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Sentencing and Recidivism Task Force
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SENATOR PIRSCH: If I could have your attention, please. I think we're going to get started. It's a little after 9:00. We want to keep to a pretty tight schedule. We have a large number of testifiers here today I understand. Thank you all for coming here today. My name is Pete Pirsch. I am...I'll be chairing the task force hearing here today. This is the second meeting of the Sentencing and Recidivism Task Force. We've invited input from key stakeholders and from people of the state of Nebraska at large to come down and give us input as to how we can improve the offender sentencing processes and practices in the state and decrease offender recidivism. And I'm joined here today by the other members of our task force. I think I'll...if you don't mind, start on the right-hand side. If you could just introduce yourself. []

SENATOR ASHFORD: Brad Ashford, District 20. []

SENATOR COUNCIL: Brenda Council, District 11. []

SENATOR NELSON: John Nelson, District 6 in Omaha. []

SENATOR CARLSON: Tom Carlson, District 38, Holdrege. []

SENATOR GIESE: Bob Giese, District 17, South Sioux City. []

SENATOR PIRSCH: Very good. And we are also here with legal counsel, LaMont Rainey, and Christina Case, who have done an enormous amount of work in preparing for this committee. And I'm very appreciative for this. And our page here today is Justin. Thank you. A few preliminary remarks. If we could turn off cell phones and pagers at this point in time, while in the hearing room. If you don't plan on testifying, which you don't have to, but if you do sign-in sheets for testifiers are on the table just on the one table there and need to be completed by everyone wishing to testify. If you are testifying on

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more than one...I'm sorry, let me put it this way. If you...to the extent that your point has already been brought up by those who have already testified, you know, and thereby rendering your, you know, your testimony moot, feel free to just submit written type of documentation. That's some point I wanted to make as well. We are soliciting oral testimony here today. By no means does this preclude you from submitting as much written testimony as you'd like to today or in the future. It will be officially entered into the record. And so, I know that we are on a tight schedule. There isn't enough time for you to fully say, in some cases, as much as you'd like, but that opportunity always exists for you to follow up with written material. So when you come up to testify if you could just hand your written sign-in sheet to the page. And is this the clipboard also? All right, okay, very good. With that, I'll just make a...I'm sorry? Oh, okay. We are joined now by Senator Fulton. And what district do you represent? []

SENATOR FULTON: Twenty-nine. []

SENATOR PIRSCH: Twenty-nine, here in Lincoln, so. I'd just say that we are going to be using the traditional light system that the Judiciary Committee uses. And so we have green light, yellow light and red light. We're going to try to keep for the most part to a...is it five minutes, is that for our...if you could make your remarks within a five minute time, for the last minute the yellow light will come on. And then the red light will come on after five minutes. So when you see the yellow light if you could just conclude your statements and that way we can make sure that this thing stays on time. Having said that, let us start off with...if Judge Karen Flowers is here. There's a number of judges who are here today and who have busy court schedules. So we'll try to accommodate them first. []

KAREN FLOWERS: And I want to thank you for that. Senator Pirsch, members of the committee, my name is Karen Flowers. I am a district court judge in Lancaster County and I have served on the Community Corrections Council since its creation, and on the Community Corrections Working Group before that. Judge Bob Evans asked me to

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come today. Bob is the current president of the Nebraska District Judges Association. But I think it's important, before I begin, that I tell you I am here on no one's behalf other than my own. LR171 begins with the observation that the Department of Correctional Services is over capacity. There is nothing new about that, nor is there anything new about the fact that if the issue of capacity is not addressed in some other way, this state will be spending tens of millions of dollars, if not more to build and staff a new prison. The resolution says that the prison capacity or the prison overcapacity provides an opportunity for the state to address proper sentencing for individuals convicted of felonies and to assess the degree to which the state does or can reduce the rate of recidivism. There's nothing new about that either. It's why the Community Correction Working Group was established by Governor Johanns and how it found its way into the Community Corrections Council. That's why it was created. It became evident to the working group that two things would be required if we were to make any serious dent in the prison population. They were additional community correction programs designed to address the (inaudible) needs of those who would otherwise be going to prison and sentencing guidelines. And the legislation which created the Community Correction Council assigned it both of those tasks. Since that time, problem solving courts, primarily drug courts, had been developed in most though not all judicial districts. Probation has added the specialized substance abuse supervision program in some but not all judicial districts and created reporting centers to go with them. The reporting centers, where they exist, not only are used by probationers in the specialized unit but other probationers as well. And in collaboration with probation, parolees can be placed in the specialized Substance Abuse Unit upon reentry into community, again in some but not all judicial districts. A fee assessed to all probationers was established to pay for the enhancement to probation. In addition, the Legislature appropriated money for vouchers to pay for drug evaluations and treatment. Money was also appropriated and made available to assist in the cost of operating drug courts and other problem solving courts. As much as has been done it is not enough. For the most part and for good reason, our efforts to date have targeted felony drug offenders only, but not as many of them as they could or should. As the resolution itself suggests, more attention needs to

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be paid to reentry programs. But for a considerable time now we have been at a standstill. While the money to do more has not been forthcoming, the Legislature has increased penalties and defined new crimes. We do not appear to be on the same page and that cannot continue. As for sentencing guidelines, it is the job of the legislative branch to adopt guidelines that reflect the public policy of this state. But passing sentencing guidelines intended to reduce the prison population without addressing community corrections and the money to fund it is at best unlikely to achieve anything and at worst downright dangerous. I continue to believe that the Community Corrections Council is where the bulk of this work should take place. The framework is already there. My suggestion is that the Community Corrections Council be charged with the task of recommending sentencing guidelines for adoption by the Legislature but together with a statewide plan for community corrections. The three branches of government are in this boat together. And it is about time we all started rowing in the same direction. I hope that LR171 is a sign that we're going to do that. Thank you very much. []

SENATOR PIRSCH: Thank you very much for your testimony. Are there any questions? Senator Council, if you did have time to answer a question, Judge. []

KAREN FLOWERS: I do, I do. []

SENATOR COUNCIL: Yes. Thank you, Judge Flowers, I appreciate your appearance here today. And I heard in your presentation a couple of references to the fact that the problem solving courts, principally drug courts, are present in some but not all counties. From your work on the Corrections Council and from your position on the bench, what is the...are we talking just resources the prevent other counties from establishing these problem solving courts? []

KAREN FLOWERS: Accommodation, right now there are two districts, I believe, that have no problem solving courts. That is changing in the 8th District. They had begun to

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establish, I believe, a multicounty drug court and leaving, I believe, only the 5th District without anything. It is my understanding there is interest in the 5th District that will change that. Beyond that I don't know. In...it takes a lot to establish a drug court. While it cannot be done without financial resources, it also takes the commitment of the judicial district and not just the judges there but law enforcement, county attorneys, public defenders or defense counsel, it's a team effort. And sometimes the slowness of getting that done is in putting that team together. And there has to be an interest and a willingness to do that because if the community doesn't buy into it, it isn't going to succeed. Also, where they don't exist are in the multicounty districts, particularly if you look at the size of the 8th District, they present very, very unique challenges. And it will be...I'm looking forward to seeing how the 8th District in particular overcomes those challenges. []

SENATOR COUNCIL: Okay and then also... []

KAREN FLOWERS: And you also have drug courts that need more resources, money. There are, my drug court, for example, we've been over capacity for a long time. And we cannot increase it without more resources and the money isn't there to do it, at least not now. []

SENATOR COUNCIL: And in terms of the over capacity, is access to the services part of the difficulty? []

KAREN FLOWERS: Access to services is one of the challenges faced not just with drug court but the specialized SAS Unit and, quite frankly, community corrections programs however you define them in general. It is those services that gives me as a judge the confidence that I can safely leave an offender there because that offender's needs, be they substance abuse, mental health, whatever, can be addressed within the community. Where those services don't exist it becomes much more difficult. And that's why I say and I made my comment that if you don't have community corrections

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together with sentencing guidelines, a judge is faced with the question can I safely leave someone in the community when there is nothing there for that person. We don't have a community correction program that provides not just the services that you're talking about but supervision, there has to be supervision with that in order to safely do it. []

SENATOR COUNCIL: Thank you. []

SENATOR PIRSCH: Are there any other questions? Senator Carlson. []

SENATOR CARLSON: Senator Pirsch. Judge Flowers, I'm very concerned about recidivism, I'm concerned about overpopulation, I'm concerned about preparing inmates so that they can become a positive person in our society. But I'm not very well versed on many of these areas. And I heard you mention a couple of things, drug court and problem solving court. I understand what drug court is. Did you say problem solving court? Is that a...would you define it for me. []

KAREN FLOWERS: Yeah, problem solving court, the best definition I can give to you is a track upon which we put offenders that addresses the specific problem that has brought them into the community corrections system, the criminal justice system. Drug courts is a kind of problem solving courts. There are domestic violence problem solving courts, there are DUI courts. And interestingly, Senator Carlson, there are what are called reentry courts, in fact there are reentry drug courts designed specifically to deal with what I'm sure Bob Houston is going to tell you are the high number of drug offenders who are released from or put on parole from the Department of Correctional Services that don't have a structured program that would aid them in being successful. Reentry courts are designed to do that. We don't have them here. And when I say that these are examples of problem solving courts, not all of those kinds of courts exist in Nebraska. Primarily, Nebraska has drug courts, family drug courts, juvenile drug courts. And there is, in Douglas County, a problem solving court called a Young Offenders Court, Judge Lamberty runs that. And, I believe, there may be a DUI court I want to say

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in Scottsbluff, Gering, but I am not positive, with Judge Camerer there. Those are what we have, but that's what they are. []

SENATOR CARLSON: Okay, thank you. []

SENATOR PIRSCH: Thank you. Any other questions? Senator Giese. []

SENATOR GIESE: Thank you, Senator Pirsch. Judge Flowers, could you give me your best scenario as far as, you know, with our correctional system 140 percent of capacity and the sentencing guidelines, I guess, is my question. How do you see that working out? Because if we're that full now, how do we ever, and some of the things that the Legislature has done with the enhanced penalties for certain crimes, how do we ever catch up? []

KAREN FLOWERS: You're not going to do it instantly, I'll tell you that. []

SENATOR GIESE: And will we ever catch up? []

KAREN FLOWERS: If your question to me is, will we never need a new prison? I suppose if the state never increased its population that might happen. But somewhere down the line, that may be a reality no matter what we do. But that's...the question is, who ought to be there? I mean that's what the Community Corrections Council is looking at, who ought to be there. Are we locking up people we're afraid of or people we're mad at? And if we can deal with the people we're mad at, those people that we're not afraid of in a way that outside of a prison context ought we not try to do that. Will you succeed with every single offender? Of course not. Does there come a time for multiple offenders, even the ones we're mad at, where we just say, sorry, it's the Department of Corrections for you, even though it might not be a violent crime. Are there going to be those people? Sure. But can we divert many of them into correctional programs that address problems, problem solving, which is why the community...the

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council focused on drug offenders, DUI, big issue, in a manner that may take some of these folks out of system forever, delay their reentry, by the way, and you save money when you do that, delay the number of times through the system a lot of these folks go, it seems to me you can have a significant impact. I think you have to work on both ends. The Community Corrections Council has focused on the front end so far, those going in. But I think, and your resolution clearly, it appears to me to emphasize that we need to do something about the folks that are coming back so that they do not return. And while collaboration between probation and parole to give some parolees the opportunity to participate in a specialized Substance Abuse Supervision Unit upon their departure from the institution is one thing. There's much more we could do about that. What sentencing guidelines can do is if they've come with community corrections, they're able to say to the judges in all of the districts, we have a program, we're going to establish a program where you can safely sentence an offender and not have to send them, and the sentencing guidelines, depending on how you've structured them, can make that the sentence of first choice. There will always be individual differences. You will never be able to fully account for them. You don't want a grid, I don't think, I hope you don't want a grid like the feds have that takes no discretion, takes all discretion away from the judge. But do I think a significant number of people can be diverted? I do. And I think Esther will provide more detail, Esther Casmer from the Parole Board will provide more detail about what more parole could do if there was programming for those offenders upon parole. Safety is an issue that judges are concerned with, that probation is concerned with, that the Department of Corrections are concerned with, and that parole are concerned with. And safety without programming, without some supervision sometimes the safety issue says no can do, and the offender either goes to the institution because of that or is not released as early as he or she might be able to be released. []

SENATOR GIESE: Would I be right in assuming that the cost of a program is much less than that? []

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KAREN FLOWERS: It may be cheaper, but it isn't free. []

SENATOR GIESE: No. []

KAREN FLOWERS: And, you know, you have the framework for community corrections in the legislation which currently exists in Chapter 47, Section 600. And we...I think the Community Corrections Council has done a remarkable job with the resources that it's had. I do not mean to suggest that the resources the Legislature has provided to the council are insignificant, they are not. But it takes more than that. The cost of doing nothing is, in my judgment, prohibitive, just absolutely prohibitive. I mean, look at when Tecumseh was built and I'm sure Bob can tell us how soon it was that that was full. And that was less than ten years ago when that facility came on line. They're expensive, operating prisons are expensive. Community corrections programs aren't free but they are by far, by far less expensive. I think, if I remember correctly oh probably the average cost of housing an offender in the Department of Correctional Services is certainly in the upper, I don't know, \$28,000 or something. You got to average because it will vary from community corrections to a maximum security. I'll bet it's averaging somewhere around \$28,000 a year. To put someone through a year of drug court or probation, again, depending upon what you're going to add into the costs of that, I want to say, and probably Ellen Brokofsky can give you a better estimate of that, I don't know, \$5,000 a year, \$10,000 at the most, absolute most. So it's a big, it's a huge difference. So thank you very much. Appreciate the opportunity to talk with you. []

SENATOR PIRSCH: Very good. Any other questions? Thank you very much, Judge, for coming and testifying here today. I saw Judge Ryder was in the audience. Judge Ryder, if you'd like to come up, I know you have a busy court docket yet today. []

REGGIE RYDER: Thank you, Senator Pirsch. []

SENATOR PIRSCH: Very good. And I've just been reminded if I could ask you for the

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record, since we're recording here, if you could just state your name and spell it for the record then. []

REGGIE RYDER: (Exhibits 1 and 2) Sure. My name is Reggie Ryder, R-e-g-g-i-e. The last name is Ryder, R-y-d-e-r. And I apologize. I didn't get here at the beginning of Judge Flowers' presentation, so I'm not sure if there's a...if I just jump into this. But if you have questions, certainly, I'll take those questions at any time. I am one of the four juvenile court judges in Lancaster County, juvenile court. And I can give you, I guess, a perspective from the juvenile court where things are. I understand this task force is addressing both the juvenile perspective and the adult perspective. To give you a little background on my experience in this process, when I came out of law school in '97, I spent from '98 until 2007, every year of that but one as a juvenile court attorney in juvenile court in Lancaster County. When I started there were two juvenile court judges. As of August of 2007, when I was appointed, there are four. So that has changed significantly in the last ten plus years since I've been out of law school. I have brought for the task force some numbers, I brought ten, I hope that's enough, of the "Juvenile Court Annual Caseload Report." And this just will indicate to you, for the three separate juvenile courts that exist in Nebraska, the numbers of cases that have been filed. They're broken down by category and then it tracks all the way back to the year 1999. And what you'll see from this, when you review this information, is even though Lancaster County has doubled their number of judges since I started in 1998 in juvenile court, the numbers of cases that we handle in Lancaster County, as there are four of us if you divide the number last year by four that breaks down to 592 cases per judge. In Douglas County, which is of course a far bigger county, they have a breakdown of 531 cases per judge, and Sarpy County is 456 cases per judge in 2008. So we still are seeing a significant number of cases here in Lancaster County even though we have four judges on board. So I'll give those to be distributed. I would say that a lot of the discussion that tends to grab the headlines is the adult system. And it does tend to be that a lot of what happens in juvenile court is not, at least from what I've seen, considered that important. And I think quite frankly the juvenile court system is very

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important. And we have a situation where in our view that if we don't address some of these problems now, when they're young, when they're more amenable to treatment, and when we have a system that's based on rehabilitation, which is what we're founded on, then if we don't address those issues while they're younger, we're going to have them ending up in the adult system and causing further costs to the taxpayers and the community and the victims that get in the way. So I would indicate to you that the biggest issues that we tend to run into are access to services for the juveniles that appear in front of us. We have, I guess, one other...a couple other changes I'll mention are costs that we've seen firsthand, besides the additional judges. Currently, in the Hall of Justice, the courthouse just down the street, there's a remodel project occurring to complete our juvenile court to make room for our four juvenile court judges. Three days a week in Lancaster County there is a visiting judge from Seward County, Judge Rouse, who comes in and fills in and covers cases. I believe in 2010 the district court is going to be having an eighth judge added that was approved by the Legislature at the most recent session. Of course, we're building a new jail here in Lancaster County. And so there are a lot of areas that are just growing in the ways that we'd like to see them not grow. But as far as the access to services, there was an interesting article, and I don't know how many members of this task force were aware of it, in the Omaha World-Herald, in December of 2008, dealing with accessing mental health treatment in the juvenile court system and the frustration that it has caused to many people, including to the judges. It certainly has caused the discussion of the safe haven issue that resulted in the special session last year. So for those that haven't seen the article, I have brought that and I'd like to have, I guess, the commission, the task force take a look at that and get kind of a perspective. There's comments in there from Judge Vernon Daniels, from Douglas County, there's comments from several parents who have had difficulties in accessing services. And that really is one of the biggest issues that we're finding is paying for services, understanding there's not an unlimited amount of money and funds available, but also recognizing that our role as juvenile court judges is to make decisions based on what is in the best interests of the child that's in front of us. And sometimes accessing services can make that much more difficult to do. Just a

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minute, I have... []

SENATOR PIRSCH: No, no, please do continue. []

REGGIE RYDER: All right. One of the things that is somewhat unique about our system as well is we have, when we have youth that appear in front of us on law violations we can either involve the Juvenile Probation Office or we can involve the Department of Health and Human Services and their Office of Juvenile Services. If we involve the Probation Office we can decide and order where the child is placed. With the Office of Juvenile Services we only have the ability to decide what the level of care is going to be. So if we have a youth who we think would be a perfect fit for a particular placement, the statute does not allow the court to say which placement that's going to be just the level of care. So what we run into then it becomes an issue for the Department of Health and Human Services to locate a particular placement. So we get to say the level. One of our concerns is and the way the statute is outlined now is when youth are ready to step down to lower levels of care we have no role in that whatsoever. That's a decision made entirely by the Department of Health and Human Services. And I think that article should cause some concern in that regard, because if issues are made based on the department and ultimately based on Magellan and their funding source, then one of the questions that we always ask, is this really what's best for this child, what's best for community safety, which is one of the things we're also charged with upholding. And so that has been an ongoing issue. And one of the concerns we've seen is in many occasions we have caseworkers who have lots of experience, we spend millions of dollars on the Department of Health and Human Services, they spend lots of time in training, and anymore one of the most common answers we hear as to why placements are sought is because that's what Magellan will approve. And Magellan is a managed care insurance company who, honestly, does not meet with the child, doesn't meet with the mental health therapist, doesn't have any direct correlation with the child. They do a file review and approve a level of care. So that's one thing that does cause some difficulty and concern. And if the child is not getting the proper services now, then are

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we going to be seeing them when they become adults. Unfortunately, we're seeing that quite frequently. []

SENATOR PIRSCH: Thank you very much. And just a little bit of information for the colleagues, Magellan is a private company that has a contract with the state of Nebraska to manage. []

REGGIE RYDER: That's correct. []

SENATOR PIRSCH: And could you just briefly describe their role. []

REGGIE RYDER: Well, the article does point that out. And I think what's really interesting in there is we oftentimes hear in court, when we hear from Magellan, that they don't get paid anymore money regardless if they approve a placement or not. That story indicates that in 2007, that as a whole the company made a \$67 million profit and the CEO made a \$1.8 million profit, which causes me a tremendous amount of concern. But what happens is they were brought in, and the story does talk about that, they were brought in, Magellan, to try to limit the costs and have kind of an oversight and kind of a watchdog. And I understand what their perspective is and their role is. But the difficulty has become, it's evolved from a point where now Magellan is really in many of these instances guiding the department's decisions. We're not hearing from seasoned, experienced case managers what do they think is in the best interest of the child. We're hearing what will Magellan approve and pay for. And so while Magellan has a contract with the department, it does not appear that the department is the one really making those decisions; it's kind of inverted and they're letting Magellan make the recommendations. And I understand it's about costs and costs aren't unlimited. But again, our decisions are based on what's best for the child based on the evidence presented. And unfortunately, that doesn't always appear to be what those decisions are based on. So I would encourage the task force to read that article and look closely at that information and it does talk more about that. []

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SENATOR PIRSCH: Appreciate that, Judge. Senator Carlson, you had a question. []

SENATOR CARLSON: Senator Pirsch. Well, Judge Ryder, just what you said, it appears that Magellan is a company that through this somehow has the authority to ration care. []

REGGIE RYDER: That appears to be how it's handled. []

SENATOR CARLSON: And we're hearing about that in other areas, too. It's dangerous. []

REGGIE RYDER: It definitely is dangerous because...and one of the questions I always will ask when we have a Magellan representative on the witness stand is, have you or anyone from your company ever met with, talked to, or spoken to the child? And the answer is always, no, they haven't. They have a set of guidelines that they look at and they try to, well, this kid doesn't fit this criteria because this doesn't fit. Yet his therapist, who he's been with for ten years, says this is what he needs, the facility is at...this is what he needs. Oftentimes, Magellan will say, no, he doesn't need residential treatment; how about a group home with outpatient treatment, which is significantly different. And so, yes, that is really becoming a significant concern that...to all of us. []

SENATOR CARLSON: Thank you. []

SENATOR PIRSCH: Senator Council had a question, then Senator Fulton. []

SENATOR COUNCIL: It's basically a comment. First, Judge Ryder, I appreciate your appearing today, making time out of your docket to be here and raising a very critical issue with regard to the juvenile justice system. And that is the level of care that youngsters are required or in need of. And having this third party determine that a

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particular level of care, that all of the mental health specialists are advising you as the judiciary that a child needs in order to correct the existing problem and to avoid reoccurrence of that problem in the future being ignored. And one of our tasks here is to look at reducing recidivism. And if young people in the juvenile justice system aren't getting the level of care that they need, then all we're doing is contributing recidivism. And it's not just seeing them again in juvenile court, we start seeing them in adult court where these problems aren't being corrected. And I just appreciate you pointing that out and the need for, I believe, the Legislature to explore this relationship between DHHS and Magellan and this whole approval process because I have personally practiced in the juvenile court in Douglas County and can relate to you at least three instances where the youngster required the highest level of care and that was not approved. And that highest level of care, unfortunately, we didn't have any service providers in the area. In fact, we didn't have a service provider in the state that could have provided that level of care for that youngster. And it wasn't approved because it would require that youngster to be placed at a facility outside of the state of Nebraska. That youngster didn't receive the kind of treatment services that he needed and regrettably ended up in Kearney, which cost far more to the state and its citizens over the long-term than providing that youngster with the care that he needed. []

REGGIE RYDER: Right, right. []

SENATOR COUNCIL: So I just appreciate you raising the consciousness particularly of the committee members here about that situation. []

REGGIE RYDER: And I agree with your assessment how that is unfortunately what we are seeing. And, I guess, I just, if I could mention the Kearney issue, too. You talked about Kearney. And one of the...that is an issue I think this task force also should look at. Because the YRTC's in Kearney and Geneva are the highest levels of care we can access. But again, we have no authority over. All we can say is you're committed to that level of care and we're done. So we have had very memorable, unfortunate instances

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where we as a system have held the youth accountable that needed that level of care for significant behavior issues. And so we do our part to try to hold them accountable, provide a program. Unfortunately, there are numerous youth, especially older youth who go to Kearney and will leave within a week or two weeks and they're completely discharged. So we go from this is what the system is doing to respond to this, to hold you accountable, to address these significant issues, only to have Kearney institutionally discharge them, which is run by the Department of Health and Human Services, and then if they're institutionally discharged, they're back in the community, they're not on parole, they're just completely released. And the message that sends to that youth, number one, is they didn't get any rehabilitative services, and number two, it tells them this is all just a big joke because the judge held me accountable, but here I am back home and I have no services, even though I was trying to get released home under all these services, not get sent here. But in the end this was great because now I'm done. And that's what we've seen on a number of occasions. And that's all part of, I guess, the limitations on what the juvenile court can do with it comes to Kearney. So you know, blended sentences are something the council, the task force maybe ought to look into that other states have, where they authority can continue beyond when they turn 19, where now once the youth turns 19, no matter how poorly they're doing or whatever their issues are, they're free and clear that we're done. And that's how that works. []

SENATOR COUNCIL: Again, I thank you because when looking at the resolution that established the task force it is so focused on corrections, the corrections department that the question presented itself, does that deprive us of the opportunity of looking at those juvenile justice issues that are housed in the Department of Health and Human Services. And I hope that... []

REGGIE RYDER: Yeah. []

SENATOR COUNCIL: ...my colleagues will see the need for this task force to look

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beyond just the corrections department issue and also look at the Department of Health and Human Services. []

REGGIE RYDER: I hope so, too. []

SENATOR COUNCIL: Thank you. []

REGGIE RYDER: And I do hope they look, too, at youth that reenter the system, what have we attempted? Have they been to Kearney? How many times? Are they now? Because we've had a number of cases recently, youth through Kearney now... []

SENATOR COUNCIL: Yeah, back at... []

REGGIE RYDER: ...making all kinds of headlines, so you know, is that program working? Are there changes that need to be made or what other programs can we look at? Senator Fulton, you had a question. []

SENATOR FULTON: Thank you, Senator Pirsch. Thank you for being here today. I'm going to ask a question and really it's going to require a response of generality, but I do so with the hopes of illustrating a little more clearly what the inner play is between the judicial branch and the Department of Health and Human Services. So with regard to the appropriate programming or treatment or care for a young person, two parts, from whom or to whom do you express your counsel and from whom do you solicit the most advice? If you...and this is generality within your own work. You're going to provide counsel and you're going to solicit advice. If you had to identify one or two or three areas or persons from whom and to whom? []

REGGIE RYDER: Well, to whom, you know quite frankly as a judge, we're not able to discuss specific, open cases. You know there's examples that would be helpful to share with folks, such as this committee. But we can't just go out and say this is...this case

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happened and this, that and the other thing. But, you know, what I try to do is in my orders when I have situations that have caused these types of issues I will spell it out in the order because I'm not prohibited from spelling out those issues. And I like to have...I send it to the department, to the legal counsel, sometimes to the head of the department. These are the concerns, this is what was presented, and this is what I think, you know, this isn't going to work. This is not in the best interest of the child and why. And to me that's the most appropriate way to put out there, this is what was presented, this is what it was based on, this is the other information. And that's how I try to voice those concerns. I mean and far as who I seek counsel from that would be usually from the other juvenile court judges, the other three judges in Lancaster County. Sometimes I'll call a judge or e-mail a judge in Sarpy County and Douglas County. We have a very small number of judges, there's only 11 of us that are just in juvenile court. And we're very...we all get along well, we all can discuss issues. []

SENATOR FULTON: I guess, who is the most...when you're gleaning information about any particular case about which you're going to render judgment, from whom generally do you receive the most information? []

REGGIE RYDER: Well, usually what happens, and this is what's sort of ironic about this, is we'll have the Department of Health and Human Services that will say, Judge, order a psychological evaluation so we can see what level of care the youth needs. So, okay, we order the psychological evaluation. We come back for a hearing. Here's the psychological evaluation. It recommends RTC, for example, but Magellan won't approve it. So the department found the provider who did the eval., who made the recommendation. Then they're going to come into court and say, no, no, don't order this. Magellan reviewed this and said that's not what the kid needs. They didn't meet with the kid. So order something else. So what I look at is, is it someone who's been working with this child as his therapist, as his counselor, how long, how frequently. Or if we don't have that, is it someone who did a full-blown evaluation? If that's what I'm presented with versus a file review from someone at Magellan who read that and said I

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don't agree, well, I'm not going to agree. That doesn't make any sense. I can't find how that would be in the best interest of the child when the evidence presented that this is what he or she needs and why. So it's based on evaluations, it's based on assessments from mental health professionals, psychologists, psychiatrists, that's where all of the information comes from when it comes to a mental health facility. We're not qualified, I'm not qualified to say, well, you need an RTC and here's why. I need something to (inaudible). Maybe the kid went to CAPS to the psychiatric hospital for children and they have a discharge summary that says, this is what he needs and why. That's the going to be much more persuasive to me than someone else who read that and said, we don't agree. And then I don't...we don't get anything from Magellan that says, why I don't agree. They don't have their...we don't get any of that information. And so we certainly rely on the professionals and that's what we're basing it on, this is why it's recommended, and this is what we're willing to do. Unless I have something that says with any authority why that's not appropriate. But there are a lot of things again, the department arranges who does an eval., and the department comes in and says ignore that, order something else because Magellan says they don't need it. []

SENATOR PIRSCH: Thank you, Judge.

REGGIE RYDER: Thank you, Senator. []

SENATOR PIRSCH: I do appreciate your time here this morning. And we'll move on then... []

REGGIE RYDER: All right, thank you very much. []

SENATOR PIRSCH: ...Judge Bob Ide. Are you here? Good morning, Judge. []

ROBERT IDE: Good morning, senators. And I warn you up front, anything Senator Carlson tells you about me has to be taken with a substantial quantity of salt. []

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SENATOR PIRSCH: (Laugh) Thank you. And if you could just start off... []

ROBERT IDE: I'm Robert Ide, I-d-e. I'm judge in the 10th Judicial District. We have nine counties south of the river, running from Geneva from Holdrege. Our jurisdiction includes adult criminal, juvenile, and quite a few civil functions. I'm going on my tenth year. My experience includes having served as a prosecutor for a number of years, having served as criminal defense counsel in adult matters, parent representation in juvenile court, one, two, sub one and two juveniles, and quite a bit of time as a guardian ad litem. Once upon a time, 15 years ago I think, I had 45 kids I represented in the system over several counties. I served six years on the State Foster Care Review Board. I served on the original Governor's Commission for Children, and I'm presently serving on that commission. I've had national training for juvenile drug court, and I'm currently presiding over a juvenile drug court in Hastings and in Holdrege. We use most of the services, I think, that are represented in this room--probation, caseworkers, mental health, drug and alcohol, and all of the facilities under...on Class 1 misdemeanors we have the authority to help you continue to plug up the Department of Corrections, I'm afraid. Now, the specific problems that I am concerned about this morning, and I think it goes into the other things that have been discussed, you know, what are we doing as a court system. Quite frankly, juvenile court, in my estimation, by function is a problem solving court and always has been. And I think the adult court would try to do the same things. My usual invitation to someone after I have sentenced them is, I look forward to not seeing you again. So the (inaudible). Now issues that I think are critical because I think the solution to reducing our criminal population is early intervention and accurate intervention. Now, I know Ellen is going to be testifying. And I don't recall, what's it been, two or three years ago we had a seminar on this. And, of course, one of the things that they told us was frequent contact and contact designed to meet this particular individual's needs or shortcomings is critical. And we get to see everything. Our number one chemical problem in the court system is still alcohol. We have problems with mental health issues. And when we get two crossed, we get dual

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diagnosis, we really have a tiger by the tail in terms of trying to find services for these people. Some of the things that we need to have, especially in rural courts is an effective chemical testing system. There's been discussion about day treatment centers. One of my favorite things to do, especially with chemical folks, is to tack a jail sentence that's reviewable onto the sentence. The person comes back, we have frequent contact with them. We have a rundown as to how they are doing. And they have a personal and immediate stake in what's going to happen. It's not going to be months of waiting around for the motion to revoke to be filed. There are going to be consequences up front. A few weeks ago, I had the shocking experience, doing jail reviews, I had nine folks before me in Phelps County and discovering that a large number of them had had no chemical testing. They were paying for it but our system didn't have a way of providing that arbitrary and surprise testing that's going to be effective. We know this works from dealing with the problem solving courts. Two other areas I want to briefly touch on. The mental health, the chemical issues, services for Hispanics, they're hard to find in some areas. Another area I have a concern for I have some jail facilities that do not have a way of effectively providing work release for some of my female inmates. And I brought this up to the county board and others and encouraged them to do something about this. The quality of evaluations is critical. Last Tuesday, I didn't quite fall off the bench, but I had someone on a DUI and the diagnose was alcohol dependence and the recommendation was the 6- to 8-hour alcohol education course. No, I did not accept that. There's another problem looming. And I didn't come here just to dump this on your lap. But there's going to be a change, and I apologize for going over here, but there's going to be a change in the way we provide services in the juvenile system. This is going to be privatized. And we're going to see some of this starting as early as, I believe, October 1. Dr. Weiss, at the Center for Children and Law, provided us with information on the experience in the states of Missouri and Kansas. one of the problems they had in Kansas was the new contracted providers would bring their own people for doing the juvenile work, which meant there was less work for some of the other people that were traditionally providing it and pretty soon their practices weren't viable. And I'm really concerned about that. Out west we'd love to have the

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services you have in Lincoln and Omaha, I think. But it is a problem. And if we're going to solve problems, we have to define what these people need and supervise them, and that takes court time. But we are willing to do it, we're willing to treat this. I apologize for running over, Mr. Chairman. []

SENATOR PIRSCH: Thank you very much for your remarks. Senator Council. []

SENATOR COUNCIL: Yes. Thank you, Judge. I have two questions that were prompted by your comments. One, you made the statement with regard to Class I misdemeanors, we're going to help you plug up the system. I mean, I just... []

ROBERT IDE: Well, that was... []

SENATOR COUNCIL: I mean, just..I mean, I think, just...if you would explain. []

ROBERT IDE: Okay. That is the one category of misdemeanors that we can commit to the Department of Corrections. So we're part of that problem. I could stand back and say as far as the state facilities we're pure of heart, we're not creating the problem, the district is. That's not true. Now, when do we apply that? Usually, it's a situation we're dealing with an individual that by their history that is not going to respond into strictly a prophylactic deal. I need to separate this person from the general population. And it gets them out of their...and potentially in the state system, as I understand it, sometimes there are services like drug and alcohol services available that normally we don't have programs locally to address these. Now, I take chances on people occasionally, but they're people that I can supervise closely, get the testing. And it's gratifying to see somebody sit down six months in the future and they no longer look like a cadaver, they look healthy, their mind is clear, they're a different person than was originally arrested for the drug matter. Yeah, your other question. []

SENATOR COUNCIL: Okay. Well, the reason I asked the question, Your Honor, is that

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even recently enacted legislation recategorized certain offenses. And now we see some offenses that formerly were not Class I misdemeanors are...have now been made Class I misdemeanors. []

ROBERT IDE: Yes. []

SENATOR COUNCIL: And I was just trying...to... []

ROBERT IDE: Third offense DUI over .15. []

SENATOR COUNCIL: All right. And our example... []

ROBERT IDE: Yeah. No, actually that's a felony; it's second offense. Yeah. []

SENATOR COUNCIL: No, that's what I was going to say. But there are some other offenses that formerly were not Class I misdemeanors that have now been made Class I misdemeanors. And that, according to your testimony, will have an effect on your ability to... []

ROBERT IDE: Can have... []

SENATOR COUNCIL: Can have. []

ROBERT IDE: ...as far as our choices. And our first choice is, at least mine is and I can't speak for everyone in the organization but we want to fix problems. You know if we can't...but we need good information. We need the mental health information. We need the social information, we need the chemical information, and we need an effective way of providing that and supervising it. And when you do that, that works, that works. []

SENATOR COUNCIL: And my second question related to your comments regarding the

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lack of effective chemical testing facilities. And you indicated that you have individuals who are paying for it but not receiving it. Is that because the payment is part of the... []

ROBERT IDE: We order it as part of the probation. []

SENATOR COUNCIL: Oh, as a part of it. []

ROBERT IDE: It costs them so much a month. []

SENATOR COUNCIL: Right. They have to...that's what I'm saying. They have to pay into the program... []

ROBERT IDE: Right. []

SENATOR COUNCIL: ...X amount of dollars per month while they're on the program. []

ROBERT IDE: Right, exactly. []

SENATOR COUNCIL: But they may not be receiving the testing. []

ROBERT IDE: It may not be happening. And part of the problem, quite frankly, is with alcohol with a little planning you can avoid it. You know, the test is coming up Tuesday morning, you just don't drink after a certain time. And that's why, I think, like the reporting centers we use in drug court, where it's a random call and you have to call in, and they'll tell you, yeah, you're testing today or you're not. So there's no way to prepare for that except stay off the stuff. []

SENATOR COUNCIL: Right. So it relates back to Judge Flowers' testimony with regard to the fact that we don't have these reporting centers... []

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ROBERT IDE: Yeah. []

SENATOR COUNCIL: ...in all of the... []

ROBERT IDE: Yep, I fully support that. I couldn't agree with it more. []

SENATOR COUNCIL: Thank you. []

SENATOR PIRSCH: Senator Carlson. []

SENATOR CARLSON: Senator Pirsch. Judge Ide, you and I know one another pretty well. I've got two questions for you. I know that my limited experience with drug courts has been a good one. And I know that you're a proponent of that. Kind of comment on how that has saved the system and helped the individual. []

ROBERT IDE: Okay. In terms of time and the people we're involving, it doesn't save anything because, for instance, our juvenile drug court system is usually set up in like four phases. Early phases we've got people reporting to the court weekly. They may test two or three times a week. They're going to AA, they are participating in treatment programs. Phase 2, we see them twice a month; 3, monthly; 4, every other month, and the testing may vary. We've had failures. We've had people that quite...well, let me put it this way, you don't really understand what addiction is until you have some person in order to try to mess up their urine test for alcohol drinks a cup of laundry bleach. Now, that's a problem. Now, there are people that shell out. But by and large those that make it are doing well. And here's the other, here's the silver lining to this deal, the people that make it now become assets for the system. I had a young fellow a year ago in Adams County that just absolutely couldn't understand why he should go to chemical treatment. And I made it as clear as I could on a record in a court in Nebraska. Now, what he wasn't counting on was one of our recent graduates laying in wait for him, apparently, out in the hall. We did not sick her on him. But apparently she had a discussion that was

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pretty straightforward, and the guy went. And you wouldn't believe the change over a year. This guy is buying in, he is actually beginning to develop empathy for other people, that's a great development when you can start thinking about how...what can I do to help somebody else. And we're seeing some of that from it. As I indicated, the downside is we're tying up attorneys, but that's fine. We think overall they're going to spend less time overall in the system. And the other bonuses are we aren't going to have potentially their children, you know, I'm afraid that if you looked at my record carefully, kids that I handled 30-odd years ago, I may have their grandchildren somewhere in the juvenile system in the 10th District. So if you don't intervene you got a problem. If we effectively intervene we're eliminating possible...further juvenile involvement, criminal involvement. The felons we see through we do preliminary hearings as well, so we have some information. And we don't want them growing up into being district court clients. The whole point is to keep this process from going on, stop it here, make them an asset, improve the life for them. []

SENATOR CARLSON: Thank you. []

SENATOR PIRSCH: You had a second question, Senator Carlson? []

SENATOR CARLSON: Well, I'd just comment that... []

ROBERT IDE: He's afraid to ask it. []

SENATOR CARLSON: ...it's good that you're Norwegian heritage has not hampered you anymore in the judicial system than my Swedish heritage in the State Legislature. []

ROBERT IDE: Thank you, Senator. And as I told you, my favorite four years was third grade. So...(laughter) okay. Senators, anything else? []

SENATOR PIRSCH: Senator Fulton, you had a question. []

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SENATOR FULTON: Okay, I'm going to...thank you, Your Honor, for being here. I'm going to ask another general question, trying to glean some trends here because we're making some decisions, I think, that will be implemented many years in the future. Drawing on your experiential knowledge, would you say that we have more or less of a problem today than in years past with crimes that are with chemical addition, crimes that can be corrected with less than tradition means? Is it more or less today? []

ROBERT IDE: Okay. Statistically, I can't tell you. My impression is it certainly hasn't gotten any better and potentially worse. And this comes, as you indicated, based on my experience as a prosecutor all the way through the system. And, of course, the chemical issues leak into not only the adult charges but frequently the problem why the children are before the court, why they are not being taken care of. And so it, you know, it just simply soaks into everything that we do. It's still a big problem. Whether it's more or less, it's still something we need to be effectively addressing. That's why I'm concerned about having those services, having the testing, having the accountability. And, you know, we get better results. It also gives the court system...gives us credibility in terms of if we tell you do to something, get it done. []

SENATOR FULTON: So if indeed there is more of a problem today, it's not egregiously more? []

ROBERT IDE: I'm sorry? []

SENATOR FULTON: It's not egregiously more, it's not noticeably more, it would be difficult for you to quantify. []

ROBERT IDE: Well, it's a lot to begin with. It's the elephant in the room. []

SENATOR FULTON: Yeah. []

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ROBERT IDE: It has a huge impact. I'm sure it does the same thing with the district court load and the juvenile court. []

SENATOR FULTON: Okay. []

SENATOR PIRSCH: Thank you very much. If there's no other questions, we'll turn now to... []

ROBERT IDE: Thank you very much. []

SENATOR PIRSCH: ...thank you, Judge Icenogle. []

JOHN ICENOGL: Good morning. My name is John Icenogle, I-c-e-n-o-g-l-e. I'm a district judge, I'm almost afraid to say this, out of Kearney. Kearney has been getting some bad press so far today. (Laughter) And fortunately, all the other judges have spoken and they've covered a lot of the territory I was going to cover. So I thought I'd take a chance kind of to muse over their comments and to, hopefully, fill in some of the cement to them. Senator Fulton, in response to the question you just asked Judge Ide, our perspective is it's difficult to know if more people are using drugs. But what we do know is that there's a culture of using drugs and an acceptance of those drugs in that culture that did not used to exist. It's a lifestyle and it's difficult to get into that lifestyle and to change it. It certainly is almost impossible to do it through the traditional penal systems that we have. More importantly, the chemical, substance abuse problem is directly tied to your violence problems throughout the state. Almost all of the metro area problems in drive-by, young people shootings is drug related. So if we can impact the one side, maybe down the road we'll be able to impact that second side as well. We also had a little bit of discussion about sentencing guidelines. I had been with the Community Corrections program since its inception. I currently, at least until tomorrow, will be the vice chair of that program. And we did work, as we were legislatively required

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to do, to cement sentencing guidelines to the state Supreme Court for their review. And they reviewed it and the Supreme Court said, this is not in our jurisdiction, give it back to the Legislature to look at. Having said that, it doesn't mean that the judiciary is not willing to work with the Unicameral on sentencing guidelines. And it doesn't mean that there's not an interest in making our lives better, your lives better, and the peoples lives better if we can. But it is going to be within your jurisdiction to make decisions about whether we have sentencing guidelines. I will caution you, almost every state that has had sentencing guidelines, those guidelines, after they're promulgated, have resulted in an increase in prison and jail populations. Judge Flowers said, if you're very specific in those guidelines and say that we are trying to keep people out of prisons and you adjust the guidelines for that purpose, then you and the judicial system and the executive branch is suddenly...we're suddenly taking a risk because we're saying to the public, we believe this person can function in a community-based program and we're willing to risk public safety on that. That is a risk that has to be taken. The judges have to take that risk. The executive branch has to take it and you have to take it if you're going to affect prison capacity and population and if you're going to hopefully address that ultimate issue of recidivism because the best way to stop people from recidivating is to rehabilitate them. And I think the tradition and what we're seeing is that the best avenue of rehabilitation is through community-based programs and an increase in those programs for reentry through the Department of Corrections so that they specifically work with individuals as they come out to lower the risk of their getting into more difficulty in the future. One of the great things we have now, and I'm sure probation people are going to talk to you about it, we now have risk assessment tools which judges are using. These are validated protocols and testing in which we can get a profile from a particular offender that determines how high a risk they are in their current situation to recidivate, get into more trouble. Also it tells us what areas of their lives need to be dealt with and adjusted and worked with to lower the recidivism even further. These tools are like all other tools, they're a part of the sentencing component. But we have these tools, we are now using these risk assessment tools. And I hope that we will be able to do a better job of saying this person, no matter how mad I am at him, really

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doesn't belong in the penitentiary, they need to be in a community-based program to change their thinking, change their behaviors because they are not truly a risk to the public. One of the things those community-based programs that we haven't mentioned are absolutely in dire need of is mental health treatment. Two-thirds or, Bob will tell you 80 percent of the people that are in the state penitentiary have a diagnosable mental health problem. Almost every person that comes through the court system on the district court level has some component of mental health needs. In some parts of the state the judicial system has been very lucky to interface well with the mental health agencies that the state provides. Other parts of the state, those agencies don't see the criminal justice client has their client. And they do everything, they avoid to have these bad people with mental health problems associate with their good people with mental health problems. So I would really encourage your work to try to create a strong interface between the mental health system and the criminal justice system so that they can partnership in the delivery of services to people, whether they are in community-based programs or whether they're coming out of the penitentiaries or correctional institutions. One other thing about community-based programs, Judge Flowers told you that cost is \$5,000 to \$10,000 for a person to participate. What she didn't tell you is that in drug courts all of those people participating are contributing approximately \$2,000 out of their own pocket towards that cost as part of their program. The other thing you have to remember when the person is in a drug court program or community-based program they're required to work, they pay taxes, their families don't need as much money from Health and Human Services to exist. And in our court they pay their child support as part of the rehabilitation program. So there are...those community-based programs do have a tremendous additional savings to the state in those areas. I've been on red for about two or three minutes. So I think I'll stop. []

SENATOR PIRSCH: I appreciate that. Senator Ashford has a question. []

SENATOR ASHFORD: Judge Icenogle, how is your son doing? []

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JOHN ICENOGLE: Oh, he's doing just great. []

SENATOR ASHFORD: Is John with his... []

JOHN ICENOGLE: My son went to West Point on June 29th. He's out of the beast, which is basic training, he as far as we can tell has all of his limbs with him. He did write his mother one night and said, we got the letter and it said, tomorrow we're going out and we're doing a maneuver with live ammunition. And he said, but tell Mom not to worry because by the time you get the letter, if something went wrong you'll already know. (Laughter) []

SENATOR ASHFORD: Speaking of live ammunition, everything that everyone has said today makes sense. And I agree with what you're saying. It's tough not to agree. I mean you've made great strides in their gaps and that's why we're here, to see where those gaps are and how we can close them for good. How do we deal with a relatively new phenomenon, I mean younger than us I guess, that this situation, and maybe I think it does exist throughout the state but clearly exists in urban areas where we have these issues, whether they're mental health, drug, whatever they are and then the element of illegal firearms is added to that milieu. And you take a child, a young person, young adult with drug issues, with mental health issues, it is unequivocal that...and you put illegal firearms in front of them. They're going to use those illegal firearms and they're going to shoot somebody else. So without getting into a lot of...because this is a ponderous issue. But how do you deal with that? How do...how does society address the issue of illegal firearms? Is it somewhat of a new issue? I mean, if you look at the vast span of time that we've dealt with criminal justice issues, what do we do with that problem from the judicial point of view? []

JOHN ICENOGLE: From a judicial point, obviously, you know if it's a simple solution, say, well, you got to identify the source and then you got to go after the source of all that and then we'll put them in the penitentiary. []

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SENATOR ASHFORD: Tried that. []

JOHN ICENOGLE: Yeah, tried that, and it didn't work. Now, when I say what I'm about to say, I want everybody to understand, I am not speaking for any judge, any part of the judiciary or the Community Corrections Council. If I had to think seriously about the violence, the firearms and the interrelationship with the drug crimes, I would say that which area do we need to address to reduce the problem in all the areas? I don't know that there would be a great demand for illegal firearms if we didn't have organizations that were using them to promote their industry. And that they were using them to protect their turf and they just had to have them. I would suggest that we as a society need to look at the other issue is how much criminalization is necessary to protect the public and how much we are feeding into the gangs by our current laws. []

SENATOR ASHFORD: But if you...and I understand our point. But if we can't disregard the, it seems to me that we can't...when we're dealing very violent acts we cannot disregard those acts. We can't excuse them in a way that we can possibly with more status type offenses. []

JOHN ICENOGLE: What I would say, when ever anybody discusses this issue, whether it's sentencing guidelines, risk assessment, community-based programs, there is still a component of our clientele that has to be locked up and maybe has to be locked up for long periods of time. What we need... []

SENATOR ASHFORD: That's what I was trying to get you to say. []

JOHN ICENOGLE: Okay. So, yeah, okay. But what we need to do is make sure we got the right ones locked up for the longest period of time he needs. []

SENATOR ASHFORD: And I agree with that and that's a great point. Thanks, thanks. []

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JOHN ICENOGLE: Yeah. So I didn't have to get myself in all that trouble, did I.
(Laughter) []

SENATOR PIRSCH: Senator Council. []

SENATOR COUNCIL: Judge Icenogle, one question. When you were testifying with regard to the drug court and what the obligations and requirements of the participants are, one of the issues that has arisen, and I'm going to say arisen, because it has existed, is the issue of eligibility for drug court. Now, you could have an individual who has been evaluated as being someone who would respond positively to services and supervision. But according to your testimony as to some of the requirements for participation, at least in my community, the district I represent we have a high unemployment rate, a high poverty rate, inability to pay the \$2,000 to participate. How do we address those individuals? Because if they're not eligible for drug court, they've been evaluated as being amenable to services and supervision, we lock them up? []

JOHN ICENOGLE: Okay. Well, first of all, you know, I'm guessing, and I'm not familiar with all the requirements in Douglas County. But I'm assuming that a person who has the crime, has the evaluation and is otherwise suitable is never excluded from a drug court based upon a financial situation. In our situation we will carry people, and more important than that ours is a federally startup drug program, it's not part of the state's newer drug courts but probation. Our supervisors will take the people and try to get them the jobs. []

SENATOR COUNCIL: Okay. And that's what I'm talking about. []

JOHN ICENOGLE: And we...and they are out developing...there are certain restaurants in the Kearney area where probably 40 percent or 50 percent of the employees are current drug court or past drug court participants because their employer has had such

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a good experience with their work while they've been under supervision. So we've been able to actually partner with the drug court back into the community to get jobs. []

SENATOR COUNCIL: Okay, because that's what I'm looking at in terms of identifying the kinds of services that would need to be provided, moving more to the problem solving courts, more of the community corrections model. What kind of services are going to be necessary for them to be successful? And if we have people who are eligible for drug court but lack the proper skills training, lack employment, that we recognize that a part of that service package must be addressing those education needs, those skill needs, and ultimately those employment needs. []

JOHN ICENOGLE: Okay. And we have...our drug court has that exact component. We partner with Goodwill for employment classes, resume classes, presentation classes, how to get along with your fellow employee classes. And there's a whole broad scheme of those services, plus the major expenses for our drug participants, such as inpatient treatment. That has some with the partnership of probation and the state on the voucher system, and that's what takes care of access. []

SENATOR COUNCIL: Thank you. []

SENATOR PIRSCH: Senator Giese. []

SENATOR GIESE: Thank you, Judge. Can you just briefly tell me or explain to me somebody...an average person that's going through the drug courts and the risk assessment tools that we have now and how that would work and if there is a... []

JOHN ICENOGLE: Well, currently, Ellen would do a much better job at this than I will. []

SENATOR GIESE: Well, if you want to, if you don't want to... []

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JOHN ICENOGLE: Yeah. But what we're doing with this risk assessment tool is that basically all felons or people convicted in district court and probably some of the more serious misdemeanants do a standardized test, LSCMI, which is a risk assessment test. It breaks down where those people are vulnerable and where they have strengths in their lives that we can use in a rehabilitation program. One of the...we use this also to see the type of persons generally that we're putting into particular programs. So we learn something about the individual to help with that. We also are able now to say people that are, in this category when we do our final...when we start doing our evaluations, were successful, these weren't successful. So with the process of evaluating programs and comparing the populations that are in those programs, hopefully, we'll be able to say this person is much better off in this type of program than that. So we'll be able to be more intelligent when we actually start moving people in and out of programs. I don't know if that answers it very well for you. []

SENATOR GIESE: We'll hear more later. Thank you. []

JOHN ICENOGLE: Okay, yeah, I'm sure you will. []

SENATOR PIRSCH: Great. Any other questions? Judge, thank you so much for coming down this morning. []

JOHN ICENOGLE: Thank you very much for your time. And you all have a good day. []

SENATOR PIRSCH: You bet. []

JOHN ICENOGLE: Senator Ashford, thank you for accepting the speaking engagement. []

SENATOR ASHFORD: Oh, it's not a long one, is it? (Laugh) []

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JOHN ICENOGL: Not for you, you're in charge. []

SENATOR ASHFORD: Okay, good. []

SENATOR PIRSCH: And next on the compiled list, Douglas County attorney, Don Kleine. []

DON KLEINE: Good morning. []

SENATOR PIRSCH: Good morning. []

DON KLEINE: My name is Don Kleine, K-I-e-i-n-e. I'm the Douglas County attorney. I thought first of all I'd just give you some information from the standpoint of our largest county in the state. My office has 50 lawyers in it right now. We file 3,600 felonies a year in Douglas County. We handle only felonies. We do handle the domestic violence misdemeanors also. We have a felony diversion program which I was a part of starting when I was a chief deputy county attorney, several years ago, where we divert felonies into a...nonviolent felonies into different programs. We have 320 cases currently pending in that area of felony diversion. I was also part of developing the drug court that we started in Douglas County, the first one in Nebraska, with Judge Murphy several years ago. We currently have 203 active cases in our felony drug court in Douglas County. It has been a tremendously successful program. And I would urge any of you if you have the opportunity to go to a drug court graduation in Douglas County. It's a very moving experience. We also have a young adult court in Douglas County where we...as a problem solving court for young people ages 16 to 22 who don't fit into the juvenile system who we're trying to divert into something else other than sending them to the penitentiary. It's a very intensive resource program, over two years, where if the person completes the program they get their felony reduced to a misdemeanor. There are 37 cases currently in the young adult court. We've started...there's a mental health diversion we also have where people with mental health issues that are charged with

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felonies, we divert them into this mental health diversion program. There have currently been 50 felony cases diverted into the mental health diversion program. Obviously, we have probation. We have a juvenile court system here in Douglas County where we have...I strongly believe that if we're going to make a difference in changing someone's life you need to charge it at an early on state. We have put quite a bit of our resources in the Douglas County attorney's office in our juvenile court. We have 13 of our 50 lawyers are up in our juvenile court at this time and they're extremely busy. We also use a juvenile assessment center. Kim Phillips (phonetic) is here and I know commissioner Rogers is here, they can speak to some of the juvenile court issues also where we divert a lot of cases that come to the juvenile court through the juvenile assessment center to put these juveniles in good...in programs where they can...they aren't going to clog up the court system and they are going to get help for the problems that they need help for. But that's sort of a little backdrop on the number of cases we handle, the types of alternative courts, whether it's a felony diversion program, young adult court, drug court, mental health diversion, that we attempt to use to alleviate some of the stress on the system. We think they are very successful type programs. But I would just answer any questions that you might have. I could expound about different thoughts about the criminal justice system and problems that we have. I agree with a lot of the statements that have already been made about problems with regard to mental health and a lack of services with regards to mental health. I believe in my opinion that most of the people that are in the correction facility over in Douglas County now have some sort of mental health issue of some kind or a drug and alcohol dependency issue that's caused or created some of the problems that the...why they're in the criminal justice system. But if there's anyone that has any questions, I'll be happy to answer them. []

SENATOR PIRSCH: Senator Council. []

SENATOR COUNCIL: Yes. Thank you, Don, for being here today. And you mention some of the alternatives to incarceration that are being employed in Douglas County. And as you know, I'm aware of the felony drug court and the mental health diversion

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and the young adult. But one of the issues that was presented, and I don't know where those problem solving courts now rest on that, and that's the situation where the substance that is being abused is alcohol and someone who has an alcohol dependency, no other controlled substance. At one time they were not eligible for drug court and they weren't eligible for mental health diversion. []

DON KLEINE: Correct. []

SENATOR COUNCIL: What is the current status with regard to individuals who have been assessed with an alcohol dependency? []

DON KLEINE: I think that now they can get into drug court. []

SENATOR COUNCIL: They can get into drug court. []

DON KLEINE: Yes, drug court, not the mental health diversion program. Well, you know, that brings another issue is the tremendous number of cases that we're seeing with felony alcohol issues. I mean, whether it's third, fourth, fifth, sixth offense, drunk driving offenses. Obviously, those folks have alcohol problems but they continue to drive and those...obviously, those are tremendous problems for all of us to deal with on the streets. []

SENATOR COUNCIL: Okay. And that's something that I think we need to look at as an opportunity to reduce the inmate population if we can come up with an effective way of dealing with that population. And I don't mean to speak out of school. And I think Bob Houston will either confirm it or deny it. But at least report, about 25 percent of our current correctional inmate population is alcohol related. Am I correct, Bob? []

BOB HOUSTON: A little higher than that. []

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DON KLEINE: Probably higher than that, huh. []

SENATOR COUNCIL: It's a little higher than that now. So we're talking in excess of 1,000 people who are currently incarcerated who have some alcohol abuse or dependency. So in terms of looking at opportunities to reduce the prison population, if we can develop a way to effectively address these individuals with alcohol dependency, it could have an impact on our prison population. []

DON KLEINE: Absolutely. And I think one of the things that the panel needs to know from a prosecutors perspective is that, you know, elected county attorneys have to answer to the public about public safety. We have victims out there. The people who have committed these crimes have done something to somebody, that's why they're in the system. And I'm all for programs if they are effective. Because what can happen, and I talked to Judge Lamberty about this because we have screening criteria for young adult court, is if I make...I have to make the decision to let this person go into that program. And should that person go out and kill someone or rape someone or do something, obviously, it's going to be...it's going to come back to me as to making that decision. So we take risks. I take risks every day when we put people in programs. But I think that needs to be done. We have to...we have risk assessments. We do that. But certainly it's a risk from our standpoint also. And the public's perception with regards to people that we put in programs, hopefully, that they can succeed. And it's so important that we have good programs. And that takes a lot of resources. The young adult court is a very labor intensive program where we have mentors, we have people in community corrections who are keeping tabs on people on a constant basis. And if somebody is going off the path, then they're going to get yanked back in pretty quick where they're not going to be able to be out there to commit any crimes. []

SENATOR COUNCIL: Okay. And it's that...DUI is one of those areas that lures Judge Flowers' statement as to people we're afraid of and people we're mad at. I mean, that's where that line is blurred because we're mad at them but we're also afraid of the

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potential safety risk associated with them. I mean, in most cases these folks aren't committing violent criminal acts, but they have the potential, in the absence of treatment, of committing very grave... []

DON KLEINE: Absolutely. And unfortunately sometimes, you know, the problem is, and like I say we have diversion, we have all these programs and we have probation. And I don't think...our judges, you know, our 16 district court judges are very responsible, good judges, make good decisions about when they send somebody to the penitentiary. And it's usually somebody who needs to get kind of knocked in the head because they're just not getting it because they've had chances, they have been put on probation, they've been in some sort of a program. Judges usually give them an opportunity. And again it's that fear that if they don't get it, they're going to go out and something bad is going to happen. []

SENATOR COUNCIL: Okay, thank you. []

SENATOR PIRSCH: Thank you. Any other questions? Senator Nelson. []

SENATOR NELSON: Thank you, Senator Pirsch. Don, the first thing you mentioned was the felony diversion programs. []

DON KLEINE: Yes. []

SENATOR NELSON: Now could you give me an example of that, you know? Do you make that decision? Does it have to be approved by the judge? []

DON KLEINE: No, it's our decision. We divert them...we will charge them. We divert them and it's based on criteria. It's going to be somebody who doesn't have a...it's not a nonviolence offense, no history. They're going to be in this program for at least a year. They're going to have to make restitution. They're going to do community service.

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They're going to do some sort of program with regards to that, some underlying issue that they might have that might have been a cause of their committing the crime. It's usually a theft. Maybe it's a criminal mischief. Those are the kinds of cases that will be diverted to a felony diversion program. []

SENATOR NELSON: So you make that decision. They never get before a judge, is that...? []

DON KLEINE: No. The judge has nothing to do with...that's not... []

SENATOR NELSON: So we're keeping them out of prison there. What of these programs where do you need more support and need expansion that you think they're really successful and we could divert more resources into? []

DON KLEINE: Well, one of the areas is mental health with regard to mental health issues. There are many people who commit crimes who have some sort of an underlying...you know, they're not to the point of being insane but obviously they have mental health issues. There are also, of course, the drug and addiction problems that are underlying issues with regards to people committing crimes. All those areas are some areas that we need more resources in. We need...if the probation folks, the people...Kim Culp can speak to this with regard to the juvenile assessment center with regard to juveniles, what sort of programs we need to funnel these people in the right direction so that they can change the course of their lives so that we don't see them in the criminal justice system. But I think alcohol, drugs, and mental health are probably the three main areas. []

SENATOR NELSON: All right. Thank you. []

DON KLEINE: Thanks, Senator. []

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SENATOR PIRSCH: All right. Senator Carlson. []

SENATOR CARLSON: Senator Pirsch. Mr. Kleine, to follow up a little bit on Senator Nelson's question, you make the decision on a diversion program and I understand the risk involved there. How do you measure success or failure of what you're doing? []

DON KLEINE: Well, we see how many people are making it. I mean, we...and that's part of the program and our success rate is very high. We also...we make the...even it's called, say the young adult court, still I'm the one that makes the decision whether we're going to let that person into the young adult court. It's not the judge. The judge just supervises that court. So (inaudible) from a prosecutorial standpoint there's got to be...prosecutors have to be assured that these programs are something that are going to be effective because we're the ones who are going to make the decision whether this person gets into that program or not. And like I said, we have statistics, and like I said, they've been very successful. Drug court has been very successful. Our diversion program has been very successful. And sometimes people don't make it and we yank them out and then we prosecute them just like we would any other case. So they're in there for quite some time and we're able to observe them and make sure that they make the restitution that's required if they're in diversion. Make sure they go to whatever programs they need to. And if they don't do that, then we can prosecute them just as we started from the very beginning for the crime they've committed. And we also ask for victim input. We talk to the victim about...let them know what's going on in the process and assure them that this isn't something we're just walking away from a prosecution here. That this person is going to be prosecuted or they're going to go into this program; they have to comply with everything. It's almost like a term of probation and they're going to have to make restitution for whatever damages they may have caused you. []

SENATOR PIRSCH: Super. Any other questions? Thank you very much for coming down here today. []

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DON KLEINE: Thank you. []

SENATOR PIRSCH: I think that was very helpful. We'll move on. Hi. []

JO PETERSEN: Senator Pirsch, committee members. I'm Jo Petersen, J-o P-e-t-e-r-s-e-n, representing the Nebraska County Attorney's Association. I'm a prosecutor. I am...have been a prosecutor for about 23 years and have worked most of that time in the 5th Judicial District. We are one of the two judicial districts that have no drug court program. I listened to Don give you several programs they have. We have none of those. Some of that's resources. I work in very small counties, very rural counties. In one of the counties...I work in two different counties right now as a part-time prosecutor. One of those counties we have three part-time prosecutors. In the other county there are two full-time and two part-time prosecutors. And so you're talking about very small communities. Our felony load in the 5th Judicial District probably ranges from 30 felonies in some counties up to 120, maybe, in the bigger counties. So the resources that you've heard from the various judges and Don that exist in metro Nebraska don't exist in many places in rural Nebraska. One of the counties that I work in is Hamilton which is in Aurora. We have no mental health facility in Aurora. We have no treatment center in Aurora. None of those things are available. If a defendant gets ordered to get treatment, he has to get him or herself to Grand Island which would be the closest facility. As Senator Council noticed, you have people that don't have money, don't have a car, don't have any transportation, don't have anybody to get them there, don't have a license. For whatever purpose, it's difficult to even get them the services they need, much less making those services available. Even a drug and alcohol evaluation ordered by the court, if we have individuals that are in jail, can't bond out, we have no one to provide that service. We have been able to get a therapist who lives in Aurora, works in Grand Island, to agree to come over and do some of those. But you're talking about rural communities that have no services. So these community programs sound great but you have got...there's got to be someplace for these people to go to get that assistance. Most of the treatment that we see is ordered by the court; it's through a probation.

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There's drug testing that was spoken about earlier where the people aren't getting it; they're paying for it. And some of that's just a manpower issue with probation, with law enforcement. Those are the types of things that we run into in...and the 5th Judicial District is 11 counties. The judges there, there are four district judges. They have discussed drug court, but again see it as a resource issue, as a time issue, as a manpower issue. They travel into a lot of different counties and you'd have to have somebody that would be able to put the time into it to warrant having the program. The sentencing guidelines, the recommendations regarding these type of treatment, again you have to make that available in rural Nebraska. We have people that commit the same crimes that they do in Lincoln, in Omaha, in Papillion. We just don't have necessarily the resources to help those people. Our judges, however, I believe, will bend over backwards to try to help these people, to try to rehabilitate them. They get probation. They're ordered to get treatment. They don't go to prison, I don't see, until they have been back three and four and five times--but we're seeing those three- and four- and five-time offenders. And so either our services aren't good enough, which sometimes they're not...and you get into the mental health where you have a dual diagnosis. That's almost impossible to find in rural Nebraska. A treatment facility for that type of problem is just nonexistent. You know, maybe some of the larger--maybe Kearney, maybe Scottsbluff--but in Aurora, Nebraska, or Fullerton, Nebraska, you don't have that available to you as an option. I'm certainly welcome to take any questions. But that's the problems we have as prosecutors west of Lincoln. []

SENATOR PIRSCH: Thank you very much. Are there any questions based on this testimony? Oh, yes, Senator Nelson. []

SENATOR NELSON: Grand Island isn't very far from Aurora. Isn't there some way that some of these people can be transported into Grand Island? []

JO PETERSEN: We don't have public transportation. You know, that sounds great... []

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SENATOR NELSON: Who pays for all of these things? Is it through the county? Is there state money available? []

JO PETERSEN: Pays for what things? []

SENATOR NELSON: To provide for that sort of thing--transportation. []

JO PETERSEN: We never had anybody make that available. I'm not aware of any public transportation that provides rides for...you know, in juvenile cases we have the department. But in adult cases they're pretty much on their own to either get a friend. There is no resource that they can go to through, probation or otherwise, that gives them that transportation. []

SENATOR NELSON: Sheriff's office could not take them in; deputies? []

JO PETERSEN: Well, then you're talking about a great deal more manpower in the sheriff's department. []

SENATOR NELSON: We're talking about 30-120 felonies. Do you think that's not manageable, you know, I mean in this area? It can't be worked out in some way with some examination? I'm just asking from your experience. []

JO PETERSEN: Are you talking about to get an evaluation or to get...? []

SENATOR NELSON: Well, yes, you've got the problem of availability, I understand. But if it is available and if distance is a problem, then it seems to me that we ought to be able to find a way to get them there for that and not leave them sitting at home with no help at all. And then we've got them coming back again and again. []

JO PETERSEN: Well...and I don't disagree with you. And eventually those evaluations

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get done but it sometime is delayed because they have to find a ride. They...I'm not sure what program we could put into place. Could we? Certainly, if they provided funds to do that. But you've got a sheriff's department that's already overworked, already understaffed in most counties, that to put somebody on just to transport...and you're not talking about one trip here. We're talking about actually getting the treatment, and so they have to go, some of those programs are four nights a week, some of those programs are every single day. Some are, you know, two days a week. And to provide transportation through a county, I think you're going to probably have county boards sitting on your doorstep asking for funds available to do that. It's a logistics and dollars-and-cents issue. []

SENATOR NELSON: All right. Thank you. []

SENATOR PIRSCH: Senator Carlson. []

SENATOR CARLSON: Senator Pirsch. In your testimony, I'm listening, I hear a problem. And no resources, so I've written down here that no resources for any diversion treatments or anything. So it sounds like probation is used more often and more frequently? []

JO PETERSEN: Individual...well, I mean the only two choices when a judge sentences is either probation or a straight sentence to either the county jail or Department of Corrections. Our judges frequently use probation, obviously not all the time. There are certain cases that it's not...they don't feel it's warranted. But they do use probation and it would be similar to the drug court or the diversion programs; it's just after a conviction. []

SENATOR CARLSON: Well, in listening to this, we still have offenses and the need for justice and need for correction. So statistically, what's the difference in recidivism in your district as compared to Lincoln or Omaha? And I view--and I'm from Holdrege--but I view Aurora as a safe community in Nebraska where people would like to live and

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move and raise a family because of the quality of life. That's the case, isn't it? []

JO PETERSEN: Well, I would hope so. []

SENATOR CARLSON: Well, I think it is. []

JO PETERSEN: Are you...if you're asking me if no one commits crimes in Aurora, that's not true, and if no one commits serious crimes in Aurora, that's not true either. I mean, percentagewise, numberwise, we don't have the numbers that Douglas or Lancaster County; we don't want those numbers. But we still have those crimes. And the repeat offenders...I mean, the probation only works as much as the probation officer has the chance to test those individuals to see if they're still using, to get them the treatment they need. The drug court program would have one more step before you got to the judge, before you ever saw them in the judicial system, hopefully before they ever have the opportunity of failing before the judge and going to prison. I mean, that's the ultimate goal of the drug court program is to provide them with intensive treatment. We don't have that even...I mean, our probation officers have a lot of cases. They don't go out every single night and test somebody or every single weekend have tests available for people just because of their mass numbers. And I'm certain someone is going to be here from probation to talk about that to some degree, but we just don't have...I mean, we have one part-time probation officer in Aurora. That person works very hard and does a very good job. There's another one that comes over and does some of the misdemeanor or juvenile work, as well, but it's still very difficult for them to put in enough time to do what some of the resources that exist in Lincoln and Omaha do. And we just don't have that available. []

SENATOR CARLSON: And in your testimony you're saying that there's a problem in rural Nebraska. []

JO PETERSEN: Yes. []

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SENATOR CARLSON: And I guess, as a member of this task force, I'm open to a recommendation as to what we should do, and I'm not asking for that right now. But it's one thing, we've got a problem, and the second thing is, what can we do about it, and I would welcome some more information in that regard. Not right now. []

JO PETERSEN: Thank you. []

SENATOR CARLSON: Thank you. []

JO PETERSEN: And our goal will be to get that to you. []

SENATOR PIRSCH: Thank you very much. Are there any other questions? Seeing none...oh, Senator Council, you have a... []

SENATOR COUNCIL: I have no question but just a comment on what Senator Carlson said. I don't...I don't view it, Senator Carlson, as that rural communities have a problem that's different from the problem that's faced in the more urban areas. It's the same problem: that's the availability of resources. The numbers are larger in Lancaster and Douglas and Sarpy and Cass County than they are in Hamilton County or any other rural county. The problem is the same: that is the availability of services and supervision for these individuals. Whether it's 30 on an annual basis or 3,000, the problem is the same. It's the availability of resources. And now those resources may be nonexistent in some rural counties, they're not existent at the level in the urban counties that we need to address the population. []

JO PETERSEN: Exactly. []

SENATOR COUNCIL: Thank you. []

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JO PETERSEN: Thank you. []

SENATOR PIRSCH: Thank you very much. We'll move on. Bob Houston. If you'd like to come up. []

BOB HOUSTON: Good morning, Senators. []

SENATOR PIRSCH: Good morning. []

BOB HOUSTON: (Exhibit 3) Members of the LR171 committee. My name is Bob Houston, H-o-u-s-t-o-n, and I'm director of the Nebraska Department of Correctional Services. And Mr. Joe Baldassano has notebooks here for you and I don't propose to go through the whole notebook with you, but the research that you called for we're trying to get to you ahead of time. And there may be more information that would be helpful to you and we will certainly get that to you. We have a research department that's very happy to run the statistics in any way that you would like. Just very briefly about my background. This is...I'm going into my 36th year in corrections. I started as a Douglas County correctional officer. Worked for the state for just under 29 years; 11 years as a prison warden. And then I was responsible for the Douglas County Department of Corrections for approximately two years. In that capacity I was responsible not only for the jail but then also our work release center and the day reporting center. So I have some familiarization with that. One of the prisons I was warden of was our youth facility, and so we had to address issues related to youth. The inmate population in the Department of Corrections has shown a steady increase over the last three decades. We gained, over the last 27 years...we gained about 116 inmates. In other words, at the end of the day there's 116 inmates left than there was the year before. One of the things LaMont--and thank you very much for helping provide guidance to our preparation today--is one of the things that LaMont suggested to us is to kind of give an idea of what our suggestion is as far as focus for this committee. And basically I have three specific focuses that I would recommend to you. The first one is to make for a safer Nebraska. I

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don't believe that trying to save money and putting the community at risk are contradictory efforts, but we can save money and make for a Nebraska community. And I do think that as we try to move into the resources that were so well described here, that lowering our prison population count and building our community resources does make for a safer Nebraska. The second focus is that the...keep the inmates to the degree possible, that are serving 12 months and less, in the community, to the extent possible. And the third is LB46, in my reading of it, which has been a little while ago, specifically talks about lowering the reliance on incarceration, and we're looking at that from a state level. But the third focus I would suggest to you is to lower the cost of incarceration at the county and city level at the same time. Our partners in local government I think need to be regarded very similarly. It also benefits the state in that the fewer people who go to county jails and the more we can deal with people at the closest point possible, the fewer people come to the state prison system. About 6 percent of everybody that goes to jail ends up in the prison system. There's about 32,000 a year that go into our county jails and city jails. About 2,100 of them shows up in our Department of Corrections. Some of those are because of recidivism--new crimes and also technical violations off of parole. Enhancing public safety while driving down costs are not necessarily conflicting goals. Both can be accomplished. According to the National Association of State Budget Officers, State Expenditures Reports, corrections has become the fastest growing general fund expenditure in the United States, second only to Medicaid. Heading off the construction of a prisons frees up millions of dollars in tax savings and other governmental operations. At the department, we look at front end, we look at in process, and back end options. At 140 percent, our most desirable situation--and Marshall Lux will talk about this and talked about that in his letter to you--is that maintaining a large capacity at our community centers, not overcrowding them but maintaining them, puts them in a situation where they are most likely going to be parole candidates. The less desirable is to continue to increase our bed count at the Omaha Correctional Center. And the very least desirable risk option would be to further crowd our high security beds. Our goal is to reduce the present and future population from 140 percent down to 125 percent. That is the figure where we can operate with the

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most efficiency and the most effectiveness with our programs, which means a reduction in capacity of about 476 inmates at our current population level. The...and I see the red light on here and if I could I just want to... []

SENATOR PIRSCH: Oh, please do. Please continue. []

BOB HOUSTON: ...refer you to a couple of things. The first thing is, is on the second page, is recidivism. Last year's recidivism rate...and we put the calculations there as to how we arrived at 25.4 percent. By the end of the year, the ASCA group, which is the Association of State Correctional Administrators, will have a more comprehensive figure to compare that with as to how we do across the country. In my discussions with several state directors over the past week at a national conference, and also with the Criminal Justice Institute that's conducting that in association with the Pew Foundation, that Nebraska is going to rank very favorably, as well we should. But we will rank very favorably there. And if I could continue, I think the key here is, in my mind, is that if we put...my job as director of Corrections is to put inmates in a position where they can have the greatest chance at success; that's basically what we do. And we talk about increasing paroles. Those paroles will come naturally. The Parole Board is doing an outstanding job of paroling people. And Esther is working well with the board members on looking at different ways we can increase efficiencies. When I say we, I mean the board and the Department of Corrections. But I think the room that we have for improvement is going to be with those people who come back with technical violations. If we could reduce--now this is the quick math--if we could have reduced, starting in 1998, just one-third the technical violators that we have coming back by having strong community programs, we'd be looking at a population somewhere around 4,000. That would be back to that 125, 130 percent level that we're talking about. I'm going to take you to Tab 1. And at Tab 1, I have two charts there that are very illustrative of what we're talking about here. You can see that in 1988 we're at about 100 percent of our capacity at our community centers. As we speak today--and we have the now-deputy director for community services, Rex Richard here, who is the warden of our community

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center in Lincoln--is that with the work that we've done with the staff there with a very modest increase of resources, we took up to nearly 200 percent our capacity at the community centers. So when the Governor and I discussed in 2006, and also more recently when we hit 140 percent, are our prisons safe, I could say very affirmatively, yes, they are. So I refer you to the chart below and that is flat and has actually dropped a little bit. And what that chart is, is the capacity for male inmates at our high-security institutions, so that goes across the board there and so we really have not had, since 1990, a significant increase at the maximum level. We've brought on, as you can see we've brought on the youth facility and we've brought on Tecumseh, and that has been a lifesaver in keeping our high security institutions, crowded as they are, at least at a flat level where it's consistent. At 200 percent in the community centers, the next place we crowd is the Omaha Correctional Center, which will be at 116 inmates a year, which will fill up very quickly over the next year. At that point we then have to look at our maximum and medium security prisons. That's where things become very difficult. Now to build a prison is extremely expensive and we don't propose...we want to never build a prison again if we can do that. To build maximum security space is something we may have to do but we want to push that as far into the future as possible. If we had to have capacity increases, such as what Judge Flowers talked about, we believe it would be at the community level. We have a risk-based national standard internal classification system that complements what Judge Icenogle talked about, and that is looking at the individuals. So we look at their custody level and we look at the individual. Having applied that by increasing capacities at the community level, we can draw down people at higher security and put them in a position where they have the greatest chance of parole. But we proposed not to build that center. We think that working with the Parole Board and working with this committee and the Community Corrections Council committee, that we can actually take our 140 percent and we want to drive that downward. The next chart I want to take you to shows our prison population started in 1982 and then also the attendant parole rate, and what we are doing is working successfully with the Parole Board and the efforts of this committee to make those lines go in a more parallel fashion. And the Parole Board does an excellent job of making

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certain that the people we put in the community are there. And so the task I think that we look for is not to say to the Parole Board, oh, would you parole more people. What we propose is, is that once we get them out there--because they've had to go through a lot to be well positioned to go out there--once they're out there, can we keep them from coming back. I think that Don Kleine spoke very well when he said there are some people that just have to go to prison. In my mind, it's less about how long a person spends in a prison and more about the fact that they did go to prison, if that's what the judges have determined. It's kind of like our parole violations. I asked Ros Cotton, who is now on the Parole Board, several years ago when she was a parole officer, I says, when do you decide to bring a person back to prison. She says when I finally figure out that I'm working harder to keep this person in the community than he or she is working to stay in the community. By strengthening our community programs, that would give the judges, it would give our parole officers, to give our Parole Board many more options. What many states terms that is halfway back options. The next thing that my testimony would cover, and I won't walk you through all of it, has to do with the internal things, because Senator Council spoke to resources and programs, and that's critical. And what we try to do is to resource--and we believe we're well-resourced--to make certain that we have enough resources where we deal with those people that are the highest risk to offend in a violent or repetitive fashion. We began a...because of Plan B, which if you're not familiar with that, Plan B came on the tails of Dr. Robinson who is here, a meth study for Nebraska which was done by UNO. In that was recommend a \$16 million facility, a \$6.5 million operating cost per year, and a capacity for about 125 inmates. And so what we did was we went to the Governor and asked if we could not build that institution, if we could not spend that \$6.5 million, and instead spend a little over \$2 million to get 36 mental health substance abuse professionals. And from that we were able to increase our substance abuse capacity, which I'll go over in a minute, and also begin a mental health center at the Lincoln Correctional Center that now has the capacity for 80 inmates, and those are our highest risk inmates. There's also a capacity for 12 females in a similar program. Females represent about 6 or 7 percent of our total prison population, so 12 may seem small, but in comparison to the 80 it fits

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right in there with those percentages. I take you to the bottom of page 3. And in there we have, on the third bullet down on Substance Abuse: Nonresidential program slots for one year is 1,924 slots. Now this may seem like a bad term for prison, but those are outpatient or nonresidential, meaning they live throughout the prisons. Inside of our residential units--and our residential unit programs go from six to ten months so they're very intense--they meet the standards set by the Health and Human Services. We took, if you look at that bottom box on the right, that's where we were in 2006 before we went to Governor Heineman and before we went in front of the Appropriations Committee. We had treatment beds for 232 inmates. If you look above that, we now, with Plan B, have taken that up to 590. And next year, with the increase that we're going to have at the Work Ethic Camp because of LB274, we're going to take that to 640 inmates, and so that's a tremendous increase. And so you can look at our prison population at 4,445 inmates and look at 1,924 slots per year and a bed capacity of 640, so we believe that we, as these things are being implemented and we have another year of resources that are coming in and we're doing the hirings and so forth, that our capacity continues and continues to increase. One of the areas of concern is treatment for sex offenders, and the...I'm going to skip you ahead a little bit. With the sex offenders, we...1,000 of our 4,400 inmates are...I'm confusing you by skipping you ahead to a section. Of our 4,445 inmates, about a thousand right now are in on sex offenses. We need to come to terms with, I think, how we handle sex offenders. Many of those individuals should be locked up for the rest of their life. Many of those individuals need to go through the programs that we have through Health and Human Services. Many of those individuals need to be on lifetime sex offender programs. Many of those individuals need to be on parole. Again, the Parole Board does an excellent job on selecting people to go on parole. But what they need is the internal resources, the confidence that we've done in the Department of Corrections to prepare the sex offenders for their eventual release and the wherewithal to have resources to which they can go to in the community to stabilize their program, to not let them hide, and to make certain they're accountable individuals. Parole provides that structure. But in order to parole them--and the discussion has been given this morning about, Senator Council, but even where we have the resources they

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aren't to the capacity that they need to be. And when we go to greater Nebraska, there's just not the service providers there. And so those, I think, are the challenges and I think I'll leave it at that for any questions. []

SENATOR PIRSCH: Very good. Are there any questions? Senator Council. []

SENATOR COUNCIL: And thank you, Bob, for the booklet, and I trust that the booklet, that no book contains information, as well, that goes to the other issues that affect the recidivism, and that's the ability for inmates upon release to sustain themselves and in general society. Education, job training. And you and I talk frequently enough that you know the volume of correspondence that I receive from inmates with regard to educational program opportunities in the correctional facilities and the skills training opportunities that may or may not exist in the facilities. Could you just briefly outline what the educational opportunities that exist at the facilities, how inmates can access those facilities? For example, every inmate that comes into the Department of Corrections goes through diagnostic and evaluation. Is that... []

BOB HOUSTON: Yes. []

SENATOR COUNCIL: And in that process one of the issues that is identified is whether or not that individual has a high school diploma or not. []

BOB HOUSTON: Yes. []

SENATOR COUNCIL: And then what happens after that point? []

BOB HOUSTON: Okay. Well, the first thing, when they come into...the inmates will come into the Diagnostic and Evaluation Center, for the most part, or to the women's facility in York. The youth that come in stay about one day and then we send them up to the youth facility, and those people that come in with a death sentence go over to the

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penitentiary after a short evaluation period. The processes that continue are the same whether they're in one of those placements, and one of the key aspects of that is education. We went to self-operate education about a year and a half ago. And what we have is, is we work with the Board of Education. Now we have certified high school at our youth facility and we have...our programs throughout the state are certified by the Department of Education. On page 4, I'll take you down below Tab 3 and I'll read that. There are 23 specialized educational and vocational programs with a combined 447 seats among 9 facilities. The Work Ethic Camp focuses on modifying behavior and attitudes towards a positive work ethic. The DCS education program has certified teachers, with our high school and programs are, as I indicated, certified. The educational and vocational programs that we have, first is literacy; then we have GED, general equivalent education degree; ABE; ASE, secondary education; postsecondary courses, and we're doing that with UNO. We want to build those capacities for secondary courses. The youth facility that has the high school. We have parenting programs--InsideOut Dads. We have the youth offender program; correspondence courses; carpentry; English as a second language; life skills; culinary arts. C-tech cabling: that's a new program we started and we're training people how to cable and then we're utilizing them for projects within the state government, and we're saving lots of money while the inmates learn a trade. We also have horticulture; welding. We have dog training. We train dogs through the various humane societies at several of our facilities. The Transformational Project, which is our Malcolm X project, has just begun. And Chris, I think we're--Chris Rodgers is here--I think we're in our seventh week with that. The Work Ethic Camp, of course. With LB83, we can now put inmates out there and they get the full array of the Work Ethic Camp. Reentry Alliance of Nebraska; Reentry Furlough Program, and that's where we can furlough people. We've worked with, now, Lancaster County, Buffalo County, and Douglas County with Don Kleine and all the judges up there, where we can take people, put them in a highly structured program back in their home, and we have reentry officers. They have to submit programs, what they're going to do for that week. We provide programs for them. And then also the college courses that are grant-funded. So we've been able to double, this

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last year, the number of people receiving their GED because of the changes we've made in the program and the capacity we've made in the program, and we now have our first nine high school graduates and that will continue. So I don't know if that answers all of your questions, Senator. []

SENATOR COUNCIL: You know, it does, Bob, and I commend the department on recognizing the need to address. But I still have a concern. We're talking about a total--and I'll use prison for lack of a better common descriptor--we have a prison population of 4,400 and we have educational capacity, program capacity of 447 seats. []

BOB HOUSTON: Yes. []

SENATOR COUNCIL: So that's about 10...we have capacity for about 10 percent of our population, but I would imagine that the percentage of our population that lack a high school diploma is significantly greater than 10 percent. []

BOB HOUSTON: Yes, you are correct. I believe, and I was surprised by the statistic, that over half of our inmates that come to us, now that we're certifying, making certain we know, do not have a high school diploma, do not have a GED. And so there is a bigger need out there. The 447 beds is a rotating 447 beds so we do rotate them through, which gives us greater capacity. The other thing is, is that we don't start them as classes, so when an inmate comes in, when his or her name rise to the top of the list, she goes right in. We don't have to wait even a week to get them into the program. So the capacity is higher than that. The education needs of our inmates is incredible and so we try to resource it so that everybody has an opportunity, given enough time on your sentence, to get their GED or their high school diploma. One of the things, as I indicated, is that when we receive inmates that are doing 12 months or less--last year we got 703 inmates--half of...if you take the average sentence stay, they stayed about 6 months on the average. So doing the quick math on that, if we didn't receive anybody doing 12 months or less we would have 350 less inmates. Now when we get people, in

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our world we're best geared for people that are doing several months or a couple of years. It's really difficult for us to engage that population that's doing the 12 months or less. But even with that group, many of them go straight to our community centers and come in. We're still...the way we address it when we have capacity issues--and we're trying to get people in when they're 5 years away from a release so that they can get in and it doesn't complicate the end of their sentence--but when we get people in with short stays were able to address those issues as well as we are when they're in for a longer period of time, so. []

SENATOR COUNCIL: And in terms of priority, and this is another conversation that you and I have had and I appreciate all of the support that comes from Marshall's office with regard to these concerns expressed by inmates who have longer sentences... []

BOB HOUSTON: Yes. []

SENATOR COUNCIL: ...and their desire for particular programs and services, but because of the need to ensure that the people who are being released sooner have been provided those services, it keeps bumping the individuals with the longer sentences back. They become...their attitudes, if they weren't bad before, are exacerbated by their sense that they're being ignored and that they want to rehabilitate themselves but have no program opportunities to do so. So that suggests to me that we need to somehow expand our program opportunities and services to address the people...the sex offenders. I mean, if you have a sex offender who is serving 1 to 3 and a sex offender who's serving 3-5, the sex offender who's serving 3-5 in the ordinary case is going to be without services for 2 or 3 years. []

BOB HOUSTON: Yes. []

SENATOR COUNCIL: So, I mean...and they're incarcerated. They don't...they can't access the services because of the need to address those who are being released

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sooner. What can we do about that, other than increase the programs themselves that provide for additional mental health providers? And you said, now you have--I wrote that figure down... []

BOB HOUSTON: We have...we received, under Plan B, 36 additional... []

SENATOR COUNCIL: Thirty-six. Okay. []

BOB HOUSTON: Thirty-six additional. And then also \$200,000 for treatment at our community centers. I think one of the things...the way we address that, Senator Council, and I think where we get the biggest bang for our buck and also, I think, address the education needs, is to address idleness. And so if you have...we have inmates under the indeterminate model, obviously, that will come in; they'll be doing a 5-25 years or they could be 10-50 and so forth. And I think that's the population that expresses the concern, and they really want something to do and they want to better themselves. Many inmates come into our programs and they get their GED within one week or two weeks, and they're out, so that capacity does go up a bit. But if we could expand our industries program, that would serve two purposes more than having our resources go in another direction. The first reason I say that is, is that we know that there's no new money out there for us, and we need to economize using our existing budget and our existing resources with no new money. Our CSI program, Cornhusker State Industries program, by expanding that it is self-sufficient. So right now we employ--and we have the director of industries there--I'm going to say somewhere around 500? John? []

JOHN McGOVERN: Five hundred and fifty. []

BOB HOUSTON: Five hundred and fifty. We have 550 people that are now engaged with CSI. If we could double that, for example...I mean, that would be a dream beyond dreams for us. If we can expand that, we can do that at no cost to the state because we generate monies that then pays for the staff salaries, pays for our shops, pays for our

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buildings, pays for the machinery inside. And we have a diversity...and you'll find, in here, every piece of CSI--you'll find that described under one of your tabs here--when we increase that...so we have the Braille program, for example. We have Braillists that are certified by the Library of Congress. That costs us no money for that type of certification, that type of vocational. We have obviously the license plate operations. Now are they going to make license plates on the outside? No. But there's work skills, showing up for work, being attentive, interactions with your supervisor. Those are the types of life skills that people learn in those operations. So if we were to expand and diversify the shops that we have, what would come with that, Senator Council, would be a lot of vocational training that the inmates could get early on in their sentence. And our programs are actually, if you go into our Braille shop, I don't know that we have anybody in there doing less than 10-15 years. Many of them are lifers, but they're doing long periods of time. It's a higher salary for them, and along with that we do have, at most of the institutions, the availability to get longer-term inmates into the education programs. And I do think that we can address, as we go along, our education capacity. []

SENATOR COUNCIL: So what would it take to double CSI? []

BOB HOUSTON: Buy more stuff from us. You know, I think it's just basically buy more stuff. We can...we have...we can sell to governmental agencies. We can sell to nonprofits. And we also have businesses that we bring in that provide...through private enterprise we have shops. In those shops, the inmates earn what they would earn if they were in the community. They pay, to a victim's compensation fund, 5 percent, which generates tens of thousands of dollars each year. They pay taxes. They pay towards family support. And so that's what the private shops will do. The industry shops pay between \$.36 and \$1.09 per hour. []

_____ : \$1.08. []

BOB HOUSTON: \$1.08. I'm sorry, I was off a penny. (Inaudible) inmates rate: \$1.08 an

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hour. And so those are highly sought-after jobs. But one thing that John will tell you is, is that for every person we have in one of those shops, we have three or four that are behaving themselves, waiting to get that job. []

_____: (Inaudible). []

BOB HOUSTON: Exactly. And so it has a very good stabilization on the institution. It takes care of inmate idleness. It provides them optimism that even if they're going to be locked up the rest of their life, their daily amenities are better taken care of because they're self-sufficient. They feel more autonomous. So I think, in a way, we address that but in a little bit different way than hire more teachers, so. []

SENATOR COUNCIL: So legislatively, while we are willing to provide tax incentives for businesses to locate in Nebraska and to undertake certain obligations with regard to hiring and creating new jobs, we might want to give some thought to offering incentives for purchasing goods and materials from Cornhusker State Industries. []

BOB HOUSTON: Absolutely. That make a huge difference. We just landed a contract with Murdock Schools. It's keeping our inmates busy. It's...you know, there's just...when we get those things...it may seem small as to what we get, but it's huge in our world. I believe Senator Fulton. []

SENATOR PIRSCH: Senator Fulton, did you have your hand raised, or...? Okay. And then I'll... []

SENATOR FULTON: Yes, Director, thank you for being here. Where do we find more information about the industries? []

BOB HOUSTON: The director is here, right there. []

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JOHN McGOVERN: I'd be glad to meet with you (inaudible). []

SENATOR FULTON: I'd like to have, somewhere, that information. What you're telling me is that there is a work force. There needs to be more demand for the product that's being supplied. []

BOB HOUSTON: Absolutely. We're building more shops. We need to fill those shops. We could build more shops. But, yes, we need the demand. If we get the demand, we'll meet that demand. []

SENATOR PIRSCH: Very good. And Senator Ashford, you had a question. []

SENATOR ASHFORD: Just briefly. Do you have data, Bob, on unemployment rates of inmates who have been released, either because their sentence is complete or they're on probation? Do you have data on whether they are being employed and how quickly...or the time lapse, the average time lapse for someone who comes out of your facility and getting a job? []

BOB HOUSTON: Yes. I can address that in two ways. One is, is if an inmate is released we wouldn't...and is no longer under our care and supervision, we wouldn't know what they're at. When we send people to... []

SENATOR ASHFORD: Well, could I just follow up on that question... []

BOB HOUSTON: Okay. []

SENATOR ASHFORD: ...because that came up in my tour at McCook, is that when they're released--they've obviously successfully completed their sentence--there is no data. These people are released and they're back out there and...but we do know when they reoffend. We do know when they come back. []

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BOB HOUSTON: Yes. []

SENATOR ASHFORD: So at least we know that. []

BOB HOUSTON: Yes. []

SENATOR ASHFORD: And so maybe that's...that's helpful information to find out why they have reoffended and, you know, did they...were they working and so forth and so on. []

BOB HOUSTON: One of the things we're working towards is... []

SENATOR ASHFORD: So I guess my question is, is there a way of...I suppose voluntarily you can obtain that data from these people. []

BOB HOUSTON: Yes. I think all the inmates come back to DEC, and what we can do...and it's probably being collected by our case managers, but I can check into that. Joe will make note of that and we'll talk to DEC, Senator, and we'll see if we can get you that information. []

SENATOR ASHFORD: And then probation, obviously you can track their employment status. []

BOB HOUSTON: When they're on probation? []

SENATOR ASHFORD: Or parole. []

BOB HOUSTON: On parole. Yes. The employment rate should be close to 100 percent. I have the warden here and...100 percent? []

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OTHER MAN: I would say other than an individual with disabilities or they're retired or retirement age, (inaudible) parole, employment or an education program is a condition of their parole. []

SENATOR ASHFORD: Well, in an employment program is one thing but actually employed is another thing. []

BOB HOUSTON: Yes. []

SENATOR ASHFORD: And I think that's a critical issue for me is how successful are these programs and do we need to...again, I don't think it's--and you've made a good point--it's not necessarily a question of spending more money but it may be a question of creating alliances with existing institutions and other governmental entities and be more effective...to become more effective in finding real jobs for these people. []

BOB HOUSTON: Absolutely. Well, I think the partnership that you and I are working towards... []

SENATOR ASHFORD: Well, the McCook thing is a great deal with the welding... []

BOB HOUSTON: Yes. []

SENATOR ASHFORD: ...but, you know, and then...but, you know, the response we get from some people is, well, you know, it's low employment so...or it's low...high employment, so we really can't...if we train these offenders they're going to take jobs away from people that haven't offended. We start getting into those kinds of lines that we're sort of defeating the purpose of what we're trying to do here. []

BOB HOUSTON: And that's true and we run into that quite a bit, you know, in our

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laundry operations and other. What we try to do is go into ventures. The Braille program is a good example of that. To do Braille books is obscenely expensive. But we take the expense out of that, because instead of paying a Braillist who is certified by the Library of Congress, a large salary, we pay them \$1.09 an hour. And so we... []

SENATOR ASHFORD: You know, what's impressive to me about what you've done at the Work Ethic--and it is impressive--and with Valmont coming in there and employing as many people as they have, obviously you have to have a place for them to work. But they put machinery into the facility that is used to train. They have...and also in the fiber optic part of this where they've...you know, inmates or--they're not really inmates, they're...what are they called at the...? []

BOB HOUSTON: We call the inmates but they're residents too. []

SENATOR ASHFORD: Residents. That they have also done quite a bit of work at the facility in laying fiber optic cable or whatever it is, or laying cable. Those are job-type... []

BOB HOUSTON: Real jobs. []

SENATOR ASHFORD: ...you know, skills. So to Senator Council's question, getting the private sector more engaged than they are is pretty important, isn't it, really? []

BOB HOUSTON: Yes, it is. But not only the private sector... []

SENATOR ASHFORD: Or other governmental entities or whatever it is. []

BOB HOUSTON: Absolutely. Nonprofits, schools, you know, throughout the state. Because there's...we have a customer base that's huge, that if we tapped upon a higher percentage of their business would make a huge difference in what we can do inside. []

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SENATOR ASHFORD: Right. And as Senator Council has suggested with some of these tax credit programs that we have in the state, if somehow we can persuade them to look at what you're doing, which is pretty significant work. Reoffenders tend not to be people in stable jobs... []

BOB HOUSTON: Right. []

SENATOR ASHFORD: ...with a good employment base or good...and obviously, there are other factors like family and other community connections which are very important, but if they have a job and it pays a living wage...and it's unlikely, much less likely that they're going to be back in your institution, isn't that right? []

BOB HOUSTON: Absolutely. And on page 2, under recidivism--and Dr. Robinson, when he testifies, will speak to that. Basically we have education...these are the risk factors: education/employment, risk factor 1; the social aspect--people who are antisocial and those types of things, and good work programs help to address that along with other things that we do; mental health; substance abuse; and housing. Those are five key things. []

SENATOR ASHFORD: And those are very important and they're all very important factors. How many employers...is Valmont the only employer in the state that has a program similar to the welding program? Is that...? []

BOB HOUSTON: I think that's a unique program in that it brings in the vocational aspect as well as the employment. []

SENATOR ASHFORD: Right, but, I mean, wouldn't that be a place where you could really expand? []

BOB HOUSTON: Um-hum. Absolutely. []

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SENATOR ASHFORD: And of all the good employers we have, we have one that...? []

BOB HOUSTON: Well, we have a lot of employers, and Warden Richard can talk to that. Do we have...? []

SENATOR ASHFORD: Maybe more? Listen, Bob, I'm not putting you...I mean, it just seems to me--this is not a criticism--it seems to me this is an opportunity. []

BOB HOUSTON: Absolutely. []

SENATOR ASHFORD: And, sure, labor market is going to go up and down and there's going to be need for welders. There's going to be less maybe in a recessionary economy or whatever. But it seems to me we have these employers out there. And if they...and connecting them or interrelating them to what you're doing, which is pretty significant...you're getting them high school education--not only GED--but they go to high school... []

BOB HOUSTON: Yes. []

SENATOR ASHFORD: ...and all the other services that you have successfully implemented in your tenure there. That's a pretty good group of people that you...to get them employed, it seems to me. []

BOB HOUSTON: Absolutely. And I must say the business community in Nebraska is excellent to work with. []

SENATOR ASHFORD: Well, I don't doubt that. I just think they need to employ more of these offenders. []

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BOB HOUSTON: Yes. []

SENATOR ASHFORD: And I think it's not because they don't want to or won't, it's because we just need to... []

BOB HOUSTON: Right. Yes, they do an excellent job on employing inmates as they go into our community placement. And now what this is, that we're talking about, of course, Senator, is bringing that employment inside, so. []

SENATOR ASHFORD: Yeah. But also not necessarily...it's bringing it inside with a job when they leave. []

BOB HOUSTON: Absolutely. []

SENATOR ASHFORD: And that's the beauty of the Valmont project is they have a job. And there's a gentleman, a person out at Valley today, working in welding that's not reoffending. []

BOB HOUSTON: Exactly. Yes. Thank you. []

SENATOR PIRSCH: Great. Are there...Senator Nelson. []

SENATOR NELSON: Thank you, Mr. Houston. And there's a lot of material here for us to read through. I'd like to go to page 4 here and come back to your 447-seat capacity, therefore your programs, your educational and vocational programs. Do I understand that a large number of your people that come in are 12 months or less, is that what you said? []

BOB HOUSTON: Yes. []

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SENATOR NELSON: Okay. Now are they the ones that get these programs? Is there time for them to get involved in and to occupy these seats? []

BOB HOUSTON: If they're closer to the 12 months than the 1 month, yes. We try to get them in there as quickly as we can. Because again, as Senator Council pointed out, the closer the door, the greater the access. []

SENATOR NELSON: Do you have waiting lists? Waiting line for those? Are they fully occupied, all of these opportunities? []

BOB HOUSTON: I don't know that we...do we have...? Maybe one of my staff can answer that. I have several staff here. I don't know that we have waiting lists for education. Now Joe or...? []

SENATOR NELSON: Well, it's voluntary, isn't it? []

BOB HOUSTON: Yes, it's voluntary. []

SENATOR NELSON: It's voluntary on their part. Okay, and what about your longer term, you're 10-25 year. Is that volunteer, also, as far as...? []

BOB HOUSTON: Yes. []

SENATOR NELSON: Do they take advantage of these? []

BOB HOUSTON: Yes. []

SENATOR NELSON: Okay. []

BOB HOUSTON: Yes. Senator Nelson, the reason they really want to...they are very

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motivated, the crowd that Senator Council addressed. They are highly motivated to engage in programs and work; probably more motivated to take advantage of work and the income that that would bring in industries. The reason they're highly motivated is, is that if you're doing, for example, 10-25 years, okay? Your tentative release date, of course, is 12 and a half years out--half the 25. Your parole's ability date is half the minimum, which is two and a half years. So there's ten years' difference between their earliest out and their longest out. []

SENATOR NELSON: So that's an incentive for them. []

BOB HOUSTON: Absolutely. Because between those ten years, if they're doing well and they're engaging the way they should and they can participate in the programs that would lower the probability they come back, then the Parole Board can come in and set a hearing. And that hearing then gives them equal access to people that have a release date similar to what their hearing date is, so. Yes. []

SENATOR NELSON: Okay. On the next page, you're talking about reentry to assist the offender in successful integration into the community, and you've got parole officers and supervisors, two reentry officers. Are they working with them prior to the time they're released? []

BOB HOUSTON: Yes. []

SENATOR NELSON: How far in advance? []

BOB HOUSTON: Oh, I couldn't give you an exact figure. Rex, if there...? []

REX RICHARD: Primarily, at the Omaha Correctional Center, we've been working with reentry up there. And I think probably within about six months, not necessarily of their release, but of their placement in the community center, those reentry officers will begin

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meeting with those inmates inside the Omaha Correctional Center to facilitate their transition, just even to the community center prior to their transition (inaudible). []

SENATOR NELSON: Again, are they required to do that or is that voluntary? []

REX RICHARD: Voluntary. []

SENATOR NELSON: It's voluntary. []

SENATOR PIRSCH: And I'm sorry to interrupt there, but just for the record, because we're transcribing that, now the...I guess your name if you could just... []

REX RICHARD: Rex Richard, R-i-c-h-a-r-d. []

SENATOR PIRSCH: Rex Richard, R-i-c-h-a-r-d. And so, Bob, in short, just for the transcriber...because I'm not sure that the transcriber picked up the answer, these microphones picked up his answer. But in a nutshell, if you could just kind of paraphrase what that, for the transcription, what that time period would be then. []

BOB HOUSTON: Yes. That was from Rex Richard who's deputy director of community services. And what the question on the table was, is how soon before a person is released do our reentry officers start working with them? And the answer is, somewhere in the six-month area. []

SENATOR PIRSCH: Okay. Thank you for dealing with that. Yeah, it's always nice that these transcriptions will be distributed and relied upon broadly, so we want to make sure we have a good record here. So thank you very much. []

BOB HOUSTON: Thank you, Senator. []

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SENATOR NELSON: But it is voluntary. And what's the extent of participation in that? Someone is getting close to getting out, and I don't know what the term is, but do they say, well, I'm not going to take part in that. Is there any incentive on the reentry program for them to try and help themselves along, you know, in a way when they get out? []

BOB HOUSTON: Well, if I could address that in a general fashion, which I think will answer your question is, is that inmates do business like any of us do. You know, we make decisions based upon needs and wants. And if the motive...although things are voluntary, the old expression, we make them an offer they can't refuse. So what we do is have incentives for the inmates. The incentives are that everybody starts out maximum security because we don't know anything about them. The incentive is to move down the custody ranks or move in a promotional way: max, medium, minimum, minimum B, community A, community B, which is the lower, and then on to parole. And so working with Dr. Robinson on Plan B to get rid of waiting lists, what happens is, is the inmates make wiser business decisions, because now, instead of walking them all the way out to where they're saying, I get out in six months, why should I mess with this; instead, by getting rid of the waiting lists or having very few people on there whose release date is far out here, they decide, you know, I might as well get into this ten-monthly substance abuse program. And that's the real value of getting rid of the waiting lists and having the resources that Senator Council addresses, because they make wiser business decisions because now they know that there are gains that they could have. And so that's really the motivation for them. []

SENATOR NELSON: Thank you very much. Thank you, (inaudible). []

SENATOR PIRSCH: Thank you. Any other questions? Senator Carlson. []

SENATOR CARLSON: Senator Pirsch. It could probably be a little bit frustrating today because we're taking a lot of time and asking several of the testifiers many questions. I think that's okay. I think that's the only way we can proceed here. So, Bob, we'll keep

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you on the hot seat a little bit longer. But I'm taking some notes here, listening to...it started with Senator Council and then Senator Fulton and Ashford and Nelson, and we're asking questions. And correct me if I'm wrong here, but one thing that registered well with me, you talked about idleness. []

BOB HOUSTON: Yes. []

SENATOR CARLSON: I get the message from a good book someplace that idleness is a tool of the devil. []

BOB HOUSTON: Yes. []

SENATOR CARLSON: Well, so you talk about opportunities for getting into a program. And if those opportunities are there, would you say that that has a probability of reducing recidivism? []

BOB HOUSTON: The opportunities for... []

SENATOR CARLSON: For learning a trade. []

BOB HOUSTON: Absolutely. []

SENATOR CARLSON: For engaging in meaningful work. []

BOB HOUSTON: Yes. []

SENATOR CARLSON: Okay. It certainly would be an answer to idleness. []

BOB HOUSTON: Yes. []

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SENATOR CARLSON: It would be an improvement, probably, in behavior. []

BOB HOUSTON: Yes. []

SENATOR CARLSON: It encourages improvement in behavior. []

BOB HOUSTON: Absolutely. []

SENATOR CARLSON: It encourages improvement in attitude in the institution. []

BOB HOUSTON: Yes. []

SENATOR CARLSON: It improves the climate of the institution. []

BOB HOUSTON: Yes. []

SENATOR CARLSON: And it's a help in rehab. []

BOB HOUSTON: Absolutely. []

SENATOR CARLSON: Now you said, if we could double it at not cost, no overall eventual cost to the state... []

BOB HOUSTON: That's right. []

SENATOR CARLSON: ...isn't that a no-brainer? And so we need to hear more about this. But it seems to me like it's the right track to go on even though there are some people that would say that when somebody goes to prison, make it as bad as you can make it so they don't want to come back. []

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BOB HOUSTON: That's right. []

SENATOR CARLSON: Common sense will tell you that's probably not going to work because they've got to be ready to be reintroduced to society whenever they get out. And if they can conduct themselves in such a manner that they speed up the opportunity to leave, that's I think what we want to do. []

BOB HOUSTON: Absolutely. And a friend and also former offender is going to be testifying to that, and I think he's going to do a very good job of describing his experiences and his testimony is going to relate very directly to that question. If I could give you kind of a...I taught at UNO for 20 years and I would take classes out to my prison. I was warden of the Omaha Correctional Center at this time, and I brought one of my college courses out. And so the...one of the co-eds asked an inmate who had given a very good presentation, how did you spend today? And he said, well, I got up this morning, I went to breakfast, I did my job which was about 15 minutes, I watched this TV show, I watched that TV show, lifted weights, went to lunch, watched another TV show, went back to his room and played cards with his friends, lifted more weights, went to bed. And she said to him, now you were just saying when you get out you're going to get two jobs, support two children and your wife, and I've just asked you how you spent your day; how are you going to transition from that? And I thought that was telling to get to the point, I think, that you're presenting here, and that is how you spend everyday and where you put your focus in life is how you're going to spend your time. If your focus is to lift weights and watch TV, when you get out is there any reason that you wouldn't want to continue that lifestyle? But if instead we get you up at 6 o'clock in the morning, you go to breakfast like the 550 men that we have in industries and the people that are engaged in our mental health programs, substance abuse programs, on down the line--we have a lot of busyness well beyond those 550 jobs--and you learn how to interact with your supervisor in a successful way, you know the importance of getting to work on time, you learn the principles and the values of that job, that's how you're going to conduct yourself. And when you walk into one of our prisons and you walk across the

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yard to get to our industries area, the inmates will come up and say, hey man, I want this, or why don't we have a third pop machine and why don't we have three baseballs instead of two baseballs, it's really inconsequent concentration of their time. But then you get back into the industries area, and you walk in and they step out of the way, they open the door for you and they say, how are you this morning, and you'll ask them how they're spending their time or what they're trade is. They will stop, they will look you in the eye, and they will be very courteous and they will describe how they spend their day. Our dog handlers do the same thing, and you can go right through our mental health people, our substance abuse people. When they're truly engaged in programs, that's their focus in life. And if we can get that early in their sentence and equip them with education, the mental health, substance abuse that address their individual needs that Judge Icenogle talked about, and then equip that with a good job, a good income that they can put into their reentry account, it just makes that recidivism rate start to shrink. . []

SENATOR CARLSON: Thank you. []

SENATOR PIRSCH: Thank you very much. Senator Giese. []

SENATOR GIESE: Thanks. I feel I need to ask a question just to complete the circle here. But Bob, if you would, just something that you mentioned early on in your testimony, and if you would just touch briefly on both of these, you said to keep inmates in the community and then also increase capacity in those communities. What exactly...can you explain what you're talking about? []

BOB HOUSTON: Well, the people that come in...okay, the people who would be considered high risk in probation, in our world is low risk. And the evaluations that...when we receive inmates in who literally get released the same day as we receive them, and of course they ask for their \$100 gate pay which we provide for them. Some will discharge a week later, two weeks later, three weeks later, and so forth. When you

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add that up over 12 months, that's 300...that's 700 inmates staying an average of six months. By the time they get through our DEC process or diagnostic and evaluation process, get assigned to an institution, go over to that institution, meet with their case manager which happens quickly, and get an assessment and take that assessment and get that into programs, they're gone. And so what happens is, is that you've got a low-risk population in a structure that's geared towards a high-risk population. And that's why I say to address the people doing 12 months or less. And if we can keep them out of the prison system, I think that it not only enhances our community corrections but it also gives them treatment that they wouldn't get in our prison system. Now with that said, there are some people that just, as Don Kleine indicated, that have exhausted every community option. They need to come to prison and so we can stabilize them and try to get them on the right track. But a good percentage of them, we can have other things that cost less money and get to the root of their issues more so than sitting on a plastic chair in our evaluation unit, so. []

SENATOR GIESE: So are you talking about people that are in county jails? []

BOB HOUSTON: Well, I mean, these are people that most likely were in county jails that have now been convicted and sentenced to our department. Some of them...we get inmates in who may have gotten three years but they'll have 400-500 days of jail time credit. And so when they come to us, they get day-for-day jail time credit and they're gone in short order. It's that crowd that we really can't impact with the programs that the communities could provide, so. []

SENATOR GIESE: Thank you. []

SENATOR PIRSCH: Great. Are there... []

SENATOR ASHFORD: Senator, I just...one...then just to kind of summarize here, you started your testimony by indicating that over a period of years that the number of

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inmates at the correctional facility and Nebraska facilities increased 100-and-something a year or whatever that number was. []

BOB HOUSTON: One hundred sixteen. []

SENATOR ASHFORD: One hundred and sixty-eight (sic). And it continues to... []

BOB HOUSTON: One hundred sixteen. []

SENATOR ASHFORD: One hundred sixteen. And that's been a...that's a number fairly constant. []

BOB HOUSTON: Yeah, what we did was we took... []

SENATOR ASHFORD: Well, I mean, that's rough but it's a hundred...but generally it goes up every year. []

BOB HOUSTON: One hundred sixteen. Yes. []

SENATOR ASHFORD: So if we've implemented all these programs, and you have and you've been successful in a lot of ways, and the population of the state is the same--it hasn't gone up--and it's 116 more a year, how does it get to...go down? []

BOB HOUSTON: Well, two ways. []

SENATOR ASHFORD: I mean, how did it...why does it go up 116 a year? Can you give me a brief answer to that. []

BOB HOUSTON: Well, at the end of the year we still have 116 of them left that didn't get out. But what happens is when a male comes to prison, 80 percent of the males we

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receive are out within 36 months, okay? Of the females that we received, 80 percent of them are out...or 90, excuse me... []

SENATOR ASHFORD: Well, that means more are coming in; more are coming in. []

BOB HOUSTON: Yes, more are coming in. So when we get a female in, 90 percent of all the females we receive are gone within 36 months, so they're not doing long sentences. In fact, if I could take you to...back to... []

SENATOR ASHFORD: Bob, that's okay. But if you're...if it's 116 more and they get out and 80 percent get out in a relatively short period of time, and recidivism rate is different for men and women but it's about, what, 25-30 percent or whatever it is. So it's...I mean, I don't know how all these correlations work out, but, I mean, essentially the population is going up; recidivism is not worse in other states and better in a lot of states. But there's still enough recidivism where this population--and that's a big factor in this growth of population, I would think, is recidivism--there's got to be a lot of a number of these people that are reoffending to get to that number of 25 or 30 percent. So I guess, just in summary, what do you...? More programs? Less sentence...or more probation? What's the...? In your opinion--you've done this a lot longer than I have--what's your opinion as to how we address this issue? []

BOB HOUSTON: Okay. Last year we got in about 300 former inmates that committed a new offense. We got in 158 people that committed technical violations and came back to us. Okay. The average over the years is about 171. That number is dropping because of actions the Parole Board and our department are taking together. []

SENATOR ASHFORD: The technical violations are going down but the 300 that are reoffended... []

BOB HOUSTON: Yes. []

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SENATOR ASHFORD: ...or 400, that keeps going. []

BOB HOUSTON: Yes. That number keeps going. The chart I wanted to just show you briefly is this is the average stay in prison, and you can see it's flat. So we haven't...even with the laws passed and so forth, it's a straight line. They're serving now, from 1982 until 2009, the amount of time that they get has not changed too significantly. []

SENATOR ASHFORD: Since '92 to 2009? []

BOB HOUSTON: Yes, '82. From '82... []

SENATOR ASHFORD: Or '82. And there have been significant increases in sentences during that time. []

BOB HOUSTON: Yes. We had, in the '80s, as you can imagine when the "get tough on crime" era, you can see where that spikes up. But it's come down and it's been steady all the way across there. So it's not about a time that they are sentenced to; it's more about the fact that we're getting greater numbers. And also when we put them out into the community, last year we had 277 parole violations. Of those, what the Parole Board is doing is just outstanding. What they're doing is, instead of just parole violating it, they're bringing back--and Esther can talk about that--they're bringing them back and putting them into 90-day programs or stabilization programs and then getting them right back out in the community. []

SENATOR ASHFORD: And Esther just needs help. I mean, they need to have programs put in, as Senator Council suggests. Okay. []

BOB HOUSTON: Absolutely. []

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SENATOR ASHFORD: So it's a combination of a lot of factors but it's not going down. Sentencing does have a...is a factor. But people reoffend for a variety of reasons and...
[]

BOB HOUSTON: Yes. If we can build community centers or build...not centers, build community resources, look at our day reporting centers. They're very successful. They're very good. Look at halfway back options. We can keep even...like you said, if we kept just one-third of the technical violations back, there's 500 inmates we wouldn't have. []

SENATOR ASHFORD: Well, and that's times, what? Times \$28,000, \$29,000 a year if it's the adult facility. So you're...so at...if you can do...yeah, you're talking real money, I mean. (Laugh) []

BOB HOUSTON: \$27,8299. But now we have some facilities that cost us considerably...
[]

SENATOR ASHFORD: Much higher. []

BOB HOUSTON: ...much higher. []

SENATOR ASHFORD: But if we're just the population, let's say...or the \$28,000, \$29,000, \$27,000, you've got 200-300 people. []

BOB HOUSTON: Yes. And as we move... []

SENATOR ASHFORD: That's a gob of money. []

BOB HOUSTON: Well, that's why we filled up our community centers and why, if we

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did, out in the future, needed some capacity increase, it would be at the community level for two reasons. One is we can draw people from max and medium down. But the costs at the Lincoln Community Corrections Center is \$15,950 per inmate per year. And it was \$19,054 at our community center in Omaha. []

SENATOR ASHFORD: And--and just to carry forward with your point is that, to your very first point, our number goal is Nebraska needs to be safe. Nebraskans need to be safe. []

BOB HOUSTON: Absolutely. []

SENATOR ASHFORD: So what you're suggesting to us is Nebraskans will be safe in the future if we reduce...if we attack these issues like the technical violations and building up the resources so that they don't...to impact reoffending...to impact recidivism, that this state will be just as safe by doing that as it would be by keeping those people in prison. []

BOB HOUSTON: Well, I guess I suggest that it'll be safer, because I believe it was Judge Icenogle that said that reforming people is incapacitation. And one of the...if I could leave on one more point... []

SENATOR ASHFORD: Well, that wasn't a bad point. (Laughter) What's your... []

BOB HOUSTON: Well, if I could say one more thing--and I'm going to borrow this from you, Rex--and Rex said this several years ago when he first went into this, is that I think what you said: The cruellest thing you can do to an inmate is put him on work release. I mean, it is. Instead of sitting around, as Ray is going to testify to, idle and so forth, they've got to get up in the morning, they've got to go to work. They've got to pay \$300 a month, now soon to be a little more than that, back to the state for their board and room. That is the community punishment. That is something that is difficult for somebody to

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do. So I think we'll be safer; not just as safe. []

SENATOR PIRSCH: Well, thank you for that closing note, Director Houston. And seeing no other questions, I really appreciate all the testimony you've brought forward here today. I think it's been extremely helpful and I'm sure we'll have more questions going forward, and we look forward to working with you. []

BOB HOUSTON: Thank you, Senator. Okay. []

SENATOR PIRSCH: Thank you very much. At this point in time, just in terms of helping to structure the balance of the testimony--we still have a number of testifiers here today and the morning nearly gone. I know some of our testifiers have driven great distances to be here this morning and will be driving back great distances, and to that end, helping to structure it, Senator Council, I think who will be assuming the chairmanship here in the afternoon, I'd appreciate it if you would...I think you had a question that may help in terms of structuring testifiers. []

SENATOR COUNCIL: Yeah. Thank you, Senator Pirsch. And I apologize to those who have been waiting to testify. We announced a five-minute limit but that certainly questions that were posed needed to be posed, and since we're talking about sentencing and recidivism, no greater source of information could we find on that as the correctional center officials themselves. But trying to plan for the remainder of the day, just wanted to see, you know, how many of you anticipate that we will continue through the lunch hour and are willing to just continue through the lunch hour? According to my records, we have somewhere between 15 and 20 people who wanted...who have signed up and indicated that they want to testify. So I just want to get a feel from those who are here to testify, if that is indeed your preference that we just continue to go forward until we conclude, through the lunch hour. Just indicate by raising your hand. How many of you would prefer to take a break? I'm sorry. I'm sorry, you folks that need to take a break... []

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SENATOR NELSON: How about asking us? (Laugh) []

SENATOR COUNCIL: You guys don't count. (Laugh) So with that, the next person who's scheduled to testify is Esther Casmer from the Parole Board. Esther. []

ESTHER CASMER: (Exhibit 4) Good morning, Chairperson Pirsch, members of the Sentencing and Recidivism Task Force, my name is Esther Casmer. I am the chairperson for the Nebraska Board of Parole. I appreciate the opportunity to come before the task force today to offer testimony regarding the important functions of the Board of Parole. Parole was established in Nebraska in 1893. A three-member parole board was created in Nebraska in 1969 and in 1987, the Nineteenth Legislature passed an amended section of 83-189 of the Revised State Statutes to provide for five full-time members. The five full-time members are appointed by the Governor, including the Chairperson. Each appointment must be confirmed by the Judiciary Committee and the Legislature. The five full-time board members, with correlating staff, are present at one of the eight correctional facilities daily to conduct offender board reviews and/or parole hearings. Review of parole hearings, commonly referred to as revocation hearings, are conducted twice a month. Revocation hearings are conducted on parolees that have received allegations of violating parole conditions that require the board to evaluate the possibilities of additional programming to enhance a positive return to society, and to judge the parolee's readiness to return into the community without being a threat to public safety. Except on days when conducting revocations and parole of hearings, the board members conduct offender board reviews daily. During offender board reviews, board interviews the offender to discuss the circumstances surrounding the offence, evaluate the progress and conduct to date. We also make recommendations for involvement in needed treatment, vocational, and educational programs, and determine the readiness for release into society on parole. This process also provides an opportunity for the offender to ask questions of the board. Offender board reviews are closed to the public. Parole hearings are conducted the last ten working days of the

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month and are held in conformity with open meeting law. Anyone who chooses to appear on behalf of or in opposition to an offender's release on parole are afforded the opportunity to speak. The Board of Parole is very supportive of the Nebraska Coalition Victims of Crime and have been an honored recipient in the past of the exemplary support and service to victims of crime award. It costs an average of approximately \$32,717 per year to keep an offender incarcerated, versus \$3,206 per year to place them on parole. The total number of inmates placed on parole in 2008 was 1,008. In the same time span, 711 successfully completed parole. However, the 2009 discharges do not reflect the numbers from that year who are continued on parole without incident. Currently, there are 768 offenders set for parole hearings and, again, this number does not reflect those that have been paroled or successfully discharged from parole for 2009. The board will actually see an average of 550 to 600 inmates per month on offender board reviews, revocation hearings, and parole hearings. There are currently 801 offenders on parole in the state of Nebraska as of August 1, 2009. In Nebraska, we enjoy a parole process rate of 86 percent with 14 percent revocation rate. The parole board meets quarterly with the Department of Correctional Services and their program directors. During these meetings, we discuss the need of the offender and what each of us can provide to better position an offender for parole and to further explore programming options. []

SENATOR PIRSCH: Thank you. Thank you very much. And I have just a quick question. You mention that there's a 14 percent revocation rate. Previously, testifiers have indicated that maybe there's some technical violations that occur. Of these violations, how many would you characterize or just is your gut telling you are mostly technical not substantive that we could probably figure out ways to overcome and thereby work on these individuals. What would you say in terms of...is it the majority of this 14 percent or just a small fraction? []

ESTHER CASMER: We would say approximately half and half. And the reason I would indicate half and half, we have given the parole officers the latitude of handling on an

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administrative level, rather than come before the board, the technical violations. Anything that is more serious, these are the ones that are coming before the board. Unless we stipulate at the time of their hearing specific violations because of their criminal history, we want them brought back in to revisit with us so we can possible tweak the conditions of parole and return them at some point. []

SENATOR PIRSCH: Thank you very much. And with that, I'm going to turn the chairmanship over to Senator Council. []

SENATOR COUNCIL: Okay. Esther, just real quick, and Director Houston referred to different dates. And I think there needs to be some understanding. There is a parole eligibility date. []

ESTHER CASMER: Yes. []

SENATOR COUNCIL: And then there is a tentative release date. []

ESTHER CASMER: The parole eligibility date by law cannot...the individual cannot be paroled prior to that specific date. Tentative release date is a mandatory discharge date of which the state can no longer hold this individual incarcerated or on parole. []

SENATOR COUNCIL: Okay. And that's at the station I think everyone needs to understand. And in the example that Director Houston referred to, someone who's sentenced to 10 to 25, they're eligible for parole after five years under that scenario. []

ESTHER CASMER: Approximately, yes. Um-hum. []

SENATOR COUNCIL: Approximately. Their TRD would be 12.5? []

ESTHER CASMER: That's about right. []

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SENATOR COUNCIL: Okay. So at 12.5, assuming our calculations are right, those are individuals who according to the statute we could no longer hold... []

ESTHER CASMER: Right. []

SENATOR COUNCIL: ...under any circumstance. []

ESTHER CASMER: Once they've reached the end date, the offenders will call it a bottom number, after they've completed their bottom number, they can't be held. They commonly refer to the tentative release date as their jam date. []

SENATOR COUNCIL: Jam date, their jam date. []

ESTHER CASMER: Um-hum. []

SENATOR COUNCIL: Okay. Just so that people could understand that because there has a bearing on programs and services as well because in the exchange with Director Houston, the closer someone is to their parole eligibility date, the greater likelihood that services will be made available, that they have access to...they have greater access to services than someone who's parole eligibility date is further out. []

ESTHER CASMER: Further, that is correct. []

SENATOR COUNCIL: Okay. And in terms of mandates, as Director Houston testified, even the parole board cannot mandate a particular program. []

ESTHER CASMER: That is correct. []

SENATOR COUNCIL: They can recommend that but they cannot mandate it. []

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ESTHER CASMER: That is correct. []

SENATOR COUNCIL: Any questions, senators? Yes, Senator Carlson. []

SENATOR CARLSON: Senator Council. In your report here, we enjoy a success rate of 86 percent with 14 percent revocation, and that 14 percent is compared to 25 percent in the overall population. Is that going through the parole process successfully appears to indicate a greater success once they're out. []

ESTHER CASMER: Yes. There have been situations of which individuals have come back on what is identified as new numbers but with the programming that has sprung up, and I observed several individual here that have dedicated themselves to offer transitional living facilities and programming, halfway houses, that itself is a positive factor in successful parole. Not everyone has family that can offer them assistance in any way, so these programs that are...we rely on very much are available to these individuals. Also, there's time on work release enhances their ability to stay out because they're financially stable, they're able to secure their own residence, and that means success. []

SENATOR CARLSON: Director Houston's report here, the recidivism rate was based on 36 months following. Is this the same... []

ESTHER CASMER: I'm not...the numbers that are there that I formulated for today is just within that year. It's not on a national level. This is just Nebraska level. []

SENATOR CARLSON: Okay. Thank you. One other question. As you meet with people that are eligible for parole, and if the parole board decides not to grant parole, what are some of the issues that occur that would cause you to come to that decision with an individual? []

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ESTHER CASMER: For us to not consider an individual for parole, we look at the criminal history, we look at the institutional behavior, we also look at their behavior within the unit, whether or not they're complying with programming. And there are some individuals that do not want parole. They tell us immediately, I'm not interested in parole. I don't want anyone telling me what to do once I leave here. And they refuse it. So we take in those factors. We take in the severity of crime. Also, we look at the situations as far as victim witness notifiers, case in point. When you're reading the information on paper, you look through the presentence, you have the class study, and you cannot visualize some of the situations that occur. And then you have an individual, it may say, so-and-so and I got into an argument and it resulted in a physical altercation. You do not see the damage that has been done to that other human being unless they come forward, and at that time, we have to make a decision on whether or not that this person has warranted parole. Some individual will come forward and say, yes, I committed this crime, it was horrendous, and they will give you detail of what they did and what their thought processes were at this time. However, if you get an individual say, oh, we just got into it, wasn't that big of deal, they're all right, and you see this person walk in the door and they've got the healings of third-degree burns, that makes you take another look at that person as far as their honesty and whether or not they are being accountable for their crime. []

SENATOR CARLSON: Thank you. []

SENATOR COUNCIL: Any other questions? Senator Nelson. []

SENATOR NELSON: I'm interested in your comment that some don't have any family, any supportive or anything to go out to. []

ESTHER CASMER: That is correct. []

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SENATOR NELSON: Is that a large factor in determining whether they should be paroled or as against staying in the system for a while longer? []

ESTHER CASMER: No, no, no. I just wanted to express not everyone in the prison system have those support systems. And I wanted to extend my gratitude at that point by coming forth with this information is the number of people that are sitting behind me that offer support, but there are a few that do not have any place to go. They have no support because of their behaviors, they have no contact with their family. Their families are not trusting of them or willing to help them. []

SENATOR COUNCIL: Any other questions? Ms. Casmer, just two quick ones. Number one, I've been looking at what other states have been doing in terms of addressing their incarceration rates, dealing with reducing recidivism, and there are a few states that have mandatory parole. And so that everyone who's released is released on parole. Are you familiar with those states? []

ESTHER CASMER: Yes. []

SENATOR COUNCIL: And what are your thoughts about mandatory parole? []

ESTHER CASMER: Mandatory parole is for some individuals it would be fine but when you're looking at mandatory parole, we don't have the resources at this point to have case managers or caseworkers within the institution to help these individuals formulate plans once they are out there. It's just my date is here. It doesn't give an individual an incentive to program, to receive GEDs, to receive some kind of technical training, to elevate to college education. It's just depends on their mind-set, their addictions. This is the date I get out and this is what I'm going to do. And I'm not saying this for job security, but I'm not comfortable with mandatory parole. However, I am comfortable and I can actually say this, I would prefer to be neighbors with an individual that has been incarcerated and has programming than one that slept through the system basically and

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walking out the door, no incentive to change. And I can say this because I am neighbors with an individual that has been incarcerated. []

SENATOR COUNCIL: So there are aspects of mandatory that the back end resources that... []

ESTHER CASMER: Resources. []

SENATOR COUNCIL: ...that's the ideal, that every person who walks out has access to the services they need. I mean... []

ESTHER CASMER: That would be a perfect world. []

SENATOR COUNCIL: That would be a perfect world. If you had the ability to receive anything that you would consider to result in reducing recidivism that you don't have currently, what would that be? And it's unfair, I mean, I didn't prepare you for this question. []

ESTHER CASMER: Okay. []

SENATOR COUNCIL: But I'm just saying if there's something that's missing right now that you believe if you had that resource, it could work to effectively reduce recidivism. And if you want to ponder on it and send it to me, I'm just... []

ESTHER CASMER: (Laugh) Okay. It's a very difficult question to ask because there are so many aspects to that question and to just single out one, I don't want to single out one. As resources I would just, a blanket resources within the community as far as programming--mental health, substance abuse. That's what's necessary []

SENATOR COUNCIL: Okay. Thank you. Have my questions prompted any other task

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force member questions? If not, thank you, Ms. Casmer. And I'm sure you'll be hearing more from me. []

ESTHER CASMER: Okay. []

SENATOR COUNCIL: With regard to the list of individuals who want to testify, we did receive a special request from Ron Johns who's from Scottsbluff and needs to be heard so that he can make that drive that I wouldn't want to make. So with your indulgence, we're going to call Ron Johns. []

RON JOHNS: Thank you. Much of what I was going to talk about has already been covered. Obviously, we've discussed a lot of the same issues of resources, mental health, access to the resources. And I'll just give you a real brief perspective from the far west end of the state. Sure. []

SENATOR COUNCIL: And before you start, I just need to remind everyone you need to state and spell your name for the record before you begin. []

RON JOHNS: Ron, R-o-n Johns, J-o-h-n-s. I'm the administrator for Scottsbluff County Adult and Juvenile Detention. Access to resources is of course always a problem. Scottsbluff is a large community for the western end of the state, but obviously once you get outside of our area, it is very, very hard to access resources. One of the concerns and problems I see is that when you get to that end of the state, you utilize what you have. We have a detention center, so we get a lot of kids that are locked up in a locked secured detention center. North Platte has a staff secured center. They put the kids in staff secured unless they can't handle it. Other places, they go to jails for short periods of time, and then they're given to the state because they can't...they need the road grader, they can't afford to hold the kids. So that being said, that's kind of where we're at at the western end of the state. What I would like to challenge you guys to do a little bit is to really...you know, we've talked about the far end of the spectrum, I would like to

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really challenge you to really look at the front end of early intervention. We talked about these juveniles that become adults that become inmates. It started a juvenile. Everybody has talked to a teacher and, of course, in my profession I talk to a lot of teachers and they'll say, Johnny is going to be in your detention center one of these days. And a lot of time Johnny is and that's because we don't have anything on the front end. I know money is always tough. And it's hard to see we've got to take care of these people that are already in our correctional facilities. But with early intervention, you know, you talked about the price of housing an inmate, and if we could do that by getting involved at an early enough time to keep them out of the system, we could make great changes. Because one of the things I heard somebody earlier say, if we can change one life, if we can change one juvenile that doesn't go up through the system and become an inmate, how many people do we effect? How big of change does that make? It makes a tremendous change. I listened to a speaker who went through the system, somebody mentored him, somebody made the change. And I looked at him and I thought, how many people has he changed because one person changed one person? And I really, really believe that in looking at all the aspects of the things you guys will be looking at that that's an important one is we need to look at early intervention and we need to look at continuity across the state so that we're doing it the same way. Otherwise all my other notes you'll be glad to know were kind of taken care earlier, so I won't badger you with that. []

SENATOR COUNCIL: Thank you, Ron. Are there any questions? Senator Nelson. []

SENATOR NELSON: Thank you for coming so far and for giving us your thoughts on early intervention. The teacher came to you and said, this kid is going to wind up in your facility some day. Is that all the school can do? I mean, what can they do as far as intervention and what...if they can't do anything or they can't do enough, then what are your recommendations? Where could those kids go before they really get to the point?
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RON JOHNS: What I would really like to see, some of the things that need to happen is schools are pretty limited. You know, we've said, raise our kids but don't do anything with them. But it takes them getting the parent involved. And, you know, the school can ask the parent to come, they can beg the parent to come, but they can't force them to come. But if you don't get the parents involved...and I mean, you know, I could give you all kinds of wonderful ideas of what I believe, you know, is that if we had places for the parents and the kids to go as a community as this school, the kids that go to this school, this neighborhood and could get them together and work together at...you know, because, you know, we run into the problems like everybody else. One parent, they have to work, they have to provide a living, they have to...so they're not there for the kids. You know, we've all heard the stories about from after school until supper time where the parents get home is when half the problems occur and all those things. If we could bring them together to teach parenting skills, to teach social skills for the kids, you know, those types of things, education I think of parents and the public is something that we lack greatly. I mean, you know, it's just like if you talk to the different entities in this room about kids, adults, inmates, you know, you'll go out of this room and there will be people saying, you know, yeah, make it dirty, make it mean, make them not want to come back, give them Sheriff Joe. Doesn't work. It does not work. It's never worked. That's not how you do it. These people have to be given the opportunity to be successful and the younger we start, the better chance we have. There's just no two ways about it. But it takes educating not only the parents with the at-risk kids but it takes educating the public that these aren't mean, bad people. They didn't get that way just overnight and said, I've just decided I'm going to be mean. No. They got that way because they learned how to get what they want just like all the rest of us learned how to get what we want. You guys got a job. You ran for office. You know, you want to make a difference. Well, they wanted tennis shoes like the guy over there, and so they went and stole the tennis shoes to get what they want. And that's how they learned to get what they want. Nobody ever taught them in a different way. But I don't want to take up too much of your time. I get on a soapbox sometimes. []

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SENATOR NELSON: Thank you. []

SENATOR COUNCIL: Any other questions for Mr. Johns? If not, Ron, thank you for coming. We appreciate it and will consider you a resource. John Freudenberg. []

JOHN FREUDENBERG: Good afternoon. []

SENATOR COUNCIL: Good afternoon. []

JOHN FREUDENBERG: My name is John Freudenberg, last name is spelled F-r-e-u-d-e-n-b-e-r-g. I'm the criminal bureau chief of the Attorney General's Office. Our office handles criminal prosecutions across the state. Many of these matters result in sentences of incarceration. The majority of the cases we prosecute are in rural counties. Our prosecutors not only assist county attorneys when they have a conflict of interest or in cases that involved public corruption, drugs or violence. Our presence in these counties is limited to the matters in which we are assisting. Therefore, we are not in a position to see the repeat offenders. However, we are always aware of the criminal records of those who we are prosecuting. The appellate section in our office is responsible for representing the state in all defendant originated appeals. That's true for matters arising out of all 93 counties. Nebraska's current criminal system gives judges discretion to impose indeterminate sentences based upon the specific facts of the case. If either the state or the defendant believes that the sentence imposed is unfair, they both have the right to appeal. The public at large is also allowed a voice in our system. The trial court judges and appellate court judges are held accountable to the public at the time of a judicial retention elections. In preparing for today's testimony, I reviewed some of the state and national statistical information regarding recidivism rates. A lot of that has been discussed to this point. I'll just touch on a couple of points that were interesting to me. The rate vary depending on the years reviewed and the states included in the study. It appears that the national reincarceration rate normally runs between one-third and one-half. That means somewhere between 33 percent and 50

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percent of the people released from prison are reincarcerated within three years. The information I have obtained from the Nebraska Department of Correction, which I think is contained in your booklet that the director gave you, shows a reincarceration rate between 25.4 percent and 31.8 percent for inmates released between 2003 through 2006. It's interesting to note in those figures that the rates are double for those who were released early on parole when compared to inmates who were released pursuant to mandatory discharge or jamming their sentence. This is a difficult issue and the Attorney General's Office is willing to work with this task force in trying to identify options. I'm willing to answer any questions you have. Thank you. []

SENATOR COUNCIL: Any questions? Yes, Senator Nelson. []

SENATOR NELSON: Run that by me again. Nebraska...you're saying that those that got off on early parole are more likely to come back in than those who went out at their mandatory date. Did I understand that correctly? []

JOHN FREUDENBERG: Yes. That's correct, Senator. The figures that I was provided...and this is combining female and male inmates, I'll just use the years 2003 through 2006: The parolees had a recidivism rate coming back into their institution at 37.5 percent while the mandatory discharge inmates has 19.7 percent. That basically is the trend that flows all the way through. In '04 is 43.9 percent for parolees, 20 percent for mandatory discharges. '05, 42.4 percent as opposed to 23 percent. In '06, 35 percent as opposed to 19 percent. []

SENATOR NELSON: So we've had three years since 2006, so we can look at those figures to see if there's been improvement. Or do you have any perception or idea if there has been improvement in those figures? []

JOHN FREUDENBERG: The problem you have in trying to do that, this is a three year recidivism rate. If you go to '07, you haven't completed the three years. []

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SENATOR NELSON: Okay. []

JOHN FREUDENBERG: So we won't know those '07 figures until 2010. []

SENATOR NELSON: Thank you. []

SENATOR COUNCIL: Senator Carlson. []

SENATOR CARLSON: Senator Council. John, how does that stack up then with the percentage given that a success rate was 86 percent from the parole board? []

JOHN FREUDENBERG: I don't think it's an apple to apples comparison. []

SENATOR CARLSON: Because this is 12 month instead of three year? []

JOHN FREUDENBERG: Well, that would be one of the differences and the difference also is they're showing individuals coming in successfully completing their system with 86 percent. That those individuals committed a crime after leaving the parole system, it would still fall under the recidivism rate pursuant to the parolees standard. []

SENATOR CARLSON: Say that again. I lost you. []

JOHN FREUDENBERG: Okay. The 86 percent rate is people who have successfully completing their term of parole. The figure that is offered by the Department of Corrections are parolees who were brought back in. So that would include the people who failed on parole and those who committed crimes thereafter. So that would bring in the technical violations and further criminal activity. So the number...it's not comparing apples to apples. []

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SENATOR CARLSON: Okay. []

SENATOR NELSON: So you can successfully finish a parole period after they're up. That extends after they go out on parole. []

JOHN FREUDENBERG: They go out on parole. []

SENATOR NELSON: Okay. And they finish that satisfactorily, and then six months later they may commit another crime and so they're a part of that statistic, is that what you're saying? []

JOHN FREUDENBERG: Yes. I probably didn't say that very artfully, but that's what I meant. []

SENATOR NELSON: Well, no...okay. []

SENATOR COUNCIL: For purposes of individuals who don't use the terminology on a day-to-day basis, you mentioned the ability of a judge to impose an indeterminate sentence. Would you explain that for the record? []

JOHN FREUDENBERG: Pursuant to Nebraska Statute 29-2204, Nebraska judges have basically the obligation to give a low sentence, a low end part of the sentence and the high end part of the sentence. So what you've heard here before is like a 10 to 20-year sentence. The ten is you take half of that bottom number and that is the parole eligibility date. If you take half of the higher end number, that is the mandatory discharge date or the date that we refer to as the jam date. []

SENATOR COUNCIL: Senator Nelson. []

SENATOR NELSON: Well, indeterminate would indicate to me it could go well beyond

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25 years. []

SENATOR COUNCIL: And that's the reason I had him explain because when a lot of people hear "indeterminate," they think it means some undetermined length of time. Indeterminate means it's a range. []

JOHN FREUDENBERG: Correct. []

SENATOR COUNCIL: A low end and a high end. []

SENATOR NELSON: Well, then that's a misnomer. It's determined. They are determining the high and the low, isn't it? Okay. Thank you. []

JOHN FREUDENBERG: I didn't label how it was called. That's just what it's called. (Laughter) []

SENATOR NELSON: That was probably the fault of the Legislature, but I don't know. []

JOHN FREUDENBERG: But it does have...it's indeterminate within the range... []

SENATOR NELSON: Okay. I'll... []

JOHN FREUDENBERG: ...I think is where the term comes from. []

SENATOR COUNCIL: Senator Carlson. []

SENATOR CARLSON: Senator Council. Okay. We go back and I've heard 10 to 20, 10 to 25 or whatever it is, so that really means that if it's 10 to 25, that means at the end of 10 years it's mandatory release? []

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JOHN FREUDENBERG: Actually, it's end of...if it's 10 to 20, yes, at end of 10 years it's mandatory release. []

SENATOR CARLSON: Oh, 10 to 25, that's where you get the 12.5. []

JOHN FREUDENBERG: That would be the 12 and a half year mandatory release. []

SENATOR CARLSON: What does the 25 mean? []

JOHN FREUDENBERG: That is just the maximum sentence, and then you're given one day to one day good time off of that in the correctional system. []

SENATOR CARLSON: That's where you get 12 and a half. []

JOHN FREUDENBERG: Right. []

SENATOR CARLSON: But on bad behavior, it could go to 25. []

JOHN FREUDENBERG: Technically yes. I have not seen that happen. []

SENATOR CARLSON: Okay. []

JOHN FREUDENBERG: But technically I guess it could. []

SENATOR COUNCIL: Senator Giese, did you have a question? []

SENATOR GIESE: Yeah, I think I do. So help me with the scenario that the longer someone is incarcerated, the better chance they have to go to whatever classes, if you will, programs. []

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SENATOR COUNCIL: It's the reverse. []

SENATOR GIESE: They don't have to be in for a long period of time to then go to classes? I mean, I'm trying to figure out the percentage on what you talked about, a third of the national recidivism rate, 33 to however many percent. But if you do programs, if you're involved in programs, then you're better...your chances for recidivism are less, correct? []

JOHN FREUDENBERG: There's a 2002 study out there and there isn't a lot of information that I could find, but the 2002 study shows that the individuals who go and take the offered rehabilitative courses in the prison system have about a 7 percent better reincarceration rate. Now, I'm just going...there's three different parts of the recidivism rate: There's the rearrest, the reconviction, and the reincarceration. Since we're dealing with prison population in this discussion, I'm just referring to the reincarceration rates. And in those situations, it's 7 percent better for those individuals who participated and completed the rehabilitative programs in the prison system. And that was within three states, none of those being Nebraska. []

SENATOR GIESE: Thank you. []

SENATOR COUNCIL: Any other questions for John? If not, thank you, John, for appearing today. []

JOHN FREUDENBERG: Thank you. []

SENATOR COUNCIL: Ellen Brokofsky. Okay. Go ahead and state your name and spell it for the record. []

ELLEN BROKOFSKY: (Exhibits 5, 6, and 7) My name is Ellen Fabian Brokofsky. I am Nebraska's Probation Administrator, having occupied this position since October of

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2005. It's B-r-o-k-o-f-s-k-y. Currently, I oversee 462 employees who supervise almost 22,000 juvenile and adult probationers. This is my 34th year in probation service to the courts and to the state of Nebraska. I am also a president of the National Juvenile Court Services Association and vice president of the National Association of Probation Executives. First, thank you for allowing me an opportunity to address this task force and to speak on a subject Nebraska probation is very familiar with. Although the language of LR171 is heavily weighted to corrections and reentry, probation has had the unique opportunity to address the task force's concerns at the front end through research-based proven methods. In fact, during the last four years the Nebraska Probation System experienced a complete transformation driven by a belief that by introducing evidence-based polices and risk reduction strategies into the probation system and other justice entities it would (1) provide our courts effective sentencing and dispositional alternatives, (2) reduce recidivism in both juvenile and criminal justice populations, (3) provide for a more efficient and effective use of probation's limited staff resources and, (4) support Community Corrections Council initiatives to reduce prison overcrowding. In the 1970s and eighties, there was a national discussion about what really works to drive successful compliance with probation and reduce recidivism. Since then, research has identified a series of policies and practices that, when implemented, can make significant cuts in recidivism rates among nonviolent probationers without the costly and sometimes ineffective overreliance on incarceration and always with public safety as a priority. This concept of risk reduction emerged which refers...risk reduction basically refers to strategies that will diminish the likelihood that an offender--and this is juvenile or adult--will elect to commit another crime. Almost four years ago, the Nebraska Probation System introduced these new policies and risk reduction strategies which drastically changed the manner in which it does business by: Providing Nebraska's courts with offender risk and needs information at the time of the presentence and predisposition investigation that focused on factors known through research to be predictors of recidivism. They call those factors criminogenic factors. I try not to use that word because too many judges have said to me, don't use that word. But basically criminogenic factors are those factors that research has shown predicts

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recidivism. Also, by training staff on cognitive behavioral group facilitation and motivational interviewing by seeking out and matching treatment resources to the high risk to reoffend probationer. And by adopting and implementing evidence-based supervision practices and programs in all levels of supervision. These new probation practices and programs support those processes of evidence-based practices which have shown the greatest success in reducing recidivism among probationers. Let me speak to just some basic evidence-based transformational efforts that probation has made and give you some information about them. Nebraska probation adopted, validated, and implemented an objective risk and needs assessment tool for both juveniles and adults in 2006. Data indicates these tools have been effective in holding the offender accountable while addressing the needs that lead to further criminal behavior. These instruments were integrated within the presentence and in the disposition in 2007 and have become a valuable tool in assisting the courts in sentencing and disposition. Our recent data, the 2008-2009 data, reflects that 80 percent...and this is adult primarily, data in 2008-2009 reflects that 80 percent of offenders assessed as very low received the probation sentence while 72 percent of offenders assessed as very high were incarcerated. While compliance with the court-ordered conditions of probation is paramount, addressing the factors that contributed to the offending behavior--according to research--determines whether the offending behavior will reoccur. Nebraska probation implemented the use of assessment scores and other objective criteria to determine the risk level and program needs of each supervised individual prioritizing supervision and program resources for offenders who are at higher risk to reoffend. Nebraska probation transformed its approach to supervision by determining not only appropriate levels of supervision, but also developing corresponding programs that focus on changing behaviors and attitudes that drive criminal activity. In an effort to provide the greatest amount of safety to the communities of Nebraska, those individuals who only by virtue of their untreated addiction, for example, and you heard about that quite a bit this morning, pose the greatest risk to the community. They are provided the highest level of supervision and the greatest number of resources where individuals posing the least risk to the

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community are afforded a lower level of supervision and fewer resources. Research indicates oversupervising low-risk offenders or failing to address key areas that are predictors of recidivism can waste scarce staff resources and reduce effectiveness. Some examples of new programs developed for probationers who are not high risk in terms of dangerousness, but are high risk in terms of repeating the unlawful behaviors that contributed to their court involvement were developed in collaboration with other stakeholders. For instance, the fee for service voucher system--you heard about that today--the specialized substance abuse supervision program, and the reporting centers were developed with support and collaboration of the Community Corrections Council. Also, the standardized model for the delivery of substance abuse services is now a Nebraska Supreme Court Rule. However, it was originally driven by legislation and evolved from a grass-roots collaboration of behavioral health providers and juvenile and criminal justice stakeholders. Its ongoing development is monitored by the justice behavioral committee of the Community Corrections Council. Now, I also provided you a handout. I gave you some information about probation in a very nice folder which talks about this transformation and a lot of our programming. But I wanted to highlight in this handout for you programs that we have specifically initiated because of their risk reduction-promising value. The standardized model I referred to, basically this model connects providers in the field with the justice community. When this model became a Supreme Court Rule early in 2006, before that time we did not have justice providers who specifically understood our population, understood criminal thinking, understood what it took to manage a juvenile or an adult that's in the juvenile justice or criminal justice system. Right now the Office of Probation Administration operates the fee for service voucher program, and this fee for service voucher program is built on the standardized model. There are 540 registered providers. The fee for service voucher system has really been quite showcased nationally because the dollars, which are offender fee dollars primarily, follow the individual. Now, this is an adult program, it's not a juvenile program, but the dollars for treatment follow the individual. And all of the quality assurance is done through the probation officers who are connecting these individuals to treatment or through the parole officers or the problem solving court

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officers. We now provide the fee for service voucher program for problem solving courts for parolees and for probationers. And the numbers I've shown you, 1,656 probationers, 688 problem solving court participants, and 198 parolees were just served in the last year. The specialized substance abuse supervision program which all of the judges refer to, Judge Flowers and Judge Icenogle in particular, is designed for felony offenders and early release parolees. This is a great collaboration between probation and the Department of Corrections. We are currently serving 309 nonviolent eligible drug offenders that when screened would otherwise have been placed or optionally could have been sentenced to prison. The specialized substance abuse supervision program is only available in the sites where the reporting centers are located. This was why Judge Ide talked to you a little bit about services and I think Senator Council said this, too, services in certain areas of the state are not available in other areas. But there was some earlier reference to cost, the cost for the specialized substance supervision program is \$8.28 a day, \$3,024 a year. Promising findings conducted by the University of Nebraska Medical Center researcher Dr. Kathleen Grant in August of 2008 indicated that the Specialized Substance Abuse Supervision program, otherwise known as SSAS, had more positive outcomes than non-SSAS offenders and fewer SSAS offenders ended up being reincarcerated during the first six months of their probation over non-SSAS offenders. And that, again, was referring to something the Attorney General was just talking about. We're looking at recidivism in terms of not only compliance with the program but more importantly, are they coming back and what kind of behavior change are we seeing? The reporting centers, I would want...I do want to say that this is consistent with the recommendations of Dr. Hank Robinson, and I know that Dr. Robinson has been mentioned earlier and will testify. But he did a report in May 2006 to the Nebraska Crime Commission entitled Moving Past the Era of Good Intentions: Methamphetamine Treatment Study, and talked about the value of reporting centers as an alternative. Reporting centers were developed as a state and county collaboration. They're only available in five sites, seven locations. You ask me, seven locations. Well, actually the five sites are Omaha, Lincoln, Papillion and Nebraska City is a shared site, Kearney and Lexington is a shared site, and South Sioux City. The reporting centers are

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highly collaborative in terms of their funding. Reporting center funding is a combination of state which covers the salaries of the probation employees, county which pays for all the buildings and the maintenance, and offender fees which covers our contracts. These reporting centers provide active coordinated probation and parole intensive supervision and 30 different rehabilitative services. You talked a lot this morning about education and employment. What we have discovered and I didn't provide this for you today, but we've looked at our population currently, and we find that those individuals who are currently on probation are mostly employed. We have a good rate of employment, especially among DUI offenders. Now, you think about the population of probation, 22,000 on any given day, probably a little less than half of those are DUI offenders. Those are people who work, generally. Among our criminal population, they're either not employed or they're underemployed. I think Senator Ashford was talking about a living wage. Well when you work at a drive in or a fast food, you don't...you can't really support your family. And so what we see is most of our higher end, higher risk to reoffend need employment. And in our latest research, what we found is the number one predictor of whether a person is going to be successful on probation is employment. The number two predictor, which I think Esther Casmer talked about, is companions or a support group. So if you're hanging out in the playground with people who commit crime, you're going to reoffend probably no matter what we do. If you have a good support system, if you have a good relationship, this one-on-one human relationship with your probation officer, your educator, your law enforcement officer, you have a greater success of succeeding. And this is Nebraska data. The community-based intervention program is all probation based and wasn't in collaboration. This is a cognitive programming approach to intensive supervision. It focuses on increasing accountability and rehabilitation while assisting in changing behavior. An overwhelming body of research supports cognitive behavioral programs rooted in social learning theory as most effective in reducing recidivism. So during the past few years, in coordination with the Community Corrections Council, we have spent a lot of time training probation officers supported by our offender fee fund on cognitive behavioral programming. They've also been trained in motivational interviewing, and

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now we have a system that not only knows how to implement all these risk assessment instruments, but now they can provide groups...cognitive-based groups for the individuals that are participating. The cost for this program is \$6.90 per day or \$2,519. Another program I want to tell you about that was showing enormous success is a partnership that we have with AmeriCorps Nebraska. This is very unusual partnership because you wouldn't think of AmeriCorps being in the justice business. But this is really dedicated to our rural communities because they don't have reporting centers, and it doesn't replace a reporting center. But let me tell you, it's...these AmeriCorps members are working for very little money and within each probation office and their focus is on schooling and employment. At the end of the third quarter for grant year 2008-2009 of the probationers who graduated from this program, 80 percent have not returned to the system. At the end of the third quarter for grant year 2008-2009 of the juveniles participating in the juvenile school support program, 68 percent have improved their grades, attendance, and performance at school. This program cost \$13 per day, \$3,400 per person per year. And this would be an employee, the AmeriCorp person themselves. Two other tools that we've used for risk reduction, I won't go into them intensely, but they are tools. They help us manage the low-risk population and the high-risk population differently. Probation is under-resourced. I have spoken to the Legislature since 2005 when I first came in. And so we've had to do great shifting and really coming to this system to look at prioritizing our higher risk individuals just so that we know that we can manage them appropriately. But let me tell you the electronic reporting system, since we put that in place we've had a 6,146 low-risk offenders on this program and 87 percent have successfully completed probation. Of the continuous alcohol monitoring program which is funded exclusively through offender fees, we've had 561 participants and we've had an 83 percent compliance rate. We also have implemented graduated sanctions, and graduated sanctions are highly recommended in all systems in terms of making a difference in this technical violations world that you talked about earlier. The implementation of swift, certain proportionate, and graduated responses that a probation officer will apply in response to a supervised individual's compliant and noncompliant behaviors are proving to be key to recidivism reduction.

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The Community Corrections Act of 2003 enabled Nebraska's Legislature to enact LB46 which provided a probation officer the ability to impose upon a probationer administrative sanctions which, with the probationer's consent and knowledge, placed additional probation requirements upon a probationer who had committed a substance abuse or noncriminal violation of the conditions of probation. As a result, and I have some data for you, the probation system is filing fewer technical probation violations as compared to the filing of sanctions, decreasing the number of technical violations every year. For example in 2007, 23 percent of probation offenders had a technical probation violation filed while 18 percent of the probation offender population had a sanction filed. In comparison in 2008, 17 percent of probation offenders had a technical violation filed and 24 percent had a sanction filed. So we are decreasing the number of technical violations that go back before the court as a revocation and potentially into prison and sanctioning them instead. Appropriate sanctioning coupled with case planning allows for effective rehabilitative practices to be implemented. Revocation rates for all violations decreased 14 percent from 2007 to 2008, the fiscal year, excuse me, 14 percent from 2007-2008 fiscal year to the fiscal year 2008-2009. There also was a 5 percent decrease during the same period of time of the number of offenders who were incarcerated for technical violations only. So we really think that we're going to be able to impact the number of individuals who are on probation who are sentenced for technical violations only. Now, this testimony addresses probations overall transformation to the incorporation of evidence-based principles and practices in both adult and juvenile supervision. However, adult supervision and programs were emphasized today more than juvenile supervision. But I, like the others who testified today, believe that successful intervention in the juvenile justice system deters future criminal activity as an adult. I would like to note a promising juvenile justice pilot project in Douglas County which is a collaboration between Probation and Health and Human Services. This pilot project is intended to provide the separate juvenile court in Douglas County a community-based dispositional alternative to connect juveniles with needed resources without placing them in state care. What's important for you to know, and I mentioned to the Legislature this year at different committee meetings and when we

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visited with senators, probation is not funded for resources. Our intention and what we'd like to see is kids staying in communities, kids staying close to home, kids not going into costly state care. And I believe that Health and Human Services is working closing with trying to help us pilot a project where, with a contract with them for funding, we are not in a position where we're providing juveniles individualized case management by the probation officer and our other stakeholders an access to community-based resources. In this pilot project, 65 juveniles were initially identified who could be best served by probation alone. These were juveniles who were in the care of health and human services and in the care of probation. This change will not only prevent moving juveniles into costly state care, it also saves the state the cost of duplicated staff resources and keeps juveniles close to family and community support. In closing, over the past years probation developed a new vision, a new mission, and a set of values and beliefs focused on improving staff skill and the system's response to the court, the community, and probationer. Consistent with its risk reduction goals and its quest to implement evidence-based principles and practices, the Nebraska Probation System has had to rethink the way it does business with the goal of providing our courts meaningful sentencing and dispositional alternatives focused on risk reduction. Our risk reducing supervision strategies are intended to promote rehabilitation and accountability while improving community safety. The process of transformation has not been easy and was possible only with the support of all three branches of government as well as county government, education, law enforcement, public and private treatment and service providers statewide. Probation plans to continue to measure performance, reporting outcomes, and future needs to the Legislature and public as required. I know I went over my time, but I wanted you to have this data. I believe that your focus on risk reduction is aligned with what probation's vision and mission is. []

SENATOR COUNCIL: Okay. Thank you, Ellen. Any questions for Ellen? Senator Nelson. []

SENATOR NELSON: Thank you for all the informative material here that you've given

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us. You don't talk very much about the fee for service voucher system. It's a financial assistance program. Where does that come from, the financial system? []

ELLEN BROKOFISKY: It is funded almost exclusively by offender fees. []

SENATOR NELSON: Okay. []

ELLEN BROKOFISKY: Probation...on the adult system, probationers are required to pay fees, and the money for those fees go into a cash fund. The cash fund permission for me to use that cash fund come with consultation with the Community Corrections Council, so this initiative was in collaboration. []

SENATOR NELSON: Is that where you were talking about the money following the individual? []

ELLEN BROKOFISKY: Yes. []

SENATOR NELSON: Well, so if I'm an offender and I put in \$500, all of that \$500 is used for my purposes? []

ELLEN BROKOFISKY: No, it's not. In fact, the Community Corrections Council made decisions around prioritizing what populations were eligible to access the fund. And those populations right now are only the felony offender population because you're looking at the prison overcrowding issue, and certain Class I misdemeanor drug offenses. []

SENATOR NELSON: Well, what do you mean then by following the individual? []

ELLEN BROKOFISKY: Well, let's say that rather than contract with an agency and say, we're going to contract with you and only you and you're going to go to that facility if

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they have a bed or if they have an opening, and if they don't, it's a capacity. You stand in line and wait your turn. We don't do that. We look at our registered providers, those people that have registered with us per the Supreme Court Rule that say...I mean, there are five components to the standardized model. But once they agree that they will take education on our population, that they will use certain instruments to do the evaluation, that they will communicate with justice about risk, then they become part of our provider list. And so these individuals that are eligible and court ordered for treatment then must go to a registered provider in whatever area of the state they live in. And the quality assurance that comes with that is very unique to government, I think, although there are lots of government people here so they can tell you differently. But what I think is unique about it is that it's quite detailed in terms of every step of the way. We don't pay the bill until we get the evaluation. And we get the evaluation, we make sure that they've used an approved provider, that the provider is consistently providing us what we need, that there is evidence-based practice that's going on there. []

SENATOR NELSON: Thank you. You're starting to or you are, you're paying more attention to the high-risk offender now and using your resources more. []

ELLEN BROKOFSKY: In juvenile and adult, yes. []

SENATOR NELSON: Are there some areas where...what more do you need in that area? Because those are the ones that are coming back I think, you know, be coming back into the system. What more are you looking to do? []

ELLEN BROKOFSKY: Well, you have to think about the high-risk offender as being a not-violent offender. This is back to that story that from our data we're seeing that those people that need to go to prison, go into prison. But there is a number or a percentage that might not have to go if there are resources and programming that will be successful in whatever area they're in. The programs that we've put in the reporting centers, the SSAS program--and this is, again, adult--are very promising. They're showing us that

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we're picking the right people that we're giving the right information to the courts because of course the courts order is what drive us. So if we provide the information to the court, and the court does choose to place this individual on probation, the programming and services that we have in particular to the reporting centers, it's working. Now, when you ask what we need, we don't have reporting centers across the state. We do not. I share with you those locations and I've documented them. We do not have the SSAS program across the state, although, probation manages, staffs most of the problem solving courts. And what's good about that is in the areas where probation does have problem solving courts, they access reporting centers. But in some areas where probation has problem solving courts and doesn't have reporting centers, the services are limited. Reporting centers are...well, I think I showed you data that just in the month of June there were almost 9,000 contacts with the reporting center. Now of course some of that was drug testing, but in those five sites, seven locations, 9,000 contacts, you can tell how busy they are. So in terms of, you know, access to the reporting centers, you only have that in certain areas. In terms of juvenile, I will say very specifically, we do not have access to resources. With the one exception of this collaboration in Douglas County, we do not have any access to resources. And so the judiciary is in a position where if the individual juvenile or the family does not have the ability to access those resources themselves, they have to go into state care and we're trying to avoid that. []

SENATOR NELSON: Thank you. []

SENATOR COUNCIL: Any other questions for Ellen? Quickly a comment and then a question. I'm pleased that the information you've provided shared the research about...oversupervision... []

ELLEN BROKOFSKY: Supervising low...yes. []

SENATOR COUNCIL: ...of low risk offenders. Because we've got to get the public to

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start thinking differently. If they see someone who receives two years probation for an offense or someone who receives five years offense for the offense, for some reason they feel like they're being better protected or the person is receiving greater punishment with the five year probation. But the research shows that in terms of altering a person's behavior and their pattern that is during the first 16 months, if a difference is going to be made, it's going to be made then. And in situations where there's oversupervision, it tends to disrupt and affect their ability to actually reenter. Is that... []

ELLEN BROKOFSKY: That's exactly right. []

SENATOR COUNCIL: Okay. []

ELLEN BROKOFSKY: That's what the...and research in this regard started in the nineties and it's just getting better and better with all the aggregate data they have. And I'm sure others can speak to that. But oversupervising low-risk individuals actually harms them. []

SENATOR COUNCIL: Exactly, and the reason I've asked that because there's been some discussion today and outside of this about sentencing guidelines and whether we should be moving towards sentencing guidelines. I just want...even if we're talking about sentencing guidelines that may include probation as an option, the length of those probations need to be taken into consideration. And my question, you've talked about the reporting centers and the success of the reporting centers, and my question is going to be really direct because we need to take responsibility for where we are by virtue of the decisions we make. Correct me if I'm wrong, didn't probation in their budget request ask for funds to expand reporting centers in the state? []

ELLEN BROKOFSKY: During the first fiscal year that I was here I did. I believe that since that time it was asked for by the Community Corrections Council. I believe Senator Brashear and of course Linda Krutz can testify to this and answer the correct

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way, but I believe that she or that Senator Brashear came into Appropriations and asked for funding of at least the remaining sites that were originally identified by the Community Corrections Council. They had identified North Platte, Columbus, Scottsbluff, and I believe Grand Island as original sites that really need to go up. And only these original...only the sites that I've told you about were funded. So I believe Senator Brashear went in and asked for funding for the rest of the sites or at least a portion of them. []

SENATOR COUNCIL: And that request was not... []

ELLEN BROKOFISKY: Right, was not funded. []

SENATOR COUNCIL: ...not funded. And so I just think my colleagues need to know what we're looking at in terms of costs. You know, not having these reporting centers where you gave us the daily... []

ELLEN BROKOFISKY: I gave you the daily...a figure of how in one month how many contacts were made. []

SENATOR COUNCIL: Right. []

ELLEN BROKOFISKY: And I gave you the daily cost for our community-based intervention which is a high-level supervision and for the SSAS program. I didn't give you a cost per contact with the reporting center which is still something we're trying to figure out because if you come in for a drug testing and you're there ten minutes, granted that you actually could produce the same, versus if you come in for a pretreatment group or an employment or education group it's different...it's hard to figure out how much that costs. But we do have a formula for how much each reporting center costs. And, again, that is a collaboration, as I talked about, between state and county and the offender fees. []

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SENATOR COUNCIL: Okay. Well, but you're still comparing it to an average of somewhere between \$28,000 and \$30,000... []

ELLEN BROKOFSKY: Yes, it's much cheaper. Yes. []

SENATOR COUNCIL: ...annually to incarcerate an individual. []

ELLEN BROKOFSKY: Yes. And parolees are using those facilities and using the SSAS program. []

SENATOR COUNCIL: Thank you, Ellen. I appreciate you coming to testify today. []

ELLEN BROKOFSKY: Thank you. []

SENATOR COUNCIL: Sorry to keep you waiting, Hank, but Hank Robinson. []

HANK ROBINSON: Good afternoon. Please enter the appearance of Hank Robinson, University of Nebraska-Omaha. I've been director of the Juvenile Justice Institute for the last several years and now am taking over a new research unit at the University of Nebraska, the Consortium for Crime and Justice Research. You've heard reference to the methamphetamine treatment study a few years. The one piece of data I'll bring out that hasn't been directly referred to is at that we were charged answering the Legislature's question of what the largest substance abuse problem was in the state of Nebraska and specifically was it methamphetamine. We reported back to the Legislature by way of the Community Corrections Council that there were 185,000 people in the state of Nebraska who required treatment for substance abuse. So in a state of 1.8 million people, it's easy to do the math. We had 10 percent of our state population in need of substance abuse treatment services. Of those, were 120,000 who require treatment and support services for alcoholism. So easily what we reported back

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was that the biggest substance abuse problem in the state of Nebraska is substance abuse. There's plenty of people in any category you can come up with. Shortly after the methamphetamine treatment study, the Legislature asked us to address the flow of offenders from Douglas County to the state prison system in a study called recidivism reduction center study. At that time, roughly 40 percent of the state's prison population came from Douglas County. In 2004, there were 561 offenders from Douglas County sentenced to the State Department of Correction Services. Of that 560-some offenders, I want to draw special attention to 71 of them because 71 of those 561 were drug and alcohol offenders. The belief at the time of the recidivism study was that if we could focus in on these felony drug offenders that were going to prison that we could do a lot to diminish the load on the prison. However, when you looked into the criminal history for those offenders, those 71 drug and alcohol offenders had prior convictions for over...well, for about 2,000 crimes and it covered more than 100 offense categories. Among the top offense categories for the 71, there were 281 driving under suspension charges, 156 assaults, 81 thefts, 65 weapon violations, 15 robberies, 6 sex assaults, and 2 homicides. So the reason why those individuals were going to prison was not because they had been caught with drugs or because they had a prior or because of the alcohol offense. In all honesty, those people were going to prison because of their prior convictions. When we looked at the 1,560 offenders between December 2003 and October 2006 that came out of Douglas County, so we're talking about 1,500 offenders, believe it or not those 1,500 offenders accounted for over 27,000 offenses just with those 1,500 offenders. Of just between 2000 and 2006, those 1,500 offenders accounted for over 15,000 crimes between them. So one of the conclusions of the recidivism reduction center study was that the reason people go prison is not because of the instant offense, which is where the Legislature tends to focus its attention. Right? You're being asked to define certain acts as criminal and assign a penalty to them. What's going on after that happens though is the reason people go to prison is not necessary in alignment with what the policy hopes of the Legislature were. People were going to prison because they had committed other crimes. The funny thing is or bad thing about this is that there's not a lot you can do to cure somebody of their criminal

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history. When you're standing in front of a judge and you have 9, 10, 11, 12 prior offenses, it doesn't matter what your current offense is. There's not a lot of rehabilitative options out there to get rid of that legacy of prior offenses. So the recommendations at that time which I bring to you today is that the real hope of reducing the flow of offenders statewide is to intervene with offenders when they still only have two or three offenses. And one of the main reasons is that it gives them a chance to screw up another two or three times before a judge really is compelled to put him into prison. The research that we reviewed for that report identified six domains that stabilize offenders against recidivism. You've heard reference to them: education, employment, positive social networks, substance abuse, mental health, and the one that hasn't really been mentioned is housing. Whether we're talking about juvenile or we're talking about adults, our best strategy to keep offenders from going beyond those two or three offenses or that string of offenses coming out of the juvenile years means that we have to stabilize them across as many of these domains as possible. What this gives us is a new powerful way of assessing how well our criminal justice system and our social service system and community organizations are working together to insulate offenders against incarceration. We've developed a few instruments. We've already talked to Director Houston about concerning it for the Department of Correctional Services. The Douglas County Corrections implementing in its day reporting center and they'll start using it as well. It takes...it adds probably 30 seconds, 45 seconds of paperwork to the people processing a case load and is basically free to implement. But with that, what we should be able to come back to, the more agencies to implement this instrument is to be able to tell the Legislature specifically once your correctional facilities stabilized offenders and returning them to the community, this is where the wheels are coming off again and that's why they're being recommitted. I'd be happy to answer any questions. []

SENATOR COUNCIL: Any questions for Hank? Senator Ashford. []

SENATOR ASHFORD: I just have one. Hank, thanks for all your work with me and everybody trying to sort all this out. I agree with you, housing is something that's not

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often mentioned, but it is a massive issue. And as federal dollars become fewer options for alternative become fewer, so it's going to take community-based work in the area of housing. In the area of employment, I didn't hear the beginning of your testimony, but one of the things that struck me about the McCook situation was that a couple of things, one is the...how hopeful it is, I guess, generally. Also, the number of people that are on probation that are sentenced into that program and then funnel out of there. And then the recidivism rate beeps somewhere around 7 percent. And often the recidivism rate, at least in McCook, a lot of that is not the people on probation but the people who have been incarcerated, can't really live outside of the...have a difficult time living outside of the facility, have a violation of parole, they're back in. And they don't come back to McCook because they violated parole. So it seems like the scenario there is that you have youthful offenders, some older, I mean they have up to 62, but youthful offenders not juveniles but young adults, there are a number of employment options available to them there. Do we have such a facility or anything like that in Omaha today or can it be easily replicated or can it be replicated knowing what you know about Douglas County, Lancaster County, eastern part of the state where there's a large concentration of offenders? []

HANK ROBINSON: The thing that would be most comparable to it would be Cornhusker State Industries which is within Department of Corrections and you have to be a committed or an incarcerated prisoner in order to access that program. []

SENATOR ASHFORD: But not on the probation side, you don't know? []

HANK ROBINSON: On the probation side, unless it would be a workforce development program, I'm not aware of anything. []

SENATOR ASHFORD: Okay. How about programs like the Valmont participation which is very real? []

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HANK ROBINSON: Um-hum. []

SENATOR ASHFORD: I mean, that's...what's nice about it to me is that it's real, it happens. There's not a lot of talking about it, it just happens, you know, How about that sort of interconnected program with the private sector where the job awaits these people when they leave? What...across the country, is that...are we moving in that direction? Are there other examples? []

HANK ROBINSON: The main...I mean, everybody is trying to hit that. The primary difficulty with it is striking the appropriate balance between providing job opportunities for either undertrained or people who have prior criminal histories against rising unemployment rates of "noncriminal offenders." That's what the... []

SENATOR ASHFORD: That's the political tug. []

HANK ROBINSON: That's the balance that has to be struck. And the other thing that we've seen with juvenile offenders particularly throughout the state who have difficulty obtaining employment relates to some just basic things that if they don't receive assistance with, they'll never overcome. One is documentation. They don't have driver's licenses. They don't know how to get their birth certificate. They don't know how to get social security card maybe or they haven't had one. And the second one relates to expectations. There has been some very well-meaning efforts that have been torpedoed by the fact that the people running them set expectations that were unrealistic for anybody much less the kids going through those programs. And then just then being able to...I think the newspaper article a couple weeks ago in a World-Herald about the...what's the program in Omaha with the AmeriCorps and the summer (inaudible). The kid that was the front page story, that is precisely what the challenge is. He didn't show up for work for three weeks and yet they hounded him and hounded him and hounded him until he started coming. And they stuck with him, it wasn't the other way around and he finally was able to catch, he was finally able to get it. And that's just the

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way it is, but we don't often have that kind of patience and resources to cultivate a kid that way. []

SENATOR ASHFORD: And that is the way it is and I agree. Even the way it is with nonoffenders who come from high-poverty environments who are...not forced into but are nudged maybe into an environment where they're not ready to be and the failure rate or their ability to move, go forward is difficult. So to expect offenders to do that or people who are on probation, have committed some offense. So isn't there a logjam there then? I mean, we have youth unemployment, black youth unemployment in Nebraska is the highest of any state in the United States, poverty rate amongst young people in black African-American young people is the greatest or one of the top three or four in the United States. I mean, don't we have...and a lot of that is offender-based. Some of it's offender based, some isn't. []

HANK ROBINSON: Some of it's offender based. []

SENATOR ASHFORD: Some of them are kids that have offended. []

HANK ROBINSON: Right. []

SENATOR ASHFORD: I mean, they may not be...have been incarcerated but they offended somewhere along the line, they've been in the juvenile system. What are we...I mean, is it...is it...these are all great programs and I think your ability now to track is very important. But how are we going to get...I mean, how is it... []

HANK ROBINSON: We will. Some of the new efforts that we're rolling out at the statewide level but particularly in some of the larger jurisdictions, we have a high degree of confidence within the next year to 18 months we're going to point specifically to where the gaps are and why it is that thing aren't working. []

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SENATOR ASHFORD: Is there hope in the early identification of behavioral issues through truancy and other minor offenses? Is that hopeful? []

HANK ROBINSON: Yeah, but it also touches on one of the philosophical...one of the problems with the philosophy we currently have with regard to behaviors. Even with juveniles who we know are going through a developmental process where there's a lot of neurological redevelopment and a lot of change we still...they kind of look like adults and we still have this idea that if we through an intervention at them and it works, they're fixed and that's all we have to do. Discounting the fact that two, three weeks, two, three months, two, three years later they're a totally different person than they were at that time just because of natural maturation process. So as a result, our obligation...I hate to say this, but I said that we had these domains that juveniles and adults have to be stabilized. If we're serious about decreasing our long-term offense rates over time and reducing our use of incarceration for offenses, we have to make a commitment to stabilize kids through about age 22, 23 years old. After 22, 23 years old if they're not getting the message, they're really are proving to us that they're just...they may beyond what we can reasonably do. But so far we haven't seen a type of community commitment. Somebody said to me... []

SENATOR ASHFORD: Let me follow up on that, Hank, real quick and then I'll let you go. And I'm sorry, Chair. I just want to ice this down. Then you can give me your anecdote, but. That's sort of my sense is that we have piece...the different maybe in the last two or three or four years is we've got some pieces in place we didn't have before. And we've...you have in your research, identified the entry points into the system. And certainly in the back end with HHS and this testimony that we had earlier today was very...we keep hearing that over and over again is the courts lose control over these cases. So you have the early entry point, you have the continuum, and then you get to the end point and the courts sort of lose control and we don't...so what is, if you were to give me one...aside from mine, I know your views about incarceration...over use of incarceration and I understand those views and I respect them. But aside from that,

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what is the shift in thinking that it's going to get us to the next level because we're still not even remotely close? []

HANK ROBINSON: It's really very straightforward. We have to accept that people have to be stable across those core domains, and then we have to commit ourselves to make sure that everybody is as stable as we can make them across some of those mains. Research is unequivocal. It's not an iron clad guarantee, but it's the best that we're going to get. And that is if people have a place to live, positive social networks, and they are occupied either with education or employment, and they do not have a substance abuse...their substance abuse or substance...chemical dependency issues are managed and any possible mental health issues are manage, we're done. []

SENATOR ASHFORD: Are we collaborative enough to get there or are we still silo driven, are we still sandbox driven, all that stuff? []

HANK ROBINSON: Nebraska is so short capacity at every level of service that it's difficult to characterize it as lacking coalitions. We could do a better job at coordination, but we are honestly so short of capacity that if we have to move forward with an eye towards enhancing and expanding existing capacity, even in light of...evidence-based practices are often very threatening when people start bringing it up, and the reason is because they are specifically designed to weed out people who aren't doing a good job. And usually the top, you know, we have another third who are doing a good, you know, they're getting by, then we have another third that just aren't with it. So...but if we're going to move forward with evidence-based practices, it has to be with the philosophy that if you're not doing a good enough job we need to extend a hand to help you come in line with everybody else, because we cannot afford to lose a single point of capacity in this state. []

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SENATOR ASHFORD: Is there any improvement at all that you see? []

HANK ROBINSON: Yeah, lots. []

SENATOR ASHFORD: Thanks, Madam Chair. []

SENATOR COUNCIL: Yeah, and thank you, Senator Ashford. Your one additional question kind of stretched out into four additional questions. (Laugh) []

SENATOR ASHFORD: But I've only asked about six all day. []

SENATOR COUNCIL: So I'm just teasing...I'm teasing you. But, Hank, a couple of...I mean, you were just talking about juveniles up until a certain age, 22. []

HANK ROBINSON: 22-23. []

SENATOR COUNCIL: 22-23. []

HANK ROBINSON: Yeah. []

SENATOR COUNCIL: And I'm asking this question relative to a sentencing issue... []

HANK ROBINSON: Okay. []

SENATOR COUNCIL: ...and that is whether or not we should be sentencing juveniles to

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live in prison without possibility of parole. What is your thought on that subject? []

HANK ROBINSON: And when you say juveniles, are you going by under.. []

SENATOR COUNCIL: Under the age of 17. []

HANK ROBINSON: Under the age of 17? Well, what I would... []

SENATOR COUNCIL: Seventeen or younger. []

HANK ROBINSON: Okay. What I would say that is the evidence is...the evidence since 2000, with a CAT scan and brain imaging studies and stuff, are incontrovertible. I mean they're...it's absolutely set that there's still a lot of neuro rewiring going on with anybody until they hit the age of 17. And while we have to...we have to enforce standards of behavior that are acceptable and are safe for our communities, I can tell you, as a lawyer, it begins to put into those sets of cases like the ones involving mental retardation and death penalty. The level of...the mens rea does not appear to be as solid for someone under 17 regardless of how they look or regardless how accomplished they may be, and it seems to be...well, there's nothing that deters 17-year-olds from anything. So, you know, it's...the idea of using...if the rationale is to use a life sentence for someone under 17 as a deterrent method then that's just totally bogus. If it's to incapacitate someone because of fear of future threat, I'd like to see it at least reviewed by the time they're in their 30s to see what kind of person they've actually finally grown into. But if it's for a deterrent purpose, that's...there's no basis for that whatsoever. []

SENATOR COUNCIL: Thank you, Hank. Any other questions for Mr. Robinson? If not, thank you for appearing today. Jim Mowbray is two. []

JIM MOWBRAY: Senator Council, members, my name is Jim Mowbray, M-o-w-b-r-a-y.

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I'm chief counsel for the Nebraska Commission on Public Advocacy. I've been practicing law for 28 years, 3 as a prosecutor and 25 as a defense lawyer, 12 of those in private practice and 13 running the commission. I think my comments, although I did not realize they'd be dovetailing in with Mr. Houston but they do. What my suggestions, I think, for this task force to take to the full body is to turn back time and go back to the eighties when especially on violent crimes when sentences were being imposed, the maximum minimum was two-thirds of the maximum. So in other words, if you were sentenced to 20 years, the maximum penalty was 6 2/3. And the reason I think we need to go back to that type of a sentencing is that we don't have an indeterminate sentence anymore. The district judges have jacked the penalties up over the years. They keep trying to push the envelope of how high can I make this go with the minimum and maximum, and they have finally succeeded. In fact, it was my client to get the first the life-to-life sentence on a second-degree murder, and that was affirmed by the Nebraska Supreme Court. So no longer do we have on second degree a distinction from first degree when it comes to sentencing. Now I realize I'm talking about violent crimes but I don't think that's any different than what the director was speaking regarding the issue of incentive. When we had the two-thirds maximum, it provided a number of things. One, it provided the judge with cover because he could max somebody, give them 6 2/3 to 20, and not feel like he's going to lose his job at the next election. It provided the inmate with incentive and that was to go and take advantage of the programs that Corrections offered then, and they offered a lot more programs than they do now. And I'm not being critical. They're under the same dollar problem as everybody else. But it did give them that incentive and it also generally prevented...I would say at least 75 percent of the trials that we're having today would not happen but for the fact that when I talked to my client and my colleagues that are in private practice or public defenders that I talked to, when you're looking...when you can't say to somebody, look, you might...your sentence on a second degree could be life to life, what's the purpose of not going to trial? And so, as I say, I think if we would go back, we can still have the serious top end of the penalty but it's the bottom end that provides the inmate with the incentive to get involved in the programs and it will provide them with the opportunity then to

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parole out if they are deserving. Now I think you heard a lot of testimony from the director saying that parole does well. You heard from the Parole Board itself. I mean, they are doing a good job but they're hamstrung, and we are...our prison population on violent crimes is getting higher and higher and higher with absolutely no ability for them to ever get out of prison. And as I say, I don't know how that helps. Now I realize that a lot of these offenders, and especially on serious violent crimes, you know, do have a criminal history. I don't dispute that. But many of them actually don't. Sometimes I'm dealing with clients that have basically no criminal history but they did one really, really bad thing and they killed someone, but yet they end up being an absolute perfect prisoner that if...with the proper, again, education, with the substance abuse, whatever it may be, the mental health treatment, that they can be a productive member and that they can come out. And so again, I don't see our prison population ever going down as long as we keep sentencing people basically to life imprisonment. It's just...I don't see how it's ever going to change. I think that everybody is doing a real good job on the front end and hopefully keeping people from ever getting to that point where they're looking at a very serious penalty, but I do think we've got to do something about limiting these maximum sentences that are being imposed. I mean, what's the point? Like the guy that I was talking about got not only life to life but he got 50 to 50 on the use of a weapon consecutive. So what...I mean I see fear for the guards in the facilities where these guys have nothing to lose, absolutely nothing to lose. Why should they behave when they have nothing basically to live for other than they're going to spend the rest of their life in prison? So for what it's worth, I do think it would help the judges, because I think some of the time the judges feel if they don't max somebody out, they are going to get voted out of office. I really think that drives them, I don't...I'm not being critical, I understand that, but I...maybe not consciously but at least subconsciously. But it doesn't change the fact that if a person should be involved...should be in prison, they will be in prison. They won't parole out. I'll be happy to answer any questions. []

SENATOR COUNCIL: Any questions? Senator Ashford. []

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SENATOR ASHFORD: Can I just follow up on that for a moment, because what, to me, it seems to me, and you can correct me if I'm wrong and I probably am not totally right at all, but by establishing a minimum sentence, in a sense, you say if you commit a...if you traffic in illegal firearms, society...no, you can't do it. (Laugh) I mean you cannot do it because what's going to happen is someone is going to use that firearm and they're going to shoot somebody else. []

JIM MOWBRAY: Right. []

SENATOR ASHFORD: It's a crime that is horrendous, maybe not in the initial stages but if the aftermath is horrendous it can be. So we say, okay, you going to spend five years, four years, three years. To me, there's a...and I think you've hit an interesting point and that is we get confused about when we talk about sentencing, getting tough on sentencing. There's a difference between, I think, establishing a minimum and then not having the ability to...and then sentencing to the maximum. Wouldn't you agree? []

JIM MOWBRAY: Yes. []

SENATOR ASHFORD: Can you talk about that? I mean,... []

JIM MOWBRAY: Well, what you're...first of all,... []

SENATOR ASHFORD: They're different point...there you're getting at different problems. []

JIM MOWBRAY: Exactly. If the person wants to take advantage of the programs and really wants to change their life and they see that, gee, they're only going to have to do X number of years, they'll involve themselves in those programs and I think it was the director that talked about the first couple of years,... []

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SENATOR ASHFORD: Three years. []

JIM MOWBRAY: ...first three years, and if that's true then they will take advantage of that, take advantage of the programs and really try to be a model prisoner and get paroled out. And if they do all of that and make a mistake, they still can be brought back in and put back in for a long period of time and they know that. So that gives them an incentive on parole to continue to be a good prisoner. On the other hand, if they're...and some of my clients would fit this bill, they would...they could care less, they'll probably possibly commit even a crime in prison. But again, as long as we've got the upper end then that's...then they're going to do that. It's up to them. It gives them the choice rather than just simply saying, look, I just got a life-to-life sentence, what's the point. And I... []

SENATOR ASHFORD: What was the 1980s rule again? []

JIM MOWBRAY: It was two...the minimum maximum was two-thirds. So if it was a 5-year sentence was a maximum, a Class IV felony, 18 months was the minimum; on a 1 to 20, which was a Class III, it was 6 2/3 to 20; on a 1 to 50, it was 16 2/3 to 50. []

SENATOR ASHFORD: And that was the sentence. []

JIM MOWBRAY: And that was the sentence many a time. Now some judges would say, you know, they still don't have to go to the minimum maximum but...or they might say it's going to be 6 2/3 to 10. I mean they can still do that. And the other problem on second degree, as I say right now, they're sentencing life to life and I, again, if the Legislature intends that then I guess say that. But if you have it at 20 to life, we would like to see that changed to 20 to 100 years and the reason being is the Parole Board has problems paroling someone for life. I mean they don't...that doesn't...that's hard to compute. And if you look at the number of people that are paroled on a second degree with life on top, it's like very...I know recently there was one individual but it doesn't happen very often. But the same thing is true if then you're doing like a 20 to life or 20 to

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100 years you at least know you have an end and you have a beginning. And I, again, I think that helps the safety factors in prison where you have, everybody has an opportunity except the really bad guys, the guys that commit first-degree murder who have been sentenced to life without parole. And that's why the system is set up that way. Those guys, fine, that's it, but they're also treated differently. They're in a segregated situation. The guards are different. They're more highly skilled, you know, versus general population. So it all, I think, would work to everybody's benefit. []

SENATOR COUNCIL: Any other questions for Jim? Senator Nelson. []

SENATOR NELSON: Thank you, Mr. Mowbray. I think I'm following you on this. The client that you talked about that had no criminal record but made a fatal mistake, killed somebody,... []

JIM MOWBRAY: Correct. []

SENATOR NELSON: ...how would this affect them, what you're proposing? []

JIM MOWBRAY: What I'm saying is he had mental health problems which contributed to the death. He had an alcohol problem which contributed to the death, and if he had the incentive to get back in and get some mental health treatment, get some alcohol treatment. He had lived basically a law-abiding life for 45 years and then all of a sudden his mental health went down the toilet. So did his drinking problem. He got angry one night. Unfortunately, there was a gun around and he ended up killing this woman. But as I say, when I look back at the history of his life, the only time he got in any kind of trouble was again through mental health problems or alcohol. And you've heard that over and over and over. I mean unfortunately, that seems to be the common thread. But he could take advantage of the whole situation where he could get treatment in mental health. At this point, there's no point, and why would the prison spend any money on him? I mean they know that he's never going to get out, and I don't think that's fair either

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but I certainly understand. When they're already limited in their dollars, why would you spend any money on treating someone who's going to be there for the rest of their life? []

SENATOR NELSON: But for someone like that, the judge doesn't have any choice now, they have to be sentenced to life? []

JIM MOWBRAY: No. He had a choice, but judges are also concerned that in especially smaller communities that if they don't look tough then they may be voted out the next time it comes through. And so I'm not saying that they do this consciously and I really am not. I mean the judges I deal with are all good judges. I think our judiciary is great. But be that as it may, you've got a community saying, hey, he killed this woman and I've got to sentence seriously. Because the public never really gets to read the presentence, I mean, you know, they don't really know the man's history, so it's just easier to let's just sentence him to a severe penalty and nobody can complain. The victim's family can't complain and the community can't. []

SENATOR COUNCIL: And, Jim, again I want to thank you. And just to follow up, was at the National Conference of State Legislators last month and went to the section on the cost of corrections, what is it, why is it, how do we address it, and exactly what you are just saying is one of the reasons: the continued impact on public policymaking, 1980s to date; the concern about high-profile cases, message to elected officials--soft on crime equals lose election; and sentencing being...the perception lengthy sentences being a powerful motivator. So... []

JIM MOWBRAY: Well, Judge Icenogle said it, remember, when he said earlier that, you know, the judges have to have basically the guts to do this, and that is on some cases you're going to have to appear to be lenient when that's actually the best thing for that individual and it's the best thing for society, but they're afraid to go there. And I'm just saying this provides them with some of that cover. []

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SENATOR ASHFORD: Madam Chair. []

SENATOR COUNCIL: Yes, Senator Ashford. []

SENATOR ASHFORD: But then what you're really saying is we need to reframe the discussion because it's really not being soft. I mean, to me,... []

JIM MOWBRAY: Right. []

SENATOR ASHFORD: ...I mean, to me, if you, again, a minimum sentence to me is different than a maximum sentence and if you are simply not going to allow...society is not going to allow a horrendous, heinous kind of violent crime involving a gun, whatever the crime is, and someone is going to...if they're convicted, they're going to do time for that. To me, that's perfectly appropriate. []

JIM MOWBRAY: Sure. []

SENATOR ASHFORD: And...but so I think what Judge Icenogle is talking about is somehow figuring out that sentencing is not just...is not a one-off event. It's part of this whole thing we're talking about. It's not just cost. It's rehabilitation, it's enforcement, it's punishment, it's justice, but it's rehabilitation and it's reentry. It's everything. What someone is sentenced to is a major thing. I mean you have the event that you have the crime, you have the sentence, the conviction and the sentence, and then those are the really big events. []

JIM MOWBRAY: And then, I mean I have...I think our Department of Corrections, and again I have some dealings with other states, I think they do a fabulous job. You saw the professionals, I mean they've come in here and testified. But that's what I'm saying: Let them do their job; is let them determine. I mean a judge has a presentence and has

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a snapshot on this individual's life, but when they actually get into prison and they start trying to rehabilitate themselves and you have the professionals in Corrections actually then monitoring these individuals, and I think they ought to have the ability that when they feel someone is actually no longer a threat to society, ought to be able to move that person out. But right now the sentences are such that they aren't given that opportunity to let them do their job. And if the person doesn't deserve it or is a threat to society, then Corrections isn't going to move them through. You know, have faith in the system. That's what I believe in. []

SENATOR ASHFORD: But it seems to me that there is a change in thinking and it has been referring to a degree and at least to the point where people that, you know, violent offenses versus nonviolent, I mean that's a simplistic concept but... []

JIM MOWBRAY: Exactly. []

SENATOR ASHFORD: But there is at least a sense there. So now the...can you be...can you be doing your job as a legislator by thinking about violent crimes in different ways as well? And I don't know but I think you're right. []

JIM MOWBRAY: Thank you. []

SENATOR ASHFORD: I think it needs reframing. []

SENATOR COUNCIL: And thank you again, Jim, for appearing. []

JIM MOWBRAY: Thank you very much. []

SENATOR COUNCIL: Linda. []

LINDA KRUTZ: (Exhibit 8) Good afternoon. I want to...you have a couple things and you

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can go ahead and hand them out. You have a couple things in my handout. There's a couple charts at the back of that and, before I get started, I also wanted to remind you, this is a really sort of narrow version of what the council has been doing since 2003 and also I wanted to remind you, some of you will recall probably, Senator Council, the council staff provided each senator with a notebook similar to the one that Director Houston passed out today with a lot of information, more detailed information about the council's work over the last six years. So I just note that so that if you have other questions. And in reference to my testimony, it's fairly lengthy so I'm going to skip over the section of the descriptors of the programs that have been developed in collaboration with Probation, and I think Ellen did a good job of sort of reporting on those, but that detail is there for you to read at a later time, so. []

SENATOR COUNCIL: And, Linda, before you start, state and spell your name for the record. []

LINDA KRUTZ: Okay. Having said all that, my name is Linda Krutz, L-i-n-d-a K-r-u-t-z, and I am the executive director of the Community Corrections Council. So my testimony today will provide background information on the council, describe the role of the council currently...describe the role the council currently plays in diverting felony drug offenders from prison, and discuss options going forward. The Community Corrections Council was created by the Legislature in 2003. Establishing the council was the primary recommendation of the working group on prison overcrowding created by former Governor Johanns. The council is comprised of 20 members representing all three branches of government, the Department of Correctional Services, probation, parole, law enforcement, and behavioral health providers. By bringing together the criminal justice stakeholders from all three branches of government and the public to make decisions on important public policy decisions, the council represents a unique example of collaboration and cooperation in state government. The council's statutory mission is to provide for the development and establishment of community-based facilities and programs in Nebraska for adult offenders and encourage the use of such facilities and

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programs by sentencing courts and the Board of Parole as alternatives to incarceration or reincarceration in order to reduce prison overcrowding and enhance offender supervision in the community, and serve the interests of society by promoting the rehabilitation of offenders, and deterring offenders from engaging in further criminal activity by making community-based facilities and programs available to adult offenders while emphasizing offender culpability, offender accountability, and public safety and reducing reliance upon incarceration as a means of managing nonviolent offenders. In addition to this primary mission, the council has the following responsibilities: research and evaluate existing community corrections programs and policies and make recommendations for improvements; and educate judges, the Board of Parole and other policymakers on community corrections issues. One of the first actions of the council in 2004 was to examine the existing prison population and admissions data and identify a target population. The purpose of identifying a target population was to focus the council's limited resources on those individuals most suited for diversion from incarceration into community-based supervision without jeopardizing public safety. It is also important to choose a target population with sufficient numbers and similar characteristics so that an effective evaluation of programs could be made in the future. After a thorough examination of DCS data, the council identified felony drug offenders as the initial target population for the council. The following facts were highlighted during the target population discussion: 28 percent of prison admissions in 2003, or 541 offenders, had a drug offense as the most serious offense; 338 felony drug offenders admitted in 2003 had a maximum sentence length of three years or less; 277 of the FDOs admitted to DCS in 2003 were discharged from prison into the community unsupervised within 12 months and most of those did not have the opportunity to complete substance abuse treatment while incarcerated due to their short stay. Having identified the target population, the council shifted its focus to the types of services needed to effectively treat felony drug offenders in the community. Utilizing an evidence-based practices model, the council collaborated with probation and the judiciary in the development and funding of the following three programs which constitute the core of community corrections efforts in Nebraska: the Fee for Service

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Voucher Program; reporting centers and specialized substance abuse supervision; and the problem-solving courts. So I'm going to skip the description and just skip to a wrap-up at the end here, if you don't mind, and that way we'll save time and not be repetitive. The council's efforts to date have focused primarily on front-end solutions to prison overcrowding by diverting individuals from prison and into community-based programs. Front-end options provide the most cost-effective method to maintain or reduce prison population by keeping offenders out of prison in the first place. The council also recognizes that recidivism reduction is an important component of any successful community corrections effort. Reporting centers, drug courts, and the voucher program all utilize evidence-based treatment services and programming targeted at addressing an offender's criminogenic needs, reducing the likelihood that they will reoffend and return to prison in the future. While outcome evaluations have not yet been completed on SSAS, problem-solving courts, or the voucher program, as they are all relatively new programs, some conclusions can be made regarding their impact on prison populations. The provided handout shows FDO admissions by DCS by probation district from 2003 to 2008, and the graph highlights the 20 percent decrease in felony drug offender admissions to prison over this time period. While it is impossible to quantify exactly how much of this decrease is attributable to the community corrections programming and how much is attributed to other efforts, such as law enforcement and legislative initiatives to reduce meth use, the SSAS program and the drug courts are clearly having an effect on new admissions for felony drug offenders. The decline in FDO admissions has accelerated since 2006 when the SSAS and voucher programs came online and problem-solving court capacity expanded. The number of offenders enrolled in these programs is another measure of their diversionary potential. As of December 2008, there were 259 offenders participating in SSAS and another 477 offenders participating in adult drug court programs across the state who would likely be in prison without these alternatives. What is clear from examining this data and from the continuing population pressures faced by DCS is that the council has not yet completed its task. Felony drug offenders still comprise 22.6 percent of the new prison admissions and 171 FDOs were admitted to DCS last year with 12 months or

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less to serve. Additionally, the programs funded through the council are not yet available throughout the state and, as a result, are unable to reach all the target population. The primary goal identified by the council during a 2008 strategic planning retreat was expansion of existing programs and services statewide. I would refer you to the provided map which provides information on where community correction services are available across the state. The SSAS program is currently available at seven reporting centers across the state. Some of this is information Ellen gave you so I'm going to just summarize my last page here. Expansion of any of these programs requires resources which have not been available due to the current economic climate. As a result, the council has partially shifted its focus to program evaluation and the role which the council can play in educating policymakers on community corrections issues. An evaluation framework is being presented to the council at its meeting this Friday, which will recommend establishing a formal process for evaluating community corrections programs. A formal evaluation process will enable the council to identify problems and make improvements to existing programs, as well as provide more detailed outcome information to policymakers. In closing, I would like to emphasize that the council is excited at the Legislature's renewed interest in community corrections and at addressing the prison population situation. The council is more than willing to provide any information or assistance we can assist you with in this endeavor. Thank you again for the opportunity to testify. And I'd be happy to answer any questions. []

SENATOR ASHFORD: Is it...do most states have a community corrections program separate from the probation program? Is that... []

LINDA KRUTZ: Separate from probation? []

SENATOR ASHFORD: ...is that the norm? Is that the norm? []

LINDA KRUTZ: You know, I don't know if it's separate. Sort of Nebraska, when this whole effort started, we referenced a lot of different states--Kansas, Oklahoma,

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Minnesota--but we worked a lot with North Carolina's model and so I wouldn't say that they're separate. Everything does seem to dovetail. []

SENATOR ASHFORD: Okay. Okay. And the benefit of having a separate council is what? []

LINDA KRUTZ: Well, the council grew out of the working group. As you know, as a part of the community corrections mandate was to develop a council and I think that it pulls all the stakeholders to the table. Just to give you a brief example, prior to the council's work, which...and the membership of the council, probation and parole really didn't communicate with each other, and I think you heard Ellen reference the really highly collaborative relationship she has with parole. I mean parole officers didn't even really know who the probation officers were. Currently, they share, they share services, they share training, and that's now sort of expanded also to DCS, which parole is a part of DCS. But I think that it keeps things from being duplicative. I think it keeps people from running the same thing, same types of programs on separate tracks. I think it's a more efficient way to utilize resources probably and one of the ways is that everybody comes to the table and makes those decisions together instead of in their own little separate domain. []

SENATOR ASHFORD: And are there other benefits than this collaboration? Are there any other benefits that you can name? []

LINDA KRUTZ: To collaboration? []

SENATOR ASHFORD: No, other than collaboration, are there any other reasons why we have a separate Community Corrections Council? []

LINDA KRUTZ: Well, I guess I don't know what you mean by a separate Community Corrections Council. I think that this... []

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SENATOR ASHFORD: Well, we have a council and we didn't have one before and collaboration... []

LINDA KRUTZ: I think it's...well, they've actually...they've actually done this several times before, prior to this effort coming this far. Steve King, if he was here, could tell you that because he was on it from the very beginning. But I think that they have developed councils or working committees to do the very same thing that we're doing. The most recent was probably about 1992 maybe. []

SENATOR ASHFORD: Well, I mean, I introduced a bill in 1989, I don't know, and it was passed. I think we had a budget of \$25,000. []

LINDA KRUTZ: Yeah, that's what I'm saying, that they put the stakeholders before...in groups before. So much of the same...many of the same people that were on that group sat on this working group and I think it's because I think they find benefit to it, but it's never been funded. I mean we create things and we devise policies and then they don't get funded. And so the upside is this has come much further this time through a whole bunch of people's efforts and maybe it's the collaborative effort, you know, that has brought it this far. []

SENATOR ASHFORD: So the benefit really, one of the major benefits, then is to...is to establish lists of...almost like a coordinating commission where you're establishing lists of priorities of things that ought to be done... []

LINDA KRUTZ: Uh-huh. []

SENATOR ASHFORD: ...and that those can be funded. And you're funding...you're not...you're funding the various agencies that conduct the activity but you've gone through this process, your organization has gone through this process... []

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LINDA KRUTZ: Right. []

SENATOR ASHFORD: ...of establishing priorities and best practices... []

LINDA KRUTZ: Uh-huh. Uh-huh. []

SENATOR ASHFORD: ...and evaluative processes, right? []

LINDA KRUTZ: Right. And I think it's just so that we don't have people working at cross purposes with each other. []

SENATOR ASHFORD: Okay. And then my last question is we don't have anything in the juvenile system that's like this. []

LINDA KRUTZ: I don't believe so. []

SENATOR ASHFORD: Wouldn't it be helpful if we did? []

LINDA KRUTZ: I think the work that this council has done has been amazing and I would...I can't speak to that because I don't work in the juvenile system, but I think that it would. []

SENATOR ASHFORD: Thank you. Any other questions? Senator Carlson. []

SENATOR CARLSON: Linda, on the target population,... []

LINDA KRUTZ: Uh-huh. []

SENATOR CARLSON: ...2003, 541 inmates had a drug offense, I imagine in this

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population, and maybe it's stated in there and I don't see it but, this would be drug users, not traffickers. []

LINDA KRUTZ: I couldn't definitively say that. I would have to...we'd have to do...we'd have to drill down on that a little bit more. But I would...the thing is that a lot of times it isn't...drug traffickers are also drug users so I would have to...I'd have to do some checking. We would just have to drill down on that number. I don't have that information today. []

SENATOR CARLSON: Well, whether we talk about being mad at or scared of,... []

LINDA KRUTZ: Right. []

SENATOR CARLSON: ...we're more mad at the traffickers than we are the...or at least I am. That would be interesting. I'd be interested in what that fact is. []

LINDA KRUTZ: We can certainly try to find that for you, Senator. []

SENATOR CARLSON: And it would seem like whatever the number is that we're talking about, if they are not incarcerated and we go back to the \$32,000 a year to keep them incarcerated, it's definitely a big difference in revenue spent not to have them in there. []

LINDA KRUTZ: Uh-huh. That's correct. []

SENATOR CARLSON: Okay. Thank you. []

SENATOR COUNCIL: Any other questions? If not, Linda, thank you and I'll see you tomorrow. (Laugh) []

LINDA KRUTZ: You bet. Thank you. []

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SENATOR COUNCIL: Okay. And I'm going to exercise the privilege of the Chair here. We had individuals who contacted us prior to today's hearing, expressing an interest and an intention of testifying. We also had members of the public who were made aware of the hearing today and appeared without knowing to contact in advance. And I've been calling people to testify not in the order that they signed in but the order they appear on a predetermined list and, with your indulgence, I'm going to try to go back and forth between people who came in and signed in as soon as they arrived with people who notified the Chair or the Judiciary Committee in advance. So with that, in the order in which I have them, and I'm just going to alternate, next up would be Teela Mickles. []

TEELA MICKLES: (Exhibit 9) Thank you. Appreciate this opportunity to speak. My name is Teela Mickles, that's T-e-e-l-a, last name Mickles, M-i-c-k-l-e-s. I am the founder and the CEO of Compassion in Action. It's a faith-based organization that works with families incarcerated. We started in 1994. My history with working with this population goes back about 27 years. I've worked with men, women, and children who are incarcerated and one of the things I'd like to bring to the council, I want to thank you for the opportunity to speak, is while we're speaking of this population to imagine in your mind a woman, not necessarily a woman of color or a woman of poverty but a woman with children, because that woman that's incarcerated with children, you have to consider where her children are and the financial responsibility for the care of her children. If she doesn't have a supportive family, who's taking care of her children? They're probably in foster care. So in addition to the \$28,000 to \$31,000 to incarcerate her, there's added a financial responsibility to take care of her children during her incarceration. Seventy-three percent of men who are incarcerated are absent from the home at the time of their crime, so their absence from the home may or may not affect it as the absence of a woman from her home. Even though the percentage is very small, I think it was mentioned 6 to 7 percent of the incarcerated population are women, please consider the financial responsibility of that woman outside of the home when it comes to

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her children and also the effects of her incarceration upon her children generationally. I've been in the business long enough to have worked with three generations--the grandmother, the mother, and the daughter--so it does have to...it is a cycle that really needs to be broken. The other think I would like to present is the prerelease aspect. Compassion in Action works with people incarcerated three to six to nine months prior to their release from prison. There is a transitional mentality that needs to take place not only emotionally, mentally, but physically. I think it was spoken of before when an individual needs to utilize their time that they are incarcerated to prepare for good behavior and good activity, for instance, get up at a reasonable time because that's when you're going to take care of your children, that's when you're going to get the job; rather than just do your time, actually check your time and make your time work. And that's the curriculum that Compassion in Action provides for people prior to their release from prison--preparing an individual to be employed. Just getting them a job is not necessarily the answer but to prepare them to be employed. Individuals who probably acquired, for lack of a better word, a substantial income illegally in a very short time period will be a little...it's going to take a time for them to adapt to the habit of getting up, subjecting themselves to an employer; getting financial, you know, gain from that employment which is substantially less than what they got when they were doing it illegally. So there's a mentality that has to be changed and that we consider that in our transformation period during the transition. I'm currently working with men and women. We do have a transitional home for ladies. We also are working with a transitional home for men which is now full. And another piece that I wanted to bring to your attention are those individuals who are serving long-term and life sentences. Currently, through the Metropolitan Community Council, they're having a table talk with Tommy Wilson, who's heading that up, we are going to infiltrate the Nebraska Department of Corrections and empower their groups that are already there, like the Seven Step group, the Toastmasters, the HARUMBE, with community involvement. We did a brief assessment because I figured, you know, if we wanted to know what would work for the incarcerated individuals, we need to ask them, and so I did a brief assessment at Nebraska State Penitentiary for the men. I asked them what product, program or...product, program or

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product would they be involved in on the inside that would validate them. They are human beings. They do have a mind. They do have worth, but they're serving a long sentence and they're not necessarily going to get involved with community programs that are (inaudible) them out sooner. So I asked them what would that look like where they could be validated behind the wall, at the same time benefit the community, and what they came up with was their programs that they have already, their clubs, their groups that they have already on the inside. They are not well attended sometimes because the younger inmates who are serving lesser time, they really don't want to listen to the older brothers. They feel like they know everything. And so their enrollment is usually low. But if the community were to support those groups and put in their hand material that would be served as an assessment so that the older men, the men that are doing longer time and longer sentences, can actually empower the younger men and give them the material to start doing some prerelease activity and some prerelease assessment, then your community agencies on the outside will be getting people who are better prepared to utilize their services. Because the resources are there. Have the time, the inmates on the inside don't know about them until they're released. So this way, when we go into the corrections and we have about ten agencies signed up to go in August 31 for a Seven Step program, and then we've been invited to go in Tecumseh in September and have the community bring their resources, bring their assessment sheets, bring their criteria to these groups and then, when we leave, leave this information with the men who are serving long-term and short...and life sentences so that they can use this information to recruit and to improve their numbers for their clubs and for their efforts to change and so that...it's kind of like a behind-the-wall assessment where the community can actually glean from the empowerment of these individuals and the interaction of these individuals in these clubs and actually get them ready for the services that are available when they get out. I think that...oh, the transition mentality and also an assessment, I hope that as you're trying to determine the good, the bad, and the ugly of this process you will have some type of assessment that comes from the men and the women themselves who are incarcerated. I've been doing this for a long, long time. I'm partnered with the Nebraska Department of Corrections. I started

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that with the Serious and Violent Offender Reentry Initiative, and it seems like the assessment always comes from educational environments like, you know, the universities and stuff like that, when I believe if you ask the people, actually ask the men, the women who are incarcerated what does successful reentry look like to you, how would you address this issue, how would you address that issue, I think that would be very valuable data that you would receive from the inmates themselves, and I don't know that it's every been collected. I know that when I put my little assessment together, those are the questions that I ask them, you know, what does successful reentry look like to you. I've learned not to have my own preconceived ideas and my own expectations of what that would look like because I've never been incarcerated. What are the stumbling stones that you find when you're transitioning? What's the lack of communication? What type of environment do you expect to come into? How can you assist in that environment to make it...you know, make it more...your success more possible, just information that we need to hear from the individuals. I think it would be very productive and effective to hear from the inmates on the different levels of incarceration, on the different rationale for why they were incarcerated and all that different, you know, all that different information, to hear from them and to find out from them what would be some benefits. And also then the transitional mind-set. Individuals who have been incarcerated for any period of time have learned survival behaviors. We call them manipulation and all kind of negative things, but it's still something that needs to be transitioned. By the time we give them successes or opportunity to have successes, which is their own identity, their own driver's license, their own insurance, their own these things, all these different levels of success are causes for relapse for individuals who have not been successful before. For us, it looks like they're doing very well; to them, they are being scared and also they're feeling threatened and they're feeling pressured by impressing all the people that are helping them and living up to their expectations rather than understanding their own worth and their own value. So the transitional mind-set can go on and my experience has been three to six years. It takes three to six years, from my experience, to successfully transition a person from that incarcerated mind-set to community reestablishment where they're actually giving

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back to the community out of their own benefits that they have gained in the process for their transition. []

SENATOR COUNCIL: Thank you, Ms. Mickles. Any questions for Ms. Mickles? And hearing none, just want...you referenced a table talk and want my fellow task force members to be aware of the table talk and the fact that this is a coalition, a collaboration of service providers who are getting together and trying to develop a strategic plan for providing for successful reentry and how important successful reentry is to reducing recidivism. So the reentry aspect most assuredly must be addressed if we are going to have any meaningful lasting impact on recidivism. []

TEELA MICKLES: Absolutely, and also the prerelease piece. I think that's brought up a little bit to get in touch with the inmates, the residents, however you want to address that, at a substantial time prior to their release so that they can get prepared to do those transitioning. And with the table talk there is a variety of community agencies, including employers, educators, drug rehab, transitional homes, all the services that a person really would need, but we need that connectivity and I believe it's happening. []

SENATOR COUNCIL: Okay. Thank you again, Teela. []

TEELA MICKLES: Thank you. []

SENATOR COUNCIL: Next would be Todd Reckling or Terri Nutzman, whoever is here from HHS. []

TODD RECKLING: (Exhibit 10) Good afternoon, Senator Council and members of the Sentencing and Recidivism Task Force. I am Todd Reckling, T-o-d-d R-e-c-k-l-i-n-g, and I'm the director of the Division of Children and Family Services within the Department of Health and Human Services. I thank you for the opportunity to present information about recidivism and programming as these issues impact our Youth

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Rehabilitation and Treatment Centers at Kearney and Geneva. Youth Rehabilitation and Treatment Centers, often referred to as the YRTCs, have served court adjudicated delinquent youth since the late 1800s. Their mission is to protect society by providing a safe and secure environment for a court adjudicated juvenile delinquents who are age 12 through 18 so that the youth can learn and develop a positive sense of self. During the '08-09 fiscal year, 153 youth were committed to our YRTC-Geneva. Of those, 42 percent were Caucasian, 16 percent Native American, 19 percent African-American, and 23 percent Hispanic. The YRTC-Kearney had 489 admissions. Of those, 49 were Caucasian, 5 percent Native American, 22 percent African-American, and 23 percent Hispanic, and 1 percent Asian. The number one offense committed by youth committed to both of our facilities was some type of an assault. The YRTCs in general provide care and treatment programming that includes psychological and social services, problem solving, education, prevocational exposure and training, social skills, drug and alcohol assessment, education and treatment, sexual trauma therapy, parental education and skill building, community volunteer work, education, recreation, and religious activities. Each of the youth admitted to our facilities has an identified treatment plan which identifies his or her emotional, physical, educational, and social development needs and how to meet those rehabilitative needs while at the YRTCs. A juvenile services officer in the field out in the service areas, in conjunction with the YRTC staff, develop the youth and their discharge plan which addresses his or her continuing treatment needs when released back into the community. Community safety is addressed as well when developing this plan. Unfortunately, recidivism does occur once the youth have left the YRTCs in some cases. Recidivism is defined by our department, Division of Children and Family Services, as the number of youth released from our YRTC compared to the number of youth that return within a 12-month period. We experience returns because of new illegal acts of law violation or a violation of their parole conditions. It's important to point out that the definition of recidivism varies greatly across the nation so there is not a consistent, national recidivism rate in which to compare Nebraska's. In 2008, our division tried to work to standardize the definition of recidivism that staff would use so we could have a standard in the future to compare and measure by. During fiscal years

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2005 through 2009, we had a total of 2,856 offenders released from our YRTC's back into the communities. During that time, a total of 532, or 18.6 percent, were returned to the centers after committing either a new law violation or a violation of their parole conditions within a 12-month period. Over these past years, there has been an increase in the number of offenders, both males and females, who have been rejected from community-based treatment programs due to violent and aggressive behavior and, thus, placed at the YRTC's. These offenders have been identified with serious conduct disorder, mental health disorders, and/or substance abuse issues. There is also an additional element of increased gang affiliation that our YRTC's are seeing. As a result, we are seeing an increase in violent assaults on youth and staff within the centers, which has resulted in serious injury for a few. Both of our YRTC's are accredited through the American Correctional Association and also participate in performance-based standards through the National Council of Correctional Administrators. In order for us to continue to work toward improvements in services and reduce recidivism, we have a few things in place. We have recently hired a clinical psychologist out at the YRTC-Kearney to work toward enhanced treatment programming, and we also have a psychiatrist that we're working with at both of our facilities. Another unique and innovative program that we started just in April of 2008 in Omaha is a multifunctional purpose program. It's called Youth Links and it's a program that offers several different services for youth either transitioning back to the Omaha area from the YRTC's or to help prevent those young in the Omaha area from needing to go maybe out-of-placement or higher level of care or additional services. Just like to point out that Youth Links is a collaboration between Boys Town and Heartland Family Services under a contract with the state. They served 360 youth over this past year and I'll let you read there the different services that they offer. But it's multifunctional purpose building. They are just currently working on their annual report and we should have that very soon and we're watching and measuring the progress and evaluation of that program. I'd also just like to echo the words that Ms. Ellen Brokofsky talked about in relationship to the Department of Health and Human Services, working closely with Department of Probation to work toward a collaborative effort to serve juveniles that are currently

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being...they're actually dual committed to both of our agencies and so also in the future work toward those youth that are lower offense and lower risk that we can serve through probation, rather than having those youth become state wards. Thank you for the opportunity to today and I'd be happy to answer any questions. []

SENATOR COUNCIL: Are there any questions for Mr. Reckling? Senator Ashford. []

SENATOR ASHFORD: Yeah, thanks for your comments. What is the recidivism rate for these young people other than coming back to those facilities? I mean they got 500 or so that reoffend and come back to Kearney or Geneva. What about into the adult facilities? []

TODD RECKLING: I don't have those statistics. []

SENATOR ASHFORD: Can you get those for me? []

TODD RECKLING: I can see if we have those certainly. []

SENATOR ASHFORD: I mean that would be...that's the most telling, one of the most telling. I mean how many are...we lose 500 back but how many of the 2000 offend into a higher, you know, grade of crime? []

TODD RECKLING: You're talking, Senator, are you talking the adult system or just a higher level of care? []

SENATOR ASHFORD: Well, I mean, do they go back to jail again? (Laugh) I mean the ones that...the ones that offend and go into Kearney and Geneva facilities, 500 come back, whatever. How many then go on to the Department of Corrections for other kinds of offenses? []

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TODD RECKLING: Yeah, I'll have to work with Mr. Houston on those numbers and see if we can put something together. []

SENATOR ASHFORD: Just by looking at their history to see...to see... []

TODD RECKLING: Right. That's not a statistic we are tracking at this time. []

SENATOR ASHFORD: But wouldn't that be the most important statistic, is...there is, is to...and I'm not...this is not a criticism but there's a continuum here of young people who are offending and they go, no matter what department, I mean I've never understood why you have two departments, one for Kearney and Geneva and another for...I know they're different services but I've just never understood that and maybe someday I will, Todd, but...and it's not your job. That's a policy issue. But what is it...I mean, why? It's these young people that are at Kearney and Geneva that are offending again, getting into the adult system, you know, being sentenced as juveniles even to the adult system. A lot of those young people started at Geneva and Kearney and so that, to me, the most important statistic that one can have is who are those people. Why are they there and what happens to them after they leave and what condition are they in when they leave? Because we've heard testimony today about, you know, they're in and they're out in three months. That's anecdotal. We don't...I mean... []

TODD RECKLING: I'd be happy to share. We produce an annual report that hopefully... []

SENATOR ASHFORD: I just want to know...here's what I want to know. I want to know how many of these people are offending into a more serious situation and what we can do to...so they won't do that. Because what we're talking about is reducing prison population here and many people who are in the adult system had been in Kearney and Geneva. We all know that. So what are those numbers and what can we do as policymakers to help intervene so that they don't get into the adult system? []

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TODD RECKLING: Yeah, I appreciate it. I think you've heard repeatedly today that if we can serve and work on those domains for those youth, the sooner the better, and so we can keep them out of the... []

SENATOR ASHFORD: Right. And this isn't about HHS being...doing something wrong or Corrections. I don't...we're not pointing fingers. But it just happens too often and, in my experience in working with some of those youth at the housing authority, it's a continuum and it's boom, boom, boom, boom, so what can we do as a Legislature to help you and others in making this work better? So I would like to know that answer though. That's very important to me to know... []

TODD RECKLING: Thank you. []

SENATOR COUNCIL: Senator Fulton. []

SENATOR FULTON: Thank you, Director Reckling, for being here. The Magellan,... []

TODD RECKLING: Yes. []

SENATOR FULTON: ...I don't know if you can answer this or not. This is kind of a bird's eye question though. Ostensibly, it seems as if Magellan, at least what we heard this morning, Magellan has sway, if not influence over the policy decisions that get made in different branches of government. At least that's anecdotally what I was hearing this morning. Can you give your side of it? Is Magellan...their services ought to be utilized as a tool per the volition of the decision makers within the department. Can you give me some feedback as to how Magellan is...is Magellan being used as a tool or is Magellan making decisions, fiduciary decisions, that are affecting the policy that's coming out of the department? []

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TODD RECKLING: Yeah, maybe I can answer from my perspective... []

SENATOR FULTON: Yeah. []

TODD RECKLING: ...what Magellan means to our system. Magellan is an administrative services organization and basically managed care, and so I think I heard some references earlier today about whether or not there were benefits or costs or profits. They act as an administrative services organization. Several years past we had a managed care company called Value Options and they were for profit at a profit contract and that's not the case with the administrative services organization Magellan. My involvement and use of Magellan in managed care is that the kids that my division serves are almost all on Medicaid and, as part of the Medicaid managed care system, it's just like any other health insurance program that most of us have if we have health insurance, whether it's Blue Cross Blue Shield or some other type of insurance company. They then look at medical necessity. So our workers are required, when we're looking for a treatment program, to have the...whatever provider it is submit to Magellan to review that, as you heard earlier in testimony, to have the clinical people at Magellan review for medical necessity and then they either authorize that or they don't. And there are some options based on that, whether we...a court may order that service and then I have to...I'll pay for it anyway or we have to make other decisions where it may not be the level of care that was requested but it may be an alternative level that's authorized or approved. So they're basing their decisions on the provider information that comes to them and then they review it, just like your insurance company would review what your doctor submits for approval for procedures for you. And so there is an opportunity, if the clinician that is submitting the paperwork and application is not in agreement with the decision that's made for authorization services, they can appeal it, they can go through a peer-to-peer review process, and then a higher level appeal. What that ultimately is about for our system is medical necessity. In part, I hope that you can keep in mind that we have different services that are treatment and nontreatment so, for example, there is a level of group home that is treatment that has a much more profound service in it

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that's treatment oriented, clinical oriented, versus maybe a group home that's more supervision, structure. And then we might offer wraparound mental health/substance abuse services for the youth. So our system is able to utilize treatment services and make policy decisions around nontreatment. When it comes to treatment then, yes, I use my managed care company to make and authorize those medical necessity levels of care. []

SENATOR FULTON: Thank you. []

SENATOR COUNCIL: Senator Carlson. []

SENATOR CARLSON: Senator Council. Todd, in your report, in the second paragraph, the last sentence, the number one offense committed by youth admitted to both facilities was assault. []

TODD RECKLING: Yes. []

SENATOR CARLSON: And then the next paragraph you talk about various aspects of treatment. And obviously I'm not expert by any means but in my visit to the penitentiary and talking to a volunteer group and listening to what they had to say, to a man, I would say they assess their problem is anger management. Well, that would...to me, that's what causes assault, the inability to manage anger. And I'm kind of interested, that's not mentioned down here, but maybe that's inherent in many things that are done as a part of the treatment. []

TODD RECKLING: Yeah, I was...just tried to give you some examples there, Senator, of the type of programming, but certainly we could. I would be happy to offer any type of additional details about the specific program. The individual treatment plan that's developed for the youth goes into what you heard Dr. Robinson describe as those different domains, what are the youth's needs, what are their strengths and how do we

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develop various programs whether...what were the kind of causal factors that may have led or contributed to that type of assault, whether it was anger. We also see a lot of the kids that are under the influence when certain type of assaultive behaviors occur. So it might be that we need to address substance abuse or mental health issues as well. So we look comprehensively to try to set up the program to best look at those root issues that may have led to the criminogenic factor or the actual offense that was created and then how to help the youth work through those situations so in the future they have the ability to recognize those triggers and to react differently than committing another law violation. []

SENATOR COUNCIL: Senator Nelson. []

SENATOR NELSON: Thank you, Senator. You say an increasing element of gang affiliation. Are you able to identify certain people coming in, young people coming in, as gang members when they come in? []

TODD RECKLING: We certainly try through our intake process to identify if that's an issue for them. Some of the kids, as you can imagine, are very forthright in saying that they're affiliated with different gangs. Some of them are youth that want to be affiliated and kind of talk the talk. Some of them have tattoos that are identifying. Through some of the past behaviors or the law enforcement reports we get or the juvenile court records that also come to us we are able to acknowledge and talk to the youth about their gang activity and try to structure some of their programming around how to break out of that gang. Part of what we often see with a gang, and I'm sure you're aware, is that it's often kind of a cry for a peer positive social network or they're looking to other members as kind of their family network in some cases, certainly not all. But that's part of what is...we try to work toward positive peer relationships, positive family relationships, and how can they build that type of acknowledgement, recognition, relationship and networking that's positive versus a gang-type affiliation. []

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SENATOR NELSON: If that doesn't work with certain individuals and they still have animosity for an opposing gang member, even though they don't have weapons or anything out there, are you able to separate them in any way so that you can eliminate some of these assaults and the tendency to do that? []

TODD RECKLING: We absolutely certainly try to do that as much as possible. We know right away sometimes when there's rival gang members where they, through the course of their actions in our units, once they're assessed and on an ongoing daily basis, if we're seeing more type of activity between certain members of a gang or certain kids that are not reacting very well, we are able to try to reclass them into a different group. Certainly you can understand that we have limitations but as much as possible we try to separate those youth. []

SENATOR NELSON: Is there an average length of time that they spend there at Kearney on any individual sentencing? []

TODD RECKLING: Yeah, appreciate that. That courts don't just send the kids to either of our facilities for a determined amount of time. I can tell you our average length of stay has varied. YRTC-Kearney currently is about...last report I have, I don't have '08-09 figures yet but we're working on those, but '07-08 our average length of stay in Kearney was about just shy of six months, about 171 days. Our average length of stay in Geneva was about 7.3 or 7.5 months. So the kids certainly have different lengths of stay, depending on the severity of their offense. What you heard described earlier was a type of a risk assessment, how do you separate the higher risk kids from the lower risk kids. We work closely with probation and we're also using the same instrument, thanks also to Dr. Hank Robinson. It's called the YLSI/CMI for the youth and that is helping us both before the kids come into Kearney or Geneva and once they are into our facilities. We use that assessment as a tool to help guide their needs and structure and, based on that, also we're starting and want to use it more to help determine how long they're there. Our challenge is that I don't control the front door of our facilities. I have partial

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control in the sense that the juvenile services officers that are out in the field, if there is a parole violation for kids that have been in the facility and are back into the communities, our parole officers, there's not a new violation but a condition of parole that was violated can, as an option, possibly send the youth back to Kearney or Geneva. What you also heard was are there other sanctions or graduated sanctions that we can use and not try to send kids back to the facilities under technical violations, so we've been working hard not to send kids back for technical violations. But when the courts commit a kid to the youth YRTC's, and then I have to manage that population, I have limited capacity in both facilities and my alternative is to determine what youth...when we're faced with which ones stay and which ones go, I have to make decisions. And I'm using that tool to help us make those decisions. But that, in my response, plays into then our average length of stay in how long a youth can stay in our programs and receive adequate and lengthy program services from our YRTC's. []

SENATOR NELSON: Thank you. []

SENATOR COUNCIL: Any other questions? Senator Carlson. []

SENATOR CARLSON: Senator Council. Todd, what qualifies a youth to be admitted to Kearney or Geneva? It's an action of the court, isn't it? []

TODD RECKLING: The way the statute currently is set up is that all youth that are committed to the Department of Health and Human Services, Office of Juvenile Services have to have an OJS evaluation. That evaluation is done, either a community-based evaluation where the youth may, if they're lower risk, they may be at home or some other type of care facility and go and receive a community-based evaluation. Some youth are also detained in a type of detention center or shelter where they'll receive that evaluation. That evaluation then is reviewed and it does go to court, so the court has an option to look at the records that were produced. Oftentimes, as we described up in Douglas County, we got probation records and sometimes historical

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OJS records that are provided. We try to assimilate through the investigatory process and that evaluation and make a recommendation to the court and then the court can make a recommendation, per statute, of the level of out-of-home care whether...or in-home care or YRTC care. []

SENATOR CARLSON: Okay. I think you started your statement by indicating that these young people are referred to HHS. []

TODD RECKLING: Not necessarily. Initially, if there is a law violation, the courts can put that youth on probation. If they don't want to do probation or perhaps there's a probation violation and they want to access the Office of Juvenile Services, that's when the court then orders an OJS evaluation. After an OJS evaluation it isn't necessary that the judge order the youth into OJS. Sometimes there's an OJS evaluation and the youth may go and be committed to probation. Sometimes they are then committed to the Office of Juvenile Services. []

SENATOR CARLSON: There has to be some kind of violation to have a youngster recommended. []

TODD RECKLING: There has to be a delinquent law violation, either a felony or misdemeanor, yes. []

SENATOR CARLSON: And I don't know what the right answer to that is, but I had grandparents who contacted me that they had custody of their granddaughter, were having all kinds of problems with her, knew it was behavioral problems, but until she got in trouble with the law there wasn't anything...they had no place to turn. And I don't know that we want to open those facilities up, but there are families that understand that we have a problem here we can't handle and the only way they could get into Geneva or Kearney was to break the law. []

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TODD RECKLING: And keep in mind, Senator, I think what you're getting at, and you heard a little bit earlier as a reference to, was the safe haven issue. And so I think the silver lining in that was that it allowed our state to look at what was happening and I'm thankful to have at least LB603 that the senators now have the Behavioral Health Oversight Committee that are looking at that. We'll be doing some different services and programming either through the Division of Behavioral Health Services to offer some type of behavioral health services. Now I don't know the situation that you describe, if that will necessarily meet those needs, but this new...we have...Division of Behavioral Health currently has a request for bids out currently for a single point of access for a help line and then a Navigator Program to help people navigate through the different systems or services to help get them connected with the rights bits and pieces to help them. My division, through Children and Family Services, through the LB603 bill, will be able to offer postadoption/postguardianship services, and another part of that bill also allocates about half a million dollars this first year and a million dollars next year for different types of some behavioral health services that are related to like Professional Partners or other type services. Again, I don't know if that would necessarily meet those needs but there are different levels of service and I think what you heard earlier is there's prevention, intervention, and then kind of the deep end when the kids come into OJS or an official agency for continued care and custody. []

SENATOR CARLSON: Thank you. []

SENATOR COUNCIL: Any other questions? Todd, I just have a question/comment. You, in response to Senator Ashford or Senator Fulton about Magellan, you spoke to Magellan's issues being driven by medical necessity and I guess, in my mind, I'm seeing a conflict between the standards that govern Magellan and what the juvenile courts, and particularly the judges, are looking at. You have a young person who comes into the juvenile court system. The evaluation shows that that youngster is in need of behavioral...other mental health services in a highly restricted context. So they need to be in a facility that they cannot leave. And then that's recommended and yet it's not so

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much the medical issue as it is the need to confine this individual for that kind of treatment that Magellan is not approving in many cases. And then those youngsters, in order to get that highly restricted environment, end up at Kearney or Geneva. []

TODD RECKLING: Senator, just if I may reply, there are levels of care that you describe that offer structure and supervision that aren't necessarily treatment. So if the condition is not a medical one that necessitates that level of care, I have out-of-home care placements available through foster care for either the OJS population or the abused and neglected or the status offense population. We have also the YRTCs are available. So there are different levels of...whether foster care, group home, or the YRTCs that offer that supervision and structure that when...if there's not the medical necessity, for that more clinical overview. []

SENATOR COUNCIL: Okay. And I guess that's what the...where I see the disconnect, and I'm not going to take up the time of the committee. I'll talk with you outside of this. But I think there's a major disconnect between the services and under what condition the children need these services and how Magellan views the services and in what condition they need to have those services provided. But like I say, I won't belabor the committee with that. Any other questions for Todd? If not, thank you. []

TODD RECKLING: Thank you. []

SENATOR COUNCIL: Next is Paul Harrison. []

PAUL HARRISON: Good afternoon. I'm Paul Harrison, the national director of Reentry Aftercare, and also with me today I have Lauri Westfall, the director for the state of Nebraska for Heartland Reentry Aftercare. I commend everyone, not only for the mission to put together this task force but your dedication to continue throughout the day with it. I heard a number of things here today, just words that come up that were common threads when we hear judges come up to testify, when we hear someone from

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the Attorney General's Office, we hear someone from Corrections. We heard about a number of great things that's going on, in maybe some cases not enough of them, but we heard about a number of great things going on inside facilities, inside courtrooms, inside the jails. Two words kept coming up in everyone's testimony and that was "resources" and "risk." That was almost two common threads in everyone's testimony today: If we had more resources we could do more of, but if we're going to do more of that we're going to take a risk, especially if you're a judge or correctional officer or someone that's putting their tail on the line when they sign their name saying that we're going to take a chance on this person and take a chance on the fact that they will be successful. I also heard this morning about gaps in services. I think the biggest gap in services sometimes is the people that aren't in this room. It's very inspiring to hear Corrections and judges and law enforcement and this panel of senators that are concerned about returning citizens. At Reentry Aftercare, we don't use ex-offenders because 98 percent of the people in prison are getting out so, let's be honest, they're returning citizens. And in a world where we're identified by what we live, what we...been a long day for me, too...what we drive, where we live, and what we do, we expect these folks to come from an environment inside a prison and be part of our world and be, as Teela Mickles said earlier, what we define as successful. Think one of the most major gaps in that is the fact that I think the last time I checked Nebraska is 1.7 or 1.8 million in population and we forget that those folks are the stakeholders in this. And they're also the same people that recognize disasters and, if we have a flood, you'll see those folks pick up shovels and sand bags and all of a sudden there's an army of people to fight the disaster. The difference is, this is a huge disaster of just dynamic proportions but we've never given them the tools. Inside the churches, inside the faith-based and religious organizations, community-based organizations, some you heard from today, I would say if you ask them what's their biggest challenge you'll hear things like I'm so busy fighting fires I can't do anything else. They need more firemen. Someone is turning 65 every 8 seconds these days. There's never been a better time to be recruiting volunteers, not only in the churches, civic organizations and other places, and what we've noticed through having thousands of volunteers in more than a dozen states is a societal shift. If

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a judge is going to take that risk in a courtroom and he has three to seven people from the community in the courtroom with this returning citizen saying that we've been doing this with this person for this period of time, that judge is not in it alone. When it comes to the employment, I heard Senator Ashford talk about employment awhile ago, we've actually been doing some job interviews inside the prison. Because if you train a team of three to seven people to work with one person during the reentry, one of them could be an employer or they know someone that is. And when you get to know that person as an individual, it becomes a lot easier to connect that skill to someone in the community that needs that resource. Also heard problem-solving court. I think that's interesting because if you spend a day in Lauri or my office, oftentimes there are problem-solving courts: How do I get my driver's license back? How do I modify my child support order? How do I overcome these obstacles. The great thing that I can tell you that's happening in our world, the more we educate the public of the problem and the solution and how to network their already existing resources, we're seeing that. I'm going to brag on Lauri, not just because she's in the room, but one of the things that we're seeing is people like her, a mother who has a son in prison here in the state of Nebraska, decided to take a bad thing and turn it into something good. Two weeks ago I was in Hastings, Nebraska, hearing one of the former returning citizens talk about how not only the community helped her to get a car, housing, a job, made her feel welcome and like she had an identity in Hastings, Nebraska, she's also leading the effort to recruit volunteers to do the same. So I think when we look at the gap, one big gap is educating the people that live in this state. We have a huge problem. We have a solution, but it takes working together. Can those folks overcome every problem? Of course not. They're not the professionals. We heard from them today and they're asking for help too. But given the right tools, they're doing some great work out there. We're seeing better than 90 percent of the people who are matched to an aftercare team stay out. We're also seeing 80 percent of that same group become part of the same team that served them. And when I heard one of the drug court officers earlier talk about people who are successful in drug court becoming a resource, it's happening on a lot of levels. Thanks for your time today and I'd be happy to take any questions. []

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SENATOR COUNCIL: Thank you, Paul. Any questions for Mr. Harrison? Senator Nelson. []

SENATOR NELSON: Thank you for your testimony today. You talk about going into the prison before they reenter with job interviews and things of that sort. Do you do quite a bit of that or is most of your work after they've actually left the prison confines? []

PAUL HARRISON: The answer to all of that is yes. (Laugh) But more defined, we want to have a plan two months before someone is released for what the first two minutes is going to look like on the outside, when the anxieties are the highest and you can't make a good decision because the world went from 3 miles an hour to 60. The community is there and... []

SENATOR NELSON: How do you make the arrangements for that person coming out to get to you immediately? []

PAUL HARRISON: Without reinventing the wheel as much as possible. []

SENATOR NELSON: All right. []

PAUL HARRISON: Nebraska Department of Corrections, I will tell you, has been great to work with. In fact, we just did a training in-house right here in Lincoln two weeks ago. They have cofacilitated events with us. But the main thing we want to do is utilize the already existing faith community, Toastmasters. Anybody that's already going into the prison, that's an opportunity to put an application into the hand of someone that could use it. []

SENATOR NELSON: Okay. Thank you. []

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SENATOR COUNCIL: Any other questions for Mr. Harrison? If not, again, thank you, Paul,... []

PAUL HARRISON: Thank you. []

SENATOR COUNCIL: ...for staying with us today and providing your testimony. []

PAUL HARRISON: Thank you. []

SENATOR COUNCIL: Michelle Shindler? Is Michelle still with us? If not, Liz Neeley. []

SENATOR ASHFORD: Oh my, that's a lot of stuff. []

LIZ NEELEY: (Exhibit 11) Don't be scared off by my big attachments. Thank you. My name is Liz Neeley. I am a senior research manager at the University of Nebraska Public Policy Center and director of Nebraska's Minority Justice Committee. Part of your legislative resolution talked to the equity and fairness of sentencing, and I'm here to talk to you a little bit about that issue here in Nebraska. The Nebraska Minority Justice Committee is an initiative of the Nebraska Supreme Court and the Nebraska State Bar Association established to examine and address issues of racial and ethnic fairness in the courts. Our mission is threefold: to ensure equal access to the justice system, improve diversity in the legal profession, and address racial disparities in the criminal and juvenile justice system. Our initiative began in 2001 with an 18-month investigation of the justice system. In regards to racial disparity, our study documented that blacks, Hispanics, and Native Americans are significantly overrepresented in arrest and incarceration rates in Nebraska. Nebraska's minority youth are disproportionately detained and disproportionately placed in out-of-home placements in relationship to their percentage in our population. Minority youth are less likely to participate in diversion. White defendants are more likely to be released on their own recognizance and post lower bond amounts than minority defendants, and black defendants are more

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likely to receive jail or prison time for certain offenses than are white defendants. Eight years later, racial disparity in confinement is still an issue. The Bureau of Justice Statistics has reported that nationally the ratio of incarceration of blacks to whites is 5.6 to 1 and 1.8 to 1 for Hispanics. Nebraska's rates are much higher than the national average. The ratio of incarceration to whites is 8.3 to 1 and Hispanics the ratio is 2.5 to 1. The disproportionate confinement of certain racial and ethnic groups has dire collateral consequences, including political disenfranchisement. For example, it's estimated that 22 percent of blacks in Nebraska aren't able to vote. It destabilized our families, decreased economic opportunities, perpetuates racial stereotypes, and erodes trust and confidence in our justice system. Since the release of our study, which I've given you a copy of, the task force has taken several steps to try to expand our capacity to examine and understand these issues. For example, we've worked with justice system entities to adopt a uniform definition of race and ethnicity. We've worked with the Legislature to obtain access to presentence investigations for the purpose of research so that we can examine and control for things like criminal history when looking at prosecutorial discretion or sentencing disparities. We've also worked with the Legislature to improve the quality of and reduce the incidence of missing race and ethnicity data from...that's provided by law enforcement and subsequently used by the courts. In the area of racial disparity, our committee is currently focused on pretrial decisions. Nationally, research on racial disparity indicates the disparity in incarceration rates is the result of a cumulative disadvantage faced by minorities across the many decision points along the continuum of justice. By understanding and reducing disparity in pretrial decisions, we hope to reduce disparity at subsequent stages in the process. For example we're currently involved in a research inquiry funded by the National Institute of Justice regarding failure to appear rates in Nebraska. What I mean by that if an individual fails to appear for a court date, a warrant can be issued and an individual can be detained. According to the Crime Commission in Nebraska in 2006, 17,313 adults were admitted into a Nebraska detention facility with a charge of failure to appear. That's 20 percent of the total detention population. A failure to appear is a real drain on the system and causes increased workloads for court staff, issuance of

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misdemeanor arrest warrants by law enforcement, and longer detention stays for defendants. Nationally, jurisdictions have implemented a reminder telephone or post card policy much like you get from your dentist or your doctor and have documented a sufficient reduction in failure to appear rates. The reason I mention this is that failure to appear rates differs significantly by rates. For example, the failure to appear rate in Nebraska for whites is 12.5 percent but for blacks is 27.4 percent. We're currently testing different types of reminders and events to see which is the most effective and have been able to reduce the failure to appear rate for blacks in Nebraska by 18 percent. We're hopeful that this will not only improve the efficiency of the justice system but play a small yet important role in reducing disproportion in minority confinement. Still many crucial decision points remain. We'll be looking at other issues such as bond disparities, etcetera, and would take any recommendations that this task force has for that role. On a final note, I just want to make a few suggestions. Our research has extended into the policy realm and the role that Legislatures play in issues of jail overcrowding and racial disparity. For several states have mechanisms in place to inform the Legislature about how the adoption of new laws of criminal offense will impact the justice system and correction populations. Sometimes this is an independent sentencing commission, sometimes it's a judicial policy research office or a legislative research policy office. But the idea is that any time there's a new crime or criminal enhancement, projections are made and provided to the Legislature about how the passage of this law will impact corrections population, how it will effect judicial workload, workload for public defenders offices, county attorneys, and the gamut of the justice system. In the past five years, these mechanisms have begun to provide Legislatures with what are called racial impact statements. Iowa is the first state to formally adopt this and I have run a copy of an article that outlines Iowa's policy for the adoption of racial impact statements. The same idea being whenever you receive projection for how it will impact corrections, you're going to see how it disproportionately could affect minority communities in your state. The increased cost to the justice system in incarceration has caused several states to do, undertake a review of the sentencing, sentences for crimes. For example, a bill was introduced in Colorado last year which

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decriminalized many misdemeanor level defenses. I think that the reexamining which crimes should even be punishable by jail time, may be a worthwhile endeavor and by misdemeanor offenses some very low level ones that (inaudible), the homeless, are these things that we really need to incarcerate people for which adds to our overcrowding issue. Iowa and many states have effectively addressed overcrowding in detention by investing in alternatives. Currently Nebraska (inaudible) has limited number of alternatives to detention. Research indicates that detaining while risk defendants does little to change their likelihood of recidivism and occasionally increases it, I just wanted to mention in closing that the evidence based practices on this does that providing alternatives to detention in your minority and low-income communities. So for example, your day and evening reporting centers are more effective in general and more effective in reducing disproportionate minority confinement by strategically placing them in low-income communities. Thank you for your time. I can answer any questions that you might have. []

SENATOR COUNCIL: Are there any questions for Liz? []

SENATOR ASHFORD: Would you find out, in Massachusetts, I think it is, (inaudible) courts in Massachusetts now. Well, I believe that in Nebraska around 80 percent of our inmates are released (inaudible). I think it's Massachusetts that are released after (inaudible). I think it's Massachusetts that saw 80 percent of our inmates are out after three years, prior to three years anyway. They're only serving that amount of time so they're not extremely dangerous people. I think it's Massachusetts. If you can find something, let me know. If your sentenced to 24 months or less, you do not go into the, you know, system at all. You're in the system but you're not incarcerated in Massachusetts, you know, complex. I don't know if that's right or wrong but I think Minnesota has something similar to that. []

SENATOR COUNCIL: And if there are no other questions, just a comment. I so much appreciate the work of the Minority Justice Task Force and as you know, Liz has been

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involved in it from the perspective of the Midland Bar Association. And I think it's important and I would urge my colleagues to review the report because the issue of racial disparity does indeed have an impact on the levels of incarcerated individuals in the Nebraska's correctional department and you don't focus on...you don't see the connection between a lot of issues and disparity like for example bond. I mean the effect that someone who is not able to post bond has on the likelihood of them being sentenced to a term of years as opposed to someone who is able to post bond and is free during the adjudication process. There is a distinct difference that can be identified in the length of their sentences, you know, whether the minimum is really the minimum or whether they get greater than the minimum and that does have an effect on our prison population. So I just urge fellow task force members to take a look at the data that's been collected by the Minority Justice Task Force and to look at what they're doing in Iowa legislative policywise to address those. []

LIZ NEELEY: (Exhibit 12) And I just wanted to say one last thing and that is, that I serve on the Crime Commission's committee for disproportionate minority confinement and they were unable to attend to provide testimony but have provided you some numbers for the situation in juvenile detention and then across other risks points in the system, and so I'm happy to leave that and make that available to you and the person you can contact...the contact information is in the header. []

SENATOR COUNCIL: Thanks again, Liz. Next would be representatives from the Ombudsman Office, Barb Brunkow or James Davis, and Mr. Davis, who has been here most of the day advised me in the hall that they would not provide oral testimony. We do have a rather lengthy and detailed document from Marshall Lux with regard to these issues and everyone received that as part of their packet. So is there anything else from the Ombudsman Office that...okay. So next would be Cheryl Weston. []

CHERYL WESTON: Cheryl Weston, kind of a community advocate and employer. Also have an empowerment called "People Empowering Themselves." And I want to thank

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you for the opportunity to be here. One, is to be able to speak before you, and two, to be able to support my senator, which is Senator Council who represents my district. []

SENATOR COUNCIL: And I'm going to interrupt you briefly, though. You need to spell your name just for the record. []

CHERYL WESTON: Cheryl, C-h-e-r-y-l, Weston, W-e-s-t-o-n. I just wanted to come in on some of the things that have been said and wanted to be here, as I said, as a support for this issue that my senator has presented and some of the things that have been heard here today, I sincerely echo. But I am opposed to and hopefully, that you will look at this ideal, sentencing is not longer sentencing, is not what is needed. I believe that the...what we need is to have some guidelines perhaps but we need to look more at prevention, intervention, and more youth programs so that they don't get into the justice system, the criminal justice system. And if building new prisons is the goal, then longer sentencing is the answer. However, if we're trying to avoid that, then we need to have more solutions such as objective, which are talk about programs. When we have these longer sentencing and specified term sentences for different actions of criminals, what has happened and it has been proven, is that too often those longer sentences are disproportionately given to the poor, people of color, people who are economically, socially, and financially disadvantaged. And we all know that, even when the instances where the federal government has changed their ruling regarding sentencing for crack, cocaine, because that was disproportionately against people of color. I believe that what we need are resources. We need the intervention. We need education, living wages, so that when people come out of the jails, that there is somewhere for them to go. And perhaps if there was more what we need as Senator Council mentioned earlier, those resources, whether it is rural or urban, the problem is still that the availability of supervision and the availability of resources. We don't have those. We need more of that. We need more community between a private enterprise and the community resources. We need more partnerships, not longer sentences. And hopefully that as you look over all the material and you have listened to everything that

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has been said today, that that's the direction that we will go to is to try to find more community resources and help them to be able to work more before they get into that. Give more prevention, more intervention. I can't stress it enough. I know maybe I'm repeating it but I do believe that that is the answer and particularly for our youth. We need more youth programs and organizations coming together and particularly working with the education system, working with private businesses who are willing to take and help and if there was this understanding and cooperation we wouldn't have some of the problems that we are having. But longer sentence is just not the key. We have to find ways that we can help inmates or individuals who get into that system, particularly the young to feel that they have a position that they can be able to excel with whatever their potential may be. We need to be working more on those minds trying to bring that potential and draw it out. And it's going to take all of us working together in order to change that. We wanted to make our society safer. We don't want to have the fear. And sentencing, long sentences is not the answer and hopefully, again, I would say, that if you would work towards finding, making it more available for resources, supervision, more intervention, more prevention, that we will have a safer society and we will have less of our jails and prisons. And just as I said, here is from the community and what I believe and really want to support and if you have any questions, I would be more than happy to answer those. []

SENATOR COUNCIL: Thank you, Ms. Weston. []

CHERYL WESTON: And you didn't give me my red light. (Laughter) []

SENATOR COUNCIL: I think you're the first person today that I didn't. Are there any questions for Ms. Weston? If not, again, Cheryl, I appreciate your response to the announcement to the community that this was an opportunity for them to come and present on these issues. And just for the record, acknowledge that you and your group as well with Ms. Mickles are involved in the Table Talk that is proceeding on a regular basis. And the intent there is to develop these public-private partnerships to work with

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the state, work with corrections and the private sector, be it principally not-for-profit at this point, but to the extent that they're any profit entity, the (inaudible) of the employer for the most part who are participating that we need to develop more of those collaboratives and to provide the resources to enable them to carry out their work. So I thank you again. []

SENATOR FULTON: Can you people...what's the name of the group again that your with? []

CHERYL WESTON: We're Table Talk, that's one of them that I'm involved in and then, People Empowering Themselves. []

SENATOR FULTON: Thanks. []

SENATOR COUNCIL: Thanks again, Cheryl. Next is Bob Creager. []

BOB CREAGER: Senator and Council Members of the committee, my name is Bob Creager, C-r-e-a-g-e-r. I'm an attorney here in Lincoln in private practice, have been so for 32 years. This year I'm the president of the Nebraska Criminal Defense Attorneys Association and I was asked to discuss at least on a portion of this debate a little bit about sentencing guidelines. But before I talk about those things, I think some broader comments, at least to put my discussion in perspective, would probably be in order. You know, a discussion about crime and punishment is really one of the more important discussions that government has with its people and the people have with its government. It is the essential function of government to order society and to make us safe from people who prefer to have a disorder of society. And in my lifetime, I was in law school in the 70's it's fair to say that the theories have been harsher on crime, more things become crimes, more crimes become more serious. We tend to be harder on crime, not soft on crime. Nobody likes to coddle criminals, we have zero tolerances offenses, we have mandatory minimums, but you know, it wasn't always that way. This

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pendulum does tend to swing. And I remember learning in law school that before we had indeterminate sentencing, which is what we have now, we had determinate sentencing which was if you robbed a bank you got ten years, you broke rocks and you got out. They must have thought that was a good idea until somebody came along and said, well, that's not a very good idea. We think we should have indeterminate sentencing in which a judge says, you robbed a bank, you get five to ten and somebody else decides when you get out. And oh, by the way, let's look at the real causes of crime. Let's look at why you robbed the bank and let's look at the psychology of bank robbers and so, we try as a society to find what it is at the time that directs us to make good common sense judgments about crime and punishment. Sometimes the people talk to us and say you're not hard enough; sometimes we're harder on crime than the people want us to be, but anyway, that's part of the debate. This pendulum swung the other way in about 1987 when the federal government decided to federalize a lot of state crimes. They came up with sentencing guidelines as a way to equalize disparate sentences in the federal system. They layered on top of that mandatory minimum prison terms for first-offender and now we have a federal system that is out of control with people warehoused in facilities run by private contractors who are making...I suppose when we look back in history, we may say that people did dumb things way back then. I wonder in 50 years from now what they will say about what we're trying to do now. But having said all that, one of the pendulum swings towards this sentencing guideline philosophy, I've changed my view on. I'm the president of Criminal Defense Attorneys Association and you might think I would be against any concept of guidelines. Most of the members in my organization would probably philosophically disagree with me but I have three stories to tell and I'll try to get them in before the light turns red. In 1987 I represented a gentleman by court appointment named Mr. Gobel. Mr. Gobel was a pretty good forger. He had plates for \$100 bills that the Treasury admired. He was caught in Lincoln, Nebraska, and he was prosecuted in federal court. Great guy, good criminal. I was a young lawyer at the time and I decided these guidelines are a bad idea so I'm going to challenge them and I filed a motion and was successful in having Judge Urbom declare those guidelines to be unconstitutional and they would not apply. So I

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was feeling pretty good with myself. The federal law at the time required a five year sentence for people who did this but the sentencing guideline said the sentence should 36 months. So we went to sentencing and having successfully convinced the judge that the 36 months was not proper, he sentenced him to five years. Needless to say, I was shocked and fortunately for him, his sentence was reduced on appeal and he got the 36 months. So my immediate reaction was, well, these guidelines aren't so bad. They do tend to have an upward and downward limit. Two other cases: I represented a young man who was driving home from Lincoln to Omaha on the interstate and he hit a pedestrian in a construction zone and killed him, fled the scene, and was arrested in Omaha. He was brought back, prosecuted for motor vehicle homicide, got probation, and weekend in jail on the weekend that he killed the guy. That was his punishment. About six months later I was representing, or asked to represent on appeal, a kid from the western part of the state who was driving along a county road, hit a pedestrian, called the cops, came back, his lawyer pled him guilty to manslaughter and he did 8 to 16 years. They're both 19 years of age with no prior criminal record. Now I don't know whether you think the eight years was too much or the one year was too little, but the disparity is unconscionable. And so when we look at who is in jail and for how long, the question of sentencing guidelines has a proper role. But I don't want anyone to think that guidelines are the answer. Guidelines could tend to increase the prison population if they're skewed towards making more things subject to minimum terms. And Nebraska is one of the few states that I run across that in their statutes and particularly the criminal probation statutes, we have a preference by statute for probation, which actually says in most cases the court should withhold the sentence of probation only unless there are specific circumstances found to exist. So we have a system that actually has built into it a fairly rational process of looking at offenders, at looking at first-offenders in juveniles, looking at nonviolent offenders, and looking at probation. The problem is, that when the Legislature speaks to the people and that speaks to the courts by making more and more things criminal, make things more serious, it sends the signal that what used to be a misdemeanor titled violation is now a felony titled violation.

Felonies are more serious than misdemeanors, those people are more likely to go to

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jail. So when you speak to us about what is crimes and which crimes are more serious than others, you indirectly affect the number of people that wind up in prison. So I would favor some notion that we try to equalize the disparity of sentences in this state to some discretionary process that does not interfere with our statutory preference for probation but which doesn't unintendedly produce the consequence of just putting more people in jail. It should be guided for putting less people in jail. []

SENATOR COUNCIL: Thank you, Bob. Any questions for Bob? I just have one, Bob. Earlier, Ellen Brokofsky testified, and I trust that I'm attributing this to the proper witness, but that in her view sentencing guidelines should not be undertaken unless it's coupled with community corrections. Do you share that opinion? []

BOB CREAGER: I spent so much time in the federal system working through the nuances of that, you know, that that's the model most people followed to the extent that guidelines are trying to do the opposite of what the federal guidelines do, if I can just explain that. The federal guidelines clearly moved the bar so that more people went to prison for longer periods of time. That kind of guideline is fool's errand in my position, in my opinion. Now to the extent that our guidelines might move towards the other end, that is expanding the people who might otherwise get probation, by taking this and shifting it into the community corrections or the alternative, yes, absolutely. So to the extent that you say, well, we're going to expand the definition of offenses for which probation or minimum sentences would be the recommended sentence, absolutely, I agree. []

SENATOR COUNCIL: Thank you. Did my question prompt any questions? If not, again thank you, Bob. Next is Tiffany Seibert. []

TIFFANY SEIBERT: (Exhibit 13) Good afternoon, my name is Tiffany Seibert, T-i-f-f-a-n-y S-e-i-b-e-r-t, and I'm the policy coordinator with Voices for Children in Nebraska. Many of the comments that have been made prior to me have covered lots of

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issues that Voices for Children is concerned with, particularly regarding juveniles in the juvenile justice system. I would like to talk a little bit. There have been a number of references about who we're scared of and who we're just mad at. It's my contention, which is supported by a large body of research, that adolescents in conflict with the law present great opportunities for reform and rehabilitation because their characters and their personas are not yet fixed or stagnant. To protect the public in the long run and to reduce recidivism, as adults it's important to remember that the majority of juvenile crime offers us much less to be afraid of, particularly because of the great capacity for reform given the right interventions. To the end of examining the fiscal impact of sentencing of juveniles, we would encourage the sentencing and recidivism task force to study the sentence of life without the possibility of parole for juveniles. We would encourage you to take into account the large body of research on adolescent brain development and a juvenile's increased capacity for reform that Dr. Robinson mentioned previously. Voices for Children believes very strongly that children should be held accountable for the crimes they commit. However, they should be held accountable in the manner that reflects their age, their emotional and neurological immaturity and their capacity for rehabilitation. Life sentences for adolescents ignore that young people have a unique ability to change. They continue to develop their identity and the direction of their lives well into their 20's. And no one can really know definitively what kind a person a 13-year-old, a 14-year-old or a 17-year-old will become. So the sentence of life without parole is a tremendous commitment of state resources for a long term for several years before we really know for sure what kind of person that child will become and whether or not we should be afraid of them. I'll skip the rest of my testimony. You can read it there but I received correspondence very late last night in fact from Mona Schlautman and she asked me to present her message to you. She says: "I lost my 15 year old son Jeremy Drake to a homicide in 1992. I and my entire family were absolutely devastated by this. I don't believe a worse thing can happen to a mother. I was glad the 2 young men were arrested and prosecuted. They certainly deserved severe punishment for their crime. Nothing can ever bring my son back. I does me or anyone no good to remain bitter. I have chosen to forgive both of the young men. I have

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for several years kept up correspondence with the younger of the two, who was only 17 at the time. He committed a terrible crime. I don't try to make light of that. I also am fully aware of his background and upbringing. He was on his own at a young age, with never knowing his father. There has been a freedom and joy in reconciling with him. I want a better life for him. I firmly believe my son does also. It makes perfect sense to me to allow this young man the opportunity to rehabilitate and make amends to society. I know he is truly remorseful and regrets that horrible night. I know he has learned from his mistake and has turned his life around, even without the hope of parole. I firmly believe he should have the opportunity for a life outside of prison. It's hard for him to stay positive and motivated while he has no chance for release. I know after teaching junior high and high school that many young people are not thinking as clearly as they need to or as adults. It would do my heart more good to be able to see these people given the opportunity for productive lives outside of prison. This, of course, would also be a good way to help reduce the population and the cost of incarceration. I trust the pardons board to do their job and not release anyone who might still be a threat to society. We need to be a people of compassion and forgiveness. Give these young people a chance. God bless you for your work and thank you for your consideration." And I think Mona's message extends beyond juvenile sentence to life without parole but really the majority of juveniles we find coming into the juvenile justice system. Thank you. []

SENATOR COUNCIL: Thank you, Are there any questions for Tiffany? And Tiffany I want to thank you and Voices for Children for doing the research that you conducted thus far in providing...in your willingness to provide information and assistance to us on the broader issue of sentencing and recidivism but particularly juvenile. []

TIFFANY SEIBERT: Right, and I would also offer Voices for Children would be happy to collaborate with any members of the task force and their staff to provide data or information that we may have access to through a lot of our national resources. []

SENATOR COUNCIL: Okay. One final question. Were you present when Hank

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Robinson testified and I posed a question to Hank about life without possibility of parole for juveniles and do you agree with his statement that after a certain period of time, that a juvenile who has committed the kind of offenses that now result in life without possibility of parole, should be reviewed or assessed to see what kind of adult they've become? []

TIFFANY SEIBERT: Right. Absolutely. Dr. Robinson said we should at least wait until they're 30 and see what kind of person they become. LB307, the bill that you've introduced, would put most juveniles into their late 30's if not 40's before they even became before the parole board. And there are a lot of other states who are looking at things like that, 20 to 25 years. Some states are even looking at legislation, just 10 to 15 years after the time of the commitment of the crime. And it's important to remember that, you know, it's the possibility of parole. It's certainly not a guarantee for these youth. []

SENATOR COUNCIL: Because I've looked at a couple of those states, Iowa and Kansas, so. And I chose to look at them because of their proximity to Nebraska and probably share ethic and value systems. So thank you again, Tiffany. []

TIFFANY SEIBERT: Sure, thank you. []

SENATOR COUNCIL: Next is Ollie Perryman. []

OLLIE PERRYMAN: My name is Ollie Perryman, Frontline, Inc., gang intervention, mentoring and reentry. I'm here in support of Brenda Council and my good friend Brad Ashford. I'd like to make a few comments when it comes down to recidivism. Number one, I'm an ex-felon, been inside NSP, OCC, USP Florence, Leavenworth, San Quentin State Prison. Been to a few prisons. But right now I think we're dealing with issue that very important because I see recidivism is not going to go away until we fix the problem that's inside these prisons. And the problem inside these prisons is, number one, overcrowding. It's impossible for an individual to get these mind-changing experiences

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in prison due to extensive waiting lists to get in, as mental health, drug diversion classes, alcohol classes, GED classes, high school classes, a college course in prison, the lines, and the waiting on these activities is just too long. And we need to come on another way to help people from prison to integrate with society. And I propose to the senate that we need to think outside the box. These drug diversion programs in prison is not working. A person taking these programs in prison get out of prison and they're back in the same position they was before they went to prison. I think if you put more programs in there that deal with a job component because most offenders that get out of jail, they don't want to go back to jail. But they hide their hands that tie behind their back. They have nothing else to do but revert back to the same thing that put back in prison anyway because there's nothing out there for them and they wasn't taught anything in prison. So I propose that these companies that work inside these prisons like Kawasaki, and these welding programs, other programs they have in prison, I feel that they should be more instrumental on working with the people from inside a prison and once they get in society. That's one way to reduce recidivism and I feel if we implement that, it will come a long way. And if we look back to what 1869 when Nebraska had it's first prison and now we're 140 years later, 2009, we have ten prisons. If our capacity of all our prisons was 3,172, we now have 4,445, we have 139.34 percent capacity. It's getting kind of ridiculous and I think you gentlemen and ladies are speaking on giving them more time in prison. Me, personally, that don't make no sense to give a person more time to extend his stay in prison when inside he's learning nothing. My job in prison, while I was in prison my job was do this: wipe down the ice machine. An hour later, somebody else came behind me and wiped down the same ice machine. Another hour, somebody come and do the same thing. This is my job. Two years I had to do this. It was so crowded, I couldn't get in schools, too crowded. The only job left was picking up trash on the yard. That's not...I mean, that's nothing. So I said, since I'm going to be...I'm just going to wipe down the ice machine, get paid \$15 a month. How can I take that to the streets? How can I take all I learned in prison to the...I didn't learn nothing in there. I self-taught myself because I didn't want to go back to prison but there's others in there just not thinking like me. You know, they not trying to.

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They need prison to help them. But there's nothing in there for them to do. And a man said, a Cornhusker State Industries. They do a lot of good work. I worked for Cornhusker State Industries. I did a lot of furniture...passed out furniture on the trucks, but after we do all this inside prison again, where does this take us when we get outside the prison. We have nothing. There's nothing out there for us. We need better resources. I think all the community programs need to come together and have like a one-stop shop for entry outside but have a one-stop shop for them inside as well. These brothers that's inside, they want training. They do not want to come back to prisons. But again, if you tie somebody's hands behind their back with no training, they're going to come back. Most people like myself went to prison, got out, I had a...I was \$17,000 in arrears on child support. That's another obstacle we have to overcome. Now I'm \$20,000 in arrears on my student loan. Those are other obstacles. So now I'm working and child support is taking all my money. I'm saying, oh God, I want to do this, I'm willing to do this. I want to try my luck again at something different. That's what they thinking so we have to figure out ways to think like, to feel like they can look inside them bars. Put yourself in their shoes for one day, one day, one hour. What would I want when I come out of prison? What would I want? So I won't have to come back up in here. That's the key, what we have to give them so they won't come back. We don't need to reinvent, we don't need to keep spinning our heads. It's okay, we aren't going to do no extensive sentencing. We are going to find a better way to compensate brothers and sisters, young and old, inside them prisons so we know when they release them there, they're not coming back. If we don't do that, all you're going to be doing is ask for more money and going to build another prison. You already are over capacity right now. What is the next step? To build another prison? It's not working. Prisons are not working, they're not. If you have any questions...I'm through. If you have any questions, be glad to answer them. []

SENATOR COUNCIL: Thank you, Mr. Perryman. First, I neglected to ask you to state and spell your name for the record, if you would. []

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OLLIE PERRYMAN: Ollie Perryman, O-l-l-i-e P-e-r-r-y-m-a-n, president and founder of Frontline, Inc. []

SENATOR COUNCIL: Are there any questions for Mr. Perryman? Senator Carlson. []

SENATOR CARLSON: Thank you, Senator Council. Ollie, you said that you didn't receive help, you didn't receive training, but something turned you around so you didn't want to go back. What was that? []

OLLIE PERRYMAN: You want the truth? []

SENATOR CARLSON: Yes. []

OLLIE PERRYMAN: God. []

SENATOR CARLSON: I agree with you. We can't legislate that, but without spiritual help, there's no hope. []

OLLIE PERRYMAN: It was two problems for me. I been going on since I was 9 years old. I'm 51 now. I got this epiphany when I was at USP Florence in 2002. I did twelve and a half years in prison. And I wasn't supposed to get out of prison. By the grace of God I'm out and I promised Him if he let me out, I would never, ever come back to prison. I would do everything in my power to prevent somebody else from doing the same thing I did to go back to prison so that's what I do now. I work with the kids, I work with youth, I go to DCYC and talk to the kids, I go to NCY and talk to the youth but at the same time they tell me the same thing that I already know, I mean there's nothing in here. There's nothing in here for us. We can't go to school, it's too crowded. We still on lockdown 13 hours of day. What are we going to do when we get a (inaudible), so it's my job as a community activist to say, man, see me when you get out. I'm going to try to find something for you because I don't want you to go back to jail, you know. So the

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point is, what are we going to do? How are we going to fix the problem? I mean, put something up in them prisons with them kids, expressly them kids can get a viable education. They're not getting it in DCYC, they're not getting in NCY. They're not getting nothing up in there, nothing. They're not getting anything. And I'm going every Thursday, I'm up there talking to them kids, they don't get anything and I know from my past experience, I didn't get nothing out of there. I chose by myself and by the grace of God, I said, enough is enough. I can't keep spinning my wheels. I can't keep doing this. And for my children, I couldn't keep on doing that, I'll remind you. But I say, see how long it took me from 9 to my 40's. Do you want another person like me? Or some more people falling behind me when they turn 40 because they're not quick. We got to stop them now. How do we do that? Create jobs. Create some kind of job training inside the prisons that will fall into the streets. That's my best advice. If you don't do that, we'll be at this table again with the same old problem with another prison, ask for more money, keep more people locked in jail, and that's not going to be the answer because one thing for sure, and be certain, they're going to come back out. They're going to get released. What we going to do then? []

SENATOR COUNCIL: Thank you, Mr. Perryman. Any other questions for Mr. Perryman? []

SENATOR ASHFORD: Ollie, I appreciate you coming and I do...we've had great conversations and I really appreciate...and I agree with you, I think, especially with the younger ones who are certainly at DCYC but even though individuals I met out at McCook and others, if they have a job, a reasonable prospect for a job, that's going to motivate them, wouldn't you agree with me? []

OLLIE PERRYMAN: Yes. []

SENATOR ASHFORD: If that doesn't exist, they're back in the street. []

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OLLIE PERRYMAN: They're hustling. []

SENATOR ASHFORD: They're in the street, aren't they? []

OLLIE PERRYMAN: Yes. []

SENATOR ASHFORD: And those kids from Kearney and from Geneva have gone over there, they're not back on the street. []

OLLIE PERRYMAN: Yes, that's what they know. []

SENATOR ASHFORD: Like lots of them. []

OLLIE PERRYMAN: Yes. Because you got to understand, that's (inaudible). I knew the streets, so they pick it up, you know. []

SENATOR ASHFORD: But it's right in our face and they come back on the street and if they don't have a job or a place to live that's stable, they're going to get back in the gang, they're going to go back and reoffend. And doesn't that happen every day all the time? []

OLLIE PERRYMAN: Every day. I'm dealing with a young man right now, right now as I speak. Just got out of NCYF. He has no job, has nothing, he's hustling. My only advice to him, dude, there's a better way. But I can't tell you not to eat, he has four babies. []

SENATOR ASHFORD: How old is he? []

OLLIE PERRYMAN: Twenty-one, four kids. But he's this tall. See what I'm saying, he's this tall, four kids, don't want to hustle, but saying, what else can I do. []

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SENATOR ASHFORD: Right. []

OLLIE PERRYMAN: He said, Ollie, can you give me a job. I can give you some advice. I don't have any job (inaudible). My thing is, man, all I can tell him is be careful. I can't tell him not to feed his kids, because I understand. So what do we do? We train them in there, have something for them when they get out of prison, recidivism will cut down 100 percent, trust me. If we don't do that, we'll be doing this all over again. []

SENATOR ASHFORD: Thank you, Ollie. []

SENATOR COUNCIL: Thank you, Mr. Perryman. Thanks a lot Ollie. I noticed you were here at the beginning of the hearing. I appreciate your staying the entire day. []

OLLIE PERRYMAN: Yes. No problem. []

SENATOR COUNCIL: Lauri Westfall was next and I noticed that she left and what she's doing with Heartland was reflective in another, Mr. Harrison's testimony. I also want to note publicly for the record that Ray Kyles, an individual who signed up to speak, was here earlier, had another commitment back in Omaha and needed to go back. Mr. Kyles established and operates a not-for-profit organization in Omaha. The name of it is "You Are Not Alone" and he works with exoffenders in providing reentry aftercare. Next is Ronald Thompson. And for you, Mr. Thompson as well, if you state and spell your name for the record and I appreciate you as well, have been here all day and I appreciate your patience. []

RONALD THOMPSON: (Exhibit 14) Thank you. My name is Ronald Thompson. I'm...that's R-o-n-a-l-d T-h-o-m-p-s-o-n. I am the director of the Boys Town National Research Institute for Child and Family Studies at Boys Town. I'm a child psychologist by training. My specialty is intervention and services research. It's not juvenile justice but you got me anyway. (laugh) What I want talk to you about today is...and I appreciate

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the opportunity for a private service provider like ourselves to give you some of our experience in this area. And I'd like to give you some things that...a lot of things have been mentioned today but things may be kind of unique from our vantage point as a service provider. I know the most about the research that we've done and we've been doing a (inaudible) research for the past 20 years at Boys Town. My job is to conduct that research along with a scientist from university-based centers and to find out what other research is going on that we ought to know about that's going to be helpful to us in doing our business. Let me say briefly to start with that Father Flanagan almost a hundred years ago said that for kids that are in trouble with the law, what they need is they need people that care about them, they need an education, they need job skills and they need good discipline and they need to learn how to pray. It doesn't matter how they pray but they need to learn to do that. []

SENATOR ASHFORD: In which order? (Laughter) []

RONALD THOMPSON: I'm not sure. I'm not sure which order he said it in. But was interesting to me is that when I started my career in this business which was 50 years later, still the predominant method for helping juvenile offenders in our country was to lock them up. And secondly, what I'd say is, that the research that has been done since that time has kind of supported Father Flanagan's vision about what...not just boys, but what kids need who are offending, but giving us some much more specific methods to conduct some interventions. First of all, longitudinal studies about antisocial behavior indicate that a lot of it is related to discipline and parenting to school failure and to association with deviant peers or hanging out with the wrong kids, which sometimes...a lot of times happens together. As a result, the most effective interventions have addressed all of those areas and I'm going to talk mostly about what I call comprehensive interventions for kids which are those which we have the most experience with. And this has been mentioned before, but the interventions that have a solid evidence base have really been those that a cognitive behavioral approach but they also combine that with what I call an ecological approach, meaning it's

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broad-based and involves lots of environments where kids are involved and also involves good relationships with both adults and peers as process in that intervention. Our own teaching family model that was developed at the University of Kansas was developed as a community-based alternative for kids that were in trouble with the law. That along with interventions...fostercare intervention developed at the University of Oregon and an in-home intervention developed at the Medical University at South Carolina have all demonstrated that they can cut recidivism rates for juveniles in half with an intensive intervention either in a family-style residential setting, in a therapeutic fostercare setting, or an in-home environment using some of these kind of methods. Very briefly, you know, the things that are consistent are fair and consistent discipline, a lot of supervision of kids, a focus on relationship, keeping kids away from other kids that have antisocial behaviors, school, and a lot of involvement with family support and those can be formal and informal supports. Let me spend the rest of my time talking about our current focus in what we think is very promising for our kids that have offended in the juvenile justice system as well as other at-risk youth. The last page of my handout is a graphic about what we call our integrated continuum of care. What we feel like happens a lot of times to kids in service systems, is they get served by a lot of people that don't necessarily talk to each other and that use different methods, and what does that seem like to the youth or the family involved. How do they understand all that? And so our answer to that or what we think is promising is an integrated continuum of care that ranges from locked residential treatment all the way to school and family support services and prevention programs. We've developed a lot of these interventions. We're in the process of testing those. Our preliminary results are encouraging, but what we're looking for at this point in time is an opportunity to do a demonstration of what we think is a promising approach for kids. What we're looking for is partnerships with public agencies to do this kind of demonstration and see if this, in fact, will provide the kind of results that we think it will. My colleague at Boys Town is actually meeting with the director of the office of Juvenile Justice in Delinquency Prevention tomorrow in Washington, D.C. trying to convince him about this idea and we're looking for opportunities to partner with public agencies to see if that makes a

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difference. Thank you very much. I'd be willing to take any questions that you have. []

SENATOR ASHFORD: Senator Nelson... []

SENATOR NELSON: Give me an example of some public agencies that you would work with. []

RONALD THOMPSON: State government, county government, yeah. []

SENATOR COUNCIL: Health and Human Services, you mean. []

RONALD THOMPSON: Departments of Human Services or Juvenile Justice, that's what I'm talking about, yeah. Because this has to be provided in a context of a larger system, you know. We're a private service provider. []

SENATOR NELSON: And the demonstration would...could you sketch that out just a little bit? []

RONALD THOMPSON: Sure. Let me give you a quick example of something that we've done. So far, what we've had an opportunity is to integrate parts of this continuum where we've had the opportunity to do that. We don't offer all those things in any one location now because we haven't had the opportunity to do that, but for example, we've gotten a grant from OJJDP to deliver a service which blends our, what we call our teaching family model, our family style residential program where six to eight youth live with a married couple and they're the primary treatment agents and using a lot of these evidence-base practices. We blend that with an in-home intervention that involves a comprehensive assessment of the family and their supports and their stressors and their needs, and so forth. And so we're simultaneously working with the youth in a residential setting and the family, and then starting to work with them as the youth makes visits at home, and so forth. So we've gotten a grant to be able to actually deliver

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that program the way we think it does and what it involves is supporting the youth when they go home when they're reunified with their families with this family-base intervention. So we've gotten a chance to do that and to evaluate the effects. We're just at the, kind of the early stages of that. Okay. Does that help? []

SENATOR NELSON: Yes, it does. Thank you. []

SENATOR ASHFORD: Yes. []

SENATOR CARLSON: Senator Ashford. The...do you have...does Boys Town turn anybody away? []

RONALD THOMPSON: Yes. []

SENATOR CARLSON: So you've got guidelines there to go to determine... []

RONALD THOMPSON: We do. We do. []

SENATOR CARLSON: Somehow whether you think you can really help this individual. []

RONALD THOMPSON: That's the primary thing that we try to determine when we get referrals is do we think that our program meets the child's and the family's needs, yes. []

SENATOR CARLSON: Okay. And your response to Senator Nelson, when you work with the family, that is that youth's family. []

RONALD THOMPSON: That youth's family. []

SENATOR CARLSON: And then much of the time do you find that that's where the real

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problem is? []

RONALD THOMPSON: Like I said before, you know, and for a lot of things, but for antisocial behavior, frequently you see three things. You see parenting, child discipline kind of problems, you see school failure, and you see kids hanging out with the wrong kids. And so frequently there is...there are family issues related to the kid's problems, yes. []

SENATOR CARLSON: Okay. Thank you. []

SENATOR ASHFORD: I might just...do you think that those three factors have changed much since Father Flanagan started the Boys Town in downtown Omaha? []

RONALD THOMPSON: Good question. []

SENATOR ASHFORD: I doubt it. []

RONALD THOMPSON: The factors haven't changed too much, I don't think. You know, there's certainly a lot more safety nets and a lot more things that are available. []

SENATOR ASHFORD: But there are a lot more safety nets but there are a lot more kids that get in trouble. []

RONALD THOMPSON: There are. []

SENATOR ASHFORD: So I wonder if there's an inverse...I don't know, was that the right word? []

RONALD THOMPSON: Inverse relationship. []

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SENATOR ASHFORD: Inverse relationship between this, more safety nets equals not fewer problem children. So I don't know what that...maybe the praying thing is the way to start. []

RONALD THOMPSON: An observation that we've had, you know, historically, I think you asked a question earlier senators, are drug problems getting worse. You know up until the 1970's we didn't get very many kids with a lot of drug problems. I mean, we got some but we didn't get very many. []

SENATOR ASHFORD: Well, the trigger may be different today than it was in the...before World War I but those factors that you mentioned are probably very similar. []

RONALD THOMPSON: Family school, yeah. []

SENATOR ASHFORD: And hanging around with the wrong crowd, so. I just have a couple of...and I know that we're very late in this but I support the residential care model. I think it's something we must implement. My experience at OHA, I've learned that if you can't give young people that are really in trouble and really distressed an opportunity to be somewhere else, they're going to go right back in there. It is absolutely, almost a certainty that that's going to happen. So if we want to ensure failure, that's what we do. If we want to find alternatives like the Boys Town model, then we try to explore those. So I think that's...I mean, not...that I agree with it, doesn't mean much but I do so you don't have to...but the other, what is...just...how much does it cost to have a young person at Boys Town or at a home at a residential setting? And I'm not going to hold you to any, is it \$50,000 or \$20,000? Is that what it costs? []

RONALD THOMPSON: Yeah, something like that. About \$50,000 a year, I think, is a reasonable guess, yeah. []

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SENATOR ASHFORD: Because you have to have full-time people living there. []

RONALD THOMPSON: All the stuff that that takes. []

SENATOR ASHFORD: Plus that includes their education. []

RONALD THOMPSON: Exactly, yeah. []

SENATOR ASHFORD: Is the residential care you have, is that all out of Boys Town or do you have other? []

RONALD THOMPSON: We have, I think, ten sites that have group homes around the country. []

SENATOR ASHFORD: But in Nebraska? []

RONALD THOMPSON: In Nebraska it's all in the village of Boys Town. []

SENATOR ASHFORD: And what is it, Father Boes was telling me, is 45,000 children are being care for every day. []

RONALD THOMPSON: Something like that, you know, if you count everything that we do, yeah. []

SENATOR ASHFORD: Forty-five thousand children. So you have some empirical knowledge. []

RONALD THOMPSON: We think we do, we do. And, you know, the comment that I'd make about the residential program and why we are doing this demonstration project is that we think we used to say the best way to help kids, juvenile offenders, is let us keep

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them for at least 18 months, yeah. And if you really want us to help them, let us keep them until they graduate from high school. But the cost is prohibitive on that many cases and so what we're trying to do with this in-home intervention is actually speed up the treatment by working with the family and youth at the same time. []

SENATOR ASHFORD: But the residential, how many can you serve on the residential side? []

RONALD THOMPSON: In Omaha, about 450 kids. []

SENATOR ASHFORD: You can. []

RONALD THOMPSON: Yeah. []

SENATOR ASHFORD: And how many do you have there now, 450? []

RONALD THOMPSON: About 449, I think. (Laugh) []

SENATOR ASHFORD: And they're not all from Omaha, though, they're... []

RONALD THOMPSON: No, no. Yeah, probably two-thirds or at least driving distance, you know, this area, yeah. []

SENATOR ASHFORD: Okay. Thank you. Any other questions? []

SENATOR NELSON: Senator Ashford. Just to follow up on that a little bit, this...you're to speed up the residential, is what you're attempting to do. You have representatives from Boys Town that are going into these homes on maybe what, weekly basis or a daily basis, and does that mean then that these kids are leaving Boys Town a little sooner than they ordinarily would? []

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RONALD THOMPSON: Yes, yes. We have...that's what we're trying to work out the kinks of that right now and to demonstrate that if we can successfully work with the family using a very similar approach, same language, you know, so it's not so confusing that we can actually reduce the length of stay in residential, provide in-home, do it at an overall less cost, total cost, and get the same outcomes. We haven't proven that. That's our goal. You know, that's what we'd like to demonstrate. []

SENATOR NELSON: I'd like to comment on a question by Senator Ashford that things haven't changed much since when Father Flanagan...when you started out you mentioned the three different areas there. It would seem to me that in the area of discipline that's changed, the fact that when he started there wasn't so much a lack of discipline as it was an inability to take care either...or they can't take of them, that's why they were placed there. Now that's changed a lot. A lack of discipline in the home and knowledge how to do effective discipline I think is a major factor. []

RONALD THOMPSON: It is. We think so too. []

SENATOR COUNCIL: Any other questions for Mr. Thompson? If not, again, Ron thanks for staying and being patient and providing us with this info. []

RONALD THOMPSON: Thank you. []

SENATOR COUNCIL: Thank you. Next I had a representative from the Empowerment Network. I don't know whether they're still here or not, but they did indicate their desire to provide testimony. The next, and quite frankly last, witness form that I have is Mike, is it Morrison? []

MIKE MOROSIN: Morosin. []

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SENATOR COUNCIL: Anyone else here that plans to testify? Okay, and with that, Mr. Morosin will be out last witness today. And if you would state and spell your name for the record. []

MIKE MOROSIN: (Exhibit 16) Mike Morosin, M-i-k-e M-o-r-o-s-i-n and I did leave a handout that hopefully got passed around. It was...that I...it was into your office and if you got that "Failure of the Individual Treatment Model". And so that pretty much will cover a lot of the other stuff. And what I want to bring up is what is the value of the excon once or the convict once he leaves the penitentiary or whatever setting he has. And how does our society view that value in society? I was in the penitentiary for about ten years, in and out, and came out in 1980. I started back Southeast Community College, had some programs in there, had my GED when I came in. So I went out and applied to the University of Nebraska Teachers College, got in Teachers College, graduated out of Teachers College in 1986 with a bachelor of science in sociology, a bachelor of science in physical education and health, coaching endorsements in track and field, swimming and diving and gymnastics. So I go before the State Board of Education and their answer to me was, well, Mr. Morosin if we were to find you morally competent to teach, we don't want your kind in our system. Now that was a hell of a statement because I said, well, what is my kind? You are out there saying, well, why don't those people get jobs? Why don't they do something with their life? So I go out and I do something and you're kind of hit in the face. So I backed up a little bit and went, hum, this is kind of different. You know, you've worked that hard six years, graduated with 3.76 average, you know, which is up there and do all the work and everything that was needed. So I took another direction. I caught a ride with a friend of mine that a drove truck to Denver every weekend so I went out to Denver. I got an application and went into the school of engineering and applied science at the University of Colorado at Denver every weekend for a whole year, earned a certificate of completion, came back, but yet no jobs. Went out, papered the market, no jobs. So I'm languished around for a little while. Fortunately, I had some skills. I could tune the cars up in the neighborhood and people would help in the neighborhood. So I said, well, I'll go to Lincoln School of

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Commerce. I earned a legal assistant degree, went out, still couldn't find a job. One of the professors at Lincoln School of Commerce said, would you come over and help us with some of the students at Doane College. So I went over to Doane, I graduated from Doane with a bachelor of arts and paralegal studies. Went out into the market to try to find a job, even had one of the law firms say, well, Mike, probably if we hired you, we might lose business. And I went, most of the times the paralegals are not in the front. We're doing research. We're doing other things. So what is the value of the excon when he comes out and goes to apply for a job? I think what we have to do is change some of the perception that society has on the value of a person that's made a mistake. Many of these people go to church on Sunday. We're taught to forgive but where is some of the forgiveness? So now, I'm coming up on 30 years. I'm into my 60's, still no job. Social Security is around the corner in just a short. I'll get \$120 a month for Social Security. So how will I live on \$120? Well, I'm going to need help so I'm going to have to avail myself of the programs that are available. But if I would have been able to work that 30 years, I wouldn't have had to rely on the taxpayer and society helping me out. So the main point as I listened this morning, then had to leave and come back, the main point is we have to place a value that's positive on the convicted felon and the value of his abilities. I've gone, I think, much more the distance than many will go. I could have fallen back in. I did heroin in the 60's but that was before methadone and that you cold turkey. You finally got off of it. We fought off of it, had good support system, got out of that area, you know. But what do I do? You know, here I am, there's no value put on me. So that's the main point that I wanted to bring to you changing the rehabilitation programs. While I was in the penitentiary, I rebuilt the state cars because I was a master mechanic. I worked in the shops making the furniture because I ran the brake press and the punch press. I could set up the dies and the mold. I could make dies. I could work on a lathe. All those skills I already had. I could weld and do that. But there still were no jobs once I got out because on the application is says, you ever been convicted of a felony. So the dilemma becomes, do I put down if I've been convicted? Well, if I don't put down, maybe a month or so later I lose the job. If I do put down, I never get called back. So you're in that catch-22 which makes things real hard. So I'm going to still strive forward. I work

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with people. I've been on the board of a daywatch shelter, a daywatch homeless shelter a number of years which has turned over in People's City Mission then. And I work with a lot of people and I see them come in and out, come in and out, and for the grace of God, that could be me for that, but God has a bigger purpose for me and part of the purpose is hopefully is to relay some of the message that you can tweak all the programs, you can do all the other things, but it comes to the value of that person once they get out and how they're perceived in society. So any questions? []

SENATOR COUNCIL: Are there any questions for Mr. Morosin? Senator Carlson. []

SENATOR CARLSON: Senator Council. You've really answered the question, but I can sit here and say, how in the world have you lasted this long and stayed on the right road...well, I know why. And there is a purpose. Sometimes hard to see, isn't it? []

MIKE MOROSIN: Well, if you were in Lincoln you would see my early training by the nuns in parochial schools to get involved. I go to City Council every Monday. Been an advocate for many of the programs. And I there...and I do that. I worked with Senator Schimek on getting the vote back for the convicted felons. But I think what needs to be done that I would bring up is for me an area would be in the political arena whether it would be a city councilman or something. There needs to be an amendment added to that after so many years if you've had no contact with the law to be able to enter into the professional field. That's what's locked out. You know, I could go on to law school, finish law school, but the doors shut. Because I'm a convicted felon, I can't be a lawyer. So where in society would be my benefit to work with? You want to kick kids out of school because you're having problems with them. What better teacher, a middle school and high school teacher trained. Give me a whole classroom worth of kids that you don't feel have value. So I mean, that's the thing is society needs to decide where to place me in the system and that's what I brought up in the paper. I tried to put it together to give you a history lesson of it of where we are because we're a conglomeration of a number of different programs. Does that answer your question there, Senator Carlson? []

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SENATOR CARLSON: Yeah, it does. []

SENATOR COUNCIL: Any other questions for Mr. Morosin? If not, I thank you again for coming and sharing your perspective with us. With that, the testimony is complete and unless my colleagues have any matters of business to bring before the task force today, we are adjourned. []