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Judiciary Committee
February 05, 2016

[LB915 LB919 LB991 LB1007 LB1027]

The Committee on Judiciary met at 1:30 p.m. on Friday, February 5, 2016, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1027, LB991, LB915, LB919, and LB1007. 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 KRIST: Welcome to the Judiciary Committee today. We'll be hearing: LB1027, Senator Morfeld, create and provide funding for campus sexual assault; LB991, Senator McCollister, redefine crime victim; LB915, Senator McCollister, create a veterans' treatment court; LB919, Senator Williams, change provisions relating to problem-solving courts; and LB1007, Senator Coash, change and provide provisions relating to the protection of vulnerable adults, seniors. Please turn off your cell phones. If you have any handouts, make sure that you give it to the page and they'll distribute it for you; if you need copies of it made, please give it to her beforehand. If you're testifying, if you're a witness, before you come up to the stage, please fill out a sheet for us and make sure that your names are spelled correctly and everything is there. When you come up to testify, please say and spell your first and last name, and that is for the transcribers so they have it. We use a light system in the committee. You get three minutes. When the green light is on, you're starting. When the amber light is on, you get one minute left. When the red light comes on, please be respectful and stop. You may be asked a question after that. If you're not testifying and you want to be known or have something put in the record, let the clerk know. Also, we have a new mike system throughout the Capitol, so if you don't want a conversation heard in the back of the room you might want to take it outside, because they're that sensitive. We'll start by just introducing the senators who are here.

SENATOR EBKE: Laura Ebke, District 32.

SENATOR KRIST: Senator Pansing Brooks will be here. Senator Coash is presenting in another.

SENATOR SEILER: Les Seiler, District 33 which is Adams County and the west half and the south half of Hall.

SENATOR KRIST: Ollie is our clerk; Diane, Diane Amdor. I'm Bob Krist from District 10.

SENATOR WILLIAMS: Matt Williams, District 36.

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SENATOR KRIST: And a perfect segue, Senator Morfeld is in the chair. And if you'd like to start us out today, let's go.

SENATOR MORFELD: Thank you, Senator Seiler, Senator Krist, members of the Education...or, excuse me, the Judiciary Committee. I'm the in the right committee. That's good. My name is Adam Morfeld; that's A-d-a-m M-o-r-f-e-l-d, representing the "Fighting" 46th Legislative District, here today introduce LB1027. LB1027 creates the Campus Sexual Assault (Prevention) Grant Program, the purpose of which is to provide grants to fund the development of programs to prevent and combat college campus sexual assault. Grants can be used for training, education, awareness, prevention, reporting, bystander intervention, and research-based threat assessment. Grants would be competitive and awarded up to the level of the appropriation, which is \$500,000 over the biennium, and be available to any public or nonpublic university, college, or community college with a physical presence in Nebraska. The reason why there is flexibility with the grant awarded is because we realized that no two campuses are necessarily similar and the needs are different. As written, the program will be administered by the Attorney General with input from the Nebraska Commission on Law Enforcement and Criminal Justice. It has been brought to my attention by the Attorney General, who I will note is very supportive of this legislation, that it would be more appropriate for the Nebraska Commission on Law Enforcement and Criminal Justice to administer this program, which would also help in accessing federal grants through the Violence Against Women Act. I intend to work on this amendment to this effect, which would also potentially lower the fiscal note for this program. Applications for grants shall be submitted on or before October 1 of each year for the program to begin on January 1. This issue was identified to me by a group of students that I work with that represent the University of Nebraska...or not represent necessarily, but attend the University of Nebraska-Lincoln and Nebraska Wesleyan. Nebraska-Lincoln is in my district and is about one-fourth of my constituents. Nebraska Wesleyan has many students that live near my district or in my district, so those are two important constituencies to me and this was an issue that they brought up that they knew was a serious problem, not only in the state of Nebraska, but also nationwide. This bill is based in part on the incredibly successful program the state of Michigan began two...for the past two years. The state had \$500,000 per year for grants for colleges and universities to use to help prevent sexual assault. In the first year they had \$1.5 million in requests for the \$500,000 that they had allocated for the program. The demand exceeded the different resources that they had put in with that \$500,000. The grants were used for everything from bystander training to drink coasters that can detect whether or not your drink has been tampered with. Sexual assault on campuses is a nationwide problem and I think it's important to realize how big of a problem it is, and here are some national statistics according to the National Sexual Violence Resource Center. First, 1 in 5 women and 1 in 16 men are sexually assaulted while in college. The majority of these crimes on college campuses are never reported. Nine out of ten victims knew the person who sexually assaulted them. Thirty-seven-point-four percent of female rape victims were first raped between the ages of 18 to 24. Twenty-seven percent of

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college women have experienced some form of unwanted sexual contact. Thirty percent of colleges and universities offered no training on sexual assault to students. Of the self-reported perpetrators, 75 percent reported that they had used alcohol prior to the incident. And nearly two-thirds of college students experience sexual harassment, and less than 10 percent of these students tell a college or university employee. The small good news is that several national initiatives are underway to combat campus sexual assault, including the White House Task Force to Protect Students from Sexual Assault, and It's On Us campaign, among many others, to help change cultural norms and engage the campus community in prevention. Colleagues, I firmly believe that sexual assault is a cancer upon our society and, like cancer, we cannot ignore it. We must aggressively address it with resources, education, and awareness. I urge your support of this legislation, would be happy to answer any questions. [LB1027]

SENATOR KRIST: Any questions for Senator Morfeld? Seeing none, thank you. [LB1027]

SENATOR MORFELD: Thank you. [LB1027]

SENATOR KRIST: And I'm sure you'll be here for closing. [LB1027]

SENATOR MORFELD: Yes. [LB1027]

SENATOR KRIST: Okay, let's start with the proponents, anyone who would like to speak in support of this bill. Just a show of hands of those who intend to speak to this bill in support: two, three, four, five, six. Okay, thank you. [LB1027]

MARY CHINNOCK PETROSKI: (Exhibit 1) Good afternoon. My name is Mary Chinnock Petroski, M-a-r-y C-h-i-n-n-o-c-k P-e-t-r-o-s-k-i. I am the Title IX coordinator at the University of Nebraska at Kearney. Students are not able to learn unless their basic needs have been met, and that includes feeling safe in their educational environment. At UNK we have developed a proactive training program, which includes on-line training and in-person activities, to help our students recognize what behavior constitutes sexual assault, stalking, dating violence, and domestic violence, also to take steps to keep themselves safe, develop strategies for how they can remove themselves from unsafe situations; and to know what to do if they become a victim of sexual assault, who to contact, where they can call. We've created safety cards for our students. Those cards provide contact information for our on-campus resources. They also provide contact information for resources within the city of Kearney and within Buffalo County, and we have additional resources on our Web site that are outside of our area with every state...I'm sorry, every county within the state. We are hoping to develop educational programming which will help our students learn skills on how to intervene and assist others when they recognize an unsafe situation, in other words, bystander intervention training. Encouraging our students to

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intervene and help each other will build a caring and responsive campus community. We have limited resources, of course, and that impacts our ability to provide the level and the quality and quantity of training opportunities for our students. Right now, due to our budget constraints, we are deciding which programs we will be discontinuing for our next academic year, 2016-17. Our bystander intervention program is suffering from the same lack of resources. Incoming students are particularly vulnerable and most of our efforts focus on programming for new students at the beginning of the year. Additional funding would allow us to use different forums to repeat the information throughout the academic year, and would help springboard our bystander intervention program. All students deserve to feel safe at school, and LB1027 would help us reach that goal. Thank you for giving me the opportunity to speak to you this afternoon, happy to answer questions if you have any. [LB1027]

SENATOR KRIST: Thank you for coming. Any questions? Senator Williams. [LB1027]

SENATOR WILLIAMS: Thank you, Senator Krist. And thank you, Ms. Petroski. Are there other grant programs that UNK and other colleges can apply for to receive funds to help in this area? [LB1027]

MARY CHINNOCK PETROSKI: We have in the past applied for federal grant programs and there, yes, we did receive a federal grant three years ago. That grant has expired and we were not able to get it renewed. There is too much competition for the money that's out there. [LB1027]

SENATOR WILLIAMS: Approximately how much money does UNK need in the form of a grant to make...to get you where you think you need to be? [LB1027]

MARY CHINNOCK PETROSKI: If I was to present a grant proposal, I'd ask for \$10,000 at this point in time. [LB1027]

SENATOR WILLIAMS: Thank you. [LB1027]

SENATOR KRIST: Were you at Kearney when Senator Hadley was there? [LB1027]

MARY CHINNOCK PETROSKI: No, I've only been there 18 months. [LB1027]

SENATOR KRIST: I was going to see if he gave you a snow day there, too, but (laughter)... [LB1027]

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MARY CHINNOCK PETROSKI: Well, we had two snow days this week, yes, we did. [LB1027]

SENATOR KRIST: Okay. All right. Well, thank you very much. [LB1027]

MARY CHINNOCK PETROSKI: Thank you. [LB1027]

SENATOR KRIST: Next proponent. Welcome. [LB1027]

CHARLOTTE RUSSELL: (Exhibit 2) I'm Charlotte Russell. I am the Title IX coordinator, assistant to the chancellor for equity access and diversity at the University of Nebraska-Omaha. First, I apologize for my... [LB1027]

SENATOR KRIST: Can I ask you to spell your first and last name for us. [LB1027]

CHARLOTTE RUSSELL: Oh, I'm sorry, Charlotte, C-h-a-r-l-o-t-t-e, Russell, R-u-s-s-e-l-l. I apologize for the lack of letterhead. It's my first time here at the Capitol. I'm very excited and more excited to be here in support of this piece of legislation. The University of Nebraska at Omaha is proud of our proactive approach to addressing issues of sexual misconduct--and we call it sexual misconduct because sexual assault is rather specific and it's a broad range of activities--within our university community and we strongly support the establishment of this grant within the state. I wanted to just give you an outline of some of our recent work. We do work in a number of areas. As Senator Morfeld spoke, there is a lot of different areas that we can touch upon in order to address, combat, educate, and protect our students, following UNO's "Culture of Caring" that we tout on our campus. One of the things that we did in our way of professional development for Title IX coordinators regionwide is we established and hosted the first Title IX consortium which provided continuing education to those of us within our region who work in this area. It was a time for us to sit and talk, share best practices. We also brought in experts to speak on issues regarding stalking through technology and intimate partner violence and sexual assault advocacy in situations specific to campus violence. We are adding Title IX-related questions to our 2016 National College Health Assessment survey. We expect that the Office for Civil Rights will make climate surveys an established requirement later at some point maybe next year, so we're trying to take a proactive approach, find out what our students need, what experiences they've had. Another thing I'd like to outline is that we...or highlight is that we hosted a showing of The Hunting Ground. I don't know if any of you have seen it, but we really wanted to face head-on some of the negative experiences that students have had nationwide in dealing with campuses and their handling of sexual assault. We invited our Greek leaders--fraternity and sorority leadership--in order to just open up a conversation. Increased funding would help UNO in a number of ways. We have a trained victims' advocate, but we'd like to have

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a full-time victims' advocate. That is a part-time duty of someone at this time. We would like to have a trained sexual assault investigator as part of our public safety department so that they can full-time address and provide high-quality investigative services from a police perspective. Finally, we would like to provide advocacy for those underserved groups. Thank you. [LB1027]

SENATOR KRIST: Thank you. Any questions? Seeing none, thank you for coming today. [LB1027]

CHARLOTTE RUSSELL: Thank you. [LB1027]

SENATOR KRIST: Thanks for your testimony. Next proponent. Welcome. [LB1027]

JAN DEEDS: (Exhibit 3) Thank you. My name is Jan Deeds, J-a-n D-e-e-d-s, and I've been the director of the Women's Center and associate director of student involvement for the University of Nebraska-Lincoln since 1998. In those roles I have been involved in, and sometimes taken the lead in, the development of sexual assault and relationship violence prevention education, victim services, and bystander intervention skills training. In the past 18 years some important initiatives have made a difference in the lives of students, staff, and faculty. In 2002 UNL received a \$200,000 Violence Against Women on Campus grant from the U.S. Department of Justice that allowed us to do three important things. First we developed a task force with representatives from student affairs, academic departments, law enforcement--both UNL, local, and state--student leaders, and community victim services agencies. One of the challenges for institutions of higher education is lack of communication between departments and organizations that are working on an issue without knowledge of each other's efforts. Representatives from these groups continue to meet weekly as the Campus High-Risk Behaviors Task Force, sharing information and identifying action steps to address issues of sexual misconduct, alcohol and drug use, suicide, and student homelessness. A second outcome from the grant was the establishment of a contract with Voices of Hope, Lincoln's victim services agency, to create a victim advocate position on their staff who specializes in working with UNL students, staff, and faculty. Emergency contact and victim advocate contact information has been distributed throughout residence hall rooms, fraternity and sorority houses, academic buildings, and other sites across campus. We have also worked with academic advisors, faculty, and staff members to encourage them to refer students and colleagues to these services. The third outcome was to strengthen the student peer educators group I initiated in 1998. PREVENT was started as a collaboration between the athletic department and the Women's Center to empower student athletes and nonathletes to teach their peers about relationship violence and bystander intervention skills. The funds in 2002 allowed us to purchase additional training materials, to bring nationally known speakers to campus to train the PREVENT members, and raise awareness among the student body. With the reauthorization of the Violence Against Women Act in 2013, the national focus

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on campus sexual assault brought renewed attention to the work of PREVENT, the victim advocate, and the Campus High-Risk Behaviors Task Force. The campus takes this issue seriously and resources were reallocated to support a graduate assistant position in the Women's Center to enhance and expand the PREVENT program to include annual bystander education and sexual assault/relationship violence prevention presentations to key groups of students, including fraternity and sorority members, student athletes, and residence hall staff members. The competition for the federal funds from the Violence Against Women Act has increased dramatically since 2002, so a state fund to support innovative projects that address current sexual assault prevention and responds to needs for colleges and universities would be an important resource; for example, we could develop a campus climate survey or a series of educational videos about Title IX requirements for students, staff, and faculty. I strongly support this bill. I'll be happy to answer any questions. [LB1027]

SENATOR KRIST: Take a breath now. [LB1027]

JAN DEEDS: What? [LB1027]

SENATOR KRIST: I said take a breath. [LB1027]

JAN DEEDS: I will (laughter). I'm watching the orange light, so I have a lot to say, so. [LB1027]

SENATOR KRIST: Thank you for your testimony. [LB1027]

JAN DEEDS: Thank you very much. [LB1027]

SENATOR KRIST: Any questions? Thank you for coming. [LB1027]

JAN DEEDS: Thank you. [LB1027]

SENATOR KRIST: Next proponent. Welcome. [LB1027]

CORRIN BEMIS: (Exhibit 4) Thank you. My name is Corrin Bemis, spelled C-o-r-r-i-n B-e-m-i-s. I work with the UNL Women's Center...in the UNL Women's Center with PREVENT. Before obtaining my position with PREVENT, I was a volunteer in the Women's Center and have been involved in the issue of gender relations and sexual violence for most of my undergraduate career. I am also involved in several other organizations and on a sorority on campus. I am here

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to talk to you today about why I support LB1027. PREVENT is obviously a large part of my life. I am working on projects for the organization, and I am in the PREVENT office at least three times a week. I devote my time outside of PREVENT to educating my friends and peers about sexual violence and bystander intervention. I would not be standing here in front of you if I did not see this as a completely worthy cause that deserves support and funding. However, I am not the UNL student who needs this funding. I am already educated on this subject; I know the difference between coercion and consent; I know how to stand up for my peers and use my bystander intervention training to keep the people around me safe. Luckily, I am one of the many UNL students who has already benefited from PREVENT's work but, unfortunately, there are many, many others who have not. When you are thinking about whether to pass this bill, I don't want you to think about students like me. Instead, think about the freshman fraternity member who learned how to respect women from his mother but is now in an organization who praises him for how intoxicated he got the night before. Think about the student parent who is trying to get through her classes while raising her son and needs a place that the two of them can go in order to feel safe during the day. Think about the girl who is too afraid to tell her friends about her abusive partner because she doesn't think there is anyone who will believe her or anywhere safe she can go. These are the students who need LB1027's funding. With this funding, PREVENT will be able to reach out to the girl in the abusive relationship. We will be able to present to the fraternity member's house and educate them on the differences between safe dating norms and harassment. We will be able to provide a safe place for the student parent to go with her son and a group where she can go to help get the funding that she needs...or, not funding, where she can get the help she needs to stay on top of her classes. I support LB1027 not only for these students, but for all students. PREVENT and organizations like it have already done so much to help the students on UNL's campus. Through our education programs, like the bystander intervention training and the Stop the Sketch campaign, and community outreach events, like the Voices of Hope benefit concert, PREVENT has successfully made an impact on the safety and equality on my college campus. LB1027 would not only provide the funding we need to continue this process, but would also allow us to grow the organization and help so many other people. I am excited about PREVENT's future, and I hope that you show you are, too, by supporting this bill. Thank you. [LB1027]

SENATOR KRIST: Thank you. Senator Pansing Brooks. [LB1027]

SENATOR PANSING BROOKS: Thank you. Ms. Bemis, thank you for coming and speaking today. It's so much strong...it's very strong with your voice saying these things. I have a daughter who is a freshman in college and these are all things any parent worries about. So thank you for your advocacy and your work. And I'm grateful to all three campuses of the University of Nebraska for their efforts in this important issue. [LB1027]

CORRIN BEMIS: Yes. Thank you. [LB1027]

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SENATOR PANSING BROOKS: Thank you for talking today. [LB1027]

CORRIN BEMIS: Thank you. [LB1027]

SENATOR KRIST: Any other questions? Thanks for coming, Ms. Bemis. [LB1027]

CORRIN BEMIS: Thanks. [LB1027]

SENATOR KRIST: Next proponent. Welcome. [LB1027]

BRENDAN GALLO: Thank you. I apologize, I don't have any handouts. My name is Brendan Gallo, B-r-e-n-d-a-n G-a-l-l-o. I'm a member of PREVENT on UNL's campus and a junior studying finance and computer science. UNL PREVENT is a program designed to prevent and combat college campus sexual assault and includes/facilitates "training, education, awareness, prevention, reporting, bystander intervention, and research-based threat assessment programs, with the goal of improving safety and security" of students at the University of Nebraska-Lincoln's campus--which is wording I've pulled from the bill. As such, it seems relevant to speak to the impact this organization has had on my life and the impacts I've seen it have on my friends' lives and, by doing so, I hope to show why I support the appropriation of funds as outlined in LB1027. Sexual assault is obviously a huge issue on every campus and, as previously mentioned, statistics tell us that roughly one in five women will be sexually assaulted during their time at college alone. I have had the pleasure of being a member of PREVENT since invited by my friend Greg DittEJD-0729man previously this year. While PREVENT uses a lot of methods to combat sexual assault, I would like to touch on three that I have found to be particularly effective, the first of which being presentations, which were previously mentioned by our coordinator. From experience I can say that the presentations are loaded with useful information and are significantly more effective than any type of on-line awareness training that can be offered to students. This is due in large part to their engaging discussion-based format that encourages students to think about how they would react if they were a bystander in a situation deserving of intervention. Second, the campaigns that were also previously mentioned, these social media campaigns, informative graphics, and special events help educate the student body. They're full of brief, relevant bits of information, such as "groping isn't just rude, it's illegal." And I have personally been...experienced the benefit of these campaigns. Earlier this year I didn't understand that Title IX was anything more than something that guaranteed the same number of scholarships for men and women in college athletics, and I'm happy to now report that I understand many of the other purposes of this legislation. Finally, I think the greatest impact that PREVENT has is our initiative to set up liaisons between Greek houses and residence halls and the PREVENT organization. With increased funding we could expand this program, similar to what the health center does with their wellness advocates, and have stipend

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advocates in every place around campus for campus residents, so that everyone has someone that they can talk to when they're in a situation where they need someone to go to. I can say personally that receiving training makes it much easier to have these difficult conversations, as I've been a confidante to people both before and after receiving this training regarding sexual assault. And while these conversations are never easy to have, it's much easier to have these conversations after proper training. And so I strongly encourage you to support LB1027 for these three reasons I've cited, and I'd be happy to answer any questions that you have. [LB1027]

SENATOR SEILER: Senator Williams. [LB1027]

SENATOR WILLIAMS: Thank you, Senator Seiler, and thank you for your testimony. Can you tell me a little bit about how PREVENT is currently funded? [LB1027]

BRENDAN GALLO: That would be a better question for our coordinator, Jan Deeds. [LB1027]

SENATOR WILLIAMS: Okay. [LB1027]

BRENDAN GALLO: I'm not too aware of that unfortunately. [LB1027]

SENATOR WILLIAMS: Okay. We'll find out. Thank you. [LB1027]

SENATOR SEILER: (Exhibit 5) Any further questions? Thank you for your testimony. Next proponent. Seeing nobody moving forward, any opponent? Anyone in the neutral? We have a letter here of support from the National Association of Social Workers, and that letter will become part of the record. And, Senator Morfeld, you may close. [LB1027]

SENATOR MORFELD: Thank you, members of the committee. I'll be fairly brief. I just want to make a few notes. First I'd like to thank everybody for coming out and testifying in support of this today. It's greatly appreciated. And I'll also note that I've talked to administration at smaller universities and colleges also across the state and, while none of them were here today, part of that is that they have very little resources, when it comes to this, to almost no resources whatsoever. And so the larger university campuses don't have enough resources as it is, but there's some colleges across the state that literally have very little to no resources and the Title IX coordinator is one of many duties of, you know, a dean or whatever the case may be. And so this program is really critical both for the large universities and the smaller universities. In addition, I think that one of the things that I really saw troubling when I came to the university...and I worked two years, full time, before I went to the University of Nebraska-Lincoln. And then I went there and when I went there full time, I actually lived on campus for

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the full four years. And while we do have good programs with how little resources we have, there is a certain culture, and I'm sure it's nothing new, on universities where there's some students that just--shockingly, I think--don't know the difference between coercion and consent. And they haven't been educated in their homes on what that is and there's a lot of popular culture and other things that really promote unhealthy and violent practices when it comes to relationships. And so that's the importance of having these types of funds available and ready to go. In addition, I lived my first year in Harper Hall, which is a dorm on the University of Nebraska-Lincoln, and then I was a resident assistant, then assistant residence director in that same hall for three more years, and I can tell you right now that sexual assault is a real problem and it's a problem that we often don't talk about. I saw many instances in that dorm and then in other dorms across campus, and it's fairly scary, and so there's a real need for these resources. I know that times are tough right now in terms of the revenue forecast and all those things, but this is a smart and much-needed investment. So with that, I'd be happy to answer any questions that you may have. [LB1027]

SENATOR SEILER: Senator Pansing Brooks. [LB1027]

SENATOR PANSING BROOKS: Thank you. Thank you, Senator Morfeld. I just...I'm sort of surprised, considering that rape is considered the most frequent of violent acts on campus. [LB1027]

SENATOR MORFELD: Yeah. [LB1027]

SENATOR PANSING BROOKS: So...and I know that there's been a lot more on this in the news about how universities cannot keep turning a blind eye to it. So the fact that very few resources are being put towards this issue is shocking to me and it's very important that we go forward, but also I would hope the university will go help you with this whole matter as well. [LB1027]

SENATOR MORFELD: Certainly. And the university, Senator Pansing Brooks, has been very supportive, and the university...the larger universities do have some administrative resources and they've been very proactive in applying for the federal grants, so I really do applaud them. But the fact of the matter is they need more resources, we need more resources, and the smaller colleges also need resources on this too. The federal funding is becoming much more competitive and so it's much harder to get those resources. And you'll see a...this committee will see another bill that I'm carrying on behalf of the Attorney General to have a statewide sexual assault...I'm getting the name wrong right now, but basically a coordinator, a person that works to train medical officials on how to treat people and collect evidence of victims of sexual assault.

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And so this is not only a need on our campuses, it's a need statewide for resources, too, and we'll talk a little bit more about that when that bill becomes...comes before this committee. [LB1027]

SENATOR PANSING BROOKS: Well, thank you. And clearly, if something happens and the university is sued, that's suing the state basically, so this is really, really important for our state. [LB1027]

SENATOR MORFELD: Absolutely. I mean...yeah, on a lot of different levels, Senator. [LB1027]

SENATOR PANSING BROOKS: Thank you. [LB1027]

SENATOR SEILER: Seeing no further questions, the hearing is closed. [LB991]

SENATOR MORFELD: Thank you. [LB1027]

SENATOR SEILER: LB991, Senator McCollister. You may go. [LB1027]

SENATOR MCCOLLISTER: Thank you, Chairman Seiler. Members of the Judiciary Committee, I am John McCollister, J-o-h-n M-c-C-o-l-l-i-s-t-e-r, and I represent the 20th Legislative District in Omaha. I'm here today to introduce LB991. The bill would add three categories of crimes for which victims are entitled to be notified and informed about the status of the prosecution of the perpetrators of the crimes in question. The categories to be added are: third-degree sexual...third-degree assault, that's on page 2, line 15 and 16 of your green sheet; domestic assault, page 2, line 16; and third-degree sexual assault, page 2, line 17. LB991 would amend Section 29-119 in the criminal procedures code. This section interacts with statutes in Chapter 81 that pertain to crime victims and witnesses. The categories of crimes listed in 29-119 is the subject of LB991 and are referenced in Section 81-1848, where the rights of crime victims are outlined. The rights of these victims include the right to be present at a trial, the right to be promptly notified of the status of the conviction process, and the right to submit a victim impact statement at a sentence hearing. The laws granting rights to crime victims have been in existence in one form or another for over 30 years. Each of these three categories of crime, which victims' rights would be assigned in LB991, has features that resemble similar crimes for which victims already have rights of notification and information. Third-degree assault, under Section 28-310, would be added to follow first-degree assault under Section 28-308, and second-degree assault under 28-309. These three crimes of assault involve intentional or reckless criminal acts that cause bodily injury to the victim. There are subtle differences in the elements of these three crimes, some of which are matters of interpretation. LB991 would recognize the rights of these

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crime victims do not hinge upon differences in the offenses charged. Domestic assault, under Section 28-323, would be added for the first time. There are three different categories of domestic assault: first, second, and third degree. The elements of these crimes and the nature of the harm to the victims can be compared to the three other categories of crime of assault I just described. The major distinguishing factor with the crime of domestic assault is that it occurs in a domestic or household setting. The acts of the offender and the harm to the victim are essentially identical. LB991 would recognize these victims are entitled to the same rights as the other victims in criminal assault cases. The last crime for which victims' rights would be recognized under LB991 is the third-degree sexual assault. The current law applies to victims of the first- and second-degree sexual assaults. Here again the basic nature of the offense and the impact on the victim are similar enough to suggest that these victims ought to have their rights established. It's interesting to note that current law includes victims of the second-degree sexual assault under Section 28-320 but does not include victims of third-degree sexual assault under the same section of the criminal code. The only difference between these two offenses is the severity of the personal injury suffered by a victim, a close semantic distinction that depreciates the nature of the injury suffered by a victim of sexual assault. These...there are proponents here today to provide more information about how Nebraska law recognizes and protects the rights of crime victims. I'd be happy to answer any questions if I can. [LB991]

SENATOR SEILER: Any questions? I have one, and I'm sure you're amending one section and it's probably in another section. Who is responsible for the notification? [LB991]

SENATOR McCOLLISTER: The prosecutors I believe. I mean (inaudible). [LB991]

SENATOR SEILER: And that's in another section of the...that you're not amending? [LB991]

SENATOR McCOLLISTER: Yeah, and actually we'll be coming back to you with an amendment because some of the defense attorneys that perhaps are responsible for that have objected to certain parts of this, so we need to amend it and deal with their objections. [LB991]

SENATOR SEILER: That's fine. We'll look further to the amendment. Any further questions? Seeing none, thank you. [LB991]

SENATOR McCOLLISTER: Thank you, Mr. Chairman. [LB991]

SENATOR SEILER: First proponent of this LB991. [LB991]

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TONI JENSEN: Good afternoon, Senator Seiler and members of the Judiciary Committee. My name is Toni Jensen, T-o-n-i J-e-n-s-e-n, and I'm here today representing the Nebraska Coalition for Victims of Crime to testify in support of LB991. Our coalition is made up of individuals who are working directly with victims or victims' issues across the state. Our purpose is around improving victims' access to their constitutional and statutory rights in Nebraska. We feel that LB991 is a step in that direction. Crime victims' rights are described in the Nebraska Crime Victim's Reparations Act. The bulk of the rights provided to victims can be found in 81-1848. That statute and others related to crime victims' rights use the definition found in 29-119, and we feel this small expansion of the current definition will help us to better serve crime victims across the state. The crime victim's bill of rights provides many things, including an opportunity to be heard throughout the criminal justice process, from initial charges, plea negotiations, sentencing decisions, all the way through to parole hearings. It also requires simple notification to victims when any proceeding is cancelled, continued, or rescheduled, so that crime victims don't travel for a hearing that doesn't actually take place. The crime victim's bill of rights also provides victims with important protections, not only for their physical security when attending court hearings, but also for the protection of their personal identifying information, which is in addition to the victims' rights that this body approved last year as a part of LB605. It is for all of these reasons, but specifically the last, that we want to see the definition of crime victim expanded. LB991 adds three pieces: third-degree assault, third-degree sexual assault, and all classifications of domestic assault. It has been our experience in working with victims that first- and second-degree offenses are often pled to a third degree or charged at a third degree based on available evidence and our witnesses. Additionally, victims of domestic assault experience extreme risk for their participation in the criminal justice process and, as such, need some of the specific protection provided for in the crime victim's bill of rights. Our board encompasses victim advocates who have worked with crime victims in urban and rural areas of this state for decades. We can confidently say that many victims hesitate to be a part of the criminal justice process out of fear for their personal safety or fear that others will find out about their victimization and use that information to retaliate or intimidate. We believe that providing this small expansion to the definition of victim will help to improve a victim's involvement with the system and also their overall experience of the system. In closing, the Nebraska Coalition for Victims of Crime asks the committee to move LB991 forward. I thank you for your time and would be happy to answer any questions. [LB991]

SENATOR SEILER: Any questions? Seeing none, thank you for your testimony. Next proponent. [LB991]

STEPHANIE HUDDLE: (Exhibit 1) Good afternoon, Senators and members of the Judiciary Committee. My name is Stephanie Huddle, S-t-e-p-h-a-n-i-e H-u-d-d-l-e. I'm the public policy coordinator for the Nebraska Coalition to End Sexual and Domestic Violence. I'm here to testify in regards to our support for LB991. The Nebraska Coalition is a statewide nonprofit advocacy

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organization committed to the prevention and elimination of sexual and domestic violence. We provide training and technical assistance to Nebraska's network of domestic violence and sexual assault programs, supporting and building upon the services they provide. Our mission is to enhance safety and justice by changing the beliefs that perpetuate domestic violence and sexual assault. We believe LB991 is an effort to do just that and will allow those who have been subjected to crimes of sexual and domestic violence to be better served throughout Nebraska. Advocates working in the local domestic violence and sexual assault programs across the state often find that victims fear reporting crimes of domestic and sexual violence. This fear is based in part on their belief that their identity will be known and associated with the crimes committed against them. It was this fear that led Congress to implement protective measures through the Violence Against Women Act. When passing this act, Congress implemented protections regarding the information that can be shared about victims of domestic violence, dating violence, sexual assault, and stalking. Federal laws authorizing grant programs prohibit those receiving such funds from sharing personally identifying information about victims without their informed, written, and reasonably time-limited consent. The 2013 reauthorization of VAWA clarified those who receive grants shall not disclose, reveal, or release any personally identifying information, regardless of whether the information has been encoded, encrypted, or protected in some other manner. Grantees are required to certify they are keeping identifying information confidential in order to receive funding through VAWA programs. Of the 20 community-based domestic violence and sexual assault programs in Nebraska, 19 currently receive funding through VAWA. The confidentiality protections set forth by grant conditions provided in VAWA apply to any victim who requests services, receives services, or has received services in the past from a victim service provider. Nebraska law currently does not reflect the privacy rights for victims of domestic violence and sexual assault. LB354, as it was amended into LB605 last year, was the first step in ensuring Nebraska law does recognize the importance of a victim's privacy rights. The laws amended by LB605 refer back to 29-119, a law which does not list any forms of domestic violence, third-degree sexual assault, or third-degree assault under 28-310, a charge often used in plea agreements for domestic assault cases. By passing LB991 you are not only ensuring compliance with the Violence Against Women Act and its grant requirements, but you are also making a statement that tells victims of these crimes the state of Nebraska intends to protect their identity should they report the crime to law enforcement. This is an important step in enhancing victim safety and ending violence. The Nebraska Coalition to End Sexual and Domestic Violence asks you to advance LB991. Thank you, and I'll be happy to answer any questions. [LB991]

SENATOR SEILER: Any questions? Thank you for your testimony. Next proponent. Anyone else testifying in favor of this bill? Any opponent? Anyone testifying in the neutral? [LB991]

SPIKE EICKHOLT: Good afternoon, Chairman Seiler, members of the committee. Spike Eickholt--first name S-p-i-k-e, last name E-i-c-k-h-o-l-t--testifying in a neutral capacity

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regarding LB991. I'm representing the Criminal Defense Attorneys Association as their lobbyist. Our organization does not take any position regarding the addition of the crimes of third-degree domestic assault and third-degree sexual assault. The concern that the membership...that our membership had was the addition of the category of crime of third-degree assault in 29-119. Adding victims of third-degree assault gives those victims certain statutory rights. One of those, as Senator Seiler asked before, was the requirement that the prosecutor notify that victim of court hearings, plea negotiations, and that sort of things. One of the other things that a victim of the crimes that are categorized gets is the opportunity to submit a victim impact statement. In 29-2201, that is the provision of law that provides for courts to order presentence investigation reports. The concern that we had was that adding third-degree assault as a category would require courts or could conceivably require courts or courts could feel that they had to order a presentence investigation report in every third-degree assault case. Third-degree assault is the most minimum or low-risk level category of assault offenses under state law. It covers things like bar fights, mutual fights, and that sort of things, and courts do not always order--under current law they have the option--they do not always order presentence reports for third-degree assaults. The concern that we would have is that if we have clients who are in custody, cannot make bond, or are trying to resolve their case and just want to plead guilty, the presentence investigation process takes anywhere from four to six weeks sometimes to complete and that would just delay resolution of those cases. It is discretionary now with the court, and it would remain so if it's not added in this...by this bill. We did meet with Senator McCollister yesterday to express our concerns to him and I think he alluded to that, that he has...is entertaining an amendment that would still add the category of third-degree assault but would provide that victims who are victims of third-degree assault but are intimate partners to the offender would be considered...going to be entitled to the victim's rights provision of this bill, and we are agreeable to that addition, so that's why we're testifying in a neutral capacity. [LB991]

SENATOR SEILER: Any questions? I want to just clarify one thing. The notices that are sent out to the victims are all by the prosecutor. [LB991]

SPIKE EICKHOLT: They're all by the prosecutor, that's correct. [LB991]

SENATOR SEILER: Okay, thank you. Anyone further in the neutral? Senator, you may close. [LB991]

SENATOR MCCOLLISTER: Thank you, Chairman Seiler, members of the committee. I would publicly like to thank Spike Eickholt for bringing information about the Nebraska Criminal Defense Attorneys Association to me yesterday. His actions enabled us to reach a compromise position with the victim's advocate proponents for LB991. The compromise produced language

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with regard to third-degree assault category, which will be drafted for the committee's consideration early next week. That's all I have. [LB991]

SENATOR SEILER: Anything further? Seeing none, thank you. [LB991]

SENATOR McCOLLISTER: Thank you very much. [LB991]

SENATOR SEILER: You may go ahead and open on your LB915. [LB915]

SENATOR McCOLLISTER: Thank you, Chairman Seiler and members of the committee. I am John McCollister, J-o-h-n M-c-C-o-l-l-i-s-t-e-r, and I represent the 20th Legislative District in Omaha. Today I am introducing LB915 to create a veterans' treatment court pilot project in Douglas County. While most veterans return home strengthened by their military service, the combat experience has unfortunately left a growing number of veterans suffering from substance abuse, mental health disorders, and trauma. Note the following alarming statistics. One in five veterans has symptoms of mental disorder or cognitive impairment. Left untreated, mental health disorders common among veterans, such as traumatic brain injury, posttraumatic stress disorder, can directly lead to homelessness and involvement in the criminal justice system. Eighty-one percent of the justice-involved veterans had a substance abuse problem prior to incarceration, and 25 percent were identified as mentally ill. Twenty-three percent of justice-involved veterans were homeless at some point in the year prior to their arrest. Less than 1 percent of Americans serve in the armed forces, yet 20 to 30 percent of American prisoners are veterans. According to the Council of State Governments, about 11,000 veterans are currently being served by the veterans' treatment courts. Based on our research, veteran treatment courts are cost effective and are an unusually effective way to deal with veterans coming into the criminal justice system. Veteran treatment courts, or VTCs, operate in most states in the Midwest and there are more than 220 VTCs nationwide. Most VTCs are run by county or other local court systems they use to divert offenders into treatment programs instead of sending them to prison. Nebraska already has a system of problem-solving courts. A pilot veterans' treatment court would be a first in Nebraska, which currently serves about 1,200 criminal offenders a year in 14 adult drug courts, 2 juvenile drug courts, 6 family courts, and 1 young adult court. Savings from a problem-solving court can be substantial. A 2012 report by the University of Nebraska-Lincoln put the cost of a problem-solving court at \$12 to \$46 per day compared to \$92 per day for a cell in the state prison. When we consider what our veterans have done for us, it becomes imperative that we not ignore the challenges they may experience from their military service. Our veterans deserve our best effort to restore them to full health. I'd be happy to answer any questions. [LB915]

SENATOR COASH: Thank you, Senator McCollister. I'm going to turn it over to questions from the committee. Seeing none, thanks for introducing the bill. [LB915]

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SENATOR McCOLLISTER: Thank you, sir. [LB915]

SENATOR COASH: I have a list of proponents that we'll call up in a particular order; and then if there are more, we'll hear those too. First proponent I'd like to call up is Judge Doyle to testify. Welcome, Your Honor. [LB915]

JIM DOYLE: (Exhibit 1) Thank you. Good afternoon. I am Jim Doyle, J-i-m D-o-y-l-e. I am one of the four district judges in the 11th Judicial District which includes 17 counties in south-central Nebraska. I am the judge of the Midwest Nebraska Drug Court. I'm also the chair of the Nebraska Supreme Court's Committee on Problem-Solving Courts. I live in Lexington, Nebraska. I thank Chairman Seiler and the members of the Judiciary Committee for providing this opportunity to testify about problem-solving courts. My testimony concerns LB915. As you consider this legislation, I ask you to consider relying on three principles that underlie the Supreme Court's Problem-Solving Courts Committee approach to the implementation and operation of the courts in Nebraska. Those principles are accountability, the use of evidence-based practices, and efficacy. The first principle is accountability. Judges and those who implement and operate a drug court are required to adhere to the standards governing all aspects of the operation of that court. The standards provide requirements, specified practices, and guidelines that must be consistently used. The standards ensure that policies, practices, and all operations of the problem-solving courts are uniform throughout the state, are based on methods proven to be effective, are fairly, uniformly, and justly employed, and are documented and available for inspection and review. The second principle is the principle of evidence-based practices. The purpose behind all measures and methods used by specialty courts is to change the way participants think and act. The only ethical and responsible way to effect such a change is by using methods and tools which research has proven to be effective and free from the risk of harm. The third principle is efficacy. Problem-solving courts in theory and by design are intended to provide a more effective alternative to incarceration of law offenders. To accomplish this end, problem-solving courts must ensure and protect the safety of the public, cost less, and provide a greater reduction in recidivism than alternative forms of sentencing. As a result, problem-solving courts must establish performance measures, collect data on such measures, analyze the data, assess the performance of the courts, and report the results and make adjustments to increase their effectiveness. I ask you to permit the Nebraska Supreme Court to expand the use of problem-solving courts, including veterans' and other therapeutic courts, by using the Supreme Court's existing procedures and rule-making authority. To ensure the success of the expanded forms of problem-solving courts, the courts must be implemented and operated in the right way. Orderly and reasoned implementation will take time and require the use of: graduated approach, including the development of interim and final standards; the progressive expansion of the courts, beginning with those vocations that have the greatest need; and the collection and evaluation of performance data, including human and other resource needs and utilization; and the employment and training of professionals required to operate the expanded

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courts. I ask you to rely upon the past performance of the Supreme Court and its Committee on Problem-Solving Courts as an indicator of the responsible and effective manner in which the expanded authority will be exercised. In 2006, the Legislature enacted statutes which authorized the use of problem-solving courts, specifically drug courts. Thereafter, the Supreme Court and its committee established the position of a statewide coordinator for problem-solving courts, promulgated rules governing the operation of the courts and, in collaboration with counties, local steering committees, and agencies and using probation-based employees, established drug courts in all 12 of Nebraska's Judicial Districts. In addition, the Supreme Court adopted a strategic plan for the improvement, increased accountability, and expansion of problem-solving courts and adopted best-practice standards. My time has expired. I thank you. If you have any questions, I'll be glad to answer them. [LB915]

SENATOR COASH: Thank you, Judge. [LB915]

SENATOR PANSING BROOKS: Finish up. Are you done? Were you done? [LB915]

JIM DOYLE: I was at the last word when the red light came on. [LB915]

SENATOR PANSING BROOKS: Thank you. [LB915]

SENATOR COASH: Timed very well, Judge. [LB915]

JIM DOYLE: Thank you. [LB915]

SENATOR COASH: Let me ask you this: Were you on the bench when the Legislature instituted the drug courts? [LB915]

JIM DOYLE: In 2006 I was. [LB915]

SENATOR COASH: Okay. And you mentioned that legislation was needed to authorize that? [LB915]

JIM DOYLE: I can explain that a little bit, the history behind that. In the early...late 1990s, the Bureau of Justice Assistance made grants available to courts to allow them to start drug court programs. In Nebraska there are three entities that did that: Douglas County, Lancaster, and central Nebraska formed a court using a grant from the Bureau of Justice Administration (sic-- Assistance). That was before there were rules on it from the Supreme Court, and it was before

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the statutes were there. They operated those courts in somewhat of a vacuum in terms of how to do it and used the ten key components, but they didn't have a statewide system for governing that. The Supreme Court asked them for some authority from you. In 2006, the statutes were adopted and then rules were promulgated. In 2006, I was a judge in Dawson County and I had a big problem with methamphetamine and I went to the Crime Commission at that time and asked them to allow me to start a drug court without a grant and to provide some assistance through the Probation Administration. About the same time then this legislation was being formulated to authorize that. The Supreme Court at that time felt that they needed to have that in order to shift the resources over to start courts such as the one I was beginning. [LB915]

SENATOR COASH: Okay, thank you, Judge, because that really went to my question because Senator McCollister's bill is very...it's a one-page bill. [LB915]

JIM DOYLE: Right. [LB915]

SENATOR COASH: It's very simple. And I'm always looking at, is legislation needed to do what the legislation is purporting to do? And I think you've answered my question that the court would like authority to be...if this were the policy, the court would like legislative authority to do that. But as I look at this, I'm...you know, I was wondering if the court couldn't just do this of its own volition without legislative authority. But it sounds like we followed the same path that the drug courts did that the court would want legislative authority. [LB915]

JIM DOYLE: That's true. There's another reason behind it. If you look at what's happening to the criminal justice system and the Legislature's actions with respect to criminal justice, the penalties have increased for criminal penalties. We now have a DUI that's a Class II felony. And so if you're an observer of the system, which all of us district judges are, we see these penalties increasing, mandatory minimums, etcetera, etcetera. You've done some correction with LB605. But the message to the public is we're getting higher and higher in our penalties and we have less willingness to allow people to continue to commit felonies, break the law. If this court were to say at the same time that you're increasing the penalties, let's go ahead and use another system to treat offenders differently that doesn't give them the penalties the Legislature is increasing, it sends a mixed message. And so the message we want from the Legislature is, we authorize you to go ahead and do this and we'll allow you to have that authority. So there's a policy issue there that we're being deferential about I guess. [LB915]

SENATOR COASH: That's very helpful. Thank you, Judge. [LB915]

JIM DOYLE: Okay. [LB915]

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SENATOR COASH: Senator Pansing Brooks. [LB915]

SENATOR PANSING BROOKS: Thank you, Senator Coash. Thank you very much for coming and testifying today, Judge. [LB915]

JIM DOYLE: You're welcome. [LB915]

SENATOR PANSING BROOKS: I guess I'm interested in a couple things. First off, gosh, I hope that the public isn't seeing this as increasing penalties but trying to find better solutions to dealing with crime and becoming smarter on crime. So that I don't think is our total goal to just continue to increase penalties. But as far as these bills with...that Senator Williams has, and Senator McCollister, do you have a feel how soon the Supreme Court would get going on this kind of expanding a problem-solving court? [LB915]

JIM DOYLE: I do. [LB915]

SENATOR PANSING BROOKS: Could you explain that a little bit and how long it might take to have this happen? [LB915]

JIM DOYLE: I would suggest that by the end of 2016 the Problem-Solving Court Committee would have an array of proposals to give to the Supreme Court to say these are the rules we'd suggest, these are the standards we'd suggest, these are the programming that we would do this. Our strategic plan that we adopted in 2012, which was four years old now,... [LB915]

SENATOR PANSING BROOKS: Yes. [LB915]

JIM DOYLE: ...has a component for this in there. We've already begun much of the work. There's a lot to do. But we would propose that we have something ready for them to look at in terms of a program and then budget considerations by the end of this year. [LB915]

SENATOR PANSING BROOKS: So at the end of 2017? [LB915]

JIM DOYLE: 2016. [LB915]

SENATOR PANSING BROOKS: Sixteen. Good. Thank you. I misheard you. So you're hopeful that this could begin sooner rather than later, is that what you're thinking? [LB915]

JIM DOYLE: Yes. [LB915]

SENATOR PANSING BROOKS: Then once it's all proposed, how did it go before? Would it take quite a while for the Supreme Court then to acknowledge and validate your suggestions? Or how does that work? [LB915]

JIM DOYLE: It doesn't take as long as it used to. I think we've gained some trust among the members of the court. And plus, our processes now are far more complete than they used to be and we're very collaborative with all the people who are affected, from probation to regional health, behavioral health services, agencies, that type of thing, bringing people in and getting things done. The other thing, as I've already said, we've already begun working on outlines for these types of proposals. They've been in our strategic plan and we're giving them interim reports twice a year on our progress on these types of developments of both the standards and the rules, as well as the programmatic content of it. We also have these systems of the Probation Administration as they help us develop programs that they can use that they pass on to other parts of their system and they bring it back to us. So some of those are being ground tested right now as we look to develop those programs. So we've got some of the infrastructure in place, if you will, to support the final phase of putting those standards and rules in place. So that's why I'm pretty confident we can get this done quickly. [LB915]

SENATOR PANSING BROOKS: Wonderful, thank you, Judge. I also want to thank you for your efforts on the drug courts. It's an important way for us to deal with overcrowding and to be able to work with some of the people that are running into trouble. I went to one of the graduations in Lancaster County and it's an amazing program. So thank you for your work on that. [LB915]

JIM DOYLE: You're welcome. [LB915]

SENATOR COASH: Thank you. Senator Seiler. [LB915]

SENATOR SEILER: Judge, I know that it's a progression of these problem-solving courts and you don't need them in every county, but the ones you do, you really have been successful in. I'm wondering how much this is going to cut into your time as a county judge or a district judge in these special problem "solings" and if...I think I've suggested this in a number of venues, I'm not sure in front of you, a referee or a magistrate to assist the district judge in gathering the facts and putting those programs together so that you're not burning up real good court time with these smaller problem-solving programs. I know they're important, but I'm wondering if in some areas that your rules would be added so that you could add a magistrate or a referee to assist the judges in that area. [LB915]

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JIM DOYLE: The use of judicial resources is something that we will look at, and I think the right way to do that is to allow the Supreme Court to do the analysis. [LB915]

SENATOR SEILER: I do too. [LB915]

JIM DOYLE: We have workload studies that we do. And what I would suggest is that right now I operate a drug court in two locations: Lexington and North Platte. They're 60 miles apart. On one Monday I'm in one place, and on the alternate Monday I'm in the second place. It's about six hours to eight hours per week that are...that I devote to the drug court program. Sometimes it's less, sometimes it's more, and that doesn't include necessarily administrative time or preparing for things like this. The use of referees would be in my view a way to help the judges in this respect. I think it's important that the judge continue to have the role of being the person that the participant accounts to. They represent the system. They represent the whole weight of the state, if you will, in terms of what we're expecting them to do. What a referee could do or other assistants could do, magistrates could do, is perhaps take some of the other caseload from the judge. That would mean the processing of cases, arraignments, things like that that can be...save some time for the judge to find those hours. We just shift that away to the other judges. But that's a complicated issue because every judge's workload is different. When you're in the rural areas, where I'm located, you've got your travel time to worry about, whereas in the inner cities and some of the larger places urban, you have different kinds of cases, the murder cases, things like that, that take a great deal of time. So what you'd want to do is evaluate that workload, which we have the current programs that do, and then perhaps shift some of it to referees or magistrates but not necessarily the actual contact of the judge with the participant in the drug court program. [LB915]

SENATOR SEILER: My point is, if you need additional legislation to establish that, I think this committee would be more than happy to examine that. But I agree with you it's the Supreme Court that needs to administer it. [LB915]

JIM DOYLE: Yes, sir. [LB915]

SENATOR SEILER: Thank you. [LB915]

SENATOR COASH: Senator Krist. [LB915]

SENATOR KRIST: Judge Doyle, thanks for coming. And I want to commend you on every...all of the programs and thank you for your service. One of the things that these legal counsels are really good at doing is blending like subject matter into consolidated, clear proposed bills that

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will become law and become statute. My question is, we're going to have people coming with vets' courts, family courts, all kinds of problem-solving courts. Can we put one document in front of you that says you have the power to do this and, if so, is there a danger in saying, go ahead, Supreme Court, and establish as many problem-solving courts as you can? [LB915]

JIM DOYLE: First question is, yes, there is. You could combine these two bills, and maybe that's something you'll do at the end. I don't know all the reasons why they are two separate bills. One is a pilot project. The other one is a more global bill, LB919, to give that broader authority. And there is considerations for each. I think one of them is how quickly can we get going, is one of the reasons for the pilot program, and there is a need that needs to be met right away. So that's the first question. The second question is, what's the risk of assigning it to the Supreme Court? Is everybody going to have their own little court? And the answer is going to be, no, because we're resource limited in the first case; secondly, we're research limited. We don't want to do these courts unless there's evidence to show that they work. There's just no sense of having the additional work if they don't produce the results and that comes down to recidivism. Does it reduce recidivism? And we're getting research that shows that our current practices that we use for drug courts, as well as for these veterans' courts and the mental health courts and DUI courts, they do work and they do have the research to support that. There is a natural limitation on the risk that they will have court for everything, and that is the three things I mentioned: accountability; the evidence base; and efficacy. You get to the point where you start getting to the marginal returns when you get to some of these courts. And we're experiencing some of that when you look at the family court and the complexity of some of the issues that are there and the amount of time it takes to work through those cases. We may need to find additional models or other models to help with that. What we do have, the benefit now, though that's also a moderator on that is we've got experience from other courts, other veterans' courts. There were some mentioned here by Senator McCollister. They exist. They've got track records. We can bring that in. We know what kind of resources we need and we can start delivering. Some of that same was true at DUI courts as well, as well as mental health courts, so we've got to step up on that. And we also know that there is a point where you satisfy the demand as best you can. You can't help everyone, and that comes down to how you allow people to get into the courts, the eligibility. And that's where the executive branch comes in through the county attorneys who exercise their discretion in allowing or not allowing people into the courts. So we've got those two brakes on it that I think are going to help on both ends of that: getting people in and then what size are we going to run once we get people in the courts. Does that answer your question? [LB915]

SENATOR KRIST: It does. Just to summarize from a layman's perspective, we could tell you, you have the authority to put all kinds of problem-solving courts in place, but there's a natural brake in place that would keep us from doing something that was haphazardly done or would have no results or no measurement, no metrics. [LB915]

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JIM DOYLE: That's right. [LB915]

SENATOR KRIST: Okay. [LB915]

JIM DOYLE: That's right. We want, the goal here is to remove...reduce recidivism and you've got to have a clear connection to that point before you start one of these things. [LB915]

SENATOR KRIST: Good. Thank you, Judge. [LB915]

SENATOR COASH: Senator Morfeld. [LB915]

SENATOR MORFELD: Judge, thank you for coming. I'm a big believer in problem-solving courts. I, like Senator Pansing Brooks, saw a drug court graduation and it was a pretty moving experience actually to see all these people work so hard to get their lives back together and do it. My question is, you know, you being on the front lines of some of these problem-solving courts and running one, I mean, what is the track record for problem-solving courts? Where have you seen the successes and what does that look like in terms of, if you have numbers, great, but anecdotal... [LB915]

JIM DOYLE: I do. [LB915]

SENATOR MORFELD: Sounds good. [LB915]

JIM DOYLE: I can tell you first anecdotally. I'm seeing the same offenders less. The first several years when I was a judge I was seeing the same people over and again, same crimes, same thing, and put them on probation a couple times, put them in prison, they're back. And it was--the driver was--addiction and a driver was mental illness. The driver was alcohol and drugs. I mean that's what it was. And so I thought, this is not working, we need to stop it. Okay? So we've done that. Now the University of Nebraska at Kearney has two researchers who have been examining the results for the last...for the first five years of our tenure at drug court to see whether we're doing well with recidivism. What they're finding is it's overwhelmingly true. We've got a lower recidivism rate than incarceration, and of those people who complete drug court there are...I think it's two and a half times more likely not to reoffend again. And this report is in the stages of being presented. I think they're going to do a presentation out in Denver this spring about their results. We've also had other evaluations done of our own analysis that shows us that we are having a good effect. Probation Administration has a similar rate of recidivism which is lower than incarceration as well. And it's those types of statistics that we're keeping that we're accounting to you and to other people showing it works. It goes back to the recidivism issue. If I

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can show that after three years these people are not coming back, which is our measure, haven't committed a Class II or above felony, which is a pretty high standard, it's worked. And again, that's because we're going to the driver of the criminal conduct, which is typically addiction and mental illness. [LB915]

SENATOR MORFELD: Thank you. [LB915]

JIM DOYLE: You're welcome. And one last point I'd like to make about accountability. We track all this stuff. We keep track of it. There's nobody going to go through and complete our program that we don't follow then and make sure that they're successful and that we find out, if they weren't, why they weren't. And we also track all the things that we administer--sanctions, everything that gets accounted for--to see if they work. We're not going to give people incentive and sanctions if they're not having a change of behavior as a result of those sanctions and incentives. [LB915]

SENATOR MORFELD: Excellent. [LB915]

SENATOR COASH: Senator Pansing Brooks has a follow-up question. [LB915]

SENATOR PANSING BROOKS: Thank you, Judge Doyle. I just wanted...do you see that the expanded courts will be able to work with the behavioral health groups and authorities in the regional areas? Is that...will that happen, and how do you see that occurring? [LB915]

JIM DOYLE: It does happen. [LB915]

SENATOR PANSING BROOKS: Okay. [LB915]

JIM DOYLE: Right now I have an interlocal agreement that our drug court does with... [LB915]

SENATOR PANSING BROOKS: (Inaudible.) [LB915]

JIM DOYLE: ...Region II. They provide all our mental health and behavioral health services, community support. And they meet with us every week in our group settings, and we have turned that part of the program over to them. It's far more efficient and what they can provide for me, which is incredibly important part of it, is accountability. I want to make sure that they have qualified people providing evidence-based programming that is designed and tested to deliver the results we want. We want them receiving therapy that works. And so it's so much more efficient

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for us to do it that way. They handle all of it and then they come to us and say, this is what we can and can't do, and we adjust our program accordingly. We're not going to reinvent the wheel when we've got the region right there that's the experts on this and provide this. And that I think is a model for the whole state. [LB915]

SENATOR PANSING BROOKS: Wonderful. [LB915]

JIM DOYLE: So we've got a great region out there and they are big partners with us. [LB915]

SENATOR PANSING BROOKS: Thank you for coming today. [LB915]

JIM DOYLE: You're welcome. [LB915]

SENATOR COASH: I don't see any other questions. Thank you, Judge. [LB915]

JIM DOYLE: Thank you very much. [LB915]

SENATOR COASH: Scott Carlson. [LB915]

SCOTT CARLSON: (Exhibit 2) Good afternoon. My name is Scott Carlson, S-c-o-t-t C-a-r-l-s-o-n. I'm the statewide coordinator for problem-solving courts for the Administrative Office of the Courts and Probation. I would like to thank Chairman Seiler and the members of the Judiciary Committee for providing the opportunity to speak to this important issue. I would also like to thank Senator McCollister and all those that have assisted him in putting forth this initiative. I'm here today because I am tasked at the direction of the Nebraska Supreme Court with the day-to-day oversight of the system of drug courts and other problem-solving courts in Nebraska. It is also my responsibility to consider the development of additional problem-solving court types necessary to address the needs of specialized populations in our communities. One such population is our veterans and service members. Veterans often face challenging experiences during their service, including combat exposure, multiple deployments, physical injury, and psychological trauma. As a result, substance use disorders and mental health disorders such as traumatic brain injury, posttraumatic stress disorder, and depression for this population has increased significantly, impacting the criminal justice system. I've provided some key research findings related to the military service in your materials. Research also suggests that traditional community services may not be adequately suited to meet the needs of veterans in the criminal justice system. Veterans' treatment courts are a proven and effective solution to address these issues and they provide veterans the tools they need in order to lead a productive and law-abiding lifestyle. Judge Robert Russell, presiding judge of the Buffalo, New York, Drug Court and the

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Buffalo Mental Health Court, created the nation's first veterans' treatment court in January of 2008 in response to the growing number of veterans appearing on his dockets. Cases are handled through a specialized court docket involving veterans with a substance use and/or mental health disorder charged with typically felony or misdemeanor nonviolent criminal offenses. The court substitutes a treatment problem-solving model for traditional court processing using a hybrid integration of drug court and mental health court principles to serve military veterans and sometimes active-duty personnel. They promote sobriety, recovery, and stability through a coordinated response. It involves collaboration with the traditional partners found in drug courts and mental health courts, as well as Department of Veterans Affairs, healthcare networks, Veterans Benefits Administration, state departments of veterans affairs, volunteer veteran mentors, and organizations that support veterans and veterans' families. Upon admission to veterans' treatment court, the problem-solving court team mentors assist the veteran with an array of stabilization and other services, including emergency financial assistance, mental health, trauma counseling, employment, housing, and skills training. While Nebraska does not currently operate veterans' treatment courts, there are over 130 veterans' treatment courts nationwide. Should the Legislature choose to support and resource this important project, the Administrative Office of the Courts and Probation is prepared to assist in the development of a program that partners the necessary local, state, and federal entities that will ensure the project's success. Through 18 years of experience with drug courts, Nebraska is well positioned to develop a proven strategy based on the most successful evidence-based strategies and standards used by model veterans' treatments courts such as those in Buffalo, New York, Tulsa, Oklahoma, and Ingham County, Michigan. These men and women volunteered to serve their nation and to protect us from harm. They bravely faced situations and conditions that most of us could never imagine. They fought for us, so let's return the favor by providing the tools they need to get better. We're privileged to be part of the solution. Thank you, and I'm happy to take any questions. [LB915]

SENATOR COASH: Thank you, Mr. Carlson. You heard the question that I asked Judge Doyle. And you work for the court, the Supreme Court? [LB915]

SCOTT CARLSON: Correct, Administrative Office of the Courts and Probation. [LB915]

SENATOR COASH: Is it the court's position that they would need legislative authority to move forward with this? [LB915]

SCOTT CARLSON: Yes. And I think I would echo Judge Doyle's sentiments in terms of that I think the goal is to...is for the Legislature we would like legislative recognition of these programs specific to these problem types I guess. And so I mean I think there's already broad authority that

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exists within the statutes, but I think defining them allows them to carry a little bit more weight in terms of legislative support. [LB915]

SENATOR COASH: Okay. Thank you, Mr. Carlson. Senator Krist. [LB915]

SENATOR KRIST: So, more direct question to you, I'm looking at two fiscal notes that are consistent with each, one the pilot program and one in the next bill that we'll talk about, a fiscal note on the specific...what is the unintended consequence of us just saying, go fix the problem, here's the list of all the problem-solving courts that there appears to be data on, stay within the lines and drive the road, because we're going to approve this one and that one and we may blend these two together but there's always...there's also family courts that I don't think are listed in either one of these two bills. And you can come up with a list of those specialty courts that are out there that are working throughout. [LB915]

SCOTT CARLSON: Right. [LB915]

SENATOR KRIST: What is the unintended consequence of me just saying, us just saying, go for it? [LB915]

SCOTT CARLSON: Well, as Judge Doyle mentioned, for one, we're resource light and our intention to go...you know, the veterans' issue in particular, we want to do it right and so, as Judge Doyle mentioned, doing it in a way that it's being done well, that we can ensure that we're going to have the maximum success. And right now the problem-solving court budget, the authority or the appropriation that was given back in 2006, we've received no substantial increase since 2006. And so problem-solving court budget is maxed out. And so in order to put the resources in place and the services in place, it's going to take additional funding. [LB915]

SENATOR KRIST: So the direction is more the appropriation as opposed to the permission to do what needs to be done. [LB915]

SCOTT CARLSON: Well, I see them blended because I think, as we talked about, we have the Problem-Solving Court Committee; we have a group, a leadership group. And in order to expand and get to the point that we want where we have a true continuum of multiple types of courts that are addressing multiple issues, as you mentioned, you know, we do have family dependency drug courts, a DUI court, a young adult court, and in order to expand into those other types of courts, we're going to need...LB919 that we'll speak to better defines that. I think it puts the onus on the state to demonstrate that support. [LB915]

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SENATOR KRIST: It seems like it's a matter of appropriations then. I mean maybe I'm looking at it too narrowly, but we'll be back talking about this court, that court, this court. They're all problem-solving courts. And if the issue is that within the budgetary process the Supreme Court needs to go back and say, you gave us direction to expand drug... [LB915]

SENATOR COASH: Right. [LB915]

SENATOR KRIST: ...our problem-solving courts as efficiently and effectively as we can, therefore, our next budget request is for X. And then we substantiate it, we move forward. I think it's a more expeditious way of handling these issues. So I'd be interested in talking to you offline... [LB915]

SCOTT CARLSON: Sure. [LB915]

SENATOR KRIST: ...to just see how we expedite this process rather than nickel and "diming" this thing and coming back with several bills. And that means I'm a true supporter of the problem-solving courts. [LB915]

SCOTT CARLSON: Sure, I understand that. [LB915]

SENATOR KRIST: I just don't think we have to give you permission to move forward; we need to give you appropriations to move forward. [LB915]

SCOTT CARLSON: That's a fair statement. [LB915]

SENATOR KRIST: Okay. [LB915]

SCOTT CARLSON: I mean we're...if the Legislature puts forth their support for these initiatives, we're in the position to put them forth and move them along and use the expertise that we have and the relationships that we've built with, you know, not only at the local level but the national level, to institute these courts well, timely, and appropriately. [LB915]

SENATOR KRIST: Okay. Thanks, Scott. [LB915]

SCOTT CARLSON: You bet. [LB915]

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SENATOR COASH: Scott, one of the things that I'm finding interesting with this is that, you know, we're not adding new cases to the docket. These are just cases that are diverted into a different court, right? [LB915]

SCOTT CARLSON: Correct. [LB915]

SENATOR COASH: So the additional resource that's needed, I mean, if we added a judge and said, now here's your...you have a new judge in this judicial district to handle this, of course, that's an appropriation. But as Judge Doyle said, he's doing his district court judge duties and then one day a week he's over here doing drug court. If there wasn't a drug court, he'd just be handling that same case as a district court judge. [LB915]

SCOTT CARLSON: Correct. [LB915]

SENATOR COASH: Right? So in your eye, and I'm asking you because you're the administrator of that office, what's the additional resources that are used in a problem-solving court that aren't used in the regular court, because that obviously is different,... [LB915]

SCOTT CARLSON: Right. [LB915]

SENATOR COASH: ...otherwise you wouldn't be in your position. [LB915]

SCOTT CARLSON: Sure. The problem-solving courts are designed around this team, holistic concept where you're bringing judges, county attorneys, defense attorneys, providers, juvenile cases of, you know, schools, and you have this key team responsible for a problem-solving court that they individually case plan around these individuals. It includes intensive supervision, so a majority of our courts are supervised through the Nebraska State Probation, so there's probation officers; there's intensive time that goes into that and multiple visits; there's intensive drug testing. These individuals in these programs are coming in to see the judge weekly, biweekly, monthly, whereas in the traditional court docket process they may be coming in periodically every six months or... [LB915]

SENATOR COASH: Okay. I appreciate it. I just wanted to get that on the record that there's... [LB915]

SCOTT CARLSON: Sure. [LB915]

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SENATOR COASH: ...additional resources. But we must be getting some bang for our buck, because in a little bit I'll read into the record a letter from the Association of County Officials who are supportive of this bill, which tells me it must save money to the county. So that's, without even reading the letter, that's (laughter)...so thank you, Mr. Carlson. [LB915]

SCOTT CARLSON: Thank you. [LB915]

SENATOR COASH: I don't see any other questions. Appreciate it. Director Hilgert, are you going to testify? [LB915]

JOHN HILGERT: Good afternoon. Chairman Seiler, members of the Judiciary Committee, my name is John Hilgert, J-o-h-n H-i-l-g-e-r-t. I'm the director of the Nebraska Department of Veterans' Affairs. I'm here to testify in support of LB915 and LB919 as well. Perhaps in some ways this testimony may be technically neutral and I say that because I'm not going to refer to the technical aspects of the bill. My comments reflect on the concept of what LB915 represents. The Nebraska Department of Veterans' Affairs is in support of the concept of veterans' courts. Veterans' courts is a proven way to improve the lives of veterans, has demonstrated itself over time as an investment in veterans that will cost the court system less because of decreased recidivism. The United States has been in a constant state of worldwide conflict for roughly the last 25 years. From peacekeeping operations to humanitarian missions to all-out combat, our servicemen and -women answer the call, some whom do not return home with the same outlook on life or, indeed, the same temperament. These men and women who fit the mission of our veterans' treatment court would be well served if given the chance to enroll and complete the program. I believe it could save resources as an alternative to more expensive options. I believe veterans' courts could reduce recidivism. I believe in a way it's perhaps our obligation to stand by these men and women. They stood by us while serving. I would encourage you to support veterans' courts in Nebraska. [LB915]

SENATOR COASH: Thank you, Director. Should this, should these come to fruition in Nebraska, would you anticipate your department being a partner with the courts in this endeavor? [LB915]

JOHN HILGERT: As was said earlier, part of the treatment court is a wraparound service type of thing, the behavioral access to the Region II that was mentioned earlier. Not only would the state of Nebraska but the...I believe the United States Department of Veterans Affairs through their Veterans Health Administration, through the Veterans Benefits Administration, our county veterans service officers, I believe it would be part of that wraparound team and I would see our department playing some role, whether it's advocacy, working with our partners and our federal/county partners. But, yes, the answer to you is we would be very supportive of that. [LB915]

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SENATOR COASH: Thank you, Director. Senator Krist. [LB915]

SENATOR KRIST: Thanks for coming. I just want to compliment the Governor on your reappointment, and you're great for what you do. Thank you for all you do for the state and the veterans. [LB915]

JOHN HILGERT: I appreciate that very much, Senator. Thank you for the kind words. [LB915]

SENATOR COASH: I don't see any other questions. Thanks, Director. [LB915]

JOHN HILGERT: Thank you. [LB915]

SENATOR COASH: Eric Dillow. Welcome. [LB915]

ERIC DILLOW: Thank you. Good afternoon. Thank you, Mr. Chairman, members of the committee. My name is Eric Dillow, E-r-i-c D-i-l-l-o-w, and I'm speaking in support of LB915 both on behalf of the Nebraska State Bar Association but also in my personal capacity as a veteran. I'm a retired Air Force colonel and judge advocate. Since retiring in 2012 I've served as a volunteer working with an informal network of veterans and family members of veterans across the state of Nebraska. Veteran treatment courts are effective because they seek to tap into that part of a veteran that speaks to duty, honor, discipline, and the unyielding sense of accountability that veterans share with each other. These core beliefs are understood by veterans, even those who might find themselves on the wrong side of the law. I was a former military judge. I've presided over many courts martial and I can tell you that those who have served recognize and respond to these concepts of military culture. The rigorous treatment and personal accountability found in veteran treatment courts serve as powerful forces compelling veterans to effectively deal with their problems, complete necessary treatment, and succeed. Our country has a rapidly growing population of combat veterans returning from the wars in Iraq and Afghanistan, along with a sizable number of veterans who have served in other conflicts, most notably Vietnam. Research indicates that up to 30 percent of returning veterans suffer invisible wounds and injuries that go unrecognized and unacknowledged, including posttraumatic stress, traumatic brain injuries, and major depression. Of those suffering, fewer than half seek treatment. Without proper care these veterans are more prone to destructive actions that bring them into conflict with the law. Veteran treatment courts, such as that envisioned under LB915, can intervene the moment veterans come into contact with the criminal justice system. The veteran's needs can then be assessed and a treatment program can be developed. A collaborative approach to treatment that focuses on supervision of the veteran throughout the process can reduce recidivism, thereby reducing long-term cost to taxpayers and increasing public safety, helping our veterans to lead sober, healthy, and productive lives. Veteran treatment courts are

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built upon the 25 years of experience we've had with drug and mental health courts. These problem-solving courts, as you've heard today, have proven...or have a record of success. When a veteran engages in this conduct and is required to face action in the criminal justice system, that is disappointing. But when we find that a veteran's criminal misconduct is the product of the effects of mental illness or substance abuse incurred as a result of the harsh and brutal realities of military service, that is a tragedy. But for their service to our nation, many of these veterans would not be suffering from these mental and psychological injuries, would not engage in criminal misconduct, and would not find themselves in the criminal justice system in the first place. With the passage of LB915 Nebraska will join over 40 states with over 240 veteran treatment courts across the country. Thank you, and I'd be happy to take any questions. [LB915]

SENATOR COASH: Thank you, Mr. Dillow. Did you...so if Nebraska were to adopt this, we'd be 41? Is that... [LB915]

ERIC DILLOW: That's correct. It is actually...the number is a little bit more than 40. There are a couple of states right now in the process of approving legislation, much as we are. [LB915]

SENATOR COASH: Okay, thank you for your testimony. I don't see any questions from the committee, appreciate it. Mick Wagoner. [LB915]

MICK WAGONER: Good afternoon, Mr. Chairman, members of the Judiciary Committee. My name is Mick Wagoner. I'm the founder of Veterans Legal Support Network, a legal nonprofit here in Nebraska dedicated to serving veterans and their families. I'm here today to ask for your support of LB915. I'm also a retired Marine Corps officer. I, along with many others here around this state, have been working towards this goal for years and feel that this bill is the one that will begin the healing for Nebraska's veterans and demonstrate in a positive way this state's care for those who have taken up arms to defend this nation. You've heard many statistics and are likely to hear more. If you don't hear enough, please ask for more because they are out there. But I think my time is best spent testifying to you about the unique nature of the veterans and why these courts are so necessary. The military does many wonderful things when converting its citizens into defenders. One very overt characteristic it demands is self-reliance. Along with initiative and perseverance, these traits are ingrained into our service members in order for them to not only survive but thrive on the battlefield. The somber rationale is that while you may hope your fellow soldier, sailor, airman, or Marine will help you complete the mission, you and you alone are responsible to finish an assigned task. This self-reliance is critical in battle but it is not easily turned off. This self-reliance often manifests itself after deployment to the degree that a service member feels that reaching out for help or assistance means that they are a failure to themselves or those that they support. Another unfortunate hallmark of postdeployment is substance abuse. Service members don't intend or want to go down this path. They are warned

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repeatedly of it and the dangers of it. The sad truth, however, is that this use of alcohol and/or drugs is actually an unintentional self-medication for their injuries they have suffered. You've heard these injuries today--posttraumatic stress, traumatic brain injuries--as signature wounds of these wars. I've seen these wounds firsthand and I want to tell you they are real, they are hidden, and they take time and professional help to diagnose. On the outside or from a social distance, an injured service member presents an appearance of normalcy. When you task them with two or three simultaneous tasks or impose a deadline or stressor, the facade usually crumbles and oftentimes leads to criminal acts. Finally, service members are generally reserved around their civilian counterparts. This includes caregivers and others who truly want to help. Many justice-involved service members have been hurt by broken promises or simply embarrassed by their circumstances. Where before they were lauded and publicly thanked for their service, sacrifice, now they feel they have failed everyone they know or love. They have difficulties and frustrations explaining the complexities of their deployments to someone who has no common experience with them. This is why veteran treatment courts are so necessary. They are run by veterans who understand the walls that the veterans put up. The injured veterans are surrounded by peers who will help them account for their actions but also understand much more deeply why they act out. By having peers who have traveled a similar path, the veterans have a trusted mentor who can lead them on the best course of healing and reconciliation. VTCs address substance abuse and other counseling needs and work to solve the underlying injury, not mask it until the veteran will likely reoffend. We all know these courts work. And with your passage of LB915, all these supporters you see here today are ready to get to work to heal these deserving Nebraskans who need our care. I'm sorry I didn't spell my name: M-i-c-k W-a-g-o-n-e-r. Wanted to get... [LB915]

SENATOR COASH: Very good. Senator Pansing Brooks. [LB915]

SENATOR PANSING BROOKS: Thank you, Senator Coash. Thank you for coming, Mr. Wagoner,... [LB915]

MICK WAGONER: Thank you, ma'am. [LB915]

SENATOR PANSING BROOKS: ...and for your service, appreciate it. I was just wondering, do you know of some programs in community corrections that are similar to LB915? [LB915]

MICK WAGONER: I work with the Douglas County Community Corrections folks. I don't want to sign them up for anything. That's not my role or authority. But I can tell you that, talking to them, they're very excited about the concept of veteran treatment courts and have many similar programs the judge talked about, as well as others. And I'm very confident they could quickly

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move to add the veterans to the drug and young offender courts that we have in Douglas County. [LB915]

SENATOR PANSING BROOKS: Can you tell us about some of the...or is somebody going to speak to that? I'm just interested in some of the interactions of the programs. [LB915]

MICK WAGONER: I probably am not the best one to do that and, like I said, I think my folks in Douglas County probably would not be happy with me have signed up for things. [LB915]

SENATOR PANSING BROOKS: Okay. All right, thank you. [LB915]

MICK WAGONER: Yes, ma'am. [LB915]

SENATOR COASH: I don't see any other questions. Thank you, Mr. Wagoner. [LB915]

MICK WAGONER: Thank you, sir. [LB915]

SENATOR COASH: Deborah Whitt. Welcome. [LB915]

DEBORAH WHITT: (Exhibit 3) Thank you. Good afternoon. My name is Deborah Whitt, D-e-b-o-r-a-h W-h-i-t-t. I am a sister of a Vietnam vet, a Marine, and a mother of an Army National Guard veteran who served in both Iraq and Afghanistan. Dear Senators, many families of military veterans do not know how to help their loved ones who return from combat missions. They come back with psychological scars which, left untreated, may lead to alcoholism and dependency upon drugs. As a result, some find themselves doing things or committing crimes they ordinarily would not have done. These are the veterans that deserve our help and understanding. The state of Nebraska needs veteran treatment courts with professionals who can assist families by providing our veterans with targeted care they require. The VA estimates that 22 veterans commit suicide every day, a national tragedy. Veterans are at higher overall risk for suicide than the general public. Veterans suffering from conditions like depression, posttraumatic stress disorder, insomnia, and chronic pain are particularly vulnerable. The VA documents that veterans who engage in VA care are less likely to take their own lives than those who do not. The veteran treatment court requires veterans to interface with the VA, thus creating another safety net for them. In addition, the VA estimates that 700,000 veterans are in prison across our country, another national tragedy. With veteran treatment courts now operating throughout the country, over 13,000 veterans who would otherwise be incarcerated are receiving the proper treatment and support they need for mental illness, substance abuse, and PTSD. Senators, we have lost way too many of our family service members to suicide and to prison. Ironically, my mother could

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have testified 50 years ago before this very committee about her son and all the sons she knew who came back from combat and were not the same as before they had left. The families of combat veterans need our help too. Let us not wait one moment longer to do what is right for those who have given up so much for us and our country. This legislation is critical in keeping and maintaining families and building overall healthier and safer communities. Passing this legislation in Nebraska continues to fulfill Abraham Lincoln's call when he addressed the country in his second and most famous inaugural address, which is now part of the VA mission statement. He said: With malice toward none, with charity for all, let us strive on to finish the work we are in, to bind up the nation's wounds, and to care for him who shall have borne the battle and for his widow and orphan. Please pass LB915 and continue today to serve and honor the men and women who are most deserving: our veterans. Thank you for your consideration and your time. [LB915]

SENATOR COASH: Thank you, Ms. Whitt. I don't see any questions from the committee; appreciate your testimony. [LB915]

DEBORAH WHITT: Thank you. [LB915]

SENATOR COASH: Mr. Holloway. Welcome. [LB915]

GREGORY HOLLOWAY: Thank you, Senator Coash and Judiciary Committee, for listening to me here. My name is Greg Holloway, G-r-e-g H-o-l-l-o-w-a-y. I'm the representative for the--legislative representative--for the Disabled American Veterans, the Vietnam Veterans of America. And this year I am also the chair for the Nebraska Veterans Council, and this is speaking for approximately 60,000 veterans, members of our organizations that we represent. We would like to see this bill happen, this get in place. And you're talking about whether or not these would work. Actually, I am living proof that a bill...a court like this might possibly work because I am an alumni of the 1963 Separate Juvenile Court of Lancaster County. And I have PTSD. I'm a combat-wounded veteran with a traumatic brain injury from Vietnam and I'm doing okay. So the lessons learned possibly when I was 16 years old from the Separate Juvenile Court of Lancaster County, which was established the early '60s and it kind of followed the lines of the Douglas County Separate Juvenile Court...they was I think the first one to establish it. Juvenile Court Judge W.W. Nuernberger was the court, was the judge back then. I love that man. He saved my life when I was 16 years old, got me looking forward and seeing how life should be. And I've carried those lessons learned from back then through my military career, which was pretty short--I was drafted--but through my life now. And I'm here speaking in favor of actions to help veterans that need help and combat-wounded veterans especially. We have so many that had multiple deployments. I spent five months, 17 days, in country Vietnam and in actually three major actions in them five months. But these multiple deployments, they're hard, hard on a

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young man and their families and which we need to assist them in any way we possibly can. Thank you for listening to an old man, and please consider this and move it forward and make sure there's funding for it. Thank you. [LB915]

SENATOR COASH: Thank you, Mr. Holloway, appreciate your testimony. Thanks for being here. [LB915]

GREG HOLLOWAY: Thank you. [LB915]

SENATOR COASH: We'll take the next testifier in support. I don't have anybody else on the list. Why don't you come on up. Thanks for waiting patiently. Welcome. [LB915]

JERRY C. ANDERSON: Thank you. I'm Jerry C. Anderson, J-e-r-r-y, middle initial C., A-n-d-e-r-s-o-n. I am here because I'm also...I'm a retired lieutenant colonel, United States Air Force, 1981, Vietnam veteran/volunteer. And this bill will help us, will help the veterans. Now the Senator McCollister called me last year, because I'm one of the founders of Nebraska Veterans Coalition, and said, Jerry, here is what I want to do. And I said, yes, this is needed because it helps the veterans. The veterans...now I'm a Vietnam veteran and you heard the statistic: 22 suicides a day. About 17 of those are Vietnam veterans, so we're kind of...seems to be beyond it. But the last 25-year war in the Gulf, Afghanistan, and in Iraq, they're young, they're a lot younger. They need this help. So I'm here to show support. I even...I support Senator Williams. But this bill needs to come out and get out. I mean I was there when Senator Seiler...or Senator McCollister, he proposed it down at the...in Douglas County. He's done all the legwork. They're there. They want to implement it. Please expedite, get this out so it can help those younger veterans who need the help and help return to a normal life. Any questions? [LB915]

SENATOR COASH: Thank you, Mr. Anderson, appreciate your testimony. Come on up. Welcome. [LB915]

BYRON ENGLER: Good afternoon, ladies and gentlemen. First time I've spoken before the Legislature, but I'm your poster boy for a Vietnam veteran. [LB915]

SENATOR COASH: Why don't we start with your name. [LB915]

BYRON ENGLER: Thank you. My name is Byron R. Engler, B-y-r-o-n, middle initial R., last name Engler, E-n-g-l-e-r. I am a disabled Vietnam veteran. I served from 1970 to 1974. I come out exemplary, not a problem for...since '72, when I got hurt traumatically twice, till 1992 I was an alcoholic. I dried out in 1992 only because somebody took me under their wing, the VA, other

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people, and gave me those type of things to take care of my problem. But what I come today to speak to you about is this implementation of the veterans' treatment program pilot project is very important to myself, combat veterans, and other veterans, the reason being is, right now, two more weeks and I'm out of the community corrections program in Lancaster County. At 63 years old, in May, I did something that I had never done before in my life and I had yelled at my wife. I had not touched my wife. I was put in the jail system. I was taken in, verbal abuse. I am not proud of that. Okay? At 63, the first time I was ever thrown in jail, it's scary, okay? And the diversion program was kind enough to pick me up, take me in, and I have learned a lot in nine months. I am a veteran. I feel that offering veterans' treatment court program would be a great help to all veterans, not just myself. Veterans, we are bonded by ideals. We went through boot camp, we went through basic. We have each others' backs. We wouldn't leave our veterans on the battlefield. Why would we leave them on the battlefield of life? We ask you to help us recognize that we are not above anybody, but we have been there, done that, come home. And most all of us have an honorable discharge. We're very proud of that. Veterans, both men and women, by the same bond look after one another; and when we are in a group together, we understand each other. Veterans communicate well with each other to make ourselves feel comfortable. We have peer-to-peer groups where we sit there and elevate each other in time of need. Veterans' treatment court program would allow veterans to communicate with other veterans. Peer-to-peer support between the veterans is a must. Veterans understand each other in a way that laypeople and nonveterans cannot completely understand that have not gone through what we have. Veterans have gone through these unique obstacles in life and have survived. Veterans suffer from posttraumatic stress disorder, traumatic brain injury, military sexual trauma, depression, anxiety, stressors that only can be imagined and are real. Many of us come back from the war but the war never left us. We need, veterans need somebody that can understand and treat us in a different manner and in a different light as a veteran and not just throw us to the dogs. Veterans in need of this treatment system should be advised accordingly to the issues at hand with each particular case, meaning we don't want special treatment, we just want people to know that you are dealing with a veteran. I do suffer PTSD. I suffer depression. I suffer anxieties, okay? If it was on my driver's license card that I was a veteran and an officer would have took me in that day and realized it, called the VA or this veterans' court deal and said something, my doctor would have been on the phone like that and said, this is how you treat Mr. Engler to bring him down. But this is the (inaudible). [LB915]

SENATOR COASH: Mr. Engler, I...your red light is on, but if you've got a final comment we'd love to hear it. [LB915]

BYRON ENGLER: Okay, I've got a final comment if I may. I pray that the Legislature and the public at large understand the need for veterans' treatment court program. Veterans do have special needs. We need to accommodate them and all veterans, men and women. Thank you for allowing me to voice my opinions and I will answer any questions. [LB915]

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SENATOR COASH: I don't see any questions, appreciate your testimony though. [LB915]

BYRON ENGLER: Thank you. [LB915]

SENATOR COASH: Very good. Welcome. [LB915]

PAUL COONEY: Good afternoon, Senators. My name is Paul Cooney, P-a-u-l C-o-o-n-e-y. I'm a deputy Lancaster County public defender and I'm appearing today in the stead of Joe Nigro, the elected public defender, to offer our position regarding LB915. And we are in support, first, of the expansion of problem-solving courts generally; and then, second, in support of this particular bill. We believe that veterans as offenders present a population of offenders with personal circumstances, with trauma issues, with substance abuse issues, mental health issues, and, just honestly, personal experiences that can be best effectively dealt with in a problem-solving court in which the population of offenders is uniquely veterans. Public defenders have I think a unique view of offenders who enter into the criminal justice system. We're the first people to see them, of course, after arrest, and most of the time they're lodged in a jail, destitute often, despairing often, disillusioned, confused, scared, frightened, often suffering from mental illness, often suffering from substance abuse, perhaps co-occurring disorders, and really quite hopeless and helpless. We know that problem-solving courts can effectively deal with certain populations of offenders. Specifically, veterans are a very appropriate population of offenders. Honestly, they served us well. We as the state, we as the criminal justice system have a duty, in my opinion, to serve them better. We must, we should, we can, and ultimately community benefits. The community benefits because we're talking about decreasing costs, because the alternative is imprisonment and that's far more expensive. The community benefits because we're talking about reduction in recidivism. Obviously, the community benefits. We're talking about problem solving rather than using old system of punitive responses exclusively to offenders' behavior. Problem solving results in people becoming well, productive, responsible, law-abiding members of our community. I will elaborate a bit further upon our belief in problem-solving courts generally when I testify for LB919. Thank you. [LB915]

SENATOR COASH: Thank you, Mr. Cooney, for your testimony. I don't see any questions from the committee. Take the next testifier in support. Welcome. [LB915]

MANDY GRUHLKEY: Senator Seiler, members of the Judiciary Committee, my name is Mandy Gruhlkey; that's M-a-n-d-y G-r-u-h-l-k-e-y. I am here today as a member of the Nebraska Criminal Defense Attorneys Association. I'm also here today as a public defender for Sarpy County in support of LB915. As a member of the public defender in Sarpy County, our office processes hundreds of cases where veterans are clients for us, being so close to Offutt Air Force Base in Bellevue. One of those such cases I think is an important display of how courts like this

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can really impact a veteran's life. I have a case right now that's pending where I'm fighting to keep my client out of jail. He was charged--it's his first criminal charge--for third-degree assault as a result of a bar fight that happened in Bellevue, Nebraska. After being taken into custody, I met with my client and asked him if he had PTSD, because I knew that he was a veteran and I also knew that he had four combat tours, one to Kuwait, one to Afghanistan, and two to Iraq. He told me he didn't think he had PTSD, so I suggested that he get an evaluation. As a result of that evaluation he was diagnosed with PTSD as a result of his combat tours and he was also...through that evaluation we learned that one of the issues in the bar fight triggered this PTSD, causing my client to behave in the manner in which he did. A veterans' treatment court will give my client an alternative to incarceration. It will also give our court system a way to honor the service that these veterans provided our country to ensure that their needs are met, and so that they do not reoffend. It is for these reasons that our membership encourages you to support LB915. Thank you. [LB915]

SENATOR COASH: Thank you, Mandy. I don't see any questions. [LB915]

MANDY GRUHLKEY: Okay, thank you. [LB915]

SENATOR COASH: Take any other testifiers in support of this bill. [LB915]

SPIKE EICKHOLT: (Exhibit 4) Good afternoon, Vice Chairman Coash and members of the committee. Spike Eickholt, S-p-i-k-e, last name E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska. We are in support of LB915 and the follow-up bill, the following bill, LB919. I'm not going to state all the reasons why we are in support of this bill and the following bill. You have my written statement. I can't say it really, frankly, any better than any other proponent or proponents have already today. We are in support of alternative and problem-solving courts. We are particularly in support of this bill because it does address the unique and challenging problems that many veterans also face if they have to enter the court system. I'll answer any questions that you have, but we'd just like to lend our support to this bill and the following bill. [LB915]

SENATOR COASH: Mr. Eickholt, you want this testimony to be reflected in the... [LB915]

SPIKE EICKHOLT: Please. [LB915]

SENATOR COASH: Okay, we can certainly do that. [LB915]

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SPIKE EICKHOLT: I think I have something else for the next one, so I'll just bring it up then too. [LB915]

SENATOR COASH: Okay, that sounds fine. Thank you, Spike. We'll take the next testifier in support. Last call for any support testimony. Okay, we will now go to testimony in opposition of LB915. Good call. We'll take the next...we'll take any testimony in a neutral capacity on LB915. Neutral, come on up. Welcome. [LB915]

KERRY MILLER LOOS: (Exhibit 5) Thank you. Thank you for allowing me to speak today. My name is Kerry Miller Loos, K-e-r-r-y M-i-l-l-e-r L-o-o-s, and I'm with the U.S. Department of Veterans Affairs. The work we do together in veterans' treatment courts directly supports VA's effort to end homelessness among veterans. We are determined to end veteran homelessness but we know we cannot do it alone. Incarceration is the most powerful predictor of homelessness, so we want to reach veterans throughout the criminal justice system and link them to high-quality VA, clinical, and other services that can address their unmet needs. That would not be possible without active partnerships with state and federal prisons, local jails, and, of course, veteran treatment courts. A VTC is a perfect example of a community coming together to serve veterans in a holistic way with the judge and other court staff supervising the legal case, VA and other community providers delivering treatment, and volunteer veteran mentors providing moral support and camaraderie. In many communities that list of partners goes on and on and continues to grow as these VTCs mature. Thank you for what you are doing to help justice-involved veterans access the services they need and take advantage of a chance to avoid incarceration and rebuild their lives with positive support and motivation. Communities like yours that embrace this team approach to serving veterans will be the leaders in ending veteran homelessness. The VA is committed to ensuring access to needed services for all veterans, including those who are justice involved. Veterans who are justice involved or have criminal histories are not only welcome at the VA, we are actively seeking them out to help them access our services. The fact that a veteran has a criminal history or is currently on probation or has a pending charge does not affect his or her eligibility to access the VA healthcare and other benefits he or she has earned while in uniform. The VA is committed to finding creative solutions to work with VTCs and other justice system partners. We have been putting new full-time veterans justice outreach specialist positions in the field ever since 2010, including 13 in fiscal year 2015. There are now 261 full-time VJO specialists serving justice-involved veterans nationwide. And although that kind of growth cannot continue indefinitely, we will work to ensure that justice-involved veterans have access to the VA services they need. Whether through technological solutions such as telehealth or alternative arrangements such as regional veterans' treatment courts, we are committed to finding creative approaches to make these crucial partnerships work. Thank you. [LB915]

SENATOR COASH: Thank you very much. So that was neutral? [LB915]

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KERRY MILLER LOOS: Yes. Thank you. [LB915]

SENATOR COASH: All right, thank you. Is there anyone else here to testify in a neutral capacity? Seeing none, Senator McCollister, would you like to close? [LB915]

SENATOR McCOLLISTER: Thank you, Vice Chair Coash. I'd like to sincerely thank the members of this committee for the nearly two hours that you've given to this topic. And I'm grateful more than you know. I'm also grateful to the many testifiers that have come here today. I think you've heard their heartfelt stories. One quick note I'd like to mention on the fiscal note. Turn to page 2 of the fiscal note if you would. You'll see the \$313,000 as indicated from the Legislative Fiscal Analyst Doug Nichols. Then go to page 2 and you'll see some of the assumptions that the estimate is based and, "the estimate includes the following assumptions," and when you look at those assumptions it just doesn't foot out. You know, our original thought on the cost of this was approximately \$75,000 to \$100,000, and that assumption I think is more borne out by those four assumptions that are listed. So we will be going back to the Fiscal Office and asking them to review that fiscal analysis, that fiscal impact, and I'm hopeful we can come back to this body and the Legislature as a whole with a revised fiscal note. [LB915]

SENATOR COASH: Thank you, Senator McCollister. [LB915]

SENATOR McCOLLISTER: And thank you very much. I'll take any questions. [LB915]

SENATOR COASH: I don't see any. [LB915]

SENATOR McCOLLISTER: Thank you, Mr. Chairman. [LB915]

SENATOR COASH: (Exhibits 6-17) Thanks for bringing the bill. Well, that will close the hearing on LB...I will read in some letters and then we'll close the hearing. We have letters of support from Dean Kenkel; NACO; the Nebraska Psychological Association; Gene and Linda Leibig; the Lincoln Chamber of Commerce; the Douglas County Board of Commissioners; Jim Cada; Martin Dempsey; Jacqueline Woolway; Mark Spadaro; Paul Cohen; and Bill Seiler. Those are all letters of support which will be part of the permanent record as well. And now we will close the hearing on LB915 and open the hearing on LB919, Senator Williams. [LB915]

SENATOR WILLIAMS: Thank you, Vice Chairman Coash and members of the Judiciary Committee. My name is Matt Williams, M-a-t-t W-i-l-l-i-a-m-s, and I represent Legislative District 36. I am pleased to introduce LB919 to expand the use of problem-solving courts in Nebraska. And as Senator McCollister just stated, we've had a lot of great testimony today on

problem-solving courts as it relates to veterans' courts. And much of that same testimony and the things you've heard will transcribe into LB919. The first problem-solving court was established in Nebraska in 1997. It was the Douglas County Adult Drug Court. Since that time, 15 additional problem-solving courts have been established across the state. Last year approximately 1,000 individuals were served by these problem-solving courts. I don't have to tell this committee about the importance of problem-solving courts to our criminal justice system. Problem-solving courts are effective at reducing recidivism. In 2012, the Public Policy Center at the University of Nebraska conducted an evaluation of Nebraska's problem-solving courts and they found: first, Nebraska's problem-solving courts reduce crime and addiction; (2) graduation rates meet or exceed the national rates; and (3) the programs are cost effective. As we know, incarceration has a significant cost to the taxpayer and our prisons are full. A typical drug court participant costs approximately \$5,000 per year as opposed to a cost of incarceration of more than \$36,000 per year. The 2012 evaluation I mentioned previously estimated savings between \$2.6 million and \$9.7 million per year. Even more important than the cost is the fact that the participants who complete problem-solving programs have a much better chance of returning to society in a rehabilitated and productive manner. Along with treatment, participants receive education and employment skills which improves outcomes. I firmly believe that the expansion of problem-solving courts can lower the cost to taxpayers and improve eventual results for the offenders. The purpose of LB919 is to send a clear message that the Legislature supports problem-solving courts and would like to see these programs expanded across our state. But we also need to be realistic about how quickly we can expand for a couple of reasons. First, it takes time to evaluate where the need is, bringing together the stakeholders, and implementing a program using evidence-based practices. Second, the Legislature does not have unlimited resources despite how much we support problem-solving courts. With this in mind, it's probably important that we discuss the fiscal impact of the bill. The Supreme Court in its fiscal note estimates the cost at \$1.2 million to \$1.5 million for each new problem-solving court, but that envisions building a new court from the ground up. In most cases that would not be necessary. In conversations with judges, and please confirm this when Judge Doyle testifies, many judges feel additional problem-solving courts could be piggybacked on top of existing drug courts and that mechanism. This of course would be based on the capacity of that existing court. All of this would be part of the evaluation and implementation plan adopted and approved by the Supreme Court. This allows the court to move forward judiciously. I was pleased when Chief Justice Heavican made clear his intent to expand problem-solving courts during his State of the Judiciary speech. If this committee agrees with the Chief Justice that problem-solving courts are a priority, I think we can work with the court to determine what resources it needs to move forward. For nearly 20 years Nebraska has successfully operated drug courts. Drug courts recognize that these offenders need special attention to address their problems and return them to society. Incarceration is not always the best solution. Now that we have seen the success of drug courts, it's time to move forward by expanding into veterans' courts, DUI courts, and mental health courts. Thank you for your attention, and I would be happy to answer any questions. [LB919]

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SENATOR COASH: Thank you, Senator Williams. So if this bill made it to the Governor's desk and was signed, would it have a \$1.5 million A bill with it? [LB919]

SENATOR WILLIAMS: I don't believe so, Senator Coash. I think what will happen is that the Supreme Court will go back to the drawing board and go through this implementation process. I think that's a great question to direct directly to Judge Doyle who works with that committee. But I think they will build this into their next biennial budget. [LB919]

SENATOR COASH: So my question is similar to what I asked Senator McCollister. What about LB919 needs to be done through the force of law that can't be done voluntarily on the court's own volition? [LB919]

SENATOR WILLIAMS: We've had that discussion at some length with the court, Court Administrator, and also with Chief Justice Heavican. And I believe they would like to have the Legislature send them a direct signal that we deem the expansion of problem-solving courts to be very necessary. You could certainly make an argument I believe under current legislation that they could possibly do this. But I think they're looking for that direction and LB919 gives them that direction. [LB919]

SENATOR COASH: I wonder if we couldn't do this through legislative resolution. [LB919]

SENATOR WILLIAMS: I don't know the answer to that one, Senator Coash. [LB919]

SENATOR COASH: It would be a question to ask because, I mean, this is obviously changing some language of statute, which you couldn't do through a resolution. But we frequently send our federal delegation the Legislature's intent through a resolution and a vote, which may be an option for us to get to the same outcome through this. But I appreciate you bringing the bill, and I don't see any questions. [LB919]

SENATOR WILLIAMS: Thank you. [LB919]

SENATOR PANSING BROOKS: I have a question. [LB919]

SENATOR COASH: Oh! But I do see a question. [LB919]

SENATOR PANSING BROOKS: Sorry. Hi. Thank you. This is wonderful and I really appreciate your bringing this forward, Senator Williams. I'm just...was there any discussion of...since it

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said, "The Legislature finds and declares," I'm all of a sudden going, what are we declaring? And the thing about...that drug and alcohol use and certain mental health symptoms contribute to increased crime, that, one, I mean I think we're talking about two different things: alcohol use or alcoholism versus a symptom. Alcoholism is a symptom of the use. So in one instance you're talking about the usage and what causes something to be either abused and cause a problem. And then we're saying that...I guess I'm worried about how people with mental health issues have throughout history...and I know that's not what you're intending to do but...and I don't know whether you want to talk about it later or not. But anyway, I think that saying certain mental health symptoms, it just seems like it would be like the lack of access to mental health, you know, to mental health programs in the community or something like that. I think that's the problem, not necessarily the fact that people have abuse and that they...or that they've got mental health issues. So I don't think these two are coordinating with each other. That's what I'm saying, so... [LB919]

SENATOR WILLIAMS: Okay, we'd be happy to take a look at that. [LB919]

SENATOR PANSING BROOKS: ...just take a look at whether or not... [LB919]

SENATOR WILLIAMS: This language was specifically worked on by the Supreme Court and those details and we'd be happy to continue looking at that. [LB919]

SENATOR PANSING BROOKS: Okay, well, maybe we can just...they're talking about two different things: the broken leg and the action that caused the broken leg in a way. One is the symptom, the broken leg, and one is alcohol use, which is the action that caused the broken leg. So it's two different actions or things that caused the problem. So I'm just trying to make sure we aren't further stigmatizing (inaudible)... [LB919]

SENATOR WILLIAMS: Understood, and we certainly know that words matter. [LB919]

SENATOR PANSING BROOKS: Yeah, they do. Thank you. It just...that was what I was looking at a little bit, trying to understand, but we're clear. I know that you want it to be clear. This is wonderful. Thank you for bringing it. [LB919]

SENATOR COASH: All right. Thank you, Senator Williams. We will open up testimony. We'll start with testimony in support. Welcome back, Judge. [LB919]

JIM DOYLE: (Exhibits 1 and 2) Good afternoon. I am Jim Doyle, J-i-m D-o-y-l-e. I'm a district judge, the judge of the Midwest Nebraska Adult Drug Court, and chair of the Nebraska Supreme

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Court's Committee on Problem-Solving Courts. I live in Lexington, Nebraska. I thank the Chairman, the Vice Chairman, and the members of the committee for providing this opportunity to testify about problem-solving courts. My testimony concerns LB919. I also testified this afternoon to this committee concerning LB915. I'm putting into the record on LB919 the verbatim transcript of my testimony concerning LB915 and I incorporate it in this record. LB919 would specifically authorize the Supreme Court to expand the problem-solving courts. A pilot veterans' court and mental health courts can be implemented as standalone specialty courts or as separate programs of existing problem-solving courts. Driving-under-the-influence courts would require further study to determine how best to implement such courts to ensure public safety, uniformity throughout the state, coordination between county and district courts, and coordination with representatives of the executive branch. Those are commonly called the county attorneys. Under a graduated approach to the expansion of specialty courts I envision a problem-solving court using the balance of 2016 to do these things. And this, Senator Pansing Brooks, is more directly in line with what you were asking earlier. We'll identify the standards, the programs, and rules which can be formulated and implemented concurrently and those which need to be done sequentially. We would then develop the standards, rules, and programs of the veterans' pilot court, that pilot veterans' court, followed by the mental health courts. Then we would determine the human and other resources required to operate the programs, conduct a fiscal analysis of the cost of programs and court operations, develop a program for education and coordination with members of the professional communities who serve the veterans and mentally ill, including the representatives of the regional behavioral health authorities, the Nebraska Department of Health and Human Services, Veterans Administration representatives, doctors, advance-practice nurses, and mental health professionals. Then we would establish a working group of state and local professionals, advocates, and interested parties qualified by experience, training, or education to identify the standards and rules for DUI courts, which adhere to the National Center for DWI Courts' guiding principles. Thereafter, I envision the committee recommending the Supreme Court budgets and program recommendations for inclusion in the Supreme Court's 2017-2019 plan of operations and biennial budget. I want to respond to a couple questions that were asked earlier about the why do we need the specific authorization. If you look at the current statute, it refers to problem-solving courts but then it just directs all its effort, energy to drug courts. And there's been some consideration about whether that kind of specific language in the statute limits the preceding general nature of this statutory language. And that's added to the issue about, well, they're sending messages about these higher penalties, why would we want to do something that takes people out of the system of those higher penalties? And so that language in the statute is something else that was added to it. [LB919]

SENATOR COASH: Does a drug court, for example...I mean that's what we have, so that's what I'm the most familiar with. An offender--let's say, you know, offender A and B--A goes through regular court and B goes through drug court for the same offense. [LB919]

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JIM DOYLE: Right. [LB919]

SENATOR COASH: Now I know that the person who goes through drug court can eventually get that charge removed through successful completion, right? [LB919]

JIM DOYLE: Correct. [LB919]

SENATOR COASH: Is there...which is not available to the offender who chose not to have drug court, lived in an area where there wasn't a drug court... [LB919]

JIM DOYLE: Chooses not to usually. [LB919]

SENATOR COASH: Chooses not to. [LB919]

JIM DOYLE: Right. [LB919]

SENATOR COASH: So my question is, does...I don't know what my question is. Let me ask this. I understand what a drug court is. A veterans' court, we've heard about that. A mental health court would be a court where the predominant reason that the offender is in court is because of mental health? [LB919]

JIM DOYLE: Really, and this goes to the question that Senator Pansing Brooks was asking earlier about the language with symptoms in there. What we believe is that mental health is...we all have different degrees of mental health. Some of us are more healthy than others. Some of us can't control the symptoms of our mental health the way that we need to and we just continue to do this. I have people that write bad checks like people drink water and they just can't quit and it is a compulsive behavior and it is a symptom of an illness. And if we can treat the underlying illness with psychotherapy and medicines, we could help that person. I can't get that person to do that because they're homeless, they don't come in when they're supposed to come in. And if I were to get a probation officer the assignment of tracking that person down, that's all they would do. But if I had them come in, take their medicine in their court program, go to their therapy as part of that day's work, I can help that person get through that. So the mental health courts are different because we're looking at medication. We need to involve ourselves with the doctors, the mental health practitioners and more directly, and then wrap around their court appearance with what they do for treatment. That way, we get them in and help them with that problem right there on the spot as we're doing the court proceeding. [LB919]

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SENATOR COASH: But I would assume a DUI court obviously is representative of the crime of DUI. [LB919]

JIM DOYLE: Right. [LB919]

SENATOR COASH: Reentry court? [LB919]

JIM DOYLE: Let me talk just real quick about DUI real fast. This is unlike a drug court or a mental health court or a veterans' court. You're going to have a conviction. It's a postconviction court. Your conviction does not go away. [LB919]

SENATOR COASH: Okay. [LB919]

JIM DOYLE: And that's the way we would operate the courts here is that you get convicted, your driving privileges are suspended, and then you complete the drug court program or the DUI court program, but that would be a postconviction program. [LB919]

SENATOR COASH: What does the offender who goes through DUI court benefit from? [LB919]

JIM DOYLE: The treatment. [LB919]

SENATOR COASH: The treatment? But... [LB919]

JIM DOYLE: The treatment, and then what's happening throughout the state right now, except for a few places, is county attorneys look at the third, fourth, and fifth offenders right now and they're saying, if you'll go to treatment we'll drop your third to a second or we'll drop your fourth to a third if you successfully complete treatment. It's already a de facto thing going on right now. [LB919]

SENATOR COASH: Okay. [LB919]

JIM DOYLE: We would just make sure that there's more controls and more standards associated with it, but the conviction would not go away. [LB919]

SENATOR COASH: Okay. [LB919]

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JIM DOYLE: Now the reentry courts, we've already got a bite of that with LB605 because what happens when they come out, they have either 9 months or 12 months or 18 months of postrelease supervision. We would continue to do that but we just wrap around more of what we have to do as judges in that process in this reentry court so that we could front-end load it with the programming so that when they come out...when they go into prison we say, when you come out you're going to be doing these things. That way, they can coordinate their incarceration as well as their reentry so that we can get them back in, reenter them to the community in a way that will help their transition, if you will, back into the community. [LB919]

SENATOR COASH: Okay. Are there any other...when we say problem-solving court, that's kind of the overarching term that we put... [LB919]

JIM DOYLE: Right. [LB919]

SENATOR COASH: ...mental health and DUI and veterans' courts are under. [LB919]

JIM DOYLE: Right. Those are all... [LB919]

SENATOR COASH: So they're... [LB919]

JIM DOYLE: The umbrella is the problem-solving courts and they all hang below it. [LB919]

SENATOR COASH: Okay. Is there any other type of court that's specific to... [LB919]

JIM DOYLE: They have...there's experimenting with domestic violence courts right now and those are in the infancy, I would guess, in terms of their effectiveness. People are still trying to evaluate them and there's a lot of reasons to look at those things differently than those other kinds of courts. But the...you're looking at the chronic offender in a domestic violence setting. [LB919]

SENATOR COASH: Okay. Thank you, Judge. Senator Pansing Brooks. [LB919]

SENATOR PANSING BROOKS: Thank you, Senator Coash. Thank you for your testimony again. [LB919]

JIM DOYLE: You're welcome. [LB919]

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SENATOR PANSING BROOKS: And I may ask you repetitive questions but, as we know, the legislative record is important. So could you just speak to that? It seems to me that if it were something like drug and alcohol abuse,... [LB919]

JIM DOYLE: Could you look...could you refer me, please, to the... [LB919]

SENATOR PANSING BROOKS: Yeah. This is lines 3 and 4,... [LB919]

JIM DOYLE: On 24... [LB919]

SENATOR PANSING BROOKS: ...3 and 4 on page 2, sorry. [LB919]

JIM DOYLE: Thank you. [LB919]

SENATOR PANSING BROOKS: We've got "and alcohol use." [LB919]

JIM DOYLE: Yeah, the... [LB919]

SENATOR PANSING BROOKS: I don't know, I mean, the... [LB919]

JIM DOYLE: The word that if you look at the... [LB919]

SENATOR PANSING BROOKS: The use versus the symptom that... [LB919]

JIM DOYLE: Um-hum, well, what we're looking here is that the way it was originally written it just said drug use... [LB919]

SENATOR PANSING BROOKS: Okay. [LB919]

JIM DOYLE: ...contribute to the increased use. And alcohol is a drug and yet it's not looked at as a drug but it's a...it's 80 percent of my cases, so that goes in... [LB919]

SENATOR PANSING BROOKS: Yeah, I can see adding that in. [LB919]

JIM DOYLE: Then the... [LB919]

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SENATOR PANSING BROOKS: But then we're talking about the use of those two drugs... [LB919]

JIM DOYLE: Right, and... [LB919]

SENATOR PANSING BROOKS: ...and comparing them to a symptom. [LB919]

JIM DOYLE: Right, and then it says, "and certain mental health symptoms." Now what we're doing there is the term "certain mental health symptoms," that's one term. It's "certain mental health symptoms" contribute to that. What we have to be careful here is an understanding of mental health. We all have various degrees of mental health. Some mental health symptoms can cause you to commit crimes. We've got to treat those symptoms by treating the underlying disease. And the underlying disease is a whole array of things that the DSM-5 defines for us. And what we want to do is take a look at that symptom and make sure that symptom is a product of the disease. And if it's a product of the disease, then we'll try to treat that symptom to take care of it so it doesn't create the criminal conduct. And when we worked on this language we tried to use the right words and we consulted with the behavioral health sciences persons that were involved in...they formulate standards for Department of Health and Human Services and for Probation Administration and come up with the right terms there because these are terms of art when they are applied in the mental health field. [LB919]

SENATOR PANSING BROOKS: Yeah, I understand. I understand the terms of art. I just think one is... [LB919]

JIM DOYLE: Yeah, and... [LB919]

SENATOR PANSING BROOKS: I mean if you applied to breaking your leg by jumping off of a roof,... [LB919]

JIM DOYLE: Yes. [LB919]

SENATOR PANSING BROOKS: ...one is the broken leg and the other is the action of jumping off the roof. [LB919]

JIM DOYLE: Correct. [LB919]

SENATOR PANSING BROOKS: And they're not the same. [LB919]

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JIM DOYLE: Well, the drug and alcohol use is the action of dropping off the roof. [LB919]

SENATOR PANSING BROOKS: Right. [LB919]

JIM DOYLE: The symptom is I've got a mental illness and this thing that's causing me to act out is a symptom of that illness, yeah, (inaudible)... [LB919]

SENATOR PANSING BROOKS: Okay. That's why I was wondering why it wouldn't be something more like drug and alcohol use and the lack of mental healthcare... [LB919]

JIM DOYLE: Oh, I see what you're saying. [LB919]

SENATOR PANSING BROOKS: ...because then they're both the action of jumping off the roof rather than... [LB919]

JIM DOYLE: Right, except that what you'd have to say with respect to jumping off the roof is, I voluntarily took the drugs and the alcohol that caused me to jump off the roof. I don't know that I voluntarily have a mental illness. [LB919]

SENATOR PANSING BROOKS: Well, but I'm not sure in alcoholism that it's all voluntary either, so. [LB919]

JIM DOYLE: Well, when you get to addiction, it is a compulsion that it is a mental illness and there is a disease. [LB919]

SENATOR PANSING BROOKS: Yeah, okay, well, a lot brighter people necessarily than I have been looking at this, but that is my concern right there. [LB919]

JIM DOYLE: Okay. [LB919]

SENATOR PANSING BROOKS: Okay, and then the other thing that I was wondering about is if you could speak to, let's see, I had some questions here. Oh, could you...I know. I asked you last, or somebody asked last time about the track record. I'd just like to have on this bill some of your discussion again about the track record of the experiment. [LB919]

JIM DOYLE: I'm going to quote the study that was... [LB919]

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SENATOR PANSING BROOKS: That would be great. [LB919]

JIM DOYLE: ...is being done by the University of Nebraska-Kearney professors. [LB919]

SENATOR PANSING BROOKS: I just think it's important to get it on the record. [LB919]

JIM DOYLE: There is some more information in some other material that I have that I can provide to you. But the University of Nebraska is doing a study of recidivism by the Midwest Nebraska Drug Court, and so far what they have found is this. They have looked at people who completed the drug court and compared them to people who didn't complete the drug court and they came up with these results. During the first five years of its operation, the Midwest Nebraska Drug Court, those who did not successfully complete the program and were sentenced to incarceration were twice as likely to reoffend--that is, to recidivate--as those who successfully completed the drug court program. Additional findings include the following. Of those participants who successfully completed the program, 33 percent committed classified crime within three years of release but only 12 percent committed a felony within three years, which is substantially below the normal number. And with respect to those who were terminated unsuccessfully from the program, 25 percent committed a felony within three years. So if you complete, 12 percent, if you don't complete, 25 percent, so it's a doubling effect, almost twice, two and a half times. So this study again is in process. It's going to be presented in March at a conference in Denver. But this is pretty powerful information. [LB919]

SENATOR PANSING BROOKS: That is. It's wonderful. Thank you. I just wanted to get that on the record. [LB919]

JIM DOYLE: Thank you. [LB919]

SENATOR PANSING BROOKS: Then I have one more question. You had concerns and so this bill needed to be drafted so that it would expand it. Do you believe it's broad enough to bring in another type of court such as the domestic assault court? Do you believe it's now broad enough by adding the words "and other problem solving court"? On line 10 and on line 20 it says, "and other problem solving court." [LB919]

JIM DOYLE: I do,... [LB919]

SENATOR PANSING BROOKS: Do you now believe it's broad enough to...so that we don't have to keep coming back with every idea that comes up? [LB919]

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JIM DOYLE: ...for two reasons. Number one, we're taking the current language, which was specifically drug court oriented, and we're spreading it, so you've got the legislative intent expressed by the modification of statute and then we've got the word "other" in there which helps. [LB919]

SENATOR PANSING BROOKS: Good. That's what I thought but I wanted to make sure you thought that. [LB919]

JIM DOYLE: And to address a little bit of concern that Senator Krist had, there are natural brakes on the system. The county attorneys and executive branch are saying, you know, we're going to, you know, go slow on this. And they are the gatekeepers on this deal. Secondly, there's the evidence-based practices that we adhere to. There's got to be evidence to show that these things work and that they reduce recidivism. Otherwise, we don't really want to do it because it's just not a good expenditure of resources because that means the other systems are working fine. [LB919]

SENATOR PANSING BROOKS: Thank you for your time today. [LB919]

JIM DOYLE: You're welcome. Thank you. [LB919]

SENATOR COASH: Thank you, Judge, appreciate your testimony. [LB919]

JIM DOYLE: Thank you very much. [LB919]

SENATOR COASH: Take the next testifier in support. [LB919]

SCOTT CARLSON: (Exhibit 3) Good afternoon. My name is Scott Carlson, S-c-o-t-t C-a-r-l-s-o-n. I'm the statewide coordinator for problem-solving courts for the Administrative Office of the Courts and Probation. I would again like to thank Chairman Seiler and the members of the Judiciary Committee for providing the opportunity to speak to you about problem-solving courts. I would especially like to thank Senator Williams and the cosponsors of LB919 for their support. Problem-solving courts began in the 1990s to accommodate justice-involved individuals with specific needs and problems that were not or could not be adequately addressed in traditional courts. Problem-solving courts seek to promote outcomes that will benefit not only the individual but victims, families, and communities. Thus, problem-solving courts were developed as an innovative response to deal with justice-involved individuals' problems, including drug use, mental illness, and trauma. Although most problem-solving court models are relatively new, early results from studies show that these types of courts are having a positive impact on the lives

of program participants and victims and in some instances are saving jail and prison costs. It is estimated that upwards of 85 percent of all incarcerated individuals in Nebraska's prisons and jails are there because of drug-related crimes. Problem-solving courts, most commonly referred to as drug courts and primarily the type of program currently operating in Nebraska, are specialized courts that target substance-using adults and juveniles involved with the justice system and parents with pending child welfare cases. Nebraska's first drug court program was inceptioned in Douglas County in 1997. Over the course of the following 18 years, 25 additional adult, juvenile, and family drug courts, a DUI court, and a young adult court have been implemented across the state, serving approximately 700 participants at any given time and over 1,200 per year. The 5th District Adult Drug Court covering York, Hamilton, Merrick, and Seward Counties accepted their first participant on February 1 of this year, accomplishing the Supreme Court's goal of providing access to problem-solving courts in all 12 judicial districts in the state. In Nebraska the primary focus has been the advancement of the drug court model by adhering to the latest evidence-based practices and developing statewide standards to ensure participants' success. A 2011 statewide evaluation of Nebraska's drug courts by the University of Nebraska Public Policy Center found that Nebraska's drug courts are following best practices and are yielding effective outcomes. The drug courts are part of the larger sphere of problem-solving courts, and these problem-solving principles have been used in new and innovative ways to create other programs such as the Scotts Bluff County DUI Court and the Douglas County Young Adult Court in Nebraska. As part of a five-year strategic plan, we are examining whether or not the pursuit of additional types of problem-solving courts is feasible. Most recently, in response to significant interest by individual state senators to examine the viability of additional problem-solving court initiatives, last October the Nebraska Supreme Court Problem-Solving Court Committee endorsed the general idea of expansion of problem-solving courts to include veterans' treatment, mental health, DUI, and reentry courts. I have included additional information in your materials. This strong support for the problem-solving court model has resulted in the previously discussed LB915 that will hopefully result in a pilot veterans' treatment court in Douglas County. The Administrative Office of the Courts and Probation is in full support of LB919 and look forward to working with members of the Legislature on future problem-solving court initiatives. Thank you. [LB919]

SENATOR COASH: Thank you, Scott, appreciate your testimony. [LB919]

SCOTT CARLSON: Thank you. [LB919]

SENATOR COASH: Take the next testifier in support. [LB919]

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JOHN KREJCI: (Exhibit 4) Good afternoon, Senator Seiler, Senator Coash. I come in support of LB919. I'm representing the Reentry Alliance of Nebraska, which is a coalition of people who work with ex-inmates,... [LB919]

SENATOR COASH: Can we start... [LB919]

JOHN KREJCI: ...Nebraskans for Peace... [LB919]

SENATOR COASH: Can we get your name? [LB919]

JOHN KREJCI: Oh, I'm sorry, John Krejci, K-r-e-j-c-i. That's the first time I've forgotten that...Nebraskans for Peace, the oldest statewide peace and justice organization, and NAACP, so I've got several hats. We should support the expansion and strengthening of drug courts in Nebraska...of problem-solving courts. I'm going to be very brief because I have appended several pages of information. This is like preaching to the choir because I believe everybody at the Judiciary Committee supported this. But when you get supporting the bill on the floor, some of the information...problem-solving courts reduce recidivism. They deal with overpopulation. They also get away from retribution and go towards more restorative justice where the community, the victim, and the perpetrator are all taken together. They say that crime is like a pebble dropped into water and the ripples go out, and restorative justice works with the community, works with the victim, works with the perpetrator. It has benefits for women especially, keeps them out of prison, and it's good for children. The recidivism rate, I believe that is better. Senator Pansing Brooks, on page 2 there is some information on drug courts, how it reduces recidivism, a couple of studies that are mentioned. There's another bill, as you know, LB915. I'm certainly for veterans' courts. But it seems rather complex and it would be good if that could be folded into this because I don't know how much different veterans' courts are. And I know there's many... (inaudible) talks about a pilot program in three years. Well, we've got, you know, I don't know, 150 or 250 vets' courts and they work, so I don't know that we need to do that. So I would just submit the information that you can use just to show how valuable they are, and I support LB919. Thank you very much. [LB919]

SENATOR COASH: Thank you, Dr. Krejci. Senator Pansing Brooks. [LB919]

SENATOR PANSING BROOKS: Thank you for this summary because I do think it's a good reminder of the savings that they say save on prison beds and attorneys' fees and court costs and community service and early intervention. So those are good reminders and it's a good summary. Thank you. [LB919]

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JOHN KREJCI: Yeah, I just...the retired college professor wants to give information out. [LB919]

SENATOR PANSING BROOKS: Thank you, appreciate it. [LB919]

JOHN KREJCI: Thank you very much. [LB919]

SENATOR COASH: Thank you. Come on up. [LB919]

PAUL COONEY: Good afternoon, Senators, Paul Cooney, P-a-u-l, Cooney, C-o-o-n-e-y, from the Lancaster County Public Defender's Office in support of LB919. First, we've heard lots of information today about all of the benefits of problem-solving courts and undoubtedly we see cost effectiveness in terms of reduction in costs of treating people rather than incarcerating people. We see increases in community safety because of decreases in recidivism. It is absolutely transformative for the criminal justice system. It's utilizing 21st century data, evidence-based practices to solve problems that are identified and resulting in criminal behavior. Now it's not for everybody, as our district court judges tell the participants as they are oriented into the program that the drug court exists--and I participate in the drug court program in Lancaster County--for addicts who, because of their addiction, are involved in criminal behavior. It is not for criminals who happen to use drugs too. And so we're dealing with a specific population of people. We're dealing with people who are in the criminal justice system not because of their general antisocial behaviors but because it's particular to a problem, whether it be substance abuse in terms of drug court, whether it be mental illness in terms of mental health court. So we have to remember that these people are (1) already in the system, and then (2) we have to deal with how to effectively deal with them in a cost-effective way and in an effective way in terms of solving the problem that produces the behavior. So (1) we have to look at proper population; (2) we have to look at proper supervision, so we have to have heightened level of supervision which may decrease at various periods as they progress through the program, it may be increased at various periods if we're seeing behaviors that are problematic. We need to have proper treatment. Frequency of court is what's I believe unique about problem-solving courts is that they're seeing the judge on a regular basis and being held accountable. In the court that I work in, we have weekly court. We start at noon on Fridays and generally goes to about 4:30 or so in that afternoon. We go on a rotation in which not every participant is in the court on a particular date. But everyone who is in court is directly addressed by the court in terms of positive behaviors and negative behaviors. We believe that Lancaster County is uniquely positioned to be potentially a pilot court for mental health court because of our access to the university in terms of data, maintenance, and organization analysis of data, because of the local resources that exist, because we have a drug court program in existence that provides a structure that could enable mental health court or a veterans' court. And ultimately our community corrections is responsible for the oversight of our

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drug court. It's not through the Probation Office. But we believe that for mental health court, that we would need some additional resources and would be asking for--if I could just make one final comment--we would be asking for the consideration of \$50,000 to start up a veterans' court and that would be primarily for supervision, treatment to be provided through the Veterans Administration, and then with mental health court, if we get access to money that already exists in the Probation Office to access treatment through a voucher system of approximately \$100,000 and approximately \$150,000 for supervision and coordination. And again, these are people who already exist in the system and this is much less costly in terms of the alternative, which is incarceration. Thank you for your time. [LB919]

SENATOR COASH: Thank you, Mr. Cooney. Take the next testifier in support. [LB919]

MANDY GRUHLKEY: Hello again. My name is Mandy Gruhlkey, Mandy, M-a-n-d-y, Gruhlkey, G-r-u-h-l-k-e-y. I'm sitting here in support of this bill on behalf of the Nebraska Criminal Defense Attorneys Association. Again, I am a public defender in Sarpy County and I sit on the drug court team for the Sarpy County Drug Court. We meet every Monday morning and staff and discuss all of our drug court cases. One of the things in prior testimony on this bill that stood out to me was a discussion about mental health treatment courts. One thing that we've noticed in our drug court is that a substantial amount of our participants who have become sober, we actually see that maybe the addiction wasn't really the issue but more so their mental health. There will become diagnosis, and then that's something that in our drug court we're having to deal with. We don't kick these people out of drug court, but we have to a lot of times change the way that we supervise these individuals, which can be challenging. There's many times in our staffings that we've said that we really do need a mental health court to address these issues. So that's one major reason why we support this bill. Another thing with these problem-solving courts, I think that that's a very good term to call them: problem-solving courts. But after sitting through drug court I will say that calling them a life-changing court says a lot more. Through drug court, yes, they get sobriety and we're addressing the drug problem in our society. But on a deeper level we are helping people with their family relationships, finding housing, we're reunifying families, and we're having these people find self-worth that they never had before they went through these programs. Just as Senator Pansing Brooks said, at the graduation, most of our graduations, there's not a dry eye. We have the participants give speeches about how their life changed. It usually takes at least two years to get through drug court and in those two years these people change tremendously. At first they struggle with being in drug court and by the end of it they are so grateful that they went through the program. A lot of my clients in Sarpy County--like I said, I have tons of veterans, mental health clients--they all need this opportunity too. In order to keep our jails from being overpopulated, we need to make life changes and these kind of courts are what can ensure that. Thank you. [LB919]

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SENATOR COASH: Thank you, Ms. Gruhlkey. One of the previous testifiers talked about...I think it was Judge Doyle talked about the county attorneys kind of being the gatekeeper on the use of the drug court. Can you just briefly tell me what that means, like the process whereby a defendant gets diverted into a problem-solving court. [LB919]

MANDY GRUHLKEY: Absolutely. So the way that it happens in Sarpy County is that the chief deputy county attorney has a screening tool that she uses for any felony drug charge. So she looks at the drug charge, looks at the screening tool. I'm not quite sure exactly the components. But if it meets the criteria, then she will go ahead and submit that case to our drug court coordinator from Probation. And then he will follow the steps of having the person evaluated. And then once we get that evaluation from the drug court coordinator, then that will come to the staffing team and then we decide whether or not they're going to be a good fit for our program. There's also checks and balances with our...the criminal defense attorney. So if we see a client that isn't necessarily charged with a drug crime but in our getting to know the client we realize that this person is...has a theft charge that's a felony charge but because of their underlying drug addiction, then we in turn can also suggest to the drug court coordinator that this person should be in drug court. A lot of times he'll go and talk to the county attorney and then most of the time there's really not very much push back. We'll go ahead and get that person screened. So there is kind of a second layer there. [LB919]

SENATOR COASH: So they can get through either through the defense side or the prosecution side. [LB919]

MANDY GRUHLKEY: That's how it works in Sarpy County, yes. [LB919]

SENATOR COASH: Okay. That helps me. Thank you. [LB919]

MANDY GRUHLKEY: Thank you. [LB919]

SENATOR COASH: I don't see any other questions, appreciate your testimony. [LB919]

MANDY GRUHLKEY: Thank you. [LB919]

SENATOR COASH: Take the next testifier in support. [LB919]

SPIKE EICKHOLT: (Exhibit 5) Good afternoon, Vice Chair Coash and members of the committee. Spike Eickholt, S-p-i-k-e, last name E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in support of LB919. The ACLU of Nebraska is a nonprofit, nonpartisan

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organization. We serve over 2,000 members and supporters in this state. We are in support of this bill for the reasons that I alluded to and that I state in the statement that's being distributed to you now, because we do support the alternative problem-solving court method. This bill explicitly follows the drug court model this Legislature adopted a number of years ago and applies it to mental health, the DUI diversion program, and also veterans' courts programs. You've heard a number of supporters testify on this bill and the bill before. I'm not going to restate all those reasons. I think they can state it better, frankly, than I can. But we do support this approach to addressing problems of crime because it is more cost effective, it is better at reducing recidivism, reoffending. And for those reasons and the reasons that you've heard earlier today, we urge the committee to advance this bill. [LB919]

SENATOR COASH: Thank you, Spike, appreciate your testimony. [LB919]

SPIKE EICKHOLT: Thanks. [LB919]

SENATOR COASH: Take the next testifier in support. [LB919]

ERIC DILLOW: Thank you, Mr. Chairman. Members of the committee, again, my name is Eric Dillow, E-r-i-c D-i-l-l-o-w, and on behalf of the Nebraska State Bar Association I am speaking in support of LB919. The efficacy of problem-solving courts has been clearly established since the first drug court was created back in 1989. And since that time we've seen the problem-solving court model expanded to deal with other aspects of the human condition, including mental health courts, driving under the influence and, of course, veteran treatment courts. Problem-solving courts generally follow a therapeutic justice philosophy focusing on collaboration with the service communities in their given jurisdiction and stressing a collaborative, multidisciplinary problem-solving approach to address the underlying issues of individuals appearing in court. Thus, problem-solving courts divert offenders from the conventional criminal justice system to a specialized court where treatment, rather than incarceration, is the primary driving force to resolve the case. These problem-solving courts provide an effective alternative for individuals whose involvement in the criminal justice system is rooted in addiction to drugs and alcohol, serious mental health issues, or traumatic experiences incurred during military service. LB919 calls for some commonsense changes to Nebraska's existing laws pertaining to problem-solving court programs, recognizing the expanded scope and role of these special courts. And we strongly support passage of LB919. Thank you, and I'd be happy to take any questions. [LB919]

SENATOR COASH: (Exhibits 6-9) Thank you, Mr. Dillow. Seeing none, appreciate it. Take the next testifier in support. Okay, seeing none, I'll read into the record four letters of support: one from NACO, Nebraska Association of County Officials; Douglas County Commissioners; the Nebraska Psychological Association; and the Nebraska Association of Behavioral Health. And

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we'll now go to opponent testimony. Seeing none, is there anyone here to testify in a neutral capacity? Seeing none, Senator Williams, you're recognized to close. [LB919]

SENATOR WILLIAMS: Thank you, Vice Chairman Coash, and thanks to the members of the committee this afternoon for listening to this kind of back-to-back testimony on problem-solving courts. A special thank-you from me to Judge Doyle for taking his time to be here. He is a noted expert, an extremely committed person in this area, and I appreciate the counsel that he has given to me personally on these issues and other issues that we have dealt with, because a year ago I did not suspect that I would be ever sitting in this chair with these issues but here we are. Also, Senator Pansing Brooks and Senator Morfeld mentioned attending drug court graduation. I had the opportunity this past year to spend an entire day with Judge Doyle in his drug court going through the staffing process with that and seeing the behind the scenes of how hard people work to make these things happen that sometimes I think we as individuals that don't necessarily have these problems just take for granted. So that doesn't happen without the absolute commitment of committed people. I'm confident that LB919 can do what Senator Krist may want to do at some point in time with family courts, what, Senator Pansing Brooks, what you mentioned about other things that we might have to do, not having to come back in short order. If you look at page 2, line 10, in addition to the specific listing of courts it's got the "and other problem solving court" designation there. I think we are clear there. In closing, please remember the words of Ms. Whitt from Wayne. We have the opportunity to make a difference. We have the opportunity to do what's right and that's what our responsibility is as legislators. We talked about that on the floor this morning, so that's how I will close today. Thank you. [LB919]

SENATOR PANSING BROOKS: I have a question. [LB919]

SENATOR COASH: Senator Pansing Brooks. [LB919]

SENATOR PANSING BROOKS: In light of the large amount of information we have received today on the cost effectiveness and the reduction of recidivism for these courts, why is it that the county attorneys and Attorney General's Office are not here today? You have...did you talk and work with them on this? [LB919]

SENATOR WILLIAMS: I actually did not talk to them. [LB919]

SENATOR PANSING BROOKS: Okay. [LB919]

SENATOR WILLIAMS: And they did not talk to me on this specific issue, so I don't have any comment on that. [LB919]

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SENATOR PANSING BROOKS: I'm sure they know about it. It's just surprising when... [LB919]

SENATOR WILLIAMS: Yeah. [LB919]

SENATOR PANSING BROOKS: It seems like this would be something... [LB919]

SENATOR WILLIAMS: I would not... [LB919]

SENATOR PANSING BROOKS: ...this would be something good to work on. [LB919]

SENATOR WILLIAMS: As hard as they have worked on other things that I have been involved with, I would not pretend to read anything into the fact that they did not testify today. That's my judgment. [LB919]

SENATOR PANSING BROOKS: Well, good for you. That's great. [LB919]

SENATOR WILLIAMS: Aren't I a good guy. [LB919]

SENATOR PANSING BROOKS: On the other side, on the things that they've come against me on...all right. [LB919]

SENATOR COASH: And we're going to close the hearing on (laughter)... [LB919]

SENATOR WILLIAMS: Thank you. [LB919]

SENATOR COASH: ...LB919. [LB919]

SENATOR SEILER: Senator Coash, you may introduce LB1007. [LB919]

SENATOR COASH: Okay. Good afternoon, members of the Judiciary Committee. Colby Coash, C-o-a-s-h, representing the 27th District right here in Lincoln, here today to introduce LB1007, which is a bill relating to Adult Protective Services, and to change provisions and definitions with regard to vulnerable adults and senior adults. The bill also eliminates the statute of limitations for knowing and intentional abuse, neglect, or exploitation of a vulnerable adult. LB1007 is a bill recommended by the Nebraska Supreme Court-commissioned subcommittee of

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vulnerable adults. This is the same committee that I talked about the other day that I serve on, and now Senator Williams does as well, of which I am a member, along with other judges, attorneys, state officials, conservators, and guardians, law enforcement as well. This bill is the culmination of the changes that that subcommittee has been thoroughly discussing for the past couple of years in an effort to help protect vulnerable adults. LB1007 makes three definitional changes to the APS Act. The first definition enhances the definition of exploitation to include the wrongful or unauthorized taking, withholding, appropriation, conversion, control, or use of money, funds, securities, assets, or any other property of a vulnerable adult or senior adult by any person by means of undue influence, breach of fiduciary relationship, deception, extortion, intimidation, force or threat of force, isolation, or any unlawful means by which...or by the breach of fiduciary duty by the guardian conservator agent under the power of attorney, trustee, or any other fiduciary of a vulnerable adult. Here's where this is coming from, this part. The law enforcement and Adult Protective Services have brought to our attention many instances where, and unfortunately this is a family member in a lot of cases, where a son, for example, goes and gets mom to turn over power of attorney and mom does that and she does that of...with her full faculties. And at that point, then the son has control over mom's money. When somebody else starts...maybe is paying attention and sees that maybe the son is not handling mom's money in an ethical way, then the law enforcement may get involved, or Adult Protective Services. And then that son holds up that power of attorney and says, hang on a second, mom said I could do this, and the investigation then stops, the law enforcement investigation stops, so this is an attempt to address that. The inclusion of a breach of fiduciary duty by the agent under a power of attorney is one of the most important needs. Powers of attorney fiduciary abuses are becoming extremely problematic across the nation. Powers of attorney have no one to report to. The lack of understanding of what can and cannot be done as a power of attorney is a clear problem, mostly because a relative of the vulnerable adult has been assigned it and basically given them carte blanche authority over the finances. So I gave you that example. Current Nebraska statute states that, this is current statute, states that, except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principal, unless they're ordered by the court or requested by the principal, a guardian, a conservator, another fiduciary agent acting for the principal, a governmental agency having authority to protect the welfare of the principal. LB1007 will help provide accountability for fiduciary duties of the power of attorney. The second definition that is added under this bill is the term "isolation," and this definition was mirrored after Louisiana's definition. Isolation needs to be added to the Adult Protective Services statutes for reasons to investigate cases of exploitation of vulnerable adults and senior adults. The lack of the isolation definition has caused issues for APS and law enforcement to prosecute cases where a vulnerable adult was not allowed to have contact with family members, friends, and concerned persons, including making and receiving phone calls or keeping that person physically or chemically restrained. Isolation is typically something that is done, the first part of abuse, that often leads to subsequent financial abuse and other types of abuse. The third definition that is added to LB1007 is the term "senior adult,"

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which is defined as any person 65 years of age or older. Currently in cases of abuse, neglect, or exploitation of adults, law enforcement and HHS workers have to prove vulnerability, which is very difficult due to the high burden of proof. By treating every adult 65 years and older as vulnerable, prosecutors will have the tool they need to prove vulnerability in cases of exploitation. Twenty-two other states currently have elder-specific vulnerability laws that range between the ages of 60 to 65. The final piece of LB1007 removes the three-year statute of limitations on prosecution of punishment for knowing and intentional abuse, neglect, or exploitation of a vulnerable adult or senior adult. Statute of limitations of three years is problematic when abuse lasts several years. An investigation starts from the date of discovery from a competent party. Financial exploitation cases are extremely time consuming and it's very difficult for law enforcement to obtain financial records from banks, which may take months and years. Often the financial exploitation is not discovered for a long time, and sometimes not until the exploited vulnerable adult has passed away. Sometimes the vulnerable adult may not even know that they are a victim until several years after the crime. So LB1007 is a very important aspect of enhancing protections for vulnerable adults and providing APS and law enforcement additional tools to that toolbox that they need to punish abuse, neglect, and exploitation. I thank you and would be glad to answer any questions. [LB1007]

SENATOR SEILER: Any questions? Seeing none, thank you. You're sticking around for closing? [LB1007]

SENATOR COASH: I'm right here. [LB1007]

SENATOR SEILER: First proponent. [LB1007]

MARK COLLINS: (Exhibit 1) Good afternoon, Mr. Chairman. Members of the committee, my name is Mark Collins. I am Assistant Attorney General and the director of the Medicaid fraud and patient abuse unit in the Nebraska Attorney General's Office. And one of my responsibilities is the investigation and prosecution of cases of abuse, neglect, and exploitation of people who reside in Medicaid-funded facilities, such as nursing homes and group homes. The Adult Protective Services Act is one of the main tools we use to investigate and prosecute these kinds of cases, and the proposed revisions to the APS Act will greatly strengthen our ability to protect the citizens of our state who are among the easiest targets for unscrupulous behavior. I'll touch on just a couple of the proposed revisions that are helpful. First, a majority of the cases that we investigate involve the conversion of assets by agents, usually relatives, who are acting under a power of attorney. The clarification in this proposed revision is helpful since POAs are not explicitly referenced in the act as it currently reads, and for all the reasons that Senator Coash has mentioned. Additionally, including withholding or controlling assets of a protected person, as opposed to the theft or conversion of those assets, is beneficial because withholding or

controlling assets can be used to exploit a protected person, even if the goal of the perpetrator is not to steal the asset but, rather, to exploit the protected person in another way. Likewise, it's important to include isolation as a form of abuse. One of the things that elderly people fear the most is being isolated from their family and friends, and an unscrupulous caretaker is in a unique position to isolate a victim and in order to overcome that person's will and subject them to further abuse or exploitation. Broadening the scope of the APS Act to include all seniors is also an important improvement. Doing so removes the hurdle of proving beyond a reasonable doubt that a victim who is over the age of 65 meets the legal definition of vulnerability at a particular point in time. It's especially true in a case where a victim has been diagnosed, for example, in early stages of dementia. In those kinds of cases, it's possible for a victim to only have intermittent cognitive impairment. Deleting the vulnerability requirement for those 65 or older removes the obstacle of determining whether a victim is having a "good day" or a "bad day" in terms of their mental status, especially in a case where abuse or neglect or exploitation is occurring over a period of weeks or months or years. And finally, deleting the statute of limitations, which would otherwise be three years, allows us to investigate and prosecute older offenses or long-term running...well, long-running schemes and should result in the recovery of more of a victim's assets through criminal restitution. It's not unusual for these kinds of cases to go undetected for long periods of time or to take place over a period of longer than three years and, as a result, the deletion of the statute of limitations removes this impediment. Thank you for your time, for your consideration, and I'm happy to answer any questions that you might have. [LB1007]

SENATOR SEILER: Senator Pansing Brooks. [LB1007]

SENATOR PANSING BROOKS: Thank you. Thank you, Attorney General Collins. I was just interested in a couple of things. It seems to me that...first off, my mom lived with us the last ten years of her life, so some of this is...resounds heavily in my mind, so I guess I'm interested. Number one, don't the fiduciary duties for a guardian already...under the powers of attorney and all the other documents that are set forth, don't those set forth enough protections from any kind of withholding or misappropriation of funds or conversion of funds? And I just...I'm not sure why extra laws that are already within the laws available under the powers of attorney are necessary. [LB1007]

MARK COLLINS: Well, I know one of the things that we've seen in the cases that my unit has investigated and that I've been...reviewed and prosecuted, one of the things we have to look at is what's contained in the power of attorney as it's written. And the varieties of POAs that are written is really pretty amazing. There's a standard form in the code, but it's not always followed. And it becomes especially problematic if a POA has certain abilities to gift assets, especially if they can gift the assets to themselves or to members of their own family. You get involved in a lot of self-dealing in those kinds of cases, and so there's an issue as to whether or not that would

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constitute a breach of their fiduciary duty depending on what happened where. I think that having this kind of language in there helps to strengthen that. It's just one of those extra tools that we could have in order to prove up our case. So I think, while I understand and appreciate that there are other duties that they have, they're not really as clearly spelled out as they would be if this was added to the code. [LB1007]

SENATOR PANSING BROOKS: Okay. Well, I just want to say that I think, and this isn't according to your testimony, but one of the goals of society would be if people would be encouraged to keep their parents at home. It was a wonderful thing for us and our kids and for my mom. And so all of a sudden to set standards is very difficult. My mom got to the point where she didn't want to go out and see her friends that were at the various retirement living centers. So somebody could allege, well, we're isolating her. So at that point she wanted to just be around those who loved her most, and that was at home with us. And we took her everywhere. We took her to the movies. We took her to the Lied Center. We did everything with her. We were able to do that because she was able to do that with us. But that concerns me. Whose definition of isolation becomes...somebody else might say we were isolating her. Her friends also didn't want to come over to our house. They got into their 90s and they became more homebound, more just happy with their situation and their lives around who they are. I understand you're trying to take care of the person who is truly isolated and not moved out of a bed and...but in trying to do that, it seems that we've broadened and could bring in people who really are looking out for the best interest of their parents. And we were able to provide caregivers to help also supplement our work. But the work of caregivers is yeoman's work, I have to say. And so if families are trying to help take care of, and especially when the costs are so outrageously extraordinary for nursing homes and if people haven't gotten insurance, I just...I'm worried about this, how far we throw that net to capture the few bad actors so that we can...we get families scared to even take care of their own loved ones. [LB1007]

MARK COLLINS: Well, I think what we have to look at is the difference between, you know, the allegation of isolation and whether or not it can be proven. We have a lot of cases that we review. My unit reviews every APS referral that comes in, 6,079 of them last year. We don't obviously take all those cases, we can't, and they don't all need to be taken. But when we have a case that on its face looks like there might be something to it, it's incumbent upon us to investigate that matter to see if a person is being exploited, for example. And so what's going to happen in a case like that, if there is an allegation that someone is being isolated, you know, APS is going to have looked at it to see if there's something to it. We will check with them to see if they found anything out to either show that isolation may have occurred or that it didn't occur. If it didn't occur, we're not going to do anything more about it absent some other circumstance. And then we will go in and look at...if APS thinks there's something to it, we would go in and look at it ourselves to see, you know, if we could prove beyond a reasonable doubt that isolation had occurred. It's one thing to make the allegation and another thing to prove it, obviously. But

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having this in there takes away one of the biggest threats that can be made to an elderly person, and that's to be cut off from their family and their friends. And if they're not in a situation like your mother was, where they're being taken care of by people who love them, but instead are being taken care of by someone who is looking to exploit them, there is really no bigger hammer that you could hold over their head than to say, you're not going to see your grandkids or your kids and I'm taking away your phone and you're not getting your mail. That's the kind of thing that we're looking to prove when we add this language to the act. [LB1007]

SENATOR PANSING BROOKS: Thank you for... [LB1007]

MARK COLLINS: You're very welcome. [LB1007]

SENATOR SEILER: I have two questions. [LB1007]

MARK COLLINS: Yes. [LB1007]

SENATOR SEILER: You remember your losses when you're a trial lawyer. [LB1007]

MARK COLLINS: Yes, I do. [LB1007]

SENATOR SEILER: So would I, and the two that I remember on this issue was we were in private and we weren't under the criminal laws but we were in private. We asked for a then accounting under a power of attorney, and a judge just said there's no statute for that. Are you running into that same type of problem? [LB1007]

MARK COLLINS: No, because in the Medicaid fraud and patient abuse unit over at the Attorney General's Office, we have two auditors who are both certified fraud examiners. And we have to have those auditors. That's part of the federal law that provides our grant that funds 75 percent of my unit's operation. So we've got auditors on staff who can look at all the bank records that we're able to get ahold of to determine whether an exploitation has occurred. The things that they would look at would be, for example, if someone is in a nursing home, you know, why are there checks or credit card charges for, you know, lots of fast food or a car repair or something like that, that they might not otherwise need. So we do have those tools. [LB1007]

SENATOR SEILER: The other one was the...I think it was the Nuss case where an attorney took a \$300,000 attorney fee right at the end for handling the account. And his first comment was, well, it was...I earned it. And the court said prove it. And he said, oh, I just remembered the

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client gave it to me, he wanted that to be a gift. Do we need any kind of presumptions that there are not gifts to a power of attorney or guardians of fiduciary situations? [LB1007]

MARK COLLINS: There is some case law on that. [LB1007]

SENATOR SEILER: Right. [LB1007]

MARK COLLINS: And I'm not familiar with the Nuss case. [LB1007]

SENATOR SEILER: Do we need to put that in this type of statute? Why don't you just think about it and take a look at that... [LB1007]

MARK COLLINS: I would have to think... [LB1007]

SENATOR SEILER: ...Nuss case, because that was a pretty clear case of...Supreme Court had no problem with it, but I'm not sure that laws were set out tough enough that a presumption the other way, you're presumed not to get a gift if you're in a guardianship or a conservator capacity. [LB1007]

MARK COLLINS: I would think that if you're in any sort of a fiduciary relationship, that that would be a presumption that might be worth considering. [LB1007]

SENATOR SEILER: Any further questions? [LB1007]

SENATOR WILLIAMS: What if that's a family member? [LB1007]

SENATOR SEILER: That was a family member (laugh); he took two farms. Anything else? No? Thank you. [LB1007]

MARK COLLINS: Thank you, Senator. Thank you very much. [LB1007]

SENATOR SEILER: Next proponent. The first example that I used, Senator, was a son. The second example was an attorney. [LB1007]

JIM VAN LENT: Hi. My name is Jim Van Lent, J-i-m V-a-n L-e-n-t. I am here representing First National Bank of Omaha in support of this bill, and I want to thank the committee for hearing

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my testimony. A little background: My role at the bank is director of financial crime compliance, and I'm responsible for compliance with the federal bank regulation, the Bank Secrecy Act, and that requires banks to create and maintain an anti-money laundering program. An important part of the program is the detection and reporting of suspected money laundering, terror financing, or other serious crimes. When we identify these crimes, we're required to file a suspicious activity report with Fin-Syn, a division of the U.S. Treasury. So in 2011 what happened, Fin-Syn issued guidance to the banks and asked us to file suspicious activity reports when we suspected elder financial exploitation while we're looking for money laundering and other things. Following this guidance, First National Bank undertook a project to enhance the training of our front-line staff so that they could spot and report this activity. Reporting this activity meant sending a referral to my team--financial crime compliance--for further review and then we, in turn, would file that suspicious activity report with Treasury. We thought at the time it would be best practice to also then file a report with this appropriate state agency, DHHS, for example. So training of this nature is important as front-line personnel, such as tellers and bankers, are often in the best position to spot these financial abuses. In addition to this training, we were able to leverage the use of our anti-money laundering software. It's very sophisticated software. We were able to leverage that to detect possible financial exploitation, analyzing customer transactions compared to red flags, and we found quite a few cases through our software. So the results: Again, as a result of the training and as a result of our software, we filed 66 suspicious activity reports relative to elder financial exploitation in 2015. That was up from only 17 in 2014. And in years prior to the guidance from Fin-Syn, we would maybe file one or two per year. So our awareness is way up and we're working hard at detecting this activity. What we have seen is two disconnects. One is HHS personnel often view these referrals that we make to them from a physical abuse perspective only. And so they go call on the person, physically they're fine, and they oftentimes will close the case. Well, there's still exploitation of finances occurring because the consistency between abuse and financial exploitation isn't always correlating. So we certainly support this legislation to put, as I think I heard earlier, more tools in the toolbox. Future demographics show that the elder population is growing and banks are becoming more aware of this as well, so support this legislation, happy to answer any questions. [LB1007]

SENATOR SEILER: Sounds like your computer is getting better. [LB1007]

JIM VAN LENT: It really is. [LB1007]

SENATOR SEILER: Any further questions? [LB1007]

SENATOR PANSING BROOKS: Are you a lawyer, sir? [LB1007]

JIM VAN LENT: No. [LB1007]

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SENATOR PANSING BROOKS: Okay, I had a question that was a legal question. [LB1007]

JIM VAN LENT: Okay. [LB1007]

SENATOR PANSING BROOKS: Thank you. [LB1007]

SENATOR SEILER: Thank you for your testimony. [LB1007]

JIM VAN LENT: Thank you. [LB1007]

SENATOR SEILER: Next proponent. [LB1007]

MARK INTERMILL: Good afternoon. My name is Mark Intermill, M-a-r-k I-n-t-e-r-m-i-l-l, and I'm here today on behalf of AARP to support LB1007. I'm going to be very brief. I had three points and now I've got four, so I'll be as quick as I can. First of all, this is an issue that our members are very interested in. We survey our members regularly to identify what sort of issues they think we should be looking at. Abuse and neglect often comes up right at the top. So we see this as a very important topic. The second point, we also are a member of the Elder Rights Coalition, as is another person who was on the subcommittee that helped develop this legislation. The issue that always comes up that we seem to always address in that coalition is the difficulty that we have in Nebraska in addressing issues of abuse and neglect, actually prosecuting perpetrators of abuse and neglect. I see this legislation as a good step in the direction of enabling law enforcement and prosecutors to be able to address those perpetrators. The third issue, the one issue that gives AARP a little bit of concern is the placing an age on a...to describe a person who is vulnerable I guess. But we also see the importance of being able to prosecute perpetrators and we see that in order to do that you have to have an objective measure or objective means of determining if a person is a victim of this type of crime. So in the interest of that, I think we see that it is important to do that. I did look at states bordering Nebraska to see what sort of definitions they use to describe a vulnerable adult. Two of them actually do use an age: South Dakota and Colorado. Colorado is the latest one to have an age and they are using the age of 70. And the last point was just to address the issue of care giving and caregivers. Aside from elder abuse, care giving is probably the issue that our members are most interested in. As I looked at the language, I think that I'm...my concerns are eased by the language that says that this is an intentional act for the purpose of abuse, neglect, and isolating the individual. So I think I'm comfortable with that in terms of using that type of language to describe isolation. [LB1007]

SENATOR SEILER: Any questions? Pansing Brooks. [LB1007]

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SENATOR PANSING BROOKS: Thank you. Thank you for your testimony. It's really helpful, Mr. Intermill. I was just wondering, since you did mention the caregiver issue a little bit, I guess I'm looking at it and I'm trying to understand it. It's my understanding there's no statute of limitations. So theoretically, as a caregiver, if some member of my family decided all of a sudden that we had committed some sort of intentional isolation or misuse of funds, how long can they sue me, do you know? And is that the intention of this? [LB1007]

MARK INTERMILL: I think the intention is, with the current statute of limitations, and Senator Coash can probably address this better than I... [LB1007]

SENATOR PANSING BROOKS: But this one gets rid of the statute of limitations. [LB1007]

MARK INTERMILL: It does, but the statute of limitations is, in the experience of law enforcement and prosecutors, overly restrictive, so there is a... [LB1007]

SENATOR PANSING BROOKS: Which...and it's how long now? [LB1007]

MARK INTERMILL: Is it two? [LB1007]

SENATOR PANSING BROOKS: Three years. [LB1007]

MARK INTERMILL: Three? Okay. So these types of incidents, they're labor intensive in terms of doing an investigation; they take time. Sometimes we...the nature of elder abuse is it doesn't come to light as quickly as it maybe should. So that's the intent of trying to address the statute of limitations. [LB1007]

SENATOR PANSING BROOKS: I guess I'm just sort of surprised because I think that the...it's my memory from law school that lack of statute of limitations is usually murder or treason or some pretty big...now it could be...if it could be a really terrible abuse case, there's no question that...but if it's something like a brother alleges that a sister, who is the caregiver, didn't take them to a movie at one point, that's a big difference. And so I don't know. I guess I'm worried about that a little bit. Those are some things that concern me, so...but I'll tell you, we have to protect our elderly, there's no question, and on the other hand, we have to support our caregivers. It's a fine balance of that walk. We want loved ones caring for loved ones. That's the best world. My mom had a great end of life. We had a great end of life. Our lives were blessed by her presence in our home. And our kids were little and grew up and loved her and saw the whole life cycle with her there. But we have to find a good, happy medium and not throw the good ones under the bus in trying to get the bad actors. [LB1007]

MARK INTERMILL: Right. [LB1007]

SENATOR PANSING BROOKS: So thank you for your work with AARP. [LB1007]

SENATOR SEILER: Thank you. [LB1007]

MARK INTERMILL: Thanks. [LB1007]

SENATOR SEILER: (Exhibits 2 and 3) Seeing no further questions, any further proponent? While you're coming up, there's two letters of support: the National Association of Social Workers; and the protection of vulnerable adults subcommittee of the Nebraska Supreme Court Commission on Guardianships and Conservatorships. You may go. [LB1007]

CINDY KADAVY: (Exhibit 4) Good afternoon, Chairman Seiler and members of the Judiciary Committee. My name is Cindy Kadavy, C-i-n-d-y K-a-d-a-v-y, and I'm here has a representative of the Nebraska Health Care Association to speak in support of LB1007 on behalf of our association's more than 400 nursing facility and assisted living facility members who provide care for more than 20,000 vulnerable Nebraskans every day across the state. We want to express our appreciation to Senator Coash and his staff for presenting this important issue for your consideration. Unfortunately, our members see these situations that have been discussed all too often: individuals who require ongoing medical care or assistance with their daily activities as a result of someone who suffered long-term abuse or neglect and, all too frequently, individuals who are financially exploited. We understand these crimes can be difficult and challenging to investigate and prosecute. Often the victim is unable or unwilling to acknowledge what is occurring. At times this is because the perpetrator is a family member or someone with close ties to the victim. So not only do our members feel a strong responsibility to protect those in their care, it's also a federal and state requirement that nursing facilities protect their residents from abuse, neglect, and exploitation. If they don't protect their residents, not only are they open to disciplinary action against their facility license or their professional license, but also criminal and civil action. It's because of that sense of responsibility and liability that we do have some concerns about the definition of isolation included in this bill, which we have discussed with Senator Coash. We understand the intent behind adding the crime of isolation to the Adult Protective Services Act. It's obviously designed to address situations where the individual may intentionally isolate the victim from their loved ones in order to increase their dependence and vulnerability and allow the abuse to continue. However, when a vulnerable adult resides in a nursing or assisted living facility, as I pointed out, the facility is expected to protect them, in compliance with state and federal requirements. These regulations include strong protections supporting the resident's right to have visitors. They also direct the administrator of that facility to limit or restrict visitations in certain situations, for the protection of the residents. In those

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situations where an individual's visitation might be limited or restricted, the regulations also provide the individual with the right to appeal that limitation or restriction. As these regulations already exist and set strict parameters on the facility's ability to limit or restrict the visitation, we respectfully request that language be added to LB1007 to exclude nursing and assisted living facilities from the definition of isolation. At the same time, we applaud the efforts of Senator Coash to draw attention to this serious issue and support the intent of the bill to more effectively address the abuse, neglect, and exploitation of vulnerable adults. [LB1007]

SENATOR SEILER: Ma'am, your red light is on. [LB1007]

CINDY KADAVY: Sorry. I apologize. [LB1007]

SENATOR SEILER: Would you wrap up? You can wrap up. [LB1007]

CINDY KADAVY: Thank you. [LB1007]

SENATOR SEILER: Okay. Any further questions? Thank you very much for your testimony. Further proponent. [LB1007]

BUB WINDLE: Chairman Seiler, members of the committee, my name is Bub Windle, B-u-b W-i-n-d-l-e, and I'm here on behalf of the Nebraska State Bar Association in support of LB1007. For the reasons that we've already heard, the bar supports the bill, and in particular it's for building in how these things practically occur, in particular the use of isolation, building isolation into the bill and into the concept of exploitation. I think the practitioners in this area that have encountered this issue see isolation as a major factor. As it was kind of put bluntly, it's easier to financially exploit someone when they're alive than when they're dead, and so isolation is a big part of that. So the bar association supports the bill. Thank you. [LB1007]

SENATOR SEILER: Yes. [LB1007]

SENATOR PANSING BROOKS: Thank you for coming, Mr. Windle. Did the bar association take a stand on the statute of limitations and having no statute of limitations on this? [LB1007]

BUB WINDLE: That came up but they did not take a position on it. [LB1007]

SENATOR PANSING BROOKS: Okay, so it's not a position...did they...so are they supporting the whole bill as written? [LB1007]

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BUB WINDLE: Yes. [LB1007]

SENATOR PANSING BROOKS: Okay, so that's a change for the bar for laws to have a statute...have no statute of limitations on something that isn't murder or treason or one of the sexual assault, the major crimes, right? [LB1007]

BUB WINDLE: I think that's right. In fact, I even think it follows in the bill the provision regarding murder, treason, and everything else. [LB1007]

SENATOR PANSING BROOKS: So I guess I'm just interested that the bar doesn't think that...the bar thinks that somebody could be sued that was a caregiver ten years after the person has died and it becomes a 'tis-'tain't between family members? [LB1007]

BUB WINDLE: Yeah. We'd be happy to discuss it in more detail. [LB1007]

SENATOR PANSING BROOKS: That sounds like a really unusual position for the bar association to take. [LB1007]

BUB WINDLE: Yeah, and we can talk about that further. I think, as many issues in front of the bar, there are members on either side of that issue. Obviously it can be helpful on the prosecution of these cases. As a defense attorney... [LB1007]

SENATOR PANSING BROOKS: So 40 years down the road the bar association thinks that somebody should be able to sue? [LB1007]

BUB WINDLE: I think that it is potentially just a reflection of the fact that the membership can disagree and, therefore, did not take a position on that. [LB1007]

SENATOR PANSING BROOKS: Okay. [LB1007]

BUB WINDLE: But if you'd like to talk further, I think we can, you know, get some... [LB1007]

SENATOR PANSING BROOKS: Be happy to. [LB1007]

BUB WINDLE: ...practitioners and do that. [LB1007]

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SENATOR PANSING BROOKS: That would be great. Maybe I'm misunderstanding something. Thank you. [LB1007]

BUB WINDLE: Yeah. [LB1007]

SENATOR SEILER: The rule is: Get the rascal. [LB1007]

SENATOR PANSING BROOKS: Yeah, at all costs. [LB1007]

SENATOR SEILER: Any further questions? Pardon? [LB1007]

SENATOR PANSING BROOKS: At all costs. [LB1007]

SENATOR SEILER: Yep. Thank you very much. [LB1007]

SENATOR PANSING BROOKS: Thank you. [LB1007]

SENATOR SEILER: Any further proponents? Anybody in opposition? [LB1007]

SPIKE EICKHOLT: (Exhibit 5) Chairman Seiler, members of the committee, Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association. We are in opposition, at least to a portion of the bill. We don't take any position regarding the broadened definition of senior adult or the definition or element or optional element of isolation that's included in the bill. But we do object, as Senator Pansing Brooks has already questioned other testifiers about, we do object to the removal of the statute of limitations. Older cases are just difficult to defend. And if it's all right, Senator Pansing Brooks, I'll maybe use your personal experience as an example. If there is no statute of limitations, then Ms. Pansing Brooks, Senator Pansing Brooks, could be charged. If she wants to have a meaningful defense against a charge of isolation or some sort of financial impropriety, she's going to want to get witnesses that could corroborate what she said earlier, that her mother did not want to see her friends at the retirement homes. Those friends are no longer living. If she wanted to somehow show that the money was not spent on her personal family, it was actually spent on her mother, the bank likely doesn't have the records anymore. The receipts that you may have for what you saw at the Lied Center are no longer in existence. You may not even be able to figure out what was shown at the Lied Center. While they may be difficult to prosecute, they're as difficult to defend, and that's our position really, not only with respect to this crime itself but really...statutes of limitation serve a purpose; they do provide for a means that matters can get resolved and that people can be convicted, if they are going to be convicted, on witness testimony and direct

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evidence. This still...that tends to fade or dissipate as time goes by. As Senator Pansing Brooks and others have asked, there is no statute of limitations for homicide, for some sexual assaults, for treason and, oddly, forgery. But this has a three-year statute of limitations, which is the standard statute of limitations for most felony offenses. No matter how objectionable those felony offenses might be, three years is typically the statute of limitations. There are some that are five years. There are some that are seven. If you look at the bill, those are referenced there. If the committee is going to act on it and possibly broaden or exempt this from statute of limitations, there is a lot of differences between three years and forever. And perhaps if the issue is to address the financial abuse, because sometimes maybe it's not discovered until there's somebody who passes away and then the people are able to look at the bank records and then realize something is going on, perhaps that type of abuse there could be a broader or a lengthier statute of limitations. But we are opposed to the bill just for that very reason. I did...for whatever it's worth, I did stop by Senator Coash's office yesterday to address him individually on our concerns regarding that for the version of his bill. [LB1007]

SENATOR SEILER: Senator Williams. [LB1007]

SENATOR WILLIAMS: Thanks, Senator Seiler. Spike, from the position of the defense counsel, is there a number there that you would be comfortable with? [LB1007]

SPIKE EICKHOLT: Well, they just told us to object to removing it, (laugh) so we didn't really take... [LB1007]

SENATOR WILLIAMS: Okay. I'll let you work that out with the senator. [LB1007]

SPIKE EICKHOLT: And I don't know if it's possible, and maybe Senator Coash could just talk with the people who prosecute these. Maybe there is a magic number. I don't know if banks as a matter of course keep records for a certain number of years, if it's five years, seven years. [LB1007]

SENATOR WILLIAMS: I should be able to answer that. We'll ask the other banker in the group. [LB1007]

SPIKE EICKHOLT: That would probably matter, at least have some consistency. The problem is on these cases is that there is not a power of attorney, or at least a very detailed one. The problem is, as Senator Pansing Brooks explained, you just have family members taking care of family members. And unfortunately, in some of the cases I've had, you have other family members who are envious or whatever may be existing in the family dynamic that come into play on these

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things. And they're sometimes very difficult to defend against. And if you just don't have access to the records or supporting materials or witnesses, it's just difficult to defend that allegation. [LB1007]

SENATOR SEILER: Doesn't fraud run for like three years, but from the time of discovery? [LB1007]

SPIKE EICKHOLT: From the time of discovery. [LB1007]

SENATOR SEILER: Which could be 20 years down the road. [LB1007]

SPIKE EICKHOLT: That's right. That's one way to look at it as well. [LB1007]

SENATOR SEILER: Okay. Any further questions? Thank you very much. Any further opponent? Seeing none, anybody in the neutral? Seeing none, you may close. [LB1007]

SENATOR COASH: (Exhibit 6) Thank you, fellow committee members, briefly just wrap up with a couple comments. I'm passing around a Lincoln Journal Star article about a pretty high-profile case that happened right here in Lincoln, and I've circled the terms. "Power of attorney" was used as a way to bilk quite a bit of money from some elderly folks. With regard to the statute of limitations, there were two sources of that that resulted in this finding its way into the bill. One was law enforcement saying that, look, we sometimes don't find out about these things until much later. The commission, of which I'm a member, and I'll just read a portion from Judge Bazis, who stated: The statute of limitations for vulnerable adults needs to be examined. The commission believes that there should not be a statute of limitations for vulnerable adult abuse because currently there is no statute of limitations for other discrete crimes, such as incest and sexual assault of a minor, and although vulnerable adult abuse oftentimes involves only financial matters, no statute of limitations exists for other financial-only crimes, such as forgery. So that was part of the reason that the commission wanted this included in the bill. With regard to the definition of isolation, it's not a crime right now to isolate an elderly person. It's a legal thing. Now there is a definition of...there is a crime of unreasonable confinement, but it's not very well defined that we can find. But right now isolating a senior adult or a vulnerable adult is okay. I meant to mention this in my opening--this is my last comment--there's often two things...when a report comes into APS that somebody believes that an elderly or a vulnerable person is being abused/neglected--neglect is really the highest thing that they see next to exploitation for vulnerable adults--but when the report comes in and there is an investigation, there are two things that start happening. One is there is an investigation of: Did a...was the person abusing a vulnerable person? And then the second thing that happens is: Was there a crime committed? Right? So law enforcement takes care of the crime aspect of it and APS is trying to determine

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whether abuse of a vulnerable adult happened. Well, what often happens when this makes it to court is that the crime is pretty easy to...not easy to prove, but it's more straightforward--you know, the money is missing, there is a bruise, you know, mom wasn't being fed. I mean those are more straightforward. The question, especially when it comes around to financial abuse, is, was the person vulnerable at the time? And so often what happens, and we got this feedback from the Attorney General's Office through county attorneys and prosecutors, is that often it's only the criminal part that is being proceeded with and it is so difficult to prove that the person was vulnerable at the time of the crime because vulnerability, when you talk about elderly and vulnerable adults, can ebb and flow. In other words, if grandma is taking her medication, she's not vulnerable; if she's not, she is. And so those are difficult elements. And so by putting that age-based system for the elderly, it allows us to do that, and that was the...it also eliminated the fiscal note, which was important, so with that I'll close. I appreciate... [LB1007]

SENATOR SEILER: What was the age you used in here? [LB1007]

SENATOR COASH: 65. [LB1007]

SENATOR WILLIAMS: Too young. [LB1007]

SENATOR PANSING BROOKS: 65. [LB1007]

SENATOR SEILER: Holy cow. [LB1007]

SENATOR WILLIAMS: Too young. [LB1007]

SENATOR SEILER: I've been a vulnerable person for ten years? [LB1007]

SENATOR PANSING BROOKS: We've been meaning to talk to you. [LB1007]

SENATOR COASH: I looked at birthdays of all of my colleagues before I made the decision to stick 65 in there, but that seemed to be pretty standard across the board. [LB1007]

SENATOR PANSING BROOKS: Okay. I have a question, so. [LB1007]

SENATOR SEILER: Yes. [LB1007]

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SENATOR PANSING BROOKS: Thank you for bringing this. Can you tell me what your bill...how your bill would have this handled differently? [LB1007]

SENATOR COASH: Well,... [LB1007]

SENATOR PANSING BROOKS: Because they did arrest the guy and they found out. [LB1007]

SENATOR COASH: Yep. [LB1007]

SENATOR PANSING BROOKS: I mean, either way, whether you find it out through power of attorney or you find it out... [LB1007]

SENATOR COASH: Well, okay. And I don't know the specifics about this case, but he's clearly being charged with theft. Right? However, by virtue of using his power of attorney, it wasn't a crime because...for the way that he did it. It was just the outcome. This is really what we hear more and more, and I think Mark Intermill mentioned this, is that unfortunately these aren't strangers coming into the lives of elderly persons. These are people that they know, they trust. Unfortunately, a lot of times, it's family who are using the power of attorney to say, you know, just in case something happens I'd like to be able to write checks for you, and then all of a sudden that becomes the legal mechanism by which they're writing checks to themselves. And it becomes a barrier to investigation, it becomes a barrier to prosecution when there's that legal document that says, yeah, but mom said I could write checks. And that's what we're trying to avoid here. I've heard the...I've talked with the Health Care Association. We're going to continue those discussions and continue to look at the statute of limitations as well. [LB1007]

SENATOR PANSING BROOKS: I presume that you would agree that the goal would be to encourage families to help take care of their loved ones. [LB1007]

SENATOR COASH: Absolutely. And if you look at the definition of isolation, I don't think anything you ever did with your mother would fit in that definition. [LB1007]

SENATOR PANSING BROOKS: Well, I don't think so either, but I just...I mean I'm not worried about that. But I just think how easily any of us in the right circumstances, with a child or with anybody, could be... [LB1007]

SENATOR COASH: Right. [LB1007]

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SENATOR PANSING BROOKS: ...misconstrued to be doing something that somebody doesn't like. [LB1007]

SENATOR COASH: My biggest fear is that there's no definition. It's not a...isolating an elderly person is not something that's contemplated in our statute at all, so (inaudible) I think it needs to be. [LB1007]

SENATOR PANSING BROOKS: Thank you. [LB1007]

SENATOR COASH: Thank you. [LB1007]

SENATOR SEILER: You bet. We are adjourned. [LB1007]