

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

[]

The Sentencing and Recidivism Task Force met at 2:00 p.m. on Wednesday, July 15, 2009, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing. Senators present: Brad Ashford, Tom Carlson, Brenda Council, Tony Fulton, Bob Giese, John Nelson, and Pete Pirsch. Senators absent: None. []

SENATOR ASHFORD: Why don't we get started. There are a couple of other members that are going to be joining us, here's one. Did you get a new car? I thought I saw a new car over there. (Laugh) Okay. I'm just kidding, Senator Fulton. I wasn't...I think everyone is here. Is that correct? Welcome, and I'm just going to give some introductory remarks and then we're going to have a vote on the task force Chair and Vice Chair. My name is Brad Ashford, I represent Legislative District 20, and we're here today to convene the Sentencing and Recidivism Task Force. This is an extremely important issue and obviously so in that the Legislature saw fit to give this task force 18 months of life and to appoint members to it from all of the committees, various committees of the Legislature and the...doing that I think is a reflection of the importance of this issue. I noticed today in the press that we...and, of course, we all know that we're fluctuating at around 140 percent of capacity in the Department of Corrections, that I also noticed in the press that Iowa I think is somewhere around 120 percent of capacity, and it seemed to me that we should...we have many goals and many responsibilities but one overriding goal might be that we reduce our capacity down to 115 percent, let's say, of capacity, which would save the state of Nebraska somewhere around \$30 million. Those are real dollars and obviously getting to 115 percent of capacity involves many, many issues, and those are...that is what we're going to be talking about during the next 18 months. I've been asked a question about whether or not we would have some sort of preliminary information available to the Legislature in January, and I assume we will, though the final report will be due 18 months from now. So there may be certainly legislation that would emanate from our first six months of work. I would like to introduce my

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

colleagues: Senator Bob Giese, Senator Tom Carlson, Senator John Nelson, Senator Pete Pirsch, Senator Tony Fulton, and Senator Brenda Council. LaMont Rainey is the legal counsel for the Judiciary Committee and he's to my right. He will be charged with the responsibility of providing legal counsel services to this task force. And Christina Case, who is the committee clerk for the Judiciary Committee, will be the clerk for the task force. I would just at this point, before we get into the official business, if anybody would have any thoughts or comments about the task force, this would probably be an appropriate time to give those. Anyone want to chime in? Senator Carlson? (Laugh) []

SENATOR CARLSON: I'll wait a little while. []

SENATOR ASHFORD: I don't know why I would point (inaudible). It's just my eyes were diverted over there for a moment. []

SENATOR GIESE: It's his glow. It's just his glow. []

SENATOR ASHFORD: It's just the glow. It's the two days of golf or something. Anyway,... []

SENATOR COUNCIL: If... []

SENATOR ASHFORD: Yeah, Senator Council. []

SENATOR COUNCIL: Yes, thank you, Senator Ashford. First, I would like to express my gratitude for the Executive Board's decision to authorize this task force. I believe it's very, very necessary, and I believe that many of my colleagues can attest to the need for us to explore any avenues of reducing the incarceration rates in our in our state institutions while, at the same time, recognizing the need to provide for the safety and well-being of all of our citizens. Some of us have had an opportunity to visit with representatives from the Department of Corrections, as well as those who are

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

incarcerated, and have various views on issues that need to be addressed in a way that, at least I certainly believe, that can have a profound impact on the costs associated with operating our correctional facilities. You know, I don't need to remind the members of the task force, as well as the public, that it was not too long ago we were looking at these capacity issues and it resulted in a \$76 million expenditure to construct the Tecumseh facility. And Senator Ashford and I had conversations around this issue when LB63 was being debated, with all of the enhanced penalties associated with particular criminal offenses and the need for us, I believe, as a legislative body to look at those enhanced penalties in connection with and in relation with...in relation to the capacity issues that we are facing in our correctional facilities. Also, I've had the pleasure of serving along with Senator Pirsch on the Community Corrections Council and looking at the Community Corrections Council and the programs that have been successful under the Community Corrections Council and looking at that as an opportunity for perhaps some expansion of those Community Corrections Council programs to address some of the incarceration issues. We also had legislation that was introduced and passed this past session that dealt with the Work Ethic Camp and some other training programs that are available, but we also have a major offender reentry situation that needs to be addressed, and my belief that if we can provide for, for lack of a better term, smoother transition of offenders back into the community, that would have a tremendous impact on the rate of recidivism. And certainly recidivism has serious cost implications for the state and I'm pleased that Senator Ashford made mention of the fact of what percentage reductions in our incarceration rates convert to in terms of dollars saved to the state, and just a reduction from 140 percent of capacity to 115 percent of capacity, \$30 million is a significant amount of money. But we're also, at least I'm also, interested in making sure that the individuals who are incarcerated have program opportunities while they're incarcerated that can assist them in reentering our communities and reentering those communities with an enhanced possibility of being successful in terms of becoming contributing members of our respective communities. So I'm tremendously excited about the opportunities presented by this task force. I want to thank a number of the individuals who are here at this first meeting and...because

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

they're here because they are interested in this issue. They have the same vision in terms of the opportunity that it presents for us and most of them, if not all of them, have expressed their willingness to volunteer and assist this task force in carrying out its mission, so I want to thank all of you who are here today for that purpose. And that's all I have, Senator Ashford. []

SENATOR ASHFORD: Thank you, Senator Council. Any other? Senator Pirsch. []

SENATOR PIRSCH: Yeah, I'd just make a few remarks, and I think it's important what Senator Council said that, as we go forward, we work closely keeping in touch with the Community Corrections Council that has been in business for a number of years now. You know, as I said, I appreciate Senator Council's work on that Community Corrections Council as well, and I think a very good choice to be on this task force as well with that knowledge. And as I said, have said on the floor before, we need to, I think, separate. We're at 140-plus percent of capacity now with our incarceration levels and this is at a point in time that we're not, you know, doing this but for the fact that we have one of two choices here. And if we do nothing then the choice is going to be taken away from this legislative body and given to the courts. The inmates will file doubtless suits and the decision will be in the hands of judges and the choices for them are not good for the taxpayers or for the people of Nebraska because one of two things will happen, one of which is that they will...the courts can order the state to (A) build another prison, which at current rates, as they were mentioning the last one was \$75 million and, given inflation, today (inaudible) is well over \$100 million most likely and we don't have that money in this kind of economy. And so the second choice is the courts will decide which inmates to release themselves without any guidance from the Legislature, the people's kind of voice, and so there's some danger that's involved with that as well. I think the Legislature should always keep on top of that and make the decisions rationally about who, you know, needs to be released with respect to the inmate population. So we need to, in so doing, make our best calculation, divide the inmate population into those people we fear who should always have a place in jail, and those people who we're mad

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

at, and I think that it was Senator Brashear who made that distinction and I think he was quoting a judge in that regard. But I think that's a good distinction. Those people who are nonviolent offenders, people we're mad at, are costing unnecessarily the taxpayers monies because they won't get their act together as far...or can't get their act together as far as managing their addictions and so they're continuously in for nonviolent crimes. And so I think we need to identify those. If there's a way that we can provide...help them to get situated so that they begin to take accountability, address their addictions and whatnot so that they are not continuously throughout their life coming back to prison, then I think that's something that we need to do and so that's what's going to compel my membership on this board. And there have been programs that have been put in place, the Work Ethic Camp was mentioned by Senator Council, the SSAS Program and the drug courts that are showing promise, and so we need to, I think, build in that foundation and, you know, make sure that we are proactively addressing this rather than how too often we find ourselves managing problems in crisis mode, when the inmate has filed suit and the judge is about to decide the fate of Nebraska. So I thank you for that opportunity. []

SENATOR ASHFORD: Yes, Senator Carl...those are very insightful comments. (Laugh) I'm glad...this...we've sort of skipped ahead to discussion of topics, but I think this is excellent. Senator Carlson. []

SENATOR CARLSON: You caught me by surprise earlier so I had a little...a few thoughts... []

SENATOR ASHFORD: Reflection time? (Laugh) []

SENATOR CARLSON: ...come through my mind that I think as we begin this I'd like to make a statement. As we study sentencing and recidivism, we need to keep in mind a balance, a proper balance between proper punishment that fits the crime and yet the need to prepare an inmate for return to society. And if we do things correctly and make

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

the right recommendations, I think the greatest compliment would be that the result is a successful return to society, which is a reduction in recidivism, and I think three things then would be accomplished. First of all, we would save money and nobody is opposed to that. Secondly, inmates' lives would be changed for the positive and if that's accomplished we have a safer society. So I think these are things that we're all very interested in and we need to keep in mind as we move forward. []

SENATOR ASHFORD: Thank you, Senator Carlson. Yeah, Senator Nelson. []

SENATOR NELSON: I appreciate the remarks here. I'm, from my standpoint, I'm very interested not only...Senator Fulton and I are on the Appropriations Committee so we're very interested in saving money and cutting down costs budgetwise, but I'm also very much interested in rehabilitation as, if they leave prison, whether it's at an earlier date or whenever it is, are we going to put some emphasis on that in your mind, Senator Ashford? []

SENATOR ASHFORD: I think that's critical and...yes. I mean.. []

SENATOR NELSON: And the Community Corrections Council has been around for quite awhile and it's done some good things. Can we build on some of the research and groundwork that they have? []

SENATOR ASHFORD: Well, I was going to mention that Senator Pirsch and Senator Council are members of that committee and they have done great work. One of the questions that I've always come back to is, how does this community corrections work in conjunction with existing programs, probation and corrections, and do we need to...are there things that we can do to even make it more effective? I remember in 1991, I guess is when we passed the first community corrections bill, I think funded it with \$25,000 and that was very, very early on, and it was about the time we did the victim work on victims' issues Senator Pirsch's mother was involved in. I think we need to really look

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

deeply into how those particular agencies work together and, of course, you know, where all of us will be able to kind of sit...and one of the things we need to do, maybe not today but soon, is to kind of set our agenda, what topics we want to look at. Maybe we can discuss some of those, just kind of tick them off today, and then start, when we get the Chair elected, start doing some scheduling. But thank you, Senator Nelson. []

SENATOR COUNCIL: Senator Ashford, if I may... []

SENATOR ASHFORD: Yes. []

SENATOR COUNCIL: ...just quickly respond to a point raised by Senator Nelson. It's a very valid point. Just for information, and this data will be made available to everybody. It will be a part of the data collection that we go through. But this is the...and it's probably not the most recent, this is June 22, '09, the Nebraska Department of Correctional Services on a monthly basis releases its information and Community Corrections Council...the Community Corrections Center for Lincoln is currently at 191 percent of capacity. []

SENATOR ASHFORD: Uh-huh. []

SENATOR COUNCIL: And so what that tells me is we need to look at expanding the program to provide more opportunities, because we wouldn't be at 191 percent of capacity if the program wasn't working and it wasn't fulfilling, but the question now is are we funding it appropriately to provide the appropriate level of services to all of the individuals who the courts have determined are prime candidates for community corrections. In Omaha, it's at 173 percent of capacity, so we've got...we have capacity issues there now but if I have to make a judgment from an appropriations standpoint, I'd want to expand the capacity of the Community Corrections Center because it only costs \$15,960 a year for someone at the Lincoln Community Corrections Center where it costs \$37,563 a year for someone at the Lincoln Correctional Center. So I mean those

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

are the kinds of issues that I think we need to be focusing our attention on to see how we can best utilize the programs that we have available, need to expand them so that we can provide the best benefit for the dollar of taxpayer money that we're using. And I doubt that there would be any taxpayer who would be upset or oppose looking at expanding a successful program that costs \$22,000 less a year per person. []

SENATOR ASHFORD: Oh, those are...that's good, good thoughts. Senator Fulton. []

SENATOR FULTON: Okay. I appreciate the opportunity to be able to serve on here and I understand by speaking I'm now putting pressure on Senator Giese. (Laugh) Part of my interest here is going to be somewhere along the lines of Senator Nelson across the way there but in quantifying. We look at this philosophically and we're talking about very basic elemental subjects of crime and punishment, and when talking about crime and punishment, immediately we elicit a response from every man, woman, and maybe child because everyone has some experience with crime and punishment living in this world. But what we have to do is we have to figure ways to quantify what we do by way of statute and rather than back into it, which seems to be the way that may be occurring. We get up to a certain level of incarceration and we begin recognizing that we may have to create more prison systems, recognizing that in so doing we are putting a monetary and numerical value on our philosophies of crime and punishment in the state of Nebraska. So part of what I'll seek in this structure, to communicate with my colleagues, is quantifying, putting numerical value to the ideals and philosophies that we hold with respect to basic elements of crime and punishment. It's easier said than done, but indeed we're doing it. We're backing into it. Let's try to be a little more forward thinking, and that's hopefully something we can accomplish in the next 18 months. []

SENATOR ASHFORD: Thank you, Senator Fulton. Okay. []

SENATOR GIESE: Senator Ashford. []



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

SENATOR ASHFORD: Yeah, Senator Giese. I didn't want to presumptuously... []

SENATOR GIESE: I'll... []

SENATOR FULTON: Sorry. []

SENATOR GIESE: Thanks there, Senator Fulton. []

SENATOR ASHFORD: I thought you were just waiting for the right moment, and here it is. (Laugh) []

SENATOR GIESE: Well, thank you. Just a couple of points that I'll bring up: Two things that the Legislature...that we did this past session was, number one, we passed a bill that would increase penalties for certain activities and these are just my thoughts on this, on this issue. And another thing we also did was we did away with the jail reimbursement program in...as a state, and it wasn't a lot of money but it was something that drastically affects a particular county of mine, as did a couple other things that we did this year, and right or wrong. I mean, I'm not going to get into whether that was right or wrong but...so counties such as Dakota County that are faced with full jails, having to build a new jail a couple years ago and now, you know, we took away the reimbursement program, counties like my county are going to be even more financially strapped. So I think it just puts a little bit of pressure on the soon-to-be Chairman of the committee to figure out some way to address that, and not that...Dakota County is not the only one that is in that boat. But so as we go forward, I think it's dire for counties throughout the state to...and they're going to be up against...and especially with the things that we do here, that we increase the penalties on certain crimes. So thank you. []

SENATOR ASHFORD: Thank you. I think those are great comments and Senator Pirsch made a great point. You know, we...sometimes we do get confused in our

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

policies when we think about is the purpose of incarceration to get those people that really need to be off the street off the street, and is it also to incarcerate people we're just mad at. You know, I think that's something we all struggle with and I know the debate on LB63 was a very good debate because we did think about those issues on the floor and they were great comments. It's a very important committee. We have great members. So with that, I would open up, I think we can get to the next item, which is the election of a Chairperson. The way I would like to handle this is open the floor up to nominations and then just have a secret ballot election if there's more than one nominee. But with that, I would open up the nominations and I would nominate Brenda Council, Senator Council, as Chair. []

SENATOR NELSON: I'd like to nominate Senator Pirsch. []

SENATOR ASHFORD: Okay. Any other nominations? Okay, the nominations are closed and I would ask that we'd fill out a secret ballot and turn them into the clerk and go from there. Senator Pirsch is the Chair. The next...congratulations, Senator Pirsch. []

SENATOR PIRSCH: Thank you very much. []

SENATOR ASHFORD: The next item is the election for Vice Chair and I would open the floor to nominations for Vice Chair. []

SENATOR GIESE: I'll nominate Senator Council []

SENATOR ASHFORD: Okay. Any other nominations? []

SENATOR FULTON: I move that we close nominations and, by acclamation... []

SENATOR CARLSON: Second. []

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

SENATOR ASHFORD: All those in favor? Opposed? Senator Council is elected Vice Chair. Thank you. Senator Pirsch, would you like to place yourself in this chair or...? []

SENATOR PIRSCH: Well, I...I'll switch out here and we'll follow the agenda. []

SENATOR ASHFORD: (Laugh) Or you can...come on up, come on up. []

SENATOR PIRSCH: Okay. []

SENATOR ASHFORD: I'll take my super secret notes with me. []

SENATOR PIRSCH: It really doesn't matter, if you want to keep (inaudible). []

SENATOR ASHFORD: (Inaudible) []

SENATOR PIRSCH: Well, I guess...thank you very much, by the way. I guess as the first measure I'd take is just, even with the air conditioning in this room, it's always hot during the summertime, so if you want to make yourself at ease, please feel free to take off your jackets. But following the agenda then, I guess we'll just open it up to the floor first, following the agenda for a discussion of topics pertaining to LR171 study. We do have...did anyone not receive a copy of...I'm sorry, an e-mail that was I believe sent to all the senators regarding the two...and let me see if that's in the packet here. Oh, it wasn't in the packet. Okay. Why don't we just open it up then to a discussion of topics pertaining to the LR171 study, if somebody would like to make some comments regarding that. Anybody have any strong opinions? Senator Council, did you want to start off? []

SENATOR COUNCIL: Yes. Since one of the reasons that the Sentencing and Recidivism Task Force was recommended to be created by the Executive Board revolved around the bill I introduced this past session, LB307, with regard to juvenile

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

sentencing, and that is one of the issues that was identified initially and is set forth in the statement of intent with regard to the formation of this task force is to look at juvenile sentencing, not only juveniles who are sentenced by the separate juvenile court but juveniles who are sentenced in adult court and looking specifically at the rates of incarceration of juveniles in adult courts, looking at the equality of those sentences and the proportionality of those sentences, particularly when it relates to violent crimes, felony level offenses. By way of example, some of the data that's already being developed by the Nebraska Department of Corrections shows that as of June 2, 2009, that there are a total of 222 inmates serving first-degree life sentences and 309 just serving life sentences. So we have 531 individuals who are currently incarcerated with life sentences and the question is, is how many of those are life in prison without possibility of parole? And I think we to do a comparison to determine whether or not that is an appropriate sentence for juveniles, to be sentenced to life in prison without possibility of parole, particularly when, again, looking at it from a proportionality perspective, when we have adults who commit that same offense and who are not sentenced to life in prison without possibility of parole. And I think that that sentence also ignores the great potential for redemption and rehabilitation for juveniles, so that is certainly one of the topics that I believe that this task force ought to be examining and exploring. Because at a cost of \$37,563 per year to incarcerate juveniles for the balance of their natural lives, when we're looking at...and you can look at the data now, we have several individuals who have been incarcerated for close to 40 years for offenses they committed when they were 15 and 16 years old, and at a...and just rounding it off, at an average cost of \$40,000 per year, you know, the question is, is that still a viable form of punishment for those individuals? So I think we need to particularly look at that. I think we also need to follow up on the work of the Nebraska Minority and Justice Task Force that identified discrepancies and inconsistencies in sentencing, not only in juveniles but of adults on a geographic basis and on a racial basis. I think we need to carefully explore how sentences are being imposed and what, if anything, can be done legislatively to prevent those types of inconsistencies. And finally, I think we need to look at the programs and services that are available to inmates, particularly in the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

Nebraska Department of Correctional Services facilities. There is an inconsistency between facilities. If you're at Tecumseh, you have accessibility to a limited number of programs versus whether you're at the Lincoln Correctional Center. And we have individuals who are long-termers in the sense of their...the length of their sentences who do not have access to programs and services that, through the diagnostic and evaluation process, they have absolutely been identified as being in need of but, because of the lack of program opportunities, space available, many of those individuals are essentially warehoused without any opportunity to get those programs and services until the time when they are close to being released and, more often than not, at that time not open to those kinds of services because they've been sitting idly for five to six or seven years, depending upon their sentences. I think that we need to look carefully and, for Senators Nelson and Fulton, the appropriation of dollars for the Correctional Services for those kinds of programs because the research undoubtedly shows that you reduce recidivism by addressing some of the behavioral and as well as substance disorders that result in people being incarcerated in the first instance. And if we're not addressing those issues while these individuals are incarcerated, then it should come as no surprise to us that we have high recidivism rates and we are expending taxpayers' dollars in a very inefficient manner when we can appropriate more dollars for substance abuse treatment while they're incarcerated, for behavioral mental health services while they're incarcerated, for educational programs while they're incarcerated, as well as for job preparedness and job training programs while they're incarcerated. I am confident that the data will show that that's the least cost of services that can be provided and we would see a return in the reduction in recidivism. []

SENATOR NELSON: Mr. Chairman. []

SENATOR PIRSCH: Yes. []

SENATOR NELSON: Those are good points but I'm also interested in looking at what happens after they're released, what follow-up there is and what services are available

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

to help them, after their release, rehabilitate themselves and not have to go back to where...from whence they came. I'd like to know what we're doing here in Nebraska and also what other states are doing to address that, such as Iowa or neighboring states. There are some interesting statistics in the World-Herald this morning about some of the other states and I think the Pew Research or something, there should be a lot of...I hope there would be information available and data there, so. []

SENATOR PIRSCH: Thank you. Senator Giese. []

SENATOR GIESE: Mr. Chairman, just a question then maybe to Senator Council or any of you that know. Who then determines, when somebody is in prison, who qualifies for programs or treatment in that? Is it just whoever wants to? How does that... []

SENATOR COUNCIL: Let me respond in two ways. Everyone who enters goes through the Diagnostic and Evaluation Center, and there is an evaluation of what kind of services would be beneficial. You have to understand that having those services identified as being beneficial, it's still voluntarily whether or not an inmate participates in many of those programs. So I think as a part of this we have to look at, you know, what ways, what...and then maybe legislative action, you know, to ensure that those services are taken advantage of, but one of the problems that is being experienced now, even those inmates who express a desire for those services, there's not enough program space available for them. []

SENATOR GIESE: And if somebody doesn't want to do it, they don't have to then. []

SENATOR COUNCIL: No. And what results in that instance, more often than not, and as a part of this task force you'll become used to some of this jargon, they'll just jam out. They'll just wait until their mandatory release date and then that does nothing to benefit society. []

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

SENATOR PIRSCH: Senator Ashford. []

SENATOR ASHFORD: Thank you, Mr. Chairman. I, just following on with what Senator Nelson suggests, I think examining best practices would be a very valuable exercise on many of these issues. The success in Iowa is apparent from the numbers we saw in the press this morning and the other...so I think reaching out to these other states, getting information, I'm sure there's the Pew Research organization has information. Alternative sentencing, which is something I know Senator Fulton was interested in on the drunk driving cases, DUIs, and in other first-offense kind of situations, especially with juveniles, you know, particularly, at least in Douglas County, the DCYC experience where people are...young people are deposited at DCYC because there is no other alternative for them (inaudible) you know, other place for them to go, I think, and that really seems to have an impact on future behaviors. So, you know, looking at maybe...especially for juveniles but not necessarily only juveniles, what do we do in those initial maybe nonviolent behavioral situations where...what does happen to these people? One of the things that was interesting in looking at the violence issue and some of the stuff we worked...some of the issues we've studied on the juvenile court side is that there apparently are 15 entry points into the juvenile court system in Douglas County, and probably applies across the state. You know, where, if there are 15 entry points, what happens...and I don't think we have to reexamine the juvenile court system, but when it relates to potential incarceration, how does that all work? You know, where does that come together? And are there other alternatives for young people? Is there early recognition of future behavioral issues and is there a way of doing that? What is out there today to address those issues? So I guess, in summary, juvenile incarceration issues, not necessarily at the Nebraska penal complex or at the, you know, Lincoln, Omaha, Tecumseh, but...or in Kearney, but in other maybe less violent or less serious offenses, what's going on out there and what are some of the options that we can look at. []

SENATOR PIRSCH: Thank you. Senator Fulton, did you have your hand raised or...? []

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

SENATOR FULTON: Well, yeah, a question I guess for my colleagues here of the body. You know, it seems to me that we're...well, my temptation is to do a root cause analysis so we have crimes necessitating some remedy on the part of the state. And I know that this is not...the root cause analysis of why we have the increase in crime isn't necessarily the purview of this committee, certainly there is data that can be gleaned in the course of our work, which could be used in some...in the future to, as Senator Ashford...that language was early recognition. Some of the programs that we're utilizing to correct behavior, to form behavior such that that behavior can be implemented into our broader society, why wasn't that being accomplished earlier? I mean, we all have theories and I, you know, breakdown of the family and whatnot, but it would be nice to have some empirical data by which we could springboard in the future, maybe not our Legislature but in Legislatures going forward. Because it seems historically that this is a problem which proliferates. It grows and doesn't become smaller. So in some years down the road there will be another task force meeting just like us. When Senator Carlson and I are old and gray, sitting in our rocking chairs, those senators are going to be talking about the same things probably that we're talking about. If we're going to be about gathering data, let us quantify the data. So I'd like to at least have that be on our minds when we're looking for data, what do some of these correcting...the behaviors in need of correcting via our penal system, is there some commonality from which perhaps a root cause could be derived? []

SENATOR PIRSCH: And was there anybody...oh, Senator Carlson, go ahead. []

SENATOR CARLSON: Chairman Pirsch, I made a statement a couple of times on the floor last session and I want to clarify something a little bit about that. I became interested in being a part of this task force not because I've got an agenda with anyone. I don't have anything about the correctional system. I don't have anything about our law enforcement system. I don't have anything about the Ombudsman's Office or anything in the line of the way things are being done. But I did make a statement, and sometimes



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

you can make statements when you don't have all the facts, maybe I'm right, maybe I'm not. I said that we've got too many incarcerations for too many offenses. Well, if we're at 140 percent then we need to take a hard look at that. But I'm interested in finding out, of the 140 percent, the inmates that we've got, what percent are in there for violent versus nonviolent offenses and all these kinds of things to try and be a part of a group that just helps make a system better. So I applaud the people that work in our system now. And for whatever part this group can play in helping make things better, then hopefully that's what our objective is. []

SENATOR PIRSCH: Thank you. Was there any...Senator Ashford. []

SENATOR ASHFORD: Yeah, Mr. Chairman, I just want to...could I just follow on with what Senator Carlson said? Because he made a very...I think a significant point and that is, is this. I do think we do have people in place today...the great hope is that we do have the people in place to effect change to get that number down from 140 percent. We are the most incarcerating country...one of the most incarcerating countries in the world. And why that is (laugh), why, you know, everybody, as you say, everybody has their theory. But we do have good people in place at the Department of Corrections and on this committee and in the court system. We hear that every day and every day in our committee we hear a great deal of discussion about what people are doing. And I'm with you, I think I'm convinced that Corrections, for one, and Probation are topflight people and maybe, in some respects, it's a matter of collaboration, breaking down some existing sort of silos and getting people to talk together more, you know. But I agree with Senator Fulton that we need to be data driven and not just philosophical. And so maybe it's a combination of hope and setting goals, is it 115 or is it 100 or is it less than 100? Ideally, it's less than 100 percent of capacity actually, but quantifying what we're doing. What is the data showing us and then, from that, hopefully, you know, we can implement policies that will be enlightened and will effect change. So thanks. Thank you, Mr. Chairman. []

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

SENATOR PIRSCH: Sure. I'll just make a comment. I think we're all in agreement that currently there is some room to at least look at the inmate population with an eye towards, again, separating out those who we fear who legitimately should be in prison, and those we are mad at who don't pose...whose primary offense is that they are continuing to reoffend, largely addiction, not seeking help for those. And I think as we look at this, I think that's an important point that you brought that we should be data driven. To that end, the Community Corrections Council I know does, Senator Council I'm sure will attest to, has sprouted out data as incredibly important to them, so they're going to be looking at those same issues that you've just raised, Senator Carlson. So we should, I think, piggyback on and work closely with the Community Corrections Council in getting that type of information. That is a topic that is continuously brought up. It's a hot topic even today on the Community Corrections Council, getting good information to make educated decisions about the best way to proceed. So I think that should be, as we go forward, I think you're right, data is important. I think we should work closely with the Community Corrections Council to get whatever information you think is relevant to the topics that have been brought up thus far and will continue to be brought up by the members of this council. Again, I think one of the...just in terms of topics that people were, you know, are throwing out what they think it's important for this task force to consider, I think we need to look at the original charge of the Community Corrections Council at the same time they're doing it, which is they targeted a population of nonviolent felony drug offenders, constituted about a quarter of the inmate population. That's a lot of, in terms of raw numbers, one-quarter, one out of every four inmates, that's a big chunk. And so what we need to I think also work on is that...is...obviously Senator Council brought up, she...her point was that in many cases it's not being...they're at 191 percent of...the program is, and so the question is one maybe of in certain areas of the state expanding that. That brings up issues of financing, which this body, the Legislature, would be part and parcel of, and so I think that's important as well. That brings me to the last topic I'll just mention broadly and I'll ask for your input, which is what do we want to be the objective of this task force? Several topics have been brought up. Is it the...obviously, I would assume that at the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

end of this 18-month task force, we are going to build upon these topics, refine through the data an understanding of what can be done, what should be done, and then I would assume present to the Legislature specific legislative proposals for action then. But I'd like to hear your input about what is the purpose of this...what should be the purpose, rather, of this task force? What do we want to have accomplished at the end of this so that we just don't have a bunch of meetings? Senator Carlson. []

SENATOR CARLSON: Chairman Pirsch, I want to bring up something because it's kind of related to this. Senator Council said something during last session that has really stuck with me and it helped me to understand a little bit better maybe how we should focus our energy. But you said we got to make sure, are we putting someone in prison because they're dangerous to society or because we're mad at them, and I got to thinking about that and there's a lot of meaning there. Because if we're mad at them, there should be a proper punishment that fits the crime that isn't necessarily incarceration that's costing us a lot of money. So we want to proceed forward in such that we're keeping that in mind. And I appreciate your comments on that. []

SENATOR PIRSCH: Yeah. And I don't mean to suggest in certain situations that there is some level where your anger...you know, the offense is of such a great magnitude that it requires prison, some amount of incarceration, but to the extent that we're doing...I mean that's something we have to be mindful, Senator. Yeah. []

SENATOR ASHFORD: Mr. Chairman, one of the...I think getting...kind of combining what everyone said here, finding...just providing...I think it would be nice for the committee to have a list of those offenses which result in...which may result in incarceration and what are the...whether it's on the local, municipal level, county level, state level, what, you know, violations of ordinances can in certain cases result in incarceration, what...you know, it would be helpful for, in the research side, to have the committee have, here they are, here's what we, as a Legislature, as a county board or whatever, city council, have determined are offenses where we're not only mad but we

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

think these people ought to be incarcerated; we're mad and they think...we think they ought to be incarcerated. That might be helpful. The other thing that might be helpful early on is maybe should we have some hearings where we bring in...one of the things that...on this collaboration thing, one of the things that struck...a couple things. One is...and this is why it's so great to have many different committees represented here. For example, on the whole truancy issue, truancy leads to violence...not necessarily violence, it leads to further criminal activity because those kids are not in school. You know, that's a school issue and it's a criminal justice issue because we do have a statute that creates it's a crime at some point to not be...to be truant, you know. So is there something there? I mean that's clearly, if we get those kids in school, they're not going to be truant, they're not going to be on the street, they're going to be doing the right thing. So there you have cross-jurisdictional issues. The question of what happens to young people that are incarcerated for nonviolent offenses maybe for capias, just outstanding capias for driving a car without a license, for example. They have no place to put those children, those young people, so they go, at least in Douglas County, DCYC. Well, we passed a statute, we passed a bill last year or part of a larger bill that says starting next year we're going to have more of an intake...Probation is going to...and that has a fiscal note, it's \$400,000 or something, that Probation is going to put people in there to try to do some intake, more effective intake, to maybe defer those juveniles before they get into DCYC, Douglas County Youth Center. So I guess I'd like to...it would be good to see...I mean hear from these various organizations, Probation, certainly Corrections, maybe some of the county attorneys that deal...juvenile court judges. I guess we're going to have to give them some parameters on what we want them to talk about, Mr. Chairman, but it would be great to hear from these people, what do they see, what are their thoughts on sentence reform. []

SENATOR PIRSCH: Thank you very much. []

SENATOR ASHFORD: Yeah. []

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

SENATOR PIRSCH: Anything further there? []

SENATOR ASHFORD: No. []

SENATOR PIRSCH: Okay. Are there any other comments? []

SENATOR COUNCIL: I have just a... []

SENATOR PIRSCH: Senator Council. []

SENATOR COUNCIL: Yeah, clearly, I believe that the objective of this task force ought to be to identify areas where we can propose legislation to address the results of our findings, and if that legislation has fiscal implications, we certainly have members of the Appropriations Committee here. But speaking for myself, I think that the establishment and convening of this task force is a waste of everybody's time and energy if the ultimate objective is not to develop and introduce legislation that's designed to address the areas that we have identified as subjects of study. And in that regard, I do want to make mention of the fact that from the legislative resolution itself, we're focusing principally on the Nebraska Department of Corrections. I think the task force needs to be aware of the fact that if we're going to be looking at rehabilitative program issues and recidivism issues, we will need to gather data from Kearney and Geneva, which are not under the Nebraska Department of Corrections, and I think we'll need to determine how best to get that information from the Department of Health and Human Services. But, you know, if you believe in the theory that if you reach these young offenders and provide them with the programs and services that they need they don't become adult offenders nor do they reoffend as juveniles, but we have to know what's occurring in those juvenile facilities, Kearney and Geneva, programmatically to see if we're providing the requisite amount of funds for them to provide the programs and services that best practices show have some effect on reducing recidivism. And I don't know whether it's out of order or not, Mr. Chairman, but we have quite a few individuals who have taken

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

time out of their day to be here and if any of them have suggestions in terms of areas of study, I don't think we should lose this opportunity to obtain that input from them during today's meeting. []

SENATOR PIRSCH: Very good. Senator Nelson, did you want to (inaudible). []

SENATOR NELSON: Oh, I just (inaudible) what Senator Council has been saying. Just looking at the resolution itself, LR171, and it seems the first two paragraphs there pretty well lay out what we ought to be doing here. We're going to have plenty to do right there in addressing those. And whether that can be composed in one goal or not, I don't know, but maybe in light of other ideas we can defer precisely what we're going to do. []

SENATOR ASHFORD: Senator Nelson, are you referring to the last paragraph or the last... []

SENATOR COUNCIL: I think he's looking at the statement of intent. []

SENATOR NELSON: I was just looking at the... []

SENATOR ASHFORD: Oh, okay. []

SENATOR NELSON: ...on the introducer's statement of intent. I'm sorry. Do you have that there? []

SENATOR ASHFORD: Yeah, I don't have that. I was just looking at the actual resolution. []

SENATOR NELSON: Yeah, okay. Right. But...so anyway, that's pretty concise. It says what I thought we were going to undertake and... []

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

\_\_\_\_\_ : Senator Ashford, (inaudible) folder with (inaudible). []

SENATOR ASHFORD: Oh, it's in my folder? []

SENATOR NELSON: Yes, you drafted it, Senator Pirsch. []

SENATOR ASHFORD: Yes, I thought it was brilliant. (Inaudible) the second paragraph especially I thought was...(laugh). Is what we're trying to do reduce recidivism and reduce incarceration? Is that the goal, I mean is that what we're all about, and if we need legislation to get there somehow, we should look at that? []

SENATOR NELSON: Well, I'd make one other point. Sentencing guidelines are a great mystery to me. []

SENATOR ASHFORD: Yeah. []

SENATOR NELSON: What do the judges go by? []

SENATOR ASHFORD: Yeah. []

SENATOR NELSON: Who...where are those formulated? Within the judicial system themselves or do we have a say about that? []

SENATOR PIRSCH: Good question. Actually, we have a say about that. We as the Legislature set the punishment range. []

SENATOR NELSON: Okay. []

SENATOR PIRSCH: Sometime...we can specify a penalty with pretty much precision--marijuana, \$100 fine, no more, no less; or we can, as we often do with a lot of

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

type of offenses, give a range, so... []

SENATOR NELSON: Of course, fines are okay, but what we're...that doesn't affect us. We want the length of a sentence and how long they're going to be there. []

SENATOR PIRSCH: Sure. Typically, see, a lot of these cases, I can tell you as a prosecutor, are fact. You know, even between types of offenses, there's certain levels of...I guess amongst that offense. And so recognizing that no two facts of the same case, say graffiti, the difference between making one stroke, one line, yeah, technically you violated the law, you're charged with graffiti, but if you go and paint, you know, the whole house causing, you know, hours and hours and hours of corrective action to be taken as opposed to that one strike, I think that's why ranges are given. Even within that one type of crime, there's levels. And so because the facts always vary, we want to give the judge the ability to look at the particularized facts and make a determination where within that range is correct, so. []

SENATOR NELSON: Well, but maybe we should be taking a look at the upper limits of the range, you know, as we go along and get this down. []

SENATOR PIRSCH: Yeah. Senator Giese. []

SENATOR GIESE: Thank you. But isn't the real reason that's driving everything here, I mean the recidivism we're concerned about and the sentencing issues, but I think isn't the real reason driving everything is the cost (inaudible) capacity? []

SENATOR ASHFORD: Well, we're not going to be able to sustain 140...I mean that's money that could go to a lot of other things or go back to... []

SENATOR GIESE: Right. But if...I think the ultimate...the goal, one of the goals has to be figure out a way to reduce cost, doesn't it? []



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

SENATOR ASHFORD: And is there a structure in...is there so some...what I'm curious about is the implication. I haven't looked at it because I just read the article this morning, we all read I guess, that the implication in Iowa they have developed some sort of process for the nonviolent offender that has had an impact on reducing their prison population; that there's something there. I mean it's easy enough to find out. We call them. But what is it that they do? Are there structural things that we can do without taking the judge's...without taking their jurisdiction away from them? Is there something we can do to evaluate? We have probation now. Is there something within probation that we could do? Is there some sort of (inaudible) technique that we can utilize to divert those people and in a responsible manner. That's...I just keep thinking about that and before they even get down there. And then the other one, the other thing that I've never quite understood is HHS has jurisdiction over Geneva and Kearney. What I always hear when I talk to my colleagues in Omaha about Kearney is...not so much Geneva but Kearney, it's a revolving door. I mean they're there for a very brief time, they're evaluated sort of in a behavioral mental health way, and then they're back on the street, in the juvenile court, they're back within...you know, they're back in Omaha, they're on the street and something else is happening quite quickly. I'd love to know about that. I mean, what's going on there? Is it just they can't hold them any longer because they're at the end of their time or...isn't it the case, Senator Council, that a lot of these young people at Kearney at least, I don't know that much about Geneva, are...they're getting out quite quickly and they're not really supervised after that. They're back where they started, isn't it, generally? []

SENATOR COUNCIL: Yeah, in most cases, that is the fact. []

SENATOR ASHFORD: Yeah. []

SENATOR COUNCIL: And one of the implications of that, Senator Ashford, is they become adult offenders. I mean there are a number of people who have an opinion of

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

Kearney and Geneva that it's criminal university 101. []

SENATOR ASHFORD: Uh-huh. []

SENATOR COUNCIL: So I mean I think we need to really, to the extent that we can under our legislative charge, look at that. And again, I think data is going to be very important and the decisions of this body, and I'm talking about the entire legislative body, should be at least...data should be taken into consideration in the actions we take. I'm going to give you an example. LB63 provides for several mandatory minimums. Okay? Why were those offenses chosen? What does the data tell us about those offenses that warrants mandatory minimums for those as opposed to some other offense? I don't know that any of us can sit here and tell you why offense A requires a mandatory minimum and offense B doesn't. But that decision to impose a mandatory minimum has a definitive economic impact on the state. []

SENATOR ASHFORD: Should we act in more consistency in sentencing? []

SENATOR COUNCIL: I think we ought to look at more consistency in sentencing and certainly the Nebraska Minority and Justice Task Force identified that as an issue that needs to be addressed legislatively, so we need to look at that. But again, when we're looking at, you know, sentencing, what's driving the sentencing decisions? And I respect, probably as much if not more than anyone else here, the judiciary and the discretion they exercise, but when we legislatively take away that discretion then I think we legislatively ought to have legitimate data-driven basis for doing that, because then sometimes our actions appear to be driven more by who we're mad at instead of who we're scared of. And if you look at, you know, LB63, I mean, there are a lot of offenses covered by that particular piece of legislation and I cannot answer a question that is posed to me by a constituent as to why this offense has a mandatory minimum and this one doesn't. I can't tell them. I don't know. But there ought to be some data that can help us determine whether it was appropriate for us to mandate a minimum sentence in

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

those cases and I think that this task force provides us with an opportunity to explore and examine that. I mean I don't know how many people are currently incarcerated for that offense right now, and if those numbers are low then one must question why did we impose a mandatory minimum? So those are the kinds of issues that I believe we need to address as a part of this task force. []

SENATOR PIRSCH: Okay. Senator Fulton. []

SENATOR FULTON: Tagging on what...thank you, Mr. Chairman. One of the things that I'm hopeful that we can have as a deliverable here, Senator Ashford talked about, you know, who's in jail, so I'm looking at it as the who, what, when scenario: who's in jail for what at what percentage? And then we are going to at some point have to apply some judgment as to whether indeed those who fall in this category ought to be incarcerated or if they can be corrected in the community. That's going to be...there's going to be some judgment to be employed. But I'd like to see in the end how much we're going to be able to save. So if we choose to have these individuals who are incarcerated now corrected in the community such that they aren't in our correctional system or at least they're not costing us much in our correctional system, establish some choices. So if we choose...if A, B, C, and D are in jail, C and D, we could have them outside of jail, how much do C and D quantify? How much would we be saving? I think that we're going to have to come up with that. So that would be one of the deliverables I hope we can come up with, is how much, if the Legislature chooses this, that, or another, how much will the state be saving by choosing this, that, or another? Or how much will the state be incurring? It might go the other way too. But I think, Senator Giese, I mean, you touched on it, that's why we're here is because we're reaching this threshold that's going to start to cost us money. Yeah, so let's come up with some...that should be one of the deliverables--how much can we save by making this decision. []

SENATOR GIESE: Well, unfortunately, I think that the cost is driving this and also the capacity of our jails and prisons. So if we don't have something, some kind of action at

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

the end of this that's going to address costs and capacity, I agree with Senator Council, it's, you know, we're wasting our time. []

SENATOR PIRSCH: Right. And I...oh, Senator Carlson, go right ahead. []

SENATOR CARLSON: It's been mentioned a couple of times now, capacity and I don't remember what Senator Ashford said earlier (inaudible) through my mind. I would hope that the last resort of the work of this committee is to build more jails. And if we're at 140 percent capacity, an expensive but easy answer would be let's just double all our capacity and then keep bringing them in and we're tough on crime. I hope that's the last thing we do. And so we still stick with the idea that hopefully the end goal is to help bring these people back into society in a positive direction and help them so they don't want to return. But I sure don't want to see us build more walls and...unless it's building something that would reduce the cost by \$22,000, or something Senator Council referred to. I'd still rather see us not have to do that. []

SENATOR PIRSCH: Well, I appreciate that, and I think, in my mind at least, it's not an issue. I don't think we can afford to as a state, looking at our latest projections and the ongoing future. We just don't have that luxury of being able to even afford building prisons. We're cutting back on programs already in place. And so...but I do appreciate...I think we're talking about...what we're talking about here is, when we talk about capacity and cost, is overall objectives and goals and I think it's healthy for us to go down that path--what is the reason that we're here. At the beginning, someone suggested, well, maybe we should set a given level, and someone suggested, you know, in terms of reducing 15 percent, which I think there was a...and getting to a certain million dollar. I don't...I mean my personal view on that is, you know, I think we would want to know who is the offender then that we're looking at, I mean, you know, with respect to getting to that level. And so I think we have to be careful of not just setting an arbitrary level but I think that's what we have to start thinking about, is what is the goal here of the task force. And I think Senator Council is absolutely right. At the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

end of this we should have specific detailed recommendations or proposed legislation for the body, and I think, given the time that we have, given the composition of the members on Appropriations, Senator Council's background, all of the members, quite frankly, we should be able to come up with some good recommendations. I think what has been put forward thus far today is a number of I'll say issues or goals, topics, that is recommendations for this committee to address. And Senator Council I think had a great idea. Why not draw from the community of interested parties, not just who are here today but also out in the community who have a lot of input, I'm sure, not just on those topics that were talked about today but other additional topics that are probably worthy of our time and consideration. And so to that end, I would...I'm going to float this idea about...this was kind of an initial convening of the task force. Would it be beneficial, and I'd like some talk about this, for us to defer specific decisions about topics to pursue to our next meeting and, in the meanwhile, invite those who have expressed those topics here today to expressly make those concrete to put...and if, LaMont, if you could get a copy of the transcript so that we'll have the benefit of those topics that have already been expressed, any additional kind of comments in-between now and then, and invite the community, well, the state as a whole and those communities who have interest in these particular topics to either comment on the topics as put forward here today or suggest new issues or topics that are worthy of this task force to address. I think we should take advantage of those out in the audience today, as Senator Council addresses, and those out in the state of Nebraska and other states who may have ideas for our path. That being said, does anybody have any comments on this? []

SENATOR NELSON: Can those just be put in writing and sent to us rather than to have to spend the time on a hearing to hear those expressed? I mean... []

SENATOR PIRSCH: Yeah and, I mean, that's what I want to hear from the counts, but my idea would be perhaps...I don't know. Do you...does this committee want to hear I guess, you know, as we start out those topics from live testimony here at hearings or do we want to invite those to come in the form of e-mails and whatnot that we'd invite or

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

some sort of as we start off here both forms, schedule it for hearing at the next task force? Yeah, Senator Carlson. []

SENATOR CARLSON: Chairman Pirsch, you want an honest answer, don't you? []

SENATOR PIRSCH: I do indeed. []

SENATOR CARLSON: I want to hear from these people today. []

SENATOR PIRSCH: Okay. Without opposition, if there is anyone (inaudible) I guess Senator Council's idea, I don't have any objection to. Do you have any kind of... []

SENATOR FULTON: I do want to be able to have something in writing to be able to contemplate, think about. []

SENATOR PIRSCH: Sure. And obviously we wouldn't act on those ideas today. I guess the question is, is it a good idea for the task force at this point in time to entertain Senator Council's idea to hear from those members of the audience who have come today who may have some suggestions, either comment, brief comments I guess I would invite on those topics that were already mentioned here today or additional topics that they think that we should consider for future hearings. And given that, Senator Council, your thoughts. []

SENATOR COUNCIL: Okay. Again, my thought process was that the individuals out in the audience have listened to what the task force members have articulated as areas of study interest. My thought was that if there are other areas of study interest to provide an opportunity for that to be reflected in the very transcript that we're going to use as our guidepost for directing the study and then to use the study areas that have been identified both by task force members, by any individual who wants to propose an area of study today, and by making a public announcement that individuals who are

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

interested in submitting ideas for areas of study they have a deadline for doing that. And then we schedule a hearing sometime after that with those specific areas of study being the items that we would receive testimony on. That would be my thought as to how to proceed. And I'm just, again, providing an opportunity. I mean I don't know if anyone out there has any area of study that we haven't already articulated. But if they do, we should take advantage of the opportunity to hear it. You can certainly ask as an alternative submit it in writing. But if we're going to draw from the transcript of what we said, we might as well add what anyone else would want to say. []

SENATOR PIRSCH: Very good. Would you entertain making that a motion then? []

SENATOR COUNCIL: If it needs to be a motion, I move that if there's any member of the public here today who has an area of study that they believe should be addressed by task force that they have an opportunity today to present that to the task force. That's my motion. []

SENATOR FULTON: Second. []

SENATOR PIRSCH: Senator Nelson. []

SENATOR NELSON: I would just say if there are some but they're not totally prepared that I think we save time by having it put to us in writing. []

SENATOR COUNCIL: In writing as well. Right. []

SENATOR NELSON: Yes. []

SENATOR PIRSCH: Very good. So that will make that part of your motion... []

SENATOR COUNCIL: Yes. []

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

SENATOR PIRSCH: ...if that is in fact, okay. You second that. Okay. Given that, let's just...if you want to call the roll then. []

COMMITTEE CLERK: Senator Giese. []

SENATOR GIESE: Yes. []

COMMITTEE CLERK: Senator Carlson. []

COMMITTEE CLERK: Senator Nelson. []

SENATOR NELSON: Yes. []

COMMITTEE CLERK: Senator Pirsch. []

SENATOR PIRSCH: Yes. []

COMMITTEE CLERK: Senator Council. []

SENATOR COUNCIL: Yes. []

COMMITTEE CLERK: Senator Fulton. []

SENATOR FULTON: Yes. []

SENATOR PIRSCH: Very good. It does indeed pass. So the motion was to entertain those comments, I believe, of the audience here today not with regards to those topics that have already been put forward but with regards to new topics of issues for this task force to address. Given that, are there any members of the audience who do have any



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

new topics or areas that are here today and would like to publicly comment on those here? []

FRANK VELINSKY: (Inaudible from audience). []

SENATOR PIRSCH: Okay, do you want to step forward then. And you have a seat here. []

FRANK VELINSKY: I don't have a written statement. []

SENATOR PIRSCH: Yeah, come on forward at the table here and we're going to get some information from you. If you'd like to comment after this gentleman, Mr. Rainey here will have some forms for you to...just cursory information to help us understand, you know, get your name and that type of information for the record. So and then feel free to come on forward. And I think we're going to just limit this to a few minutes. So if you can make your comments very concise, I think probably about three minutes per commentator or individual would be about appropriate. Okay, sure, sure. Could you raise your hand if you intend at this time, I know some of you might join a little later. But if you intend to put a few comments through, if you're in the audience right now, after this gentleman, could you raise your hand. Okay, so we're looking at maybe a couple. Okay. Couple more. Gives us an idea of how much time. Okay. And, sir, whenever you're record just go ahead. And for the record if you could tell us your name and spell your name for us. []

FRANK VELINSKY: Certainly. My name is Frank Velinsky. And the last name is spelled V as in victory e-l-i-n-s-k-y. My office is located at 11904 Arbor Street in Omaha. I will...my comment is in terms of a study has to do with my years of observation, if you will and study. My academic background includes a baccalaureate degree in criminal justice with an area of concentration in corrections or community corrections area. I have spent time working for Boys Town and as an executive director of a youth shelter

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

system in Omaha and Bellevue area. I am currently an owner of a business called Care Tech, Incorporated. We provide in-home services for elderly and disabled people, which you may wonder what in the world has that got to do with this task force. And I wouldn't blame you. The...what I have observed...and we take many clients of all ages, elderly, disabled, very young, very old. And we've found that in working in both Nebraska and Iowa that we are...we were getting clients that were very challenging in terms of their behaviors. And the more we had some success with stabilizing these individuals, being able to work with them, helping them stay in their own homes, the more it seemed like we got. I got to admit we scratched our heads quite often and wondered why we couldn't get to the rest of them, why we couldn't stabilize those individuals. For a lack of understanding of explaining away the behaviors I began to look at some similarities in terms of brain injuries. And I joined the Iowa Brain Injury Association as well as the Brain Injury Association of America. And the more we looked at it, the more I looked at it and studied even the individuals coming back from the second Iraq war, we got into that in terms of study, again the more it became clear that there might be a connection here with early brain injuries. We looked at studies from the Metro Area Continuum of Care of Omaha, where they do snapshots of the homeless populations once a year. And they asked a couple of questions that I...it perked my interest. One was, did you ever receive a blow to the head in your childhood where you may have saw stars or were knocked unconscious. And the answer was an overwhelmingly about, I think it was like 35 percent plus. A similar study done with 5,000 people in Mt. Sinai Hospital in New York, again 5,000 people, found somewhere near 65 percent of these individuals saw stars or were knocked unconscious in their childhood. Along with that came this most interesting study, and I'm sorry again, I'm not prepared to give you the source of where I got it, but I've heard it at least several times, and that is the prison systems in this country contain 85 percent populations that may have a diagnosed brain injury. I think if we...I understand and I've studied the criminal justice system, like I said, and it's been somewhat of a hobby of mine. I go back to my first courses where teen movie, the 14th lopped off heads, trying to stop crime and not even that stopped it. It seems that no matter what you do there is that desire or whatever it is to be antisocial. What I think

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

would be worthwhile is to look at this area of brain injuries and maybe come at the criminal justice system from maybe a medical standpoint as opposed to a social or a social psychology standpoint. Okay? []

SENATOR PIRSCH: Very good, I appreciate that. Are there any questions anyone has basically? Thank you very much. And again, I invite those who are in the audience to...as we continue this for the next task force meeting date to get in touch with us if you'd like to flush that out or follow-up in some matter in writing, via e-mail. There was another gentleman who indicated that he wanted to testify. Is he still here. Oh, okay. Sir, do you want to come on up and have a seat at the witness table. And if...thank you for coming forward. And if you can just state your name for the record, spelling your first and last name. []

JAMES DAVIS: Okay. James Davis, D-a-v-i-s. I am deputy ombudsman for Corrections. And basically, I'll just make it brief. We didn't prepare a statement today. But we want to assist the task force in anyway that we can. We'll probably send a written statement down on some of the areas or topics that we'd like to see discussed. So pretty much that's what it is right now. []

SENATOR PIRSCH: Super. Thank you. []

JIM DAVIS: I don't want to waste the task forces time, but we will put together a statement. []

SENATOR PIRSCH: I appreciate that. Any questions based on that? Okay. Seeing none, I appreciate, Mr. Davis, you coming down here today. And we look forward to getting your input. Oh, I'm sorry, Senator Ashford you had. I'm sorry. Oh, I'm sorry. Thank you very much for coming. And is there anyone else who would like to put some input in here today? Sir, do you want to come on forward and have a seat. And again if you can just give us a few minutes and state your name out to start out with and spell

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

that, if you would. []

JIM HANSON: Jim Hanson, H-a-n-s-o-n. Have had the pleasure of working with Senator Council and Senator Ashford in the past. And currently from Plattsmouth, Nebraska. We've done a lot of work with Omaha, Papillion. I date back to 1970, when I had some the orneriest kids, probably, in the metro area. And I say simply this. Put a hammer in their hand and not a gun. I developed...envisioned a program where I took 12 boys and we built a complete house. The next year I brought five boys over from West Side and we built three houses with 36 kids. Since then I left education back then and went into construction and got a little bit of trouble, in 1991. I went through the system, upstairs on March 4, 2004, Governor Johanns told me I was probably the ideal candidate that ever went through the Pardons Board. I was granted a full pardon. And I made a mistake, I screwed up. I've developed and conditioned my life to giving back to folks less fortunate than myself. Since that time I got my teaching certificate back. I went to UNO, 57 hours, all A's and three A pluses. My study was simply what you're talking about today. I have a lot of visions, I a lot of ideas and a lot of leadership as far as what's happening, what should be happening and where do we go from here. I'd be very much...love to be a part of this. I've done a lot of projects with Urban League, with Boys and Girls Clubs. I was supposed to do 250 hours community service, I did 3,000 hours because I wanted to make it count, I wanted to make a difference. And I lost my wife four years ago to breast cancer. I lost basically a career. And the bottom line, if you've never seen Shawshank Redemption, you should watch it. Because right in there is the message that you're talking about as far as how we prepare these people and where do they go from here. How forgiving and nonforgiving is society? How can we relate this to education? Why do urban schools fail? Why does society fail? You've got to connect all these components together and you senators are doing the right thing, so... []

SENATOR PIRSCH: Thank you for your comments. Any follow-up based on that? Thank you. Any other individuals who want to testify here? Okay, seeing none, I'll move on then. Just the last item of business and then I'll ask for any other comments that you

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

have. But according to the schedule that was put forward it deals with scheduling. And so I just wanted to briefly touch upon that aspect with the committee. How, you know, obviously we're looking at near mid-July at, you know, do we want to discuss at this point how often we want to meet and what format we want to meet. If I can just hear some comments on that. As we're setting out now, and obviously we've invited not just only those individuals here in the room but we're going to make, I guess, and I can get your comments, too, about how we can formally invite those out there in Nebraska and the various communities to participate. So if I can get your input as far as how we can go about that, and secondarily, how often, you know, how we want to proceed going forward. Senator Fulton, did you have your hand raised in regard to those topics? []

SENATOR FULTON: Well, getting an answer to this question, that would help us to determine how often to meet. And, I guess, do we want to have something deliverable for the Legislature, for the main body by the beginning of next year? Is that a...is that something that we want to accomplish? []

SENATOR ASHFORD: One of the...when we came up with this concept, Senator and Council and I earlier this session, the idea was to try to, at least in this first go round, are there things, it's a short session, are there things that we can do in the short session that can have an impact and put in place some processes that will have an impact in the short-term. Are there some things that we can do to address some things that are really low hanging fruit that we all agree we have to...we can address. Is there something we can put in place? I think we should have something. I mean the hope would be that we would have something to give to the Legislature on those issues. For example, if we invited the Department of Corrections to come in and say, are there some things that you need or that would help you expedite the process of getting people back into the...you know, get them out of the system and back on the street. Get the Community Corrections, get Probation, are there some things that we can laundry list that will have an impact on the immediate problem which is that we're right at capacity. We can't be right at capacity. Senator Council is absolutely right. We...I mean, I think, I mean we

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

may slightly disagree. I think there are some underlying reasons why we did especially the gun crimes, why we did...why we made mandatory minimums. But I do...there's no question that there will be more incarcerated people in the short-term. Senator Council is absolutely right. So we know we're going to go over 140 percent, unless the world changes and everybody becomes very, very nice very, very quickly to each other. We know we're going to get above 140. So what can we do to address that? Because I'm afraid that we will be...we've almost...we've stepped our toe in the water, so you know if we don't come up with something then there is what, you know. We're at 140, where are we? Where is this task force? So I think we have to come up with some viable options. And who do we talk to first to get those viable options? The courts, Corrections, I don't know. []

SENATOR PIRSCH: Senator Carlson. []

SENATOR CARLSON: Chairman Pirsch, I'm probably the least prepared of anybody on this group to give recommendations and I need more information. But Senator Council and Senator Ashford were in my office with a group of people, and I won't identify them. Wouldn't it be helpful to have that group...ask that group to come and meet with us? []

SENATOR ASHFORD: Absolutely. []

SENATOR CARLSON: And more from the standpoint of us listening to what they have to say, we gain some very valuable information to move forward, I think. []

SENATOR COUNCIL: Mr. Chairman. []

SENATOR PIRSCH: Senator Council. []

SENATOR COUNCIL: Mr. Chairman, if I may just suggest this as a framework. Having...scheduling a hearing in the relatively short-term with enough notice and then

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

invite...specifically invite to the hearing the individuals that we met with, as well as some others, to provide testimony. And I think that that will help to shape the next step, which is going to be a lot of data collection and evaluation. Which during that period of time the task force won't have to be meeting as frequently. But...which gets to a point that I need to raise at this point in time is that this is going to be, at least in my view, a very data intensive effort. And because there's going to be a lot of data collection and a lot of data evaluation I would hope that the members of the task force are willing to allow members of their staff to assist this staff, because I'm sure as you all know when the original resolution was introduced it was introduced with the request that there be funding for staff. That was eliminated. So we're going to expect an awful lot out of the limited staff, because all we have is the Judiciary Committee's staff. So my first request is to hope that fellow task members are willing to assign, for lack of a better term, of at least a member of their staff to assist in this data collection and evaluation. But I think we need to have a public hearing first to make sure that we have all of the issues framed properly, and then that drives the data collection and evaluation. And then until that data is collected there's really not much that the task force can be doing in the interim. So then that would determine when the next meetings would be. []

SENATOR ASHFORD: We had that...we did that on the violence thing. We had some...we invited, I think there were 10 or 11 people to come and testify and then opened it up for public comments. That did help frame the issues. You know, we...first of all, you got to figure out who to invite. But I mean I think we can probably discern who those people are, generally, and then open it up. And that certainly helped frame the issues for that violence issue, those violence issues. We do need help. I mean, I don't know on the Appropriations side on some of this departmental, maybe there's some help we can get there. And on the Government Committee, I mean, you've got structural issues, jurisdictional issues. []

SENATOR NELSON: Mr. Chair, would three weeks be sufficient time to... []

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

SENATOR COUNCIL: I would think so. []

SENATOR NELSON: I was just looking at maybe three weeks from now, like maybe the 5th or 6th of August. []

SENATOR ASHFORD: Can it be the week after that. I'm not... []

SENATOR NELSON: Okay, that's what we need to...yeah, that's just a...I was just throwing that out as a possibility. []

COMMITTEE CLERK: The 12th and 13th would be Wednesday or Thursday. []

SENATOR PIRSCH: Okay, so we're talking about mid-August then. Okay. Let's look at those two days. And I think what we'll do is then put a proposed out and I'll get comment back via e-mail from members of the committee whether or not which of those two days seem to work okay for the members. And then what time that this, you know. If this time of the day works okay, then we'll try to keep to that. []

SENATOR ASHFORD: It probably won't get done in half a day. []

SENATOR PIRSCH: Well, maybe we need to start as little sooner then in the...okay. Well, let's...and so we'll send out an e-mail and then we'll invite comment as to what you think is appropriate in terms of...but that gives you kind of a ballpark day, the 12th or 13th. And, like you say, I think you're right, it's going to be half... []

\_\_\_\_\_: Say 10:00 a.m. start time? So go to lunch, come back after lunch and finish up? []

SENATOR PIRSCH: Okay. We'll use that as a working paradigm. And again, we'll float an e-mail and see how that... []



Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Sentencing and Recidivism Task Force  
July 15, 2009

---

SENATOR NELSON: I can tell you right now that I'll be gone the 10th, 11th, and 12th, so the 13th would work best for me. []

SENATOR ASHFORD: What kind of day is that? []

SENATOR CARLSON: The 13th would for me. []

SENATOR COUNCIL: It's a dangerous one. (Laugh) []

SENATOR NELSON: It's a Thursday. []

SENATOR ASHFORD: Oh, that's good. []

SENATOR NELSON: Is that bad? []

SENATOR ASHFORD: No, just so long as I'm not (inaudible). (Laugh) []

SENATOR PIRSCH: Well, the 13th might not...Thursday might not work so well for me, but we'll flush that out then. So very good. Are there any other topics that this task force should address before we adjourn? Hearing none, I'll ask for a motion to conclude. []

SENATOR FULTON: So moved. []

SENATOR NELSON: Second. []

SENATOR PIRSCH: And we'll have a vote then, if you want, to conclude the hearing for today. All those in favor say aye. All those opposed. Ayes have it. Thank you very much. []