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Judiciary Committee
February 12, 2015

[LB119 LB290 CONFIRMATION]

The Committee on Judiciary met at 1:30 p.m. on Thursday, February 12, 2015, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB290, LB119, 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: The bewitching hour is now upon us. We will take the bills--LB290, LB119--and then the two confirmations, in that order. First of all, I'd like to welcome you to the Judiciary Committee. Before you...if you're going to testify, make sure you get a testifier sheet, fill it out, and have it ready to hand to one of our pages as you come up to the...to testify. Like to introduce on the far right Senator Matt Williams from Gothenburg, Senator Adam Morfeld from Lincoln, Senator Bob Krist from Omaha, Senator Ernie Chambers from Omaha, our legal counsel Diane Amdor. From the far left...oh, I thought you were going to miss with us. [LB290]

SENATOR EBKE: Well, I'm going to be leaving again, too, so. [LB290]

SENATOR SEILER: Oh, okay. Dr. Laura Ebke from Crete; Senator Patty Pansing Brooks from Lincoln; and Senator Colby has already moved up to the...introduce the bill; and our committee clerk, Oliver VanDervoort. We are on the time. Green means start and go, yellow means you've got one minute left, and red means stop. If you're right in the middle of something important that the committee feels is real important, they will ask you to continue your thought. But we play it equal for everybody. And we will start now with Senator Colby introducing LB290. [LB290]

SENATOR COASH: Thank you, Chairman Seiler, members of the Judiciary. I am Colby Coash, C-o-a-s-h. I represent the 27th District here in Lincoln. So here is LB290. This is a bill to eliminate certain notification requirements under the Sex Offender Registration Act and eliminate the offense of unlawful use of the Internet by a prohibited sex offender. This bill was brought to me by the State Court Administrator in order to amend the statutes that were ruled unconstitutional in October 2012 by a federal district court, Doe v. State of Nebraska. Just by doing a quick glance at this bill, you'll notice this bill does nothing more than strike language that was deemed unconstitutional. In addition, it strikes language that requires notification of an offender because they no longer have to comply with this unconstitutional language. LB290 updates portions of the sex offender registry law that were ruled unconstitutional. This challenge legislation originated in LB97 and LB285 that were both passed in 2009. Generally, these sections, 29-4006 and...require disclosure by persons to register under the Nebraska Sex Offender Registration Act of remote communication device identifiers, addresses, domain names, and Internet and blog sites used in this section, requires registrants to consent to search

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and installation of monitoring hardware and software, and criminalizes some of the registrant's use of social networking Web sites, instant messages, and chat rooms accessible by minors. Colleagues, this bill is not a comment on the crime. This is not a comment on anything other than the Supreme Court has made a ruling that said that there are some laws on our books that are unconstitutional. These provisions that have been deemed such should be removed, and that's what this bill does. Before I turn it over to questions, I want to, for the benefit of some of the newer members on this committee, get a little historical perspective on some things that relate to this. Because this has been a session kind of deemed getting smart on crime, not just be getting tough on crime, I want to talk to you about a change in our sex offender registry. You may hear about this from testifiers that I did not ask to speak about this, but I want to help you understand a change that's occurred. In 2009, this Legislature passed what we called the Adam Walsh Act. All right? And we all know who Adam Walsh was. And there was federal legislation by that name and every state had to pass a version of that. The Adam Walsh Act that we passed was done in part to capture some federal monies which, by the way, I would point out to you, we have not captured because Nebraska is not in compliance with the act. But in a nutshell, what that act did is it changed our registry system from a risk-based system, which is a system that evaluated sex offenders based on their risk to reoffend and put requirements on the registry based on the results of that risk. That was the old system. The new system as a result of the Adam Walsh Act, which included provisions that we are now striking from this bill because they were unconstitutional, the new system was an offense-based system. So it matters not your risk; it only...the only thing that is viewed in the eyes of the court is what offense you are ultimately convicted of. This committee has looked at this issue quite a bit. We did actually an interim study and I will tell you it's a big study and I've spent time with it. And I know it's on file in our counsel's office so you can look at it yourself. But the end of the day, if you go to, like, you know, the last page, you know, try and figure out what did the study eventually say, eventually, it said that we're no more safe or at risk going from one system to the other. Okay. All things being equal, it's pretty much the same. Again, that's a little historical background about how we got to where we are, the reason for this bill. This bill again simply removes some unconstitutional language that was put in. I'm one that believes that if...our statutes should be clean. And if the court says, you've got provisions in there that do not comply with the constitution, then it's our obligation through this committee to remedy that and remove that language, and that's what this bill does. So with that, I will close and answer any questions. [LB290]

SENATOR SEILER: Senator Krist. [LB290]

SENATOR KRIST: Thank you, Chair. Thank you, Senator Coash, for bringing this. It's a necessary change, I believe. And just as an editorial comment, it's awfully nice to hear somebody listens to the court when they issue an Opinion. I spent the last summer finding out that not everybody listens to the court when there is an Opinion. So thank you for bringing this forward. [LB290]

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SENATOR SEILER: Any further questions? Thank you. You may have your seat. First opponent...or proponent of this bill. [LB290]

COREY STEEL: (Exhibit 1) Good afternoon, Chairman Seiler and members of the Judiciary Committee. My name is Corey Steel, C-o-r-e-y S-t-e-e-l, and I am the State Court Administrator for the judicial branch of government. I am here to testify in favor of LB290. I'd like to thank Senator Coash for submitting LB290, which we have asked for him to do so, which finds Nebraska statute to be unconstitutional. Nebraska statute requires judges to have convicted sex offenders complete a sex offender registry form provided by the Nebraska Attorney General's Office. In 2012, portions of the Sex Offender Registry (sic--Registration) Act were determined by U.S. District Court Judge Roger (sic--Richard) Kopf to be unconstitutional. The impact statute requires a convicted sex offender to register with law enforcement all social media to which the offender had uploaded content or made posts. Following this decision, the sex offender registry form was changed by the Attorney General's Office to remove the unconstitutional requirements, but those requirements still remain in the statutes. This is problematic for Nebraska judges which are charged with acting within the law while ensuring the individual's constitutional rights. LB290 is simply a cleanup bill which is intended to correct these conflicts between the statutes and the federal court's decisions. The Nebraska State Patrol and the Nebraska Attorney General's Office have been consulted to ensure that LB290 removes all the unconstitutional requirements with which these very agencies deal with. One thing that I do want to note, it's very difficult for a judge to have somebody in front of them in the court that they have to ask unconstitutional requirements of. And so it puts our judges in a tough spot when they know something has been found unconstitutional that they now still have to and are required by statute to ask. And so that's why we simply came to Senator Coash and asked that this bill be brought forth for cleanup. And I'd be happy to answer any questions at this time. [LB290]

SENATOR SEILER: I have one. [LB290]

COREY STEEL: Yes. [LB290]

SENATOR SEILER: Was this an original action in federal district court or did it start in state court and get handed over to the...for an Opinion from the federal court? Do you remember? [LB290]

COREY STEEL: I don't remember off the top of my head. Sorry, Senator Seiler. [LB290]

SENATOR SEILER: Okay, not a problem. [LB290]

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COREY STEEL: I can find that information out for you though. [LB290]

SENATOR SEILER: Any other questions? Seeing none, thank you very much. [LB290]

COREY STEEL: Thank you. [LB290]

SENATOR SEILER: Next proponent. [LB290]

JEANIE MEZGER: I am Jeanie Mezger. It's M-e-z-g-e-r. Mr. Chairperson and members of the committee, thank you for this opportunity to speak in favor of LB290. I appear today as a representative of Nebraskans Unafraid, a group of registered citizens, their spouses, and loved ones. When my husband comes home from prison in a year and a half, he'll be on the register and I will be on the register, my children will be on the register, our address will be there. I also appear on behalf of a member of Nebraskans Unafraid who is unable for medical reasons to be here today: Dr. Lisa Sample, Reynolds professor at the school of criminology and criminal justice at UNO. Dr. Sample and her team at UNO have conducted groundbreaking research that demonstrates the very low reoffense rates of registered citizens. Dr. Sample also is in the midst of research that reveals the negative outcomes of Nebraska law on family members of registered citizens concerning their social relationships, employment prospects, housing opportunities, and parenting abilities. This damage is senseless and it's made all the more so in light of her research findings that show current Nebraska law is not correlated with reductions in reoffending. Nebraskans Unafraid endorses LB290 as a cost-efficient change to the law that won't have any real impact on public safety. Those words, "no real impact on public safety," come straight from Dr. Sample. LB290 in its current form eliminates from Nebraska law the portions that were found unconstitutional more than two years ago by U.S. District Judge Richard Kopf. And while LB290 brings Nebraska law into conformance with the letter of Judge Kopf's ruling, it falls short of the spirit of that ruling. As you recall, Judge Kopf wrote that he wrote down the illegal parts of your LB285 in 2009 and of the remainder of the law he said, quote, I upheld many portions of Nebraska's new sex offender registration laws even though it was my firm personal view that those laws were both wrongheaded and counterproductive, end quote. Dr. Sample's research is showing the wisdom of Judge Kopf's personal view. Her empirical evidence shows that changing from a risk-based notification system to the current offense-based notification system does not reduce sex offenses. Based on the difficulties with state compliance with the Adam Walsh Act, Dr. Sample would support legislation that returns us to a risk-based notification system. Second, given the dynamic nature of social relationships and how they relate to sexual recidivism, Dr. Sample would suggest yearly risk assessment of all offenders on the registry to increase public safety. And third, in light of empirical evidence of data entry errors and lag times of information...thank you. [LB290]

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SENATOR SEILER: Ma'am, hold it a second. [LB290]

JEANIE MEZGER: Thank you very much. Any questions? [LB290]

SENATOR SEILER: Senator Krist. [LB290]

SENATOR KRIST: Can you wrap up for us, please? [LB290]

JEANIE MEZGER: I'm trying to think. Yes. You want me to just finish? [LB290]

SENATOR KRIST: Absolutely. [LB290]

JEANIE MEZGER: Okay, thank you. And third, in light of empirical evidence of data entry errors and lag times of information to public registries, Dr. Sample would suggest providing sex offenders with a receipt upon updating their registry information to reduce the chances that they'll be arrested for registration violations, reduce litigation for false arrest and imprisonment for registration violations, and to provide sex offenders a way to prove their compliance with the law. Even though current Nebraska law requires sheriff's offices to provide that hard copy documentation, some of them refuse to do so. Douglas County is one example. A final note... [LB290]

SENATOR KRIST: Is that...is your script...I didn't mean to interrupt. [LB290]

JEANIE MEZGER: Yes. [LB290]

SENATOR KRIST: Is your script typed out and in that form? [LB290]

JEANIE MEZGER: Yes, and it's in the packets that I gave, yes, so you'll have a copy. [LB290]

SENATOR KRIST: Okay, great. Just a few seconds to wrap up then, please, if you would. [LB290]

JEANIE MEZGER: Okay. Federal Center for Sex Offender Management has provided a million-dollar grant to the University of Massachusetts-Lowell to determine the costs and benefits of the Adam Walsh Act. This in and of itself suggests that there are questions about the practicality, cost efficiency, and public safety value of an offense-based notification system. [LB290]

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SENATOR KRIST: Three minutes is not a lot of time, is it? [LB290]

JEANIE MEZGER: It's not. It's...phew, goes by. And the...there's a packet that I gave to you. And any other questions? [LB290]

SENATOR KRIST: Thank you. [LB290]

JEANIE MEZGER: Thank you. [LB290]

SENATOR SEILER: Any questions? Seeing none, thank you very much for your testimony. [LB290]

JEANIE MEZGER: Thank you. [LB290]

SENATOR SEILER: Next proponent. [LB290]

DAVID TARRELL: Good afternoon. My name is David Tarrell, and my last name is spelled T-a-r-r-e-l-l. I'll get back to the importance of that "a" in just a moment. And I'm here on behalf of the Nebraska Criminal Defense Attorneys Association. I'll start off with a quick story. I said I would get back to the "a." My last name is spelled T-a-r-r-e-l-l. But I once received a call from a bailiff in district court that said I was needed in court. And I said, what is the defendant's name? And the bailiff checked with the judge and said, actually, the defendant is you. And I said, no, that's got to be a mistake. And she checked again. And I asked for the spelling and she said, the defendant's last name is spelled T-e-r-r-e-l-l. And so I corrected her. But as it turns out, the person with the name one letter off of mine is a convicted sex offender. And as you can well imagine, I took some steps right away to make sure that people spelled my name correctly. And as I talked to people and colleagues about this, about what I might do because it was so commonly misspelled, someone made the comment that I should just start calling myself a different name. And I said, I'm not going to change my name because I just happen to have the misfortune of having to be one letter off of a sex offender's. And I think that kind of provides an introduction into this law. We can't throw out our constitution because we want to go after sex offenders. We...as Judge Kopf said in his order, we must follow a constitutional path. And he also commented that we have violently swerved from that path. So I think this should be a no-brainer. It's...a certain Alabama Supreme Court justice notwithstanding, it is important to be in compliance with federal law and with Judge Kopf's interpretation of the constitutionality of this. So it looks like I have a minute left. Are there any questions? [LB290]

SENATOR SEILER: Have any questions? Thank you, David. [LB290]

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DAVID TARRELL: Thank you. [LB290]

SENATOR SEILER: Thank you for coming. [LB290]

DAVID TARRELL: I appreciate it. [LB290]

SENATOR SEILER: Next proponent. [LB290]

DANIELLE BAILEY: Mr. Chairperson and the members of the committee, thank you for hearing me. My name is Danielle Bailey. I'm a doctoral candidate at the University of Nebraska in Omaha. Like previous speakers, I believe that the passing of LB290 creates no additional danger to public safety. Our studies at the University of Nebraska actually provide empirical evidence that the passing of LB290 would actually increase public safety through the encouragement of all nine support networks. Now criminal justice researchers have identified social support from spouses, family members, friends, and other acquaintances as a vital part of offender risk management. Offenders of any type who receive social support are less likely to recidivate as they go through rehabilitation and reintegration into the community. However, registered sex offenders in particular face challenges obtaining this social support due to the social stigma and the social isolation that these offenders face in the community. In our research we have identified on-line resources as a vital source of social support for registered sex offenders and their family members. On-line forums, Facebook, and other social groups allow for easier communication with long-distance family members and friends, thus reinforcing family bonds, as well as provide access to support networks specific for sex offenders and their family members. Given the relative social isolation of registered offenders in the community, increasing access to this on-line community means that these offenders will have opportunities to strengthen existing and create new social bonds. Since the creation of these social bonds and the strengthening of these social bonds will increase...excuse me, will reduce their recidivism risk and promote offender desistance from crime, passing LB290 will, therefore, significantly increase public safety. Thank you for your time and consideration of the issue. [LB290]

SENATOR SEILER: Any questions? Thank you very much. [LB290]

DANIELLE BAILEY: Thank you. [LB290]

SENATOR SEILER: Next proponent. Seeing nobody scrambling from their chair, opponent, people testifying against this bill, to this bill. Seeing nobody, in the neutral. [LB290]

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BRIAN KITT: (Exhibit 2) Good afternoon, senate committee. I've been before this committee before testifying on the registry. The registry is cruel. [LB290]

SENATOR COASH: Can you start with your name? [LB290]

BRIAN KITT: Oh, I'm sorry. I'm sorry, Senator Coash. My name is Brian Kitt. The registry is cruel. It crushes human dignity. It make reintegration with society nearly impossible. It deceives public trust because it puts out untruthful information and it wastes law enforcement resources. Every single person is hurt by the registry, whether they're a registrant, whether they're law enforcement, or whether they're just a public person. Everybody is hurt by the registry. We have to remove the low-risk people. I have been on the registry for nearly 20 years and no one ever has assessed me as anything other than low risk. And I will spend the rest of my life on the registry just to be safe. I shared my 2004 risk assessment with Dr. Stephen Huot. He said Nebraska had misused the research and the assessments were not even valid. I pointed this out to Dr. Black and Amanda Metcalf in 2004 and Amanda told me she didn't care what Dr. Huot said, she thought it worked. In July of 2013, federal case 8:09-cv-456, we introduced evidence. This showed that Jon Bruning had ordered his staff to intentionally lie about LB97 and LB285 to the Legislature. He broke his oath in office; he broke his bar oath. But since his intent was doing harm to registrants, he was never held accountable for that. People do cruel things to children and they're not registered. But there are people on the registry who have never harmed anyone. Some just had relations with a fiance. Some are because a girl lied about her age. One person I know videotaped his honeymoon and he's on the registry for that, another because his 17-year-old girlfriend sent him an explicit video. In 1994, the Department of Justice stated that recidivism was less than 1 percent. Today, studies show that the registry has increased recidivism to 10 percent. As you've heard before, Dr. (sic--Senator) Ashford tasked Lisa Sample to do this, and her studies showed that Nebraska recidivism went from less than 1 percent to almost 4 percent. LB285 caused a 400 percent increase in recidivism in Nebraska. This law needs to be repealed. I sent you handouts that show you some of the myths and the lies that have been used to support LB285. There is a great deal of misinformation out there. You need to get past the mythology and look for the truthful information. We use experts when we create bridge or road safety laws. We use experts for drug safety laws. But for some reason, when it comes to child safety laws we use hate and mythology to create our laws. How would you like it if one of your children or your grandchildren were on the registry? Wouldn't you like for them to have an opportunity to get off if they were safe? We talked about the JAG Byrne funding earlier. Did you know the reason that Nebraska is out of compliance? It's because Nebraska refused to put children on the Nebraska sex offender registry. That's why Nebraska never got the JAG Byrne grant. [LB290]

SENATOR SEILER: Okay. Any questions? Seeing none...oh, did you...okay. You may step down. Thank you for your testimony. [LB290]

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BRIAN KITT: Thank you. [LB290]

SENATOR SEILER: Anybody else in the neutral? Senator Coash. Senator Coash waives. We'll close this hearing and move on to LB119. Senator Schumacher. Is he on his way? [LB290]

_____ : (Inaudible.) [LB119]

SENATOR SEILER: Two penalty points. (Laugh) [LB119]

SENATOR SCHUMACHER: All right. (Laughter) If I do...that's all, I'm doing good. [LB290]

SENATOR SEILER: Senator Schumacher, you may open on LB119. [LB119]

SENATOR SCHUMACHER: Thank you, Senator Seiler, members of the Judiciary Committee. I'm Paul Schumacher, S-c-h-u-m-a-c-h-e-r, representing District 22 in the Legislature. This particular bill was the result of some talking with the local county judges who felt there were circumstances in which they were in a position to sentence someone for a felony, a Class IV or IIIA felony, and it would be good for them to have the latitude to sentence a person to a county jail if it was one year or less. Currently, they can do it if the sentence is going to be for less than one year, and they felt that this would give them additional flexibility in sentencing and may ease prison crowding. They recognize that there could be some additional pressure put on the county jail system but, at least in Platte County, there were cells available and the incremental cost of those cells would be minimal in cases of a year or less sentence. The second, maybe less obvious, reason for the bill is that, as we look at sentencing generally and our minimums and our mandatory minimum sentencing, this can also perhaps melt into a vehicle for sentencing reform should other vehicles be needed other than the ones under contemplation now, a very simple suggestion from the county judge that we make a one-day adjustment in the sentencing parameters. And that would be my introduction. [LB119]

SENATOR SEILER: Okay. Questions? I have one. On your fiscal note it states that it's about \$377,572 savings. I assume that's to the General Fund. But wouldn't that be also a kick to the county as an unfunded mandate? [LB119]

SENATOR SCHUMACHER: Well, actually, some of the county comments, I'm not sure how they're generated, but it would be a savings to the state General Fund. But...and I think the fiscal note indicates that there would be about 50 people that would be affected. But the county analysis indicates that Douglas County would have 50; Lancaster County would have 50. It suddenly looks like a biblical story of the fishes and the loaves in that they keep multiplying.

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But, yeah, there would, I mean, there would be some; but to the extent they've got space available, it would only be incremental. To figure the county side of that by taking their entire jail budget and dividing it with the number of people probably isn't a fair incremental analysis, where I think the savings to the state was done just on the incremental analysis of what each additional inmate would cost, not taking the whole cost of the prison system and dividing it. If you did it that way, that state figure probably...a whole lot higher for savings on it. But to the extent there are cells available at the county level, the incremental level of...or cost of housing those people would not be \$90-some a day. [LB119]

SENATOR SEILER: You don't mean the district court would look at the jail holding cells and see if there's any opening and then make their distribution of the prisoners based on the cell openings. [LB119]

SENATOR SCHUMACHER: (Laugh) I don't mean to presume what a district judge would do. [LB119]

SENATOR SEILER: Okay, I didn't think you did. Senator Krist. [LB119]

SENATOR KRIST: Yeah, I'm going to talk about this fiscal note too. I was going to ask, you know, it's...the loaves and the fishes analogy is probably a good one. We have a situation where the entire Department of Correctional Services is saying that they're going to see 53 less, which is \$377,572, \$377,000. And then we have our two largest counties coming in and saying, it's going to cost us \$1.7 million and \$2 million because of this change. We obviously go by the legislative fiscal note, but I...and I wouldn't go any further than that. I mean it's ludicrous, I think, in terms of how it projects out. So thank you, Senator Schumacher. [LB119]

SENATOR SEILER: Thank you. Seeing no further questions, you're going to stay around for closing? [LB119]

SENATOR SCHUMACHER: I'd like to hear what the counties have to say. [LB119]

SENATOR SEILER: Okay, fine. [LB119]

SENATOR SCHUMACHER: Thank you. [LB119]

SENATOR SEILER: Open the testimony up to proponents, those in support of the bill. Okay, opponents. [LB119]

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DAVE LARSON: Senators, I'm happy to be here. I'm Dave Larson. I live here in Lincoln. I volunteer for Nebraska Aftercare in Action. I also volunteer for the FEAST ministry at Our Savior Lutheran Church. And I'm a member of the Reentry Alliance of Nebraska. I only have two objections to this, and they're quite specific. I believe that the state does not regulate the county jails on the same rules that the prisons are. We had one man who was in the Lancaster County Jail and then was moved to Columbus. Columbus jail looks really nice. He lost 15 pounds in a month. And I went out to visit him, assuming that the rules would be the same, and I could not visit him because the rules were different in a county jail than they are in the prison. And if this happened to family that made special trips out, or friends, I think it's a disaster. The other thing in this bill that I see is wrong is lines 13 and 14 talk about a mandatory minimum, and I don't think that has any place in the bill. Thank you. [LB119]

SENATOR SEILER: Any questions of this witness? Seeing none, thank you for... [LB119]

SENATOR CHAMBERS: Just one. [LB119]

SENATOR SEILER: Oops, excuse me, Senator. [LB119]

SENATOR CHAMBERS: Just to let you know that I...some of the things that I have I can talk to Senator Schumacher other than here. But I never did want any of these state prisoners to go to county jails. I had gotten complaints about county jails just from prisoners who were sentenced to the county jails. And some of the state prisoners don't get the same consideration, the same treatment that they would at the State Pen. And if they are sentenced to prison, they should not be sent to a worse place. And a bill that would let them be sentenced to these county jails is something I don't want to see. And I bet the only way the county jails would want to do it is if they get money for it, so it's an economic development and cash-cow kind of arrangement. And I see it very similar to the way I see private jails, private prisons: They want to make as much money as they can with as little expenditure on their part, because their primary responsibility is not to meet what we consider to be rehabilitating...rehabilitative needs but, rather, to make money. And that's never, in my opinion, a good way to treat people who are where they are not because they violated a law that put them in a place like that. So I just wanted you to know that you are not alone in your concern, and some things worse than what you just described have been written to me. [LB119]

SENATOR SEILER: Any... [LB119]

DAVE LARSON: Can I respond to that? [LB119]

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SENATOR SEILER: Yes. [LB119]

DAVE LARSON: I believe also at Columbus there was nothing for a prisoner to do. There...it was absolutely a waste of time. [LB119]

SENATOR SEILER: Any further questions? Thank you for your testimony. Further opposition. [LB119]

MICHAEL THURBER: (Exhibit 1) Oh, glasses on first. Good afternoon, Senator Seiler and members of the Judiciary Committee. I'm Michael Thurber, T-h-u-r-b-e-r. I'm the director of the Lancaster County Department of Corrections, the county jail here in Lincoln. Lancaster County asked me to come today to oppose this...the passage of LB119. The change of incarceration locations for persons convicted of a III-, IIIA-, or a IV-Class felony just represents a shift of responsibility to the local government for these offenders. Jails are designed and, by nature, created for short-term incarceration. As our fiscal note stated, knowing that inmates are credited for the time served while on pretrial in our facility, they accrue good time, we feel that it would add approximately 59 inmates per day to our average daily population, and we stated that further in the fiscal note. By changing the statute, the new population diverts future local jail beds to this unplanned population, meaning that more sentenced inmates and offenders will be serving time in county jails. We're also aware of other bills that are in front of the legislative body that deal with sentencing, and we feel that its potential could change and increase incarceration to county jails and have the county be responsible for those incarceration days. [LB119]

SENATOR SEILER: Any further questions? Thank you for your testimony. [LB119]

MICHAEL THURBER: Okay. [LB119]

SENATOR SEILER: Further opposition to this bill. In the neutral? Seeing none, Senator Schumacher, you may close. [LB119]

SENATOR SCHUMACHER: In listening to the last testimony, I'm wondering if some of the difference in what the state calculates and what the counties calculate arise out of a misunderstanding. This does not apply to Class III felonies because they're a year. This only applies to the IIIAs and the IVs, so maybe that's where the numbers somehow end up being different. I did learn something and I'm going to ask the sheriff back in Platte County about the comments about the Platte County Jail. It's another tool for the Judiciary Committee to look at, a vehicle for perhaps modification or other issues dealing with sentencing, and I thank you for your time. [LB119]

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SENATOR SEILER: Okay. Any questions? Seeing none, thank you for the bill. [LB119]

SENATOR SCHUMACHER: Thank you. [LB119]

SENATOR SEILER: This will close the hearing on LB119. (See also Exhibits 2 and 3) We will now entertain Darrell Fisher. [LB119]

DARRELL FISHER: Chairman Seiler, members of the Judiciary Committee, good afternoon. My name is Darrell Fisher. It's D-a-r-r-e-l-l. Fisher is common spelling, F-i-s-h-e-r. And I have been nominated to be the executive director of the Nebraska Commission on Law Enforcement and Criminal Justice, more commonly referred to as the Crime Commission. My background includes 33 years as a sworn law enforcement officer in Nebraska. I retired from the Nebraska State Patrol as lieutenant colonel in 2008. During my service with the Patrol, I served as a sergeant for seven years, a lieutenant in management for six years, a commander for five, and an administrator for more than three. Twelve of those years were in training and nearly five of those years as the director of training for the Nebraska State Patrol. I also served on the Police Standards Advisory Council for more than three years. This council oversees the operation of the Nebraska Law Enforcement Training Center for the Crime Commission. Since my retirement from the Patrol, I served on the Nebraska Community Corrections Council from 2009-2011. I also served on the Nebraska Public Employees Retirement Board in 2013. I was inducted into Nebraska Law Enforcement Hall of Fame in October 2008. And I am a current member of the International Association of Chiefs of Police, the Nebraska Police Officers' Association, the Nebraska Sheriffs' Association, and the FBI Law Enforcement Executive Development Association. I hold a bachelor of science degree with a comprehensive major in criminal justice from the University of Nebraska at Kearney. In addition, I have completed master's hours towards a degree in military history through American Military University. My specialized law enforcement training includes first-line supervision school, Nebraska's management training, and I am a graduate of the Northwestern University School of Police Staff and Command. In 2014, I served as the executive director of the Crime Commission and during that year we reduced the backlog of complaints for revocation against law enforcement certifications by more than 85 percent: from 20 down to 2. I authored a racial profiling model prevention policy, which had been requested by state statute for several years, and I personally reviewed the racial profiling policies submitted by every law enforcement agency in this state to ensure compliance with current statute. I am pleased to report that we now have 100-percent compliance with Nebraska statute. The staff of the community corrections division and I collaborated with CSG and other members of the Justice Reinvestment Working Group on the prison overcrowding issue. With the assistance of an outstanding staff, we overcame a major hurdle as we labored to weather a high-risk designation by the U.S. Department of Justice brought on by unresolved audit findings. This special designation froze our federal grant dollars, which our fellow state and local allies depend on. We responded to all requests for further documentation, hired staff to review all

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documentation and assure the reimbursement requests were allowable under each grant, and we changed our grant process from a drawdown of funds to a reimbursement process. I am pleased to report our efforts resulted in a removal of the high-risk designation and the hold removed from nearly all of our federal grants. It has been a very busy 2014, and I expect that to continue in 2015. I believe my experience contains direct, as well as transferable, skills to meet these challenges now and in the future, and I greatly look forward to this appointment and the challenges that it presents, as it affords the opportunity to work with all partners and stakeholders in the criminal justice community. Thank you very much, and I would be happy to answer any questions you may have. [CONFIRMATION]

SENATOR SEILER: Senator Krist. [CONFIRMATION]

SENATOR KRIST: This is a reappointment for you, obviously, and you've given us a list of things that you do. I don't know for a fact, but I think that the efforts that you took to get out from underneath the DOJ were exemplary and they were on time and your staff did a great job. It put us back where we needed to be, and I appreciate that. I also appreciate the fact that within the JDAI function that I cochair with Corey Steel, which is the Juvenile Detention Alternative Initiative, LB561 and the LB464 monies that are distributed through the Crime Commission, you've taken extraordinary efforts to make sure that we have those grant policies and procedures in place. And those actions are happening under your supervision in a very speedy manner, and they need to, as we've discussed many times. I also appreciate the fact that when I pick up the phone and call, Mr. Fisher, that you are responding and you're there. So I can tell you, you have my vote and my confidence. Thank you. [CONFIRMATION]

DARRELL FISHER: Thank you, sir. [CONFIRMATION]

SENATOR SEILER: Senator Chambers. [CONFIRMATION]

SENATOR CHAMBERS: Mr. Fisher, I'm glad you're here. I'm glad you have the position you have. And when the Chairman introduced you, he said, we'll now entertain Mr. Darrell Fisher, and Senator...I won't even call his name for the...well, I can call his name for the record. What's your name? [CONFIRMATION]

SENATOR KRIST: Krist. [CONFIRMATION]

SENATOR CHAMBERS: Senator (laughter)...Senator Krist, like a mind reader...oh, thank you very much. (Laughter) [CONFIRMATION]

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SENATOR KRIST: You're welcome. [CONFIRMATION]

SENATOR CHAMBERS: Senator Krist, we...sometimes we have to break the monotony. Senator Krist, like a mind reader, said, how are we going to entertain Mr. Fisher? But I would like to use that word not in the sense of it being hilarious, comedic, or anything, but your presentation was entertaining to me in the sense of it engaged my mind, it was very informative, and it's meaty and of substance. For the position that you hold, we need somebody like you. And I hope that nobody outside of Nebraska listened, because you may be wooed away from this state. But before you do get called away or decide to go somewhere else, there are a couple of issues I'm going to bring to your attention. But I wanted you to have all of these preliminaries out of the way so that it's clear that you are the man who's going to be there. And what impresses me is the handling of complaints. The public often feels, and people who are not members of the public, but a lot of times that they file a complaint just so that there will be a record of it somewhere, but they don't expect anything to be done. But I do think that you have a respect for the notion of professionalism in law enforcement. Codes of conduct, codes of ethics are not just words and they're not just to be memorized, but they are actually to guide the conduct of people who are sworn officers and are given a certificate by the state to be law enforcement officers. So they are assuming a responsibility voluntarily to live up to those standards; and I think as much as one person can do to see that becomes the guiding principle in this state, you're the person. And as I stated, what I'm going to contact you about is nothing that you will lose any sleep over, but I wanted all of these other things, such as your reappointment, your...and I'm sure you're going to be confirmed without any problem. We can just work on what it is I want to bring to you and in the back of your mind, not that you'd wonder if my vote would be influenced by how you...that would not be in it at all. But by getting it out of the way, not even will it be a shadow on the back of your brain. But I want to ask you, with all that you're doing, how many of you were born to your mother when she gave birth? (Laughter) Just one? Were you a single birth? [CONFIRMATION]

DARRELL FISHER: I have siblings. [CONFIRMATION]

SENATOR CHAMBERS: As far as you... [CONFIRMATION]

DARRELL FISHER: I hope...I'm hoping that's what you were asking. (Laugh)
[CONFIRMATION]

SENATOR CHAMBERS: Oh, I mean there are...you've done a lot of things of substance. You're not that old a person. When we had an Attorney General named Don Stenberg, I said about him, and I didn't mean it as a joke, that he's a man who does the work of three people: Larry, Curly, and Moe. When I say you have done the work of three people, I don't mean it as a put-down.

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Seldom in the time that I've been in this Legislature has somebody come with credentials that have substance to them and are not just a lot of honorary or titular positions, but they carry responsibility. They require of you or expect of you some knowledge and expertise. And if it sounds like I'm touching you up, I am so you'll know that I'm not going to accept anything from you other than the high quality of response that you've shown yourself to be capable of. And I just wanted that to be said on the record because everything we say is recorded and it will be transcribed. So if you ever want to show anybody what my opinion was of you and that I uttered publicly, you can get a copy of the transcript and I'll back up every word that I said.

[CONFIRMATION]

DARRELL FISHER: If I may respond? As far as the law enforcement revocations, while it's in the testimony, there is a side of me that I really...I take no satisfaction from that. The problem of it is, is when police officers break the law, then there is no law. There's just a fight for survival. We are...when we take the oath, I think most people, most candidates probably just go through that rote, you know, they go through that by muscle memory. But really you need to sit down and read that oath. Our job is to be guardians. There is a philosophy out there right now that I think is they like to tell people that they subscribe to the warrior mentality. Well, if you truly look at a warrior mentality, a warrior mentality is nothing but a quiet confidence. I would prefer to call it a guardian mentality. If you've ever read Plato's Republic, he talked about the guardian mentality. Our job is to fight for people who are unable to fight for themselves, to protect people who are unable to fight for themselves. That calls into a question a serious service mentality, and there are times when I question whether everybody has that. Three of those people that went through revocation I numbered as my friends at one time. I have not spoken to them since. It was a difficult, trying experience. I drew no satisfaction from that. They did, in fact, break the law, and they needn't have a license to practice law enforcement anymore. That's the philosophy that I took. I was a little surprised when there were as many complaints pending as there were. We had to move those along. Those folks who summoned the courage to turn in those complaints for revocation, that...it was a courageous act on their part. They deserved action. They deserved justice. They deserved a response. I intend to deliver that. That's what I was hired to do as...

[CONFIRMATION]

SENATOR CHAMBERS: Mr. Chairman, may I continue the love fest for just a few more (laughter)...for just... [CONFIRMATION]

SENATOR SEILER: You may. [CONFIRMATION]

SENATOR CHAMBERS: Here's what I like about the existence of the commission under somebody like you. I view it as not only a freestanding, independent commission, but it's like a fail-safe element of the kind you describe. Whether the officer's agency did or didn't do anything,

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whether or not a prosecutor aware of these misdeeds did or did anything, the commission is going to look at what its duties are based on the statute, and what anybody else has done or has not done is not going to determine the outcome by the commission. And when the public can really have that kind of confidence, even if the result is not what the individual who files a complaint wants, that person doesn't come away with the ideal, well, they swept it under the rug, it's Jesse James covering Frank James, then he turns it over to the Dalton brothers and they all make it look like they're doing something and everybody is busy but the outcome is predetermined. If I thought that was the way you were doing, you would know it. So I'm not a pushover and my colleagues can indicate that this is not the usual approach I take with people. But I'm doing it with you because your job can be lonely. And sometimes you might even need somebody to say--well, as strong as you have to be--that we know what you're trying to do and we appreciate it. You're not a miracle worker. [CONFIRMATION]

DARRELL FISHER: No, sir. [CONFIRMATION]

SENATOR CHAMBERS: The only thing I expect you do, and I think it's reasonable, is to walk on water. (Laughter) I have said all that (inaudible)... [CONFIRMATION]

DARRELL FISHER: I know I can't do that, sir. [CONFIRMATION]

SENATOR SEILER: Senator Pansing Brooks. [CONFIRMATION]

SENATOR PANSING BROOKS: It's hard to even say anything in addition to that eloquence, but I just wanted to say that among the people that I have met as a new state senator, my time with you was highly enjoyable. I think we talked about the fact that my dad was among the founding members of the Crime Commission. And when I think about that and the fact that you exemplify, I believe, everything that they had hoped to create out of that commission and...I just cannot thank you enough for your serious attention to the needs of our state and the criminal justice system and all that you're doing to keep our society in check. Thank you. [CONFIRMATION]

DARRELL FISHER: Thank you very much, ma'am. [CONFIRMATION]

SENATOR PANSING BROOKS: Appreciate it. [CONFIRMATION]

SENATOR SEILER: Any further questions? Thank you very much for coming today and sharing your thoughts. [CONFIRMATION]

DARRELL FISHER: Thank you, sir. Thank you, everyone. [CONFIRMATION]

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SENATOR SEILER: Okay. At this time we would open the hearing on...pardon? Oh, yes, is anybody else to testify on behalf of? Seeing none...I just assumed there wasn't. (Laughter) Mr. Frakes. Anybody that good doesn't need a backup. You may open with your opening statement. [CONFIRMATION]

SCOTT FRAKES: (Exhibit 1) Well, that's a good way to start; will teach me not to number the pages. Senator Seiler, members of the Judiciary Committee, my name is Scott Frakes, spelled S-c-o-t-t F-r-a-k-es. I've been appointed by Governor Ricketts to serve as the director of the Nebraska Department of Correctional Services and I'm here before you today to introduce myself and to respond to any questions you may have of me. Significant failures over the last two years have eroded public confidence in the Nebraska Department of Correctional Services. I was asked by Governor Ricketts to transform this agency, to restore the excellent reputation it once had. And with your help, we can achieve that goal. The citizens of Nebraska need and deserve a Corrections Department that makes public safety its top priority. By keeping the public safe, our staff safe, and the men and women under our control safe, we can then focus on our next priority--providing meaningful opportunities for people to change for the better. NDCS's long-term contribution to public safety is reducing recidivism. Every convicted felon that returns to our community and does not reoffend equals at least one less victim of crime. Ninety-seven percent of our prison population will return to our communities. Approximately 80 percent will release from prison in the next three years or less. Break the pattern of criminal thinking and behavior, and we can turn offenders into good neighbors. I started my career at the Washington State Penitentiary in 1990, excuse me, 1982 as a correctional officer; entered college right out of high school with dreams of becoming a social-psychologist. Six years later I was married, I was running a struggling business and anticipating the birth of our first child. A steady paycheck and healthcare benefits made the work of corrections sound very attractive, although I didn't plan to stay for long. But I found that I was fascinated by the work and I saw the potential to make a difference. I was raised in a family that practices servant leadership. A good friend of mine is fond of saying, "if there's a barn to raise, you go help raise it." NDCS is filled with barns that need to be raised. I spent 15 years working in the uniformed ranks at four different prisons, then promoted to executive management in 1997. For the last 17 years I've been involved in helping to create and implement many innovative programs and approaches that led to safer prisons, better community transition, and more effective use of resources. NDCS will become a data-driven organization. We will have attainable goals and outcome measurements that support our success. We will partner with the many stakeholders that have a voice in how a corrections system should be run. We will find solutions to overcrowding. We will be proudly accountable to the citizens of Nebraska. Senator Seiler, you asked that I speak today to four of the recommendations made by the LR424 Committee. Recommendation 2: Use of the reentry furlough program, RFP, has been significantly reduced in the last year and there are currently 35 people engaged in the program. On February 9, I placed a moratorium on new admissions to the program. I've reviewed the 35 men and women on the program, have directed that 1 individual

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be returned to confinement. If I decide to continue the program, the department will promulgate formal rules and regulations through the Administrative Procedures Act. Recommendation 5: Michael Kenney has announced his retirement effective March 6, 2015. Kyle Poppert has resigned from state service effective February 9, 2015. I'm currently meeting with and assessing all the leadership within NDCS. There will be further changes, but at this time I'm not ready to remove or reassign more staff without having a good sense of what the organization needs. Recommendation 8: I'm actively reviewing reports, meeting staff and stakeholders, preparing to testify on legislation, and building a plan to reshape NDCS. I have much to learn about the department and Nebraska laws and regulations. I met with the Council of State Governments JRI group on Tuesday, and I'll be discussing LB605 with them tomorrow, although we moved it to next Tuesday. I bring some understanding of the JRI work from my previous position. Recommendation 9: For the last three years I've had the lead role in reforming the use of restrictive housing in the Washington Department of Corrections, with a focus on meeting the needs of mentally ill offenders. We reduced the use of administrative segregation, setting a 47-day cap on the length of stay. We turned intensive management into an offender classification rather than a punitive sanction, offering programming in congregate classrooms, mental health treatment and programming, and a centralized multidisciplinary process that ensured the beds were used correctly. The outcomes included a one-third reduction in the use of restrictive housing beds, increased staff safety, and a trend that suggests a reduction in self-harm incidents. Washington DOC partnered with the Vera Institute of Justice, and Disability Rights Washington to accomplish these changes. NDCS has applied for a grant that would bring the Vera Institute's Segregation Reduction Project to Nebraska. I plan to invite Disability Rights Nebraska, the ACLU, and the Ombudsman's Office to join us in our efforts. Our prisons have become the de facto mental health system in America. This became evident by the end of the 1980s. I had the good fortune to have an interest in correctional mental health and have been at the table for mental health service discussions going back to 1991. I'm not a mental health practitioner. I am highly skilled in eliminating operational barriers to the delivery of effective mental health services, and I know how a good correctional mental health system should function. I will be bringing in a consultant to look at our mental health operations and make recommendations related to staffing, approaches, and use of resources, helping us to create a high-functioning mental health system. I realize my statements barely skim the surface of the issues faced by NDCS. Overcrowding is impacting every aspect of our work, and I look forward to discussing our short- and long-term options in the weeks ahead. I'm ready to respond to your questions. Thank you. [CONFIRMATION]

SENATOR SEILER: Senator Krist. [CONFIRMATION]

SENATOR KRIST: Thank you for coming. Thank you, Chair. And you and I had an opportunity to sit down face to face, and during that I relayed my continued emphasis on item finding number five. I understand Director Kenney's departure. I understand Kyle Poppert's departure.

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And I understood from our conversation that it's kind of tough to tear...it's kind of tough to demolish everything when all you're trying to do is rebuild and find out where you are. But, sir, I'm going to tell you something. Dr. Weilage has to go. He is the sole person responsible for obstructing justice and the report that should have been given to the Johnson County Attorney and then, subsequently, to the Lancaster County Attorney. He restricted that information from the flow. His blind disregard for a psychiatrist and her diagnosis caused four people's deaths. He has to be removed. So whatever you need to glean from him, I would hope that you would do it in short order and that Dr. Weilage would be out on his own, practicing where he can't hurt us anymore. And I'd offer you a chance to respond. [CONFIRMATION]

SCOTT FRAKES: Well, Senator, I think in our meeting a couple days ago I heard you very clearly and when I say that I'm looking at these issues, I'm not thinking about long-term processes. I'm thinking about fairly quick processes, making good decisions quickly. [CONFIRMATION]

SENATOR KRIST: Good. Well, this is my opportunity to put on the record so that we have an opportunity to establish that there is no misunderstanding. I also think that you're going to have to pick Larry Wayne's brain and Larry needs to find someplace to go fishing, because in this whole process he could have done many things to interrupt the train wreck before it got there. So I told you in our private conversation, I want to repeat it here publicly, in about three or four months I expect you to rip open your shirt and see the "S" on it, because it's going to take a superman effort to put us back on a basis with the citizens in this state where they trust what we're doing in Corrections. Good luck. [CONFIRMATION]

SCOTT FRAKES: Thank you. Thank you. [CONFIRMATION]

SENATOR SEILER: Senator Chambers. [CONFIRMATION]

SENATOR CHAMBERS: Mr. Frakes, I'm not unduly egotistical, but I've been made aware of the fact that my name is known outside of Nebraska and if you read things in the paper and listen to what people tell you, you might have developed an idea of my reputation. And that reputation, some people think that my reputation is very bad, and I want to tell you today on the record that they're mistaken. It's worse. I look at you as I would a blank tablet where you have the opportunity to write on it what will be the basis for our ultimate judgment of you. I'm going to send you some information containing Dr. Weilage's sworn testimony, and if you are able to read the information given under oath and see where, by actual count, and it may not be all the instances, Nikko Jenkins on more than 30 occasions pleaded for mental healthcare, and it was denied in every instance. He wrote to the Johnson County Attorney's Office asking that they undertake a civil commitment because he was about to be released from prison, and he even

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made the appeal. Based on the idea that when somebody is about to be released from prison they don't make a request to be held in continued confinement, his mother filed a formal petition. When the Johnson County Attorney's Office contacted Dr. Weilage, Dr. Weilage lied and said that Nikko Jenkins was being given counseling and mental health programming. Upon questioning by at least myself and other committee members, it became clear that they were not giving him counseling. The programming, which had to do with anger management, could not be given because it was given only at the facility in Lincoln and he was at Tecumseh. So the Johnson County Attorney's Office was completely misled. The information that my colleague, Senator Krist, and by the way, I know who he is,... [CONFIRMATION]

SENATOR KRIST: Oh, that's good. Now I can turn it around. [CONFIRMATION]

SENATOR CHAMBERS: I knew him before he did that. Dr. Weilage did not like the idea of a psychiatrist making a diagnosis based on her superior expertise that went contrary to his. What he and those hired directly as employees of the state did with Nikko Jenkins was to say he had no mental illness, everything was behavioral, and the way you can handle behavioral problems is solitary. More than half of his time was spent in solitary confinement. When time came for him to be released, he walked straight out of solitary into the community. I had been misled by Director Houston into believing that Nikko Jenkins was receiving mental health treatment because he was going to come into the community where I live. I told him that I don't want this man coming to this community without mental health treatment, and if the treatment needed cannot be provided in the time he has remaining, I want the department to have him committed to where he can get it. I was given the impression that was being done, so I backed off. After the fact, I see they did nothing. He went right from Tecumseh into solitary confinement in Lincoln. I contacted the Johnson County Attorney. I want this on the record. That's why I didn't talk to you. I wanted to do it on the record so that I would say what I have to say and then you can respond on the record to the extent you choose to. I told the county attorney that Dr. Weilage had violated the law and I cited statutes. They didn't want to do anything, I'm sure, because Tecumseh is in Johnson County. It's a source of revenue. It provides jobs. I guess they may purchase goods and services from people. So the prison was viewed more as a source of revenue than a place for rehabilitation. And the Johnson County Attorney asked the judge to appoint a special prosecutor. I recently got a copy of the report he submitted to the court, which I haven't had a chance to read yet, but based on newspaper accounts he said that Dr. Weilage had no obligation to undertake anything related to a mental health commitment civilly because he was not near enough to release. Therefore, even if Dr. Weilage did not give him information, he didn't have to under the law. I'm going to send you, when I write to you and give you this sworn testimony of Dr. Weilage and his boss, Mr. White, citations and quotes from the Nebraska Supreme Court. And as you know, when the law is interpreted and construed by the State Supreme Court, that is what the law is. They went to great lengths when they were handling an impeachment trial of the former Attorney General to say that he, as a public official, had an obligation to provide undivided

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loyalty to the public; that he had to be forthcoming and things had to be done in a proper way to discharge his duty. And I'm not going to go into all of the background of that, but he had withheld some information. There was an investigation. The investigator who had been hired by the Legislature, said they wanted to see his income tax returns. He admitted to the Supreme Court that he played the part of the lawyer. He held up the document like this and said, see? That was how he did it. He admitted during the trial that he knew what was wanted, he knew they wanted to see that information, but playing the part of the lawyer he reacted just to the words that they uttered and he did not give that information. That led the court to say that if a person has no obligation to speak and doesn't speak, that's one thing. But if he has no obligation to speak and chooses to speak, especially if he's responding to inquiries, he has an obligation to be fully forthcoming, to withhold no information, and something which might be factually accurate is the same as a fraud if there are qualifying statements that prevent that statement from addressing the question that he was asked. I'm going to send you direct quotes and how you can find the case to show that once Dr. Weilage engaged with the Johnson County Attorney, he could not get away with lying, he could not get away with withholding information. And when he knew what the county attorney was asking for, he had an obligation to present it. The former Attorney General said nothing prosecutable had been done by anybody. The Lancaster County Attorney where the prison is located, which is Lincoln, did nothing that was prosecutable, in fact, nobody did. But I will cite statutes that were violated. And I'm talking to the current Attorney General about revisiting all of the conduct of these various people. I say this to put in context what I'm going to say to you, letting you know I'm going to send you information and you can make a judgment for yourself. But I, as one of the people who sat through hours and days of testimony under oath about the scandalous misconduct at the Department of Corrections engaged in by officials, high-placed employees, psychologists, some of whom in e-mails mocked, ridiculed, and laughed at Nikko Jenkins, made fun of him. And I asked some of the psychiatrists who came--these are psychiatrists, not psychologists: Is it ever appropriate for a mental health provider to mock, laugh at, and ridicule a patient and do it by way of e-mail? They were appalled. This the Attorney General knew. This the former Governor knew. Everybody knew and yet nothing was done to anybody. And that's why some of us are so urgent in saying that those people have to go. You cannot properly do the job you're here to do if you've got people whose hands are unclean. I'm going to give you a clean sheet and tell you all I want you to make this bed up. You say, okay, but I don't do these things myself, I have my assistants who do it. I say, fine. Then they come in, they have sludge, axle grease, mud on their hands, and you allow them to make up that bed. You are responsible for what they do. I expect those people to be gone. I'm going to talk to the county attorney and I'm going to try to pressure the Lancaster County Attorney. But we're talking to you now. You're an employee of the state, not the Governor. He hired you but you are a state employee. We appropriate the money that pays your salary. The citizens' taxes give us that money and we must be proper stewards of that money. I want you to succeed. I will help you succeed. I will pressure you more to do your job that I know you can do than maybe you are aware of yourself. And you know why I know you can do it? Because I talked to Harold Clarke.

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And when he was the director here, I developed a great amount of respect for him. He told me that when he came to Washington State, you were there. He appointed you to be a deputy warden or whatever the title was out there; that you produced; that you worked your way up through your ability and rose to a position in that place where you were. He told me that you are a caring person, that you are an understanding person, and that you believe in getting things done. I'm going to take him at his word, I'm going to take you at your word, and I want you to take me at my word. This final thing: Mr. Chairman, pardon me for taking time but I want to give him a flavor that he might not otherwise get if I'm not saying it directly to him. And I don't want it to be like I'm going to whisper it when you and I are together and then I can say, well, I said this, if in fact I didn't. When I was in the Army, we marched in the company area and some guys wouldn't have their uniforms right and the sergeant, when we came back, he said, some of you may think that you can make me look bad, he said, but you can never make it as hard on me as I can make it on you. And everybody straightened up and flew right. You cannot make my job as difficult for me as I can make it for you to stay here if you don't do your job. I'm not going to dictate to you how to do your job, but I'm going to look at the results. And I think all of us, including the public, have the right to expect something different. You're not coming into an ordinary situation. There are penal experts around the country who looked at what they saw in Nebraska and, without seeing all the information, said, this is the worst prison scandal I have ever encountered, than I have ever seen, than I have ever read about, because there was corruption from top to bottom. They violated the law. One man said, I don't have the luxury of obeying the law. They disregarded Supreme Court decisions. The rules and regulations that govern their conduct they disregarded and felt totally unaccountable. That's the kind of situation you're entering. And as Senator Krist said, it's going to take a superman-type effort and I don't expect you to do it alone. But if we did expect you to do it alone, we're not expecting you to do anything you're not being paid for. You're being well paid. I'm glad the Governor did that. He followed, although I don't know if he's aware of it, the mantra of an industrialist named Armand Hammer. He said first of all, if you pay peanuts, you get monkeys. If you pay somebody a decent salary then you're in a position to demand a high-quality performance by them. So although I didn't want to talk to you prior to this hearing, if you want access to me, I'm not a difficult person to contact or talk to unless you have not done what you should. So I am going to vote for your confirmation even though you haven't gotten rid of all the dead wood. But if I place an act of faith and I wind up swinging in the wind, I am not one of those people who forgives and forgets, or however that goes. You are a man, as I am. We think about what we do before we do it. We know that our conscious choices carry consequences. And if we don't live up to what we should, we have to be prepared to bear the consequences of that. I don't think Governor Ricketts wants to be embarrassed. I think he believes that he employed somebody who can do this job. So you are going to be caught between two opposing forces and you cannot run to one to get away from the other. But I promise you that if there's anything in the way of assistance in doing your job that you need and I can provide it, then I'll do that. And that's all that I would have to say.

[CONFIRMATION]

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SENATOR SEILER: Would you care to respond? [CONFIRMATION]

SCOTT FRAKES: Briefly. [CONFIRMATION]

SENATOR SEILER: Okay. [CONFIRMATION]

SCOTT FRAKES: Senator Chambers, thank you. The Nikko Jenkins' case has become case study in corrections across America. As soon as I became aware of it in Washington State, I used it to bring staff together and say, this is why we're doing this work and, see, we're not doing these pieces as well as we should and we need...there's more work that we need to do. What I'll say to you today is we probably won't always agree on everything. I believe I won't disappoint you, and I look forward to when you come back to me and say, I think Harold Clarke was right. [CONFIRMATION]

SENATOR SEILER: Senator Coash. [CONFIRMATION]

SENATOR COASH: Thank you, Chairman Seiler. Welcome, Mr. Frakes, to the committee. I have two things I want to put on the record as well, and if you want to respond, you can have that opportunity. I think your predecessors were capable, well-meaning directors. But I feel that in a lot of...especially over the past several years, that they were put in an impossible situation in their positions. I believe that they saw what changes needed to be done. I think that they saw what culture change needed to happen. I think they saw what resources needed to be put to bear to make the institutions what they should be. And I don't believe that...well, in my time here, not one of them ever came here and said...was able to come here and say, I need this to do my job, which is to keep the community safe, corrections officers safe, and inmates safe. So what I would say to you, when you find that--and I know you...I get it, you have a boss, okay--but this committee and this Legislature wants what I believe you want. And you have to be okay with coming here and answering those questions. And when you need resources to do what you feel is right, I want you to be able to come, at least to this committee, and request that. I probably know more corrections officers in the state than you do at this point, okay,... [CONFIRMATION]

SCOTT FRAKES: Bet you do. [CONFIRMATION]

SENATOR COASH: ...because I represent a lot of them. And I have to tell you, I'm concerned for their safety and I'm concerned about the culture in which they have to work. And there are hundreds of them across the state who work incredibly hard and do the best job that they can, and I don't believe that they've been given a fair voice in this whole discussion. Those corrections officers are what keeps...I live a block away from one of the institutions, all right, so I'm kind of

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interested in making sure that they're doing their job. And I think that they do. And I'm really concerned about the environment in which they have to do that. And I believe that you were appointed in part because of your reputation in changing that culture and changing that environment. And I'm excited to see you begin that process. And I want you to think of this committee as your partner in doing that because we do have the same goals in mind. I appreciate you coming in today. Thank you. [CONFIRMATION]

SENATOR SEILER: Senator Pansing Brooks. [CONFIRMATION]

SENATOR PANSING BROOKS: Thank you so much, Mr. Frakes, for coming and we all wish you the very best. It's important for Nebraska. I just want to, in your testimony, under Recommendation 8, you said, I bring some understanding of the JRI work from my previous position. Could you tell me what that experience was and, you know, how...what you felt about it? And this state has spent a lot of money and time on a study and I'm just interested what you're thinking about all of that. [CONFIRMATION]

SCOTT FRAKES: Okay. I wasn't directly involved but I was kind of secondarily involved. The work, as it was beginning to come together and really was just being announced as I'm leaving that state would connect directly to my work as a prisons director in Washington. So I am...when the swift and certain concept came to Washington State, I was thrilled. I've had a longtime frustration with the concept that we put people on, in Washington, community supervision. We set standards for behavior that, I'll be honest, I would struggle to meet on occasion, and then are confused when they fail to achieve those standards. And then the typical result was to pull them back out of the community and put them back in a prison or a long-term jail piece. So that opportunity to do something different of quick, fast, effective intervention, to me that was good scientific thinking around how to change, how to manage people without destroying the home they might have established, the job they might have established. So I was excited about that piece. The math made sense. In Washington, it's more around sentence recalculation because it's a determinant sentencing state. So as it was explained to me, and we went through some of the adjustments, it seemed like they were fairly reasonable, didn't create issues, identifiable issues for public safety, and could lead to some pretty significant reductions. Connected to that, of course, is the piece of trying to find good science that says how long someone should be in prison for whatever crime. You know it...if you just use a punitive model, then it's pretty easy to establish a range and say that's good. But what we need today I think is better science around how long somebody should be in prison and what happens, of course, while they're in prison. The smart supervision piece for me is another piece of it, and Washington was moving down that road before CSG. And this is just going to help find, I think, the funding that they need and allow them to really get the staff the training that's required and move them in the right direction. So that's... [CONFIRMATION]

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SENATOR SEILER: I'm sorry. I didn't give you a chance to respond to Senator Colby Coash. If you have something you want to challenge him on, go ahead. [CONFIRMATION]

SCOTT FRAKES: No. Just to say thank you and I will be looking for help and, yes, I will say this. Governor Ricketts told me during my interview that he was looking for people that he could bring in that would basically set goals that he was looking for. We would set them together and then he would let those people go out and do the work and manage the resources and make things work. That's part of why I accepted the job. It's my expectation that that is how we're going to do business, and that means that at times we probably won't agree about everything. But there are so many things that need to be addressed in this department, I'm going to have to push and I have to push hard. [CONFIRMATION]

SENATOR COASH: Given your short...given that you've only been here a short time, can you talk to the committee about your assessment of the current culture and where you'd like to go with your leadership? [CONFIRMATION]

SCOTT FRAKES: I've already picked up on some indicators that there is some level of a fear-based culture. That's a big concern for me, people that are reluctant to step forward, reluctant to really say what's on their mind. Haven't identified exactly where it's coming from but just in watching how people interact, how they talk to me one on one, because I like to do a lot of one-on-one meetings, as time allows, and then watching how people behave in a smaller group, seeing some very different dynamics around that. A couple people have been brave enough to come to my office and say, we're told you're somebody who doesn't want a fear-based culture; I'm going to take a chance, stick my neck out and say, I think there is one. So that's a piece of what I see. I also see a culture of staff, and I'm told that it is true of state workers in Nebraska in general, that are willing to work incredibly hard for wages that are, compared to where I come from, definitely not nearly as high. They're willing to work the long hours. And they're willing to do the hard work. And they're willing even in light of, in case of my department, lots of negative press, lots of indications that the department they work for is not a good department to work for. They're not turning their back. They come to me and they tell me, I love this department, I'm still proud of my department, I just want it to be better. That's what I picked up here on day nine so far. [CONFIRMATION]

SENATOR COASH: Thank you. [CONFIRMATION]

SENATOR PANSING BROOKS: Can I finish? [CONFIRMATION]

SENATOR SEILER: Senator. [CONFIRMATION]

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SENATOR PANSING BROOKS: Thank you. [CONFIRMATION]

SCOTT FRAKES: Sorry. [CONFIRMATION]

SENATOR PANSING BROOKS: No, that's okay. We got bollixed up here. But anyway, I just...I want to make certain that you are willing to take that study seriously. A lot of us are new. And I happened to sit in on some of those Justice Reinvestment meetings and I understand that incredible amounts of time by many of my colleagues were spent. And of course, our new Governor was not privileged to be able to sit in on all of those meetings as well. It's sometimes easy as a new person to come in and say, oh, well, I've got new ideas. And of course you will have new ideas. But I hope that you will take seriously the amount of work and the study and the efforts that have come out of that entire Justice Reinvestment. Is every single thing perfect? No. And you may have incredible ideas. But I hope that you do not just dismiss that and say, well, that's one other group, that's their opinion, that's their study. This state has invested a ton in that study. And I hope, and I'm putting on the record, that I am asking, because I'm trying to understand the totality of that study as a new state senator, I hope that you will take that seriously as well. Thank you. [CONFIRMATION]

SCOTT FRAKES: Respond? [CONFIRMATION]

SENATOR KRIST: Can I do a follow-up on that for just one second? We, in that CSG--and I know that you know this but it's great that you put it on the record, Senator--we're not done. We don't have to be finished with that process. So I would encourage us to continue that conversation, because we need three signatures on a piece of paper--the Governor, the Speaker, and the Chief Justice--to go into phase two, which would be of tremendous help to you... [CONFIRMATION]

SCOTT FRAKES: Right. [CONFIRMATION]

SENATOR KRIST: ...in your department. And we need to make that statement. And that's one of the things that I think this committee can do and you can do through your boss to say it's...we got to continue. Thank you. Sorry. [CONFIRMATION]

SCOTT FRAKES: Thank you. [CONFIRMATION]

SENATOR SEILER: Senator Morfeld. [CONFIRMATION]

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SENATOR MORFELD: Mr. Frakes, thank you for coming today. And a lot has already been said. I'm one of those new senators and so I'm just going to switch the conversation just a little bit but then also let you know that, as Senator Krist and Senator Chambers and Coash and Pansing Brooks noted, you can't do this alone. We have to make sure that you have the right kind of resources necessary to be successful. And leading into that, in Washington, your time there, what kind of reentry programming had...what did that consist of in Washington and which parts of it had a healthcare component? [CONFIRMATION]

SCOTT FRAKES: Hmm. Okay. Well, in my mind, reentry work started about in 1999 in Washington State under the Offender Accountability Act. Wasn't called reentry. It was offender accountability. But it had components that were very focused on the value of families and so that was the most clearest piece of the reentry. Also, we began to look for better tools for risk assessment and started talking about building release plans, thoughtful release plans. When Harold Clarke came in 2005, he brought the word "reentry," and we became very focused around the work, created staff positions, some of the stuff that's currently coming to life in a new department. That was, for me, some of the really exciting time because it was the first time in my career that community corrections and prison staff began to really partner. We actually reached a point of where we would have community corrections officers come to the facility, sit on a multidisciplinary classification team. Sometimes we had Mom and Dad on the telephone and, of course, the offender; and have very thoughtful conversations about what that hand-off would look like from prisons out to the community. And unfortunately, Mr. Clarke left and the economy went down the tubes, and it was just simultaneous, so one of the things go to out of Washington was real focused reentry work. It didn't go away completely, fortunately. What we continued to do was work on building... [CONFIRMATION]

SENATOR SEILER: Okay, excuse me. Let me let me interrupt you. Will you slide forward? You're not coming through on the transcriber. Thank you. [CONFIRMATION]

SCOTT FRAKES: What we continued to do was focus on the family work and increased our creating family councils at all the facilities, as well as at the statewide level. And that piece continues to be an important part of the work. But about two years ago, roughly I think, we began to talk again using the word "reentry." Have created a few positions, they now, Washington State has created a few positions. So for me what it means is I loved what Harold brought to Washington. Harold said...Mr. Clarke said reentry begins at reception, and that...and then Mr. Clarke introduced us to Peter Garrett from the U.K. and the dialogue work, and Peter Garrett said, you know, in the U.K. what we're talking about is reentry should start at arrest. That's the beginning of the criminal justice system. But at least for now, from my, you know, piece of the world, reentry definitely starts at the moment that that person enters the system. So that means that you've got to have an effective diagnostic process. You've got to have programs lined up. You've got to be able to get those men and women...well, it's really the men. The women

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primarily are going to one prison and a couple community locations. But you've got to be able to get them to the right location in a reasonable amount of time. You've got to figure out how you stage those resources so that they're delivered in a way that they're still effective upon release. There's plenty of good science around that. And then ideally, in my perfect world, there is some kind of supervision for pretty much everyone and it needs to be, again, thoughtful and scientific, risk needs based, and that there's additional resources around programming or other needs, whatever the needs assessments are, that we've got resources that are available to meet those. [CONFIRMATION]

SENATOR MORFELD: And my district is north Lincoln, northeast Lincoln, and while the correctional facilities are not in my district, as Senator Coash, what we find in Lincoln is that once a lot of the inmates are released, they're released in the community and they often stay in Lincoln. And one of the things that I've seen, going door to door, and some of them can vote and some of them can't. We have two years, you have to wait two years. But I talked to many of the family members that were often former inmates and one of the big things that they were really lacking were critical healthcare needs and some of those different things. I mean how did you deal with that in Washington and, in particular, how has the Affordable Care Act provided additional resources for that? [CONFIRMATION]

SCOTT FRAKES: Thank you, and you asked that question once but then you added the piece that I would have forgotten and that's we had...Washington had been fairly good about working to establish community mental health resources where available. Certainly a struggle in Washington as well. If you're in a urban area, easier to find; if you're in 1 of the 34 rural communities in Washington State, there may be little or none. So having some kind of hand-off to mental health providers or to the community mental health network, sending people out the door with 30 days of medication. With the Affordable Health Care Act, what we began doing is working with men and women before release to see if they qualified, see if there was a need, and to work to help get them either enrolled or headed down the road. And I can't remember, there was initially some stumbling blocks around that because, of course, we don't give--and I don't think we do it here either--we don't give people access to the Internet. So...but I think there was a solution that was found for that piece as well. And so thanks for bringing that up because that's another question I need to go back and ask what are we doing. [CONFIRMATION]

SENATOR MORFELD: Excellent. Thank you. [CONFIRMATION]

SENATOR SEILER: Senator Williams. Excuse me. Senator Krist. [CONFIRMATION]

SENATOR KRIST: Follow up, I'd like to talk to you off-line. I have a bill in Health and Human Services right now that, instead of terminating Medicaid or services when they go into the

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incarceration, we suspend them. And then the suspension is coordinated with Health and Human...Department of Health and Human Services and Department of Corrections. We know that upon release, it can be turned back on very quickly. We're finding that one of the things that we found in CSG and other investigations I was involved with is that when you send a diabetic, for example, out the door with no services medically, it is equally as important with mental health services as well, but they need to have those services or we're looking at factors that will increase recidivism. So there's a lot of those things going on that...and that would bring me to my final point and I'll shut up. You have so many things sitting in potential legislation and when we spoke we need to know which direction you want to go. I know that that's probably on your to-do list. But the sooner we can start talking about things like just that specific, is that what you want, and I'm assuming that you do, or this one, is it going to work within your scope. That's the conduit I think that Senator Coash was also alluding to. One phone call to Senator Seiler or somebody on this committee, we can start to weed through LB605 and other associated bills that are out there, because we, again, Senator Chambers said, we want you to succeed.
[CONFIRMATION]

SCOTT FRAKES: Thank you. [CONFIRMATION]

SENATOR KRIST: Thank you, Chair. [CONFIRMATION]

SENATOR SEILER: Senator Coash. [CONFIRMATION]

SENATOR COASH: Thank you. Director Frakes, this is a tougher one to talk about but I think it...I want to give you a chance to respond because it is out there. It's part of the...it's part of the material that we all received. In your previous position, there was an incident that happened that shined a light on the safety of the institution. [CONFIRMATION]

SCOTT FRAKES: Yes. [CONFIRMATION]

SENATOR COASH: Which you'll hear...I mean we all have different things that we're concerned about here. Mine will continue to be on the safety aspect. But you had an incident there where the safety of the corrections officers was put into question and you had to make some changes, I believe, and it was on your watch where a corrections officer lost their life. [CONFIRMATION]

SCOTT FRAKES: That's correct. [CONFIRMATION]

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SENATOR COASH: And I'm just going to give you a chance to respond to that and what you learned from that, how that's going to impact how you manage the facilities here in Nebraska. [CONFIRMATION]

SCOTT FRAKES: So as I said in my opening, I spent 15 years wearing the uniform. In Washington State, the uniform is blue. So they say if you've worn the uniform, you're part of that, then part of your heart is blue. And that has never left me. Jayme Biendl's murder was by far the most horrific thing that I've ever experienced in my life. And I've had a few other tragedies in my life. Of course, that in no way compares to what happened to Jayme, who was...it rocked not just the facility but the entire Department of Corrections. It had been 33 years since a staff member had been murdered in the line of duty. What we identified was some very direct failures by a few staff--just didn't do what they should have done, what they were paid to do. And I'm sure the research would show that I took action around those staff. But good union representation, a process that led to their jobs being restored, and that's how processes need to work. Think I'll just leave that at that. [CONFIRMATION]

SENATOR COASH: Well, I need to have you take it a little bit further because part of the reason some of those members' jobs were restored was because it was shown that there was kind of an overarching safety issue throughout the institution where they worked and it couldn't be found that it was just those three with unsafe behaviors; that there was a problem of that, that was wider than them. And that was part of the reason, whatever process went through, their jobs were restored. And so...and that happened on your watch and so you had to take some steps beyond just those three employees. Am I right? [CONFIRMATION]

SCOTT FRAKES: I did. Specific to staff there was a lieutenant that was demoted, nonrepresented staff, so it doesn't show up in that record; another lieutenant that was formally reprimanded; some associate superintendents, one resigned rather than face some other action, and another one was reassigned and then resigned, retired actually. So that was one piece of the personnel issues. There was a specific...the union did a very effective job of making that argument at the arbitration. I don't believe that the review by the National Institute of Corrections or the Labor and Industries review or the critical incident review that was done by the Department of Corrections would draw exactly the same conclusions. It did identify that there were systemwide issues. There was...one of which was how, as a Department of Corrections, we accounted for staff, and that was one of the things that led to some significant changes, changes in radio equipment, the issuing of carry-on-person oleo...well, pepper spray. I can't remember, and there was more than that. At the facility level what was identified was there was some disconnects between post orders. So one set of post orders told an officer they were supposed to be at a certain place, but the place where that was, that post order didn't reflect that that person should show up. And then there was definitely evidence that supervisors weren't paying as much attention as they should; that there just wasn't enough checks and balances in place. So I could

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go on and say that it was...I'm not going to say that it's any individual failures. I am a believer in the buck stops here and I was on the watch and it was my facility, and I'll carry that with me the rest of my life. What I took away from that was learning that despite economic crisis, despite all the ongoing challenges that might be occurring, and if we talked a lot more I think there's definitely some parallels between my experience and some of what has occurred here in Nebraska, learned that you got to pound the table when you think things are getting dicey. And I spoke but I didn't speak loud enough. I said that there was reason to be concerned, that staffing levels were getting too low because of the economic cutbacks, that staff were disconnected and discontent because of the furloughs and the other...some of the other economic impacts that were occurring, so...but I didn't do that in a way that I think it drew enough attention. I also recognized that there was some leadership that needed to change and I gave them more chances to change than I probably should have. Those are two specific things that I bring away from that. And I have acted very differently in the last three years when issues like that arise.
[CONFIRMATION]

SENATOR COASH: Thank you for responding to that. [CONFIRMATION]

SENATOR SEILER: I have a just a few questions. I sent you a letter of my concerns to kind of prompt you into taking a look at those three studies. When the people on this committee talk about being very serious about those three studies on prison overcrowding and the related issues, I don't think it can be emphasized enough the senators, I won't speak for the other people, but the senators that participated in those, I calculated my salary for the time spent was \$2.25 an hour. And so they took it pretty serious. And you say you're going to build a plan to reshape the program. I hope you include in that plan facilities, bricks and mortar, repairs and things, equipment that you need as well as programs, career path, as well as education. I just had a person contact me out at McCook, wants to go to...put 200 jobs, career jobs, out there. I think I visited with you a little bit about that. And there's many more that want to participate in how you reform that McCook program out there. And last, systems of mental health, I'm really seriously...the last number I saw when we did the hearings was 31 percent of your people have some sort of mental health programs. And that may be low because I just talked to some people that were out at your place and observed--I think it was before you got there--observed people being mentally examined. And they where not impressed at all that they were even getting close to how much mental problems are really floating around out there. So I think that those things included in your plan, but most of all I want you to have the confidence to be able to contact either myself or any member of this committee and ask that the committee get together and help you. I think one of the failings that was going through those committees is there was--and I'm sure it won't happen under this Governor--but there was a feeling, if it wasn't true it was a feeling, that a senator couldn't talk to a department head without prior approval and the questions being submitted. Now that was the mentality, I believe was floating around and I don't want that to be part of this committee. We want to be able to work with you. And really, we know you've

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got a mess on your hands, there's no doubt about it, and we want to help you.
[CONFIRMATION]

SCOTT FRAKES: Thanks, Senator. [CONFIRMATION]

SENATOR SEILER: So any further questions? Thank you very much. [CONFIRMATION]

SCOTT FRAKES: Thank you. [CONFIRMATION]

SENATOR SEILER: Anybody in support of this candidate? Seeing none, anybody opposed?
Seeing none, anybody in the neutral? Seeing none, this hearing is closed. [CONFIRMATION]