parole eligibility date without a hearing if they meet these two criteria: there is no outstanding residential treatment program requirement and no Class I misconducts in the last 24 months. If they qualify, they will meet with a parole officer-- or the, pardon me, the Parole Board, and enter into a contract two years before their parole eligibility date. Why are we doing this and what's the advantage? We are doing this to create certainty for the inmate. For a lot of inmates, it-- the parole process feels arbitrary. Should I cooperate? Are they going to let me out? I don't know. If they qualify-- by the way, this is a consensus item-- if they qualify--

**FOLEY:** One minute.

**LATHROP:** --if they qualify, then they enter into a contract. These are people that are nonviolent, people that are two years from their parole eligibility date. And the contract basically says, you know what, you don't need any inpatient treatment and if you don't get any misconducts, you're out in two years on your parole eligibility date. What does that do for the institution? What's that do for the inmate?

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For the institution, it means that that person's going to behave themselves. They're more likely to keep them-- their nose clean while they finish the balance of their sentence and move towards their parole eligibility date. And for the Parole Board, that means one more small case they don't have to deal with so they can focus on more high-risk individuals. It frees up time for the Parole Board. The, the head of the Parole Board was on board with this notion and that is the expedited parole process.

**FOLEY:** Thank you, Senator Lathrop. Senator McCollister. Senator McCollister.

**McCOLLISTER:** Thank you, Mr. President. Good afternoon, colleagues. Next amendment-- I'm glad we're moving ahead as we move this afternoon. I always start my talk about criminal justice reform referring to 1980 when there was only 1,400 people in our system, but then we had the '90s: three-strikes-you're-out, enhanced sentencing, other factors that built up our prison population to unacceptable levels. And you can use the chart that Senator Lathrop gave us to see how that, how that has increased. We've-- talking about the CJI work group, and would Senator McKinney yield to a few questions?

**FOLEY:** Senator McKinney, would you yield, please?

**McKINNEY:** Sure. Thank you.

**McCOLLISTER:** Senator McKinney, were you on the CJI work group?

**McKINNEY:** Yes, I was.

**McCOLLISTER:** What-- of the three branches or the three efforts, which one did you serve on?

**McKINNEY:** I was on the-- the sentencing subcommittee.

**McCOLLISTER:** Well, some of the elements that we talk about in sentencing include consecutive sentences--

**McKINNEY:** Yes.

**McCOLLISTER:** --mandatory minimums. What, what was the discussion about those two particular strategies for criminal justice reform?

**McKINNEY:** With consecutive sentences, we were looking at how there was an increase in judges using their discretion to consecutively sentence individuals; and for the mandatory minimums, we were having

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discussions about decreasing manda-- mandatory minimums for low-level drug offenses.

**McCOLLISTER:** Were there information provided that show that those particular elements, consecutive sentences and mandatory minimums, don't increase public safety?

**McKINNEY:** Yes. I think, you know, the examples from other states like Utah show that we could do this with-- and be smart as well.

**McCOLLISTER:** OK. There was 21 recommendations, is that correct?

**McKINNEY:** Yes.

**McCOLLISTER:** And how many did the group unanimously adopt?

**McKINNEY:** 17.

**McCOLLISTER:** And of-- what were the, the four others that you chose not to adopt?

**McKINNEY:** The, the four others were geriatric parole for individuals who are incarcerated that are, you know, seniors pretty much, modifying drug possession penalties, discourage the use of mandatory minimum sentences for nonviolent felonies and allow credit to be earned during a mandatory term towards the nonmandatory portion of a sentence, and the 21st one was ensuring consecutive sentences are used consistently and appropriately across the state.

**McCOLLISTER:** We talked about geriatric issues this morning and I think we discussed the fact that we can actually prove that those people in those senior ages don't recidivate. Is, is that correct?

**McKINNEY:** Yes. And contrary to popular, popular belief, individuals that serve long-term sentences, especially once they get past a certain age, have a low recidivism rate.

**McCOLLISTER:** Yes. Well, that would be a good strategy for us to adopt. Any clue how many people would be eligible for parole if we were to adopt such a policy?

**McKINNEY:** Oh, that's a good question. I can't say an accurate one off the top of my head, but it would be a good number of people.



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**McCOLLISTER:** I think we made that study last year and I'm thinking it was easily 60, but perhaps is a number-- a number as high as 100 folks in the--

**FOLEY:** One minute.

**McCOLLISTER:** --system right now would be, would be eligible. One minute? Thank you. Next question: when it comes to sentencing reform, what were the-- some of the issues that surfaced from those that object to sentencing, sentencing reform?

**McKINNEY:** There were conversations about public safety, thinking about victims, basically not wanting to be soft on crime. People think they're already doing their job, but they've incarcerated the tenth-highest black incarceration rate in the nation. So those were the conversations.

**McCOLLISTER:** How about technical violations? If a person had a small technical violation on parole, how often are they sent back to prison?

**McKINNEY:** I think that was 40 percent.

**McCOLLISTER:** And I think some states have-- no longer ask people to go back to prison for a small technical violation, is that correct?

**McKINNEY:** Yes, and we had discussions about halfway-back houses and things like that for individuals that--

**FOLEY:** That's time, Senators.

**McCOLLISTER:** Thank you, Senator McKinney.

**FOLEY:** Thank you, Senator McCollister and Senator McKinney. Senator McKinney, you're next in the queue.

**McKINNEY:** Thank you, Mr. President. But, Senator McCollister, we had conversations about, you know, looking at how do we address technical violations and possibly having a halfway-back system to not necessarily send those individuals back, but have a system kind of, kind of close to how the federal system is, where they have halfway houses and, you know, slowly reintegrate individuals back to society. The, the CJI process was an interesting process, to say the least. I went into it trying to be as optimistic as possible, but going into it, I clearly stated in the first meeting that, you know, are we here to actually do something or are we here to pay lip service and say we

tried but we couldn't come to agreements on anything? And in my honest opinion, I was trying to be optimistic, but once we got to actually figuring out what the options were and the recommendations, the true colors were shown. It felt like individuals were willing to go through the process just to say we tried, but not actually willing to take the necessary steps to change our criminal justice system in this state, and that's the problem. Individuals were allowed to express their opinions on the options or if we want to call them recommendations. Everyone did and we had our opinions on things. Then once it came time to release those documents, people got hesitant, wanted things to change. It took longer for the final report to come out because of that and now we have a bunch of amendments on LB920 because the process wasn't a good-faith process; it was to pay lip service. And you could stand up and say no to this and no to that, but the facts are the facts. We're either going to do something about criminal justice reform in the state of Nebraska or we're going to continue to have a prison overcrowding crisis. And people can stand up and talk about public safety, but I would just tell you that having a schedule, for instance, a, a 4-3 schedule where people are able to roam around inside, for example, Tecumseh, for-- from Monday to Thursday, but they're locked up Friday, Saturday, and Sundays for 72 hours, that's not safe. That, that creates a whole bunch of crisis. People have reached out to me about not getting medication, not getting proper medical treatment, being mistreated by the guards, not getting showers when they were supposed to. How is that humane? We have to do something. Again, I repeat, if we elect to build a prison, it will take a long time for that prison to be built, which means we'll still have a prison overcrowding crisis that we don't address, but we're-- a lot of people will walk away happy saying, oh, we decided to build a prison, we are tough on crime in Nebraska, don't come to Nebraska because we're tough on crime, but people are standing up talking about humanity. How is that humane? And then we, as a nation and as a country and as a body, stand up and talk about other nations across the world, about the atrocities and injustices that they do, but we don't want to hold ourselves accountable. America has been one of the worst places ever in history, from slavery to mass incarceration, but nobody wants to even address that. They want to ban that from schools. People do. It's, it's crazy. It makes no sense. And then you wonder why people want to leave this state, why we can't retain people or anything else like that. Because you want to build prisons, you want to stay stuck in the '90s tough on crime, which-- and, for instance, in north Omaha, being tough on crime hasn't helped, over-- impoverished my whole life, and crime is what it is because instead of investing in people, we've elected--

**FOLEY:** One minute.

**McKINNEY:** --to lock people up, which hasn't helped my community or Senator Wayne's community or Senator Vargas' community at all. But y'all don't care because y'all don't have to live at night and lay in your bed and hear gunshots and hear people get shot around the corner. You don't have to hear the sirens all night. You don't have to wake up and answer those phone calls about who got shot and who didn't get shot, where was it at. You don't have to hear that. We have to live that. But instead of being smart and investing in communities, you want to build prisons and be tough on crime and it makes no sense. And somebody please stand up and make it make sense to me. I welcome you to. Thank you.

**FOLEY:** Thank you, Senator McKinney. Senator John Cavanaugh. Excuse me, Senator. Before I-- let me just jump in here for a second. Senator Halloran would like us to recognize six fourth-graders from the Zion Classical Academy in Hastings, Nebraska. Those students are with us in the north balcony. Students, please rise. We'd like to welcome you to the Nebraska Legislature. Senator John Cavanaugh.

**J. CAVANAUGH:** Thank you, Mr. Lieutenant Governor. So I again rise in, I guess, support of FA75 and, and opposed to building a new prison, especially without any substantive reform. And I wanted to talk about the-- I had an opportunity. Went with Senator McKinney, we went and visited the Concerned Lifers at the State Pen on August 6 of this year, and we sat down with them for an hour or so and talked about prison life and talked about, you know, the system and a lot of different things. I know other folks here have had the opportunity to go and visit other institutions and see them and meet with people. But I wrote down a couple of quotes that I thought were relevant and interesting and, and I actually asked the guys if I could read them when I-- when we were there. So there's one that I think is particularly relevant to this conversation: how you want someone to come out is how you treat them while they're in. And that was a gentleman named Todd Cook talking about how we need to make sure that we are making programming available to people, we're not, we're not treating people in an inhumane way, a lot of the things that Senator McKinney just talked about that-- where it's hard for people to feel like a human when they can't get a shower and they can't communicate with their family and they can't get basic necessities. And we treat people-- we-- some of these people will be in there for life, the Concerned Lifers. Not all of those folks will be there for life. They're-- some of them are doing long terms of incarceration and ultimately would get out at some point and-- but not just them, but

everybody that's in, most of these people are going to come, come out of the, the system and they're going to come back and live in society, some of them after a year, some of them after 20 years, some of them maybe after 50 years. And we don't focus enough on making sure that people come out better than they went in, better equipped, better prepared, and helping them deal with whatever issue or reason led to their incarceration and by which I mean decreasing the likelihood that they're going to reoffend, whatever offense, commit another offense, and that is the, the objective, is to decrease crime, to decrease the number of individuals who are the victims of crime. One of the ways we decrease the number of victims of crime is by decreasing crime, is by making sure that individuals who may potentially commit a crime are not going to commit it for whatever reason. And we do that by helping people with mental health and drug and alcohol treatment. We do that by making sure that people have opportunities and that is not just building another facility and it is not focusing on longer sentences and more stacked sentences. So there are ways to work on that and that actually serve the, the objective that we all agree with, that we all espouse. It's just more complicated. We're taking a long-- a lot of time to talk about this, taking opportunity because it is a complicated issue. It takes time, it takes effort to understand, takes interest, and we're having this conversation in a longer format for that reason, because the short answer is, lock more people up, but that's not the right answer. It's not the constructive answer. It's not a useful answer. The long answer is making these types of changes, systematic changes, institutional changes, that will actually serve the state's aims and our goals and be more efficient, cost less, and have a better outcome. The other quote is one that-- it said it's about who you are and not--

**FOLEY:** One minute.

**J. CAVANAUGH:** I'm sorry, it's not about what you've done, it's about who you are. And this was a gentleman named Lance Allen who said that a lot of these people, these Concerned Lifers, did do something terrible and they-- a lot-- they express remorse and regret, and yet they're still human beings who are still part of our community, even though they're incarcerated. And they, they should be treated as an individual and not always-- or not, not treated as the worst thing that they've done. And so it is important in this conversation to remember to reflect upon the fact that we are talking about people's lives. And I know we're not trying to diminish victims of crime, not trying to say that people aren't entitled to justice, but we need to make sure that we are cognizant of the fact that there are-- there

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are humans on both side of this issue and this, this situation. Thank you, Mr. President.

**FOLEY:** Thank you, Senator McCollister-- excuse me, Senator Cavanaugh. Senator Machaela Cavanaugh.

**M. CAVANAUGH:** Thank you, Mr. Lieutenant Governor. Good afternoon, colleagues. So this amendment, I think, strikes any changes to the capital improvement project, which I haven't gotten to yet, so I don't know how much that would be, but I'm certainly going to take a look at it and possibly vote for it if we get to vote on it. I've been going through the budget, as one does, and I just-- I really don't have the words for how much I dislike this budget. It reminds me of LB1107 in 2020 where we put a whole bunch of things together, too big to fail. Too big to fail is never a good approach. It's not about compromise at that point. It's about forcing everyone to do something that is completely against what they want or believe in because they're going to put something else in there. It's making you decide against doing what you believe is right and doing what you believe is wrong and putting those things together so that you have to do what's right and wrong at the same time. I don't believe that the canal should have been in the main-- this budget. I don't believe that the lake should be in this budget. I don't believe that the prison should be in this budget. If the intention is for this budget to die on the floor, then I understand why those things would be included. They are very controversial. It is a lot of money that helps no one. It does not improve the quality of life for anyone. Yes, it secures water rights in the future, which in the future might yield something, but it is not doing anything for the immediate needs of the people of Nebraska. And if we're not going to do anything for the immediate needs of the people of Nebraska, then I would go back to Senator Linehan's income tax bill and say, well, at least this does something for the people of Nebraska. This bill does some things for some people in Nebraska. It includes reimbursement rates. It adds money to the food bank. It has some money for middle-income housing and rural housing, but nothing compared to the things that it could, first of all, do for all of those things and nothing compared to what we are doing for these other things: the prison, the lake, the canal. The prison, the lake, the canal-- comes down to those three things. You put those in this budget, this budget is toxic to me. The prison, the lake, and the canal-- I should not be forced to choose between giving people and in-- a raise from \$12 to \$13 who are providing essential services and then just throwing, in my view, away hundreds of millions of dollars because-- why? Those things should be decided on their own merits. Those things should be their own standalone

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bills to be debated by this body: the prison, the lake, the canal. And those things are such huge projects that there's so much within them to be debated. Let's take the lake, JEDI, STAR WARS, whatever you call it.

**FOLEY:** One I-- one minute.

**M. CAVANAUGH:** Thank you. I don't oppose everything in that bill. There are things in that bill that I think are infrastructure and necessary, but they're being attached to building a recreational lake, and that's forcing the senators who represent those districts where the water infrastructure improvement projects are happening to vote for a recreational lake even though you don't think we should, even though it will take farmland away from family farmers because we're going to have to use eminent domain. Ask yourselves what you're being asked of to do here today, to do on all of these bills, and is it right and is that how you want to legislate? Because it's not how I want to legislate. Thank you.

**FOLEY:** Thank you, Senator Cavanaugh. Senator Tom Brandt has a very special guest with us today. His mother, Janet Brandt Murray, from Plymouth, Nebraska, is with us in the north balcony. Mrs. Brandt, could you please rise so we can welcome you to the Legislature. Senator Lathrop.

**LATHROP:** Thank you, Mr. President. When I last spoke, I was talking about the first option, that having to do with expedited or streamlined parole. That, that recommendation or that option also included a second aspect, and I'd like to visit with you about that now. Right now, we have about 14 considerations that are taken up by the Parole Board as they decide whether someone is a suitable candidate for parole, whether they should be paroled or not paroled. The working group that I was in that included the head of the Parole Board recommended-- and it was a consensus item-- that we narrowed the considerations down to six. I'm going to read those for you in a second, but I want you to know the rationale behind that. And the rationale is this: when there-- the, the considerations that have been taken off of the list of considerations are those that are more subjective. And the reason for that is, is that we want inmates to feel that parole is achievable, something they can do, and have clear guidance for what it takes to get to parole and not have something that is so subjective that they go, there's no point in even trying. And that, that's part of the concern that some inmates have, recognized by the Parole Board themselves, and the recommendations are that we limit or have six considerations. I'm going to read those

to you so that you know these considerations are fair considerations, they're more objective considerations, and they will benefit both the Parole Board and those seeking or considering seeking parole itself. The first one is the Parole Board will consider the following factors: (1) the adequacy of the individual's parole plan, including sufficiency of residence and employment history; (2) the individual's prior criminal record, including the nature and circumstances, dates and frequency of previous offenses; (3) the individual's institutional behavior; (4) the individual's previous experience of parole and how recent such experience is or was; (5) whether an individual has completed a risk and needs assessment pursuant to Section 83-192; and (6) the perspective of victim or victim's representative on the parole application. The-- that is the first recommendation, that's the logic for the first recommendation or the option, and I'll go on to the second one. The second option that this group developed, and it is a consensus item, is to increase the number of assistant parole-- pardon me, assistant probation officers-- they call them APOs-- in the state and pairing those individuals with probation officers who manage high-risk caseloads to ensure that officers are able to follow evidence-based, evidence-based practices and to ultimately maintain and improve high success rates of probation supervision. It will first be a pilot in one county or probation district in order to assess the impact of increasing the number of supportive personnel within the probation workforce. Why is that important? Some time ago, I think it was in LB605, we established post-release supervision. They are followed by-- so some people with lower-level felonies, when they are discharged, they will have post-release supervision in addition to those that just have straight-up probation. And what we've seen with post-release supervision is now probation is dealing with some higher-risk individuals, people that need a little more attention--

**FOLEY:** One minute.

**LATHROP:** --people, people who need a little more oversight. By establishing assistant parole-- probation officers, it allows our probation officers to focus on the high-risk, high-need individual. It gives them help without having to hire an actual trained probation officer. This will help our probation officers cover more ground, cover more cases, and be able to do a more effective job focusing on the high-risk, high-need person. It is a good idea, and for that reason it was a consensus idea in the workgroup. I'm out of time?

**FOLEY:** 13 seconds.

**LATHROP:** Thank you.

**FOLEY:** Thank you, Senator Lathrop. Senator Walz.

**WALZ:** Thank you, Mr. President. I've been really trying to take some time today to read this report from the Nebraska Criminal Justice Reinvestment Working Group, and I don't know if you all have copies of this. And if you don't, I would suggest that you get it because it has some really great information about-- just about the, the process and the recommendations. I honestly have to say I appreciate the conversations that we've had so far about the process and the recommendations that were made, the options that were made in the-- in this, in this report. I am not an expert. I'm not an expert in this area and that's why I rely heavily on Senator Lathrop, Senator Pansing Brooks, Senator DeBoer, Senator Wayne, Senator McKinney, and many other people to talk about the findings and I rely on them to help me understand what the recommendations are and why they're important. I, I'm kind of disappointed that there are so few senators on the floor right now. This is an important issue. Adding prisons without reform is a waste of taxpayer money and unless we address the root of the problem, we're going to continue to just throw money away. More important, this really is a waste of a life for a person who has the capacity to succeed and really add value to their communities if they're given a chance. So I'm going to continue to listen. I really appreciate the conversation. I appreciate the information and I would like to yield the rest of my time to Senator Lathrop.

**FOLEY:** Thank you, Senator Walz. Three minutes, Senator Lathrop.

**LATHROP:** Did you say three?

**FOLEY:** Three.

**LATHROP:** Thank you, Mr. President. The third option for our consideration coming out of the CJI process is generally establish supportive housing programs for individuals on supervision in the community, specifically developing a supportive housing program to provide accountability and intensive support to individuals on parole who commit technical violations without revoking them fully back to prison. Let me tell you what this is about. So when we place somebody on parole, they have, they have-- they are accountable to a parole officer, right? They have to check in, they have to maintain employment, they have to have a suitable housing, and they also have to take drug tests. And sometimes, sometimes people on parole will be



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late checking in, they might have a dirty UA, not a law violation. They haven't been caught committing another felony. We're talking about technical violations. This is a consensus item, I believe-- it is-- because recognizing-- and those who were involved in this process recognize that sometimes people trip up, but they don't need to go back to prison. Forty percent-- this is a-- Senator McKinney just answered this question. Forty percent of parole revocations are the result of technical violations. So do we send them back to prison, where they will then take a bed, or do we find a place-- I like to call it a halfway-back house, right? Somewhere, Parole is establishing a pilot program. Senator McDonnell and I have worked on a larger program than that, but in the short term, we'll have 15 beds in a facility that will be established by Parole. Here's what it does. If somebody is just completely ignoring the probate-- the parole officer and doing nothing they're supposed to, back they go.

**FOLEY:** One minute.

**LATHROP:** But if somebody is late checking in, they're supposed to call on Monday and they call on Tuesday, if they just need a little more structure to succeed, this is what they would go to. It's a great idea. Senator McDonnell and I saw this over in Council Bluffs when we toured a facility over there where they take people who will succeed, but they need a little more structure, and it's, OK, you're going back to the, the halfway-back house. "Ros" Cotton calls it the "prep house." I think that's offensive to some guys that went to Prep, maybe John Cavanaugh; that would be about it. It is, it is a, it is a really thoughtful, a good idea. It may well help to have some of our technical violations on parole spared the expense of going back, expense for us of having them back at the Department of Corrections and that is--

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

**LATHROP:** --option number three. Thank you.

**FOLEY:** Thanks, Senator Lathrop. Senator Hunt.

**HUNT:** Thank you, Mr. Lieutenant Governor. I appreciate a little Omaha humor with the Creighton Prep joke. I'm really going to miss Senator Lathrop in this body, and I've known that and we've talked about that. But listening to him discuss this bill at length this morning and, and throughout yesterday, I've learned so much from him about how the criminal justice system in Nebraska actually works, different terms that he uses that I didn't know, and it just gives me a lot

more clarity to the process that I think is a value add that we will really be losing in this body. I also appreciate what he was talking about, the halfway-back houses for people who just need a little bit more structure. Colleagues, if I were ever incarcerated and I got to come out on parole or probation, which by the grace of God, I haven't been basically. I mean, I've-- I make mistakes like everybody does. And a lot of times, I think that the reason people end up incarcerated or not is just a matter of luck. But I'm the kind of person who needs a lot of structure in my life and I think if I were on parole and I had to check in at a certain time, at a certain place, at a certain date, and I couldn't go outside a certain boundary, that's something I would frankly have a lot of trouble with, and probably a lot of people in this body too. I'm thinking specifically of one constituent of mine who I corresponded with when he was incarcerated many years ago, and when he came out, he came back to live with his wife and his family in my district and he kindly actually offered to campaign for me and knock doors for me. And he became an important resource to me, understanding what it's like to be incarcerated and understanding what it's like inside the prison system because he kindly shared that experience with me. And he is now incarcerated again on one of those technical violations. I think that he told me he went to Vala's Pumpkin Patch with his family and that was technically outside the boundary of the area he was allowed to go and now he is back in the correctional facility in Lincoln. So, colleagues, how is that keeping anyone in Nebraska safer? I mean, we've got someone who's trying to become civically engaged, who wants to reintegrate into his community, who's spending time with his family doing really wholesome, positive things, and our reaction to that is to send him back to prison. So when we talk about examples of, of overpopulation in Nebraska and that we're putting people in prison who don't really need to be there and so that's why we need to look at these criminal justice reforms that Senator Lathrop and Senator McKinney have been talking about, that we heard through CJI, that we've heard through different consultants we need. But then I hear the Governor or I hear certain folks in this body say, but we can't do that because we're going to be soft on crime. The crimes, quote unquote, that we're talking about in many of these cases is just like what my constituent did, the technical violation of going outside your parole boundary by taking your kids to the pumpkin patch for Halloween. I mean, that's the level of the reality of the experience that we're talking about. And I think that there's just some misunderstanding about what's-- being soft on crime really is because when you're reincarcerating these people who are not a danger to society or to anybody or to themselves or to their

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families, that's not making society safer. It's not doing anything for public safety. And it's probably worse, harder on crime or I don't know what. It's probably making us less safe if we keep antagonizing and harassing these citizens, these neighbors that we have in Nebraska who are trying to do the right thing. I participated in the ACLU/ALEC--

**FOLEY:** One minute.

**HUNT:** Thank you, Mr. Lieutenant Governor. I participated in the ACLU/ALEC seminar and discussion that was facilitated by Senator McCollister in December 2020 that he spoke about and that was another really great opportunity. I know several of us were there. A lot of colleagues showed up to that one. And I was listening to it in the car, actually. I was driving my child. We were going to the Great Sand Dunes National Park in Colorado, so, you know, mid-pandemic, like, we're going on our little vacation road trip, driving across Nebraska to Colorado. And it was a really great environment to listen to that conversation because it was easy to focus on listening, and then I had my child with me in the car and they were listening, too, and then it was easy to have a con-- conversation and discussion in the car about criminal justice reform, about incarceration in Nebraska, and then hearing all of these solutions from both sides of the political divide--

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

**HUNT:** --about-- thank you, Mr. Lieutenant Governor.

**FOLEY:** Thank you, Senator Hunt. Senator Wayne.

**WAYNE:** Thank you, Mr. President. I'm not going to get on the prison discussion. I think we've been saying that a lot, but what I did pass out to colleagues is a chart that I kind of spent doing time yesterday when the-- and the day before and when we were drafting our amendment to LB1024, why we're justifying a cash transfer of \$225 million. And if you look at waters and trails-- and that's everywhere outside of Omaha and Lincoln, really, but we'll just talk waters and trails-- we're going to spend in special projects, according to these budget adjustments, \$318,550,000. Rural, specifically, special projects, we're going to spend about \$105 million in the budget. We talk about military and military bases. That includes our Nebraska-- not our Nebraska Air Force, but our Nebraska National Guard. We're spending about \$60 million-- a little bit over, almost \$61 million. Then when you get down to prison reentry, you'll notice we have a

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\$4.3 million adjustment, and that'll keep going for the next couple of years. That was part of the \$13 million contingency-- prison contingency fund we had last year. But then when you get to what's actually happening inside of Omaha and Lincoln, it's only \$20 million. I just feel like I heard the Speaker say, when we talk about ARPA funds, they want it to be balanced throughout congressional districts. That's what I want our special projects through our budget to look like. What I didn't include is our overall salary increases. I didn't include YRTC, \$15 million, because I believe the YRTC serves kids from all over the state. I didn't include the 15 percent adjustments for most of our providers because they serve everybody across the state. If we want to get technical, there's probably more in Omaha and Lincoln because there's more people, but it's based off of people, not necessarily a special project. But I find it interesting when you add them all up, when you add them all up, we're looking at roughly a little over-- let me get the right number here. Technology is always great. So outside of Omaha and Lincoln, the, the actual city limits, we're looking at over \$484 million of what we would deem special projects. And I think-- and I'm not discounting-- well, there's probably one in here I'm-- two maybe I'm discounting, I think we should have a conversation about, but I'm not really opposed to any of those. But for hypothetical reasons, let's say you think a lake between Omaha and Lincoln is somehow strictly going to benefit Omaha and Lincoln. We can include that in the number. We can also include the National Guard readiness in Bellevue. What I won't include is STRATCOM because not everybody can go there. So even if you subtract those out, we're looking at over \$393 million of special projects outside of Omaha and Lincoln. That's why I'm having a hard time supporting the budget. I can talk about the prisons, but I feel like you guys are hearing enough about that or you should probably keep listening because there's going to be more information you should hear about. But just from an overall math perspective, looking at numbers for numbers, Omaha and Lincoln, proportionally, based off of the budget, budget adjustments, aren't, aren't involved in the conversation for special projects. I don't know if you want to call it special projects, but that's what they are. So we have \$484 million roughly out of the \$700 million-- according to the, the budget adjustment report, \$725 million-- that are going to special projects outside of Omaha and Lincoln. And then you wonder why I'm saying, if you say you support north Omaha, show me in the budget. And what I'm not going to let happen on the ARPA conversation-- so I'm, I'm, I'm foreshadowing this right now--

**FOLEY:** One minute.

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**WAYNE:** --you don't get to get away and say you're investing in north Omaha with federal dollars. I'm asking the state to step up now. The state should step up just as much as what we're doing with federal dollars. You don't get to say we got a pot of money from the feds and now we're investing in north Omaha. That's no longer good enough, Appropriations Committee. It's no longer good enough to this body for me. We have to put state dollars in. And so on AM1024 that I filed yesterday, we're going to ask for a \$225 million cash transfer to balance out this-- what I think is not equal or not equitable, whatever word you want to use, because it qualifies for both-- budget that were laying out before us today. Thank you, Mr. President.

**FOLEY:** Thank you, Senator Wayne. Senator McCollister.

**McCOLLISTER:** Thank you, Mr. President, and good afternoon again, colleagues. I've talked a lot about my time at the Platte Institute, and my job as executive director there was to hire PhDs that would write about policy and give us a direction to go. And one of those, those papers we wrote was with the Texas policy organization, Right on Crime, and apparently we finished that report in 2011, maybe 2012, but we really didn't take that advice and that's unfortunate. Why do I say that? Nebraska is only one of four states that experienced increased incarceration rates since 2010. Nationally, the number of incarcerated citizens under state or federal jurisdiction across all states and territories declined by 11 percent between 2009 and 2019, while Nebraska's population continued to increase. In addition to pushing capacity of state's prisons to their limits, Nebraska's rising population is occupying, occupying a sizable portion of the state's budget. Corrections expenditures have increased over 1-- over 51 percent since 2011, from \$199-- one \$179 million dollars to \$272 million in 2020, not including the additional, at that time, only \$130 million, but now it's approximately \$272 million, estimated to cover the cost of a new prison. Nebraska is hardly alone-- alone in this regard. Since the early 1970s, state prison populations across the country expanded rapidly and the state officials have been-- spent an increasing share of taxpayer dollars to keep pace with soaring prison costs. From the 1980s to the mid-2000s, spending on corrections was the second-highest growing budget item in state budgets. We have talked about occupy-- opportunity costs, and if you spend increasing amounts of money on prisons, that reduces the amount of money you can spend on north Omaha, south Omaha, lowering income tax rates, property tax reform. That's not possible if we're continuing to spend extra money on prisons. What are some of the key findings that we should talk about? The length of stay for incarcerated individuals in NDCS has increased 38 percent in the last

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decade, driven largely by increasing sentence lengths and decreasing patrol rate-- parole rates, and that's been a problem. I think the decrease in parole rates has occurred just in the last decade and maybe it's we're afraid to let people out. I don't know what the problem is, but we need to deal with that issue and I'm hoping, when LB920 comes up, we can deal with that issue. Another key finding, these trends are great-- these trends come at great cost to the state, with Corrections expenditures growing over 50 percent since 2011 to more than \$270 million in 2020. Yet in spite of this investment, recidivism rates have increased over time, with 30 percent of those released in 2018 returning to NDCS custody, up four points since 2008. Perhaps it's the issue that Senator Patty Pansing Brooks claimed, where those people to jam out are more likely to return. That's something we need to deal with. The training we need to give those people needs to occur before they jam out. So these are some of the issues we need to deal with. Nebraska is an outlier. We need to make the--

**FOLEY:** One minute.

**McCOLLISTER:** --trip that many other states have made. Thank you, Mr. President.

**FOLEY:** Thank you, Senator McCollister. Senator McKinney.

**McKINNEY:** Thank you, Mr. President. I rise again in support of FA75 because I just don't think we should be setting aside any money for a prison, but to continue-- to more so continue the conversation. So we have the First Step Act, which was passed in Congress and signed into law by President Trump, and then we have LB920. They have some similarities. So one, limit use of consecutive sentences. In the First Step Act, which was passed, it reduced mandatory consecutive sentences for multiple firearm convictions by eliminating a stacking provision which previously resulted in a 25-year mandatory minimum. In LB920, it attempts to limit the use of discretionary consecutive sentences to cases in which aggravating factors are present. Would Senator Murman yield to a question?

**FOLEY:** Senator Murman, would you yield, please?

**MURMAN:** Yes.

**McKINNEY:** Senator Murman, I'll, I'll read this again. So we're on the topic of limiting the use of consecutive sentences. In the First Step Act, it reduced mandatory consecutive sentences for multiple firearm

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convictions by eliminating a stacking provision which previously resulted in a 25-year mandatory minimum. LB920, which Senator Lathrop introduced, attempts to limit the use of discretionary sentences to cases in which aggravating factors are present. Which one is-- which one goes further, in your opinion, the one in the First Step Act or the one in LB920?

**MURMAN:** Could you repeat that one more time?

**McKINNEY:** All right. So in the First Step Act, it reduced mandatory consecutive sentences for multiple firearm convictions by eliminating a stacking provision which previously resulted in a 25-year mandatory minimum. In LB920, it attempts to limit the use of discretionary consecutive sentences to cases in which aggravating factors are present.

**MURMAN:** Well, I do believe the judge should have discretion.

**McKINNEY:** That's understandable. Do you think what was done in the First Step Act went further than LB920?

**MURMAN:** I'm still not quite following the language in the two examples, but I do believe the judge should have discretion on sentencing.

**McKINNEY:** OK, thank you. Senator-- all right. Senator Clements, would you yield to a question?

**FOLEY:** Senator Clements, would you yield, please?

**CLEMENTS:** Yes.

**McKINNEY:** I'm not sure if you've been listening to the conversation. So we're on the topic of limiting the use of consecutive sentences. In the First Step Act, which was passed by Congress and signed into law by President Trump, it reduced mandatory consecutive sentences for multiple firearm convictions by eliminating a stacking provision which previously resulted in a 25-year mandatory minimum. In LB920, which Senator Lathrop introduced, it attempts to limit the use of discretionary consecutive sentences to cases in which aggravating factors are present. Which one you think goes further?

**CLEMENTS:** Which one goes further?

**McKINNEY:** Which one do you think-- what's the word? I guess I ask, which one could you live with?

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**CLEMENTS:** Well, I'm comfortable with the state statutes that we have now.

**McKINNEY:** All right. Thank you. And I'm asking--

**FOLEY:** One minute.

**McKINNEY:** --these questions because I think, you know, we need to understand what's, you know, on, on the plate for us as a state. You know, we had a bill passed in Congress that I believe went further than what LB920 is doing and we can't keep the status quo in Nebraska because that has led to the tenth-highest black incarceration rate, the worst prison overcrowding crisis in the country, and a lot of other things. So if you haven't, I'll send this around to you guys so you guys can look at it and kind of get a better understanding of what I'm trying to ask, but thank you.

**FOLEY:** Thank you, Senator McKinney. Senator John Cavanaugh.

**J. CAVANAUGH:** Thank you, Mr. Lieutenant Governor. Well, first I want to just address I had circulated a, a pin and, like, a little flier from the Irish American State Legislators Caucus. Being that tomorrow is St. Patrick's Day, I know there's a party that some people are going to do this evening. I just thought if anybody needed some sort of Irish paraphernalia to wear to the party, I wanted to make sure you all got it a day early so you could wear it tomorrow and tonight, but that is from our, our friends in Ireland in interest, I suppose, of continued friendship with the United States and recognition of I think it's 100 years of Irish independence this year. So that's what that is. If you have any questions, I'd be happy to talk about it off the mike. So I wanted to kind of just reiterate what Senator Lathrop was talking about in terms of some of these recommendations and go back to the one I think he just talked about the-- his most recent time on the mike is establishing supportive housing programs for individuals on supervision in the community, which I think is option three in the CJI report. And I previously talked about the recidivism, the, the number of people going back in the-- from the report, the quarterly jail census, prison census report that includes the number of people coming back for technical violations. And in the months of October and November, as we-- as I noted, they were more than 50 percent technical violations. In the month of December, it was close to 50-50. And if you look at the recommendations, if you look at the CJI report, the basis of the recommendation says, while statewide prison admissions are decreasing for new admittance, meaning new people going into prison for a sentence, having just been



sentenced by a judge, that that number is going down, they are increasing for individuals returning to the prison for parole revocation; admissions to NDCS, Nebraska Department of Corrections Services, due to parole violations have increased from 2011 to 2020; and one in six admissions to NDCS come from either parole or PRS failures. And so the reason that this is important is one of the things leading to our problem, our crisis, our overcrowding is the fact that we are having people serve their sentence, get paroled, get into the community, and then they have a violation, a technical violation in more than 50 percent of those instances, and then being sent back to custody. That's a problem on both ends, right? That's a problem in terms of the, the crowding issue because we are housing more people, but it's also a problem from that humanitarian aspect of this-- these individuals have served the-- their sentence up to and completed the programming that we asked them to complete in custody to qualify for parole, gotten on parole and started a life, which is what we want them to do, and then they've had-- as Senator Lathrop pointed out, the technical violations can include being late, having a positive UA, which means testing positive for drugs, which people I know are quick to say, yes, using controlled substances is illegal, it's against the law in the state of Nebraska currently, it would be a violation of your terms of release, and it, it is not a good idea on top of that. However, a lot of people, when they get out, they are still-- they're obviously living in a new environment, which is, we all are quick to say, is certainly better than being in prison, but it is different than what you become used to in that period of time. So they're adjusting; they're trying to find their place in that world outside or they're trying to find a job, trying to get a place to live, try to reconnect with their family, which was difficult because we charge people to make phone calls and to write emails when they're in prison, so we're disconnecting people from their communities. And so--

**FOLEY:** One minute.

**J. CAVANAUGH:** --they get back out and they have some kind of problem that they are not equipped to deal with and they revert to the thing they know, which can be a substance, and then they have a positive test and we send them back to prison for that. That is not serving the long-term aims of getting people back into a productive life for them. It's not serving the long-term aims of decreasing a number of people in custody. It's not serving the long-term aim of decreasing crime. It is not serving any of our objectives. It is costing us more money. So this-- so creating supportive housing is helping people solve one of those problems that they face as they come back out and

as they try to reintegrate into society and that is why it's a good recommendation. That's why it's in the, the program here and that's why it will help in one way. There are many other recommendations that we can keep talking about, but that is one small thing we can do to help alleviate the crowding crisis we have, help people achieve the objective that we set out for them and that we are trying to accomplish as a whole, as a state. And I'll push my light, talk about the next one. Thank you, Mr. President.

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

**M. CAVANAUGH:** Thank you, Mr. Lieutenant Governor. Good afternoon, colleagues. OK, continuing on with the budget. So there's a lot of-- for those following along at home, there's a lot of sort of-- this is happening over eight hours, but also really quickly. So we are working on a massive budget, the largest budget the state has ever done, and we have the whole Fiscal Office basically sitting over the side over here, and the Appropriations Committee and the Fiscal Office have been working on this all year. They get the bill, the bills out, they work on it over the weekend, and we start debating it immediately. So when you see us all reading here, it's because this is basically our time to really dig into the budget and ask questions, and asking questions, I think, is really important. So I'm just figuring out what these three different pieces are. So the piece that we talked about yesterday, LB1012, that was creating cash-- new cash funds for different projects that we have going on. The bill that we have in front of us today is the actual appropriating language for those various projects. And then the next bill up is the directing the transfer of the funds by the Treasurer to those cash funds. So these are working in a series and at each point, there's a lot of overlap as to what's in these. And it in some ways gives us an opportunity at every stage to talk about whether or not this is how we want to spend this money. The canal is in all three of these bills. JEDI is in all three of these bills. The prison is actually in two of these bills because we don't have appropriating language. So it's not in the current bill, but it is in the final bill where we, where we send the money, where we transfer the money, where the money moves from us to that fund. So each step of this is important. Each step has a reason, but this one right here that we are debating-- and I will say, yesterday, I found it very refreshing. The conversation and the debate around LB1012, it was the first time in a long time that I felt like the entire body was engaged around the conversation, which was great. There was real questions, back-and-forth happening, and that's great. We were creating new cash funds. But today we are talking about the actual appropriation of the budget and the Chamber

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has been not very full and there's been pretty much the same people talking. There's a lot in this bill. You don't have to just talk about prisons. Some of us, that's what we're talking about. That's what we care: criminal justice reform, sentencing reform, not-- spending money on people, not prisons. But this is really, really important and I personally feel like eight hours isn't enough to be debating over a billion dollars and how we're going to spend it. And I would really encourage, colleagues, for you to start getting in the conversation because if you're not getting in the conversation, then what are you doing here? This is the only thing that we have to do. This is, this is our-- we are constitutionally required to do this. Everything else, we are not required to do, but this we are required to do. So I would really just encourage everyone to-- even if you don't want to talk, just engage in the conversation--

**FOLEY:** One minute.

**M. CAVANAUGH:** --on the floor. People did this yesterday and I feel like it was productive. One minute, OK. Well, probably less than one minute now. So there just-- there's a lot more in this budget that I want to talk about, so I won't even get started now. I will take another turn. Thank you, Mr. Lieutenant Governor.

**FOLEY:** Thank you, Senator Cavanaugh. Senator Ben Hansen.

**B. HANSEN:** Thank you, Mr. Lieutenant Governor. First of all, I just want to actually praise Senator Lathrop for his, his drive and his passion for prison reform. Over the last four years, I've-- I know he's been a champion of that and he's always been trying to move the needle in a certain direction. And so with that, I just have a couple questions if Senator Lathrop would, would yield, please.

**FOLEY:** Senator Lathrop, would you yield, please?

**LATHROP:** I'd be happy to.

**B. HANSEN:** I, I appreciate a lot of information you've been giving me off the mike and I think that's helping answer a lot of my questions. But I think one of the questions that I had-- and it might have been several times you've mentioned this, that there have, there, there have been many states around the nation that have reduced or changed their sentencing laws. How many of them, if you know, how many of them have also had an end-of-life prison like we do?

**LATHROP:** A what prison?

**B. HANSEN:** And end-of-life prison, I think we kind of use that, one of those--

**LATHROP:** Oh, I think Utah went through that. My recollection is that CJI made that in the presentation of information to the broader group of senators. I think they talked about their experience in Utah--

**B. HANSEN:** OK.

**LATHROP:** --where Utah was looking at kind of the same place we're at, do we build more, how much more do we build, should we do reform first, which they did.

**B. HANSEN:** OK, I, I just want to make sure we kind of differentiate the different states that might have an actual functioning prison that's maybe more modern versus one that we're-- we're kind of in between a rock and a hard place where we have a-- we, we really do have to replace our prison that we have now because, according to the report, they even said it's an end-of-life prison. And the people that I've talked to have said it's like, you know, the age of everything in the prison is making things difficult and even unsafe for many of the employees. One of the things that we did also discuss, and, and you did answer it, I believe, was Utah, from my understanding, when they reformed their sentencing laws back in 2015, 2016, did see a drop-- it was somewhere around, I think, 18 percent in, in prison population, which makes sense. However, what they did see a significant increase was the amount of parole-- or probation violations because there's a lot more people on probation now. They saw a huge increase in parole violations, which then led to an increase in incarceration rates. I know that's something maybe you can address. You have some information and I asked you about that, so I can give you some time later to address that if you want or if you want to--

**LATHROP:** OK.

**B. HANSEN:** OK.

**LATHROP:** I'd be happy to--

**B. HANSEN:** Yes. Tha--

**LATHROP:** --because you do have information.

**B. HANSEN:** Thanks and also-- want, want to-- I am not completely opposed to sentencing reform for nonviolent, nonviolent crimes. I

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know it might seem a little bit out of the realm of my, my colleagues or, or my political philosophy. However, I think that when it comes to Nebraska, I think that needs to be also in conjunction with building a new jail. I think we need a new jail, a new prison. Washington County recently just built a new jail. They had to increase-- I, I can't remember exactly the amount of beds that they have, but they pretty much tripled the amount of beds that they had. And I got a chance to tour that facility and I was just amazed on the, the technological change they had from the old from the new prison. They had this big command control center in the middle where they could view everything. The facilities were much better. From my understanding, employee satisfaction rose quite a bit. Their-- they felt more safe. Healthcare options were different. The ability to have programming and increase expanded education with this new facility was improved. And so when we, when we talk about we need to improve programming, we need to improve-- you know, or we need to decrease the amount of people going into prison, I think first we have-- I think with a new prison, we will address a lot of these problems--

**FOLEY:** One minute.

**B. HANSEN:** --when we can build new prison, when we can have better facilities to have better programming. I think one of things we always mention also is that we can't get employees to, to work here. I think if we build a new facility, we might be surprised. First of all, (a) they're going to feel more safe because from my understanding, that's one of the main reasons of why they leave. It's not-- we-- not how much we pay them, but actually how unsafe they feel. And so with a new facility, I think we'll address one of those major concerns and we-- the employee retention will go higher along with pay. But also, I think the, the, the life or the lifestyle of the prisoner will also dramatically increase, helping with positivity, helping with reform, helping with education. So maybe won't see the recidivism rate we have now. So I think, you know, which came first, the chicken or the egg? I think the jail, in my opinion, should come first, also, perhaps, in conjunction with looking at--

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

**B. HANSEN:** --some possible reforms of nonviolent crimes.

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

**B. HANSEN:** Thank you, Mr. Lieutenant Governor.

**FOLEY:** Thank you, Senator Hansen. Senator Lathrop.

**LATHROP:** Thank you, Mr. President. I'm glad Senator Hansen went immediately before me because I'd like to respond to his concerns, thoughts, questions. Utah, that was looking at a very similar situation, their data suggested that in 2015, their crime rates were actually going up relative to the national average and they were in the predicament that we find ourselves in: Do we build? What do we build? What does it look like? Utah took a thoughtful approach and said, let's get the, let's get the criminal justice reform piece put in place and then we'll know what to build and how much to build and what it needs to look like. I can tell you, I don't-- I'm, I'm not opposed to new facilities, better facilities for the incarcerated, as well as the people that work there. It doesn't, it doesn't change the fact that the population is still growing. Nevertheless, Utah's experience was that after they instituted reforms, their crime rate decreased by 26 percent, while its arrest rates decreased by 19 percent and its imprisonment rates reduced by 4 percent. So they didn't experience a problem relative to public safety as a consequence of making those kind of reforms. That said, colleagues, I want to go on to the fourth option from the CJI process and that is to create-- have the Administrative Office of the Courts and Probation develop internal guidance-- so this is a-- this is not necessarily a part of LB920, but something that would happen independent of that-- establish guidance and training for probation officers across the state regarding the use of early discharge policies and the criteria which must be met by the individual on probation prior to the officer's submission of early discharge, as well as the key components to include in the early discharge summary report. So here's what happens. Research indicates individuals can reduce their sentence or their supervision by-- or provide-- if we provide incentives for positive behavior, that can result in the super-- supervision of individuals that are at higher risk. Under state law, a probation officer is authorized to submit an application for early discharge at any time during supervision and required to submit it when the individual on probation is in compliance with all conditions, not had a major violation in six months, and is at a reduced risk of recidivate-- recidivating and has served three-quarters of the imposed sentence. So what this option is intended to address are those individuals who are well-behaved, they're, they're eligible to be discharged early from probation, but across the state-- and you can see on page 27 of the report-- across the state, people getting off of probation early varies from county

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to county. There needs to be more consistency in that process. This would be an internal guideline established by the Office of Probation to incentivize people to get off probation sooner by being compliant, allowing the probation officer to focus on the higher-need, higher-risk population. The fifth option from the CJI process relates to two individual sections, but broadly speaking, it's to narrow the broad sentence ranges by tailoring punishment to specific levels of seriousness, and specifically that relates to burglary and low-level theft.

**FOLEY:** One minute.

**LATHROP:** This consensus item would create degrees of conduct within burglar-- within the burglary statute to differentiate levels of conduct severity and harm by separating the types of burglary based on the building types, for instance, separating a home invasion, which would be the highest level of burglary, from a nonresidential or a commercial structure. We're one of the very few states that don't grade burglary according to the type of structure which has been entered during the burglary. That is a consensus item, actually. And the second one, briefly, is you can get a felony conviction if you shoplift at a misdemeanor level twice. One of the recommendations is simply to say modify the habitual theft statute to avoid lengthy incarceration for low-level conduct by establishing the theft of any amount--

**FOLEY:** That's time. Thank you, Senator Lathrop. Senator Pansing Brooks.

**PANSING BROOKS:** Thank you, Mr. Lieutenant Governor. I stand up to just add a little bit more to the conversation, then I'm going to give some time to Senator Lathrop since he's asked me for it. I just want to point out that the JFA study shows that, that recent growth in the Nebraska Department of Correctional Services has risen 4.4 percent for admissions between '18-- between 2018 and 2019, with 15 percent decrease in parole releases. If we cannot do a better job on parole and getting people the programming that they need so that they can become safer to be able to come out in our communities and let-- I guess we're just doing what we're going to do, continue paying for prisons and do nothing else to solve the problem. We continue to pay for these prisons and we do nothing to solve the issues. Texas does. I, I guess they're better legislators than we are. I, I just don't understand why Texas is closing prisons and we want to continue to build them. It's against the national trend. It's against what makes

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good business sense. And now I'd like to give the rest of my time, Mr. Lieutenant Governor, to Senator Lathrop.

**FOLEY:** Thank you, Senator Pansing Brooks. Senator Lathrop, 3:30.

**LATHROP:** Thank you, colleagues. I'm going to jump ahead because option number six is going to require five minutes and I, and I don't want to try to do that one too quickly. Let me talk about number seven, and the next time I'm on the mike I'll talk about number six. And number seven, a consensus item, is to increase the education for stakeholders about young adults involved in the criminal justice system. So we all are familiar with the fact that there are juveniles. Those are the people that are not yet 19. And those, those individuals, depending upon their crime, are-- they have an entire process available to them in the juvenile court. But what science has taught us, science has taught us, is that young people, their brain is not fully developed until they're 25 years old or right around there. And why is that important in the criminal justice context? Because we call them emerging adults. They are, many of them, actually adults, and if you look at statistics on who commits the most crime at what age, you're going to see the bell curve at its peak at about 19 or 20. In other words, that's where most of the offenders-- the age of most of the offenders and it goes down to sort of a normal level after about 30. Why is that important? Because when we're trying to fashion punishment, when we're trying to develop problem-solving courts, it's important to recognize that people in that emerging class-- emerging adult class, they're going to do things that are impulsive and they're going to do things that are yielding to peer pressure. We certainly see that even with serious crime. We see it take place with all sorts of crime. This option merely requires that people be educated on that fact and take it into consideration as we fashion policy, as well as sentence some of these more youthful offenders. How much time do I have?

**FOLEY:** 1:15.

**LATHROP:** OK. Number eight is expand problem-solving courts, and I'll start on this, but this one may require a little more time as well. It's important for you to appreciate, I believe. Option number eight is expand problem-solving courts. This is very much a goal. It, it doesn't require-- well, it does, but it, it is a goal. It's something we hope to do. It's-- problem-solving courts, as many of you know, are a tremendous success. We take high-risk, high-needs individuals and place them into a problem-solving court, which is a, a type of probation, if you will, where they are accountable to the court. A



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judge will see them on a regular basis. They have a case worker that makes sure that they are getting the treatment they receive, staying sober, maintaining their employment, and doing the things that many of them have gotten off track from. It is a very positive thing. When we talk about problem-solving courts, it is broad enough to include veterans' courts, emerging adult courts, drug courts. We even have a pilot program--

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

**LATHROP:** --for mental health courts. Thank you.

**FOLEY:** Thank you, Senator Lathrop. Senator Hunt.

**HUNT:** Thank you, Mr. Lieutenant Governor. On my last time speaking, I was talking about the seminar with the ACLU and ALEC that was organized by Senator McCollister that I participated in. And I want to share some things that were discussed by the facilitators. I won't read the whole thing, but I wanted to-- I say that this is from the facilitator, so people don't think this is my own words or something. But one of the things they say is, so what's the path forward for our most overcrowded prison system in the nation? Any meaningful effort to reach a 50 percent reduction in incarceration in Nebraska must include a concerted effort by lawmakers to stop introducing or endorsing any legislation to create new chargeable criminal offenses, particularly legislation that duplicates or overlaps with existing offenses. Lawmakers should also move to correct or repeal existing laws that dictate unduly long sentences, such as mandatory minimums. Reducing the amount of time served, even by a few months, could significantly reduce the state's prison population. Further, a focus on front-end reforms that reduce the number of people who come into contact with the correctional system in the first place is essential. Pre- and post-booking diversion programs should be expanded in an effort to direct people out of the criminal legal system, particularly those who may benefit from access to treatment and support for people with disabilities. To address the booming probation and parole population, Nebraska policymakers can look to California, where reducing the parole conditions for lower-risk people has proven successful and saved the state money. I'll interject here and say there are other states besides California that have done this. If some of you are allergic to the word "California," don't get too hung up on that. Were Nebraska to adopt the reforms outlined in this blueprint and achieve a 50 percent reduction in its prison population, the state could save nearly \$140 million by 2025, money that could be spent on schools, infrastructure, and services

for citizens or simply given back to taxpayers in the form of tax breaks. Adding prisons to Nebraska without any criminal justice reform is going to end up being a waste of money. And the reason we're taking time talking about that on this bill is because efforts of leaders in this body to make a deal for a new prison or for renovations to prisons that we have or any kind of capital construction related to incarceration. Many people have said, I'll support the new prison, I'll, I'll support appropriating money for that type of endeavor if others agree to criminal justice reforms. It's kind of a negotiation and a trade-off that we're trying to do and we're not there. And that's a really frustrating thing because what am I supposed to conclude, what is anybody supposed to conclude, when you hear one side saying, we want to build a new prison, but we don't want to do anything to reduce the prison population so that in a few years from now, when we finish this new prison that we've appropriated funds for, we have to build another one? OK, well then that puts the state in a new problem-- in a new position that creates a new problem of not having enough money, ongoing flow of revenue into Nebraska to keep making a new prison every three to five years. I think that to people who are advocating for this, colleagues, that is the goal. They want to keep having to build a new prison all the time because then that opens up Nebraska to finally having private prisons in the state, which we don't--

**FOLEY:** One minute.

**HUNT:** --have private prisons in Nebraska right now. But if we keep having the demand of needing to lock people up because we're not doing any criminal justice reform, then that's going to open the door, you know, five, ten years from now for future Legislatures to say, maybe it's time for us to finally start contracting with private prisons. And this is something that can definitely directly benefit politicians. To me, this is a completely calculated and strategic political move to support private prisons that then can come back and support politicians in their efforts to gain wealth and power. So when we say that we're going to have to keep building prisons down the line, I think that that's by design, colleagues. I don't think that's an accident. Thank you, Mr. President.

**FOLEY:** Thank you, Senator Hunt. Senator Morfeld.

**MORFELD:** Thank you, Mr. President. Colleagues, I have not spoken this afternoon as an actively practicing attorney on this topic, and so I thought I would speak up a little bit. So first off, I've been on the Judiciary Committee for the last eight years and when I came in, in

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2015, a lot of work had been done already on LB605 or what would become LB605. So as a freshman senator, I came in and about a year or two of work had been done in terms of looking at what are we going to do to responsibly create some policies that would stop the tide, particularly of nonviolent offenders, going into our prison system and being able to do that in a responsible way that keeps our communities safe. Now, in order to get LB605 across the finish line-- and I was not an integral part of this because, as a freshman senator, I'm just trying to figure out where the restrooms and my office was-- but at the time, a lot of legislative leaders that were leading the charge on that had to make a lot of concessions in order to get LB605 across the finish line. And those concessions, quite frankly-- many of those concessions, quite frankly, were things that allowed the state to continue down the path that it had already been headed. And the experts at that time said, hey, listen, like, you can make these amendments to get it across the finish line, but these are some pretty serious gaps and holes that are going to lead to continued overcrowding. And here we are, seven years later, and some of those things that were identified then were identified again as some of the root causes. And the bottom line is, is that this responsibility is ours, to set the policy and set the standards across the state. And we cannot rely upon-- I shouldn't say we can't rely upon, but in the end, this responsibility sits with us. The county attorneys and law enforcement prosecute and enforce a law based on the laws that we have on the books and they have the discretion to do so. Now we can disagree with their discretion. I often do in some cases, and I've been fairly vocal about that in a different role, in a different capacity. But in the end, we have to take the leadership and we have to set the standard because otherwise, depending on who the county attorney is, depending on who the law enforcement officer is, they're going to use their discretion. And in some cases, that discretion, particularly for nonviolent crimes, leads to overincarceration of people that could (1) have accountability, but (2) have that accountability in a setting that is more conducive and more productive, not only for them but also our community and our society. And so this is up to us, and I can tell you one thing that isn't going to work is us not doing anything, because that's been pretty much the case over the last seven years. And now we have literally the most overcrowded prison system in the entire country and we're not going to be able to build our way out of this problem because we have a more fundamental and root cause of the problem in our policy and in our laws, so we have to do something. The other thing that we have to address is the

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accessibility of mental health access and then also community corrections as well.

**FOLEY:** One minute.

**MORFELD:** We have to be able to provide more resources for community corrections. We have got to provide more access to mental health supports because, I tell you what, a lot of the crimes, a lot of the issues that we are facing are substance abuse related that are often-- where often the root cause is mental health issues and people are self-medicating. They're self-medicating because they still don't have access to healthcare, they don't have access to mental health supports. And in some cases, we've had prosecutors come down to the Judiciary Committee and tell us that the only way to get somebody to help was to prosecute them, which is not what they wanted to do, but that was the only way to get that individual help. And, colleagues, if we don't take away anything in this body on criminal justice reform, it should be that one thing that, when you have prosecutors coming down to the Judiciary Committee and the Education Committee, in some cases, saying, the only way that I could get somebody help and keep my community safe was to prosecute them, even though I don't think I should and it's not just, we've got a problem.

**FOLEY:** That's time.

**MORFELD:** We have to take action. Thank you, Mr. President.

**FOLEY:** Thank you, Senator Morfeld. Senator McKinney, it's your third opportunity.

**McKINNEY:** Thank you, Mr. President. First, I rise in support of FA75, but also would say that I had one of the pages pass this out to each one of you. It's the First Step Act compared to LB920. Again, the First Step Act was passed in Congress and signed into law by President Trump. Secondly, I was sitting there thinking. I was like, you know, what if the pandemic didn't happen and there, there weren't any ARPA funds? Would the state be willing to invest, invest into north Omaha? And I'm just wondering, it, it-- would the state be willing to? So would Senator [RECORDER MALFUNCTION] yield to a question?

**FOLEY:** Senator Wayne, would you yield, please?

**WAYNE:** Yes.

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**McKINNEY:** Senator Wayne, if there weren't any ARPA funds, as of now, do you think our state would be willing to invest into north Omaha?

**WAYNE:** Based off of the current budget before us and based off of history, very little investment, I believe.

**McKINNEY:** There's currently \$175 million set aside, not expended, but set aside for prison. What could you do with that \$175 million?

**WAYNE:** Well, we could start an airport project that would allow businesses, at least five businesses who have publicly committed to coming down to north Omaha and creating around 400 jobs that are livable wages, high paying jobs. The average salary-- salary is around \$65,000 a year. We could do at least \$20 (million). We can do at least \$20 (million) to \$40 million in affordable housing. We know we currently have a backlog of about 5,000 affordable homes of approximately 1,000 affordable unit apartment complexes. So that's just right there. We can come up with \$175 (million) off of this, those two projects alone that would fundamentally transform north Omaha. And if you take it from a mathematical perspective, if we're able to reduce those four census tracts, plus the other 12 census tracts that have 16 higher percent more of African-American males in the judicial system, that would pay for itself by the reduction in recidivism. Because studies show if you have a living-- livable-- living wage job and you come out of incarceration or you're already going through the system, if you have a livable wage job, it actually reduces your incarceration rate and recidivism rate about 27 percent. So that's about \$5 million a year, you could save so just off of housing people. So mathematically, the \$175 million would pay for itself within about 15 years.

**McKINNEY:** So are you saying investing in people and not prisons would be a better solution for our state?

**WAYNE:** Not just for our state, but for some of the hardest hit communities. But absolutely, if you just look at the math, that's what I said earlier, conservatives shouldn't support this budget. If you just looked at the math on the prison alone, the math doesn't make sense.

**McKINNEY:** I agree with you. I do not think it's fiscally responsible to continue to put proposals for prisons on the table and not invest in communities that have been the hardest hit for decades upon decades.

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**WAYNE:** I agree with you, Senator McKinney. How many times have we-- I mean, we do most of our meetings in north Omaha, and there is a need and a want to do better and be better, we're just looking for-- for the state to level the playing field.

**McKINNEY:** I agree with you, it shouldn't just be the federal government that's willing to address these inequities. I think the state of Nebraska has responsibility in itself to invest substantial amount of dollars into our communities and other impoverished communities across the state.

**WAYNE:** I agree with you. I got a phone call that maybe my district might be a potential site for a prison. That's not the way I want to bring jobs to north Omaha, and that's what I relayed to Director Frakes and everybody else. We need good paying jobs, not--

**FOLEY:** One minute.

**WAYNE:** --necessarily involve the system. But while you brought that up, Senator McKinney, if we just had an extra thousand community beds in Omaha, there are enough employers right now who could take those individuals and they could work making \$25 an hour at manufacturing facilities in both of our districts, like Lozier is looking for third shift operators and warehouse people every day. So we have them. We have over a thousand people right now listed as community corrections who are sitting in prison instead of out in the community serving the rest of their time.

**McKINNEY:** And I think that needs to change because I get many calls about people being classified as community, but they're stuck in Tecumseh in maximum security. And we're talking about humanity and the mental well-being of these individuals. Just imagine being classified to be in community, working yourself back in the community, but the state wants to keep you in a maximum security facility that is on a four-three schedule and for three days out the week you can't leave your cell and you barely get--

**FOLEY:** That's time.

**McKINNEY:** --medical attention. Thank you.

**FOLEY:** Thanks, Senator McKinney. Senator John Cavanaugh.

**J. CAVANAUGH:** Thank you, Mr. President. That was good conversation. And so I wanted to kind of circle back to conversation I heard some people talking about earlier about the reducing the jam out release--

releases, which is the Option 6. And I know several people have talked about this. And I heard Senator Morfeld talking about LB605, which was the last kind of big reform we undertook. And one of the reasons, so in LB605, the Legislature reduced sentences under Class 4, 3A and 3 felonies and also put those-- made those a mandatory straight sentence, which is you only give somebody a one year, one determined-- determinate number of years. So on a Class 4, it's zero to two years. So you would give somebody a-- a 2-year sentence and they do that sentence. After they do that 2-year sentence, then they would be placed on post-release supervision, which is essentially parole, although administered by the probation office. And so that's how those worked to-- and the idea was that having people on a period of community supervision after a term of incarceration decreases recidivism. And what the Legislature at that time failed to do was to reinstitute a rule that had previously been in place where the top number and the bottom number needed to be different at that-- originally, I think it was a 20 percent number, which meant that the top number sentence could be no-- it could be the maximum and then the bottom number, meaning the parole eligibility number could be no more than 20 percent of what the top number was. The reason for that is that the difference between the top number and the bottom number is the time in which an individual is eligible for parole but not eligible for full release, meaning not jamming out. And that period of time that the person spends in that window, they could still spend it in custody. So if a judge gives somebody a 10 to 20, they have that 10-year window, which with good time is again the 5-year window, but they have that whole time in which they could potentially be paroled and be on community-based supervision and be subject to that supervision and services to-- as kind of a step down level of supervision, from custody-- in custody to out of-- out of custody supervision in the community. And that helps with reducing recidivism by making sure that people have that kind of stepped down supervision, which then, of course, make sure that they are continuing to follow the programs. And so that's the reason for that-- the difference in the top number, bottom number, suggestion in the-- in the report, as it says 27 percent of those released in 2020 would serve their entire sentence and had no supervision following the release from custody. So that-- that is the problem presented in Option 6 and the reason why it's important, it would be helpful for individuals to have a community-based corrections, in-between have a parole eligibility window that is larger than a few days or a few months, which is really what is happening. Many of the sentences we're getting to the exact same sentence being a 20 to 20 or a 10 to 10 and the-- in LB605, the Legislature did say that a sentence had to

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be indeterminate, which meant that the top number and the bottom number had to be different and the way a lot of judges has-- have interpreted that to mean is they have to be different by at least a day. So there have been instances where somebody gets sentenced to, you know, 9 years and 364 days to 10 years, or really something more likely 9 years, 6 months to 10 years, or something along those lines where the amount of parole eligibility--

**FOLEY:** One minute.

**J. CAVANAUGH:** --Is insignificant to the point where they don't have a real opportunity to be on parole. Often, they don't even have their parole eligibility does not coincide with a meeting of the Parole Board. So that's another reasonable fix suggestion that can actually serve the objective, the long-term objective of rehabilitation, community safety, decreasing crime, helping all sides of this issue and saving us money in the long run. It is smart, it's rational, it is logical and it serves the objectives we state. And so that is why this is a suggestion in this report and why it would be a good idea to adopt a difference in the top number, bottom number, creating a window for parole eligibility. Thank you, Mr. President.

**FOLEY:** Thank you, Senator Cavanaugh. It was your third opportunity. Senator DeBoer.

**DeBOER:** Thank you, Mr. President. I will yield my time to Senator Lathrop, who asked me for it.

**FOLEY:** Senator Lathrop, 5 minutes.

**LATHROP:** That sounded kind of weird, but thank you. No, I very much appreciate the time, Senator DeBoer, very much. Colleagues, I want to talk about jamming out. And if you don't hear anything else today, this is the part you want to listen to because so far we've been doing the consensus items and frankly, they don't move the needle. And this is actually a consensus item, reducing jam outs. 27 percent of those released in 2020 served their entire sentence and no supervision following the release from custody. Over the past 10 years, half the people who have jammed out have done so because they had a flat sentence. There's a consequence to this. First, they get no incentive to the person to take active steps to become a good parole candidate by participating in treatment and other recidivism reducing programs. These sentences, flat sentences, do not account for the possibility that a person can significantly change while or during the period of incarceration, and third, the person is released



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with no support or supervision at the conclusion of a flat sentence. This is really, maybe the most important consensus item we'll talk about. When a person jams out, that means that they-- they spend their entire sentence and they don't parole. OK? If you-- if you don't parole, then you, we call it getting a gate check. They give you a \$100 check and you're on your own. You are accountable to no one and you get no services. You walk out of there and you go back to wherever you came from, the circumstance that you were in. The-- the opposite of that is to be paroled. To be paroled means that you have gone through your programming. You have been found by the Parole Board, by the way, appointed by the Governor, the Parole Board has found you to be a suitable candidate for parole. And when you're paroled, colleagues, when you're paroled, you are given services. So they might help you find a job. They might help you find a place to live. They give you services and importantly, you're accountable to somebody. So now, for a period of time, after I leave the gate, I have to talk to a parole officer and I might have some additional programming to do. I might have outpatient alcohol treatment. I have-- I might have a list of things that I need to do besides maintain a job, stay off of drugs and alcohol, or at least drugs, I'm not sure about alcohol, and maintain employment. Right? So you got a job. You got a place to live. You're accountable. You're-- you're-- have to answer to somebody. And by the way, I think the cops can pull you over and check you out anytime they want. I might be overstating that, but I think-- I think I'm right. So how do people end up currently jamming out instead of paroling? Well, there's a couple of different ways, but the one that's most consequential is that their sentence is flat. So for most of the more serious crimes, you get an indeterminate sentence, you get a high number and you get a low number. Your jam out date, with good time, if you don't lose it, is half of the high number--

**FOLEY:** One minute.

**LATHROP:** --and your parole eligibility date is half of the lower number. If you have a sentence that's 48 to 50 years, that window is so narrow that most of these guys go, I got a flat sentence, I'm just going to jam out. Well, that defeats the purpose. This is a consensus item. It is the foundation for the nonconsensus items that I'll talk about later. This is-- Chief Schmaderer himself said, I don't like guys jamming out. I want them on parole. I know who they are. I know where they're at. I know what they're doing and I know they're accountable to somebody and they're getting some services. This is the most important recommendation because it provides the foundation for those things that were nonconsensus items which may lead you to

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say, then what's the problem? Which is exactly the problem. If we don't want people to jam out, then we need to do something about sentence structure.

**FOLEY:** Time.

**LATHROP:** And that's where we get into the nonconsensus items that I'll talk about soon. But we do not want people to jam out. We want them to parole.

**FOLEY:** That's time.

**LATHROP:** We want them to go through the programming.

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

**LATHROP:** We want them to have the services. Thank you.

**FOLEY:** Thanks, Senator Lathrop. Senator Machaela Cavanaugh, your third opportunity.

**M. CAVANAUGH:** Thank you.

**FOLEY:** Excuse me, Senator, I apologize. I promised the Clerk to read a couple of items in the record.

**ASSISTANT CLERK:** Quickly. Thank you, Mr. President. Amendments to be printed: Senator Dorn to LB700 and Senator Hughes to LB805A. Additionally, your Committee on Enrollment and Review reports LB1184, LB1165, LB29, LB855, and LB905 to Select File, LB905 having E&R amendments. Additionally, your Committee on Enrollment and Review reports LB1073 as correctly engrossed. That will be placed on Final Reading. Notice of Committee Hearing from the Education Committee. Senator Briese introduces LR337, LR338, LR339, and LR340, LR337 referred to the Executive Board. Excuse me. They all are referred to the Executive Board, Mr. President. That's all I have-- and amendments to be printed. Senator Briese to LB939, Senator Pansing Brooks to LB741 and Senator DeBoer to LB741. That's all I have at this time.

**FOLEY:** Thank you, Mr. Clerk. Senator Machaela Cavanaugh.

**M. CAVANAUGH:** Thank you, Mr. Lieutenant Governor. He didn't ask me for it, but I'm going to give it to him anyways, I'll yield my time to Senator Lathrop.

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**FOLEY:** Senator Lathrop, 5 minutes.

**LATHROP:** Was that to me?

**FOLEY:** Five minutes yielded from Senator Cavanaugh.

**LATHROP:** Thank you, Senator Cavanaugh. I appreciate that. Again, as I appreciated Senator DeBoer's time. Colleagues, I want to keep talking about jamming out and so people jam out for a variety of reasons, but they are generally people who do not-- by-- by definition, they're people that don't parole. There might be a variety of reasons someone doesn't parole. A lot of it is sentence structure. The low number is too close to the high number and a lot of offenders, if you're doing 10 years, many of them will say, I don't care if I get out six months earlier, I don't want this guy following me around and I don't want to go through substance abuse treatment. OK, that's a choice they can make, but we're incentivizing that choice by giving what we call effectively flat sentences. It can be a sentence where the numbers are so close to one another that an inmate says, I'd rather spend six more months here than to go through the programming. I'd rather spend six more months here than be accountable to somebody when I get out. If I want to get out and start using street drugs again, I don't want to be on parole because that's going to be a parole violation, right? So people choose not to go through the parole process, but if you provide a big enough incentive and they realize, you know, I could get out of here a couple of years earlier, I got to go through programming. I get some services. Somebody is going to help me, but I got to be accountable to this parole officer. And that isn't an easy life. You're reporting a lot. You are jumping through a lot of hoops. You have to behave yourself and you have to do a UA test, right? They're going to-- they're going to make you-- they're going to test your fluids for the presence of street drugs. And you have to report on certain days and they tell you who you can live with and who you can't live with and what you can do. And you have to maintain employment and it's not easy. It's not easy because a lot of these people have an experience, that kind of structure before they ever got convicted of the felony that sent them there in the first place. And what we want to do is have sentence structures that incentivize that, and it is puzzling to me that our group met and we found that jamming out across the board is something we want to avoid. Law enforcement, prosecutors, you name it, everybody recognizes the jam art-- jam outs aren't a good thing. That it is far better to have somebody on parole because they succeed more often. They succeed more often because they have that structure. Right? Not unlike, maybe your kids. Sometimes they need more structure, sometimes they don't. But

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the parole officer can work that person, stay in contact with them, support that person and help them to be successful when they get out. So when we get to the nonconsensus items and they'll be the last, probably the last four that I talk about, when we get to the nonconsensus items, you're going to see that they're about having people have some incentive to not jam out. And that really, and most importantly, is having some separation between the two numbers in your sentence. You can get an indeterminate sentence and you-- to incentivize them to sit in the Department of Corrections and say, if I jam out, I'll be here--

**FOLEY:** One minute.

**LATHROP:** --8 years, and if I-- if I get parole, I could be out as early as four. Maybe they get paroled, maybe they don't. And it's really important to know two things. Ninety-five percent of these people are coming back to our communities, 95 percent of them. And having them come out on parole is far superior. And when we get to those things that are more contentious, which is where it gets politically difficult, if the sound bites and the rhetoric are all about being tough on crime, then-- then that's when you start to get nervous about this. I get the-- I get the idea, but I can't get there. But now it's up to us. It's our turn to solve one of our problems. And by the way, this stuff is being led by conservatives who realize-- did you say time?

**FOLEY:** That's time. Thanks, Senator Lathrop. Senator Pansing Brooks.

**PANSING BROOKS:** Thank you, Mr. Lieutenant Governor. Well, I've decided to just find this comical now because we-- I've brought the one-third rule to get rid of these determinate sentences every biennium since I got into this Legislature. I've been trying to talk you all into understanding that these flat sentences and you may be confused by the words determinant and indeterminate, but it's just what it sounds like. A determinate sentence is a determined sentence, such as 12 to 12 years or 10 to 12 years. So an indeterminate sentence is something that with a broader intersection of time like 5, 5 to 15 years. So what's happening is that we're getting mad at these people and we're going to throw the book at them. And so what happens is we give these-- these determinate sentences and the judge decides, yeah, we're going to-- we're just going to throw the book at them. The county attorney's want to throw the book at them and we're going to make darn sure they stay in as long as they can. Well, guess what happens? So they don't get the programming. So even if-- even if it were 10 to 12 years, they would theoretically be eligible for

parole for at half of that time, so that's 5 to 6 years. Well, the problem with an inmate who's paroling is that they are subject to supervision. And guess what? They don't want to be subject to supervision. They want to get out and be free of the whole system, not have anybody checking in on them, not have anybody trying to tell them to check in and give urine samples or whatever is necessary. So we've been talking about this since 2015, and all of a sudden-- we're all of a sudden talking, oh well, gosh, we should think about doing either the one-third rule or the one-half rule. And that one-half rule says that the sentence cannot be-- the minimum cannot be greater than one-half of the sentence. So if the original-- if the sentence allows somebody to be put away for 12 years, then the minimum cannot be greater than half of that. So that means the sentence is 6 to 12 years. At that point when the-- when the-- we know that with good time, if the-- if the inmate is acting appropriately, they get to come up for parole at half of that time. So that would be, if it was a 6- to 12-year sentence, that would be 3 to 6 years. Now that doesn't mean that the inmate is going to be let out in three years, but it does mean that he can come-- he or she can come before the Parole Board at that time. And so the issue is, the person goes before the Parole Board and the Parole Board says, there is no way in heck that we are going to let you out now, which is reasonable because, what? Why is it that they're not letting them out? Yes, because they have not had the programming. So they have not had the programming required and so, of course, they're not going to be let out. They-- they haven't followed through the issues, but of course, we aren't providing all the program that they-- programming that they need. So we are part of the problem. It's interesting because they're-- in the JFA report, there's a part about this that it says the Nebraska justice system has a multipronged sentencing structure comprised of both flat, determinate and indeterminate sentences. A determinate sentence sets a fixed term of incarceration without an opportunity for parole. So again--

**HILGERS:** One minute.

**PANSING BROOKS:** --it's a determinate sentence. If a person with a determinate sentence loses any good time, the entire sentence will be extended. An indeterminate sentence includes a maximum term to be used to compute a defender's discharge date and a minimum term to be used to compute the defendant's parole eligibility date. Again, with parole eligibility, there's much greater chance of not jamming out. The most infamous jam out was Nico Jenkins, who jammed out straight from solitary confinement, threatened that he was going to kill people, and he did. So, we are our own worst enemies here. We're not

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only costing the state millions of extra dollars, but we're also our own worst enemies because we are not making the state safer by these laws. It was an indeterminate sentence includes a maximum term used to compete-- to compute a defendant's discharge date and a minimum term to use to compute the defendant's parole--

**HILGERS:** Time, Senator.

**PANSING BROOKS:** --eligibility date. In '72, the Nebraska Legislature--

**HILGERS:** That's time, Senator.

**PANSING BROOKS:** Oh, sorry. Thank you.

**HILGERS:** Thank you, Senator Pansing Brooks. Senator McCollister, you're recognized. This is your third opportunity.

**McCOLLISTER:** Thank you, Mr. President. Good afternoon, colleagues. On my previous times on the mike, we talked about the parole system, and one of the problems we have with the parole system is that the number of people receiving parole has dropped. I'm not exactly sure why that's occurred the last four or five years, but it has dropped. Maybe Senator McKinney has an answer or can give me some rationale for that. Senator McKinney will you yield?

**HILGERS:** Senator McKinney, would you yield?

**McKINNEY:** Sure.

**McCOLLISTER:** Wanna talk?

**McKINNEY:** Senator McCollister to respond to that, I would say there's probably a multitude of issues. I think we need to rethink the functioning activities of our Parole Board. But also it was brought to my attention earlier this week or last week, that the Parole Board has only met 50 percent of the time as a full body. A handful-- like last year, like they only meet as-- they've only met as a full body 50-- they only meet as a full body 50 percent of the time. The other times, there's either at least one person gone 50 percent of the time and when you look at the numbers, there's a decrease in parole. However, you said, for people being allowed on parole when there's less than a full body.

**McCOLLISTER:** Are they required to have everyone in attendance in order to conduct a meeting?

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**McKINNEY:** I wish they did. I don't know for a fact, but I think we need to look at that.

**McCOLLISTER:** So let's change our focus a little bit and talk about probation. And some states offer those people coming out of the corrections system less time on probation than others. In fact, I think Nebraska, is a-- is a obligation to set probation at five years. Is that-- is that correct? Or some states and I guess a certain number of states have allow no more than two years on probation because they've found that there's diminishing returns with the longer terms of probation.

**McKINNEY:** I would agree with that. I believe the longer someone stays on probation, the more likely that they're going to reoffend just by nature of life happening. And when you think about technical violations or something like that, you've on probation for three years and you miss a meeting and you go back to prison, but you've been out and you haven't done anything for three years. They send you back. You go to Vala's pumpkin patch or an accident because after three years, you may forget maybe I can't cross into Sarpy County, but you go back to prison. You've established a life, you got a livable wage job, you taking care of your family, but you get violated and sent back.

**McCOLLISTER:** One other issue is, we've been talking about technical issues with pro-- probation and some states limit incarceration for technical probations to no more than 30 days. But I don't believe Nebraska has a policy. Are you aware of a policy with technical violations in Nebraska?

**McKINNEY:** I'm not aware, but I think that would be a smart policy, and I don't think you should be sent back.

**McCOLLISTER:** Yeah, last question. Some states allow for a driver's license suspension for failure to pay fines or fees. Does that occur in Nebraska where you can get your driver's license revoked?

**McKINNEY:** Oh yes, you can if you fail to pay a fine or fee. If you're-- if you have back child support, they take your license, which I think is dumb. If you want somebody to pay child support, why would you take away their ability, they don't--

**McCOLLISTER:** Thank you, Senator McKinney. I yield the balance of my time to Senator Pansing Brooks.

**HILGERS:** Senator Pansing Brooks, one minute.

**PANSING BROOKS:** Thank you. Thank you, Senator McCollister. So just to finish my really exciting story and description of determinate sentences, the CFA report says on page 5, in 1972, the Nebraska Legislature mandated indeterminate sentencing by operation of law. The indeterminate sentencing was mandated by operation of law under a statute that year. And if a judge attempted to pose-- impose an indeterminate sentence, a statutory minimum sentence was automatically used in contravention of what the court had decided to determine the inmate's parole eligibility. We attempted to do the same kind of work, but after-- after LB605 when CSG came in in 2014, it was recommended to get rid of our determinate sentencing to go back to what we were doing. And we still have the same problem that-- it has been recommended by study, after study, after study. Thank you, Mr. President.

**HILGERS:** Thanks, Senator Pansing Brooks, Senator McKinney and Senator McCollister. Senator Hunt, you're recognized. This is your third opportunity.

**HUNT:** Thank you, Mr. Speaker. As I said adding-- adding a new prison without adding any reforms to our criminal justice system is going to end up being a waste of money. And it's not a fix because in a few years, the incarcerated population that we have in Nebraska is going to continue to outgrow the space that we have for them. And I want us to ask ourselves if this isn't a little bit by design. I think that there are a lot of people who are interested in bringing private prisons into Nebraska, and people are very strategic, long term, and so I think making sure that we can house our own prison population is going to be imperative if we want to stop something like that from happening. And we cannot do that unless we can also reduce the people that we have going into our system. There is a web of-- of a huge-- a huge network and list of ways that we can do that, whether that's through improving educational opportunities or improving food security, reducing poverty, having more jobs that people can do. Reducing the-- the qualifications that we have for certain state jobs. I just saw-- I just saw this news that I thought was really great, just a moment ago, that said, Governor Larry Hogan, who's in Maryland, today he announced the launch of a multipronged first in the Nation Workforce Development Initiative to formally eliminate the four-year college degree requirement from thousands of state jobs. That's the kind of thing that we know could keep a lot of people from reoffending. And also, you know, making sure that people who have backgrounds can get jobs like that. And these are all part of the huge web of solutions that have been brought to us by different experts in criminal justice reform that opponents have completely



rejected. But we can turn on the spigot and have a seemingly endless amount of money reoccurring to keep building new prisons. And I don't think that that's a conservative approach to government. And it's going to erode continued-- continue to erode the public services that we have in the state that are already eroded. I don't think it's that super different from the movement we see to privatize education. You know, we-- we have needs in our public schools. We're not funding them. We have needs in our carceral system that we're not funding. And eventually, we're going to have people in state leadership who say we need to start looking at private solutions for that. In education, you know, that's-- that's school choice and school vouchers and charter schools and tax credits for private schools and things like that. And in incarceration, that's going to be private prisons. The three biggest businesses that government is in is medication, incarceration and education. And these are things, you know, health care and public safety and education that are in the basic best interest of every single Nebraskan. And I want to make sure that it's always public funds that are supporting those institutions and not private dollars, potentially, where we don't know where that funding is coming from. They aren't accountable to the public. There's no oversight from government. You know, I'm certainly not one of those people who is saying government is the answer to things. But what I will say is that public oversight is always something that improves any government system. So the more public oversight we can have in our carceral system, that's going to come when it's funded with public dollars, and that's something that I want to keep secure in our state and something that I think we need to do more of with our health care system and our education system as well. But in this Legislature--

**HILGERS:** One minute.

**HUNT:** --our habit of setting aside really large sums of money for things that are not certain yet, for things that we haven't completed the study on, for things that we don't know the feasibility about yet, that's a big problem. We have to stop rubber stamping things that are not set in stone, especially just because I think we've got a lot of money kind of burning a hole in our pocket. We've got our Governor going out. We have many leaders in this body here who are trying to build a legacy and leave something behind before they're term limited. And I think a lot of people are kind of going on a shopping spree and this isn't responsible. It's not being good stewards of public tax money when we keep rubber stamping things that are not set in stone. The Governor will be gone. Scott Frakes will

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eventually be gone. Many of us will be gone and we will be worse off than when we started. Thank you, Mr. Speaker.

**HILGERS:** Thanks, Senator Hunt. Senator Dorn, you're recognized.

**DORN:** Thank you, Mr. Speaker. And a little bit of the conversations have at least been going on lately, I want to thank some of the people for getting up and talking about, I guess, jamming out and parole. Going to yield my time here to Senator Lathrop, but I'd like him to talk a little bit specifically about has COVID-- or how has the work staff or all those things affected parole, and that ultimately leads to, you know, more people jamming out and stuff. If you could visit with that a little bit, what-- why are the reasons we're having not so many people qualify for parole?

**HILGERS:** Senator Lathrop, 4:24.

**LATHROP:** Thank you for that question, Senator Dorn. So you had a COVID piece in there. COVID-- COVID affected my understanding. My understanding is COVID affected the ability of the Parole Board to get five members there at any given time. You need three affirmative votes to get parole and when a Parole Board arrives and two members can't make it for whatever COVID-related reasons, then that effectively means you need a unanimous decision from the three people that showed up. I know that we had complaints coming from some of the people who were before the Parole Board, and they said, when there's only three people there, any one person can veto or stop a parole from happening. We have five members for a reason because we asked the Parole Board to manage risk, right? If we wanted to-- wanted to have zero risk tolerance, we would put a Parole Board in place that always says no, right? We'd fill up our prisons and no one would get parole. We have to rely upon the Parole Board and these are the Governor's appointees approved by this Legislature. We have to rely on them to use their judgment to-- to look in the file, to talk to the offender or the inmate to determine, is this person a suitable risk? There is always risk because we're dealing with a population that have demonstrated their ability to commit felonies, or they wouldn't be before-- before the Parole Board. But their job in our process is to manage that risk. Try to reduce the risk as much as they can. Not unlike Director Frakes' responsibility with community corrections. If he sends somebody over to community corrections, that guy can be on work release, or the inmate, can be on work release and Director Frakes is managing risk. We're always managing risk when it comes to the Department of Corrections, parole and probation, and we rely on them to do assessments. They have standardized assessments

that help them inform them of the ability. Parole Board is also going to look at how you behaved when you were in there. Have you been on parole before and then-- then we had to violate you because you wouldn't talk to your parole officer or you absconded, and we had to drag you back here from Colorado. You're probably not going to get parole or you're going to be in there a while before you do. So we-- that's a really important function. And we in the Judiciary Committee, when we are approving a candidate for the Parole Board, we had that conversation. You understand that you are responsible for managing the risk, keeping-- keeping society safe, but that doesn't mean nobody gets parole. It means you're trying to decide who are the best candidates. And do we have people that violate parole? Yeah, we do. We have a good number of them who will have some kind of a violation. 40 percent of them are technical violations. A lot of them are another felony. Back they go, they get another charge and they get a violation of parole, and they're back at the Department of Corrections. So I have great respect for the parole officers, the Parole Board and the work they do.

**HILGERS:** One minute.

**LATHROP:** But it's really important to understand that they are managing parole. The effect of COVID. I can only tell you it's sort of secondhand what I've had people say that sometimes they weren't at a full compliment and that became an issue because it's harder to get three votes when there's only three people or four people there versus five. And if you get someone who's particularly risk adverse, then if they're typically a no, then you got to-- you got to rely on the others to give you the three affirmative votes to get you across the finish line. They are also reviewing violators to determine what's the appropriate sanction. So they're a busy group of people doing a lot of hard work and trying to manage the risk and-- and keeping in mind the public safety is their Northstar, but that we can't keep people in there until they all jam out.

**HILGERS:** That's time, Senator. Thank you, Senator Lathrop and Senator Dorn. Senator Matt Hansen, you're recognized.

**M. HANSEN:** Thank you, Mr. President. I was inclined to-- encouraged to turn on my mike by the story Senator Lathrop earlier was talking about-- about jam outs, and I think the concept of jam outs is very much something we as Nebraska have to continue to work on and continue to solve. And I'm going to talk about kind of my limited experience working on this particular issue and then I'll yield my time to Senator Lathrop if he wants it later. But the concept of jam

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outs, and as Senator Lathrop described, is in many circumstances, it's literally an individual who has served every day of their sentence in the State Pen, the state correctional institution and has literally completed 100 percent of their sentence. They've served up until the last day, which means, of course, that regardless of that day, regardless of that is, they're let out. So in addition to the obviously lack of supervision, the lack of any sort of supervision post-release as well as transition to community, it also leads to some absurdities occasionally, including with the gate check that has been mentioned. I worked on this issue trying to-- ultimately in a bill we passed several years ago, allowing individuals to have an opportunity to get a state ID before they leave prison and talk about that for two reasons why it's important. One is the jam out date can fall on any particular day. And I had a person who was working in a nonprofit talk to me about somebody who jammed out on Thanksgiving morning. That was just what happened to be the very last day of their sentence and they were let out of prison on Thanksgiving morning, didn't have anywhere to go and most places were shut down. And so they had to have somebody from the nonprofit. Luckily, this person who planned ahead and looked up their phone number and called them collect from a payphone outside the prison to come pick them up. And that is what happens when people jam out, like they're just literally let out the door. In addition to the complication, why this nonprofit cared was when you are released with the gate check, it's difficult to even cash the check because you don't necessarily have an ID, let alone a bank account. And of course, you have to pay money to get the ID, but all of your money is in this gate check, which has this catch-22 of how do you get a driver's license? How do you cash check, back and forth. Department of Corrections, I understood, started working with the issuing bank of the checks that they would at least have a recently released inmate license and that one particular bank would use that as proof of identity to cash the gate check. But again, that was still an individual who had to know that, figure that out and get themselves to that bank in order to get those funds. And again, this is usually just for \$100 or slightly more. That might be all of the kind of startup money they have in the world to reestablish their life. So what happens then is, of course, there are nonprofits that work in this area, including we had a nonprofit here in Lincoln that was working on issues related to providing and making sure that persons experiencing homelessness had access to identification. It's basically helping people who are homeless get state IDs. Well, what they were finding is once that kind of program got up and running is that a lot of the people that they were helping were people who were almost immediately recent releases from some of

the state institutions here in Lincoln. Primarily the-- the State Penitentiary. So we were literally releasing people. They were jamming out. They were getting a check they couldn't cash with no plans on where to stay, where to go. And they were often walking across town to one nonprofit they heard about, and that nonprofit was then helping them front the money to go apply for a state ID and then taking them to the bank where they could go cash the check. And that was a service we were relying upon both the individual jamming out of the correctional institution to figure out in a local nonprofit--

**HILGERS:** One minute.

**M. HANSEN:** --to really pick up the slack. And that's the situation. We're just the logistical issues of the jam out. I'm not talking about even all the recidivism measures or supervision or all the other benefits. Those are just some of the issues that we in the state have let happen as we've neglected kind of our post and our post-release of corrections system by encouraging and allowing so many jam outs. It is just kind of an absurd thing of people standing outside on Thanksgiving morning, making a collect call to hope somebody from a nonprofit will call and pick them up and take them somewhere. Like that's the situation we're leaving people leaving the State Pen from. Thank you, Mr. President.

**HILGERS:** Thanks, Senator Hansen. Senator Morfeld, you're recognized.

**MORFELD:** Thank you, Mr President. Colleagues, I want to kind of start where I left off there. I think that it's important to start grounding ourselves back into some of the summary takeaways of CGI analysis. And I know that it's been discussed a few times by Senator Lathrop and some others, but I pulled up some of the summary takeaways because I wanted to sink in just a little bit more if we can. Nebraska's prison population has grown 21 percent over the past decade. This growth is largely due to increases in the length of stay due to longer sentences and a decreasing percentage of parole grants, which was discussed by Senator McKinney and a few others. It'd be nice if the Parole Board show up to work every once in a while. Through admissions-- though admissions have declined, the majority of admissions are still for nonviolent, low-level offenses. Though the admissions have declined, the majority of admissions are still for nonviolent, low-level offenses. Despite a 50 percent in the correct-- increase in the corrections budget, prisons are over capacity and recidivism rates are growing. So that should be a clear sign that what we're doing up until this point isn't working and we need to make changes. Further, it's not on this summary side because I was

just pulling up the slides from CJI that I had on my phone, but crime rates are actually down. Crime rates are down overall as a state, and yet our prison population is going up because we have longer sentences, particularly for nonviolent crimes, or we're filling the prisons with folks who committed nonviolent crimes, who have been proven in other states and in other places to be more successful with accountability. So there's still accountability, but through community corrections and through rehabilitation and providing other types of services. This not only keeps our community safer because they're able to provide for themselves, they're able to get the help that they need, but it also ensures that there is accountability. So these community corrections programs, and if you-- if you've gone to any of the-- the drug court graduations or the veterans' court graduations and you hear all of the requirements in order to pass that, it's pretty incredible. So these aren't programs where, you know, there-- there's accountability, quote accountability, and then they don't show up or-- or nobody knows where they're at or whatever the case may be. These are really intensive programs that are quite frankly tough for people to pass, particularly people with substance abuse problems. And we all know somebody in our lives that has dealt with a substance abuse problem. And it's generally not solved the first, second or third time because it's a disease that leads people to doing things that are against the law and crimes, and there must be accountability. But we also must acknowledge the fact that these are folks that oftentimes need help and if we don't get them the help they need, they go into the prison and then they come out worse than when they went in in the first place, because 99 percent of the people that go into our criminal justice system are coming back out and are going to be grocery shopping right next to you, are going to be at your parks, going to be with you at your workplace. There should be a strong incentive to make sure that they have the supports and resources to be successful. If they go into the system--

**HILGERS:** One minute.

**MORFELD:** --they're more successful when they come back out, which quite frankly, is rarely, if not ever happening right now in our current system. When you're this overcapacity, people are rarely ever coming out better than they went back in-- than they went in. And oftentimes they're going back in. So colleagues, we need to do something different. What we are doing is statistically not working. It's making our communities actually less safe because it's increasing recidivism and we have to take a different approach. Thank you, Mr. President.

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**HILGERS:** Thanks, Senator Morfeld. Senator Blood, you're recognized.

**BLOOD:** Thank you, Mr. President. Fellow senators, friends all, I stand currently in support of the floor amendment, but also in support of the amendment and the underlying bill. With that, I would ask if Senator Lathrop would be willing to yield.

**HILGERS:** Senator Lathrop, would you yield?

**LATHROP:** I would be happy to.

**BLOOD:** Thank you, Senator Lathrop. Senator Lathrop, are you willing to go down the memory lane with me right now?

**LATHROP:** It sounds like it.

**BLOOD:** All right. I thought, we need to stir things up here, he's getting sleepy. So do you remember in 2013-- and these aren't trick questions, so I'm going to try and guide you the best I can. Did inmates sue the state of Nebraska over prison overcrowding? Do you remember?

**LATHROP:** I know that inmates filed suit against the department for the circumstances of their confinement.

**BLOOD:** Do you remember off the top of your head, and I have the answer if you don't, in November 2014, what the percentage of our capacity was over capacity?

**LATHROP:** I think we were at 150.

**BLOOD:** 159 percent.

**LATHROP:** OK.

**BLOOD:** So that previous June, we were at 151 percent. Do you remember what a 140 percent triggers with our executive branch?

**LATHROP:** Well, the statute, and I have a copy of it here, says that the-- the Governor may declare an overcrowding emergency at 140 percent. We did amend that, I think, in 2015 to say if you are not below 140 percent, an emergency shall be declared July of 2020. And that was done and we remain in that emergency.

**BLOOD:** And a federal judge can also do that, is that correct or not?

**LATHROP:** A federal judge did not do that. That was all statutory.

**BLOOD:** But they say that they can, can they?

**LATHROP:** If-- if a federal judge in the case against the state was dismissed. In fact, claims against-- those types of claims that are filed in federal court aren't just, we're overcrowded, judge order something. It really is those things that you don't get because you're overcrowded. So I'm not getting sufficient medical care, sufficient dental care, ADA compliant. Those-- those things that are symptoms of the overcrowding are the basis for the lawsuit. And in this case, the inmates attempted to turn it into a class action. That was denied and the case was resolved one way or the other and dismissed shortly after that.

**BLOOD:** But a symptom of what was going on.

**LATHROP:** Pardon me.

**BLOOD:** But a symptom of what was going on, unhappy with the overcrowding.

**LATHROP:** Yes.

**BLOOD:** Taking it upon themselves to try and create change. And during that time-- and I just want to make it clear again, if we were to look at the flow chart of state government, where in the flow chart does the prison system fall. Who-- who's-- out of the three branches, who's responsible for the system?

**LATHROP:** Oh, the executive branch is responsible for running the Department of Corrections.

**BLOOD:** All right. Thank you for that. So at that time, would you say that was accurate that you and Senator Ashford and a few others who actually sat on that committee that you had Senator Heineman come, I think, was in December 2014, that you continually preached at that time that just-- that justice reinvestment was mandatory at that time.

**LATHROP:** So in 2014, we had a special investigative committee that looked into the miscalculation of sentences in addition to some Nico Jenkins stuff. And what became clear when we did the Special Investigative Committee is a lot of the scandals that were associated with the Department of Corrections at the time were a function of the executive branch attempting to resolve overcrowding through what became known as--



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**HILGERS:** One minute.

**LATHROP:** -- no cost options, which is paroling people that probably weren't good candidates, developing a furlough program that didn't go through the Administrative Procedures Act. And-- and then they just started having people leave with an ankle monitor and-- and finish their sentence on their couch.

**BLOOD:** And is that when the Anderson decision started being discussed more?

**LATHROP:** My recollection is Anderson was, what do we do with the people whose sentence were miscalculated and they are out? I'm not going to be able to tell you the specifics of that other than we had the Castillas decision that decided the proper calculation of good time. That wasn't applied by the department. A bunch of people got out and then we didn't bring very many of those people back. Very few of them.

**BLOOD:** All right. Thank you for helping us go back to when much of this started.

**LATHROP:** Thank you.

**HILGERS:** Thank you, Senator Lathrop and Senator Blood. Mr. Clerk, for items.

**ASSISTANT CLERK:** Thank you, Mr. President. Amendments to be printed: Senator Bostar to LB800; Senator Linehan to LB939; Senator Friesen to LB1012. Your Committee on Judiciary, Chaired by Senator Lathrop reports LB920, LB922, and LB1213 to General File, all three having committee amendments. Senator Halloran introduces LR341. That will be laid over. That's all I have at this time, Mr. President.

**HILGERS:** Thank you, Mr. Clerk. Senator Matt Hansen, you're recognized.

**M. HANSEN:** Thank you, Mr. President. I'll yield my time to Senator Lathrop.

**HILGERS:** Senator Lathrop, five minutes.

**LATHROP:** Thank you, Senator Hansen. I think I'm going to take-- I've been going through the options. I want to detour a little bit and talk about one of the proposals that has come out of this process, which is establishing a-- a requirement for indeterminate sentences.

And that requirement would be that if you are going-- if you're the court and you're going to impose a sentence, that's an indeterminate sentence that the lower number is going to be half of the higher number unless you are a sex offender, in which case it would be, I think, 85 percent of the higher number. That proposal is directly responsive to the consensus item of reducing jam outs. Because if you can imagine, if you are getting a sentence and the top number is 8 years and the judge gives you 8 to 8 or 7 to 8, that individual is not likely to parole out. They're going to decline an opportunity to go through programming, in all probability. They're-- they're going to end up jamming out. If that person has a sentence of 4 to 8, they now have a pretty significant incentive to go through the programming and when we talk about programming, and for those of you that aren't familiar with programming, when you come into the department, you come in through that-- by way, if you're a man, you come in by way of the Diagnostic and Evaluation Center. It's on the campus next to the Lancaster County Corrections Center. And while you're there and the purpose of having you go through what we generally refer to as the DNE Center, the point in having you go through DNE is to do an assessment. They go through your assessments and then you have sort of the list of things you need to do before you get out of there or before you're parole eligible. So if you are somebody that's had all kinds of problems with drugs, they're going to say, you need inpatient drug rehabilitation or substance abuse. That's going to have to be done before you're eligible for parole because parole isn't going to parole somebody who has a clinical programming need. That can be true with sex offenders if they have an inpatient sex offender requirement. By the way, not an easy thing to get into. A lot of people end up waiting to get into that program past their parole eligibility date, but that's an example. We have anger management and there's, I think, four or five of them that are sort of what we generally categorize as clinical programming requirements. You'll-- you'll know what you need to do before you leave, right, or before you're eligible for parole, after you've been at DNE and they've done these assessments. Then you go into the population. Most of these people are getting programming. So if you-- if you require inpatient substance abuse or whatever the-- whatever the requirements are, you're going to get it shortly before you become parole eligible. I'm not sure I agree with that. We've moved a bill to have a study done to determine when's the appropriate time to get that. Seems to me, it makes more sense to have somebody go through that earlier and practice what they've learned and-- and give an opportunity to see if it's stuck. But that-- that programming is really important. That's really-- really an important part of

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rehabilitation. We don't have a lot of what I would call vocational services. We're not going to train somebody over at the Department of Corrections to be a welder.

**HILGERS:** One minute.

**LATHROP:** Right? Maybe when-- when that individual gets to community corrections, he can go to a community college and study that or be involved in that kind of a course or a process. But we don't-- we don't and that may have been something that we've done historically, but it's not something we have the ability to do now unless of course, you're learning something. If you're working in the sewing shop or in where they make signs and license plates, you might be learning a skill there. You might be learning a skill over at woodworking where they make desks and things for the state. But generally, it is those clinical programming programs that need to be completed before you're a candidate or will ever be a successful candidate. But the Parole Board is going to check those things. Is the programming complete? Does he have any misconduct? Has he been on parole before? Those considerations that we talked about before and that window of time.

**HILGERS:** That's time, Senator.

**LATHROP:** Did you say time?

**HILGERS:** Yes, that was time. Thank you, Senator Lathrop and Senator Matt Hansen. Senator Morfeld, you are recognized. This is your third opportunity.

**MORFELD:** Thank you, Mr. President. Colleagues, I want to pick up where I left off just a few minutes ago. One of the things I want to discuss that we talked about a little bit earlier is community corrections. And one of the issues when I first came down to the body was looking at and working on some of our mental health supports and supports with folks that have developmental disabilities, things like that. And it really went back to the reduction in funding after we closed, I think what it was called the regional centers at that time, maybe it was called something else. It was 10 or 15 years ago. But in any case, what happened was we closed down those centralized facilities and then we said, hey, we're going to invest that money back into the community, particularly for folks who don't have enough money to be able to provide for these services themselves. And what actually happened was another recession came along. Budget cuts had to be made. And a bunch of these community organizations that were

created to fill the vacuum of these more centralized facilities never really actually got the adequate funding that they needed to be able to provide these services. So then what happened was, you had a bunch of people who didn't have access to health care, didn't have the ability, sometimes even if they had resources, to find a qualified professional because there wasn't funding out to keep those qualified professionals employed with enough clients in certain areas. And then you also had a little bit of a brain drain that was happening in rural parts of our states for various reasons. And so you had a perfect storm of not enough providers, not enough funding for the providers to have a good mix of clients that could both afford the care and-- or not afford the care, and then you had a bunch of folks that still needed the care, didn't have access to it, went deeper into the mental health and other types of issues that they were experiencing and facing. And sometimes-- sometimes they would self-medicate and then commit crimes. And then it used to be that there was enough capacity, enough room in our corrections system at that point in time to be able to provide them services. And now we have them sleeping on cots, mattresses, pretty much anything that the Department of Corrections can find in extremely overcrowded conditions. We're having a hard time finding mental health practitioners that can actually-- that actually want to work in the corrections system. We have a hard time finding mental health practitioners, quite frankly, that want to work in the private sector in Nebraska. Huge problem. And don't get me started with all the licensing problems and other hurdles that we haven't addressed over the years to actually help recruit some of these qualified practitioners, mainly due to some LGBT nondiscrimination language and some other things. But we'll get into that maybe a little bit later. But now what we have is we have a system that is the most overcrowded system in the entire country. We have a system that does not have enough qualified mental health practitioners to be able to serve not only the population within the prison system, but also the population of folks--

**HILGERS:** One minute.

**MORFELD:** --that are out in our communities. And so what we have then are folks that cannot get the assistance that they need. And then they're left to their own devices, and they're left to oftentimes self-medicating with either legal or sometimes illegal drugs. And then they get caught and then they get put in a system and they come out worse than they went in. And then we wonder, why we have a crime problem. And in fact, that crime problem has been decreasing over the last 10 years, and yet our population keeps increasing. And if that's

not a sign that we need to take action, then quite frankly, colleagues, I don't know what is. So I hope we will take action on LB920. Not just the portions that we have agreed upon, but also the portions that have a substantive impact. Thank you, Mr. President.

**HILGERS:** Time, Senator Morfeld. Seeing no one else in the queue, Senator Lathrop, you're recognized to close.

**LATHROP:** Thank you, Mr. President, and colleagues. I appreciate those of you who have stayed here to participate and take in what we're sharing about corrections and corrections reform and the prospect of-- or the folly of building more space without having the reform precede that undertaking. I'm going to close on this and then I will ask that the amendment be pulled and I'll go to the next one, Mr. President, after I complete my remarks. We've spent a good deal of time talking about the jamming out and what that means, why it's important to not have jamming out and that we will be looking when we get to LB920 of policies that are targeted towards preventing jam outs. I want to be forthright about this too. The jamming out is not only because people have flat sentences. We do have some people who have had an opportunity to go to some of these clinical programs and have failed. If you're-- if you're clinical programming is substance abuse and you're not ready to stop and you flunk out of the program, back to general population you go. And that's not going to get you parole and you may well jam out because of that as well. This having a narrow or a flat sentence is a subset of a larger group of people who do not jam out or who do not parole out. Some of these folks parole out later than they should. And that's another-- that's another piece that we do have some inmates who are willing to go through programming but can't get to it. They maybe can't get to it because they're on a waiting list and other people are ahead of them. It may be that they're in one facility and it's not offered until they're transferred to a different facility. So that's also a problem with some people who are not paroled when they are otherwise eligible because they have not completed their programming. One of the other consensus items is the expansion of problem-solving courts, I started to talk about this sooner. Problem-solving courts are, colleagues, a great success. The Appropriations Committee and the Judiciary Committee have fully embraced these too, this notion of problem-solving courts. The idea that an inmate would-- or-- or an offender would have an opportunity to enroll in a problem-solving courts and think of it as very intensive probation where you have to appear before a judge who could throw you in prison and sentence you and that creates quite an incentive. But it's-- but something else happens in problem-solving courts. And this is important to talk

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about. A lot of these people that end up with felony convictions, whether it's substance abuse that's at the bottom of it or exactly what might be their-- their demon that leads them to their felony conviction, a lot of these people have experienced trauma. They grew up in situations that aren't healthy, and they get in front of a problem-solving court, and it is very affirming. It is very positive. And for many of these people, for the first time in their lives, for the first time in their lives, someone's telling them, Attaboy, well-done. In fact, they give them stuff sometimes when they-- they'll give them a pass to go have dinner. They'll do things for them to encourage them to support them. It is-- it is remarkably-- I've been at a graduation before. There are remarkable things when these people graduate because for the first time--

**HILGERS:** One minute.

**LATHROP:** --they're being recognized by authorities, being recognized by people in authority and in power, that they're a good person. That they're not as bad as the worst thing they've ever done. Very, very positive. They have a great success rate. The people get involved in criminal activity at a far, far, far lesser rate than if they are incarcerated and do time. So these problem-solving courts are an important piece of the puzzle. The challenge for Nebraska is judicial resources. The problem-solving courts have support staff, they have caseworkers, but ultimately the judge has to carve time-- he or she has to carve time out of their day to do problem-solving courts and that's an extra duty. Our challenge in expanding problem-solving courts is a judicial resource one. So as much as we can ask and hope and beg to expand problem-solving courts--

**HILGERS:** Time, Senator.

**LATHROP:** Thank you.

**HILGERS:** Thanks, Senator Lathrop, and--

**LATHROP:** I do want to pull FA75, and I'll go on to the next amendment.

**HILGERS:** FA75 is withdrawn. Mr. Clerk for items.

**ASSISTANT CLERK:** Thank you, Mr. President. Amendments to be printed: Senator Cavanaugh, to LB939. Enclosed communication from the Governor. Engrossed LB767, LB767A, LB1099e were received in my office March 11, 2022. These bills were signed and delivered to Secretary of

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State on March 16, 2022. Signed, Sincerely, Pete Ricketts, Governor.  
That's all I have at this time, Mr. President.

**HILGERS:** Thank you, Mr. Clerk. Mr. Clerk, for an amendment.

**ASSISTANT CLERK:** Next amendment, Mr. President, is from Senator  
Lathrop, FA76.

**HILGERS:** Senator Lathrop, you are recognized to open on FA76.

**LATHROP:** Thank you. Just a couple more thoughts on problem-solving courts. We do-- Senator Geist passed a bill, I think a year ago, maybe two, that provides for a pilot program for mental health problem-solving courts, which is a bit of an experiment. I think it's in Sarpy and Lancaster County, if I'm not mistaken. Those are-- I hope those are successful. This is a significant issue as I-- you've heard me speak on the mental illness and the people that have mental illness and the challenges they face with criminal activity. We are attempting to solve the expansion of problem-solving courts, but constrained by judicial resources. Option number 9 in the CJI report is to improve reentry practices for those being released from prison. If you are being released from prison, you are going to face many, many hurdles. There are many barriers to successfully leaving the department and getting into society, readjusting. A lot of it is a function of how much family support you have, how you were doing before you got in there. But the consensus item developed and it's number nine on the list is that we do the following three things, require the parole reentry process to assess for and establish a plan to address an individual's responsivity factors. And when I saw that on the list, I wasn't sure what that meant. That-- that really means look not just at their risk to reoffend, but look at the challenges they face with employment, treatment, child care, transportation, medical care and education. Those things oftentimes are, as we try to assess their risk to reoffend, overlooked. The recommendation is that parole now take into account those responsivity factors. The second thing is establish a parole supervision position similar to the post-release supervision navigators. And third, require the department to track Medicaid enrollment forms filled out prior to release for all individuals leaving the department. Let me talk about that one. If you go into the Department of Corrections on a sentence, you are going to have your Medicaid eligibility stop, right? Medicaid won't pay for care for an individual who is incarcerated. This is about-- and Senator Cavanaugh has a separate bill that we're trying to do some work on in the Judiciary Committee, this is about people being enrolled in a timely manner before their release. And why is

that important? Many of these people have medical needs. A lot of them have needs for substance abuse or other types of treatment, much of it mental health as well. And having them enrolled in Medicaid at the time they are discharged is important so that when the parole officer says, I need you to get this treatment and that treatment, you need to see a counselor, you need to get outpatient substance abuse treatment, there is no delay because they're waiting for the process of getting that former inmate enrolled in Medicaid. It is a thoughtful consensus item, and it's part of the Option number 9. Number 10 is to remove the barriers of criminal conviction for individuals who are successful on supervision. This is about giving information. This, too is a consensus item. And I'm just going to stop here in case you've forgotten that the consensus items, for the most part, don't move that-- don't move that dashed line you saw. These are good things. They help people to be successful. They may move that line marginally or nominally, but they're not the ones that-- that help us with the overcrowding situation as much as the nonconsensus items that we'll talk about. At the successful completion of probation, specific notice should be given to the individual that they may be eligible to have their convictions set aside pursuant to 29-2264, what the outcomes of having their convictions set aside are and are not, and that they should contact an attorney or their public defender's office for further information. So if you successfully complete probation, you're entitled to have that conviction set aside. It's not as though you haven't been convicted, but it is set aside and that too will be on your record and it aids these individuals in getting employment. They can tell a prospective employer, yes, I was convicted, but that conviction has been set aside. This is current law, but it is clear that the-- this opportunity to have your convictions set aside upon successful completion of probation has not been utilized to the fullest extent. Option 11 is also a consensus item, and this is to provide some incentives to motivate compliance while on community supervision. And when we talk about incentives, I think the fiscal note has about \$38,000. So we're not talking about giving these guys big checks or anything, but it's more like positive reinforcement. And this was a discussion that happened in a-- in a working group that I did not participate in, but it makes perfect sense. You will have better success with people who are on supervision if you're not just threatening them with sanctions, but you are rewarding them like they do over in the problem-solving courts by giving them something like a gift card to, you know, a Panera or something like that. Small things that say good job. This is-- this is a consensus item, something that I think deserves some attention, some consideration.



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And again, that's a nonconsensus item. Number 12 in our list of options is prioritize restitution to victims of crime. So when an individual-- when an individual does have the ability to pay something after they've been sentenced, so let's say somebody breaks into a house, steals something, a car and crashes the car, the victim is entitled to restitution and the court is entitled to court costs. This particular consensus item, this particular consensus item came out of the work group that included victims of crime. They were interested in seeing that restitution be prioritized over court costs and the like. Uh, a simple, straightforward, thoughtful, responsive to victims doesn't really move that dashed line that-- that is our growth rate, but nonetheless, a thoughtful-- a thoughtful idea. Number 13 relates to providing incentive to mental health workers who want to help and treat and be involved in the care of individuals in the community. And I have to tell you colleagues, when we-- when we look, and this is true in the child welfare, in the juvenile justice and in the adult population, that we simply don't have across the state, the mental health workers that we require. These individuals who are paroled leave the Department of Corrections, and they may have some requirement that they participate in counseling. They may need mental health treatment, they may need substance abuse treatment and particularly out in western parts of the state getting access to this type of care is sometimes very difficult because of the workforce. This option, which is a consensus item, it is-- a consensus item would have a program set up to provide financial incentive to people, psychiatrists, psychologists and mental health professionals to provide to go into that field and provide care in the community to the population that we're talking about here today. That's Item 13. Number 14.

**WAYNE:** One minute.

**LATHROP:** Thank you. Number 14 is to utilize county court and district courts as a physical access center for virtual behavioral health treatment for individuals on community supervision. Again, this is a consensus item. It is a-- it is an attempt to provide mental health services where they are not available. Set up a station in a county court or a district court jury room somewhere that it's private, where an individual can go and meet face-to-face virtually with a mental health professional. This is a consensus item. It's thoughtful. It helps people get access to mental health care. And as much as I'd like to see us do this, it will not move that trajectory of our population, but it remains an important piece in-- in the overall process--

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**WAYNE:** Time, Senator.

**LATHROP:** --coming out of CJI. How much more time do I have?

**WAYNE:** That's time, Senator.

**LATHROP:** Thank you.

**WAYNE:** Finished with the opening. Welcome to the floor to debate. Senator DeBoer, you're recognized.

**DeBOER:** Thank you, Mr. President. All on this day, colleagues, as I began by asking for a plan. Senator Lathrop worked with a group that has proven to have success in other states on issues like ours. It was a process that involved all three branches of our government and the group came up with some recommendations. Not everyone agreed on every recommendation, I can acknowledge that, but the rec-- the recommendations that were consensus items won't get the job done. Not alone. The entirety of the recommendations, the consensus and nonconsensus items is a full plan. It's a plan that has a good chance to get our average daily prison population below our capacity without having to build 200 beds every year and keep it there. It's a plan that focuses on public safety by putting guardrails into our criminal justice system by reducing jam outs and promoting post-release work in the form of parole and supports for parole. This is a plan that incentivizes people to participate in their own rehabilitation. We have to get people invested in their own change. And then, if it's part of the plan we need to change conditions for the current population, we do that as part of a plan. If we are spending money, if we are dealing with taxpayers dollars in the large amounts that we're talking about here, they deserve a plan to know what it is we're trying to do. They need to know that their money is going to be spent in a way that makes a difference. They need to know that their money is being spent in a way that promotes public safety and helps our community. They deserve a plan. We cannot keep taking little nibbles around the edges and kicking this problem down the road. I can't even imagine how frustrating it must be for Senator Lathrop who has seen this problem over a 16-year period. In the past, we've done a lot of little things. We've approved a lot of partial plans, but we don't have time for little movements anymore. We need a full plan. And we shouldn't take partial action anymore and put another Band-Aid on. And that's what we're talking about when we're talking about the net effect of a prison that by the time it's built, will still leave us in the same position where we are now, where we are still in the same overcrowded situation. The taxpayers deserve a plan. They need

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to know that their Legislature has a plan for how we're going to get our average daily population below our capacity and keep it there. We have a plan--

**WAYNE:** One minute.

**DeBOER:** --with the CJI plan, so let's put everything together and come up with something that we can do in a full way for criminal justice in the state. Thank you, Mr. President.

**WAYNE:** Thank you, Senator DeBoer. Senator John Cavanaugh, you're recognized.

**J. CAVANAUGH:** Thank you, Mr. President. I didn't think I was going to get to talk this afternoon, but I'll take my chance. Why I pressed my light when Senator Lathrop started talking about, uh, problem-solving courts and so I think that is a topic that requires more conversation and revisiting. So the problem-solving courts, and he kind of did a nice job of describing a bunch of them, but to refresh your recollection, we have drug courts which are designed for nonviolent offenders who have a demonstrated drug problem, which doesn't mean it's a drug-related offense necessarily. It can be a possession offense, but it can be a theft offense as well. And that's one example. There's veterans' courts, young adult court, mental health court being piloted. I think there's a DUI court being piloted in either Lancaster or Sarpy County. And again, there is a constraints in terms of the number it takes a judge, basically takes a day off a judge's docket and so we need to make sure we have the judicial resources for this. But what happens is somebody gets charged with a crime. Usually it's a first offense felony and then they go into court and they enter a plea to that offense and then they apply to the court and hopefully get accepted. And then if they go through all of those programs and are successful over usually about a year or more, then they get to withdraw their plea and have the charge dismissed so they don't have the conviction. And they come into court every-- I think for drug court is on Tuesdays in Douglas County and they report in front of the judge. They give a status update. If they screwed up, they get-- they can get sanctioned, meaning they can go spend the night in county or something like that. They can get other sanctions of other projects or programs they're supposed to undertake and so it's got accountability. It's got, as Senator Lathrop said, that they do get applauded for successes and-- and so it's-- it's got both of those things. And then the long-term outcome is that they get to-- well, they get to have the progress that they make in the community but then they also get to, if they're successful, withdraw

that plea and not have the conviction. So it is a good program. I think we all get invited or have been invited to witness some of these graduations. The Veterans Court here in Lancaster County, I think recently invited me at least. I don't know if they invite everybody. And, you know, it's certainly a great program to participate, to go observe. But the problem we have with some of these is that they're not necessarily available to everybody. There are individuals that get denied for different levels of offenses or get denied because of prior record. And some of these people didn't get into the program before they-- you know, these didn't exist when people came through. So that's a consideration. The problem with problem-solving courts is they're just not available enough. It's a resource allocation question, it's an admission question. And sometimes defense attorneys have to struggle and argue for the-- why their client should be admitted into whichever program, young adult court, drug court, but whichever problem-solving court, make sure to get them in there and be eligible. And they have a demonstrated track record of success, and they are one tool that we can use and we should certainly be building them up. But again, like all of these tools, like all the recommendations, not-- no one, there's no silver bullet, not one thing is going to solve all this. But expanding the access to this, the expanding the use of this is a success. It's something that will help us make progress. I don't know, are we going to go past me? I can-- I can end if everybody wants to leave, but--

**WAYNE:** One minute.

**J. CAVANAUGH:** Thank you, Mr. President. And so problem-solving courts, certainly we should expand use of those. And, you know, without going on to another topic, I will yield the remainder of my time to the Chair. Thank you, Mr. President.

**WAYNE:** Thank you, Senator John Cavanaugh. Senator McKinney, you're recognized.

**McKINNEY:** Thank you, Mr. President. I rise in support of FA76. And I was sitting here thinking again, I was like, you know, we've got people that want to-- want to be tough on crime, but we also have people that stand up and say we need property tax relief and we should respect the taxpayers. And if that is so, then you should be OK with being smart on criminal justice reform. You know, I mean, I have a couple business degrees, and I would probably say that, you know, the return on investment on being tough on crime is probably not the greatest. It's probably a failure. And if it was a Fortune 500 company, it would probably be bankrupt by now because it just

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hasn't worked. Being tough on crime has done what? We have an overcrowding crisis. Tough on crime did that. The Governor wants to spend \$270 million, and that's not even an operational cost, that's being tough on crime. I don't think that has worked. So the return on investment is horrible again. If somebody could explain the fiscal thinking behind being tough on crime and how it's a benefit to Nebraskans and taxpayers, I'll be willing to listen to it. But to stand up and say we need property tax relief and saying we need to be tough on crime makes no sense. We could, you know, help out our taxpayers if we didn't have proposals to increase felonies, build a prison. Take people DNA. Allow OPD to track juveniles that got ankle monitors, all those type of things tough on crime approach, but the return on investment has done what? Our prisons are overcrowded. The Governor wants to build another prison. We have the 10th highest black incarceration rate in the nation. I guess that's acceptable as well for the state because you guys wanted to be tough on crime. So just stand up and say, I'm OK for our state having the 10th highest black incarceration rate in the nation. Please say it. And we've been going all day and I've only spoken to-- one person has said he would like a prison in his district, but that's across the state. That's not between Omaha and Lincoln. And another that's open to it for economic development, which I just don't think prison should be used as an economic development tool. But when you stand up and say you want property tax relief, but you also want to be tough on crime, please explain that to your constituents of why we can't give them more property tax relief because the budget for the Department of Corrections is \$200-plus million. We want to spend \$270-plus million, not account for operational costs, supply chain, being messed up a war in Europe, all those things, please explain why they cannot get property tax relief because you guys want to be tough on crime. It's not fiscally responsible to be tough on crime. It makes no sense. Please explain to me the the fiscal rationale behind being tough on crime and why it makes sense to have overcrowded prisons. A proposal for a new prison saying no to everything placed on a table to reduce the population. If you can make it-- make fiscal sense, I'll listen to you, but I'm sure nobody will stand up and make that argument because you cannot make the argument and I don't know how you explain it to your constituents. Go in and say, oh, you want property tax relief. No, we didn't get it this year because we decided to vote for a prison.

**WAYNE:** One minute.

**McKINNEY:** So there's your tax relief in a prison somewhere between, I don't know where, because only one or maybe two people in this body

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have stood up and said they actually want a prison in their district. So if there's only one or two people, where is this prison going to go? Is it going to go to Bellevue? I definitely don't want it in north Omaha. Fremont doesn't want it. Where are we going to put this prison? Seward doesn't want it. I don't know. But we really need think about it from a fiscal perspective, is being tough on crime fiscally responsible to taxpayers in Nebraska. Thank you.

**WAYNE:** Thank you, Senator McKinney. Senator Machaela Cavanaugh, you're rec-- oh, I'm sorry. Senator Lathrop, you're recognized.

**LATHROP:** Thank you, Mr. President, and colleagues, it's been a long day. It's been a long day and we're going to break here, apparently at 5:15. And I thought I'd spend a little time at the end of this day, sort of interrupt my going through the options that came out of CJI and talk about a couple of things that we started the day with, and sort of the motivation I have relative to this issue. You know, one of the things that has provided me the most satisfaction as a state senator over 12 years is the opportunity to come down to this body, come down to the Capitol and identify some of the biggest issues facing the state. And I have been involved with and collaborated with senators, with interest groups, with others to help resolve some of the biggest issues facing the state at different times and-- and I'm-- I kind of like being involved in those. It's-- it's very gratifying to get something done when it is a significant issue facing the state and this overcrowding is-- is one such issue. It-- I want you to think about it this way. This-- this idea of criminal justice reform is something being advanced in conservative states by conservative senators. Senator McKinney mentioned that the-- the Trump administration passed the first-- I forget the name of it, the criminal justice reform at a national level. This is something that's happening because conservatives see that it doesn't make sense to continue to pour money, pour money into the Department of Corrections without pausing, without taking a pause, stop, and stepping back and saying, can we get more bang for our buck, more bang for our taxpayer dollar by another approach-- by another approach. This is that moment where we need to pause and answer that question. We need to ask that question and we need to be thoughtful. We should be leaders on this topic. The idea that we can come in here and jack up penalties and think that we're going to make a community safer is folly. It doesn't happen. Many studies have been done that demonstrate what makes a community safer, what discourages a criminal isn't the length of the sentence they may get, but the risk that they'll get caught. That's a law enforcement issue. If law enforcement and by the way, they're doing a much better job in Omaha.

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I don't know if you-- if you read that article on Gun Violence in Omaha done by Henry Cortez in the World-Herald a few weeks ago, you can see that their ability to solve those gun violence cases has gone up dramatically over the last 10 years-- dramatically. They attribute that, as they should, to the efforts of law enforcement in Omaha, but also the Crime Stoppers, and they are solving far more of these homicides and first degree assaults than they ever did. But back to-- back to criminal justice reform. If we don't do this-- if we don't do this, we need three of the prisons the Governor's proposing. We need three of them. We need to decide this isn't let's build a prison because the pen is-- is past its useful life.

**WAYNE:** One minute.

**LATHROP:** This is what do we need to build and before we undertake that, an answer to that question, we need to know what our population projection looks like. And colleagues. If you don't want to do anything on this, if you just want to do a couple of consensus items and feel like we've done something, we're going to need a lot more prison than what the Governor is proposing. We're going to spend a lot more on it and you ought to-- you ought to think about this, too, if you-- if you will, as you consider this tonight. That when you build a prison, your operating expenses, your ongoing operating expenses are probably going to be in the neighborhood of 10 percent of the cost to build the place. So you want to spend \$200 million a year-- or \$200 million to build something, you're probably going to spend 20 operating it every year. These operating expenses are going to eat us alive. And at some point-- at some point it's going to be the tax break you guys get--

**WAYNE:** Time, Senator. Time, Senator.

**LATHROP:** Thank you.

**WAYNE:** Senator Machaela Cavanaugh, you're recognized.

**M. CAVANAUGH:** Thank you, Mr. President. Colleagues, I spoke with Senator McKinney, and I think we have identified a space to build a new prison. It's between Lincoln and Omaha. It's close to a workforce and they have a lot of land. I'm talking about Elkhorn. They came in and a lot of people from Elkhorn came and testified during the interim about the-- the ability to build large sports venues, so they clearly have the land. They've got a lot of people. People are moving out of Omaha central, out to Elkhorn. So Senator McKinney, there's your answer. And with that, if I have any time left, Senator Lathrop,

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would you like the rest of my time? I'll yield my time to Senator Lathrop.

**WAYNE:** Senator Lathrop, you're yielded 4:10.

**LATHROP:** OK, perfect. Thank you, Senator Cavanaugh. I-- I started this, you know, I started this journey a long time ago when I was here the first time and I served on the Judiciary Committee and Senator Ashford was the Chair of that committee and I can remember Brad and I would have Bob Houston in who was then the director of the Department of Corrections. And I can remember Brad asking him, you know, that population, it looks like it's getting up around 150 percent. Oh, everything's fine, we're fine. We weren't fine. We found out when we did the special investigative committee that-- that they were-- they were in a panic over at the Department of Corrections with the overcrowding and the circumstances and the-- the solution then was to go to no cost options and we know how that ended and it wasn't well. Every once in a while, every once in a while, a Legislature is faced with having to solve a problem facing the state. We have such a problem. Colleagues, we have a problem with overcrowding, and it's not going to be solved by building more capacity. What we need to replace the Pen with should be guided by a facility study, and that facility study should have the benefit of our policy with-- that will influence whether our population grows at the department or stays flat. I am not on some mission to reduce the population. I'd be happy if we could just flatten the line or significantly decrease the rate of which our population grows. And it's not because-- it's not because I'm soft on crime or that I got somebody over there I want to see get released, I don't. But it's important because it's a problem facing the state and there is a smarter way. And we have spent nine months through the summer while you were playing golf, we spent nine months trying to formulate what is the problem and what are the solutions. We have a path forward. We have a path forward that will flatten the trajectory of our rate of growth at the Department of Corrections. Eventually, we'll get to that bill. I appreciate you're paying attention today. I appreciate your questions, if you have any. I see Senator Erdman looking at me and I can't tell if he's looking at me like he wants to jump up and ask a question or not. But I invite you to ask questions because this is-- this may be something that's going to be a little--

**WAYNE:** One minute.

**LATHROP:** --uncomfortable to do. Did you say time?



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**WAYNE:** One minute.

**LATHROP:** Thank you. It may be something that's a little uncomfortable, and it may require that you tell your constituents why it makes perfect sense. But this is our turn. We can't kick the can down the road, and we certainly can't pass a couple of feel-good things out of LB920 and think we've solved the problem. Or worse yet, build a facility that isn't going to-- isn't going to make a lick of difference. It will not make a lick of difference when it comes to overcrowding. We will remain an overcrowding emergency when this facility that's been proposed is built and we will spend \$270 million increasing our capacity by 700 beds. I have good news and bad news. The good news is, it's after 5:15. The bad news is that--

**WAYNE:** Time, Senator.

**LATHROP:** --tomorrow is going to look a lot like today. Thank you.

**WAYNE:** Items for-- Mr. Clerk, items for the record.

**ASSISTANT CLERK:** Thank you, Mr. President. Amendments to be printed: Senator Arch to LB1012. Announcement: the Natural Resources Committee will hold an Executive Session tomorrow at 10 a.m. under the south balcony; Natural Resources, 10:00 a.m. under the south balcony. Finally, Mr. President, a priority motion. Senator Bostelman would move to adjourn the body until Thursday, March 17, at 9:00 a.m.

**WAYNE:** Colleagues, there has been a motion on the floor to adjourn the body till 9:00 a.m. All those in favor say aye. All those opposed say nay. We are adjourned.