

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

Judiciary Committee
February 16, 2017

[LB243 LB245 LB250 LB258]

The Committee on Judiciary met at 1:30 p.m. on Thursday, February 16, 2017, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB243, LB245, LB258, and LB250. Senators present: Laura Ebke, Chairperson; Patty Pansing Brooks, Vice Chairperson; Roy Baker; Ernie Chambers; Steve Halloran; Matt Hansen; Bob Krist; and Adam Morfeld. Senators absent: None.

SENATOR EBKE: Good afternoon. Welcome to the Judiciary Committee. My name is Laura Ebke. I am a senator from District 32. I chair this committee. I'd like to start off by introducing members of the committee or having them introduce themselves, starting with Senator Baker. [LB243]

SENATOR BAKER: Senator Roy Baker, District 30, Gage County and part of Lancaster County. [LB243]

SENATOR EBKE: Senator Morfeld and Senator Krist and Senator Chambers, I believe, are going to be joining us here shortly. Senator Morfeld has a bill. [LB243]

SENATOR PANSING BROOKS: Senator Patty Pansing Brooks from District 28. [LB243]

SENATOR HANSEN: Matt Hansen, District 26, northeast Lincoln. [LB243]

SENATOR HALLORAN: Steve Halloran, District 33, Adams County and southern and western Hall County. [LB243]

SENATOR EBKE: And assisting us today are our committee clerk, Laurie Vollertsen, and our legal counsel, Brent Smoyer. The committee pages are Kaylee and Toni. On the table over there you will find some yellow testifier sheets. If you are planning on testifying today, please fill out and hand it to the page when you come up to testify. This helps us to keep an accurate record of the hearing. There is also a white sheet on the table if you don't wish to testify but would like to record your position on a bill. We'll begin the testimony with the introducer's opening statement. Following the opening, we'll hear from the proponents of the bill, then the opponents, followed by those speaking in the neutral capacity. And then we'll finish with a closing statement by the introducer if he or she wishes to give one. We ask that you begin your testimony by giving us your first and last name and spell them for the record. That's very important. If you're going to testify, I ask that you...that we keep the on-deck chair filled. If you have any handouts, please bring up at least 12 copies and give them to the page. If you do not have enough copies, the page

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

Judiciary Committee
February 16, 2017

can help you make some more. We'll be using...well, let me ask, how many people are planning on testifying on the first bill? Okay. We will plan on using a five-minute light system today, at least for the first bill. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning. And when the red light comes on, we ask that you wrap up your final thought and stop. If you're in the middle of some very important discussion, hopefully one of the senators will ask you a question and let you continue on. As a matter of committee policy, I'd like to remind everyone that the use of cell phones and other electronic devices is not allowed during public hearings. Senators may use them to take notes or to stay in contact with their staff but hopefully not too much; we won't be talking on the phone, anyhow. So at this time I'd make...I'd ask that everybody check your cell phones, make sure that they're on silent or vibrate mode. Also, I don't think this will be the case today, but verbal outbursts and applause aren't permitted in the hearing room because they tend to distract from what's going on. And you may notice that committee members will come and go throughout the hearings. That doesn't have anything to do with the importance of the bills in front of us, but senators do have bills that they need to introduce in other committees or they may have other meetings that they have to leave briefly for. So with that in mind, we will begin our hearings today with LB243, Senator Bolz. [LB243]

SENATOR BOLZ: (Exhibits 4-6) Good afternoon, members of the Judiciary Committee. I am Senator Kate Bolz; that's K-a-t-e B-o-l-z, and I represent District 29 in south-central Lincoln. I am here today to introduce LB243. This bill would require the administration of secure state institutions, including our correctional institutions, regional centers, and youth rehabilitation and treatment centers, to inform the victim of an assault on staff of any disciplinary action taken against the alleged assaulter, and it also requires that the administrator inform the appropriate county attorney of the assault. The county attorney then must also report their decision and rationale. The county attorney of course has discretion as to whether or not to prosecute, but shall inform the victim of the actions. The concept of this bill came to me after a number of discussions with staff members and union representatives for state employees at some of our state institutions, in particular the regional center and the prisons, who have been subjected to assault where repercussions were either not evident or not reported to them as the victim. I believe that Director Frakes and the Department of Correctional Services have begun a process to address many of these concerns in the correctional system. I think that this bill is a complement to that work. The culture study done by the Department of Correctional Services showed that staff safety was a dominant theme, and there is an associated budget request for additional custody staff as a direct response to concerns regarding the ratio of staff to inmate. The bill is also a direct response. Employees believe that inmate violence against staff needs to be addressed, and this bill does just that. It is not my intent to increase the number of prosecutions for the sake of it, but many of these assaults, if they had taken place in the community, would have resulted in arrest and prosecution. The circumstances of life in a state institution are different, with internal discipline that does not exist in our local communities, but

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

Judiciary Committee
February 16, 2017

the decision of whether or not to prosecute should not exist wholly with an administrator, but with a duly chosen prosecuting authority. If this bill passes, the administrators would inform prosecutors of the assault and any internal disciplinary actions, as well as other relevant information. I expect a letter might come back from the county attorney that states that no additional charges will be filed on the assault because the inmate is serving a life sentence and has had internal disciplinary actions. I have brought an amendment to limit the scope of the bill to the assaulted staff only. The amendment also requires data reporting on assaults by the Department of Health and Human Services. They do already collect some of this data. It would also require some reporting. In closing, I would say that there has been an increase in staff assaults at the prisons, at the regional center, and at the youth rehabilitation and treatment centers; some of those statistics are provided in the fact sheet that I offered you. Safety is a priority for our employees. It should be managed in a number of different ways, and I think this legislation is a step in the right direction. Be happy to answer any questions. [LB243]

SENATOR EBKE: Senator Baker. [LB243]

SENATOR BAKER: Thank you, Senator Ebke. Senator Bolz, how does this increase safety of employees? [LB243]

SENATOR BOLZ: I don't know that it does directly, but it has some positive implications. One is that an individual who was assaulted will have the security of knowing that disciplinary action was taken and that disciplinary action is what is supposed to deter further assaults. So having that oversight and accountability I think is an important aspect of the legislation that relates to safety. [LB243]

SENATOR BAKER: And I understand your rationale, but isn't there a possibility this is going to lead to second-guessing of penalties assigned for infractions? I mean with taking these out of context, I know this is very inexact parallel to discipline of students in school, but in school, you know, one student might do something, another student might do the exact same thing, and the discipline of one could be different from the others because you don't know the other five or six things that happened before that. [LB243]

SENATOR BOLZ: Sure. [LB243]

SENATOR BAKER: So that would be my concern that it could lead to second-guessing and quibbling once it was told what did happen and say, oh, no, that isn't right. [LB243]

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

Judiciary Committee
February 16, 2017

SENATOR BOLZ: Fair enough. I guess I would have a different perspective in two ways. The first way is that I think there is already second-guessing. There is already a lot of confusion, at least as reported to me, because there isn't that assurance that the disciplinary action will be reported back to the victim. There is maybe second-guessing about who did and didn't get a report to the county attorney and when that is or isn't fair. And so by putting it into statute and having a clear process that everybody can count on, at least we leveled that much of a playing field. The other piece I would say is that there is an aspect here that is intended at least to be in the employees' best interest, that this is to help the employees' morale and ensure that they know that their safety and security is being taken seriously. [LB243]

SENATOR BAKER: Thank you. [LB243]

SENATOR BOLZ: Sure. [LB243]

SENATOR EBKE: Any other questions for Senator Bolz? Okay, thanks. First proponent. [LB243]

MIKE MARVIN: (Exhibit 7) Good afternoon, Chairwoman Ebke, members of the Judiciary Committee. My name is Mike Marvin. I'm the executive director of NAPE/AFSCME Local 61. We are the collective bargaining agent for over 10,000 state employees, representing those people in the Department of Corrections, the regional centers, and the youth treatment centers. We're here today in support of LB243. I want to thank Senator Bolz and her staff for all the work they have done on this bill. I do find it very disappointing that it has come to the point that we have to ask for legislation to be passed in order to force the state to do what's right by their employees. Senator Bolz touched on it. Director Frakes has already started some of these things and we appreciate that. Some of this is modeled after the plan that he came up with. But I also want to acknowledge, and I hope I don't butcher his name, Mark LaBouchardiere from the YRTC's. He's stepped up since he has taken over at the YRTC's in making sure that assaults get reported and discipline gets done and helps keep these staff informed of what's going on. That being said, I mean, if they leave, there's no guarantee that these behaviors are going to continue. They didn't happen in the past no matter how much we asked for these kind of things. We just happened to get a couple directors that understood the importance of these assaults and getting them prosecuted or addressed so that the employees understand what is happening. But if those directors leave, without statutory language, the next directors may revert back to the old ways of not informing people. These assaults are getting very common. There are going to be several people behind me that are going to testify about what's happening at the Lincoln Regional Center. I'm not sure if any of the YRTC people got here yet. There were supposed to be several come from them. But the severity also seems to be getting worse, and you'll hear from...about those. At the YRTC's in particular, before Mark took over, and at the Lincoln Regional Center,

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

Judiciary Committee
February 16, 2017

we're not sure that the county attorneys are actually being informed of these; in fact, we know for a fact that at the YRTC's they were not. I don't know if any of you saw the Channel 7 coverage of the assaults out at the YRTC, but they came to the county attorney with a bunch of assaults that had happened out there and the county attorney had no idea about them. So we want to make sure these are getting reported to the county attorney. Senator Baker, I guess the answer is that we are already second-guessing what the administration is doing, whether they care, whether they're paying any attention to it, whether they are building a record. And we also understand that maybe one assault will not be the same as somebody who has been very assaultive for a long period of time. But if we don't build that record, there is no way that the progressive could happen, and we believe it's necessary for these things to happen. With that, I would be happy to answer any questions you have. Again, there are several people behind me who may be able to answer your questions about the assaults a little bit better. [LB243]

SENATOR EBKE: Thank you, Mr. Marvin. Senator Krist. [LB243]

SENATOR KRIST: Mr. Marvin, Mike, I just want to commend you on your years of experience and service to the state and to the union. We've had several conversations, some mostly good,... [LB243]

MIKE MARVIN: Mostly good. [LB243]

SENATOR KRIST: ...and you've done a wonderful job. I congratulate you on your future retirement. You have a lot to be proud of. [LB243]

MIKE MARVIN: Thank you, Senator Krist. I appreciate that. And, yeah, most of it's been good and I've enjoyed all my interactions with you. [LB243]

SENATOR KRIST: Thank you, Mike. [LB243]

MIKE MARVIN: You bet. [LB243]

SENATOR EBKE: Any other questions for Mr. Marvin? [LB243]

MIKE MARVIN: Thank you. [LB243]

SENATOR EBKE: Thank you for being here. [LB243]

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

Judiciary Committee
February 16, 2017

MIKE MARVIN: You bet. [LB243]

SENATOR EBKE: Next proponent. [LB243]

FARID KARIMI: Good afternoon, Senators. I'm afraid that you have to put up with my accent. I'm Dr. Karimi. My last name is Karimi, K-a-r-i-m-i; first name, Farid, F-a-r-i-d. I'm a general psychiatrist as well as a forensic psychiatrist by training, and today is the anniversary of one year of my work here in Lincoln Regional Center. First two months when I was here, I was shocked by the number of assaults that I have witnessed. I have worked in a variety of different settings in New York State as well as Illinois. I came from Illinois last year. I'm talking about maximum security prisons, jails, state hospital, forensic units, private facilities. I have never seen so many assaults. And what we fail to realize: that these assaults has two major negative effects. In light of Governor's budget cut, we have to work more effectively rather than doing the same thing over and over. The way that it can affect the effective work is the experience has shown when you have patients who assault the staff and you press charges, pretty soon the number of these assaults will come down and don't do it. We have patients...I want to make a distinction here. I'm not talking about as a forensic psychiatrist. I'm not talking about patients who are psychotic and don't know what they do. The intent is a major issue. So we are very conscious about the intent, that if somebody is psychotic, then it's not his fault, he's not psychotic. But I'm talking about patients who are not psychotic and they are antisocial. They have been years in prison, back and forth, and they come here. They know very well that we can't press charges against them. Recently we had a physical assault, as well as sexual assault, on one of our staff. And as they were putting the patient in restraints, I was there. One of the technicians said, are we going to do highly restrictive status? We had highly restrictive status in the past that it has been closed, that chapter has been closed. I was shocked that they're putting him there. He assaulted, tore off the pants of this young lady, beat her up, sat on her and beat her up, and he knows about we do not have anymore highly restrictive status. We are talking about these patients, patients who are completely aware, plan with the intention, and they come in that way. The benefit would be the number of restraints would come down. We won't have to back and forth put the patient in restraints. And also the environment would become peaceful. In any given day we have a few patients that are very well known to staff that they don't have any psychiatric problem, or the psychiatric problem is under control with the medication very well, but yet behaviorally that is their fantasy. They can do whatever they want and they know there are no consequences to this. What it does, the morale of the staff, they really are very disappointed and we have such a rapid turnover of the staff we can't keep them. That results in having more overtime and forcing the staff to have to work here and just to put a...we have to pay for that, those staff, including injuries, the hospital bills, the days that they're going to be off. So when you look at it, you see morally and financially is the best interest to do that. I suggested when I came, after two months, I suggested that, and I volunteered, that I'm going to go make a team in the hospital and, as soon as something happened, we are going to go and evaluate this patient forensically to see that if

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

Judiciary Committee
February 16, 2017

this patient knew at the time what he was doing, or he didn't. And by the way, Senator, in regards of second-guessing, we have cameras everywhere and we review those cameras always, so we have a very good idea that what happened and the...thank God, the cameras have been very helpful. So we look at the cameras. I will go and do evaluation and if the patient was not psychotic and had an intent, then what we have to do, we have to press charges. I was told, ah, we did it, but there is a state attorney here who says you should have picked up a better job. So I suggested, as I was doing my fellowship in New York, what we did, we had constant contact with the court system, with the chief judge, with the judges, and we had workshops that we would set up for the state attorney's office and also public defender office in order to educate them about this matter and also to establish a better relationship. They have so many patients who are sitting in the jail for a trespassing issue and they are not competent to stand trial and they're waiting to come to LRC. I've seen patients 14 months who are working in a coffee shop. By the time that he made to LRC, it was eight months and he was sitting in jail, back and forth. So we can get those people moved much faster if we can regulate our units. Unfortunately, because of this issue, we don't have any control in the units. We have rapid turnover of staff. We don't get the opportunity that staff...the staff issue of relationship with the patients and patient told them. So there are so many negative aspects to not doing this. [LB243]

SENATOR EBKE: Thank you, Doctor. Any questions? Senator Baker. [LB243]

SENATOR BAKER: Thank you, Senator Ebke. Sir, I'm not even going to attempt your name because I'm sure it didn't get written down right. [LB243]

FARID KARIMI: Well, I bet you can't. (Laugh) [LB243]

SENATOR BAKER: Okay, so, and you described violent assaults and anybody would agree that those things need to be dealt with, certainly, and with a sure hand. What, to you, constitutes an assault? Is anytime a person touches another person, is that an assault? [LB243]

FARID KARIMI: Oh, absolutely not, Senator. Our skin is much thicker than that. We're talking about biting the ear off and spitting it out. [LB243]

SENATOR BAKER: I understand violence. I mean that's clear. What's not clear is, is that an assault? [LB243]

FARID KARIMI: No. We don't want that, because that is going to be (inaudible) on us as well. We want the serious aggressive and assaultive behavior that results in injuries to be prosecuted. [LB243]

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

Judiciary Committee
February 16, 2017

SENATOR BAKER: I'm just not seeing language in the bill that says what's...what you're calling an assault, I guess. And if that's an assault, you need the full workup? I don't know. But thank you for your testimony. [LB243]

SENATOR EBKE: Okay. Any other questions? Senator Krist. [LB243]

SENATOR KRIST: First of all, thank you for coming to the state of Nebraska. We are sadly in need of psychiatric help, me included. [LB243]

FARID KARIMI: Thank you, sir. [LB243]

SENATOR KRIST: The problem that we have had, obviously, we have...the youth facilities are in the Department of Health and Human Services, the correction facilities, and they're all pretty well lined up here. You're speaking strictly, just for the legislative record, for corrections facilities and the facility, the Lincoln Regional facility, which I understand and I've been there, the cameras, the documentation, and I think corrections officers and the employees do define and understand the difference between aggressive behavior, violent behavior and, as Senator Baker would say, something that could be considered an assault against one's physical space but not necessarily violent. Is there in Corrections a definition that the corrections officers are trained to and that staff is trained to, to draw the line between pushing someone and stabbing someone? [LB243]

FARID KARIMI: As I said, our skin is very thick and we understand that a lot of these patients could be psychotic... [LB243]

SENATOR KRIST: Right. [LB243]

FARID KARIMI: ...(inaudible) and they may push somebody. And we are there to help them. That is the spirit that we have there. And we have accepted that that is a possibility somebody may push me. As a matter of fact, two weeks ago somebody grabbed my tie and I didn't even become angry because I knew that he just was psychotic and grabbed it. And I said let it go, and he finally let it go. We do not talk about those. We're talking about strictly two issues. It's the patients who have an intent and they know and we...as a forensic psychiatrist, with a good evaluation you can document all of those... [LB243]

SENATOR KRIST: Right. [LB243]

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

Judiciary Committee
February 16, 2017

FARID KARIMI: ...that have these assaults and that they were not psychotic at the time. And number two, the serious assaults, if you just come to a unit and say we are going to consider it assault if somebody touch you, people think that...they don't believe their ears,... [LB243]

SENATOR KRIST: Right. [LB243]

FARID KARIMI: ...because we all get touched and that's okay. But when they become physical, when they hit somebody in the eye, in the face, when they sit on somebody and keep punching and there are four or five people, we go and get them, and they knew what they were doing because they had some problem with this staff member a day ago and now they decided to do it, then you know what, if you don't prosecute them, they don't stop it. They brag about this. The patient that I was talking about, even as of today, two weeks, three weeks has passed by, still he...the staff all hear him that he brags about this that how he assaulted this young lady. [LB243]

SENATOR KRIST: And I thank you for your testimony and I understand about the Lincoln correctional facilities and other correctional facilities, and they're lucky to have a forensics psychologist or psychiatrist on staff to make those definitions and follow through. I guess just generally for the legislative record and for Senator Bolz, that kind of understanding and ability to differentiate may not be in the Health and Human Services...you got it. Okay. Thank you very much. All right. Senator Bolz has made a note of it, so I don't need to say any more. Thank you so much for coming. [LB243]

SENATOR EBKE: Any other questions? Thank you for being here today. [LB243]

FARID KARIMI: Thank you so much and good afternoon. [LB243]

SENATOR PANSING BROOKS: Oh, Senator Halloran had (inaudible). [LB243]

SENATOR EBKE: Did you have a question, Senator Halloran? [LB243]

SENATOR HALLORAN: That's okay. I can ask someone else. [LB243]

SENATOR EBKE: You sure? [LB243]

SENATOR HALLORAN: That's okay. [LB243]

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

Judiciary Committee
February 16, 2017

SENATOR EBKE: Okay. Okay, next proponent. You've got to wave your hands a little more (inaudible). [LB243]

SENATOR PANSING BROOKS: We'll tap you. [LB243]

SENATOR EBKE: Yeah, throw something at me. Good afternoon. [LB243]

MARY GALLAGHER: Hi. My name is Mary Gallagher, M-a-r-y G-a-l-l-a-g-h-e-r. I'm not good at this because I'm really nervous. [LB243]

SENATOR EBKE: We're not too scary, so it's okay. [LB243]

MARY GALLAGHER: Not because I'm scared, but because I care about the people I work with and these injuries are horrible--they're not pushing somebody, they're not...you know, it's...we're not even talking about scratches and bumps and bruises. We're talking about some horrific injuries. I'm a nurse at the regional center in Lincoln. We are not a correctional facility. We're not set up like a correctional facility. We don't have the kind of equipment they have or the kind of rooms where you can put people for any period of time after they've done something that they're being watched more closely for. We have small little rooms. There's no toilet in there, there's no sink, so it's just a little room. So as soon as they get in there, they know that all they have to do is say, I have to go to the bathroom, and have to go in there with several staff, however many you need, and get them from that room and take them to the bathroom in restraints, or not, depending on, you know, how the patient is behaving. Our patients come from everywhere. We have patients who are there by the Mental Health Board, as well as from the courts for competency evaluations, so they can have any manner of legal history, criminal histories, and we don't have the protection that, like, somebody from Corrections would have. We just have us, and that's it, and it's...our safety is in the number of staff that we can get to that unit in a short amount of time when something happens. And really what I brought with me today is just a list of injuries so you can kind of see the different things that happened. If that's okay, I can just read them. [LB243]

SENATOR EBKE: Sure. [LB243]

MARY GALLAGHER: This was just two or three days ago. These are names of employees, not patients: Robert (phonetic) was punched in the face and his glasses were broken on his face. The same person hit, he grabbed ahold of the nurse and punched her in the head multiple times before she could...before the staff could get ahold of him long enough for her to get away. Another building, a female patient bit a patient on the arm and, you know, some of these people

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

Judiciary Committee
February 16, 2017

have histories of different medical issues: MRSA, hepatitis, I mean, all assortment of things. He broke the skin and that guy has a huge bite mark on his arm, a big bite ring. I think the doctor referred to this, to this employee. She's an SSII. A patient stalked her up and down the hall a couple times and then he just went after her and he grabbed her by the leg. I think she was trying to, like, move him away from her, kick him away from her, and when she brought her leg up he grabbed her leg and flipped her down onto her chest on the floor. Just a year, I think maybe about a year ago, she had been kicked in the chest by another patient and had a cracked sternum from that incident. This guy flipped her onto the floor, on her chest, and was sitting on her, pummeling her in the head, in the neck/back area, and there were three female staff on the ward: the nurse and two female SSII's and that female SSII and somebody, I heard somebody say, we're with the nurse. The nurse was on his feet trying to hold on to him. There is no woman that has the strength of a man when he's angry. No matter how hard you try, can't always hold on to somebody. Anyway, he ripped her uniform from her midsection down to her knees, and she was under him with him hitting her. Another patient, thank God, saw what was happening, ran and jumped on him, and he bit that patient on the back of the shoulder. Another patient saw it and ran to help them because the three girls were there or the...yeah, three girls were there. The nurse and two female staff were trying to hold on to him and get that other staff out from under him. And another patient ran up and had him kind of in a headlock to try to get him off of her so she could get away. As she got away and was running, she dropped her radio. Another patient picked up her radio and was yelling on the radio for help for that ward, because that's our only way to get people there is, you know, we...they have people who are kind of watching the monitors but they're not maybe watching the same area at any given time, so that was...that's how we get staff to the areas to help and that's what he did to help them. We have another employee. A patient got ahold of him. They were trying...he had broke a vacuum cleaner, was swinging the parts of it around to hit people, and they, when they went in to get ahold of him and to get the vacuum parts away from him, he bit him on the back of the shoulder and had sunk his teeth in so hard that the nurse climbed on a table and was trying to pull his head off of that employee and every time she would pull on him the patient was...I mean the employee would scream because he was hurt so badly. [LB243]

SENATOR EBKE: Well, thank you. Red light is on. [LB243]

MARY GALLAGHER: Do you want to hear the rest of them or do you... [LB243]

SENATOR EBKE: Well, how many more do you have? [LB243]

MARY GALLAGHER: Oh, I'm at the end of my time. [LB243]

SENATOR EBKE: Yeah, yeah, yeah. [LB243]

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

Judiciary Committee
February 16, 2017

MARY GALLAGHER: Anyway, there's just so many incidents here you just can't even tell them all. [LB243]

SENATOR EBKE: Sure. Thank you for being here to testify. Do we have any questions for Ms. Gallagher? Senator Pansing Brooks. [LB243]

SENATOR PANSING BROOKS: Thank you for coming, Ms. Gallagher, and thank you for your heartfelt testimony. When I'm looking at the bill I'm trying...and I can ask somebody else, but is the intention to inform all victims so if a victim is an inmate that they would also be informed? Is it employees as well as... [LB243]

MARY GALLAGHER: What we hear frequently is, well, they're not going to do anything about that, that person is sick. But the employee is still hurt. So, you know, we see the difference, we know the difference between somebody who is psychotic and mentally ill and is struggling with other things. [LB243]

SENATOR PANSING BROOKS: Right. But this says inform the victim, so there could be a victim. Is it only employees? [LB243]

MARY GALLAGHER: That's what I think we want is for it to be reported, for the person that got hurt to know what happened,... [LB243]

SENATOR PANSING BROOKS: Okay. [LB243]

MARY GALLAGHER: ...if we're going to do anything. [LB243]

SENATOR PANSING BROOKS: Even inmates too? [LB243]

MARY GALLAGHER: Right, because that most recent incident that was pretty bad, they did...I believe he has court over that. And then I think they'll get back to him with what happens, and to the victim. [LB243]

SENATOR PANSING BROOKS: Okay. [LB243]

MARY GALLAGHER: Is that what you're asking me? [LB243]

SENATOR PANSING BROOKS: I think so, yeah, thank you. [LB243]

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

Judiciary Committee
February 16, 2017

SENATOR EBKE: Senator Halloran. [LB243]

SENATOR HALLORAN: Thank you, Ms. Gallagher. It's a very emotional issue for you, I'm sure. This...I guess I'm confused about the intent of the bill and I don't expect you to necessarily answer the questions, but it talks about informing the victim, in this case the employees, of the disciplinary actions. [LB243]

MARY GALLAGHER: Because, you know, we're staff, we really don't know what they do beyond maybe that the sheriff comes and talks to the patient. [LB243]

SENATOR HALLORAN: Right. [LB243]

MARY GALLAGHER: Beyond that, we don't really know what goes on. [LB243]

SENATOR HALLORAN: I guess that's my question. Are there...in your mind, is there potential for disciplinary actions that are sufficient to cause that person to not do that again? [LB243]

MARY GALLAGHER: As a rule, no, I don't think...I don't...as far as I know, they're not usually charged but, I like I said, I'm not really aware of that or I don't have that kind of information. [LB243]

SENATOR HALLORAN: Right. Okay. Okay, thanks. Appreciate it. [LB243]

SENATOR EBKE: Any other questions? Thank you for being here today. Any other proponents? Proponents? [LB243]

CARRIE PATNODE: Can I talk if I didn't fill out the yellow sheet? [LB243]

SENATOR EBKE: Are you a proponent? [LB243]

CARRIE PATNODE: Yes. [LB243]

SENATOR EBKE: For? Come on up. You can go ahead and you fill that out. Just spell your name for... [LB243]

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

Judiciary Committee
February 16, 2017

CARRIE PATNODE: Okay. My name is Carrie Patnode; last name is P-a-t-n-o-d-e. I am, like Mary, I'm a registered nurse at Lincoln Regional Center. Like she said, I mean, and what Dr. Karimi said, there's a huge turnover at Lincoln Regional Center. I think a lot of it is because patients exactly aren't held accountable and staff is not informed. We don't feel that we're supported at all. So, I mean, I have...this was my first nursing job. I've been there two years. I've seen numerous staff come and go because they've gotten hurt. We're doing exactly what we're supposed to. We're not equipped like correction officers, but, you know, we're taught to do a certain hold on a patient and, you know, we don't feel supported. There is not...like they were discussing with the incident, the sexual assault incident, I was the nurse on that ward on the shift. It was an antisocial patient who had no scheduled medications. He had been there prior, numerous, I think almost 20 years, no scheduled meds because there was no meds for antisocial patient. So this is a person who is understanding of behaviors, he's understanding of...he's been through numerous classes to try to work on his behavior. He...you know, they found contraband in his room relating to this specific staff. He sexually, physically assaulted her, and then we were told later that no charges were filed because she was a security staff and not a nurse or a doctor; otherwise, he would be held accountable. I mean, for us, for our own mental well-being, it's hard because we don't feel, you know, supported by staff. We're not a patient. We're staff. You know, in that instance we had a quick little discussion about pretty much this is what happens as a nurse; you come to Lincoln Regional Center, this is what's expected. We do meetings of, you know, ways to help, but they don't follow through with our support. We do, you know, we put our comments in a comment box. We don't see anything in result of that. And, you know, in this measure, I think for our well-being, to know what the discipline action is for a patient would help us to see, okay, we're supported, we're...you know, they're listening to us, they're trying to help us. So just to have that peace of mind of knowing, you know, this patient...and of course, you know, these patients who have done such harm, like she listed, they've been doing meds for months, for years, so supposedly they're stabilized because they're on meds. So physically hurting us, I mean, and then they get away with it, like she said, they brag about it, I mean, that doesn't make me want to stay and be a nurse. I mean, I got into mental health. I only planned to be in mental health. That's my dream. That's because I came and I wanted to care for people. I got out of property management because later in my life I became a nurse because this. And I would love to stay in mental health, but I don't feel supported, I don't feel listened to. That's pretty much it. I mean, you know, I...a lot of us, it's like there is no result. We just have to come in the next day and that's what supposedly happens. Well, you know, I don't know why high turnover. I mean there's so many things that could be done if they listened and followed through, bottom line, so that's it. [LB243]

SENATOR EBKE: Thank you, Miss...Patnode, right? [LB243]

CARRIE PATNODE: Yeah. [LB243]

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

Judiciary Committee
February 16, 2017

SENATOR EBKE: Thank you for being here today. Any questions? Senator Halloran. [LB243]

SENATOR HALLORAN: Thank you, Ms. Patnode. Are you aware of any discipline actions that are taken? [LB243]

CARRIE PATNODE: I luckily have not been injured the two years--knock on wood. But I talked to one of the team leaders. A team leader is a manager of the security staff. He said in the ten years he's been there, only one patient who assaulted a doctor has been criminally charged. I do not know much about the background, so I won't speak too much on it, because I have not seen it myself. But I don't hear from other nurses and other security staff that there is much response. And like she said, patients brag about it, keeps going, the same patient assaults again, or that staff member just quits. [LB243]

SENATOR HALLORAN: Do you... [LB243]

CARRIE PATNODE: So I assume nothing is getting done. [LB243]

SENATOR HALLORAN: Okay. Do you feel that maybe hands are tied, the administrative hands are tied on giving disciplinary action? [LB243]

CARRIE PATNODE: Honestly I don't know. I just feel like... [LB243]

SENATOR HALLORAN: By tied, I mean do you think that they are restricted by the rules handed to them? [LB243]

CARRIE PATNODE: I mean, yes, I mean I think it's in the court's ruling that makes the decision, so, you know, Lincoln Regional may not have a say in it because it's in the judge's decision based off what that patient has done. I don't honestly have much experience with knowing that. [LB243]

SENATOR HALLORAN: Okay. No, that's good. I appreciate it. [LB243]

CARRIE PATNODE: So I'm sorry that I can't... [LB243]

SENATOR HALLORAN: Thank you. No, that's fine. [LB243]

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

Judiciary Committee
February 16, 2017

SENATOR EBKE: Any other questions? I don't see any. Thank you for testifying today. [LB243]

CARRIE PATNODE: Thank you. [LB243]

SENATOR EBKE: (Exhibits 1-3) Are there any other proponents of LB243? Are there any opponents to LB243? Is there anybody here to testify in the neutral capacity on LB243? We have a couple of letters. So, Senator Bolz, if you want to make your way up. We have a letter in the neutral capacity from Sheri Dawson of the Department of Health and Human Services; we have an opposition letter from Director Scott Frakes of the Department of Corrections; and we have a letter of support from Larry Scherer of...oh, it's neutral, okay, hang on. Correction: from Scott Frakes is neutral, and from Larry Scherer from the NSEA in support. Is that correct? I see some people...okay. Thank you, Senator Bolz. [LB243]

SENATOR BOLZ: Thank you. I just wanted to answer the two questions that have come up during the hearing and any other questions you might have. In answer to your question, Senator Pansing Brooks, we clarified that language through an amendment, so the amendment specifically articulates that it is to apply to employees. And in answer to the question around the definition of assaults, that may be an area where I could work with this committee to refine more, but the way that I thought about this piece of legislation was that we wanted this to apply to assaults as defined by the institution. So, for example, regional center hospitals define assault as injury that occurs as a direct result of a patient's deliberate physical aggression directed at the staff member, not applicable if the injured staff member was engaged in application of the restraint at the time of injury. So those definitions of assault might vary a bit, institution by institution. I didn't want to make them all use the same definition of assault. I thought that we could probably rely on the institutions to have a standard definition of assault and rely on that, but certainly, you know, with the help of legal counsel or anybody on this committee, we could refine it in whatever way is necessary. [LB243]

SENATOR EBKE: Senator Krist. [LB243]

SENATOR KRIST: My suggestion, and you'll have to go to legal counsel on this, is that in the actual bill language it informs if a person is assaulted, reference the individual institution policies, procedures, or whatever it might be. [LB243]

SENATOR BOLZ: Great. [LB243]

SENATOR KRIST: That will clarify that there's at least... [LB243]

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

Judiciary Committee
February 16, 2017

SENATOR BOLZ: Great. [LB243]

SENATOR KRIST: ...a definition of what that assault is. And then a comment and a question, now we've been, pardon the expression, but we've been kind of tied at the hip throughout most of the Corrections investigations. And you know, and I do, that had a spotlight been put on the Nikko Jenkins issue earlier in the process, if the chain was broken, we wouldn't have lost four lives. I see this potentially as one of those items that might have broken the chain because the county attorney in that particular county would have been informed of all of the assaults on both sides, and injury to self and danger to others, and would have started asking some questions potentially, potentially. But I like this. I think it's...I think it doesn't go too far, you know, and yet it reminds people of responsibility and tries to put a spotlight on the safety of both the employees and corrections officers and inmates or patients as well. So good job. [LB243]

SENATOR BOLZ: Thank you. [LB243]

SENATOR EBKE: Senator Halloran. Oh, I'm sorry. [LB243]

SENATOR HALLORAN: No, go ahead. [LB243]

SENATOR CHAMBERS: Go ahead. You can take the youngster first. [LB243]

SENATOR EBKE: Oh, (laugh) okay. Senator Halloran. [LB243]

SENATOR HALLORAN: Thank you, Senator Chambers. Senator Bolz, I appreciate you bringing this bill. I think these employees need more protection. But having said that, I don't think that...or they need more reinforcement that their well-being and safety is respected. But I think it takes, from what I understand, it appears as though there's not enough disciplinary action being done to report on. In other words, we're asking for the victims, in this case the employees, to have at least be given a summary of the disciplinary actions taken but... [LB243]

SENATOR BOLZ: So if I may,... [LB243]

SENATOR HALLORAN: Sure. [LB243]

SENATOR BOLZ: ...a couple of responses to that. One is, to Senator Krist's point, this is a bill about employee safety and protection. It is also a bill about processes and accountability. So by requiring this information to be brought to light, that adds some accountability in ensuring that

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

Judiciary Committee
February 16, 2017

disciplinary action is followed through on. The other piece that I'll mention is that on line 21 of the bill it states that notification shall also be sent to a representative of the victim's labor union, though the victim may request otherwise. But I think the other piece of this puzzle is that if the disciplinary action in some way wasn't appropriate, the employee could work with his or her labor union to try to address that issue and negotiate with the administration to try to address how disciplinary actions could be managed better in the future or respond to that particular case. [LB243]

SENATOR HALLORAN: But you understand my point. My point is I don't believe that these people are given or afforded enough opportunities or avenues for disciplinary action from the administrator's perspective in regard to someone who makes a victim of one of the employees. [LB243]

SENATOR BOLZ: Well, so... [LB243]

SENATOR HALLORAN: I think it's kind of hollow in a way. I mean we could... [LB243]

SENATOR BOLZ: The...right. [LB243]

SENATOR HALLORAN: We can set up a statute that says there should be reporting but if there's no... [LB243]

SENATOR BOLZ: Right. [LB243]

SENATOR HALLORAN: ...disciplinary actions to report, then there's nothing to report. [LB243]

SENATOR BOLZ: Right. So I think this helps us to hold administrators accountable to ensuring that there are appropriate disciplinary actions. I think the other piece of this is the report to the county attorney if the assault is criminal in nature. And there is a distinction, just to be...to put it out there for articulation, there is a distinction between a patient who might be in a psychotic episode who injures someone and an individual who is of sound mind making a conscious choice to aggressively hurt someone. And in that case, that is a criminal act and should be prosecuted as such, and this ensures that the county attorney follows through with his or her obligations to do that. They can't do that if they're not informed. [LB243]

SENATOR HALLORAN: Okay. [LB243]

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

Judiciary Committee
February 16, 2017

SENATOR EBKE: Senator Chambers. [LB243]

SENATOR CHAMBERS: Should the same approach be taken if an employee harms an inmate that it must be turned over to the county attorney and the county attorney has to explain why no charges are brought, if such is the case, and the inmate be informed of that? In other words, should it work both ways, because I know of inmates who have been harmed and I know of instances where the administration said we did something but we can't tell you what we did, and it wasn't reported to the county attorney. [LB243]

SENATOR BOLZ: I see your point and I think you're right. I think any victim of a crime or criminal activity should have their due course. We did step away from the idea that it should be...that this particular bill should address inmate on inmate assaults because, for me, that got into too much tricky territory in terms of what the responsibility of the Legislature might be versus the responsibility of the Department of Corrections to manage their population. But if you and I want to team up on adding that language and this committee wants to incorporate that into this work, I'd be more than happy to do it. [LB243]

SENATOR CHAMBERS: What good is this really expected to achieve? [LB243]

SENATOR BOLZ: You know, it's not a bill that will revolutionize any institution. It's a narrowly focused bill that achieves a couple of small goals, and those goals are ensuring that the employees have the dignity of receiving information about how their particular issue was appropriately addressed; and to Senator Krist's point, it ensures that when criminal activity has taken place, the county attorney receives that information and can intervene if and when appropriate. [LB243]

SENATOR CHAMBERS: Why should the county attorney explain why he or she would not file charges? In other words, what kind of explanation would have to be given? Suppose the county attorney simply said...and this is the law. A charge is not to be filed unless the county attorney believes that a conviction can be obtained. Is that sufficient explanation, that I don't believe I could get a conviction? [LB243]

SENATOR BOLZ: It's a great question, Senator. I think the best-case scenario is that in a legitimate case of criminal activity, the county attorney reports that he or she will prosecute and the employee knows that that is the case and that his or her rights have been respected. In the cases where the county attorney chooses not to prosecute, I think under the legislation as written any explanation would suffice to meet the statute. I think the only benefit of that would be if there were cases that moved forward because the county attorney had a flimsy excuse. At least we could hold that county attorney accountable. [LB243]

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

Judiciary Committee
February 16, 2017

SENATOR CHAMBERS: And, Senator Bolz, I just wanted some of these things in the record because you and I will have...we can talk anytime and a lot of time. [LB243]

SENATOR BOLZ: Sure. [LB243]

SENATOR CHAMBERS: But I wanted some things in the record. That's all that I have. Thank you. [LB243]

SENATOR BOLZ: No, I'd be happy to keep working with you, Senator. [LB243]

SENATOR EBKE: Any other questions? Thank you, Senator Bolz. This concludes the hearing on LB243. We will proceed to LB245. [LB243]

SENATOR BOLZ: Hi. (Laughter) [LB245]

SENATOR EBKE: Welcome back. [LB245]

SENATOR BOLZ: Thanks. [LB245]

SENATOR KRIST: Long time no see. [LB245]

SENATOR BOLZ: (Exhibits 1 and 9) Good afternoon. I'm still Kate Bolz, K-a-t-e B-o-l-z, and I still represent District 29 in south-central Lincoln. The next bill we'll discuss is LB245. This bill would address challenges related to overtime in the Department of Correctional Services by making the following changes: would ensure that employees had at least eight hours, consecutive, off before a shift begins; protects an employee from repercussions for failure to volunteer for overtime; and limits the amount of overtime a corrections employee may work to 32 additional hours each two weeks. The bill also allows the department to declare an emergency and suspend the overtime rules if needed. According to the Department of Corrections Inspector General, monthly overtime hours have doubled from 2014 to today, from below 20,000 hours to almost 40,000. The information I handed out shows that individual employees have worked significant overtime during a two-week period for which we requested data, which was January of this year: as much as 214 hours in a two-week period, or 134 hours of overtime. I believe this is an issue of safety. When employees are not rested or are forced to work overtime when they may already be exhausted, chances of making a mistake or error that can be harmful to inmates and other employees can happen. This is reflected in the Department of Correctional Services culture study. Too much reliance on overtime could also impact the ability of the work force to respond to a crisis situation. The safety of the institution is paramount. The reliance on overtime

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

Judiciary Committee
February 16, 2017

has fiscal costs too. In fiscal year 2012, overtime costs were \$3.5 million. Four years later, in FY '16, overtime cost the state more than \$8.3 million, more than double. While my intent here is not primarily fiscal, it is something we should certainly keep in mind, especially during difficult budget times. I understand that some current staff will maybe be in opposition to the bill because they use overtime to supplement their income. I applaud this work ethic but I have concerns about fatigue, burnout, and decreased safety. I believe that the staff of the Department of Correctional Services should be paid better. I have advocated for increased wages and longevity pay and I'll certainly fight for those things on the Appropriations Committee. And I also understand that some employees may be better physically equipped than others to participate in overtime. But since the physical standards in the Nebraska Department of Correctional Services have been decreased, there are concerns that again have been addressed, have been articulated in the culture study about the stamina of the work force as a whole. A safe environment means sufficient staff, well-trained new officers, and well-rested officers to respond to the sometimes unexpected needs of a given day in one of our state's correctional institutions. Again, I'd like to thank Director Frakes for his efforts. I'd like to thank the front-line employees and the others who have contributed to safety improvements at the Department of Corrections, but I think this is an important conversation to have. In our work on the Special Investigative Committee on the Department of Correctional Services, we know that the inmate-to-staff ratio is a challenge. We know that employees are being asked to work a significant amount of overtime. We know that in some ways the work force is stressed and that relates to the ability for the institutions to be safe. And so while we need multiple solutions in this area, we do need more employees, we need more of the right kinds of employees, we need to be able to recruit and retain and appropriately pay employees, limiting overtime is a part of this conversation because at this point in time we can see how overtime is used excessively, in the words of the LR34 Committee report, and does have relation to the safety of the employees and the facility as a whole, as we can see reflected in the Department of Correctional Services culture study. With that, I'd be happy to answer any questions. [LB245]

SENATOR EBKE: Senator Krist. [LB245]

SENATOR KRIST: A couple of questions and a couple comments: From LR424, which I think is now four years old, through LR34, we collectively--and I just want to put this on the record, particularly for new senators--we collectively saw some major findings as we peeled back the onion on the status of Corrections back years ago. One of those was a, I would call it, a turnover that is unacceptable for a work force based upon many conditions. One of those, and I would ask you to just add any conditions that come to your mind as well, but one of those obviously is a lack of progression professionally with a step program in place. One is the difference in wages with comparable places around the state who do much the same thing, like Douglas County and Lancaster facilities and jails across the state. One is obviously sometimes the location of those facilities in terms of attracting people to be there, safety of the facility. All those things affect I

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

Judiciary Committee
February 16, 2017

think the continuity or the reduction in turnover. Can you think of any others that you might throw in there? [LB245]

SENATOR BOLZ: Maybe just to flesh out a little bit, that work/life balance, you know, the ability to be able to count on going to your kid's tee-ball game, as well as to manage your own mental and emotional strength. [LB245]

SENATOR KRIST: So in that four-year period, we've not really seen a reduction in overtime because, in my opinion, we have not seen a proper manning level across the board, and some of these changes have been laboriously brought about by really not any timely motions in different directions. And to my expectation, and I told Mr. Marvin this when he was up there for the last one, it's not for lack of trying. It's potentially for lack of reacting to those requests from the union and from the director because of budgetary constraints, because of administrative turnover, because of our inability to, as Senator Chambers likes to say, our ability to run on the cheap and our inability to pay what is really required. But I'm being a little long-winded here, but I'm doing it for a point. If the administration, if the current union structure, and if the director cannot solve a problem, then I think the citizens who are our corrections officers in the state need to find another voice, another way to get to where they need to get to. Whether it's another union, whether it's another negotiating point, I don't know. I was quoted in the paper as saying I think they should go out and do this to protect themselves and find different advantages to get to where we need to get to. But this, this brings up what, once again, was a crisis situation in the Department of Corrections. If you don't have enough people, the railroad doesn't run. And if the people are overtasked and don't have the proper work/life balance, family balance, they become stressed. And when they become stressed, they get hyper thyroid, or they're not able to react to their situation in the way they should be. You bring this forward at a time that it couldn't be better, and I think, I know, I know we're probably solid on our agreement that this is very, very important based upon the information that we have seen and the studies that have been undertaken. (Inaudible) long-winded and I apologize. [LB245]

SENATOR EBKE: It's okay. [LB245]

SENATOR KRIST: But if you'd like to add anything to that, please do. [LB245]

SENATOR BOLZ: I appreciate that. I'll just briefly say some people might say that addressing overtime is addressing a symptom and that the underlying diagnosis is the ability to recruit and retain and pay employees. I don't disagree with that. I think it's very important that the Appropriations Committee that I serve on does their due diligence by the Department of Correctional Services' ask to add employees and I'll do my best on that side. But I don't think

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

Judiciary Committee
February 16, 2017

that we ignore the symptom just because we've come up with a diagnosis. And this is a part of making sure that we get where we need to go. [LB245]

SENATOR KRIST: Thank you. [LB245]

SENATOR EBKE: Senator Baker. [LB245]

SENATOR BAKER: Thank you, Senator Ebke. Senator Bolz, I'm very much in agreement with what you're proposing here and in line 9 and 10, "Employees must have at least eight consecutive hours off work before a shift," so that there was no more double shifts. [LB245]

SENATOR BOLZ: I don't think that the bill limits a double shift, but when you're done with that shift, you need eight consecutive hours to rest. And I, to be frank, I don't know that that's very different from the status quo as it is now, but in my mind this puts together some minimum expectations in terms of overtime. [LB245]

SENATOR BAKER: So there could be double shifts. [LB245]

SENATOR BOLZ: Sure, sure. You know, I think there are circumstances in where that's appropriate or where that's necessary. [LB245]

SENATOR BAKER: And I...in the...further down that page, line 25, you talk about corrections-related emergencies where, you know, some of these other provisions would be relaxed. What about a blizzard? Is that a corrections-related emergency? [LB245]

SENATOR BOLZ: It's a good question and if there's need to articulate the circumstances in which these things wouldn't apply, we could certainly do that. I think when we wrote it, it was envisioning issues like the Mother's Day riot a couple of years ago in which it really wouldn't be appropriate to put limits on overtime. But in an ideal situation, a work force would be sufficient and robust enough that you wouldn't be at your 32-hour limit when that blizzard hits. [LB245]

SENATOR EBKE: Any other questions? [LB245]

SENATOR BOLZ: Okay, thank you. [LB245]

SENATOR EBKE: Okay, thanks. First proponent. [LB245]

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

Judiciary Committee
February 16, 2017

JERALL MORELAND: (Exhibits 2-4) Senator Ebke, members of the Judiciary Committee, good afternoon. My name is Jerall Moreland, J-e-r-a-l-l M-o-r-e-l-a-n-d. I'm here today representing the State Ombudsman's Office in the capacity of deputy ombudsman for institutions. I'd like to thank Senator Bolz for an invitation to offer our views on LB245 as it relates to the department's protective services staff overtime use. And, no, I'm not going to have time to read my entire written testimony, but I'd like to highlight a couple points within that testimony and I would submit the written testimony for the record. The first point deals with overtime issues not being limited to the Nebraska correctional system. Taking into consideration all of the initiatives that has been generated by studies of the staffing issues experienced by the Department of Corrections, it is perhaps not shocking to see that the department continues to rely heavily on overtime hours to keep its prisons staffed. The protective service staff employed in the Nebraska corrections systems has been asked to adjust to significant elevations in the inmate census, and to maintain control of our correctional facilities in the face of chronic overcrowding and understaffing. Across the country, other prison systems are confronted with the need for increased utilization of overtime to assure appropriate staff coverage; however, some states have addressed the concerns related to the use of overtime in the prisons by crafting special overtime policies. For instance, some jurisdictions have established limits on how many overtime hours an employee can work during a one-month period. At the Rikers Island in New York City, for example, policy has established an overtime cap of no more than 57 hours per month. In California, that state's department of corrections has set overtime limits at no more than 80 hours per month. Along these lines, LB245 would do the following: set an overtime cap limiting the number of mandatory and volunteer overtime hours that could be worked by protective service staff; require a minimum rest period; and allow the Director of Department of Corrections to suspend the provisions of the bill in the event of emergency for a set time period. We have made other suggestions in our written testimony for the committee to consider adding as requirements as well. Second point I'll make deals with the total overtime hours for protective service staff. In front of you, you should have a handout titled "NDCS Mandatory and Voluntary OT Hours." It looks like this. Take your attention to the use of overtime hours charted for calendar year 2016. You will note increases throughout the year, with some ebb and flow months. But the key on this data is in January the department captured approximately 16,000 hours of overtime and increased to approximately 21,000 overtimes December of 2016. The total represented hours for 2016 equals 251,000 hours for calendar year 2016. I...we believe this number may be a little skewed; that is, it is our understanding that none...protective staff have been working overtime hours in some of the protective service employee slots. And that may not be captured in the department numbers under protective service overtime hours. Finally, the last point I will highlight deals with the turnover rate for protective service staff in Corrections. You should have another handout titled "Monthly Protective Services Turnover." I want to bring your attention to the highlighted area of the chart. As you can see, the turnover numbers in the department have progressively increased. Essentially, the turnover numbers have gone up 82 percent, or two

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

Judiciary Committee
February 16, 2017

times, since calendar year 2010. I thank you for your time and I can answer any questions that you have. [LB245]

SENATOR EBKE: Senator Krist. [LB245]

SENATOR KRIST: Mr. Moreland, thanks for coming. In 2016, looks to me like there was a total of 424 turnovers. [LB245]

JERALL MORELAND: Yes. [LB245]

SENATOR KRIST: That means someone who has been trained that leaves the organization. Is that right? [LB245]

JERALL MORELAND: Correct, yes. [LB245]

SENATOR KRIST: What's the total number of employees that this is taken from? [LB245]

JERALL MORELAND: I'm not sure what the total number is now. I would suggest that I think mid-2016 the department suggested that there was a 25 percent turnover rate to that percentage... [LB245]

SENATOR KRIST: That's my memory of it as well. [LB245]

JERALL MORELAND: ...departmentwide. [LB245]

SENATOR KRIST: Yeah, that's my memory of the total number of people. But this is from that total... [LB245]

JERALL MORELAND: Yes. [LB245]

SENATOR KRIST: ...there, not from...so if 25 percent of the population is turning over for one reason or another, that means that we're going to have to train a quarter of the population every year? [LB245]

JERALL MORELAND: That would be correct, and that's the dilemma that they are in of trying to maintain staff that they need. I know some states have looked at that exact issue and then one

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

Judiciary Committee
February 16, 2017

of the questions they have is they want to guard against overutilizing overtime because of those training expenses. [LB245]

SENATOR KRIST: And where are they going, just for the record? You and I both know. Where are they going? [LB245]

JERALL MORELAND: Right, right. It's our understanding that they're going, in some cases in Lincoln they're going right around the street, they're going to other county jails. Others are going into maybe the train industry. Safety is paramount, we believe, in one of the decisions that they are making. The other piece has to do with that life/work balance, and so they're going where they get that life/work balance. [LB245]

SENATOR KRIST: And just one other question, just again to follow through with my line of questioning with Senator Bolz and the legislative record, can you give me--you gave me two of them--can you give me any list of things in line of probably...life/work balance is probably right up there; money,... [LB245]

JERALL MORELAND: Um-hum. [LB245]

SENATOR KRIST: ...the amount of money that one organization is paying over the other; lack of overtime, obviously that goes into the life/work balance; safety being one of them. Anything else that you can, you could highlight that might be a reason to walk away? [LB245]

JERALL MORELAND: I think your health, even outside of life and balance: Is the employee healthy? And over time, long periods of long work hours tend to impact that piece. And that's something that they're showing nationally as well. So I think you've covered a lot of the main issues. Another issue I would suggest is that when we talk about mandatory overtime versus volunteer overtime, I would suggest that where we do have a group of employees that want the hours, we tend...we have to ask the question, how many hours is not safe? And so where we can have employees choose or volunteer their hours or have it preplanned, that is going to be beneficial for employees. For example, in the corrections system we do...you'll notice there is a tremendous amount of volunteer hours. However, is that really volunteer hours? And as this group had seen in the past, a lot of times, the staff members, they're not aware that they are going to need to work overtime until after they are already on shift. And so if they can get into a system such we know Douglas County may have a similar system where they can preplan their volunteer hours a week or two, that will keep them that stability of work and life balance. [LB245]

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

Judiciary Committee
February 16, 2017

SENATOR KRIST: As it applies to safety, I'll just make a comment in general, and this is...it's not even in the same church or the same pew; it's an entirely different church. But in the aviation industry you can't turn a wrench longer than 12 hours. You have to have eight hours involatile to come back to the workplace. If you fly a crew due today over 14 hours, you need 12 hours in between the next time you come to work. So this is not "constructually"...or perceptually or philosophically it's nothing new. It's how long can a person function in a high-pressure environment safely and do what he or she needs to do, so. [LB245]

JERALL MORELAND: That's exactly right, Senator. Conceptually, I don't think it's a new idea, as you mentioned. Even in the trucking industry I believe research indicates that they work up to...they can only work up to 70 hours or drive up to 70 hours in a 7-hour (sic) period before they have to take that break. [LB245]

SENATOR KRIST: Seven-day period. [LB245]

JERALL MORELAND: Seven, yes. [LB245]

SENATOR KRIST: Okay. Okay. Thank you. [LB245]

JERALL MORELAND: Sure. [LB245]

SENATOR EBKE: Senator Baker. [LB245]

SENATOR BAKER: Thank you. I'm looking over your sheet here... [LB245]

JERALL MORELAND: Yes. [LB245]

SENATOR BAKER: ...shows turnovers. You probably don't have retention data. In other words, is it possible, if we're looking at 424 being you said maybe 25 percent of the total employees--so, you know, rough guess, 1,600, 1,700--is it possible that 80 percent or more of those positions didn't turn over at all and that some positions people stayed two or three months, multiple turnovers within...that there was not necessarily unduplicated? You know, is that possible? [LB245]

JERALL MORELAND: So we are aware that...let's...I think training for department may be four to six weeks approximately. We are aware that new employees go through that training and for

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

Judiciary Committee
February 16, 2017

some reason they may be terminated during that training or they may decide to leave during that training period. [LB245]

SENATOR BAKER: Right. [LB245]

JERALL MORELAND: Then we also have those that have been away from the facility that they have completed their training, now they go to the facility to work, and we are aware that they at times will leave. It's not right for them. They finally get on to the work site and it's not a type of work they expected. And so I would assume those kind of numbers are included in that 424. [LB245]

SENATOR BAKER: So this is bad but may not be as bad as it...quite as bad as it appears. If you've got...and it's hard to know. You may have 85 percent of the people who are still there from a year ago, whereas other positions have turned. [LB245]

JERALL MORELAND: Yes, Senator. I would say there needs to be more detail into that number to determine. [LB245]

SENATOR BAKER: Right. Thank you. [LB245]

JERALL MORELAND: Yes. [LB245]

SENATOR EBKE: Senator Halloran. [LB245]

SENATOR HALLORAN: It's hard to put percentages on these things. First, thanks for your testimony. It's hard to put a percentage on these things, but if you could put an educated guess to it, what percentage of the overtime is--it's probably large--is because...is...well, it's...I would assume it's mostly financially driven, right? I mean the people obviously want more income, and so it's...so they're going for more overtime. And I guess the direct offset of that is if we, and this is aside from this bill, but if we increase the salary and benefits to a point where that wasn't such an attractive means of getting more income, our retention might be better, I would assume, and there would be less stress with excessive overtime and the turnover wouldn't be so bad. Now that sounds like an easy solution, but that...I don't know where else we're going because, quite frankly, I don't know you could pay me enough. In all things said, you know, the people that are being retained are saints. It's a hard, hard job, stressful job. But anyway, it's more of a statement than a question. [LB245]

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

Judiciary Committee
February 16, 2017

SENATOR PANSING BROOKS: Thank you. Any further questions? Thank you very much for coming, appreciate it. [LB245]

JERALL MORELAND: Thank you. [LB245]

SENATOR PANSING BROOKS: Next proponent. [LB245]

DOUG KOEBERNICK: (Exhibits 5 and 6) Good afternoon, Senators. My name is Doug Koebnick, spelled K-o-e-b-e-r-n-i-c-k. I work for the Nebraska Legislature as the Inspector General for Corrections. LB245 is an interesting proposal and I can truly understand how people can line up on either side of the intent of the bill. With that said, I support the legislation because I think it is important for policymakers to have a discussion like you're having today on this issue. Senator Bolz and Mr. Moreland covered a lot of the ground that I was going to cover, so I'm just going to kind of cut right to the end here and save you a little time. I summarize by saying, while I don't know if 32 hours is the magic number as far as overtime in a two-week period, and I recognize that at the end of the day that most are...that the posts need to be staffed, I do believe that there is a point at which the department or the Legislature needs to step in and say that despite someone wanting to work an extensive amount of overtime, that they can't do that due to safety concerns. When Senator Bolz had received information from the department that showed somebody worked in a four-week period 400 hours, I wasn't shocked exactly but it still was...I mean, because I've seen some big numbers in the past, but that was quite amazing that somebody would work 27 out of 28 days and pretty much work a double every one of those days. That seems at some point maybe somebody from the department or that facility should have stepped in and say, you know what, we maybe should have you take a couple more days off. I would end by sharing that several years ago I worked on the Beatrice State Developmental Center issue. The Legislature and the U.S. Department of Justice both found that overtime was a contributing factor in the abuse and neglect of residents. At BSDC, stress and fatigue contributed to well-intentioned employees making poor decisions. In addition, overworked and fatigued employees all ended up...they ended up quitting and that only led to more staff overtime and it kind of became this circle. I was out at the Lincoln Correctional Center last fall talking to some staff and one of the staff there described it as if, let's say, somebody has got their finger in an outlet and there's maybe ten of you in there and you're holding hands and somebody has got the other end, so you got that circuit and somebody leaves, so then you're not feeling much electricity or a zap, if you will. But as more and more people leave, pretty soon you're feeling a lot of discomfort and everything and she said by the end of the time you have like two people there and you're really, really wiped out and stressed out and fatigued. So that was how she described it. I said that's probably better than I've ever described it. With that, I'd be happy to answer any questions that you may have. [LB245]

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

Judiciary Committee
February 16, 2017

SENATOR PANSING BROOKS: Thank you, Mr. Koebernick. Any questions? Thank you for coming. Next proponent. Welcome. [LB245]

JIM MAGUIRE: Good afternoon, Senators. My name is Jim Maguire. I'm president of the Nebraska Fraternal Order of Police. We're here to support LB245. Some of the previous testifiers have taken some of the thunder of what I was going to bring up. But over the last several months I've had the opportunity to speak to several officers that work in corrections and asking them point blank, what is your biggest gripe? And you would think it would be pay and it's not pay; almost to everybody, it's the amount of overtime that they are required to work. Going down to Tecumseh and talking to some of the officers, and there are some officers down there that live in Omaha, and just doing a quick check on Google Maps, the drive from Omaha to Tecumseh is one hour and 18 minutes. If they're working a double shift that they are being forced to work, that's over two and a half hours of just drive time. So you've got them work...you've got them down to, what, five and a half hours to where they can go home, see their family, get something to eat, get some sleep, and then come back to work. You've got these people who are dead tired, and that's going to end up causing problems not only within the officers but, you know, some of the inmates there, because you've got people that are just...they're beat and there has to be...whether or not the magic number is 32 hours, I don't know, you know, but the amount of forced overtime, it's clearly something that has to be addressed. And I know that you're trying to come up with the magic number. I don't know what that is, but I do know that working four or five days in a row, working double shifts, is absolutely excessive. One thing that I'll just...I'll leave at this. I just...I do want to be brief. I've been a Douglas County deputy sheriff for 25 years. I have worked well over 1,000 traffic accidents and I can tell you that I have gone to my fair share where people are just dead tired and they're driving off the road and crashing. And just to kind of put this in the back of your mind, if they are...if you have officers that are being required to work that much overtime, there may be an attorney that may turn around and say the state is liable for some of these accidents because they are being required to work this amount of overtime. So there is, there is the potential for some kind of an ambulance chaser to come out and say you're liable for this. So I do think that the bill has absolute merit. But again, as I've repeated, I don't know what the magic number is, but I know that the amount of overtime that these officers are working is excessive. Thank you. [LB245]

SENATOR EBKE: Senator Krist. [LB245]

SENATOR KRIST: Can you...thanks for coming, Mr. Maguire. Can you...you didn't spell your name for the... [LB245]

JIM MAGUIRE: Oh, I'm sorry, sorry about that. It's Jim Maguire, M-a-g-u-i-r-e. [LB245]

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

Judiciary Committee
February 16, 2017

SENATOR KRIST: So I'm sorry. [LB245]

SENATOR EBKE: That's okay. [LB245]

SENATOR KRIST: But the other, the thing that I wanted to ask you is--you mentioned it might not be the right number--do you have other knowledge of other police departments or other facilities that enforce a work pattern that we're talking about here? [LB245]

JIM MAGUIRE: My agency itself requires a minimum of eight hours in between each shift because we don't want officers out on the street working too many...and that's not just overtime. We're talking about part-time jobs that they're also working. So there's limitations over the whole. So if...generally it's 12 hours per day. You cannot work more than that. You cannot work more than 30-32 hours in a week. And that's a combination of overtime and your security jobs that you have on the side. And it's basically because we have to have officers who are rested. And it makes for a little peace and harmony out on the street when we're out there because, you know, you don't want somebody that's a little squirrely. [LB245]

SENATOR KRIST: So in my world it's...we call it a crew duty day. In your world it would be actually serving in the county...as a county sheriff and maybe doing something on the special event or whatever it might be. And in my world it's called eight hours inviolate, which means that we have...I have to allow you eight hours at a rest. And sometimes that includes I make you work for 12, I know it takes 30 minutes for you to go home and get eight hours inviolate, and you're going to come back for 30 minutes. Does that also apply in your world? [LB245]

JIM MAGUIRE: It does. Now I don't want to get into the dynamics of everything with our job, because it's eight hours. So if somebody wants to take vacation time so that they can meet that eight hours, they can. But they have to have eight hours. And it's enforced where you have to tell people where you're working, how many hours are you going...is this going to put you at the week. And they track all that throughout the course of the year and it has to go to your direct supervisor all the way on up to the sheriff. [LB245]

SENATOR KRIST: So this is kind of off the record but just for my own curiosity: Do you have a "bottle to throttle," kind of, also? [LB245]

JIM MAGUIRE: (Laugh) Yeah, I've been known to have, you know, plenty of energy drinks and everything else when I was working overnights. I worked overnights for a lot of years and it can get tough around 4:00 or 5:00 in the morning. [LB245]

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

Judiciary Committee
February 16, 2017

SENATOR KRIST: Okay, thank you very much. [LB245]

SENATOR EBKE: Senator Halloran. [LB245]

SENATOR HALLORAN: Well, I guess I'm showing my naivete here, but most of the overtime is forced overtime? [LB245]

JIM MAGUIRE: The officers that I have had contact with are being required to work overtime. It is forced overtime. [LB245]

SENATOR HALLORAN: Okay. [LB245]

JIM MAGUIRE: I'm not saying that there's...there's going to be plenty of people that are going to want to work voluntary. [LB245]

SENATOR HALLORAN: Sure. [LB245]

JIM MAGUIRE: But the ones that I have, I've talked to dozens of them and all of them have complained about the amount of forced overtime they've been required to work. [LB245]

SENATOR HALLORAN: And I know you're not management so this is... [LB245]

JIM MAGUIRE: No. [LB245]

SENATOR HALLORAN: ...this isn't fair for me to ask you that question. But it's a puzzling question to me why, with this much overtime--and it's time and a half, right, or...? [LB245]

JIM MAGUIRE: Yes. [LB245]

SENATOR HALLORAN: It's time and a half and with 32 hours...I mean, I applaud the bill. I think it's a great number. But 32 hours, that's this close to a 40-hour week, right? Am I looking at that wrong of 32 extra hours? [LB245]

SENATOR EBKE: In a two-week period. [LB245]

SENATOR HALLORAN: In a week, right? [LB245]

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

Judiciary Committee
February 16, 2017

SENATOR EBKE: Two weeks. [LB245]

SENATOR HALLORAN: And so... [LB245]

JIM MAGUIRE: In a two-week period. [LB245]

SENATOR HALLORAN: So you could almost, I mean, you could hire another person if you could find them, right? [LB245]

JIM MAGUIRE: Yes. [LB245]

SENATOR HALLORAN: Am I looking at that mathematically wrong? I mean that seems crazy to me that we're...you know, if there's a shortfall in employees at some level to help keep, you know, them fully staffed and everything. [LB245]

JIM MAGUIRE: It is absolutely a retainment issue. There's no question about that. [LB245]

SENATOR HALLORAN: (Inaudible), yeah. And retainment issues, some of it's centered around income, no doubt, but you... [LB245]

JIM MAGUIRE: No doubt. [LB245]

SENATOR HALLORAN: But... [LB245]

JIM MAGUIRE: But speaking to them, their number-one issue was the amount of forced overtime they were required to work. The number-two issue was pay, but the first...I would have thought it would have been inverted but it wasn't. [LB245]

SENATOR HALLORAN: Okay. What about safety? Where is that, their own safety? [LB245]

JIM MAGUIRE: Safety is up there. But when you have the amount of forced overtime, that plays into the safety issue... [LB245]

SENATOR HALLORAN: Sure. Okay. [LB245]

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

Judiciary Committee
February 16, 2017

JIM MAGUIRE: ...because some people are just too tired to recognize the dangers of the job. [LB245]

SENATOR HALLORAN: All right. Okay, thanks. [LB245]

JIM MAGUIRE: You bet. [LB245]

SENATOR EBKE: Any other questions? Thank you for being here today. [LB245]

JIM MAGUIRE: Thank you. [LB245]

SENATOR EBKE: Any other proponents? Almost didn't make the call. [LB245]

SPIKE EICKHOLT: (Exhibit 7) I know, I know. Sorry. Good afternoon, Madam Chair, members of the committee. Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in support of LB245. You do have a copy, or are going to receive a copy, of my written testimony. I'm not going to reread that to you. It's duplicative of a lot of the other testimony you've heard already and some of the comments that committee members have made, so I'll just make some general points just for the record today. This committee and many members on this committee, both in your role as members of the Judiciary Committee and also in your role of the special committee created by LR434 and LR34, have looked at the problems with Department of Correctional Services, specifically the issues relating to staff retention and vacancies. And like Senator Krist just said, there appears to be an interrelationship with the vacancies at Department of Correctional Services, particularly Tecumseh, the high turnover rate, and then the required overtime that's implemented, whether it's considered voluntary or mandatory, it's required in some way to sort of compensate or cover for the vacancies, which, because the mandatory overtime is often required and staff tends to resent that, that also in turn contributes to the cycle of vacancies and turnover. And as Senator Krist summarized earlier in one of his questions, this problem seems to not be fixing itself. It seems to be a persistent problem. And what Senator Bolz has is perhaps a different way of looking at this issue, and that is by proposing the Legislature actually step in and provide limits on what and when the department can require mandatory hours to be served by its employees of the Department of Correctional Services. You've heard from some of the other testifiers today working a lot of hours in any workplace is bad. It causes stress. It causes passivity at the workplace. It causes burnout. And these things are bad in a prison setting, particularly a prison setting that is overcrowded. And I think you've heard from some of the other testifiers here earlier and what Mr. Koebernick talked about and what Mr. Moreland talked about that this is an issue that this committee should look at. And what Senator Bolz has proposed is a good idea and we support it. [LB245]

SENATOR EBKE: Any questions? Senator Baker. [LB245]

SENATOR BAKER: Thank you, Senator Ebke. And, Mr. Eickholt, in your mind, when we talk about a corrections-related emergency being declared, would lack of people to cover the positions constitute an emergency? [LB245]

SPIKE EICKHOLT: I think that could be. The only other reference to emergency in existing statute is the prerogative that the Governor has to declare an overcrowding emergency, but that's not necessarily what this terminology refers to. But it looks like the bill proposes a corrections-related emergency, which presumably would be up to the department director himself. So it could be a snowstorm, it could be vacancy problems, it could be anything that at least has a similar impact of what's listed in the bill itself, and that is a riot, escape, or a fire or some other type of situation that requires additional people to be there. [LB245]

SENATOR BAKER: But if that included saying we just don't have enough people to cover, to safely take care of this prison, for the next eight hours you must stay, we're right back to where we started with, aren't we? [LB245]

SPIKE EICKHOLT: We could be, I mean, but at least we would have some accountability, some affirmative step by the administration to declare that emergency. I mean, the problem...maybe not problem so much but the situation regarding the overtime being mandatory was really sort of uncovered by the work of this body through this committee and the special committee to sort of highlight this issue and yet it still keeps on going. So I see what you're saying that the sort of discretion the department director has might somehow nullify this bill or would arguably...at least would require the department director to do something. [LB245]

SENATOR BAKER: Thank you. [LB245]

SENATOR EBKE: Senator Krist. [LB245]

SENATOR KRIST: Yeah, I would just point out on that note, and I think it's important for the record, for those that are listening, the declaration of an emergency requires the director to do it himself and then they (inaudible). I guess it could be delegated. But then it says, "In a corrections-related emergency, the provisions of subsection (1) of this section may be suspended for up to two weeks," so rather than continuing on an emergency basis, which is where we're at, you have two weeks to solve the problem. And I think that's a foot stomper in this piece of legislation. And if you want to comment on that... [LB245]

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

Judiciary Committee
February 16, 2017

SPIKE EICKHOLT: No, I think you're exactly right. [LB245]

SENATOR EBKE: Any other questions? Thank you, Mr. Eickholt. Are there any other proponents? Going once, going twice. Are there any opponents who wish to testify? Good afternoon, Director. [LB245]

SCOTT FRAKES: (Exhibit 8) Senator Ebke, Chairperson Ebke. Good afternoon, Chairperson Ebke and members of the Judiciary Committee. My name is Scott Frakes, F-r-a-k-e-s. I'm the director of the Nebraska Department of Correctional Services and I'm here to testify against LB245. LB245 proposes the following restrictions on overtime: limits to 32 hours the amount of overtime protective services staff may work in two consecutive weeks; requires at least eight consecutive hours off of work before a shift; allows staff members to volunteer for overtime but prevents discipline for refusing to volunteer for additional overtime. NDCS experiences high level of overtime...high levels of overtime, which is not how I want to operate this agency. However, LB245 is not the right approach to this issue. Having staff work high amounts of overtime for long periods can lead to burnout and safety issues. Overtime is a symptom of the recruitment and retention issues facing the department. Capping the number of hours staff may volunteer to work does not address the underlying issue and will likely make it worse. The department is working hard to address recruitment and retention through a combination of efforts, including the following: a collective bargaining process which resulted in an increase in base pay for protective services staff beginning in November 2016; the retention initiatives funded by the \$1.5 million appropriation last year which include continuing education, commuting, and retention bonuses for staff; corrections-focused resiliency training for staff throughout the department provided by Desert Waters, LLC; leadership training to provide supervisors with the tools needed to increase staff engagement. Progress has been made in recruiting and retaining protective services staff members. In the last quarter of 2016, we reached our goal of 2.33 percent turnover for protective services. That's a monthly goal. The rate in January 2017, or for the month of January 2017, was 1.99 percent, so 2 percent. I'm optimistic this positive trend will continue and reduce the amount of overtime required of staff. My goal for 2017 is to bring protective services turnover down to 20 percent and then continue to push it down from there. I'm testifying in opposition to LB245 for a number of reasons. First and foremost, LB245 only addresses the symptom, not the problem. It does not address nor solve the recruitment and retention issues which drive overtime for protective services staff. LB245 eliminates mandatory overtime. While it is never our desire to force staff to work overtime, we must be able to staff essential posts. The inability to discipline staff members who refuse overtime and the cap of 32 hours of overtime per pay period will jeopardize our ability to safely operate NDCS prisons and puts the public, our staff, and inmates at risk. Additional reasons for my opposition include: LB245 will negatively impact the ability to expand programming opportunities with NDCS facilities by limiting the availability of protective services staff to fill security posts. Capping the amount of voluntary overtime that can be worked sends the wrong

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

Judiciary Committee
February 16, 2017

message to our dedicated staff who are taking extra shifts to help out their coworkers. Micromanaging issues such as overtime at the legislative level is contrary to the intent of the collective bargaining process and interferes with the freedom of staff to negotiate the terms of their labor contract without outside interference. The eight-hour minimum time off between shifts is in conflict with language in the existing collective bargaining agreement which requires at least seven hours off for persons working two consecutive shifts. Many staff members willingly work overtime to supplement their income in order to meet their personal and family needs. Staff members know their capabilities and perform their duties without issue. I appreciate Senator Bolz's effort to support staff by reducing overtime. LB245 is neither an appropriate nor an effective way to address this problem. Staff members who volunteer for overtime are often our most engaged and dedicated workers. Preventing them from working the number of hours they choose to work will negatively impact morale and could jeopardize the safety and security of Nebraska's prisons. Thank you for the opportunity to testify today. I will answer any questions the committee has. [LB245]

SENATOR EBKE: Senator Krist. [LB245]

SENATOR KRIST: Thanks for coming, Director. I don't want to oversimplify this, but--and I think we've had discussions where we've agreed and we've agreed to disagree--so just for the record, we're kind of the chicken and the egg right now. I mean you call it a symptom and I call it a disease, and you're right it's one of the symptoms. You never got...had the pleasure of serving under Governor Heineman and watching how the funding issues, lack of investment in infrastructure, and the care and feeding, if you will, of the personnel that are the backbone of your department were discarded in a lot of ways during collective bargaining. I've had this conversation with Mr. Marvin and I don't want to take the chance of having Governor Ricketts continue down the path of not solving the disease. So in some ways, even though I understand your position and I understand why you have it, I don't know what else you would do. I mean, if we can't set a standard that you have to get to and then we have to fund to, then it becomes the discretion of whoever is sitting in the chair to decide how much emphasis is being put on your department to get to where you need to get to. It's admirable that you want to be 20 percent turnover. But I think the issues that need to be addressed are the core of the disease at this point, so. And I don't know if you used the word "inappropriate" or, at the end, "not a good way to go about it." I've always expressed a lack of sense of urgency, I guess, in terms of solving these problems. And this one is complicated, I understand. But if not this, then what? What standard do we have to...I don't think...let me back up before I ask that question. I'm not sure this is micromanaging. I'm sure this is setting a standard and raising a bar to a point that we need to hit or we're going to have further decay and problems. And some of your comments are well founded in the fact that you've already recognized that employees need an inviolable point between stopping work and beginning work. We're talking about a difference of one hour and if that's not...if we have a legal issue because of the collective bargaining issue, then we can start

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

Judiciary Committee
February 16, 2017

talking about those things. But I've pontificated long enough, so you take the rest of the time and do what you do to respond to my comments would be fine. [LB245]

SCOTT FRAKES: Hmm, well, I'm not sure that I pulled a specific question out. I guess generically it would be the, if not this, what? And we, as, you know, we've seen in the last four months the results of the last year's work and really targeting, trying to impact these issues are showing results. I don't go to the bank on four months' worth of data. So I like where the trend line is going. I was very happy to see January's numbers. I want to see in July where we're at in terms of are we still headed the right direction. It's certainly one of the things anecdotally that I'm already feeling is, unlike conversations prior to November that I have with line staff when I do town halls, I have not had a protective services member approach me in the last three months, two and a half months, to talk about pay. Other staff that were not impacted certainly have been there to talk to me, so there must be...I sense there is some level of satisfaction with what the collective bargaining process led to. Didn't solve all the problems, but it's a step in the right direction. The other retention efforts, there is some of those that I do believe are having some noticeable impact both in terms of just making staff feel better and the things that we're doing around encouraging more training and education. That comes right back to staff engagement because we know that money is a short-term motivator. It's the quality of the job, the quality of the life, the quality of your supervisor that keeps people, and that it's a safe work environment. So we've certainly seen some positive trends around staff safety. Again, we don't take four months' worth of things moving the right direction and assume that everything is fixed. So I believe that all of the efforts that we have gotten underway that we're going to continue to build on are moving us in the right direction. The requirements of the bill or the restrictions of the bill, there's four facilities in particular that I'm not sure what I would do, I'm not sure how I would operate those facilities today if I was required to limit overtime to this level and that's a huge concern to me. These are the high...our highest security facilities. [LB245]

SENATOR KRIST: Well, (inaudible)...okay, so, and I...life is better with you here, let me just say that. [LB245]

SCOTT FRAKES: Thank you. [LB245]

SENATOR KRIST: But you say early on and in your testimony you emphasize the fact that it's not the standard to which you would like to manage your agency. So most of those restrictions that are in there are I think sensibly a standard that you probably would aspire to, plus or minus an hour, plus or minus a little bit here and a little bit there. [LB245]

SCOTT FRAKES: The limit piece, probably a lot more discussion, certainly the time between shifts, yeah. [LB245]

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

Judiciary Committee
February 16, 2017

SENATOR KRIST: Okay. All right. Thank you very much. [LB245]

SENATOR EBKE: Any other questions for Director Frakes? Senator Baker. [LB245]

SENATOR BAKER: Just one question. Director Frakes, if you didn't have enough manpower to cover what you felt needed to be covered in the facility, would you declare, if this passed, would you declare a corrections-related emergency? [LB245]

SCOTT FRAKES: I have not played out all of the scenarios to decide whether or not. If it was simply that I didn't feel I had enough staff to operate the facility, I'm not sure in reading the bill that that qualifies. I suppose I could make the decision it did and for two weeks, you know, resolve it, but two weeks goes very quickly. But the quicker answer, the more legitimate answer, would be when you can't staff posts, you reduce programming, you reduce movement. And if the...if you have a significant number of posts you can't fill, you don't let the inmates out of their cells. That's very problematic. [LB245]

SENATOR BAKER: Thank you. [LB245]

SENATOR EBKE: Senator Chambers. [LB245]

SENATOR CHAMBERS: Welcome, Mr. Frakes. [LB245]

SCOTT FRAKES: Senator Chambers, good to see you. [LB245]

SENATOR CHAMBERS: I assure you this encounter will not be confrontational, but I will have to ask some pointed questions for the record. You do serve at the pleasure of the Governor, isn't that correct? [LB245]

SCOTT FRAKES: Yes, sir. [LB245]

SENATOR CHAMBERS: When the Governor submits a budget to the Legislature, he establishes, I presume, an overall amount of money that he is going to consider and not want to go above that as far as what the Legislature would authorize for spending. You generally agree with that? [LB245]

SCOTT FRAKES: Generally agree, yes. [LB245]

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

Judiciary Committee
February 16, 2017

SENATOR CHAMBERS: And if there would be a certain number of agencies under the Governor's control, the Governor might give a certain amount of flexibility to each agency head but may have an idea in his or her own mind as to which agencies might have a higher public profile and, therefore, may receive money. You don't have to respond to these things; it's just kind of creating a context. If you were left totally free to use your expertise that you've developed over the years, the knowledge that I'm sure that you have about how a department of corrections should be run, it would be reasonable and not you criticizing your boss to acknowledge that, if you could just look at what needs to be done and then get the money necessary to do it, rather than reverse it and be told you have this much money, work with it, that could put constraints on an...let's make it hypothetical--not you, a director in another place, a long time ago, far, far, away, (laughter) in a different universe--because I'm trying to get something without seeming to put you on the spot. [LB245]

SCOTT FRAKES: Sure. [LB245]

SENATOR CHAMBERS: I recognize the reality of a person working in a political system. There are things that the Legislature is doing when it comes to building a budget that I strongly disagree with. My priorities are not even those of the Appropriations Committee, so those tensions are there. If the situation could be ideal as far as I'm concerned, entities such as the Department of Corrections have a job different from anybody else's. First of all, you cannot choose who is going to come into the prison. You cannot set the amount of time any inmate is going to spend there. All of those major decisions that go to what this department is going to do will be made by others and your situation is take what you've got, take what we give you, and do the best you can and don't mess up. And if you mess up, don't do it in a way where it's going to reflect back on me if I'm your boss. That's the way I see it. For this hypothetical department of corrections, would it be fair to say that in most situations no department of corrections anywhere in this country would be given the amount of money that the professionals would say is needed to do the job the way it's supposed to be done? Do you think any department gets that kind of freedom in terms of requesting money and getting it? [LB245]

SCOTT FRAKES: What I see across the country is that... [LB245]

SENATOR CHAMBERS: Could you speak a little louder? [LB245]

SCOTT FRAKES: What I see across... [LB245]

SENATOR CHAMBERS: I'm old and I need to hear. [LB245]

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

Judiciary Committee
February 16, 2017

SCOTT FRAKES: You know, I'm...same issue. What I see across the country is every department is faced with deciding what the priorities are and there's always a give and a take. If staff are seemingly better or well compensated, then there's probably some other part of the department that is not as well funded as a different department that might focus more on physical plant or on programming opportunities or on whatever else the department offers. So there is usually give and take, and then of course there's regional issues as well in terms of how much money different states will commit to corrections. So the last part of the answer for me is I would put our state on the...I won't say within what percentage but definitely more on the leading edge than on the back edge of funding for corrections and the commitment to do what needs to be done. [LB245]

SENATOR CHAMBERS: Now to add another dimension. You work, when I say for the Governor, you know what I mean--he appoints you and so forth. The Legislature now comes into play and we have to take broad policy decisions. It was determined some time ago that 40 hours a week is a proper number of hours a person should be required to work or work. The Legislature may look at the work being done by correctional employees and before we even get to the specifics of their job, recognize what happens to a person who works too many hours: the lack of sleep; irritability; if you have a family, maybe some tensions and problems in being away from home too much, the children, a spouse, and so forth. The Legislature may disregard what a director might say would be a reasonable number of hours to work even if it exceeds 40 hours a week. And the Legislature could say, because of what we have to look at in terms of the society as a whole and the purpose of the Corrections Department in doing what it does but at the same time the employees are citizens of the state, we are going to take a policy decision and say that on a job that a state employee does, no more than a certain maximum number of hours will be allowed, even if the employee chooses to work more hours. So we would have to take a decision that deals with the general run of employees and conclude that we're not micromanaging as most people use the term. But even if it's considered to be that, in our collective judgment as the policymakers, decisions of the kind that would be in this bill are those that should be made. Now with that having been said, if we enact this legislation, you would have to work within the confines of that legislation and the budget that you're given, the money that you're given to work; you'd have to establish some priorities, maybe make adjustments here, some adjustments there, to comply with what we put into the law as a director. Would you agree? If we do that, because we can do it, we don't work for the Governor--some of us do but others don't--here's what I'm trying to get at... [LB245]

SCOTT FRAKES: Broadly, yes, you know,... [LB245]

SENATOR CHAMBERS: Director Frakes, I'm trying not to be confrontational. You know the way I usually would do this, but I'm doing it differently now. I want you to know that from what I've heard, without asking questions of anybody so far, I think what is being proposed by this bill

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

Judiciary Committee
February 16, 2017

is reasonable, not only talking about the welfare of individuals but the overall purpose that we want to achieve when we fund a Department of Corrections. If people are going to work, it's a stressful environment in dealing with inmates, dealing with fellow workers, and dealing with supervisors. We can say we don't want that pressure exacerbated by just having to spend too many hours on the place, so to speak. If we enacted this bill, how much would that cripple you in terms of trying to do the job that you're trying to do as a director, if it would cripple you at all, and why would that be the case? [LB245]

SCOTT FRAKES: Yeah. Unless I make significant progress, greater progress than...you know, we're making progress now but I'd have to probably...let's say I'd need to double the amount of progress in terms of filling positions and reducing turnover. Unless I was able to achieve that by the time the bill went into effect, I think we are at risk that my four high-security facilities might not have staff to operate them correctly, which would lead to reduced programming, reduced out-of-cell time, potentially lockdown situations. [LB245]

SENATOR CHAMBERS: Why? [LB245]

SCOTT FRAKES: Because... [LB245]

SENATOR CHAMBERS: Because you wouldn't have enough money? [LB245]

SCOTT FRAKES: So I've got money. I've got... [LB245]

SENATOR CHAMBERS: Plenty of money? [LB245]

SCOTT FRAKES: You know, I don't... [LB245]

SENATOR CHAMBERS: Don't say (inaudible)... [LB245]

SCOTT FRAKES: No, I've got...as I testified last year, I have the right amount of money to accomplish the mission and not too much money so that I don't use it properly. I don't desire to have the level of overtime that we have. I would much prefer to have significantly less overtime. It makes sense fiscally. It's better for the health of the staff. It's better for the health of the organization. And as I testified in the past, there's always some level of overtime in a correctional system because there are unpredictable activities. Most of our overtime right now is driven by staff vacancies. There are other issues as well, including areas where staffing for relief is not what it needs to be, and that's where the staffing model and the staffing analysis will help us address that piece. But staff vacancy is number-one problem, drives the most amount of overtime

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

Judiciary Committee
February 16, 2017

across the agency. So under the current system, if we need...we know what our minimum staffing level is to safely operate the prison and still allow for movement, the activities that should occur. If there are not enough people available to fill the shift, we ask for volunteers. Contractual language dictates how that overtime is assigned. And at the point that no one else volunteers and there's still mandatory posts that need to be filled, then we use a mandatory assignment process and there's rules around that as well. It starts with the least senior staff and then you work through a rotation and if you get through it in a month period, you could get all the way through all the staff available on a shift. Without the ability to use a mandatory process, which is part of what this bill does, then I can envision that fairly quickly we would have...because we already have difficult days where we ask everyone. You know, some say yes and some come from home and there's still posts that need to be filled. We begin the overtime, mandatory overtime assignment process. The contract allows people two "buys" or two "I can't work it today," so they use their "get out of mandatory overtime" card and we end up going through the list of available staff more than once and sometimes that creates its own tension, certainly impacts morale as well, for all the reasons mandatory overtime is not a healthy thing for a system. But if you're looking at a choice between being able to run the facility and a safe and minimal amount of activity level or locking it down and running it like we do when there's a serious problem, the preference is always to run with movement, to be able to let people out, to get them out for meals, to do programming, to have recreation. So that's what I see happening because I...we would no longer be able to tell staff you must stay and we would be limited by how much they can voluntarily work. We would...right now at the penitentiary we would very quickly go through the staff that were eligible and available to work. There would be inadequate people to fill the post. I envision that then we would go on lockdown. [LB245]

SENATOR CHAMBERS: I don't want to become too hypothetical, too theoretical. I have enough on the record now for my purposes, but I would like to talk to you more when we can just get together and speak very freely. [LB245]

SCOTT FRAKES: I'd like to do that. Thank you. [LB245]

SENATOR CHAMBERS: That's all I have, Madam Chair. Thank you. [LB245]

SENATOR EBKE: Thanks. Senator Baker. [LB245]

SENATOR BAKER: One last question, Director Frakes. Have you noticed any correlation between mandatory overtime and amount of sick leave? [LB245]

SCOTT FRAKES: There is a vicious cycle that occurs when mandatory overtime... [LB245]

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

Judiciary Committee
February 16, 2017

SENATOR BAKER: That's what I thought. [LB245]

SCOTT FRAKES: ...when it's sporadic and occurs and people can acknowledge, okay, I got caught this month but when it happens to someone twice in the same week, absolutely, sometimes because they're just frustrated, tired, and whatever, sometimes because they know...the other piece that happens unfortunately is staff will say, I'd better not go to work today because I know I need to be off at 2:00 for whatever reason. So, yes, short answer would be that is a problem. [LB245]

SENATOR BAKER: Thank you. [LB245]

SENATOR EBKE: Any other questions for Director Frakes? Thank you for being here today. [LB245]

SCOTT FRAKES: Thank you. [LB245]

SENATOR EBKE: Have a good day. Any other opponent testimony? Anybody in the neutral capacity? [LB245]

MIKE MARVIN: (Exhibit 10) Good afternoon again, Senator Ebke, members of the committee. My name is Mike Marvin, M-i-k-e M-a-r-v-i-n. I'm executive director for the Nebraska Association of Public Employees, the collective bargaining agent for those people at the Department of Correctional Services. You have my written testimony so I will let you read that. There are a couple issues that came up. First let me tell you why we are testifying in a neutral capacity. We have had calls at the office on both sides of this, many who support it, many who are against it. Many people want the right to volunteer for as much overtime as they want. Many of them are concerned about the safety of the facility if there is not enough staff there. If the department didn't have the ability to do the mandatories, they feel that they would be in an even more unsafe position. So that's why we are here in a neutral capacity. It's not that we do not have strong concerns about the amount of overtime use in the Department of Correctional Services, particularly mandatory overtime, but I also have said this many, many times. I see some new faces here so I'm going to say it again. All voluntary overtime is not voluntary. People realize that they're coming up on the mandatory list so they try to control when they work by volunteering on this day. We have way too much overtime. Senator Halloran, you raised the point of how much it costs and would that not pay for staffing enough positions? Absolutely it would and we have a lot of vacant positions if that money is sitting out there, too, that can be used to hire new people. We have had an inability to retain people, not an inability to hire people. The department has shown an ability to hire people. We've hired I think 400 last year and we lost 400 people last year. We just cannot keep people. That goes to the pay issue. The pay issue we

have no means, no means to move through the pay line from the starting since 2002. Everybody is stuck at the start. That has to do with our comparability that we are stuck with under the State Employees Collective Bargaining Act and the administration's unwillingness to exceed comparability since Mike Johanns has been in office. There is nothing that says that they cannot exceed the comparability if they choose to do so, they just have not been willing to exceed the comparability. If we could find a way to have meaningful movement--and we did negotiate some movement through the pay line in these last negotiations but it was less than meaningful--it just gives us some language to maybe build on in future contracts, but we have to find a meaningful way to move people through a pay line in order to retain employees. If we could do that, the movement through the pay line would be greatly appreciated and would keep people employed. The other issues that was raised was the passage of this law. And while I am not an attorney, Senator Chambers often says he's not an attorney but he's studied the law, I am not an attorney, I have not studied the law, Senator Chambers, but I have relied on my legal advice from our attorney. And because of the way the State Employees Collective Bargaining Act is written and the way this bill is written, the State Employees Collective Bargaining Act would have precedence. You would have to negotiate these things anyway. You could change the language of the bill that would do that that say irregardless of collective bargaining or whatever. Then you could put this bill into effect. But the way the bill is written, much like the bill last year that we pushed through on loss of vacation time for people who were denied vacation, that gave us leverage at the table. We still had to put that into our contract this last time. It was just put through to give us leverage at the table and we still had to negotiate it. So those issues are out there. And with that, I'd be happy to answer any questions that any of you have. As I said, we just wrapped up our collective bargaining and some changes were made, but not enough in my mind. [LB245]

SENATOR EBKE: Any questions for Mr. Marvin? Thank you for being here again. [LB245]

MIKE MARVIN: All right, thank you very much. [LB245]

SENATOR EBKE: Any others in the neutral capacity? Senator Bolz. [LB245]

SENATOR BOLZ: Very briefly I just wanted to share that I handed out a mandatory overtime report that was requested by the Appropriations Committee and submitted on January 1 of 2016 that might answer some of your more detailed questions regarding overtime. And the other piece that I wanted to mention is that the operative date of this legislation is July of 2018 so there's no requirement that things change immediately. I'd be happy to answer any further questions or work further with the committee on any language or amendment changes if you are interested in doing so. [LB245]

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

Judiciary Committee
February 16, 2017

SENATOR EBKE: Questions for Senator Bolz? [LB245]

SENATOR BOLZ: Thank you. [LB245]

SENATOR EBKE: Thank you for being here today. Okay, we're going to take five minutes, let everybody stand, stretch, whatever. [LB245]

BREAK

SENATOR EBKE: Okay, thank you for returning. We will proceed with the hearing on LB258 and Senator Hansen. [LB258]

SENATOR HANSEN: Great, thank you. Good afternoon, Chairwoman Ebke and fellow members of the Judiciary Committee. My name is State Senator Matt Hansen, M-a-t-t H-a-n-s-e-n, and I represent District 26 in northeast Lincoln. Today I'm here to introduce LB258. When a person leaves prison in Nebraska, Nebraskans should expect this person to be as prepared as possible to successfully transition back into their community. As the state prepares that person for reentry, it should look to remove barriers that lead to a successful transition. One barrier that we are...that people are sometimes faced with as they leave our prison system is the lack of a state identification card. Without a state identification card, a person may have trouble undertaking some common daily activities such as cashing a check, opening a bank account, renting an apartment, finding a job, or even gaining access to the federal building to obtain their Social Security card. The National Reentry Resource Center, which is a project of the Council of State Governments Justice Center, published a brief paper on this subject last year. The center found the following, and I quote, "State-issued identification is frequently required to access social services, secure housing, and apply for employment--all factors that could play a crucial role in a person's successful reintegration into our community after incarceration. People leaving prisons and jails with state identification may be able to more quickly access vital services and support, and those without identification will likely face significant barriers to successful reentry." LB258 amends a state reentry law and it simply adds this language to statute: "Prior to the discharge of an individual from a department correctional facility, the department shall provide such individual with an opportunity to obtain a state identification card or a motor vehicle operator's license." The legislation does not detail Department of Correctional Services how specifically to carry out this discretion...this direction, but leaves it up to them to determine how they will best provide this opportunity to those leaving the system. Currently there are barriers in place that make it difficult for those leaving our correctional system. Those include the cost of attaining state identification card and birth certificate, the providing of two forms of address, and having a photograph taken for a state identification card. The Department of Correctional Services needs to work with the Department of Motor Vehicles and the Department

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

Judiciary Committee
February 16, 2017

of Health and Human Services to address these barriers and any others that they identify. While I am aware the department is currently working on this issue, it is my understanding that this work has been going on for quite some time. I can think of no good reason why this reasonable expectation would not be part of our state prisoner reentry law. In a recent survey by the Association of State Correctional Administrators, at least 25 states responded that they had...that they already do provide state identification cards to those leaving their correctional system. I believe that it is time for Nebraska to do the same. I would ask your support of LB258. With that, I'll close and take questions. [LB258]

SENATOR EBKE: Any questions for Senator Hansen? [LB258]

SENATOR CHAMBERS: Senator Hansen, you meant...did you have a chance to read Director Frakes's letter? He was of the opinion that what you're seeking to do could be done without legislation, that there are some logistical...is he here now? [LB258]

SENATOR EBKE: He may have left. [LB258]

SENATOR CHAMBERS: So maybe he's not going to testify. That's why I wanted to give you a chance. Why don't I give you a copy of his letter, then when you close,... [LB258]

SENATOR HANSEN: Absolutely. [LB258]

SENATOR CHAMBERS: ...in your closing, so that you will know. Then you don't have to answer questions when you haven't had a chance to really examine what was being said. But I don't have any questions of my own, but I do appreciate and support what it is you're ultimately trying to do. [LB258]

SENATOR HANSEN: Thank you. And to the point, I have not read the letter yet but I'll read it before my closing. [LB258]

SENATOR EBKE: Okay, thank you. Any other questions? Senator Halloran. [LB258]

SENATOR HALLORAN: Yes, thank you, Senator Ebke. Senator Hansen, if...it won't always be the case, but if a driver's license is expired and requires a driver's test, how do you envision the mechanics of that working? Will the corrections officer have to provide a...or will Corrections have to provide a vehicle for them to drive in the test? I guess it might vary. Help me out with that (inaudible). [LB258]

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

Judiciary Committee
February 16, 2017

SENATOR HANSEN: Sure. And that's why the law is state identification card or driver's license. Obviously, if a driving test is required that has some significant security concerns, one might imagine at a minimum logistical concerns, and so that would kind of be up to the department to be to what extent they want to do that test. I suppose in those instances in which the...an inmate leaving the correctional services do not have a...or would require testing by the Department of Motor Vehicles, it could be up to the determination that they could just get a state ID card instead. [LB258]

SENATOR HALLORAN: Okay, but it is required though. I mean it would be required to physically take the driver's...the driving test, right, in some instances? And so you envision that the corrections...that Corrections will provide a chaperoned car, I assume? [LB258]

SENATOR HANSEN: I don't necessarily envision that Corrections will provide chaperoned cars in those instances. Those might be instances where that is logistically not realistic and so that would be then the opportunity that they provide the opportunity just to get a state identification card which would not require the driving test. [LB258]

SENATOR HALLORAN: Okay. [LB258]

SENATOR HANSEN: Certainly if Department of Corrections feels that's something they are able to provide and implement and think they're able to do, that would be a possibility, but I do not feel that would necessarily be mandated. [LB258]

SENATOR HALLORAN: Will there be a cost to that card? I don't know. Will there be a cost to that card, that ID card/license? [LB258]

SENATOR HANSEN: I mean, yes, there is a cost that's it's already up to private citizens, but it's my understanding that Department of Corrections already issues a card called a...I believe it's entitled "recently released inmate" card, so they're already printing and laminating one card, and if this could replace that, I don't necessarily know if that would be an increased cost. [LB258]

SENATOR HALLORAN: Okay, thanks. [LB258]

SENATOR HANSEN: Thank you. [LB258]

SENATOR EBKE: Any other questions? Okay, thank you. [LB258]

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

Judiciary Committee
February 16, 2017

SENATOR HANSEN: Thank you. [LB258]

SENATOR EBKE: Uh-huh. First proponent. Good afternoon. [LB258]

MATT HILL: Good afternoon, committee members. My name is Matt Hill, H-i-l-l. Currently I'm representing the Center for People in Need. My current position is a vocational/life skills coordinator for the TRADE Program that is through the Department of Corrections. It's called the TRADE Program: Tackling Recidivism and Developing Employability. Previous to this, I spent ten years with the Department of Corrections, held various positions--unit management, parole, administrative. I'd like to talk a little bit about time. Time is free but it's priceless. Once you've lost it, you never get it back. For those entering the community, every minute matters. As time goes on, the moment they walk out the front door of the facility, rent, bills, child support, family needs, personal needs begins to mount. Every extra moment it takes to gain employment, open bank accounts, establish transportation, or apply for general assistance, it builds their barrier to success. As a parole officer I could see the mounting strain on folks who would come into my office, parolees, their families, as they struggled to make the changes that they thought so hard about when they were in prison. At that point, I could listen, I could try to help them prioritize, and I could point them in the right direction. Much of my role is the same today. The only change is that I try to give them as many skills and tools necessary for their future success. You know, legislation like this or seeking things like this, I've seen a lot of the struggles that, you know, our community has taken quite a bit of action as a whole to help people reenter, much more than it was when I started in corrections. The leaps and bounds that we've made are great, but I still see a lot of the same struggles. Identification is one of those same struggles; seems like it's a pretty easy piece that we could take out. What it basically does is it removes a barrier to their success. It allows them to lay a foundation stone when time is on their side. So while they're in the incarceration facility, they have time on their side, they can apply for these things. Once they hit the community, the train has already left the station and they don't have that time upon their side anymore. That's all I have to say. [LB258]

SENATOR EBKE: Senator Baker. [LB258]

SENATOR BAKER: Thank you. Mr. Hill, you say you used to work in corrections? [LB258]

MATT HILL: Yes, sir, I did. [LB258]

SENATOR BAKER: Do you know, a person in prison--you know, say they have a driver's license going in and, you know, sometimes we get notices you can renew this--do they have that same opportunity to renew a license while they're incarcerated? [LB258]

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

Judiciary Committee
February 16, 2017

MATT HILL: No, they do not. [LB258]

SENATOR BAKER: Why? [LB258]

MATT HILL: There is not a clear pathway for them to do it. You know, where you and I might go on the Internet and just simply...excuse me, I'm a little nervous--first time, so. [LB258]

SENATOR EBKE: You're fine. [LB258]

MATT HILL: ...simply fill out a form and use their debit card to pay on-line, there is no system for that. If you for some reason need to take a written test, there is no way that we have set up or that Corrections has set up to kind of oversee that testing. [LB258]

SENATOR BAKER: Well, I get that, and Senator Hansen spoke about the logistics, you know, if a person had...they'd receive a state ID card rather than a driver's license, so I'm just focusing on people who had a driver's license, five years is up, and you just answered my question, they... [LB258]

MATT HILL: Yeah, there's no way to renew it. [LB258]

SENATOR BAKER: Okay, thanks. [LB258]

SENATOR EBKE: Any other questions? Thank you for coming today, Mr. Hill. [LB258]

MATT HILL: Thank you. [LB258]

SENATOR EBKE: Any other proponents? [LB258]

FRAN KAYE: My name is Fran Kaye, F-r-a-n K-a-y-e. I'm one of Senator Baker's constituents and I want to thank him and the rest of the committee for letting me speak. I volunteer in the prisons and I often have people tell me, Fran, I'm going to get out, can you help me get a driver's license? Sure. Do you have your birth certificate? No. How do I get that? Well, I can help you do that too. And it becomes kind of a big hassle and I'm willing to do that, I don't have any problem with doing it, but I don't think it's fair that people that I don't know because I haven't been working with the clubs that they're in don't have somebody that they can ask who will look, okay, how do you get a driver's, how do you get a birth certificate from South Dakota. Okay, I can order that for you; oh, wait, no, I can't, because it's asking me about this information that I can't

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

Judiciary Committee
February 16, 2017

get for you so I'll have to wait till next week before I can get the information so I can order you the birth certificate for South Dakota. It would be so easy if it just all went through the prison and then people would have their driver's license or their state ID when they got out. And there's so many things that you don't even think about that you need it for and it just makes life so much easier and it's so much easier for people to get back into society with that ID. So, please, just make it automatic that people can do it when they...before they get out. Thank you. [LB258]

SENATOR EBKE: Thank you, Ms. Kaye. Any questions? Okay, thank you. Any other proponents? [LB258]

AMIE JACKSON: Good afternoon, Senators. Thank you, Senator Hansen, for introducing this bill. My name is Amie Jackson, J-a-c-k-s-o-n. I'm a peer outreach specialist with the Mental Health Association on Nebraska's reentry programs. I believe that this bill is very important for the men and women currently incarcerated. I have been working closely with this population as an outreach specialist. Basic needs are a huge priority when it comes to someone reentering our communities. Not having a valid state ID not only puts up barriers but prevents them from moving forward. If they do not have a valid state ID, they are not allowed to get a job; they are not allowed to rent an apartment or motel room, adding to our homeless population; they are not allowed into the federal building to apply or reapply for SSI or SSDI or obtain their Social Security cards; they are not allowed to get a bus pass; they are not allowed to cash their checks or open a checking account; they are not allowed to apply for Department of Health and Human Services benefits. And if they are from out of state or have been incarcerated for more than ten years, they need a birth certificate first, which can take four to six weeks to get. I'm in full support of this bill because it allows a person more responsibility. It breaks down those large barriers and will eventually attribute to someone becoming independent and alleviate them from completely relying on the system. The ID they are currently released with places immediate stigma because it says "recently released inmate" and it is not honored anywhere in our community. I would also like to mention that I often take people to Matt Talbot Kitchen and Outreach to help with this process. I've spoken to the director of outreach there who has said that she would be more than willing to help DMV and the DOC and other collaborative community partners to make this process easier and available to the many people who need it. The money that is being used now to provide the ID that they're released with, that nobody honors and quickly makes its way to the trash can, should be used to provide a valid ID to help the individual move forward, take care of their business, and cut one more string attached to the system. [LB258]

SENATOR EBKE: Thank you, Ms. Jackson. Any questions? Thank you for being here today. [LB258]

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

Judiciary Committee
February 16, 2017

AMIE JACKSON: Thank you. [LB258]

SENATOR EBKE: Next proponent. [LB258]

SPIKE EICKHOLT: Thank you, Madam Chair, 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 in support of this bill. This bill does not directly deal with what the defense attorneys do on a day-to-day basis, but when we met as a committee to talk about taking positions on bills that were introduced, this bill appealed to us because it affects so many of our clients and many of us have had this issue come up with the clients and former clients. This is a good bill; it's a good idea for the all reasons that you've heard already. I'm not going to restate those. I'd just tell you anecdotally that this is an issue. When I was in the public defender's office here in Lancaster County, over the 12 years that I worked there I had several former clients stop in my office, call me, and ask me just to send a letter to the address they were staying at because, to get a license or a photo ID, they needed to have at least two recent postmarked first-class pieces of mail sent to them. And I would do that, I would just...I'd send them something related to their case to them, but that was just sort of as an anecdotal example of the struggle that they have that they're trying to do on their own. They really have nowhere else to go many times and they would just reach out to the former lawyer who sort of represented them before they went to prison. Now if the Department of Corrections is doing it administratively already, that's good, but we would support the bill or any sort of effort to make this a policy. [LB258]

SENATOR EBKE: Thank you, Mr. Eickholt. Questions? Senator Chambers. [LB258]

SENATOR CHAMBERS: Mr. Eickholt, you may have answered to my satisfaction the issues raised by Director Frakes. I didn't want to see a lot of time taken before we even get this underway. It's past due now. But I wanted to hear from some people who have had direct contact and experience with what's happening now so we'd be able to say that the state when it releases you, on behalf of the public, we are restoring your freedom, we are restoring your dignity, and now we're restoring your identity, because as the other testifier said, both, you're Mr. Nobody, you're Ms. Nobody, and this I think is the least that can be done if we really are trying to help people reestablish themselves as members of the community. [LB258]

SPIKE EICKHOLT: That's right. [LB258]

SENATOR CHAMBERS: So I appreciate what I'm hearing. [LB258]

SENATOR EBKE: Any other questions? Thank you, Mr. Eickholt. [LB258]

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

Judiciary Committee
February 16, 2017

DOUG KOEBERNICK: Good afternoon, Senator Ebke. Members of the Judiciary Committee, my name is Doug Koebernick, spelled K-o-e-b-e-r-n-i-c-k. I work for the Legislature as the Inspector General for Corrections. During my tenure as Inspector General, I've spent a considerable amount of time attempting to gain a better understanding of the prisoner reentry process and I've come to the conclusion that the department, with a jump-start from the Legislature, has made significant strides in that area. This has been done through the creation of specific reentry positions and the use of reentry grant dollars. And with all that said and with everybody who talked before me, I think that this is a bill that is good public policy. It kind of gives the department a nudge to go ahead and keep moving forward with their efforts. I think it would be good to have in state statute for those reasons. And recently Director Frakes sent an e-mail to members of the Reentry Alliance network on this issue and he said we are working on it and it is a challenge I believe we can solve. So I think he has a letter with some concerns. I think Senator Hansen probably can address those concerns and get this bill in shape to move forward because, like Senator Chambers said, it's well past time. And if at least 25 states can do it, certainly we can do it too. [LB258]

SENATOR EBKE: Thank you, Mr. Koebernick. Any questions? Thanks for being here. Any other proponents? Are there any opponents to this bill? Is there anybody speaking in the neutral? Senator Hansen, would you like to close? [LB258]

SENATOR HANSEN: Normally I'd love to waive closing but I specifically said I'd address something in my closing so I felt obligated to come up. Now having read Director Frakes's letter, just a couple things. I do realize he recognizes the security concerns potentially with issuing driver's tests, and I understand that's a situation, so in my mind there's the people who are only eligible for a state ID or only want a state ID, the people who are potentially eligible for driver's license renewal and don't actually have to take the physical driving test, and maybe those who would have to take a driving test. To accomplish kind of a lot of my goals and priorities, if that's only the state ID cards, that still helps with a lot of the basic abilities of, you know, opening a bank account, applying for services, renting an apartment, getting a hotel room, so that's something we can certainly look at. And then in terms of whether or not it needs to be in statute, I do agree it's something that can be done not in statute. But as kind of we were talking about in some of the previous bills today, just because something can be done not in statute, that puts it at the kind of whim of...don't want to say whim, but it's at the discretion of who is in charge at that given moment. And so I would be regretful if we let it go, don't pass this law, it's all of a sudden just a regulatory procedure and all of a sudden we have a different Corrections Department Director or a different Governor or a different Appropriations Committee and this is something that, say, gets cut in a budget cut, you know, six, seven years down the line and it takes us another six, seven years to realize it's a problem again and so on and so on. If we enact into statute, we've established kind of a minimum threshold that we'll have to meet and people can plan on that accordingly and in order to undo that policy change would, you know, obviously

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

Judiciary Committee
February 16, 2017

require a bill and a public hearing. So with that, I'm obviously willing to work with the committee members and stakeholders, see what we can do to best move forward. [LB258]

SENATOR EBKE: Okay. Any questions for Senator Hansen? Senator Baker. [LB258]

SENATOR BAKER: Senator Hansen, bill becomes operative July 1, 2018. Why that date? [LB258]

SENATOR HANSEN: It's frankly an arbitrary date that was going to be more than a year from the end of session that says we want you to do this, we understand it will take some time to implement the procedures, get the equipment and whatnot, and so we're giving you a year to do so. That could be moved up or moved back kind of by my standards. I certainly don't want to unnecessarily delay it because I do think this is an urgent problem that affects people on kind of a daily basis, but, you know, obviously understand that it will take some time to get it implemented across the system. [LB258]

SENATOR EBKE: Okay. Anything else? Okay, thank you, Senator Hansen. [LB258]

SENATOR HANSEN: Thank you. [LB258]

SENATOR EBKE: (Exhibits 1 and 2) We have two letters: one from Kelly Keller, the National Association of Social Workers, in support; one from Scott Frakes, Director of Correctional Services, opposed. That closes the hearing on LB258 and we will move on to LB250. Senator Harr, welcome. [LB258]

SENATOR HARR: Thank you, Madam Chair, members of the Judiciary Committee. My name is Burke Harr, H-a-r-r, and I am from Legislative District 8 in Omaha. I am here on LB250 which I have brought on behalf of my friend and former colleague, Mr. Matt Kuhse, and the city of Omaha prosecutor's office. LB250 changes provisions relating to probationers' rights. One of the standard and basic terms of a probation sentence requires a defendant to report to the probation office as directed by his or her probation officer. Often a defendant will either never report to the probation office after being placed on probation or will show up a couple of months and then stop reporting. This failure to report can serve as a basis for a violation of a criminal probation since it was a term and condition of probation that this individual agree when she...he or she was placed on probation. However, the Nebraska Supreme Court, in State v. Windels, 244 Neb. 30, 1993, requires the state, justifiably, to diligently pursue a revocation and to explain the delay in prosecuting a probationer who is entitled to a prompt consideration of a violation. The court was concerned of situations where a defendant's probationary period ended before he or she was

either arrested on a warrant or appeared before the court. This bill is not looking to replace that Supreme Court decision, only to make an exception when the defendant fails or refuses to report to the probation office. Defendants could provide, and often do provide, false addresses or other contact information that make it difficult for a probation officer to make contact with someone. These individuals are often transient as well. This proposal will not adversely affect a defendant on probation. It only means that a defendant will be entitled to a prompt consideration of his or her violation of probation when he or she presents themselves before a judge. This only applies to...in situations where the violation is for failure to report or refusal to report to the probation office. I think, you know, we in this body have seen the importance of probation. We know that we want to incentivize more individuals to go on probation; and when we do that, which is not a bad thing, sometimes we take a risk and we're giving people probation that maybe in the past hadn't or wouldn't have gotten probation. And so we're seeing new problems that we hadn't seen before and this is one of those situations where we're taking a little more risk. And I think we need to incentivize individuals to appear with their probation officer so that they can receive the services that the courts have deemed necessary for them to properly repay society and to, quite frankly, better their lives. And so if we're going to take the time to put people on probation and we're going to provide the resources for those probationers, I think we should create every incentive that those individuals avail themselves to the probation office. That's the idea behind it. The language may be a little clunky. I concede that. I probably would concede that. I look forward to working with legal counsel and Mr. Kuhse, along with some from the criminal defense bar, to improve that language. But I think the concept behind this is important and I would ask for your support on LB250 and would entertain any questions you may have regarding this bill or anything else. [LB250]

SENATOR EBKE: Senator Chambers. [LB250]

SENATOR CHAMBERS: Senator Harr, I can read English, I can understand it when it's written, and, as I was saying this morning, sometimes language may refer to what preceded it or follows it. Is this language designed to say that if the probationer has failed or refused to report, then no hearing is to be granted, revocation can just occur? Is that what this is saying? [LB250]

SENATOR HARR: As I stated earlier, I think it's a little clunky. That is not the intent at all and I think it needs to be fine-tuned a little bit because I take your point that that should not be what happens. [LB250]

SENATOR CHAMBERS: So what is the point of this bill? What do you intend it to do? [LB250]

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

Judiciary Committee
February 16, 2017

SENATOR HARR: The intent of this bill is if an individual does not appear voluntarily before the probation office or does, appears for a short time and then fails to appear, and the basis of their failure to appear is failing...or basis of their violation of probation is failure to appear, that we are giving...we give the court a little...or the courts and the justice system more time to find that individual so that...right now the time lapses and you can't violate them after their probation would have normally lapsed. But it doesn't make sense that we incentivize people not to show because then if their probation lapses then they can't be violated for not showing. Right?
[LB250]

SENATOR CHAMBERS: This makes me think of Shakespeare,... [LB250]

SENATOR HARR: "'Tis true." [LB250]

SENATOR CHAMBERS: ...Much Ado About Nothing. You and I are going to have to talk about this, not here,... [LB250]

SENATOR HARR: Yeah. [LB250]

SENATOR CHAMBERS: ...because it's not making sense to me. I understand what you're saying. [LB250]

SENATOR HARR: Okay. [LB250]

SENATOR CHAMBERS: But if a person...first of all, it makes a refusal and a failure the same. If a person has an appointment at 9:00 on Tuesday,... [LB250]

SENATOR HARR: Yeah. [LB250]

SENATOR CHAMBERS: ...and is in an auto accident on Monday, it's the same as a refusal. It doesn't say fails or refuses without just cause. It just says flatly, if you fail to show, then it's over.
[LB250]

SENATOR HARR: However, if you did fail to appear and an arrest warrant was issued for you and you went before a judge, I think a judge would not look kindly upon that violation of probation if there was reasonable cause for you to have missed that probation hearing. [LB250]

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

Judiciary Committee
February 16, 2017

SENATOR CHAMBERS: How much time elapses? When you say the time elapses, you meant the probationary period is over. [LB250]

SENATOR HARR: Yes. [LB250]

SENATOR CHAMBERS: And you won't be able to punish them as you want to do as a prosecutor or... [LB250]

SENATOR HARR: Right. It creates a negative incentive not to show. And as long as you keep your head down, you're on super-secret probation and don't get in trouble with the law. [LB250]

SENATOR CHAMBERS: And what's wrong with that? [LB250]

SENATOR HARR: Because you then can't avail yourself of those services that have...we make available to them. [LB250]

SENATOR CHAMBERS: Well, you're dealing with a criminal anyway, what do you expect? [LB250]

SENATOR HARR: Well, I believe that there is redemption in everyone's heart and I believe that's why we provide those services in our judicial system and through our probation, whether that's drug and alcohol training, whether...or classes, whether that's making-smart-decision classes. If not, why do we even have probation... [LB250]

SENATOR CHAMBERS: So that you don't... [LB250]

SENATOR HARR: ...if we don't do something to make their life better? I think it's incumbent upon us. [LB250]

SENATOR CHAMBERS: ...so you don't overload the jails when you don't have anybody...anyplace to put people, and sometimes a judge may feel that it's inappropriate based on what this person did to go to jail and spend any time in jail. There are more... [LB250]

SENATOR HARR: True. [LB250]

SENATOR CHAMBERS: ...reasons that I would look at as a policymaker than a prosecutor would look at. All a prosecutor wants to do is lock them up; if they don't do what we say, punish

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

Judiciary Committee
February 16, 2017

them. But I daresay, because I've filed complaints against county attorneys and even a city prosecutor, and they didn't want the punishment that would go along with a finding that violated the code. So nobody wants to be punished, but when you have all of the coercive power of the state at your disposal, the person on probation could be 18 years old. Is that true? [LB250]

SENATOR HARR: Yes. [LB250]

SENATOR CHAMBERS: And we know how irresponsible, as we call it, young people can be. [LB250]

SENATOR HARR: Can be. [LB250]

SENATOR CHAMBERS: If they're smart enough to evade a broken system in the first place and they haven't committed any crimes in the meantime, what difference does it make? And if they commit a crime, that's what they'll be punished for. And these are just rhetorical questions. [LB250]

SENATOR HARR: Yeah. [LB250]

SENATOR CHAMBERS: You may be able to persuade me when you and I talk that this makes sense but right now it doesn't make sense to me. [LB250]

SENATOR HARR: And I'll just address that in two ways. If it's just, hey, go on your way, the judge can give them time in cloth, time served, right? Or (2) a judge can set what are the requirements for probation. And if it's, quote unquote, a bench probation of just don't get out of...don't get in trouble again, when you look at the requirements, they can eliminate all the requirements and say you're on probation for this period of time. But generally they want them to take something to improve themselves so they don't come before the courts again. And I think that's what we all want to as policymakers encourage. [LB250]

SENATOR CHAMBERS: Then why don't you put something in this to specify a rationale for it? I know there might be a whole lot behind the scenes that will not appear in statute but I want to know what the rationale is. And without demeaning, disparaging any specific prosecutor, I don't trust prosecutors. Their aim is to convict people and lock them up, not to do justice. I saw where a woman was so drunk that she was wheeled into court in a wheelchair and the judge took a plea. And if somebody is that drunk, how can they knowingly, voluntarily, and without coercion enter a plea which is a waiving of all your rights? I'm preparing a complaint against that judge. [LB250]

SENATOR HARR: Yes. [LB250]

SENATOR CHAMBERS: And I think at some point others in the judiciary ought to do this. The code allows a judge to take action when he or she observes misconduct on the part of a lawyer or a judge. They don't do it. It falls to me to do it. I have enough to do dealing with you all down here in the Legislature. But, see, I cannot, unlike my colleagues, I cannot watch somebody mistreated by the system and people know it. Defense lawyers know it, prosecutors know it, other judges know it, and they won't do anything, so I have...the villain, anyway, the most hated man in Nebraska, has to look at those people who are the throwaway people. And now this woman is up against it so much she's not even interested in an appeal. All she wants to do is get better. She's going to feel when she comes to her senses, if she ever does, that she did something wrong and she got what she deserved. She didn't deserve to have happen to her what happened to her. And sometimes we have to look out for people even if they are considered to have violated the law, and hers was a probation violation. [LB250]

SENATOR HARR: It was. [LB250]

SENATOR CHAMBERS: And a judge...I don't know what I would have done had I seen that. I might have tried to intervene. Maybe I would, maybe I wouldn't. I'm not comfortable with that. Why won't somebody else...other people read the newspaper besides me. And if I sound like I'm whining, I am. I'm overburdened, but I'll find the time anyway. So when I see something like this, it's in the context of what I see happening in the system. Prosecutors are not interested in justice. The prosecutor, if he or she had any sense of self-respect, had any love of the law and respect for the concept of justice, justice is giving a person his or her due. You know what condition has to be attending a waiver of all your rights. They have to be explained to you. If I'm four times the limit of alcohol, do I understand what you're saying to me? [LB250]

SENATOR HARR: I think it's more...it was more than four times the limit. [LB250]

SENATOR CHAMBERS: So do I understand what you're telling me? You say you're giving up the right to confront witnesses. I don't...I didn't even hear you. I believe you can have so much alcohol in you that your sensory perceptions would be impaired. [LB250]

SENATOR HARR: That's fair. [LB250]

SENATOR CHAMBERS: And I know that she didn't understand. So see the kind of work that you all who are practicing lawyers put on somebody who is not a lawyer and is hated and is a villain, who is antipolice, "anti" the system, and not like my colleagues who say less government

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

Judiciary Committee
February 16, 2017

and pass a law, but somebody who when he sees a wrong will try to correct it. I'm venting. And you're a lawyer, you're a senator, nobody can say I'm taking advantage of you, and you can respond. [LB250]

SENATOR HARR: No, I think there's more than enough blame to go around in that situation. It was not defensible at all, so I agree with you. [LB250]

SENATOR CHAMBERS: Is this...does my pay grade as a senator require me to do what I said I'm going to do about filing a complaint against the judge? [LB250]

SENATOR HARR: And there may be already. I don't know. But, you know, I think it's a good belt/suspenders. [LB250]

SENATOR CHAMBERS: Can you show me any place where a senator is required or expected to do that? [LB250]

SENATOR HARR: No. [LB250]

SENATOR CHAMBERS: So I'm going above and beyond... [LB250]

SENATOR HARR: I think it might be... [LB250]

SENATOR CHAMBERS: ...the requirements of what a senator is to do. [LB250]

SENATOR HARR: And it might be required upon a lawyer to report. [LB250]

SENATOR CHAMBERS: Is that what we call a virtuous act? [LB250]

SENATOR HARR: You are a virtuous man. [LB250]

SENATOR CHAMBERS: Well, no, I said a virtuous act. [LB250]

SENATOR HARR: Well, I'm calling it... [LB250]

SENATOR CHAMBERS: We don't want to extend this too far, because even the devil speaks truth on occasion but he's still known as the father of lies, so let's not get carried away with this

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

Judiciary Committee
February 16, 2017

virtuous stuff. But I want that as a matter of record and I am working on that complaint.
[LB250]

SENATOR HARR: Thank you, on behalf of all lawyers. [LB250]

SENATOR EBKE: Any... [LB250]

SENATOR CHAMBERS: And I don't like your bill, by the way, (laughter)... [LB250]

SENATOR HARR: It's a good bill. [LB250]

SENATOR CHAMBERS: ...as it is. [LB250]

SENATOR HARR: We'll talk about it. [LB250]

SENATOR CHAMBERS: Okay. [LB250]

SENATOR EBKE: Any other questions for Senator Harr at this point? Okay, do we have any...you're going to be here for a few minutes? [LB250]

SENATOR HARR: I will stay as long as I need to. Thank you. [LB250]

SENATOR EBKE: You'll stay? It doesn't look like you'll have to stay very long. [LB250]

SENATOR HARR: Thank you. Good. [LB250]

SENATOR EBKE: Yeah. Are there any proponents? [LB250]

MATT KUHSE: Good afternoon, Chairman Ebke. Members of the Judiciary, I'm Matt Kuhse, M-a-t-t K-u-h-s-e. I'm here on behalf of the city of Omaha as the city prosecutor for the city of Omaha. Instead of my outline that I was going to talk about, I'll get to Senator Chambers' point to put this in context a little bit since Mr. Harr has not been a prosecutor in quite some time. Twenty-some years ago, the Supreme Court decided in that case that Senator Harr mentioned-- State v. Windels, a case I have no qualms about and this bill is not looking to replace the court's decision--what happened in that case was a gentleman was placed on probation for a DUI I think about a week or two weeks before his probation was set to lapse. He was reporting to his

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

Judiciary Committee
February 16, 2017

probation office on a regular basis, came in, admitted that he was drunk. They submitted a violation and then they couldn't find him and that's when the court made their decision about how the state has a responsibility to try and find this person and alert him. They basically, back in 1993, what the probation office did was just send a letter to his house, not registered mail, not certified mail, just sent a letter to his house. He didn't get it and then I think his case got disposed of a couple of years ago. The situation that the intent of this statute or bill that Senator Harr proposed on behalf of myself and the city of Omaha is to deal with a different situation, the situation that this is not the norm for people who are...for the thousands and thousands of people who are placed on probation every year, the misdemeanor cases and the felony cases. It's to deal with, and it does happen and it's regrettable, someone who is placed on probation and they never check in, and I'm talking about ever. The situation about someone just not showing up once, that's not what the bill's intent is designed for. It's for the people who either (1) never show up, and it does happen, not on any type of excessively frequent basis, but either never shows up, shows up a couple times, and then kind of just drops off and doesn't show up anymore. And it puts the probation office, I think, in a bind because when someone is not showing up, you don't know if they're going to their AA classes, you don't know if they're following up on their treatment, you don't know if they're doing their community service, because the defendant isn't showing up anymore for their required probation meeting. So a situation where someone doesn't show up because they're in a car accident, there's a family emergency, that's not what this is talking about. It would be a situation where the sole basis for the violation would be they didn't show up. The Windels decision has been in my opinion extrapolated in the courts to be now it's not just reflective of just what happened in that 1993 case; people can now come in, make this argument, and courts are saying, okay, well, this wasn't done in a timely fashion, so you can't go forward with the violation, oh, and by the way his probation time is expended...expired, so there's no consequence. I can certainly understand Senator Chambers' point about the punishment angle. But when people are placed on probation and if they're fortunate to receive that sentence, especially if it's in lieu of an incarceration sentence or whatever other alternative the court would decide, they should have to do what they're supposed to do on probation. Probation is designed to help people out with dealing with a problem, whether it be domestic abuse, whether it be drunk driving, whether it be drug abuse, whatever, it's designed to help them. And when they just drop off the face of the earth and don't do anything, there is no consequence for that. If they lay low, leave the state, or just don't provide accurate information to the probation office for them to locate them, it really ties everybody's hands and I don't think it's an equitable result for someone who has been placed on probation to just have nothing happen when they never show up. So I just want to put that in context instead of doing my remarks. I know there is some concern about individuals being incarcerated in other jurisdictions, whether in the state or outside the state, but the Supreme Court has already dealt with that particular issue in 2007, in State v. Hernandez, they dealt with that particular issue so that's not a concern of this statute or this bill and the proposal behind it. [LB250]

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

Judiciary Committee
February 16, 2017

SENATOR EBKE: Senator Chambers. [LB250]

SENATOR CHAMBERS: Now, Mr. Kuhse, you are also a lawyer, so if anybody is watching they won't think I'm picking on a layperson. I have said, and you may have heard me say it before, I don't just look at what the words say and what those who advocate it say its intent is. I look at what can be done under the law. As written, a person simply does not show up and it doesn't have any qualifiers at all. If you fail to show, then it can be curtains if that's the approach that is chosen to be taken by the prosecutor. In the hierarchy of practitioners of the law, I think we would agree that the judge is generally considered to be the high level. The lawyer has obligations. The public prosecutor has obligations. The judge meets the highest standard, must, so the judge is at the pinnacle. If I can see a judge do openly and notoriously what that judge did with that drunk woman, I don't trust what people given authority will do on the basis of just doing what is right. As Jesus said, if this is what they will do in a green tree, what will they do in a dry? If the judge cannot be trusted, I don't mean across the board, but with such a blatant wrong, and prosecutors were there, why should I believe that given this open-ended authority, like this bill would do, that should happen? I just...I'm too skeptical now. I want you to understand it has nothing to do with you as an individual. As James Madison, or whoever it was, said, if all men were angels we wouldn't need any laws, or something like that; and if all criminals were honest, we wouldn't need any jails because once they told us they wouldn't do it anymore then they wouldn't do it anymore. But a judge wouldn't accept that, I don't think, and I hope that you understand what I'm saying. But even if you don't, I want you and Senator Harr to know that the way this is written, I think it is the perfect formula for injustice. It makes a volitional act...it places a nonvolitional act--beyond a person's control--on the same level as the most deliberate, intentional, culpable act. They are...there is a parity and equivalency between them and that's what the law would allow and it's what I cannot support. But that's all that...and if you want to respond, you can. I don't want to just say it and then you have to just sit there without offering a rejoinder. [LB250]

MATT KUHSE: Oh, no, I think your points are well taken. And it would be easy for me to blame Senator Harr for the language of the bill, but I'll admit it's more my fault than it is him in terms of the language. I'm married to the concept. I'm not married to the language. I believe that's what I told Senator Harr when he raised that concern. So your point is well taken, Senator, and I accept that. [LB250]

SENATOR CHAMBERS: Okay. [LB250]

SENATOR EBKE: Other questions? Thank you for being here. Other proponents? Guessing we have one opponent? [LB250]

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

Judiciary Committee
February 16, 2017

SPIKE EICKHOLT: Good guess. [LB250]

SENATOR EBKE: Okay. I'm pretty good at that. I can do math. [LB250]

SPIKE EICKHOLT: Good afternoon, Madam Chair and members of the committee. My name is 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, opposed to LB250. I visited with Senator Harr yesterday and told him some of our thoughts and our concerns about this bill. I would suggest the committee, and committee counsel particularly, look at present law: 29-2266. It's the statute that immediately precedes this. That Statute 29-2266 was just amended last year by this committee and the body in LB1094, and that was the secondary or the follow-up bill to LB605. In LB1094, 29-2266 created two categories of sort of missing probation appointments. There was failing to appear for a probation appointment and then there was this new definition called absconding probation, which essentially means that a probationer purposely avoids supervision for at least two weeks and reasonable efforts by the probation officers and staff to locate the probationer are not fruitful. I don't know what this bill is to do, if it's to somehow address the Windels decision or something else, but the language and the proposal in this bill just ignores 29-2266. That's only been law for maybe six or eight months. But the whole point of LB1094, or one of the points of this provision of LB1094, was to provide for the graduated sanctions the probation officer does, the noncriminal violations and the eventual custodial sanctions that can be imposed if a person repeatedly misses appointments, fails to comply with probation, and does the things that they are doing or not do the things they are doing to receive the benefit and the services through probation. So I think the committee has addressed that. What I think this bill will do if it's passed, it will relieve the state of its obligation to bring motions or revoke probation, to have those processed promptly through the court system. And I think it...not only does it ignore everything that's in the current law, but I think it also, as Senator Chambers provides, will come into play in almost every motion to revoke probation. A person's probation can be revoked for a variety of things: repeatedly missed appointments, absconding, getting a new criminal charge, repeated testing positive for drug offenses, and a variety of other things. I will tell you that if a person has violated any of the terms of their probation--if they got a new charge, if they left the state without permission--they'd miss an appointment somewhere along the line because that's just part of that unfortunate choice that they made to trigger the motion to revoke probation. So what this bill will do, we think it will just require that almost all motions to revoke probation are not processed promptly because, if you look at the language, 29-2267 requires that when a motion to revoke is filed the probationer shall be entitled to prompt consideration except when the probationer has failed to report to his or her probation officer. There is no requirement that that fail to report is intentional or deliberate or knowing for the reasons Senator Chambers said. I don't know that it's necessarily been dealt with if that person happens to be in custody somewhere else, because I don't think that uses that kind of language. There's no exception to that. So those are the concerns that we have. We would encourage the committee not to act on

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

Judiciary Committee
February 16, 2017

this. I think that the committee did deal with this last year in LB1094, at least what to do with somebody who doesn't necessarily, you know, violate their probation but doesn't really step up to take advantage of their probation term. And with that, we would end our testimony. [LB250]

SENATOR EBKE: Any questions for Mr. Eickholt? Okay, thank you. Senator Harr. [LB250]

SENATOR HARR: Thank you. Knowing that I am all that stands between you and a four-day weekend, I'll be brief. And I appreciate the words spoken. Just to clarify the record, LB605 doesn't apply to misdemeanor probation and I think we want to encourage individuals on probation to make themselves better. That's the intent here is to get them to show and to follow. And if they don't, maybe we do need Corrections, but let's at least give them a chance and let's get them in front of that probation officer. And that's all I'm trying to do. And I will work with you, Senator Chambers, on the language. I'll work with legal counsel and with the two parties that came here today. But I hope I can get you to come around on this idea. [LB250]

SENATOR EBKE: Yes, Senator Chambers. [LB250]

SENATOR CHAMBERS: There was a principle during the time, during the slavery times, to explain why black people should not be allowed to learn to read. They said a black man who learns to read is a good plow hand spoiled. I learned to read. I quoted Shakespeare, Much Ado About Nothing, to describe the bill. I will quote from another piece of literature which might be familiar to people on this panel to describe the person who brought it or the one who asked that it be brought. [LB250]

SENATOR HARR: I should have waived. [LB250]

SENATOR CHAMBERS: Have you ever heard of Simon Legree? [LB250]

SENATOR HARR: I don't think so actually. [LB250]

SENATOR CHAMBERS: Has anybody ever heard of Simon Legree? [LB250]

SENATOR EBKE: Senator Baker has. [LB250]

SENATOR CHAMBERS: And who...what book did...what story did... [LB250]

SENATOR PANSING BROOKS: The King and I. [LB250]

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

Judiciary Committee
February 16, 2017

SENATOR CHAMBERS: Say it again? [LB250]

SENATOR PANSING BROOKS: It's from The King and I and it was in little...Uncle Tom's...
[LB250]

SENATOR CHAMBERS: The King and I? [LB250]

SENATOR PANSING BROOKS: Uncle Tom's Cabin. [LB250]

SENATOR CHAMBERS: Okay. And you know why that book was so significant? Who wrote Uncle Tom's Cabin? [LB250]

SENATOR BAKER: Harriet Beecher Stowe. [LB250]

SENATOR PANSING BROOKS: Oh, yeah. [LB250]

SENATOR HARR: Yeah. [LB250]

SENATOR CHAMBERS: No, that was a description. That wasn't her name. Her name was Harriet Beecher and she was in an accident and she had this story just bubbling up in her and she couldn't write. So she went to a doctor who taught her how to manipulate her foot. So she tied a pen on her foot and Uncle Tom's Cabin was written by Harriet Beecher's toe! (Laughter)
[LB250]

SENATOR HARR: Oh. [LB250]

SENATOR CHAMBERS: I'm sorry, I had...I couldn't resist. (Laughter) See how you inspire me? You'll never hear me be this silly again. [LB250]

SENATOR HARR: Well, thank you, sir. [LB250]

SENATOR PANSING BROOKS: I'm glad you could get it out, Senator Chambers. You almost couldn't get it out. [LB250]

SENATOR EBKE: That's... [LB250]

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

Judiciary Committee
February 16, 2017

SENATOR KRIST: You were entertaining yourself. [LB250]

SENATOR PANSING BROOKS: You cracked yourself up. [LB250]

SENATOR CHAMBERS: You know when something hits you like that, I hadn't time to process it appropriately. [LB250]

SENATOR EBKE: That's even better than the ocean's bottom's joke. (Laughter) [LB250]

SENATOR HARR: Thank you. [LB250]

SENATOR EBKE: Thank you, Senator Harr. [LB250]

SENATOR HARR: Thank you, Madam Chair. [LB250]

SENATOR EBKE: Do we have any letters? We have no letters. This closes the hearing on LB250. [LB250]

SENATOR PANSING BROOKS: Don't we have some more questions? [LB250]

SENATOR EBKE: I don't know. Do you have any? Okay. Have a nice weekend. [LB250]

SENATOR HARR: Thank you. [LB250]