

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 1, 2023

WAYNE: Good afternoon. Good afternoon.

DeBOER: Good afternoon, everyone, and welcome to the Judiciary Committee. My name is Senator Wendy DeBoer. I represent the 10th Legislative District in northwest Omaha and I serve as Vice Chair of the Judiciary Committee. We will start off today by having members of the committee and committee staff do self introductions, starting on my far right with Senator Ibach.

IBACH: Thank you. Teresa Ibach, District 44, which is eight counties in southwest nebraska.

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

GEIST: Good afternoon. Suzanne Geist, District 25, which is the southeast corner of Lincoln and Lancaster County.

JOSH HENNINGSEN: Josh Henningsen, committee legal counsel.

ANGENITA PIERRE-LOUIS: Angenita Pierre-Louis, committee clerk.

BLOOD: Good afternoon. Senator Carol Blood representing District 3, which is western Bellevue and southeastern Papillion, Nebraska.

HOLDCROFT: Rick Holdcroft, District 36, west and south Sarpy County.

DeKAY: Good afternoon. Barry DeKay, District 40, representing Holt, Knox, Cedar, Antelope, northern part of Pierce and most of Dixon County.

DeBOER: All right. Also assisting us are our committee pages, Logan, Logan Brtek from Norfolk, who is a political science and criminology major at UNL and Isabel Kolb from Omaha, who is a political science and pre-law major at UNL. This afternoon, we will be hearing five bills and we will be taking them up in the order listed outside the room. On the tables in the back of the room, you will find blue testifier sheets. If you're planning to testify today, please fill one out and hand it to the pages when you come up. This will help us keep an accurate record of the hearing. If you do not wish to testify but would like to record your presence at the hearing, please fill out the gold sheet in the back of the room. Also, I would note the Legislature's policy that all letters for the record must be received by the committee by noon the day prior to the hearing. Any handouts submitted by testifiers will also be included as part of the record as exhibits. We would ask if you have any handouts that you please bring

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ten copies and give them to the pages. If you need additional copies, the pages will be happy to help provide them for you. Testimony for each bill will begin with the introducer's opening statement. After the opening statement, we will hear from any supporter of the bill, then from those in opposition, followed by those speaking in a neutral capacity. The introducer of the bill will then be given the opportunity to make closing statements if they wish to do so. We ask that you begin your testimony by giving us your first and last name and please also spell those names for the record. We will be using a three-minute light system today. 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'll ask you to wrap up your final thoughts. I'd like to remind everyone, including senators, to please turn off your cell phones or put them on vibrate. With that, we will begin today's hearing with LB368 and Senator Conrad.

CONRAD: Hello. Good afternoon, friends. Hi. My name is Danielle Conrad, it's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I'm here today representing the "fightin' 46th" Legislative District of north Lincoln. Also, before I jump into the testimony-- and I know we have a busy day. Just-- I'm going to reminisce, reminisce just very quickly. I think the very first bill I introduced in committee in my first term was in Judiciary on a legal separation bill. So this is my first bill in 2023 that has a hearing and it's great to be back in the friendly confines of the Judiciary Committee. So with that, LB368 creates a grant program administered by the Commission on Law Enforcement and Criminal Justice. It expands and enhances criminal justice programs in a county with a city of the primary class. As you well know, mental health and programming issues facing our state prisons are not unique to the state. Our county jails also struggle to provide needed services due to staff and funding shortages. This grant program is designed to provide grants to improve and expand correctional services. These services include cognitive behavioral programs, peer support recovery, residential housing and others. Services like these go a long way towards reducing recidivism and ensuring individuals released from incarceration have opportunities to be successful. So let me just give you kind of the Cliff Notes version, kind of the origin story on this bill. Right after the November elections, Lancaster County invited all of the senators representing Lancaster County and all of the county board members to come together and just kind of have a briefing on key issues that were facing our community. So we got to hear from different county agencies about budgetary matters, policy matters-- I know Senator Geist was there as well. And

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it was very well attended and it was very informative. I was already familiar with the good work happening in Lancaster County community corrections prior to this meeting, but that meeting really put a fine point on the good work that they were doing, particularly to try and keep people out of a carceral setting in the county or state level, to find appropriate community placements that let people stay with families, continue working access programs and services. And I think what we know from the track record in Lancaster County-- and there are good community corrections programs happening in other communities that I would be very open minded to expanding these program resources to, is that every dollar that we can invest in alternatives to incarceration is a better value for the taxpayers and has better outcomes for every stakeholder involved. It reduces recidivism and it enhances and advances the shared public safety goals that we have across the political spectrum and across the state. So after that meeting, I asked Lancaster County if they would touch base with their community corrections and their correctional department and county commissioners and if they would help me put together a proposal or an idea to help educate the body about how these community corrections programs intersect with the challenges we have in prison overcrowding and prison reform and to see if we can't somehow connect the dots by providing some state resources to maintain and expand these programs, because not only do they help to keep county jail overcrowding at bay, because of the demographics and the data that we know from the CGI study, what happens in Lancaster County and Douglas County in particular, has significant impacts in our state prison pathways and overcrowding. So, if we're able to keep maybe a few more dozen people or a few more hundred people out of that, that pipeline into our overcrowded prison system, it could really make a big difference in a state like Nebraska in addressing overcrowding and having better, and having better outcomes for all stakeholders. That's the long and the short of it. There are experts here who work in these community corrections programs all day, every day that have far more expertise than I do on the mechanics of these measures. I'm probably going to scoot back to Government Committee because we have voter ID up today and I want to make sure to be an active participant in that committee hearing as well. But I'm happy to answer questions, and I'm really grateful that this measure was set on a day with so many other thoughtful proposals about addressing prison reform and smart criminal justice approaches.

DeBOER: Are there any questions for Senator Conrad? Senator DeKay.

DeKAY: Thank you, Vice Chair DeBoer. Senator Conrad, this, this is going to be an ask for grant, for--

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CONRAD: That's right.

DeKAY: --\$2.1 million for the 2020-- 2023-24 year. Is that an ongoing grant process or will that end after one year? And if it does, how will we appropriate the money or where will we get the money to continue the program?

CONRAD: Thank you, Senator DeKay. That's a great question. So the measure, as introduced and as written today, is for a General Fund appropriation for this biennium. The existing programs happen through a variety of different revenue streams. And my idea with this legislation was to find state resources, either through ARPA funds or general funds or other sources to, to really expand what's happening in the community corrections program. So I was kind of thinking that we could, if there was an appetite in the committee or in the body to move something like this forward, we could almost kind of use it like a pilot program to say like, OK, this is how this grant program worked in this biennium. Then it gives us a chance to evaluate whether we want to continue state funding or wrap it up or expand it to other counties. But Senator DeKay, I'd be happy to work with you and Appropriations and other members if there's a different fund source or a better way to structure the financing just to achieve the same goal. But thank you.

DeKAY: Thank you.

DeBOER: Other questions from the committee? Senator Blood.

BLOOD: Thank you, Chair DeBoer-- Vice Chair DeBoer. Thank you for bringing this forward, Senator.

CONRAD: Good to see you. Yes, thank you.

BLOOD: Just a quick question. I know you have people testifying, so I'm just looking for a quick synopsis.

CONRAD: Sure.

BLOOD: You're going to expand diversion options for young adults that have not previously been allowed to use these diversion programs. Why is that?

CONRAD: You know-- and I will defer upon the expertise for some folks that are coming behind us, but I think different communities have different options for problem-solving courts. For example, I think there is a well-established Young People's Court in Douglas County

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that Brad Ashford's brother, Judge Ashford, kind of helped to establish and preside over. I'm not sure we have that exact sort of opportunity here in Lancaster County, but of course, Lancaster County has been a leader on drug courts and veterans courts and 24/7 and DUI courts. And so each community has-- and your home county in Sarpy has done incredible things on mental health courts. So each community has just tailored a few different options, I think, to best meet the needs of their populace. I think, hopefully, this would provide an opportunity to kind of explore and examine, maybe. Should we have more options, more robust options available in Lancaster County for young offenders? And we've had a very, very brief email exchange with the Lancaster County Attorney, Pat Condon, who I think is interested in, you know, continuing a dialogue to figure out how his office can continue to be a strong partner and in finding the right, kind of, the, the right program and services for folks that come through their doors.

BLOOD: So just for clarification, so the reason that it hasn't been expanded is because they're not sure where to expand or how to expand or is it financial?

CONRAD: My sense today would be probably a little bit out of each column, but I think there'll be some folks behind who might be able to, to provide some more detail to fill out that question.

BLOOD: That's fair. Thank you.

CONRAD: Yeah.

DeBOER: Senator Geist.

GEIST: Yes, thank you for this. I just have a quick question. And I'm reading through the fiscal note--

CONRAD: Yes.

GEIST: --which is-- I wanted to ask about the residential housing, that this would provide residential housing with 24/7 support, which we need greatly. I'm just curious if this grant program is adequate in its funding to do that and hire people and do all the-- I'm just wondering about the amount.

CONRAD: Yeah. That's a great question. No, thank you, Senator Geist. I really appreciate that. And I know you've really been digging into these issues very, very deeply and so I appreciate your leadership and would be excited to work with you on something like this. But my

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understanding about why the residential housing piece is identified-- and you'll know this from, from your work in CGI and in the past that, you know, especially for folks with severe mental illnesses, for example, you know, reentry planning doesn't really work if they don't have a place to go. And so I think that that-- my understanding, in terms of how the grant program, kind of, was constructed at least at inception, was to kind of elevate and address that from some hard to reach folks that, that maybe didn't have a safe place to go and it makes all that-- those supportive services hard to deliver if you don't have access to housing. But it is an ambitious program for a rather modest amount. So I think that we would probably need to think about, maybe, this is a starting place and then we have a place to expand in future bienniums. Or maybe there is a dedication or a carve-out specifically for housing and then some of the other staffing components that are addressed here, because I know that they've got some really good ideas about what they're doing to help women in prison, in particular, and family reunification and folks with really high needs in the system that need a lot of supportive services. So I'd be happy to work with anybody on adjusting the number or how the funds are dedicated.

GEIST: OK. Thank you.

CONRAD: Yeah.

DeBOER: Any other questions? Senator DeKay.

DeKAY: Thank you. Off of that, I just have a quick question, Senator. Is housing, is housing already in place or what's the pathway to getting those properties in place so that there is residence for those people?

CONRAD: Yeah, that's-- thank you, Senator DeKay. That's a good question. And I know that access to affordable and stable housing is something that runs across each of our legislative districts all across the state. And I'm hopeful that that will be a real focal point for us to, to work on together this year. But in Lincoln and Lancaster County, I think there's a continued need for additional access to stable and affordable housing. I think our community has made great strides working across a variety of different disciplines to use a housing first kind of focus to help address the needs of people who are chronically experiencing homelessness and otherwise. And, and I think they've, they've done a pretty good job. But I do understand for some of the hard cases that come through community corrections that

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there is still a need for establishing and accessing housing. Is that helpful? I can follow up with more. OK.

DeBOER: Other questions?

CONRAD: Thank you.

DeBOER: All right. Thank you so much.

CONRAD: Thank you. Have a good rest of your day. Appreciate your time.

DeBOER: Thank you. Let's have our first proponent testifier. Welcome to your Judiciary Committee.

KIM ETHERTON: Well, good afternoon, Senator DeBoer. I originally wrote this for Senator Wayne--I'm substituting-- and members of the Judiciary. My name is Kim Etherton, K-i-m E-t-h-e-r-t-o-n. I am the director of Lancaster County Community Corrections and I'm here to testify in support of LB368. I would like to thank Senator Conrad for recognizing, recognizing the importance of the criminal justice and the behavioral health programs being administered in Lancaster County through the Department of Community Corrections. The Criminal Justice Enhancement Grant Program proposed by Senator Conrad will support expansion and enhancement of these programs, which in turn will minimize participants' contact with the legal system and shift individuals away from prosecution and incarceration. One example of how grant funding can be used relates to the ever present housing shortage. Supervised and supported housing opportunities for individuals with severe mental illness are limited. Transitional housing opportunities for men and women who are just beginning their recovery journey are limited and difficult to access without immediate funds for rent. A key component of success is a safe, healthy place to live. Grant funding will provide opportunities to expand this resource and secure temporary housing options for individuals leaving jail and entering a diversion program. And an issue that often creates barriers to success is keeping individuals engaged while waiting for a placement in a treatment program. Expanding access to substance use respite care can offer a safe, supervised environment following a relapse or to prevent a relapse and/or overdose, and/or overdose and also improve program retention rates. Generally, if we can maintain engagement until treatment begins, individuals are more likely to remain in program. There are currently five diversion options available in Lancaster County, all targeting specific populations. General misdemeanor and felony diversions are-- is for first-time offenses, but veterans diversion, mental health diversion, intensive

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supervision diversion and treatment diversion are the other four. I'm skipping because I only have three minutes. Lancaster County would like to ensure the interventions we offer are culturally informed. The County Criminal Justice Enhancement Grant program can assist with the cost of professional training in culturally informed and evidence-based programming, as well as reimbursement for providers who agree to offer the programming when it does not meet a payor's service definition. In addition to diversion programs offered at community corrections, we also have undertaken efforts to assist individuals reentering the community from our local jail. The Young Adult Reentry Program targets young men 18-30 years of age and is a partnership with Matt Talbot Kitchen and Outreach. The Women's Reentry Program is a partnership with Saint Monica's Treatment Center for Women and CAST, the Community Support Assistance Team, is a partnership with the jail and the Lincoln Regional Center addressing competency restoration. These reentry programs were pilot projects funded by the Bureau of Justice Assistance. LB368 will be a resource to ensure ongoing success of these programs. Lancaster County continually explores opportunities to improve access to justice. Supporting local efforts to slow and stop the penetration into the criminal justice system is an important factor in reducing our state prison system, as well.

DeBOER: All right. Thank you very much. Are there any questions?
Senator Geist.

GEIST: Yes, Kim. Thank you so much for your presentation. I also-- I don't really have a question. I just want to thank you for the work that you do. You do great work in our county and I've watched it and I appreciate it. And I guess I could lead up with a question. In your opinion, is, is this enough? I, I, I know there, there's never enough. The needs are so great in, in this arena, but, but to start giving individuals something to-- have rent payment or is this, for one year, enough?

KIM EHERTON: It's complicated. Any time you expand something, it requires planning before you can implement. And my concern is that we won't have enough time to get those things established in order to get them started before the funding expires.

GEIST: OK.

KIM EHERTON: So that is a concern, but it also requires providers having the funds they need to make it happen. Mental health housing, psychiatric stabilization is expensive, but it is sorely-- that population is sorely underserved, at least in this community.

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GEIST: Yeah.

KIM ETHELTON: So, you know, psychiatric residential rehabilitation services, I would love to see those expanded and there are providers in the community that do it. They would just need to be reassured that they have the funds to sustain it.

GEIST: Yeah. OK.

KIM ETHELTON: And it is you know, it's-- but it is amazing what a safe, stable home does for somebody's recovery. Without it, it's generally nonexistent.

GEIST: Yeah.

KIM ETHELTON: So.

GEIST: It's a big deal. Thank you.

KIM ETHELTON: Yeah.

DeBOER: All right. Thank you. Any other questions for this testifier? I don't see any. Thank you so much for being here. I'll take the next proponent testifier.

BRAD JOHNSON: Good afternoon, Senator DeBoer and members of the-- I did the same thing Kim, Kim did-- and members of the Judiciary Committee. My name is Brad Johnson, B-r-a-d J-o-h-n-s-o-n. I'm the director of Lancaster County Department of Corrections. I'm here to testify in support of LB368. Research is clear: programming in correctional settings can reduce misconduct, lower recidivism and improve post-release, post-release employment outcomes. The Lancaster County Department of Corrections believes programming is a valuable tool and responsibility of our department. We strive to provide this resource at the highest level possible. We recently began substance recovery programming for incarcerated women and men with a substance-related charge and/or sentence that were not able to obtain such services in the community. The program initiative called WISR, Women's Inception to Substance Recovery, started May 3, 2021 and MISTR, Men's Inception to Substance Treatment Recovery, started October 3, 2022. Both programs target trauma, criminologic and maladaptive behaviors, as well as substance dependency. The curriculum familiarizes them with evidence-based psychological education and holistic coping strategies. Programming and participation are voluntary. They can withdraw their consent at any time. Services are provided by licensed mental health professionals, profess--

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provisionally-licensed mental health professionals, Master level counselors in training and other certified addictions staff. All non-licensed professionals are supervised by a licensed professional trained in the curriculum of addiction and mental health. Currently, we have two non-clinical contracted individuals for non-clinical program staff and two mental health practitioners/substance abuse counselors. The evidence-based curriculum is comprised of nine-week cycle of 16 hours of classes, Monday through Thursday. Program staff, community contractors and mental health clinicians facilitate programs. Dialectical behavioral therapy and cognitive behavioral therapy interventions are utilized to reduce maladaptive behaviors, encourage motivation to change and increase awareness of substance abuse recovery. Exercise, art, Moral Reconciliation Therapy and wellness recovery action plan groups are just a few offered. As of January 30, 2023, 130-- 193 WISR women and 63 MISTR men have participated. Of that number, 42 women and 10 men have graduated the program. Sessions have averaged 16 women and 24 men at a time. In order to expand these and other program endeavors, more instructors are needed to facilitate program initiatives. Currently, the jail, on average, has over 600 inmates on any given day. Only 4 out of 600 can receive WISR/MISTR programming services at a time. In order to expand, we would have to receive more financial funding for training--

DeBOER: Sir.

BRAD JOHNSON: --and expansions of staff. Yep.

DeBOER: Sorry, I'm going to have to start enforcing--

BRAD JOHNSON: I'm done now.

DeBOER: --the red light or I'm going to get in trouble.

BRAD JOHNSON: I'm done. So.

DeBOER: Thank you very much. Are there questions for this testifier?
Senator Holdcroft.

HOLDCROFT: Yes, sir. Thank you, Chairman DeBoer. I just noticed you are the director of Lancaster County Depart-- I'm sorry-- director of Lancaster County Department of Corrections.

BRAD JOHNSON: That's correct.

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HOLDCROFT: And Ms., Ms. Ethington-- Etherton was the director of Lancaster County Community Corrections. So can you help me out with the distinction between those two offices and--

BRAD JOHNSON: Well--

HOLDCROFT: --the scope of work?

BRAD JOHNSON: So I'm the director of, in layman's terms, the jail, which is out on West O Street. So I'm responsible for housing and incarcerating folks that are there pre-- pre-trial or sentenced. Kim's department is community corrections and they deal more with pretrial diversions, drug court, folks who aren't necess-- who aren't in custody but are going through some type of diversion or treatment process to keep them out of jail.

HOLDCROFT: OK. Thank you.

BRAD JOHNSON: Yep.

DeBOER: Other questions? I don't see any.

BRAD JOHNSON: Good.

DeBOER: Thank you so much.

BRAD JOHNSON: Thank you.

DeBOER: Next proponent testifier. Welcome, Mr. Eickholt.

SPIKE EICKHOLT: Good afternoon, Vice Chair DeBoer and members of the committee. My name is Spike Eickholt, S-p-i-k-e, last name is E-i-c-k-h-o-l-t. I'm appearing on behalf of the ACLU of Nebraska and the Nebraska Criminal Defense Attorneys Association in support of LB368. I, I don't want to repeat what's been said, but I would-- I'd just like to add to the record to kind of illustrate how this investment would help not just Lancaster County but the state. In response to what Senator Holdcroft just asked, this is going to be targeting people who are on some sort of level of supervision in the community, either on a diversion program or on a type of problem-solving court program and that's what Ms. Etherton's office is going to handle. It would also provide for services for those people who are in jail. You can sit in our jail system for sometimes up to a year awaiting resolution of your case and particularly for people who have high needs, their visits are reoccurring to the jail. In other words, they are committing crimes, but they're not the level of

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severity that's going to end up them going to prison. And many times, their criminal acts are related to mental health issues, substance abuse issues. And while it may seem sort of odd that the jail would somehow be lobbying for money to try to treat those people, the reality is that the money is not there. They're going to have to house them anyway. It's advantageous, not only for the people, but for the system to have people who are sitting in the jails receive some sort of beneficial treatment, whether it's substance abuse treatment, psychological treatment, something like that, because eventually, they're going to get out of the jail system. And as Senator Geist [INAUDIBLE] before, if you have some sort of meaningful transition and supervision when they're in the community, they're just less likely to come back. And that's why this bill is, is a good idea and that's why we support it. In the time that I've been practicing, mostly in Lancaster County, I've seen what's been done here at the Lancaster County level with Ms. Etherton and also with Mr. Johnson and the jail. At one time, there was no services whatsoever in the jail. If you had a client who was on bond, they would just sit there waiting to go in front of the judge to get their case handled one way or the other. But there really has been an investment to try to deter and lower recidivism. And as I said before, it's good for the county and it's good for the state. I'll answer any questions if anyone has any.

DeBOER: Any questions from the committee? Senator Ibach.

IBACH: You started answering my question. Thank you, Ms. Vice Chair. You started answering my question but then you didn't, so I'm going to ask it. So it's kind of two part. First of all, is this a project that Lancaster County and the city of Lincoln will also support?

SPIKE EICKHOLT: I, I think so. I can't speak for them. It looks like some of the grants are going to, sort of, bolster some of the diversion options now. And Ms. Etherton kind of alluded that there are several diversion options. The simplest one is like a STOP program for a traffic case. A little more intensive is something for a first-time offender, like a misdemeanor shoplift. They can go to a diversion program and have the case dismissed. But for some people, for usually low-level offenders, they may commit a relatively serious charge that requires more supervision or they may have a minor charge but due to their sort of risk level, their addiction degree or their mental health needs, that type of diversion program needs to be tailored a little more intensively. And I think that's what part of the grant is for, is to provide for staff, equipment to monitor those people so that when they're on diversion, they're just not checking in once a week and doing whatever they can do without getting caught. They're

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actually daily checking in, actually going to a rehabilitative program, maybe doing community service or something similar. And I think that that's what part of the investment is for.

IBACH: All right. Thank you. Thank you. Ms. Vice Chair.

DeBOER: Other questions? That's all I see at the moment. Next proponent testifier.

JASMINE HARRIS: Good afternoon, Vice Chair DeBoer and members of the Judiciary Committee. My name is Jasmine Harris, J-a-s-m-i-n-e H-a-r-r-i-s. I am the director of Public Policy and Advocacy with an organization called RISE. We work with individuals. We are the largest nonprofit here in Nebraska, focused solely on habilitative programming and reentry supports. Our mission is to break generational cycles of incarceration. We will support this legislative policy that was introduced here. Within the past year, we have become the nonprofit partner with Harvard's Access to Justice Lab and the University of Zurich on a study that will look at the long-term impacts of short-term incarceration of individuals in Douglas and Lancaster counties. And within the five and a half months that we have been doing this study, we have about 100 people who have been enrolled. And what we see a lot of are individuals who struggle with mental health and substance use disorder. We have case managers as part of this partnership, so that way we are connecting individuals with community resources and really working out a plan to get them connected to the needs that they have. Our case managers really, really try to work with individuals, but we know that if we can have more resources and more opportunities for those individuals, the more likely their success would be. We're sending out court reminders, getting individuals to those court reminders and to those court dates and things like that, but we struggle with finding enough resources. So if we have individuals who do go back into the facilities, into the jails, if they have the resources there, it will be very beneficial for them to connect there, as well. And if there are opportunities for the community corrections, if those individuals are in diversion programs and things like that, we just know the more resources, the better success that people would have. So I just wanted to be on record that we support LB368 and ask that you all vote this out to General File.

DeBOER: Thank you very much. Are there questions?

HOLDCROFT: Yes.

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DeBOER: Senator Holdcroft.

HOLDCROFT: Thank you. Vice Chair DeBoer. First of all, I wanted to compliment RISE. This morning we toured the penitentiary and, and the warden had nothing but good things to say about it. She said, to quote her, she said, we love RISE. Now, I had a presentation from a gentleman from RISE about two years ago at a Rotary Club, and it seemed that the emphasis back then was to hook up with inmates that were within six months of their release. Was, was that-- is that-- now what I got the impression today was you've expanded that by quite a bit.

JASMINE HARRIS: Yes. We've expanded. Our sole focus is still our in-prison program. And we work with individuals about a year before their earliest release date. And then we've now expanded into youth and family programming. We have our business incubator where we're working with individuals who have been system impacted who want to start businesses. And then this is the now partners, a partnership with those universities to look further into pretrial.

HOLDCROFT: So when you say you need more resources, is it both funds and people or instructors or is it one or the other?

JASMINE HARRIS: For this bill specifically, I think it really goes to the resources that people can connect to while they're in those programs, whether they're in the jails or doing those diversion programs, because we know everybody isn't going to the prisons. A lot of people are on probation in those community diversion programs. So the more resources we have in those kind of programs, the more we can deter people from being incarcerated in the state facilities.

HOLDCROFT: Thank you, again, for everything you do.

JASMINE HARRIS: Thank you.

DeBOER: Any other questions? Senator DeKay.

DeKAY: Thank you, Vice Chair DeBoer. Ms. Harris, on your-- in your diversion program or when they're out in, in your housing and counseling takes place, what happens at the-- in you-- with your funding, what do you need to-- so if the counseling need to continue after their time in the, you know, reentry program, how does that help or what happens with those people so that they continue to get the counseling that they need at that time?

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JASMINE HARRIS: So on our program that we're doing on the pretrial side, we don't provide the counseling. We are-- we have case managers who are connecting people to the resources in the community. So they're finding counselors, they're finding detox centers, they're finding mental health providers, things like that. So I just figure the more resources we have in a centralized location like the jail or with the diversion programs, the easier it is to connect people to those services, because we know that mental health providers are short, the waitlists are long. So we find times where we're waiting almost 30 days to get someone connected with a mental health provider. And so the more resources we have in the community, the more we are able to address those situations that are going on.

HOLDCROFT: Thank you.

JASMINE HARRIS: You're welcome.

DeBOER: Other questions? Thank you so much for being here. Next proponent. Is there anyone here to speak in opposition to this bill? Is there anyone here in the neutral capacity? For the record, we've, we've received three letters of support. And so with that, we'll close on LB368 and we will open on LB163 and LB432. We're going to do a joint hearing. So welcome to your Judiciary Committee, Senator McKinney.

McKINNEY: Good afternoon. Good afternoon, Vice Chair DeBoer and members of the Judiciary Committee. My name is Terrell McKinney, T-e-r-r-e-l-l M-c-K-i-n-n-e-y, and I represent the 11th, the 11th Legislative District in north Omaha. We are here today to discuss LB163, which would provide various reforms to our state jails and prisons. Also, LB432, to adopt the Second Look Act, change provisions relating to sentence, to sentences and certain offenses, provide for good time for incarcerated individuals serving mandatory terms, expand parole eligibility and geriatric parole and change provisions relating to parole. First, I will discuss LB163. Since my time in the Legislature, I've spent a lot of time inside of our state prison institutions. And it's not to brag or say I'm doing more than others. The committee this morning went to the Nebraska State Penitentiary to highlight that to showcase my commitment to those individuals inside-- men and women. And it's not lost on me that when individuals commit a crime, that they should be held accountable. On the same coin, I am also a believer in redemption. At what point do we allow incarcerated individuals to redeem themselves? I am also aware that states have realized a long time ago that incarcerated individuals fill a need in the prison industrial complex. Is this the reason why the stipulations

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and requirements are not designed for incarcerated individuals to be successful? Our, our justice system is designed for them to fail and return to prison or to be cash cows to the state forever. Because let's be truthful, incarceration is punitive always. It is not to rehabilitate. If it was, we would see different outcomes. I don't know how anyone who has been incarcerated for 15-20 plus years is supposed to successfully reenter the community or society when the system does not operate properly or humanely. My office receives many letters and calls pertaining to the operations of the Nebraska Department of Punitive Services from those inside and out. We have a department that has intentionally deferred maintenance to ask for a new prison, in my opinion, but one that has no plans to, to actually close NSP just to repurpose it and I believe, for minimum security. Many issues can be solved with the funds requested for the new prison. I decided to introduce LB163 to focus primarily on prison operations and management, which can get lost in a criminal justice conversation. There are many elements to the bill that I will highlight. Section 1 will create a new section that will prohibit the construction of a new state correctional facility or local jails unless admissions and length of stays have declined over the preceding 20-year period in that jurisdiction, I did that because honestly, even if we were to build another prison, by the time it opens, we'll need to build another one. So I just strongly believe we need to change our policies. Section 2 would create a new section. This section would allow non-legal mail of an inmate of a correctional facility to be searched, but the contents could not be disclosed by staff except and of course, the such person's official duties. Legal mail to an incarcerated individual could be searched for contraband in the presence of the recipient, but the contents cannot be read without a search warrant. I brought this because, currently, the department has been copying and shredding legal mail of incarcerated individuals. The issue with this is some of those original documents are needed when they're up for appeals, but the department has been destroying them. Section 3 would amend Section 28-9-- 936 to provide additional exceptions to the criminal offense of bringing an electronic communication device into correctional facilities. The additional exceptions would include members of the Legislature and the Inspector General, Ombudsman and some others. I brought this because it makes no sense that state senators can't take phones in prisons. I'm assuming, and they can come up and counter it, that they put this policy in so we couldn't identify how horrible the prisons are being ran. Section 4 would amend Section 47-101.01 to prohibit county jails from generating revenue by administering telephone and video conferencing services and require county jails to negotiate contracts with telecommunication,

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telecommunication providers to provide the lowest cost to incarcerated individuals. Because the state took the responsibility to incarcerate those individuals, I think it's inhumane to overcharge them and exploit them because they're incarcerated. Section 5 will create a new section that would prohibit a county jail commissary for marking up goods more than 10 percent, because why are we marking up goods for people that the state takes responsibility to house? Section 9 would amend Section 47-201.01 to prohibit the jails from getting any revenue from the cause. Section 10 would create a new section to prohibit the same thing-- markup with the county jails. Oh, Section 12 would amend another section to allow for incarcerated individuals to be paid a minimum wage. They are not slaves and should be treated as humans and just because they are incarcerated does not mean that they should be paid \$0.50 or \$0.75 or \$1.26. It makes no sense. They have families. Section 13 would amend Section 83-178, to require the Department of Punitive Services to include inmates-- incarcerated individuals last known address and legis-- legislative district in their file. Another one to highlight is Section 17. It would create a new section to require the Department of Punitive Services to contract with a book vendor or vendors to provide culturally diverse selection of books. They, they switched the vendor and since I've been in office, I've been hearing complaints from many, many individuals inside that the current vendor does not have a diverse selection of books or culturally diverse selection of books and it's an issue. Section 19 would add some funds to the reentry cash fund to help individuals when they're being released. Section 21 will create a new section. It would allow the Legislature's authority to assert control over the state's penal institutions, according to the Constitution, in the event of a prison, prison overcrowd situation or staffing emergency. And I don't expect most of you all in here that showed up today to agree with this bill. Some probably think I'm crazy or overly ambitious. The fact of the matter is that it doesn't matter if you are for prison reform or you want to be tough on crime. Our state prison system to date has been running poorly from top to bottom and changes are needed. We cannot build our way out of poor management, a lack of humanity, intentional deferred maintenance and not looking at these issues through a holistic lens. Next, I'll discuss LB432. After LB920 failed to pass last year for many reasons, many have asked, what's next? How do we get something accomplish-- accomplished that will be meaningful? My answer is the work of being bold going forward, when introducing bills pertaining to criminal justice. Many will come and oppose but will not offer answers to our problems besides saying no, making more crimes, running our prisons poorly and trying to build another one. Many fearmongers say things that don't make sense just to feel good. A

good number of my neighbors, friends, family and constituents are the people you fear the most. The disproportionate representation of many from my community and others point to this. They don't live in many of your communities, nor have you or will you interact with them. Many have come before this committee in my time here. Do they actually scare you? What is your motive to deny much-- to deny much needed change? Shame on you if it's to get a check, stay in office or to get elected. That strategy has yet to work, not even a little bit. If it did, we would see a different reality in our prison system and it wouldn't be one of the worst in the-- in our country in the world. And I'll make it plain and I think you all probably know this. I am not scared of the police, the county attorneys or anyone else that benefits from our overcrowd situation. I am not here to make the Nebraska Department of Punitive, Punitive Services comfortable. I'm here to fight for those many of you have written off. Changes must be made to decrease our population, to prepare the men and women inside for success after incarceration and allow them to showcase to us that they have changed. The current dilemma we are facing as a state is not fiscally conservative and we're not saving any nickels. We're only throwing more into sinkholes in the name of being tough on crime. According to a Crime and Justice Institute that was-- Institute report that was released, over the last decade, Nebraska's increased it's prison population by 21 percent, outpacing state population growth nearly threefold. Just listen to that. Our prison population has grown more than the population of our state. Nebraska was one of just four states across the country that saw its incarceration rate increase in 2020, which is counter to national trends focused, focused on lowering incarceration and crime, crimes, crime. In 2020, correction expenditures were over a quarter billion dollars, not including an estimated \$270 million for a new prison to meet the needs of a growing prison population. Yet this increase in, this increase in financial burden for Nebraska taxpayers has yet to enhance public safety. Over the last decade, recidivism rates have not declined when nearly one-third of individuals released from prison, prison return within three years. Given these conditions, the corrections system cannot do what taxpayers expect. Absent policy changes, Nebraska prison population is projected to increase by roughly 25 percent by 2030. This growth would likely require building a second prison, in addition to the quarter billion (dollar) facility proposed by the Governor to accommodate the current population. Building more prisons is not the answer. Building more, more means creating more crimes. When you build more prisons or bigger prisons, you have to create more criminals to fill them. Criminal justice expansion does not very little to address-- does, does very little to address the needs of people

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experiencing harm or violence. What is needed is prioritization of policies that reduce the number of people in prisons, which leads to my introduction of LB432. It has provisions known as the Second Look Act. It also has things dealing with the Commutations Review Board. Part of it, part of it would allow for a person serving a sentence of more than 15 years for an offense committed when the person was the age of 25 or younger to petition for review of their sentence after serving 15 and a half years. This section will also allow persons serving a sentence of more than 20--20.5 years for an offense committed when the person was 26 or older to petition for review after serving 20.5 years. A petition could not be filed for at least two years. Section 5 would require NDCS to provide a notice of offender's rights under Sec-- under Second Look Act. I won't take forever, but-- and just to close and we could-- I got a lot more to say on my close, but to close, you know, we will have a substantial increase in our prison population if we don't make changes to our current policies. Spending \$500 million on corrections makes no sense. It's not even responsible. We have people that stand up every day and say we need to save money, the state is spending too much money and all these type of things. But we keep throwing money at prisons just to say we're tough on crime. And it makes no sense to me. Six out of ten of our prisons are 120 percent operational capacity. We have an aging population because the length of stays are going up and if we don't figure this out, all we're going to do as a state is just continue to put money into building prisons. And it makes no sense. And, you know, somebody is probably going to come up and say, what about the victims and those type of things? And I'll say this: today is one of the hardest days of my life that I got to deal with every year. This day ten years ago, I was talking to my best friend at one hour and the next hour I was being told he was shot. And the next hour he was dead. And I think about that and I walk around with that every day of my life. So when people get up here and say, Senator McKinney doesn't care about victims, that is a lie. I deal with it every day. But I also am a human and I look at it from a holistic perspective. Yes, I would like people to be held accountable, but we have to look at that accountability in a better way. The solutions that were proposed 30 years ago or 20 years ago led to a mass incarceration in our state and our country and it's not working. Nebraska is one of a few states that is still trying to build their way out of this. We have to change our policies. And I'll leave it there. Thank you.

DeBOER: Are there questions for Senator McKinney? Senator Geist.

GEIST: I do have a couple. Thank you for, for bringing these issues to the forefront, because I think it's, it's time, probably, to have

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another discussion on this. But-- so on LB163, with the provisions in the first paragraph, the first section that talk about not building a prison unless for 20 years, we have a reduction in our population. So basically, you don't want to build another prison now.

McKINNEY: I think-- the, the issue I have with the discussion about the building of another prison is, saying that ignores that we need to make some policy changes. And I think we need to pause the discussion on building another prison until we have a real discussion about policy changes to decrease the population. A prison is not going to solve our problems at all. And then we'll have to wait 4 to 5 years before it asks for a line. And by the time it's all gone, it's going to be super overcrowded and we'll need to build another prison. So I don't know why we're talking about another prison over talking about policy changes.

GEIST: Well, but currently, NSP is overcrowded and the conditions aren't great. So if we don't look at another place for these humans to live, then that's going to just increase without relief even in five years if we, if we don't look at--

McKINNEY: But even if we looked at another place, we still got to deal with the issue that it's overcrowded and we've got to figure out how to reduce that population--.

GEIST: Exactly--

McKINNEY: --or the populations in the state.

GEIST: --which brings me to LB423. So, so if we want, if we want this to be a less punitive system, which we do and we agree on that and we want more programming to help inmates become rehabilitated so that when they are let out, they're better people than when they went in. And we agree on that. But LB423 just talks about reducing the penalties and reducing the sentences so that people get out earlier and unless I have not read it, there's not anything in this bill that makes people better when they're there that puts in that, that programming that makes people better when they get out. And that's my concern about it.

McKINNEY: I've got-- I have other bills, too, dealing with those issues, but I, I would say this: a, a part of it-- it says in there, an individual cannot petition a Parole Board until, until after a certain period of time. And the reason for that is to allow for them to do the things necessary to improve themselves and show to us that

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they are eligible to be released. It's not to say-- it's not to reduce it and say you get out right away. They still have to show that they improved themselves and we also have to trust the Parole Board to properly evaluate them. It's not a "pass this bill and you get out the next day" type of bill. It's yes, we're, we're going to try to reduce the population, but we're going to be smart about it and allow them to do-- take programming, take advantage of courses and classes to showcase to us that they have improved.

GEIST: Well, my concern is, is that we're not putting resources into that. And, and so--

McKINNEY: We can.

GEIST: And I know-- we'll talk about that more.

McKINNEY: We this is just, this is just one bill, but I'm all for putting resources-- that \$2 million should be \$20 (million) from another bill. We should take all the money that is supposedly proposed for the prison and put the resources into the people inside.

DeBOER: Other questions? Senator DeKay.

DeKAY: Thank you, Vice Chair DeBoer. Senator McKinney, I was on that tour this morning. It was an eye-opening experience for me, to say the, the least. One question I have, coming forward with-- if we're going to reduce incarceration time through early release or programs like that, how does that help when we're having a reincarc-- reincarceration rate of 33 percent or 30 percent, whatever that percentage was, within three years? How does that help the prison reduction if, if, if it's almost like a-- I don't want to say it this way, but like a revolving door coming out?

McKINNEY: So I'll repeat, this is one bill. But I think-- but what we need to do, we need to invest more dollars into putting more staff inside these facilities to increase the amount of programming that the, that the state can offer. So, yes, this is a part of it, but the other part is making sure that they are able to take the programming and take the necessary courses to improve themselves so they are not returning. But also on the front, there's other things on the front and back end that we got to with-- that we have to improve as well, making sure that parole is doing their part and probation is doing their part, as well.

DeKAY: The pro-- I agree with the programming. Number one, we want to make them better people coming out than they were coming in. And when

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they can reintegrate within society and have a productive life going forward. So.

DeBOER: Are there other questions? Senator Blood.

BLOOD: Thank you, Vice-Chair DeBoer. And thank you, Senator McKinney, for being a champion of this cause. I actually have a couple of quick questions, but I'm not going to use the phrase better people. I find that really offensive. I keep hearing that phrase today, that we expect them to leave the prison being better people. That means we're implying they weren't good people to start with. We know that things happen, circumstances happen and people sometimes do stupid things in, in bad circumstances. It doesn't mean that they need to be made better people. It means they need to be rehabilitated or they need to be given a chance. So I'm not going to use that phrase because I'm finding that really annoying. I have a technical issue. One of the issues is in reference to LB432 and it's more one of question. Section 29 would amend 83-175 to allow NDCS to place offenders in the community for medical treatment. Do they not already have that ability or is it-- when you're saying place offenders in the community for medical treatment--

McKINNEY: So this--

BLOOD: --do you mean move them out.

McKINNEY: This-- that, that section is because not last summer but the summer before last-- and this is how that came about. There was an individual that I was trying to help that developed a tumor and he was terminally ill. And the Department of Corrections and Parole played political football with his life. He was terminally ill, he was dying and they would-- and they kept moving him back and forth from hospital, back to the pen, back to the hospital, back to the pen, and just made it super difficult. His family bought medical equipment and all, all those type of things to take care of him toward the end of his life. It did-- he did end up getting released because of them playing political football. So that came about to say, OK, if somebody is determined terminally ill, there should be a mechanism to allow those individuals to get home to their families. We could-- we, we-- it-- we could talk about whether they should be released or not, but the thing about it is somebody is dying. At the end of the day, they're dying. They're not a threat to you, me or them or anybody in the community. They're terminally ill. And I believe if somebody is dying, they shouldn't die in prison.

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BLOOD: So do we want to be even better defined in that then? Because to me, when I read it, I just hear, to place offenders in the community for medical treatment, which I feel they have the ability to do that, based on that sentence right now. You're talking about people that are terminally ill. Is that correct?

McKINNEY: Yeah.

BLOOD: I think so. And then the other question that I have, so you're talking about staffing shortage and how we need a better ratio. How are we going to find those employees?

McKINNEY: How are we going to find them? Good question. I mean, you don't build a prison in Tecumseh.

BLOOD: Right. I mean, that's, that's a given.

McKINNEY: That, that, that's a problem. I mean, the culture has to change. You know, I know just speaking to some people that do work inside, the culture is a top-down culture. And it doesn't allow for flexibility and it doesn't allow for individuals that work there to feel like they're supported or-- they deal with a lot of mental issue-- mental health issues because, one, it's a stressful job. And two, you've got an employer that doesn't, in my opinion, got their best interests at heart. So I would say we've got-- we have to change the culture. So hopefully whoever is the next, next director changes the culture.

BLOOD: How do you see that happening? I mean, to be--

McKINNEY: How do I--

BLOOD: --having worked maximum security--

McKINNEY: How do I see it happening?

BLOOD: --and worked in the prison, I can tell you that it's a fishbowl. You're with people who have nothing but time on their hands to figure out how to screw you over every day as a staff person. And then, being a correctional officer, being a corporal, being a caseworker, it's kind of like being in the military. The only people that really understand it--

McKINNEY: They got time on their hands because instead of--

BLOOD: We're not rehabilitating them.

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McKINNEY: --instead of actually living up to the name of corrections, it's all punitive. So we got to-- yeah, you improve the culture of the staff but you got to improve the culture of the prisons.

BLOOD: Oh, I agree.

McKINNEY: --and make it more about improving people instead of housing people.

BLOOD: I, I completely agree. But I'm saying if you want to change the culture also amongst the staff, I think we have to have more people. We have people that sit on Judiciary or come out on the floor and say that they're subject matter experts have-- who have never worked in a prison. And I think it's always interesting how we often-- and I'm not saying you necessarily, seem to know better than the staff themselves what it's like to be locked, to be locked in all day long with offend-- these-- with those that are incarcerated. And the mental health of both the inmates and the staff is a big issue. And I don't feel we're addressing either of those issues. And I always tell people working in a prison is kind of like being in the military. The only people that understand are the people that work with you. And I'm sure those that are incarcerated feel the same way.

McKINNEY: I'll say this: instead of the department or the Governor coming and proposing a prison, propose a bill to put resources into mental health for staff and individuals that's incarcerated.

BLOOD: Yeah, no argument here. So I appreciate-- I know it's a piece of a really big puzzle and, and that there's more questions than I think we have time for today, from me. So I'm hoping that you and I can sit down, have coffee and talk through some of these things because we've talked about them for decades. When I worked there in the late eighties and early nineties, we had prison overhead crowding, that's where Tecumseh came from. We're always trying to build our way out of it. We're never trying to figure out why we need to keep trying to build our way out of it. So I see what you're trying to do. Thank you.

McKINNEY: No problem.

WAYNE: Any other questions from the committee? Seeing none, thank you for being here. First Proponent. Welcome to the Judiciary Committee.

THOMAS RILEY: Thank you, Chairman Wayne and members of the Judiciary Committee. My name is Thomas Riley, T-h-o-m-a-s R-i-l-e-y. I'm a Douglas County public defender and I am here-- I'm going to limit my

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comments to LB432. And I'm here on behalf of the Nebraska Criminal Defense Attorneys Association and the Douglas County Public Defender's Office in support of this bill. Obviously, it's an omnibus bill and there's no way on earth I could address the majority of the issues that are a part of this. But let me say that the, the bill addresses two, two things in my opinion: people that maybe are going into prison that don't belong there. And secondly, people who are in prison and are there for far too long. I was-- Senator Geist, Senator McKinney, myself, Don Kleine, were on the committee that dealt with this last year that resulted in LB920 that was unsuccessful. LB432 includes a lot of that. And my suggestion is that the bill be advanced to the floor. Let me talk about the-- what Senator McKinney called the Second Look Act or a portion of it. Basically, the people who get sentenced to life or 80-120 or 150-200 years in prison, obviously, are never going to be parole eligible in their lifetime. And the, the point of this bill is that some of these folks that have these huge numbers, after decades in prison, maybe don't belong there anymore. Part of the reason the population is so overcrowded is because there are people in there in their sixties and seventies who don't need to be there anymore. And this-- when I first started, they had commutation hearings. Now, it's-- you go to a Commutation Board hearing and it's no, no, no, no, no. Let me say that I represented 13 people who were resentenced, who were originally sentenced to life in prison, but the Supreme Court said juvenile-- juveniles couldn't get life without parole. Six of them have been released and not one of them has re-offended. Not one of them has re-offended. And they had no hope at all. This bill recognizes-- that portion of the bill recognizes the science about the under 25 age group. And that is just undisputable science and it gives them-- those individuals an opportunity. Keep in mind, when a judge is sentencing someone-- we're seeing judges give 49 to 50. These people are not going to get paroled. One of the reasons that the, the recidivism occurs is because they, they had-- they're not on parole, they're just kicked out. And we know how that went with several high profile cases. I see the red light's on and I'm--

WAYNE: Any questions from the committee? Seeing none, thank you for being here today.

THOMAS RILEY: Thanks.

WAYNE: Next proponent.

TIMOTHY NOERRLINGER: Good afternoon, Timothy Noerrlinger, N-o-e-r-r-l-i-n-g-e-r, on behalf of the Nebraska Criminal Defense Attorneys Association. I was supposed to talk about LB163, but I don't

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expect it'll take the whole time and may address some issues of LB432. But with regard to LB163, the association supports that bill. Specifically, there are provisions within it that deal with legal mail. At this point, our clients are telling us that when we send them letters, even though they're marked as legal, they are being opened in front of them, copied and then given to our clients. Obviously, that is a concern with defense attorneys that have either open criminal cases or appellate work going on. Those are confidential communications. They, oftentimes, include information about strategy, which should not be within the purview of the government, in our opinion, so we support LB163 specifically to allow for that. With my remaining time, I would also indicate that we support LB432. Certainly, mandatory minimums, especially drug mandatory minimums are a problem that we see frequently. It is arbitrary and capricious at best to have an individual that has 9.8 grams of meth be eligible for drug court or probation, where somebody that has 10.5, which is infinitesimal different amounts, is suddenly ineligible for probation and must serve a three-year sentence and also ineligible for the drug-- and the problem-solving courts such as drug court that I think all of us can agree are key to reducing recidivism. And one, I don't believe, can, with any clear-eyed rationality, say that that same applies to putting someone in the Department of Corrections. We also support the theft enhancement provision or making it so it's only within a ten-year period. As an anecdotal example, I can tell you five years ago, I had an individual that was homeless. He took a few things from a convenience store. They cost less than, than \$5. He then went to prison for two years and one of those would have not been enhanceable if it hadn't been for this. Certainly, I think this bill tries to address a lot of other things, but sending people to prison for substance abuse and low-level status offenses and being unhoused certainly seems to exacerbate the problem. And the Defense Attorneys Association is support-- is in support of giving the courts greater discretion to avoid mass incarceration. And I'll, I'll finish on that. I think Mr. Riley talked about most of the other parts of LB432 for our organization.

WAYNE: Thank you. Any questions from the committee? Seeing none, thank you for being here today.

TIMOTHY NOERRLINGER: Thank you.

WAYNE: Next proponent. Welcome.

MERLENE MASON: Hello. My name is Merlene Mason, Mason, M-e-r-l-e-n-e, and I'm here to support the LB432 on behalf of my little brother,

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Rodney Mason, that has been locked up, currently, 20 years. To me, I just feel like it doesn't matter what race or nationality you are. I feel like the, the justice system should be fair all across the board. Because for my little brother to have been lock-- be locked up all these years, I, I just feel like the justice system was not on his side. And for him to have both of our parents pass away while he's locked up, for him to not even be able to get out to even come to the funeral or for him to, you know, be up here doing all these programs-- he's, he's doing a wonderful job. He's haven't been in no trouble in over 15 years. And I'm just a very-- advocate because my brother deserves a second chance out here. He has a grandbaby on the way, never got to raise his daughters. And for the system to not try to even give my brother a second chance is sad, is heartbreaking. Because he's a good person. My-- over the years, my-- when he was younger, before he was a teenager, my mom tried everything as a single mother to try to get him help. She tried therapies. She tried to get him mental help, you know, and I look at it like this. The system should look at everybody as a whole. I think they should look at every individual by themselves, because had my brother been able to get the help that he needed when he was younger, maybe he wouldn't be here right now. My mother tried. She was a single mother. She tried all that she could. I mean, like even from him being locked up as a, a young person, it was just like, my mom-- she was never one of them type that will sit here and, you know, be like, OK, well, you know, my son didn't do this, my son-- my mom is one-- she was one that said, yes, if my kids did it, hey, they deserve to, you know, get, get in trouble behind whatever the consequences is. But I just feel like this, this LB432, it please-- it will give my brother a, a, a second chance at life. And like I said, even if he has to be on house arrest for five, six year-- I don't care what it is, but just to give him a second chance. He was 21 when he locked up; he's 41 years old. He was just a baby himself. So I'm just please asking.

WAYNE: Thank you. Any questions from the committee? Seeing none, thank you for being here.

MERLENE MASON: Thank you.

WAYNE: Next proponent. Welcome.

ANDREA POSTON: Hello. My name is Andrea Poston, A-n-d-r-e-a P-o-s-t-o-n. I'm here on behalf of my wife's brother, Rodney Mason, as well. He was locked up in his twenties for a crime that was not able to be proved, but it was hearsay. He has done so many programs. I don't want to repeat everything she said, but he's done so many

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programs to try to rehabilitate himself. He's, you know, got, got degrees and certifications. And what, what is the point of corrections, if not to correct what was done and, and get them the rehabilitation that they need. And at his-- you know, he's 41 now. So I just-- I am, am-- I'm pro this bill because he deserves a chance. If he didn't get to raise his kids, maybe he can raise-- help with his grandkids. And just having him just sit there in prison with no chance for parole-- I did a research study in 2019, and I named it The Red Tape of Bureaucracy, because at that time, in 2019, it cost \$30,000 just to house an adult offender. And Senator Blood, you asked where would the resources come from to, to get the help needed in prisons that could help-- use those resources for other things besides just housing an adult offender for the rest of his life. That's all I have to say.

WAYNE: Thank you. Thank you for being here. Any questions from the committee? Seeing none, thank you for being here.

ANDREA POSTON: Thank you.

WAYNE: Next proponent. Welcome.

LORENE LUDY: Thank you. My name is Lorene Ludy. L-o-r-e-n-e L-u-d-y, and I'm here on behalf of people of faith, people of good conscience, people who care about other people. My faith tradition teaches me to treat people as I would want to be treated. I go into the penitentiary every, every week for years. Well, for the past year, I have been going in every week to teach a course on alternative to violence. I come into contact with hard working, sensitive, thoughtful, compassionate people. And I wonder why-- what are they doing here? And I wonder, if your children made a stupid mistake when they were a young adult, would you want them locked up for the rest of their lives? Are you willing to treat other citizens of Nebraska that way? If your brother did something stupid when he was 18 or 21 or even 25, when his silly testosterone brain did stupid things? Would you want your brother locked up for 20 years? You know, most of you, that probably wouldn't be the case because you're white and you would have good lawyers. I'm speaking in favor of LB432. The Second Look Act. Second look-- respect means second look. I think it's time that we show respect to everybody, including the men and women that are in our prisons.

WAYNE: Any question-- were you done? I wasn't sure.

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LORENE LUDY: If I have another pause, God might give me a little bit more to say. I don't know yet. Oh, the yellow light's gone on.

WAYNE: Any questions from the committee? Thank you for being here. Next proponent.

JASON WITMER: Jason Witmer, W-i-t-m-e-r. I was just thinking for a moment when I was listening and I've been listening the last week to so many things and, of course, for years. And then I just realized-- not just realized, but we keep looking for people with titles who are the experts. And I think that's why we are-- dug this hole. Because I was raised by the state. I was foster child all my life. I got worse and I got worse. I became state ward inside the prisons. I did 20 years in there and I was raised by men who have life sentences. When I say raised, I mean the ones that started maturing me to be somebody better. Life sentence is 150 years. Just this amount, a massive amount of time that expanded their mind into the state of, I got to do something different and I'm in the worst situation I can possibly be. And if anybody wants to know how worse situations can make you do terrible things, as well, like when we keep talking about misconduct reports and people fighting-- January 6, it's a whole bunch of legal citizens going insane because they all got together and they was all packed together with terrible mindset. I know that's very political, but it shouldn't be. It's a statement. And a prison system is like that all the time with a bunch of people packed in with their traumas and their negative mindsets and trying to get past it. And it's really hard to do. But we are-- this bill addresses people who've done 20, 25 years. You're going to find that they're not in there gangbanging. They're actually, they're actually the best course of men like me, children like me, that come in the system going backwards and getting worse, to find a way to get-- to see somebody saying that there's something different and see it represented in what they have done with their time, what they do with themselves. And the part-- I talk about the negative environment is because a lot of times, the way you have to live in situations that's often created by other people, knocks them down to say like, well, we seen, five years ago, this happened. This time this happened. But that's part of the prison system. I think there's a lot of things that can be addressed. But I will tell you right now, I can say, you start paroling them men out, I can tell you a dozen organizations that will work for them to be successful. I can tell you dozens of individuals in, in grassroot groups that will work for them and be successful-- work with them, including myself, including myself. So I speak as an advocate, I also speak as somebody whose mother was killed. And so I do speak in favor of that individual coming out as well, if that is the course that he chose to take with

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his life as he matured inside to be better like these men. So this is not a lessening of punishment here. We, we have this state of continuously growing it, growing it, growing it, and then suddenly talking about we're lessening something. We're in the hole because we've grown it to where it's been at. We're going to hear people come up and speak about this.

WAYNE: I got to cut you off. You've been here before. You know. I appreciate it, though. See if there's any questions. Any questions? Senator DeBoer.

DeBOER: Thank you, Senator Wayne. So I've some vague familiarity with some of the good work that some folks are doing on the inside in sort of peer-to-peer kinds of situations and stuff. Do you have any sense for, sort of, how long the general trajectory is between when they sort of start out and when they get to that point where they become the mentors and they become sort of the ones that are helping out folks like you and things like that? What's the time frame?

JASON WITMER: It doesn't take 20 years. I can tell you that. Sometimes-- it's definitely flexible, but what-- sometimes, what you're seeing is, people are coming in young; in a couple years, you're thinking, like they're out of control; because, one, when you come in, you have one thing to hold on to-- whatever reputation you had out there because nothing else-- nobody's giving you hope for a successful future because you came out of a whole environment that has often has all these factors in. So you-- so that's what you're seeing and it's really hard to cling to that. But a couple of years-- martyr, I am not. When I got to-- known men who have killed people, I was-- became aware, at some point, that I'm being friends with people who, possibly, could have killed my mother. Right? When I advocate for that, I remember that. But I also remember that, yes, I got that separation. But these aren't a whole-- they're not what they did. We can't heal what we did. That's just-- I don't need to tell you that. We can't heal what we did. But I can tell you from experience that the same people that I've harmed have reached out and I put myself out there because they deserve that. I don't deserve to go to them. And they get a sense of healing to know where you're at, that you're doing something different. Nobody-- I have yet to meet anybody who's healed because they're-- somebody is sitting in jail for a life. It's never happened for me. It's never happened for me.

DeBOER: Thank you.

WAYNE: Thank you. Senator Geist.

GEIST: I so appreciate your testimony. And, and I know we've met before and-- my question, though, is we're on the side of having to make the hard decisions of what about the people that aren't like you, that come out and they hurt other people again? And that-- that's the weight of the problem. It's not people like you. It's not even the people that mentor you. It's those that have not changed. And, and that's the difficulty here. I want to give people second chances and, and in many cases and in many ways, I would like to do that in a way, though, that also protects the public because really, that's our responsibility. I, I can't applaud you enough and I know there are many other people like you who make this a really difficult decision, who make this really hard. So I don't really have a question. I, I just, I just want you to understand in, in part, why this is hard. It's not because of-- if everyone was like you, this would not be hard.

JASON WITMER: So I'm gonna make a, a short statement.

GEIST: OK.

JASON WITMER: I know it's not a question Wayne-- Senator Wayne. But I want to say and I don't like to put and I'm not going to put names on it-- I know at least a half dozen men who've done murder out here in the community. They're not in the same spaces as me because they chose different paths with their life. But I know one of them. All the kids go to where he works, to work out in the neighborhood and do trainings and do all this little thing. And he's like their big uncle. And now the ones-- one of them hires people because he's learned to, you know, his art. There is a safe. It's called-- well, the safest thing we can do to the community is provide support. Prison is not support. I get there's people in prison who work there that do good, but you can't do good with a negative system. And prison is a-- it's just a trauma center, trauma on top of trauma. The, the success comes from diverting this money into the community. We have reentry groups left and right that spend their time-- and yes, you can't control each and every person. Otherwise, it would be true that mental health is dangerous, but it's not. Dangerous people often have higher levels of mental health, but it's not dangerous. That's why there's not a whole bunch of Nikko Jenkins effects, because they get support. But in prison, they don't get the support. We divert that money. You will find that, that you are safeguarding the community. If we, if we fuel that money inside, you will find that more of them men will have more resources to do what they do with the men in there. Because I would have come out as dangerous as I was as a kid, because nothing in there gave me hope until they did.

WAYNE: Senator DeBoer.

GEIST: Thank you.

DeBOER: Sorry. Just one more follow-up question, because I think part of what Senator Geist is getting to is that, you know, let's say there's one person who doesn't get rehabilitated in the course of even 20 years, ten years, 20 years, whatever it is. Is it possible for a Parole Board to see the difference? Is there enough of a difference between someone who is-- changed their ways the way you did and someone who has not, so that a Parole Board would be able to discern, oh, that one did not change. All of these other folks did change.

JASON WITMER: I'm going to lean mostly towards no, because the Parole Board is not made up by a dynamic of people who are able to see them difference. They're only able to see what they project as-- operating as law enforcement. Everything's dangerous, operating as the, the very mentally and escalating CO, correctional officer, that came up here the other day that everything's a danger. And it's only that. It's really hard to just see the, the better because we keep people who don't have criminal backgrounds that-- as for instance, I bet you that CO, if you pull his records and you go talk to people, he's escalated situations into the danger that he's talking about reducing with solitary confinement. He's displayed that, so it's really hard for a dynamic of people who don't have impact of people in there, who don't have people who actively work to reentry people in there. But you can see it in long-term records if you ignore the minor misconduct reports which somehow seems to be so dramatic to everybody, when it's a system, just-- you get wrote up for everything.

DeBOER: OK. So let me ask it in a different way.

JASON WITMER: OK.

DeBOER: Could people, not necessarily the Parole Board, do people exist who could distinguish the difference between the ones who have not changed and the ones who have?

JASON WITMER: Yes.

DeBOER: OK.

JASON WITMER: There's whole groups in there right now. Circle of life, that's mostly lifers. I hope if some of you all are voting against this and take this seriously, you would go in and sit in some of the meetings. There's mostly lifers, but it's not close. The IPS has

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people. The, the juvenile center has grown men in there who are the greatest element in that, that, that prison, the greatest element of possibility for juveniles who are hard to get over their impulse thing. You have examples of that, but they're ignored for the benefit of more-- another prison. Right now, that's so political, I don't think groups are even willing to listen to the alternatives that I hate to say, but them alternatives is the safest course for this state.

WAYNE: All right.

DeBOER: Thank you.

WAYNE: Any other questions from the committee? Seeing none, thank you for being here.

JASON WITMER: Thank you.

WAYNE: Next proponent.

FRAN KAYE: Thank you, members of the committee, Senator Wayne, Senator DeBoer, my own senator, Senator Geist. My name is Fran Kaye, F-r-a-n K-a-y-e. I'm here to support LB432. But I'd also like to say that after more than 25 years of volunteering in the prisons and with people out on the streets, I totally endorse absolutely everything that Senator McKinney said in, in LB163. In regard to LB432, we imprison too many people and often the wrong people for too long. Although Nebraska's prison population is not excessive by U.S. terms, it is unconscionably huge in comparison to those of other Western democracies. Nebraska incarcerates approximately five times as many people per capita as Canada. I've lived in Canada. Guess what? Nebraskans are not five times as vile, nasty, mean, cruel and dangerous as Canadians. They are the same. We have about the same crime rate in Nebraska as in Canada. We have twice the murder rate. Something's not working in locking up all of those people. It's not normal to lock up all of those people. It doesn't work. LB432 is a conservative bill that begins reducing excess prison populations in a thoughtful manner. Giving individuals a second look after 15 for young offenders or 20 years for older offenders maintains the elements of deterrence and denunciation, but allows for people to change and grow and to have a chance to be released when they can be assets to society, like Jason. Except for a handful of dangerous offenders, in Canada, the longest sentence is 25 years. Get it? 25 years. And very few people even serve that long and yet it works. We're not saying, oh, my goodness, they're going to get out. No, we've got used to it.

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And we don't have higher crime rates in Canada, yet we lock up five times as many people in Nebraska. What are we doing it for if it doesn't give us lower crime rates, if it doesn't make us safer? LB432 also provides for medical and geriatric parole, something that both saves the state money and allows at least a limited healing to families torn apart by incarceration. I had a good friend who died in prison. It was really hard on his family. Perhaps most important, LB432 substantiates that life without possibility of parole sentences are unconstitutional in Nebraska and substitutes parolable sentences for all non-capital crimes. Canada doesn't have a death penalty, by the way. I enclose a memorandum on the subject for Frank Root, a leader of the Circle of Concerned Lifers at NSP, which Jason just mentioned.

WAYNE: Ma'am, I have to--

FRAN KAYE: In short, LB32-- LB432 works. Thank you.

WAYNE: There we go. Thank you. Any questions from the committee? Seeing none, thank you for being here. Next proponent. Welcome.

Y'SHALL DAVIS: Thank you, sir. Hello, everybody. I'm Y'Shall Davis. Y'Shall is spelled Y'S-h-a-l-l, last name Davis, Da-v-i-s, and I am a proponent of the Second Look Act. And I would like to thank Senator McKinney for having a heart, especially since he comes from north Omaha and he's talking about people being returned back to north Omaha, recognizing them as humans and not as threatening as a lot, a lot of folks would like to assume. My understanding of the Second Look Act is that it's a conversation. It's not a demand that after 20, 25 years, you automatically get out. It's a conversation. How have these people been doing in the last 20, 25 years? Have they been getting written up? Have they been problematic? If not, you know, let's, you know, discuss a possible release date. That's my understanding. This is a conversation. I think it's a conversation that needs to be had. With it in place, I think it'll give individuals, lifers, incentives, you know, to do better on the inside, which would make life for other prisoners and staff much better. When these people have an incentive to say, hey, you know, if I can go the next 10 years, the next 15 years, you know, with the likelihood of getting out and yes, I want to take advantage of all this programming instead of trying to jam or just get out there and go reckless. Yo, I want to take advantage of this programming. The programming is the only means of rehabilitation, it sounds like, outside of the lifers being mentors themselves. So I mean, I think it needs to be entertained. I have a big brother doing life in NSP. He's in his 37th year. He got charged with felony murder.

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He was 18 years old. He never touched the lady. She saw him leaving after he burglarized the house. She had a heart attack. He didn't even-- wasn't aware that she even had a heart attack, you know, So he had no intentions on killing anybody, but he has life without parole in his 37th year-- has grandkids now that, you know, he didn't get to raise his son; he won't get to raise his granddaughter. To answer your question, I think Geist-- Senator Geist, you asked a-- one of you asked what was the-- how many years before you realized rehabilitation may have kicked in? Well, I went to a graduation at the RTC, the RISE, you know, programming they put on and I was talking to a young man and he told me, he said, you know, I'm doing like ten years. You know, I was a student athlete at UNL, got with some guys, they was doing drugs. Next thing you know, I'm on drugs, I'm doing burglaries. He said, now I'm here. You know, I'm doing all this programming. I'm ready to get out. He said after five years, it was overkill. He like, now I'm just sitting here like a-- someone kidnapped or something. He like, five years is overkill. But, you know, he's looking at 15 years. So, I mean, maybe five years is plenty of time for someone to get rehabilitated. Again, it depends on the individual. Mass incarceration today is the mathematical consequence of a grim series of legislative enactments, each bringing more pain to the black community than the last.

WAYNE: Thank you for-- I'm strict with it. I appreciate it. Let's see if anybody has any questions.

Y'SHALL DAVIS: All righty.

WAYNE: I started out on gun day doing it and now I got to keep it going. I apologize. I try to keep it consistent for everybody. Thank you for being here. Next proponent. Welcome.

MAGGIE BALLARD: I didn't know there was going to be a combined hearing, so I got both. Yeah, both testimonies. Good afternoon. My name's Maggie Ballard, M-a-g-g-i-e B-a-l-l-a-r-d, and I am with Heartland Family Service, speaking as a proponent of both LB163 and LB432. And we would like to thank Senator McKinney for bringing these bills forward. Heartland Family Service, as a lot of you know, we do a lot of different things. We work with mental health treatment, substance use disorder, treatment, crisis response, therapy and counseling services, restorative justice program, in-home family services, financial and housing programs and more. And what I like to highlight-- and this is one of the reasons that Heartland has always been in opposition of building a new prison all together, is that we've seen that when you invest in the services like what we provide--

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what we provide is that you see your tax dollars being saved from having to incarcerate people. So I want to get to the point in my second paragraph here on LB163, if you're following along, is that if the Legislature is going to decide that we do need to spend, you know, \$250 to \$300 million building a new prison, it is imperative that we have a plan to keep ourselves out of the situation that we have found ourselves in for the past few years: a state of emergency. Building a new or a bigger prison is about as effective against reducing our overcrowding as building more hospitals is against reducing the number of cancer patients. I also just want to highlight something, because I know there's a couple of people here who probably haven't been familiar with Heartland Family Service yet, but we-- we're really big on talking about ACES, adverse childhood experiences. So there's groundbreaking research, although it's kind of older now, talking about how certain childhood experiences affect the likelihood of someone having problems later in life, such as heart disease, diabetes, teen pregnancy, addiction and even incarceration. And so the way it works, there's a list of ten experiences. The higher the ACE score, the more likely someone is to develop such problems. As an it-- as it turns out, one of those ten adverse childhood experiences has been proven to adversely affect children and youth is the incarceration of a parent or caregiver. And sadly, one in ten Nebraskan children have a parent that has been incarcerated. So, you know, at the same time that we want to make sure that people have humane living conditions for prisons or while they're in prison, we have to make sure that we are doing something to reduce crime and reduce incarceration. And again, I'm speaking because so many of our clients at Heartland are system, system impacted. They happen or they love someone who has been incarcerated. So again, I'm skipping over a lot of the things I wrote down because, again, I'm trying to combine a lot of that into the 3 minutes, but I just hope that you will vote this bill out of committee to free up our tax dollars and be able to do so without, honestly, jeopardizing our public safety. So I'd be happy to answer any questions.

WAYNE: Any questions from the committee? Seeing none, thank you for being here today. Next proponent.

NATURE MEDICINE SONG: Hi.

WAYNE: Hello.

NATURE MEDICINE SONG: My name is Nature Medicine Song, N-a-t-u-r-e, Medicine, M-e-d-i-c-i-n-e, Song, S-o-n-g. You know, I, I work with Stand In For Nebraska here, which is one of the organizations that

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Jason mentioned that would gladly work with people, we already do. I also work with Community Justice Center and we have an 83 percent rate, meaning that 83 percent of the people that take our curriculum do not return back to prison. And I'm one of those. I work really hard at it. But I'm telling you all, I'm uphill right now, uphill every day of my life. I just put on a cool outfit and people can't tell the mud I'm in. But I can assure you, I too, am like Jason and I was mentored by women that, when I was released, I knew that they would have made it, no question. And I was doubting myself walking out of that door. And part of why I'm sitting here is because I didn't want to f*** it up for them. Sorry. I didn't want to mess it up for them because I thoroughly believed, not even just in myself, but at that point, I think I had more hope from them than I did for my own self. But I don't even want to talk about that because what I hear about people saying is changing the culture. And you're right. We need to change the culture. And instead of us acting like we don't know what that means, we need to start looking into Germany and places like that that have already had this in store and start visiting those places and really have the conversation to really change that narrative and that culture because it's not unheard of. It's happening. New Zealand does it as well. Matter of fact, they came and visited our nursery to better their nursery programs. I was a part of that. I was considered a violent offender and I want to share this part of my story because I think it would bring in some of the naysayers, because I had to sit across from my naysayer. I had a rap sheet really thick. I had no reason to be told that I could go into this nursery program. But that Warden, John Dahm, at York Penitentiary, gave me that chance. And I know, that because he was the water in that rose coming through the concrete, it matters. We need support. There are so many resources out here that are waiting and there are so much peer support and we have stats that show that peer support works. We have that 83 percent because they see us come in with stuff like this now instead of khaki suits and they see themselves. And in turn, we have peers inside that are doing what we do. It's possible. Even the ones you think aren't going to make it, they can. I've seen it and they've inspired me, too. So I just ask you all to just get out the box a little bit. Not jump off the cliff, but have a very intense conversation on this because it's already happening in other places. And restorative justice covers community, victims and offenders, because we all do make up that community. Thank you.

WAYNE: Thank you. Any questions from the committee? Seeing none, thank you for being here.

NATURE MEDICINE SONG: Thank you.

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WAYNE: Next proponent. Welcome back.

JASMINE HARRIS: Thank you. Good afternoon, Chair Wayne and members of the Judiciary Committee. My name is Jasmine Harris, J-a-s-m-i-n-e H-a-r-r-i-s, director of public policy and advocacy with RISE. We are in support of both LB163 and LB432-- too many numbers so I've got to make sure I look at the thing. You have my written statement, so I'll just kind of highlight some things in the time frame that we have. So LB163, thanking Senator McKinney for bringing some of these things back this session, as many people don't know about them unless they or them-- or their loved ones have been incarcerated. What he is doing is ensuring that incarcerated individuals and their families aren't subjected to unaffordable items with cap and commissary costs and ensuring that jails are not charging a lot of money for those phone calls. We have already established that if you have a job in prison, you're making about \$1.21 a day to \$4.72 a day, depending on the type of job. You're expected to pay your obligations, legal obligations, victim's compensation fund, state and federal taxes as a incarcerated person and things of that nature and still get some of your basic hygiene items. So we know that those costs can be astronomical when only making that much a day. Communication is important for individuals staying connected to their family. It also helps reduce recidivism. Nebraska's Department of Corrections has set a precedent in the state by keeping the permanent costs low and not accepting kickbacks from phone companies. Because of this phone call costs have been lower and have allowed more families to stay in touch. County jails should follow suit. I will say, back in 2021, I received a call from a county jail where I was told it would be \$1.80 plus tax for up to 15 minutes of talk time. It then told me there was a \$13.19 cent transaction fee, therefore rendering it about \$1 a minute at a \$15 cost. So in talking with people when all they have are \$20 a week to send to their loved ones for a phone call and commissary items, it adds up. LB432-- thank you for bringing this back. It is part of another few bills that I'll talk about as those come up as the reincarnation of LB920 from last year. I went on record that what has been determined is that if this legislation would have passed last year, there would have been-- saved the state more than \$55 million in additional costs by 2030, also decreasing the prison population growth by over 1,000 people in that same time frame. So we need to make sure that we understand the impact these types of policies have on our population. The Second Look Act is an opportunity to not only acknowledge but provide resolve in the extensive and pervasive usage of harsh and lengthy sentences. There is a racial disparity when it comes to African American, American and Latinx individuals. When we

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are entering data into our system and we can determine a person's race based off of their lengthy sentence and conviction, that is a problem. So we ask that LB432 is a part of an overall comprehensive package that makes it out of this committee. Thank you.

DeBOER: Thank you. Are there questions for this testifier? I don't see any.

JASMINE HARRIS: Thank you

DeBOER: Thank you for being here. Next proponent.

DONNA McPHERSON: My name is Donna McPherson, and I have my husband is stationed or he's incarcerated, I should put it that way, at NSP. And he was in the unit-- they had the flooding this last year. And he-- most people don't realize that that was a medical unit. And a lot of issues, medical, that he has are not being addressed properly. And the Parole Board gets their information from the prison, from the medical staff, from the prison itself. Sometimes they go through the PSI from so many years ago to make their decisions and they should take each individual person under and what their situation is. But my husband, he had to have surgery this last month and he actually flatlined on the operating table. They were able to revive him; they cracked two ribs in the process. But now he's having to deal with that. He's in a wheelchair and he does dialysis. He was told that on a medical parole that he would probably not be eligible, even though he's got a terminal disease. They said he wasn't terminal, so they said it wasn't going to happen. And all this information gets given to the Parole Board. We need to have some type of communication between the Parole Board, the institutions and get this straight so that the people that, you know, really don't-- aren't medically able to even do any harm to anyone or cause any crimes. Let them go. And we need to, to actually have some guidance to the Parole Board, parole committees, you know, so that, that might alleviate some of the overcrowding. Sure, it's not going to prevent everything, but it might help. And so I'm just coming as a family member of an inmate to express my views and feelings on it.

WAYNE: Any questions from the committee? Seeing none, thank you for being here.

DONNA McPHERSON: Excuse me. I didn't hear you.

WAYNE: Oh, I said-- I asked if there was any questions from you-- from the committee and there isn't any, so thank you for being here.

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DONNA McPHERSON: Try it one more time. I don't hear very well.

WAYNE: No, that's OK. There's no questions from the committee, so you're good to go.

DONNA McPHERSON: All right. Thank you.

WAYNE: Thank you. Don't feel bad. The transcribers sent me a note saying I don't talk loud enough either, already, so-- and we ain't even had that many hearings. Next proponent.

SCOTT HISER: Hello, my name is Scott Hiser, S-c-o-t-t H-i-s-e-r. I took time off work today to come from where I work at as a production supervisor within NSP. I work for a for-profit company there. I'm not part of the corrections system, so-- and I come on my own today just to represent concerns I have that deal with LB432. I work every day with men that I know, personally, are reformed, but they have no hope of ever seeing the light of day and making good on that. They're in prison for life without parole for crimes that were-- most, most of them if not all of them, were committed before the age of 25. And I used to work for an insurance company as well. I can tell you, psychologists are confirming with science and, and, and data today what, you know, insurance companies have known for a long time: the male brain does not fully develop until age 25. And so the impulsive types of things and the failure to look forward and consider consequences to actions are all things that, that, that men are not-- in particular, men, are not equipped to deal with fully and effectively until that age. And so these men, having been reformed for a very long time, are watching their lives tick by year after year, year after year. They're doing the best they can. I, I would like to just say, I'm presently neutral on LB163. I've not read what the provisions for that are. I'm a proponent of LB432. But my unique perspective, maybe, on this is that we provide an opportunity for these men to come and some of them, it's the first paycheck they've ever had. They get to see and feel what it's like to earn their way, to spend their, their, their honest gains in ways that benefit others, because they-- honestly, they can't spend it on themselves in prison. So why are they working for, you know, a dollar a day or-- when they could be working for \$10, \$15, \$20, minimum wage at least and then sending that money to family members, you know, children that they're not able to raise, they're not able to be there for them. You know, restitution to families. And if, you know, if nothing else, charitable causes that are, that are worthy; they're giving back to society. Those, those are compelling reasons, in my mind, to go ahead and execute on LB432. The, the fear that these men will come back out and

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somehow recommit a crime, I would say leave that up to the Parole Boards. The, the LB432 is only giving them the opportunity to be heard. It doesn't guarantee that they will be released. But on the Parole Board, having people there that know them and don't just see names on a page and what's written in a package to be able to testify on their behalf, I think, would be an excellent way to address your concern that we know--

WAYNE: Thank you.

SCOTT HISER: --who we're releasing when we do it.

WAYNE: Thank you for your testimony. Any questions from the committee? Seeing none, thank you for being here. Next proponent. Welcome.

SPIKE EICKHOLT: Good afternoon, Chair Wayne and members of the committee. My name is Spike Eickholt, S-p-i-k-e, last name is E-i-c-k-h-o-l-t. I'm appearing on behalf of the ACLU of Nebraska in support of both LB163 and LB432. I was gonna say a couple of things about LB163. You're receiving or going to receive a copy of a report that the ACLU did back in 2017 regarding the high cost of jail phone calls. I think it was Ms. Harris-- Jasmine Harris said earlier that our state prison system does do one thing right and that is it generally caps the cost of prison phone calls that prisoners make to family members and attorneys and other calls that they make out-- from within the system. Jails are a different story. And we highlighted this issue and elevated it in 2017. Generally, what happens and what still happens is a number of private companies will provide a contract, if you will, to the jail to run their jail phone-calling systems. There really is no regulation. The PSC does not regulate this type of service and the county is essentially awarding a monopoly contract to a provider. But the cost of the service is borne by the people who are in the jails and their families. And what you would see is, like Ms. Harris related, is arbitrary high costs. The Legislature actually passed a bill that Senator McCollister and Senator Groene, then-Senator Groene and Senator McCollister worked on years ago that tried to address this issue and did make some reforms. First, it prohibited any provider from recording or charging for calls to attorneys that inmates made from the jails because that was something that was happening regularly. It also banned this habit of-- I can't remember what they called it, like a commission signing bonus where if a county would contract with Encartele, Encartele would immediately award them a \$25,000 bonus. They'd simply just earn it back based on the jail calls that they made. It prohibited that. They had some regulation over it, but there's still problems there and Senator

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McKinney tries to address some of that [INAUDIBLE] phone calls and commissary items in LB163. LB432 does a number of other important things. There are some concepts that are going to be discussed in this later Bill, but you're going to hear a lot about the CJI report and if you're not familiar with it, LB432 addresses some of those issues. One is this issue that we have in the state with flat sentences. And by flat sentences, meaning there is just really no time between a parole eligibility and a time when somebody is actually released from prison. And that contributes to a higher recidivist rate, because what you have is someone who is either not going to be paroled or transitioned to the community or really has no interest in being paroled because they have such a short window of time to simply wait out their sentence and then just walk out as a free person. Another issue that LB432 does deal with is that concept of medical parole. And that was an issue-- geriatric parole, medical parole, whatever you want to call it, that was in the CJI report. One of the findings that they made is that other states have reformed their parole systems to accommodate for an elderly or an infirm release system. We really haven't done that in this state and that's one thing the bill does. There are a couple of other concepts I think we'll be discussing in the next couple of bills, so I won't go over those now and I'll answer any questions if you have any.

WAYNE: Any questions from the committee? Seeing none, thank you for being here. Any other proponents? Welcome back.

PAUL FEILMANN: Senator Wayne and Judiciary Committee, my name is Paul Feilmann. F as in Frank, e-i-l-m-a-n-n, 5106 Mayberry, Omaha. 68106. I just want to briefly talk about Malcolm X. He was recently inducted into the Hall of Fame. One of the interesting aspects of Malcolm X's autobiography was his time in prison. And, and Senator Geist, what you talked about earlier was those people that can make a big difference. There was a person in his autobiography he talked about who steered him to reading and actually led him down the path that got him out of prison and to the person that he eventually became. Since I've been going to the prisons over the last five years, there's some guys in there that are doing that same kind of stuff and they just don't see any hope. But you know what? They just keep doing it. So today, I wanted to mention their names on the mike. Three in particular-- Michael Sims has been running the seven-step program for, I think, 20 years. It's a re-- basically a self-help. It's run by all the guys. Crescent Tucker has been in solitary confinement and he's in one of the programs that goes down to the solitary confinement units, even though he's been there and has post-traumatic stress about it, he sits and talks to those guys. And he supports guys all over the prison, in

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terms of helping the young guys get their act together. I mean, he's just an amazing guy. And every time I see him, I just feel for him because he just doesn't see any future, but he just keeps plugging along. The other guy is Howard-- Bernard, Bernard Long. He's doing the same thing. He's in the circle of lifers. Those guys, all they do is spend their lives working on how to help the other guys, the younger guys, get their stuff together, learn from their experiences and, and so forth. And that's what happened with Malcolm X. The, the situation that I see-- oh, there's one other person I want to mention. Ty Sullivan. I met him. He does, not in prison. He did 17 years. And I want you to remember Ty Sullivan. This is a guy that's a fascinating story. He helped remodel this building, \$30 an hour. When I met him, he was on parole. He had tried to escape, but he learned how to be an electrician in NSP, and he was now working for \$30 an hour for a union remodeling the Capitol. Now that is not rocket science, investing in a new prison or investing in job training, education, mental health. You take all those resources from a \$200 million prison and you put them into RISE and job training. Oklahoma just looked at having companies go to prisons to train people so when they come out they have jobs. It just, you know, Senator Lindsey Graham-- Lindsey, John Lindsay, he told me he was the head of Judiciary 25 years ago, 150 percent overcrowding. We have not invested money in anything but prisons.

WAYNE: All right. Thank you for your testimony. Thank you for your testimony.

PAUL FEILMANN: Thanks.

WAYNE: Any questions? Thank you for being here. Any other proponents? Any other proponents? Mr. Kleine, I'm pretty sure you're not standing up to be a proponent. He gave me my first job out of law school. We'll turn to opponents. Any opponents? Welcome to your Judiciary Committee.

DIANE SABATKA-RINE: Good afternoon, Chairman Wayne and members of the Judiciary Committee. My name is Diane Sabatka-Rine, D-i-a-n-e S-a-b-a-t-k-a-R-i-n-e. I am the interim director for the Nebraska Department of Correctional Services. I am here today to testify in opposition of LB163. Due to time constraints, I'll be summarizing my written testimony. If the requirements in Section 1 are enacted, NDCS would need to renovate the Nebraska State Penitentiary since a replacement facility could not be built. Based on a 2022 engineering study, the funding needed to fully renovate the Penitentiary would cost more than \$250 million. Furthermore, doing repairs in a location where inmates live will make it challenging to maintain a secure environment. Nebraska's need for a new Penitentiary is inevitable. It

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does not make economic or practical sense to fix the current State Penitentiary. NSP should be decommissioned, not renovated. This bill would make it impossible for NDCS to provide sufficient space for a population to live and prepare them for reentry into the community. In Section 2 of this bill, the requirements regarding legal mail are consistent with current NDCS policy. However, policy violations can be appropriately addressed through employee discipline rather than through criminal charges. Section 12 would increase the agency budget by approximately \$100 million a year. While the current inmate work stipends are below wages in the community, in a 2021 survey of correctional systems across the nation, NDCS had a wage similar to or higher than most respondents. Section 21 allows the Judiciary Committee to order the director to perform certain duties if an overcrowding emergency or staffing shortage is determined. The Judiciary Committee's authority does not traditionally extend to the day-to-day operations of NDCS-- NDCS and may raise separation of powers concerns. Section 21 defines staffing shortage as a 15 to 1 or higher ratio of the inmate population to correctional officers. A variety of factors need to be considered when determining appropriate staffing levels. That is why experts recommend that staffing ratios should not be standardized or compared. The definition of staffing shortage under this bill is based on an oversimplified idea of how prison staffing works and does not account for the unique populations of NDCS, nor the necessity of proper management of a facility that accounts for inmates as well as staff safety. Every few years NDCS completes a comprehensive staffing analysis that considers numerous factors, including the physical plant and custody levels of our facilities. The proposed staffing ratio would not keep pace with the changing staffing needs and would interfere with NDCS's ability to carry out the essential functions of our agency. Thank you for the opportunity to testify. I would be happy to answer any questions that you have.

WAYNE: Any questions? Senator DeBoer.

DeBOER: Thank you. There's quite a, quite a number of things in here. So the commissary costs, I remember we had a hearing about that last time. Can you speak to that? What was-- do you have an objection to putting a cap on the commissary costs? And what is that objection? I can't remember if you did or didn't.

DIANE SABATKA-RINE: So our commissary costs, the per-- the increase that's added to the actual cost varies depending on the products. So some products have zero increase in cost. Others have more. So very much like what we face in the community applies with the commissary and any of the profits that, that are earned from the commissary go

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directly into the Inmate Welfare Fund. So in essence, we give back to the population that we serve.

DeBOER: Would you object to putting some kind of cap on the commissary costs?

DIANE SABATKA-RINE: Again, I think that this bill, as I recall, gives funds to replace that. But over time, that could impact what we are able to provide through the Inmate Welfare Fund.

DeBOER: OK. Thank you. And then you're talking about the decommissioning of the Penitentiary.

DIANE SABATKA-RINE: Correct.

DeBOER: What does, what does that look like? Is it we wait until, I mean, because you're doing a lot of movement right now--

DIANE SABATKA-RINE: Correct.

DeBOER: --into the 384 beds. So do we wait until it's we've got a whole new prison and then you start moving people over, over-- I don't know how long that would take, a period of time, and then, OK, everybody's out of the Pen. What happens then to the pen? Do we bulldoze it? Do we-- what happens to decommission it? How does it officially get blessed as decommissioned?

DIANE SABATKA-RINE: So once the facility is empty, we would work with the Building Division to follow the procedures in place for demolishing and decommissioning a state-owned facility. I've never experienced that before, so I don't know what that steps-- those steps-- exact steps would be. I know that it would be a process, but, but we would just follow the Building Division's guidance.

DeBOER: Didn't we just build like 100 beds over there? We passed it today--

DIANE SABATKA-RINE: We did.

DeBOER: --in our-- but I don't remember-- that-- I feel like that opened in the time that I was a senator, so within the last five years.

DIANE SABATKA-RINE: That's correct.

DeBOER: So would a building like that be destroyed?

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DIANE SABATKA-RINE: It would be decommissioned. And again, I don't know exactly what decommissioned means--

DeBOER: OK.

DIANE SABATKA-RINE: --so those would be considerations we would have to make.

DeBOER: Who would I talk to about what that decommissioning looks like?

DIANE SABATKA-RINE: I can find out that information for you and share it with you.

DeBOER: That would be fantastic if you could let me know what--

DIANE SABATKA-RINE: Absolutely.

DeBOER: --that looks like and how that-- what we do with a pretty new facility and all of those things.

DIANE SABATKA-RINE: I will do that.

DeBOER: Thank you.

WAYNE: Any other questions from the committee? Seeing none, thank you for being here.

DIANE SABATKA-RINE: Thank you.

WAYNE: Welcome to your Judiciary Committee.

DON KLEINE: Good afternoon, Senator Wayne and members of the committee. My name is Don Kleine, K-l-e-i-n-e. I'm the Douglas County Attorney. I'm here as the Douglas County Attorney and a representative of the Nebraska County Attorneys Association in opposition to LB432. I appreciate Senator McKinney for bringing these issues in the format of this bill for discussion today. But, you know, if you look at our background in Douglas County and my background in Douglas County, I believe in second chances. We have mental health diversion, diversion, young adult court, drug court, veterans treatment court. We keep about, there's about 350 people that we have that currently are charged with felonies are in these programs to keep them out of possibly going to the Penitentiary. And I think those are very good programs. And I know the state is trying to enhance the ability for all jurisdictions to have those kind of problem-solving courts. But

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when I look at, at this, there's several items in this, it's a fairly large bill that I-- I'm, I'm in opposition to because I don't think it's a-- it's the right way to address an issue here. You know, and I hear talk about sentences and large sentences and we have a difficult job to do. Judges have a difficult job to do. So really you're criticizing the judges who have all the information before them and making decisions about what sort of sentence to give people. And those are very difficult decisions to make when you have somebody's-- after they've seen what they've seen with what somebody did, and then trying to figure out what do I do with this person? So, you know, if you got the chance to see the presentence report on a lot of these, you would maybe understand why the judge felt it was so important to give this person a long-term of years. In Omaha we, I think, done a great job prosecuting people who have committed murders and shootings and used guns. And it has had an impact. Our homicide rate in, in Douglas County, contrary to the national trend, is decreased over the last three years. I, I see my time is just about up, but, but there's, there's several things in here that I would disagree with. I also question whether all the money is going to come from for whether the public defenders, county attorneys, the processing of a bill of exceptions, or what they call to be used for the Court of Appeals. How do you plug this into the system with the Court of Appeals being the process part of the appellate process if somebody doesn't get their sentence recommendation to commute and then they can appeal that process according to the statute? I don't know where all, all these pieces come from, and I don't know how you plug that into the court system when it's not part of the court system.

WAYNE: Wrap, wrap up. Thank, thank you for your testimony. Any questions from the committee? Senator Geist.

GEIST: Thank you for your testimony. Would you speak to what you were just speaking to again? I, I need you to connect the dots for me about that it's not part of the court system or--

DON KLEINE: Well, I, I don't know if it's even-- there's-- there'd be some constitutional issues there, I think, when you create a, a review board that doesn't really have any power, quite frankly. And I think you create false hope there and, and it's three people who, I think, are chosen according to statute by the Chair of Judiciary, an attorney, a retired judge, a public defender, and somebody who served time. And they're going to make it-- they don't have the power to commute anybody's sentence, but they would make a recommendation to the Board of Pardons, which would be the same as you-- anybody can write a letter to the Board of Pardons. You can do all these kinds of

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things. And then if it's not, if it's ignored or it's not given, then there's a right to appeal to the Court of Appeals. I just don't understand how it fits in the court system itself. And there are many things that are, are part of the decision-making process in this bill that are already part of the legal system, whether it's ineffective assistance of counsel. I noticed that's one of the areas, that's something that's addressed to the post-conviction action that people could bring forward to the court, to the district court where the sentencing occurred and ask for a new trial based on ineffective assistance of counsel.

GEIST: Would this body have the authority to give those three people the authority to make that decision?

DON KLEINE: I haven't really researched it. I don't know the answer to that, but that's a good question. I don't know.

GEIST: OK. Thank you.

WAYNE: Any other questions from the committee? I got a short, short one or maybe not so short. I don't know. I understand why you're opposing the bill as written, because we have to be for it as written or not. But conceptually, a look back after 15, 20, maybe we don't know the exact year, and I don't want us to get bogged down on the year, but conceptually, you look back on somebody who maybe have spent time in there and to, and to give a recommendation to the Parole Board, conceptually, you're not-- I mean, are you, are you for that or against it?

DON KLEINE: I don't have a problem with if you-- if they said something about after so many years that the Parole Board should take a, a look at this person again, because sometimes they're not even eligible to be looked at by Parole or the Board of Pardons. So, I mean, I don't have a problem with people looking at people in their circumstance in life and maybe the fact that they've changed. But I don't think this is the right approach to do it.

WAYNE: I'm, I'm not conceding that point because I don't know where, but, I mean, as far as this approach, but I'm kind of trying to figure out conceptually if, if we can get-- and, and I think the victims would be a part of this conversation, and I think they should have a voice in this process, and that's not really addressed in here. So there's, there's issues I think we all can, we can point out, but I'm saying conceptually, we know we have people who are lifers, people who have been there for a long time. Are you OK with conceptually looking

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back at them and saying, Parole, let's take a double look at this person?

DON KLEINE: That's a lot.

WAYNE: It's, it's a heavy question, I'm saying, I'm saying very conceptually. I'm not saying let's get into the--

DON KLEINE: Very conceptually, because it's a very complex issue also. I think the other concern is it's just simply public safety. That's what we're talking about.

WAYNE: Right.

DON KLEINE: That's what I talk about. And then what are the circumstances of what that person did to begin with? So I think you'd have to look at the whole picture there. And-- but certainly, I think there's an ability to think about that process and how it could be done.

WAYNE: Would you be willing to sit down with some people from here and, and other people who are going to be opposed to this? And, and I think what everybody's trying to do, and I'm not going to speak for Senator McKinney, is we do have people who are sitting for a long time and it's more of a parole issue. I don't think it's an issue that we have. I'm just-- we're just talking conceptually. I don't know if it'll pass this year. I know for the past when I'm leaving, but I think both sides of this argument have to figure out how do we do a look back in an effective way. I don't know what that is because I'm not smart enough to figure it out, but--

DON KLEINE: I don't know what it is either, Senator, so, but I'm willing--

WAYNE: But you're willing to have that conversation?

DON KLEINE: --willing to visit.

WAYNE: OK. That's all, that's all I'm looking for right now--

DON KLEINE: All right.

WAYNE: --because I don't know either. I'm not smart enough. Any other questions? Thank you for being here.

DON KLEINE: Thank you.

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WAYNE: Welcome.

JOHN BOLDUC: Thank you, Committee Chair Wayne, committee members. My name is John Bolduc, J-o-h-n B-o-l-d-u-c, Superintendent of Law Enforcement and Public Safety for the state of Nebraska. I'm here today on behalf of the Nebraska State Patrol to testify in opposition to two specific provisions of LB432: the proposal to move possession of less than one-half of one gram of hard drugs to a Class I misdemeanor and removing the mandatory minimum sentence requirements for Class ID and IC felonies for drug offenses. The Patrol opposes these provisions from a public safety perspective because they may ultimately harm the people they purport to help. Drug-related offenses under the Nebraska-- under Nebraska law include offenses ranging from possession of a small amount of heroin to dealing large quantities of other dangerous drugs such as meth. These are not victimless crimes. These drugs are dangerous not only for the users, but for their families, friends, and the community at large. The elimination of the mandatory minimum sentences for Class ID and IC drug-related felonies automatically reduces the protection afforded to communities from some of the most serious drug offenders. And a reduction in classification for simple possession charges eliminates some rehabilitation opportunities for people with addiction. The United States again eclipsed 100,000 drug overdose deaths in a 12-month period in 2022. Although faced with a sharp increase in drug overdose deaths, Nebraska currently has one of the lowest drug overdose death rates in the country under our existing statutory structure, which allows for rehabilitation for addicts and protection from those who distribute these drugs in our communities. In fact, the United States Sentencing Commission's January 2022 publication: Recidivism of Federal Drug Trafficking Offenders Released in 2010, tells us that approximately one-third of drug trafficking offenders who are rearrested were rearrested for drug offenses. In closing, I want to thank you for your time and consideration in my testimony today. Be happy to answer any questions.

WAYNE: Any questions from the committee? Senator Geist.

GEIST: I'll keep it short. You see a lot in your profession of the ripple effect of this-- of changing the sentencing here. Would you mind just speaking to that just a bit? I know you're talking about, about overdoses, but there's other effects to that as well.

JOHN BOLDUC: Thank you for the question, Senator. So the, the concern about reducing or eliminating the mandatories from some of those drug offenses is that the prosecutors have no leverage. We have some great

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opportunities with drug courts, with diversion programs, with a lot of great programs that have been addressed in front of this committee. But without a minimum, there's, there's really no incentive for people to go into those diversion programs. And so it takes away some of the tools for the prosecutors. And therefore, we're going to see a lot of those same folks in that revolving system of dealing again and again and we'll be encountering them.

GEIST: And the success that you've seen of people that-- and you speak to this-- that briefly in your testimony, but would you also speak to the success that you see of people that have gone through the--

JOHN BOLDUC: Absolutely. The folks who are going through treatment successfully, we're seeing, first of all, we don't see them again as repeat customers. And we're seeing some great success stories. And again, a lot of those are coming out of the drug courts and other effective programs like that.

GEIST: Yeah. Thank you.

JOHN BOLDUC: Thank you.

WAYNE: Senator DeBoer.

DeBOER: Can you-- I didn't follow it and I think maybe I just zoned out for a second or something. Without the mandatory minimums, you said there's no incentive to participate in maybe a drug court or something like that. Can you connect the dots for me?

JOHN BOLDUC: So--

DeBOER: How is it that they--

JOHN BOLDUC: --so on--

DeBOER: --because the judge could--

JOHN BOLDUC: --most first time-- I'm sorry, Senator, I didn't mean to interrupt you.

DeBOER: Sorry, let me just finish. Sorry, just-- because the judge could still do a sentencing range, so there's-- there could be even more serious than the mandatory. You know, there's-- so explain that.

JOHN BOLDUC: So on--

DeBOER: Connect the dots. Sorry.

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JOHN BOLDUC: --so on the IC and ID felonies, OK, is that we have no, no floor. There's no minimum for, for those serious offenses for the, for the drug offenses. That's what I'm speaking to specifically. Then they're-- they have a problem getting those folks into some of the diversion programs or there's no incentive because they can hold that over their head, right, go to this diversion program or we're going to give you this-- we're going to send you through the system into this, and you would be facing a mandatory minimum.

DeBOER: So is there no incentive to say go through the drug court or are you going to go get three to seven years or you're going to go get, you know, something like that, that doesn't--

JOHN BOLDUC: Well, if there's no, if there's no mandatory minimum, it could be go to drug-- go to diversion or you might get zero or six months or--

DeBOER: So is that, that the thing you're saying that, that, that someone who is facing that will say, well, I might get zero, so I'm going to go ahead and take my chances in court? Is that what you're saying?

JOHN BOLDUC: I've seen that actually happen.

DeBOER: Yeah. OK. OK. I think I understanding your point now.

JOHN BOLDUC: Thank you.

WAYNE: OK. Most of the people I've represented go to-- do the-- do drug court because they don't want the felony not because of a mandatory minimum. In fact-- I'm not-- we don't need to argue. I'm, I'm not one of those Chairmen who can argue back and forth. But I, I, I think I disagree with the mandatory minimum and the mandatory minimum gives leverage to the prosecutors is what you, you said.

JOHN BOLDUC: I did.

WAYNE: But it's not to go to drug court-- it's not to go to diversion, though. I mean, you're-- they're going to get rid of the felony, at least in Douglas County. Are you, are you saying that a Class IV felony that potential has probation, no mandatory minimum, people aren't going into drug court or, or other courts out in western Nebraska because they, they don't have, they don't have a mandatory minimum? I'm, I'm confused.

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JOHN BOLDUC: OK, so if we take away the mandatory minimum on those felonies and they are offered a diversion program of some type, there, there is no incentive for them to, to take that when they might just get a zero on their sentence anyway.

_____ : Why is he asking for a mandatory--

WAYNE: Oh, oh, oh-- OK. I'm, I'm not one of those, like, just going to go back and forth. I think it's better to talk off line and figure it out. So thank you.

JOHN BOLDUC: Thank you.

WAYNE: Any other, any other questions? Thank you.

JOHN BOLDUC: Thank you.

WAYNE: Next opponent. Welcome.

MIKE GUINAN: Good afternoon, Chairman Wayne, members of the Judiciary Committee. My name is Mike, M-i-k-e, Guinan, G-u-i-n-a-n. I'm the criminal bureau chief for the Nebraska Attorney General's Office. I appear before you today on behalf of Attorney General Mike Hilgers and Nebraska Attorney General's Office in opposition to LB432. In the interest of brevity, there are a number of individual sections of this proposed legislation which are repetitious or repeats with slight modifications of the sections found in LB352 to which we are opposed. I will plan to address those in more detail in testimony on LB352. LB432 would also create a Second Look Act to which we are opposed for several reasons. I will be happy to address those in more detail subject to questions. However, I do want to finish my comments on one particular section of LB432, which is not contained in LB352 and that is Section 32, which would eliminate life without parole for anyone except those serving a death sentence. By way of example, in November of-- by way of example, I'd like to share with you in November of 2017, Aubrey Trail and Bailey Boswell lured Sydney Loofe to their apartment in Wilber, Nebraska, attacked her, including strangling her and killed her. They dismembered her into 14 parts, stuffed her body parts and other evidence into garbage bags and the next day disposed of her remains like trash along 15 miles of desolate Clay County roads. Trail was tried, convicted, and received the death sentence from a three-judge panel. Boswell was tried, convicted, and received a life sentence despite two of the three judges ruling that she should receive the death penalty. Coincidentally, Boswell's direct appeal was just heard before the Supreme Court upstairs this morning. Section 32

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of LB432 would provide that Trail sits on death row, while Boswell would be eligible for parole. As the lead prosecutor on those cases, I guess I, I have a hard time wrapping my head around that possibility. Ultimately giving a-- given a number of LB432's provisions, including Section 32, the Nebraska Attorney General's Office respectfully asks the members of this committee to not advance LB432 to General File. Thank you and I'd be happy to answer any questions you may have.

WAYNE: I would ask any committee member not to comment on the active appeal that's going on right now. Go ahead, Senator Geist.

GEIST: Oh, I was just going to refer to you, you had a statement there about something you'd like to speak to pending a question. So asking--

MIKE GUINAN: Oh, sure. Yes.

GEIST: --that you would speak to--

MIKE GUINAN: Yes.

GEIST: --that, that, that section pending a question.

MIKE GUINAN: Sure. The Second Look Act, I think Mr. Kleine addressed several of those things. But one of the major concerns, I guess, we would have with that section is it creates this mechanism question on how it would be funded and so on. But ultimately, at the end of the day, that mechanism would only be able to make a recommendation to the Board of Pardons. That mechanism would include discovery, additional order-- materials may be ordered through expansion, the record, there would be hearings, there would be a record created. There's an appellate right straight to the Court of Appeals so there would be a lot of additional, I guess, bureaucracy for ultimately a-- just-- only a recommendation to the Board of Pardons. And the Board of Pardons is created by constitution and its constitutional powers cannot be limited or modified by any act of the Legislature or Nebraska courts.

GEIST: OK.

MIKE GUINAN: So as Mr. Kleine had indicated, there are ways to supplement for a Board of Pardons' review. But we believe that this, this would be, I guess, very cumbersome and question on some of the procedures.

GEIST: So does that-- your, your response then address whether we have the authority to give them the authority of law to make that decision? Is that what you're saying that--

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MIKE GUINAN: Well--

GEIST: --that authority is limited by the Legislature?

MIKE GUINAN: And again, just like Mr. Kleine, I, I don't have a good answer for you. I'm not sure if this body would have that ability or not. I don't have a good answer.

GEIST: Is it separation of powers issue or I don't know?

MIKE GUINAN: Right, right. It, it is-- and it's advisory board ultimately or advisory committee,--

GEIST: OK.

MIKE GUINAN: --which is the extent, as I understand it, its abilities to recommend, make a recommendation to the Board.

GEIST: OK. All right. Thank you.

MIKE GUINAN: Yes.

WAYNE: Any other questions from the committee? Seeing none, thank you for being here.

MIKE GUINAN: Thank you.

AMBER WOOD: Hello. My name is--

WAYNE: Welcome.

AMBER WOOD: --my name is Amber Wood, A-m-b-e-r W-o-o-d. I thought these were two separate hearings, so I'm just going to submit stuff and then talk. My daughter is Karly Rain Wood. Karly was a very independent 20-year-old who was doing all the things, 401k, two jobs, she was saving to buy a house and she was saving to start her own business. She was extremely driven and independent. I'm hearing a lot of these things. I've read both bills. What you're seeing now is her photo, and I ask you to take a look at it. And as I talk about this, please think of someone that you know that was just starting their young adult life. Karly got off her second job for the day, went to meet some friends, and was at a party. After she met up with those friends, it took ten minutes and Karly was shot. Karly was shot eight times. Not once, eight times. Now Karly didn't even go out as a rule, this was officially her first party. And I mean that, it was her first party. She went to a place where she thought her friends were there

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she was going to be safe. Karly was shot by felons with guns. Now I'm reading this bill, both of these bills since I have to combine them, the committee part of this seems one sided when you have three people for four years making decisions. Where's the representation of victims? Where's the representation of the prosecutors? Where's the representation of law enforcement? Where's the accountability? If this, if this committee decides that the judicial system did their job, the taxpayers paid all this money to go through their process, to pay public defenders, to go through the court process, where is the accountability? Does this committee get reprimanded? Do they get fined when they get it wrong? Because many people got it wrong and Karly is dead. So I need to understand a lot of this. And these two bills being together, I have a lot to say about it. But the jails, that seems like a cop-out. You do the time, you go in jail, you lose privileges, read books, better yourself, learn a trade. All that is going to help rehabilitate. If the problem is long-term offenses, great, integrate into this new jail all the other stuff that works. But right now my daughter is dead and who do I get to scream at because somebody decided that these guys were OK? Four-time felons were OK because they don't listen. They're not listening to the laws and the rules. But they were out on supervision, federal supervision.

WAYNE: Thank you for your time. Any questions from the committee?

GEIST: May I just ask--

WAYNE: I just want to-- that is an open case and there's-- and Don Kleine is in the room, so I want to be careful not to talk about her, her specific situation. I'm just making sure I'm clear of that. I don't want anybody to get conflict out of anything. So if you want to talk about anything else but exactly her situation, only because I'm trying to be respectful for Don, he's the prosecutor on the case.

GEIST: Yeah, I'll, I'll-- I just thank you for coming. We rarely hear from victims in this committee. So thank you for advocating for your daughter. And I'm sorry for what happened.

AMBER WOOD: Thank you.

WAYNE: Thank you. Thank you for being here, ma'am. Next opponent. Welcome.

TIMOTHY C. MELCHER: Thank you. Members of the Judiciary Committee, my name is Timothy C. Melcher, T-i-m-o-t-h-y C. M-e-l-c-h-e-r, on behalf of Nebraskans Unafraid to oppose this bill. We are an organization

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that addresses issues with the sex offense registry, such as homelessness, unemployment, and vigilante crime, including murder. It's important to note that these issues not only affect registrants, but their families as well. We oppose this bill for the same reasons we would oppose LB50 and LB352. It's discriminatory towards those convicted of sex offenses. Language in Section 21 of this bill is substantially similar to language from Section 12 of LB352, with one exception. LB432 allows those convicted of Class IIA felonies or higher to receive about a 66 percent reduction of their time instead of 50, while anyone convicted of a sex crime is still only entitled to 30 percent. Therefore, this bill is even more discriminatory in regards to sentence reduction. Section 24 of LB432 reiterates Section 15 of LB352 verbatim. To iterate-- to reiterate our objection, Section-- subsection (4) (a) (ii) (A) "Sexual contact or sexual penetration," which effectively includes any crime involving sexual contact or penetration. To further exacerbate the discrimination, (4) (a) (iii) includes attempt to commit an offense which has certainly been exploited by the prosecutor in Gage County. Search results of the sex offense registry will yield many results containing convictions of attempted offenses. It's clear that the Legislature views sex crimes as particularly heinous and depraved. If it doesn't, we would ask three things: one, allow those convicted of sex offenses of Class IIA or higher to receive a 66 percent reduction in their sentence as their peers do under this bill; two, remove subsection (4) (a) (ii) (A) from Section 24 and; three, remove attempt to commit an offense from subsection (4) (a) (iii) of Section 24. Thank you for your time.

WAYNE: Thank you. Any questions from the committee? Seeing none, thank you for being here. And just so everybody knows, I was not giving legal advice. I was just-- [LAUGHS] just a little humor from a lawyer.

ROBERT KLOTZ: Robert Klotz, R-o-b-e-r-t K-l-o-t-z.

WAYNE: Welcome.

ROBERT KLOTZ: In 1960, there were only 1,269 in prison. Twenty years later in 1980 there were 1,389, an increase of only 120 inmates. This meager increase exploded 20 years later into an additional 3,700 inmates. This bill does not address the why of the exploding inmate population. It simply sweeps it under the rug and will incur even more lawlessness. The why is that we are in moral decline. The government sets the tone for the morality of the country. You set the tone for Nebraska. One time the morality of religion worked hand in hand with government, now the Supreme Court began to excise religion from the equation after their 1947 declaration of separation of church and

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state to the point the teacher was not to pray in school even silently to themselves. In the 1970s Nebraska, and all the other states, enacted no-fault divorce, starting a dismantling of the family by replacing commitment with capriciousness. Generations later, this self-centered fickleness has supplanted the country's moral compass, resulting in many single parents who are not there to train up the children. Children are learning from children resulting in a Lord of the Flies collaborative mentality. Truth has become how one capriciously defines truth. So confusion runs rampant to the extent we find, for example, the city council of Lincoln unwilling to tell you what is a male or a female. Even the ancient Greeks knew the answer and they were blatantly homosexual. Yet, they understood only men and women married. Now, a clear moral wisdom is sorely missing from government and the country. By arbitrarily freeing inmates by not providing meaningful consequences for crimes, such as imprisonment, you avoid morality that demands justice and creates a get-out-of-jail-free mentality. You will create an inbuilt hindrance to the admission and facility population decline. Generations of kids will ignore morality as they see crime does pay creating that inbuilt hindrance to the admissions. Bottom line is morals count. Senator McKinney on TV talked about low wages and the need for inmates to have minimum wage. Average inmate receives \$38,000 of free care, some are receiving hundreds of thousands of dollars. They get without any cost, housing, full medical, clothing, schooling, and transportation. Why do they need minimum wage? They have more necessities than many free Nebraskans. Department of Corrections is the state. An inmate is not an employee, he or she is an incarcerated felon under punishment receiving a stipend for their labor to buy soap and tooth--

WAYNE: Thank you for this. The red light is on. Any questions from the committee? Seeing none, thank you for being here. Next opponent.

ELAINE MENZEL: Good afternoon, Chairman Wayne and members of the Judiciary Committee. 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. The only bill that we're testifying to is LB163, and that's in opposition. And it's primarily to two pieces of that related to the telephone calls and also the commissary cap. With respect to the telephone calls, that legislation that Mr. Eickholt referred to earlier was addressed in 2018. And there are parameters that refer to federal regulations that are based in part upon inmate population. So it will vary throughout the state with those rates. And then also the commissary portion was previously testified to in terms of it being problematic. It's my impression that while-- that the commissary portion and the inmate portion, if there's

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any additional funds, they would go to operating costs but also to inmate programs. With-- and then I'll divert just a little bit, as Senator McKinney was, I'll say, challenging us to come up with ideas as to how to address things. Perhaps-- and mental health, I thought was a perfect example of an area where we could use some additional support and help. I obviously am not the first one to testify to the need for that. And those of you who have been in Judiciary before have heard me come to the committee and ask for that. We do-- we are, as an association, part of promoting what's called the Stepping Up Initiative. And what that is, is a partnership with the National Association of County Officials, the psychiatrist, and CSG-- yes, CSG Justice Institute [SIC] with respect to helping mental health become more important recognition within the jails. There are about 17 that recognize that as being important throughout the state including the three largest populated. But there are also counties that with smaller populated populations are using that. So investing in those types of programs, I think, would be beneficial to us. So with that, if there's any questions, I would attempt to answer them.

WAYNE: Any questions from the committee? Seeing none,--

ELAINE MENZEL: Thank you.

WAYNE: --thank you for being here. Next opponent. Welcome.

CHARLIE BOECK: Good afternoon. Thank you. My name is Charlie Boeck, C-h-a-r-l-i-e B-o-e-c-k. I'm here today representing my own beliefs and as a representative of the Fraternal Order of Police Lodge 88. Our labor union represents 1,500 custody staff at state correctional and mental health facilities. I'm speaking in opposition of LB163, specifically Section 2. This legislation creates new criminal penalties relating to the handling of incarcerated individuals' mail. While the mail process differs from facility to facility one thing is consistent, many team members are involved in the successful delivery of incarcerated individuals' mail. From facility mail rooms to supervisors to line staff, our goal is to have a secure mail process where mail is screened by approved personnel, and only released through authorized means. However, our concern is that a new or inexperienced staff member may make a mistake in the mail handling process how mail is inspected or inadvertently disclose information contained within. The penalties of a Class II misdemeanor, punishable by up to six months in jail and a fine of \$1,000 as well as summary discharge, are unnecessarily punitive. Summary discharge from employment is a violation of employees' rights as agreed upon in our labor contract. It strips away the right to due process regarding

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release from employment. Employees have a right to representation, notice of hearing, and to present facts at said hearing. Additionally, concurring with Senator Geist and other community members' concerns, prohibiting construction of a new prison does a disservice to the incarcerated population. With no plan to house or increase services to promote success upon reentry, the system will continue to be overburdened. We always encourage the Legislature to visit facilities and to hear from the line staff as well as the incarcerated population so that informed decisions are made as new legislation is introduced or passed. Thank you for your time.

WAYNE: Thank you. Any questions from the committee? Seeing none, thank you.

CHARLIE BOECK: Thank you.

WAYNE: Next opponent. Next opponent. Seeing none, we'll move to neutral testimony. Anybody testifying in the neutral? Well, I guess [INAUDIBLE]. For LB163, we received 18 letters for the record: 16 support, 2 in opposition. For LB432, we see-- we received 36 letters: 30 in support and 6 in opposition. With that, go ahead, Senator McKinney, with your close.

McKINNEY: Thank you. If we went by those numbers from those-- from the written reports, saying Nebraskans support both bills. That was an interesting hearing. It was-- and I do thank everyone that came in testifying for and against it. It's good to have constructive dialogue. I would say that, you know, LB163, I think those changes, most of the changes in there are needed. Well, all of them are, in my opinion. I know the overly controversial one is not, not constructing a prison after 20 years. And I did that because I think we need to have a-- I, I felt like we needed to have a discussion about the prison in a real discussion. And only way to do that is to put something in the bill that says we won't build a prison because it can't just be about building a prison. We need policy changes that need to take place in order to, you know, make sure those inside are, you know, because 90-plus percent of them will be back into society. So whether we like it or not, we have to do something or else we're just going to keep building prisons. On the case of LB432, you know, I see nothing wrong with providing the option for the Parole Board to look at individuals after a certain period of time. We have to understand that there is no perfect system in society and we can't base our decisions based on the one. Nothing is perfect. Life isn't perfect. The Legislature doesn't run perfect. Nothing runs perfect. But we want to base our decisions on a hope of perfection. It's never

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going to be perfect. And that might be hard to swallow, but it, but it's the honest truth. You know, I was a kid visiting NSP. I spent a lot of time in there since I've been in office just to better understand those issues, not only from incarcerated individuals, but from staff. It-- the testimony was interesting to me because it, in my opinion, is misguided. What are we doing here? What is the purpose of incarcerating people? I thought it was to, you know, hold them accountable and hopefully, you know, do something to improve them while they're incarcerated. And our current system, honestly, is not working. It's not working for anybody, not for those who think people should be locked up and not for people who think, you know, we should give second chances. We have to do something different. What is justice? Honestly, what is it? I've asked that question multiple times and nobody has answered it for me because I live with the pain of my best friend dying every day of my life. I think about them every day of my life. You go to the floor, I have a pen with this face on it because I think about it every day of my life. And that's what drives me. And me introducing these bills isn't to say I don't care about victims of crime. I do. I live with it. But I also grew up in an area that was over policed, high in poverty, and those type of things. And I feel as though society has set up a system for individuals to offend. But when they do offend, society doesn't want to take the responsibility to make sure that we improve them as individuals. And we have to get to that. I'm not sure, these might not be the solution. We got some time to work on these, but I think they had to be introduced and you could disagree with me, but honestly, we, we got to, we got to, we have to do something different. And I'll leave it there. Thank you.

WAYNE: Thank you. Any questions from the committee?

McKINNEY: Oh, and I will say, if you look at the fiscal note, it says LB432 would decrease the prison population. Just to leave that out there.

WAYNE: All right. Appreciate that. That'll close our hearing on LB163 and LB432. Next, we'll open on LB50. We'll open on LB50. Welcome to Judiciary, Senator Geist.

GEIST: Thank you, Chairman Wayne and good afternoon, members of the Judiciary Committee. For the record, my name is Suzanne Geist, S-u-z-a-n-n-e G-e-i-s-t. I represent District 25, which is the southeast part of Lincoln and Lancaster County. I introduced LB50 because I believe we need thoughtful criminal justice reform. As a member of the Criminal Justice Reinvestment Working Group in the

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interim of 2021, we took a close look at all the branches and areas of government in regard to criminal justice reform. I introduced this bill as an amendment to LB920 last year and decided to bring the amendment back as LB50 this session. This bill is a good starting point at making changes to our system. We need to focus on rehabilitation, providing good programming, safe and secure housing for those who are exiting our correctional system. We also need to continue to provide opportunities for people to succeed and become productive members of our state. This bill will expand problem-solving courts. Some counties only have one, and this will allow for more than one. It also will create the opportunity for virtual behavioral health services for court-involved individuals. During my time on the working group, we learned that it is hard for court-involved individuals to receive behavioral or mental health services in rural areas of the state. Some people have to travel hours to get to the services, and by allowing for virtual services, some people or more people will be able to access the services needed. We also learned that individuals who may be eligible for set-aside convictions may not know that they are eligible. And this bill provides for notification to those individuals of their eligibility and when that will occur. Probation officers are overwhelmed with caseloads. And in my bill, we will also create a pilot program which will provide assistant probation officers. And I'll give an aside here that's off my notes. I wish we could provide every probation officer that supervises high-risk probation individuals an assistant, but because of the constraints of budget we have not done that. But I would like to do that. But one step at a time. Anyway. That is, we're making this provision in order to be sure that probationers are, one, receiving the services that they deserve and that supervision is taking place and the supervision that is required. When individuals are required to pay restitution, those payments are currently not prioritized, and by prioritizing restitution will not only help victims families to, to feel and to know that their family member was not forgotten, but it also helps individuals who committed the crime to hopefully find closure and begin to turn their lives around. And LB50 will also create the ability for streamlined parole contracts for those that qualify and a program to establish a technical parole violation residential housing program. This is a pilot program that allows for housing for those who have a technical violation without sending them back to incarceration. This pilot program will require that individuals participating in it will, at a minimum, be required to participate in counseling, educational, and other programs as the department deems necessary. I have been contacted by a couple, and actually now I have to say several agencies with some technical changes for this bill. And

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because of the backlog in Drafting, we, we are working on those changes. We will bring an amendment to this bill. Nothing actually changes the intent of the legislation. It changes wording and takes a little bit out where we used "probation" instead of "parole." We actually took this legislation from LB920 last year and my amendment and, anyway, there are some errors in that. And so we are working to fix those. And of course, you will want to see that before you would do anything with this legislation. But with that, I'm happy to take any questions you may have and thank you for your time.

WAYNE: Start with Senator DeKay, followed by Senator Blood.

DeKAY: Thank you, Chairman Wayne. Senator Geist, you talk about a pilot program to assist probation officers and then another pilot, pilot project, too, for an incentive program. Could those be used at one in the same that would--

GEIST: Sure, they could be.

DeKAY: --be able to combine dollars that would actually help employ people, but also give them the direction to learn from probation officers that are already in the field?

GEIST: That-- it could be. What that does, though, actually, is it gives some flexibility for probation to decide where they want to try those, those projects. Again, those are done in a small-- it's called a pilot project because they're done in a small area. Just to show-- for one thing, we know that incentives help people. It's one thing to always correct behavior-- in our last hearing, we were talking about punitive correction all the time, it's very important that you also incentivize good behavior. And I learned this from being at drug court and, of course, being a parent or just, you know, knowing human nature. It's one thing to always correct behavior, but it's great to reinforce good behavior. And that's what the incentive program does. I think we'll, we'll see that that will bear out, that it will be successful. And again, I already gave commentary to adding help to those who have large caseloads on probation. So I believe that will be successful as well.

DeKAY: Thank you.

WAYNE: Senator Blood.

BLOOD: Thank you, Chairman Wayne. Senator Geist, I have two quick questions.

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GEIST: OK.

BLOOD: So I've been looking at these side by side for a while now, not just today, and--

GEIST: I'm sorry, you-- you've been looking at--

BLOOD: I've been looking at these side by side, Senator Wayne's and Senator Geist's bill that we're looking at today.

GEIST: OK. OK. I just wasn't clear what--

BLOOD: The last two that we have in the hearing today. And I think I heard it in your introduction, but I just want to clarify, my interpretation of your bill-- and the reason I'm comparing it is because your bills are trying to do some of the same things--

GEIST: Correct.

BLOOD: --in fact, should of had a joint hearing on these-- is that this appears to be where you left off when we had the debate on the floor. Kind of like your stopping point. Senator Wayne seems to be more of what Senator Lathrop was talking about on the floor.

GEIST: Correct.

BLOOD: Would you say that that's accurate?

GEIST: Yes. I, I believe Senator Wayne's bill probably is formerly LB920.

BLOOD: OK.

GEIST: And mine, just to give you commentary on mine, were all consensus items from that working group. We have worked to pare some of that down because some did not-- no longer applied. So that's going to reflect on a few of the differences that you'll see from my amendment last year to this current legislation.

BLOOD: And then looking at, at the fiscal note, I'm reading under the Nebraska Board of Parole:

GEIST: Um-hum.

BLOOD: The Board of Parole is currently establishing a pilot residential program for parolees who commit technical violations. The agency is utilizing reappropriations to fund the pilot in fiscal year

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2022 and 2023. To continue the pilot, the agency would need additional appropriations and PSL established in their base. So is that reflected-- so how the fiscal notes are being done this year, I think, have been a little bit more confusing. Have you noticed that?

GEIST: I have to admit I have, yes.

BLOOD: Yeah, so I'm a little confused about where that is in the fiscal note as far as the cost for that, the additional cost, because they're saying that they already established this type of program. If indeed they continue this type of program, it's going to be more money. I'm not sure where I'm seeing that at in the fiscal note. Is that on--

GEIST: Well, where, where--

BLOOD: --the \$845,000?

GEIST: On the fiscal note, on page 2 of my fiscal note, it kind of delineates rent for the house, utilities, and all of that. Is that where you're referencing--

BLOOD: I'm, I'm trying to figure out--

GEIST: --from the Board of Parole?

BLOOD: --if they have an existing program already?

GEIST: No, they are beginning a program.

BLOOD: But isn't it already funded, beginning that pilot program?

GEIST: I do not know if their current program is funded.

BLOOD: Because we're in fiscal year 2023-- 2022-2023 right now.

GEIST: Correct.

BLOOD: And they're saying that the agency is utilizing reappropriations to fund the pilot in fiscal year 2022 and 2023.

WAYNE: I can answer that question for you.

BLOOD: Do we need to-- can you answer that? Thank you.

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WAYNE: Yeah, I just met with Ms. Cotton. They are-- the house is actually set to open in the next month to have an open house and they'll start their programming. So they already have the money.

BLOOD: So are we expanding it, continuing it? That's where I'm confused. So it already exists?

WAYNE: It exists.

GEIST: It exists.

BLOOD: So--

GEIST: I would like to expand it. And if we appropriate dollars, hopefully it will.

BLOOD: All right. I'm still a little confused on some of this, but we can talk more outside--

GEIST: OK.

BLOOD: --because I know eventually we want to go home tonight.

GEIST: This is true.

WAYNE: Senator McKinney.

McKINNEY: Thank you, Senator Wayne. Thank you, Senator Geist.

GEIST: Sure.

McKINNEY: Just one quick question, because I kind of learned this last week. I didn't realize that the Board of Parole wasn't required to take implicit bias or cultural competency training or courses or things like that. It's, like, not mandatory. Would you be open to putting something inside of your bill or something that says that the Board of Parole and parole officers are mandated to take cultural competency and implicit bias training because I think it's very important?

GEIST: Oh, I thought you were going to continue your question.

McKINNEY: No, I'm sorry.

GEIST: I think that's something we can talk about.

McKINNEY: All right. Thank you.

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WAYNE: I'll just say right now, for those who are maybe about to walk over here or who are thinking about waiting for my bill, the reason my bill was dropped, and it's going to be a very short opening, was I was communicating with Senator Geist while she was on vacation and there was a miscommunication so I dropped my bill without seeing her bill because I wanted to make sure we had a conversation. But that's kind of-- so those who might want to testify on my bill, there's an orange sheet back there. Just sign up and say you're opposed to it. You don't have to testify. Any other questions from the committee?

GEIST: And I will concur there was a miscommunication, and part of that was due to me, so I take responsibility for that.

WAYNE: The point is we're going to, we're going to work together on both bills to figure out where to go. Any questions from the committee? Seeing none, thank you for being here.

GEIST: Thank you.

WAYNE: First proponent.

DON KLEINE: Good afternoon, again. Don Kleine, K-l-e-i-n-e, Douglas County Attorney. I'm here as the Douglas County Attorney and as a representative of the Nebraska County Attorneys Association. I'll be very brief. We're, we're supportive of this bill. I'm supportive of this bill. Anything we can do to enhance mental health and behavioral health services, help Probation and Parole, we're, we're all for and expanding the problem-solving courts, which I'm a big fan of. So I think this is important. Again, the history, and like Senator Geist stated, was that in that committee, the LB920 committee that Senator McKinney was on, I was on, Senator Geist was on, Tom Riley was on, and several other individuals, these were items-- in, in LB50-- the items in LB50 were consensus items from that committee that everybody somewhat agreed-- I mean, not somewhat, everybody agreed on. And so it seems like an easy-- it should be the easiest thing since that's a consensus item from that group, people were in agreement that these are important issues that, that should be legislation to help in all those, all those regards and all those issues should be something that's kind of low-hanging fruit with regard to criminal justice. So I'll be happy to answer any questions, Senator Wayne.

WAYNE: Any questions from the committee? Seeing none, thank you for being here. Next proponent.

BOB DENTON: Good afternoon,--

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WAYNE: Welcome.

BOB DENTON: --Chairman Wayne and members of the Judiciary Committee. My name is Bob Denton, B-o-b, D-e-n-t-o-n. I am the deputy administrator for the Adult Probation Services Division with the Administrative Office of the Courts and Probation. And I testify today in support of LB50. First of all, we want to thank Senator Geist for her leadership on community corrections and for considering our suggested amendments to the bill. In relation to criminal justice reform, problem-solving courts and probation have consistently risen to the top as an effective solution for reducing recidivism. As stated in the bill, one form of a problem-solving court currently operates in all 12 judicial districts and currently serves approximately 680 individuals on a daily basis but more are needed. As of December 31, 2022, the statewide recidivism rate for problem-solving courts in Nebraska was 16 percent, which means 84 percent of all individuals who completed problem-solving court remained crime free for at least three years after their release. As a result of LB605 passing in 2015 as a, as a justice reform strategy, presumptive probation was added by this body, which increased the felony probation population by 50 percent, with 63 percent of these individuals assessed by a validated risk-screening instrument at a high, very high risk to reoffend. In addition, post-release supervision was added to the role of Probation. We currently supervise over 1,200 individuals on post-release supervision, 89 percent of whom have been assessed as a high, very high risk to reoffend. Even with the increase, our success rates remain stable and our current recidivism rate for all adult probationers is 19 percent and post-release supervision individuals is 27 percent. But the increase in probation admissions and having more individuals with higher levels of risk to reoffend, Nebraska Probation has utilized the system probation officers as a cost-effective means of maintaining intensive supervision and case management standards. Assistant probation officers work directly with high-risk probation officers to act as a team and the supervision of individuals who are at a high risk of reoffending as a solution to ensure evidence-based practices are maintained and ultimately reduce recidivism rates. LB50 would allow Probation Administration to create a pilot site to implement a one to one ratio of a system probation officer to every high-risk probation officer. This would allow us to track results and determine the effectiveness of this strategy and potentially expand to the rest of the state. And I will end there.

WAYNE: Thank you for your testimony. Any questions from the committee? Senator DeBoer.

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DeBOER: I don't know if you're the right person to ask this question, but I'll just try.

BOB DENTON: OK.

DeBOER: What percentage of people would you say would be eligible or would be helped or successful in a problem-solving court setting? Of all the folks that are sort of out there, what percent do you think would be successful should we have all the money in the world to do that?

BOB DENTON: I can't answer that question directly, but I can tell you during LR399, we provided data that demonstrated we have the ability, if given the resources. Right now we serve about right under 5 percent of the eligible, potentially eligible population. We could double that to 10 percent with given the appropriate resources.

DeBOER: And would 10 percent of people be helped by those kinds of courts? Is that what you're saying? Is you're-- are you just saying you would have the capacity or would you have the customers, so to speak?

BOB DENTON: Both.

DeBOER: OK.

BOB DENTON: Yes.

DeBOER: And would you have--

BOB DENTON: And, and more.

DeBOER: --would you have--

BOB DENTON: I mean, 10 percent is-- and we can't tell exactly how many of that felony population, but we're pretty certain that if given the appropriate resources, we could expand, we could double the current population that we serve, which would be a good start.

DeBOER: And let's say you got all the money and you did 10 percent, are there still others that might-- I mean, I'm just trying to kind of get a sense of is it less than 50 percent? Is it more than 50 percent that would, would be successful in this kind of setting?

BOB DENTON: I personally believe it'd be 10, more than 10 percent, but I don't have data to demonstrate that right now. But the data that is

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available, I think, is pretty indicative that there is a bigger population of individuals out there who would be eligible and suitable for a problem-solving court and would benefit from this program.

DeBOER: How expensive is it on average to put someone through a problem-solving court?

BOB DENTON: I did include in my testimony a handout. We refer to them as infographics on problem-solving courts and the current supervision cost for a problem-solving court is the last attachment, and it's really small, but I'm going to-- I think I can read it. For adults, it's \$14.76 per day, and for youth it's \$14.88 per day.

DeBOER: And how does that compare to incarceration? Is that less than traditional--

BOB DENTON: Significantly less.

DeBOER: That's what I thought.

BOB DENTON: Yes.

DeBOER: OK. Thank you very much.

WAYNE: I'm, I'm going to ask a question, but I'm stuck by this fancy staple. We are giving you guys way too much money. That is like--

BOB DENTON: That's saving taxpayer dollars right there. No staples.

WAYNE: That's expensive. We got to look at that budget. My question is, on post-supervised release, can a judge in their post-supervised release supervision early?

BOB DENTON: Can they release them early?

WAYNE: Yes.

BOB DENTON: Yes.

WAYNE: Well, when the Attorney General comes up, I'm going to ask him how is it constitutional?

BOB DENTON: I could not answer that.

WAYNE: OK. Thank you.

BOB DENTON: Yes.

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WAYNE: Any other questions? Seeing none, thank you for being here.

BOB DENTON: Thank you.

WAYNE: Just the person I'm looking for. Welcome.

MIKE GUINAN: Good afternoon, Chairman Wayne, again, and members of the Judiciary Committee. My name is Mike, M-i-k-e, Guinan, G-u-i-n-a-n. I'm the criminal bureau chief for the Nebraska Attorney General's Office, appear before you today on behalf of Attorney General Mike Hilgers and the Nebraska Attorney General's Office in support of LB50. In 2021, the leaders of the state's three branches of government launched the Justice Reinvestment Initiative creating a Criminal Justice Reinvestment Working Group and invited CJI to run analysis on the data. The ultimate goal of this work to reduce rates of recidivism, recidivism and lower prison population trends in Nebraska are a worthy endeavor. The resulting report released in January of 2022 identified a number of policy options which were considered. All or a majority of those, I believe, are found in LB352. Taking a lead from Senator Wayne's statements, there are a number of, of individual sections in LB352 to which we are opposed. However, it is the Attorney General's Office's position that the proposals laid out in LB50 are, are a good starting point to effect the desired changes identified in the report, and we do support this bill. With that, on behalf of the Nebraska Attorney General's Office, I would ask this committee to advance LB3-- or I'm sorry, LB50 to General File. Be happy to answer questions at this time.

WAYNE: Any questions from the committee? Senator Ibach.

IBACH: I do just have one. As I was reading the, the bill itself, it states that the pilot program shall be limited to a single probation district. So I'm assuming, like, this district. And then in, in the last testimony it talked about, including a statewide program that, that would provide for safe, confidential, and reliable treatment throughout telehealth. And so because I'm from more-- a more rural area,--

MIKE GUINAN: Sure.

IBACH: --I'm assuming that this doesn't intend to replace any of the programs that are already in place but enhance them?

MIKE GUINAN: That's my understanding, Senator.

IBACH: OK.

MIKE GUINAN: Yes.

IBACH: Thank you. Thank you.

WAYNE: Not to put you on the spot but I'm struggling with this post-supervised release and, and that being underneath Probation, I'm not saying they're doing a bad job, I'm just trying to figure out the constitutionality of it when my understanding is once the sentence is done, or once a sentence is commenced and the order is filed and that individual leaves that courtroom, the court has no more jurisdiction over that individual.

MIKE GUINAN: That's, that's my understanding.

WAYNE: And then it would have to go to the Pardons Board-- Parole Board or Pardons Board, somewhere outside of that.

MIKE GUINAN: Right. My understanding, you're correct, when the case is over outside of the court's jurisdiction and that person is now remanded to whatever, prisons or whatever.

WAYNE: This isn't the bill to do that on, but we're going to have some conversations around it. I'm just in my head trying to figure that piece out, like, because you just argued in the last bill that separation of powers issue with the, with the Parole Board.

MIKE GUINAN: Oh, you mean the Pardons Board piece?

WAYNE: Yeah. And then here we've kind of blurred the line, we're saying you're in your sentence, but it stays in the, in the court and then we can even commute your sentence early by letting you off of post-supervised release within the court. You follow where I'm--

MIKE GUINAN: I'm, I'm not following you, Senator Wayne.

WAYNE: So if the sentence is 3 years and 18 months post-supervised, that same judge can now commute that sentence on the post-supervised and say you only have to do six months. We're releasing you, according to testifier before you, early. That's a-- they're commuting their sentence. The, the sentence was 3 months-- 3 years, 18 months. That, that has to be the sentence. The judge can't-- now you following me? Are, are we, are we doing lawyer talk so don't have to answer right now? We can, we can talk about it later.

MIKE GUINAN: Might be better off--

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WAYNE: All right.

MIKE GUINAN: --but I--

WAYNE: Let it go. We'll talk. I was-- just popped in my head from the last to this one, I'm just trying to figure it out, that's all.

MIKE GUINAN: Sure. Sure. Yeah, I'd be happy to talk to you.

WAYNE: That's what happens when you get a new Chair--

MIKE GUINAN: Yes.

WAYNE: --you start thinking.

MIKE GUINAN: Absolutely.

WAYNE: All right. Any other questions? Seeing none, thank you for being here.

MIKE GUINAN: Thank you.

WAYNE: That's an interesting issue from my perspective.

AMBER WOOD: Hello again. Amber Wood, A-m-b-e-r W-o-o-d. This bill I just read, but there's a lot of things that seem to touch on a lot of different scenarios that I've dealt with in my life. Speaking to my daughter Karly, in my opinion, the system failed her and it failed our family. It failed the criminals themselves, in fact. But being nicer and letting them out is not going to help them or society. The judicial system, in essence, is a second parent figure to a criminal guiding them from wrong, teaching them what's right, and executing punishment when needed. If we cater to someone when they break the law and make-- and refuse to comply, then we're not helping anyone. I'm upset because imagine a felon who repeatedly throughout, throughout his criminal career gets let out off of probation, off of, off of supervision simply because he didn't want to comply. That happens over and over. And the problem that I see and have gone through probation myself, probation officers are overloaded, prosecutors are overloaded. Right? We want to spend all this money to rehabilitate, but where's the accountability steps to get there? So where's the probation officer and their assistant, especially with high-end repeat offenders, with, with violent offenders because people that were involved, that-- with my daughter and killing her were repeatedly in the system over and over again and repeatedly let out and let off of supervision or they were on supervision and then weren't being

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supervised? So that's one of my biggest issues, is that the whole, the whole thing's a mess. But giving probation officers when-- more money needs to be allocated while we're-- while they're out amongst us. While they're out amongst innocent people who aren't committing crimes, who don't have a, a criminal record. Jail should be scary to not want to go there. I don't think it is anymore. I think it's a break from surviving on the streets. And I think it's a vacation for a minute. And then parole and probation should be a chore. Walk the walk and then earn your freedom. But where's the accountability in all that? Where's the report card because it's not happening?

WAYNE: Thank you for being here. Any questions from the committee? Senator Blood.

BLOOD: Thank you, Chairman Wayne. Thank you for that you are persistent in your messaging, I think that's fantastic. I want to be really cautious because I know that we have a fine line we have to walk, but I'm, I'm asking this question, and I want you to know that I worked maximum security, I was the first pregnant woman to ever run the yard at LCC. I worked at the Pen, like, I worked in the prison. So I don't disagree with what you're saying, but I have a question for you. We want people, and you heard Senator McKinney say the same thing, it is the expectation that when people commit crimes, that they are punished for that. And I don't think anybody disagrees with that. But at the same token, almost the exact same percentage of people think that we're rehabilitating inmates when they're incarcerated. And that's part of what we're talking about today, is that we want to know that if indeed those people are doing their time and being punished, that they are also being rehabilitated because one day they're going to be out, one day they're going to be our neighbors. And so if all we do is, is punish, but we don't give them that pathway that you're talking about, which is what's going on right now, and it hasn't really changed over the decades since I worked there is that when we talk about rehabilitation, and in the '70s we used to be really good at it in Nebraska and we kind of lost our way. That happened around the time of, of Governor Heineman where we were cut, cut, cutting so we cut rehabilitation in the prisons. So what happened is our recidivism rate went up and our people that were incarcerated were getting out. And, you know, you got nothing but time on your hands if you're not being rehabilitated except to learn how to be a better criminal, right, because you're just hanging out, you're just talking. You're on the yard doing whatever. So the question that I have is-- I don't disagree, if you commit a crime, you should be punished. And I don't disagree that prisons aren't, you know, supposed to be fun. Right? But at the same token, if we never rehabilitate them, if we

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never-- we talk about this pathway, but we don't have a pathway. Nebraska is part of the problem and part of why this committee, and I just got on this committee, that's why this committee has worked so hard for such a long time. As an advocate for victims rights, you do want people to be rehabilitated in addition to being punished don't you or am I not hearing that right?

AMBER WOOD: No, I absolutely do. The, the problem-- well, you know, I'm reading these bills and, like, the other one that I didn't really get to speak on everything because I didn't know it was a joint hearing, you can read those, whatever I wrote, though, but it, it just seems like kind of a mess and there's no, there's no it's going to be this way and they have to account for this and the committee seems lopsided. You know, that's that one. There should be-- yes, I'm sure there's issues in, in jails and prison. I mean--

BLOOD: I can't speak on jails. I can only speak in prisons, so, but, yeah.

AMBER WOOD: I, I can speak on a jail. OK. There's, there is issues, yes, but would you rather have that repeat offender out next to your loved one or in jail until they have proven themselves?

BLOOD: Which-- see, we're actually talking about the same thing. No, I wouldn't. I would want them rehabilitated. And that's the issue that we're trying to, to resolve. And I, I, I hear what you're saying about the statutes, and statutes can be difficult to read anyway even for those of us that read them every single day, is that I want that person who is one day going to be my neighbor to be rehabilitated. I don't want them to be a repeat offender that never gets help, who has nothing but time on their hands while they're incarcerated learning how to be a better criminal. I want them to be rehabilitated while they're incarcerated. I want them to, to do their time, to take their punishment, but I want them to one day be my neighbor and be a good citizen.

AMBER WOOD: But rehabilitation doesn't stop when they open the doors and say you're free.

BLOOD: I, I don't disagree with that.

AMBER WOOD: There, there needs to be steps and, and how-- you know, processes and accountability and report cards that say, yep, you do this and next step is this. You're essentially being a parent to that

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prisoner again to teach them how to properly be with people nonviolently.

BLOOD: And, and what I encourage you to do is, is to find some of us and have breakfast with us, have lunch with us, have coffee, or the weekend with us. Because hearing what you have to say, I think you'll find that actually that is, is the best-- not all of it, intent of this bill and--

AMBER WOOD: Yep, this one I, I like.

BLOOD: --and that we do have opportunities to do better so we can protect victims in the future. But we can't do that if we don't have a full-- we've got so many things to change in Nebraska so we've let this fester for decades and it's not going to be an overnight fix.

AMBER WOOD: Right. But I do think that you need-- if there's ever a committee or whatever, you have to have people from, from every side, not just inmates and, and defense attorneys and judges. I mean, there's got to be prosecutors, victims advocates in that, which I don't think that that money-- it was never stated how that would be paid for. But I think taxpayer dollars are better spent on protecting the innocent people once someone's reintegrating. Because ankle monitors don't seem to work for some of them, they don't care, they cut them off. You know, I'm just not going to comply. I'm a felon. I'm just going to go have a gun. Nope, I was told I can't have a gun, but I don't care. So deciphering who's who, like you said, about the Parole Board, maybe it starts with the Parole Board, who is letting them out and who's just saying, oh, I give up, I'm not parenting you anymore?

BLOOD: The one thing I'll add, and then I appreciate you having this conversation with me and answering my questions, is that unfortunately, because we aren't rehabilitating inmates properly, they're jamming out, which is kind of what you're talking about. They don't get rehabilitated. They're angry, they're not reformed. And then that's when that cycle starts all over again, so.

AMBER WOOD: And maybe that's where that other prison goes to when it's decommissioned, it's a next phase.

BLOOD: I, I, I think you need to start talking to senators and having coffee with all 49 of us. Thank you.

AMBER WOOD: Thank you.

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WAYNE: Thank you. Any other questions from the committee? Seeing none, thank you for being here.

AMBER WOOD: Thank you.

WAYNE: Next proponent.

JASMINE HARRIS: Good evening, Chair Wayne and--

WAYNE: Welcome.

JASMINE HARRIS: --members of the Judiciary Committee. My name is Jasmine Harris, J-a-s-m-i-n-e H-a-r-r-i-s, director of public policy and advocacy at RISE. LB50 presents the 17 policy recommendations from the Reinvestment Justice-- Justice Reinvestment Initiative that happened in response to the prison overcrowding emergency that was declared. These policy recommendations that were the consensus items were not just created in a vacuum with this working group from the data from CJI, I was also integral in ensuring that roundtables were created to bring people's voices into that room through the impact-- directly impacted individuals, service providers that are a roundtable for victims, victim advocates, roundtables with law enforcement, and so forth that all went into creating these policy recommendations. So I just wanted to make sure that people in the committee knew that that was a part of that process as well. RISE is in support of LB50 as this is the basis of what LB920 was last year. We support all opportunities that allow more people to have the opportunity to parole. Because you are eligible for parole, does that mean you get parole. But what we also do with RISE as our reentry team is working with individuals a year before they reach the door, they're working on their reentry plans, working on those basic necessities, ensuring that we are walking that actual walk with them. We also prepare them for parole hearings. We go to their parole hearings for support. The parts that I'm talking about is the streamlined contract. Creating the streamlined parole contract process and changing the guidelines to focus on more concrete objectives would help ensure more people who have shown great strides in improving their success upon reentry are prepared and granted parole. So it's not a whole lot of objectiveness coming from the Parole Board, but there's actual substantive information that they're working with to ensure they're paroling individuals. We also support that pilot program for the technical parole violation, residential housing now that we know it's not the real thing. Because as we are working with people, we do have some people who go back on technical violations. The majority of those are due to mental health and substance use issues. And so what we would

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like to see is for them to receive those resources and help versus going all the way back to a prison. The CJI, Crime and Justice Institute report showed that 40 percent of people who return to the Department of Corrections were due to technical violations of parole. So that would be a significant, I think, release on some of the population overcrowding that we see. And with that, I'd be happy to answer any questions and ask that you all create a comprehensive criminal justice reform package, including some of these from LB50.

WAYNE: Any questions from the committee? Seeing none, thank you--

JASMINE HARRIS: Thank you.

WAYNE: --for being here. Next proponent. Welcome back.

MAGGIE BALLARD: Thank you. My name is Maggie Ballard, M-a-g-g-i-e B-a-l-l-a-r-d, still with Heartland Family Service in support of LB50. And we appreciate Senator Geist for bringing this bill forward. Our greatest support comes from the push for pilot programs and problem-solving courts. As an agency that serves both Iowa and Nebraska, we have seen successes when our clients are able to participate in such problem-solving courts and diversion programs. They have more success in becoming productive members of our community and are less likely to reoffend than when the totality of circumstances around their crimes are not taken into consideration. LB50 also includes a pilot program to establish a technical parole violation residential housing program. Providing accountability and support for individuals who commit technical violations is a perfect example of how a violation can be corrected without that person going back into Corrections. We also want to underline the importance of such a program following a therapeutic community model. We support the changes that this bill will make to restitution laws ensuring that victims and survivors of crime receive restitution before fines and fees are paid. Some of our clients at Heartland have been on the receiving end of such restitution and it really does make a difference and we feel that they should receive those payments first. One thing that I want to make sure we all understand, kind of like what Senator Blood was saying, about our clients are at Heartland Family Service is that they are our neighbors. They are people just like you and me, except, sadly, and some of them, I'd say many of them have experienced more trauma than you or I can really fathom. I talked about ACEs earlier, and that's one of the things I, I would ask to be considered. I, I don't want to go as far as to testify neutral instead of being in support of this bill, because I am. But I think that when someone gets in front of a Parole Board, one of the things that should also be

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considered is not just their, you know, demeanor towards law enforcement or, you know, what they've done during their time, but also knowing what trauma they have experienced. Keeping in mind that that being incarcerated has been traumatic for them and even maybe adding their ACE's score. And I do want to go on record and say that if that's something that anyone in this committee would be interested in doing, I would be more than happy to help that happen. The other thing I would be remiss if I didn't bring up today in relation to all these bills that are being heard and the things that are happening in this state is that at the end of last year, the session, it was very disheartening to see another year go by without comprehensive criminal justice reform or prison reform happen from the Unicameral. So we do believe that LB50 will get us closer to being the kind of state we want to be. We just ask that you not stop there. And on a more personal note, in relation to one of the things that someone said about \$14.80 [SIC] for, you know, participation or supervision in problem-solving courts, that is abhorrent to me. That should be abhorrent that we are--

WAYNE: OK. I appreciate your conversation. I'll ask you a question, you'll be fine. Any questions? What were you about to say?

MAGGIE BALLARD: Thank you. It is abhorrent to me because what I just heard is that we as a state are OK with spending \$38,000 a year incarcerating someone instead of \$14.80 a day on that person to be supervised under problem-solving courts. Thank you so much for letting me finish that thought.

WAYNE: No problem. Any other questions from the committee? Seeing none, thank you for being here. Any other proponents? You could have just filled out the orange sheet, you did not need to testify. Welcome.

SPIKE EICKHOLT: Thank you. I'll just [INAUDIBLE]. My light's already started.

WAYNE: Yeah. [LAUGHTER]

SPIKE EICKHOLT: 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 in support of LB50. I did explain to Senator Geist, at least her office, that I would be supporting her bill. This, as she said, is a starting point and it's a good starting point. I think that those of you who are returning senators remember the debate that we had or that you had, I should say, on the floor

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about LB920 and Senator Geist's alternative amendment. We would respectfully suggest that Senator Geist and this committee go perhaps a bit further in adopting some of the recommendations from the CJI report. But what Senator Geist has in LB50 is a really good starting point. First, that she explains it does provide for meaningful investment in problem-solving courts, which is important. She does provide, which is a small but it's important thing and that is when the court imposes a sentence on an eligible type of crime that the court advise that defendant that they may be able to seek a set aside later. A set aside is a partial, for lack of a better term, a partial pardon from a judge. And it does have some consequence in some circumstances for jobs and licensing circumstances. One of the things that this bill also does is it prioritizes the repayment of restitution. In most criminal cases, at least in Lancaster County, restitution is often paid before a plea is entered as part of a plea negotiation. But courts have the ability in any kind of criminal case if a person is found guilty of a crime and that they can quantify that that crime has caused someone some measurable amount of loss and that defendant has the ability to pay, court can enter a restitution order. Right now, the restitution amount is just considered along with court costs, fines, probation fees, and the person just sort of plugs along and pays it as they go and there's no prioritization of making the victim whole. But what this bill does, it is puts restitution first, if there's restitution orders and anything that person pays, it goes to the victim. The streamlined parole that you heard before for eligible offenders who are in custody who have not had any significant write-ups and are serving sentences for eligible offenses that there'd be this option for a presumptive parole. And finally, the technical violations residential home, the sort of something Senator Lathrop called the halfway back house, is kind of a, a very good proposal as well. Because right now on a technical violation if someone is on parole, they have a technical violation that rises to the level where they recommend the person be taken into custody, they go all the way back to the prison system. They start all over again at RTC. And I'll just tell you, anecdotally, representing people who end up there, they just generally give up. They have no interest on being on parole. They're just going to serve the rest of their sentence. And they have this mindset that when they get out, they're just not going to get caught next time. And those are the people that you see coming back. I'll answer any questions. Oh, what I handed out was a summary that CJI did for the work they did last fall. I found it on the website and it summarizes some of the recommendations that they had last year to the Legislature.

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WAYNE: Any questions from the committee? Senator DeBoer.

DeBOER: Just briefly, will this LB50-- we don't-- I don't know if I have an analysis of it or not somewhere. Anyway, I can't put my fingers on it right now. Will this have an effect on our population in the prison? Can we tell from what we have here?

SPIKE EICKHOLT: If I remember right during the debate, CJI was able to sort of measure what some of the different amendments would have, the amendments from the original LB920, and this may have had some impact, but my impression or my recollection was that this would not do enough, if you will, to trend down the anticipated numbers for our prison population.

DeBOER: OK. Thank you.

WAYNE: Any other questions? Seeing none, thank you for being here. Oh, sorry, Senator DeKay.

DeKAY: Thank you, Chairman Wayne. Sir, you had talked a little bit about restitution being from a standpoint of enormous loss, so from-- and you talked about, like I said the restitution part of it, if that person is incarcerated depending on how you-- what you call-- consider an enormous loss, how do you-- how do we have-- they pay restitution on something like that?

SPIKE EICKHOLT: It depends on what the restitution amount is, how much it is. Sometimes you have to sort of-- the prosecution has a difficult time of establishing or showing what the actual loss is. I mean, unfortunately for people who are victimized, they can't put a dollar figure on it.

DeKAY: Right.

SPIKE EICKHOLT: But give you an example, say you have somebody smashes up your car window and steals something or tries to steal something from it. You have insurance, but you have to pay the deductible of \$500. That's an example of you can give your-- give the prosecutor your sort of receipt that you paid your deductible to get your car fixed. Then at the time of sentencing, the prosecution is going to ask the judge to order the defendant to pay restitution. And if it's an exorbitant amount, if it can't be quantified, my guy is never going to be able to pay it, I would argue against it. But for something like the example I have, the judge will say, well, you've been working up until this point, you're able to post this \$1,000 bond, you're going to get some time. But it looks like from this letter I got from your

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employer, you've got a job for you. In that circumstance, the judge is probably appropriate to make a finding that he has the ability to pay and he'll order him to pay the \$500. There's court costs to go along with every case that's filed and generally they're assigned to the defendant if somebody is found guilty. That's another value that can range from \$48 all the way up to over \$100. And sometimes the judge will also, in addition to the jail sentence, give them a fine, which is something that goes to the school fund. What this would do is say whatever he pays, the defendant pays on his case, the \$500 goes back to the victim first. And that's, I would respectfully suggest, a good way to look at it.

DeKAY: So, like, just real quick, so, like, if, if they are incarcerated, get out, and they're ordered to pay restitution, the judge can order or impose garnishing their wages to help pay back those?

SPIKE EICKHOLT: Sort of, you-- a judge's restitution order can be converted into a civil judgment, and then the victim or a lawyer on their behalf can try to garnish their wages. Put a lean on a bond if they've got another case posted bond somewhere. If they've got any other way that just like trying to force any kind of collection judgment that can be pursued out there as well.

DeKAY: Thank you.

WAYNE: Any other questions from the committee? Seeing none, thank you for being here. Any more proponents? Proponents? Moving to opponents. Opponents? Welcome back.

TIMOTHY C. MELCHER: Thank you. Members of the Judiciary Committee, my name is Timothy C. Melcher, T-i-m-o-t-h-y C. M-e-l-c-h-e-r, and I am here in opposition on behalf of Nebraskans Unafraid. We are an organization that addresses issues with the sex offense registry, such as homelessness, unemployment and vigilante crime, including murder. It's important to note that these issues not only affect registrants but their families as well. We oppose this bill because it excludes nearly all felony sex crimes from streamlined parole by considering them violent crimes. Per the bill, a sex crime is considered violent as soon as it is classified as a Class IIIA felony or higher. The crime need only have an element of sexual contact/penetration to be considered violent regardless of a lack of physical force or threat. Given the ambiguous overlap of definitions within Chapter 28, this seems discriminatorily convoluted. "Without consent" under 28-318 includes force or threat, but this definition is not used in

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28-316.01. "Without consent" is one of three conditions of a sexual assault under 28-319. Yet, the other two conditions don't include force or threat. Additionally, the judge is to consider whether serious bodily injury occurred with pregnancy being considered serious personal injury. Note that pregnancy outside of sexual assault is not considered serious bodily injury and, therefore, isn't violent. Under 28-319.01, there are no conditions indicating lack of consent, force, or threat; 28-320 again uses without consent to define second- and third-degree assault-- sexual assault. Yet, third-degree sexual assault is not a felony. Under 28-320.01, the element of serious bodily injury dictates the classification of the felony. If the crime include serious bodily injury, it is a Class II felony for the first offense. If it lacks bodily injury, it is a Class IIIA felony despite the fact that no force or threat is used. Subsequent offenses in both result in a Class IC felony. Enticement with an electronic device is a Class ID felony and IC felony despite the lack of force or threat; 28-322.01, which is a Class IIA felony, has no element of force or threat and consent of the victim is not admissible as a defense; 28-322.03 is nearly the same as 28-322.01 except that it is a Class IIIA felony and consent appears to be an admissible defense. It appears that the convolution of the law is the issue here and not the crimes that land people in prison. That aside, conviction of any of the aforementioned crimes requires a person to be registered on the sex offense registry for at least ten years up to life. Therefore, we ask that anyone convicted of a sex crime be considered for streamlined parole since they will already be part of a monitoring program once released. Thank you for your time.

WAYNE: Thank you. Any questions? Senator Blood.

BLOOD: Thank you, Chairman Wayne. I, I just need some clarification here. Lots of, lots of stuff in this one paragraph. So are you saying that you don't feel-- that you feel that when a person-- I'm talking about enticement with an electronic device-- that when a person grooms somebody that-- because that's what it usually is, enticing on an electronic device-- that they deserve to, to go right back out on the streets so they don't need any kind of rehabilitation, that they don't need [INAUDIBLE] punishment? Because enticement, enticement with a, a electronic device is not always, but traditionally, somebody-- an adult male that goes to a chat room and starts grooming a, a, a young person, often a pedophile. And I'm really cautious how I use that word, because every time I use that word, people don't understand that I actually know the definition and I'm not talking about all sex offenders. Just want to put that on record. Is that what you're saying? Am I reading that wrong? Are you saying that that's, that

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should be considered the same as, I don't know, some of the things we've talked about today?

TIMOTHY C. MELCHER: So your question-- could you reiterate the question?

BLOOD: Well, I'm saying-- you're saying that, that you don't think it's-- it's my understanding that you don't think we're being consistent or fair when it comes to people who commit these types of crimes. And one of the examples you gave was enticement with electronic device. And that's the one that kind of stuck out for me right now. There's others that stuck out, too, but because it's 5:15, I'm not going to ask all of them.

TIMOTHY C. MELCHER: So I see what you're saying with that one. My only argument is that it's not violent according to the definite-- well, according to the definition it would be violent because violent is defined as a Class IIIA felony or higher. But there's no force--

BLOOD: But you don't have to be treated violently to have your entire life destroyed and your mental well-being destroyed, that that's-- you-- there is a difference-- you can do worse damage without violence and enticement is one of them. There's, there's a book called: The Body Keeps the Score. She talked a little bit about the-- I'm drawing a blank of what it's called--

MAGGIE BALLARD: ACEs.

BLOOD: --thank you-- about ACEs. And so this type of trauma is often much worse than any violence. And so the, the thing I would ask you again, is do you feel that, that it should be less than because there's no violence? Is that what I hear you saying?

TIMOTHY C. MELCHER: Sorry, no, you're, you're making a good point. I see what you're saying there. Like, I'm saying, oh, these people aren't violent let them all out. Right?

BLOOD: I'm, I'm not sure you're even saying that, but I, I think you're-- I-- my concern is it's so much more complicated when you're talking about these issues. I hear where you're coming from and what your concern is. But I think we have to be really cautious not to lump these all together, because especially when you're talking about things like enticement, that person works very, very hard to make that person on the receiving end a victim. It's not usually done in a few minutes. It's usually done over a period of time. So they're repeating it over and over and over again to groom that-- they're actually

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grooming, unlike the silly bills that we're hearing about, drag queens and stuff, they're actually grooming these children.

TIMOTHY C. MELCHER: Right. Well, I would say to my argument that there-- it wouldn't be considered a violent crime. It sounds like you agreed with me, but just because there's a lack of violence within the crime doesn't mean it doesn't have damages on the victim is what you're saying.

BLOOD: Right, severe damage is sometimes worse than any violence.

TIMOTHY C. MELCHER: And so that is-- those are the types of issues that we do deal with and that we do approach and we don't know what the answer is either.

BLOOD: All right. We'll have to have a chat sometime. Thank you.

TIMOTHY C. MELCHER: All right. That sounds good.

WAYNE: Any other questions from the committee? Seeing none, thank you for being here. Any other proponents? I mean, opponents, sorry, opponents? Any other opponents? Anybody in the neutral capacity? Seeing none, we have-- as Senator Geist comes up to close, we have seven letters of support, five-- seven letters for the record: five in support, one in opposition, and one in neutral.

GEIST: And in the interest of time, this will be super short. One of the things that I know that CJI did not measure was the question of recidivism, and that's what I would like to affect, especially, for instance, Ms. Wood, who came and talked about the need for following people once they're released. Many of the provisions that I have in this bill are directly to affect recidivism. So if we slow down the rate of the people going in and being incarcerated, that is one way to affect the population. So anyway, with that, this is a start. This is certainly not the do all end all, but it is a start. And I think more needs to be done and it is expensive. Sadly, it's expensive to get people better, but it's a start and I'm willing to work with anyone that wants to move down this path and make things better. Thank you.

WAYNE: Thank you. Any questions from the committee? Seeing none, that'll close the hearing on LB50 and we'll open the hearing on LB352 and I'll pass it over to Senator DeBoer.

DeBOER: Welcome, Senator Wayne.

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WAYNE: Thank you. Good evening, my name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District 13. Last night, I was trying to figure out when I was watching the movie "Dirty Dancing" of how to tie "Dirty Dancing" into this opening, it's the best movie of all times. It is one of my favorite movies. But to keep this short, I'll ask testifiers behind me-- I know some of them really want to testify in opposition or in favor. This bill was actually-- I did email Senator Geist and Senator McKinney and Senator Slama, at the time who I thought I was returning to this committee, and just said, hey, I might draft this-- have Josh draft this bill, just so we can have this on the table. I did not know Senator Geist is introducing her bill. I'm not withdrawing this bill, but I'm not moving this bill forward as is. As with Senator Geist, this is going to be a starting point. So I'm going have the committee hold it until we come to some consensus around different ideas and different bills. I do think there is some things that are important in here, but I didn't want to go first today because I was not a part of the LB920 discussions and I didn't want to influence anybody's conversation. I just wanted to hear why people were for, for or against certain things. And obviously, Senator McKinney and I didn't quite communicate because he introduced many of the same provisions. So I heard many of the reasons why people were against the provisions in my bill. So, again, I'm asking the committee to hold this at this time. And we're going to work with Senator Geist and Senator McKinney and Senator DeBoer, who were part of the LB920 conversations last year to figure out how to move a package forward in which we can all get behind. So if you're planning on testifying, I would again ask you to fill out the orange sheet and just say opposition or in favor. But if you want to testify, I appreciate that, too.

DeBOER: Any questions for Senator Wayne?

WAYNE: All right.

DeBOER: I don't see any, Senator Wayne. So let's have proponent testimony.

JASMINE HARRIS: Good evening. I'm still going to testify. [LAUGHTER] Jasmine Harris, J-a-s-m-i-n-e H-a-r-r-i-s, director of public policy and advocacy with RISE. Again, we were part of the conversations with LB920. Just wanted to be on record saying that these four-- this is the full package that LB920 brung. I'm drawing attention to the four nonconsensus items that many will oppose to. From the Crime and Justice Institute data dive, these four recommendations were the most imperative because of the findings. And what this found was that the

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admissions into the Nebraska Department of Correctional Services were with mandatory minimums have more than doubled from 2011 to 2020. Total time served is up 29 percent due to increasing sentence links. A majority of consecutive sentences were discretionary and not required by statute and a decrease in the parole grant rates. I know, Senator DeBoer, you asked about what parts as far as the impact in many of these four recommendations that were nonconsensus items would be the one that would move the needle more. That's where that \$55 million by 2030, an additional cost would have been saved and the decrease by 1,000 people would have happened if LB920 passed last year. So that would be in the seven years. And I can send you all the Crime and Justice Institute brief that just came out a couple of weeks ago that encompasses all of what they found. And with that, I will end.

DeBOER: Are there questions for this testifier? Senator McKinney.

McKINNEY: Thank you, Senator DeBoer. Thank you, Ms. Harris. Can you speak to the need for geriatric parole with the aging population considering many individuals that are currently incarcerated are incarcerated for decades?

JASMINE HARRIS: For decades. Yeah, so we are in favor of geriatric parole. We know that we have an aging population in our Department of Corrections. I think as it stood the last time we did the numbers, it was over \$40,000 to incarcerate one person per year. So when you then add on someone who is aging and their healthcare costs and things like that, it just really increases the amount of burden that's on the state. But we've also seen in our program a lot of our people who are life timers and those who are elder are, are peer facilitators, they go into our-- back into our programs with new cohorts and they talk to those individuals and they help those individuals and they have proven themselves. So geriatric parole and just say just because you're a certain age, you get out. It is opening up another opportunity for people once they reach a set age. I think it's 70 in the bill. If you've done 15 to 20 years of your sentence, then we open that opportunity for parole. As you're aging and being able to see, that research has shown, as you get older your propensity to commit crimes decreases. So just giving that opportunity.

McKINNEY: Thank you.

DeBOER: Are there any questions from the committee? Thank you.

JASMINE HARRIS: Thank you.

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DeBOER: Next proponent.

SPIKE EICKHOLT: Thank you. 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 LB352. I understood and I listened to what Senator Wayne said, so I'm not going to repeat or even really give my actual testimony. I just wanted to be on record-- we want to be on record in supporting this effort. This, if it's not obvious, would include everything that LB50 has and then more that was proposed last session and contained in LB920, what would have been LB920. I'll answer any questions if anyone has any.

DeBOER: Are there any questions? I don't think so. Thank you so much. Oh, wait, a latecomer. Senator McKinney.

McKINNEY: Spike, can you speak to the issues with the usage of consecutive sentences and how that has also led to increased length of stays and also as a part of the problem with the overcrowding crisis?

SPIKE EICKHOLT: So in that summary I handed out on LB50, one of-- CJI looked at some features or, I don't know what, oddities or peculiarities or exceptions or whatever word you want to use that are sort of evident in our system. And one thing that was common is that if a person was ever found guilty of more than one felony and sentenced, even if they may have related to the same underlying crime, same case, they're almost always stacked consecutively one after the other. I can't remember the statistics, maybe in that summary, it was something like maybe 70 or 80 percent of the time it was something like a consecutive sentence. Because the one thing that CJI sort of noted is that-- or actually are people going-- our prison system numbers, the entry number is relatively low, it's not trending nearly as high, but the sentences are longer and the consecutive sentences is one sort of feature of it. So one of the things that LB352 has, it sort of has this presumption for nonviolent cases that are-- occur on the same day and some other factors. But those would be if there are multiple accounts be concurrent, which means they're served at the same time. I can't remember which section of the bill but it's somewhere contained in LB352. So that's one feature. And I'll just also say something else. You'll probably hear me testify against new crimes that already reclassify or recategorize or relabel existing crimes. And that's one reason why both ACLU and the Nebraska criminal defense attorneys oppose that is because that's what you will see in practice is the stacking of sentences if you have multiple crimes that apply toward the same criminal acts.

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McKINNEY: Thank you.

DeBOER: Are there any other questions from the committee? That didn't seem to spark any, so I think that's it. Next proponent testifier. Looks like we're ready for the opponent testifiers.

DON KLEINE: Don Kleine, K-l-e-i-n-e, Douglas County Attorney and representative of the Nebraska County Attorneys Association, here to oppose LB352. Again, this was something that, that came up in the CJI study. This isn't something people all agreed on, obviously. There are many parts of this. And, Senator DeBoer, I'm just going to answer your question, too. If you look at this, oh, Senator-- or Justice Heavican reported a judicial address to the Legislature that problem-solving courts cost about \$4,500 a year per person and it cost \$41,000 to incarcerate somebody. So huge difference in the cost. So sorry, I just thought I'd answer that question that you had brought up. You know, there's a lot of parts of this bill that we don't have to guess what's going to happen. I sit on the board of the National District Attorneys Association with all DAs from around the country. And we talk, we have quarterly meetings around the country. There are a lot of these ideas that have been tried already in places like Los Angeles, San Francisco, Portland, Seattle, Saint Louis. And we've seen what's happened with these reduction of sentences, making felonies, misdemeanors and not helping people that have drug addiction problems by putting them out on the streets. Homeless population is significant in, in Portland. Portland made all possession cases misdemeanors. People aren't getting treatment. People are out on the streets living in tents. They're not getting help. They're not solving their addiction problems. There's a lot of-- that's the problem I have with this bill. And there's, there's significant problems with many sections of it in that regard. And you don't have to say, it's, it's already been tried in several parts of the country unsuccessful, so. I'll be happy to answer questions.

DeBOER: Are there any questions? Senator McKinney.

McKINNEY: Thank you. You said reduction of sentences and all those changes have been tried across the country as unsuccessful. But are you also arguing that what we're doing currently is successful?

DON KLEINE: It's more successful than what's happening there. Have you've seen the articles or the TV--

McKINNEY: Is it successful, though?

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DON KLEINE: --stories in San Francisco where people are just going and stealing everything--

McKINNEY: Is it successful--

DON KLEINE: --or Los Angeles where companies are leaving those jurisdictions?

McKINNEY: --is it successful or is it not successful, not more or less?

DON KLEINE: I think we're successful in, in certain areas, yes.

McKINNEY: Successful in over incarcerating disproportionately black, Latino, and Native American individuals in the state of Nebraska. That's--

DON KLEINE: Well, the problem is, Senator--

McKINNEY: --that's what, that's what we're successful-- can I finish talking before you reply?

DON KLEINE: You can say whatever you want.

McKINNEY: Can I finish talking before you reply? Thank you. The state of Nebraska over incarcerates minority individuals. The stats are there. Then you're going to reply and say, but the victims aren't minority. Yes, this is true, but everybody commits crimes. But the difference is the communities where those individuals come from are over policed. I would guarantee if we had the same police presence in affluent communities as we do in impoverished communities, the difference would be there would be a difference in the population. But because we don't, we over incarcerate people. And that's the issue. And just to point out the stats or things from across the country, say, oh, the sky is falling, don't do this because this is going to happen. What we're going through is horrible. Our prison population is overcrowded and Douglas, Douglas County is a part of that problem and we have to find solutions. We can't just keep saying no just to say, oh, because across the country these deaths are happening and all these things are happening. We, we have to be way more open-minded to see some changes in this state and in this country. If we don't, we're just going to keep building prison, after prison, after prison. These communities where these people come from are still going to be poor and all we're going to do is keep putting money into it. Putting money into the pockets of people that say no. And that's the problem I have. Thank you.

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DON KLEINE: Can I speak to that or not?

McKINNEY: No, I'm done.

DON KLEINE: Oh, I can't. OK. Thank you.

DeBOER: Senator Geist.

GEIST: I, I did write down a question to ask you that's off the subject of what was just being discussed, and I, I wonder if you would speak to-- there's a couple of things. One, consecutive sentencing. We've had conversations about this. And I wonder if you would speak to why that's used and whether the judge or the county attorney and/or both have discretion when they use that in sentencing?

DON KLEINE: Well, it's up to the judge unless it's a statutory requirement.

GEIST: OK.

DON KLEINE: You know, if somebody uses a firearm to commit a robbery, you're charged, you're convicted of the underlying robbery, you get sentenced on that. And it's a consecutive sentence and a mandatory minimum for using that firearm in commission to that, that robbery. But on other cases where it's not a statutory required consecutive sentence, the judge is the one who makes the determination about whether it should be consecutive or not. The judge looks at all the facts and circumstances of that case, the impact on society, the danger to society of that individual, and then makes an appropriate decision based on, on what the sentence should be. Sometimes what they'll do is they'll take, you know, if it's a, it's, say, two separate assaults, the judge can sentence somebody to-- say-- if they wanted to, they could sentence them to 20 to 30 on one assault and one to two on the other, or they could kind of separate the two and give them 10 to 20 on one and 10 to 20 on the other. They have the discretion to make a decision on what an appropriate sentence might be based on the facts and circumstances that they're aware of regarding the defendant, the incident itself, the facts and circumstances in every case.

GEIST: And when that judge gets that case, are they able to look at the whole of the individual?

DON KLEINE: Are they able to what?

GEIST: Look at the whole of the individual?

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DON KLEINE: Absolutely. They look at their criminal history, the good things about them, the bad things. They listen to people allocute on the defendant's behalf at the time of sentencing as to why the sentence should be mitigated. And they're going to make the decision based on the recommendation also by the Probation Office who does a presentence investigation in that case.

GEIST: So there's a lot involved in that.

DON KLEINE: There's a lot involved.

GEIST: One other thing I will just say, and-- have you read the book: San Fransicko?

DON KLEINE: I've heard of it. I've heard about parts of it. I haven't read it, though.

GEIST: Well, it's not from a conservative like me. It's from someone who is way left of center from what I-- my political philosophy is. And it speaks to a lot of what you were just, I believe, trying to address about what happens in a society when we just let people out of prison and when we degrade our sentencing for drug use. And, and it speaks directly to what's happening in San Francisco right now. And I think that's what you're alluding to when-- and it gives some solutions, by the way, which are far different than what we're trying to do here today and warns people about doing some of the things we're trying to do here today.

DON KLEINE: Absolutely.

GEIST: And I think that's what you're alluding to.

DON KLEINE: Yes, I am.

GEIST: And I would encourage our committee to read that book because it's very informative. And it is-- it becomes quite apolitical. This is not a political left/right issue. It's an issue of what's best for our society. And, and so I would just recommend that. Anyway.

DeBOER: Senator McKinney.

McKINNEY: Thank you. And I would suggest that you and others read The New Jim Crow and watch the movie the "13th." Thank you.

DeBOER: OK, Senator DeKay.

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DeKAY: Thank you. Not being from a metropolitan area, I was just wondering-- we were talking a little bit about different crimes within the city structures. Does Omaha police and Lincoln police or, you know, from the metropolitan areas, do they keep any data on geographical areas of different parts of the city with the highest crime rate?

DON KLEINE: Certainly, they have a crime analysis unit that, that they get calls from certain areas and they'll tell you how many calls they get from certain precincts in the city at different times and the type of calls those are so they do break that down. Yes.

DeKAY: OK. Thank you.

DON KLEINE: Sure.

DeBOER: Are there other questions? I have a question.

DON KLEINE: Sure.

DeBOER: So-- and I am not trying to be combative in any way. I just want to understand something. And I've never really gotten to ask this question before. So I would love to ask. It seems like one of the things that we're trying to do is give judges who have those presentencing investigations, etcetera, some discretion. So far am I kind of on the right track?

DON KLEINE: Yeah, well, that's right they should have the discretion. That's why we have these, you know, 1 to 50 discretion, you know, sentence anybody anywhere in that regard.

DeBOER: Great.

DON KLEINE: Yeah.

DeBOER: OK. So here's what I get confused on then. Why would we oppose the repealing of mandatory minimums then? Because if the judge is the one who has the discretion, the mandatory minimum is us over in the Legislature saying you have discretion but you have to at least do this in this case so I, I think I'm missing something, so.

DON KLEINE: Well, I think that, you know, if you noticed, we worked, we teamed up with the United States Attorney's Office. We had-- there were some advertisements about if you do a gun crime, you're going to do time. And that's in reference to a mandatory minimum. You're going to do time for sure if you do a gun crime. And that's the message that

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we wanted to send. And we've been very clear about enforcing the law and using firearms to commit different crimes. And so it's just ensuring that, yeah, that person's going to do, if they're a felon, they possess a firearm, they're going to do a mandatory minimum of three years, but the judge can sentence them up to 40 years on that. If they use a crime, a gun to commit the crime of robbery, they could be sentenced on the robbery from between 1 to 50 years. And on the use of the firearm between the mandatory minimum is 5 to 50 years. So on those particular kinds of situations, the Legislature has said, yeah, that's-- we want to make sure that message is sent, that if you're going to do a mandatory minimum amount of time and the judge can take that into account with the rest of the sentence. You know, all judges know that a mandatory minimum of three or mandatory minimum of five is no good time.

DeBOER: Right.

DON KLEINE: So they might adjust what they would have given them without that with the rest of that sentence. So they take that into consideration when they do the sentencing.

DeBOER: So it sounds like what you're saying is that by having those mandatory minimums in place, it provides a deterrent effect. Is that kind of what you're saying?

DON KLEINE: That's the hope that it is. Just like if we have sex crimes, we have mandatory minimums for sexually assaulting a, a child. It's a mandatory minimum of 10-- 15 years and a sentence goes up to life. So, yeah, on certain crimes there are mandatory minimums to make sure that people understand if you're going to do something like this, you're going to pay a price for it.

DeBOER: And before we had mandatory minimums in place, were folks getting generally sentenced to that time as a minimum for those crimes?

DON KLEINE: Well, if they did, but they got good time for it. So, I mean, you know, if they, if they got a, a 3 to 5, you know, before the mandatory minimums, they'd have to do a year and a half before they are eligible for parole.

DeBOER: But wouldn't the judge be able to figure out that they were going to get a good time for it?

DON KLEINE: No, that was before. You said-- you asked me [INAUDIBLE].

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DeBOER: Right. Right. I'm saying but, like, a judge knows when-- how much good time they get, right, so they would be able to--

DON KLEINE: Oh, absolutely.

DeBOER: --so the judge-- so I guess my question is, because the judges know how much good time there is, was what the judge was ultimately sentencing them to roughly the same as before the mandatory minimum as afterwards or do we see that the sentence length went up because of the mandatory minimum?

DON KLEINE: No, I think it's-- I don't think it makes a-- I see what you're saying. Sure. A judge could give somebody, oh, a 10-year sentence-- 10 to 20 or something like that, which would be just like a mandatory minimum of five.

DeBOER: But I, I guess I was more asking a historical question whether they did. But I can probably find that data somewhere to--

DON KLEINE: You probably can. I'm not sure what the answer is.

DeBOER: OK. And then is it a similar sort of reason why you oppose-- because another one of these is lowering the minimum sentence so there were discussions of 70 percent or less, 50 percent or less, that sort of thing, is it because of the deterrent effect that you oppose them or why is it that you--

DON KLEINE: No, it's why are you taking the discretion away from the judge in the first place? If you want to be honest with the people, why don't you tell them. We're not really-- you know, the Legislature passed the law that say sentence is from 1 to 50 years. But you know what, we're going to pass this law that says you can't sentence them more than 50 percent of that 50 years. Why don't you just lower the sentence to 25 years then if that's what you're saying? That you're saying, hey, that you can't sentence somebody on a minimum because we're going to take the percentage away, either 70 percent on, on the more serious sex crimes or 50 percent on other crimes. So you're saying-- you know, that, that's very disingenuous to me-- to the public. I have victims coming to me going-- OK--

DeBOER: So, so would it be-- would you oppose if we did that, if we just said, OK, now we're going to take something that's 5 to 10 years and made it zero to 10, would you oppose that?

DON KLEINE: Yes, I would oppose that.

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DeBOER: But that's because of the deterrent effect, that--

DON KLEINE: No, it's because of the, the judge having the ability to give that person what they felt was an appropriate sentence for that crime, there's broad discretion there. Just like you said, if the judge is looking at the presentence investigation, he says, look, this person should get 45 to 50 years. OK?

DeBOER: Right. What I'm saying is, if, if, if the judge wants to give them 45 to 50, but the current thing is they get 5 to-- that this is a crime that gets 5 to 10. I don't know what the crime is that gets that, I'm a little outside of my depth. But what if we as a Legislature said instead of that same crime getting 5 to 10, we moved it to zero to 10, still the discretion of the judge, now they have more discretion, arguably, because they have a larger window to put them in. Would you all be opposed to that piece?

DON KLEINE: That's not what this bill is.

DeBOER: No, I know, but I'm asking, do you think you would be opposed to that?

DON KLEINE: I don't quite understand how that would work--

DeBOER: OK. Yeah, I'm sorry.

DON KLEINE: --quite honestly. That's OK. I mean, if we-- if you could tell me exactly how that would pan out. We have the, the categories of crimes, the Class I felony, Class II, III, IV, and there's, there's a, you know, minimum/maximum amount for those different penalties. So-- and there's pretty wide discretion on most of them except for the Class IVs. The low grade felonies, there's a presumption of probation, you know.

DeBOER: Yeah. So, so-- yeah, I-- well, I'll follow up with you I think,--

DON KLEINE: OK, that's good.

DeBOER: --and, and continue to ask some questions. Have you noticed that there's a flattening of sentences by judges over the last 10 or 15 years? I mean, you're involved on the ground floor with some of these things.

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DON KLEINE: You know, that's, that's a, that's a good question because that's one of the questions that comes up that do you want to have some, some time at the end--

DeBOER: Yeah.

DON KLEINE: --whether they are on parole or whatever. So the, the 50 to 50 sentence didn't allow that. That doesn't usually happen at all. I mean, there are certain times with certain cases-- I could, I could give you examples of those where a judge might give somebody 47 to 50 years plus 47 to 50 years and run them consecutive because it's a little girl who was two years old who's getting strangled by a guy and he video tapes it, and he does it twice. So the judge sentences them to that sentence and then runs them consecutive.

DeBOER: But you haven't noticed a trend towards more flattened-- because how long have you been the, the attorney in, in-- the county attorney in Douglas County?

DON KLEINE: I've been elected county attorney for 16, a little over 16 years.

DeBOER: So in that time, have you noticed a flattening of sentences by judges?

DON KLEINE: I, I really haven't noticed a flattening because the judges are aware that, too, because they, they hear that from, you know, Judge Heavican and, and the courts and the probation system that, that they want to have a window at the end so that that person's sent to parole time or whatever.

DeBOER: Right, has, has a, has a, a sort of inducement to--

DON KLEINE: Right.

DeBOER: --to, to do something.

DON KLEINE: So, so the courts understand that I think.

DeBOER: OK. Well, thank you. Are there-- did that-- apparently, that spurred another question. Senator DeKay.

DeKAY: No, I'm going back to the question I asked you earlier about the data.

DON KLEINE: Data, sure.

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DeKAY: OK. So when you have that data in front of you, are you able to dispatch more cruisers in those areas or do you wait to respond?

DON KLEINE: Oh, sure, if they're high crime areas, the-- and the police would answer better than I would. But, but certainly they-- they're-- they are-- higher call areas are going to be-- have greater enforcement. The police are going to go where, where crimes are happening or where people are asking for assistance where the 911 call is from.

DeKAY: Thank you.

DON KLEINE: Yeah. Sure.

DeBOER: Any other questions now? Looks like you're done. Thanks a lot.

DON KLEINE: Thank you. Have a good night.

DeBOER: Next opponent testifier.

MIKE GUINAN: Well, I guess it's evening now. Good evening, Vice Chair DeBoer, members of the Judiciary Committee. My name is Mike, M-i-k-e, Guinan, G-u-i-n-a-n. I'm the criminal bureau chief for the Nebraska Attorney General's Office. I appear here today on behalf of Attorney General Mike Hilgers and the Nebraska Attorney General's Office in opposition to LB352. There are a number of sections of this proposed legislation to which we are opposed, and those deal with those sentencing limitations, whether it be habitual or mandatory minimums, and so on, that, that restrict a judge's ability in their sentencing role. These tools are-- these are tools in the tool bag that, in my experience, are used judiciously but effectively to address not just serious crimes, but the serious factual situations that make up those crimes, including the events, the people-- the events and the people involved, both the victims and defendants, their status and their condition, both leading up to and resulting from the crime, as well as their backgrounds and histories. Again, as I mentioned before, reducing the rates of recidivism and lowering the prison population trends in Nebraska are not controversial ideas. To that end, the Attorney General's Office position that the proposals laid out in LB50 are a good starting point to effect those desired changes. Ultimately, however, given the number of LB55 or LB52's [SIC--LB352] provisions, the Attorney General's Office respectfully asks this committee to not advance LB352 to General File. Thank you.

DeBOER: All right. Are there questions? I don't see any.

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MIKE GUINAN: All right. Thank you.

DeBOER: Thank you. Next opponent. Is there anyone here-- opponents? No. Anyone here to testify in the neutral capacity? Seeing none, there are 11 letters in-- that have been written about this: seven in support, three in opposition, and one in neutral. That will bring us to the close from Senator Wayne.

WAYNE: I was hoping, I was hoping-- I started off with "Dirty Dancing" and tried to lighten the mood because I was hoping not to, not to really have this conversation today. Part of it is because I went to the prison this morning and there's a weight. And maybe not everybody in this body feels the same weight. But there's just a different burden that certain people in this body have to carry. And I'm not blaming race. To me, I'm biracial, I got the, the best and the worst of both worlds. I get to see it in my family play out across this country for those who love Trump and those who love Obama. But there's a different burden when you look in north Omaha at the failure of our education system, at the poverty rates, at the lack of equity in-- and I ain't talking equity of, of being nice and trying to figure out-- I'm talking about home equity when you look at the incarceration rates from certain census tracts. And so when people get a little upset, or at least myself, about some issues, don't take it personal, but understand that we still see it today. It was my first-- freshman year, we were over at Billy's and a lobbyist decided not to pay for some drinks, and I was sitting with Senator Geist, with some people from D.C., and I guarantee you, had I been a white senator, that would never have happened. And it was so blunt that Senator Geist got up-- Senator Geist's husband got up and apologized to me and went and tried to take care of the bill. I can count on the number of hands where-- at the Cattlemen Ball, I was riding up the elevator with Senator Brandt, and they asked me what we were serving them tonight because I was supposed to be the help. And so when you walk into the prison today and you see people that you literally grew up with who had the same opportunities, but I just happened to be fortunate enough to have mentors. Some, if Don Kleine was still here, he was one of the first people to hire me when I clerked in law school. They didn't have the same chances, not because they weren't smart as me, many of them were smarter, but if they made a mistake the system wouldn't give them a second chance. There isn't logic behind some of the things we do, particularly in this committee. Some of it is the fear of the one, the one person who might do something and you might get hit with the campaign fire, the fear that you might be the reason that one person got out and the fact that you might just care enough to feel sorry for the victim of the program you helped implement because of the one. See

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I don't think we're doing this because we're political, I think you actually care and you're worried about the one. But when people get frustrated and people get upset and people are trying to have a conversation and maybe to the extremes that I saw in some of Senator McKinney's bill, but the reason why I didn't push down on it is because I get it. I get it. And if we don't have the courage as a committee to stand up and face the one, then I don't know what the hell we're doing. You can't build your way out of this. We open in three to four years based off our rate. The prison is full. The economy isn't going to be going like it's going right now. Where's the next \$500 to \$600, by then \$700 million going to come from? Are you going to give up your property tax relief to pay for it or are we going to let a federal judge say we got to release half of the people because we're overcrowded? That's the burden I walk in here every day when I know that on any given day, 40 to 50 percent of high school kids in Omaha Public Schools are not going to school. They're going to end up in a prison. I didn't want to have this conversation today because when we walked out of that prison, I was like, damn, that's heavy. Terrell is dealing with street cars, trying to get them to north Omaha, trying to create jobs and economic development. I'm on education, trying to figure out how not to let the next prison-- wave of prisoners come in from our community. Because then we come here, we sugar and coat about mandatory minimums. That's political. We ask for discretion on one hand when it's convenient, but then when we-- we say, no, we don't want to give up mandatory minimums for the same discretion. And I don't fault prosecutors for that because I, I'm a criminal defense attorney. That is their leverage for many of my clients to plead and some of them should plead. But let's just be honest about it and start having an honest conversation. Otherwise, in four years, when you guys are back, you're going have to build a new prison. And how are you going to staff it? We got huge problems facing us. We have a lot of money right now to figure out how to do something. But we got to find the courage to stand up. We got to find the courage to say, I understand there may be the one, but overall, we got to move the ball forward. My bill is not perfect. Hell, it's a starting point. It's a copy of a bill that I probably wouldn't even have voted for last year because I think I was on Senator Geist's side because I don't remember. I just remember talking to her, she said she's not in favor of it. I said, OK, I don't know where I'm at. But if we don't start being honest and start having real conversations and understanding where Terrell-- Senator McKinney's coming from, understanding where Senator Blood is coming from, understanding where Senator Geist is coming from. And if you don't understand, then go over to Billy's and start having a drink and some coke and talk about

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it. Because his frustrations are real. He's not anti-victim. His best friend was killed. My frustrations are real. Senator Blood worked there and watched it not get better. But now she's a senator, it's still getting worse. Those are real. And Senator Geist talks to mothers every day who are struggling in juvenile and afraid that their girls are going to get raped or die the next day. That's real. All this out here is just noise. We got to step up and have the courage to do it. And I'm sorry I'm getting into it, but I didn't want to have this conversation. I want to talk about don't put baby in a corner and laugh and go home and start maybe on Friday. Because most of you all don't carry the same burden that Senator McKinney and I carry. Most of you all didn't walk in there and see six or seven people you literally grew up with who were smarter than you. But we do. They're just trying to figure out and get to know us. Just trying to figure out how we can come to a common ground. Otherwise, like I said, we might as well just stop right here and cancel the rest of the hearings because I don't want to waste time no more. With that, I'll answer any questions?

DeBOER: Are there any questions for Senator Wayne? Senator Wayne, I don't think you're going to have any questions so that--

WAYNE: We're going to have a quick Exec. I mean, like, quick, quick Exec.

DeBOER: --that ends LB352. That ends our hearings for today. Thank you.