

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

**LATHROP:** Welcome to the last Judiciary Committee hearing of the year. Good afternoon. Are we on?

**LAURIE VOLLERTSEN:** Yes.

**LATHROP:** OK. Good afternoon. Welcome to the Judiciary Committee. For those of you that haven't testified before, I read this little thing so that you have an idea of how to testify and what the process is. My name is Steve Lathrop. I represent Legislative District 12 in Omaha and I chair the committee. Committee hearings are an important part of the legislative process and provide an important opportunity for legislators to receive input from Nebraskans. If you plan to testify today, you'll find yellow testifier sheets at the table inside the door. Fill out a testifier sheet only if you're actually going to testify before the committee and please print legibly. Hand the yellow sheet to the page when you come forward to testify. There's also a white sheet on the table if you do not wish to testify, but would like to record your position on a bill. This sheet will be included as an exhibit in the official hearing record. If you're not going to-- yeah, it's too late to submit a position letter so I won't go through that with you. We'll begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents and finally by anyone speaking in the neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We ask that you begin your testimony by giving us your first and last name and spell them for the record. If you have copies of your testimony, please bring up at least ten copies and give them to the page. If you are submitting testimony on someone else's behalf, you may submit it for the record, but you will not be allowed to read it. We use a three-minute light system here in Judiciary Committee. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning and when the red light comes on, we ask that you wrap up your final thought and stop. I was talking to somebody-- this is my last committee hearing so I'm going to say this. I was talking to somebody who was legal counsel in this committee and he said in the old days before Kermit Brashear put that light system up, people would be up here and they'd just talk for, like, 20 minutes at a time and hearings would never end. So as I reflect back on 12 years of sitting on this committee, I guess I owe it to Kermit Brashear that we have a light system that is-- seems to have taken off and today, it will be set for three minutes. As a matter of committee policy, I'd like to remind everyone the use of cell phones is not permitted in the hearing room. Please take a look and make sure your cell phone is in the silent mode. No outbursts or

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

applause are permitted in the hearing room. We're paperless and you may see senators on their laptops. That's them following along, looking at comments and not jacking around on Facebook or anything like that. You may see committee members coming and going and that has nothing to do with how they regard the importance of the bill under consideration, but they may have bills to introduce in other committees this afternoon. And with that, we'll have the members introduce themselves, beginning with Senator Geist.

**PANSING BROOKS:** Oh, woah.

**LATHROP:** We're going the other way today.

**GEIST:** Just wake me up a little bit. Good afternoon. My name is Suzanne Geist. I represent District 25, which is the southeast corner of Lincoln and Lancaster County.

**McKINNEY:** Good afternoon. Terrell McKinney, Senator, District 11, north Omaha.

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

**PANSING BROOKS:** And I'm Patty Pansing Brooks from Legislative District 28, right here in the heart of Lincoln, and this is the last day, after eight years, of Vice Chair of this committee.

**BRANDT:** I'm Senator Tom Brandt. I'm not the Vice Chair. Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster Counties.

**DeBOER:** And for the first time, they saved the best for last. I'm Wendy DeBoer. In four years. I've always been first introducing myself. LB10-- LD 10 in northwest Omaha.

**LATHROP:** Assisting the committee today are Laurie Vollertsen. Laurie is somebody that kind of goes with the committee. It doesn't matter who the Chair is. Laurie is the committee clerk, does a great job, keeps all the stuff straight, and Neal Erickson is one of our two legal counsel who also does a great job. I appreciate their service to the committee and to my office. And our pages today are Bobby Busk and Logan Brtek, who have also been our pages through the year. We appreciate what they've done for us through this session. And with that, we'll begin with the first hearing today and that's LB1000 and Senator Ben Hansen. Senator, welcome to the Judiciary Committee.

**B. HANSEN:** Thank you, Chairman Lathrop. All right. Well, good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Ben Hansen. That's B-e-n H-a-n-s-e-n and I represent Legislative District 16. Thank you for the opportunity to present LB1000. I'm proud to have worked on this bill with a diverse group of stakeholders, including the Home School Legal Defense Association. Let Grow, and Nebraska Appleseed. This bill is also similar to model legislation adopted by the American Legislative Exchange Council, or ALEC, and similar bills have recently passed in three states, including Utah, Oklahoma, and Texas. LB1000 does several things to update and clarify Nebraska's definition of neglect, which is currently pretty broad. First, the bill proposes to narrow language that permits juvenile court jurisdiction where a child lacks proper parental care. Since the definition of proper parental care varies with opinion, LB1000 would change the juvenile court's jurisdiction to situations in which willfully-- in which parents will free-- willful-- willfully refuse to provide care despite being able to do so. Secondly, the bill proposes to amend the sections related to the termination of parental rights in the criminal neglect statutes. Parents know their children's abilities and strengths more than anyone else. They also understand the varying differences between each child. Because of this, LB1000 seeks to amend the existing statute, which defines criminal neglect circumstances as situations in which an adult knowingly permits a child to be placed in a situation that endangers their mental health. Parents have reached out saying they feel that there are everyday experiences they allow for their children that people from the outside could consider as endangerment. In actuality, though, the, the parents allow for these activities to promote growth and to challenge their children to excel in life. The language change that addresses this issue would clarify that criminal neglect only exists when the danger is sufficiently obvious that a reasonable person would not cause their child to be placed in such a situation. Along these same lines, LB1000 protects the ability of children to engage in reasonable childhood independent activities without the parents being called into the child abuse hotline or brought into the child welfare system. This bill would make clear that independent activities like kids walking to school or playing outdoors, remain unattended in a car when it is not too hot or too cold, or remaining unattended at home for a reasonable amount of time with provisions for reasonably foreseeable emergencies that may arise are not child abuse in and of themselves. If the child has sufficient maturity and physical mental abilities, they would be able to engage in such activities and avoid substantial risk of harm. Finally, I want to make this point that this does not give leeway to child neglect. What it

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

does do is help in DHHS' efforts to screen out cases where system involvement is not needed and better use of our taxpayer dollars for more appropriate cases. I heard from the Lincoln Police Union and they agreed in saying that LB1000 brings more clarity to a statute that seems to get misinterpreted more and more often by the public. They appreciated the bill and that it would give some guidance to law enforcement and allow for more discretion. Let's give parents the confidence they need to raise children who are capable and ready for basic, independent activities. I appreciate both Senator Wayne and Senator McKinney for cosponsoring and I'm thankful for the support found in the online comments. With that, I would be happy to answer any questions or defer to the testifiers. I would just ask that you please support LB1000. I will take any questions to the best that I can.

**LATHROP:** I'm going to ask you a question that I don't expect you to have an answer to.

**B. HANSEN:** Great, I, I--

**LATHROP:** But I want to-- if there's lawyers coming up here to-- that do juvenile court work, then they can, they can be responsive to this question. A lot of times when we have a definition in, for example, the juvenile code or the criminal code, it has been interpreted and refined and there's millions of cases that deal with the-- with that particular definition. And I'm wondering if with this bill, are we changing a bunch of case law that has defined some of these terms?

**B. HANSEN:** That is a great question and I will defer to--

**LATHROP:** I thought so and I see a couple of lawyers in the crowd--

**B. HANSEN:** --testimony after mine.

**LATHROP:** OK. I just want to make sure that we're not making a little tweak and then it throws out a whole bunch of case law on, on juvenile court cases.

**B. HANSEN:** Makes sense.

**LATHROP:** OK. I see no other questions so thanks for being here. I assume you'll be here to close?

**B. HANSEN:** I should be. I have another bill up, but yes, I should be.

**LATHROP:** OK. Well, if you're not here, we'll understand why.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

**B. HANSEN:** Thanks.

**LATHROP:** Thanks, Senator Hansen. We will take proponent testimony at this time. Oh, good afternoon.

**SARAH HELVEY:** Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Sarah Helvey. It's S-a-r-a-h, last name, H-e-l-v-e-y, and I'm a staff attorney and director of the child welfare program at Nebraska Appleseed. We support LB1000 because Nebraska's current definition of neglect is outdated and overbroad. As a result, too many children and families are reported and investigated for alleged maltreatment that is never found to be true. We know that in Nebraska, 5 percent of total reports to the hotline are substantiated and of those-- so of those 5 percent that are substantiated of tens of thousands of calls every year, 80 percent of the 5 percent constitute physical neglect, which is often an economic issue for families. In addition, Nebraska's current law requires universal mandatory reporting, meaning ever-- every person, regardless of their profession, must report suspected child abuse or neglect, neglect, subject to criminal penalties. Universal mandatory reporting, coupled with a broad definition of neglect, put, puts mandatory reporters, all of us, in a difficult position and it results in thousands of families-- more than 30,000 families per year in Nebraska-- being investigated for actions that don't constitute maltreatment and should not involve state intervention. We also know that there's a significant disproportionality in reports of alleged maltreatment among children and families of color and that Nebraska's definition of neglect permits this bias at the front end of the system. LB1000 would update and clarify Nebraska's definition of neglect and declare that certain reasonable independent activities like playing outdoors or remaining unattended for a period of time, as Senator Hansen said, are not child abuse or neglect in and of themselves when provisions have been made to try to mitigate that harm and avoid the substantial risk of harm. We support LB1000 because we believe it would add to the ability of HHS to screen out cases where there is not evidence of abuse and conserve resources for more pressing types of cases. We also support this bill because we know that children benefit from opportunities to be kids and have unstructured play and that families shouldn't be stopped from giving their kids independence, whether by choice or, in some cases, by necessity. And for all these reasons, we respectfully request that you vote to advance LB1000 out of committee and join the other states that have done so. I'm happy to answer any questions that the committee may have--

**LATHROP:** Senator DeBoer.

**SARAH HELVEY:** --including the one you posed, yeah.

**DeBOER:** How many other states have done? Do you--

**SARAH HELVEY:** There are, there are three states that have already passed laws similar to this.

**DeBOER:** Uh-huh.

**SARAH HELVEY:** And then there are two currently pending. I think that one recently was voted to advance unanimously in the state of Colorado, but there are two more that are currently pending.

**DeBOER:** OK, thank you.

**LATHROP:** So I have a question for you. So are we, are we reducing the number if-- when you say-- let's-- let me give you a hypothetical. There's a child standing in the middle of a playground. Somebody sees the child and we'll make that kid six years old. He's standing in the middle of the playground and it doesn't matter what, what town in Nebraska and he's been out there for three hours. Nobody else is playing with him. He's just there by himself and somebody calls in. How do you know whether that's a good call or a bad call without at least making some inquiry? And if you got to make some inquiry, are we doing anything with the bill to reduce the number of things that are a waste of time?

**SARAH HELVEY:** I mean, I think there'd have to be a judgment about, you know, the amount of time that the child was there alone in this circum-- the weather and the circumstances. And so it would depend on the hypothetical, whether that's something that should be called in to the hotline and investigated for abuse or neglect.

**LATHROP:** We're-- so we're not really going to slow down the number of calls into the hotline, though, are we?

**SARAH HELVEY:** I think we are because when I look at the definition of neglect, it's broad and there are-- there's a provision, for example, that a parent knowingly permitting their child to be placed in the circumstances that may endanger their mental health. And as a parent of a teenager, I feel like that's some everyday experiences that my child is going into. And I think that teachers and other mandatory reporters, like I said, all of us, don't always know whether it's a circumstance where they need to call the hotline or not. They may feel

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

that it's not, but when they read the language of our statute or they look at the definition of abuse or neglect in Nebraska, they feel that they're required to do that, subject to criminal penalties.

**LATHROP:** OK. Senator Pansing Brooks.

**PANSING BROOKS:** Thank you. Thank you for being here with Ms. Helvey. So I'm looking at the section on-- about the motor vehicles on page 7, line 14-- lines 14 to 16. Just tell me, I'm presuming they-- if-- this doesn't mean you can leave the infant in the car unattended, correct?

**SARAH HELVEY:** It would allow that as long as the conditions are not likely to be--

**PANSING BROOKS:** Wow.

**SARAH HELVEY:** --to lead to potential harm. And I can give another personal hypothetical of this situation. At the-- when my kids were in preschool, I had a preschool-aged child and I had an infant and the-- like, the door-- I parked right by the door and I was-- I couldn't go in just to, like, get my child out of the front door with my infant or even a small child under the age of six in the car. We would get emails from the school and say, our teachers are mandatory reporters. Don't-- do not leave your child for a second in the car because our teachers are going to have to report you, parents.

**PANSING BROOKS:** Right.

**SARAH HELVEY:** We heard from the Lincoln Police Department that they had some newer officers that would feel they had to issue a citation for a parent that was still in view of their car that had left a child there, that could still see the child under the language of the statute. So I guess my opinion would be and Appleseed's that this permits-- protects the safety of the child, but permits a little bit of flexibility for that parental judgment situation.

**PANSING BROOKS:** I think that's valuable. I have a friend who went into the store when they were leaving town and there were three children. The baby was asleep in the seat. The oldest child was probably, I think, 12 or something. And so that person left and went into the store quickly to get something and by the time they came back, the police were there and questioning the parent and-- but meanwhile, the 12-year-old would have been fine and could handle getting anybody out if there was an issue and knew to keep the doors locked. So I appreciate that. I think what the law is now is, is, is not as

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

thoughtful as it should be, so-- and doesn't pay attention to parental rights. Thank you.

**LATHROP:** OK, thanks for being here, Ms. Helvey.

**SARAH HELVEY:** But I-- may I speak to your question about the case law? Because I think-- personally, I think that's the, you know, would be my most important question about this bill. I present it to the Supreme Court commission on children in the courts in December because we, we were looking at some of this language with Senator Hansen at that time. And I flagged that for the, for the attorneys and the judges on that commission because this does amend 43-247(3)(a) and language that has been interpreted by a lot of case law--

**LATHROP:** Right.

**SARAH HELVEY:** --so I said to my colleagues at that-- on that-- at that commission meeting. I-- by no means am I presenting any feedback that that they had, but that that is, I think, an important thing to consider because this would, in my view, eliminate some of that case law that has interpreted that same language we have had for a long time. That said, a lot of the language, in my view, in 247 and other provisions that this bill is amending are outdated and cause us to have that, that 5 percent substantiation rate and result in a lot of families coming into the system and being investigated and resulting in that trauma in a way that isn't important. So I-- my view is that that is a trade-off that we're making, but at some point, we need to look at the language and make an update.

**LATHROP:** OK. Appreciate your response to my earlier question.

**SARAH HELVEY:** Thank you.

**LATHROP:** Next proponent. Good afternoon. Welcome.

**LINCOLN ARNEAL:** Thank you. Good afternoon, Chair Lathrop and members of the Judiciary Committee. My name is Lincoln Arneal, L-i-n-c-o-l-n A-r-n-e-a-l, and I am assistant vice president of policy and leadership at Nebraska Children and Families Foundation. As an organization, NCFE works in partnership with community and collaboratives and the state and national partners to give local community partnerships the ability to develop long-term plans using the latest strategies and data to prevent life's challenges from becoming a crisis for many Nebraska families and children. I'm here in support of LB1000. This bill is full of technicalities and provides a much clearer definition of allowable activities that do not constitute



childhood-- child abuse or neglect. It allows for greater freedom by parents on how to raise their child and permissible activities that promote a healthier approach to child development and parenting. This bill will not likely cost the state any money to enforce. In fact, it could save the state money, as it would establish clear guidelines around abuse and neglect. With clearer definitions, it would eliminate some of the confusion about permissible activities for parents. There are simple things like walking to and from school, playing outside, staying home alone, or riding their bicycle around the neighborhood. It also clarifies that parents don't need to supervise children 24/7, provided they have established a safe environment for appropriate developmental activities. Two changes in the language help achieve these clear standards. First is the insertion of the reasonable person standard. While the standard may seem vague, it is not, for all of us have pondered actions thinking about what other people would do when faced with the same situation. Applying that standard for parenting practices can better help them care for their child and provide age-appropriate activities for their children. In addition, these additions, these additions allow children to maintain unsupervised for short periods, given it is age appropriate to do so and reasonable precautionary measures have been taken. Each spring, I help facilitate Nebraska Children's Legislative Days event. As at this event, young people with system experience pick five bills from hundreds introduced each session. This year, one of the five bills that they selected to advocate on behalf of was LB1000. The young leaders who chose this topic come from different backgrounds and many experienced foster care or the juvenile justice system. Some are even parents of young children themselves. They spoke about why they care about this bill and provisions they like about it. Following the event, we emailed links out to each senator of the presentation. During the presentation, they talked about how they liked that the bill allowed for more age-appropriate activities to help the child learn to take care of themselves and learn independence. They also liked that it provided a reasonable person standard for most endangerment situations. This change would alter the mindset from being a reasonable parent from being the perfect parent. They said they all knew good parents and could imagine what those parents would do in the situation-- in that situation, which would prevent them from being too protective or stifle learning opportunities for their children. Thank you for your time and your consideration of LB1000. I hope you support this common-sense bill. I'll take any questions if you have them.

**LATHROP:** I don't see any questions today.

**PANSING BROOKS:** I have a question.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

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

**PANSING BROOKS:** I just-- I'm back to that section again because I do like this bill. I'm just looking back at page 7. Do you have the bill in front of you?

**LINCOLN ARNEAL:** I don't have it in front of me, no.

**PANSING BROOKS:** You do?

**LINCOLN ARNEAL:** Do not.

**PANSING BROOKS:** OK, well, I'll just say that it's-- talks about, "for purposes of the section, independent activities include, but are not limited to." So it talks about traveling to the school by walking, running, or bicycling to and from school. It talks about playing outdoors. That's (b) and (c) is, is remaining unattended in a motor vehicle. It goes on to say that by conditions that don't-- that have been mitigated by reasonable precautionary measures and then (d) is remaining at home unattended for a reasonable amount of time. So two of the four activities, independent activities, have the reasonable-- reasonableness level of-- but it seems to me it could be playing outdoors under reasonable conditions--

**LINCOLN ARNEAL:** Yeah, I--

**PANSING BROOKS:** --instead of just playing outdoors. I mean, if they're playing outdoors and it's two below zero and-- that wouldn't be a reasonable-- and they were in a, you know, a little--

**LINCOLN ARNEAL:** Yeah.

**PANSING BROOKS:** --swimsuit or something or just their diaper. That's not reasonable. So it seems like if we've added the reasonableness charge-- I was trying to think of the right word--

**LINCOLN ARNEAL:** Standard.

**PANSING BROOKS:** --the standard of reasonableness to two of the four areas, it seems like it could pretty easily be amended to have the reasonableness standard on all four areas, playing outdoors and also traveling to school or nearby recreational area. Otherwise, specifically, it's been set up to have a reasonableness standard for (c) and (d), but not (a) and (b), so.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

**LINCOLN ARNEAL:** Yeah and there are other sections where it does establish that reasonable standard, not just within those examples, but other sections, it does establish that.

**PANSING BROOKS:** Seems like it should be consistent--

**LINCOLN ARNEAL:** Yeah.

**PANSING BROOKS:** --in my opinion, but I love it otherwise, so thank you.

**LATHROP:** I don't see any other questions, thank you. Hello and welcome.

**MARY HILTON:** Afternoon. Thank you. My name is Mary Hilton, M-a-r-y H-i-l-t-o-n. I am the legislative liaison for the Nebraska Christian Home Educators Association, NCHEA. We appreciate Senator Hansen for introducing LB1000 and Senators Wayne and McKinney for supporting it. The NCHEA was founded in 1986 with the mission to encourage and support Christian families in the education of their children at home, in accordance with biblical principles, and to support the rights of Christian parents to homeschool their children. We believe that the family is the basic governmental, social, and spiritual unit created by God. In it, children gradually learn self-government and social relationships and it is for these reasons that we support LB1000. As home educators, we spend time with our children, giving them substantial parent-directed instruction and activities. However, part of raising self-governed children necessarily requires reasonable freedom without a hovering parent. When children have free play, the independence to walk to the park or grocery store, or run around the block, they learn important skills and life lessons necessary to mature into responsible adults. When kids are given the freedom to be creative, to have fun, to make friends, overcome fears, solve their own problems, take initiative, to do something smart, brave, or kind without parental guidance, they are equipped with the tools to become strong, happy, and resilient adults. The NCHEA acknowledges that LB1000 affects the broader community beyond just the concerns of homeschooling parents, as presented before my testimony. However, our members have experienced false accusations of abuse and neglect when allowing their children reasonable independence. Whether it is actual or perceived, homeschooling parents do often fear having their children taken from them. For DHHS to open an investigation, it only takes a call from a neighbor who believes that homes-- the homeschooling children next door don't get to play outside enough, labeled maybe as abuse, or perhaps they play outside too much,

neglect. Since 1923, since the 1923 case of Meyer vs. Nebraska, the Nebraska United States Supreme Court has repeatedly stated that the rights of parents to raise their children is fundamental. Fit parents are given the freedom to make essential decisions about their children's well-being and ought not be second-guessed by government officials without compelling state justification. Time and again, courts have deferred to parental judgment and consider parents' rights to make family life decisions constitutionally protected. Sections 4 and 6 of this bill specifically clarify what is not abuse or neglect. Our organization supports parental rights and believes that passing LB1000 would further protect the rights of our parents, as well as parents and children throughout the state of Nebraska. It is the hope that-- of the NCHEA that the Nebraska Legislature will soon pass LB1000. Thank you for your time and I'm open to any questions you might have.

**LATHROP:** Very good. I don't see any. Oh, I'm sorry. Senator Geist.

**GEIST:** Have people in your association actually been cited for this or is this just kind of a trend that you're trying to get ahead of?

**MARY HILTON:** No, actually, this is-- so our association, since 1986, has received, you know-- I don't know the exact number. I did reach out to the, the long-standing president of the organization that takes these kinds of calls and she said they are just too numerous to count. And I can-- I'd be happy to give you some examples of what those might have-- what those have looked like.

**GEIST:** Maybe just one.

**MARY HILTON:** OK, so--

**GEIST:** And if you're not prepare-- I mean, if you're not--

**MARY HILTON:** No.

**GEIST:** --prepared for that, you can just send--

**MARY HILTON:** No, I have, I have actually-- I have several, but I, I will give one. So there was a mother in Superior, Nebraska, who had some fairly rambunctious, difficult little boys that had been abused earlier in their life. She was a good mother. She was on welfare, however, and disabled and she-- her boys were really creative and they made birdhouses that they sold to help her-- their family make money. And they lived in an old, 100-year-old home that needed work that the boys also helped their mother with. So to make a long story short, the

children were not doing well in the public school setting and she decided to homeschool them and to pull them out. Within three months, she was cited for abuse and neglect and truancy as well. So it was a very traumatic experience for her. She had done her due-- a lot of work to be able to homeschool her boys and she ended up having them tested and their test scores before-- they were in, like, upper-elementary, junior high age. Their test scores leaving the school were at the low-elementary level. However, when they were retested, they were actually at a sixth-grade level, both of them, in just three months. And so it is accusations like that that are a concern. And there's others, really simple ones, just, like, you know, parents-- as some had said, like, you know, you pull up to Blockbuster Video in the old days, you know, and you literally go five feet to put the movie in the slot and parents in our organization have been cited for neglect for that. Having their kid play outside too long, whatever that means. There used to be actually a commercial on the radio-- I don't know if it was DHHS that sponsored it-- that actually encouraged a neighbor to say, you know, little Johnny's been outside playing an awful long time by himself, to encourage neighbors to tell on their neighbors if they're concerned about kids playing outside too long. And so I just-- I think that we live in an age where the, the, the press and the media push this paranoia that our kids are constantly at risk of being kidnapped when the, the statistics, the crime statistics do not support that whatsoever.

**GEIST:** OK, thank you.

**MARY HILTON:** Thank you.

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

**MARY HILTON:** Thank you for your time.

**LATHROP:** Good afternoon and welcome.

**SHANNON SPLONSKOWSKI:** Hi. I'm Shannon Splonskowski, S-h-a-n-n-o-n S-p-l-o-n-s-k-o-w-s-k-i. I'm here to share my experience being threatened with calling the police for leaving my children briefly unattended in a local store. I was shopping at a store with my children when my three-year-old needed to use the restroom. Sadly, she didn't make it to the bathroom before having an accident. So at that time, I did not have a change of clothes with me and I left her and my five-year-old daughter in the single-person restroom and I left my nine-year-old child right outside the bathroom and I went to a nearby rack in the store no more than 50 feet away to grab some clothes to

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

change her into. There was a woman waiting in line to use the bathroom and I mentioned that it would still be a few minutes before the bathroom was available and I apologized for the inconvenience. When I walked to the clothing rack, the woman went up to a store employee and loudly declared that I had locked my children in the bathroom and abandoned them. And as I was walking back to the bathroom with the clothing, she was trying to make the cashier call the police. The entire time, I was in sight of the bathroom and my nine-year-old was right outside. I confronted the woman, as I overheard what she was saying, and explained what was really happening in the situation. The cashier did not end up calling the police and did not want to get involved in the conflict. When I asked the woman why she had jumped to conclusions, she said she'd heard a woman with large numbers of children who abandoned their children in this way and she assumed that that's what had happened. I was shaken up by this confrontation and frustrated by the way the situation was handled. This is a rather minor story, but the result could have been a lot different if the police had been called and a mandatory investigation was initiated to determine if there had been any child abuse or neglect. As a parent, I shouldn't need to be in fear that every time I let my child-- children play outside, ride their bikes, or help me go shopping that I might have the police or Child Protective Services investigating me. Unfortunately, the current law leaves my husband and I at risk of government intrusion and the mental trauma that can accompany CPS interviews and home inspections. I know of an experience with a close friend who was shopping with her family. Her husband went into a store while she remained in the vehicle with her children. Someone reported to the police that there were unattended children in her vehicle, not looking closely enough to see that an adult was present and the vehicle was still running so there was no danger of overheating. At the time, the family was unaware that the police had been called, but nearly a week later, CPS showed up at their residence and conducted interviews based on the false statement of the unknown passerby. This caused significant stress and anxiety for the family while waiting for CPS to decide if any evidence of child abuse was present. My ability to parent and discern suitable activities for my children should not be at risk because of a nosy neighbor or ill-informed stranger calling the police for perfectly acceptable situations. I urge you to pass this legislation to help protect parents in Nebraska from government invasion into personal family lives.

**LATHROP:** OK. We appreciate you coming in today. Thanks for being here.

**SHANNON SPLONSKOWSKI:** All right, thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

**LATHROP:** Any other proponents of LB1000? Good afternoon.

**TONYA WARD:** Good afternoon, Senators. My name is Tonya Ward, T-o-n-y-a W-a-r-d, and I'm the president of Energy Rescue Inc. Our mission is to advocate for justice on behalf of residents in poverty who are trying to keep their families safe here in Nebraska. I support LB1000 because it is a beginning, but there is much more needed. Truancy for one should not be-- should be a true case of truancy if the state allows truancy to be used as a form of neglect. Since the failed truancy law criminalizes normal absences from school where parents and schools know where the child is, especially when a parent communicates their child's absences into school, this is not neglect. Utility shutoffs also play a significant role in the unnecessary removal of minor-aged children from their loving homes when utilities are shut off. This is reported on foster care files under housing conditions and only the police keep these details of housing conditions. CPS and foster care agencies do not track these types of removals and the children can get stuck in foster care for an unnecessary amount of time. The damage done to our children and their families can negatively affect them mentally, physically, and emotionally, leaving them scarred forever in some cases. I will never understand why Nebraska senators continue to allow our public utility companies to destroy families, cutting off life's basic necessities: water, heating, cooling, electricity, gas, neglects the utility customers in poverty and can lead to increased homelessness since many lease contracts, including HUD and Section 8 leases, state that housing can be terminated if utilities are not kept on in these homes. We need our senators to review these dangerous policies and practices and protect our children and families in poverty instead of allowing vulnerable residents to become homeless, lose their jobs, lose their children, leaving families to spiral deeper into poverty. We are in the days or weeks leading up to utility shutoffs in Nebraska when the moratorium allows utility companies to shut off households, thousands of households, from utility service when three consecutive days of low temperatures falling above 32 degrees, despite the temperatures dropping again below 32 degrees in that day follow. When a home loses that electricity, the children are traumatized by the threat of being removed from their loving homes and CPS, without warrant or court order, only dump, dump them into Nebraska's dangerous, bulging, broken foster care system. The fastest time reported to us about CPS showing up on a doorstep of a home to remove the minor children living there was four hours from the time the utilities were shut off and an anonymous reporter alerted CPS. Mandatory reporters and callers who abuse-- who report abuse and neglect should not continue to be anonymous in Nebraska. These people

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

should be held accountable for their accusations and if they are false accusations, they should suffer serious consequences for those false reports. Termination of parental rights cases have been brought also to our attention and include reports of CPS and others involved in foster care purposefully trying to turn kids against their own parents, making them mad so that in the recorded sessions, they can show an aggression or negative interaction that can be used against the parents and children. Housing conditions should not just be recorded on police paperwork like it is today. To protect our children, the housing conditions should be a part of that child's record and the Foster Care Review Board should follow up and make sure all the detailed reasons a child was removed and placed in foster care--

**LATHROP:** Ms. Ward.

**TONYA WARD:** Oh, I, I did it.

**LATHROP:** Yeah. No, people do and that's OK. I just-- it's my job to remind people about that red light, I'm afraid.

**TONYA WARD:** Yes, sir.

**LATHROP:** Let me see if there's any questions--

**TONYA WARD:** OK.

**LATHROP:** --and if there's not, then we'll have-- Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Ms. Ward, For your testimony today. Are you familiar with the LIHEAP program?

**TONYA WARD:** Yes, I am.

**BRANDT:** And I see you have an old statistic in here, 18,000 households were disconnected in 2014.

**TONYA WARD:** Correct.

**BRANDT:** I don't know if you're aware, but Nebraska has an influx of tens of millions of dollars into that program, federal money. I don't know if it's all been used yet, so there should be a pretty healthy amount there for people to apply to keep these utilities from getting disconnected.



Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

**TONYA WARD:** I appreciate you, sir, but there's a flaw in the LIHEAP program that I have been complaining about for decades.

**BRANDT:** I'd like to hear it.

**TONYA WARD:** Thank you. In Omaha specifically and Sarpy-- I should say Douglas and Sarpy County, the furnaces and the heating and cooling systems require both the electric spark from OPPD, for instance, to ignite the gas flame and provide heat into a house with the blower running. For some odd reason, Nebraska allows the utility companies to say the LIHEAP funds will be used in winter only for heating, ignoring the fact that pouring millions of dollars into MUD for gas and water, but shutting off the OPPD electricity wastes the federal dollars for the program because the house is still cold. There is no heat flowing through that home. And years ago, years ago, Nebraska used to divide that LIHEAP payment between-- 50/50 OPPD and MUD and the LIHEAP program worked and it provided heating/cooling for everybody poor who qualified through winter and it provided cooling and water for people for summer. So I've been complaining about this, but it hasn't reached the correct ears. So I was super happy and I came and testified to the senators about that LIHEAP improvement that I'm-- I apologize. I don't remember the senator's name who improved that. Was that your bill? Good job. Thank you, Senator.

**LATHROP:** On it.

**TONYA WARD:** So that is, that's beautiful, but the-- I'm also getting calls at our nonprofit on the hotline about LIHEAP not being applied for people to be able to maintain both utilities. There is within DHHS. It's called crisis funding, but to qualify for crisis funding is ridiculous. You have to prove receipts of your losses. I had a car accident, for example, and I qualified for LIHEAP as a single mother with three kids living in poverty; \$200 right now I'm living off of because I had two car accidents in the last five months. So instead of DHHS saying, oh, you qualify for the crisis help, because I couldn't pay the \$1,000 bill of damage to my car to prove that I had damage to my car-- despite the note from the mechanic, they said, oh, you don't qualify because you haven't paid it yet. Well, I can't pay it and so my car's being sent to the junkyard. But the LIHEAP bill is-- or not bill, sorry. The LIHEAP program is very important because if we go back to the way it was-- they were using the program, it would be beneficial. Today, it's failing. And so when we dump the LIHEAP funding into the winter funds, people are still freezing and they still get their kids taken by-- into foster care by CPS because they don't have heat, but they just said \$800 paid on their LIHEAP bill, so

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

if we can work together on that improvement, I'd appreciate all of you [INAUDIBLE].

**BRANDT:** OK, we'll look into it. Thank you.

**TONYA WARD:** Thank you, Senator.

**LATHROP:** OK, very good. Thank you, Ms. Ward, for being here.

**TONYA WARD:** Thank you so much. I appreciate all of you senators.

**LATHROP:** Any other proponent testimony? Good afternoon.

**AUBREY MANCUSO:** Good afternoon, Senator Lathrop, members of the committee. My name is Aubrey Mancuso, A-u-b-r-e-y M-a-n-c-u-s-o, and I'm here on behalf of Voices for Children in Nebraska. An ideal child welfare system prioritizes family preservation and removes children from their home only when absolutely necessary. Voices for Children supports LB1000 because it clarifies the definition of child neglect to prevent families from becoming unnecessarily involved in our child welfare system. Removal from the home is experienced as a trauma by children, regardless of the suitability of parents. Nebraska has a long history of high rates of removals per capita and persistent racial disparities in who is investigated for child neglect and removed from the home. In addition, even the investigation process itself can be traumatic for a family. Nebraska has made progress in reducing the number of child removals over the past decade, but we continue to have a higher rate of investigations per capita than the U.S. overall. Further, the rate of investigations that are ultimately substantiated is lower than the U.S. average. What this demonstrates is that we are continuing to put families through investigations that may not be necessary to ensure child safety. We appreciate that there needs to be a high standard when it comes to child safety, but we need to maintain the appropriate balance between safety and not causing unnecessary trauma for families. Neglect is the predominant reason for child welfare system involvement in Nebraska and it's often conflated with poverty. In some cases, the issues can be better addressed by providing more resources and support to families outside of our formal system. In Nebraska, everyone is a mandated reporter, meaning that reports are often made by those with little background or experience to really be able to assess whether a child is truly in a dangerous situation. Implicit bias remains a problem in all our system, but plays an even larger role when everyone is required to report suspected child abuse or neglect. LB1000 would clarify the definition

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

of neglect and help more families stay out of our child welfare system altogether and we urge the committee to advance the bill.

**LATHROP:** OK. I don't see any questions for you today, but thanks for being here. Welcome.

**SCOUT RICHTERS:** Thank you. Good afternoon. My name is Scout Richters, S-c-o-u-t R-i-c-h-t-e-r-s, here on behalf of the ACLU of Nebraska in support of LB1000. We wanted to first thank Senator Hansen for bringing this bill. The changes made through LB1000's efforts will help better protect both the rights and the safety of Nebraska's children and Nebraska's families. In 2019, there were 37,690 reports of alleged maltreatment made to the child abuse and neglect hotline in Nebraska and these reports resulted in over 1,500 children being determined to be in an unsafe scenario that resulted in some form of interaction with the legal system. Involvement of the child welfare system disproportionately affects families of color, especially black and native families. For example, Native American children make up 1.1 percent of the total Nebraska child population, but they make up 4.8 percent of child welfare involvement cases. Black children make up 6 percent of the total Nebraska child population, but 14.9 percent of child welfare involvement cases. Once involved in the child welfare system, children of color in Nebraska are also more likely to be removed from their home, spend longer periods of time in out-of-home care, experience separation from siblings, and be churned through multiple placements. Every child deserves an equal opportunity to grow up in a safe and healthy environment and the Legislature must take the necessary steps to ensure that the statutory language surrounding serious matters, such as child abuse and neglect, are congruent with the needs of Nebraska's children and families. For these reasons, the ACLU supports LB1000 and I would be happy to answer any questions.

**LATHROP:** OK. I do not see any questions for you today, but thanks for being here.

**SCOUT RICHTERS:** Thank you.

**LATHROP:** Anyone else here to testify as a proponent? Anyone here to testify in opposition to LB1000? Anyone here in the neutral capacity? Seeing none, Senator Hansen, you may close. We do have position letters from 25 proponents and we have no letters in opposition or in the neutral capacity.

**B. HANSEN:** Thank you, Chairman Lathrop and members of the Judiciary Committee. I think this is my last bill I have a hearing for this

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

year, so that's kind of nice. And this is the bill I know you all wait for because there's no opposition, there's all proponents from a diverse group of backgrounds and interests. So it's maybe time we let our kids thrive and play outside without parents worrying about getting called into a hotline or being arrested for child abuse or child neglect. So I appreciate your consideration of this bill and I hope we can move it forward so we get on the floor this year for consideration. Thank you.

**LATHROP:** OK. Very good. I don't see any questions. Thanks for being here today.

**B. HANSEN:** Thank you very much.

**LATHROP:** That will close our hearing on LB1000 and bring us to Senator Blood and LB692. Senator Blood, you may open on LB692.

**BLOOD:** Well.

**LATHROP:** Welcome.

**BLOOD:** Thank you and good afternoon, Chairman Lathrop, fellow senators, friends all. My name is Senator Carol Blood, which is spelled C-a-r-o-l B-l-o-o-d, and I represent District 3, which is western Bellevue and eastern Papillion, Nebraska. Thank you for the opportunity to bring forward LB692 to the esteemed Judiciary Committee. I bring forward LB692 because it's time that we started the conversation here in Nebraska about something that has been around for a very long time, but now we have a name for it. What I'm talking about is the deceptive act of nonconsensually removing a condom during sexual intercourse. This is called stealthing. Stealthing is a form of sexual assault and should be taken as seriously as the other forms of sexual assault that we're more familiar with, such as groping and even rape. Stealthing was brought into the mainstream public eye in the United States when a Yale law student, Alexandra Brodsky, published her people titled-- paper titled "'Rape Adjacent': Imagining Legal Responses to Nonconsensual Condom Removal." In this paper, she found that nonconsensual condom removal is a common and growing practice among young, sexually active people and further requires explicit laws such as LB692 to properly address the concerns of the victims. Victims of stealthing run the risk of contracting sexually transmitted infections, which, if left untreated, can lead to serious complications of the reproductive systems. It's even worse in women who develop diseases from STIs because it can leave them sterile and unable to have children. Stealthing also increases the risk of a woman

experiencing an unplanned pregnancy. The research on unplanned pregnancies has shown that women who experience them have worse economic and health outcomes over the course of their lifetimes and over the course of their children's lives. Victims of stealthing may feel betrayal and see it as a grave violation of dignity and autonomy. Many may experience emotional and psychological distress, especially those who have experienced sexual violence in the past. Consent is at the very core of this issue and it's rather black and white. If someone consents to have sexual intercourse with the understanding the condom will be used and either party violates that agreement by removing the condom at any time, they should be held accountable for it. Stealthing is not a joke. Lack of consent is not funny. This bill has been the brunt of several jokes by various people in our body and staff. It is deeply disappointing and concerning to me that people do not take this issue seriously, especially when we reflect on the recent incident in our legislative body. It shouldn't take a scandal for folks to understand that sexual harassment and assault occur in several different forms and it's important that we acknowledge each one of them. We know that many survivors do not want to see the person who violated them in prison, but could use help covering Medicare-- medical debt or maybe help to see a therapist. With LB692, I simply want to affirm that stealthing does occur by offering help to its victims. In 2021, California passed a law that makes stealthing a civil offense. That state joins several countries, including the United Kingdom, Germany, Switzerland, Canada, and New Zealand that have already criminalized stealthing. Now, LB692 doesn't go as far as criminally penalizing perpetrators of stealthing, but it does give victims a clear avenue for recourse by allowing them to bring about civil action and collect, collect on damages. So it's long past due for more widespread legislation and shifting of social norms on this issue. Stealthing has, stealthing has gotten more attention in the past few years, but the topic is still largely and dangerously flying under the radar. That's not entirely surprising, given the relatively subtle nature of the violation. It usually happens during sex that starts out as consensual, yet as I've told you, the potential harm is substantial. Civil litigation can sometimes yield more results for victims and after reading Nebraska's Criminal Code, I don't feel like we need more new laws. I urge the committee to take a close look and let's acknowledge that stealthing is a real and pressing issue that needs to be addressed in Nebraska. Topics of sexual assault deserve our attention and LB692 deserves to be debated by the full Legislature. And frankly, if you were to kick it out with full support, I have opportunities to amend it to other bills and I look forward to your support and would be happy to take any questions. I

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

may not get to stay for my closing because I'm going to be up in Appropriations shortly.

**LATHROP:** OK. Well, we certainly understand you may have other places to be. Thanks, Senator. Senator Slama.

**SLAMA:** Thank you, Mr. Chairman, and thank you, Senator Blood, for being here. I just have a few questions in reading through LB692. So I think I understand where you're coming from in terms of the active stealthing and how that's a form of sexual assault, but my biggest concern with LB692 is that goes far beyond-- we're dealing with language in this bill that goes far beyond, like, the purposeful removal of the condom. I'm not seeing any intent language here, is that correct?

**BLOOD:** So when we worked with the attorneys here in Nebraska and asked questions in reference to what's the difference between criminal and civil, this is the description that was recommended to us. So to be very frank, that's the answer that I have for you.

**SLAMA:** OK, so if we're in a situation where the condom breaks or even partially falls off without the knowledge of the wearer, like, even due to a piercing on the other sexual partner, like, that would--

**BLOOD:** That's not--

**SLAMA:** --fall under this?

**BLOOD:** That's, that's-- so we're talking about-- and I, I thought it was clear in LB692, perhaps it isn't. We're talking about somebody who says, Senator Slama, the person that you are selecting to have intercourse with chooses not to, to say-- you both consent to say let's have intercourse and we're going to utilize a condom. And then halfway through that person purposely--

**SLAMA:** Um-hum.

**BLOOD:** --removes the condom because perhaps they don't like how it feels or perhaps they were purposely trying to trick you into having sex without a condom by saying they're going to start by having sex with a condom and when-- we know, by the way, 12 percent of women have experienced this, 10 percent of men have said they have done it that are sexually active in your age bracket.

**SLAMA:** Sure.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

**BLOOD:** So it's not a matter of oops, the condom broke or oops, there's a hole in the condom. It's a matter of somebody intentionally agreeing to consensual sex and then removing it in the process of having sex.

**SLAMA:** Sure and I, I completely understand where-- there's just no intent language in the bill, so that might need to be something that needs to get clarified before I get on board with supporting it because right now it's very broad in terms of there not being intent, just that the condom has been removed and even that removal definition is very broad. Even a partial removal could be considered removal.

**BLOOD:** I appreciate that.

**SLAMA:** Yeah.

**BLOOD:** With all the attorneys in this committee, I'm sure you could come up with a wonderful amendment that would correct that.

**SLAMA:** Maybe one day I'll join those ranks. So Senator, how would you envision these actual damages being calculated here? You mentioned sexually transmitted diseases, unplanned pregnancies. I think those are easier in terms of calculating damages, but in terms of the definition for the parts list-- the body parts listed, it seems to go beyond just areas that would cause sexually transmitted diseases or pregnancy, so how would you calculate actual damages through this bill?

**BLOOD:** So, so I would actually disagree. I, I think that we have to understand that different people, based on how they identify, may utilize different body parts than perhaps you or I would and that it's quite clear that if you do indeed get an STI or STD. It's very clear that if indeed you get a pregnancy or you get a-- something that's been passed on because of that connection-- I'm trying to be so polite here-- pass it on because of that connection--

**SLAMA:** Oh, no need to be polite. Like, we're just talking about the language of the bill.

**BLOOD:** --that that's something that's going to clearly come up that a doctor is going to have to treat. And so obviously, a doctor bill is something that sub-- that's substantial that is indeed something that you can show is a damage. A psychologist, a counselor--

**SLAMA:** Um-hum.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

**BLOOD:** --those are all things that are viable that you can say because of this, I have a relation-- I have relationships issues because of this, I am dealing with depression, because of this, I'm, I'm dealing with anger issues. So those are things that are concrete that you can go and see a doctor for. Bodily injuries are something concrete that you can go and see a doctor for.

**SLAMA:** Sure.

**BLOOD:** So I think a lot-- the reason it's defined the way it's defined, again, is because we did work with people that were attorneys in the Nebraska area to say, what are we forgetting? What do we need to include? So I, I agree that there's a lot of description there when it comes to body parts--

**SLAMA:** Yeah.

**BLOOD:** --but it's based on, on what we felt was appropriate for a bill like this.

**SLAMA:** OK. Well, I, I appreciate that clarification because that leads me on the, on the definition of intimate part because you're right; I mean, different folks have different approaches. I was interested in terms of the body parts that were selected as being defined as an intimate part because I, I, I saw that as being a little bit of a subjective thing for, for different people. Wouldn't that same assessment for damages be applicable to someone considering, like, their belly button or their foot an intimate part? And if so, like why, why was that not included in the definition of that?

**BLOOD:** Again, I went to legal specialists and we said, what do we need to include and what do we not include?

**SLAMA:** Um-hum.

**BLOOD:** So if indeed you, you felt belly button was a body part that needed to be included, again, I would not have anything against an amendment like that.

**SLAMA:** OK. And then just one last one. So what, what was the thinking in only using-- only referencing a male condom in this statutory language? I mean, couldn't you make the same--

**BLOOD:** Like a dental dam or--

**SLAMA:** --argument for--



Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

**BLOOD:** --could you be more specific?

**SLAMA:** Yeah, female condoms, dental dams, shifting of a diaphragm. Like, you'd had-- you could have the same outcome, same potential damages for any number of birth control methods. I was just interested to hear your reasoning on using a male condom in the statutory language.

**BLOOD:** So in our research--

**SLAMA:** Um-hum.

**BLOOD:** --that was the data that we were able to glean. So we were not able to come across anything where a woman purposely, during the course of having intercourse--

**SLAMA:** Um-hum.

**BLOOD:** --removed her diaphragm. We didn't find incidents like that. We didn't find-- I mean, of course, when it comes to things like medications, I'm not the medication police. If you choose not to take your birth control pill, it's not my job to police that, but we know that indeed, when it comes to this-- to stealthing, that this is an ongoing issue, especially among young adults, college students, and the LGBTQ community.

**SLAMA:** Um-hum.

**BLOOD:** So it is something that is concrete that we track with data. So I think that when you start getting-- become the bedroom police, then that takes it a bit too far. I don't feel, when we talk about sexual assault-- and that's why I feel you're kind of going into the weeds right now.

**SLAMA:** Um-hum.

**BLOOD:** This is sexual assault and we had to come back to what this is. This is two people that agree to have sex and have given each other consent to have sex as long as a condom is used. If one partner decides not to use that condom after consent has been given for a condom, that is sexual assault and that's the issue that we're dealing with. So as far as other forms of contraception, I guess you'd have to be more specific and show me where that is sexual assault because the consent is different in those cases that you're talking about.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

**SLAMA:** I mean, I, I would disagree with the definition of consent and removing the birth-- I think the approach is the same in terms of the damages that could be done, but I appreciate you answering my questions and I, I do, I do think you're touching on an issue here of stealthing that is an important one. I'm just worried-- you mentioned bedroom police-- that we're already taking a step into that with the broad language of LB692, so thank you.

**BLOOD:** Again, I would say that we have a lot of smart attorneys like Senator Lathrop and Senator Morfeld, Senator Pansing Brooks on this committee who I'm sure could utilize an amendment and correct what is considered broad language.

**LATHROP:** OK. Senator Blood, I don't see any of the questions. Are you going to stay too close?

**BLOOD:** I'm going to try and stay to close.

**LATHROP:** OK. We understand if you can't. How many people are going to testify on this bill? Can I-- can you hold your hands up? One, two, three, four, five, about five or six. We have Senator Matt Hansen that's up next. OK. Is he-- did you say he's here? Oh, I couldn't see. All right, well, we'll take proponent testimony.

**MAEVE HEMMER:** Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Maeve Hemmer, M-a-e-v-e H-e-m-m-e-r, and I'm here today to share my support for LB692. While I do serve as University Nebraska-Omaha's student body president and student regent, I want to be clear that today I'm speaking in my individual capacity and not as a representative of the University of Nebraska System or Board of Regents. I first want to thank Senator Blood for introducing LB692. Stealthing is not a topic of many conversations right now, so I deeply appreciate Senator Blood's commitment to making space for this discussion and for you all to consider action that would improve Nebraska. While stealthing is a relatively new term in our society, the act that the term represents, a man or person with a penis removing their condom without consent during intercourse, is not a new concept. Not only is stealthing an issue that has been present for some time, but it is also an issue that remains stigmatized despite its prevalence in our communities and presents a substantial risk of harm with each occurrence. Dr. Kelly Cue Davis, an associate professor at Arizona State University, has done extensive research in the realm of sexual violence and sexual risk, with specific attention to the issue of stealthing. According to one of Dr. Davis's studies conducted between 2017 and 2019, 12 percent of the 503 women participating

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

reported experiencing removal of a condom by a partner without their consent and 10 percent of the 626 men participating reported that at-- on at least one occasion, they had removed a condom without the consent of their partner. Further, Dr. Davis presumed these statistics were likely not completely representative of the impact of stealthing, given that stealthing is often times unknown to the victim. Nonetheless, the statistics from Dr. Davis' study represent a deeply concerning reality of widespread sexual violence and deserve immediate attention from our community and its leaders. The impact of stealthing is one that is characterized by outcomes that are life changing and oftentimes irreversible, such as an increased risk of contracting a sexually transmitted infection or disease, nonconsensual pregnancy, and resulting trauma from nonconsensual sexual behaviors. An immediate acknowledgment of the harm and impact of stealthing, as well as actions that serve to reduce the prevalence of nonconsensual sexual behaviors, are vital in our effort to improve the bill and well-being of communities across Nebraska. While this bill won't be the end of the conversation on stealthing, it does provide victims and survivors of stealthing with the opportunity to recover civil damages. I believe this element of the bill is particularly important because it represents an opportunity for victims and survivors to make a decision about how to move forward following an act that disregards their agency and autonomy. I urge you all to support LB692. Thank you for your time and consideration of my testimony.

**LATHROP:** Very good. I don't see any questions. Thanks for being here.

**MAEVE HEMMER:** Thank you.

**LATHROP:** Any other proponent testimony? Good afternoon.

**ADELLE BURK:** Hi. Chairperson Lathrop and members of the Judiciary Committee, my name is Adelle Burk, A-d-e-l-l-e B-u-r-k, and I am the senior manager of public affairs at Planned Parenthood North Central States. I'm here today to state our support of LB692, which would allow civil action if an individual removes a condom during intercourse without the consent of their partner. Planned Parenthood's vision is one where communities recognize sexual and reproductive rights as basic human rights and where every person has the opportunity to lead a healthy and meaningful life. This vision becomes a reality if people have bodily autonomy, the right to make decisions about what is and is not right for that person and their body. Planned Parenthood North Central States supports LB692 because it helps to ensure bodily autonomy at all times. Consent should underlie all sexual activities without exception. Our education team often reminds

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

us to use the acronym FRIES when we talk about consent. That means consent should be freely given, reversible, informed, enthusiastic, and specific. The act of stealthing or removing a condom without consent during sex violates each of these principles and it's an unacceptable act. In addition to being a violation of a person's consent, stealthing puts a victim's health at risk. Sex without a condom can result in STIs and unintended pregnancy and both outcomes can have drastic consequences for a person's life. LB692 also helps to validate survivor stories and ensure justice. A 2017 review of victim interviews found that many victims of stealthing weren't sure that they had gone through a rape or sexual assault, despite the fact that their consent was violated and their health and bodily autonomy were put at risk. Victims deserve to have their stories heard and believed and they deserve legal recourse if they so choose. Stealthing is a serious act of sexual assault that puts health and safety at risk and it can place the victim at risk of STIs and unintended pregnancy. It violates a person's bodily autonomy and puts their health at risk. Thank you to Senator Blood for introducing this bill and we encourage the committee to vote it out onto General File. With that, I would take any questions.

**LATHROP:** OK. I don't see any questions at this time, but thanks for being here.

**ADELLE BURK:** Thank you.

**LATHROP:** Good afternoon.

**ARYN HUCK:** Good afternoon. Let me get my papers out here. Hello. Thank you, Senator Lathrop and the Judiciary Committee for the opportunity to buy testimony as part of the committee record. My name is Aryn Huck, spelled A-r-y-n H-u-c-k. I'm the community organizer for OutNebraska, a statewide nonprofit working to celebrate and empower lesbian, gay, bisexual, transgender, and queer questioning or LGBTQ Nebraskans. OutNebraska is in support of LB692. The removal of the condom without consent creates significant risk of pregnancy or sexually transmitted infections and should be taken seriously. Apart from the fear of specific unwanted outcomes like pregnancy and STIs, there's also a psychological and emotional toll. Survivor interviews indicate that survivors experience the act of a condom being removed as a disempowering, demeaning violation of sexual agreement. In the Columbia Journal of Gender and Law, Alexandra Brodsky, which is the article Senator Blood mentioned at the beginning, includes case law citations when she writes the law is clear that one may consent to one form of sexual contact without providing a blanket future consent to

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

all sexual contact. She argues that when someone has consented to sex using a condom, they're consenting to touching by the condom, not touching by the bare skin of the penis. I've included an article with my testimony for your further reading. LB692 creates a civil violation for the removal of a condom without consent. This allows the victim to cover the costs of STI testing or emergency contraceptive or, if necessary, treatment for STI or the costs associated with pregnancy, whatever decision the victim makes regarding that pregnancy outcome. OutNebraska believes it creates a level playing field without overcriminalization. For these reasons, we respectfully ask that you advance LB692 to the General File. I'm available for questions. I know also there were some questions earlier on about nonheterosexual sex, how that works here. As, like, an LGBT educator and advocate, if there are questions for how this impacts LGBT Nebraskans, I can provide some clarity there if there are still questions, but thank you.

**LATHROP:** I don't see any questions, but thanks for being there.

**ARYN HUCK:** Yeah, thank you so much.

**LATHROP:** Next proponent. Anyone else to speak in favor of the bill? Is there anyone here to speak in opposition? Well, you may come forward.

**JEANIE MEZGER:** Chairman Lathrop and members of the Judiciary Committee, my name is Jeanie Mezger, J-e-a-n-i-e M-e-z-g-e-r. I'm testifying in opposition to LB692. Stealthing, one sexual partner deliberately removing a condom when the other partner expects that condom to be used, is dishonest and can be risky for both partners. I'm opposed to that practice, but I'm not sure that this bill does much to discourage it. This legislation seems to be making the rounds as legislation does. California made it illegal last fall. I want to thank Senator Blood for not making stealthing a crime the way some other states are doing. Those states include Iowa, Massachusetts, New Jersey, New York, and Wisconsin. A good example or a good explanation for why criminalizing does its own harm comes from Alexandra Brodsky, the author of that 2017 paper. She said when survivors turn to the criminal legal system, everyone but them gets to make decisions how the case proceeds. Police have to decide whether to investigate. Prosecutors have to decide whether to pursue the case. Survivors don't get a vote and that can be a really disempowering experience compounding the violation itself. With civil litigation, the victim gets to choose. Harm done between partners who agreed to sex would be a really great opportunity to use restorative justice. Sexual partners use male and female condoms, spermicide, diaphragms, cervical caps, contraceptive sponges, dental dams. They are-- there are probably

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

other devices too. I'm not sure that LB692 is actually about safety because it only mentions male condoms. The list of intimate parts in this bill fascinates me: the sexual organ, anus, groin, breasts, buttocks, but not the mouth. I suppose this is what happens when legislators lift text from bills used elsewhere. This bill, along with other attempts to legislate how to properly conduct a sexual encounter, will affect mostly young people, single people. Another group that could be affected are those who are not neurotypical, those with autism, Asperger's, or any other intellectual or developmental disability. I'm sure you're all smooth and well-practiced by now, but if you think back to your own early sexual encounters, you know that people can be incredibly clumsy about sex and shouldn't be penalized for that. I would rather there be an effort to educate people about the dangers of stealthing and how to be aware of what's going on during sex instead of setting up an adversarial approach. I ask the committee not to advance this bill and not to sneak it into another bill as an amendment, the legislative version of stealthing. Thank you.

**LATHROP:** OK. I don't see any other-- any questions, so thanks for being here today.

**JEANIE MEZGER:** You bet.

**LATHROP:** Anyone else want to speak in opposition? Anyone else here to speak in a neutral capacity? Yeah, you may come forward. Good afternoon.

**TIMOTHY C. MELCHER:** Good afternoon, senators. So a lot of my concerns with this bill have actually already been addressed.

**LATHROP:** Let's have your name, though, and spell in for us if you don't mind.

**TIMOTHY C. MELCHER:** Timothy C. Melcher, T-i-m-o-t-h-y C M-e-l-c-h-e-r. But anyway, I'm just going to kind of blow through my testimony, save you guys some time. My name is Timothy C. Melcher and I'm here to testify in a neutral capacity for LB692. My reason is because I agree with the principle of the bill, but I see technical issues and possible unconstitutional vagueness. Firstly, this is a civil bill that contains criminal components. The word "prohibit" from the introduction is indicative of criminal language along with "a person shall not" in section 1. Section 1(b) contains "without verbal consent," which aligns with the language out of sexual assault statutes. Also, I had initially thought that the definition of

intimate part came directly from sexual assault statutes, specifically 28-218, but the definitions don't appear to match. Secondly, I'm not sure how this bill would work in practice. Stealthing, in my opinion, is a form of sexual assault. Sexual assault is a crime and therefore would be prosecuted in criminal court. In criminal proceedings, a victim can receive restitution, but it's a burdensome and often ineffective process. This is why damages are usually collected in civil court. However, the damages in this bill are not clear. Are they STI transmission, unwanted pregnancy? These damages seem easier to prove than the act of stealthing itself, so why not sue on those? To my understanding, civil law currently allows for anyone to sue anyone for anything, including STI transmission and unwanted pregnancy. With that being the case, this bill is arguably null. Nevertheless, women I have consulted find it important to have stealthing language in statute to show that this type of behavior is wrong. In summary, I agree with the principle of the bill, but see technical issues. I believe that not having defined damages could be considered unconstitutionally vague and I'm unconvinced that the current language would render this, render this very operable in law. But as stated above, women would like to see some sort of stealthing language somewhere in statute and so I remain neutral. Thank you for your time.

**LATHROP:** OK. Well, I appreciate your investigation before your testimony.

**TIMOTHY C. MELCHER:** Yeah.

**LATHROP:** It sounds like you did your homework. Thanks for your testimony. Anyone else here to speak in a neutral capacity? Seeing none, Senator Blood, you make close. We do have position letters; five proponent letters, none in the neutral or in opposition.

**BLOOD:** Thank you, Chairman Lathrop. So I actually want to thank the person who came and spoke in opposition of my bill because actually that person actually justified why we need this bill. You know, it was in most of our recent memories that until recently when state statute was changed, it was still thought that a man that was married to a woman couldn't rape his wife, right? How we think about things evolves based on when it becomes a pressing issue, when we finally think we need to step in and do legislation. We know this is a pressing issue. I know we don't need more people in prison right now here in Nebraska, but I also know that when it comes to taking care of our victims, that sometimes giving them options-- and I also said at the very beginning, it's time we start this conversation in Nebraska. In fact, you and I talked about it on a bus to a luncheon the other day, Senator Lathrop,

that today is really about starting the conversation. We know that this is sexual assault. We know that this is a growing issue. This is the approach I took. It's not going from state to state taking language, but sharing this with people here in Nebraska that I trust and asking what language they thought would be best if we were to broach this. And it was always clear with everybody too-- they made it clear and agreed that it needs to be civil and not criminal and, and I don't want it to be criminal. But what I do want is to make sure that people identify that we know this is an issue, that we have language that shows that stealthing is an issue and is a type of sexual assault and this was my resolution. And I don't pretend to be an attorney ever. I look to the experts. I look to those that are more qualified than I am and spend a lot more money on college to become lawyers than, than I spent on school and this is what we came up with. But I do say-- and, and I ask you to really seriously think about this-- if we are trying to help the victims and we are trying to identify that indeed, this is an issue in Nebraska, if you can come up with a better solution, I'm on it. But this is the solution that we came up with and at the very least today, as we talked about, Senator Lathrop, we've started this conversation and hopefully we can have fewer jokes down the hallways about it because sexual assault is not funny. And last I knew, we were all adults and we should handle this, this issue as adults.

**LATHROP:** Very good. Senator McKinney.

**McKINNEY:** Thank you, Senator Lathrop, and thank you, Senator Blood. I had a quick question because I don't know what is considered. What if somebody sabotages the condom?

**BLOOD:** Well, that's not stealthing because that's, that's-- I mean, we're talking about the removal of condom, of condom.

**McKINNEY:** Yeah.

**BLOOD:** So that's definitely a criminal act, right, I would assume?

**McKINNEY:** I was-- that's what I was asking. I wasn't sure what it was considered.

**BLOOD:** So yeah, we did think about that--

**McKINNEY:** Yeah.

**BLOOD:** --but then we'd really have to go in the weeds and the same reason we didn't go into the weeds with things like dental dams. We



Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

know and have data that shows that this particular thing is an issue. Could we have gotten into the weeds and included things like people purposely putting holes--

**McKINNEY:** Yeah.

**BLOOD:** --because they do want to have a baby or, as Senator Slama-- kind of hit and ran out the door afterwards-- said that, you know, what about dental dams and other types of birth control? If we go into the weeds and we start addressing all of those things, are we really addressing the issues at hand, which is stealthing? So there are a lot of incidents and yeah, you can take those people to court, some as criminal, some can be civil, but that's not the bill that I wanted to bring forward. So good question and we know it happens--

**McKINNEY:** Yeah.

**BLOOD:** --right?

**McKINNEY:** All right, thank you.

**LATHROP:** I don't see any other questions. Thanks for being here today and presenting LB692 and beginning a conversation, as you said.

**BLOOD:** Thank you for having me.

**LATHROP:** Yeah, thanks, Senator Blood. That will close our hearing on LB692 and bring us to the last bill-- the day of the year.

**MORFELD:** Ever.

**M. HANSEN:** Of my career.

**LATHROP:** In my case, ever. Senator Matt Hansen, welcome to the Judiciary Committee.

**M. HANSEN:** Thank you. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Matt Hansen. For the record, M-a-t-t H-a-n-s-e-n, and I represent the 26th Legislative District in northeast Lincoln. I'm here today to introduce LB1223. This bill aims to work-- to continue the work and focus on issues related to competency restoration for standing trial, specifically the long wait times for the few spaces available at the Lincoln Regional Center. A few years ago, we passed legislation that provided for community-based options to try and reduce wait times and improve services and I think this bill is a logical continuation of that focus. As a reminder to

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

the committee, restoration to competency is a state obligation managed by DHHS, but defendants typically wait in county jails for a considerable amount of time before receiving services from the state. As this committee has heard on a multitude of occasions and several different hearings, the average waiting time for these individual services can be considerable. Recently, the wait time for those in Lancaster County Jail waiting to be transferred to Lincoln Regional Center is averaging about 145 days. These individuals are the responsibility of the state of Nebraska, but instead of providing counties with some level of reimbursement for these costs, we allow them to remain in county jails and allow county resources to pay for it. This bill would seek to provide some level of reimbursement. So LB1223 would seek to do four things: first, it would require that DHHS reimburse counties at \$100 per day for cost for lodging defendants after the first 30 days. The cost for reimbursing defendants shall include food, medical services, transportation, and other necessary costs incurred by the county to lodge the defendant. This would provide the counties with the least \$100 of that costs after 30 days of housing a defendant in the county jail while waiting for space to become available at the Lincoln Regional Center. Second, LB1223 clarifies that admission to the Lincoln Regional Center to those listed under current statute at Chapter 83-338 and adds defendants who are determined by a court to be incompetent to stand trial. While-- with this amended language, the statutory priority list comes into play only conditionally, as the statute already reads and I'll quote, that any time it becomes necessary, for lack of capacity or other cause, to establish priorities for admission of patients into the state hospitals for the mentally ill. Third, LB1223 mandates that the state hospitals for the mentally ill shall include minimum levels of beds for different reasons of commitments, totaling 200 beds. In recent months, it has become clear that the number of beds available in Lincoln Regional Center is dramatically low for those seeking to place individuals at the center. We've heard variations on reasons for why this is the case, but I'm concerned that the number-- low numbers are placing undue burdens on county jails and other local hospitals. And then fourth and finally, the bill requires the Division of Behavioral Health and the CEO of Department of Health and Human Services to prepare a report and testify at a public hearing of the Legislature annually. As many of us who have led the charge on these kinds of issues depart the Legislature, including myself, I think this issue is too important for us to not set up some kind of reporting structure where members of the Judiciary Committee can receive updates on what's going on in the Lincoln Regional Center and within the Division of Behavioral Health. Our county jails have become mental

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

health facilities, which they are not designed for. This provision would allow the Judiciary Committee to join with the Appropriations Committee in hearing firsthand from the folks making those decisions at the department on these issues. I hope you'll join me in supporting legislation to provide direction to DHHS on issues related to mental health. With that, we've got several testifiers who can talk to kind of some of the specific experiences, so I will close, but be happy to take any questions.

**LATHROP:** I have some.

**M. HANSEN:** Sure.

**LATHROP:** I'd like some context for this bill. You had a bill when we-- when you recognized that there was a problem. We had a problem where people who needed to have their competency restored-- the law previous to your, your bill--

**M. HANSEN:** Yep.

**LATHROP:** --your earlier bill, not LB1223-- required that anyone who needed to have their competency restored would be committed to the regional center to have their competency restored. And a couple of years ago, you, you put a bill in as an alternative to that. But at the time your bill was offered and we had a hearing on it, we were told that it-- the average wait time for somebody who was incompetent-- I remember Lancaster County sent their jailer down here to testify-- 100 days of waiting for someone who is incompetent to stand trial. And for people that don't know what that means, they don't know the defense lawyer from the jury, right?

**M. HANSEN:** Right.

**LATHROP:** They don't know who's in the room to help them and how to defend themselves. That's how bad they are. They sit in county jails for 100 days and then they wait. They can't be in the population because of course, they're going to get hassled by everybody else that's down there when they are that-- having those kind of mental health issues. You then passed a bill that, that allowed for some of this restoration to happen outside of the regional center. Can you tell us what the, what the effect of that bill has been?

**M. HANSEN:** You know, I think there has been some progress and it's kind of been-- we've-- we saw some initial progress where we had these numbers in, like, the high to mid 100s, you know, six months or thereabouts. And I think for a while, it increasingly was going down

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

and we got some of the wait times below 100 days. And then in the past nine months, year or so, it's spiked back up to go back up. For Lancaster County, it's 145. I think Sarpy County estimated it was 129. So it's, it's high again. And that's the difficulty is there are some who can-- some people who can be restored to competency outpatient, but if it's going to be-- I mean there's some cases that you simply-- there's going to be no community provider that can handle it, which is why you need a secure facility like the regional center to do it.

**LATHROP:** How many people are taken or how many people have been restored to competency or-- you don't have to give me a number, but just give me some idea. Has your bill been effective in getting some people restored to competency without going down to the regional center?

**M. HANSEN:** You know, I can't tell you how effective it's been and that's something that I've been trying to kind of pin down.

**LATHROP:** OK. Hopefully somebody behind you can and as a result of your bill passing, has the-- has there been a change in the number of beds available at the regional center that are dedicated to restoring competency for these people?

**M. HANSEN:** You know, I don't know and I think that's one of the things we wanted to introduce in this bill. Originally, this bill was intended to just be the reimbursement. And then as we were working on it, kind of at the-- right at bill introduction, we found out kind of that there were actually less beds available at the regional center than some of the county officials had expected and that's where the idea to set a number in statute came from. That's always been, I think, as I understand it, an internal decision in DHHS and it's kind of gone up and down and so setting some sort of minimum was the idea of the county.

**LATHROP:** OK. I just want to make one other comment and then it looks like Senator Geist might have a question too. I apologize to you for having this be the last bill of the, of the committee. I'm, I'm disappointed in myself for not having it sooner. I think this is one of the most important dignity of-- human dignity questions the committee is going to address this year because obviously we have a lot of corrections issues and those are all, in my estimation, relate to the dignity of the people who are incarcerated or caught up in the criminal justice system. But to have people wait 100 days to have their competency restored and they sit in county jails, I know the counties see that as unfair, but to me it is, it is a violation of

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

human dignity to make these people who are incompetent sit in county jails because we won't provide the capacity down at the regional center or in some other suitable place to have their competency restored. And it is-- I, I appreciate you bringing it. I apologize-- I mean that sincerely, Senator Hansen-- that this ended up being the last bill we heard this year because I regard that as one of the more important bills.

**M. HANSEN:** Thank you.

**LATHROP:** Senator Geist.

**GEIST:** I do have a question and actually, we agree. I agree this is a problem. I'm curious-- a couple of things: why-- do you know why there are fewer beds? Is that because more people are staying longer? Are we having a staffing problem? Do you know why?

**M. HANSEN:** No, I don't have a good answer why. I think DHHS might be testifying today and so that they can provide some perspective. And like I said, I think it's a bit of ebb and flow, if I had to speculate. I mean, staffing has always been an issue. We've heard staffing at the regional centers, but some of those same staffing concerns that other institutions have been having and I-- that sometimes hurts capacity.

**GEIST:** Then just specific to your bill, I, I noticed the different number of beds that are-- you've delineated here. Is that-- is the variance-- for instance, the 90 beds, which are for the-- those who are sex offenders or mental-- have been committed by the Mental Health Board and-- as opposed to 20 on-- those are indigent, 30 for others. Is that because of the continuous number of, of those in that population that you're continually seeing? And I assume that to be the case, but--

**M. HANSEN:** Yeah and I should say personally, I'm very flexible in these numbers, but I think the goal was to try and kind of take a snapshot of what the average population was--

**GEIST:** Um-hum.

**M. HANSEN:** --and make sure we were providing the correct number to each category.

**GEIST:** And then one final, if you don't mind, is let's say we had all these beds available. Is that currently available? Are these, are

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

these numbers of beds right now being used and currently available or are you expanding the pool from what we currently have?

**M. HANSEN:** As I understand it, the regional center has more capacity than the numbers, at least more physical space than the number, so--

**GEIST:** Than these numbers?

**M. HANSEN:** Yes.

**GEIST:** OK.

**M. HANSEN:** It's a matter of, I think, staffing and allocation.

**GEIST:** OK. All right, that's all, that's all. Thank you.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Senator Hansen, for bringing this bill back to that same topic. So like Section (c), the 90 beds for the sex offenders, those are all at Norfolk, would that be correct?

**M. HANSEN:** Yeah, that's my understanding.

**BRANDT:** Right and then all the other-- because the total here, you have 200.

**M. HANSEN:** Um-hum.

**BRANDT:** So then you're, you're asking for 110 beds at the regional center?

**M. HANSEN:** Um-hum.

**BRANDT:** OK, that's, that's what I needed to know. Thank you.

**M. HANSEN:** Yeah.

**GEIST:** OK, gotcha.

**LATHROP:** And just for the record, those were affirmative responses--

**M. HANSEN:** Someone was nodding--

**LATHROP:** --to Senator Brandt's question, yeah.

**M. HANSEN:** Yeah.

**LATHROP:** I, I'm mindful of a record all the time, so.

**M. HANSEN:** Sure, yes.

**LATHROP:** I don't see any other questions. Thanks for bringing the bill.

**M. HANSEN:** Thank you.

**LATHROP:** I mean that sincerely. We will take proponent testimony. Welcome, Commissioner.

**DEB SCHORR:** Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Deb Schorr spelled D-e-b S-c-h-o-r-r. I'm appearing before the committee in my capacity as chair of the Lancaster County Board of Commissioners and I'm here to testify on behalf of the board in support of LB1223 and I'd also like to note, for the record, that Douglas County joins Lancaster County in supporting this bill. As Senator Hansen indicated in his opening remarks, I will be addressing the need for priority placement of individuals who have been deemed incompetent to stand trial and ordered to the regional center for restoration of competency. As a member of the Lancaster County Board for nearly 20 years, I have witnessed a steady and significant increase in the percentage of mentally ill detainees compared to the overall jail population. Furthermore, the severity of their illness has also increased, including those individuals who were deemed incompetent to stand trial. Prior to the opening of the new Lancaster County Jail in 2013, we recognized this trend during the planning phase and designed the facility with a specialized housing area for those individuals who are not able to function in the general population area, but can manage in a smaller group with a lower staff-to-detainee ratio. We also designed an infirmary area for those individuals who need much closer supervision by correctional staff, as well as medical and mental health professionals. Although our jail provides the most compassionate care possible considering our facility design and environment, we are very limited in the level of therapeutic treatment options we can implement during incarceration. Unlike a dedicated behavioral health facility like the regional center, our jail is simply not designed or equipped to provide the mental health treatment needed to restore individuals to competency. As the wait times at the regional center continue to increase, those in the most need of acute care are housed in our infirmary area because all other less restrictive options have been exhausted. It is my belief that detainees who need to be restored to competency should not be housed

in a correctional facility any longer than is necessary. Unfortunately, the current wait time to get an individual admitted to the regional center for competency has skyrocketed. As you can see on the final page of my testimony on the red graph, the average wait time is now an astonishing 145 days, as was mentioned earlier. The county jail currently has 12 individuals housed in our facility who have been ordered to the regional center and so far on average, they have waited over 96 days, as shown in the blue graph, to obtain access. We are currently housing an individual who has been on the waitlist for 365 days, almost a full year. I know how easy it is to become numb to the statistics, which might not mean much to you in the abstract, but to our jail staff who hear from the agonized families whose loved ones are incarcerated for hundreds of days after being deemed incompetent to stand trial, they are begging the jail to send their loved ones to the regional center for treatment. Our staff know these individuals deserve treatment, yet the staff is forced to tell these families that they'll have to keep waiting until a slot opens up and they can't-- not even provide a reasonable estimate of when that might occur. It could be a year or even longer. We need legislation like LB1223 to ensure that those who have been ordered to the regional center for restoration of competency receive priority placement. We owe it to the detainees and their families to ensure that they receive the intensive treatment that has been ordered by the court and that is beyond the capacity of our county jail. I ask you please support this legislation because these wait time numbers all represent actual people who are in need of treatment today. Thank you for the opportunity to testify and I'd be glad to answer any questions.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Commissioner Schorr, for your testimony today. The 21 people that you have that are incompetent today are what percentage of your jail population?

**DEB SCHORR:** Our jail population, I checked it yesterday, was 564, so I'd say it's right in that range right now.

**BRANDT:** So it's about 3 or 4 percent. And is that a consistent number for you?

**DEB SCHORR:** I would say that's a consistent number. They also divide-- require a lot more staff time and so it-- even though our per diem cost on average for an inmate is \$125, the average cost for someone housed in one of these specialty units is over \$200 a day.



Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

**BRANDT:** And then-- yes, because you mentioned tying up the infirmary beds.

**DEB SCHORR:** Um-hum.

**BRANDT:** What percent of the infirmary is tied up with these individuals? Half?

**DEB SCHORR:** I do not have that information. I'd be glad to get that from a jail administrator and email it to you.

**BRANDT:** And the last one, I don't know if you'll be able to answer or an attorney probably would-- and it's just curiosity on my part. When somebody is declared incompetent to go to trial, at that point, do they become a state problem or are they still a county problem?

**DEB SCHORR:** They would become-- I would assume they would become a state problem, but they are housed at our jail at our expense.

**BRANDT:** So I mean, at the time of inc-- of being declared incompetency, at that time then is when they technically should go to treatment at a state facility?

**DEB SCHORR:** I am not an attorney and I'm not going to--

**BRANDT:** OK.

**DEB SCHORR:** --go any further on that--

**BRANDT:** All right, thank you.

**DEB SCHORR:** --so.

**LATHROP:** Senator Geist.

**GEIST:** Is there any communication with any of these housed individuals with a, with a mental health therapist or any kind of treatment that goes on with these individuals while they're there?

**DEB SCHORR:** Yes.

**GEIST:** OK.

**DEB SCHORR:** Yes, we do provide very basic mental health treatment, but obviously not to the extent that these people with high needs need, nor the ability to restore them to competency--

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

**GEIST:** Right.

**DEB SCHORR:** --within the jail environment.

**GEIST:** OK, OK. Thank you.

**LATHROP:** I have a question about your graph.

**DEB SCHORR:** Yes.

**LATHROP:** So there are two here--

**DEB SCHORR:** Um-hum.

**LATHROP:** --and I'm trying to make sure I understand. Is the first one how long they spend at the regional center or is that a number--

**DEB SCHORR:** That is how long they are waiting to get into the regional center.

**LATHROP:** The top one?

**DEB SCHORR:** The, the top-- wait, hold on just a second. The top one shows the nine individuals that are currently housed at the Lincoln Regional Center and how long they waited to get there--

**LATHROP:** Oh.

**DEB SCHORR:** --OK? How long they waited to get there. On the bottom graph, those are the people still waiting that we are housing, waiting to get in.

**LATHROP:** So when it says December 21 on the top graph and 144.89, that's the average amount of time the people who are still there as of December 21 waited in your jail--

**DEB SCHORR:** To get--

**LATHROP:** --to get to the regional center.

**DEB SCHORR:** To get to the regional center.

**LATHROP:** And the bottom graph then is-- that's the average current waiting time for people coming out of Lancaster County.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

**DEB SCHORR:** That are still waiting. Those are the individuals waiting in our jail who haven't even got there yet and then the top are people that are already there and how long they waited.

**LATHROP:** So that's just the average of the people that are there now. That number could go up if they don't get in there soon. OK.

**DEB SCHORR:** Correct.

**LATHROP:** So 144 is the more meaningful number. On average, how long are they waiting? Commissioner, I asked Senator Hansen a question about whether his bill that provides for alternatives to go into the regional center to have your competency restored. His Senator Hansen's bill made a-- are, are there individuals who need to have their competency restored? Are they getting some help other than waiting in line to go to the regional center as a consequence of this bill?

**DEB SCHORR:** We, we do have some that are waiting to go to the regional center who can operate safely in the community, so we have that population. When you talk about people that-- the restoration of competency within the community, and I think that Administrator Johnson could address this more specifically, it's a very highly specialized field. And so it is a capacity issue that we have those specially trained mental health treatment providers that are able to assist in restoration of competency. There is-- just isn't the capacity in the community at this point or across the state.

**LATHROP:** Well, I look at this and it's, it's sort-- in some respects, a math problem and we tried to alleviate it or Senator Hansen did with his bill. I think we passed that two years ago. I would have expected someone to come in here two years after that bill passed and say it worked; we're restoring some of these people in community and our numbers or average is down to 50 days. And instead, it's going in the wrong direction.

**DEB SCHORR:** Well, and I think Senator Geist mentioned it's an inflow and an outflow issue. If you've got less beds and you still have, you know, people coming in, then that backup is just going to continue to go this direction. I, I think that the restoration of competency within the community was a component of the solution, but that specialized treatment in that facility is what the majority of these people with complex mental health issues need.

**LATHROP:** OK. Do you have questions?

**GEIST:** I--

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

**LATHROP:** Senator Geist.

**GEIST:** --I do, but my train derailed.

**LATHROP:** I want to make sure I recognize you.

**GEIST:** It's all right. I-- go ahead. I, I lost my questions.

**LATHROP:** OK.

**DEB SCHORR:** I guess that's what happens when you're in the last bill of the last day, right?

**GEIST:** I think so, I think so. Thank you for your grace.

**LATHROP:** Yeah, you can. Senator DeBoer.

**DeBOER:** So is this going to be enough? Will this have an effect, right? I mean, you said that the-- getting them restored in the community is a component of the solution. Is this a component of the solution as well or is this a larger answer?

**DEB SCHORR:** This is the larger, this is the larger answer.

**DeBOER:** OK. Are there additional things?

**DEB SCHORR:** And I can-- the additional beds is what's most important to Lancaster County. OK, yes, \$100 might be helpful to us, but it's the basic human issue that that's not dealing with.

**DeBOER:** Do you think that this-- I mean, have we gone far enough or are we still not going to get to the, the, the biggest--

**DEB SCHORR:** I certainly think this is a step in the right direction and I also appreciate the component that Senator Hansen introduced that has the advisory committee and the annual reporting back to this and to the Appropriations Committee to continue to give you the ability for oversight.

**DeBOER:** OK, thank you.

**GEIST:** I remember.

**LATHROP:** Senator Geist.

**GEIST:** I got my train back. OK, along with Senator DeBoer's questioning, do we have enough of these highly trained specialist?

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

Are-- do we have enough of them to provide for this service and is this an issue of pay?

**DEB SCHORR:** We don't have enough of them in the community, I can tell you that. I don't know the access that the Lincoln Regional Center has to those specialists, so--

**GEIST:** OK.

**DEB SCHORR:** --it's probably a capacity issue on, on that side. Is pay a component? Probably. Is it-- is that specialized training another component? I-- maybe additional partnerships with regards to forensic, you know, psychology with some of the educational facilities in the state might, might go-- you know, take a-- help us take another step in that direction.

**GEIST:** And then one more thing is, is this unique to our community? I, I, I don't suspect it is because I know that lack of mental health access and services is a problem across the country. But this seems fairly serious and, and I'm curious if that's something that if you-- if you know, is this happening across states or is this really unique to us?

**DEB SCHORR:** This is an issue that we are seeing across the country--

**GEIST:** OK.

**DEB SCHORR:** --is that jails have become that de facto mental health provider. And it was never the intention for that--

**GEIST:** Right.

**DEB SCHORR:** --to come about, that that specialized treatment is needed in other locations other than a correctional facility.

**GEIST:** OK, thank you.

**LATHROP:** OK. Commissioner, thanks for being here.

**DEB SCHORR:** Thank you very much.

**LATHROP:** We appreciate your testimony. Good afternoon. Welcome.

**C.J. JOHNSON:** Thank you. Good-- excuse me, good afternoon, Chairman Lathrop and members of the Judiciary Committee. Boy, I practiced that all afternoon, never got it right.

**LATHROP:** That's all right.

**C. J. JOHNSON:** My name is C.J. Johnson, C.-J. J-o-h-n-s-o-n, and I'm the regional administrator for Region V Systems, one of the six behavioral health authorities in Nebraska. I'm here to testify in support of LB1223. I am testifying today to focus on the need to establish minimum bed capacities at the Lincoln Regional Center, LRC, for each of the areas identified in LB1223, speaking specifically to the 90 beds identified for those who have been placed on a mental health board commitment. Following the 2004 Behavioral Health Reform Initiative, LB1083, it was determined that 90 psychiatric beds or 45 percent of the 200 licensed beds at the Lincoln Regional Center were required to address the statewide needs of treating identified individuals in the behavioral health system who have been placed on an inpatient mental health commitment. These individuals have been identified as actively acute and due to significant challenges, i.e., aggressive behavior, medication refusal, or other longer-term psychiatric hospital needs are in need of care at the Lincoln Regional Center. When individuals are not able to be admitted to LRC, as identified by community providers, the entire state behavioral health emergency system is compromised as community hospitals and other treatment facilities are forced to reduce capacity, increase staffing, and many times, address damages to facilities. Community hospitals and crisis centers have historically relied on the ability to refer and admit individuals when necessary to LRC. When this resource is not available, capacity in community settings goes down as community providers must limit admissions to ensure the safety of other individuals in their care. This, in turn, impacts access for law enforcement when placing an individual who is experiencing an acute mental health crisis on an emergency protective custody hold. This results in law enforcement having to travel significant distances to ensure that an individual goes to a proper treatment setting. Prior to 2017, each regional health authority was identified with a dedicated number of psychiatric beds at LRC, allowing them to coordinate and facilitate discharges and admissions based on system flow. Over the past several years, this allocation process has not been available and we have seen those psychiatric beds eroded to approximately one-third of the original 90 that were identified. The current practices at LRC for admissions for different status of individuals outlined in LB1223 does not allow for the system partners to have a clear understanding of need. It is critical that these minimum bed requirements be allowed so that each area can properly manage-- monitor and manage system needs and, if necessary, make future recommendations to address any

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

additional system issues. At this time, I'm willing to answer any of your previous questions and/or ones you have now.

**LATHROP:** Senator Geist.

**GEIST:** Yes, and I had asked, I think Senator Hansen, when he was there, why the diminished number of beds, as you said, that they have eroded over time?

**C.J. JOHNSON:** Well, what-- so, for example, in our system after 2-- behavioral health reform was identified after we moved all the money and a number of people out into the state community that we needed 90 beds available at LRC for mental health board commitments. OK, there's 200 licensed beds there now, although you will probably hear today that due to workforce issues and some capital construction, that that bed availability is probably 146, around there.

**LATHROP:** Down to what?

**C.J. JOHNSON:** 146, approximately. The argument here, though, is even if there aren't that many beds, by still having a number of beds identified per system, then you could figure out percentages. So in our case, we can say, OK, if there's 146 available, then at this time, we should get 45 percent to manage within our system.

**GEIST:** Um-hum.

**C.J. JOHNSON:** The problem that I see is right now, there's no rhyme to reason about how people are admitted or dealt with from any of the different systems so we can't really know what that is costing each system. For example, in our system, LB1083 was very clear that if there is a reduction in psychiatric beds, that that money needs to be pushed out into the community. Well, we've seen a significant reduction, but I haven't heard any discussion around that money being pushed out in the community to help with the behavioral health system. But at the same time, there may be additional bed needs for justice for the restoration. But do we need to expand the capacity in the state and other places or how do we need to do that? But it's so hard to-- for us to really tell because the beds are getting shifted, we're not able to really look at our individual systems and say, this is how we're being impacted, this is what we need, OK? That's one. Any other-- I'm sorry.

**LATHROP:** So when Senator Hansen passed the bill that allows for some people to be-- to have their competency restored outside of going to the regional center, has that had an effect on--

**C.J. JOHNSON:** Well--

**LATHROP:** --the demand for beds at the regional center for competency restoration?

**C.J. JOHNSON:** What I can tell you is within the last 60 days, I inquired as to where that process was at and the last I-- the last information I had received was there were two providers who have contracts with the division. However, neither of those providers have been able to hire for those positions and that they were working on another contract potentially with another agency. So based on the information I have, there has been no outpatient restoration--

**LATHROP:** OK.

**C.J. JOHNSON:** --done because of the process.

**LATHROP:** That is the-- not the answer I wanted to hear, but it's the-- that's an answer to the question that I had. And if I understand your answer correctly, while the bill required that HHS provide an alternative to having these folks go down to the regional center, they're trying to get a contract or they're, they're-- they-- HHS is trying different things, but we haven't provided services or restored the competency of anybody under Senator Hansen's bill.

**C.J. JOHNSON:** Not that I'm aware of--

**LATHROP:** OK.

**C.J. JOHNSON:** --based on the information I received.

**LATHROP:** Have we-- to your knowledge-- and I do see the HHS people here and I could ask them, but I'm-- I can't wait for an answer. Do they have fewer beds available, is that what's happening? Do we have more people coming in the front door, do we have people that are staying longer, or do we just have less capacity now than we had two years ago when we passed Senator Hansen's bill?

**C.J. JOHNSON:** Well, because-- I mean, because of workforce issues, some related to COVID, there is some capital construction that needed to be done at the regional center based on accreditation body--

**LATHROP:** Sure.

**C.J. JOHNSON:** --there have-- there has been a reduction in available capacity. It's, it's-- but there's still 200 licensed beds out there.



Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

But the bed availability, based on the last discussion I had, is-- it's around 146, 150 available beds due to those things, which again is understandable. I think anybody in the-- in this field could talk about the workforce shortage out there and the challenges associated with it.

**LATHROP:** Well, maybe.

**C.J. JOHNSON:** Maybe.

**LATHROP:** I mean, we, we decided to get serious about it over at the Department of Corrections.

**C.J. JOHNSON:** I-- well, and I, I think that that lends itself to-- also the question as even based on the fiscal note on this bill, is there, is there money in the system? I mean, if we're only operating X number of beds and we're not having as many people hired and etcetera, etcetera, etcetera, is there already money, money in the system to address some of these concerns and to, you know, to take a look at those?

**LATHROP:** OK. Well, I don't see any other questions, but I do appreciate you taking the time to come in today and share your thoughts. Other proponent testimony? Good afternoon.

**ELAINE MENZEL:** Good afternoon, Chair Lathrop, which I guess it'll be the last time during this term of your office that I'll say that, but--

**LATHROP:** It's true.

**ELAINE MENZEL:** For the record, my name-- and other members that the committee, I'm saying good afternoon as well. For the record, my name is Elaine Menzel, E-l-a-i-n-e M-e-n-z-e-l, here today on behalf of the Nebraska Association of County Officials in support of LB1223. We are here to thank Senator Matt Hansen for bringing this legislation to your attention. While Commissioner Schorr testified as to the support of Lancaster County and Douglas County, I'd like to express that this is something that also is applicable to other counties across the state. I'll draw your attention to the fiscal note that I prepared, not because it's a stellar fiscal note by any means, but because it notes of a limited number of people that responded, about 19, that they had individuals that are awaiting commitment as well. As some of the testimony was occurring from the prior testifiers, it seems kind of like deja vu with issues that I've come to the committee discussing with you before related to the mental health issues and LB1083 and

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

lack of funding going back to communities and those types of things. But with that, I'll, I'll just close and say again, thank you for all of your time, appreciate it, through the 2022 session. And I'm sure I'll see you maybe during the rest of the session because it's not over, but if you have any questions, I'll try to answer them.

**LATHROP:** Senator Geist.

**GEIST:** I'm curious with the drastic wait times that we were shown in Lancaster County, I'm assuming that's similar in Douglas County. Do you know?

**ELAINE MENZEL:** I, I'm sorry, I can't testify on that, but I'm sure we can get that information to you.

**GEIST:** Would you? Do you know if, if the, the severity of the problem is similar in other counties?

**ELAINE MENZEL:** I-- again, I, I don't know that I can say specifically, but my guess is-- because I guess that wasn't what I specifically surveyed--

**GEIST:** Uh-huh.

**ELAINE MENZEL:** --those counties for.

**GEIST:** OK.

**ELAINE MENZEL:** My guess is that across the board, it's going to generally be applicable in terms of a wait time--

**GEIST:** OK.

**ELAINE MENZEL:** --existing for them.

**GEIST:** Thank you.

**LATHROP:** The fiscal note says that on average, 128 days.

**ELAINE MENZEL:** I must have collected it, I'm sorry.

**LATHROP:** No, I'm--

**ELAINE MENZEL:** Oh, that-- I apologize.

**GEIST:** Thank you. It's even highlighted.

**ELAINE MENZEL:** OK.

**GEIST:** I just am absorbed in this and not reading everything--

**LATHROP:** OK.

**GEIST:** --I have. Thank you.

**ELAINE MENZEL:** I apologize.

**LATHROP:** That's OK. I don't see any other questions. Thanks.

**ELAINE MENZEL:** Thank you.

**LATHROP:** Next proponent.

**SHANNON ENGLER:** Good afternoon, Senator Lathrop--

**LATHROP:** Good afternoon.

**SHANNON ENGLER:** --and members of the Judiciary Committee. My name is Shannon Engler, S-h-a-n-n-o-n. I'm senior director for behavioral health at Bryan Medical Center. I'm here today to support LB1223 on behalf of the Nebraska Association of Health-- Behavioral Health Organizations, Nebraska Hospital Association, and Bryan Medical Center, specifically, the section in there about bed capacities that you've all been having a great conversation about. In Nebraska, we have too few public psychiatric beds. Treatment Advocacy Center, which I've included an attachment in there, identifies a need for approximately 950 public beds in the state of Nebraska. In 2001, DHHS listed that we had 607 public beds, 20 federal beds, 538 private beds. That was a total of 1,165 beds. That attachment is in there. Mr. Johnson referred to LB1083, which the intention was to-- let's stop inappropriately using the regional center, if indeed that was occurring, reduce the number of inpatient beds, move the money to better outpatient services. But at the same time, within that legislation, it also says in there the division may reduce or discontinue the services if no further commitments, admissions, or readmissions for such services are required. It was determined at that time, as has been discussed, about 90, 100 beds were needed to go ahead and fulfill the needs there. Now those were for mental health board committed patients. Those were not for NRRI patients or sex offender commitment patients because that law occurred later on, so distinct populations. Like I said, Treatment Advocacy Center, included the document in there, with the recommendation for 50 beds per 100,000 patients. In a population with 1.9 million patients in Nebraska, we

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

need about 950 beds. I don't think we need that many, but that is a good reference to look at. Most recently, DHHS issued a draft plan that identifies we have 366 public beds, 19 federal beds, and 374 private beds and that they want to use 30 beds at the Lincoln Regional Center for mental health board committed patients. Bryan receives approximately 97 transfer requests per month in 2020 and 141 transfer requests in 2021 from hospitals across the state that did not have the capacity to admit psychiatric patients. And you can see there 16 percent were involuntary patients in 2020, 18 percent were involuntary patients in 2021. We cannot accommodate all those requests. So that is an indication that there is an insufficient number of public beds and private beds. And especially if the division is looking to utilize, contract private beds to move patients into that should be served at the regional center, that just further decreases, you know, our public capacity. And so at the end of the day, we don't have enough public capacity or private capacity. But in reference to this bill, I certainly support the bed numbers that are given out. The only recommendation I would give that those 90 beds that are identified on page 5 for mental health committed patients, we should have an additional number for patients committed under the sex offender act because those 90 beds were the 90 beds identified under LB1083 just for mental health board committed patients. So thank you very much. I'd certainly entertain any questions.

**LATHROP:** OK. Thank you for your testimony, Mr. Engler. Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. You are an expert in this field.

**SHANNON ENGLER:** I don't claim that. [LAUGHTER]

**BRANDT:** How do we fix this? Do we open another regional center? Is that the solution to the problem?

**SHANNON ENGLER:** We need to have a sufficient number of beds because what has happened is we need an appropriate continuum of care and this is kind of like, well, the private insurance agents. Let's push down, let's kind of downgrade and, and move people down into the cheapest mode of care that we can to try to fix the problem. But that doesn't work because then people get sick and then they require higher levels of care and higher levels of care and you can't not have higher levels of care and have a complete continuum of care. I mean, at Bryan, we offer acute inpatient care. We're a hospital, but we offer a continuum of services all the way through outpatient care and ultimately just support groups and all that. We wouldn't be successful in what we do if we don't-- didn't have all of the critical elements present to

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

deliver to clients that are in need at the different levels. So did that answer your question?

**BRANDT:** Sure, thank you.

**LATHROP:** Senator Geist.

**GEIST:** Are, are we seeing more incidences of-- I noticed your, your statistics were increasing every year.

**SHANNON ENGLER:** Yeah.

**GEIST:** And so evidently, we're seeing more and more patients who have higher needs for mental health. Is that a correct assumption?

**SHANNON ENGLER:** What, what, what I def-- what we definitely see is Bryan has seen an increase year over year and I have statistics back to like 2010 or something like that--

**GEIST:** Um-hum.

**SHANNON ENGLER:** --of increased transfer requests to my facility from other hospitals in the state of Nebraska. And it started out we had maybe 30 a month or something like that, but it's definitely on an incline and the last couple of years have definitely shot way up.

**GEIST:** And I'm sure some of that due to COVID and the stress that that has created, but is there any other, in your field, assumed reason why we're seeing an increase in severe mental illness?

**SHANNON ENGLER:** Well, as I talk to my colleagues from hospitals across the state, they-- again, they're having committed patients that they're treating in their facilities that are-- if you have ten beds and three of those clients are, are committed patients, then you have three less beds to take care of your community and that is going on across the state and I-- because I did ask my colleagues. It's, like, well, do you have, like, a, a distinct unit or number? Well, no, if, if we have eight patients under commitment today, then other patients have to go somewhere else whether-- if we only have three today, you know, we have better capacity for our community. So I really believe the root cause for this bill is beds at the regional center to take care of all three of those primary subpopulations of clients that they serve, so.

**GEIST:** You mean you-- we need expanded capacity of each of those--

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

**SHANNON ENGLER:** Right, for the sex offender committed patients, the NRRRI clients, and the mental health board committed patients--

**GEIST:** OK.

**SHANNON ENGLER:** --to round out the continuum of care and make it more appropriate than what it is and it's lopsided.

**GEIST:** OK, thank you.

**LATHROP:** OK, thank you for your testimony. We appreciate hearing from you. Next proponent. Good afternoon.

**SPIKE EICKHOLT:** Thank you. Good afternoon. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska and the Nebraska Criminal Defense Attorneys Association in support of the bill. We want to thank Senator Hansen for introducing this bill and really for leading on this issue. He was introducing bills related to this in his first year or two on this committee and he really has, in my opinion, elevated this issue not only in Lancaster County, but really statewide. I can't really-- I'm just going to-- I don't want to repeat what other people have said. One thing that Senator Matt Hansen did was to provide for the outpatient restoration option, as Senator Lathrop mentioned earlier and has been discussed. One other thing Senator Matt Hansen did that's not reflected in the statutes and this bill is he did it change some of the bond statutes because it used to be if someone does not commit-- not competent, they would invariably be in jail. You're going to be locked up in a jail facility. Some people are not competent, not necessarily due to any actual mental illness or rather the mental illness might just be diminished capacity and they do have a place to live in the community. He did change or he introduced a bill that resulted in change in the law that allowed for some people to be in the community so they're not stuck on these 150-day waiting period in a jail facility waiting to go to the regional center. And one other thing he did do, which is important-- I think from a legal perspective is important. If you look on page-- the bottom of page 3 and the top of page 4 of the bill, at current law-- that's (5) and (6), when you've got somebody charged with a crime and they're in jail waiting to go the regional center just to be restored to competency to face trial on that crime, that has some significant Eighth Amendment issues and due process issues. When someone is determined to be not competent, the way it works is that someone is charged with a crime. And sometimes a judge on his or her own motion or the defense lawyer really will go visit with that client or that person will appear in court and just have some sort of outburst. And

the issue of whether this person is competent comes up and sometimes the judge will order on their own motion that person be evaluated for competency, but usually it's the person that is appointed to represent them. And competency is not necessarily a diagnosis of their mental illness to try to help them treat their mental illness. The U.S. Supreme Court developed the sort of standard that a person, if they're going to be tried with a crime, has to be mentally competent to face trial. The idea was it's just not fair to have somebody who is in a catatonic state or a delusional state to be wheeled into a courtroom like some sort of-- I hate to say it pejoratively-- like some sort of mannequin and just face trial and then go on to prison. You need to have some sort of appreciation for what you are charged with. You need to have some sort of understanding of what the judge does, what the prosecutor does, and what your lawyer does-- or supposed to do for you-- and then finally, you have to have some sort of ability to help assist in whatever defense you might have. That standard applies for minor cases like trespassing if the police pick up somebody who's sleeping on the sidewalk because they're in a profound mental state, but it also applies for situations of murder. So you can have somebody who's sort of caught up on this waiting list regardless of charge, regardless of severity of the offense, just trying to be restored to competency. What you have with this long waitlist in jail, unfortunately, is kind of a perpetuation of the mental health problem because what will happen-- and it happens so many times-- is that a person will have a moderately serious charge, they'll sit in jail for six months, they'll go to the regional center for another six months, they'll be restored to competency. They'll be medicated and they'll be brought back to court and I'll plead them out. They'll get credit for that time served and they're back in the community and unfortunately, you'll see those people come back again. And that's not at all efficient for the state. It doesn't serve criminal justice needs. It doesn't serve mental health purposes. And it's just, I think, in my opinion, it's a confounding feature of this problem. I'll answer any questions if you have any.

**LATHROP:** Senator DeBoer.

**DeBOER:** So I think what I heard you're saying is that there are times when someone going through the process of getting the restoration of competency is in there for a good chunk of what the period of time would be. Are there situations where someone is waiting-- I know we passed a bill that said if you're sitting in jail longer than the, the sentence would be that, you know, you can get time served and so does that happen with respect to people who are waiting for competency to be restored? Does that apply in that case?

**SPIKE EICKHOLT:** It does. If-- my defense attorney members have had mixed success because there will be instances where somebody is contacted by law enforcement because they're doing something very erratic that's criminal, but perhaps not all that violently or seriously criminal. So the only thing they can really book them into jail for is, like, a disturbing the peace or they keep coming on the university campus, a trespass. Those things are punishable by up to three months, up to six months, respectively. So you can figure out that math. They're sitting in jail. I can't bring them to court in the first day and just plead them out. They can't get through a plea process. The judge will say, you're here today, do you want to plead guilty? And the person will stare blankly back at the judge. So they're just sort of caught in the criminal justice system. I don't fault the prosecutors for charging those crimes because law enforcement brings them to them. Just-- it's just the default option, right? You just can't have people sort of wandering in the community. There is the option that the state could pursue immediately to sort of have them committed pursuant to the mental health board, but as you heard and seen some of the numbers, there's a waitlist for that as well. And if a person is sort of found to be not competent and the evaluator finds and the court eventually finds that the person cannot be restored to competency, then the state can always pursue to have them committed pursuant to mental health board commitment. But to answer your question, you do see some instances where people are waiting in jails and some of my defense attorney members have had some success in getting those cases just dismissed, appearing in front of a judge saying he's already served the maximum amount of time. Competency is unimportant.

**DeBOER:** And then in other instances, they go-- they finally get there, they get some medication for the first time, then you plead them out because they've been more or less in for the amount of time, they go out into the community again and you say they see them back because then they don't-- they just get their-- I mean, it's not like they're getting very large treatment when they're in the regional center, is that right, that they're just sort of getting back to a basic level of competency?

**SPIKE EICKHOLT:** That's right.

**DeBOER:** That isn't a now you have the ability to go live your life--

**SPIKE EICKHOLT:** Right.

**DeBOER:** --level, right?



**SPIKE EICKHOLT:** Right.

**DeBOER:** And so then they come back again and they go through the process again because they, they didn't have a long enough period where they were getting restored enough so that they can take their own meds and take care of themselves. Is that kind of the--

**SPIKE EICKHOLT:** I think so. One of the bills-- I like LB920 and Senator John Cavanaugh's got a bill that would provide for, in those situations, if somebody goes back to the jail, they're going to get released soon-- for Medicaid-- to connect them with Medicaid assistance or some similar thing. Because a lot of times, it's not necessarily they don't want to take medication, it's just that they don't, they don't have a realistic plan, a realistic regimen to get back and make sure they're medication compliant and connect with the therapists and the mental health providers in the community. I don't think-- the people at the regional center, I think, are very good employees. I think they mean the best, but they're only there for the limited purpose of just getting this person ready for trial and then moving them out. That's, that's what's such a wrong thing about competency to, to be viewed as a way to sort of treat mental illness. That's not what it's for. It's really just to get people fit enough to sit in that courtroom and resolve that criminal case.

**DeBOER:** So then we have-- last question, I promise. Then we have folks who may be sitting in for 100 or 300 days or something and then they, they go through this, they get restored to competency, they're released; there's no plan for them. We've done no post-release plan. They have no-- none of that, right, that--

**SPIKE EICKHOLT:** That's right.

**DeBOER:** In the typical corrections, I don't know, they have the release plan that they start the day one, we've heard, so they don't have any of that, right?

**SPIKE EICKHOLT:** Especially if they are pleading to a misdemeanor offenses because a lot of times felony charges will be reduced down because one of the things that the prosecutor will look at is, you know, it came in on a terroristic threats charge, which is fairly serious felony, but it's a catch-all felony because they were screaming, terrorizing, threatening things in public, for instance. But then when the dust settles, prosecutor will look at the facts of the case, see how the person do at regional center, realize, well, you know, there's a lot of mitigation there. I mean, that person was

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

clearly in a mental health crisis. They'll drop it down to a third-degree assault, up to a year in jail. If they get time served, they're out. Sometimes there is-- with a felony sentence, there's at least supposedly supervision that might be able to provide those services. I will say that in my-- I got a court-appointed case now where my person was in outpatient community, found to be restored to competency, released from the regional center, and he's connected with a mental health diversion program, a county-run facility that Lancaster County does, and he's doing pretty well. He's working in the community with them, but that's really on his own volition and thanks to what Lancaster County provides. That's not something that's offered statewide, though.

**DeBOER:** OK.

**LATHROP:** OK. Thank you for your testimony. Any other proponents?

**TIM HRUZA:** Good afternoon, Chairman Lathrop, members of the Judiciary Committee. My name is Tim Hruza, last name is spelled H-r-u-z-a, appearing today on behalf of the Nebraska State Bar Association. I don't have much additional to add. You guys have, have heard the problems from top to bottom with what we see. Let me just say this: the Nebraska State Bar Association reviews legislation and takes positions on bills where we believe there's very-- that issues affect Nebraskans' access to justice or our justice system. I can tell you that we had resounding agreement among prosecutors, defense attorneys, and while judges do not vote on positions taken in legislation, were very outspoken and direct that this is an issue, that, that the wait times that we have and the amount of time that people spend really are affecting, as you said, Senator Lathrop, human beings, right, and the system to a, to a very large degree. For that reason, I appear today in support. I think you have agreement across all sections of the bar that this is an important issue. We thank Senator Hansen for continuing to work on it. He's done a number of, number of bills, as, as we've discussed today, since I was legal counsel for this committee several years ago. So I appreciate the work that he's done, appreciate the work that you do, and we thank you for taking time today and, and paying attention to this important issue. Happy to answer any questions you might have.

**LATHROP:** OK. I don't see any questions for you.

**TIM HRUZA:** Thanks.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

**LATHROP:** Thank you. Have a great weekend. Any other proponents? Opposition testimony? Welcome. We've been waiting for you.

**LARRY W. KAHL:** I kind of got that sense. Good afternoon, Chairman Lathrop. Vice Chair Pansing Brooks, thank you very much for your service.

**PANSING BROOKS:** Thank you.

**LARRY W. KAHL:** Members of the Judiciary Committee, my name is Larry W. Kahl, L-a-r-r-y W K-a-h-l, and I am the chief operating officer for the Department of Health and Human Services. I'm here to stand in opposition to LB1223, which would require DHHS to reimburse counties for lodging certain defendants and require the state hospitals to maintain a predetermined number of beds by statute category. A little history: in January 2021, the Lincoln Regional Center began ligature mitigation construction on three of its patient housing buildings in response to a joint commission finding that facilities needed to be modified to reduce chances of patient harm. Patients from one building undergoing construction are moved to the other buildings until renovation is complete and COVID-19 supply chain issues have caused significant construction delays. As a result, LRC as a whole has whole buildings or wings out of commission for months at a time. So construction is slated to be completed by this fall. However, it has really been a particular problem for all of us. LRC has also been impacted by the national staffing shortage, especially of registered nurses and LPNs. Currently, LRC utilizes traveling nurses to fill gaps in full-time roles and DHHS spent \$4.5 million at LRC alone in 2021 on temporary staffing services. LB1223 establishes a minimum number of beds for each statutory admissions category. DHHS opposes arbitrarily establishing a minimum number of beds for different categories of admissions because this could be physically impossible, create gaps in services, leave beds empty or short needed beds at the facility. Additionally, the bed allocation plan in LB1223 could unintentionally cause an expanded waitlist. LRC currently admits patients from a court admission list and a mental health board admission list. Currently, there are 77 people on the court admission list are waiting-- awaiting a bed and one mental health board individual. The average length of wait time for a court admission is currently at 76 days and I can explain that later, if you'd like. Currently, LRC has 54 patients admitted from mental health board, a little bit more than half of the 90 allocated beds under LB1223. As of March 1, there was just one individual on the mental health board admission list. If 35 beds at LRC were left unfilled simply because they were arbitrarily reserved for mental health board patients and not where the need exists, the

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

average length of wait time for court admissions would increase dramatically. DHHS believes that patients should be admitted as soon as a staff bed within their needed program is available. LB1223 as written would set up barriers to doing that. DHHS is addressing the challenges facing individuals waiting admission to the LRC. I have included a handout which outlines some of the tactics that DHHS has implemented to reduce the admissions list. A reduced length of stay during which patients still receive high-quality care is one of the many strategies I think that will help reduce the length of time a patient is waiting for care. Finally, the bill requires an annual board report and hearing before the Appropriations Committee and Judiciary Committee of-- on DHHS compliance to the bill. DHHS does not oppose transparency. However, chief executive officer, officer should have the discretion to appoint a designee in participation for the hearings. In summary, DHHS is working to reduce length of stay and length of time on the admission list. In addition to this, we are actively working with our regional partners to address critical care gaps in service. The department believes that bed allocation plan, as stated, would cause delays in treatment and I respectfully request that the committee oppose the legislation that is-- as it is currently written. Thank you for your opportunity to testify and I am here to answer any question.

**LATHROP:** Oh, good. I will start because I took a tour of the Lincoln Regional Center a couple of years ago. It was kind of one of those staged things where they knew the senators were coming. I call them executive tours. And my recollection from that tour was that we had four housing buildings. Am I right?

**LARRY W. KAHL:** Correct.

**LATHROP:** And that even two years ago, one of those housing buildings was not in service, so we were operating the regional center with three housing buildings, is that right?

**LARRY W. KAHL:** We currently house Building 10 for acute care of psychiatric women; Building 3, acute care men; 5, forensics; and Building 14, fourth building, sex offenders programming.

**LATHROP:** Are they all occupied?

**LARRY W. KAHL:** They are all occupied.

**LATHROP:** Are they all full?

**LARRY W. KAHL:** They are not all completely full.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

**LATHROP:** OK, so-- well, let me go back because my question was two years ago, we were only using three of the four buildings, is that true?

**LARRY W. KAHL:** It may have been. I was not here at that time.

**LATHROP:** And you're telling us today that we're using all four of the buildings--

**LARRY W. KAHL:** Yes, sir.

**LATHROP:** --but that the four buildings are not at full capacity because you have some construction going on to resolve the ligature issues. And that was a bill we passed to have you do it--

**LARRY W. KAHL:** Yes, sir.

**LATHROP:** --a year ago. I think that was a Senator Howard bill.

**LARRY W. KAHL:** And if, if I can say, even the larger component of that is staffing. The issue that we've all heard about from hospitals all across the country has been we've heard them talk about a shortage of beds. Well, their physical beds are still present. They haven't been able to staff the beds.

**LATHROP:** OK and I want to-- I'll get to that in just a second.

**LARRY W. KAHL:** OK.

**LATHROP:** So if we have four housing buildings--

**LARRY W. KAHL:** Um-hum.

**LATHROP:** --we have a certain number of beds in those buildings--

**LARRY W. KAHL:** Yes, sir.

**LATHROP:** --how many beds do we have in total? Not how many have you staffed or how many can you staff, but how many--

**LARRY W. KAHL:** Right.

**LATHROP:** --actual beds do we have?

**LARRY W. KAHL:** So if we want to talk licensed beds, licensed beds, operational beds, you know, physical beds, staffed beds.

**LATHROP:** Let's start with physical beds.

**LARRY W. KAHL:** Physical beds, I believe about 180.

**LATHROP:** So in the four housing buildings, there, there, there are situated in those buildings 180 beds.

**LARRY W. KAHL:** Physical beds.

**LATHROP:** Whether they're licensed or operational is a different question, but there's 180.

**LARRY W. KAHL:** Um-hum.

**LATHROP:** How many of those 180 actually have a patient in them?

**LARRY W. KAHL:** Today's census is 164.

**LATHROP:** So of our overall capacity, not licensed or operational, but our overall capacity at the regional center is 180.

**LARRY W. KAHL:** Based on, on my current knowledge, yes. We do have a--

**LATHROP:** OK, I just don't want to get into a deal--

**LARRY W. KAHL:** Yeah.

**LATHROP:** --where I got to take your deposition here--

**LARRY W. KAHL:** No, no.

**LATHROP:** --and be careful about how you're answering questions. I'm trying to understand.

**LARRY W. KAHL:** Um-hum.

**LATHROP:** We have four bed-- four buildings and each of those buildings, the sum of all the capacity is 180 and no more.

**LARRY W. KAHL:** The licensed capacity is greater, the number of licensed beds, but the physical beds, based on my last request to the team, how many physical beds do I have? If I had to fill them all today, they're telling me 180.

**LATHROP:** OK, so we are, we are-- I'm going to have to ask you some more questions to get to the answer. Do you have more licensed beds than physical beds?

**LARRY W. KAHL:** Yes.

**LATHROP:** What's the difference between a licensed bed and a physical bed?

**LARRY W. KAHL:** A licensed bed is actually a placeholder, if you will. They-- we license a certain number of beds to be able to be available. If we have additional capacity, if we can fill additional beds, if we can add wings, we, we fill those licensed beds. Many times, licensed beds are held onto almost as a, a matter of being able to give you additional flexibility. If we were able to staff, open another wing, and to, to acquire more physical beds, we already have licensed beds to be able to do that.

**LATHROP:** OK. And when I'm talking about beds, I'm talking about your ability to bring people in. If you didn't have a staffing issue, if you didn't have construction for the ligature issues, you have how many-- how much space?

**LARRY W. KAHL:** Yeah, there are 2-- 200.

**LATHROP:** Or your space can accommodate how many people--

**LARRY W. KAHL:** Um-hum.

**LATHROP:** --if you did not have issues with staffing and did not have issues with the construction related to ligatures?

**LARRY W. KAHL:** Um-hum. Likely the answer would be the 200 beds that-- for all of the acute care and forensic care.

**LATHROP:** So each one of those buildings can hold 50 people if you have the staff and you don't have them out of service because they're being repaired.

**LARRY W. KAHL:** It varies a little bit, but I understand your, your point, yes.

**LATHROP:** OK. And of the 200, you have some buildings-- so you're doing this construction that has to do with the ligature issues, right?

**LARRY W. KAHL:** Correct.

**LATHROP:** You've been mandated to maintain your accreditation to get rid of these risks that people could kill themselves inside the regional center and that's taking some beds out of service.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

**LARRY W. KAHL:** Yes, sir.

**LATHROP:** OK. And you're saying you're down to 180 from the, the total 200. On your best day when you're fully staffed and you don't have any construction, you're down from 200 to 180 and currently, you have 164 people in those beds.

**LARRY W. KAHL:** That is our current census, correct.

**LATHROP:** The fiscal note says that the average wait is now 128 days. Do you agree with that? Apparently, that's what the counties are telling the Fiscal Office.

**LARRY W. KAHL:** We maintain a mental health board waitlist and a court waitlist. The individuals with the longest pending number of days waiting, which are quite high and would align more with what information we've been hearing, most of-- the two individuals that are at the top of our list are both on bail. They're out on bail and they're not currently available for us to admit. So those days kind of sway our numbers a little bit. But what we're seeing, to actually Senator Geist earlier comment, was the inflow, the flow-- the number of people hitting the admissions list is happening now at a greater pace than we were able to admit and pull people down off of the waiting list. The waiting list per today, we have 77 people on the waitlist. To me, the number of people on the list, while important, is maybe not as important as how many wait days does the individual have? If we're able to manage our throughput more appropriately, reduce our lengths of stay, increase, you know, the people's ability to quickly be returned to competency and be able to be received and treated in the community, that's the bigger issue for me. And right now, when I look at the larger number of individuals that are new to the list compared to the, the small handful that are still there for a longer period of time, 76 days.

**LATHROP:** Well, at the average-- yeah, I don't want to get caught up in the math because we're-- we clearly have a capacity issue--

**LARRY W. KAHL:** We do.

**LATHROP:** --and I appreciate Senator Hansen's bill-- I don't think the \$100 and making you guys pay the counties \$100 a day is enough incentive. I don't think that'll solve the problem. We have a capacity issue and I appreciate when LB1083 was passed in 2004, we said we were going to close regional centers because people should be in the least restrictive environment and invest the money in community services.



Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

That never happened and we apparently closed too much of our capacity because we have these issues and it's not just-- I hear it from judges when they, when they have somebody that needs to have an EPC and they're calling around or the, the law enforcement's calling on all over the state trying to find that an empty bed because they can't get somebody into the regional center. We have a capacity issue and I, and I appreciate this isn't that the Health Committee, but I think we-- sitting here on the Judiciary Committee knowing people are waiting months and they're so bad, they're incompetent to stand trial and we haven't even started on the people who are placements for other purposes, the sex offenders and those other people who are-- need to be committed. What, what is the solution? If it's not this bill, what is the solution for us to have the capacity to meet the needs of the people who are incompetent, the people who are to be committed, and the sex offenders that are part of your charge?

**LARRY W. KAHL:** I think the, the solution, as previous testifiers had shared, is really being able to have a robust continuum of care, definitely being able to have an adequate number of acute care beds at the highest level of care, which LRC would be, but also being able to have the appropriate number of services to be able to serve the number of people that have the need throughout the continuum. One of the areas that, that we are focusing on now is working closely with the regions relative to a gap analysis. What areas within the community are hindering us from being able to release and discharge an individual who's ready to be discharged, perhaps not ready to be completely independent, needs a level of care that does not currently-- is not currently available within the community? It with-- it holds up at discharges.

**LATHROP:** I appreciate that, I appreciate that.

**LARRY W. KAHL:** So the whole continuum is key.

**LATHROP:** I appreciate that. If you had more care out in the community, maybe you could get a few of these people out sooner. But I got to tell you, if you do the math, I don't, I don't see that solving the problem. When I listened to the gentleman testify from the region, they're-- they look at the high-end individuals that they can't get into the regional center and now they're taking up a bed at Bryan that's not available for somebody else. And what do we got, what do we got to get you to do to expand your capacity at the regional center? And I appreciate you'll be done with the construction at some point--

**LARRY W. KAHL:** Um-hum.

**LATHROP:** --and there will be another 36 beds available, perhaps.

**LARRY W. KAHL:** Correct.

**LATHROP:** But that, that too doesn't explain or get us down to a reasonable period of time for people to wait to have their competency restored.

**LARRY W. KAHL:** So I think it raises the issue of what are we seeing from the community in terms of the number of mental health cases? Additional capacity is something that I think that should be considered. Our throughput is definitely something and you can see from my work, my handout, that's the area where we've been spending the majority of our time is on seeing how quickly we can appropriately and safely move people through the system and to partner with our community partners to make sure that we've got enough beds in the community that we can spread those folks at the most appropriate level of care throughout the whole continuum.

**LATHROP:** Will the budget include any request from your office for more capacity? When we take up the budget in a couple of weeks, are we going to see we need to, we need to have more-- another building put on the Lincoln regional site to, to provide for more capacity?

**LARRY W. KAHL:** Probably not in, in the-- in this current cycle.

**LATHROP:** OK. I've asked enough questions. Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Mr. Kahl, for appearing today. These 164 people, do they-- that are there today, do they include the criminally insane that will be there for the rest of their life?

**LARRY W. KAHL:** Yes.

**BRANDT:** So realistically, we don't have 164 people that are going home someday. How many of those beds are, are, are available on a rotating basis?

**LARRY W. KAHL:** Traditionally, that's the acute care population, not the long-term forensic patients, but it's more acute men's and women's psych and there are approximately 40 beds each for acute men's and acute, acute women's psych.

**BRANDT:** So 80 beds.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

**LARRY W. KAHL:** Approximately 80 beds.

**BRANDT:** OK, so we-- Senator Hansen in the bill proposed 200 beds that I assume are acute care beds. So we would need to add about 100-and-some beds somewhere in the system. Second question is Norfolk-- is the Norfolk Regional Center the same status as the Lincoln Regional Center?

**LARRY W. KAHL:** No, the Norfolk Regional Center, 111-bed capacity, running at about 80 percent occupancy, census of 88 today, is predominantly all sex offenders, with the exception of one wing, the one west wing, which is-- serves acute mentally ill aged, if you will--

**BRANDT:** Geriatric.

**LARRY W. KAHL:** --folks that are perhaps not able to, to actively participate in programming and have additional medical needs, folks that would have potentially been seen or served in a long-term care type of facility, but long-term care doesn't take this population.

**BRANDT:** Right, but we would have some capacity outside of the Lincoln Regional Center.

**LARRY W. KAHL:** Potentially.

**BRANDT:** And then we still have-- we've torn down most of the Hastings Regional Center facility, but we have a campus there to construct new because we obviously have a new YRTC there. And when we take down these other buildings, we have lots of space to put new on that campus. We've still got a campus of Beatrice on its way underutilized, currently used for DD and other places across the state. We have room for veterans' home in Grand Island, for example, that could be utilized for something. So the state has a lot of available capacity. Your department needs to tell us how to configure this capacity. I don't think Senator Hansen has probably guided to that, do you agree with that?

**LARRY W. KAHL:** That's why I stand in opposition to the bill. I think that, that DHHS should be the ones to help identify capacity and certainly at least for the state-based care.

**BRANDT:** But we have 93 counties, not all 93 because some of them don't have jails, but I can tell you, my mental health professional in Fillmore, Thayer, Jefferson County is my county sheriff. And when we have eight cells in Fillmore County and we have to put one woman in,

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

in there, we got five cells because it ties up a wing of four. Same way in Thayer and then they're stuck with this individual, maybe criminal, maybe not, for weeks, if not months at a time. And you know, I think Lancaster is the biggest county that I've got, but it isn't, it isn't just Lancaster and Dodge. It's the whole state that faces this problem and we need to work together to solve it, so thank you.

**LATHROP:** Senator DeBoer.

**DeBOER:** So what's the average time in these acute beds for someone that you serve to return to competency? Do you have a sense of that?

**LARRY W. KAHL:** Oh, I'm a little embarrassed. I, I should have the length of stay right on the top of my head and I do not.

**DeBOER:** Is it-- it's probably a month. Is that, that kind of range or is it more like six months or is it more like two days?

**LARRY W. KAHL:** It's longer than two days, obviously.

**DeBOER:** OK.

**LARRY W. KAHL:** You know, it, it-- it's the whole process of being able to, to onboard the individual, stabilize with medication most frequently, help address some of the identified life skills. Really, depending on whatever comes to us in the form of their initial treatment plan and what their needs are to help provide stabilization for them and then partnering with our regional partners to be able to transition them back into their, their home areas and community. That clearly has the much higher turnover rate than what the long-term forensics would.

**DeBOER:** So these acute beds that are being housed with people that are returning to competency, when you, when you return them to competency, are they at a level where they can return to their homes in a, in a way that is meaningful, they can take care of themselves or they being returned just to a level-- because it seems like the law would require them just to be returned to a level where they can appreciate the courtroom, not to a level that they can--

**LARRY W. KAHL:** Um-hum.

**DeBOER:** --take care of themselves, so--

**LARRY W. KAHL:** Demonstrating a capacity to understand and comprehend, yes.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

**DeBOER:** So that doesn't necessarily mean that they can take care of themselves.

**LARRY W. KAHL:** Not necessarily able to fully function in society in a way that we would think of as a person being able to be healthy and independent.

**DeBOER:** OK and you talked about wanting to-- I, I thought I heard you said-- and, and I hope, I hope you can help me with this. I thought I heard what you said, said one of your solutions was, was to increase your throughput. And what I understood that to mean, and I don't know if this is true, is that what you want to do is spend less time with each patient in the acute beds, is that correct?

**LARRY W. KAHL:** The idea would be to, as quickly as possible, return people to a stabilized state where they could best perhaps be served in a lower level of care. It's all about acuity and of course, LRC is the highest level of acuity in the state. I mean, it's--

**DeBOER:** Sure.

**LARRY W. KAHL:** --folks are,--

**DeBOER:** So--

**LARRY W. KAHL:** --are seriously, seriously mentally ill and needing stabilization and care. The sooner that those folks can be restored back to a more normal life in the community, the better and so--

**DeBOER:** So--

**LARRY W. KAHL:** --throughput is, is a factor. It's a little dehumanizing to speak of it in those terms. It's almost industrial to speak of in those terms, but being able to help folks have the resources that they need as quickly as possible to be able to be successful in the community.

**DeBOER:** So is one of your suggestions for the solution to get them through faster?

**LARRY W. KAHL:** That is one of the steps that we are currently taking is being able to make sure that the, the care is being done very deliberately, very precisely in a way that helps those individuals to get their needs met as quickly as possible and help them to be able to move to that next level.

**DeBOER:** Is there a level of care outside of the regional center currently where someone could be housed that was not able to appreciate a courtroom setting? So in other words, is there a level of care where someone who is still incompetent to be in trial could be housed outside of the regional center or are you the only place where someone who cannot appreciate what's happening in a trial can be housed?

**LARRY W. KAHL:** So my, my understanding is you're asking about outpatient competency restoration or even jail-based competency restoration.

**DeBOER:** Well, what I'm asking is if folks can be released from your level of care to a lesser level of care and still not being competent to stand trial.

**LARRY W. KAHL:** I would say that there are individuals who are able to receive-- return to competency on an outpatient basis. There are individuals that may be able to have competency restored while in a jail-based setting. And there are those individuals that are going to require full-on hospitalization at LRC to have their competency restored.

**DeBOER:** So if someone comes to at LRC, they're not going to return somewhere else in the community until they've had their competency restored, is that correct?

**LARRY W. KAHL:** If they're housed at LRC for competency restoration, yes.

**DeBOER:** OK.

**LARRY W. KAHL:** Our job would be to restore competency and make that determination before they're released.

**DeBOER:** So is there some current impediment to you returning them to competency as quickly as possible?

**LARRY W. KAHL:** I, I don't know that I would say that they're impediments. There are, in some cases, limited resources: making sure that we have adequate staff, being able to get them into beds, treat them as quickly as we can and we've been through that that, you know, to restore competency [INAUDIBLE]--

**DeBOER:** The reason I'm asking you-- thank you-- the reason I'm asking you that is because if what the-- one of the points of the solution

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

is, is to get them restored more quickly and there's nothing that's impeding us from getting this restored more quickly now, it doesn't seem like a really useful thing to hang our hat on to try and get more availability. Am I missing something there?

**LARRY W. KAHL:** It's my belief that if we are efficient in terms of being able to both help restore individuals for competency or to help those that are experiencing an acute psychiatric illness towards stabilization in as quickly of a fashion as is possible, it opens up a bed for the next person on the list to be able to begin to receive care.

**DeBOER:** And I guess my question was just are we experiencing inefficiency now that would allow us to-- but I think we've, we've, we've gone through this.

**LARRY W. KAHL:** I think there are always opportunities to be able to try and improve the processes and that's where we've been focusing on, things that are within our control.

**DeBOER:** But it sounds like we probably also need to do some kind of additional bed space in order to get this problem solved. Yeah. OK, thank you.

**GEIST:** I do--

**LATHROP:** Senator Geist.

**GEIST:** I do just briefly. I noticed in you-- in the things that you have listed, what you're doing about it, and the two that I'm interested in and you've touched on them as you were discussing with Senator DeBoer, the establishing the outpatient competency restoration process and investigating adding jail-based competency restoration, which was why I asked Commissioner Schorr if there's a-- any kind of treatment that's going on within the jail. So I'm curious if you would-- I know it's probably a staffing issue. I, I'm, I'm guessing that's what the issue is. But the establishing the outpatient competency restoration is what Senator Hansen brought forward a couple of years ago. Would you tell me a little bit about what you're doing there and adding in the jail-based competency treatment?

**LARRY W. KAHL:** I'm a little-- in my capacity having oversight just of LRC--

**GEIST:** Um-hum.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

**LARRY W. KAHL:** --I'm not necessarily involved in the oversight of--

**GEIST:** OK.

**LARRY W. KAHL:** --the entire Department of Behavioral Health Services, but I know that, that Director Dawson has been working on developing the resources, the structure, and the manpower, if you will, the people resources to be able to more widely engage outpatient competency restoration throughout the state--

**GEIST:** Um-hum.

**LARRY W. KAHL:** --which I believe is part of the solution.

**GEIST:** Um-hum.

**LARRY W. KAHL:** Jail based is something that is, is a little bit newer. We're currently doing a pilot and working with Director Frakes at the DOC. We've got five individuals that were on the waitlist.

**GEIST:** Um-hum.

**LARRY W. KAHL:** They're captive. He's willing-- they were willing to allow us to be able to pilot and see if we could work with those individuals and in effect work them off of the waitlist by helping to restore competency in a jail-based setting. So we're, we're doing it now. We're, we're piloting and learning from the experience to help refine our process, being able to go forward and hopefully be able to use it more broadly.

**GEIST:** I assume that's a triage thing where you figure out who would best fit that kind of category, but that's interesting and maybe a quick solution to help some of these things happen. So that's all. Thank you.

**LARRY W. KAHL:** We do have a couple of psychiatrists that go all over the state--

**GEIST:** Um-hum.

**LARRY W. KAHL:** --doing evaluations and making-- helping make those determinations about is this person really going to require the LRC level of care or can they-- are they a good candidate for outpatient restoration? So-- and those are taking place on a very timely basis, so.



**GEIST:** Thank you.

**LATHROP:** I want to make a couple of comments. First, I appreciate the work that you've done on the YRTC's. Senator Pansing Brooks and I have been involved in that and perhaps others. That said, whenever we start talking and having these conversations and we talk about, well, we're going to try to make some efficiencies and then we're going to try to do some of the, the things from Senator Hansen's bill like that's going to solve the problem. And it's pretty clear to me after this hearing that it's not going to solve the problem and I'm not going to be here next year, nor will Senator Pansing Brooks or Senator Morfeld, but I, I want to be really clear that this is a capacity problem at the regional center. It is a capacity problem at the regional center that needs to be resolved and those of you that are coming back next year need to understand that it is a capacity problem at the regional center. And we don't fix it-- you asked a-- Senator DeBoer asked a question about is there another place. The statute is very clear. It is your responsibility at the regional center. If you are incompetent, you are to be taken to the regional center and Senator Hansen's bill is an exception to the requirement that competency be restored at the regional center. And we don't have enough capacity there to do it and apparently his bill isn't getting it done, isn't reducing the demand for space and for capacity at the regional center and this needs to be addressed. I don't know, to be perfectly candid about it, if this bill is going to get it done. I don't think even if we could get it passed that, that the \$100 a day is going to make somebody do what needs to be done, which is build more capacity out at the, out at the regional center or add some facility that was formerly a regional center or someplace. But you're the institution guy, so I will leave it to my colleagues that will be here next year to ensure that they remember this conversation and then hold you to-- hopefully you're still here next year. I know there'll be a change of administration, but we-- this is a, this is a human, human dignity. Yeah. Anyway, that's all I got. Thank you.

**PANSING BROOKS:** Thank you.

**LATHROP:** Anybody else here to testify in opposition? Anybody here to testify in a neutral capacity? Seeing none, Senator Hansen, you may close, and we do have two letters, position comments, both in support coming from Douglas County Board of Commissioners and the Nebraska County Attorneys.

**M. HANSEN:** Thank you, Chairman Lathrop and members of the committee. First, I'll acknowledge those letters. Obviously you heard from the

county attorneys, you heard from the defense attorneys, you heard from the entire bar association, pretty united front in the legal field, recognizing that this is an important issue to resolve. I personally am of the opinion that we do not have enough mental health beds in the state of Nebraska. We probably do need to build more. I, I've been there for a while and haven't had the opportunity to really push that, including with the fiscal stance we're at. I will say that we're kind of in a similar issue as in other areas that just building capacity on its own doesn't solve the problem if the actual process and management isn't going well. For example-- and I know there's some reasons because of constructions-- as I counted it today based on the licensed beds or you might, like, say, design capacity to use the other terms, there are 67 beds that aren't being used between Norfolk and Lincoln. Some of them aren't physically available because of the construction, but there's 67 beds. We have a waitlist of 77 people. That should knock out most of our waitlist and we-- in trying to figure out what's happening, causing this to not be staffed, causing this to not be filled. You know, likewise, several of these things in this bill, I think a lot of people were under the impression that the regional center was operating much closer to its 200-person licensed capacity until honestly in the past few weeks and months, recognizing that it's only about 80 percent capacity and that was even a higher number than I-- I thought I was going to hear 164-- was kind of shocking. I think a lot of people thought it was much higher than that. The last thing I want to maybe highlight is I had not heard about the jail-based restoration pilot program until it was just mentioned in the testimony. I would question how that is being structured and how that was being done. Certainly, as you've noted, the statute requires restoration at a, at a state-run hospital or, or some sort of other, I guess, state-owned or state-operated facility, I suppose, is how they're doing it. Certainly, it's not being done at the county level to my understanding. It's apparently being done within Department of Corrections, but then I think the committee-- I don't have to elaborate at all on why the committee will understand we can't rely on capacity at the Department of Corrections to solve capacity problems at the Lincoln Regional Center. With that, I appreciate everybody's kind comments on all of my work on this issue. I really would like to move this forward in any way, shape, or form we can, working with the committee. If nothing else, maybe even just the reporting requirements so this issue doesn't go away and I'd be happy to work with the department, all stakeholders, the committee in finding a path forward. With that, last bill of the year, last bill of my career, last bill of several of our careers. I'm happy to have spent so much time in

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 3, 2022

Judiciary with all of you and with that, I'd be happy to take your questions.

**LATHROP:** Great. Thanks, Senator Hansen. We appreciate your coming before the committee with the frequency with which you have appeared.

**M. HANSEN:** Thank you.

**LATHROP:** But this bill in particular, it, it is, it is bringing again to life a very, very serious problem and thank you.

**M. HANSEN:** Thank you.

**LATHROP:** All right. That will end the hearing on LB1223 and our hearings for the day--

**DeBOER:** Colleagues--

**LATHROP:** --and the year.

**DeBOER:** Colleagues, I'd like to get a picture of us. I'd like to get a picture.