

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

Judiciary Committee
January 26, 2012

[LB787 LB920 LB972 LB985]

The Committee on Judiciary met at 1:30 p.m. on Thursday, January 26, 2012, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB972, LB787, LB920, and LB985. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Colby Coash; Brenda Council; Burke Harr; Tyson Larson; Scott Lautenbaugh; and Amanda McGill. Senators absent: None.

SENATOR LATHROP: I am going to call us to order since I'm the Vice Chair and we have three, four members here. Since Senator Ashford is the first person to introduce a bill, he can't do what I'm about to do which is to tell you a couple of the simple rules that we observe in this hearing room. One is we'll ask you turn you cell phones off, or on to vibrate, so you're not interrupting the hearing. And then generally the process will involve in the order listed outside, we'll take up the bills one at a time. And that process involves, since there's some unfamiliar faces here, that process involves the state senator will introduce the bill--in this case, Senator Ashford--followed by an opportunity for proponents to testify; opponents; and then those in a neutral capacity. Then the senator will close. We observe the light system here which means that you have three minutes to speak. So that you know, we all, senators, live by a light system as well on the floor, so we're not imposing anything on you that we don't have to live with ourselves. You'll have a green light for two minutes, yellow light means you have one minute, and when you get to a red light, we'll ask you to stop. If any senator has questions, they'll follow up with questions. And with that, we'll begin with Senator Ashford who is here to open on LB972. [LB972]

SENATOR ASHFORD: Thank you, Senator Lathrop and members of the committee. First of all, so I don't forget--and I won't forget--but Senator Hadley is here and he's going to speak on this issue. Senator Hadley has really spent an inordinate amount of time thinking about specifically about the YRTC facility at Kearney, and has dialogued with me and the members of the committee for a while about possible solutions, and his leadership is the primary reason why we're here today. Let me just briefly, and there are a number of testifiers who will be here and talk about the YRTC issue. But just to reiterate to those who are here, many of whom are here often, this committee and every member on it has been committed to juvenile justice for as long as I've been back and as long as we've worked together. I believe I'm not incorrect in saying that we have a passion in this committee for children and youngsters from the very first indications that they're having problems, whether at school or in the family, in their communities, all the way to those more serious cases that some of which...and where the juveniles end up at or go to the YRTC facility--and, heaven forbid, those very few cases where a young person is involved in violence. And it's a tragedy of immense proportions in our state that we see the kind of juvenile violence that we see throughout the state. And I know five or six years ago we started thinking about why are these young people committing acts of violence, why are they where they are, why are they not in school, why are they

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

Judiciary Committee
January 26, 2012

not in an environment that will allow them to grow and prosper. And it's an elusive issue, because sometimes I feel like, and I know my colleagues on the committee would join me, is sometimes we feel like the Dutch boy with the finger in the dike. We think maybe we've...I don't want to just speak about the Dutch--I mean I know there's others--but (laugh) the...we think maybe we have found a solution and then we...you know, then another leak springs. And it's just very, very difficult. Senator Council, I admire the work Senator Council has done in all her years in government, especially in the years on the school board where she reminded me the other day that she was the lone vote on the Omaha school board to vote against the closing of Tech High School, which in those days, and not so long ago, but in those days it provided a pathway for young people who wanted to take a different approach towards a job or the military and be trained in alternative kinds of pathways and technical education. So I come today with a specific issue, and that's the issue of Kearney and Geneva for the young people who are sent to those two facilities, women, and young women and boys who have committed a variety of different kinds of offenses in their local communities. One of the real tragedies in this state, too, is our lack of alternative capacity for young people, whether it's in Douglas County or anywhere else. You know, there is a significant need for staff-secure facilities, regional staff-secure facilities that provide security but at the same time are not viewed as prisons. And so there are lots of systemic problems that we need to address. But today we're thinking about and talking about YRTC and Geneva. I've been out there several times, just as recently as a few months ago. I can tell you that--with Senator Hadley--I am incredibly impressed by the commitment of the city of Kearney to this facility. The people, some of whom you'll hear about, hear from today, the commitment by them to helping these young people become productive citizens. I'm very, and as this committee has been, very impressed with Bob Houston and his tenure at the Department of Corrections. He's clearly in my view one of the premier corrections officials in the country. He's been noted as such and there is no question that he is. His desire to come to us with a solution, the solution that we have in this bill, I think he's come to us with great good faith and with a tremendous amount of thoughtfulness about how to help make this facility more safe, to cut down on the assaults that have occurred there, so that these young people can learn and so that they can get back to their communities. We're not going to solve every juvenile justice problem with LB972, but it's a step; and it's an important step to helping these young people, the 150-160 boys, for example, at YRTC who desperately need our help--desperately, desperately need our help. So many of them go back to their communities and then go back to YRTC again. There's a lack of alternatives in each one of our communities, and we have to persist in working hard to find those alternatives. But I think today this is, and what it will be and I know it will be, is a time for thinking about and talking about solutions. The bill suggests a solution. I'm certain that there are other solutions. But I commend everyone that's here and, of course, this committee, and Senator Hadley, most especially, for his leadership. Thank you. [LB972]

SENATOR LATHROP: Thank you, Senator Ashford. Are there questions? Senator

Council. [LB972]

SENATOR COUNCIL: Thank you, Mr. Vice Chairman, Senator Ashford. And you've stated we've worked closely together on juvenile justice issues, and we rarely diverge in our opinions, but this is one of the places our opinions diverge. And when I look at the proposal, you know, I appreciate the concern that's addressed and I don't mean to diminish...Senator Hadley and I started last year and had discussions about the issue of the assaults, particularly at YRTC-Kearney. But my focus is on the purpose that the facility was established for, and it's YRTC, which stands for Youth Rehabilitation and Treatment Center. I don't know what amount of thought, if any, has been given to an alternative recommendation which would be to identify those young people who fall into the violent category. I think some data indicates that there's 27 percent of the young people who are being referred to YRTC-Kearney are there for violence-related issues. The other issue is that we're lumping YRTC-Kearney and YRTC-Geneva and moving both of them under the Department of Correctional Services, where at least in my mind there hasn't been the level of concern expressed about the operations at YRTC-Geneva. So my question is, what kind of consideration has been given to somehow changing either the reference process, the referral process, or the classification process? And when I talk about the classification process, there is a Nebraska Youth Correctional Facility that is under the jurisdiction of the Department of Correctional Services. Rather than having the 63 percent of the youngsters who are at YRTC-Kearney placed in more of a correctional setting, why don't we do something to address the 27 percent through a means that would involve the Department of Corrections but not actually move away from what YRTC-Kearney was set up to do? And you and I have also had conversations about how, over the course of time, how the youth have changed but that facility hasn't. I mean you have these large open dormitories. So have we given thought to looking at either better securing the facility or looking at addressing the issues of alternative placement for those youth who are more likely to be violent during their stay at YRTC? [LB972]

SENATOR ASHFORD: That's the critical question that you're asking, Senator Council. And I think your numbers are about right. I think it's around 27 or 30 percent of those young people have more violent tendencies than others. To answer your question, I know that Bob Houston has looked into this matter. One of the things we don't want to do I think at the outset is we don't want to have to charge somebody with a felony in order to move them, a young person, out of Kearney or Geneva and place them somewhere else. So are there other options? I think clearly the Douglas County youth correction facility is an option. I know that Bob Houston, Director Houston has looked at that. I think you're clearly correct about reconfiguration of the facility in Kearney, and there is a bill that I put in on doing that. I think that's a very viable thing as well. You're right, the dorms, the other facilities there, that are from what I understand and talking to experts in the field, would indicate that they're not conducive. So I think it's up to this committee to think about the best approach. [LB972]

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

Judiciary Committee
January 26, 2012

SENATOR COUNCIL: Thank you. [LB972]

SENATOR LATHROP: Thank you, Senator Ashford. And we will take the first proponent. Do you want to chair? [LB972]

SENATOR ASHFORD: Yeah. [LB972]

SENATOR LATHROP: Okay. This guy should get three minutes. [LB972]

SENATOR ASHFORD: I want to be Chair if Senator Hadley's (inaudible). [LB972]

SENATOR LATHROP: We should make sure he's limited to three minutes. [LB972]

SENATOR HADLEY: Seems like I'm spending way too much time in front of the Judiciary Committee. (Laughter) I could be over listening to the inheritance tax people. So this is a little more important than that. [LB972]

SENATOR MCGILL: Oh, gosh. Listening to the Governor. [LB972]

SENATOR LATHROP: I think I'd rather be here. [LB972]

SENATOR HADLEY: Senator Ashford, Chair, my name is Senator Galen Hadley, G-a-l-e-n H-a-d-l-e-y. I represent the 37th District in Kearney. Just as a quick kind of catch-up, this started basically when I was brought a bill by the Department of Health and Human Services that would have put employees of YRTC-Kearney and Geneva on the same footing as correctional officers as far as a third-degree assault. Right now, if you're a correctional officer, that is considered a felony. If you're at YRTC, that is considered a misdemeanor. And we had a very good hearing on that bill, and we talked about it and what the county attorneys were doing in the counties. We have gone forward from there to looking at what are some of the possible solutions to the problem, and there is a problem. One of the numbers that struck me that I believe was...at our hearing this summer: one assault for every 2.5 employees. I think that's a pretty significant number, one for every 2.5 employees. I thought of that this morning as I was walking into the Chamber as I walked past the state trooper who was outside the Chamber. I walked past the state trooper that was in the Chamber in the back and I saw the state trooper in the Chamber in the front, and I would guess part of the reason they are there is to make sure that some citizen who decides to take out their anger about us doesn't get a chance to. It means that basically if you work at YRTC for three years there's a good chance you're going to be assaulted. You talked about the admissions by offense. Actually I did...great minds must work a lot alike, because I did get the numbers. In 2009-10, 129 out of the 449 were sent to YRTC for assault--not for truancy, not for procuring alcohol, not for resisting arrest, trespass--assault; 6 percent for sexual

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

Judiciary Committee
January 26, 2012

assault. So 30 percent of the young men that are sent to YRTC-Kearney are there because of a term called assault. That's a pretty good-sized number. I've talked to a lot of current employees, former employees, very dedicated people--very dedicated. A lot of them have been there a lot of years. And Senator Council talked about the purpose of the facility. I'm not sure how much the purpose has changed, but I think there might be a difference in the type of person that's coming. People with maybe more violent tendencies are coming to Kearney now. They also had, and I'll probably get the terms mixed up, but it was the peer pressure type of situation that they had. They called it the "takedown," where they basically used peer groups to try to police. And I talked to a number of former employees, and they said that really did work very well. And they talk now about they don't use that, so now the employees are the ones that have to get in the middle of the scuffles. And they talked to me how hard it is to make...you know, to use soothing words to calm down two young men fighting. There was some talk earlier, and I think it was Senator Council and others that had talked about that it is not a Corrections facility now. But I did happen to look...I think part of the reason we send young men there is for rehabilitation, and I think that is a part of the Corrections. In fact, I looked it up: In California, Ohio, and North Dakota, their corrections departments are called the corrections and rehabilitation department, with an emphasis on both. I think moving it to Corrections is a correct approach. And the primary reason I do that, I say that, is that DHHS is a very huge, complex organization, as we all know. Some of you sit on Health and Human Services. You know 6,000 employees, a lot of departments, and I think they try to do a very good job here, but I'm not sure this is their area of specialty. And I'm just not sure, given the number of hours in the day, whether this rises to the level of intense interest, whereas I think with Corrections it would. And I think Corrections, to say that they wouldn't be interested in still fulfilling the treatment part of this would be incorrect, because I think they would. I looked at Corrections and I actually read about the different facilities from the McCook Work Camp to the other things that they use that cross the spectrum of Corrections, and I think that they could do the job. I hope you will give consideration to this. I think it's important to not only the employees but to the 80 percent of the young men there who are also subject to these assaults. It isn't just the employees who are being assaulted. I'm sure the statistics will be given to you again that were given this summer. So it's a double edge trying to help the employees and help the young men that are there. I thought...I've heard the term 20 percent, that the concerns they have are with the 20 percent. And sometimes it's hard to pick out the 20 percent. But I thought of a kind of a bushel of apples that if 20 percent of the apples are bad, if you don't move those 20 percent out or do something with them, eventually your bushel of apples you get more bad apples. That's an old farm thing, Senator Lathrop. [LB972]

SENATOR LATHROP: I was going to say it's starting to sound like Michael Jackson.
(Laughter) [LB972]

SENATOR HADLEY: Anyway, I hope you do give consideration to this. There's a lot of

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

Judiciary Committee
January 26, 2012

people here that are going to testify for it. And I know you will give it a fair hearing because I know that we all have the same goal, that is to help the young men and women who are there and also to help our employees for the state of Nebraska who are trying to help these young men and women. So with that I would answer any questions that you might have. [LB972]

SENATOR ASHFORD: Thank you, Senator Hadley. Senator Council. [LB972]

SENATOR COUNCIL: Thank you. And thank you, Senator Hadley. I just want to make a comment before I ask questions. Again, this proposal provides for the movement of YRTC-Kearney and YRTC-Geneva under the Department of Corrections, yet all of the discussion has been about Kearney. And apparently they're not being the same kind of issues or the obvious need to move Geneva or their programming is meeting the needs. That's problematic. So I'll move from there. You stated that... [LB972]

SENATOR HADLEY: Could I... [LB972]

SENATOR COUNCIL: You can respond. [LB972]

SENATOR HADLEY: Could I make a comment on that? If you remember when we had the hearing on my bill last year, we actually had the nurse from YRTC-Geneva that had had facial fractures and had been severely beaten by a young lady. And as I remember it right, the young lady was, like, 280 pounds, and had severely beaten the nurse at Geneva. [LB972]

SENATOR COUNCIL: Right. Yeah, no, I'm not saying that there have not been assaults. [LB972]

SENATOR HADLEY: Yeah. [LB972]

SENATOR COUNCIL: But the level... [LB972]

SENATOR HADLEY: The level. [LB972]

SENATOR COUNCIL: ...of concern has not been the same for Geneva as has been for Kearney. [LB972]

SENATOR HADLEY: I would agree, I would agree. [LB972]

SENATOR COUNCIL: And number two, you stated that...and I don't think anybody disagrees that the type of young men who are going to...being sent to Kearney now are different than in the '90s when it was moved under the Department of Health and Human Services. My question to you is, do you know whether the nature of the

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

Judiciary Committee
January 26, 2012

programming at Kearney has changed any in that period of time? [LB972]

SENATOR HADLEY: Senator Council, I could take a guess at it, but I think that question would...I think we'll have the head of the YRTC, that that would be a good question for an exact answer on that. [LB972]

SENATOR COUNCIL: Okay. And then you also stated a statistic about...that indicated that the likelihood of a staff person being assaulted, I think you said 2.5. [LB972]

SENATOR HADLEY: One in 2.5. [LB972]

SENATOR COUNCIL: One in 2.5. What are the staffing ratios at Kearney? [LB972]

SENATOR HADLEY: I believe the staff is about 160. I believe it's in that area. I think... [LB972]

SENATOR COUNCIL: But it's over three shifts, correct? [LB972]

SENATOR HADLEY: Yeah. Right. Over three shifts. [LB972]

SENATOR COUNCIL: Okay. So in terms of staff-to-young person ratio, we need to look at that, I mean, because if we're not staffing YRTC-Kearney appropriately, I'm not saying that excuses anything but it may also contribute to the situation. And my next question has to go to...assuming YRTC-Kearney is moved under the Department of Corrections, is it your expectation that the current staff would become Department of Corrections staff? [LB972]

SENATOR HADLEY: Yes. And the training would then be taken over by the Corrections Department, you know, as an employee of the Corrections Department. [LB972]

SENATOR COUNCIL: Okay. So these would be the same people delivering the programming that's being delivered now. [LB972]

SENATOR HADLEY: That's my understanding. [LB972]

SENATOR COUNCIL: Okay. So is it fair to say that the only change would be, would be that they would have a correctional center approach to discipline? [LB972]

SENATOR HADLEY: I would expect that to happen, Senator Council. And obviously they would be considered correctional officers under the definition of the other bill. And I guess it's just maybe a presumption on my part that as these young men and women go there, maybe dealing with correctional...someone who is called a correctional officer might be a little different than DHHS staffing. [LB972]

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

Judiciary Committee
January 26, 2012

SENATOR COUNCIL: Sadly, I don't tend to agree. I mean if the situation is we're going to have the same group of people delivering the same programming and the only thing different is going to be now they're Department of Correction employees rather than DHHS employees, that that somehow magically will result in, you know, less assaults, when the facility configuration will remain the same. And, quite frankly, the Department of Corrections' configuration is nothing like YRTC's configuration except on the yard during open time. But in terms of at night, when I understand a lot of these assaults occur, you've got these big dormitory settings. [LB972]

SENATOR HADLEY: Um-hum. [LB972]

SENATOR COUNCIL: And again I don't know if I'm correct or not, when the director comes forward, but it's my understanding that on the night shift at YRTC-Kearney the ratio is 1 to almost 30. So you've got one person trying to oversee 30 young men in an open dormitory setting. You know, I'm just trying to understand how that will be altered if you don't address staffing, if you don't address the configuration, and the only thing we do is take the tag off the door and it's no longer DHHS, now it's the Department of Corrections, but. [LB972]

SENATOR HADLEY: I think those are fair questions, Senator Council. [LB972]

SENATOR COUNCIL: Okay. That's all I have, Senator Ashford. [LB972]

SENATOR ASHFORD: Thanks, Senator Council. Yes, Senator Coash. [LB972]

SENATOR COASH: Thank you, Chairman. Senator Hadley, will there be a change...if this were to go through, will there be a change in the process or criteria by which a youth finds himself to Kearney, whether it's Corrections or HHS? [LB972]

SENATOR HADLEY: My opinion is that there would not be a change. We're not changing the...if you mean by the type of... [LB972]

SENATOR COASH: Type of kid or the process. I mean, there's a judicial...I think we'll get some answers from HHS about how kids find themselves there. [LB972]

SENATOR HADLEY: Right. [LB972]

SENATOR COASH: But do you anticipate a change in that process? [LB972]

SENATOR HADLEY: I don't anticipate a great change, Senator Coash. [LB972]

SENATOR COASH: Okay. Because my question is...and I'm going...I'll put this to you

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

Judiciary Committee
January 26, 2012

but probably somebody behind you will have to answer it, is people are sentenced to a correctional facility. A judge says: You're going to serve 30 days, one year, six months, and you're going to go and you're going to serve it here. That's the corrections model. But the kids that are there now aren't...I mean they are mandated to go there by HHS but it's not a judicial...you know, it's not a sentence that they're serving... [LB972]

SENATOR HADLEY: That's correct. [LB972]

SENATOR COASH: ...that says you now are going to spend the next six months of your life here. So I'm just trying to figure out if this were to go through, would we have to reevaluate the way that kids get there? Because in the corrections model, you know, you're going there for a period of time, and it's because you've done something. [LB972]

SENATOR HADLEY: Right. [LB972]

SENATOR COASH: Which is different, in my mind, than going there because you need something, you know. So I'll just leave it at that and maybe somebody behind you, but... [LB972]

SENATOR HADLEY: Yeah. Okay, I'm sure that somebody can... [LB972]

SENATOR COASH: ...answer that. [LB972]

SENATOR HADLEY: I would say that I see part of the problem is, is the relatively short period of time the youth are there. I just always...you know, I sit in my mind and say, you're changing behavior in six months? You know, it really struck me when Senator Ashford and I toured out there, and the comment was made for a lot of these young men, because we toured YRTC-Kearney, this was quite a change for them because they got three square meals a day, had their own bed, had clothing, were going to school. And if you want to tell me what I worry about, is that after six months we turn around and send them back, potentially to the same living atmosphere that they came from. And I don't...remember, I'm an accountant, so trying to figure these things out, I would leave that to the experts in the field. But that's kind of what I thought of when I was... [LB972]

SENATOR ASHFORD: And that clearly is a dilemma. I think we saw that when we were there. Senator Harr. [LB972]

SENATOR HARR: Thank you, Senator Ashford, and thank you, Senator Hadley, for coming here today. I guess my question is, is there a change in the mission statement or how it operates, by changing it from one agency to another? [LB972]

SENATOR HADLEY: I think that would probably be something that they would have to

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

Judiciary Committee
January 26, 2012

work through. I think I would go back to what I said, that which agency works in this general field more? Now you say it's not a corrections; that they're going out for treatment. But they're there, right? If they walk away, they can be charged with a felony. So this isn't, you know, just a fun and games, and if you want to go home on the weekend you can. So I wonder, does that...while you say it, it is not a corrections institution, is that a little bit how a corrections operation works? Do we not have...minimum...I was familiar with the minimum security prison in Yankton, South Dakota, with no walls, no, you know, locks, and such as that. Well, you know, so I truly believe that the Corrections might have the ability to have a little better handle on operating YRTC. [LB972]

SENATOR HARR: So your statement...and I'm not trying to put words in your mouth but I am trying to summarize, is more...there isn't a philosophical change in philosophy, but the philosophical philosophy of YRTC fits better with the Department of Corrections as opposed to DHHS. Is that what you're...? [LB972]

SENATOR HADLEY: Yes, I would. And as I said, I looked at the... [LB972]

SENATOR HARR: Okay. [LB972]

SENATOR HADLEY: ...the institutions that Corrections have, and it's interesting to go to their Web site. And I pulled each of them and I tried to look at their mission statement, and from maximum security to minimum security, to minimum max, to the work camp in McCook. So they deal with a spectrum of institutions right now. So I would hope that this would just fit into that spectrum. Obviously, in the real low, you know, minimal security, no offense, that type of thing. And if I can say one other thing. I had a call from two businesspeople that had businesses close to YRTC, and one of them has had two walkaways in the last two months. One of them barricaded himself in his office. Another one they couldn't find. They knew he was in there because of the TV cameras. Couldn't find him, and it took the police, oh, a couple hours to find. And this person says, you know, I've had this business for 20 years, and I'm more afraid now than I ever have been. [LB972]

SENATOR ASHFORD: Senator Lathrop. [LB972]

SENATOR LATHROP: Senator Hadley, the first thing I want to do is commend you for your concern, and I know it arises out of your concern for constituents that actually work there and who get hurt there, and I want to publicly acknowledge your commitment to those folks that currently work there and many of whom you know. That said, did I hear you say that if they assault or if they escape, it's not a crime, but now that we've put them into Corrections, they will be subject to felonies for either of those activities? [LB972]

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

Judiciary Committee
January 26, 2012

SENATOR HADLEY: I believe this, Senator Lathrop. If I remember my bill correctly, is that under...and I could get you the number. The corrections officers, a third-degree assault is a felony. My bill was to put YRTC employees under that bill. [LB972]

SENATOR LATHROP: Okay. But we effectively do that if we were to pass Senator Ashford's bill. [LB972]

SENATOR HADLEY: Yes, I believe that would be correct. [LB972]

SENATOR LATHROP: Okay. So that's one of the consequences of making the change. [LB972]

SENATOR HADLEY: That's right. [LB972]

SENATOR LATHROP: And I'm saying this to you, but really it may be for Bob or Kerry Winterer to answer when they come to testify. I look at the fiscal note, and the fiscal note says there's no fiscal impact. And what they...as I look at the fiscal note, it says every dime that we take from the folks that are administering that now, HHS, we give to the Department of Correctional Services; this will not cost the state of Nebraska anything. And that sounds to me like we're just changing the name of the administrator on the door and making it a felony to hit somebody, because we, at least under the bill, are not giving Bob Houston one more resource that HHS doesn't already have. We're not changing the layout, we're not changing the number of people that work there. And my fear is it will look like we've done something, and we will have done exactly nothing but turn these kids into felons when they hit an officer. We had an interim study on this and it told us two things: One, we need to have a building to put the troublemakers in, right? And the other is we need more staff, and we need to change the layout of the dorm there. That was the solution. And we can turn it over to Bob Houston, who I have the greatest respect for. He's got a lot of fans in this Judiciary Committee. But it doesn't change the underlying problems that are leading to what you're here to talk to us about. Your people...you won't have one more person there, you won't have a different layout. They won't even be different people. They'll just wear a different colored uniform. And there may be the only benefit, if it is a benefit at all, is that they'll be felons if they hit one of these people, instead of not. And I don't know that you have an answer, and that's fine, but at least I'm giving a preview to the others that will come behind you over my concern. But what I don't want you to do is to go back to Kearney and tell people we've done something when all we did was change the name on the door and we still have people getting beat up. [LB972]

SENATOR HADLEY: I understand that, Senator Lathrop. And I would hope that the Appropriations Committee would support Senator Ashford and my bill for a construction project at YRTC. [LB972]

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

Judiciary Committee
January 26, 2012

SENATOR LATHROP: Okay. I was going to say, well, I think that would probably solve the problem besides other than this bill, but. [LB972]

SENATOR HADLEY: But we've all worked with the Appropriations Committee though, too, right? [LB972]

SENATOR LATHROP: Well, yeah. But that really is the fundamental problem. We've decided that we're not going to spend any money in this state, period, and then to answer your concern and the concerns of the people in Kearney, we're going to have Corrections take over and not give them one more resource that HHS doesn't have right now. And that...boy, I'm not going to let that happen. I will not sit here and pretend like we've done something and let somebody say that we've done something and have your people continue to get beat up in the same facility wearing a different-colored shirt, so. [LB972]

SENATOR HADLEY: Thank you. [LB972]

SENATOR ASHFORD: You can tell this committee is extremely passionate about... [LB972]

SENATOR HADLEY: Well, I appreciate that, because this is... [LB972]

SENATOR ASHFORD: ...and about juveniles. I mean, seriously... [LB972]

SENATOR HADLEY: This is an... [LB972]

SENATOR COUNCIL: Yeah. And about the staff. [LB972]

SENATOR ASHFORD: And about the staff and about the juveniles. [LB972]

SENATOR HADLEY: That's right. [LB972]

SENATOR ASHFORD: And, Senator Hadley, you've done a great service by concerning yourself with this issue. And I...we spend...you know, either we spend our time dealing with what happens when young people don't get through the system. They come out and they do something really bad as adults, and then Bob has to take care of them down in his facility. We've spent about half of our time with that, creating more crimes than we ever...there's not enough books to put all the crimes out there that everybody wants to create. Whereas I think our passion is, no, we want intervention; we want to do whatever is humanly possible to make those young people productive. And if we spend a month every day trying to find that solution, then it's not time ill-spent, and I think that's partially, if I might, what Senator Lathrop and Senator Council are saying. [LB972]

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

Judiciary Committee
January 26, 2012

SENATOR HADLEY: Wow. I take...I really haven't heard anything that, you know, I'm going to stand up on the chair and say, well, that's foolish. [LB972]

SENATOR ASHFORD: Yeah. I mean, most people are going to agree, but it's hard work. [LB972]

SENATOR HADLEY: It's hard work. [LB972]

SENATOR ASHFORD: It's really hard work. [LB972]

SENATOR HADLEY: And, you know, one last thing. You know, the staff is dedicated. I mean, it's hard work. And can you imagine teaching a class where, you know, the student is with you six months, not even a, you know, a semester and a month or something like that, and then they leave, and kids are coming and going and...you know, it is hard work. And I appreciate the committee's, you know, having the study this summer, and I hope you will listen to this and I'm sure the people behind me have a lot better answers. [LB972]

SENATOR ASHFORD: Well, and thank you, Senator Hadley. And I... [LB972]

SENATOR HADLEY: And are you sure you don't want to come over and listen to inheritance tax problems? (Laughter) [LB972]

SENATOR ASHFORD: Now I know you've got another bill, so. [LB972]

SENATOR HADLEY: Thank you. [LB972]

SENATOR ASHFORD: How many people are here to talk about this particular bill? Oh, that's not so many. I'm going to use...I don't usually do this, but I am going to take a little bit of a prerogative to kind of frame the discussion. I've asked Dr. Pope from Boys Town to come down. And Dr. Pope has an expertise in working with juveniles and developmental issues, and I'm going to ask her to come up first, and then Bob Houston and Kerry Winterer and Jana Peterson after that. And then we can go through the group. But I'd like to start with Dr. Pope because she had some very interesting thoughts when we spoke. So if you would tell us who you are and... [LB972]

KAYLA POPE: Sure. [LB972]

SENATOR ASHFORD: Okay. [LB972]

KAYLA POPE: (Exhibit 1) So my name is Dr. Kayla Pope. It's K-a-y-l-a, Pope, P-o-p-e. And I want to thank Senator Ashford for inviting me down today to talk and give you

some background information on this issue. I have worked with the juvenile justice population for the past 20 years in several capacities: first, as an attorney as a guardian ad litem; then and now, as a child and adolescent psychiatrist doing forensic evaluations and treatment; and most recently, as a researcher at the National Institute of Mental Health where I've been studying behavioral and biological factors which contribute to antisocial behavior. Over these past 20 years, I have learned much about this population, and I want to offer two points for your consideration. First, these children can be treated, and many of the risk factors that result in the development of antisocial behavior can be ameliorated. We know that two-thirds of the children in the juvenile justice system have diagnosable mental illnesses, and this is excluding the diagnosis of conduct disorder. We have evidence-based treatments to help these children. But to be effective in altering the trajectory of these children's lives we need to make a commitment to staying the course. A child exposed to a decade of abuse, neglect, and trauma cannot be turned around in 30 days. The second point I want to make is that there is a significant amount of research looking at how best to structure interventions for this population, and the evidence exists to guide systems design. The most fundamental consideration--and something we've actually already been talking about this afternoon--is the procedure used for risk assessment and the need to be validated and implemented with fidelity. Why is risk assessment so important? Because it is what guides resource allocation and ensures the safety of the community as well as the children that we serve. We know that in any given juvenile justice sample approximately 70 percent of the children will be low risk and not likely to recidivate. For these children, minimal resources are needed, but it is important that the precipitating factors be addressed. For another 20-25 percent of these children they will be of moderate risk for recidivating and will require more resources, but again they need to be targeted to the risk factors. The remaining 5 percent of these kids will be high risk, and it is this group that will need the greatest allocation of resources. Without a good risk assessment process, resources are likely to be misallocated, resulting in a system that is both inefficient and ineffective. I have brought with me additional materials--actually I've already handed them out--which gives you some of the key principles that guides system design for juvenile justice systems, and I'd be happy to make myself available for questions or for consultation. [LB972]

SENATOR ASHFORD: Thank you, Doctor. Senator Council. [LB972]

SENATOR COUNCIL: Yes. Thank you, Doctor Pope, and thank you for the material. And I don't mean to put words in your mouth, but just hearing your brief summary of basically what we will find in the context of these articles and research papers is that to address the issues at YRTC-Kearney and Geneva, it goes beyond simply changing the staff from DHHS staff to Corrections staff. [LB972]

KAYLA POPE: I think there are several steps in the process that need to be looked at, and I think again I think risk assessment is the first step, and then looking at what

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

Judiciary Committee
January 26, 2012

continuum of services do you have to treat these kids. A lot of these kids I think should be treated out in the community, having appropriate surveillance systems in place, etcetera. And I do think the point has already been made: Putting these low-risk kids with these high-risk kids is really creating a very dangerous situation for everyone, and staff included. [LB972]

SENATOR COUNCIL: And then...and that's...and I guess that's...I'm glad that you stated, I mean, the continuum that we're looking at. And Senator Lathrop really got to it in his questions of Senator Hadley, is that just changing the oversight without addressing all of these other issues is not going to resolve the situation that exists at, particularly, YRTC-Kearney. [LB972]

KAYLA POPE: It probably would be insufficient, absolutely. [LB972]

SENATOR COUNCIL: Okay. Thank you. [LB972]

SENATOR ASHFORD: Dr. Pope, are there examples? If you were to model a facility for this higher-risk group, how would you model such a facility, and what would it have in it? [LB972]

KAYLA POPE: So I actually would refer you to the materials here. There's actually a very good description of how to model a system, as well as a continuum of care, and how you can actually match that up with the level of risk for the individual. So it's a complicated process and I would rather not just, in a few minutes, describe something, but refer you to the materials. [LB972]

SENATOR ASHFORD: Are there other...Senator Harr. [LB972]

SENATOR HARR: Thank you. I guess my question is, and I'm still not clear, why is this legislation necessary to make the changes that you advocate for? [LB972]

KAYLA POPE: I'm not sure this legislation is necessary. I think what you need to look at and consider is what are the systems that you currently have, what kind of stewardship is available. And I know I've talked to Bob Houston a little bit about his philosophy and his approach to the adult correction system. I think he is very much in favor of rehabilitation and realizes that, you know, risk assessment is an important part of that and having the resources available to match the children's needs. So, you know, I think the question is, who is the better steward? And I think that is going to be a function of looking at the systems that are currently available. [LB972]

SENATOR HARR: Thank you very much. [LB972]

SENATOR ASHFORD: And I don't want you to give me a short...I understand your point

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

Judiciary Committee
January 26, 2012

about not wanting to make a short summary response to a complex problem. But if we have a...I think one of the problems that we've seen or I've seen in going out there and looking at this, is that you have a system of input into the YRTC facility. It's a...it would be 93 counties and you have 93 sets of judiciary, and you have workers in 93 counties or whatever, and it may be that a young person, a juvenile is sent to YRTC because they are, as Senator Council suggests, 30 percent or 27 percent are at extremely high risk of being violent. Then you have other young people who are...juveniles who are lower risk. But there are not enough options in their particular communities or for whatever reason. [LB972]

KAYLA POPE: Right. [LB972]

SENATOR ASHFORD: So it's the input into the system itself, really, that...it's that gatekeeper sort of thing. [LB972]

KAYLA POPE: Right. And it's my understanding that risk assessment and the way that's actually done is it varies from one county to the next, and I think that's very problematic. So when the staff at the YRTC received these children, they really don't know what they're getting, because it is variable in terms of the assessment that's already taken place. And absolutely it sounds like the children that are in the western part of the state may be very low risk but then are being thrown in with these high-risk kids because of the lack of options. [LB972]

SENATOR ASHFORD: Okay. [LB972]

KAYLA POPE: Yeah, it's a problem. [LB972]

SENATOR ASHFORD: Thank you, Doctor. Thank you very much, and we're glad to have this material. Bob, are you going to speak next, or...? Bob Houston. [LB972]

BOB HOUSTON: (Exhibit 2) Okay. Good afternoon, Chairman Ashford and members of the Judiciary. My name is Bob Houston, H-o-u-s-t-o-n. I'm director of the Nebraska Department of Correctional Services and I'm here today in support of LB972. I'm going to pass out my testimony. If you wouldn't mind, I'll summarize the first couple paragraphs that I have, because some of the issues have been spoken to. But I do want to talk about that our department has had outstanding training program which I believe is to the benefit of staff and the youth. Our department focuses on interpersonal communication and utilizes what we call the three R's: role modeling, the redirect, and the reinforcement of positive choices. We believe this philosophy will work well at YRTC environment, as well as serve as guiding principles underlying both current programs and effective advancements. Really, our department believes in the ability of the individual to change and sets expectations for individual engagement and participation in one's own rehabilitation. We will greatly rely upon the wealth of knowledge and

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

Judiciary Committee
January 26, 2012

expertise of the YRTC staff to maintain treatment models being used now. Our goal is for a smooth transition where we would be able to stabilize the physical environment and allow the youth to gain greater benefit from the treatment opportunities presented. I spent a number of years as warden of the Nebraska Correctional Youth Facility that's been spoken here today, and I'm pleased to have the opportunity to have the YRTCs back in the department, and I'm excited to have the opportunity to work with the staff of both facilities to provide a safer treatment environment. While fights will still occur, I believe that the frequency and the severity will decrease. I believe this bill is a positive step to a safer environment for the youth and the staff at the YRTCs while maintaining the successful treatment programs and moving forward with research-generated enhancements. And I'd be pleased to answer any questions that you have. [LB972]

SENATOR ASHFORD: Yeah. Let me just ask one question and then I'll turn it over to my colleagues. Can you just, for everyone's benefit, talk about the Nebraska Correctional Youth Facility. You've got it in your statement but could you amplify on that and how is that administered and who is there and so forth. [LB972]

BOB HOUSTON: Yes, absolutely. The youth facility sits in Omaha up by Eppley Airfield, and you drive by it when you go to the airport. It's a maximum security correctional facility. The staff there consists of, of course, of the warden and the assistant warden, a head of security. But then we also have the housing unit staff. The housing unit staff operate in a way that's germane with what we have in our other facilities, and certainly it's in the same model that has been developed and is being implemented at YRTC-Kearney, and I believe at Geneva as well. [LB972]

SENATOR ASHFORD: Can you...Bob, can you tell us what that is? I think we need to be a little more specific about what model has been developed at YRTC that would be similar to what is at the Nebraska Correctional Youth Facility--what are you talking about specifically? [LB972]

BOB HOUSTON: Okay. Well, what our philosophy in the department is, and we carry it out in each one of our facilities, is we went to the unit management model in 1979. And what that does is take a large facility, and we consider the youth facility, even though there's about 80 youth there, to be a large facility. And we break it down into smaller parts under what's called unit management. And so the philosophy is, is that the effective treatment starts with the home--you know, where the youth come after work, after school, come in during lunchtime, and so forth--that there be staff there to give a more family-like type atmosphere in the case of a youth facility, and certainly a better security structure in a high-security facility. And so the case management staff, the unit management staff, they do classification and provide opportunities for treatment to our treatment specialists who are there to deal with their everyday issues. Along with that, at the youth facility, we have several mental health staff, including clinical psychologists, mental health workers... [LB972]

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

Judiciary Committee
January 26, 2012

SENATOR ASHFORD: Are they there on a daily basis, Bob? [LB972]

BOB HOUSTON: Every day. Yes. [LB972]

SENATOR ASHFORD: And...okay. [LB972]

BOB HOUSTON: They are assigned to that facility. [LB972]

SENATOR ASHFORD: But at YRTC, and I'm sorry, Senator Council, and I'm not going to... [LB972]

SENATOR COUNCIL: No, go ahead. [LB972]

SENATOR ASHFORD: At YRTC, the...and Jana is here and she can talk about it, but I believe the mental health interface is much more limited than that. [LB972]

BOB HOUSTON: Yeah. I think Jana would have to...we...our mental health staff are on the housing unit every day, talking to the youth and engaged with the youth. [LB972]

SENATOR ASHFORD: And are they...psych...what are their...do you have MDs as well as psychologists? Who are they? [LB972]

BOB HOUSTON: Well, we have Dr. Flearl. She's the doctor for three facilities that we have: the Omaha Correctional Center, our community center, and the youth facility. We have nurses that are part of that, and then we also have a mid-level, either a nurse practitioner or a PA. [LB972]

SENATOR ASHFORD: Is there any kind of school at the Youth Correctional Facility? [LB972]

BOB HOUSTON: Yes. We...about two and half years ago, going on three years ago, we formed our own school. We went to the Board of Education in Nebraska and we became a certified school. We now offer a high school diploma, along with GED for those that aren't going to be there long enough to get the high school diploma. We have all certified teachers and we are rated as the number two school educational unit in the state as far as compliance, and our compliance rate was 135 percent, which means we went well above the minimum. [LB972]

SENATOR ASHFORD: Senator Council. [LB972]

SENATOR COUNCIL: Thank you. Good afternoon, Bob. [LB972]

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

Judiciary Committee
January 26, 2012

BOB HOUSTON: Good afternoon. [LB972]

SENATOR COUNCIL: And for purposes of my colleagues and those watching and those present, Bob and I work on a variety of issues together. So my comments and my questions are no reflection on what's going on in the Department of Corrections, although there are some issues that we continue to battle with. But based upon what you were stating in your opening and in response to questions from Senator Ashford, you've kind of confirmed what for me has become the obvious, and that is under this proposal, under this bill, the intent would be to just take existing YRTC staff and provide them with a training and a focus that is more in line and consistent with the Department of Corrections approach. Am I correct? [LB972]

BOB HOUSTON: I guess I don't see it that way, Senator. [LB972]

SENATOR COUNCIL: Okay. So are you talking about completely replacing YRTC staff? [LB972]

BOB HOUSTON: Well, no. I don't see it that way. I guess what I'm saying is, is that I think that the way I see it is not an either/or situation. I see it as a collaborative process. The...we...I've served 23 years in the department while the two were together, while Geneva and Kearney were under the Department of Correctional Services, and I have formed friendships with the...long-term relationships with people that work there now or are retired from there, and so forth. Their mission is unique and distinct from what we do in high-security facilities. When...and I guess when I think of the identification, a lot of discussion has been our identification with them and them taking on our identification, when really I see it as quite the opposite. I just came back from three meetings basically. One is with other state directors; one as a commissioner for the American Correctional Association going over audit reports, of which Kearney just received another national accreditation from the American Correctional Association; and then to deal with association business. On my panel where I'm a commissioner was a person from Washington, and she--Joyce Burrell--she is over at the criminal justice for youth. And I talked about this possible move and so forth. Well, by the time I left yesterday, I had people who I've known for years or people who I've just recently known that their area of concentration is youth services, and they are an integral part of the American Correctional Association. The certifications that Kearney and Geneva received are from the American Correctional Association. The Youth in Custody, which is people processed through the youth, that organization is with the Department of Justice. The entity under the Department of Justice that monitors youth facilities is a woman I've known for several years. And I was basically surrounded by people that have particular interests and that they make their living and that's what their departments are about is juvenile justice, that have offered to assist us in any way possible. And so just as I would think that the...not speaking just for Nebraska but on a national level, that the youth facilities are identified with the American Correctional Association, of which we

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

Judiciary Committee
January 26, 2012

are a part of, and so I don't see this as an either/or situation. I think what it is, is a continuation of a corrections look at the youth facilities. There was testimony earlier that I don't need to duplicate about the number of people in on assault and that type of thing. And Senator Hadley indicated about the bad apples. Well, what happens is, is that when you don't have...when there's a lot of assaults on the staff...I mean, imagine here, if every week somebody was being assaulted, we would certainly look at our personal security differently and that would affect the environment that we're working in. If every day, going by these numbers, there's a fight in the hallway and that we have to break that up, you look at your job much differently. I was asking Jana earlier about when the assaults happened, and they happen in the evening in the dining room, but also walking across the yard. If when youth walk across the yard they are trying to engage in education but they're also thinking about their personal safety as they get there, it sets an environment in which the focus then becomes, if you're a staff member, on who's going to assault me today and what fight am I going to break up. And if you're a youth, how do I engage this when I have these individuals that might bring physical harm to me. And so we talked a little bit about, or talked earlier about treatment, but I really think the treatment plays out based upon the culture and based upon the expectations, the accountability, and the environment from which they arise, therefore, residential treatment programs, so that you have the dynamics of living that are an integral part of the treatment modalities that you use that are evidence-based. And so I really see this as a collaboration and not us clamping on to it and bringing it in to a corrections model, but it's not quite them taking over us. But what it is, is that as we move forward, should this change occur, that every step of the way the modalities that we would bring in, the environment that we would support that I think is very good, that it is all based upon the youth at risk at the point that they are at. And I think it's that type of engagement as we move forward that's really to me the key part of it, and I think that with the Corrections environment, with our...you know, the training that we have and the things we're able to do, I think those are really important. But I think more...even more importantly is, is that they would come into...even further into the community that embraces them with people that through the American Correctional Association, the national audits that they've been meeting every year and the resources that are available, that the focus would stay on youth, whether they be a 12-year-old or an 18-year-old, that it be particular to the youth and that we really look at the treatment from the child's perspective as well as our own perspective on what we think they need. And I certainly think that we have the resources both within the department and on a national level to move this forward. [LB972]

SENATOR COUNCIL: And with all due respect, Bob, listening to what you just said further convinces me it needs to stay where it is. [LB972]

BOB HOUSTON: I'm sorry? [LB972]

SENATOR COUNCIL: That it needs to stay the way it is. I mean, quite frankly, what I

took from what you said was that there are resources that are available to the staff and administration of YRTC that they can access and that what I see, you know, and admittedly I'm looking through a particular lens, is then you talk about collaboration, I'm looking at what additional resources...and you and I have these discussions all the time. And we're talking about programming here, and I look at what some of the needs of these young people have and their behavioral and mental health issues. We have difficulties in your current correctional setting getting people through those programs when they need to be going through those programs, and here we have even a shorter period of time to be dealing with these young people. So when I see a proposal that brings no additional resources, as Senator Lathrop has pointed out, no additional resources to the table, I'm led to believe that what we're talking about is...you're correct, bringing in a different culture, and that's a Corrections culture, into this setting, where why can't that be accomplished by a collaboration that keeps the centers under DHHS with Corrections providing that...assisting in the development of that culture? Because again, quite frankly, you're going to be working with the same people. I mean it's not like you're bringing in a whole new group of folk. You're changing a culture admittedly. But I am not convinced that it requires a movement under a different agency to achieve this culture change; that that can be accomplished with the expertise that you and your staff have if there's going to be no cost. If we flip them, there shouldn't be any cost for you to provide that same level of expertise to move YRTC-Kearney to where everybody in this room thinks it needs to be, and that's the place that's safe for staff, that's safe for the young people that are sent there, and that are addressing their needs while they're there. That's it. And I still am not convinced that we better accomplish that when we're not given any additional resources, I mean, and I'm going to hear it because you're telling me what you got at the Nebraska Youth Correctional Facility in terms of staff to meet the behavioral mental health needs of the young people at that facility. I don't...I need to wait and hear what we have to meet those same needs at YRTC. And if it's not comparable, then maybe that's where we ought to be directing our resources. But we're talking about a...it's a cost-neutral. And then I'd say, what are we gaining? [LB972]

BOB HOUSTON: I know there's a question in there somewhere. [LB972]

SENATOR COUNCIL: No, no. That was pure proselytizing (inaudible). [LB972]

BOB HOUSTON: Okay. (Laugh) Because if I could make one comment on that. [LB972]

SENATOR ASHFORD: Well, is there a hybrid approach, Bob, that could be applied here? Or do you see the idea of moving more difficult cases to...or is it possible to do that, to a more secure facility within your department? I think those are sorts of the questions, I think. [LB972]

BOB HOUSTON: Well, I think... [LB972]

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

Judiciary Committee
January 26, 2012

SENATOR ASHFORD: And Senator Colby has a question...Senator Coash has a question. [LB972]

BOB HOUSTON: Oh, I'm sorry. [LB972]

SENATOR COASH: Thanks, Bob. You've been around a long time, Corrections. And you mentioned something in your opening statement that I wanted to ask. There was a time when YRTC was under Corrections, correct? [LB972]

BOB HOUSTON: That's correct. [LB972]

SENATOR COASH: Were you around when that was the case? [LB972]

BOB HOUSTON: For 23 years of it. [LB972]

SENATOR COASH: Okay. So there was a reason at some point that we said Kearney shouldn't be under Corrections anymore and we ought to put that under Office of Juvenile Services. I wasn't around, you were. What was...there was a reason for that. Do you recall what that was? [LB972]

BOB HOUSTON: Well, I'd like to tell you I did and could testify to that, but I was a prison warden at another facility at that time. I think I was the warden of the Lincoln Correctional Center at the time. And so I wasn't involved on the central office and certainly not as a director. [LB972]

SENATOR COASH: Right. Okay. Well, I think that's an important question to ask... [LB972]

BOB HOUSTON: Yes. [LB972]

SENATOR COASH: ...because we made the policy decision at one point that these kids are best served under HHS, and we're going back and that may be the right move, but we ought to know why we moved it in the first place. If this goes through, as briefly as you can because we have a lot of people that want to talk, what's going to change? Are the staffing ratios going to change? [LB972]

BOB HOUSTON: Well, I think that again if we look at it as an either/or situation, and we're sitting does it go here or does it go there, I think that good arguments could be made on either side. But I guess what I would propose to you, at least from my own perspective is, is that a wealth of resources comes with this. First of all, we're a smaller agency. Kearney and Geneva would be a big deal in our agency, and I think Health and Human Services did a very good job of paying attention to them. But they would be a big deal in our department, the first thing is. The second thing is, is that some of the key

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

Judiciary Committee
January 26, 2012

indicators of residential living are things that that's what we do for a living and that's what we address. And so it's not just the youth and so forth, but it's the fact that whether youth or you're an inmate in a correctional facility is you can't come and go as you please to. And with that brings a whole set of dynamics. Goffman, in his book, Asylums, addressed that very well with secondary rewards and other types of behaviors that arise out of confinement, and those are the dynamics that we address, because we understand when people are confined against their will that there are certain dynamics that are not replicated in open society. So with that comes the resources of looking at it from a legal perspective, looking at it from security threat groups, identification, how we identify them, how we manage our populations, how we classify them, how we go about uses of force to intervene quickly and bring an end to that assault, how we try very hard to not further criminalize adult offenders. And certainly in the youth facility a resource that would be there, of course, as Senator Hadley talked about, the ability to charge somebody that way. But that really isn't at the basis of safety, because we think that being in a department as we move people from a less secure facility, a residential facility such as Kearney or Geneva, if they're moving into more secure confinement, that that be done administratively and not to further criminalize youthful behavior. And so being under the same umbrella as the Department of Correctional Services, and over time being able to develop, how do we bring the confinement for those individuals who display a predatory type of behavior in an administrative fashion rather than charging them with a felony fashion... [LB972]

SENATOR COASH: Which is what you do in Corrections. [LB972]

BOB HOUSTON: What's that? [LB972]

SENATOR COASH: Which is what you're used to in the adult corrections. [LB972]

BOB HOUSTON: Absolutely. [LB972]

SENATOR COASH: Just one last quick question. Will the kids that are there, if you take over, be called inmates? [LB972]

BOB HOUSTON: No. They are youth now and they'll be youth later. We would not put a fence up. You know, we don't have any plans on that. What I can tell you is, is that Dr. Pope who testified earlier I think gave me some key articles, and one of them is, is that, you know, as you address youth, you really...those programs that are most successful are the ones that have the best family environment. And a healthy family is one that's free of tension, psychological or physical hurting of someone else. And that is very important that we have that at the youth facility, and I think that the staff out there is just doing an outstanding job to get there. And I think with some of the resources that we can bring to the table and looking over at the long term as to how we deal more effectively with predatory behavior without further criminalizing the youth of our state, I

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

Judiciary Committee
January 26, 2012

think that's a resource that we bring to the table, and we'd be very pleased with this mission. [LB972]

SENATOR COASH: Thanks, Bob. [LB972]

SENATOR ASHFORD: Senator Harr. [LB972]

SENATOR HARR: Thank you, Senator Ashford. And thank you, Mr. Houston, for coming here and answering our questions. And I've heard a similar question asked different ways and I'm not yet satisfied with the answer, and maybe I need to ask it--because my head is so small--directly. It seems we all agree we want employees to be safe, well respected, and we want to help these kids. We get that. You say we can do that by changing culture and expectations, and part of the reason we can do that is because of the way you do things. You do things differently. What I haven't heard is we do things differently and you say accreditation. My question is, do you have a different mission statement? Do you...how is your approach so much different than HHS? I understand you have different training, but how do you do things differently? How do you change that culture? How do you change those expectations? And how can you do it and HHS can't or hasn't? If you haven't caught on yet, there's a bit of cynicism within the Legislature about moving agencies or moving things around, because in the past we went along with the experts, and the results have been less than satisfactory. So we I think have to have extra proof to say not only trust us, but here's why to trust us. And I don't think that's occurred. And so I guess my question is, what can you do that someone else can't do with the same amount of money so that we should make this change? [LB972]

BOB HOUSTON: Well, I think it's like with anything, you have to have a structure for success. And the... [LB972]

SENATOR HARR: And what is that structure? [LB972]

BOB HOUSTON: Well, I think the first thing is, is that...I think Senator Hadley hit upon that early, and that is you've got to have safety. I mean you just have to have safety. And we bring to the table things that I think can move us in the direction of having a safer environment. [LB972]

SENATOR HARR: And safety. So what can you do that HHS can't do for safety? [LB972]

BOB HOUSTON: Well... [LB972]

SENATOR HARR: Is it just merely the threat of a felony or an actual felony? Or is there something more you can do? [LB972]

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

Judiciary Committee
January 26, 2012

BOB HOUSTON: Well, I think is that there's a whole wealth of things that we do, to do safety. It's not charging somebody with a felony. It's not restraining them on the floor. It's not putting them in a segregated confinement. It's the moment you walk in the door of a facility, a residential facility, whether it be a youth...there has to be an expectation by the youth or the inmate that you're going to treat each other, yourself, and the staff respectfully, and you start that out at the beginning. It's an understanding, as I indicated earlier, the dynamics of being in the confined world, to being separated from your family, you can't leave, you can't go home, understanding those dynamics. We understand those dynamics. I think that the training that the staff have I think is a key component of that. But in order to get to really the fundamentals of treatment, I think you have to...the staff has to feel secure, the youth have to feel secure. And we bring a very sophisticated way of identifying gang behavior. But there's more dimensions, and that has to do with how you classify youth at Kearney or Geneva, how you assign people towards success to their living units, to their work assignments. It's an understanding of what the dynamics are of gang affiliations and how those play out in a confined environment. And so...I mean I could go on, but there's just so many dynamics that go with residential living that we understand, because that's what we do, that are present not just in adults but in youth. [LB972]

SENATOR HARR: And I understand that, but I still...I don't understand why HHS can't do that or why you can't train them to do that. Why do we have to make a large shift? Because when there's a shift there's going to be lag time and there's going to be...I mean we change one word and we get a fiscal note that says a new computer program is going to cost \$40,000. So that's \$40,000 that's going to assigning new computer programs that could be better spent on a child. [LB972]

BOB HOUSTON: Um-hum. [LB972]

SENATOR HARR: And so my...I guess I still can't...it hasn't worked through why you are...I can understand you have a lot more training, but is your training different? And if it is, why can't you help HHS with that training instead of moving a whole system from one department to another? Because sometimes it feels like when we do that, all we're doing is moving chairs on the deck of the Titanic and we're not making actual substantial change. [LB972]

BOB HOUSTON: Okay. Well, and I certainly understand your concern, and I think that as far as the dynamics of the youth facility that Jana I think will be addressing that, and I think there's other people that will talk to that. And I certainly understand...I don't know all the particulars of past experiences with that. But I guess the way I look at is, is that what we're talking about is putting those youth facilities under an umbrella that matches up very closely with the dynamics of residential living and the resources that are available under the Corrections umbrella, and embracing on a national level, you know,

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

Judiciary Committee
January 26, 2012

the resources that are available. Now that's not to say that Health and Human Services couldn't do that. We have that framework. But I think key to that also, as time goes by, is that we really want the campus to stay as it is: safe; secure; to have the absence of tension, psychological and physical. But also being under the Department of Correctional Services, it offers over time decision making as to how we can move the predatory offenders into a more secure environment without charging them with a felony to make that part of just the natural process that we're going to match your behavior with the resources available in the state. And I think moving it under the Department of Correctional Services allows those decisions to be made. [LB972]

SENATOR HARR: All right. That goes a lot further. And then I guess my question is, what is the mission statement? Would you change from what it currently is? [LB972]

BOB HOUSTON: Well, our mission statement is that we really want to have humane environment, that we want people to become productive citizens, that we respect the ability of people to change. And I think those basic principles, I think whether it's youth or adult, are probably about the same. If over time we found that we needed to change our mission statement to enroll the youths, if we would do that in a heartbeat, if...you know, because we want to make certain that the philosophy at a Kearney or Geneva stays focused on the youth, that is the betterment of the youth, giving them a better opportunity, equipping them with the resources they need and the match-up with community services to be on target with where they're at. And certainly...and I know if you probably overuse the phrase, not to criminalize youthful behavior and to let youth be youth, but make certain they're held accountable, make certain that they have an environment that's tension-free. Make certain that with the 400 occurrences between youth that we have out there, that if we can decrease that or, you know, cause those to not have injuries, that that 20 percent that are acting that way becomes 5 percent. Because oftentimes youth, certainly youthful offenders, will react in an assaultive way in an environment where they feel physically threatened. I mean, why wouldn't they? And so if you can relieve that tension, it will make a huge difference in that environment and I think it will be...create an even more therapeutic environment, because people know they're safe. [LB972]

SENATOR HARR: Thank you. [LB972]

BOB HOUSTON: Um-hum. [LB972]

SENATOR ASHFORD: Thanks, Bob. Thank you. [LB972]

BOB HOUSTON: Okay. [LB972]

SENATOR ASHFORD: Kerry and Jana, or...Jana. [LB972]

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

Judiciary Committee
January 26, 2012

JANA PETERSON: (Exhibits 3, 4, and 5) There's several things that are being passed out to you all today. One of them is my testimony, and the other is for Geneva and Kearney YRTCs' statistics, our "Youth on Youth Assaults," as well as "Youth on Staff Assaults." [LB972]

SENATOR ASHFORD: Jana, give us your name first. [LB972]

JANA PETERSON: All right. My name is Jana Peterson. I'm the facility administrator at the Youth Rehabilitation and Treatment Center. Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Jana Peterson, J-a-n-a P-e-t-e-r-s-o-n. I'm the facility administrator at the Youth Rehabilitation and Treatment Center in Kearney, Nebraska, for delinquent male juvenile offenders. I would like to thank Senator Ashford and Senator Hadley for introducing LB972. I am here to testify in support of this legislative bill. I have been employed in a number of frontline and administrative positions with the Department of Health and Human Services over the past 25 years. My job responsibilities during this time have included working with children and their families in the areas of abuse, neglect, delinquency, and ungovernable behaviors. I've been able to collaborate with other state agencies, such as State Probation and the Department of Correctional Services, as well as local governmental and community partners to better serve our youth, their families, and the people of the state. Since returning to YRTC-Kearney in 2008 in a leadership position, I have seen the increase of number of juveniles entering the facility with mental health, substance abuse, assaultive aggressive behaviors, and gang affiliation. We are seeing an increase in the number of youth-on-youth assaults and youth-on-staff assaults. This increase interferes with the primary goal at YRTC-Kearney of rehabilitation and treatment, as it necessitates us to place more focus and emphasis on safety and security. With the transfer of the YRTC-Kearney to the Department of Correctional Services, our staff would benefit from the expertise Corrections has in areas of correction-oriented management of facilities, including the Nebraska Correctional Youth Facility in Omaha. They are likely better equipped to address the security and safety concerns we have been experiencing at Kearney. At YRTC-Kearney, we have dedicated and talented staff that focus daily on helping juveniles make positive changes. Currently, YRTC-Kearney is accredited with the American Correctional Association, and we work closely with the Council of Juvenile Correction Administrative Performance Based Standards to ensure effective treatment and programming. Over the past several years, the YRTC-Kearney facility has taught and implemented a cognitive evidence-based program called EQUIP, and it's updated our discipline model. EQUIP was one of the several models that was recommended by two nationally known consultants who evaluated our program in 2008. Based on our new programming and discipline model, we have been able to normalize our approach to youth. They receive incentives as well as consequences for their behaviors. Even though there is a need for enhanced safety and security at the facility, under Corrections we will continue to provide the critical rehabilitation and treatment programming to the juveniles we serve. I

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

Judiciary Committee
January 26, 2012

support the decision to transfer the YRTC-Kearney facility to the Department of Corrections. I have been involved in meetings over the past several months between Department of Health and Human Services and the Department of Correctional Services to plan the implementation of an effective and smooth transition. The transfer will not eliminate current rehabilitation and treatment programs or staff at the facility. In closing, I would like to thank the committee for their time in allowing me to express my thoughts. If you have any questions, I'd be happy to answer them for you. Thank you. [LB972]

SENATOR ASHFORD: Senator Larson. [LB972]

SENATOR LARSON: What constitutes a youth-on-youth or a youth-on-staff assault? Like, what is an assault? Is it, you know, punching or spitting? I mean, what...I see it goes from 198 to 231. I'm just asking, like, what's the minimum requirements for a youth-on-youth assault or a youth-on-staff assault? [LB972]

JANA PETERSON: It could be any physical contact like a push. It could be a hit or it could be actually utilizing an object as a weapon such as... [LB972]

SENATOR LARSON: But the minimum would be kind of a... [LB972]

JANA PETERSON: A push or a... [LB972]

SENATOR LARSON: Do a lot of those get reported, even like just a push or...in terms of the youth-on-youth, I mean, I see it in the handout. [LB972]

JANA PETERSON: If it's escalated...if their behavior has escalated to a point where...I mean, if you nudge somebody, that's not an assault. But if you're angry, your behavior is not de-escalating, and you push somebody or you push through somebody, that's an assault. [LB972]

SENATOR LARSON: What's the consequences for that in the center? [LB972]

JANA PETERSON: Um-hum. There are several consequences. We have different stages of consequences. The first, it may be a loss of a privilege, and that's just to get the youth's attention. So if a youth likes to listen to their radio, they could lose their radio privileges for up to 72 hours. Or it could be a loss of a privilege for...maybe they like recreation, so they could lose, like, a sporting event, a one-time event. If that doesn't work, then we escalate what the consequence is. Ultimately, the end consequences or the most severe consequence is being in isolation up to five days. [LB972]

SENATOR LARSON: How many youths are in Kearney right now? [LB972]

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

Judiciary Committee
January 26, 2012

JANA PETERSON: There's 160. [LB972]

SENATOR LARSON: One hundred sixty. And in 2011, you showed there were 472 assaults. Are you seeing it's the same offenders day after day after day, or are most of the 160 involved into the process? [LB972]

JANA PETERSON: No. There's different offenders on any given day, but there's probably the 20 percent of the population that are repeat offenders. [LB972]

SENATOR LARSON: Twenty percent constitute most of the 472 assaults, you would guess. [LB972]

JANA PETERSON: Right. [LB972]

SENATOR LARSON: And moving it to the Department of Corrections you think can lower this, or what can the move...? I mean the numbers speak for themselves in terms of obviously the rise of the assaults. How does the department...the move to the Department of Corrections help solve the problem? [LB972]

JANA PETERSON: Moving to the Department of Corrections would be one part of the solution. Their expertise, their training, how they identify youth that identify with gang affiliation, that expertise could benefit the department. [LB972]

SENATOR LARSON: And you, I guess obviously you think that would help lower the number of assaults, that type of knowledge? [LB972]

JANA PETERSON: It would assist with lowering. [LB972]

SENATOR LARSON: It would assist. Okay. Thank you. [LB972]

SENATOR ASHFORD: Senator Council. [LB972]

SENATOR COUNCIL: Yes. Thank you, Ms. Peterson. I apologize that I had to step out of the office a moment during your testimony. But I have reviewed the written copy, and my questions are along the lines, I think, of the questions that Senator Larson was pursuing. And you were present during some of the Senator Harr's questioning of Mr. Houston. And when I read the statement, "With the transfer of YRTC-Kearney to the Department of Correctional Services, our staff would benefit from the expertise Corrections has in the area of correction oriented management of facilities, including the Nebraska Correctional Youth Facility in Omaha," describe that benefit to your staff. [LB972]

JANA PETERSON: Okay. I think by being under an umbrella of Department of

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

Judiciary Committee
January 26, 2012

Corrections, we would work closely with the Omaha facility that also works directly with the youth, our young males. They would help us reevaluate our staffing model. Mr. Houston talked about the unit managers. That is something that is brand new as of this January to YRTC-Kearney facility. Just in the last several weeks, we have noticed, due to staff presence or officer presence, we have seen a decrease with assaultive behavior. So one thing is the staffing model utilized, maybe collaborating with them to look at our training and what we provide. We believe that we not only provide training so many hours a year but we need to provide day-to-day training. Supervisors, unit managers, administrators, peers, coworkers, they need to assist each other because we're all there for one goal--to help the youth so they can leave YRTC and be successful. Another thing is that, you know, it's just one part of the solution. It's not going to solve the solution (sic) if it goes over to Department of Corrections tomorrow. It's just one part of starting to evaluate the facility and where we need to go to stop the aggressive, assaultive behavior or a majority of it so we can really have a safe environment for both youth and staff. [LB972]

SENATOR COUNCIL: All right. And at the core of my question, Ms. Peterson, is what prevents that from occurring now? And when I see the statement that says, "They," being Department of Corrections, "are likely better equipped to address the security and safety concerns we have been experiencing at Kearney," I read that statement in the context of the fact that it will be the same staff at Kearney that's there now. There's no plan or intention for a wholesale replacement of staff, so we're going to be dealing with the same people. And if Corrections is better able to equip that cohort to address safety and security, why can't that be done without moving the center under the Department of Corrections? Why can't that collaboration occur, why can't that training be provided without a wholesale movement of the centers under the Department of Corrections? What prevents that from occurring now? [LB972]

JANA PETERSON: I would defer that question to Kerry Winterer. [LB972]

SENATOR COUNCIL: Okay. I will respect that. And you also talked about these models that you've...have been recommended to you by the national consultants, and at least there's some indication that you're seeing some positive results of that. Would it be your expectation that that would be something that Department of Corrections would assume and continue, or would it be your expectation that they bring in a whole new set of models to be employed? [LB972]

JANA PETERSON: In our planning meetings, it's my understanding, as well as the team's, is that what our current programming is would remain. I think we're very close to what Department of Corrections' approach is. Mr. Houston talked about the three Rs. He talked about the role model, and we expect that out of the staff as well as redirecting the youth's behavior, and then reinforcing by incentives, and that's what the philosophy of what we go by at YRTC-Kearney. [LB972]

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

Judiciary Committee
January 26, 2012

SENATOR COUNCIL: All right. With the models that you're employing right now. [LB972]

JANA PETERSON: With the model of EQUIP. [LB972]

SENATOR COUNCIL: Of EQUIP. [LB972]

JANA PETERSON: Uh-huh. [LB972]

SENATOR COUNCIL: Okay. And you also referenced in your testimony and Mr. Houston referred to it, and I guess that's where I got a little confused because it was almost the implication that if YRTC-Kearney and Geneva are moved under the Department of Corrections, that's the means by which they access this expertise from the American Correctional Association and the Council of Juvenile Correction Administrators. But you're already a part of that, correct? [LB972]

JANA PETERSON: Yes. [LB972]

SENATOR COUNCIL: Okay. So there's no...I mean it's not...in order for you to access that expertise or the assistance that those groups could provide, you don't have to be under Department of Corrections. You're already in a position to access that now. [LB972]

JANA PETERSON: Correct. [LB972]

SENATOR COUNCIL: Okay. And please, I guess I need to, you know, qualify my statements, and I think Senator Lathrop stated it very well at the beginning, at least speaking for myself, and I think I could fairly confidently speak for all. I mean, we have the utmost respect for your staff and the mission and the difficult task that you've been asked to undertake. Our problem is...and our...my questions will be, why can't we do the things needed to better protect your staff, better secure the facility, provide better programming for the young people without having to move the centers under the Department of Corrections? I mean, that's at the core at least of my concerns. Because when I look at some of the staff security issues that you're talking about, I mean, I don't know whether providing you more resources to have more staff...because you made a comment about since the corrections officers have been there, you've seen some change. What corrections officers? [LB972]

JANA PETERSON: Well, under the Department of Health and Human Services, within the last...since the fall, we reevaluated our staffing needs and we received five additional employees and they became unit managers. [LB972]

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

Judiciary Committee
January 26, 2012

SENATOR COUNCIL: Okay. [LB972]

JANA PETERSON: So within the department we are evaluating. I think there's another legislative bill out there for a deficit request to not only look at the structure of our facility but also to look at our staffing needs. [LB972]

SENATOR COUNCIL: Okay. So the unit manager approach that Mr. Houston was referring to being utilized at the Nebraska Youth Correctional Facility you're already beginning to implement at Kearney. [LB972]

JANA PETERSON: Yes. [LB972]

SENATOR COUNCIL: Okay. I have no further questions. [LB972]

SENATOR ASHFORD: My only question, I guess, Jana...and thank you for what you do. Honestly, it's one of the key elements in our statewide effort to help these kids, and you really serve us well and I must tell you. Just very briefly, the...and you've said it but just to maybe summarize, you've been there since...back since 2008 that we've had an increase in both staff assaults and youth assaults, youth-on-youth assaults, of some great...of some significant degree. What do you attribute that to? What is your, if you could summarize that, what is causing that significant increase in assaults? [LB972]

JANA PETERSON: I think there's a lot of different things that are creating the increase in assaults. I think when you look at that, you have to look at the number of youth that are coming through our front door every month. We have an average of 43 new youth for the last year coming through the door every month. Within that statement alone, you look at the culture at the facility. It's hard to develop a culture when you have that many new youth coming through the front door and when your average length of stay is at 4.9 months over the last year. You know, over the years we went from a program that...you know, there's some youth that stay a year and there's some youth that leave within a fairly reasonable amount of time. You have to look at the risk and the severity of the crime that they committed and what their behavior is currently showing. So that's one thing. Another thing is...now I forgot the question. [LB972]

SENATOR ASHFORD: Just how do you categorize the...or how do you summarize the root causes of these increases? [LB972]

JANA PETERSON: Oh, okay. Through performance-based standards, we also looked at the time of day that the assaults are occurring, what days are they occurring, what are your staff-to-youth ratio during those times. And we found out that they're occurring, like Mr. Houston said, during travels across the facility, they're occurring around the lunch hour, they're occurring at bedtime. When you have four out of the six living units that are a barrack-style living unit with up to 30 youth trying to get to sleep at one time

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

Judiciary Committee
January 26, 2012

with one staff member overseeing that sleeping quarter, it's hard to get youth asleep. Therefore, with the unit managers, we have come in and we have five...up to three to five additional staff there at night, and they overlap the shift so they can help get the youth asleep, and that has seemed to help. So the structure of the facility, staff-to-youth ratio. In the mornings, on our first shift, we may have one staff member with 22 to 30 youth on one living unit at a time. In the evening it gets better and then at night time, as someone made the statement, we have approximately nine staff members at the facility with 160 youth. So I think it's just a multitude. We, since fall of 2010, we implemented a new program called EQUIP. It's a staff-directed program but there's been a big learning curve for both staff as well as youth. Someone brought up that youth may be committed there or recommitted there or come in several different times under a parole violation, so with that being said, you have youth that have worked through the program with our other treatment program, and now they're learning a whole new program. So that has caused some challenges, as well as some of the employees have decided that they either want to further their education or it's a stepping stone to their professional career, as well as, you know, maybe it's just not the place that they want to work, and we have seen a higher increase of people leaving the facility either through promotions or their professional growth or just making the decision it's not the right place for them. So I think a lot of different factors play a part into that. [LB972]

SENATOR ASHFORD: Senator Council and then... [LB972]

SENATOR COUNCIL: Thank you. Since the increase in staff and the move to the unit manager kind of approach, has it been long enough for you to get any picture for the impact that that change in your operations can or has had on like assaults or behavior issues, or has it been in place long enough to get any feel for...? [LB972]

JANA PETERSON: No. I mean, I can just tell you the relief that I can already see personally for myself. They became on board January 2 and they started their positions then. The amount of phone calls and consultations that I receive every night due to youths' behavior has drastically decreased. The amount of incident reports as well as staff utilizing the last resort in physically intervening with assaultive behavior has decreased. But we're only into it 26 days, 24 days. [LB972]

SENATOR COUNCIL: Days. Okay. Thank you so much. [LB972]

SENATOR ASHFORD: Thanks, Jana, very much. We've been on this now, I know we haven't even gotten to the opponents, so we're not going to cut anybody off, but it's really my fault really more than anything else, asking too many questions. But thanks, Jana. [LB972]

JANA PETERSON: Thank you. [LB972]

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

Judiciary Committee
January 26, 2012

SENATOR ASHFORD: But I know a lot of people have to get back to Kearney and so forth, so...Kerry, are you next? Okay. [LB972]

KERRY WINTERER: (Exhibit 6) Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Kerry Winterer, that's spelled K-e-r-r-y, last name is W-i-n-t-e-r-e-r. I'm chief executive officer of the Department of Health and Human Services. I, too, would like to thank Senator Ashford and Senator Hadley for introducing LB972 and I'm here to testify in support. I have no intention of repeating what a lot of...what you've already heard today from people who have preceded me and are really more expert in a lot of these issues than I am. I would be remiss, however, not mentioning that the YRTCs have talented and dedicated staff whose goal is to help juveniles make positive changes. With that said, I believe the staff would be better served under the Department of Correctional Services. The focus of DHHS needs to be on children in the community, especially on youth who have been neglected and abused. As members of this committee are aware, significant discussions are occurring on the proper delivery of juvenile justice and the role of our Office of Juvenile Services. As an example, later today you will hear testimony on LB985, introduced by Senator Krist, related to the Nebraska Juvenile Services Delivery Project, which is meant in part to prevent unneeded commitment of youth to OJS in the first place, and to provide supervision by the Office of Probation Administration. This is part of a general rethinking of the role of DHHS and who best to provide services to the OJS population. If successful, the pilot project could lead to a shift of OJS personnel and funding to the courts. As CEO of DHHS, I would prefer that the focus of DHHS be on youth who are neglected and abused, and the role of the YRTCs better fits elsewhere. Fortunately, with the Department of Correctional Services, we have an agency dedicated to the safe management of facilities and rehabilitation, rehabilitation of offenders. I believe a transfer is an important step in juvenile justice reform, and it would benefit both the youth and the staff at the YRTCs. Thank you to the committee for giving me the time to speak to you on this very important issue, and I'm happy to respond to any questions you may have. [LB972]

SENATOR ASHFORD: Thanks. Any questions of Kerry? Senator Council. [LB972]

SENATOR COUNCIL: Yes, thank you, Mr. Chairman, and thank you, Mr. Winterer. I'm going to have to ask Dr. Pope this question afterwards. But I hear what you're saying, Mr. Winterer, about where DHHS would rather focus their energies and resources, but your statements in that regard imply that the young men, in particular, because we're basically concentrating on Kearney, that the young men at Kearney aren't youth who have been neglected and abused. I mean, I would venture to say that the bulk of the young people who are referred to Kearney have been victims of neglect and abuse, perhaps neglect and abuse that was not addressed by DHHS soon enough. But to suggest that by moving to the Department of Corrections the YRTC-Kearney that you're moving a cohort of young people who are not neglected and abused, and you're

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

Judiciary Committee
January 26, 2012

focusing on neglected and abused, I'd imagine it gets back to what Dr. Pope was saying about the assessments of these young people. You know, with proper assessments of these young people, I'm sure that you'd find that the overwhelming majority of them have been victims of neglect and abuse, so I guess I don't buy that reasoning for moving to the Department of Corrections because these young people, too, suffer from the vestiges of neglect and abuse and are supposed to be at Kearney for purposes of having some treatment around those issues. [LB972]

KERRY WINTERER: Right. I in fact agree with that. I think certainly you would find that a lot of those youth in the two YRTCs have been the subject of abuse and neglect, but we are in a change at this point in time. And I would also agree with you that probably a lot of the reason that these youth are in these facilities is because the system hasn't served them well up to that point in time. What DHHS needs to do is be focusing on those kinds of services rather than running a secure facility. However you describe it, that's a secure facility, and our attention needs to be on community services, it needs to be on the services that can in fact prevent kids from ultimately being there, and that's really where our focus needs to be, not on running a secure facility. We'll continue to do that. If the judgment of the Legislature and this committee is that we're going to continue to do that, we'll continue to do that and we will continue to do everything in Jana's and our power to provide the kinds of treatment that needs to be there. We have a \$900,000 deficit request this session to increase the staff there so we can deal with these issues as they continue to be our responsibility to deal with. But at some point in time you have to look further down the road and say, where are we going with this? Is it appropriate for HHS to be operating a "secure facility"? And the population in that secure facility is going to do nothing. To the extent we're successful in doing these other services up-front, the population at the YRTC is nothing but going to potentially get even more violent because you're going to be able to deal with problems sooner and more effectively before some court decides they need to go to the YRTC. [LB972]

SENATOR COUNCIL: But with all due respect, Mr. Winterer, DHHS has much, if not all, to do with whether a youngster goes to YRTC or...I mean the range of remedies available to the juvenile courts is least restrictive to most restrictive. [LB972]

KERRY WINTERER: Right. [LB972]

SENATOR COUNCIL: And DHHS, in large measure, are the ones making the recommendations about the level of treatment. And when you look at options, I mean, when you're talking about we want to go back to the community, I mean, we've eliminated some options. [LB972]

KERRY WINTERER: Uh-huh. [LB972]

SENATOR COUNCIL: I mean, we've forced some options to go out of business. So

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

Judiciary Committee
January 26, 2012

where is this going to occur where we have people, young people who need to be in residential, out-of-home, residential, secured treatment facilities? Regrettably, the options that we are down to now, YRTC or someplace outside the state. So we talk about, yeah, we want to bring it back to the community, but where are the resources in the community? I mean, we're talking about a much deeper problem and far more resources than \$900,000. [LB972]

KERRY WINTERER: Absolutely, I agree with that as well. But as I said before, as is trying to move the department in a direction and to try to resolve some of these issues, one of the issues is should the kid...should the department fundamentally continue to operate a secure facility, and one of my conclusions is I'm not sure that's the "business" we ought to be in, particularly when you know that there is an entity out there that can do rehabilitative, can do treatment, and has the structure and the wherewithal and the ability and the record to provide those kinds of services. It seems to me it's almost...it's let them do what they can do and get us out of the business of running a secure facility. I mean, that's the fundamental question here, isn't it? [LB972]

SENATOR COUNCIL: Okay. I mean...okay, and what it boils down to is get it out from under my jurisdiction because when you say they can run it better and they've got the equipment to do it, they're going to be doing it with the same people at the same place with the same programming that you have now. So other than what Senator Lathrop said earlier, you change the plate on the door from DHHS to Department of Corrections, you're doing it with the same people in the same place and the same infrastructure. [LB972]

KERRY WINTERER: I mean that's certainly one way to look at it. I'd prefer to look at does this fit within the mission. Where does this kind of a facility fit; inside of whose mission does it fit? [LB972]

SENATOR COUNCIL: That's all I have, Senator. [LB972]

SENATOR LATHROP: Just one observation, if I may. The same logic would send the Bridges Program with the developmentally disabled to Corrections though. I mean at some point, at some point HHS has a responsibility to be involved in rehabilitation. Some of those people are difficult. There are difficult people over at the Bridges Program with developmental disabilities, and there are difficult people at the YRTC. And I don't know, just because Bob is good at locking people up and doing what he does and taking good care of them, I think we're letting HHS off the hook, I honestly do. And it seems to me that you can talk to Bob and learn from Bob all the things you need to do to improve it, but fundamentally, fundamentally, the facility needs some work, the staffing needs some work, and those things are what we ought to be focused on. And I really, really have a concern that what we're doing is trying to do something without spending a dime so that we can say we've solved the problem, and Galen Hadley will

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

Judiciary Committee
January 26, 2012

be back here to tell us those people are still getting beat up and the kids aren't getting the rehabilitation that they need. [LB972]

KERRY WINTERER: Yeah. Senator, there's a distinction, I think, if you talk about the Bridges Program. It would be different. Corrections doesn't have...isn't equipped to deal with that particular population, and no one would suggest that that would be appropriate. That's the difference. [LB972]

SENATOR LATHROP: The Bridges Program? [LB972]

KERRY WINTERER: Yes. [LB972]

SENATOR LATHROP: Okay. [LB972]

SENATOR HARR: Mr. Winterer. Thank you, Senator Ashford. Mr. Winterer, you said the mission statement of your...of the Division of Children and Family Services is to deal with neglect and abused children. So I went to your Web site, and the mission statement according to the Web site is: The mission of the Division of Children and Family Services is to provide the least disruptive services when needed, for as long as needed to give children the opportunity to succeed as adults, to help families care for themselves, resulting in healthier families and safer, more prosperous communities. Now nowhere in here, this mission statement, does it limit your department, this division, to neglected and abused children, and yet that's what you want to put it in and I have a problem with that. And I think it's getting back to what Senator Lathrop said. I'm not quite sure, just because you're doing your job poorly doesn't mean you can't do it anymore. Instead of giving it off to...the appearance I have, from an outsider looking at this, is it looks like this is a vote of no confidence from the Governor, and so to correct this problem he's asking us to introduce legislation to move this from your department to Corrections. And I don't see you fighting very hard to say, hey, we're doing a great job but they can do it better, or...and I haven't heard from anyone why you can't do what they do. And my question...and then it gets back to what Senator Coash asked earlier, and I know I'm compounding my questions, but I just...I'm not seeing the answers I need, and so I feel like I need to ask the same questions over and over again. Why was this change made all those years ago from Department of Corrections to DHHS? And what has changed to say, you know what, we made a mistake, which don't get me wrong, I'm always excited when DHHS is willing to admit they made a mistake and willing to go back to the way they did things before. I get that. But my question is, what was the mistake made and why do we need to go back and what are the national best practices? [LB972]

KERRY WINTERER: Well,... [LB972]

SENATOR HARR: Choose the one you want to answer. (Laughter) [LB972]

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

Judiciary Committee
January 26, 2012

KERRY WINTERER: Could I choose which question? [LB972]

SENATOR HARR: Yeah. [LB972]

KERRY WINTERER: Let's talk a little bit about "mistake," I guess, and I don't...I don't think anybody should leave with the impression that the reason that this is on the table and we're considering it is because HHS is doing a poor job with these YRTC's. Nobody has said that, and I would say and I would defend to the last man and the last person in the room that in fact HHS is doing a very good job with, admittedly, limited resources and in a facility that needs some help. When we were here before we talked about this. So it isn't because...and much of the reason we're talking about this wasn't because somebody said, well, HHS is doing a bad job and, therefore, we need to take it away. Much of it was really the result of our instance, if you will, as we look at where ought we to be focusing, what ought we to be doing that we can really affect, and does the YRTC's now and looking forward into the future fit best with us or with someone else. I mean that's the fundamental question. It's not a question of performance here because I think that if you look at the performance of the YRTC's and look at any measurable objective standard, they're doing very well, so that is really not the issue. The issue is how can we take DHHS, which is this big, and say where can we most effectively make a difference and how can we most appropriately focus on things that really should be what we're focusing on and look objectively and logically at all these things that we're doing and saying, well, isn't there something here that maybe somebody else could do just as well that would help us in terms of doing the things that we really think we can do and that we're uniquely, uniquely qualified to do? That seems to me to be the fundamental question. We're not admitting that we're doing badly or nor is, I think, the message is that we're doing badly here. We're trying to do a better job as we look forward in terms of analyzing what should we be doing and what can be done by someone else that might help in terms of the overall scheme of better outcomes. [LB972]

SENATOR HARR: So you're saying your mission is now neglected and abused children. [LB972]

KERRY WINTERER: I'm saying that's...no, I'm not saying that's our only mission. [LB972]

SENATOR HARR: Okay. [LB972]

KERRY WINTERER: What I'm saying is that I used it in the testimony to say that's really where we need to be focusing on. We have challenges in child welfare,... [LB972]

SENATOR HARR: Okay. [LB972]

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

Judiciary Committee
January 26, 2012

KERRY WINTERER: ...child welfare reform. We have challenges along those lines. We have a lot of uses for our resources and a lot of things we should be focusing on that are ours, that we own, that we can only do. [LB972]

SENATOR HARR: Okay. [LB972]

KERRY WINTERER: There are some things we do that might even be duplicative that others in this big state government might be able to do as well or better than we do. [LB972]

SENATOR ASHFORD: And I think...and I don't want to interrupt. I think it's a good question and good answer. I think what we're going to try to do is move it along here, Burke, so if you have one more question. [LB972]

SENATOR HARR: Just to follow, and I guess my question is if you can answer what Senator Coash asked earlier, which is what was the reason for the shift? [LB972]

KERRY WINTERER: Yeah. You know, I don't have a good answer for that... [LB972]

SENATOR HARR: Okay. [LB972]

KERRY WINTERER: ...in terms of the history there. I know that the YRTC's used to be part of Corrections. Then there was another office established for youth, I don't even know what it was called, that was part of Corrections. Then it was spun off, and you may know more...certainly know more than I, it was spun off as its own. In 2007 I think then it was folded into HHS, I think. So it's had several iterations. [LB972]

SENATOR ASHFORD: In the '90s it was...in the '90s it was part of Corrections, a separate part of Corrections, and then it was spun off into...or then it went to HHS, then OJS was created later, but... [LB972]

SENATOR HARR: And we can talk about it off record to give you some context too. [LB972]

SENATOR ASHFORD: Yeah, but let's do this... [LB972]

SENATOR HARR: I'd love to. [LB972]

KERRY WINTERER: And I've got...in fact, there's a history I can provide to you which outlines that. [LB972]

SENATOR ASHFORD: There is definitely history there. [LB972]

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

Judiciary Committee
January 26, 2012

KERRY WINTERER: Yeah, and there's a written history I can provide to you. [LB972]

SENATOR ASHFORD: There's a history, but let's do this...as there is with most things you know, other than what we're doing right now which is in the present. But why don't we do this. Thanks, Kerry. [LB972]

KERRY WINTERER: All right. Thank you. [LB972]

SENATOR ASHFORD: And how many other proponents do we have? And how about opponents? Okay, let's see if we can get through the next testifiers in the next half-hour at the max because we've got so many people here on other bills and I don't want to cut anybody off because we've asked a lot of questions, but... [LB972]

JULIE DAKE ABEL: (Exhibit 7) Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Julie Dake Abel, J-u-l-i-e D-a-k-e A-b-e-l, and I'm executive director for NAPE/AFSCME Local 61. We're the union that represents most state employees and specifically employees at the YRTCs in both Kearney and Geneva. I'm here to testify mostly in support of LB972. While I thank you for looking at taking action and introducing this bill, moving to Corrections may or may not be the answer. There are some deep-rooted problems that need to be corrected for the safety and security for all the YRTCs. In other words, if the administration at the YRTC, specifically in Kearney, does not change or change their ways dramatically, it may be for naught. You will hear me mostly talk about the YRTC in Kearney, as you've heard a lot today, because that is where the most obvious, serious problems are. Administration at Geneva seem to have a much better handle on running the facility the best they can and treating staff in a more respectable manner. I will say, kind of in response to what Senator Harr had brought up earlier, that I do think HHS is doing a poor job. And I know that Senator Council had brought up about...the question about being the same people with the same program. I will tell you that I think the staff could do pretty well changing over to Corrections, but I would have a problem if the administration locally does not change in the facility, and I would hope that there would be some different programming to be done, and this is in response from my many months talking to the staff, employees out there. And there will be a couple of employees following me that you could certainly...may be able to get some more answers from. I can also tell you that as you've heard, in Kearney assaults are high and many times are not reported correctly or not at all. They have a high number of assaults and it's not getting better, in spite of what you may hear. My staff and I have visited with a lot of employees over the last few months, and there has been a high number of assaults. If you refer to the handouts that I gave you, I have marked "B" and "C," "B" and "C" is information that we received on youth-to-youth assaults and youth-to-staff assaults. However, if you look at the last page, this is another piece of paper that has come to our attention and those numbers seem to differ from the first two exhibits that were provided by the agency, so we're not

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

Judiciary Committee
January 26, 2012

even sure that the proper...the proper information is being given. I will say, in closing, that there has been an increase in staff number leaving. There is a huge, huge, overwhelming concern, and I cannot stress it enough, of how the staff is treated in Kearney and the incredible fear of retaliation. And like I said, I cannot stress that enough. I've heard that over and over from so many different staff that they are scared to even talk to you. I do believe there is a cultural problem as well. I would also ask that these...that maybe we need to look at an oversight committee being done for the YRTC's, specifically maybe in Kearney, because it has become such a huge problem. I don't believe it's an easy fix. We do believe that corrections would do a better job and most of our employees do, too, right now. But if administration and their philosophy and their attitude towards the employees in how they handle the youth and assaults does not change, things will not get better. And I know that I'm out of time so I will stop. [LB972]

SENATOR ASHFORD: Thanks, Julie. Do we have any questions of Julie? Senator Council. [LB972]

SENATOR COUNCIL: Just real quick, I'm trying to understand your attachments. [LB972]

JULIE DAKE ABEL: Yes. [LB972]

SENATOR COUNCIL: You say Exhibit "B," at least the period that are not blacked out,... [LB972]

JULIE DAKE ABEL: Yes. [LB972]

SENATOR COUNCIL: ...represent youth-to-youth assaults. [LB972]

JULIE DAKE ABEL: Correct. [LB972]

SENATOR COUNCIL: And then Exhibit "C" is youth-to-... [LB972]

JULIE DAKE ABEL: Staff assaults. [LB972]

SENATOR COUNCIL: ...staff assaults. [LB972]

JULIE DAKE ABEL: Yes. [LB972]

SENATOR COUNCIL: Now were you in a representative capacity prior to 2002 for the employees at YRTC-Kearney? [LB972]

JULIE DAKE ABEL: I personally was not. I may have... [LB972]

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

Judiciary Committee
January 26, 2012

SENATOR COUNCIL: You know, because I don't want to try to...it's not like I'm sneaking up on you or setting you up, but one of my concerns is it was my understanding that for years the method of dealing with conflict at Kearney was to have the youth go at each other, okay? [LB972]

JULIE DAKE ABEL: That's my understanding as well. [LB972]

SENATOR COUNCIL: Okay. How much of that has carried on? I mean, while you may have discontinued that policy,... [LB972]

JULIE DAKE ABEL: Uh-huh. [LB972]

SENATOR COUNCIL: ...how much of that practice remains? I mean how much of that is still a part of the culture at Kearney? [LB972]

JULIE DAKE ABEL: I don't believe that it is, but I think the staff that come after me may be able to better answer that. [LB972]

SENATOR COUNCIL: Okay. Now you also represent the staff at Geneva, correct? [LB972]

JULIE DAKE ABEL: Correct. [LB972]

SENATOR COUNCIL: You don't have the same level of... [LB972]

JULIE DAKE ABEL: There are assaults happening at Geneva, but from what I am hearing from the various employees that I've talked to, that they believe that the situations are handled better. [LB972]

SENATOR COUNCIL: Okay. [LB972]

SENATOR ASHFORD: Thanks, Julie. Thank you for your testimony. [LB972]

JULIE DAKE ABEL: Yeah. Thank you. [LB972]

SENATOR ASHFORD: Next proponent. Good afternoon. [LB972]

ROBIN SMITH: (Exhibit 8) Good afternoon. I'm Robin Smith. I am an employee at YRTC, and I am a member of NAPE and representing NAPE here plus the employees. I maybe have an answer for Senator Harr's question about why we...I may be wrong but I was around then and helped a little bit, but I think that was to stop some overlap between HHS and the Department of Corrections, and it was also to streamline the

government I think at the time. That's kind of my recollection from that time. I have just a little short comment. I had made some notes here while you were talking. I come here today to support the passage of LB972. I feel that the Department of Corrections will be a better fit for the youth housed at YRTC-Kearney and that the Department of Corrections will better provide a more secure and a more stable facility for youth and staff at YRTC at Kearney. And I had a couple notes on some things. I think we're kind of dancing around a couple issues a little bit, but one of them was on the staff assaults. Up until 1997, we were covered by state statute while we were in Corrections, so if we were assaulted by youth, there were consequences. And when we left and went to HHS, we didn't have those statutory protection and we didn't know it at the time, until somebody was hit over the head with a chair and we found out, and we've not been able to get that back, as far as I know. Also, in 2002 we had always done this youth-on-youth containments, and I'm not a real expert on them, but I sat at the table when Senator...or then-Governor Johanns ended our youth-on-youth containments and I think our...the restraints and I think that was kind of the beginning of a lot of our problems when it comes to assaults of youth-on-youth assaults and youth assaults on staff. I know that Senator Council called that "going at each other." I would say that that's not the way that happened or occurred. I thought it was a much more humane way of dealing with the violence up there at the time. But like I said, I'm not a real good expert. There's a couple of people who can do better. I think the other problem is there are...there's no consequences for anything up there. They have LPs. You know, you can't go to the gym, you can't go to the canteen, so if you hit the staff you don't get to go to the canteen. Hit another staff, you may not get to go to the gymnasium. There's kind of a joke that if you, you know, you kick out a \$1,400 door, whatever, you'd lose...you can't go to the canteen twice or whatever. But I guess that's kind of what the core issue is to me. I think we're dancing around, doing a lot of stuff, and the real issue is there's no consequences for what's going on for the youth. [LB972]

SENATOR ASHFORD: Thanks, Robert (sic). Senator Council. [LB972]

SENATOR COUNCIL: Yes, thank you, Mr. Smith. I'm going to be real quick. I'm going to ask two questions. You said that in 1997, when the move was or the removal of Correctional Center... [LB972]

ROBIN SMITH: Yeah, we went under an umbrella... [LB972]

SENATOR COUNCIL: ...coverage,... [LB972]

ROBIN SMITH: Yes. [LB972]

SENATOR COUNCIL: ...in 1997, was the practice of youth-on-youth containment being applied at Kearney? [LB972]

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

Judiciary Committee
January 26, 2012

ROBIN SMITH: Yeah, it was there, was there, had been there for years and years. [LB972]

SENATOR COUNCIL: Okay. And it continued after the move, the removal of the protection. [LB972]

ROBIN SMITH: Governor Johanns came out, there was some bad publicity, it was not true at the time, and he came out and for basically...he didn't want to fight the World-Herald over this so he...because I sat there and he just said, I'm not going to fight the World-Herald over this issue, and we were thrown under the bus basically, in my opinion. [LB972]

SENATOR COUNCIL: Okay. But based on your comments, it is apparently a practice that you endorsed. [LB972]

ROBIN SMITH: Yeah, I think it was a more humane way of dealing with...you would not have all the staff assaults, you wouldn't have the youth-on-youth assaults. [LB972]

SENATOR COUNCIL: Okay. And how? I mean how is it... [LB972]

ROBIN SMITH: Because as a group, and like I said, there's people...a couple others can answer this better than I can, but if you have a group of nine boys and two would go at it, there were the other seven youth would stop this. Now as it is, and I've seen this, if you have two kids that are going to go to a fight, the other seven kids don't necessarily get involved and they wait for the staff. [LB972]

SENATOR COUNCIL: Okay. [LB972]

ROBIN SMITH: And I've seen this personally in a couple cases so... [LB972]

SENATOR COUNCIL: Now you state rather emphatically that the Department of Corrections will provide a safer, more secure, and a more stable facility. How? [LB972]

ROBIN SMITH: I think, like I said, one is if we go...that's one of the reasons I think the staff would like to go to Corrections. We would have that statutory protection from assault like we did 15 years ago. And I think they would like to...and, like I said, we had lost that. We need that because when the youth come up and they assault the staff, they gain a little bit of notoriety with the rest of the youth up there, and there's not enough consequences for these assaults. [LB972]

SENATOR COUNCIL: Okay. So the threat of felony prosecution is what, in your mind, would result in...would cause a reduction in assaults. [LB972]

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

Judiciary Committee
January 26, 2012

ROBIN SMITH: I think it would help. There were some other...there were some other ways of dealing with it at the time. Like I said, some others can maybe answer that a little better than I can. But, yeah, I can remember...we were talking about this one time before. I can remember very few staff assaults up until, say, 2002 or... [LB972]

SENATOR COUNCIL: Right. And 2002, coincidentally, was when the youth-on-youth containment policy ended. [LB972]

ROBIN SMITH: That's when Governor Johanns ended it. [LB972]

SENATOR COUNCIL: Okay. I have no further questions. [LB972]

SENATOR ASHFORD: Thanks, Senator Council. Robert (sic), thank you for your testimony and thanks for all the work you do up in Kearney. [LB972]

ROBIN SMITH: Okay. [LB972]

SENATOR ASHFORD: Let's have a couple more proponents I think. [LB972]

KELLY MURR: (Exhibit 9) Senator Ashford, members of this committee, my name is Kelly Murr, M-u-r-r, and I'm a former YRTC employee. I'm here basically because in this packet that's been passed around I have a good...I think I have a good knowledge of what goes on at YRTC-Kearney. I started in 1985 and was two months short of being there for 26 years. I have a lot of friends up there and still do. I'm concerned about the...and I'm in favor of LB972. I think that there's a lot of things that go on up there that maybe a lot of people are unaware of. In '85 we were under Department of Corrections and we ran a program called Positive Peer Culture. Staff didn't start or encourage fights that went on up there. We did everything we could to stop them. It was under Positive Peer Culture that there was youth-on-youth containments. Staff were there to look over the containments to make sure that no...the youth that was being held on the floor was not being hurt at any time. Under, at that time, Senator Johanns, it was changed and there was a lot of discussion as to what program we were going to go to. In 2002, many programs were looked at, and eight years later we came up with the EQUIP Program that we were going to take...start doing. Under Positive Peer Culture, we had a lot of staff up there that had a lot of time, 10, 15, 20 years, and under the EQUIP Program we had two eight-hour days of training. We don't have anybody up there that you could call maybe an expert of a program. I guess I agree that the change of a name isn't going to make any difference unless there is something in place for it to become better, and I think it's keeping everyone safe. And I think when the staff feels safe they make the youth feel safe, and that makes youth learn different behaviors, positive behaviors. Again, there's a lot of concerns. Under the Department of Health and Human Services, there are so many JSOs that sometimes wouldn't even come up and visit youth. They had service coordinators do that. Sometimes they didn't show up and that really doesn't

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

Judiciary Committee
January 26, 2012

tell you that they care for the youth, they're just in a safe place so we don't have to worry about them. I guess I would probably...I guess I agree. I care for the employees at YRTC-Kearney, and I think their safety is of the utmost importance no matter where they're at. For the safety to happen there must be administration who puts their safety first, and the administration is more worried about being friends, maybe, with the youth, lack of discipline. And the thing I would like to finish saying is that Ms. Peterson came up through the ranks like everybody else and at times I think maybe she forgot where she came from, the hardships that she had to work through from a cottage staff to a group leader to different places that she has been to. And I think for whatever it stays, whether it goes to Corrections or stays at YRTC, staff has to be...some input first important along with the staff...or with the youth. [LB972]

SENATOR ASHFORD: Kelly, thank you for your comments. Senator Council. [LB972]

SENATOR COUNCIL: Two quick questions, and thank you, Mr. Murr. I'm reading one of the documents in your packet, the document addressed to "Dear Senators," and on page 2 of that document you list some changes you feel need to be made. And the third bullet point is a moratorium on commitments so that staff can be fully trained without the stress trying to do a job that they haven't learned how to do yet. What does that mean? [LB972]

KELLY MURR: When we went to...when we decided to use the EQUIP Program, all staff at YRTC was divided up and they were given two days to learn a program. When the living unit was selected to start using that program, they went through maybe a weeklong program. We don't have or we didn't have at that time when I was there a fully developed disciplinary program, so we were again flying, in my opinion, flying by the seat of our pants. I think in order for the staff to actually learn a program, to feel confident in running a program, in teaching a program to a youth, I think at times that you're going to...I think you may have to maybe stop...doing something to stop commitments to coming to YRTC-Kearney to where the numbers are down low to where staff can be trained on the program. Maybe a month won't even work. Maybe two months won't work. But I think a time has to be given to where staff can learn that program and feel comfortable with it before they can start doing something to educate the youth. Under Department of Health and Human Services, when we were...and Positive Peer Culture, our length of stay was eight months. But we end up getting youth at YRTC-Kearney quite often, and when we have to make a selection for youth to be placed on release, sometimes we have to look at files that we get from other placements, sometimes they're good files, sometime they're very vague, and make a decision on, well, he will be the less harm to society or back into the community so we're going to select that youth to be placed on release. So I think in order for any program to work, we have to do something to...where there has to be something done to train the staff properly before we start moving kids into a program and start working with them. [LB972]

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

Judiciary Committee
January 26, 2012

SENATOR COUNCIL: And the same would be true if YRTC-Kearney is moved under the Department of Corrections and they come in with a new program. [LB972]

KELLY MURR: I think if it was moved under the Department of Corrections, I think there needs to be some kind of a transition, even if it's a deal where YRTC has no youth but the staff are there that are trained under whatever program Department of Corrections is using to where they understand it, they feel comfortable doing it, and then start bringing youth back in so they can be...start working the program and start receiving the help they need. [LB972]

SENATOR COUNCIL: Okay. My final question, your next bullet point on that page, an emphatic no licensed medical...no licensed mental health practitioners; staff does not need the added distraction of more serious mental health problems to deal with; those issues belong in separate facilities. What do you mean by that? [LB972]

KELLY MURR: Before I left, it was being talked about that each living unit there, YRTC was going to try and hire LMHPs to be in each living unit so they were there to help the mental health youth. I think within the amount of youth that are there and the staff not having the...not having the training to deal with a lot of the mental health youth, I think if you're going to do something with mental health, I think they need to be...the mental health part needs to be put into a completely different facility. You are going to have some that will have mental health and it may be not as severe as maybe some have to where they could be dealt with, and we do have mental health practitioners on campus right now. But I just think that the way the living unit staff are, they are really pressed with all the things that they have to do, the paperwork, the handing out medications, the dealing with other youth in the living units. I don't think they have the time to sit there and deal with somebody that has mental health problems. [LB972]

SENATOR COUNCIL: Okay. Well, you were here when Mr. Houston was testifying about that being one of the advantages that the Department of Corrections has at the Nebraska Youth Correctional Facility, that they have... [LB972]

KELLY MURR: Correct. [LB972]

SENATOR COUNCIL: ...these mental health providers. So if you move under the Department of Corrections, the likelihood is you'd be getting what it is that you're objecting to. [LB972]

KELLY MURR: And that would be a plus. [LB972]

SENATOR COUNCIL: I don't have any questions. [LB972]

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

Judiciary Committee
January 26, 2012

SENATOR ASHFORD: Thank you. Senator Coash. [LB972]

SENATOR COASH: Thank you. Thank you, Mr. Murr, for coming down. Twenty-five years you worked there? [LB972]

KELLY MURR: Twenty-five years. [LB972]

SENATOR COASH: Whoa. That's commendable, and I know you didn't do that for the money. I wanted to ask you about your...because you've got such long experience, you were talking about the old model of the Peer... [LB972]

KELLY MURR: Positive Peer Culture? [LB972]

SENATOR COASH: ...Positive Peer Culture. That was a model that you were trained in and... [LB972]

KELLY MURR: Uh-huh. [LB972]

SENATOR COASH: ...you used for many years. And that allowed youth-on-youth restraint? [LB972]

KELLY MURR: The youth at that time were allowed to, if there was assaultive behavior, the youth did...we were on the group process to where groups are...youth are placed in groups by size, age, and sophistication. When a youth would assault another youth, it was the youths' responsibility to do everything they could to stop that youth from hurting that other youth. They were held on the floor to keep them from harming themselves anymore or other people anymore. [LB972]

SENATOR COASH: And the youth would do that to each other? [LB972]

KELLY MURR: The youth would do that. [LB972]

SENATOR COASH: Wasn't that dangerous? [LB972]

KELLY MURR: You know, looking back and looking under the things that we're doing now, there was less staff and youth being hurt than there are now. When that happened, staff was right there watching the youth, making sure there wasn't anything going on to cause that youth that's on the floor any more harm, to keep him aggravated, or... [LB972]

SENATOR COASH: What was this...in those situations, what was your role? If you're not the one keeping the kids safe and they're doing that to each other, what became your role as the staff? [LB972]

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

Judiciary Committee
January 26, 2012

KELLY MURR: There were times that staff did hold the youth down along with the youth as well. Most of the time when that was there, we were knelt down over the youth, along the side, and we were watching the youth to make sure that no one was hurting them. We were trying to calm the youth down, trying to get them back up so they could talk about the problem that got them back or got them on the floor, got the assaultive behavior to stop. [LB972]

SENATOR COASH: Okay. I think I heard in your testimony that...have you seen an increase in violent youth, or have you seen an increase in violence from the youth that are there? I mean, are the youth that are coming in the last five years just inherently more prone to violence than the youth you saw 25 years ago? Or is it the method that the staff are taught to deal with it, is that the change? [LB972]

KELLY MURR: I think the youth coming in are a lot more violent... [LB972]

SENATOR COASH: Okay. [LB972]

KELLY MURR: ...than what we've seen at the very beginning or at the start of my working there. [LB972]

SENATOR COASH: So you are seeing a different kind of kid coming into Kearney... [LB972]

KELLY MURR: We are seeing a... [LB972]

SENATOR COASH: ...than you used to see. [LB972]

KELLY MURR: ...a lot different kids. [LB972]

SENATOR COASH: Okay. [LB972]

KELLY MURR: We're seeing...my responsibility was dealing with the oldest and larger group on campus. I can tell you many times I dealt with kids that were maybe 6'3" and 300 pounds, and you were expected to...one staff was to keep the youth apart or trying to keep a young man from hurting somebody else. You know, 6'3", 300 pounds and he's angry and that adrenaline is flowing, that's a lot to try and take care of. [LB972]

SENATOR COASH: Yeah. I've been there. And just...and I don't want to put words in your mouth so I just want you to clarify. I'm just going to kind of summarize back. [LB972]

KELLY MURR: Okay. [LB972]

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

Judiciary Committee
January 26, 2012

SENATOR COASH: And I know you're here in support of this bill. But one of the things that I thought I got from your testimony was who runs it may not be as important, which department runs it may not be as important in changing what needs to happen to make everybody safe as it is the leadership of this personnel who's running it, whether they're in Corrections or HHS. It sounds to me like what you're saying is it's more about the personnel and not the department, but I want you to clarify it that's not what you meant. [LB972]

KELLY MURR: Correct. No, that's what I meant. I think leadership needs to be looked at. [LB972]

SENATOR COASH: Okay. Thank you. [LB972]

SENATOR ASHFORD: Thank you. Thanks a lot. Next? And do we have any other proponents after this testifier, not that...then we'll move on to the opponents. [LB972]

SUE BOKENKAMP: Good afternoon, Senator Ashford and senators. My name is Sue Bokenkamp, B-o-k-e-n-k-a-m-p. I am here as a teacher to testify in behalf of LB972. One minute. I'm president of the West Kearney Education Association and I am representing the Nebraska Education Association here today. I am an advocate for not only my peers but the youth I work with. I want you to know I've taken personal time to be here today. We get three days a year and I've taken one of my three days to be here. I've dedicated my life to teaching. I have been employed at YRTC for almost 27 years. I am a teacher, a certified professional counselor, and a licensed mental health practitioner. My job at YRTC is that as a teacher. During my employment, I spent half of my time under Department of Corrections and half of my time with the Department of Health and Human Services. I believe the philosophies of the departments are different. That's where I believe the difference is, is the philosophies. I do think to some degree...I'm going to answer some questions I heard and here's my paper, it got really messed up so...I do think at times we are a dumping ground for the mental health facility. I do believe there's lots of abused in mental health, young men out there and women, for that matter, that don't commit crimes. But what I am seeing at YRTC and what I've worked with for 27 years are juvenile offenders adjudicated to YRTC for law...criminal law offenses. We cannot address the mental health issues until we get control of the conduct disorder, and the only way you're going to get in control of the conduct disorder is to have a structured...a very structured and disciplined environment. That is what I think we're lacking here. Ooh, I better hurry. I am interested in their educational goals, and there's a direct link, and we know that, between education and the opportunity for them to be successful. Our teaching staff provide students the opportunity not just to catch up on their education, to get a GED or a high school diploma. As teachers, we know that students learn best in a friendly, safe environment. YRTC, I was part of the discipline model. I helped create the discipline model, and I will

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

Judiciary Committee
January 26, 2012

tell you that an LOP for youth that hits a staff is not appropriate behavior. It's not an appropriate consequences, nor do the youth believe it's an appropriate consequence. In 2005, from 2005 to 2011, both youth-on-youth assaults and youth-on-staff assaults has tripled. The quality of a good program is the retention. I'll finish up here. [LB972]

SENATOR ASHFORD: Go ahead. No, go ahead and finish. [LB972]

SUE BOKENKAMP: Okay, is retention, and from my observation we've had a very difficult time keeping staff. I heard people say, well, what are you just going to do, turn over the...change the whole staff? We come from a town of 30,000. How are you going to replace the entire staff? And in my opinion, I'm proud of every single person I work with. I believe going to Department of Corrections does not mean punishment. It didn't mean punishment when I worked with them before. We provided treatment. It's always been a treatment modality. It's never been throw away the key, and I don't believe that's what it is right now. And teachers, we as the teachers, we do believe that Corrections is the best environment to help youth on their conduct disorders. And I would seriously urge you to consider this. We started writing letters in 2002. My first letter to various senators and to HHS was in 1999 talking about the safety and security of the institution. My question to you would be, why am I here today? Why is that still going on? And that's one of the concerns that I have. I really appreciate you giving me the opportunity to talk to you today, and I'll answer questions if you have any of me. [LB972]

SENATOR ASHFORD: Well, we really appreciate you being here, most importantly, and I can't tell you why it's taken 13 years. [LB972]

SUE BOKENKAMP: That was kind of a rhetorical question but... [LB972]

SENATOR ASHFORD: But, no, it was a very valid question and one that needs...you deserve an answer to. I'm not sure we have it today, but you'll get one at some point here... [LB972]

SUE BOKENKAMP: Thank you. [LB972]

SENATOR ASHFORD: ...in the next few weeks. [LB972]

SUE BOKENKAMP: Thank you. [LB972]

SENATOR ASHFORD: Senator Coash. [LB972]

SENATOR COASH: Thank you, Senator Ashford. Thank you, Sue, for coming down. [LB972]

SUE BOKENKAMP: You're welcome. [LB972]

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

Judiciary Committee
January 26, 2012

SENATOR COASH: It's great to have somebody with the experience of the span that you've had because you can remember what it was like. [LB972]

SUE BOKENKAMP: Uh-huh, I do. [LB972]

SENATOR COASH: Okay. You're going to get the same kind of kids,... [LB972]

SUE BOKENKAMP: Yes. [LB972]

SENATOR COASH: ...all the same staff. [LB972]

SUE BOKENKAMP: Well, if...are you assuming... [LB972]

SENATOR COASH: You'll still be there, right? [LB972]

SUE BOKENKAMP: Okay. [LB972]

SENATOR COASH: You'll still be there. [LB972]

SUE BOKENKAMP: Uh-huh. [LB972]

SENATOR COASH: All of your...all your coworkers will still be there. [LB972]

SUE BOKENKAMP: Right. [LB972]

SENATOR COASH: You'll have the same dedication to kids... [LB972]

SUE BOKENKAMP: Right, um-hum, um-hum. [LB972]

SENATOR COASH: ...that you do, no matter who's running it, same leadership. What will be different? [LB972]

SUE BOKENKAMP: You know, in my opinion and from my experience, kids need structure and they need discipline, and I do not feel we are structured enough or disciplined enough. I don't think...and I really think our administration is a little bit between a rock and a hard spot. They might be surprised to hear me say that, but, you know, I think when PBS standards become more important than the safety or the security of the youth or the staff, or when you're told to do certain things, I think that becomes ineffective. I think you have to be...look out for the best interest of the youth you serve regardless of what else is going on. [LB972]

SENATOR COASH: So you think by making this change, PBS, positive behavior

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

Judiciary Committee
January 26, 2012

support. Is that what you're talking about? [LB972]

SUE BOKENKAMP: No. I'm talking performance-based standards. [LB972]

SENATOR COASH: Performance, okay, performance-based, okay. [LB972]

SUE BOKENKAMP: I'm talking about meeting the performance-based standards. [LB972]

SENATOR COASH: Okay. But what you're saying is by making this change... [LB972]

SUE BOKENKAMP: Changing. [LB972]

SENATOR COASH: ...you'll all of a sudden have... [LB972]

SUE BOKENKAMP: No, I don't believe that. [LB972]

SENATOR COASH: ...the discipline and the structure that's needed? [LB972]

SUE BOKENKAMP: No, I think it has to come from leadership. [LB972]

SENATOR COASH: Has to come from leadership, okay. [LB972]

SUE BOKENKAMP: Yes. Uh-huh. [LB972]

SENATOR COASH: So... [LB972]

SUE BOKENKAMP: And I...go ahead. [LB972]

SENATOR COASH: So is it...and I don't want to put words in your mouth, but is it...is what you're saying is you feel like you'll get that kind of leadership from Corrections that you're not getting from HHS? [LB972]

SUE BOKENKAMP: Yes, I do, from the Department of HHS, yes. [LB972]

SENATOR COASH: Okay. Does the Department of Corrections have some...they don't have a magic program out there. [LB972]

SUE BOKENKAMP: No. Uh-uh. [LB972]

SENATOR COASH: But do they have some kind of resource or some kind of a tool that they can come in and implement that will give the structure and the discipline that you think is the piece that's missing? Because I was trying to listen to Director Houston and

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

Judiciary Committee
January 26, 2012

figure out what that structure, what that tool would be. [LB972]

SUE BOKENKAMP: Yeah. [LB972]

SENATOR COASH: And I think Senator Council's question would be, well, why don't we just do that under HHS. [LB972]

SUE BOKENKAMP: Uh-huh. [LB972]

SENATOR COASH: But... [LB972]

SUE BOKENKAMP: Well, I'm not sure I can give you that answer. I'm not sure I'm the right person to give you that answer. I guess from my point of view is that the Department of Corrections is in the best position to not only train staff but to be a support to staff and back staff up. I worked under the Positive Peer Culture Program and I found it to be a very effective program. Youth were empowered to help other youth. Youth are not being empowered to help other youth right now. Staff are empowered to help youth. We want to train the youth of our society to be kind and caring and helping people. If you guys were all in this room and you started going after him, would you like the rest of them to just stand back and not doing anything? That's what we're expected to do. We have to have possibly 1 staff with 30 kids, and it's just not at night, which Senator Council mentioned. It's in the day, too, sometimes, you know, especially on the weekend. [LB972]

SENATOR COASH: Well, I appreciate your comments on that Positive Peer Culture. But I'm trained in these areas, and I do understand there are a lot of different options out there, and it makes me real nervous to have kids putting their hands on other kids and... [LB972]

SUE BOKENKAMP: I understand that. And I would like to stress the EQUIP Program is based after the Positive Peer Culture Program. It is the basis for EQUIP. The difference is the hands on. I have no problem with the hands-off approach, but I have a problem with the lack of discipline approach, the lack of what administration can do with a youth. If a youth assaults another youth or a staff and gets three days in a room by himself, is that telling him...is that giving him the consequences he needs to change his behavior? Or if the consequence is, no, you don't get your radio today, is that enough consequence to take care of the behaviors of the youth? Are we being fair to them? Would I do that to my own kids? No. I would have stronger discipline measures than that for my very own kids, and why would I expect any less out of the youth I serve than what I expect from my own children? [LB972]

SENATOR COASH: So it sounds like kids are running the show out there. [LB972]

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

Judiciary Committee
January 26, 2012

SUE BOKENKAMP: I think they are. [LB972]

SENATOR COASH: Kids are running the show. [LB972]

SUE BOKENKAMP: And I will tell you that I think it's based upon the staff. I think there are some staff there that still have credibility and the youth will listen to but that is diminishing. On a daily basis you can ask any single staff at YRTC if they've been cussed at, yelled at, threatened. I had a fight in my room on Monday and two youth going at each other. Now I am pretty good with my mouth, but I am not physically going to separate two 200-pound boys, and I will tell you I had good response from the staff when I called, partly because I don't call unless I need help and partly because I have some credibility. But you know if it's the weekend and there's not that staff there, what support does that living unit staff have? [LB972]

SENATOR COASH: So you got kids running the show. [LB972]

SUE BOKENKAMP: I think so. [LB972]

SENATOR COASH: Okay. And that's a barrier to the treatment that you're trying to give. [LB972]

SUE BOKENKAMP: It's a definite barrier,... [LB972]

SENATOR COASH: No question. [LB972]

SUE BOKENKAMP: ...a definite barrier. [LB972]

SENATOR COASH: And the reason you're coming in and supporting this bill is you're saying, look, if we got a different model to come in... [LB972]

SUE BOKENKAMP: Uh-huh. [LB972]

SENATOR COASH: ...we could take control... [LB972]

SUE BOKENKAMP: Uh-huh. [LB972]

SENATOR COASH: ...and we could get better outcomes for kids. [LB972]

SUE BOKENKAMP: You know what? It's switched so much right now that you're going to take a while to get that switched back over to staff being in control. I don't think there's a magic formula. I don't think there's a program that you're going to go get that's going to say, wow, this is going to take care of it. [LB972]

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

Judiciary Committee
January 26, 2012

SENATOR COASH: Well, if that's true, it comes down to the leadership, right? [LB972]

SUE BOKENKAMP: Absolutely. [LB972]

SENATOR COASH: So does it matter who's running...I mean, I think what I'm hearing you saying is you don't feel like DHHS would give you the leadership. [LB972]

SUE BOKENKAMP: I agree. [LB972]

SENATOR COASH: Okay. [LB972]

SUE BOKENKAMP: That's what I'm saying. [LB972]

SENATOR COASH: All right. I'm starting to get a handle on what's going on. Thank you. [LB972]

SUE BOKENKAMP: Okay. [LB972]

SENATOR ASHFORD: Okay, then we got to...yeah. [LB972]

SENATOR COUNCIL: I just have one quick question. [LB972]

SUE BOKENKAMP: Sure. [LB972]

SENATOR COUNCIL: And thank you, Sue. [LB972]

SUE BOKENKAMP: You're welcome. [LB972]

SENATOR COUNCIL: Correct me if I'm wrong. Did I hear you say that what...you believe one of the problems is utilization of performance-based standards? [LB972]

SUE BOKENKAMP: Uh-huh. [LB972]

SENATOR COUNCIL: Okay. [LB972]

SUE BOKENKAMP: Yeah, I think we're really interested, and don't get me wrong. I understand as a teacher I try to meet standards set forth by teachers. I understand our administration is doing their job and trying to meet the standards. But what I'm saying is if we're more important about...we report that we don't want to be the top agency with the most assaults and we're concerned about that, lockup is a big issue. So what do you do with the kids that assault people? In order to prevent that, some kids may not get the lockup time they need because we can't lock...we don't have the lockup facility. I know there's a misconception among people that why don't you guys take care of it out at

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

Judiciary Committee
January 26, 2012

YRTC, but if you've been there and you've seen the facility, there is not a place to lock those kids up. And even if there is, there are standards set that the administration is trying to meet. And so what do you do with that kid? And here's the worst part. Those kids know it. They know it. To go to lockup for three days is a break from the group. [LB972]

SENATOR COUNCIL: Two points: Number one, if there's no lockup now, and that's something you'd say is needed,... [LB972]

SUE BOKENKAMP: Uh-huh. [LB972]

SENATOR COUNCIL: ...how are you going to get the lockup merely by virtue of going to the Department of Corrections? [LB972]

SUE BOKENKAMP: I don't know. [LB972]

SENATOR COUNCIL: Okay. [LB972]

SUE BOKENKAMP: I don't know because I know that the way the facility is built, and Senator Ashford was there, the way the facility is built, we're not like any other facility in the country. We are not a facility that really should be meeting performance-based standards because we don't fit that facility. We are an open campus with open dormitories, and we don't fit the mold. And do I think every room should be individual, kids have their own rooms? No, I don't. I think kids are safer in the open dormitory. When you have the open dormitory, there are kids with values there, but it's much easier to get sexually assaulted or assaulted in a closed...in a room when you're by yourself than it is in a dormitory with 30 other youth. So I do not favor of building a facility that puts all the kids in a separate room unless your primary goal is to meet performance-based standards, and you can send the kid to his room and lock the door for a period of time without counting it as a lockup time. [LB972]

SENATOR COUNCIL: Okay. And, Sue, I'm going to be very frank. [LB972]

SUE BOKENKAMP: Okay. [LB972]

SENATOR COUNCIL: Bob Houston sat here during his testimony... [LB972]

SUE BOKENKAMP: Uh-huh. [LB972]

SENATOR COUNCIL: ...and embraced performance-based standards. [LB972]

SUE BOKENKAMP: And I agree with him but I think you've got to...here's my point. [LB972]

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

Judiciary Committee
January 26, 2012

SENATOR COUNCIL: And, well, let me finish. [LB972]

SUE BOKENKAMP: Okay. [LB972]

SENATOR COUNCIL: Those very same performance-based standards that the institution is party to now,... [LB972]

SUE BOKENKAMP: Exactly. [LB972]

SENATOR COUNCIL: ...I don't get that the same standards are okay if the Department of Corrections is implementing them and it's not okay if DHHS is implementing them. [LB972]

SUE BOKENKAMP: I'm not saying...don't get me wrong. I'm not saying that. I'm saying that I believe that every institution and every professional needs certain standards to live by. I'm saying when you're implementing a new program, which we have done, that there's going to be a transition period, and during that transition period, maybe it would be three or four years, so what if the lockup times go up? So what if they don't meet performance-based standards? If the youth...there is a deterrent to youth. They don't want to be out there that long. They want to go home. But if they know that that's not going to happen, if you could...if the administration could not be chained to performance-based standards while with the implementation of the program, maybe we could get control of the discipline. [LB972]

SENATOR COUNCIL: So what makes you think that the Department of Corrections would do that? [LB972]

SUE BOKENKAMP: Because I think that the philosophy of the Department of Corrections is different from the Department of Health and Human Services. I think our goal is the same. You know, we all are there for the best interest of the student and the youth. I don't think we're one bit different. I don't think Mrs. Peterson thinks any different than Bob Houston does. I think they have the same philosophy, but how we reach that goal is where I think there may be a difference. And I'm not even saying Mrs. Peterson. I'm saying the Department of Health and Human Services. [LB972]

SENATOR COUNCIL: Okay. Okay. Well, like I said, I'm confused because... [LB972]

SUE BOKENKAMP: Yeah. I wished I had the answers. [LB972]

SENATOR COUNCIL: ...if you're going to apply and be governed by the same set of performance-based standards,... [LB972]

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

Judiciary Committee
January 26, 2012

SUE BOKENKAMP: Why do you need to move? [LB972]

SENATOR COUNCIL: ...how is it that the Department of Corrections is more acceptable to implement those than the Department of Health and Human Services? [LB972]

SUE BOKENKAMP: I think the... [LB972]

SENATOR COUNCIL: And then my final question to you is somebody tell me otherwise but...and I think even Senator Ashford stated this, that this large dormitory-type setting is part of the problem, and you just said you think that's the better structure. [LB972]

SUE BOKENKAMP: I do. I do. And I...well, we can agree to disagree. [LB972]

SENATOR COUNCIL: Okay. No, no, but I'm just...no, no, no, no, no. [LB972]

SENATOR ASHFORD: No, no, I think time out. [LB972]

SENATOR COUNCIL: I'm just making the point. [LB972]

SENATOR ASHFORD: Time out just a second. Time out just a second. [LB972]

SENATOR COUNCIL: I'm just making the point. [LB972]

SENATOR ASHFORD: I think the point is I don't know. [LB972]

SUE BOKENKAMP: Uh-huh. [LB972]

SENATOR ASHFORD: And I don't know because I'm not doing what you do every day and...or what Jana Peterson does every day. I don't know. What I do know, and thank goodness you're there and the other people that have come up here have been there and are there, to help us along. I don't...this is not a positional kind of discussion. What this is a discussion about is we got to fix this thing and we got to fix it this year, and we've got to rely upon you and your colleagues and the other people in this room to get us there so we can do it. And my perception of how something should be is de minimis compared to the perception that we get from you guys. So with that, thank you very much for your comments. [LB972]

SUE BOKENKAMP: You're welcome. And I just want to finish by saying if I knew the answer I wouldn't be a teacher, so... [LB972]

SENATOR ASHFORD: That's right. And thank you for using your time, and next time we bring you back to tell us how to solve this we'll figure it out so you don't have to... [LB972]

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

Judiciary Committee
January 26, 2012

SUE BOKENKAMP: Well, that would be great. [LB972]

SENATOR ASHFORD: ...well, you don't have to use personal time... [LB972]

SUE BOKENKAMP: Thank you. [LB972]

SENATOR ASHFORD: ...because we need you to help us. Any...we have opponents now, I think. I think that was the end of the proponents. Do we have any opponents to the bill? [LB972]

SENATOR LATHROP: Good afternoon. [LB972]

SARAH FORREST: (Exhibits 10-11) Okay. Good afternoon. So good afternoon, Senator Lathrop and members of the committee. My name is Sarah Forrest, that's S-a-r-a-h F-o-r-r-e-s-t, and I'm the policy coordinator for both child welfare and juvenile justice at Voices for Children in Nebraska. And I'm here today in opposition to LB972 for basically four simple reasons: It's going to increase the lack of coordination in our already "discoordinated" juvenile justice system in Nebraska; it's moving away from rehabilitation and towards the philosophy of confinement; and it represents a rejection of national best practice and trends when it comes to these facilities; and it also fails to address the true underlying problems which I think you've been hearing about a lot today. I've distributed to you all both a copy of some testimony and a background issue brief that we published early this January which has both YRTC history and data on about the past decade at the YRTCs, who are the youth that are committed, what's the cost of the services, etcetera. So the YRTCs serve about 600 kids each year but they cost Nebraska \$17 million. We know right now that recidivism rates at both YRTC-Kearney and YRTC-Geneva are high, 29 percent at Kearney and 17 percent at Geneva. And as already been testified to, there are a rising number assaults. So we know that the YRTCs have long been broken and Voices for Children has long been part of trying to address those problems. We don't feel that switching to the Department of Corrections will help this. And in looking at what other states have done and national best practices, we feel that it's both fiscally irresponsible and unsafe for kids, who can and should be rehabilitated, to go back to the Department of Corrections. All youth deserve a chance at quality, rehabilitative services, and LB972 moves us further away from this ideal. We ask that you reject this proposal and work on best practice ideas to reform and enhance safety and, in part, that also has to do with addressing the fact that the YRTCs right now in Nebraska are monopolizing available juvenile justice funding. They're serving the wrong children. There are too many children who are there for low-risk offenses who could be better served in communities. And they're inadequately providing for the high needs of their youth who have high substance abuse and mental health needs, who have serious, serious disorders, who need specialized treatment that the YRTCs just aren't capable of handling. And there are national best practices on all

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

Judiciary Committee
January 26, 2012

of these models that I'd be happy to talk more about. So thank you. [LB972]

SENATOR LATHROP: Very good. Thank you for your testimony. We'll see if there's any questions. I see none. [LB972]

SARAH FORREST: Okay. [LB972]

SENATOR LATHROP: You must have explained it all. [LB972]

SARAH FORREST: I guess so. Well, you have the issue brief and I'm... [LB972]

SENATOR LATHROP: Yeah, we got it. [LB972]

SARAH FORREST: ...be certainly happy to work with you. [LB972]

SENATOR LATHROP: Okay. Thank you very much. We appreciate your testimony. Anyone else in opposition here today? [LB972]

MARY FRASER MEINTS: (Exhibit 12) Hello. I'm Mary Fraser Meints, and M-a-r-y F-r-a-s-e-r M-e-i-n-t-s, and until December 16 Uta Halee Girls Village in Omaha provided an array of services to kids, including many of the kids we're talking about today. So first I'm going to provide a little historical background and I was there in 1995 when we merged child welfare and juvenile justice, and then I'm going to provide some solutions. The...at the time in the mid-'90s, we merged child welfare and juvenile justice because there was a lack of resources for kids in the community. I was asked to form a team, we were called the Badges and Birkenstocks Team, and we looked at the best practices from child welfare and from juvenile justice. We had a consultant from Child Welfare League of America who also consulted with OJJDP, the Office of Juvenile Justice, Delinquency and Prevention. And so we took from child welfare case management and an array of services, and from juvenile justice corrections we took the classification system, the use of less restrictive and most restrictive for community safety, and the restorative justice and graduated sanctions approach. We put that all together and came up with, I think, a good plan, and I think it worked somewhat. And there's some things that maybe didn't happen, but I think it was a good approach. At the time, there was also a discussion about using the Nebraska Correctional Youth Facility for those high-risk kids, the youth with the assaults, and that never happened and I'm not sure why, but I do think that should be pursued. And I would suggest separating those kids out and then putting the kids, who can be served in community-based services, in community-based services. And I can tell you that it works. Uta Halee provided services to over 400 kids, boys and girls in the juvenile justice system, through community-based services. You could put a reporting...a youth, a girl, in a reporting center at about \$95 a day, you could add a tracker, you could add electronic monitoring for a period of time, and that would be less costly than the YRTC for those kids who

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

Judiciary Committee
January 26, 2012

don't have violence issues. You could have staff secure settings across the state. I truly believe that kids grow best in families, and when you are close to the families that helps the kids succeed. I've heard a lot of talk today that's disturbing me about assaults on kids and youth taking kids, and I could talk to you more about reduction of violence in environments. Uta Halee reduced restraints to three, from July 1 till December, and we had no seclusions for three years. It was not done...it was done with a plan. It's not impossible but you have to have a focus on doing that. So I believe kids should be served as close to their families as possible. I believe there should be an array of community services. And for those kids who are violent, I think that the youth correctional facility in Omaha is a good option. So I'd be glad to answer any questions you might have, and I have worked in the system for over 30 years. [LB972]

SENATOR ASHFORD: Mary, thank you for all that you have done... [LB972]

MARY FRASER MEINTS: Yeah. Thank you. [LB972]

SENATOR ASHFORD: ...for 30 years. [LB972]

MARY FRASER MEINTS: Thank you. [LB972]

SENATOR ASHFORD: And Senator Council. [LB972]

SENATOR COUNCIL: Real quick, thanks, Mary, for coming, and thanks for presenting. And correct my understanding, but at Uta Halee you did provide what would be characterized in the juvenile justice system as a staff secure facility. [LB972]

MARY FRASER MEINTS: Yes. [LB972]

SENATOR COUNCIL: I mean if a young woman needed that level of service, they didn't have to be sent to Geneva. [LB972]

MARY FRASER MEINTS: Exactly. [LB972]

SENATOR COUNCIL: They could receive services at Uta Halee. [LB972]

MARY FRASER MEINTS: Yes. [LB972]

SENATOR COUNCIL: And now that program no longer exists. [LB972]

MARY FRASER MEINTS: Right. [LB972]

SENATOR COUNCIL: So in terms of young women who need a staff secure setting, the options now are in Geneva or out of the state. [LB972]

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

Judiciary Committee
January 26, 2012

MARY FRASER MEINTS: Or other facilities such as the Boys Town residential program. [LB972]

SENATOR COUNCIL: Well, the Boys Town residential program. [LB972]

MARY FRASER MEINTS: Now the other thing that's happened is that some of those in-between levels of care are now gone because of the changes in Medicaid that you've heard me talk about, so there's just the psychiatric residential treatment. And we used to provide the less restrictive treatment setting. [LB972]

SENATOR COUNCIL: In the less restrictive of the... [LB972]

MARY FRASER MEINTS: Yeah. [LB972]

SENATOR COUNCIL: Okay. Thank you. [LB972]

MARY FRASER MEINTS: Yeah. [LB972]

SENATOR ASHFORD: Senator Coash. [LB972]

SENATOR COASH: Thank you, Senator Ashford. Thank you, Mary. [LB972]

MARY FRASER MEINTS: You're welcome. [LB972]

SENATOR COASH: Nineteen million dollars almost is what we're appropriating annually to run YRTC. That's what the fiscal note says. And we're serving, I think we heard, 160 kids at YRTC, I think is what I heard. Maybe it was 130, but 160 kids I think. If we reappropriated that \$19 million in the community-based programs, could we serve 160 kids? [LB972]

MARY FRASER MEINTS: You could serve way more than that. Uta Halee's budget, when we had just Uta Halee, was \$12 million, and we served over 800 Nebraska kids and 300 Iowa kids. That's residential, the highest level, most costly,... [LB972]

SENATOR COASH: You have to build this ground up, though. [LB972]

MARY FRASER MEINTS: ...plus community based. What? [LB972]

SENATOR COASH: You'd have to build something ground up, though. I mean, that \$19 million is operations. I mean the buildings are already there in Kearney. But you still think we could do it for \$19 million? [LB972]

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

Judiciary Committee
January 26, 2012

MARY FRASER MEINTS: Community-based services don't necessarily need a building. The 400 kids we served in Nebraska didn't need a building. We went to their homes. The tracker services provided services there. We went and picked kids up and took them to our campus for our reporting center and day treatment and intensive outpatient treatment. So the other thing I didn't talk about is the kids get mental health services, and they're Medicaid eligible when they're in the community. So, yes, I think the money could be reallocated and used. [LB972]

SENATOR COASH: So there...let me ask you about that. The kids that are there now, are they Medicaid eligible? [LB972]

MARY FRASER MEINTS: No. [LB972]

SENATOR COASH: Would they be if they were under Corrections? [LB972]

MARY FRASER MEINTS: I don't know. I don't think so. [LB972]

SENATOR COASH: So if they're locked up, they don't...no Medicaid. [LB972]

MARY FRASER MEINTS: Okay. Federal Medicaid requires the highest restrictiveness level is not eligible for Medicaid. So if the Nebraska Correctional Facility, Youth Facility was used as the highest level of restrictiveness, then kids at the YRTC would also be eligible for Medicaid, I believe, but I would suggest that you ask Medicaid that question. [LB972]

SENATOR COASH: Yeah. All right. Thank you. [LB972]

SENATOR ASHFORD: That's important information, Mary. Thank you. [LB972]

MARY FRASER MEINTS: Yes. Thank you. [LB972]

SENATOR ASHFORD: Thank you very much. [LB972]

MARY FRASER MEINTS: Thank you. [LB972]

SENATOR ASHFORD: Do we have any other opponents for this bill, on this bill? Any neutral? More opponents? [LB972]

_____: No. (Inaudible). [LB972]

SENATOR ASHFORD: Oh. Any neutral testifiers? That concludes the hearing on this bill, and I thank you all for your patience and, most importantly, your sharing of information. (See also Exhibits 13, 14, and 15.) Senator McGill is next. [LB972]

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

Judiciary Committee
January 26, 2012

SENATOR MCGILL: Which of them...is LB787 first? [LB787]

SENATOR ASHFORD: LB787. [LB787]

SENATOR MCGILL: Well, I'll try not to take as long. [LB787]

SENATOR ASHFORD: I don't see how it could. (Laugh) Good afternoon, Senator McGill. [LB787]

SENATOR MCGILL: Hello, Senator Ashford, it's almost the evening. (Laugh) [LB787]

SENATOR ASHFORD: It is. [LB787]

SENATOR MCGILL: Hello, members of the committee. I'm here to introduce LB787. It provides for staff secure facilities operated by political subdivisions to be licensed by Jail Standards as minimum standard for staff secure facilities. The Crime Commission was the agency who originated this concept of the staff secure as an alternative to detention. Lancaster County built a facility, but even since it was built, guidelines were never formally adopted by the Crime Commission, and yet Lancaster and Sarpy counties built facilities based on the concept. As each of us knows, the Crime Commission is an agency that does not provide any direct service and takes an objective approach to the development of standards that are based upon best practice and court decisions for minimum guidelines for persons in custody. They have a board that is comprised of representatives of many counties, who provide feedback to operation guidelines. Consequently, in my opinion, they are best suited to provide an objective approach to oversight of standard operational guidelines. This bill was brought to me by the Lancaster County Board of Commissioners as a result of an attempt by HHS to require the Lancaster County facility to be licensed under Public Health as a child-caring agency. As they began their initial discussions, it became clear that Jail Standards has demonstrated an ability to provide minimum standards for detention facilities that hold similar youth, and consequently they would be the best agency to provide for state standards throughout the state for staff secure facilities. As a result of conversations following the attempt by HHS to license a facility as a child-caring agency, the county, in consultation with Sarpy County, concluded that it would be in their best interest to have operational guidelines set forth by the Crime Commission rather than through DHHS. I'll have several people testifying here after me to talk about how in Lancaster County they already use the Jail Standards. And there are a list of reasons, you know, I could give the committee about why the Jail Standards are better, including there's a grievance procedure through Jail Standards, and there are no juvenile rights under the childcare standards. There are specific provisions for discipline and medical services that aren't there under the child-caring standards. So with that, I will close and let the experts talk. [LB787]

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

Judiciary Committee
January 26, 2012

SENATOR ASHFORD: Okay. I know there are some experts here. Any questions of Senator McGill? I think...it's good. Thanks. [LB787]

SENATOR MCGILL: Thanks. [LB787]

SENATOR ASHFORD: Proponents? [LB787]

MICHELLE SCHINDLER: (Exhibit 16) I will be very brief, I promise. Here's some stuff. My name is Michelle Schindler, M-i-c-h-e-l-l-e, Schindler, S-c-h-i-n-d-l-e-r. And I'm the director for the Lancaster County Youth Services Center. What we do there is we provide secure detention, staff secure detention, and an assessment center. I want to make sure I set this. When we're talking staff secure, it's different than what you were previously hearing about. This is temporary custody pending disposition. So we're going to serve up to...kids that are disposed of waiting for placement. I've been working with youth and at the Youth Services Center for over 20 years. And in those 20 years I've worked the Jail Standards Board to develop policies and procedures from everything--Senator McGill spoke about this--from facility design to communication to resident discipline, classification, the grievance policies, medical and mental health. They have a variety of different standards, similar to ACA, what you saw with DOC and the youth confinement have. Currently staff secures, they don't have any oversight with standards. And it came to our attention that there were people that thought we should. We are supportive of that. In doing all of our policies, we followed Jail Standards for detention. But some people may say those standards need to be tweaked. So they would probably be separate standards for staff secure facilities. We have to get a handle on this. In June of 2013, we're talking about changing populations of who can go into secure detention. And I think it's a best practice to have standards developed by some organization. I believe the Crime Commission is the best organization. They do not do any services, so they have no vested interest other than the best interest of everyone. And it also has a board of sheriffs, law enforcement, people from different counties that sit on it. So it's not just a state organization telling counties what to do; it's truly a collaborative process. So I'm open to any questions. [LB787]

SENATOR ASHFORD: Well, you've done a great job in Lincoln. [LB787]

MICHELLE SCHINDLER: Well, thank you. [LB787]

SENATOR ASHFORD: And that's...I wish we had something similar, but we don't. So... [LB787]

MICHELLE SCHINDLER: Omaha is going to get there. I mean, I know. [LB787]

SENATOR ASHFORD: Really? [LB787]

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

Judiciary Committee
January 26, 2012

MICHELLE SCHINDLER: I know. (Laughter) They don't have a choice. [LB787]

SENATOR ASHFORD: Okay, thanks for your comments. [LB787]

MICHELLE SCHINDLER: Okay. Thank you. [LB787]

SENATOR ASHFORD: Next testifier. [LB787]

BRITTANY BEHRENS: (Exhibit 17) Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Brittany Behrens, B-r-i-t-t-a-n-y, Behrens, B-e-h-r-e-n-s. And I'm a deputy county attorney at the Lancaster County Attorney's Office. And I'm here today on behalf of the Lancaster County Board of Commissioners, as they were the ones that brought this request for this legislative bill forward. I'm going to talk a little bit about the legal issues that brought us to make this request. It is Lancaster County's position that the Nebraska Commission on Law Enforcement and Criminal Justice and specifically the Jail Standards Board should be given authority to inspect staff secure facilities. Currently there is no agency that has explicit statutory authority to inspect staff secure facilities. And as a result of that, that's what prompted the Department of Health and Human Services in July of 2010 to send the initial request to Lancaster County, and specifically their staff secure facility, asking that Lancaster County license its staff secure facility as a child-caring agency. And I'm going to talk a little statutory definition. Under Nebraska Revised Statute 71-1902, "child-caring agency" is defined as an entity "which is organized as a corporation or a limited liability company for the purpose of providing care for children in buildings maintained by the organization for that purpose." Once we did a little bit of research and opened discussions with the Department of Health and Human Services, it kind of came to the forefront that that definition and the statutory references that HHS was kind of hinging on in their request to Lancaster County didn't give them the statutory authority to require us to make application for a child-caring license. "Staff secure" itself is listed under Nebraska Revised Statute 43-245, under "Nonsecure detention services." And because the Jail Standards Board already has experience and expertise in inspecting juvenile detention facilities, Lancaster County feels that the Jail Standards Board could provide the most appropriate guidelines for regulation of staff secure detention facilities. The Jail Standards Board currently develops standards for physical facilities, care, programming, disciplinary procedures, and general operating procedures in juvenile detention facilities. And this legislation would merely extend that regulatory authority the Jail Standards Board already has over juvenile detention facilities to staff secure facilities. This would ensure that there is a consistent scheme for inspection of both secure and staff secure facilities. [LB787]

SENATOR ASHFORD: Okay. [LB787]

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

Judiciary Committee
January 26, 2012

BRITTANY BEHRENS: That's all I have, and if there's any questions, I would be happy to answer them. [LB787]

SENATOR ASHFORD: No. My only question would be that we've had discussion about the Jail Standards Board and the adoption of national standards. [LB787]

BRITTANY BEHRENS: Um-hum. [LB787]

SENATOR ASHFORD: And did...did you...? [LB787]

MICHELLE SCHINDLER: I was in opposition. [LB787]

SENATOR ASHFORD: Okay. So you think we should have not the national standards but the county-by-county... [LB787]

MICHELLE SCHINDLER: I think that you can do ACA on top of this... [LB787]

SENATOR ASHFORD: Okay. [LB787]

MICHELLE SCHINDLER: ...if you choose to. [LB787]

SENATOR ASHFORD: Okay. [LB787]

MICHELLE SCHINDLER: But I think, when you look around the country, generally states have specific needs that they want to look at, because you have different circuits, Eighth Circuit, Ninth Circuit... [LB787]

SENATOR ASHFORD: Okay. So that's why this would be Jail Standards... [LB787]

BRITTANY BEHRENS: Correct. [LB787]

MICHELLE SCHINDLER: Right. [LB787]

SENATOR ASHFORD: Correct? [LB787]

BRITTANY BEHRENS: Correct. Yeah. [LB787]

SENATOR ASHFORD: Okay. It wouldn't be the...okay. [LB787]

BRITTANY BEHRENS: Yeah. [LB787]

SENATOR ASHFORD: Got it. [LB787]

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

Judiciary Committee
January 26, 2012

BRITTANY BEHRENS: Correct. [LB787]

SENATOR ASHFORD: I seem very clear on that. Thank you. [LB787]

BRITTANY BEHRENS: You're welcome. [LB787]

SENATOR ASHFORD: All right. Next. [LB787]

DICK SHEA: I was going to say, good evening. [LB787]

SENATOR ASHFORD: We still got 25 minutes till, technically, evening. [LB787]

DICK SHEA: I see that. My name is Dick Shea, S-h-e-a. I am at the Sarpy County Sheriff's Department. I've been there for 21 years; prior to that, 21 years in high school education. In 1998 Sarpy County did not have any juvenile detention center at all, so we did a study. And it was also at that time these two names you may have heard of, Michelle Borg and Jeff Golden, they were the ones that started the talk about staff secure. So the county chose to go with a staff secure. Our population today in staff secure are 18 youngsters; average length is 8.4 days. We have no one in secure detention; the only option we have is DCYC. But we can deal with most of the youngsters at staff secure. At the time that we looked at who does this fall under, we went to DHHS; they said it's not in their area. And Jail Standards said there was nothing on there. So, as you heard before, DHHS tried to get us to be part of the Public Health. And you don't mix the two together; it's two complete different concepts. So the sheriff has said...plus our county people are in great support of this. There should be some type of standards and guidelines so that we could be held accountable. We dovetailed some of the standards that were in Jail Standards for a juvenile detention center. Maybe, when you look at a secure detention and if you talk about staff secure, they look different, okay? I look upon the staff secure as a structured, disciplined, specialized high school. Because when you go in there, that's the type of atmosphere you have. So, like I said, we are in...back it up. So if you have any questions, I would go ahead and answer. [LB787]

SENATOR ASHFORD: Well, I mean, you've done a great job. What you've done in Sarpy County is terrific. And, you know, so you're commended for that. [LB787]

DICK SHEA: Okay. Could I just add one more thing? [LB787]

SENATOR ASHFORD: Sure. [LB787]

DICK SHEA: I'm sure some of you are aware of the fact that the Casey Foundation is coming into the state of Nebraska and are making everyone look at it. That has had some positive impact. Right now, Douglas County, and Sarpy, are in contract to haul

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

Judiciary Committee
January 26, 2012

some of their youngsters in our staff secure... [LB787]

SENATOR ASHFORD: Right. [LB787]

DICK SHEA: ...and that will be signed off next Tuesday. [LB787]

SENATOR ASHFORD: No, it's been a great added development. Thank you. Next proponent. [LB787]

ELAINE MENZEL: Chairman Ashford and members of the Judiciary Committee, for the record, my name is Elaine Menzel, M-e-n-z-e-l. And I'm here on behalf of the Nebraska Association of County Officials, testifying in support of LB787. Jail Standards assist the counties in the adult jail environment and juvenile detention facilities. Oversight by Jail Standards for staff secure facilities would help ensure that the standards are being met in those areas as well. For these reasons as well as those offered by Senator McGill and other supporters of the legislation, we ask you to vote for this, for LB787. I'd be glad to try to answer any questions if you have any. [LB787]

SENATOR ASHFORD: Yes, Senator Council. [LB787]

SENATOR COUNCIL: Yeah. Thank you. And I apologize if this area was discussed while I was out of the room, but I thought I heard in the exchange with Senator Ashford that there are standards somewhere for secure facilities? [LB787]

ELAINE MENZEL: There's federal standards that...LB390 last year would have totally eliminated the Jail Standards... [LB787]

SENATOR COUNCIL: Right. [LB787]

ELAINE MENZEL: ...oversight for counties. [LB787]

SENATOR COUNCIL: Right. [LB787]

ELAINE MENZEL: And that provision got deleted from the overall legislation that your committee... [LB787]

SENATOR COUNCIL: Right. [LB787]

ELAINE MENZEL: ...adopted. However, there was also an exclusion that Douglas County could utilize the federal standards and... [LB787]

SENATOR COUNCIL: Right. [LB787]

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

Judiciary Committee
January 26, 2012

ELAINE MENZEL: Other counties, as I understand it, are opposed to utilizing those federal standards because there's additional steps required. That's my understanding. [LB787]

SENATOR COUNCIL: Right, right. And so the intent of this is to restore Jail Standards for... [LB787]

ELAINE MENZEL: In an area that's not currently... [LB787]

SENATOR COUNCIL: Under the federal. Or complying with... [LB787]

ELAINE MENZEL: Just Jail Standards... [LB787]

SENATOR COUNCIL: Okay. [LB787]

ELAINE MENZEL: ...period, because apparently now there's some confusion as to whether Health and Human Services has oversight about it. And Jail Standards does not, based upon my impression or interpretation that they have in that area. [LB787]

SENATOR COUNCIL: Okay. [LB787]

SENATOR ASHFORD: Thanks. [LB787]

ELAINE MENZEL: Thank you. [LB787]

SENATOR ASHFORD: Any other proponents? Any opponents? Neutral? Done. [LB787]

SENATOR MCGILL: Well, real quick for a close on that. I know that the pharmacists have had some concerns about the dispensing of drugs and how the Crime Commission has never created an actual policy in their Jail Standards, with the dispensing of drugs. And so that's something that they are concerned about adding onto these facilities. But, hopefully, we can get all that worked out too. (See also Exhibits 18 and 19) [LB787]

SENATOR ASHFORD: Okay. [LB787]

SENATOR MCGILL: All right. [LB787]

SENATOR ASHFORD: Next bill, Senator McGill. [LB920]

SENATOR MCGILL: LB920. This will take a tiny bit longer because a lot of things are involved here. Good afternoon again, committee. I'm introducing LB920. Victims and survivors of domestic abuse face many different obstacles as they try to leave an

abusive relationship. We've already gone over that a lot this morning, actually, already, so I, hopefully, won't get too repetitive. But these are some additional changes that have been brought to us from the Domestic Violence Coalition. First of all, in 2008 we passed LB1014, which was designed in part to make Nebraska's domestic abuse protection orders as compliant as possible with federal laws. We amended a law to create a process requiring the courts to schedule a hearing for every application. Did this meet the federal requirements? Sure, it did. It went from one extreme, where few of Nebraska protection orders met these requirements, to the opposite end of the spectrum, where almost every order met these requirements. Unfortunately, it also created a process that was disliked by both judges and victims. The effectiveness of Nebraska's protection orders continued to erode with the release of Mahmood v. Mahmud. The Nebraska Supreme Court dismissed a protection order in that case for lack of evidence. The result of this and subsequent decisions is that a victim of abuse, whether filing for a harassment protection order or a domestic abuse protection order, is required to know court procedures and the rules of evidence, subjects that lawyers learn in their first and second years of law school. The most recent attack on the effectiveness of protection orders came in November. An appellate decision was released in a criminal case, State v. Graff, overturning Graff's conviction for violation of a harassment protection order. During a hearing on the protection order, both Graff and the petitioner stipulated to the entry of a mutual harassment protection order. The final order was mailed to Graff, his attorney, and to the petitioner, but Graff was never served. Two months after the entry of the final order, Graff swung a baseball bat at the victim's car, and then using the baseball bat, he pushed her head through the open car window. Even though he had stipulated to the entry of the order against him, the Supreme Court dismissed the conviction because Graff had not been served, as is required by law. LB920 is a bill that has been developed to remove many of these uncertainties that I just described. First, LB920 removes the mandatory hearing requirement that was approved in 2008 and replaces it with other options that will continue to meet federal requirements in the majority of these cases. The bill allows the respondent or petitioner to request a hearing or the court to order a hearing on its own. This change attempts to take into consideration victims' safety as well as concerns raised by the courts. Secondly, LB920 allows the court to consider the affidavit and petition as offered evidence. This reduces the impact that Mahmood case created. That is, it removes the burden to know and understand the rules of evidence and local court procedures. A victim would not need to know how to offer evidence because the testimony offered in the affidavit would already be offered by the statute. This provision would also provide that the affidavit and petition could be offered in lieu of testimony in the case. And finally, LB920 goes on to address the issue of service raised in the Graff case. The bill would allow the respondent to be prosecuted for a violation of the order when the respondent is served with the order or has actual notice of the order and the substance of the order. It is my belief that this can be accomplished in open court when a judge informs the respondent that a protection order is being issued and the specific restraints of the order are being placed there right before the respondent. Senator Pirsch also offered a bill, LB1056, that deals with this

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

Judiciary Committee
January 26, 2012

final part of the issue. And I actually think his language is better because instead of just saying "actual notice," it talks about being in court and hearing that firsthand, which removes the ambiguity of what "actual notice" means. So he turned in his bill much later than mine and will be heard later by the committee. This date had already been set for my bill. But I'm hoping we can address some of the issues in mine and perhaps use language that's similar to his to address this part of the problem. And the final thing that the bill does is it does use some language about who can have a firearm, which is, really, just mirroring federal statute. And so it just brings our laws in line with that. And at this point I guess I will close and open to questions. [LB920]

SENATOR LATHROP: Very good. Senator Council. [LB920]

SENATOR COUNCIL: Thank you, Senator Lathrop. Thank you, Senator McGill. My question is about...you said the petition and the affidavit... [LB920]

SENATOR MCGILL: Um-hum. [LB920]

SENATOR COUNCIL: ...as evidence, and you also indicated that there would be no need to testify. [LB920]

SENATOR MCGILL: Um-hum. [LB920]

SENATOR COUNCIL: If you receive an ex parte protection order based upon the petition and the affidavit... [LB920]

SENATOR MCGILL: Um-hum. [LB920]

SENATOR COUNCIL: ...and the respondent requests a hearing,... [LB920]

SENATOR MCGILL: Um-hum. [LB920]

SENATOR COUNCIL: ...is it the intent of the bill that that's all the judge would require, that the petitioner wouldn't have to...would be under no duty to present evidence at the hearing, if the respondent requested a hearing? [LB920]

SENATOR MCGILL: What we're trying to avoid...and the domestic violence folks who brought this idea to me may be able to better describe the response, but...is to prevent a woman who really feels a great deal of fear from having to appear there physically in court. [LB920]

SENATOR COUNCIL: I appreciate that. But doesn't that present constitutional arguments on your ability to confront your accuser? [LB920]

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

Judiciary Committee
January 26, 2012

SENATOR MCGILL: Potentially. I would appreciate you asking that question to the people following me too. I do not have as much experience... [LB920]

SENATOR COUNCIL: All right. [LB920]

SENATOR MCGILL: ...in this forte. [LB920]

SENATOR COUNCIL: All right. Thanks. [LB920]

SENATOR LATHROP: Very good. Any other questions? I see none. We'll look forward to the testimony. Those in support of Senator McGill's LB920, please. [LB920]

ROBERT SANFORD: (Exhibit 20) Good afternoon, Senator Lathrop and committee members. My name is Robert Sanford, R-o-b-e-r-t S-a-n-f-o-r-d. And I am here on behalf of the Nebraska Domestic Violence Sexual Assault Coalition in support of LB920. As Senator McGill has stated, LB920 addresses a number of issues. LB920 is a result of ongoing conversations that involve discussions with the State Court Administrator's Office, prosecutors, representatives from law enforcement, the Family Violence Council, and victim advocates. Early in this process, the State Court Administrator's Office asked judges to identify concerns that they had with protection orders. The overwhelming response was the hearing requirement that was added to 42-925 in 2008. This was also a concern to victim advocates. As Senator McGill stated, prior to 2008 Nebraska law allowed a judge to issue an ex parte protection order; that order was served on the respondent along with a form to request a hearing. If a hearing was not requested, the ex parte order would ripen into a final order. At that time we were told that this would not allow Nebraska's protection orders to be compliant with federal firearms laws and that we needed to establish a process that ensured every protection order had a hearing. After listening to the concerns raised by both judges and by victim advocates, members of our policy committee went back to the FBI and to national technical assistance providers in an effort to find a process that takes all of these concerns into consideration. The result is a process similar to before, with the additional language that allows an applicant to request a hearing. A hearing requested by either party or on motion of a judge should allow for federal provisions to take effect in most cases. LB920 also seeks to amend Nebraska's provisions related to service and the sufficiency of evidence in both harassment and domestic abuse protection order cases. In a 2010 appellate decision the court stated that the trial judge could not consider the application and affidavit for a protection order as evidence in making a decision because they had not been offered and accepted as evidence. This requires applicants to have a knowledge on par with the attorney who they may be facing in the courtroom. LB920 seeks to offer an affidavit and application as evidence by the mere fact it has been filed, allowing a judge to consider that as being offered, to accept that as evidence, and make a valid order based on the evidence. In another decision, the Nebraska Supreme Court considered the protection order services provisions. In this particular case, the

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

Judiciary Committee
January 26, 2012

defendant had attended a protection order hearing, stipulated to the entry of an order, and then proceeded to violate that order several months later. He was later charged and convicted of violating the protection order. The court stated that since he had not been served with the protection order, he could not be convicted of the crime. LB920 would allow a respondent to be charged if either service took place or the respondent knew the order existed and the contents of that order. We would ask you to support this bill. [LB920]

SENATOR LATHROP: Very good. Thank you for your testimony. Any questions?
Senator Council. [LB920]

SENATOR COUNCIL: The same question...thank you. The same question I asked Senator McGill. With the...what I understood that the bill would allow is that if a petition and an application is filed and the ex parte order is granted, then the respondent requests a hearing...and did I understand correctly that the petitioner didn't even have to attend that hearing and that the application and petition would be evidence? [LB920]

ROBERT SANFORD: In the past, that was actually how it was practiced in a number of courtrooms. The way that this is written...the way I look at it as being written is that it doesn't necessarily say that she doesn't have to be in the courtroom, but what it does say is she doesn't have to know the magic language that we learn in law school, that one sentence that says, "Your honor, I would offer this as evidence." She doesn't have to remember to do that during the hearing process, that this actually would allow the judge to make that decision at that point, without it being offered, because it has been filed. [LB920]

SENATOR COUNCIL: Okay. [LB920]

ROBERT SANFORD: The Supreme Court actually went on to state I believe it was in the Mahmood case that Senator McGill referenced, or it was in the progeny from there, that the court couldn't take judicial notice of the protection order application because it's contested facts. So we're trying to find a way that allows that affidavit to get into the evidence so that the court can actually consider it because a lot of times a number of the cases that have come out since Mahmood came out actually addressed issues where testimony was actually taken. Everyone was in the courtroom; no one was sworn in; the affidavit was never offered; and a protection order was issued. But the Supreme Court or Court of Appeals had to dismiss that because no one was sworn in, there wasn't any evidence for the court to consider. So we're trying to ensure that there is something there, so that when it does go on appeal, that that process is covered. [LB920]

SENATOR COUNCIL: Okay. And don't get me wrong, I'm very supportive of protecting victims and potential victims of domestic violence or abuse. But I'm concerned that the

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

Judiciary Committee
January 26, 2012

opposite is often the case, too, and that is, the respondent is pro se. And if the petition and application are immediately received into evidence because they were filed, and you get a pro se respondent who asks for a hearing, he no more knows the rules of evidence or what you have to do than the person who filed the petition and application. [LB920]

ROBERT SANFORD: You know, and just to be clear, this is offering it into evidence; it's not being accepted into evidence at this point. You know, so there is still that process of having the chance to question the validity of the affidavit and go through that process as well. [LB920]

SENATOR COUNCIL: Okay. So when is it deemed offered into evidence? Upon filing? [LB920]

ROBERT SANFORD: The way that the bill is written, that's correct. [LB920]

SENATOR COUNCIL: Okay. [LB920]

ROBERT SANFORD: That it would be offered as evidence because of the fact that it was filed. [LB920]

SENATOR COUNCIL: Okay. And then the judge would have to rule whether to receive it. [LB920]

ROBERT SANFORD: I don't believe that we wrote it such that it was automatically considered to be accepted as evidence. It was that it was offered as evidence. Because if we accepted it as evidence, we're getting close to that point of... [LB920]

SENATOR COUNCIL: Right. [LB920]

ROBERT SANFORD: ...taking judicial notice again. [LB920]

SENATOR COUNCIL: Right. Okay. I guess I'm just concerned that maybe inadvertently we're creating more complexity to the process than we're trying to relieve. So I just...I'll look at the bill again. I just don't want us to add more complexity to the process and get into situations where you get overturned on appeal because you've got the denial of the right to confront the...I mean, those kinds issues which could be easily raised on an appeal if, for example, court judges just summarily accept the petition and application into evidence. And it may be one of those occasions where, for fear, the petitioner doesn't show up. And that's happened. And I think you almost provide an immediate appealable issue there. I'll be glad to work with Senator McGill and look at it to achieve the objective. Maybe somebody sees it differently...Mr. former county attorney deputy-type dude. [LB920]

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

Judiciary Committee
January 26, 2012

SENATOR ASHFORD: Okay. Thanks. Next testifier. [LB920]

JO PETERSON: Good afternoon. [LB920]

SENATOR ASHFORD: Good afternoon. [LB920]

JO PETERSON: My name is Jo Peterson; I'm a deputy county attorney. I'm here on behalf of the Nebraska County Attorneys Association in support of this bill. We believe that this bill does in fact close a loophole that was created by court cases that say, even though an individual is present in the courtroom, they're told the protection order applies against them, and they are told the terms of that protection order, they can go out and commit a crime...actually it wouldn't be a crime by violating it because they weren't served by sheriff. And so we support the bill, and I'm here on behalf of the county attorneys in that regard. Senator... [LB920]

SENATOR ASHFORD: Oh, Senator Council. [LB920]

SENATOR COUNCIL: I have no problem with that aspect of the bill. I have a problem with the petition and the application. [LB920]

JO PETERSON: And I just heard your questions. If I can respond to... [LB920]

SENATOR COUNCIL: Uh-huh. If you could. [LB920]

JO PETERSON: ...maybe briefly to those. I believe that, as I read this bill, that the affidavit would be offered into evidence upon filing. It's been my experience in watching these cases with the judges that they may well accept that into evidence. If, in fact, the respondent appears and rebuts that evidence, I think the judge will, whether the petitioner appears or not, will take whatever that respondent says and make a determination of what she believes to be accurate. If the petitioner doesn't show up, the only evidence she'll have to rebut that would be the respondent's. It's been my experience that judge swear those individuals in and have them give statements to the court. [LB920]

SENATOR COUNCIL: Okay. [LB920]

JO PETERSON: And so I think that if he or she shows up, the respondent, that that issue would be addressed by the court taking that evidence from that person. If the petitioner shows up, that person, he or she, would be able to add to that affidavit by testimony. [LB920]

SENATOR COUNCIL: Okay. [LB920]

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

Judiciary Committee
January 26, 2012

SENATOR ASHFORD: Yes, Senator Harr. [LB920]

SENATOR HARR: And then I...I'm sorry, I do have to leave. I have to pick up my children. But you're putting the burden of proof now... [LB920]

SENATOR ASHFORD: Well, then why are you asking this question? (Laughter) [LB920]

SENATOR HARR: Well, because I think this is a bad bill as written. [LB920]

SENATOR ASHFORD: What? [LB920]

SENATOR HARR: It puts the burden of proof on the respondent instead of the petitioner. [LB920]

SENATOR ASHFORD: There are no bad bills. [LB920]

SENATOR HARR: There are no bad bills. But that would switch the burden of proof. [LB920]

SENATOR LATHROP: No, that's Boice. (Laughter) [LB920]

JO PETERSON: I believe that...I would tell you this, it's my belief that if the petitioner doesn't show up for that second hearing, that most judges, in my experience, take what their affidavit says with a grain of salt. And they're going to listen strongly to what that respondent says. It does make the respondent come in and rebut that information. There's no question about that. But that's true now. I mean, that's been always true. [LB920]

SENATOR HARR: Well, if no one shows in, then the evidence can't be offered to assert the truth of the matter. And so now we're changing the burden, so now they have to rebut that. [LB920]

JO PETERSON: They have to give some statement as to what happened. They do. They have to do that... [LB920]

SENATOR HARR: You know, and I'm all for victims; I get that. I mean, I really do. I did domestic violence for a little while. I mean, I prosecuted, and I understand it. But... [LB920]

SENATOR COUNCIL: You did domestic violence for a little while? (Laughter) [LB920]

SENATOR HARR: But there are people who manipulate the system... [LB920]

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

Judiciary Committee
January 26, 2012

SENATOR ASHFORD: These records can be tricky, Senator Harr, you know, how we... [LB920]

SENATOR HARR: ...and so...well, I...and then, like I said, I'll be out of here. But I just think we have to be very careful in this area. And we have to worry about moving presumptions. And you are, to a certain degree, moving presumptions. And especially in criminal cases you have to worry about moving presumptions. And if that evidence is offered, that person doesn't show up, for whatever reason...and there are people who are intimidated from showing up. I get that. But if this woman could not show up because she forgot or she...I mean, we don't know why she doesn't show up. She doesn't show up; now we're forcing the respondent to show up, so that the respondent also has a protection order, who hasn't done anything wrong, because the affidavit could be false; we don't know because we don't get a chance to cross-examine. But the burden has now shifted to the defendant. And I just don't feel that that's the proper...that's proper. And I'll leave it at that, and you can respond. [LB920]

JO PETERSON: I would respond briefly by, right now I think that's the case. I think right now the burden is on the respondent to appear and provide testimony about why this protection order should not be continued. [LB920]

SENATOR HARR: Well, that would be true if the affidavit were allowed into evidence. But if no one is there to enter the affidavit into evidence, then there is no one to respond, and so... [LB920]

JO PETERSON: Well, if the petitioner doesn't show up...I'm talking if the petitioner shows up. You know, you're talking about, okay, if the only person that shows up is the respondent. It's been my experience that judges take that affidavit, then, with a grain of salt... [LB920]

SENATOR HARR: I don't disagree with you... [LB920]

JO PETERSON: ...and may or may not enter that order. [LB920]

SENATOR HARR: ...but that wouldn't prevent them. [LB920]

JO PETERSON: You're right. It would not. [LB920]

SENATOR HARR: And so we're creating something...I just...I just... [LB920]

JO PETERSON: I understand what you're saying. [LB920]

SENATOR HARR: Yeah. [LB920]

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

Judiciary Committee
January 26, 2012

JO PETERSON: It is an issue. [LB920]

SENATOR HARR: And I disagree with that. I'll just say that. I think the petitioner needs to show up, is what I'm saying. And we're allowing a situation where a petitioner doesn't show up and now we've shifted the burden. And I don't think that's what we want to do. And I'll leave it at that. Thank you. Now I've got to leave. [LB920]

JO PETERSON: Okay. [LB920]

SENATOR ASHFORD: We're going to talk about Senator Harr now for a bit. (Laughter) Does anybody...I don't know if anybody wishes to... [LB920]

SENATOR COUNCIL: Did he say he did domestic violence? (Laughter) No, I'm sorry. I'm sorry. I'm sorry. [LB920]

SENATOR ASHFORD: He said he did domestic violence, he's going to pick up his kids, and then he said something about appearing or not appearing or... [LB920]

SENATOR LATHROP: Have the State Patrol intercept him. (Laughter) [LB920]

SENATOR ASHFORD: Yes. Get him back here. Thank you. [LB920]

JO PETERSON: Thank you. [LB920]

SENATOR ASHFORD: I think we got it. Do we have any other proponents? How about opponents to the bill? Neutral? [LB920]

RON JENSEN: Chairman Ashford and members of the Judiciary Committee, I'm Ron Jensen; I'm a registered lobbyist. I'm appearing before you this afternoon on behalf of the National Rifle Association and in a neutral capacity on LB920 and certainly not here to offer accommodation or consideration to batterers but to ask you to remove from the bill a section or subsection that we think is problematic. And I'm referring to subsection (g) of Section 2 on page 7, which adds to those matters that the judge can include in the order "enjoining the respondent from possessing or purchasing a firearm as defined in Section 28-1201." And we have three problems with this, really. One is it's duplicative of federal law. Under federal law an individual who is under this kind of an order or who has been convicted of this kind of a crime cannot purchase a firearm, and they are prevented from doing so by the nationwide National Instant Check System that's administered through the FBI, at the time of purchase, except for ex parte orders of this kind. And I, of course, wasn't part of the discussion when that law was passed. It's the Brady Law, which was passed a number of years ago. But I suggest it was probably for good and sufficient reasons. And in any case, in stepping beyond that, this particular

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

Judiciary Committee
January 26, 2012

provision steps out into a territory where there is no screen and there is no check, and so I don't know how you enforce this. And it's the same problem with possession. I don't know how you enforce a prohibition on possession. Do you...if you know of the existence of the gun at the time that the judge grants the order, do you send the sheriff out to pick it up? And, again, this is an ex parte order. I think that can be problematic. As Senator Harr said, and we're not on the side of the batterers, but it is possible for the affidavit to be false. That's the bad news. The good news is that it's not needed because the factor that it would replace, the order that it would replace, which becomes (h) is, and I quote, ordering such other relief deemed necessary to provide for the safety and welfare of the petitioner and any designated family or household member. So it seems to me that the bench already has the ability to make that order. This is an important matter. It's an important bill. We suggest to you, don't burden it with this. I'd be happy to try to answer any questions. [LB920]

SENATOR ASHFORD: Seeing none. Point clear. Thank you. [LB920]

RON JENSEN: Okay, thank you. [LB920]

SENATOR ASHFORD: Senator McGill, do you wish to...well, wait, are there any other neutral... [LB920]

SENATOR MCGILL: Anyone else? [LB920]

SENATOR ASHFORD: ...people? No. [LB920]

SENATOR MCGILL: I don't think so. [LB920]

SENATOR ASHFORD: Senator McGill. [LB920]

SENATOR MCGILL: I think I've only taken 25 minutes on two bills, so I'm trying to speed things up. [LB920]

SENATOR ASHFORD: You've done very well so far. [LB920]

SENATOR MCGILL: Again, you know, Senator Pirsch has some great language in his bill on this issue, and I am happy to work with the committee to mesh out that language to just take parts of my bill. I'm not going to fall on the sword of your problem, Senator Council. I think you bring up some valid points. Just to address the NRA representative real quick, this part of the bill came at the request of the Court Administrator's Office. Just yesterday when we were hearing gun bills, the Nebraska organization that was here testifying said that they didn't actually have a problem with this provision because they felt it basically lined up with federal statute. So I know they're separate from the NRA, but they didn't have a big problem with it. So with that, I look forward to working

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

Judiciary Committee
January 26, 2012

on this and maybe getting something out there on the floor. [LB920]

SENATOR ASHFORD: Thank you, Amanda. Good job. Thank you all. The last bill of the day is Senator Krist's bill, which is...what's the number? LB985. [LB920 LB985]

SENATOR KRIST: Yes, sir, thank you. Senator Ashford and committee members, I will be brief in my introduction. I think most of you understand this issue as well if not better than I. This was one of the Chief Justice's priorities in his State of the Judiciary. I want to thank Justice Michael Heavican and Ellen Brokofsky for their diligent work and also a special mention here to Corey Steel, who really is a functional expert in this area. And I invite you to talk to him. I'd also invite, in Exec, that you might talk with Senator Ashford about his findings and the priorities in other parts of the state. With that, let me just give you a quick introduction. This is a program that's been around for 30 months; it's done very well. Thanks to your legal counsel for helping me out with this too; thank you. This program has been around for 30 months; it's run very effectively. And then it had...it was short-sheeted in its effort, because the money was yanked out by HHS for other priorities. It is a program that has great data; it has great results; it reduces duplicity on the front side of this thing by putting a manager in charge of a young person. It accesses services beyond the silo effect throughout. It's economically feasible. And if you look at the fiscal note, which may be scary at the beginning, notice that the money there...it's a big number. But the bottom of your first page, if you have a revised copy, the last two lines: Under this bill the children served by the pilot projects would not become state wards under the Department of Health and Human Services, resulting in savings approximately equal to the cost identified by the Supreme Court. In essence, what that's saying is a transfer of money will come from the DHHS funds, where they would be handled in some other capacity across...to be handled within the judiciary during this program. I think that's pretty clear. Our opposition, obviously, is going to come from getting that money out of HHS and moving it across. But I think it will be a fight, potentially, that will be... [LB985]

SENATOR ASHFORD: But maybe not. [LB985]

SENATOR KRIST: ...well suited. And if it's not, I will be pleasantly surprised. I ask that you move this as quickly as possible so we can consider this. And I had one paragraph I want to read to you. We're just in the middle of our first bill in Health and Human Services, so we'll probably be here past midnight tonight. But through the LR37 process and the subsequent report, it was made clear that child welfare reform is bigger than privatization. Privatization is a tool, and it is not child welfare reform. Additionally, child welfare reform is a highly complex systematic issue. There is much that everyone agrees regarding the goals of child welfare. Key: key among them is, when appropriate, to provide early intervention and assistance for children and families to keep children out of the system, provide community-based in-home services, provide safe out-of-home placement and services, and move children to permanency or correct the

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

Judiciary Committee
January 26, 2012

situation. That's what this program does. It has great merit. With that, I will allow anyone who wants to come after me and take any questions you might have. [LB985]

SENATOR ASHFORD: Bob, thank you for your great work on this. And appreciate you carrying the ball. And we'll...are you going to go back to HHS or stay around for a little bit? [LB985]

SENATOR KRIST: As long as there's no opposition that I need to hear, I probably will. [LB985]

SENATOR ASHFORD: Okay. [LB985]

SENATOR KRIST: But I should probably stick around a bit. [LB985]

SENATOR ASHFORD: Yeah, just for a bit. But do you want...? [LB985]

SENATOR MCGILL: He's probably sick of that hearing. [LB985]

SENATOR ASHFORD: Why don't we...the representative from UNMC has been patiently waiting, and I would ask if she would come up and talk to us about the evaluation piece. [LB985]

MELISSA TIBBITS: (Exhibit 21) All right. My name is Melissa Tibbits, and I'm an assistant professor in the department of health promotion, social and behavioral health at the University of Nebraska Medical Center College of Public Health. Thank you for the opportunity to support LB985 today. I am here as a representative of the University of Nebraska Medical Center. I have a Ph.D. in human development and family studies from the Pennsylvania State University, and I'm trained in the etiology and prevention of risk behaviors in childhood and adolescence. In addition to teaching graduate-level program evaluation and child and adolescent development courses, I also serve as the evaluator for several child- and adolescent-focused projects within Nebraska. The research literature and my own work focused on violence prevention in Douglas County have identified several risk factors for juvenile delinquency and justice system involvement. Examples include academic difficulties and failure, family and peer delinquency, family conflict, and substance abuse. Many of these risk factors are modifiable through rehabilitative services such as academic supports, individual and family counseling, and substance abuse treatment. Providing these services in a timely manner that, when appropriate, preserves the family structure has the potential to decrease the likelihood of juvenile recidivism. For this reason, I support establishing and continuing the Nebraska Juvenile Justice Service Delivery Project. The project focuses on increasing the efficiency of rehabilitative service delivery to youth on probation and decreasing the number of youth dually supervised by the Office of Probation Administration and Health and Human Services. Not only does this project have the

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

Judiciary Committee
January 26, 2012

potential to prevent recidivism and its social and financial costs, but it also has the potential to decrease the costs to the state associated with dual supervision. My colleagues at the University of Nebraska Medical Center College of Public Health and I welcome the opportunity to collaborate with the Office of Probation Administration to evaluate the social and financial impacts of the Nebraska Juvenile Justice Service Delivery Project. Faculty at the College of Public Health at the University of Nebraska Medical Center have expertise in several areas relevant to this project, including child and adolescent development, program evaluation, economic evaluation, mental and behavioral health, and biostatistics. In conclusion, I support LB985 because I believe it has the potential to play an important role in preventing juvenile recidivism and promoting adolescent health within Nebraska. A thorough evaluation will help determine the impact of the project on these outcomes and will provide evidence regarding the appropriateness and cost-effectiveness of expanding the project to other judicial districts within Nebraska. Thank you. [LB985]

SENATOR ASHFORD: Thank you, Melissa. And the evaluation is important, and we appreciate your willingness to work on it. Thank you. [LB985]

MELISSA TIBBITS: Questions? [LB985]

SENATOR ASHFORD: I don't see any. [LB985]

MELISSA TIBBITS: Okay. Thanks. [LB985]

SENATOR ASHFORD: Ellen. [LB985]

ELLEN FABIAN BROKOFSKY: (Exhibits 22, 23, and 24) This is the testimony, and these are the handouts. Good afternoon. I know it's been a long day for you, but you've got to feel sorry for Senator Krist here. (Laughter) I won't be long. Chairman Ashford and members of the Judiciary Committee, my name is Ellen Fabian Brokofsky, B-r-o-k-o-f-s-k-y. I'm the State Probation Administrator, and I am employed by the Nebraska Supreme Court. I testify today in support of LB985 because this bill formalizes the Nebraska Juvenile Services Delivery Project, a program that provides rehabilitative services for juveniles while on probation rather than in state care. This project sprang from the collective leadership of Chief Justice Mike Heavican, Court Administrator Janice Walker, and former DHHS Children and Family Services Director Todd Landry. They hoped to solve a problem. The problem was, too many juveniles were being placed in state care, becoming state wards, solely to access treatment services. Many of the juveniles placed in state care had both a caseworker and a probation officer overseeing them. The plan was to find a means to provide the juvenile court dispositional alternatives that would promote rehabilitation and provide supervision while the juveniles remained with their parents in their own homes and in their own schools and only one probation officer overseeing them, rather than a probation officer

and a DHHS caseworker. Thus began the collaboration between DHHS and the Office of Probation Administration and the project LB985 seeks to solidify. It is interesting to note that at the onset of the planning for this project, DHHS staff estimated costs could be \$10 million or more for the 300 youth the project was initially intended to serve during an 18-month period of time. Fortunately, introducing streamlined risk assessment, referral, and case management proved to provide a significant cost savings, as 635 youth were served in the project at a cost of \$3 million-plus dollars for a period of 30 months. Of course, this \$3 million figure is a cumulative figure representing the cost of growth from the onset of the project with zero juveniles in January 2009 to June of 2009 and then steady admissions into the project from July 2009 to June of 2011. The funding needed for continuation of this project in Douglas County and to fulfill the purposes outlined in LB985 is based on the costs associated with serving 500 youth a year in all levels of care. And I think that Senator Krist talked about the fact that in July of this last year, and we spoke to the Judiciary Committee about this before, that the project is currently serving only certain levels of care, not out-of-home group care. Now back to the problem that generated the notion of piloting a juvenile services delivery project in Omaha. This problem was not a new one. This is my 37th year working for probation. Until the inception of the project in Omaha in 2009, there had been no state funding specifically allocated to juvenile probationers for access to treatment. Then and now, in every area of the state but in Douglas County by virtue of this project, if a juvenile's parents are working but do not have insurance or make too much money--sort of working-poor--to qualify for Medicaid, the juvenile is placed in state custody for access to assistance for services. Once in state care, juveniles are engaged in the current child welfare service delivery system. Juveniles are immediately made eligible for Medicaid by virtue of the fact they are state wards. I mention this, as it is important you know this project is different from that. It's not business as usual. As a state ward, a juvenile is required to use only certain providers, which may or may not provide the most appropriate services needed. Under the project, the number of providers is not restricted. Once placed in the project, juveniles in Douglas County are individually assessed by Probation to determine their most appropriate treatment referral as well as to assess their family's ability to pay for that referral. The idea is that the juvenile will not be required to engage with a provider simply because there's a contract with the provider or the provider accepts Medicaid. Rather, what drives the selection of the provider is the service offered by the provider best matches the needs of the juvenile. This matching of a juvenile's needs to the appropriate treatment and level of treatment is essential to rehabilitation and one of the most important basic principles of implementing evidence-based practice into juvenile justice service delivery. I think we mentioned to you before that 83 percent of the juveniles that are in this project are actually at home and receiving services at home. If the juvenile and family require financial assistance, a registered provider is utilized and a fee-for-service voucher is issued. The provider is not paid until the service is rendered and the report about the service is received by probation and the court. Funding follows the juvenile. We can account for every penny that's been paid for each juvenile. The juvenile's name: we'll tell

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

Judiciary Committee
January 26, 2012

you exactly what the cost for those services have been. There are 188 individual providers in Omaha who have met the provider qualifications and are registered with this project. Two-year data from this project suggest it's working very well. However, LB985 would provide an opportunity for a comprehensive evaluation of the project. LB985 also provides an opening for expanding the project into a rural location to evaluate its efficiencies and effectiveness in a nonurban area. In closing, LB985 recognizes the value of a focused and effective juvenile justice service delivery project that has been proven to work both by preliminary data and also the opinions of individuals inside and outside the juvenile justice system. Rather than moving to state ward status, juveniles and their parents are matched with community-based services they need while under the supervision of a probation officer. I would like to thank, before I close, both Senator Ashford and Senator Krist for their support, their assistance with this project. [LB985]

SENATOR ASHFORD: And Senator McGill. [LB985]

ELLEN FABIAN BROKOFISKY: And Senator McGill. I want to thank... [LB985]

SENATOR MCGILL: I do love this project. [LB985]

ELLEN FABIAN BROKOFISKY: I want to thank Doug Koebernick from... [LB985]

SENATOR ASHFORD: Who loves this project. [LB985]

ELLEN FABIAN BROKOFISKY: I want to thank Doug Koebernick as well, from Senator Lathrop's office, who has been a help for me for many years, in terms of what really works for juveniles. [LB985]

SENATOR ASHFORD: Actually, everybody on the committee has played a real role in this, Ellen, but... [LB985]

ELLEN FABIAN BROKOFISKY: Well, thank you. [LB985]

SENATOR ASHFORD: ...thanks for your comments. Just because we let Ellen go over, we're not...it doesn't apply to Corey or anybody else in this...(laughter). Does anyone have any... [LB985]

SENATOR LATHROP: In fact, she used their time. (Laughter) [LB985]

SENATOR ASHFORD: Yeah. [LB985]

ELLEN FABIAN BROKOFISKY: I...Corey isn't planning... [LB985]

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

Judiciary Committee
January 26, 2012

SENATOR ASHFORD: Corey has 30 seconds when he gets up here. [LB985]

ELLEN FABIAN BROKOFISKY: He isn't planning on testifying. [LB985]

SENATOR ASHFORD: Oh, he isn't. Oh, okay. [LB985]

ELLEN FABIAN BROKOFISKY: He isn't. So... [LB985]

SENATOR ASHFORD: All right. [LB985]

ELLEN FABIAN BROKOFISKY: And we do have handouts. I know it's late. I've given you as much data as you can... [LB985]

SENATOR ASHFORD: Well, the one thing that struck me about...one, is we're going to be able to keep people out...we talked about YRTC for four hours today. [LB985]

ELLEN FABIAN BROKOFISKY: I listened. [LB985]

SENATOR ASHFORD: And this is an excellent way to address... [LB985]

ELLEN FABIAN BROKOFISKY: Community-based... [LB985]

SENATOR ASHFORD: ...community-based services. And with the one area...we've talked to the 11th Judicial District, in North Platte, McCook, Ogallala, and those areas, and they really have no capacity, hardly, anymore. And so for them to have this and not have to send a young person to YRTC is a massively important thing. So... [LB985]

ELLEN FABIAN BROKOFISKY: Well, and I listened to Mary Fraser Meints and what she had to say in terms of community-based services, and she was exactly right. [LB985]

SENATOR ASHFORD: Right. [LB985]

ELLEN FABIAN BROKOFISKY: There always will be a certain portion of your population that is going to need high structure... [LB985]

SENATOR ASHFORD: Right. [LB985]

ELLEN FABIAN BROKOFISKY: ...and you know that. [LB985]

SENATOR ASHFORD: But it's a...it's not... [LB985]

ELLEN FABIAN BROKOFISKY: But it's a small portion. [LB985]

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

Judiciary Committee
January 26, 2012

SENATOR ASHFORD: Right. [LB985]

ELLEN FABIAN BROKOFISKY: Most of the juveniles can be served in the community, matching the right services with appropriate levels of care. [LB985]

SENATOR ASHFORD: Right. Right. Well, good work. [LB985]

ELLEN FABIAN BROKOFISKY: And we don't have that. [LB985]

SENATOR ASHFORD: I think...yeah, Senator Council. [LB985]

SENATOR COUNCIL: Thank you, Ellen. [LB985]

ELLEN FABIAN BROKOFISKY: Thank you. [LB985]

SENATOR COUNCIL: Hey, Corey. My only question...you made reference to Mary. [LB985]

ELLEN FABIAN BROKOFISKY: Yeah. [LB985]

SENATOR COUNCIL: My only concern about the continued success of the program is the availability of services. [LB985]

ELLEN FABIAN BROKOFISKY: That's right. [LB985]

SENATOR ASHFORD: Right. [LB985]

SENATOR MCGILL: Yeah. [LB985]

SENATOR ASHFORD: Right. [LB985]

SENATOR COUNCIL: You know, and if we keep losing service providers, it won't be, you know, the failure won't be as a result of what probation and the courts are doing. It'll be because we don't have service providers. And... [LB985]

ELLEN FABIAN BROKOFISKY: Well, and, you know, DHHS can't say this, but I will. Over the years the problem has really been that services haven't been built around the children... [LB985]

SENATOR ASHFORD: Well, they're not flexible, are they, Ellen? [LB985]

ELLEN FABIAN BROKOFISKY: ...and the children's needs. And I think that it's not DHHS's fault. It's, you know, in my humble opinion...take out Ellen but 37 years. We

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

Judiciary Committee
January 26, 2012

haven't prioritized children and children's services the way that children's services need to be. And it's a continuum. It's a beginning to an end and building the services in. There's a ton of things that we can do together that can make a really good comprehensive system. I don't think it's going to be free. But I do want to make the point that, again, this is business not as usual. This is money following the juvenile; the juvenile drives the bus, not the money. And that is a complete opposite of the system that we have now. [LB985]

SENATOR COUNCIL: And with that flip in the delivery system...should enable the resurgence of more community-based services. [LB985]

ELLEN FABIAN BROKOFISKY: Yes. Yes, absolutely... [LB985]

SENATOR COUNCIL: Thank you. [LB985]

ELLEN FABIAN BROKOFISKY: ...in my opinion, my humble opinion. [LB985]

SENATOR ASHFORD: Good work, Ellen. Thank you. [LB985]

ELLEN FABIAN BROKOFISKY: Thank you very much. [LB985]

SENATOR MCGILL: Thank you. [LB985]

ELLEN FABIAN BROKOFISKY: Thank you. [LB985]

SENATOR ASHFORD: Anybody else? Well, you don't come under the 30-second rule. So you... [LB985]

SARAH FORREST: (Exhibits 25 and 26) (Laugh) I promise I'll be fast. [LB985]

SENATOR ASHFORD: Okay. [LB985]

SENATOR MCGILL: No, I think we hold her to it. (Laugh) She's got a letter. [LB985]

SARAH FORREST: Hello again, Senator Ashford and members of the committee. I'm Sarah Forrest, the policy coordinator for child welfare and juvenile justice at Voices for Children in Nebraska. We're here today in support of LB985 as a move towards ensuring all of our children in the juvenile justice system are better served, in the proper services. We think this is a good step to, basically, serve more youth in their homes and communities; prevent them from becoming state wards; move towards providing more developmentally appropriate, evidence-based, and promising practices; and, basically, eventually generate fiscal returns as we invest in simple but crucial services. Many other states have started to invest in community-based juvenile justice, and they've

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

Judiciary Committee
January 26, 2012

seen huge fiscal returns. There have been numerous academic studies that have really shown the benefit. I've distributed to you a brochure that we put together with our national network, the National Juvenile Justice Network, funded by the Tow Foundation, which shows just the cost of juvenile incarceration, juvenile confinement, compared to what it would take to invest in a Job Corps program, some after-school, send that kid to University of Nebraska-Lincoln. So we're talking about simple, affordable, and effective services that can help kids get on the right track and grow to be thriving adults. And we urge you to advance the bill. And I'd be, well, happy to answer any questions. [LB985]

SENATOR ASHFORD: Thank you, Sarah. [LB985]

SARAH FORREST: Yep. [LB985]

SENATOR ASHFORD: I think...I don't see any questions. Thank you. [LB985]

SARAH FORREST: Thank you. [LB985]

SENATOR ASHFORD: This is effective here. Let's...we'll keep that. Well, we have one more--any others?--one more testifier here. [LB985]

ELAINE MENZEL: Chairman Ashford and members of the committee, for the record, my name is Elaine Menzel, M-e-n-z-e-l. And I'm here on behalf of the Nebraska Association of County Officials. We support the efforts of both the probation office and the Department of Health and Human Services in being collaborative on this project. NACO has a long history of being involved in juvenile justice issues, and we are supportive of the efforts of a continuum of care and services for the juveniles and hope that they don't become further into the system, primarily cost related but also for the benefit of the youth, to see that they do better in the long run. I just lend our support and hope that you'll vote favorably. If there's any questions, I'll attempt to answer them. [LB985]

SENATOR ASHFORD: Thank you, Elaine. Bob. [LB985]

SENATOR KRIST: Very quickly close on the issue. To Senator Council's point, I've had conversations with the local providers in the Omaha area, Uta Halee and the board and Mary. And seeing the future business that they can grow to, they are looking forward to coming back into the service area. And I know Senator Lathrop has some issues that will maybe restore some of those services out there, potentially in the future, as well, in his committee. The strong point about this is that we sometimes do things by paying them what they really need. [LB985]

SENATOR LATHROP: Oh, yeah, got it. That committee. [LB985]

SENATOR KRIST: That committee. [LB985]

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

Judiciary Committee
January 26, 2012

SENATOR COUNCIL: That committee. (Laugh) [LB985]

SENATOR LATHROP: Okay. Yeah. [LB985]

SENATOR KRIST: Yeah, we'll tell you about it later. The strong part about this is that sometimes in government we rush into things and we don't do things quite correctly. Imagine that. This one has a part of it that is an evaluation part, and it will tell us if this working and if it's working correctly. And thanks to the university for stepping up to the plate on that one. Thank you for consideration. I hope you move it out as quickly as possible. [LB985]

SENATOR COASH: Senator Krist... [LB985]

SENATOR ASHFORD: Senator Coash. [LB985]

SENATOR COASH: I promised Senator Lautenbaugh this won't take long, but I do want to ask you about this fiscal note. So we've got \$7 million. Is the expectation that, by providing additional funding, HHS won't need \$7 million, and so that through the appropriations process we could put that \$7 million into this project? Is that what you're thinking? Or are you thinking: HHS has to continue to do what they're doing, we've got to find an extra \$7 million in the budget to get this project going. [LB985]

SENATOR KRIST: The reality of the situation is that with the current contracts in place in the Omaha area and the pilot program running concurrently, we were actually double-paying for these kids for 30 months. That's the gross reality of the situation. The reality right now is that we're going to be able to transfer the money from the DHHS funds to the judiciary to fund this program. And that's where the negotiation will come with the department. I have verified that with Liz Hruska and our own legislative office. And that's that addition on the bottom of that page... [LB985]

SENATOR COASH: Okay. [LB985]

SENATOR KRIST: ...that says that that money will move. [LB985]

SENATOR COASH: So HHS needs... [LB985]

SENATOR KRIST: This is not \$7 million new money. [LB985]

SENATOR COASH: Okay, so it's a neutral thing, and everybody understands that. [LB985]

SENATOR KRIST: It's a neutral thing, and we need to make people understand that.

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

Judiciary Committee
January 26, 2012

And Appropriations...we've had discussions with them, and we'll continue to have discussions with them. [LB985]

SENATOR ASHFORD: And, yeah, Senator Krist... [LB985]

SENATOR COASH: Okay. Thank you. [LB985]

SENATOR ASHFORD: ...has made it crystal clear from the beginning on this, and so we'll work on that. Senator Council. [LB985]

SENATOR COUNCIL: And are you saying it could actually be a cost savings? [LB985]

SENATOR KRIST: I think it is a cost savings. I think the \$7 million is actually more money than the program... [LB985]

SENATOR ASHFORD: Will need. [LB985]

SENATOR KRIST: ...needs. We'll find that out though. And isn't it worth the \$200,000 to find that out? [LB985]

SENATOR COUNCIL: Thank you. [LB985]

SENATOR KRIST: You bet. [LB985]

SENATOR ASHFORD: Thanks a lot, Bob. Really, it's great work. [LB985]

SENATOR LATHROP: Thanks, Bob. [LB985]

SENATOR KRIST: Thank you. [LB985]

SENATOR ASHFORD: Thank you. [LB985]

SENATOR KRIST: Thank you. [LB985]

SENATOR COASH: Have fun back in HHS. [LB985]

SENATOR MCGILL: Are you guys doing the... [LB985]

SENATOR KRIST: Yeah, I'll call you at midnight. [LB985]

SENATOR MCGILL: ...are you guys doing case management? [LB985]

SENATOR ASHFORD: All right. Do I have a motion to go into Exec Session?