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Judiciary Committee
February 11, 2015

[LB172 LB173 LB483 CONFIRMATION]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, February 11, 2015, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB483, LB172, LB173, and gubernatorial appointments. Senators present: Les Seiler, Chairperson; Colby Coash, Vice Chairperson; Ernie Chambers; Laura Ebke; Bob Krist; Adam Morfeld; Patty Pansing Brooks; and Matt Williams. Senators absent: None.

SENATOR SEILER: Welcome to the Judiciary Committee. I'm Senator Les Seiler from Hastings, Nebraska, and Chairman of this committee. From the right, we have Senator Matt Williams from Gothenburg, Senator Bob Krist from Omaha. Our counsel is Diane Amdor. On the far left is Senator Laura Ebke from Crete; Senator Pansing Brooks from Lincoln. And our clerk is Oliver VanDervoort. Our pages today are Jonathan and Drew. And most of you, I recognize your faces from being here before. Please fill out the green sheet to testify. If you do not want to testify but want to voice your opinion, there is a sheet out there where you came in that you can fill it out and put who you're for or against, this...the bill you want to appear on, but you don't have to testify. We will be being...we are joined by Senator Chambers from Omaha.

SENATOR CHAMBERS: Yes. (Laugh)

SENATOR SEILER: And Senator Morfeld and Senator Coash will be joining us, I believe. When you come up to testify, make sure you speak into the microphone. That's not so much to amplify your voice but to make sure it gets on the transcript properly. Silence your cell phones and be ready to go here.

SENATOR KRIST: Lights.

SENATOR SEILER: Oh, lights. We are running the light program. You'll have green, yellow, and red; and on red, stop, because I will tell you to stop. If you're in something pretty important, one of the senators will ask you to continue or to wrap up the best you can. Okay, we have some appointments to examine. Gerard Ruiz, is it? I don't see him. Has he made contact with anybody about telephoning in or anything? Okay. We'll skip over him then. And if he shows up, we'll get him in. Michelle Schindler, please come up and introduce yourself to the committee, pronounce your name, and spell it for the record. [CONFIRMATION]

MICHELLE SCHINDLER: Okay. 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 of the Lancaster County Youth Services Center.
[CONFIRMATION]

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SENATOR SEILER: Okay. And you're here for Crime Victim's Reparations Committee appointment? [CONFIRMATION]

MICHELLE SCHINDLER: Yes, I am. Yes. [CONFIRMATION]

SENATOR SEILER: Okay, and how long have you been on that committee?
[CONFIRMATION]

MICHELLE SCHINDLER: I think it was two years. This would be a reappointment. It's been a pleasure sitting on this committee. I truly believe that when we look at the criminal justice system, we definitely need to consider that there are victims. And this committee is really important to me to address the needs of victims when they have a financial impact and they're not able to respond to that with their own means. I think it's part of making them whole.
[CONFIRMATION]

SENATOR SEILER: Okay. Anything you'd like to tell the senators? [CONFIRMATION]

MICHELLE SCHINDLER: Well, I appreciate...I know this year you guys have a bill that you're looking at regarding crime victims and we're very supportive of it and we're very excited about it. We also do know that at the federal level there will be more money coming down to address programs that respond to victims of crime. [CONFIRMATION]

SENATOR SEILER: Any questions? Matt, Senator Williams. [CONFIRMATION]

SENATOR WILLIAMS: Thank you. Can you just tell us what your committee does?
[CONFIRMATION]

MICHELLE SCHINDLER: Well, sure. What...there's some statutes that in the event someone has been harmed by crime and say they have medical bills or they're out of work, they can apply for some reimbursement through the Crime Commission. And there's a variety of rules that the Crime Commissioner looks at to see if there are...they can meet those rules to receive funds. In the event that the Crime Commissioner believes that they don't meet the definitions of reimbursement, then this is the appeal process for people to come through to us to reevaluate that. [CONFIRMATION]

SENATOR WILLIAMS: And what are your qualifications to serve on that? [CONFIRMATION]

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MICHELLE SCHINDLER: Well, my qualifications: I've worked in the juvenile justice system for over 20 years. I've studied the juvenile justice system. I...jeez, a variety of things. I worked with the National Council on Crime and Delinquency to look at some risk assessments. I work daily with people who have been charged or determined to have violated someone else's property or person. And I believe very strongly that, for someone to become rehabilitated, they must understand that their behavior has impacted someone else, and the only way to do that is to bring the victim's voice into the picture and to address their needs. Does that make sense?

[CONFIRMATION]

SENATOR WILLIAMS: Um-hum. [CONFIRMATION]

MICHELLE SCHINDLER: Okay. [CONFIRMATION]

SENATOR SEILER: Senator Krist. [CONFIRMATION]

SENATOR KRIST: Thank you, Chair. Thanks for coming and thanks for what you do. Just one quick question, you alluded to the fact that...more federal funds. Are we seeing more funds from the federal government coming up? [CONFIRMATION]

MICHELLE SCHINDLER: There's...it's our understanding that the Crime Commission should be receiving a lot more federal funds, and then communities can apply for those funds for victim advocacy, different types of programs to respond quickly and promptly to the victim needs.

[CONFIRMATION]

SENATOR KRIST: Well, I know the Crime Commission is doing a great job in the grants and some of the monies that are going to the counties and this is just an extension of that. And so thank you for what you do. [CONFIRMATION]

MICHELLE SCHINDLER: You're welcome. [CONFIRMATION]

SENATOR SEILER: Anything further? Thank you very much for coming and testifying.
[CONFIRMATION]

MICHELLE SCHINDLER: Thank you. [CONFIRMATION]

SENATOR SEILER: Has Fred Ruiz arrived yet? Okay, we'll go on to LB483. [LB483]

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SENATOR PANSING BROOKS: (Exhibit 1) Good afternoon, Senator Seiler and members of the Judiciary Committee. My name is Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s. And I represent Legislative District 28 right here in the heart of Lincoln where we are sitting, and I am here to introduce to you LB483. As you are all keenly aware, one of the most important issues we will face in this legislative session is prison reform. With our critical prison overpopulation, we find ourselves in a situation where we must act. For too long our only focus has been to be tough on crime. We now need to be...to focus, I believe, on being smart on crime. The study completed this interim by the Council of State Governments identified several key components that will allow Nebraska to not only reduce the overcrowding problem but also address the recidivism rate. LB483 addresses one of those recommendations. It's typically referred to as the one-third rule or indeterminate sentencing. In the 1970s the Legislature began to amend the correctional system in Nebraska from a model of simply incarceration to one of incarceration with treatment and rehabilitation. The Legislature amended the critical procedure...the criminal procedure code to provide for a sentencing scheme that allowed for those inmates who were sent to prison to work toward reforming themselves and assimilating back into the community after being rehabilitated once they were released from incarceration. The Legislature developed the one-third rule which limited the discretion of judges to impose the maximum sentences by providing that the minimum sentence imposed could not be more than one-third of the maximum possible for the category of penalty available. This one-third limit provided that the offender inmate would have time and opportunity for rehabilitation in the prison system before being paroled and would also ensure meaningful time for the offender parolee to be supervised once paroled into the community. Inmates had the incentive to actively participate in constructive and rehabilitative programs within the prison system, so they were better candidates to be paroled when they became eligible. Additionally, the one-third limit still allowed for judges to impose a significant maximum sentence for offenders to be supervised while on parole or incarcerated should such inmates not comply with the terms of the parole conditions. The one-third limit was a law in Nebraska from about 1971 until 1993 when it was removed. The legislative history provides little explanation for why that particular rule was eliminated. In 1993, the Legislature passed the truth in sentencing act which removed the one-third rule without comment. With that change, the prison system moved back to being a place to house inmates with little to no programming. Judges are imposing sentences with maximum and minimum sentences that are nearly identical, leaving very little time for meaningful parole. In 1997, the one-third rule was reinstated for Class IV felonies. Those are punishable by a maximum sentence of zero to five years. What we are left with are minimum and maximum sentences with a very small window of supervision or, in many cases, flat sentences that allow no opportunity for meaningful postrelease supervision. According to the CSG--the Council on State Governments--Justice Center, in fiscal year 2013, 17 percent of people newly admitted to prison, 449 people, received a sentence with a parole window of one month or less or no parole opportunity at all. The slim or nonexistent parole windows of these flat sentences ensure that these individuals would leave prison without supervision when released. In fiscal year 2013, 57

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percent of flat sentences were for terms of one year, which equates to a six-month length of stay in prison after good time is applied. This bill would expand indeterminate sentencing to include all classes of felony, except when a maximum limit of life is imposed by the court. While it is unclear that this bill would actually reduce the prison population, it is clear that it would increase the parole window and prevent people from jamming out. LB483 is not a panacea for all of our problems; however, it will provide a solution to the issue of jamming out prisoners without rehabilitation. So I will take any questions that you have. I have three...I'd like you to pass out. I've got three pieces of paper that came from the Council of State Governments regarding this issue and would like to give it to you to look at. The other thing is, I would ask you to look at the fiscal note and see that in the first year we save a million and by 2016-17 it goes up to \$3.2 million. So... [LB483]

SENATOR SEILER: We'll take it. [LB483]

SENATOR PANSING BROOKS: Pardon me? [LB483]

SENATOR SEILER: We'll take it. [LB483]

SENATOR PANSING BROOKS: (Laugh) Ha! Okay, good. Okay. All done? No questions. So any questions? And of course others behind me with much more knowledge of criminal law will be speaking, so. [LB483]

SENATOR SEILER: Any questions of this witness? Senator Krist. [LB483]

SENATOR KRIST: Just a comment. It's always nice to see when our own fiscal analysts and somebody else's fiscal analyst agree, and the numbers are identical for Corrections and for Fiscal Office. So thank you. [LB483]

SENATOR PANSING BROOKS: Good. Thank you. [LB483]

SENATOR SEILER: Any further questions? Seeing none. [LB483]

SENATOR PANSING BROOKS: Thank you. I'll stay around. [LB483]

SENATOR SEILER: You can go back to your chair. First witness as a proponent of this bill. [LB483]

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SARAH NEWELL: (Exhibit 2) Oh. Yeah, sorry, make sure I can get my handouts back here. Members of the committee, my name is Sarah Newell. Last name is spelled N-e-w-e-l-l. I'm an attorney at the Nebraska Commission on Public Advocacy testifying in support of LB483. I apologize that you have to deal with me. My boss, Chief Counsel James Mowbray, is out of town for his 30th wedding anniversary and so he thought, if he wanted to have a 31st, he'd probably ought to follow through with that, so. (Laughter) This is an issue that is...that we've been following closely, particularly since the Council for State Governments report came out this summer. Having...I have not practiced under the one-third rule within...with the exception of the Class IV felonies. But my understanding is that for quite some time, between '71 and '93, it really was an easy or a clean way of addressing some of the overcrowding problems that we've had within our correctional system. And I've...I can give you much more in-depth history about how we got to this place over time and I have more memos on that. I know that you guys are really excited to see me because every time I come I bring you reading material. But as Senator Pansing Brooks indicated, one of the major things about the one-third rule is that we know that it works. It was in statute for many years. It was removed from statute somewhat surreptitiously, seemingly, as an accident by Bill Drafters when the truth in sentencing bill was morphed in. So it is isn't as though this was a policy change that the Legislature debated and decided that this just wasn't working; it's something that had worked. And the beauty of the one-third rule really is that it encourages offenders to take advantage of rehabilitative efforts or, at the very least, to maintain their good time, because for those of you who are unfamiliar with the sentencing process, indeterminate sentencing means you get a range. The bottom number determines your parole eligibility date, and the top number determines the date that you jam out or your...the maximum release date. Good time applies to that unless there's a mandatory minimum involved, and we'll talk about that more with Senator Chambers' bill later. But what the one-third rule does is it says that the bottom number can't be more than one-third than the top number. So that way, you have ample time to parole or for parole supervision, assuming you keep your good time. It gives people an incentive to maintain their behavior in the facility, keeps the staff safer. And it also gives them time for parole supervision so that they're being watching the in the community, and if they're not following their P's and Q's, they go back. They other thing that it does from our perspective is that it helps us give certainty to clients when they're...when we're talking about plea negotiations and what various, different outcomes would be, because if you can say, the worst you can get is X, Y, Z, then that person knows, as long as they mind their P's and Q's, they can actually be released in a timely fashion, whereas when we have such broad sentencing discretion as we do now and people are getting numbers--you know, 20-20--there is no incentive for...well, one, you're not going to get paroled because you're going to jam at the same time that you're parole eligible. But also, you're not going to get any services, you're not going to get any oversight, and you don't really have any incentive to follow rules in the facility because you're more or less hopeless. It is what it is. So that's one of the things that the one-third rule does that I think really is an advantageous way to handle this problem. Plus, it's, you know, wonderful fiscal note, it's tested before, there are no fails...or it's a fail-safe. If there's any questions... [LB483]

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SENATOR SEILER: Anybody have any questions? Seeing none, thank you. [LB483]

SARAH NEWELL: Thank you, Your Honor...Senator, not "Your Honor." (Laugh) [LB483]

SENATOR SEILER: Next proponent. [LB483]

JERRY SOUCIE: Good afternoon, Mr. Chairman. My name is Jerry Soucie, S-o-u-c-i-e. I'm here on behalf of myself and the Nebraska Criminal Defense Attorneys Association in support of LB483. And I'm old enough to have practiced law under the old one-third rule and was out of the state when it got repealed and then came back and was shocked to see that we no longer had that provision in our statutes. I can tell you what the impact was in the old days. In the old days, with the one-third rule you could plead to a Class III felony and be able to explain to your client why it was in his or her best interest to take the deal to a Class III because you could tell that client, look, we're going to be able to limit the judge's discretion, the judge is going to...not going to give you more than 6 2/3 to 20, that's worst-case scenario, if you keep your nose clean, if you do well, you've got a shot at parole in 3 years and change. And that was a tremendous incentive for somebody who was facing a serious charge to say, look, I'll cut my losses, I won't risk a trial. When I came back, it went exactly the opposite. And you would have to be honest to your client and say, what can the judge do to you, he can give you 20-20. And the guy says, well, what's my incentive to take the plea, if he maxes me, I get the same on my parole eligibility as I do on my max. And you would say, there's nothing I can do about it. And so then what you would have is you would have defense lawyers who would kind of flimflam the client, I think, and I know it happens, where they say, no, no, the judge isn't going to do that, and then the client says, wait a minute, my lawyer told me I wasn't going to get more than five years. Maybe the lawyer said it and maybe he didn't; maybe the client heard what he wanted. But that kind of process shouldn't be involved in a thing as important as a guilty plea. The second thing that it does is it allows then when the...when this rule disappeared, this turned loose judges to all of a sudden, instead of doing what they used to do, which was to give you a little minimum, to all of a sudden start maxing people: 19-20, 18-20. And if you're doing an 18-20, there is absolutely no incentive to take parole because, if you take parole, you're then going to turn around and you're facing somebody pulling you back in and you have to do another two. And these guys have been in that long. They haven't been through training or they haven't been through programming. There is no incentive. I would ask you to support it. It allows DCS with cooperation of the Parole Board--remember, that's your checks and balances--it allows DCS to control their population by either recommending people to the Parole Board...and then the Parole Board decides. Parole Board says yes or no. And I realize the credibility of the Department of Correctional Services as we sit here today may not be as high as it should be, but that's the reality of the situation. Thank you very much. If there's any questions... [LB483]

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SENATOR SEILER: Senator Williams. [LB483]

SENATOR WILLIAMS: Thank you, Senator Seiler. I have one question just so I'm understanding this. If I heard your testimony right on the...currently, if a judge did an 18-20, as you mentioned, and the person did choose parole, violated parole, they could be pulled in for 2 years. [LB483]

JERRY SOUCIE: Yes. [LB483]

SENATOR WILLIAMS: Right? If we do have the... [LB483]

JERRY SOUCIE: Let me back up a minute. It's worse than that. If he's doing an 18-20 without a maximum...mandatory minimum and he would parole in, say, four...or, excuse me, 9, if he paroled in 9 and then he gets pulled back in, he could do another 11. [LB483]

SENATOR WILLIAMS: Up to the 20. [LB483]

JERRY SOUCIE: Up to the 20. [LB483]

SENATOR WILLIAMS: What's the difference with that same circumstance under this legislation,... [LB483]

JERRY SOUCIE: Under this legislation... [LB483]

SENATOR WILLIAMS: ...the one-third? [LB483]

JERRY SOUCIE: ...it's even worse for him. I mean he has a... [LB483]

SENATOR WILLIAMS: That's what I thought. [LB483]

JERRY SOUCIE: He has a greater incentive to be proper, to not do something that he shouldn't do, because he's looking at even more time on the back end and he has an advantage to get himself out early on the front end. [LB483]

SENATOR WILLIAMS: So it doesn't change the rule, so to speak, of how that would work. [LB483]

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JERRY SOUCIE: The revocation of parole, you mean? [LB483]

SENATOR WILLIAMS: Right. [LB483]

JERRY SOUCIE: Well, yeah, and I overstated that. That's his risk. The Department of Correctional Services could re...could give him his good time back and he could parole, depending what his parole violation was. I think if his parole violation is another felony, I think he's stuck. But if it's drinking, hanging out with the wrong people, things of that nature, he might get his good time back. [LB483]

SENATOR WILLIAMS: Okay, I think I understand. Thank you. [LB483]

SENATOR SEILER: Senator Chambers. [LB483]

SENATOR CHAMBERS: Thank you. Mr. Soucie, just for the record's sake, eligibility for parole simply means that the board can consider whether you should be paroled but it is not mandated to parole you at any given time. [LB483]

JERRY SOUCIE: That's absolutely correct. [LB483]

SENATOR CHAMBERS: And that's all that I wanted to make clear. I mean you made it clear. Thank you. [LB483]

SENATOR SEILER: Anything further? Thank you very much, Mr. Soucie. [LB483]

JERRY SOUCIE: Thank you. [LB483]

SENATOR SEILER: Next proponent. [LB483]

THOMAS STRIGENZ: Good afternoon, Senators. Thomas P. Strigenz, I appear on behalf of the Sarpy County Public Defender's Office. I am the Sarpy County Public Defender. I just want to make sure and testify in support of this bill because I know this bill comes at everybody as a, you know, recidivism side and parole eligibility side. But I also want to remind everyone that this bill "incentifies" the inmates while they're in prison to behave and to get access to services when they're in. So, I mean, you know, we talk about, you know, the...each side of what an inmate can get, but let's say an inmate does do a 10-20, so then you're in the middle of this thing. You know, this bill pre...currently only applies to Class IV felonies, so we get a lot of 20 months to five year

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sentences on Class IV felonies. And it "incentifies" the inmate when they're in prison to get and access...to get into programming, to say, hey, I'm going to do this today, you know, I get down here, I'm going to get in there and get my name on the list. And also what we see from a reality standpoint is the prison system is giving the inmate the ability to get it. You know, so many times, if they're doing it, a longer, low-end sentence, a ten-year sentence, they're going to say, you've got time, we got other people we got to take care of. And that's what this bill will do. This bill will "incentify" the inmate to get in but also make the prisons allow them to get access to these programs, because, you know, it is when they get out that this board and the Legislature needs to protect. And if they're doing the programs on the inside, it'll be better for them to get a parole eligibility and then they'll behave when they get out. But again, I know we talk so much about when they...when they're out under this bill, but it really does open up doors to them when they're in the prison system. So with that, we'd ask that you support it. [LB483]

SENATOR SEILER: Thank you. Any further questions? I have one. [LB483]

THOMAS STRIGENZ: Yes, sorry. [LB483]

SENATOR SEILER: You mentioned the magic word: programs. [LB483]

THOMAS STRIGENZ: How do they do it when there isn't anything being taught? It's just...they can't. I mean, you know, I mean... [LB483]

SENATOR SEILER: So you're saying this bill really needs to have a programs... [LB483]

THOMAS STRIGENZ: ...component to it, more programming component. [LB483]

SENATOR SEILER: ...has more programs as a component. [LB483]

THOMAS STRIGENZ: Absolutely, absolutely, because we're seeing, again, the people with the Class IVs, the 20 months, they're getting into the limited programming that's available to them, this...you know, it...there is...needs to be more programming while they're in, absolutely. [LB483]

SENATOR SEILER: Okay, thank you. Any further questions? Seeing none, thank you. [LB483]

THOMAS STRIGENZ: Thank you, Senator. [LB483]

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SENATOR SEILER: Further proponent. [LB483]

ALAN PETERSON: (Exhibit 3) Good afternoon, Chairman Seiler, members of the Judiciary Committee. I'm Alan Peterson, P-e-t-e-r-s-o-n, and I am the senior counsel and the lobbyist for ACLU of Nebraska. We support this bill. You'll be working for the next few months on prison reforms aimed in part at overcrowding but also aimed at reducing the failure of prison, the failure of that word "corrections," when no programs, no transition work, no supervision follows or even starts with the serving of the sentence. It's terrible. It's a failure. It makes the word "corrections" a joke. I have prepared a letter in support of this bill and the two following bills--LB172, LB173--and I should confess now it's the same letter, although I know you need a separate record, so you'll have three copies by the end of this afternoon. The return to something that worked in the past makes so much sense, and I appreciate the expertise of Mr. Soucie and each of the other witnesses also in regard to, and Mr. Strigenz in particular, in regard to why this means the time spent behind the bars should be better spent because of the motivation to qualify for not only eligibility but for release. It's like a complicated toy that actually works. It's great. There may be negatives to it. I suspect maybe there will be some con testimony. I might mention to you that the letter I provided you includes the two-page report of December 31, 2014, from the department setting out the overcrowding situation at each of the institutions--above 300 percent, as I think you all know by now, at the D&E, at the Diagnostic and Evaluation--an average of 159-percent-plus overcrowded. This bill, the following two bills, and some of the work by the CSG are called front-end reforms. Let's get the front-end sentences down and start getting some impact out of that on this overcrowding problem. One last thing I'd mention, the Attorney General's Office provided, albeit in rather fine print, back in 1998 a complete explanation of how the indeterminate sentencing system worked then and right up to now. It's by present federal Judge Laurie Smith Camp. May I finish just this thought? My light is on. [LB483]

SENATOR SEILER: Senator. [LB483]

SENATOR EBKE: Do you want to finish your thought? (Laugh) [LB483]

ALAN PETERSON: Thank you, Senator Ebke. The explanation shows the complications of that system. I thought the testimony you have so far returning to the one-third rule for all classes of crimes make so much sense, is so much clearer than that difficult Opinion. But if you want to look at it, its number is 98013. You wouldn't want to go back to that fine print. Thank you. [LB483]

SENATOR SEILER: Any further questions? Senator Williams. [LB483]

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SENATOR WILLIAMS: Thank you, Mr. Peterson. [LB483]

ALAN PETERSON: Yes. [LB483]

SENATOR WILLIAMS: What was the rationale for changing the rule? [LB483]

ALAN PETERSON: I don't... [LB483]

SENATOR WILLIAMS: You probably testified on that. [LB483]

ALAN PETERSON: No, I didn't. I have a belief that there was a culture of "let's get 'tough on crime'" that was used by some candidates for office that they supported or would support heavier sentences for people. Crime is always a problem. At that time it was used as a political cudgel to win some races. That's my opinion. That's not an expert opinion. That's just somebody that was there and watched it. [LB483]

SENATOR WILLIAMS: Thank you. [LB483]

ALAN PETERSON: Thank you. [LB483]

SENATOR SEILER: Any further questions? Seeing none, thank you. [LB483]

ALAN PETERSON: (Inaudible.) [LB483]

SENATOR SEILER: Any further proponent. [LB483]

JOE NIGRO: Hi. I'm Joe Nigro. That's spelled N-i-g-r-o. I'm the Lancaster County Public Defender. I know there was a question about how this change occurred in the first place, and it's my recollection that this occurred in the 1990s. It was late in the session and basically it was slipped into some legislation. It was not something that was debated here or discussed in front of the Judiciary Committee, and people didn't even realize the change occurred. When there was an attempt to make the change back the next session, then you had people who didn't want to make it, make a change, and sort of portrayed it as, you know, it was a good thing to be tough on crime. And so at that time, basically, the only change that occurred was that Class IIIA and Class IV felonies were separated from each other. And so for Class IV felonies, the one-third rule went back into effect and for IIIAs it did not. But prior to that, for both...for Class IIs, Class IIIs, and Class IVs, prior to that initial change, it had always been this way, that the minimum could be no

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more than one-third of the maximum. And Mr. Soucie was talking about those numbers. And I think the point that I wanted to emphasize, the reality is, once this change occurred, for example, on a Class III felony, if someone is sentenced to 18-20 years in prison, if you assume that they're going to keep their good time, that automatically becomes 9-10. When somebody gets to nine years, if they only have one year left to serve in their sentence, they may not want to parole because they may think that chances are good that they're going to screw up and if they can make it one year and they can make another year in the institution, then they're out with nobody looking over their shoulder. If you have the one-third rule in place, the person now can't get 18-20. The sentence, the most on the bottom could be $6\frac{2}{3}$, so then it becomes $6\frac{2}{3}$ to 20. The top number with good time still becomes ten years, but the bottom number now becomes $3\frac{1}{3}$. So now a person is looking at a gap between $3\frac{1}{3}$ years and ten years where they could get out on parole potentially. And there is a much bigger incentive for the inmate to want to parole because now you're looking at seven years and they may think, I'll take my chances on screwing up because I want seven more years of freedom. I think as a society we should all want more people to come out on parole instead of being released without any supervision whatsoever. And so that's the big change, and so I would strongly urge you to consider supporting this bill because I think society's interests are better served. The judge can still hammer the person on the top end if they want to give them a big number, and some offenses people aren't going to get paroled. But that bottom number is going to create a bigger incentive for people to want to parole, so they'll behave in the institution and will have supervised release. And I think that's why you should support it. Any questions? [LB483]

SENATOR SEILER: Any questions? Senator Morfeld. [LB483]

SENATOR MORFELD: Thanks for explaining that a little bit more. I'm still trying to wrap my head around it, but I think I've got it now. That's contingent upon us making sure that we have enough resources for programming and other critical supervision type of services afterward. I mean the current services and the current funding that we have for that isn't sufficient if we were to expand this to... [LB483]

JOE NIGRO: Oh, that's always been true. [LB483]

SENATOR MORFELD: Yeah. [LB483]

JOE NIGRO: I mean you absolutely need to fund more services in terms of mental health, substance abuse, job training, all of the...and the adequate number of supervision officers. But the research is pretty clear that people who come out on parole are less likely to reoffend than people who just jam their time and get out, so. [LB483]

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SENATOR MORFELD: Certainly. [LB483]

JOE NIGRO: And that's why I think it's not being soft on crime, because the top number can still be the maximum. It's just...it's making all of us safer because people are more likely to come out on parole. [LB483]

SENATOR MORFELD: Thank you. [LB483]

JOE NIGRO: Any other questions? [LB483]

SENATOR SEILER: Any further questions? Seeing none, thank you. [LB483]

JOE NIGRO: Thank you. [LB483]

SENATOR SEILER: Any further proponents? Seeing none, opponents. [LB483]

DON KLEINE: Opponents? [LB483]

SENATOR SEILER: Opponents. [LB483]

DON KLEINE: Good afternoon, Mr. Chair, Senators. My name is Don Kleine, K-l-e-i-n-e. I'm the Douglas County Attorney and I'm here on behalf of the Nebraska County Attorneys Association to oppose this legislation. Some of the reasons are that, you know, when you talk about a sentence that...parameters that...the parameter, say 1-50 years, and you say that the judge can only give a...the maximum sentence in effect is 18 2/3. I can give you some anecdotal examples. Erica Jenkins just got sentenced to 30-50 years consecutive for two counts of robbery in her role in helping her brother Nikko murder two Hispanic males in south Omaha. And so by this law, the maximum sentence the judge would have been able to give is 18 2/3 to 50 and she would have been eligible for parole in 9 years. I don't think that's appropriate. Same with the people who are convicted of conspiracy to commit murder with regard to the Payton Benson case who have pled and are facing 1-50 years, I don't think an appropriate sentence under that crime for that type of crime is a sentence of 18 2/3 years as the minimum. You know, there was statements about, well, you know, the Legislature made some change. That was 22 legislative sessions ago and I think part of the reason that that change might have been made was it's somewhat deceptive to the public. When we're told, the public is told the sentences could be up to 50 years for a Class II felony, but really the maximum the judge can give somebody is 18 2/3, one-third of that maximum sentence, we talk about judicial discretion, and I've heard that from members of this group here, a judge can use their discretion and set that sentence process up so

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that they...there's a difference between the minimum and the maximum so that that person does have parole issues or ability to get paroled. So a judge has that discretion to set that minimum and maximum sentence within the parameters of that 1-50 years or 1-20 years so that that parole system can be available to them. There was a little bit of misleading statement earlier about this 18-20 sentence. That 18-20 sentence now means that somebody is eligible for parole in 9 years under that 18-20 and they jam out in 10 years, they're done. So I don't know what that thing was about having up to 20 years. But if they jam out, they're done in ten years. And again, that's a situation that I think the public hears and kind of questions because they say, well, gee, the sentence was 18-20, they're eligible for parole in 9 years and they can jam out in 10, what...how does that fit with regard to what the sentence is? And again, that's why I think that the amendment, to some extent, by the Legislature was a truth in sentencing law where the judge says 18-20 and says, well, what that really means is the person is eligible for parole in 9 years and jams out in 10 years. So that's what that sentence is, 9-10, not 18-20. I seem my time is up. So I think it's something that doesn't need to be done. I don't think it's a good bill from the standpoint of the County Attorneys Association. [LB483]

SENATOR SEILER: Senator Chambers. [LB483]

SENATOR CHAMBERS: Mr. Kleine, I will be more fair than prosecutors are. Did you hear the explanation of why it's desirable to have a longer period of time for a person to be under supervision by the state when they get out? If they serve the nine and they're eligible for parole, if they get out in nine, say, but if they serve one more year, that jams them out. They can't be held in prison more than one year. [LB483]

DON KLEINE: Right. [LB483]

SENATOR CHAMBERS: And when they do that, they're under no supervision whatsoever. [LB483]

DON KLEINE: Right. [LB483]

SENATOR CHAMBERS: Even if they get out in nine, the amount of time that they'll be supervised is one year. [LB483]

DON KLEINE: That's right. [LB483]

SENATOR CHAMBERS: If they get out earlier, then they're under the supervision. Prosecutors run for office on the basis of being tough on crime. I don't believe any prosecutor is concerned

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about overcrowding when bringing a charge or seeking a sentence. Do you agree or disagree with that? [LB483]

DON KLEINE: Oh, I'm more worried about public safety than overcrowding, so I think the solution is to make sure that the public is protected from this individual if they're out there committing violent crimes. Right. [LB483]

SENATOR CHAMBERS: So if we have total overcrowding, and you've already answered but I want a specific answer, that is of no concern to the prosecutor; that's a matter for the Legislature. Would you agree? [LB483]

DON KLEINE: I don't have any control over that. It is a matter for the Legislature. [LB483]

SENATOR CHAMBERS: And there are different considerations that a policymaker would have from those that a prosecutor would have. [LB483]

DON KLEINE: I would hope some of those are similar to what prosecutors have also. [LB483]

SENATOR CHAMBERS: Some are. But if the...the heavier a possible sentence, the bigger a club a prosecutor has in coercing a plea bargain, even from people who may be innocent. [LB483]

DON KLEINE: Well, that's not true. [LB483]

SENATOR CHAMBERS: I'm stating it. I'm not asking a question. I'm stating it. [LB483]

DON KLEINE: Well, that's good. I'm just answering. [LB483]

SENATOR CHAMBERS: And there are facts that have demonstrated it because under the Innocence Project they find that lawyers have told their client, even though you're innocent plead guilty because if you go to trial you haven't got much chance of winning, if you take this plea right now they will cut the time that you can get to less than you'd get if you go and you're convicted. And you know why they know that: because subsequently the person is found not to have committed the crime. The only reason he or she pleaded was because the lawyer and the prosecutor got together and told the client, not only do you have to accept this plea, you have to accept it now. Now you can disagree and say you don't believe it happens; but it does and that's what I'm going on. But I want to ask you this question. [LB483]

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DON KLEINE: Sure. [LB483]

SENATOR CHAMBERS: You're concerned about the public. Recently, in Douglas County a man was...he was charged with and the evidence established that he strangled a man to death in the man's own home, dismembered the body, and tried to dispose of it in another county. Are you familiar with that case? [LB483]

DON KLEINE: Sure. [LB483]

SENATOR CHAMBERS: And you allowed him to plead to a much lesser offense than first-degree murder, didn't you? [LB483]

DON KLEINE: Absolutely, because I read the police reports and I know what the evidence was. [LB483]

SENATOR CHAMBERS: And, well, why was...did you over...what was he charged with originally? [LB483]

DON KLEINE: Originally he was charged with first-degree murder. [LB483]

SENATOR CHAMBERS: Why was that charge made? [LB483]

DON KLEINE: Because we thought we knew what had happened at the time the murder took place, the incident itself. [LB483]

SENATOR CHAMBERS: But after you read the police reports, you found out that you couldn't prove that? [LB483]

DON KLEINE: No, there were some questions with regard to the autopsy as to the cause of death and the manner of death, and that was part of the premeditation element of first-degree murder. [LB483]

SENATOR CHAMBERS: But somebody... [LB483]

DON KLEINE: And so there was some other evidence that also told us that there could have been a fight that took place between them when this individual came home and wanted this person out of his house. [LB483]

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SENATOR CHAMBERS: So despite the fact that it was a horrendous crime and the dismemberment was mutilation of a body for sure, despite what the public thought or might think, you allowed him to plead guilty to manslaughter. Isn't that true? [LB483]

DON KLEINE: As you're aware, Senator, the dismemberment of the body has nothing to do with premeditation of that crime at the time the death took place. [LB483]

SENATOR CHAMBERS: I'm not talking about premeditation. I'm talking...you're talking about the public's perception and so am I, and the public looks at the dismemberment to establish the frame of mind this person was in. But you're not going to make your ultimate decision on the basis of the public's perception, are you? [LB483]

DON KLEINE: No. [LB483]

SENATOR CHAMBERS: Okay, and neither am I going to make my judgment based on what a prosecutor wants because, as you stated, you don't have to be concerned about overcrowding, you don't have to be concerned about the absence of programming. All you have to be concerned about is the number and percentage of prosecutions that are successful. And most of them...before I say it, are most of your prosecutions cases that go to trial or are they resolved by plea bargain, felonies? [LB483]

DON KLEINE: Plea agreements, plea agreements, or they go into diversion or we allow them to go into a diversion program or we allow them to go into drug court or we allow them to go into mental health diversion or we allow them to go into young adult court so they don't get a felony conviction. Those are all programs that we do to prevent people from getting felony convictions. [LB483]

SENATOR CHAMBERS: There have been studies where judges have acknowledged, especially judges in cases where a person is allowed to plead guilty to a crime which he did not commit, that they are not too anxious or eager to inquire too deeply into the facts that led this person to plead guilty because their docket is overcrowded. The prosecutor has a heavy schedule. So if they can get somebody to plead guilty, they'll do it. If the judge examined it, then the judge may not accept the plea. And at the federal level, they're talking now about judges getting involved in these plea bargains because this happened. And there's a federal rule right now that the judge can't be involved. If the judge is involved and it goes to trial because there is no plea agreement, the judge's objectivity may be questioned. But even now that can be circumvented by allowing a judge magistrate to be involved if both the prosecutor and the defense attorney agree because everybody...not every individual--that's more of a statement. Many people are not looking at the fact that these plea agreements are not matters of justice, they're a matter of convenience. And

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often the defense lawyer works with the prosecutor to persuade the person to plead guilty. Now I'm not asking you to agree with anything. You've got your reasons for what you say. I've got my reasons for mine. But I'm not looking at what the public is going to think. I'm looking at the reality. When people had their sentences miscalculated by the Department of Corrections and hundreds of people were let out before they should have been, the public was in an uproar. There were prosecutors who were upset. And nobody became upset until the scandal hit. But the reality of what was happening was there. There were people in corrections who knew what was happening, but the thing that drove them was the overcrowding. After it reaches a certain tipping point, the federal courts could step in and, as they did in California, finally, order the release of a certain number of prisoners. Are you aware of that ever having happened in another state? [LB483]

DON KLEINE: Oh, yeah, I'm aware of it in California. Some of my colleagues there have told me what the experience was with the federal court system and the governor ordering prisoners from state penitentiaries to go if there was a sentence, I think, less than ten years to serve their time in the county jails and the problems that that caused. [LB483]

SENATOR CHAMBERS: And other ways of trying to reduce the number... [LB483]

DON KLEINE: Right. [LB483]

SENATOR CHAMBERS: ...in prison. Here's what I'm getting at: When those people in the Department of Corrections, based on laws passed by the Legislature under the instigation often of prosecutors to start putting in mandatory minimums, lengthening the sentences without any programming--and in some cases the Parole Board could not parole people if they hadn't had certain programming, so the people who but for the absence of taking that programming could be paroled, cannot be paroled--under that pressure, the Director of Corrections and the director of the department itself, and they had some discussions with representatives in the Governor's Office, began to contrive ways of getting people out of the prison, not by way of parole, not by way of exoneration, but under fly-by-night programs of saying, you get home, you'll be there, but you're still considered in custody, those are issues that the county attorneys don't have to worry about. Politicians... [LB483]

DON KLEINE: I disagree with that. We do worry about that and we do...I set up a diversion program. I have a Young Adult Court. I try and help people stay out of the system and I am involved in trying to keep people who are... [LB483]

SENATOR CHAMBERS: Then what's wrong with this law? [LB483]

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DON KLEINE: Well, like I said, I think the...I think it's a problem because I think that when you say that this judge can only sentence to the minimum sentence to one-third of the maximum, I don't think that's a good idea. I don't think that...there's a reason I think that judges have the discretion when they have a 20-year sentence that they give. There has to be a reason. In their presentence investigation they say, you know what, this person deserves to get 18-20 years. [LB483]

SENATOR CHAMBERS: Then you would support a bill that would do away with mandatory minimums, keep the sentencing range, but give the judge total discretion? [LB483]

DON KLEINE: No. [LB483]

SENATOR CHAMBERS: See, you're not for either one of them. [LB483]

DON KLEINE: Now I'll be up on LB172, too, because I think there's still discretion there but I think that...I think the person needs to know on those kinds of crimes that they're going to at least go to the penitentiary and probation is not available for them. And I'll talk to you about that when I get that chance. [LB483]

SENATOR CHAMBERS: And the reason I'm going back and forth: to give you a chance to respond to some of the things I'm saying that you didn't have to...a chance to bring up. [LB483]

DON KLEINE: I appreciate that. [LB483]

SENATOR CHAMBERS: And it won't be as though you're just pulling things out. You're responding to provocation, if you will. Mr. Kleine, I've been in office...how long have you been a prosecutor? [LB483]

DON KLEINE: Well, as the county attorney, it is...I'm in my ninth year as being the elected but I've been probably doing this for about 27 years. That... [LB483]

SENATOR CHAMBERS: I've been in the Legislature 13 years more than you've been a prosecutor and I have observed prosecutors before you came, while you were here. Did you know of a man named "Pinky" Knowles who was the Douglas County prosecutor? [LB483]

DON KLEINE: That...he's the first person I worked for as...after...out of law school. [LB483]

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SENATOR CHAMBERS: So he was...he goes back a ways, too, but he didn't have the longevity on this earth even that I enjoy. A lot of the things that happened in this Legislature was at the instigation of prosecutors. The people who did it at the time didn't care what the long-term effects were. As a result, legislators today are dealing with those programs, those problems, because some senators didn't want somebody saying, well, if the judge says this it means that, we want this harsh sentence. And the senators succumbed and now we have those problems. Prosecutors don't have the answer. Prosecutors don't have to appropriate money. They don't have to do anything about handling the problems that they help create. They can now say the Legislature did it. I fought against it while I was here, and that's how come a lot of your colleagues said that I was soft on crime, that I didn't want anybody punished. But I had more sense than they had because I was a policymaker and I was looking at what the ultimate results would be of our actions. You're now saying we should continue a failed program, a failed policy, have long sentences with no programming. There are not going to be any prisons built, by the way. [LB483]

DON KLEINE: I guess I didn't say that, I don't think. I didn't say I didn't want any programs. You're miss... [LB483]

SENATOR CHAMBERS: Well, there's not going to be. [LB483]

DON KLEINE: Well, that's something...I've never...you attribute that to say, you've said that you don't want any programs, you want long sentences. I don't think I've said that. [LB483]

SENATOR CHAMBERS: Mr. Kleine, when they are going to attribute to a person intent or knowledge, they have what they call constructive knowledge or intent whereby a person who is deemed to be ordinarily reasonable and rational and may not be this person, it's the legal fiction of construct. [LB483]

DON KLEINE: Right. [LB483]

SENATOR CHAMBERS: If a reasonable person, given these circumstances, committed an act, that person is charged with the knowledge and intent of wanting to reach the result that that act resulted in without consciously intending it, without necessarily even knowing it. So if they couldn't use circumstantial evidence and constructive knowledge, there are a lot of cases they couldn't win. And here's where I'm getting to that: Fictions are used to put people away. I'm not going to deal in fictions when it comes to what we as legislators have to do. There is not going to be a prison built. What you want are the results of what your prosecutions lead to because you know what they're going to lead to because you can see it. They're going to lead to overcrowding; they're going to lead to the Legislature not, for whatever reason, appropriating the

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money to put in programming. Without the programming, there's certain statutory requirements that a person cannot be paroled. Those are things you know. And if you don't know, you should know. So if you know and your actions contributed to it, that's your intent. That's the way I'm getting at it. So 20 years from now, we listen to you, you will be dead. I won't (laughter) and these other people won't even care. But the legislators are going to say what we are saying now: Why did the Legislature do that? They did not have to do what the prosecutors wanted. And there has been no record, no studies that indicate longer and harsher sentences reduce recidivism or reduce crime. The only period... [LB483]

DON KLEINE: The crime rate is down. [LB483]

SENATOR CHAMBERS: The only period...but it's not because of longer sentences. [LB483]

DON KLEINE: Well, you can tell us why, but I don't know. It's...the trend is... [LB483]

SENATOR CHAMBERS: Well, they say a lot of times people age out of the category where they're going to commit them, and there are reasons that are given by experts other than harsh sentences. But they can say that the overcrowding is based on the harsh sentencing. But at any rate, is there anything else that you feel you'd like to say to wrap up what you were trying to get across to us? [LB483]

DON KLEINE: No. You and I have...we talk often and I appreciate and I respect you. But I would want you to know that certainly it...I guess it is a concern for anybody that's a citizen of this state that there's an overcrowding problem, particularly when it's part of the system that you work in, that I work in, that I don't have any control over other than the job that I do with regard to handling cases in Douglas County. [LB483]

SENATOR CHAMBERS: If you had control, what would you do? [LB483]

DON KLEINE: That's a good question. I think there has to be...we've been, as prosecutors, been kind of yelling for a long time that we need more mental health resources. I think there are so many people that are in the penitentiary or in the county jail right now that are dealing with mental health issues, a great percentage of them, and they're not getting the help that they need. And maybe that would help them stay out of the system. That's one of the biggest issues that I see. [LB483]

SENATOR CHAMBERS: But isn't...based on police arrests and decisions made by the prosecutors, conduct by mentally ill people is criminalized and they're put in prison, or jail if it's

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not long enough to go to prison, because they have no place else to put them, or do you deny that that happens? [LB483]

DON KLEINE: Well, I...I mean, I'm sure it does happen. [LB483]

SENATOR CHAMBERS: Okay. [LB483]

DON KLEINE: I'm sure it does, probably more so from a misdemeanor standpoint than felonies. Like I said, we...you know, if somebody is...we have the Board of Mental Health that we use quite often for...to help families when they have somebody, not even commit a crime, that might have a mental illness and be dangerous to themselves or someone else. We have a mental health diversion program that we use because I don't believe that people who are...have a high-level mental health issue to the level obviously of insanity that they don't...aren't responsible for what they do, don't belong in the criminal system, that we have to figure out some other way. [LB483]

SENATOR CHAMBERS: If there's no place to put them, what do you do with them? [LB483]

DON KLEINE: Like I said, we try to send them through a mental health diversion program. [LB483]

SENATOR CHAMBERS: Oh, when I say "you," I don't mean you as a person or a prosecutor, society. [LB483]

DON KLEINE: No, somebody in my office...yeah, it's a difficult question in my answer. There are no...there's no set answer because there are people who have, obviously, tremendous mental health problems that are in the criminal justice system. [LB483]

SENATOR CHAMBERS: But the Legislature does have the power to do something about it, isn't that true? [LB483]

DON KLEINE: Yes, I think so. I think you could devote more resources, set up more programs. [LB483]

SENATOR CHAMBERS: And if the Legislature claims that it costs so much and so much, the Legislature has the means of raising revenue, as every state has, namely by taxation, isn't that true? [LB483]

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DON KLEINE: I believe so. [LB483]

SENATOR CHAMBERS: So everybody knows what is needed: the programming. Everybody knows who is responsible for creating programs: the Legislature. And everybody knows that the way the Legislature gets the money to do it is by taxation. But what do you hear all politicians saying: no more taxation; we're going to cut taxes. And those politicians forget or don't care about the consequences. But there are some policymakers, such as myself, who are going to say, what can be done under the circumstances is what I'm going to do. And this one-third minimum...or this one-third of the maximum is something I think ought to be done. And nobody can establish that, during all those years when that was the case, that it committed...created any harm. When the fad of saying "be tough on crime" came, that's when people started talking about truth in sentencing. Most people don't pay attention to what a person is sentenced to. Family members, most of the public don't even know. They wouldn't know about one-third of the maximum. They wouldn't know what the maximum is. They don't know that a Class IV felony can consist of a person giving false information to get a credit card, completely nonviolent. But under the current system, if a person did that three times, that person could be labeled an habitual criminal and the maximum would be 60 years with whatever the mandatory minimum would be. [LB483]

DON KLEINE: Ten. [LB483]

SENATOR CHAMBERS: Those are the irrationalities in the law that have to be corrected. And you don't have to worry about it. I do. All you have to do is say, well, we want this guy off the street and we can get him with this habitual. Before we get to the other bill, anticipating, you don't have to file an habitual criminal charge on somebody at their third felony, do you? [LB483]

DON KLEINE: And I don't,... [LB483]

SENATOR CHAMBERS: And why... [LB483]

DON KLEINE: ...not unless there's a situation where we really feel it's appropriate. There are many times that we use our discretion and don't file habitual criminal charge even though somebody is eligible for it. [LB483]

SENATOR CHAMBERS: And probably more times not than, but it's, as they always say, a tool in the toolbox, and we'll get to that on the bill. But my final question to you: If this bill is passed, what damage is going to be done to society other than people saying, well, I didn't know that that's what was going to happen? [LB483]

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DON KLEINE: With this bill? [LB483]

SENATOR CHAMBERS: Yes. [LB483]

DON KLEINE: Like I said, I think it...I think somebody like, for instance, Erica Jenkins deserves to get more than an 18 2/3 to 50 sentence for her role. [LB483]

SENATOR CHAMBERS: Why? [LB483]

DON KLEINE: Because it is a horrific crime and people do care about what happens, especially victims' families, with regard to what happens to the...in a case, in the sentence. It's appropriate. [LB483]

SENATOR CHAMBERS: We know that, and that's why the charge is brought in the name of the state,... [LB483]

DON KLEINE: Right. [LB483]

SENATOR CHAMBERS: ...because if you let the victim's family do it, they want dismemberment while alive or burned alive. [LB483]

DON KLEINE: Exactly, that's true. [LB483]

SENATOR CHAMBERS: So what the victim's family wants plays no role whatsoever when the policy is being formulated. And we as policymakers should not be caught up in the fad or the furor of the day. So my understanding of what happened is that...here's how you can amend the bill. If you're changing existing law, then whatever you draw a line through is eliminated and whatever you put a line under is new. [LB483]

DON KLEINE: Right. [LB483]

SENATOR CHAMBERS: But there also...in the repealer clause a tactic whereby if you just list the numbers of statutes and say such and such a statute is repealed outright. My understanding is that that's what happened in getting rid of that one-third. And when it was found out, Attorney General Don Stenberg said, well, that's what happened and it's going to stay like that, and he engineered it with the senator whose bill it was. And when you have things like that, that happened, the court doesn't look at why it happened. All the court looks at is that that which was

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repealed is no longer the law. So up until the time that that occurred, the "no more than one third" was the law. Prosecutors worked under it. Judges worked under it. The Parole Board understood it. Everybody in the system understood it. Would you rather, instead of saying that you'd have one-third of a heavy sentence, we just reduce the maximum and then don't have one-third of the maximum but whatever the judge wants to say? If we reduce that sentence that has 50 at the top and 1 year at the bottom, first of all, there is no offense that should be so mild that it merits 1 year or so horrific that it merits 50. To me, you're talking about different qualities of acts, different acts, in other words. So should we look then at reducing some of these heavy maximum sentences? Would you prefer to go that way? [LB483]

DON KLEINE: No, I don't, because you're missing something there, because the other thing that the judge takes into consideration is the individual who committed the crime and their criminal history. If this is the third time they've done this act, if it's the fourth time, if it's...and the manner that they did it, that's something else the judge looks at, so... [LB483]

SENATOR CHAMBERS: Maybe they do that for white people. [LB483]

DON KLEINE: What's that? [LB483]

SENATOR CHAMBERS: Maybe they do that for white people. I've been in court and watched some cases where they were virtually the same and some of these white guys were sent home to their families. You probably haven't seen that because you're not in court when some of these things happen. And other people play like they don't know. But in my community we know because there are people who sit in court just because they want to see what happens. But I'm not going to have you argue that. The point I'm saying is that I have a very strong feeling of supporting for this bill because I served on an investigative committee identified as the LR424 Legislative Investigative Committee looking at Corrections. And when we saw all the wrongful conduct, the violation of statutes, the violation of rules and regulations, the corruption of public records, all of which are crimes, the ignoring of Supreme Court decisions and the prosecutor in Lancaster County, who knew that crimes had been committed, said nothing should be prosecuted, the Attorney General, who know that crimes had been committed, said, nothing is prosecuted, because his office was involved in some of those things that were going on and people in his office who should have acted a certain way didn't so he can't, say, prosecute anybody because his office was involved...I don't know what happened with the Lancaster County Attorney, but when I see these people coming here for these harsh sentences and they won't prosecute cops who commit crimes, they won't prosecute public officials according to the conduct that they committed and the level of crime they ought to be charged with, I'm the last one to say, well, the public is concerned about this. And prosecutors are concerned? I don't believe it and I want to make it clear for the record so they know what they're dealing with. I'm

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not naive and I'm going to do everything I can to persuade my colleagues that we have a responsibility to do a job. When the prosecutors were able to manipulate and intimidate or fool the Legislature into putting all this crazy stuff into the statutes, look at the result. And now they wash their hands of it. And now they want us to continue doing it. We are now in the corrective mode. Some of us have seen too much. I'd seen it a long time ago, but they thought I was imagining. I'm going to put myself in it. Some of us have seen too much to let things continue as they have gone. Some changes are being made, but there are policy decisions that must be made. Now if we enact this law, you can still charge whatever crime that's listed under the statutes that you want to charge, can't you? [LB483]

DON KLEINE: Sure. [LB483]

SENATOR CHAMBERS: And the judges can sentence, within the parameters of the sentencing allowed, anything they want to. [LB483]

DON KLEINE: Well, not anything they want to. They can do one-third of the maximum. [LB483]

SENATOR CHAMBERS: Well, I said, "within the parameters of what is allowed." [LB483]

DON KLEINE: Right, that's right. [LB483]

SENATOR CHAMBERS: So that means whatever the law would happen to say, they can do that. [LB483]

DON KLEINE: Right, right. [LB483]

SENATOR CHAMBERS: Do you lose sleep at night when somebody is not punished as harshly as you personally think they should be? [LB483]

DON KLEINE: Do I lose sleep at night? [LB483]

SENATOR CHAMBERS: Yeah. [LB483]

DON KLEINE: Well, I think about these cases that I handle all the time and I lose sleep because I see very sad things on a weekly basis where it's very sad from the standpoint of somebody who

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is going to go to the penitentiary for a long time and it's very sad because somebody has either lost their life or been hurt very badly, so on both sides. [LB483]

SENATOR CHAMBERS: I understand what you're saying. [LB483]

DON KLEINE: So, yes, I lose sleep about the job that I do quite often. [LB483]

SENATOR CHAMBERS: Now, had I not asked that question, you wouldn't have even brought that up, would you? [LB483]

DON KLEINE: What's that? [LB483]

SENATOR CHAMBERS: Of how it bothers you sometimes personally and you may lose sleep over it. [LB483]

DON KLEINE: And, yes, I do, and you know that. And... [LB483]

SENATOR CHAMBERS: I know, but you wouldn't have just volunteered that. [LB483]

DON KLEINE: No, I wouldn't volunteer that. [LB483]

SENATOR CHAMBERS: You're welcome. [LB483]

DON KLEINE: Thank you. (Laughter) [LB483]

SENATOR SEILER: Senator Morfeld. [LB483]

SENATOR MORFELD: So do you believe that there's any merit to this bill's ability to incentivize treatment and rehabilitation? [LB483]

DON KLEINE: I understand that part of it. I mean I... [LB483]

SENATOR MORFELD: But do you believe there's any merit to it? [LB483]

DON KLEINE: I think... [LB483]

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SENATOR MORFELD: I know that you understand it. I'm wondering about your opinion as to the merit. [LB483]

DON KLEINE: Well, what I'm saying is I think that with the law as it is now you can still...a judge can tailor a sentence to incentivize somebody in the same manner that you're talking about here. The judge could sentence somebody to that exact same sentence that they're...you're talking about making law, sentence them to 18 2/3 to 50, right now. Okay? So the judge has that ability right now, but the judge also knows all the facts of the case, knows the history of the defendant, and has to make a decision, which we put on them, as to what sentence is appropriate based on that...again, the parameters, as Senator Chambers said it, of the law. So I see that in existence right now, and the judge can tailor the sentence that way if defense attorney asks them or has some reason with regard to how the sentence should be termed out. [LB483]

SENATOR MORFELD: So you don't think this bill improves the ability or the incentive for that individual to seek treatment, doesn't do anything. [LB483]

DON KLEINE: Well, it gives them a bigger time lag, but I think also it takes away that opportunity for a judge to say, you know what, this person deserves to spend a lot more than 18 2/3 to...in prison and I want to sentence them to 40-50 years... [LB483]

SENATOR MORFELD: So if it was... [LB483]

DON KLEINE: ...for this terrible crime. [LB483]

SENATOR MORFELD: I'm sorry to interrupt. [LB483]

DON KLEINE: Yeah. No, that's all right. [LB483]

SENATOR MORFELD: So if it was just talking about a third, maybe a half, do you think that that would be better? Would that change your... [LB483]

DON KLEINE: Like I said, I don't think it...I think the judge has that ability right now. [LB483]

SENATOR MORFELD: Okay. [LB483]

SENATOR SEILER: Any other questions? I do. [LB483]

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DON KLEINE: Thank you. I'll see you in a little bit. [LB483]

SENATOR SEILER: No, I do, I do. [LB483]

SENATOR CHAMBERS: Wait. He... [LB483]

SENATOR SEILER: Whoa, Don. [LB483]

SENATOR EBKE: Whoa, whoa, whoa, whoa, whoa. [LB483]

SENATOR SEILER: Don, I get a chance. [LB483]

DON KLEINE: Oh, you wanted to ask a question. I thought you were telling me you...I was dismissed. (Laughter) [LB483]

SENATOR SEILER: No, no, no. I fully understand your job as a prosecutor and I fully understand the job of defense counsels that have appeared here and I'm glad that you and I agree that the judge has got all the facts and he's the one that ought to make the decision. There is a concept that runs through that I think that we all kind of touch on but when we have hearings like this it never is brought out, and that's recidivism. Now you don't like recidivism. I'm sure the county...the public defenders have more jobs than they need to, to be...keep handling these same people over and over. And I know the judges don't like recidivism. How do we cut back on recidivism? The prisons are full of people that are just making a circle. [LB483]

DON KLEINE: Well, I think one of the issues that, from a recidivism standpoint, is the mental health issue and...to address and also the addition issue. And that's why we started up a drug court. [LB483]

SENATOR SEILER: Right. [LB483]

DON KLEINE: It has 150 people in it that... [LB483]

SENATOR SEILER: And it's working. It is working. [LB483]

DON KLEINE: ...that are charged with felonies that we say, go in here, see if you can get the help that you need that we don't think would get addressed in the penitentiary. In our place, with our drug court and the people that we have paid in Douglas County to supervise these folks,

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counsel them, make sure they do UAs on a couple times, three times a week, and help beat that addiction problem. I mean, the biggest satisfaction I've ever had, one of the biggest, is walking down the hallway of the courthouse and a guy walking up to me and says, Mr. Kleine, you don't remember me but you let me go into drug court a couple years ago and I'm doing great right now and I got a job and I'm supporting my family and I thank you for that opportunity because I'm doing great, and I know I still have an addiction problem, but I think I'm fighting it and I'm beating it. [LB483]

SENATOR SEILER: No, I won't question... [LB483]

DON KLEINE: And so that's... [LB483]

SENATOR SEILER: I question... [LB483]

DON KLEINE: Yeah, so that's a...I mean I think that's part of the... [LB483]

SENATOR SEILER: I think it's a good program. [LB483]

DON KLEINE: I think multiple of our people that are in prison either have an addiction issue, a drug issue, or a mental health issue. [LB483]

SENATOR SEILER: Thirty-one percent has mental health... [LB483]

DON KLEINE: Right. [LB483]

SENATOR SEILER: ...or drug or alcohol abuse. [LB483]

DON KLEINE: Right. [LB483]

SENATOR SEILER: I think that's the latest number I saw from out there. But when we let it slip that the programs are not out there anymore either in career path or in education to get people going, what's...what...give me a little brief of your analysis of McCook, the Work Ethic program when that was actually working as... [LB483]

DON KLEINE: Yeah, you know, I don't really know. I couldn't...I'm not...have the expertise really to answer that question. [LB483]

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SENATOR SEILER: Okay, I... [LB483]

DON KLEINE: I don't know how many people really... [LB483]

SENATOR SEILER: Okay, that's fair. [LB483]

DON KLEINE: ...came there from Douglas County and I don't know what success rate we had. So somebody else might be able to answer that better than I would. [LB483]

SENATOR SEILER: Okay, that's fair,... [LB483]

DON KLEINE: I don't feel I should give an opinion when I don't... [LB483]

SENATOR SEILER: ...because just the other day I had a person approach me who wants to teach 200 people out there to be mechanics on center pivots. He'll provide all of the education materials, the equipment, the whole nine yards, and yet we've loaded that with people that probably don't qualify for Work Ethic program out there. I was just wondering what your thoughts were. [LB483]

DON KLEINE: I think that's an important aspect. I've talked to Randy Schmailzl who is the president of Metro Community College about...we're doing out there: young adult people, if they make it through the court, trying to get them a scholarship so they can go to Metro. And then we also talked to...about the possibility of people reentering Douglas County from the penitentiary getting some sort of education benefit from Metro also. So I think that's important. [LB483]

SENATOR SEILER: Okay, thank you. I have nothing further. [LB483]

DON KLEINE: Sure. Thank you. [LB483]

SENATOR SEILER: Next opponent. Boy, did you carry all these people on your back, Don? (Laughter) Another opponent. Anybody in the neutral? Okay, that will close the hearing on... [LB483]

SENATOR PANSING BROOKS: Well, sorry,... [LB483]

SENATOR SEILER: Oops, excuse me. You got away. (Laughter) Thank you. I keep forgetting to...you. [LB483]

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SENATOR PANSING BROOKS: Yeah, thanks. (Laughter) Okay. [LB483]

SENATOR CHAMBERS: I'm going to take him to the woodshed after this hearing. [LB483]

SENATOR PANSING BROOKS: Thank you very much. That will be good. Okay. Senator Seiler and members of the Judiciary, just a couple of things. I just wanted to read into the record what these three handouts I had discussed. One of them from the CSG talked about the fact that while some sentence lengths dropped, the minimum sentence lengths grew in proportion to the maximums and narrowed the parole window. So that's one of the sheets. That's page 36. They...there's another sheet on page 30...I'm in reverse order. On page 30, it talks about the limited one-third rule is the legacy of the '90s truth in sentencing legislation and subsequent repeal. And fortunately, Senator Chambers is here to remember some of that past history of how that happened. There is no legislative testimony or any kind of history about what happened to that rule, either in the Judiciary or the...on the floor. So I will nod, give a nod to Senator Chambers for his long memory of what happened there. And then the other sheet was page 31 of the CSG report that said the current one-third rule does little to preserve a meaningful parole window, and you'll see all sorts of explanations there. I just wanted to speak to a couple of the things that Mr. Kleine mentioned. He mentioned public safety, and then...and I would argue that programming protects our public safety and actually lowers recidivism. We have statistics on that. And as the testifiers stated, it encourages attendance at programs that we know work. Again, this bill frees up some money for programming, in my estimation. We see that in the first year it saves nearly \$1.1 million and \$3.2 (million) in the next couple of years, \$3.2 million. Again, to argue that Ms. Jenkins or someone like her will be paroled, if something like that major were to happen it's because there was a major rehabilitative effort made and the Parole Board determined that this person was ready to be paroled. So again, we can depend on judges to do some of this, but we see time and again where judges are giving flat sentences or mandatory minimums that are so close that there's no opportunity for parole. I just want to also point out that 90 percent of people that are put...that are incarcerated will be released. And wouldn't we rather have some form of supervision and programming rather than jamming them out angry, learning nothing, and no skills? And finally, I just want to remind you that this bill guarantees that the offender has ample time to rehabilitate before they're released on parole and ensure that there's time for supervision once paroled into our community. This allows judges to impose the maximum sentence if they think it's necessary while also preserving the need for rehabilitation. And some of that is mentioned in Jim Mowbray's letter, as well. So thank you very much. That's all I have. [LB483]

SENATOR SEILER: Okay. Your letters will be included in the transcript. [LB483]

SENATOR PANSING BROOKS: Okay, wonderful. Thank you. [LB483]

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SENATOR SEILER: This closes... [LB483]

SENATOR PANSING BROOKS: Oh, did you have something? [LB483]

SENATOR SEILER: Oops, excuse me. Senator Williams. [LB483]

SENATOR WILLIAMS: Thank you, Senator Seiler. I just have one question. You mentioned in your closing that time and time again, I think was your comment, that we see sentencing like this. Do you have statistics to back that "time and time again" comment up? [LB483]

SENATOR PANSING BROOKS: The statistics that time and time again we see sentences that are too close and... [LB483]

SENATOR WILLIAMS: Sentences of the 18-20. [LB483]

SENATOR PANSING BROOKS: I think that some of those were with the CSG, and I can...I think that we do have some... [LB483]

SENATOR WILLIAMS: Could you get that for me? [LB483]

SENATOR PANSING BROOKS: Yes, we'll try to find that. [LB483]

SENATOR WILLIAMS: Thank you. [LB483]

SENATOR PANSING BROOKS: Anything else? [LB483]

SENATOR SEILER: Anything further? Seeing none, you may step down. Thank you. [LB483]

SENATOR PANSING BROOKS: Thank you. [LB483]

SENATOR SEILER: That closes the hearing on LB483. Senator Chambers, opening the hearing on LB172. [LB483]

SENATOR CHAMBERS: Mr. Chairman, members of the committee, I'm Ernie Chambers. I represent the 11th Legislative District. I make no bones about the fact that I have for years, decades, observed the way prosecutions are brought, not only in Douglas County and Lancaster

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County, but in others by way of newspaper articles and reading certain Supreme Court Opinions. There have been some horrendous crimes committed in rural areas and there were not the same kinds of prosecutions as those occurring in Douglas and Lancaster County. There was one county where the prosecutor himself said he would never seek the death penalty because the county could not afford it. So when it comes to the ultimate punishment of taking the life, prosecutors do consider the amount of money involved and if in one county a prosecutor, for whatever reason, won't seek the death penalty and a prosecutor in another county will, if you're concerned about what the public thinks, the first thing they ask is, why does it operate like this? And if they're a bit knowledgeable, they might say that when it comes to taxation the taxes have to be uniform, certain taxes across the state; but when it comes to taking a human life, there is no state law on taking a life. There are 93 individual laws and those will be determined by the individual prosecutor. Nobody can order a prosecutor to seek the death penalty. So if, as has happened on occasion...and maybe none of the people who have ever prosecuted in Nebraska are aware of this. There were prosecutors who didn't believe in the death penalty and they never sought one on the basis of that belief, because there were some horrendous crimes committed. That's to indicate my bias and bias is when you favor something in a way that people think the facts don't warrant. Prejudice is to prejudge without facts in a negative way and bring about negative consequences on somebody. So if you're in a position where they say, would you rather somebody be prejudiced against you or biased, you're not biased against, you're biased for, tell them you'd rather have somebody biased before you. What this bill does is very simple. It will give some people heartburn. I'm going to depart from what I usually do when I give a presentation. I'm going to read some things into the record because we have people who are going to testify, perhaps on both sides of the issue, who can give the type of information that maybe I would give. So the first thing I'm going to do is read my statement of intent because there should be a concise reason provided as to why a bill is offered. "This bill eliminates selected mandatory minimum sentences under Section 28-105 by removing the word 'mandatory' from the description of authorized penalties for Class IC and Class ID felonies. The sentencing range remains 5 to 50 years and 3 to 50 years, respectively. As drafted, mandatory minimums remain for 1st degree sexual assault," found at Section 28-319, "and sexual assault of a child (28-319.01 and 28-320.01)." If you open your green copy, you will see the listing of all the categories of felonies. And you will see the IC felony where the maximum is 50 years, mandatory minimum is 5. We would strike "mandatory" and simply leave the range of 5 years minimum, 50 years maximum, the same with the Class D felony. There are certain misdemeanors that may be allowed to keep their mandatory minimums and that drunk driving, W-A (phonetic) or whatever it is, and since they're not bothered, then you won't see any of them stricken. Those penalties number in the days so you're not dealing with parole. You're not dealing with good time except that the prison, the jails asked that a type of good time be allowed so that inmates will have an incentive to behave. So if you're given a certain number of days, you can have that cut even in jail if you behave. But those are not affected by this bill. I'm going to read now from the fiscal note. And this was prepared by the Legislative Fiscal Analyst Office:

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This bill would eliminate certain mandatory minimum penalties. Eliminating mandatory minimum penalties could reduce the state prison inmate population because inmates would not have to serve a mandatory minimum sentence before being able to earn good time. This could result in offenders being paroled or released earlier. The Department of Correctional Services estimates that inmates could reach that parole eligibility date and tentative release date approximately 2.3 years sooner than under current law. This could result in a savings of \$12,491 in FY '16 and \$129,225 in FY '17. Then they give an attached DCS response for details which I will read. And that, by the way, will be briefer than if I gave just the discourse trying to cover the waterfront. But if you have any questions, then I'd be willing to answer those. And you might listen to what these people who will testify will say and they might answer some of your questions by way of their testimony. But I'm prepared to answer any that you put to me. But keep in mind that I will close so you will have a shot at me when this reaches that point. As of December 31, 2014, the inmate population was 159 percent of design capacity. On December 31, 2013, the inmate population was 153 percent of design capacity. So there was an increase of 3 percentage points in that one-year period. And those who served on that LR424 Investigative Committee had repeatedly heard about the pressure that the overcrowding placed on various prison officials and employees, impelling them to do, even though it was a violation of the law, things that were designed to release prisoners even contrary to the law. The Governor's Office wanted the Parole Board to release categories of prisoners whom the Parole Board members did not want to release; and pressure was brought to bear against them, even to the point of maybe they wouldn't retain their position on the board if they didn't start releasing these people. And the response of the people in the Governor's Office was, you're not going to lose your job because you may release some people who are...have committed felonies, you run a greater risk of losing your job if you don't release enough people per month. This is the fiscal note prepared by the Department of Corrections. LB172, and the reason I want to read this instead of paraphrasing it, I'm going to read the department's words that they themselves gave. And if I digress, I will let you know so the record will not indicate that something I said was from this that I'm reading. "LB172 proposes to eliminate the 5 year mandatory minimum for Class IC felonies and the 3 year mandatory minimum from Class ID felonies. These proposed changes do not create a new offense or broaden the applicability of any existing offense. Therefore, assuming that prosecutors and judges do not change the manner in which they charge and sentence defendants, this bill would have a negligible impact on NDCS"-- that's Nebraska Department of Correctional Services--"admissions. Eliminating mandatory minimums from Class IC and ID felonies, however, will impact NDCS's average daily population because it allows inmates to begin accruing good time credits in accordance with N.R.S."--Nebraska Revised Statutes--"Section 83-1,107 upon admission, rather than after first serving the mandatory minimum portion of their sentence." I'm going to digress here. The way the good time law operates now, when you enter, your sentence is cut in half automatically because good time, so to speak, is put into your account. If you don't misbehave and draw down your account on good time, then after you have served half of the minimum, you become eligible for parole. That simply means the Parole

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Board can consider whether or not to parole you, but the Parole Board doesn't have to. When half is taken off your maximum, then you have a mandatory release date which will be a shorter period of time than what the maximum says if you don't lose good time. I'm going back to this document now. "The bill also affects the parole eligibility of inmates convicted of Class IC and ID felonies as they would be eligible for parole after serving half of their minimum term rather than having to serve the entire mandatory minimum prior to parole eligibility." I'm going to digress again. The way some of the miscalculations occurred, the department was allowing good time to be accrued against the mandatory minimum. By doing that, people were required to serve less time than they would have ordinarily. So look at the mandatory minimum as a block, and until you've reached the top of that block, you're not to get any good time. Your good time starts being accrued after that mandatory minimum has been served. It's as though for purposes of good time your sentence starts at the end of your mandatory minimum and that's when you begin to have good time. And you take half of what the minimum would be against half of what the maximum would be to determine parole eligibility and mandatory release date. And if that's confusing, that's what the ones calculating said. But for those who are calculating it, and if you do it on a piece of paper, it's not confusing at all. But if you allow people to start accruing good time as soon as they get in, before they serve that mandatory five-year minimum term, then their sentence is reduced to what it ought not be considering that mandatory minimum. Now I'll go back to this paper. "Data from inmates convicted of Class 1C and/or Class 1D felonies between FY2010 and FY2014 suggest that the changes in LB172 would enable inmates to reach their parole eligibility dates and tentative release dates approximately 2.3 years sooner than under the current sentencing scheme. As a result, the decrease in the average daily population is estimated to be between 11-25 inmates during FY2016, and between 29-51 inmates during FY2017. (The population impacts are projected as a range because it is unknown whether or when inmates may be paroled in the future.) We can expect the resulting reduction in correctional costs to be between \$6,245 and \$18,737 for FY2016, and between \$78,773 and \$179,677 for FY2017. This note assumes that the provisions of LB172 are prospective and only affect offenders convicted on or after the effective date of the act." And under Nebraska's Constitution, the only one...the only entity that can mitigate or lessen a sentence after it becomes final is the Pardons Board. So any time we pass a law that makes a lesser sentence available, it has to apply after that law takes effect, because if you applied it to sentences prior to that you would be usurping what the Board of Pardons is supposed to do because you're reducing a punishment that had become final. In other states where a law such as this have taken place, such as New York, they can apply them retroactively and they have shut down almost a half dozen correctional facilities in New York. That's documented. And they expect even more to occur in the future because that was looking at cases that had already happened. And as these cases come forth, those mandatory minimums are not there. There were judges who felt when they were required to impose a mandatory minimum that even though the crime would qualify as a felony it did not merit what that mandatory minimum was. Believe it or not, there are some felonies where judges feel that probation is appropriate. And if you look at the huge number of nonviolent Class IV felonies especially, you

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will wonder why they're felonies anyway. But the Legislature was stampeded when there was a certain group that thought that they had been offended against to make it a felony and the Legislature would oblige, never looking at the ultimate results. I had said I would keep mine as brief as I can. I don't think I missed anything, but let me be sure. And if I did, I'm sure those who testify after me will fill in. If you have any questions, I will answer them at this point. But if you don't, then I will relinquish this chair. And whoever sits in it after me had better be wearing some asbestos britches. No, no, no, not because of what will happen to them, but because of where people say that I'm going to go when I die. And sometimes you get a foretaste of it so you'll recognize the real thing when it comes. (Laughter) But if you have any questions... [LB172]

SENATOR SEILER: Any questions for Senator Chambers? Seeing none, thank you. [LB172]

SENATOR CHAMBERS: Thank you. [LB172]

SENATOR SEILER: First proponent. [LB172]

ALAN PETERSON: (Exhibits 1 and 2) Chairman Seiler, members of Judiciary Committee, I'm Alan Peterson, P-e-t-e-r-s-o-n. I testify on behalf of ACLU of Nebraska in favor of this bill, LB172. In three minutes I can't go into nuts and bolts, perhaps though the general picture of what is attempted, as I understand this bill, and I have worked with the introducing senator on it. The bill does a broad sweep removing the mandatory language with regard to two big classes of crimes, two very serious classes of crimes: IC and ID. Those would no longer have the penalty under Section 28-105 of our statutes with the word "mandatory" in it. And I think it's clear, because the senator already did a pretty clear job of it, but the main point is removing that word "mandatory" has two collateral effects: (1) it allows good time to start accumulating, if the person behaves themselves in prison, from day one, not from the day after the mandatory minimum might be served; and (2) right now, there is a disqualification from probation even being considered if a mandatory minimum sentence is part of their sentence, so that's the other collateral effect. There may be very few, but there may be some where the judge would like to have that tool available for some portion of the disposition of the case. Right now, it's against the law. Remove that word "mandatory," then in that list of crimes, the ICs and IDs, that tool returns to the judge's hand. I think the big concept is, once again, this is a front-end reform aimed at reasonable changes to sentencing which, in fact, may and probably will have a good impact on the crowding problem. I'd suspect most of us read the very interesting and, frankly, detailed report, including quotations from one of your senators, Senator Coash, in the paper just a few days ago about what really happens in terms of crowding. It's so serious. I handed out again that same letter. You don't need to read it again, but it includes that report with those details of how crowded each of the individual institutions are, and they're shocking and they're unconstitutional. That's why ACLU is involved. We want it fixed. We don't want to be involved in litigation. If we

have to, we will. One last point, and Senator Chambers mentioned, only the Pardons Board could make this retroactive. ACLU is not above or below going to the Pardons Board, if you would pass this, and saying, let's make it retroactive for prisoners who are serving their time now, let's remove that, it will help some more. It would take quite a move, I understand, but it's not impossible. Thank you. [LB172]

SENATOR SEILER: Any questions? Senator Chambers. [LB172]

SENATOR CHAMBERS: Mr. Peterson, on that very point, an inmate could make an approach to the Board of Pardons. [LB172]

ALAN PETERSON: Yes. [LB172]

SENATOR CHAMBERS: And in the old days, before Governor Heineman changed it, the Parole Board was allowed to make recommendations, and then they were ordered not to make any recommendations even though they were the ones who reviewed the records. The Department of Corrections were people who had dealt with the inmates, but the former administration said, you're not allowed to do that. If the current administration were not to take a posture like that and there were people that the Department of Corrections and the members of the Parole Board felt were worthy of being given the same consideration that would occur under this bill, that could be done and it wouldn't have to be where the Parole Board (sic)--I meant the Pardons Board--made a blanket ruling if they didn't want to. They could take it on a case-by-case basis if they chose, couldn't they? [LB172]

ALAN PETERSON: They could do so. [LB172]

SENATOR CHAMBERS: And if there were a package, so to speak, of inmates where the Parole Board and the Department of Corrections had worked together and they could certify to the Pardons Board that these people should be considered, the Pardons Board can consider them or not, but it's free to do whatever it wants to do. Isn't that right? [LB172]

ALAN PETERSON: Yes, and the Attorney General a year ago tried to do kind of a blanket commutation situation with regard to the juveniles. That didn't work. It didn't go through, but that's not impossible or unprecedented. [LB172]

SENATOR CHAMBERS: And just so people can understand really the wide discretion of the Pardons Board, if Mother Teresa had gone across a line at Offutt because she was against nuclear

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weapons or whatever they were doing and she went to prison, the Pardons Board is not required under the law to even give her a hearing, are they, if they choose not to? [LB172]

ALAN PETERSON: No. That's correct. [LB172]

SENATOR CHAMBERS: And on the other hand, if instead of Mother Teresa it was Jacqueline the Ripper and she had ripped up 100 people, the Pardons Board could grant her a hearing and release her if they chose to do it. [LB172]

ALAN PETERSON: Constitution says so. [LB172]

SENATOR CHAMBERS: And they don't have to give a reason for denying or for granting. [LB172]

ALAN PETERSON: Not unless you say politically they might need to do that. [LB172]

SENATOR CHAMBERS: But I meant under the constitution... [LB172]

ALAN PETERSON: That's correct. [LB172]

SENATOR CHAMBERS: ...they are free to do whatever they want to. The Legislature cannot compel them to do anything. The Legislature cannot keep them from doing anything. And we know the political realities are what they are, but I'm just trying to make it clear because some people aren't aware of what the Pardons Board can do... [LB172]

ALAN PETERSON: Right. [LB172]

SENATOR CHAMBERS: ...that making arguments before them, like you might to a court, trying to offer evidence, does not require them to do anything at all. [LB172]

ALAN PETERSON: That is right. [LB172]

SENATOR CHAMBERS: Okay. [LB172]

ALAN PETERSON: Thank you. [LB172]

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SENATOR CHAMBERS: That's the main thing I was trying...oh, and one other thing. When we say that you remove the mandatory minimum, that doesn't mean that a judge, when you've got the range, can only sentence to a minimum of five years on one case or three years in the other. [LB172]

ALAN PETERSON: Up to 50 years, and even if we'd use the one-third rule of...one of...one-third of 50 is probably 16, and two-thirds or so, yeah, he...the judge, he or she could impose a sentence larger than the mandatory minimum using existing law, even if you move...remove that word "mandatory" out. [LB172]

SENATOR CHAMBERS: And even though you stated this, I found that when people read transcripts, if it looks like there's been an exchange, they'll tend to read that rather than what looks like what I do with a heavy block of discourse. [LB172]

ALAN PETERSON: Yes. [LB172]

SENATOR CHAMBERS: The main thing/things that will happen if this bill is passed is that for that...what amounts to the five-year mandatory in one case and the three-year mandatory in the other... [LB172]

ALAN PETERSON: Right. [LB172]

SENATOR CHAMBERS: ...is that the person will be allowed to accrue good time during that three-year period in one case or the five-year period in the other. And if the judge, because there are so many different types of felonies embraced in those categories, could see fit to grant probation...and that would not be allowed now because the mandatory minimum must be served currently. [LB172]

ALAN PETERSON: That's right. [LB172]

SENATOR CHAMBERS: And I am aware of situations, and I've read some in the paper, where judges wanted to give a lesser sentence than the mandatory minimum but they couldn't. [LB172]

ALAN PETERSON: Yeah. Right. [LB172]

SENATOR CHAMBERS: I just wanted that crystal clear. [LB172]

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ALAN PETERSON: Yes. Any other questions? [LB172]

SENATOR SEILER: Seeing none, thank you. [LB172]

ALAN PETERSON: Thanks for hearing me. [LB172]

SENATOR SEILER: Next proponent. [LB172]

JOHN KREJCI: (Exhibit 3) Good afternoon, Senators, Senator Seiler. My name is John Krejci. I live at 4402 St. Paul Avenue in Lincoln. And I'm testifying in support of LB172 and I'm testifying for Nebraskans for Peace. I really don't think I need to go over...most studies, most...the...have...the Council of State Governments, Lathrop committee, most serious research says that mandatory minimum sentences aren't doing the job and the sooner we have them out of the way the better. What I'd like to do is give it a concrete example. If you want to get handwritten, personal letters, I think Senator Chambers probably has boxes full of these. This is an example of a young man who was convicted of a violent crime when he was 15. He grew up in prison. He was 11 years. He got resentenced. He got out. He went back to North Platte. He got a job. He went with his parents. He was trying to get into school. But it's really difficult for a young person, any inmate, to readjust. I'm working with men and it's just really, really hard. He made some mistakes. He got into a halfway house in Omaha. He got back into some...with some of his old friends. He started doing drugs. He was set up by a woman who was an informant. They've got some really seedy informants in Omaha. And so he was busted for I think it was meth. Because he had this violent act 11 years ago, he wasn't eligible to get around any of the mandatory minimums. He was sentenced to five years. He was in Douglas County Jail for a year waiting to be...for his trial, then he went to Leavenworth for a few months, and now he's in Forrest City, Arkansas, and he's got to serve five years. Interesting, his...the guy who sold him the drugs, the dealer, because he didn't have that violent crime ten years ago, he got three-and-a-half years, so the idea of mandatory minimums are unfair, arbitrary, they give the...you know all of that. They give the judge no flexibility. And I didn't realize that they...the good time doesn't start. So really, the more we get done with them, the better we are. You know, this is an example, and there's a lot of people in this same situation. So that's all I have to say. [LB172]

SENATOR SEILER: Questions? Thank you very much. [LB172]

JOHN KREJCI: Thank you. [LB172]

SENATOR SEILER: Next proponent. [LB172]

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JERRY SOUCIE: Mr. Chairman, my name is Jerry Soucie. I'm an attorney. I'm here on behalf of the Nebraska Criminal Defense Attorneys Association in support of LB172. I think it's important to recognize that the time that an inmate actually done, there are really four different levels of judgment or discretion involved. The first level is what we're doing here, which is the Legislature that makes a legislative judgment as to what hypothetical conduct merits a particular range of sentencing imprisonment, whether it be 0-1 as a misdemeanor or 5-50 for use of a weapon in commission of a felony. Now the second level would be the prosecutorial's decision in terms of what to charge an individual. The third...and that is made not based on knowing much about the individual, based on the police reports, what they think happened. Mr. Kleine talked about a case in which they charged murder, later on they decided it was something different. Third level of discretion will be the judge who actually then looks at a presentence investigation, makes a judgment as to that individual standing before me today I think ought to get X number of years' mandatory minimum. But what changes is the Department of Correctional Services then, when they get an individual who's seeing this person 24/7 for a period of time, makes a judgment in terms of whether this individual is appropriate to be reentered into society on parole or something of that nature. Now going back to dealing just with the issue of this body's discretion, when you talk about mandatory minimums, that means that you as legislators are saying the prosecutor and the judge and the Department of Correctional Services has no discretion to look at this individual and decide he or she ought to be released on parole or let out early or be placed on probation, which is also a consequence of the mandatory minimum. I had one case involving a young man--anybody less than 30 is a young man in my world--who had a roommate, who was a relative, who was growing marijuana in his house. And he's going, dude, you can't be doing that, you can't be doing that. He leaves and the cops bust in and they arrest the other person, but the other person isn't prosecuted because he has health issues and it would bankrupt the county if they put him in. They bust this kid, and this kid then is facing a mandatory minimum of three with no prior record. He's not eligible for drug court. And I had to string that case along for almost a year before the particular county attorney got voted out of office and then I could get him into drug court. And so that was a legislative judgment where you said that guy should be going to prison for a mandatory minimum of three years. Second example is if you buy drugs in Lincoln, Nebraska, at the Burger King on "O" Street, you're...sell drugs, you're selling them to a cop, because they do that because it's within 1,000 feet of a school, imposing a mandatory minimum. And they did that in a case I had where everybody was from the O.U.R. Home. These were special education individuals and one of them was so ignorant that when the cop gave him \$150, he wanted to give him back \$15 change. And so that is a legislative judgment that guy should have done three years. Thank you. [LB172]

SENATOR SEILER: Questions? Senator Chambers. [LB172]

SENATOR CHAMBERS: And I'm going to do this for the prosecutors, too, as I already demonstrated, but I do have a question. You did hear Mr. Kleine mention, and I think he said

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even in the case of some felonies, they use diversion and in some cases will try to put somebody where they'll get mental help. So in a sense, even if it was one of those cases where there might have been a mandatory minimum, if the whole thing had gone through that criminal process, those alternatives would not have been available, would they? [LB172]

JERRY SOUCIE: No, I don't think you get diversion on a IC or a ID. I've never heard of it. That was a problem I had in that case. [LB172]

SENATOR CHAMBERS: And if somebody felt, even in the prosecutorial branch, that something ought to be done, that would indicate that the Legislature merely saying that this category of offense should carry a mandatory minimum, that is not necessarily based on empirical evidence that such should be the penalty when judges would like to give less than that amount, prosecutors might like to go a different route, but they can't. Now if we do away with the mandatory minimum and the range is still there, the judge can fashion and customize the sentence within that range to whatever he or she wants currently. [LB172]

JERRY SOUCIE: Exactly. I mean...and they're going to go...I mean Mr. Kleine, where he talks about what they want to do in terms of, gee, that's too much, that's too little time for somebody like Erica Jenkins, any prosecutor worth his salt can load up a particular crime with not only robbery, use of a weapon, kidnapping, false imprisonment, first-degree assault, attempted first-degree assault. You can give the court range from not just 1-100, you can give the judge range from, you know, 5-200 if you're just...with a little bit of effort, doesn't take much. [LB172]

SENATOR CHAMBERS: Now this is going to call for an opinion. How long have you practiced law? [LB172]

JERRY SOUCIE: Too long: 35 years. [LB172]

SENATOR CHAMBERS: That first answer was good. Now have you observed in the courtroom variations in the way judges might handle what are substantially similar cases? [LB172]

JERRY SOUCIE: Yes. [LB172]

SENATOR CHAMBERS: Do you...would it be your opinion that if this law were passed, judges are free to do currently what they do within the sentencing range? [LB172]

JERRY SOUCIE: In the mid to upper range, yes. [LB172]

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SENATOR CHAMBERS: Now... [LB172]

JERRY SOUCIE: In the lower range, I think there would be some cases where judges would want to put somebody on probation but feel they can't. [LB172]

SENATOR CHAMBERS: Okay. Now has it been your experience to observe prosecutors who would do just what you mentioned, by taking one incident of transaction and finding every statute that may have been violated and charge them as distinct counts, with the intent of coercing a plea bargain? [LB172]

JERRY SOUCIE: Absolutely. The common example is of a bag...if you have a bag of pills, they may charge you with 27 counts of possession of oxycodone when, in fact, it's really only one crime. [LB172]

SENATOR CHAMBERS: And do you think, based on your experience, that defense lawyers know this happens, prosecutors have to know it happens, and that judges know this will happen, the overcharging in order to bring about a plea agreement to a lesser offense? [LB172]

JERRY SOUCIE: Yes. There's a practical limit to how far they can go because judges recognize it, but it happens. [LB172]

SENATOR CHAMBERS: But I mean it is known by everybody who is in this system that those kinds of things occur. [LB172]

JERRY SOUCIE: Absolutely. [LB172]

SENATOR CHAMBERS: But if a prosecutor, as you pointed out, chooses to prosecute on several of those charges and if a jury convicts on more than one, the judge could make them run consecutively, which means one after the other. Is that true? [LB172]

JERRY SOUCIE: That's within the judge's discretion. Whether he exercises that discretion that way, it's fact specific to the case. [LB172]

SENATOR CHAMBERS: And that's all that I would have. Was there anything else you need to finish up what you were saying? [LB172]

JERRY SOUCIE: No. [LB172]

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SENATOR CHAMBERS: Thank you. [LB172]

SENATOR SEILER: Any other questions? Seeing none, thank you very much. [LB172]

JERRY SOUCIE: Thank you. [LB172]

SENATOR SEILER: Next proponent. [LB172]

DARRYL HARRIS: Hi, Senator Chambers. Darryl Harris, 244 South 26th Street. What I'm fitting to tell you all, I don't know how many of you all have ever been... [LB172]

SENATOR CHAMBERS: Excuse me. Just so that it's clear, first of all, they'd like you to give and spell your name so that the transcribers can get it right, and then you have to address your remarks to us, not anybody. [LB172]

DARRYL HARRIS: Okay. Darryl Harris, D-a-r-r-y-l H-a-r-r-i-s, 244 South 26th Street. I don't know how many of you have ever been in jail for more than a night, or prison, so I'm here to speak on behalf of the people who are affected most by these laws that you make here. And Senator Chambers spoke about they can't be retroactive. Well, first of all, if you choose, you can make a law retroactive, as LB1199 was done, depending on the language and the wording. The collateral damage, as one of the people spoke about, something collateral: the children, the wives, the old mothers and fathers who are infirm, who are left behind when these people are sentenced to prison. And the good time law, what I would like to touch on is the aspect of how much power and control the Department of Correctional (Services) staff have to withhold and/or to unjustly take your good time. So even with mandatory minimums, that does not mean that a person is going to get all their good time. And right now, the big thing is on this thing, this legislative session, is about prison reform. This is related to prison reform. And I want to say something about justice. For me, the men back in Tecumseh State Correctional Institution, the women in your correctional state institution, the women in the Lincoln correctional institution, the men and women in the jails and prisons around here who are physically brutalized, sexually assaulted, psychologically and verbally degraded every day, who are suffering, and the people that you sent to these jails and prisons when you make these laws and you have no idea what you are sentencing these people to, they come back to the community. And so when you think about these mandatory minimums and you so casually say, well, this person broke the law so they ought to just be thrown away, I want to tell you that that is as much a threat to the safety and security of the people of Nebraska and the community as any murderer, as any rapist, or anybody else. I want to quote to you one thing here right quick. And I'm new to this. I'm just a regular person, and that's who I'm speaking for. I'm not a high-class, educated...you know, like you all. I'm the common, everyday people who are affected by the laws that you make and that are

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supposed to protect me too. And I want to tell you all and I want you to tell you all constituents, justice is not just punishment; justice is what is best for everybody, not just the victim of a crime or the family of the victim of the crime, but the family of the perpetrator, as well, because we are all one species--human beings. And all too often you all sit down here and you make these laws, looking at others as if they are separate from you. [LB172]

SENATOR SEILER: Okay, your red light is on. [LB172]

SENATOR PANSING BROOKS: Mr. Harris, could you please go ahead with what you're saying? [LB172]

SENATOR SEILER: Just wait a second. Just wait a second till she gets her question. [LB172]

SENATOR PANSING BROOKS: I just said, would you please continue with what you're saying. [LB172]

DARRYL HARRIS: One thing: There are no necessary evils in government. Its evils only exist in its abusers (sic--abuses). If it would confine itself to equal protection, and, as Heaven does its rains, shower its favors alike on the high and the low, the rich and the poor, it would be an unqualified blessing. That is what Andrew Jackson said in 1832. I'm here to tell you that justice is supposed to be for all of us, and you ought to take that into account when you make these laws, not just punitiveness. And I am speaking from experience after 20 years in these systems. I want to put a face on it. See me, hear me, and smell me. I am a human being, and what is done to those people behind them walls and stuff is coming back out here in this community. So I want all of you all to know, you all are as much a threat to the security, if not more, to this state than any criminal, unless you honestly are about doing some justice. Thank you. [LB172]

SENATOR SEILER: Well, just a second. Anybody have any questions? Seeing none, thank you for your testimony. [LB172]

DARRYL HARRIS: Thank you for having me here. [LB172]

SENATOR SEILER: Next proponent. [LB172]

SARAH NEWELL: Senator Seiler, members of the committee, again, my name is Sarah Newell. I'm testifying on behalf of the Nebraska Commission on Public Advocacy. Newell is spelled N-e-w-e-l-l. I just wanted to dovetail quickly on what Mr. Harris actually said and kind of give an example of a client of mine that has...is currently serving a mandatory minimum sentence, and I

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think it helps kind of put a face on our previous discussion and also on this. The gentleman I'm thinking of, 22 years old, sentenced 20-20 years, so parole and jam date identical, on manslaughter, and then 20-25 on use of a weapon to commit a felony, particularly a gun. That's a Class IC felony, mandatory minimum of five years, meaning, again, as Senator Chambers explained, you serve your hard five, no good time accrues, and after that is when the good time accrues. Also, because it's use of a firearm, it's a mandatory consecutive. So his parole eligibility date is 2035 and his jam date is 2038. So this gentleman, who I think all would agree is...was convicted of a very serious series of crimes is going to be on parole, if he's paroled at all, for three years. And so that's going to be from 2014 to 2035 he's in an institution in the Department of Correctional Services. They will not give him programming unless there are major changes that I...you know, that will come down the pipe, probably from this Legislature, because the current policy is that you don't get programming, you don't even start programming, especially on a mandatory minimum, until you're close to your parole eligibility date. And again, eligibility just means that that's when they start even talking about you, so they're not even going to talk about parole like...paroling him until 2035, which means he's not going to get any services in any meaningful way until maybe 2034, 2032 at best. So we have a gentleman who is going to be in prison from 2014-2035, without any real services, just doing his time. Hopefully, he has the same attitude that he had when he went in, which is, you know, I'm young now, I'm...I want to have a future, I want to get out, I want to do better, and I hope he can keep his head down and he will do the best he can. But as Mr. Harris indicated, you know, it's a rough circumstance for people that are in there, especially for a long time. So the thing that I think that we need to remember is that, unless you're going to make every crime punishable by life in prison, no matter how serious the crime, these folks are going to be reintegrating into society and you want them to have...you want some rehabilitation. You want them to reinvest in society. You want them to feel like they're coming home to something that they actually respect and want to be a part of. And when you deny people, you put up these mandatory minimums, you take away hope. People don't have any hope. They don't have any incentive to follow rules. They're just doing their time and they're bitter and they're angry, and then they come out into society and in...and I don't know that we get to expect them to act in any other way than the way that they've been treated for the past however many years. So I guess I would just ask you to consider those things when considering all the bills from this...I guess from this afternoon. Services are very important, but we really do want to give people an opportunity and an incentive to change. Any questions?
[LB172]

SENATOR SEILER: Senator Morfeld. [LB172]

SENATOR MORFELD: And I just want to make sure that I completely understand the impact of this bill. And I appreciate the example that you gave me. Under this bill, the individual that would not be eligible for parole until 2035, and then the jam-out date would be 2038 even if they're given parole, how would this bill impact that? [LB172]

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SARAH NEWELL: Well, he has...he's...realistically, most people who are serving their sentences right now, their sentences are final and it won't affect them. It will be proactive, so it'll start with people that are sentenced after this bill. [LB172]

SENATOR MORFELD: Certainly, so the same case after this bill has passed, if it's passed. [LB172]

SARAH NEWELL: Yes. So under that circumstance, then he would be parole eligible...okay, he'd still have...on the 20-20 he'd have...he'd be parole eligible in ten and jam out in ten on the manslaughter. Consecutive to that, he would be parole eligible in ten on the 20-25. So does that make any sense? I got to walk you through it slower. Okay, so we have two different crimes at play, which is harder. So the manslaughter is 20-20. That means parole and jam, same day, no parole eligibility whatsoever. Consecutive to that is 20-25. So under...if this bill were to pass, then he would be parole eligible in 10 and--oh, I'm bad at math--half of 25. I went to law school because I can't do math. (Laugh) [LB172]

SENATOR WILLIAMS: Twelve and a half. [LB172]

SARAH NEWELL: (Laugh) Thank you. [LB172]

SENATOR MORFELD: Twelve...he's a banker. [LB172]

SARAH NEWELL: I appreciate your help--assist to Senator Williams. (Laughter) But currently, what happens is then on that 20, the 20-25, he serves a hard five. So the first five years of that sentence, no good time accrues. And then once that five is done, then he starts to accrue good time towards the remaining 20. And then he still has the ten from the manslaughter on top of that, and that's just for parole eligibility. [LB172]

SENATOR MORFELD: Okay. [LB172]

SARAH NEWELL: And then on top of that, he still has the jam date of 25, the... [LB172]

SENATOR MORFELD: Okay. [LB172]

SARAH NEWELL: ...for the use, if that makes sense. [LB172]

SENATOR MORFELD: Okay. [LB172]

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SARAH NEWELL: It also makes the math a lot easier for Corrections if you take out the mandatory minimums. [LB172]

SENATOR MORFELD: Okay, thank you. [LB172]

SARAH NEWELL: As someone who hates math, it's an incentive. [LB172]

SENATOR SEILER: Senator Williams. [LB172]

SENATOR WILLIAMS: Thank you. Since you came up and talked about this to put a face on it, tell me what this person did. [LB172]

SARAH NEWELL: This is the fun part. He was originally charged with second-degree murder and use of a weapon to commit a felony. The facts are...and we had a trial that ended up in a mistrial because the jury hung and then we ultimately worked out a plea agreement. He also...basically, he was at a party with a friend, with a series of friends. A gentleman who was very intoxicated, has a history of violence, including punching women off of bar stools, started picking on my client's younger friend, who was much smaller, punched him out, knocked him out. My client, who had a gun on him, not a great decision but had a gun on him, shot, in his estimation, in defense of his friend. The question would be whether or not he acted reasonably under the circumstances, which was why the jury hung the first time. Ultimately, I guess, in the process of doing that, he also shot another one of his drunk friends kind of who was sitting behind him. So there's use of a weapon on two different counts, murder, second, and second-degree assault. Those are the original charges. [LB172]

SENATOR WILLIAMS: So the second person wasn't killed. [LB172]

SARAH NEWELL: No, he just was...it was a leg wound, through and through. [LB172]

SENATOR WILLIAMS: Okay. [LB172]

SARAH NEWELL: And that was ultimately dismissed as part of a plea agreement, along with the other use charge. [LB172]

SENATOR WILLIAMS: Okay. [LB172]

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SARAH NEWELL: So I...and again, I don't say this to say that...I mean, if I represent you, you're charged with some serious stuff. I mean, that's what our agency does. But this was a case that at least two of the jurors wanted to acquit, two of them wanted to convict outright, and the rest were somewhere in the middle, thinking it was some version of manslaughter, which is why we ended up working out the plea agreement and pled him down. And those are decisions that, you know, he has to wrestle with. You know, is it something...I would tell you that county attorneys typically are smart enough to add on charges to get to where they think they want to go. I know that they...we offered manslaughter to plead him to just straight manslaughter. That was something he was willing to do from the beginning. County attorney didn't feel comfortable with that, and I'm...you know, they have a job to do, as well. I don't, you know, speak ill. But that was part of why the use charge was important, because it gave the opportunity for more time. But realistically, even if the use wasn't a mandatory minimum, if the judge really thought that this was the appropriate sentence, you still have the 20-50 range, the judge could still accommodate that, just taking away the mandatory minimum. It just basically says that if the judge wants to accommodate and doesn't want to punish someone as heavily or is in a circumstance where they feel like probation is appropriate, it gives them more discretion. [LB172]

SENATOR WILLIAMS: Was this his first brush with the law? [LB172]

SARAH NEWELL: It was his first conviction aside from I think shoplifting. [LB172]

SENATOR WILLIAMS: Okay. Thank you. [LB172]

SARAH NEWELL: Yeah. Any other questions? [LB172]

SENATOR SEILER: Senator Pansing Brooks. [LB172]

SENATOR PANSING BROOKS: Thank you. [LB172]

SARAH NEWELL: And I apologize. I always end up facing this way. I neglect you guys. [LB172]

SENATOR PANSING BROOKS: That's okay. Ms. Newell, thank you for your testimony. I'm just...I know of a case...I have a case that I'm close to somebody who had a first-time drug offense and was put in prison for 22 months' mandatory minimum. So it's not just the violent, second-degree murder crimes. Is that's correct? There are... [LB172]

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SARAH NEWELL: That's true. [LB172]

SENATOR PANSING BROOKS: In Nebraska, do we have nonviolent mandatory minimum sentences that are being imposed? [LB172]

SARAH NEWELL: Absolutely. The...I think Mr. Soucie alluded to...if my recollection is right, ICs are, you know, selling within a school zone. And so...and I used violent crime as an example because that's what our office focuses on. The commission handles violent crimes by statutory definition. But in my prior life, I worked in the public defender's office and we would routinely see people that were charged with school zone violations and it...you know, you're constantly getting out your tape measure trying to figure out, well, is this really within the, you know, however many feet, because a lot of times you'd see people that had no history whatsoever charged with...and especially, I think we're seeing a lot of folks on the university campus who were, you know, just college kids selling stuff to their, you know, their friends and whatever in the dorm. But that's a school zone, and so you're seeing people getting charged with major felonies with mandatory minimums without significant history. [LB172]

SENATOR PANSING BROOKS: Okay. The case that I'm familiar with doesn't have to do with a school; it doesn't have to do with the violent crime. It was just selling to an undercover police officer and that was the...and it was a 20-year-old that had, had an upstanding record at college and got into a bad crowd, and it was the first offense. So I'm just trying to make sure that there are cases where it's not selling next to other students, it's not in with a violent crime. [LB172]

SARAH NEWELL: And if I recall correctly, and I apologize because I haven't done drug offenses in the past couple years, but if I recall correctly, one of the ICs is also by weight or by the amount of the drug or whether it's a dangerous drug. And Mr. Strigenz from the public defender's office in Sarpy County might be better equipped to handle that particular question. I apologize. [LB172]

SENATOR PANSING BROOKS: Okay, thank you. [LB172]

SENATOR SEILER: Thank you very much. [LB172]

SARAH NEWELL: Thank you. [LB172]

SENATOR SEILER: Next proponent. [LB172]

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DAVE LARSON: Senators, my name is Dave Larson, D-a-v-e L-a-r-s-o-n. I live in Lincoln. I think my standpoint is different from a lot of people. I've lived in all parts of the states, almost. I'm a retired Lutheran pastor. I have seen how criminals get treated in the country and in the cities. Last few years, I've been doing volunteer work. The organization I work with is Nebraska Aftercare in Action, and we provide support teams for people when they get out on parole or when they jam. So in the last few years, I've gotten to know a lot of prisoners and I have more familiarity than I did before. If you looked at the paper this morning, the overcrowding is worse and we have a lower crime rate, and that's happened a lot the last year. So because of this, I think it's very important that we support the removal of mandatory minimum sentences. I think the mandatory minimum sentences do not rehabilitate. I think they don't treat the prisoners as persons. Back in 1970, when I worked in the juvenile detention center in Minneapolis, we were learning what rehabilitates people. At the same time, this movement to lock people up with a mandatory minimum sentence was starting, and it turned out to be a fiasco, the way I see it. So all the phrases that remove mandatory minimum, I think, are good. There are also some other phrases in the bill that I think are important. Page 4, lines 10 and 11, advise the offender of the time before mandatory release. And my time is almost up. And the next one, the court should state the concurrent or consecutive sentences. And the last one, when the defendant is under 18 the court makes the disposition under the Nebraska Juvenile Code. And I think that's very important, and those things weren't mentioned by other people. But really, treating the...a prisoner like he's someone who has worth and can be rehabilitated is important. Also, if this passes, I think the judges' judgments are elevated. With the mandatory minimum sentences, I don't believe the judges are respected enough. Thank you. [LB172]

SENATOR SEILER: Any further questions? Thank you very much. Next proponent. [LB172]

DICK CLARK: Chairman Seiler, members of the Judiciary Committee, my name is Dick Clark, D-i-c-k C-l-a-r-k. I'm director of research for the Platte Institute. Thank you for the opportunity today to testify in support of LB172 which would eliminate certain mandatory minimum sentences in Nebraska. Nebraska has a prison problem. And though Nebraska has historically had a lower incarceration rate than many other states, its correction facilities currently house far more prisoners than they were designed to hold and the number of incarcerated offenders in the state continues to climb. Crowding in prisons can mean that program areas may not be available for services that would otherwise help prepare inmates to transition back into their communities upon release and makes these correctional programs less effective at preventing future crimes. But the evidence suggests that overcrowded prisons are not just less effective at rehabilitating inmates. They're also significantly more dangerous for the inmates and for corrections officers too. A federal Government Accountability Office study in 2012 reported that overcrowded facilities led to more violence between inmates, as well as more violence against corrections staff. While some have proposed building a new prison to reduce overcrowding, the price tag is expensive. One bill waiting to be heard in Appropriations would allocate more than \$261 million

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to Corrections for this purpose. Nebraska currently spends, for comparison, about \$185 million a year in state General Funds to operate DCS. Reducing the use of mandatory minimum sentences means trusting our judges to use their discretion. It also means saving taxpayers the high cost of incarcerating offenders who might otherwise more rapidly move through the corrections system into programs that actually work to prevent future offenses. Long terms of incarceration destroy families, disrupt living arrangements, and impair employment opportunities. Those are all critical factors in reentry, and most of those who are locked up will eventually leave prison and have to reintegrate with the rest of society. Not all crimes charged under a particular statute involve offenders who are equally blameworthy. Allowing judges a greater measure of discretion in sentencing will better ensure that justice is done, that the public is protected from dangerous criminals, and that people are not being imprisoned unnecessarily. Eliminating these mandatory minimums is one of a number of reforms that you and your colleagues can enact this session to make Nebraska's criminal justice system serve Nebraska better. We all want dangerous criminals off the street. We all want offenders to have every incentive to become law-abiding, productive members of our communities. Our latest report from the Platte Institute, which I believe you've all received, contains a number of recommendations. I think this bill is a part of the reforms that are needed and hope that we can continue to be part of the conversation. Thank you for this opportunity to testify, and I'd be happy to answer any questions. [LB172]

SENATOR SEILER: Senator Chambers. [LB172]

SENATOR CHAMBERS: Mr. Clark, you were moving so rapidly I waited to exhale and now I can. Thank you. But you had stated that you work with the Platte Institute. Correct? [LB172]

DICK CLARK: Yes, sir. [LB172]

SENATOR CHAMBERS: Has anybody ever accused your organization of being soft on crime? [LB172]

DICK CLARK: I don't believe so, but I'm not sure that I'm acquainted with the full record of criticism of the Platte Institute. [LB172]

SENATOR CHAMBERS: It hasn't been. So what your organization did was to study data and, to the extent that you can in a study, look at what is probably in the best interest of society with reference to this issue that we're discussing? [LB172]

DICK CLARK: Yes, Senator. [LB172]

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SENATOR CHAMBERS: And it has nothing to do with saying, I don't think people should be punished for their wrongdoing. [LB172]

DICK CLARK: No, sir. I think that everybody needs to be protected, including taxpayers, including the folks that might get hurt when the wrong people get released. And the way that we can keep the public more safe and protect the taxpayer is to use discretion where it's warranted, allow judges to use discretion in this area. [LB172]

SENATOR CHAMBERS: And your organization actually released a report and put its name behind what it was stating. Is that true? [LB172]

DICK CLARK: Yes, sir. [LB172]

SENATOR CHAMBERS: Thank you. [LB172]

SENATOR SEILER: Thank you very much for your testimony. [LB172]

DICK CLARK: Thank you. [LB172]

SENATOR SEILER: Next proponent. [LB172]

JOE NIGRO: I'm Joe Nigro, N-i-g-r-o. I'm the Lancaster County Public Defender and I wanted to speak in support of this bill. It seems to me that if you are an advocate of judicial discretion in sentencing, then you should be for this bill, because what this bill...what the current law does is tie the judges' hands to a large extent on the minimum sentence which can be imposed. By removing the word "mandatory," you're going to allow the judge to have more flexibility on when that parole eligibility should occur. You're also going to...I mean this certainly...these mandatory minimums have contributed to prison overcrowding because, the way the formula is calculated, it affects both the minimum for parole eligibility and for discharge. There has been some discussion here about types of offenses, and ICs and IDs do include a number of nonviolent offenses and there are a number of drug offenses. A felon in possession of a firearm, if my memory is correct, long ago was just a Class IV felony and it was a Class III, certainly was a Class III for a long time. And now it's a ID and a second offense is a IB. And when you talk about felon in possession of a firearm, it doesn't necessarily...I mean sometimes we've had cases where somebody may just have a gun in their house. Now I'm not saying that they should do that, but if they're using it in another crime, they can be charged with use of a weapon to commit a felony. And certainly, if they seem to have some evil intent as far as the gun, that can factor in the judge's discretion on the upper end of the sentence. And the other thing I think to keep in

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mind about this bill is that it does not tie the judge's hands from still hitting somebody hard on the top end. And just because somebody is eligible for parole doesn't mean that they will be paroled. And the reality is, for a lot of different types of offenses, people are not...the Parole Board hasn't been paroling them. So it does...but I think that when you start talking about some of these drug offenses, I think it does give the courts more flexibility. And people charged with these charges facing mandatory minimums that are not eligible for probation, they're not eligible for drug court or some of the other alternatives, it might be appropriate in some specific circumstances, especially when you're talking about drug offenses and means that might be more effective. I think that, you know, a lot of times it's glamorous to be tough on crime, but I think that we've seen that these results don't work and for people who are...most of these people are going to get out and there are just better ways to try and deal with them and this deprives the courts of some of those options. And it's certainly used as a cudgel in plea bargaining. I mean that's just a reality. If anybody has any questions, I'd be happy to answer. [LB172]

SENATOR SEILER: Senator Chambers. [LB172]

SENATOR CHAMBERS: In one of the New England states, I'm not sure if it was Providence, Rhode Island, but I hate to say it, but it's...the New England area is a very small geographic area, comparatively speaking. But in one of these towns, they had an outbreak in the use of heroin that was so drastic that it was...it made national headlines. But as long as heroin had been used in black communities and poor white communities, this was criminality of the worst kind. When these white people in the suburbs became aware that their children were using it and they became aware of it as a result of the proliferation of drug overdoses, many resulting in death, then it was no longer a matter of criminality but a medical problem, something that society needed to address, and prison was not the place where you needed to put these young people. So these issues are not only political, but they're class centered, they're race centered. So as cynical as it might sound to me, I wish every crime was committed in white suburbs, then people would stop saying there are only certain people who do this and we don't like those people so lock them up and throw away the key. But when it comes into their house, then, my son is a good kid, you just don't know him, my daughter is a good girl, she has all these talents and abilities, what harm would you create if you put her in prison. That was the attitude, and they changed their whole approach to street drugs, such as heroin, because it came into their houses. In Omaha, and it's happening in other parts of the country but Omaha is catching on now, there is a lot of abuse of prescription medications and a lot of the kids get them at their own homes. But nevertheless, that is not viewed as drug abuse in the way that some of the people were considered who are serving time right now in prison. And if it was the conduct that we're talking about and the harm that was being done to society by somebody using certain drugs, then these kids in the suburbs should get the same thing. They should be charged with a Class IV felony or a Class IC or ID, whatever the highest is, and ruin their life, don't let them get jobs, don't let them get certain federal assistance in various programs. But now they suddenly have had a come-to-Jesus awakening, and they see

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that we've got to deal with these drug problems that affect these children other than by means of making them crimes. All that I can do as a policymaker is to look at as broad a picture as I can, make sure that at the outstart we do not treat people in such a way that what they do when they're very young can ruin them for the rest of their life, and we're trying to make a start now. In fact, what this bill does by itself is more symbolic than anything else because, since a judge has a range in one of the categories of 5-50 and 3-50 in the other, if the judge wanted to give a 20-50 year sentence, that person is not eligible for parole until he or she has served 10 years. So under the current range, without a mandatory minimum that can happen. But you start accruing good time right away but also you are eligible to be put on probation. And I think that a much greater use should be made of probation. I see politicians given a second chance by not being charged with the level of offense that they actually committed under the law. They violated the public trust, did the kind of things that should entitle them to harsher punishment, because of the great amount of trust that was reposed in them and the violation of that trust. I think that police officers ought to be held to a higher standard, as the Nebraska Supreme Court has said, but prosecutors don't prosecute them. So I cannot make a prosecutor prosecute a criminal cop, but I can try to do something about the law that allows prosecutors to overcharge other ordinary citizens who run afoul of the law. And that's what I intend to try to do and this is a baby step in that direction. If a judge is vengeful, vindictive, and we don't get that other bill that will not allow the minimum to be more than a third of the maximum, a judge could charge...could sentence somebody to 40-50 years and still have a disproportionate sentence based on the offense. We cannot create a perfect system, so we have to do the best that we can. Now I want to ask you a question as a public defender. You're the public defender, not me. Have there been cases where, even if we're not dealing with a mandatory minimum, you thought that a person should have probation instead of being given any prison time at all? [LB172]

JOE NIGRO: Yes. [LB172]

SENATOR CHAMBERS: And in some of those cases they got prison time anyway. [LB172]

JOE NIGRO: Yes. [LB172]

SENATOR CHAMBERS: And since you would be the one handling the case and asking for no prison time, that means you're willing, in a sense, to stake your reputation on how you judge this case and, whatever the fallout would be, you would accept it by telling the judge, I think this person should have probation. [LB172]

JOE NIGRO: Yes. [LB172]

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SENATOR CHAMBERS: You're willing to do that. And it would be known to you that you're not a fortune teller and you cannot guarantee, just like a judge and nobody else can, that this person is not going to misstep. You can't guarantee that, can you? [LB172]

JOE NIGRO: No one can. [LB172]

SENATOR CHAMBERS: But what we're trying to do is the best that we can, is that right? [LB172]

JOE NIGRO: Yes, yes. [LB172]

SENATOR CHAMBERS: And when the book asks, are we our brother's keeper, it doesn't mean in the sense of somebody in a zoo locking up and being the keeper in that sense, but looking out for the best interest of our brothers and our sisters, as we would want somebody to look out for us. Would... [LB172]

JOE NIGRO: Yes, yes. [LB172]

SENATOR CHAMBERS: You're a very wise man. I'm glad you came today. Thank you. (Laughter) [LB172]

JOE NIGRO: You're very kind, Senator. One other point that I did want to make, because there was talk about selling in a school zone, and when that law was created, the purpose of that was to deter people from selling drugs to schoolchildren. But the reality is, and you can see a map of Lincoln and almost all of it is within a school zone, and so we frequently see cases where people are not...you would almost never have cases where people are actually selling to schoolchildren. Somebody's house is near a rec center or day care or a school and they're...of course, if we see them, they've probably sold to an undercover officer, so they certainly weren't selling to children. And so I'm not saying that this is good activity. But what I'm saying is that that winds up being a hammer held over our client's head in terms of negotiations or options. And I think it really goes against what I saw as the original intent of creating that law, which was to protect children from drugs. [LB172]

SENATOR CHAMBERS: And one thing: When I was here, that's what people were saying when they asked for that. And I was asking, how are you going to know that the person is so far and so far from the school? Then they said, well, we'll put up signs. But the problem never did develop where the children were being sold drugs. [LB172]

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JOE NIGRO: Any other questions? [LB172]

SENATOR SEILER: Nothing further. [LB172]

JOE NIGRO: Thank you. [LB172]

SENATOR SEILER: Thank you. Next proponent. Next opponent, opponent. [LB172]

DON KLEINE: Good afternoon again, Senators. My name is Don Kleine, K-l-e-i-n-e. I'm the Douglas County Attorney, here on behalf of the Nebraska County Attorneys Association, to appear in opposition to LB172. And I want to tailor my remarks to really a couple of crimes that are impacted by this, not all of them. I'm really disappointed and I find it hard to understand sponsoring a bill that would give a break to people who use a firearm to commit a felony or are felons in possession or who are child pornography possessors who have a prior conviction of sexual assault or sexual assault of a child, different assault issues. You know, the Legislature, the people passed many of these laws, what, about five or six years ago, and now to see the Legislature say, well, maybe we'll reverse field, I think is a bad message, particularly about...what I'm talking about is the using a firearm to commit a felony: people who shoot someone, people who use a gun to force their will upon somebody either by robbing them or kidnapping them, and people who are felons, convicted felons who have firearms. We have gun problems. We have shooting problems that occur in Douglas County. And the message that I think the people through the Legislature send is, you know, for those types of crimes I would hope the message would be we are so opposed to that happening, just like you are with child sexual assault and sexual assault on second offense. You say the mandatory minimum is 15 years or the mandatory minimum is 25 years, a much greater mandatory minimum, the message being we don't want people to do that to children or to women or to sexually assault someone. Well, the same should apply here, much shorter mandatory minimum, at least three or five years for the use, three years for the felon in possession, but the message being we aren't...we don't want to tolerate this and you're not going to be eligible for probation if you do a gun crime, meaning if you use that gun to commit a felony or you're a felon in possession. We have worked very hard with the U.S. Attorney's Office. We put billboards up in Omaha saying if you do a gun crime you're going to do time, and it's partially based on this kind of law. And to say, well, somebody who uses that gun to commit a felony, we want to take away those mandatory minimums, the judge factors in those mandatory minimums when he sentences. The fellow that got sentenced to...on the manslaughter and the use of a firearm, I'm sure the judge took that into consideration but obviously felt that that wasn't enough and gave him a lot more than the mandatory minimum. The judge still has discretion up to the 50 years on those Class II felonies, but I think the message from the people, your constituents, should be those kind of crimes aren't going to be tolerated, we want at least to...we've got a lot of different judges. We're going to ensure that, at

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least, if somebody uses a gun to shoot someone or to commit a felony or is a felon in possession they're going to do a mandatory minimum of at least five years on that use or three years as a felon in possession. I think that's good law, and I think there's a good reason for that and it's a good message sent by the people of the state of Nebraska who you represent when you say we're not going to tolerate that kind of crime, just like you do with sexual assaults of children.
[LB172]

SENATOR SEILER: Senator Chambers. [LB172]

SENATOR CHAMBERS: Evenhandedness...Mr. Kleine, there are more gun crimes in my community than I would venture to say in the rest of the state put together. Would you agree?
[LB172]

DON KLEINE: That could be possible, I'm sure. [LB172]

SENATOR CHAMBERS: And people in my community are aware of how opposed I am to gun crimes and how I criticize law enforcement for not trying to find the source. I.. [LB172]

DON KLEINE: I've seen you be involved in that, yes. [LB172]

SENATOR CHAMBERS: I'm a politician. I've said I'm going to run for reelection. But I want the people in my district to know what it is I stand for, and I'm not going to pander to them, I'm not going to pander to the prosecutors, I'm not going to pander to anybody. I'm looking at a criminal justice system that comprises the police officers, the prosecutors, and the courts. And I'm not going to overbalance it by letting cops get away with false arrests and excessive use of force. Now I can't stop it because I'm not a law enforcement officer, but I'm going to fight it and expose it where I can. I'm not in favor of judges being overly harsh because they have to stand for retention even though they don't run for election, as do other politicians. I'm looking at the system as a whole, and I do believe that it is my job to serve as a civilizing element in this state. And regardless of how prosecutors feel, regardless of how people in my district feel, and anybody else who based their feeling on an appeal to emotion or revenge or any of those other things, I'm going to look at what I think the system ought to achieve. In the same way I believe that educators ought to be held to the standard of educating children and they should know more when they get out of school than when they went in, I believe that we ought to create a system which punishes but also which rehabilitates or gives the opportunity of a...to a person to rectify, make atonement for the wrong that was done in the same way that we would want to be judged with some degree of mercy. So I want to get rid of all minimums for every offense, get rid of every minimum sentence. You can still have the range and then let the judges do their job. And if they don't do their job, then let there be whatever repercussions the public can provide by voting

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not to retain. But I am not as a policymaker going to say...people want to see a harsh punishment here but they don't want to see it there. I want to take away all mandatory minimums on all of the offenses, even those involving children, child pornography, and domestic violence and all of it, and put the sentencing in the hands of the judges. Those crimes would have minimum sentences. It wouldn't be zero to whatever so that it would be possible for a judge to say, I'm not going to give you any time. We would have a minimum, no mandatory. And then if the prosecutors felt that a sentence was not appropriate, right now--right now--under the law, you as a prosecutor can go to court and challenge if you think that a sentence handed down was too lenient. You can do that, can't you? [LB172]

DON KLEINE: If it's a...if we feel it's excessively lenient, they... [LB172]

SENATOR CHAMBERS: That's what I'm... [LB172]

DON KLEINE: ...not just a lenient sentence but an excessively lenient, right. [LB172]

SENATOR CHAMBERS: Right. So there are alternatives available right now in the case of excessive leniency. But you said that judges can factor in the particulars with reference to the person, the circumstances, and so forth, and then tailor a sentence to fit that. [LB172]

DON KLEINE: Yes. [LB172]

SENATOR CHAMBERS: A judge is not restricted to any location between the maximum or the minimum under the current law except where a mandatory minimum is required. So you can remove that and the judge can give a higher sentence than the mandatory minimum and can fashion it in such a way that a person is not going to be eligible for parole as soon as he or she might be if the mandatory minimum were there. But the difference is that they can start to acquire good time, and good time is a prison management tool in the same way that we have allowed prosecutors to have plea bargaining as a tool for managing their caseload and other factors. So in order that it's clear to anybody who listens, I did not even want mandatory minimums in the cases that are exempted under this law. I wanted to do away with all of them. And I would say it to anybody in my community. I'd say it at a community gathering. I'm saying here it here and I'm standing behind it. And if the people in my district for some reason think that I'm off base, they can vote me out of office when I run for office. And I had a program. I told people, anybody can run for this office who wants to. I don't have a proprietary interest or hold on this office. If you don't think that I've done the job that I should do, put somebody else in, but I'm not going to lie to you about what I am, I'm not going to beg you to vote for me, I'm not going to beg you for money. All I'm going to offer you is what I've done, and if you don't know my record, I'll get it for you, and if you don't like it, don't vote for me. That's the way I operate.

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So I'm letting you know and these other prosecutors know, and I'm going to try to find a way to get on them by way of law, because their ethics make no difference, the statutes make no difference. There are certain categories they will not prosecute. Notice I say "they." I didn't say "you." How many times have you heard me say that if I was charged with a crime, I'd be falsely arrested by the cops anyway. But who have you heard me say I'd rather be prosecuted by than anybody else? Who is the person I named? [LB172]

DON KLEINE: Me. [LB172]

SENATOR CHAMBERS: And did I do it publicly? [LB172]

DON KLEINE: Yes. [LB172]

SENATOR CHAMBERS: On more than one occasion? [LB172]

DON KLEINE: Yes. [LB172]

SENATOR CHAMBERS: And do I know that you're a prosecutor? [LB172]

DON KLEINE: Yes. [LB172]

SENATOR CHAMBERS: Do I know that, on occasion, you've sought the death penalty for people... [LB172]

DON KLEINE: Yeah, I...yes. [LB172]

SENATOR CHAMBERS: ...on occasion? [LB172]

DON KLEINE: Yes. [LB172]

SENATOR CHAMBERS: So it's not that I think that you're just a pushover and an easy person. What, if you remember my rationale, what was the rationale that I gave as to why, if I had...and I gave you credit for being a very competent attorney at what you do. [LB172]

DON KLEINE: You want me to tell you what you said? [LB172]

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SENATOR CHAMBERS: Yes. [LB172]

DON KLEINE: You said, on the one hand, I would want you to prosecute me because I think you're very fair; on the other hand, I might not want you to prosecute because you're so good at what you do. [LB172]

SENATOR CHAMBERS: And could a prosecutor get a higher recommendation than that from somebody? [LB172]

DON KLEINE: No, and I hope that you understand that that's the goal in my office. And I know the other prosecutors that I work with, too, and I know that you have strong feelings. But we really believe that we're trying to do the right thing and do justice and make sure that the innocent people are not prosecuted and that the guilty people are held accountable and we try and make the community a better place to live. [LB172]

SENATOR CHAMBERS: The reason I'm saying that for the record, when I talk about prosecutors I don't want people to get the impression that I'm saying every prosecutor in the state, that there are those who I know do the best they can. And you've handled cases in ways that I disagreed with, and I think you know that. [LB172]

DON KLEINE: Right. [LB172]

SENATOR CHAMBERS: So this is not just a "Kumbaya," a love fest between us. [LB172]

DON KLEINE: Right. [LB172]

SENATOR CHAMBERS: I think you were picked to come here today because those people know how I feel about you, or you got the short straw. Which was it? [LB172]

DON KLEINE: It's probably a little of each, I suppose, I suppose. [LB172]

SENATOR CHAMBERS: Did you pull the short straw? [LB172]

DON KLEINE: Yes. [LB172]

SENATOR CHAMBERS: You did? (Laughter) Okay, that's all I have. Thank you. [LB172]

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SENATOR SEILER: Anybody else? Thank you. [LB172]

DON KLEINE: All right. Thank you. [LB172]

SENATOR SEILER: Further opposition? [LB172]

MARTY BILEK: Senators, my name is Marty Bilek, M-a-r-t-y B-i-l-e-k. I'm Mayor Stothert's chief of staff in Omaha. Originally, when I saw this bill, I thought simply that what it was is giving judges more discretion, and actually I'm all for discretion. I'm never in favor of anybody's zero-tolerance policy because it takes away discretion. However, after I examined the bill further and saw what crimes that it involved--it involves primarily gun crimes, use of a weapon to commit a felony, a felon in possession of a firearm, and dealing narcotics--and then when I thought about what crimes that we're faced with in Omaha and what challenges us in Omaha, we've...we have concerns about this bill. And specifically, we have 30 and 40 homicides in Omaha every year--that's far too many--mostly are gang related, mostly involving firearms, and we strive to do something about that. Recently, Omaha was attributed as being the most dangerous city for young black males. As a mayor in the city of Omaha, obviously, it's our top responsibility to do something about that, and that's what we're trying to do. Now we realize that as far as gang violence is concerned, and use of weapons to commit felonies, is far more complicated than just a law enforcement issue. It involves young parents who have children and for whatever reason they're not able to adequately raise those children. Maybe poverty afflicts them. Maybe it's an education gap. Maybe kids aren't able to get the education that they need to be successful. Maybe it's high unemployment in some areas. The result is poverty. The result is drug abuse. And what we see then is violence. The problem that I'm having here today is with this bill you're basically sending the wrong message. All of those crimes that we're concerned most about, you're being...you're taking a soft, lenient stance. You're changing the law so that it's counterproductive and it does just the opposite of what we're trying to accomplish here. Now I'm aware that when people come up here and talk about being tough on crime or soft on crime, it's almost sophomoric. It's kind of a simple way to talk about a very complicated problem. But nonetheless, we have to talk about this because if it was other crimes that we were talking about, if it was a burglary or a theft, then I understand. The discretion is good. Taking away that mandatory minimum might be something that you'd want to consider. But in this case, you have mandatory minimums there for a reason. Previous Judiciary Committees have considered this. They've decided that gun crimes are different, dealing drugs are different, there needs to be a mandatory minimum. However, there's still plenty of discretion. You've got between three years or, in the other case, five years, and then you have up to 50 I believe is what it is. So there's plenty of discretion for a judge to apply. The county attorney also has discretion when he's considering these charges, so he is able to apply his discretion, as well. And then when you simply say that the mandatory minimum is three and in the other case five, I think that is the will

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of the people and I understand why it's there. And I see that my red light is on already, so I'm just going to finish by saying... [LB172]

SENATOR SEILER: Just wait a second. You want to make your question? [LB172]

SENATOR PANSING BROOKS: Oh, no. Do you want to go ahead and finish what you were... [LB172]

SENATOR SEILER: Senator. [LB172]

MARTY BILEK: Yeah, I want to make one quick comment because I want to... [LB172]

SENATOR CHAMBERS: Well, we would have to ask you a question. [LB172]

MARTY BILEK: Okay. [LB172]

SENATOR CHAMBERS: What was the comment you wanted to make? [LB172]

MARTY BILEK: The comment that I'm going to make here is that many people or many of the folks that have testified here, whether it be this bill or the previous one, are talking about prison overcrowding. Nobody denies that's going to happen. Nobody wants to spend \$150 million or whatever that it would cost to build a new prison. There is a study out there. The Council of State Governments has a solution and basically what it does is it takes a Class IV felony and parses it and their solution involves reducing the prison population by as many as 500. And I don't know that this will impact that well, so you're going to get what you want as far as prison reform goes with taking the advice of the Council of State Governments and other legislative bills that went before this committee, but you could still leave this in place and I wish you would do so. Questions, please. [LB172]

SENATOR SEILER: Senator Chambers. [LB172]

SENATOR CHAMBERS: Mr. Bilek, I live in the community where the gun violence occurs, and I'm not like some of the people of my complexion who are deemed the leaders whom the mayor talks to, whom the chief meets with. And they can talk to whomever they please. My address has four digits, not five. I live right in the heart of the community. I live at 19th and Binney Street, by choice, and I would like to see the gun violence brought to an end. And until the chief had a meeting with me a few days ago, no official responded to me down through the years that on the

floor of the Legislature, at committee hearings, and you were working with the sheriff's department at that time, that I was pleading with, condemning, cajoling, everything I could, the various law enforcement agencies to put together a multidiscipline force, as they had done to fight alcohol being given to underage white kids, methamphetamine. But when it came to the guns, they did not even have the common courtesy to show me the professional courtesy of a response when I took the time to write to all of them. They didn't. The first one who responded was the U.S. Attorney who currently has that job. The other U.S. Attorneys ignored everything I said. She responded. She told me that my timing was perfect because these various agencies were going to have a meeting. The chief asked me would I meet with him, which I was more than willing to do, but all of those years not even a response. Then people come here, as you're doing--and I'm not condemning you--saying that if you have these certain minimum sentences it's going to do anything about the gun violence. You've got the minimum sentences. They're not doing anything. That's the easy way out. It lets these politicians say, such as the former Chairman Brad Ashford of the Judiciary Committee, he was not making it soft on crime. He thought he was doing something by responding to the furor by saying, we're going to have some mandatory minimums. I wasn't here when they did that. I fought mandatory minimums. It would seem that unless I'm working undercover as a black member of the Ku Klux Klan, I would be the one pushing for harsh sentences. But when you put harsh sentences, these officials whose job it is to do something feel that that's it. You know as a member of law enforcement that the certitude or likelihood of apprehension and punishment are of greater deterrence than a harsh punishment that is either not going to be imposed or the person is not going to get caught. How many criminals have you dealt with who were sure they were going to get caught? [LB172]

MARTY BILEK: All of them think they're not going to get caught. [LB172]

SENATOR CHAMBERS: Exactly, so the punishment doesn't make any difference. They've got a death penalty, and some of these people have killed babies, old people. And there's a death penalty. How much harsher can it be than that? Has that deterred any of the shooting? Not one bit. [LB172]

MARTY BILEK: Senator, they all think they're not going to get caught, but they all know that there's a risk, there's an occupational hazard with respect to their crimes. And they know that if they do get caught, there are...there's punishment. And they know that and they're calculated about which crimes they commit based on what the punishment is. [LB172]

SENATOR CHAMBERS: I'm going to shock you. There are guys who are doing the shooting who are...where there are cops complicit and they say, if you get me some drug arrest, I will not take you in on this gun charge, because, for one thing, the guns are only used against us. And you can say it's not happening all you want to. I live there and I know. So I'm going to do all I

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can to get rid of all of these mandatory minimums and let people like you and Mayor Stothert and these prosecutors tell the people in my community what a bad fellow I am. And I don't care what the people outside my community think. I am taking an approach that I'm going to use because I think it will put me in a position to do something which cannot be done and will not be done now. When the onus is on the judges to behave as judges are supposed to do, then I have a stick to use that I don't have now. See, judges don't like public exposure and public criticism. And for your benefit, I'm going to send you a newspaper article that documents from records that the FBI had where J. Edgar Hoover told his agents, and this is before I was in the Legislature, don't mess with Ernie Chambers (laughter) because he will embarrass the agency by going to the media. Now that was the time when they were messing with Robert Kennedy, who was the U.S. Attorney General, messing with John Kennedy, who was the President, messing with Martin Luther King, and all the rest of them. And they made it clear that they didn't like them. You cannot find another person in the annals of FBI activity where the director said, leave him alone. Now if I was committing crimes, they'd have me, because they watch me. When I went around the country giving speeches, and I didn't know it at the time, they had agents following me. Now nothing that experts such as you would recommend, well-intentioned, worked. Nothing. Nothing is working now. [LB172]

MARTY BILEK: Senator, I think what your point is... [LB172]

SENATOR CHAMBERS: What I'm offering is what I think will work and I'm going to try to get that done to see if it does. [LB172]

MARTY BILEK: Senator, what you're offering is you want this, the penalty here, to be more lenient, and the...and your argument is because, if it's more strict, if it's...just...I'll leave it at that. If the penalty is more strict, it's not going to do any good, so why would you do it? That's your point. What I'm going to argue is, with the penalties in place the way that they are right now, the chance is, the likelihood is, if you commit a gun crime, you're probably going to do a little bit more time in jail or at least you stand that risk because there's a minimum that's hanging over your head. And for that reason, that person is off the street longer and the people in your district are safer and that's what this is all about for us. Now is it going to make all the difference in the world? No. Is...does more need to be done? Absolutely, yes, but there's...this is just a little something that we can do, and I think that by introducing this bill it's counterproductive for what you're trying to accomplish for the people in your district. [LB172]

SENATOR CHAMBERS: Mr. Bilek, I'm old enough to call you this without you getting angry. Let me tell you a thing or two, Sonny. I have...I've been in this...in Omaha 77 years. I have lived in that community all of my life up to now. I watched all of the supposed solutions fashioned by white people. Black people put a black man in office and now that there's some momentum in

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this Legislature to try something different from what we've done, the minimum sentences are failures even at the federal level. There are states known for being harsh on crime who are doing away with the minimum sentences. There are judges who are condemning the minimum sentences. There are Democrats and "Repelicans" in Congress who are getting together in a bipartisan way to do away with mandatory minimums. They said this locking people up forever is no good. There are many cases that prove it. They are operating in some federal prisons what amounts to a geriatric ward, and the people there did not commit crimes of violence. So all of those things have failed. You're in a position to give your view, what you're doing now, and you should. But I have a vote and I have a voice where the policy is going to be formulated. And if I'm not successful in formulating that policy, it means that what I wanted to try to do is not going to work. But I'm not daunted. I will not be deterred. And when the mayor is no longer in office, I may still be in the Legislature, and you won't be down here saying what she told you to say. And I will continue to push. People around this table may be gone. I'm the only one who was term limited out and came back. At the time I was term limited out, I was old enough to have retired years prior, but I won't quit. And I'm going to continue to live in that community. And you won't see me on television, at prayer meetings, at marches, building makeshift memorials. The people who need some kind of feeling that they're doing something can do all of that, and I won't condemn and criticize them. But it's not going to work and I'm not going to do it. I'm going to keep trying to put my foot in the rear end of law enforcement, find a way to embarrass them or whatever I have to do to get them to do their job. And in the meantime what I can do in the Legislature, I'm going to tell my colleagues that you ought to listen to somebody who lives in the community that everybody else talks about to get what they want. And they've had it their way without any interference all of this time, and the conditions have gotten increasingly worse. You know why there are more arrests now? Because Crime Stoppers has offered more money. And there are some people who are willing to take a risk for that money. And I know what I'm talking about. And except for the fact that I don't know how honest you'd be with me, I would tell you some things, but the only way you'd know them is if I told you. And if you spoke out of school, you'd ruin what it is I'm trying to do and I can't take that chance. But I assure you I'm not doing something that's going to hurt my community. With the mandatory minimum, a judge can sentence far in excess of that. I'm talking now about managing these prisons, which we have a responsibility to do. And the granting of good time is a part of managing that prison. And the person who first sets foot in that prison should know that he or she is entitled to some good time. And if you misbehave from the first day you get in that prison, you are going to lengthen the amount of time you stay here; if you behave, you can shorten that amount of time. That's what I'm looking at. You don't care what happens in the prison. When I say that I don't mean you, just it makes no difference, but that's not your responsibility. It is mine. And we have limited tools with which we can work. The only way we could do more along that line is to allow a greater amount of good time. But I don't want anybody who sets foot in prison to not be able to start accruing good time from the first day because you're not going to catch everybody. And when you catch them, they're going to come crying to me and tell me that this happened and that

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happened and I should get something in the way of a break. I tell them, you put yourself in the man's hands now; let your lawyer file an appeal. But the point I'm getting to, the part and the place where I can do anything is at the policymaking level. And I don't have confidence in what you're saying because it didn't work when you worked for the sheriff. It's not going to work now that you're the top employee of a politician. It's not going to work because the county attorneys have had their way all of these years. So now I want to try it, as Frank Sinatra said, "My Way." But I think it wouldn't be mine as one person. It would be our way. And these people who are on the...in the Legislature served, some of them, on a committee where we had a chance to review what's happening in the Department of Corrections, and we see that there are very serious problems there which can erase and nullify any and all the things that are being done by other people in other realms where law enforcement is involved. There were judges who said publicly, I didn't realize that Corrections officials were modifying my sentence; I gave the sentence and the people in the Corrections Department changed it and they let people out when they shouldn't have been let out. And you know why they shouldn't have been let out? Because there was a mandatory minimum. But it wasn't being honored by those in Corrections. And when a county attorney in Lancaster County, where the crimes were committed by these people, and they were crimes by the definition in the statute, he said, with the Attorney General, nobody did anything that's prosecutable. People in my district see that. They say, let them go get those guys, they don't bother them. I say, yeah, but they're going to get you because you're not white and you're not one of them. And if I find out that you're doing something, I'm going to tell on you. And when I had my program, before the mayor and the city of Omaha had Cox taken off the air, I was telling people if you know who did something, tell me and I won't tell them you told me and I will tell on them. And my word alone will not convict them, but it can be enough to get a search warrant. That's what I was willing to do. I was willing to put myself out there. It's my community. My blood is in this community. Yours is not. You don't live there. Prosecutors don't live there. And they're going to tell me what ought to be done and they've had total control and nothing has resulted? I'm not going that way. So I hope you don't take personally what I'm saying, but you're here representing the city, the city which has turned a blind eye to the problems in my community. [LB172]

MARTY BILEK: That's not true. [LB172]

SENATOR CHAMBERS: And one of the things that I cannot control is where they're working on that multi-, you may as well say, billion-dollar sewer separation project and all we see out there, whether somebody has got a shovel or a backhoe or a bulldozer, are white people. We can't get jobs in our community, jobs that are created through federal funds that are designed to uplift communities, and we cannot work in our own community. And anger is going to manifest itself against the people who are closest to that person. So before they talk about black-on-black crime,... [LB172]

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MARTY BILEK: You need to see what we're doing about that, Senator. [LB172]

SENATOR CHAMBERS: ...let them talk about white-on-white crime, because every ethnic group commits more crimes against its own group than it does anybody else because they commit them around the people they live. And I hear white politicians saying, before you talk about the police, talk about what black people are doing to each other. Well, white people commit more crimes against white people than they do anybody else, Native Americans, Latinos, Asians. That's the way it goes. But they always pick us. And my job, as one man, is to stand up against all of it and all of you all where necessary and say, you can say what you want to, you can do what you please, and you might get it done, but it's not going to be easy because I'm going to do everything I can to stop you. [LB172]

MARTY BILEK: I don't know why you would do that, Senator. But all I'm going to say is, you know, I've been around for 62 years myself. I've lived in...I grew up in the inner city of Omaha. I've worked in law enforcement for a long time and so I'm not oblivious, I'm not naive. I understand what you're saying. You said a lot. But for right now, all we're talking about is a mandatory minimum for, basically, for gun crimes. And that's what my primary concern is today. And for me, it's just all quite simple. The longer the gun man stays in jail, the longer the gun man stays in prison, the safer Omaha is and primarily your district. And I believe it's got to be that way, because if he's in jail longer, he's not on the street and he's not reoffending. He's not recidivating. That's what it's about for me. [LB172]

SENATOR CHAMBERS: You know what this ignorant federal government is finally learning? That Guantanamo is a recruiting ground for ISIS. That's where you make connections. That's where you learn things and you hook up with people in there that you'd never make contact with on the street. Prisons are recruiting places for our young people when that's where you put them. And you say the longer you keep them here the longer they're off the street. But when they come off out of there, they're more lethal than ever. [LB172]

MARTY BILEK: Yeah, I don't disagree. I don't disagree at all. Matter of fact, you're going to be hearing about other bills that are going to be talking about programming in the prisons. There's bills that are going to be talking about supervised release and I believe, and we're getting way off topic here, but I believe that you can set a person up for failure. You can send them to prison and when they get out, if there's no programming involved, you've set them up for failure. They don't have any choice. They've got to start dealing drugs because they can't get a job. Nobody will hire them. I'm against that. We need to do something about it. That's a big defect. The Council of State Governments addresses that and I think there's some real progress that can be made there. I don't think that our first...at first blush that we should just send people to prison. Matter of fact, as far as I'm concerned, it's hard to get into prison and you have to reoffend two or three times

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before most judges will even send you there, depending on what your crime is. And you're going to just...we're going to be talking about habitual criminals here after this particular bill and this is all going to come up again. But my point is, I don't...no one here, not Don Kleine, not anybody, none of the prosecutors look forward to coming in to work to see how many they can put to prison, but in some cases you got to do it because it's necessary for public safety. But who wouldn't say that? [LB172]

SENATOR CHAMBERS: The difference is that you said all you're talking about are gun crimes, and I made it clear I'm talking about an entire system where not just gun crimes but every crime I want. I want the system to have no mandatory minimums for anything. [LB172]

MARTY BILEK: That's fine. But what's happened here is you happen to call out the most serious crimes, the crimes that are most important to us as a city. Gun crimes, gang-related crimes, you've picked those out, cut those out and says, these are the ones we want to be most lenient on, these are the ones we want to take the mandatory minimums away from. And now I'm confused. If you hadn't done that, I'd probably be up here testifying the other way. I just don't know why you would try to thwart our efforts to stop gang violence in Omaha by passing something like this. [LB172]

SENATOR CHAMBERS: We're not thwarting your efforts. First of all, you're not... [LB172]

MARTY BILEK: Yes, you are, Senator. [LB172]

SENATOR CHAMBERS: ...you're not drying up the source of guns. I know that as a fact. When you arrest somebody, you take the guns. You try to trace to the origin. But if the spider is not done away with, these people who get these guns, and some of them are kids, they're the spider webs. The spider spins the web. And until you get the spider, you're going to continue having these gunsels. You cannot cure... [LB172]

SENATOR SEILER: Gentlemen, this is a very interesting discussion, but can we move on? [LB172]

SENATOR CHAMBERS: Uh-uh, you shouldn't have had me on this committee. [LB172]

SENATOR SEILER: No, we want you on this committee. [LB172]

SENATOR CHAMBERS: I'll tell you what, I'm going to follow what the Chairman said today, and he's not going to be allowed to forget it. I'm going to let you go because he asked can I stop

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what I'm doing. He is the only white man I've let deter me from what I'm doing. But the next person who comes up here I'm going to show what happens when he asks me to stop and I agreed to stop. So whoever the next one is, get ready. And whoever else is behind him, get ready also. I don't have any more questions. [LB172]

MARTY BILEK: Sorry. Anybody else? I have... [LB172]

SENATOR SEILER: Any other...no. You may step down. [LB172]

SENATOR CHAMBERS: Just a comment. But do you see how even my colleagues say this is interesting but we got to move, because they'll go back to their safe communities? They don't care what I'm talking about. [LB172]

MARTY BILEK: Thank you. [LB172]

SENATOR SEILER: Next witness in opposition. [LB172]

GREG GONZALEZ: Good afternoon, Mr. Chairman, members of the Judiciary Committee. Greg Gonzalez, Omaha police, assistant chief. [LB172]

SENATOR CHAMBERS: Excuse me before you start. I wish you weren't the next one so I might modify what I said. [LB172]

GREG GONZALEZ: (Laugh) All right. Last name, G-o-n-z-a-l-e-z. We talked a little bit today about, you know, what we're trying to do, I guess, statewide and particularly Omaha, and that's for us a big problem--the eradication of illegal firearms and just firearms in general. Two thousand fourteen, just a quick stat: over 1,000 guns taken off the street; over 1,000 victims of gun violence. And really want to make note of violence because I think that's notable in this discussion. A lot of things have been said about committees and rehabilitation, things of that nature, and I do agree with a lot of the points that have been made. The issue for us, as a management tool, is we have to reduce violent crime. So part of that is we have a lot of acts of violence including...that involve firearms. So one thing I would ask you to consider is scour the classifications of firearms, because I hear a lot of delivery of controlled substance, maybe possession of a controlled substance, but maybe there's a little bit of what's codified in law shouldn't be codified under certain IC or ID felonies. That's one thing I'd ask you to look at. For us it's really a matter of taking guns off the street and trying to make the street safer. I believe the men and women of the police department are trying to do that, so I just wanted to touch a little bit on that today. We certainly oppose a couple of the crimes that are involved here. We certainly

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support rehabilitation but I have not seen any reports yet on any of the rehabilitation that would involve offenders of gun violence. So if they're out there, I haven't been part of any committees, I'd love to see some of those efforts. And if anything is gleaned from this committee, I'm certainly confident there will be some rehabilitation involving gun offenders. So I appreciate your time. If you have any questions, I'll absorb them. [LB172]

SENATOR SEILER: I will assure you, we are headed in that direction,... [LB172]

GREG GONZALEZ: All right. [LB172]

SENATOR SEILER: ...at least this committee is. [LB172]

SENATOR CHAMBERS: I should wait until the Chairman...he's in charge and he's got to show it, so I'm going to do like we do in school. Mr. Chairman, may I speak, please? [LB172]

SENATOR SEILER: Yes, sir. [LB172]

SENATOR CHAMBERS: Thank you. In my meeting with the chief, he told me some of the things that are being undertaken now and I will allow him to say, in a public forum, what that is if he chooses. But I was able to say, and I did say it, that we are no longer trying to get to the source of the guns, we're no longer at ground zero. We're approaching a corner. And if we turn that corner, then we're on the way toward reaching what I think we need to reach, which is to get at the source of the guns. And I told the chief that I was not going to disclose anything that we talked about other than that we talked and that kind of statement that I made. But if this had been underway long before now, maybe we wouldn't even be having this conversation. But I'm saying what I'm saying about the bill that I'm talking about because I made it clear that I'm looking at the entire system, the judicial system, not just where gun crimes are involved, children, women, or anybody else, but the way the judicial system operates. It was the Legislature that set those high maximum sentences in the first place so the Legislature can formulate the policy. And that's what I'm trying to influence now. [LB172]

GREG GONZALEZ: I understand. [LB172]

SENATOR CHAMBERS: That's all that I have. [LB172]

SENATOR SEILER: Any other questions? [LB172]

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GREG GONZALEZ: Thank you. [LB172]

SENATOR SEILER: Excuse me, Officer. [LB172]

GREG GONZALEZ: Yes, sir. [LB172]

SENATOR SEILER: I do have something that's bothered me a little bit. How...it seems from the testimony we've heard today that these minimum/maximums have been in effect since the early '90s. Yet your gun use in Omaha and the number of murders in Senator Chambers' area is continuing to rise. I have a little trouble if that's really an effective statute that is helping. And I, in my own mind, when a client of mine used to pick up a gun, he was either using it for defense or he was going out to hurt somebody,... [LB172]

GREG GONZALEZ: Right. [LB172]

SENATOR SEILER: ...and he didn't care what the statutes were until he got caught. Then he was all worried about the statutes. Can you give me some rationalization? [LB172]

GREG GONZALEZ: Well, certainly, you know, there are consequences, obviously, for being a gun offender and committing violent acts, and I think it's been mentioned before. I think everybody probably understands that. I will tell you that as far as gun offenders are concerned in that respect and the disparity of crimes, it's not just the state obviously that prosecutes gun offenders. The federal government does as well. We're doing our best, obviously, to combat gun crime, and when you look at those numbers, we actually look a lot more at also, as well, especially for offenders involving narcotics, is really scrutinizing what's codified in law for rehabilitative efforts. So it's easy, like we mentioned before, to put folks behind bars. We believe definitely there needs to be consequences. There are a lot of different variables that involve crime, as you know. There are ebbs and flows. And so there's a lot of good work. We have a lot more task forces. We're tracing firearms. There's a lot of good efforts and collaboration being done and I think Senator Chambers touched on that. But crimes, it ebbs and flows, like I mentioned: homicide rates do, felony assaults do, firearms do. But we have to develop a plan to really tackle the problem of where the guns are coming from, and I think you're doing that. Maybe a little bit behind the curve in some efforts, but, like anything else, we're doing our best. And so it may be reduced. Violent crime is down currently. So, you know, as we start to really address some of them other issues, especially rehabilitative efforts, and really what drives a lot of these gun offenders and that's exactly why I mentioned it earlier. We know that a lot of individuals that are selling narcotics, potentially are using narcotics and they're selling because of their addiction. What we need to know a little bit better is why 13-, 14-year-old kids are murdering people in our streets, and that's happening. I've worked homicide and we've had 14-year-old murderers. So

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those are the issues that we need to really develop an understanding of and then develop a plan as we move forward. So that's my two-minute version of my personal opinion, so. [LB172]

SENATOR SEILER: Thank you very much for your input. [LB172]

GREG GONZALEZ: You're welcome. Yeah. [LB172]

SENATOR SEILER: Senators? Anybody else? Thank you. Okay, come on up for opponent. [LB172]

JOHN WELLS: Chairman Seiler, Senators, I'll be very brief because I think most of the points have been hit. And I just want to expand a little bit... [LB172]

SENATOR SEILER: Would you please state your name and spell it? [LB172]

JOHN WELLS: I'm sorry. Sergeant John Wells. I'm president of the Omaha Police Officers Association, J-o-h-n W-e-l-l-s. I don't think that there's any single law that is going to eliminate crime or completely eliminate our violent crime problem. And I understand and completely recognize, having been down here last year and following the news, the monumental task that this committee, not only this committee but the entire Legislature has in cleaning up this corrections mess and finding solutions to a lot of these very serious problems. What at least my concern is with this law, and it specifically relates to firearms but, more importantly the prohibited person law, is--I think, Senator Chambers, you hit on it earlier when you were talking to Don Kleine--that it's a tool in the toolbox. It's not a panacea. It's not the end-all, be-all. It will not end gun violence on its own. But the people I represent, the men and women that make up the Omaha Police Department, it's a tool. And it's a tool to fight that high-level offender that maybe we know is doing shootings or we know that may be responsible for murders. But the people are scared due to retaliation or just don't want to come forward and be a witness that somebody we know is out committing these violent crimes; that one of the few things we can get them with is we stop them on the street in a vehicle and they've got this gun and they're a prohibited person, that that gives us the ability to take that violent person off the street until hopefully we can get somebody to come forward. Or maybe when they see that they're going to get a mandatory minimum and they're going to go away for a number of years, that they then become willing to come forward on this other homicide case. We're not necessarily opposed to looking at all these different aspects in considering changes to the law. I guess in law enforcement what we're really asking for is if we're going to make these changes, that you give us the tools, whether it be extended supervised release and other things like that and beefed up parole and programming in the prison, so we can address some of these underlying issues and we can address the violent crime. And I think that's the primary concern. [LB172]

SENATOR SEILER: Okay. Senator. [LB172]

SENATOR CHAMBERS: We have to take the panoramic view. And whenever you undertake a reform movement, anybody whose habitual way of doing things is going to be disturbed is going to resist it. Change is difficult for people. But despite what's happening in my community, I'm willing to be the point person, for whatever anybody wants to make me that, to trying to alter as much of the system as we can. I am very concerned about the judicial system. I want to give the judges the tools they need to do what they ought to do. And then if they don't, then I do have some things. I cannot make everybody do what ought to be done, but if you know any judges, ask them who they'd least like to have on their case, so to speak. But regardless of what you say or the prosecutors or Mr. Bilek or the mayor or anybody else, I will not be told by somebody how to do my job as a policymaker. I'm going to do it. And if everybody is angered by it, that goes with the job. I'm paid to do that and I'm paid to confront those kind of problems. So I'm sure you believe that a person ought to give an honest day's work for the pay received, but I saw some things that the police union did that were troubling to me. During the election they misstated things about the good time law. They blamed Senator Ashford and I'm the one who got the law. Even when I wrote about it publicly, the police union continued to blame him. I even saw a person hold up a bullet and suggest that Senator Ashford was responsible for giving criminals a free ride and for what was happening in the community, and that was not true. So when I saw the police do that, what little respect I had for them, I had none. They let me know they would say anything, they would do anything for political reasons. So they're politicians like everybody else. And when they behave like politicians, I treat them that way. So I think you have every right to be here and I'm glad that you came because it gives me a chance to tell the one who's representing all those officers that I'm going to do all the things that I said here, that I'm going to try to get with these reform efforts we're putting forth. We cannot look just at arresting people. We have to look at what is going to happen in the prisons, not only to the inmates but to the guards, the psychologists, and all the people who are there, because society is to be protected. They have decided that they're going to take people's freedom as a way to punish them and it's our job as lawmakers to make sure that that is done, nevertheless, in a way that's humane, that's civilized, and that's calculated to achieve the goal that we say corrections should achieve. And if the police think that they should enforce the law based on what the punishment for a crime is, they don't know anything. They're not being trained. They don't know what their job is. If the crime...if the punishment is one day in jail and the police officer's job is to arrest somebody who violates that law and is paid to do it and is sworn to do it, he's the wrongdoer no matter what the punishment is. I don't see why it's of any concern to the police department what the punishment is for any crime. That's my view. So you came and you gave your view, but it has no impact on me. One of these days, I'll have a conversation with you and let you know what kind of things you all could do that would not only have an impact on me but change my attitude toward the police and maybe help you do some things... [LB172]

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JOHN WELLS: I'd be open to a conversation. [LB172]

SENATOR CHAMBERS: ...that you're not able to do now. [LB172]

JOHN WELLS: Senator, I'd be open to a conversation with you at any point. [LB172]

SENATOR CHAMBERS: Well, I'll keep that in mind. But that's all that I have. [LB172]

SENATOR SEILER: I agree with Senator Chambers. I don't quite see when you say it's a--and the officer before you said--it's a tool in your toolbox. It's a tool in their toolbox, not in yours. [LB172]

JOHN WELLS: And we work in partnership together and maybe... [LB172]

SENATOR SEILER: No, I understand that. But as far as delegation of responsibility... [LB172]

JOHN WELLS: Well, and ultimately, ultimately, we're tasked with combating the crime and it's not just simple as point the police in a direction and go arrest somebody and be done with it. I mean there's sort of an art and a science behind police work and we're just as involved in the community in trying to solve a lot of these problems as everybody else, because they're just not as simple as they seem on the surface. But you look at ways of how can we combat or how can we stop the violence, and taking known violent offenders off the street who you know are going out and doing shootings is certainly one of those strategies. [LB172]

SENATOR SEILER: But I wanted to make sure that you understood, we're not repealing those statutes that say you can arrest somebody... [LB172]

JOHN WELLS: I understand that. [LB172]

SENATOR SEILER: ...for possession. [LB172]

JOHN WELLS: And our concern is that the sentences will be greatly reduced because prior to the mandatory minimum being in there, the standard, just when actually I was in the gang unit, we used to follow it anecdotally that somebody may get a year to 18 months for a felony possession charge, and they'd get out very quickly and be right back on the streets. [LB172]

SENATOR SEILER: Okay. Anybody else? Senator. [LB172]

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SENATOR CHAMBERS: May I make a comment? Isn't your problem with the judges then? The laws are adequate without a mandatory minimum. The laws are there. The judge is given the power. You want us to do your job and do the judge's job so the judge does not have to think. We may as well put robots there. There has to be discretion and the discretion is there when we take away all the mandatory minimums. Then the police and everybody else can talk about the judges and say, we think you're being too soft. The prosecutor, as been pointed out, if they think that a sentence is excessively lenient, they can appeal it. That's what they can do. But they seldom do it. But they come down here every time there's a bill such as this. I think a lot of them are lazy and they think that we are pushovers and will do things that are already within the province of others. If you have, as a judge, a 5- to 50-year range for sentencing, isn't that enough leeway to give adequate sentences for what you're talking about? [LB172]

JOHN WELLS: And it can be. But if you're seeing sentences that are consistently on the low end and you get together with the prosecutors and you believe that's light, the only remedy generally is to go to the Legislature and have them address it through statute, because you can't really take away the judges' ability to follow the law. [LB172]

SENATOR CHAMBERS: Then shouldn't you all focus on what the judges are doing, since we gave them the tools that they need? [LB172]

JOHN WELLS: And that's certainly part of it, Senator. But again, the only way to really remedy that is through a statutory change, which is the Legislature's domain. [LB172]

SENATOR CHAMBERS: Well, maybe you can get one of those little gunsels to bump me off and tell them, if you kill Chambers, we won't do anything to you and you'll have a free ride. And cops can arrange that if they want to. [LB172]

JOHN WELLS: I don't think that's...that's pretty big hyperbole, Senator. I don't... [LB172]

SENATOR CHAMBERS: Actually, it's not. [LB172]

JOHN WELLS: I think it is. [LB172]

SENATOR CHAMBERS: Okay. [LB172]

JOHN WELLS: It absolutely is. [LB172]

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SENATOR CHAMBERS: That's not a suggestion, by the way. [LB172]

JOHN WELLS: I didn't take it as that. (Laughter) That's why I said it's hyperbole. [LB172]

SENATOR SEILER: Thank you very much, Officer. [LB172]

JOHN WELLS: Thank you. [LB172]

SENATOR SEILER: Any further opposition? Anybody in the neutral? Senator Chambers? [LB172]

SENATOR CHAMBERS: I don't believe in overkill. No, thank you. (Laughter) [LB172]

SENATOR SEILER: Okay. Senator Chambers waives. Senator Chambers, you're open for LB173. [LB173]

SENATOR CHAMBERS: I'm Ernie Chambers. I represent the 11th Legislative District. I, along with a number of other senators, are...we're introducing LB173. We're sponsoring it. I am the one bringing it as the chief sponsor. And I know people have various things to do on this committee but I am speaking for the record. And I have access to all of the senators anyway and this gives the public, whether we have all the senators here or only the Chair and I, they will have the opportunity to get their opinion into the record. So I hope none of those who want to speak for or against would be deterred because it seems that our numbers are diminishing. What they would have to say is just as important now as it would have been otherwise. And since this is the second bill, any questions that may have occurred to somebody on the other bill, I will close and then those questions can be put to me. But I'm trying, maybe not successfully, to not extend the hearing, but I will try on this bill. And this one is less complex because it relates to only one subject. I will read my statement of intent first. "This bill limits the use of the habitual criminal enhancement statute by applying it only to violent crimes, enumerated in subsection (b) on page 2, and certain motor vehicle homicide crimes. The enactment (sic--enhancement) would be applicable if two previous convictions, as well as the current conviction, are for any of the enumerated offenses." And you will see them listed and along with the identification of the offense is the citation to the statute where it can be found. Back to the statement of intent. "The offender would still be subject to a possible sentence of 10 to 60 years, but the minimum term no longer would be mandatory. A mandatory sentence must be served day-for-day with no allowance for good time, which means that there can be no eligibility for parole consideration during a mandatory minimum sentence. Removal of the mandatory minimum allows for judicial discretion in fitting the sentence to the crime and the particular offender." And during that ten-

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year mandatory minimum where there can be no good time and you have to serve it day for day, an inmate has no reason to behave at all. The only thing they can do is put that person in solitary. They cannot add to the sentence because that can only be done if the person commits a prosecutable offense where it goes to court and the judge adds to the sentence. So if a person is serving ten years minimum, then that person need do nothing whatsoever and would not be allowed to participate in programming because you're not close enough to the time when you're going to be let out to participate in certain programming. So everything about this current law that allows the habitual criminal enhancement is counterproductive. I'm going to read the fiscal note, as I did on the other one. This bill...and this is by our Fiscal Analyst's Office: This bill would change habitual criminal provisions. The bill changes the provision so it applies to a conviction of an additional violent crime, instead of just another felony, period. Violent crime is defined in the bill. Departing from the statement, it would be possible for somebody to use these high-tech gadgets and plug in and find out all of the types of felonies, three of which, or the same one three times, can result in being hit with this habitual criminal charge. And no one of them would be worthy of a sentence of ten years. But this enhancement notion is a good tool to coerce a plea bargain. It is not mandatory that a prosecutor charge a person as a habitual criminal even if all three of the crimes are felonies. And if the charge is brought, it's not necessary that it be carried to trial. A plea bargain can be entered. And at the federal level, they're acknowledging the disparity between the position of the defendant and that of the prosecutor. All of the tools, all of the weapons are in the hands of the prosecutor and they coerce a very high number of plea bargains in the federal system, well over 90 percent. Very few of them go to trial. And the judges do not inquire very much into why the plea bargain is arrived at, because upon questioning the defendant may slip and say, well, actually, Your Honor, I didn't commit the crime but my lawyer and the prosecutor told me if I didn't plead guilty then I could get whatever that humongous sentence would be. The judge doesn't want to hear it. It's convenient for everybody to let even innocent people go to prison, which does happen. And thank goodness for the Innocence Project. It's being demonstrated that even people on death row are actually innocent of the crime for which they were committed...convicted and sentenced. Back to the statement: "This bill could reduce the state prison inmate population because it reduces the number of offenses under which the habitual criminal provisions would apply. The Department of Correctional Services (DCS) estimates that this bill could reduce the inmate population by an average of 15 inmates per day in FY 2016 (saving approximately \$106,860) and 31 inmates per day in FY 2017 (saving approximately \$220,844). The FY14 per diem for an individual inmate was \$7,124 per year. This is the cost for food, medical care, inmate wages, clothing, cleaning supplies, food service supplies, cell and dorm supplies, other supplies, and transportation. As of December 31, 2014, the inmate population was 159 percent of design capacity." The year previously, "On December 31, 2013, the inmate population was 153 percent of design capacity." Then there is a note provided by the Department of Correctional Services and I want to read, as I did on the other bill, what they put in writing themselves about this bill: LB173 proposes amending Section 29-2221 to limit the habitual criminal penalty enhancement to individuals convicted of a violent

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offense who have served at least two prior prison terms for violent offenses. Violent offense in the bill is defined as murder, manslaughter, first-degree assault, kidnapping, first-degree sexual assault, first-degree child sexual assault, robbery and motor vehicle homicide while under the influence. The bill also removes the mandatory minimum penalty from the habitual criminal penalty enhancement. These proposed changes narrow the pool of offenders eligible to be deemed a habitual criminal and allow inmates to begin accruing good time credits in accordance with Section 83-1,107 upon admission, rather than after first serving the current 10- or 25-year mandatory minimum for the habitual felon enhancement. During FY 2014, only three newly admitted inmates met the new violent offense criteria outlined in LB173. In contrast, 22 habitual criminals were admitted in FY 2014 under the existing definition. The decrease in admissions, coupled with the decrease in expected length of stay, is predicted to reduce the institutional population by an average of 15 inmates per day in FY 2016, saving approximately \$106,860, and 31 inmates per day in FY 2017, saving approximately \$220,844. This bill in no way can be deemed soft on crime. First of all, there are way too many offenses which are designated felonies. The consequences of being convicted of a felony are catastrophic if you're young or if you're poor, if you don't have education. And some things are felonies such as, and I've mentioned it, giving false information to obtain a financial instrument, which could be a credit card, a debit card, or things such as that. And if you're young and do it and they decide to charge you with a felony, it has no minimum. So even if you don't do time, you've got that felony. And when you apply for a job, if you try to get in the military, if you try to get certain federal grants that are available to people, you're out in the cold. This proliferation of offenses is the Legislature's doing. Nobody created these offenses and designated them felonies other than the Legislature. When I was fighting against making certain shoplifting offenses felonies or putting all of these different shoplifting events or fraudulent activities, add them together to make a more serious offense, I was opposed to that. But they, nevertheless, did it. And now we have all of these miscellaneous crimes without rhyme or reason. And anybody looking at all of those different kind of felonies would wonder why are they here. There would come a period when some particular industry would have suffered some kind of crime and they would come to the Legislature and they could have that particular act made a felony, even though it would be too late to help them. There are some misdemeanors, and I was able to make this point when we were talking about a gun bill, because if you're convicted of a felony, any felony, you cannot get a concealed weapon permit. So I pointed out that when you put restrictions like that...and I'm against the proliferation of guns. I'm against concealed weapons, period. But nevertheless, if you're going to have a law like that, there should be some rational relationship between what you're trying to achieve and the act that you're prohibiting. There are misdemeanors which carry no minimum. Class IV felonies carry no minimums. Many of the Class IV felonies are nonviolent. There are violent misdemeanors which carry no minimum, and they're misdemeanors and you can get a license to carry a concealed weapon. But you, who committed the violent act, would be more likely, if you can determine it on the basis of what you've done in the past, more likely to be a danger with the concealed weapon than somebody who's shown you already he or

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she is going to use a pencil and a piece of paper to try to trick somebody, not walk in and put a gun on them and say, give it to me, or hit somebody upside the head or punch them in the mouth. But the Legislature is not careful. The Legislature does what national organizations will tell them to do, like the NRA, to make it seem like they're reasonable. They'll say, we'll put in a requirement that anybody convicted of a felony cannot carry a concealed weapon. They don't know all the laws in all of the states. They don't realize that some people convicted of felonies are less of a threat to commit a violent act than those who committed violent misdemeanors and can get a license to carry a concealed weapon because of the way the Legislature named that particular conduct. With this particular thing that I'm bringing, to make it as simple as I can, the only way that enhancement could be invoked, whether the prosecutor carries it to a trial or not, would be based on three felonies which were violent. All three would have to be violent. None of the nonviolent felonies would allow for the enhancement. When the enhancement requirement is met--namely, three felonies--the range of 10-year minimum to 60, or 25-year minimum to 60 in certain instances, that range would still be there and the judge could sentence that way. Prosecutors could still use the threat of the habitual criminal charge to coerce plea bargains. And here's what needs to be kept in mind. Plea bargaining has become an essential tool that prosecutors use, and they say we need that. But they don't want to give the prisons the management tool they need, which is good time, to manage the prison and keep everybody more safe than they would be without that good time. So the prosecutors do not always charge a person who has committed three felonies as a habitual criminal, and those who are honest will say that, based on the types of felonies, that charge would not even be appropriate. When they do bring it, a lot of times they don't expect it to go to trial. They expect a plea bargain. So I want you to keep that in mind when they come up here and tell you that passing this bill would end the republic as we know it, western civilization west of the Mississippi would be a thing of the past. And when you're old you'll look back on it with nostalgia and say, if only they hadn't passed that bill saying that before you can have habitual criminal enhancement they have to be three felonies; if it hadn't been for that we would still have superhighways, we would have Warren Buffett's two railroads crisscrossing this part of the country, we would still be raising cattle, we would still be raising hogs, we would still...some people trying to kill off all the mountain lions. Others want to poison all the little prairie dogs. All of that is gone. But I'm here to tell you that despite what they say, that is not going to happen. I don't think any law is going to impact any people who commit crimes except those who are not likely to go to jail in the first place. The white-collar criminals who reckon in advance what is likely to be the consequence if I insider trade, if I do these various things that are called white-collar crimes that will cause the collapse of the finance industry, they're not going to go to jail. But if they think they will then they won't do it. But as one of the representatives of law enforcement pointed out, these people are not going to think about what the penalty is before they pick up a gun and do something. Maybe the Chairman said that. That's what they want to do and that's what they're going to do. And that's why they make crimes of passion less culpable than premeditated crimes, because when you're under the influence of that emotional distress, your brain, the part of it that controls your actions,

has been pushed aside and impulsively you do something. You did the act and you're going to be punished, but not like the person who coldly and calculatedly planned this out and then deliberately carried it out. One thing, then I'll stop. There was a prosecutor from out west. He was either in Kearney County or one other county out there, and he would come down here and speak for the death penalty and against repealing it. But when a man in his bailiwick took a high-powered rifle and, because he had gotten a divorce several years prior and it was an ugly divorce and he was still upset, he went to his wife's house and waylaid her and shot her dead with a high-powered rifle, then he went home and changed cars and thought about it, maybe had a hamburger, got in his car and drove to another county and waylaid the lawyer as he came out of his office and shot him, dead too, he was put on trial first for his wife's murder and they let him plead so that he'd get the life sentence. This prosecutor who wanted to keep the death penalty let this guy, who had now...who was a mass murderer, serial murderer, plead guilty so that he wouldn't face the death penalty. He's serving a life sentence when the trial for the second murder comes up, and that same prosecutor said, we'll take the death penalty off the table if you'll plead guilty. And that's the way these prosecutors do. They come down here, "death penalty everywhere but not in my county." And there were a lot of people who thought that was a very atrocious double murder because of the way it was carried out, the length of time that had passed between the precipitating incident, namely, the divorce, not that it would have been justified at any time. But not much time had passed that he couldn't say he did it under any kind of spur-of-the-moment action. So I think we, as policymakers who have the opportunity to think, reflect, and consider what would be in the best interest of civilizing this society, advancing the maturity of the society and eschewing violence, should do so. And the state should be the example. But when you have sworn public officials saying one thing and doing another, then it creates cynicism. So I want you to listen to the prosecutors carefully but take it with a grain of salt. And I will document, not from what I'm speculating. I collect articles. I'll show you the articles in newspapers, over which I have no control, and I did not change what is in those articles. Now if you have any questions that you'd like to ask me, I will answer. [LB173]

SENATOR SEILER: Senator Pansing Brooks. [LB173]

SENATOR PANSING BROOKS: Thank you, Senator Seiler. Senator Chambers, I guess I was just wondering, does an intervening nonviolent felony change anything? Is it just three cumulative violent felonies? [LB173]

SENATOR CHAMBERS: Are you... [LB173]

SENATOR PANSING BROOKS: I'm talking about if you have to have three violent felonies, right, to... [LB173]

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SENATOR CHAMBERS: Yes. [LB173]

SENATOR PANSING BROOKS: So what if there were an intervening? What if it was a violent felony, then a nonviolent felony, and then two violent felonies? Does that... [LB173]

SENATOR CHAMBERS: If the third felony... [LB173]

SENATOR PANSING BROOKS: Does it have to be in a row? Do the three violent felonies have to be sequential? [LB173]

SENATOR CHAMBERS: Now that's interesting. But if it...it says if the third felony, if the third offense followed two previous felonies,... [LB173]

SENATOR PANSING BROOKS: Right. That's why I was... [LB173]

SENATOR CHAMBERS: ...then they could enhance. So even if they were intermittent, then the three felonies would be there. But... [LB173]

SENATOR PANSING BROOKS: I just wondered whether or not that specifically allowed an exception. [LB173]

SENATOR CHAMBERS: Yeah, I don't look for them to do that much using, because they don't that much now, the... [LB173]

SENATOR PANSING BROOKS: Oh, that. [LB173]

SENATOR CHAMBERS: ...this provision because the Department of Corrections, in their statement, mentioned how few would be there under this definition, and then there were 22 under the current law. [LB173]

SENATOR PANSING BROOKS: Okay. [LB173]

SENATOR CHAMBERS: So it's not being used as much as it could be used. And the problem that I have with that, when I've read about it being invoked, I knew of cases far more serious where if they were going to invoke it and carry it through, it should have been, but it wasn't. So sometimes if a guy will agree to be a snitch or, naturally, if you plead guilty, then it's not going to be used. The aim is not necessarily to use it in terms of... [LB173]

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SENATOR PANSING BROOKS: A hammer. [LB173]

SENATOR CHAMBERS: ...putting somebody away but to use it as a hammer. And you'll have a chance to talk to the prosecutors and they can tell you if I'm, in their opinion, not accurately reflecting the way things are done. And I think when they speak you should take what they say based on your experience and knowledge of human nature for what it might be worth to you and not base your reaction to it on anything I say here. But if they say anything that contradicts what I've said, then I'll go through files and get the articles to support what I'm saying and get some statements from judges and others who point out how this particular type of action is utilized. [LB173]

SENATOR PANSING BROOKS: Thank you. [LB173]

SENATOR SEILER: I believe you used the term "prior," not "consecutive," in your statute. [LB173]

SENATOR CHAMBERS: Oh, say it again. [LB173]

SENATOR SEILER: I think you used the term "prior,"... [LB173]

SENATOR CHAMBERS: Yes. [LB173]

SENATOR PANSING BROOKS: Oh, not consecutive. [LB173]

SENATOR SEILER: ...so it doesn't...it's not consecutive. [LB173]

SENATOR PANSING BROOKS: Okay. Thank you. [LB173]

SENATOR SEILER: I have nothing. Senator Williams. [LB173]

SENATOR WILLIAMS: Thank you, Senator Seiler. Senator Chambers, I just have a couple of questions. [LB173]

SENATOR CHAMBERS: He wasn't looking. It's good you didn't see that. [LB173]

SENATOR WILLIAMS: That's right. Well,... [LB173]

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SENATOR CHAMBERS: Okay. [LB173]

SENATOR WILLIAMS: You didn't wear your purple shirt for me today though, but that's okay. You talked about taking a panoramic view and what creating good public policy... [LB173]

SENATOR CHAMBERS: Yes. [LB173]

SENATOR WILLIAMS: ...means in our discussions here. [LB173]

SENATOR CHAMBERS: Yes. [LB173]

SENATOR WILLIAMS: Tell me how this, both LB172 and LB173--this question is covering them both--how do they square with LB605 and what we're going to be looking at from the report of CSG? [LB173]

SENATOR CHAMBERS: Well, I did not take those things into specific consideration because I don't know what will happen there. So I'm bringing what I think is going to be effective. And I'm interested, as I stated, in the integrity of the judicial system. I don't want to give prosecutors a tool that is not going to be used in the way it should be if you like it at all. But I've been against all those kind of things. I was against the enhancement because, before, they didn't call it career criminal. They said it's a deterrent, that it's to deter others from behaving in this manner. And the first senator to bring a bill like that was Douglas Bereuter, who subsequently became a member of the U.S. Congress. But one good thing he did for legislators, he got a provision in the Internal Revenue Code where senators could claim certain expenses against the income taxes they would pay. So he redeemed himself. But I argued that Mr. or Ms. A should not be punished harshly solely for the purpose of preventing Mr. B and Mr. C...Ms. C from doing something. They weren't talking about career criminals. Some people call it three strikes and you're out. And it was during that time when everybody was saying, get tough on crime. And the only way they could do it, because they had as many felonies as you could shake a stick at, so they said what we're going to do, if no one of these other felonies, and they don't have to be violent, would merit a 10- to 60-year sentence, we're punishing for this felony. And this felony, even if alone, wouldn't carry anywhere near that stiff a sentence. We're going to contrive a way to put them all together and say we're not punishing you for the first felony, we're not punishing you for the second felony, we're not really punishing you for the third felony. But the third felony triggers this machinery that goes into effect and says, whenever you commit three felonies, whatever they consist of, then that third felony in effect is worthy of a 10- to 60-year sentence, with a mandatory 10-year sentence or a mandatory 25-year sentence in other instances. And I don't want any of the mandatory sentences, period. These two items were in separate bills because

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some people would view the habitual sentence charge differently from merely removing mandatory minimums from other felonies. [LB173]

SENATOR WILLIAMS: So when we look from a public policy standpoint of what we are going to be looking at with overall prison reform and corrections reform, you would like to look at these two things separately from what will be a combined bill of some kind looking at the whole prison system. [LB173]

SENATOR CHAMBERS: I didn't want it to be a part of any other bill because somebody else would control those. But we have to look at what happens at the front end too. Other people are talking about programming, intensive supervision, the things that you need to do after people are there. I want to look at what happens at the time of a committal or admission, what is it that puts them there in the first place and for how long. First thing I want to do is get rid of all the mandatory minimums. And if you find judges who are skewing the sentences too much, then pressure can be brought to bear on those judges to explain why they are doing that. And the media know how to do that. Maybe they like what the judge is doing. Maybe they want what he or she is doing to become an example. But once the spotlight is put on a judge...I think it may have been Judge Frankfurter who said it, the best antiseptic for judicial conduct is sunlight. In other words, publicize what they're doing, not necessarily bringing an ethics complaint but bring it to the light and let people see it. And if judges become aware of what is going on, and they do have classes and seminars where they talk about these things, I believe we can see a difference. And as quiet as it's kept, as they used to say on the street, there are judges who want to get rid of the mandatory minimums. And part of it, not only does it restrict their discretion in a general way, but there are people they have to sentence to that mandatory minimum which is far more harsh than they think should be applied to the crime committed that they are sentencing. [LB173]

SENATOR WILLIAMS: So you have moved to my second question dealing with the judicial system and... [LB173]

SENATOR CHAMBERS: Uh-huh. [LB173]

SENATOR WILLIAMS: ...discussions that we've had off the mike about what we can do there. [LB173]

SENATOR CHAMBERS: Uh-huh. [LB173]

SENATOR WILLIAMS: I get some feeling from you on this, as you are having your conversations with some other witnesses, that by putting the burden on the judicial system you

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have a plan of setting them up to fail. Would you feel that there's any...should I feel that way?
[LB173]

SENATOR CHAMBERS: No. You should feel that they're intelligent enough to realize that the game has changed. And now they're not going to be able to hide behind anything the Legislature did. They're going to be right there with all of the tools that they need from A to Z. And if they choose not to apply or use the tools properly, then the focus is going to be on them. If the judge gives what is considered by some people in a certain area of the state to be too low a sentence, then it's up to him to say why he or she imposed that sentence. And minimums have nothing to do with any of that. They skew the system. We would not have had the scandals, the biggest aspects of them, if we had no mandatory minimums. They were ignoring the requirement that you not allow good time until the mandatory minimum had been served. [LB173]

SENATOR WILLIAMS: For the record, would you agree to watch them like a hawk? [LB173]

SENATOR CHAMBERS: I will watch them like a hawk would watch another hawk who's invading his or her territory. [LB173]

SENATOR WILLIAMS: Thank you, Senator Chambers. [LB173]

SENATOR SEILER: Seeing nothing further, you may step down. [LB173]

SENATOR CHAMBERS: Thank you. [LB173]

SENATOR SEILER: First proponent. [LB173]

ALAN PETERSON: (Exhibit 1) Senator Seiler, members of Judiciary who are still here, and thank you for your patience and work today. I handed in a written letter, a couple pages, single spaced, of ACLU of Nebraska's views--Alan Peterson, by the way, P-e-t-e-r-s-o-n--and I don't need to go over that and I don't need to go over the details of this bill. I don't need to repeat what Senator Chambers has said eloquently. What I want to tell you, though, is that booklet I handed out a while ago on LB172 also covers the same history which is behind this business of "three strikes" laws. And they arose at about the same time, as I mentioned before, perhaps in part politically favorable vote getting. But that's not all of it. I know there's more history. But it's really laid out as to both these two concepts, both mandatory minimums and this breed of mandatory minimum called the "three strikes" law. What I want to do with--got plenty of time for what I want to do--is simply tell you that maybe in almost 50 years of being an advocate, there's been a few times where something that I thought I was saying was so truthful that

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unintentionally my voice would break. And I heard a witness earlier today, I couldn't hear their spelling, I thought he said Harral (phonetically), the black gentleman who sat up front and spoke briefly... [LB173]

SENATOR PANSING BROOKS: Harris. [LB173]

ALAN PETERSON: ...and what I want to...pardon? [LB173]

SENATOR PANSING BROOKS: Harris. Mr. Harris. [LB173]

ALAN PETERSON: Harris. What I want to do is refer you to the written stuff that I've handed in and then remind you of what ought to be an echo of that gentleman's statement. He said, referring to criminal justice, justice is not just punishment. And he talked about the circles of pain and trouble that every crime and punishment situation causes. What I like is that this committee deals with that big picture every time you have a bill that's on point. These bills are really on point. These are part of front-end justice and the circles from whatever decisions are made do affect all of us--victims' families, perpetrators' families, of course the victims. That was great and I'd hope you would keep that thought in your minds as you deal with these bills and all the stuff that you have come before you. Thank you very much. [LB173]

SENATOR SEILER: Questions? Thank you. Next proponent. [LB173]

DAVE LARSON: Senators, my name is Dave Larson. I live here in Lincoln. As I read this bill, I was going to say something more specific, but I think what I like about it, it narrows down the definition of a habitual criminal so there's going to be, as Senator Chambers says, fewer people in prison. It's going to reduce the population. And what I want to focus on here is who will be likely to get out of prison quicker. One of the worst experiences I've had is go to the visiting room at NSP and see all the mothers bring their kids in to visit their fathers, either their little babies or their 14-, 15-year-olds. Those kids are growing up without their fathers. One of the results of this bill will be that fewer of those families are going to have to go in and see their fathers in those formative years because those fathers are not going to be in prison as long as with what it was like before. So I speak very strongly in favor of this and I hope it passes. [LB173]

SENATOR SEILER: Any questions? Seeing none, thank you. Next proponent. [LB173]

JERRY SOUCIE: Mr. Chairman, members of the committee, my name is Jerry Soucie, S-o-u-c-i-e. I appear here on behalf of myself and the Nebraska Criminal Defense Attorneys Association.

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In my career, I think I've represented hundreds, probably over a thousand individuals charged with serious felony offenses, many of them being violent offenses. You're not going to get any dispute from me that somebody that commits three violent offenses in his career represents a danger to society. And whatever the reasons for that motivation or his or her behavior, I think society has a legitimate reason to say that person just needs to be segregated from the rest of society for a significant period of time for danger alone. But what this bill does is it addresses another whole group. When the Department of Correctional Services' fiasco first broke, one of the individuals in the Omaha World-Herald on the front page of the story is the poster child of somebody who shouldn't have got out, and they identified him as an habitual criminal. What you need to know and what the Omaha World-Herald didn't cover was the fact that that individual was an habitual criminal based on a forgery conviction, which after he was sentenced to whatever it was, 10 to 15, 10 to 20 years, the Legislature reduced that offense to a misdemeanor. And yet, because of the timing upon which that event occurred, he was still doing time as an habitual criminal. And yet the crime for which he was convicted and became the poster child would have gotten him less than a year had it been in effect at the time he was sentenced. Another woman, who is being pursued by the Attorney General's Office to come and owe them some time, doesn't have any violent offenses. She has a lot of forgeries, I'll give you that, but most of those prior offenses that she had have since also been reduced to misdemeanors. So there's a huge category of people out there who I think you need to look at the fairness of the process and it just doesn't exist when you can tag someone with a mandatory minimum of ten. And you know, if you want truth in sentencing, if you give somebody a ten-year sentence at \$30,000 a year, you're saying we need to protect this forger who wrote a \$500 bad check from the rest of society to the tune of, what, \$3 million for incarceration? I don't think that makes fiscal sense. I don't think it makes common sense. And I would ask you to pass this bill. Thank you. [LB173]

SENATOR SEILER: Any further questions? Seeing none, thank you, Mr. Soucie. [LB173]

JERRY SOUCIE: Thank you. [LB173]

SENATOR SEILER: Next proponent. [LB173]

THOMAS STRIGENZ: Good afternoon, Senators. Thomas P. Strigenz, S-t-r-i-g-e-n-z, appearing on behalf of the Sarpy County Public Defender's Office. I am the Sarpy County Public Defender. This bill is brilliant, and it is brilliant, and the reason it's brilliant is because it literally touches on the two things that are very, very important, you know, one of which...and I know Mr. Soucie talked on behalf of the NCDAA and I'm also involved in that organization and we talk about public policy. That's your job, is to do public policy. But that's one-half of this bill does talk about public policy, is what crimes are worth ten years in prison. And you know, I put it out

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to our membership, our (inaudible) and I've never seen my e-mail come in fast about all the examples we could give about forgeries and bad checks and people doing the, you know, small, what we consider nonviolent, crimes getting some major time. The other side of it, I mean the public policy is what you determine those crimes should be. The other side of it, though, is the habitual criminal statutes are an intimidation and bully statute, and it is. And the reason it is, is because it's unfairly and discriminatorily applied. I mean it is discretionary with the county attorney when they apply it, and they apply it if they don't like you, and I'm just telling you. That's from the...and again, it's not even the head of the county attorney's office so much. You deal with a private attorney or a county attorney in the lower levels and they're saying you've got to...we want a conviction on this case and we're going to do habitual on you. And that's why I don't like the habitual criminal statutes. I mean, if it was uniformly applied, I guess that's the rules of the game and that's the rules of the game we got to play it by. But it's so discretionary in how it's given. And again, it's a bully tactic, and it is. I've seen it applied that way. And again, my peers also look at that, that way. So you know, the public policy is, what charges do you want to do? You know again, I think Mr. Soucie said it absolutely correctly. Nobody is going to get up here and say three violent people, you know, don't deserve to do time. But there's other charges that don't. But again, taking the mandatory minimum away absolutely would take that bully side of it away, and we strongly support this and hope that you do too. [LB173]

SENATOR SEILER: Questions? [LB173]

THOMAS STRIGENZ: Thank you. [LB173]

SENATOR SEILER: Seeing none, thank you. [LB173]

THOMAS STRIGENZ: Thank you. [LB173]

SENATOR SEILER: Next proponent. [LB173]

SARAH NEWELL: Chairman Seiler, members of the committee, Sarah Newell, N-e-w-e-l-l, on behalf of the Nebraska Commission on Public Advocacy. I won't belabor but just to echo, I haven't been practicing that long, but in the ten years that I have been practicing I can't think of a single case where the habitual criminal enhancement has either been filed or threatened, whether that be at the county level or working with the AG's Office, where it would have qualified under this bill. And most of the times that it was threatened or filed, usually it was just threatened for forgery cases or a few drug cases. And they were also typically cases where I had a defense, where there was something to talk about but, you know, it was used as a hammer to say, well, if you want to...if you really want to take it to trial then you'll have to deal with that ten-year mandatory minimum risk. And that is a really heavy thing for people to weigh as their options.

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And you know, I am sensitive to Senator Chambers' concerns, as a defense attorney who's tried to, you know, the feel...a lot of times people feel like defense attorneys are telling them they have to plead or whatever. And I try very hard not to do that. But ten-year mandatory minimum, that's a real thing that people have to consider. And it's really hard to say, do you want to risk that or do you want to risk going to trial and pleading your case? And I think the fuzzy noise happened the last time I testified and I think it's a sign I'm supposed to stop, if there's any questions. [LB173]

SENATOR SEILER: Any questions? Thank you very much. [LB173]

SARAH NEWELL: All right. Thank you. [LB173]

SENATOR SEILER: Any further proponents? [LB173]

JOE NIGRO: Joe Nigro, Lancaster County Public Defender. I believe that the habitual criminal statutes were originally created to take people off the streets who were truly a menace to society. And the problem with there being no restrictions on the type of felonies that can be used to make someone eligible for habitual criminal is it winds up resulting in overkill. And I certainly have seen people who have gone to prison on habitual criminal sentences for property crimes, for drug offenses, small...possession of small amounts, and I think perhaps even residue. You know, residue is when the substance is already used up. It's not even usable. You just have somebody who has a problem and now you're going to put them in prison for ten years? I mean I would urge you to look at trying to deal with the fact that that's even a crime or certainly that it shouldn't be a felony, as far as the residue. But when people are facing the possibility of ten years before they can even earn good time, it's just...it's too harsh. And I think Senator Chambers, his idea here is a wise one to try and rein in when the habitual criminal can be used and truly focus on people who are dangerous. And it's not that people who commit some of these property crimes aren't a problem. But again, I think it's overkill. And when you look at the math, it winds up for...because this again is a mandatory minimum, when you look at the math of how much time people have to do, it winds up, for some of these nonviolent offenses, they're there unnecessarily long. And I have seen people, because the judge felt bad about this sentence being so long, giving somebody ten to ten. Well, what that means is you've got somebody who has a history of violent or a history of felony behavior and now they're going to get out as soon as they're eligible. So again, they are not going to come out under supervision. In all of these ideas I think we want to try and have more people come out under supervised release. It will ultimately make the community safer, which is I think the goal all of us want. I mean obviously I'm trying to protect my clients, but I live here too. And so I would urge you to keep that in mind. But I think that the judge can still be harsh with someone. It just limits this. And this certainly...I used the word I think on your last bill of cudgel or hammer for the mandatory minimum is ICs and IDs. Well, a habitual criminal is like having a boulder held over your head. And I can tell you, I

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can guarantee you, I've had clients who perhaps had something that might have been worth talking about at a trial and I've counseled them that you can't risk this because you're going to sit there for ten years before you earn any good time. And it's...it boxes our clients in. And it is used as a threat frequently and I think this would put us in a more reasonable situation. Any questions? [LB173]

SENATOR SEILER: Seeing none, thank you for your testimony. [LB173]

JOE NIGRO: Thank you. [LB173]

SENATOR SEILER: Next proponent. (See also Exhibit 2.) Opponent. [LB173]

JOE KELLY: I'm Joe Kelly, K-e-l-l-y. I am the Lancaster County Attorney. I'm here on behalf of my own office and the Nebraska County Attorneys Association in opposition to LB173. One provision that I would point out, before making some comments about habitual criminal in general, is this. LB173 also takes away for those crimes that remain as potential habitual criminal crimes the mandatory minimum language of the bottom 10, so that the 10, under for the most violent criminal now charged with a violent crime with two violent priors, who is given 10 on the bottom and 60 on the top, would be eligible for parole in 5. They would get good time under this provision for the bottom, for the ten. That is a change in addition to the crimes that have been narrowed in this bill. We believe that the statute in its present form is a necessary and appropriate sanction for sentencing continuum in our criminal justice system. You talk about the hammer and there's a lot of discussion about that, and it is true that the highest, most severe penalty in your Criminal Code for which any particular criminal act might be punished will always be a point of discussion between defense and prosecution when they're trying to arrive at a plea agreement. And if your goal is to take away any of the discussions about that, the only alternative to plea agreements is really to say, by statute or otherwise, county attorney, your job is to file against every crime for which you see probable cause and to proceed without any pleas because plea bargaining is bad. And the reality is it's done for a myriad of reasons. I think the most important reason--when the factual basis this doesn't...when the facts don't pan out to support the crime. The last thing I'll say with this limited time is in Lancaster County, I looked at my numbers: 2012 we filed 8 cases with the habitual criminal; 2013, 13; 2014, 6. So, yes, we do use it sparingly in this county. And I know the flip side argument is, well, that means a lot of people didn't have it filed against them. That's true and that's part of prosecution. My time is up. I'll submit to questions. [LB173]

SENATOR SEILER: No, you still got some time. [LB173]

JOE KELLY: And I think I wanted to make...okay. Sorry. [LB173]

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SENATOR SEILER: Go ahead, finish your test... [LB173]

JOE KELLY: One last point: When we're dealing with the typical antisocial career criminal, he or she, and let's just say he, is likely to take what he pleases and do what he pleases. That means that person may be a career or a property criminal today and a violent criminal tomorrow and a property criminal the next day. So there's no real way to put people in categories. As we know from all of the work that's been done on the CSG project, just because somebody committed crime A does not necessarily mean they're going to be more likely to commit that crime if they recidivate. I'll stop there. [LB173]

SENATOR SEILER: Any questions? Senator Williams. [LB173]

SENATOR WILLIAMS: First of all, Mr. Kelly, were there other points that you wanted to make? [LB173]

JOE KELLY: I'm sure we'll get to them. I mean thank you, but no. [LB173]

SENATOR WILLIAMS: Okay. I just have a question, as one of the nonpracticing attorneys around here. We talk about, I think the statistic that gets thrown around, is there's somewhere around 90 percent of the cases that we arrive at a plea bargain. [LB173]

JOE KELLY: I guess, yeah. [LB173]

SENATOR WILLIAMS: Give or take. [LB173]

JOE KELLY: Sure. [LB173]

SENATOR WILLIAMS: In your experience in doing this for a long time, is the result of a plea bargain, in your judgment, a fair result for the state and a fair result for the criminal? [LB173]

JOE KELLY: Yes, because two sides are bargaining and a defendant gives up the right to a trial and the state gives up the right for a conviction for some crimes or for a potential penalty of a crime that's taken off the table. So it's no different than any other contracting and bargaining. Two sides are trying to find what's best in their interests and the defendant is rightfully looking out for himself, what is best for me. [LB173]

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SENATOR WILLIAMS: Well, a plea bargain shouldn't have a negative connotation generally. [LB173]

JOE KELLY: No, and as I said, there's only one alternative and that's try everything. [LB173]

SENATOR WILLIAMS: Yeah. Thank you. [LB173]

SENATOR SEILER: Senator Chambers. [LB173]

SENATOR CHAMBERS: Mr. Kelly, you've heard me make some general comments about the Lancaster County Attorney's Office. Well, my questions are going to be related to this bill so you can exhale, okay? Exhale. [LB173]

JOE KELLY: Exhale. [LB173]

SENATOR CHAMBERS: Okay. Now you say, what value would there be to plea bargaining if you took away the ten-year minimum? But if 90 percent of the cases are resolved by plea bargain, they don't all have a mandatory minimum, do they? In other words, you plea bargain a lot of cases that don't have a mandatory minimum. [LB173]

JOE KELLY: Sure. Yeah. [LB173]

SENATOR CHAMBERS: Right? And in effect, if we look at the habitual criminal statute, we are saying that that third felony, whatever it is, is worthy of a 10- to 60-year sentence. That's what we're really saying, because we're not trying them for the first one, we're not trying them for the second, and we're not punishing them for either one of those that preceded, are we? [LB173]

JOE KELLY: Correct. [LB173]

SENATOR CHAMBERS: We can't do that. [LB173]

JOE KELLY: No. [LB173]

SENATOR CHAMBERS: We can't. Okay. So we're saying that this third felony, whatever it is, is worthy of a 10-year minimum, 60-year maximum. And there are not many felonies that have that kind of a sentence, are there, that you can think of? [LB173]

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JOE KELLY: Well,... [LB173]

SENATOR CHAMBERS: No, there are not. [LB173]

JOE KELLY: Well, 20...anything that carries any Class II is up to 50. Is that what you meant?
No. [LB173]

SENATOR CHAMBERS: Is there? The IC and ID where we took away the mandatory...
[LB173]

JOE KELLY: Right. [LB173]

SENATOR CHAMBERS: ...minimum, in one case it was five,... [LB173]

JOE KELLY: Right, mandatory five. [LB173]

SENATOR CHAMBERS: ...in another case it was three. [LB173]

JOE KELLY: Right. [LB173]

SENATOR CHAMBERS: So you can name me a felony right now that carries a mandatory
minimum of 10 years and a maximum of 60. [LB173]

JOE KELLY: There aren't any. That's unique to the habitual criminal statute. [LB173]

SENATOR CHAMBERS: Okay. And now I want everybody here to understand that we're saying
that third crime is worthy of a punishment which no crime carries right now. And in California,
which couldn't happen in Nebraska, a guy got that life sentence for stealing some Oreo cookies,
because out there, the third offense, it didn't have to be a felony. And he had been shoplifting all
the time. When he stole those Oreo cookies, he got a life sentence. But people say, well, that's
the law. Well, that was the law, but I think it's unjust, and my job is to see that that doesn't
happen here. And the only reason that the prosecutors want this is so it can be a hammer. If they
were interested in justice, they would say, we don't even want you to change the punishment that
would exist for this crime from what it is, standing alone, to one of 10 years to 60 years. Because
you know under the current law a Class IV felony could trigger the habitual sentence charge,
couldn't it? [LB173]

JOE KELLY: Yes. [LB173]

SENATOR CHAMBERS: And there's no way that giving false information to obtain a financial instrument would carry a 10- to 60-year penalty because it's a Class IV felony and there's no minimum at all. That shows how skewed the system is and that's what I wanted my exchange with you to be. All the other stuff I can get you on that in another forum. But in the same way I don't think that there should be a habitual enhancement, you're not here to account for any disagreements we had before and I'm not going to do that, although I made general comments about how prosecutors, your office included, would not prosecute at all certain state employees and officials, and that stands. But on this, I think you have helped me a great deal because you answered forthrightly and honestly. First of all, you admitted that...and it's not really an admission. It's a statement of fact. Over 90 percent of these criminal trial charges will end in plea bargains. I've never said do away with plea bargains. I don't think the criminal justice system could stay. It would fall under its own weight if everyone had to go to trial... [LB173]

JOE KELLY: Sure it would. [LB173]

SENATOR CHAMBERS: Or the other alternative is that you don't charge at all. [LB173]

JOE KELLY: Right. [LB173]

SENATOR CHAMBERS: So plea bargaining is an essential, and I have defended it when some senators wanted to do away with it. I'm not even dealing with that. So I'm not against everything that prosecutors do, but I'm against unfairness. If we were going to have duels, I would say like Aaron Burr and Alexander Hamilton: We can choose our weapons. And pistols were what were chosen and we both take our number of steps and we have our second watching us. Everything is fair unless your gun has bullets and mine doesn't. Then it's not fair. The appearance seems to be fair. You're a lawyer and I'm sure you took contracts when you were going to through law school, didn't you? [LB173]

JOE KELLY: Sure. [LB173]

SENATOR CHAMBERS: Can you remember back far enough to recall what an adhesion contract is? An adhesion contract can be struck down as invalid ab initio--from the beginning--because of the disparity of position between the two people. And there never is bargaining because one's position is so much superior to that of the other. These plea bargains amount to adhesion contracts. It's not like a fair negotiation because the prosecutor has everything. The defendant can only submit, because the prosecutor says I can charge you with habitual and you'll

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get 10 to 60, and you know, I know, and your lawyer knows that in this county you'll lose. And the defendant knows it and will often plead guilty to a crime that he or she didn't even commit. So if we get rid of not the enhancement but allowing any felony, any three to constitute a basis for triggering the habitual criminal statute, that's not hurting the criminal justice system at all. Because if somebody commits three nonviolent felonies, I don't see them as that much a threat. I'd rather they commit nonviolent felonies if they got to commit some. But if I'm facing the same thing if I commit three nonviolent ones, well, the next one I ought to go, instead of just stealing Senator Ebke's purse that has enough in it to put it above a certain amount as a felony, I ought to go over there and sneak up behind her and knock her in the head with a blackjack, so she has no chance of seeing me, and taking her purse and go. And it won't be any worse. It won't be any worse because what you will charge me with is being a habitual criminal. And you'd charge me with that if I just snatched her purse. You'd turn me into somebody who says, if they're going to give me this sentence, I'm going to let them sentence me for a bull instead of a calf. So I want you to see my rationale, even if you don't agree with it. So first of all, you acknowledged that the plea bargains resolve over 90 percent of the cases. You've acknowledged that most of the felonies are...many of them are nonviolent, and none of them will carry a 10, a mandatory 10-year to 60-year sentence. So those are all things that help my argument. And I feel you got the short straw this time, did you, and that's why you had to come here, or did you volunteer? [LB173]

JOE KELLY: Don and I got volunteered. [LB173]

SENATOR CHAMBERS: You volunteered? [LB173]

JOE KELLY: Don and I were both volunteered, I think, when we weren't at the meeting. [LB173]

SENATOR CHAMBERS: Uh-huh. Don said if you don't come with me, I'm going to tell on you, whatever it was. But anyway, that's all that I have. [LB173]

JOE KELLY: Okay. [LB173]

SENATOR SEILER: I have one question. [LB173]

JOE KELLY: Sure. [LB173]

SENATOR SEILER: And I'm just a little bit ahead of Alan, so his memory may be better than mine. But didn't the habitual start out with one felony and three misdemeanors looped together constituted habitual? [LB173]

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JOE KELLY: I don't know. And when somebody said something earlier, I looked at my statute real quick and the sites go clear back to 1920 on the habitual criminal statute. I don't know what it was. [LB173]

SENATOR SEILER: Yeah. It just seemed to me like that years and years ago. [LB173]

JOE KELLY: As long as I've been practicing, it's been three. [LB173]

SENATOR SEILER: Was there, Don? [LB173]

DON KLEINE: I think there was a long, long time ago. [LB173]

SENATOR SEILER: It was a long time ago. [LB173]

JOE KELLY: And I don't think the county attorney...I certainly wouldn't argue with a discussion of whether or not false reporting or whatever the...you know, that was thrown out as should that be part of any of the three used. Well, I don't know. I don't think I've ever seen one and I don't think I care if it's available or not. But in any event, like I said, I think the tough thing for us, we use it sparingly. We have a specific guideline in our office about when it is to be used, how it is to be handled. And six or seven, eight a year is not a lot. We file 1,500 felonies a year, of which 8 or so might have the habitual criminal. [LB173]

SENATOR SEILER: Okay. [LB173]

SENATOR CHAMBERS: Mr. Chairman, for the record,... [LB173]

SENATOR SEILER: Yes, go ahead. [LB173]

SENATOR CHAMBERS: ...Mr. Kelly, you're aware that under the bill there still can be the enhancement but all three have to be felonies. You're aware that if the three are felonies... [LB173]

JOE KELLY: Violent. [LB173]

SENATOR CHAMBERS: ...there can still be the enhancement. [LB173]

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JOE KELLY: Violent felonies. [LB173]

SENATOR CHAMBERS: And you...say it again. [LB173]

JOE KELLY: Violent. [LB173]

SENATOR SEILER: Violent. [LB173]

SENATOR CHAMBERS: Yeah, violent. [LB173]

JOE KELLY: If they're all three violent,... [LB173]

SENATOR CHAMBERS: Right. Right. [LB173]

JOE KELLY: ...but you still...you got five on the...you got a minimum of ten. [LB173]

SENATOR CHAMBERS: But we're taking it a step at a time. If the three, because you...we all, everybody is talking about a menace to society, a criminal, I meant career criminal who is a menace. So the three violent felonies would still allow for the enhancement and the bill takes away the ten-year mandatory minimum. [LB173]

JOE KELLY: Correct. [LB173]

SENATOR CHAMBERS: And you cannot show me a felony where that felony standing alone carries a ten-year minimum. [LB173]

JOE KELLY: Correct. [LB173]

SENATOR CHAMBERS: Okay. So we're not really taking anything away by doing away with the ten-year minimum. You have the range still. [LB173]

JOE KELLY: Well, I think you could get probation. I mean I think...I think you could get probation on a 10 to 20. [LB173]

SENATOR CHAMBERS: Now what judge in Nebraska do you think is going to give somebody probation on a third felony? [LB173]

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JOE KELLY: I don't know. I don't know. I mean but, you know, that was one of...a lot of this is judge based. And one of the contradictions between the first bill we heard today, six and a third, and the next two was that we were talking about giving the judges discretion. And really, that first bill does just the opposite. It ties their hands. [LB173]

SENATOR CHAMBERS: You mean the one where it's one-third of the... [LB173]

JOE KELLY: Yes. [LB173]

SENATOR CHAMBERS: No, it doesn't. It brings about justice not by tying the judges' hands, by setting the policy, which the Legislature can do,... [LB173]

JOE KELLY: Sure. [LB173]

SENATOR CHAMBERS: ...by saying that we're not going to have this thing of defeating a more important desire. That more important one is to ensure that there's a period of managed or supervised release. Letting the judge give a 20 to 20 allows for no supervised release. That's why I keep saying mine is looking at the panorama, taking the panoramic view, looking at the whole, not just individual pieces of it. We don't...I don't think anybody on this committee wants people released, after a good stretch in prison, to get out with no supervision at all, whether it's called managed release, supervised release, or parole. And here's what the federal government is doing. They're cagey. They have no parole. So what they do, they created, out of whole cloth, supervised release, which amounts to parole. You release a person before they serve all that sentence. Without that supervised release, they serve more time. But they finally came to the realization of what penologists told them all along, that if rehabilitation is what you want and you want to equip people, resocialize them, you have to have a period when they leave the prison but where they're still under some kind of supervisory authority. We can't give them parole so we're going to call it supervised release. And Senator Ashford, bless his soul, wanted to have in Nebraska both supervised release and parole. And I say, wait a minute, you can't have both of them; you can have one or the other. [LB173]

JOE KELLY: Uh-huh. [LB173]

SENATOR CHAMBERS: And you're going to have one in one office and one in the other. So the person is released over here, and then parole over here and supervised release over... [LB173]

JOE KELLY: It would be a hand-off. [LB173]

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SENATOR CHAMBERS: Right, and you can't do it. But anyway, when you look at it and analyze it, you see that some Congresspersons put the federal sentencing structure in a bind by reacting to those fads when they say we get tough on crime. And we've created as many crimes as we can, so now we have to create harsh sentences. And that wasn't enough because they'd get parole. Now we have to take away parole. So when you do things piecemeal like they did, problems arise. I'm saying--and it's the last time I'll say it here because we'll be through but it's the way I would wrap mine up--we got some momentum and we've got people willing to get on board with making some corrections who never wanted to do anything before. And I want to make the most of this momentum and do something about what brings you into prison and how long you stay before we even get to the programming and so forth. So I think getting rid of these mandatory minimums, restricting the use of habitual criminal charges will go a long way to making everybody's job more honest, even if it's not easier. But that's all that I have. And I'll ask you a question; you can answer it or not. You might...you anticipated that I was going to go a different direction when you got up here, didn't you? [LB173]

JOE KELLY: Sure. [LB173]

SENATOR CHAMBERS: But I didn't, did I? [LB173]

JOE KELLY: No. [LB173]

SENATOR CHAMBERS: World is full of surprises, isn't it? [LB173]

JOE KELLY: Yes, it is. [LB173]

SENATOR CHAMBERS: And some of them are pleasant, aren't they? [LB173]

JOE KELLY: Yes. [LB173]

SENATOR CHAMBERS: You're welcome. [LB173]

JOE KELLY: Thank you. [LB173]

SENATOR SEILER: No further questions. Thank you. [LB173]

JOE KELLY: Thank you. [LB173]

SENATOR SEILER: Any further opponent? [LB173]

MARTY BILEK: Marty Bilek, M-a-r-t-y B-i-l-e-k, Mayor Stothert's chief of staff in Omaha. A lot of the comments that I need to make or felt like I needed to make with regard to this bill are identical to the ones I made earlier, so I'm going to...I'm not going to repeat myself. The only thing I am going to do is make a couple of...just a couple comments. A lot about what you'll be discussing this session will have to do with prison reform. As we all know, there's an assortment of bills. And when you get right down to it, what you're talking about is, who is salvageable? Who would benefit from the programs that are available, whether you're addicted to drugs, you have mental health problems, you need vocational rehabilitation? Or who is not salvageable? Who are the people that are dangerous to society? They can't be rehabilitated for any reason and they just need to go to prison and maybe there's no helping them. And that's what this is sort of about too. What you have is a habitual criminal. In my career with law enforcement, I've been in courtrooms many, many hours and I know how hard it is to get to prison. Judges don't do that for first offense. First offense you'd maybe get probation. Second offense, maybe probation and county jail. Third offense, maybe you go to prison, maybe you don't. Fourth offense, fourth felony where you're pushing the envelope here. Fifth offense, basically which is the three strikes and you're out is where we're at now, and then you end up acquiring an additional charge which has now, depending on which one it is, either a 10-year minimum or a 25-year minimum. I think that charge is there for a reason. I think that habitual criminal law is...was well-founded years ago when the Judiciary Committee passed it. I think it's pertinent now. I think that anybody that commits three felonies, regard...I know there's a lot of conversation about, well, there's some felonies are more serious than other felonies; they shouldn't all be considered the same. But given the fact that it's hard to get to prison and given the fact that you have to offend three different times as a felon, it seems reasonable. The penalty fits this crime. So in closing, I would say that, again, these are the folks, these career criminals, are really causing us problems in Omaha with violent crimes, gang violence, and basically by enacting this law it's counterproductive. It's not helping us. And I would like for this...I would like for this bill not to pass. Thank you. [LB173]

SENATOR SEILER: Senator Pansing Brooks. [LB173]

SENATOR PANSING BROOKS: Thank you, Senator Seiler. Mr. Bleak (phonetically), Blick (phonetically)? [LB173]

MARTY BILEK: Beelick (phonetically). [LB173]

SENATOR PANSING BROOKS: Bilek, sorry. I just wanted to say that I am concerned about your use of the term "salvageable" and "unsalvageable" for people. And I think that people may

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need to be in prison and we may need to do programming and we may need to put some people into a secure position so that they are not out hurting people. But we are not talking about garbage. We just had this young man. Who is to determine whether somebody is salvageable or not? There are a lot of people that need to decide that. And I just...I'm not happy with that use of the term when dealing...when talking about a human being. [LB173]

MARTY BILEK: I guess all I'm saying is for that young man that's up here right earlier, and I'm going to continue to use that term because I don't think it's derogatory whatsoever. I certainly don't intend it that way. What I mean is he can be helped, he can be salvaged. He can return into society, be a productive member. And apparently that's the case with him and I'm very happy for him, that he was able to overcome, because oftentimes there's huge obstacles. And that's hard to do once you've been to prison, so that's a huge accomplishment for him. Good for him. However, there's other people in Omaha. You know, I hate to keep throwing out the Nikko Jenkins but he's not salvageable. He's killed four people. Dr. Garcia has killed multiple times as well. There's no fixing that and there's no programming available that's going to help them or convince anyone that they can return to society, and that's what I mean when I use the term "not salvageable." I'm not using it...I think I'm using it reasonably and I'm not trying to be derogatory. [LB173]

SENATOR PANSING BROOKS: Thank you. [LB173]

SENATOR SEILER: Look at all the hearings he created by his episode. He got my salary down to \$2.25 an hour this summer. (Laughter) Excuse me. Go ahead. [LB173]

SENATOR CHAMBERS: Mr. Bilek, exactly who are you representing here today, because I know you're not here as a private citizen, or are you? [LB173]

MARTY BILEK: You know, you could argue that either way. Obviously, as I introduced myself, I'm the mayor's chief of staff, so I'm representing her. I know what her political leanings are. Me and her, coincidentally, are like-minded or maybe not coincidentally. Maybe she has felt like we were like-minded and I could further her cause in the mayor's office. But nonetheless, I've got my own opinions and I like speaking passionately on them, like many of you here do today. [LB173]

SENATOR CHAMBERS: But here's what I'm getting to. Are you...did the mayor instruct you to come down today? Are you speaking for the mayor's office? [LB173]

MARTY BILEK: Whenever I'm speaking down here I'm speaking for the mayor's office, yes. [LB173]

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SENATOR CHAMBERS: Okay. [LB173]

MARTY BILEK: Now did she say, here's what I want you to say? No. I just told her, here's why we should be opposed to these bills; you're trying to fight crime in Omaha. It's all I'm doing. [LB173]

SENATOR CHAMBERS: Oh, no, I'm not even challenging what you said. [LB173]

MARTY BILEK: Okay. [LB173]

SENATOR CHAMBERS: I just want it clear that you're here speaking for the mayor's office. And that means you're a public servant, I meant you're a public employee and you get a salary. [LB173]

MARTY BILEK: I am. [LB173]

SENATOR CHAMBERS: You earned it already. Don't work overtime. [LB173]

MARTY BILEK: (Laugh) All right, I'm going to take that. Are there any other questions? [LB173]

SENATOR SEILER: Any further questions? Seeing none, you may step down. Thank you. Any further opposition? Seeing none, anybody in the neutral? Seeing none, Senator Chambers, you may... [LB173]

SENATOR CHAMBERS: I don't want this committee to kill me. No, I don't have anything to say. (Laughter) [LB173]

SENATOR EBKE: You've already gotten taken care of me. I (inaudible). [LB173]

SENATOR PANSING BROOKS: But I had your back. [LB173]

SENATOR EBKE: You had my back. Yeah, I appreciate that. [LB173]

SENATOR SEILER: Good job. [LB173]