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Judiciary Committee
January 17, 2018

[LB672 LB675 LB676 LB692 LB841]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, January 17, 2018, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB676, LB672, LB675, LB841, and LB692. 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, now that Senator Pansing Brooks rearmed me after having disarmed me from my gavel. Welcome to the Judiciary Committee. My name is Laura Ebke. I'm the senator from Crete representing Legislative District 32. I'm Chair of this committee and I'd like to start off by asking my colleagues to introduce themselves starting with Senator Baker.

SENATOR BAKER: Roy Baker, District 30.

SENATOR KRIST: Bob Krist, District 10.

SENATOR CHAMBERS: Ernie Chambers, District 11.

SENATOR PANSING BROOKS: Patty Pansing Brooks, District 28.

SENATOR HANSEN: Matt Hansen, District 26.

SENATOR HALLORAN: Steve Halloran, District 33.

SENATOR EBKE: And Senator Morfeld may be joining us, we think? Yes. Okay, in a bit. Assisting the committee today is Laurie Vollertsen, who is our committee clerk, and Tim Hruza, who is one of our two legal counsels. Our committee pages are Rebecca Daugherty and Sam Baird. On the table over there you will find some yellow testifier sheets. If you are planning on testifying today, please fill one 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's also a white sheet on the table if you do not wish to testify but would like to record your position on the bill. And just a matter of information, I was told that--I missed the Chairs' meeting this morning--but I was told that a new committee policy for all Chairs was established. We would like, if you want letters submitted for the record, okay, that the committees are asking that they get them to them by 5:00 p.m. the night before. So if you have a hearing--it won't matter for today--but if we have a hearing, for instance, on a Wednesday, we would like to have letters into the committee clerk, into the committee office by 5:00 p.m. on Tuesday, if you're not going to testify personally, yes. We will begin our

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bill testimony with the introducer's opening statement followed by the...following the opening we'll hear from proponents of the bill, those for the bill, then opponents followed by those speaking in a neutral capacity, and we'll finish with a closing statement by the introducer if they wish to give one. We ask that you begin your testimony by giving us your first and last name and spell them for the record. If you're going to testify, you will see that there are two on-deck chairs up at the front. I would ask that we try to keep the on-deck chairs filled so that we know if we're coming to the conclusion of proponents or opponents. So when Senator Krist gets up to introduce his first bill, if any proponents of the bill would get themselves into the on-deck chairs, that would be helpful. If you have handouts, please bring them up, bring up at least 12 copies and give them to the page. If you don't have enough copies, the page can help you by making more. The Judiciary Committee has a lot of bills this session and so we are going to be using a three-minute light system as our norm. When you begin your testimony, the light will, on the table, will turn green. The yellow light is your one-minute warning and then the red light comes on, we ask that you start wrapping it up, and at three minutes and 30 seconds you will hear an audible tone and that means you absolutely really need to stop unless somebody asks you a question and asks you to proceed. We're trying to keep things moving. 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. At this time I would also ask that everybody who has their cell phones, make sure that they're in silent mode or turned off. Also, we appreciate no verbal outbursts or applause. We need to be able to keep moving. And then one more thing, you may notice people coming and going. I will be leaving shortly to introduce a bill myself and Senator Pansing Brooks will chair for the period of time that I'm gone. That has nothing to do with the importance of the bills that are being heard; it just means that we have a lot of bills of our own that we have to move into other committees to have heard. So with that in mind, Senator Krist, we will open with LB676. [LB676]

SENATOR KRIST: Thank you, Chairman Ebke, and hello to my fellow committee members. Good afternoon. For the record, my name is Bob Krist, B-o-b K-r-i-s-t. I represent the 10th Legislative District in northwest Omaha, along with north-central portions of Douglas County, which includes the city of Bennington. I appear before you today in introduction and support of LB676. Before I begin with the introduction of this bill, because I have the next two, as well, I'd like to make some general comments for the record. These bills come out of at least eight years of my participation in the Corrections issue, in general. I've shared time on special investigative committees with many of you. If you look at the recommendations that have come out of LB424 (sic), LB34 (sic)...sorry, LR424, LR34, and LR127, which I hold in my hand, you will see that there is a predominant or an overabundance of recommendations and findings that are identical year after year after year, or, as they say, deja vu all over again. None of these, to my mind, have been looked at and treated probably as vigorously as they could have been. In some cases, the department or Parole or Probation have made some strides, but in the case of these three bills

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that are upcoming, I think they demonstrate a further action or a more affirmative action in these particular areas. I think it goes without saying that we are approaching a point at which an emergency would be declared in a few years, and I'll talk about that in the next bill. But we need to get out of the box and think more aggressively about solving the problem that we have confronting us within Corrections. So specifically on LB676, which is the bill that I'm introducing right now, existing law exists or allows for inmates of Department of Correctional Services to be released into the community on a temporary basis for limited purposes and periods of time. These purposes include attending a funeral of a relative, contacting a potential employer, or even going to work outside of the prison facility on a work-release basis. LB676 would authorize inmates to be released to obtain substance abuse evaluations or treatment, to attend rehabilitative programming or treatment, to seek residency or employment, or to participate in structured programming as required by the Department of Correctional Services. The intent of broadening these temporary and supervised release provisions is to provide more options for the offenders to obtain the programming and treatment necessary for their release and parole. Those are my prepared statement. I would say that if you refer to your report, Madam Chair, on LR127, you will see that there are some 400 individuals who are eligible for parole who sit in our Corrections facilities and cannot be paroled for internal provisions, policies, rules, statutes, because they haven't had the training that they need or are required in order to qualify for those parole conditions, some of them as insignificant as, and not that anger management is insignificant, but as insignificant as a couple of weeks or a month of anger management training. If that training is not authorized or not provided at the institution that that individual has been in or that individual refuses the treatment, which we find in a great deal of cases, then they're not eligible for parole. I think that allowing some of these services to be provided in a community-based atmosphere, and thinking outside the box, may get more of those 400 folks eligible for parole to actually be paroled. And with that, Madam Chair, I will stand for any questions, or sit for any questions. [LB676]

SENATOR EBKE: Do we have any questions for Senator Krist? I see none at this point.
[LB676]

SENATOR KRIST: May I sit in the chair while I'm waiting? [LB676]

SENATOR EBKE: Please do, yeah. First proponent. [LB676]

DOUG KOEBERNICK: (Exhibit 4) Good afternoon, Senator Ebke and members of the Judiciary Committee. My name is Doug Koebernick, spelled K-o-e-b-e-r-n-i-c-k, and I'm the Inspector General for Corrections for the Nebraska Legislature and I'm testifying in support of LB676. LB676 seeks to amend State Statute 83-184 to allow the director of the Department of Correctional Services to let specific incarcerated individuals to receive certain services in the

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community. However, this would only take place with the recommendation of the Board of Parole. This may result in a movement of more individuals obtaining programming or exhibiting behavior that will allow them to be paroled earlier than they would have without this opportunity. This would potentially assist the department with their overcrowding issue and could also provide for better transitions of individuals back into their home communities, which might keep them from reoffending in the future. And these are good things. However, with that said, someone commented to me that this could be seen as similar to the Reentry Furlough Program that was instituted by the department beginning in 2008 and whose flaws were captured in the LR424 Report in 2014. I appreciate that thought and have an excerpt from that report for each of you. I thought I'd give you a real quick history of that program. In a nutshell, the Reentry Furlough Program, or RFP program, resulted from Governor Heineman's directing former Director Bob Houston to pursue the no-cost option for controlling overcrowded conditions. The RFP program resulted in hundreds of inmates being returned to the community prior to their being paroled, but it did so without the development of the regulations of the program complying with the Administrative Procedures Act. The LR424 Committee found that it was developed outside the law and, while it originally was created to exclude violent offenders, the LR424 Committee found that at least 162 inmates convicted of violent offenses, including murder, were placed in that program. This took place at a time when the Governor's Chief of Staff...Esther Casmer was...where the Governor's Chief of Staff told Esther Casmer, the chair of the Board of Parole: Don't be concerned about losing your jobs for paroling people; be concerned about losing your jobs for not paroling people. The chair also testified that former Director Houston applied direct pressure to her and the board to place more inmates in the community. In the report, the LR424 Committee stated that the RFP program needed to be abandoned but if there was merit in reinstating it, that it should be done through the legislative process, such as in this bill. With that said, it is important to keep that in mind if the department and the Board of Parole are provided with this tool. Thank you for the opportunity to testify on this bill. [LB676]

SENATOR EBKE: Any questions for Mr. Koebernick? I see none. Thank you. Next proponent. [LB676]

DAVID LARSON: My name is David Larson. I live in Lincoln. [LB676]

SENATOR EBKE: Will you spell your name for us, please? [LB676]

DAVID LARSON: What? [LB676]

SENATOR EBKE: Will you spell your last name for us, please? [LB676]

DAVID LARSON: L-a-r-s-o-n. [LB676]

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SENATOR EBKE: Okay, thank you. [LB676]

DAVID LARSON: I've been working with prisoners for ten years and the provisions in this bill seem important to me, especially letter (a). Visiting dying relatives and attending funerals of a relative, I think that does psychological damage to prisoners when they aren't able to attend a funeral or be with a parent or a loved one when they die. Also included in that is obtaining medical services they can't get in the prison. The letter (b) talks about training, training programs for work, and prisoners do not get enough training and not enough opportunities to train for jobs while they're in prison. Letter (c) talks about "Participate in substance abuse evaluations or treatment, attend rehabilitative" programs, and I think that can be improved. Those are the things that I really saw in this bill. I support the passage of all of it. [LB676]

SENATOR EBKE: Thank you, Mr. Larson. Any questions? Thank you. [LB676]

SPIKE EICKHOLT: (Exhibit 5) Good afternoon, Madam Chair and members of the committee. My name is Spike Eickholt, first name is S-p-i-k-e, last name is E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in support of LB676. The ACLU of Nebraska--I know it's well known to the committee--is involved in litigation with the state over the issue of Department of Corrections. But we are still willing to engage this committee and this body in coming up with legislative solutions to the prison problem. I think Senator Krist and Mr. Koebernick said it best, sort of explaining the issue and the intent of this bill. I know that the members of this committee have either served on special committees or have heard bills with respect to the Department of Corrections, so you sort of know the issues...or the issue that this bill is intended to address, and that is the high number of people who are in prison who are parole eligible, that situation where they appear in front of the Parole Board but they have not been able or have not been willing or have just not done the programming necessary, and that could be because of the wait list that they have and the limited opportunities in the facilities. And as Senator Krist explained, this is an opportunity to provide some legislative intent that perhaps the treatment could be provided somehow in the community. If the prisons can't provide it, perhaps it'll be sought in the community, or at least some plan could be made for the people who are parole eligible so that when they appear in front of the Parole Board they do have a place to live, they have begun an anger control class, or some similar thing. You're going to hear for a number of bills, I think we're going to testify on all of them, and as Senator Krist explained, perhaps there's not a single solution to this problem. But I think I would suggest that the solution is sort of what led to the problem, and that is it's an incremental buildup to the overpopulation problem that we have and it's going to be an incremental sort of build down to the prison population we have. And this is one part of it and we would support it and urge the committee to advance it. [LB676]

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SENATOR EBKE: Thank you, Mr. Eickholt. Any questions? I see none. Thank you. I see no one in the on-deck chair. Does that mean there is nobody else speaking in favor? Are you a proponent? [LB676]

KELLEE KUCERA-MORENO: Yes. [LB676]

SENATOR EBKE: Okay. [LB676]

KELLEE KUCERA-MORENO: (Inaudible) LB676? [LB676]

SENATOR EBKE: LB676, yes. [LB676]

KELLEE KUCERA-MORENO: LB676. Hi. My name is Kellee Kucera-Moreno. I'm here on behalf of my husband. [LB676]

SENATOR EBKE: Spell that, please. [LB676]

KELLEE KUCERA-MORENO: Kellee, K-e-l-l-e-e, Kucera-Moreno, K-u-c-e-r-a, hyphen, M-o-r-e-n-o. I am very nervous here. [LB676]

SENATOR EBKE: It's okay. [LB676]

KELLEE KUCERA-MORENO: It's going to be hard for me just to speak on one. I'm...my husband is Alfredo Moreno. He was incarcerated at 2005. I met him in 2014. We met and got married and so the history that I know of Al is from 2014 on. Al had been clean and sober since 2005. And when he...when I met him at Community Corrections Center, he had done all of this. He was...had done all the programming. I'm just saying this off the top of my head. Al is the man that would make everybody look good. I mean he's done everything that any...that you guys have asked of him, Corrections, above and beyond that. So he makes Corrections look good because he did what was asked of him, but he surpassed that by being a clean, spiritual person, helping others, working on himself. He was eligible for parole, moved in. He got a great job as a welder. Everything was going great and he received an injury, speaking of medical stuff. He received an injury while incarcerated at Community Corrections Center by Christina Ferguson (phonetic), who did an adjustment on his neck and she adjusted his neck and cracked it and he has permanent injury from that. She went...he went to her for a lower back problem and ended up with a neck injury. As for the medical stuff, Al tried over and over to get people to take a look at his back--I need this looked at, whatever. So finally when that was...actually that still hasn't been addressed due to the fact with a neck injury, having surgery, being released, all this stuff, they

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still haven't look at the back injury which was the original thing. When Al was at Community Corrections Center, he was placed on five different narcotics for this, so now we're getting the chemical dependency. He's chemically dependent. He'd been clean and sober for nine years. He is telling the people at Community Corrections Center, um, I can't do this, I'm high, you know, this is not okay. He received surgery, was released, and at home he started looking for something to relieve his pain. So he had drug-seeking behavior, didn't have insurance, drug-seeking behavior, took meds, ends up his addiction is going again. Talked to his parole officer, they tried to work things out. Lo and behold, he ends up back incarcerated again. He goes to Omaha Corrections Center, gets treatment there even though he's already done the treatment. It was helpful. He got out and still has...I mean he has permanent injury that he's having to work on. So the second time he gets out, he's in the community thinking that his drug of choice...he could drink alcohol, maybe alcohol would help relieve the pain, which it wouldn't... [LB676]

SENATOR PANSING BROOKS: Sorry. Ms. Moreno, that's the little buzzer that they now have, unfortunately, so if you could just quickly summarize what you want to say and hopefully you can come up and tell more at the other... [LB676]

KELLEE KUCERA-MORENO: And which is this bill that we're talking about? I'll try to wrap it up with that. [LB676]

SENATOR PANSING BROOKS: Well, and you could come back in a while. [LB676]

KELLEE KUCERA-MORENO: Oh. Does a person need...yes, he's been in the community, he's done everything inside and out. People are supposed to be in the community. We're supposed to live in the community. So when you take them out and put them back and there's nothing going on in there, if you've already done it and you're supposed to be in the community, you need to be in the community. It's just that simple. [LB676]

SENATOR PANSING BROOKS: Thank you. [LB676]

KELLEE KUCERA-MORENO: Thank you. [LB676]

SENATOR PANSING BROOKS: Any other...do you have anything to...any questions, anybody? Okay. [LB676]

KELLEE KUCERA-MORENO: Thank you. [LB676]

SENATOR PANSING BROOKS: Thank you. Sorry it's so fast. [LB676]

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KELLEE KUCERA-MORENO: No, that's fine. [LB676]

SENATOR PANSING BROOKS: (Exhibits 1-3) Thank you for coming. Any further proponents? Proponents? Okay, how about opponents? Any opponents? Okay, any in the neutral? Anybody here in the neutral? Okay, and that...we do have some letters. We have a letter from Mary Sullivan from the Nebraska...or the National Association of Social Workers-Nebraska Chapter in support; we have a letter from Fran Kaye in support on behalf of herself; and we have a letter from Director Scott Frakes from the Department of Correctional...Nebraska Department of Correctional Services in neutral. Thank you. Okay, that closes the hearing on LB676, so on with the next one, Senator Krist. I don't know the number...LB672. [LB676]

SENATOR KRIST: No, I didn't have any closing on that one. That's okay. [LB672]

SENATOR PANSING BROOKS: Oh, you had closing? [LB672]

SENATOR KRIST: No, that's okay. [LB672]

SENATOR PANSING BROOKS: Okay, you waive closing. [LB672]

SENATOR KRIST: It's just my way of harassing you. I'm on it today. [LB672]

SENATOR PANSING BROOKS: Yeah, that's twice today, I just want you to know. [LB672]

SENATOR KRIST: That's twice today. Sorry, Madam Vice Chair. Good afternoon again, Senator Pansing Brooks and other members of the Judiciary Committee. For the record, my name is Bob Krist, B-o-b K-r-i-s-t, and I represent the 10th Legislative District in northwest Omaha, along with north-central portions of Douglas County, which includes the city of Bennington. I appear before you today in introduction and support of LB672. LB672 would provide the Department of Correctional Services with the authority to release inmates who are determined...wait a minute, are we on LB672? Yeah? Okay. [LB672]

SENATOR PANSING BROOKS: We're on LB672, yeah. [LB672]

SENATOR HALLORAN: LB672. [LB672]

SENATOR KRIST: Well, did you have a schedule or did you have... [LB672]

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SENATOR PANSING BROOKS: LB672 is next. [LB672]

SENATOR KRIST: Yeah. Okay. ...would provide the Department of Correctional Services with the authority to release inmates who are determined by the department to be terminally ill or permanently incapacitated. The department shall identify inmates who are eligible for medical release based upon their medical records. If an inmate is released, the department shall require that the committed offender agree to placement for medical treatment and that he or she be placed for a definite or indefinite period of time in a hospital, hospice, or other housing accommodation suitable to his or her medical condition as specified by the department. If during the term of the medical release the condition, physical condition, of the inmate improves to the extent that the inmate is no longer eligible for medical release, the department may direct the inmate to be returned to custody of the department and finish out the rest of his or her sentence. The medical release program is not a new program. There are...there exists currently a medical release program. I do believe, though, that it has not been used as appropriately as it can be. I'm not going to go through any anecdotal situations. I know that there is a...at least Mr. Koebernick will talk to you about a situation that exists in the system right now. I think one of the things that has come up in question from the community, the regions, the hospitals, and the clinical-type situations around the state so far is "yeah, but," and the "yeah, but" is who pays for this once they leave. Folks, we are paying an incredible amount of money to keep them incarcerated as a person who is infirm or is going to...or who has been termed terminally ill. Those services, those drugs, the treatments are already happening within the system. By getting them out of the system and released into outside of being incarcerated, we would be able to use in most or some cases, and I'm going to use "most" as a "foot-stomper," CMS dollars--that is, Medicare or Medicaid dollars--which is not 100 pennies on the dollar, as you all know. There is a cost-share possibility, not to mention that I think there is a humanity issue here where a person who is incarcerated for something that he or she may not even remember or know or put themselves in that position, no more harm to themselves or to the society from which they have been taken and sentenced to serve time for a crime that they've committed. With that, I will stand for any questions. [LB672]

SENATOR PANSING BROOKS: Any questions? [LB672]

SENATOR CHAMBERS: Just one. Is there any time...because it appears at first glance that a person could be released, be on medical leave or however they decide to term it, then, if he or she no longer needs to be on medical leave, that person can be returned to the institution. [LB672]

SENATOR KRIST: Correct. [LB672]

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SENATOR CHAMBERS: How...no matter how long the person is out, he or she would have to come back? [LB672]

SENATOR KRIST: Well, the bill is specific in the fact that the time that they are out would be considered time served. So potentially, if they were out for two years and their term was only for another two years, they would not have to go back at all. But I believe the intent of this legislation, and I would be happy to carry that intent onto the floor if we'll vote it forward, is to say that these are for the terminally ill and the most critical situations. So I see this being employed at the department's discretion and with the proper medical documentation for the terminally ill, those...and I will use Alzheimer's as an example because most people don't get well from that ailment. So I think that it would be a rare situation where there would be years and years of hospice or care in a hospital and then they would be returned, but that is a possibility and it also exists today with the compassionate medical release program that's in place. [LB672]

SENATOR CHAMBERS: Does cost have anything to do with it? Is it strictly based on the condition of the inmate? Or would the state be saying this is going to be expensive treatment, we know that the person is going to come back here, but that person will be responsible for the treatment? Or would the state continue to be responsible while the person is out? [LB672]

SENATOR KRIST: In the predominant cases, at least the ones that we have looked at, most of these people are going to be qualified for CMS, Medicare, Medicaid. [LB672]

SENATOR CHAMBERS: Okay. [LB672]

SENATOR KRIST: So the state is still responsible for a portion of that treatment while they are...when they would be put into the facility as a cost share as a state. If there is private insurance or a family has private insurance or self-pay, then, obviously, the insurance would kick in. But I...there aren't very many of those cases, Senator Chambers, so I...it's not a matter of economics. It's a matter of, in my mind, freeing up those beds from the people who are terminally ill, infirm, or can't even remember who they are, to go into a more humane environment to spend the rest of their life until they pass. [LB672]

SENATOR CHAMBERS: If you were administering it, I wouldn't even ask the question. At whose discretion will the person be allowed out? [LB672]

SENATOR KRIST: It would be the medical board established by the department. [LB672]

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SENATOR CHAMBERS: Okay. And anything else I have, we can talk because we're in...we're cell mates. [LB672]

SENATOR KRIST: Okay. [LB672]

SENATOR CHAMBERS: Okay. [LB672]

SENATOR KRIST: We're not double bunking, however. We don't like that. [LB672]

SENATOR CHAMBERS: Heavens, no! [LB672]

SENATOR PANSING BROOKS: Okay, any other questions? Okay, thank you, Senator Krist. All right, we will have proponents, proponents. Thank you. [LB672]

DAVID LARSON: My name is David Larson, L-a-r-s-o-n. I'm a retired pastor. I have done some training in the prison system in Minnesota. I've also had a lot of experience with people who are dying. I've had personal experience with family members who have lived in hospice facilities. I want to thank the prison system for having a hospice thing in NSP, at least, but I believe that if a prisoner has a choice to live in a really good hospice facility, their remaining time can be very good for them. And the dying process is really a part of living. I think this is very important for the individual to be able to choose a facility that is good for him, him or her. And (3) it says that the committed offender has to agree to the placement. I think that's important. If the individual wanted to be placed in the hospice in the prison system, that's okay, they would be comfortable with that. But if they wanted something outside the prison system, that would be a very good and humane thing for them. That's all I have. [LB672]

SENATOR PANSING BROOKS: Okay, thank you. Any questions of Mr. Larson? Thank you for coming today. Next proponent. [LB672]

DOUG KOEBERNICK: Good afternoon, Senator Pansing Brooks and members of the committee. Again, my name is Doug Koebernick, spelled K-o-e-b-e-r-n-i-c-k, and I'm Inspector General for Corrections for the Legislature. I'm testifying in support of LB672 because I believe that it might have the potential to do several things that can result in positive change. But I think those have been touched on already, so I'll just jump to kind of the end of my testimony. As Senator Krist said, I can...I've been out there for--visiting the prisons--for two, two-and-a-half years in this position and I've witnessed many individuals with medical conditions that would be considered quite debilitating, and I think that this bill would assist those people. I remember visiting with one man, one young man at the Nebraska State Penitentiary--he's in the skilled

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nursing facility--with a very significant medical condition that was going to result in a death not that far down the road, and we spent a lot of time sitting in that room and he wasn't able to move around or anything. And we talked about how he was just going to lay in this bed for, you know, a year or two and just stare at these white cinder-block walls and the white ceiling. He was not going to be able to really look outside, not going to really spend much time with family because of his condition. And that was quite impactful, and there's other cases out there of people with dementia or other conditions, health conditions, that I think could be assisted by this bill. And finally, just to give you an idea of the cost of medical care within the department, I asked the department's chief medical officer if he could give me kind of some data as far as the cost of these inmates as far as healthcare cost and he gave me two different sets of data. One was for inmates who, people, patients who were in the hospital and had inpatient stays, and the top ten users, or the most costly top ten inmates in that condition, cost about \$2.4 million between the ten of them; two of them topped \$400,000 during the last fiscal year. Also, inmates receive, people receive care within the facilities, and treatment as well, and there's a few people that received treatment that cost over \$100,000 a year, so that just gives you kind of an idea of some of the cost involved. I also have data as far as like somebody asked me how many people are we talking about if you look at certain ages, and there's about 280 men that are 60 years old or older in the system right now. But like the example I gave, that guy was I think 26, so it doesn't have to be on age or anything like that to be based on medical condition. So with that, I am open to answering any questions that you may have. [LB672]

SENATOR PANSING BROOKS: Okay. Any questions? Yes, Senator Halloran. [LB672]

SENATOR HALLORAN: You gave some figures there on the number of people that might qualify for this and it's just...I mean it doesn't...I don't want this to be mistaken for disregarding the compassion for doing this, and I'm just curious, again, on average, the number of people that, you know, would qualify for this on an annual basis. [LB672]

DOUG KOEBERNICK: I know the department in their fiscal note estimated it would be between six and ten individuals a year. [LB672]

SENATOR HALLORAN: Thank you. [LB672]

SENATOR PANSING BROOKS: Any further questions? Okay, thank you, Mr. Koebernick. Next proponent. Welcome. [LB672]

JOHN KREJCI: (Exhibit 2) Good afternoon, Senators. My name is John Krejci, J-o-h-n K-r-e-j-c-i. I come to testify in favor of the LB672, Nebraska Treatment and Corrections Act. I represent Nebraskans for Peace, the largest statewide peace and justice, oldest organization; and also for

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RAN, Reentry Alliance of Nebraska, it's a coalition of like 35 people, groups that support people who come out of prison; also for the National Association of Advancement of Colored People; and I write for the Nebraska Criminal Justice Review. So I have many hats. But I don't have too much to say. I'll be very brief, as usual. We know that the problem--why am I getting feedback?--of prisons in Nebraska is overcrowding. Much of what we are experiencing stems from that, and that's a responsibility for us, community, for you as legislators, and we need to cut down the population. That's fundamental. Now cost, staffing problems, inadequate programming, stress on inmates and staff, not to mention violent incidents and rioting, come from that. This bill to provide medical relief for terminally and physically...terminally ill and physically handicapped would lessen, not a whole lot, but lessen the population, save money. It costs about three times as much to take care of ill inmates and disabled inmates. And it would cut costs, cut the size of prisons, and it would be compassionate. I mean, who wants to die in prison? The letter that I, or the piece that I have appended, is "I Do Not Want to Die in Prison." I think that's a horrible fate and you can read it. It's very...it's an attorney who was put in jail because they were doing something that was quite...oh, my goodness, my time's almost running out. Anyway, you can read that. I contacted Director Frakes with regard to this and he responded saying, "What you propose is good public policy." He referred me to Washington State which has a program, terribly complex and bureaucratic, but, you know, at least it shows it can be done. His major concerns were that this is not an area where I want to dedicate resources, quote unquote. Further, he cited issues such as public safety, rights of victims, courts' authority to sentence, and the shifting of the cost of healthcare from Corrections to another public entity. However, he did state the need for geriatric services continues to grow and we are expanding our capacity to meet the needs of the aging through mission-specific housing and improved hospice care. He also spoke of "dedicated space for in-patient geriatric care." "These approaches provide an improved quality of life for aging inmates and do so at a cost that may be lower than public health...options." That was an e-mail he sent me on November 5. This bill also has some restrictions, which I think is really good. I support this bill. I think you should support, advance it. It will have several advantages which I outlined. Thank you very much. [LB672]

SENATOR PANSING BROOKS: Thank you, Mr. Krejci. Any questions of Mr. Krejci? Further proponents? Okay. [LB672]

SPIKE EICKHOLT: (Exhibit 3) Madam Vice Chair and members of the committee, my name is Spike Eickholt, first name is S-p-i-k-e, last name E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska, testifying in support of LB672. Senator Krist, again, explained the bill. I think the bill is fairly straightforward. Mr. Koebernick gave some insight as to perhaps how it could be used. But we would support this proposal because, as Senator Krist indicated when he introduced the last bill and he was speaking to all of the bills he introduced today, this is one other way of looking at the prison overcrowding problem. This is also good public policy with respect to just humane public policy. I mean at some point when a person, really regardless of

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what they may have done to end up in prison, when that person is terminally ill or permanently incapacitated, that person, arguably, is not a threat anymore to society. Whatever punitive sentence that person should be serving is really lost when that prison sentence becomes essentially a prison-run assisted care facility. And I think Senator Krist is right. If people are released from prison who are terminally ill, they will be paid for by the state, their care will be, but as far as efficiency and sound public policy it would probably make more sense to have that paid for outside a prison setting. I mean staffing is already a problem in the prison. If you can just imagine a number, just a handful, six or ten people who need 24-hour nursing care, the few nurses that we have in the prison can't simply be doing that. And I know from at least anecdotal reports that many times other inmates are caring for inmates who are terminally ill. And that's just sort of an unusual and perhaps not appropriate situation. So we would encourage the committee to look at this. I think that it is narrowly tailored, as Senator Krist indicated. If you look at the bill, it applies to people who are terminally ill or permanently incapacitated. I think maybe what Senator Chambers was asking about, you don't want to have a situation where someone could be released just because they need an operation and then immediately returned back to the prison. You don't want to have that sort of situation. So you do want to have it sort of narrowly tailored, balancing issues of public policy, and really what makes most sense for who you want to have in your prison system. And with that, I'll answer any questions. [LB672]

SENATOR PANSING BROOKS: Thank you, Mr. Eickholt. Any questions? Thank you for coming. Next proponent. Proponents? [LB672]

KELLEE KUCERA-MORENO: Hi. Kellee Kucera-Moreno. You need me to spell it again? [LB672]

SENATOR PANSING BROOKS: Yes. [LB672]

KELLEE KUCERA-MORENO: K-e-l-l-e-e Kucera, K-u-c-e-r-a, hyphen, M-o-r-e-n-o. I'm here on behalf of inmates' families and inmates. The system is overcrowded and a lot of that has to do with sentencing, which means that a lot of people are there spending a lot more time than they need to. When you get a sentence from five to ten years, that's a pretty big discrepancy. I mean like what...how bad do you...what do you have to do to get either five to ten years? Sometime in there, people are going to start growing old. They're going to probably have regretted doing whatever they're doing in the first couple of years. Hopefully there's some rehabilitation that's going on that, you know, addresses the main issue. But I mean it just seems like for the sake of everybody, people need to be back in the community. If you're terminally ill, your family members want you back there. The system isn't equipped to handle all this. That's what the community is for. You know, there's lots of...for these issues it needs to be addressed in the community. And I just think that overall that, you know, like the gentleman said, that this is

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specific, too, and I don't see where there would be a problem with people being released, you know, and it's at the discretion of the system anyway. But they're not equipped to handle half of this, you know, staffing, and it's just really sad. And I guess it's specific to these issues so I guess it doesn't address that the fact that addiction is a medical condition. That's also not being addressed. That's probably not specific to this, I'm guessing. So I guess that's all I have. [LB672]

SENATOR PANSING BROOKS: Thank you. Any questions of Ms. Kucera-Moreno? Okay, next proponent. Any proponents? We'll move to opponents. First opponent. Welcome. [LB672]

ROSALYN COTTON: Welcome. Good afternoon, Vice Chair Pansing Brooks, Senators of the Judiciary Committee. My name is Rosalyn Cotton, R-o-s-a-l-y-n C-o-t-t-o-n, chairperson of the Parole Board. I'm here to offer testimony in opposition of LB672. Senators, the Nebraska Constitution, Article IV-13, gives Parole authority exclusively in assisting those individuals from medical release. This is why the board must approve all work release, passes, and furloughs. NDCS does not have the independent authority to release individuals before completion of their sentence. Medical release under LB672 is more expansive than other existing forms of release which will require the Parole Board's approval. Medical parole already exists. I will give you an example. We had an individual who was violating on parole about three months ago. His mother called me last month requesting assistance and basically I met with a couple of board members asking for approval to get this individual back on a parole hearing status so that we can visit with him again and release him due to his medical condition. It appears to me that medical release under LB672 is more expansive, but the language nearly mirrors the existing medical parole statute but removes certain eligibility limitations, such as those individuals that are sentenced for death or life imprisonment. The LB672 unconstitutionally gives NDCS powers exclusively held by the Parole Board. Thank you. I will answer any questions. [LB672]

SENATOR PANSING BROOKS: Thank you, Ms. Cotton. Are there any questions? [LB672]

SENATOR KRIST: Your objection is that this bill should have been directed towards the current statute and you should have the authority to let people out that are medically terminally ill and/or have a condition to go out. Is that it? [LB672]

ROSALYN COTTON: With the conditions that we normally look at, as well as actually those individuals that are parole eligible, that is correct. [LB672]

SENATOR KRIST: Ms. Cotton, I'm glad I got your attention because that's exactly what I've been asking you and the director for over the last couple years: find ways to get people that don't need to be sitting in prison out of prison and let us statutorily help you do that. So if your objection is that this green copy should be directed to you, I'm happy to do that. [LB672]

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ROSALYN COTTON: Again, as I stated, the board is...right now we're doing that anyway. As long as those individuals are eligible, we basically assist the Department of Correctional Services with all the individuals that are...that have medical conditions and they need to be placed in the community. We are doing that. The Department of Correctional Services literally alerts us when that particular individual is somebody that we need to take a look at. [LB672]

SENATOR KRIST: Okay. So I'm not going to cut you off. [LB672]

ROSALYN COTTON: Oh, that's okay. [LB672]

SENATOR KRIST: But I'm going to tell you that there's at least five people, and two of them at Tecumseh, that don't know who they are. They're suffering from Alzheimer's in the last stages of their life. They have no idea why they're there. We have a guy with Lou Gehrig's disease that was just described. How does the function in bureaucracy get from him to you so that we can make some of this happen? [LB672]

ROSALYN COTTON: I would ask you, Senator, if you can, send me a list of those particular names and I will work with the department and see exactly what we need to do. [LB672]

SENATOR KRIST: Fine. That's called legislative oversight and I'm really happy to do that. Thank you, Ms. Cotton. [LB672]

SENATOR PANSING BROOKS: Okay. Any further people that would like to ask a question? [LB672]

SENATOR CHAMBERS: Just this, that by me being quiet, I've been (singing) like a bridge over troubled waters. That's all I have. It's quite enough. [LB672]

ROSALYN COTTON: Thank you, Senator. Any other questions? Thank you. [LB672]

SENATOR PANSING BROOKS: Thank you, Ms. Cotton. Next opponent. And just as a reminder, we're not supposed to speak on our own bills (inaudible), as a happy reminder, Senator Krist. [LB672]

SENATOR KRIST: What did you say? I'm sorry. [LB672]

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SENATOR PANSING BROOKS: Another happy reminder that we're not really supposed to question on our own bills. [LB672]

SENATOR KRIST: Well, I couldn't sit here and take it, so, sorry. [LB672]

SENATOR PANSING BROOKS: Okay (inaudible). Okay, welcome, Director Frakes. [LB672]

SCOTT FRAKES: (Exhibit 4) Good afternoon, Vice Chairperson Pansing Brooks. 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, NDCS, and I'm here today to provide testimony in opposition to LB672. LB672 provides for medical release of individuals sentenced to prison who are determined to be terminally ill or permanently incapacitated. This proposal is nearly identical to the existing medical parole statutes but, importantly, this bill does not require the inmate to be parole eligible and (2)...actually (1) does not require the inmate to be parole eligible; (2) would require medical...would allow medical release to apply to inmates serving a sentence of death or life imprisonment; and (3) does not involve the Parole Board in the decision-making process. These differences effectively make medical release an expanded version of medical parole. I support the concept of medical release, but I'm opposed to LB672 because I believe the existing medical parole statutes are the model on which any additional medical release proposal should be based. The Parole Board currently signs off on all releases on parole, medical parole, work release, passes and furloughs, as they are the body which is tasked with considering and weighing the risk to the public and balancing those with other factors to determine if release is appropriate. Individuals who are not yet parole eligible also have the opportunity to request a commutation of their sentence through the Pardons Board process. Thank you for allowing me to testify today and I will be happy to answer any questions. [LB672]

SENATOR PANSING BROOKS: Let's see, anybody have a question? I have a question. Thanks for coming, Director Frakes. So do you have any kind of...so say that you do have somebody who isn't in for life and, let's see, I'm looking at...do you have some sort of communication, either a formula or a format, where you speak to Parole and say this person is really sick? I mean, how do you alert Parole that somebody should be considered for a medical release? [LB672]

SCOTT FRAKES: Well, Chairperson Cotton and I meet at least monthly, sometimes more frequently than that. There are also other meetings that occur between my department and her staff, so that's one of the venues. If the medical director and his staff identify a case that they believe needs to be considered, then they'll bring that to me and I will reach out to Chairperson Cotton. So there isn't a...there's not a formal, structured, driven-by-forms process, but I do

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believe and feel that we have a very good communications process that allows us to bring those cases forward. [LB672]

SENATOR PANSING BROOKS: Okay. Any...yes, Senator Baker. [LB672]

SENATOR BAKER: Director Frakes, when this comes to the attention that someone is in medically bad shape and the recommendation goes to the Parole Board, give me a time line how fast or how slow does that process work before a decision is made. [LB672]

SCOTT FRAKES: You know, Senator, it could vary I think anywhere from probably 60 days to several months just depending on all of the different factors, especially if there's a need to then take it to the Board of Pardons for review, as well, the person who is not currently parole eligible. [LB672]

SENATOR BAKER: Thank you. [LB672]

SENATOR PANSING BROOKS: Senator Hansen had a question, then I'll go to Senator Chambers. [LB672]

SENATOR HANSEN: Thank you, Senator Pansing Brooks. Thank you for coming, Director Frakes. I guess I'm listening to yours and Ms. Cotton's objections. I'm just trying to refresh myself on the process of the parole, so if you could just kind of walk me through that, the interrelation kind of between parole, medical parole, and work release, because those have all come up a couple times. Like what would that look like for a typical inmate? [LB672]

SCOTT FRAKES: Well, at the point that they reach their parole eligibility date, then the case manager using the case plan process would be...well, I'm not going to try and get into the technical details because I'll get it wrong. But once the inmate is approaching parole eligibility, and usually, actually, one year out from parole eligibility, they'll be scheduled for a review. They may then be set for a date, a hearing date for parole that's consistent with their parole eligibility date, if there's other factors that could be adjusted. At the point that they are, if they have enough length of sentence, there will be additional reviews and meetings with the board. That's how we determine whether or not they're eligible for work release. I'm probably the wrong guy to try and give you the answers that you might be looking for, honestly, because I understand the process but I don't do that work. [LB672]

SENATOR HANSEN: Okay. Okay. Thank you then. [LB672]

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SENATOR PANSING BROOKS: Could we find that process from somebody at Corrections, please? [LB672]

SCOTT FRAKES: Yes. Yes. [LB672]

SENATOR PANSING BROOKS: Maybe we could get that summarized for us. Okay, Senator Chambers, did you have something? [LB672]

SENATOR CHAMBERS: Mr. Frakes, are you contending that the Legislature lacks the authority to do what this bill would provide for, or you just disagree with its being done in this fashion? [LB672]

SCOTT FRAKES: Well, I'm not a lawyer, so I will not make a judgment that there's a constitutional issue. But there...that question has been raised as to whether or not there's a constitutional issue to be addressed. For me, more importantly, I believe the existing system does work and is meeting the needs. [LB672]

SENATOR CHAMBERS: But as far as you're concerned, because if there were a legal issue, that person should have come to answer questions we may have, so we will take that off the table. The Legislature does have the authority to do this. If we create a system of parole, methods, policies, give direction on how procedures ought to be adopted and so forth, we can do with that system whatever we want to do. We could even abolish it. If the Parole Board is created by the constitution, there could be a Parole Board, but maybe the Legislature would not assign it any duties. The point I'm getting to is that it's a policy issue that I want to discuss with you rather than the legal technicalities, because somebody, either side, could challenge that in court. But I'm trying to understand your view. Are you saying, in a nutshell, that the current system addresses the issues that are raised by this bill? Is that your view? [LB672]

SCOTT FRAKES: Would you repeat that for me, please? I'm having a hard time hearing today. [LB672]

SENATOR CHAMBERS: Is it...okay, I should speak louder. I'm sorry. [LB672]

SCOTT FRAKES: That's okay. [LB672]

SENATOR CHAMBERS: Should...is it your contention that this bill should not be passed because the system as it stands right now is addressing the issues raised by this bill? [LB672]

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SCOTT FRAKES: Yes. [LB672]

SENATOR CHAMBERS: And if the Legislature disagrees, then, whereas the discussion is good, the ultimate decision is that of the Legislature. Do you agree? [LB672]

SCOTT FRAKES: Legal issues aside, yes. [LB672]

SENATOR CHAMBERS: And should the Legislature do that, no bureaucrat, however he or she was placed in position, should do anything to try to frustrate the will of the Legislature. Do you agree with that? [LB672]

SCOTT FRAKES: I believe I do. [LB672]

SENATOR CHAMBERS: You believe you...no, you know what you do. Now you might say somebody...you believe somebody else. You know whether you should try to frustrate the will of the Legislature. Can you say categorically that you would not try to frustrate the will of the Legislature? Or in the alternative, would you say categorically that if you disagree with the Legislature's policy decision, you would do all you could to try to keep that from being carried out? Which is your position, that you would abide by it as it's written in the law or you would try to circumvent it and defeat it? [LB672]

SCOTT FRAKES: I follow the law. [LB672]

SENATOR CHAMBERS: Say it again? [LB672]

SCOTT FRAKES: I follow the law. [LB672]

SENATOR CHAMBERS: I have no other questions at this time. [LB672]

SENATOR PANSING BROOKS: Any other...yes, Senator Halloran. [LB672]

SENATOR HALLORAN: Thank you, Chairperson Pansing Brooks. Thank you, Director Frakes. This may seem not germane, but we don't always necessarily hold to germane topics. But in that you may not come up to testify again today, but I...a few questions, first a comment. Back in the early 2000s, we closed down regional hospitals--they were specifically mentally hospitals--and did a social experiment of placing these folks into community housing. And with less supervision, many of those folks ended up on the streets and committing crimes and in

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correctional facilities. And the reason I say this is because we've kicked the can down the road for many years on developing more beds, but I would not be for, necessarily, building more prisons. But I would like to see some discussion in the Legislature about reestablishing regional mental hospitals because, and here's coming to the question, what percentage would you say the population--this is a hard one, it's kind of a subjective question--but what percentage of the population are folks that shouldn't be in the correction facilities but, rather, in mental hospitals that have severe mental issues and, consequently, in a rather abusive situation with other prisoners because they're quite vulnerable. [LB672]

SCOTT FRAKES: Well, that is a hard question to answer because, of course, they only come to us if they've been adjudicated by the courts to be competent to stand trial. [LB672]

SENATOR HALLORAN: Right. [LB672]

SCOTT FRAKES: So I have to go with the belief that upon arrival they belong in the prison system. That's the court's determination. There's a small part of our population that either comes with what we see as such a level, significant level of mental health issues or that develop further symptoms, become more seriously ill during their course of incarceration. We're talking about a population of about 2-3 percent, so that's 100-150 people, a little bit more, and of those, though, I'd say again it's a small handful that we look at and say that we can't meet their needs within the system and the tools and the resources that we have, and we do, of course, work with LRC. The last part of the answer I'll give you back, Senator, is if there were more community mental health resources in America, I think it might influence some of the court's decisions in terms of... [LB672]

SENATOR HALLORAN: Right. [LB672]

SCOTT FRAKES: And it would also influence people not ending up on the criminal justice path. But again, once they come to me, they've gone through all the processes so it's really hard to say. But every so often...we have one individual right now I know of that's currently housed at LRC but still belongs to us. [LB672]

SENATOR HALLORAN: It's kind of a pet project of mine, if we get to a point where we want to get serious about talking about relieving some of the population problems and reestablishing lower-security mental hospitals where they could also house the folks that Senator Krist is talking about that need to have, you know, more care, who are terminally ill, but would be less costly to build and less costly, I would suspect, to maintain lower security. But we can't keep kicking this can down the road. It's been kicked down the road for years on housing to take care of people that really have chronic mental issues and shouldn't be in the penal (inaudible). And

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I'm not laying this on you. It just gives me an opportunity to make that statement. Thank you.
[LB672]

SENATOR PANSING BROOKS: Any other...I have one comment and I agree with you that's something that we really need to look at, Senator Halloran. I also want to take just a moment to...of personal privilege because I want to thank both Director Frakes and Nebraskans for Peace for clearly the cordial correspondence that went on between you both. And I appreciate the fact that clearly Senator...or Director Frakes and the department wrote seriously in response to Nebraskans for Peace's request, which is...and as he said, they're part of RAN, which is a group of 35 members in our community that are trying to help supplement the Corrections issues. So I really appreciate that you responded cordially and seriously to their request. I also appreciate the fact that Nebraskans for Peace gave you credit by quoting back what you'd written. So again, we will do more together and be far stronger if we're working together to solve these issues than just battling at each other and trying to figure out what's wrong about what one particular entity is doing or another. So I really thank you, both Nebraskans for Peace and Director Frakes, for that.
[LB672]

SCOTT FRAKES: Well, thank you, and you give me...I'll take the opportunity to say I think the world of John and I think Nebraska is all the much that much better to have those people like John that are so...thank you. [LB672]

SENATOR PANSING BROOKS: Thank you. Any other questions of Director Frakes? Okay, thank you, Director. Any other opponents? Okay, opponents. And what about in the neutral? Is anybody in the neutral? [LB672]

SARA HOYLE: (Exhibit 5) Good afternoon, Vice Chair Pansing Brooks, members of the Judiciary Committee. I'm Sara Hoyle, H-o-y-l-e. I'm the director of Lancaster County Human Services, which encompasses our general assistance program. Being passed around to you is a letter from our board chair, Chairman Todd Wiltgen with the Lancaster County Board, and we are in a neutral capacity on this bill. We are also in agreement with Senator Krist on families and the individuals being released need a long-term payment healthcare plan. If they're terminally ill, if they're incapacitated, they need to have a healthcare plan that's going to take care of them. With general assistance in the county, we provide short-term assistance to individuals who are not able to work, who have an overarching healthcare concern. We do have individuals who are on parole that we are providing assistance to. Medical providers in our community want to be paid. So when we're looking at individuals being released from prison and applying for Medicaid benefits, there's a waiting period that encompasses that. We...right now, in order to be on general assistance, you have to apply for benefits through Social Security Administration and subsequent through Medicaid. Our normal waiting period is anywhere from six months to two years. So

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during that time, then the county assumes the responsibility of medical bills, of rent payment, of different types of benefits that we don't readily have available in our community for these individuals. Let me give you an example. We did have an individual not too long ago who was released, who had significant healthcare needs. This individual ended up costing Lancaster County \$140,000 in medical needs. He had a heart condition and then he spent time in a rehabilitation facility. This individual was not a resident of Lancaster County. However, he was released to our hospital in our care. So we then, in statute, were able to go back and try to bill the county where he established legal residence at. That county was a small county and we were not able to collect from that county, so there is a concern. We want to make sure, like Senator Krist said, that if individuals are being released through this, they have long-term, stable healthcare coverage. Questions? [LB672]

SENATOR PANSING BROOKS: Thank you, Ms. Hoyle. Any questions of Ms. Hoyle? Thank you for coming. [LB672]

SARA HOYLE: Thank you. [LB672]

SENATOR PANSING BROOKS: (Exhibit 1) Any other in the neutral? Neutral? So, Senator Krist, close...oh, and, yeah, there's a letter of support by Fran Kaye who wrote on behalf of herself. Senator Krist, do you want to close? [LB672]

SENATOR KRIST: I would. I broke your rule and I sat up here and I asked a question, but I couldn't take it anymore, and I was corrected and I apologize, Vice Chair. If the issue is that the bureaucracy wants it aimed at the right department--rather than Corrections, it should go to Parole or whoever--I'd be happy to shift the responsibility for this to happen. But this is truly indicative of being in neutral and coasting towards 2020, which is a perfect preview for my introduction into my next bill. So I'm happy to...would you like to close that one and start another one? [LB672]

SENATOR PANSING BROOKS: Yeah, so that ends hearing and now Senator Ebke is back, Chair Ebke is back. [LB675]

SENATOR EBKE: Thank you, Senator Pansing Brooks. And thank you for indulging me. I got there just too late.

SENATOR PANSING BROOKS: Just in time?

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SENATOR EBKE: Well, no, not...I was...I got there. They were supposed to wait for me and they didn't, and so I got there just as the other bunch was walking out and they'd started the next hearing. So, not wanting that to happen again, I stayed.

SENATOR PANSING BROOKS: Oh, my god.

SENATOR EBKE: So we now open the hearing on LB675, Senator Krist. [LB675]

SENATOR KRIST: Good afternoon, Senator Ebke, members of the Judiciary Committee. For the record, my name is Bob Krist, B-o-b K-r-i-s-t, and I represent the 10th Legislative District in northwest Omaha, along with north-central portions of Douglas County, which includes the city of Bennington, and I appear before you today in introduction and support of LB675. Current law provides that, July 1, 2020, if the director of the Department of Corrections certifies that the design capacity of prisons is over 140 percent, then the Correctional Services overcrowding emergency shall exist. When such an emergency exists, the Board of Parole is to immediately consider and review inmates for suitability for release on parole. LB675 would advance the date of emergency determination to July 1, 2018. That's July 1 of this year. The bill would also require the Department of Correctional Services to certify and provide a list of those inmates who are presently parole eligible but are incarcerated to the Board of Parole. So let's review. LR424, LR34, LR127, they've recommended the same things, they've talked about the same things, and here we sit with a Big-Block Chevy in neutral doing absolutely nothing to think outside the parameters of the box that we're in. We've made some progress in some areas. We say we're making progress in some areas. We have disbanded a group of stakeholders that have been involved with this process since the beginning. We've internalized it into just two branches of this government, and the legislative branch has been told in no uncertain terms, you don't need a special investigative committee, you can just have an investigative committee. How long are we going to wait to see some out-of-the-box parameters happen as were suggested in the previous two bills? How long are we going to wait as we approach July 1, 2020? Look at the fiscal note. You think that fiscal note is bad? If we get to 2020, I guarantee you, it's going to be worse. Why are we not incrementally doing the things that the fiscal note suggests we have to do to comply with this bill? They've identified things that need to be done now to invest in the process moving forward. Now I'm sure that Ms. Cotton and Director Frakes are going to come up here and disagree with moving the date up because it's putting them under pressure. Guess what? I may or may not be here in 2020, but most of you will be. And when that date arrives and the emergency is put into place, is not the time to start bailing water. You're taking on water right now. There is a push-pull robocall going around saying, do you believe that Senator Krist should be able to release these dangerous people into our society? I'm not suggesting that we open the floodgates and put dangerous criminals on the street. I'm suggesting that we look for options to look to decrease the prison population, whether it's compassionate-care release, medical release, whether it's trying to look forward and press that parole list down from 200...402 in your report down

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significantly in the next year or so. I think the fire needs to be lit. Now maybe this is the wrong thing to do. Maybe pushing this forward this far is the wrong thing to do. But in reality, if we don't start talking about July 1, 2020, today, we are never going to be prepared for that date. And I don't believe, I honestly don't believe, that this administration is taking it seriously. Now I'm sure, again, Director Frakes and others in the administration will take exception to that, and that's fine, but I think in an oversight capacity this Legislature needs to look at those options and needs to look at, as Senator Halloran suggests, behavioral, mental health, substance abuse. What are we doing to create...to get those folks out of our prison system and find someplace else to have them treated? What are we doing to take 400 parole-eligible men or women and make sure that we can expedite that parole process? We've asked Ms. Cotton before and she said, I don't need any more people, I'm doing everything I can, I'm fine. We asked Mr. Frakes from the date he walked in here how much money do you need, when we had money to put onto the project: I don't know how I'd spend it. Well, now we don't have any money and now we have the same problems we had then and we're pushing the can, as Senator Halloran said, kicking the can down the road. Am I a little impassioned about the last two bills and this one? Yes, because I think we can start thinking outside the box just a little bit and making progress a little bit faster than what we're making, instead of succumbing to another lawsuit or the Department of Justice coming in. I know those of you who have been involved in these committees, particularly Judiciary Committee and the Special Investigative Committee and the investigative committees, understand what happens in states where the ACLU sues, but let me say it again publicly. In the state of California, it all started with lawsuits, it all started with an overcrowded prison situation, it all started with people who didn't take anything serious, and then the Department of Justice came in and fixed their problem for them. And the Californians will tell you it was very expensive and they didn't like what happened when DOJ walked in the doors. On the flip side of that, you look at what the...see our convention or our Council of State Governments gave us in terms of a road map to follow through, and we've deviated from that roadmap. And you look at what the state of Georgia did when it stayed on that roadmap, and they've closed down parts of their prison system. They were given a blueprint, they were given a roadmap, just as we were. We went off course and idled in our Big-Block Chevy and waited for something to happen, all blamed on being tough on crime and, gosh, don't release those prisoners who are so dangerous. It's a political football and it's being kicked down the field and I think it's time for that to stop. Now if we have a serious discussion about whether the emergency needs to move up to July 1, 2018, or we don't, I hope the press will at least be kind about the fact that somebody thinks it's important that we reduce our prison population, somebody thinks that there's something, some ideas out there that are outside the box, and somebody has challenged the folks in the administration that if the Legislature doesn't have it in the right box for your bureaucracy, tell us what that box is that you want us to ask you to do, or tell us where we need to put it. It's time for the state of Nebraska to stand up and say July 1, 2020, is closer than it seems and we need to get outside the box and try to fix some of the things that we can. Thank you. [LB675]

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SENATOR EBKE: Thank you, Senator Krist. Any questions of Senator Krist? [LB675]

SENATOR PANSING BROOKS: Okay, I have one. [LB675]

SENATOR EBKE: Senator Chambers. [LB675]

SENATOR CHAMBERS: Not really a question. There is a saying that the evil men do lives long after they're gone. We could take the easy route and say while we're in the Legislature we'll just mark time and dump it in somebody else's lap. I think that's wrong. We have the wherewithal to do something now and we should not say we'll be here this short time, then others can deal with it. We know what the problem is. Some of us have wrestled with it for over a decade and nothing has been done. Thankfully, the ACLU is finally taking some action. It still, though, isn't too late for the Legislature to act and the Legislature probably won't. But we can at least lend our voice, as you're doing by way of this legislation, to the necessity that we assume a responsibility as policymakers to address a problem that exists right now, not in 2018, '19, it's now and has been ongoing. So for my part--I want to say it on the record--I appreciate what you're doing with this bill. And if there's anything I can do to bring it to fruition, I will. I see it as being more important than any of these tax bills. And we can come back in a special session on the tax as far as I'm concerned. They can put anything on the ballot that they might be able to get on it. That's their area of interest. I'm more interested in what's happening to people who are in the state's custody under circumstances that, in my view, violate the statutes right now. I just wanted to put that on the record. [LB675]

SENATOR KRIST: Thank you, Senator. [LB675]

SENATOR EBKE: Senator Pansing Brooks. [LB675]

SENATOR PANSING BROOKS: I just want...thank you for bringing this and I agree that, you know, something needs to be done. And so I was wondering if you...did you think about anything not quite as draconian as, like, bringing it up to this year, because I just wondered if you thought about an interim step where we could force...I don't know, for us to get us to halfway there, at least, by 2018, to get to...instead of...I mean we're at 156 or something, 155, right now? [LB675]

SENATOR KRIST: The press is a powerful tool, the pen is a powerful instrument, and I think sometimes bringing something into the public eye like this, you're right, it's draconian and it is abrupt. The date of July 1, 2018, is almost insane when you start talking about moving that emergency up. But the point I'll make here is when does the action start,... [LB675]

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SENATOR PANSING BROOKS: Okay. [LB675]

SENATOR KRIST: ...when we declare an emergency, because if we declare an emergency on July 1, 2018, that means we're going to get serious about it and fix it? Or do we wait until July 1, 2020, and say, okay, it's time to get serious about it and fix it? So I'm not sure that the date, which is, I will grant you, draconian in many ways and probably not doable, but what is the action point? What is it going to take for the state to actually say we have a problem and we're going to try to fix it and quit blaming being tough on crime and releasing the most dangerous criminals into the community? For God's sake, when you've got 400 people who are ready to be paroled and they don't have anger management training, what's the issue? The issue is that we haven't provided them or they've said, no, I don't want it, because they want to jam out. Have we heard this record before? It started playing six or seven years ago. Senator Pansing Brooks, I appreciate your comment and it is reasonable. It's just that I'm term limited and I'm unreasonable at this point. I believe that we, you know, if you're given a deadline to get something done, I don't know how you were in school, but tell me I have a paper due by Tuesday and I start it on Monday afternoon, right? Well, I think we're taking that attitude towards this whole issue. I don't think we're preparing ourselves for July 1, 2020. And I'm sure we're going to hear we're doing that or we're making progress. Well, the numbers don't say that we're making progress. Something else I'd like to put on the record. LB605 was the product of a large workload on about a year-plus with major stakeholders who looked at those things and said sentencing reform is extremely important, LB605 will be the impetus behind a reduction. Well, then what happened? We had it all set, ready to go. New administration walks in and county officials, county prosecutors, and people started the discussion all over again. Those same people that sat at the table with us and agreed that LB605 should look like this said, oh, Governor Ricketts, we don't want this, it's not being tough on crime enough. So we whittled it down. You know why LB605 hasn't had the impact that it needed to be? Because we washed it down, we watered it down, we compromised again. So don't blame LB605 on not taking the action it should have. I'm not saying that to you. I'm saying that to general public. The original LB605 would have had a much more dramatic effect. But this administration even bartered down on those issues because it wasn't tough enough on crime. So if this is a major issue in the next whatever campaign is going on, so be it. But I honestly think that reasoned approach, both in terms of the sentencing parameters and the issue that we have right now, which is having too many people and they're double bunked and they're killing each other because they're standing on each other's nose, make no mistake, there would be a man alive today who did nothing but forgery, who was ready to get out of prison, who was put--double bunked--in a solitary confinement situation with a murderer. How do we get ourselves in those situations? I'm done. [LB675]

SENATOR EBKE: Thank you, Senator Krist. Any other questions? I think we're done. Thank you. [LB675]

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SENATOR KRIST: I'm done. [LB675]

SENATOR EBKE: First proponent. We have proponents for the bill and do remember to stack in the chair. [LB675]

KELLEE KUCERA-MORENO: I'm sorry, I am pro-LB675. [LB675]

SENATOR EBKE: Okay. [LB675]

KELLEE KUCERA-MORENO: (Inaudible) is that okay? [LB675]

SENATOR EBKE: No, that's fine. Yeah. [LB675]

KELLEE KUCERA-MORENO: Kellee Kucera-Moreno, Kellee, K-e-l-l-e-e, Kucera, K-u-c-e-r-a, Moreno, M-o-r-e-n-o. Now is the time. My husband was locked up again. He was arrested February 22 for something that he shouldn't even be in jail for. If you just trust me on this, he would not be in jail if it were up to certain people. However, he got another sentence of five years and he was supposed to be off parole two weeks from February 22. This, to me, this is our situation as inmates, inmates' wives, as addicts, as people with mental health problems. The people that are in there need to be responsible for their own recovery. And what I find, my husband Alfredo Moreno and I would like to offer our services. I did make copies, but I was in the newspaper, front page. There's an article October 23, 2017, if people would like to look that up. I don't have 12 copies. It's interesting because I don't read the newspaper and I'm on the front page. And so it's about inmates, inmates' families, stuff like that. She did a great job. All the bills, everything that people have been trying to bring to light, is mentioned in here. If I have time, I'd like to read a letter that Judge Maret did not let me read. I felt like when he went to sentencing, we could have said, hey, there's a mistake here, and from zero to five, he got five because she didn't take a look at anything. So I would like to read my letter. This is August 9, 2017. Dear Judge Maret, I, Kellee Kucera-Moreno, wife of Alfredo Moreno, thank you for taking time to read this, as my sanity depends on it. I'm not being dramatic, but I seriously know my husband feels bad about and takes responsibility for all that has landed him in prison in 2005. Al is a reformed ex-convict. We all...Al is the reformed ex-convict we all hoped for. He was blessed with a spiritual awakening in 2005. He's a fast learner. I'm just improvising now. I can't believe I only have three minutes to discuss this. Al is a fast learner. In 2005-2014, he did everything that was expected. I have piles. This is just my stuff trying to figure out what you all are trying to figure out. And we have ways to do this without money, like maybe just a little bit would be helpful. But he's done...he has certificates, journals, letters, assignments that we could have shown the judge to show her that he does not need a treatment program. When he got his assessment done, they looked at his old number, they looked at him as...and when you look at

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this article, please know that this is a fictitious husband. This is not my husband. But the way it looks, it's describing him as he was in 2005. Again, he's reformed in recovery. I met him. He had ten years' sobriety. He gets a fractured neck. He's put on opiates by the system. The system gave him five different narcotics, to a drug addict. And he's telling Lorna (phonetic) and Mr. Hooper (phonetic), God bless them, at CCCL, he was telling them, I'm an addict, I shouldn't be on these drugs. Anyway, when he was released, he was already in his...his addiction was already, you know, his addiction was already going. And as for the medical part, addiction is a medical issue, as Joe Nigro and as a lot of people know. This isn't a behavioral thing. People don't need to be shamed and blamed. They already do it themselves. [LB675]

SENATOR EBKE: Going to have to cut you off. Any other...any questions? Thank you for coming and testifying today, appreciate it. [LB675]

KELLEE KUCERA-MORENO: Thank you. [LB675]

SENATOR EBKE: Any other proponents? [LB675]

JOHN KREJCI: (Exhibit 3) My name is John Krejci, J-o-h-n K-r-e-j-c-i. I come to testify in favor of LB675 and thank you, Senator Krist, for your passion and this bill and the several bills that you've done. I appended to my testimony a letter to the editor that I sent in 2000. Senator Chambers said we're working at this for ten years. It's closer to 20. And everything I said here is just as relevant today, which means we are treading water, we are doing same old, same old, and it's deja vu all over again. So, you know, let's get going and do something. A few things have been done. The prison population was increasing in 2000 and we solved it by building a 1,000-person prison at Tecumseh, and if you think that solved the problem, well, we can, you know, build another one. I think most people would agree it hasn't done a very good job. We need to think outside the box. We need something new and different. And the idea of just letting people out when they're coming near the end of their sentence, if they're nonviolent offenders, if they've done a good job, makes a great deal of sense. I don't know how the bureaucracy can deal with it but, by golly, it makes a whole lot of sense, though we have to be careful, the last paragraph, I think. When California did it, what they did is put a whole bunch of people in county jails. That gets their population down. That's a shell game. That's...so we want to...we're doing that already but...and it's not very cost effective, so we need to watch out for that. State emergency just makes a lot of sense. And I don't need to reiterate what other people have said and what Senator Krist has so well said. I like the idea of a list of inmates who are parole eligible. I've heard the term 500 thrown around. Inmates tell me that it's...likely it's closer to 1,000, you know, and that it's just a real backlog and a lack of programming. And there's 500 in line for violence control and 500 for substance abuse, something like that. It's a lot. That's really as much as I have to say. Do

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read my op-ed because it's just as relevant today as it ever was. Thank you very much, Senator Ebke and all the committee. [LB675]

SENATOR EBKE: Thank you, Mr. Krejci. Any questions? Thanks for being here. [LB675]

JOHN KREJCI: Thank you. [LB675]

SENATOR EBKE: Next proponent. [LB675]

SPIKE EICKHOLT: (Exhibit 4) Good afternoon, Madam Chair and members of the committee. My name is Spike Eickholt, S-p-i-k-e, last name E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in support of LB675. I'm not going to restate anything. The bill is pretty straightforward. You've got my written testimony so I'll just try to summarize that. Nebraska has had its overcrowding law, we've had this provision in statute since 2003. And the numbers haven't changed since 2003 with respect to the triggering numbers. Emergency overcrowding declaration could be made, an emergency could be declared anytime we're at 140 percent of design capacity. We've been at 140 percent or more for years. I meant to look it up before today. I can't remember when it was. But we've been coasting along that and it's been building now. We've kind of stayed at 155-160 percent of design capacity really continually the last year or so. I think all of 2017 we were I think at average about 157 percent of design capacity. And I know that ultimately it's a policy decision for this body to make, this committee to make, the body to make, but I think what Senator Krist proposes makes some sense. Rather than just waiting for it to somehow magically drop, waiting for it to happen one way or the other, there, arguably, should be some leadership on this point. And perhaps maybe moving the date up to July 1, 2018, at 140 percent and requiring that, maybe a different proposal would be to just stagger it down. If the numbers truly are going to be down in July 2020, perhaps you propose and amend the bill that if by July 1, 2018, if it's at 155 percent, then the emergency has to be declared. And January 1, 2019, if it's at 145 percent and it's declared, or some sort of real plan that assures the public that policymakers can agree on and can at least measure whether we're going the right direction. I think, arguably, I mean I was worked...I worked on the LB605 committee. It was one of the committees that dealt with reform. And I think Senator Krist is right. There were some compromises made, the sort of proposal that CSG had for criminal justice reform and sentencing reform was adopted in part, and you already see bills introduced this session, last session, to sort of undo that, whether it was increasing penalties or amending the way that the CSG program was laid out. So anyway, I'm just kind of deviating. But I think doing something like that to at least get ahead of this issue, try to control it, would make sense. It's going to cost something. I think the fiscal note is probably accurate and it would probably make more sense to phase that in beginning now, rather than just sort of waiting for it just to sort of have the bill submitted to us to pay for it. So we would encourage the body to look at this. [LB675]

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SENATOR EBKE: Any questions? Guess not. Thank you. Are there any other proponents? I see none. Let's move to opponents, anybody opposing the bill. [LB675]

ROSALYN COTTON: (Exhibits 5 and 6) Good afternoon, Chairperson Ebke. Senators of the Judiciary Committee, my name is Rosalyn Cotton, R-o-s-a-l-y-n C-o-t-t-o-n, chairperson of the Parole Board. I have been serving on the Board of Parole approximately 13 years and I'm here to offer testimony in opposition of LB675. Senators, I take my role as the chairperson of the board seriously. Parole plays an important role in the criminal justice system, important because parole is the ideal way for an individual to transition back into the community after incarceration. But the unfortunate reality is that there are individuals who, while parole eligible, are not ready for parole. Paroling these individuals would not only pose a serious public safety risk, but could also harm the individuals' rehabilitation. The board does not arbitrarily grant or deny parole. The board utilizes decision-making guidelines which include data, risk-assessment scores, offense severity, completion of recommended institutional programming, and behavior misconduct. The board goes beyond the guidelines to consider a wide range of factors that assess parole readiness and success. Simply put, if an individual is parole eligible but has not been released on parole, there is a reason. It's not the frequency of parole hearings. I can assure you the board is busy. The board travels to nine correctional facilities every day of the week to conduct parole reviews, parole hearings, and parole review hearings. In most cases, a parole eligible individual has not been released because granting parole would have been contrary to the individual's interest and public safety. If that reason is cured, the board considers the individual for parole. This leads to my concern with LB675. Under the corrections system overcrowding emergency, the board must immediately consider or reconsider everyone who is parole eligible. The board is working very hard with the Department of Correctional Services to discuss a contingency plan should a corrections system overcrowding emergency ever occur. That plan must carefully consider and vet it because, as I have just stated, there is a reason a parole-eligible individual has not been released. I am concerned that efforts to move the date of calling an overcrowding emergency from 2020 to 2018 indicate an expectation that an overcrowding emergency would be declared in July of 2018. As of now, there does not appear to be a way of increasing parole without putting parole at risk. The purpose of the accelerated parole required in an overcrowding emergency is reduce the prison population by releasing a significant number of inmates on parole. That cost, per person, would be approximately \$3,343 and that does not include the services. Because there is a reason the board has not released a majority of the parole-eligible individuals, the clearest way to increase parole would be for the Parole Board to relax its standards. This cannot be desired outcome or all we would do is replace an overcrowding emergency with a public safety emergency. Also, I'd still like to encourage you all to come to parole hearings to see how the process works. Thank you. At this time, I'll answer questions. [LB675]

SENATOR EBKE: Senator Hansen. [LB675]

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SENATOR HANSEN: Thank you, Chair Ebke, and thank you for coming in, Ms. Cotton. What are the most common reasons somebody is denied parole? [LB675]

ROSALYN COTTON: Victims. When we receive information per a PSI or information that comes in for a letter or whatever the circumstances may be, many times victims will show up at a hearing. We've already settled for a hearing. They come to the hearing and protest them releasing them on parole. They will provide additional information, sometimes graphic information that basically does not sit well per public safety. We have individuals who may have detainers, INS detainers. They may refuse the parole. We have them scheduled for the hearing and they refuse to go to their ICE detainer. We had individuals last month, two waived their parole hearing. And as Senator Krist just said earlier, LB...the LR34, LR127 Committee, I basically testified and said these individuals do not want to get out. When they waive their parole hearing, it's like, okay, we'll put you back on hearing status and we will continue to work on trying to get you out. That seems to be the two main reasons why sometimes, and I don't understand, they just do not want to parole. Those are big reasons. [LB675]

SENATOR HANSEN: Thank you. [LB675]

SENATOR EBKE: Senator Baker. [LB675]

SENATOR BAKER: Thank you, Chairman Ebke. Ms. Cotton, what is your idea what we ought to do? [LB675]

ROSALYN COTTON: That's a good question. I think, as I stated earlier, the board is very busy. As being the chair, I have taken other...try to look at other alternatives. I'm working with a parole administrator, Julie Micek, on trying to get other alternatives. I think at this particular time when we look at those individuals that we have not considered, because keep in mind we have to visit with these individuals every single year, and based off that, if they choose not to show up for their reviews...and believe it or not, they do. I had a packet of waivers just last week of individuals who don't even want to see the board. And sometimes if those individuals are low risk and they have not been assessed programming, the Parole Board would set them for a hearing anyways. So I think the ideal thing would be is for us to continue to look at alternatives. And I know, Senator Krist, we've been trying to do this and it's the same old song over and over again. But the bottom line is, you know what, as soon as the admissions come in, we're kicking them out the door. And the ones that's coming in, we got to go through the same process all over again. I, as the chair, we're trying to do the best we can with alternatives. And at this point, we only can continue to work on alternatives because, you know what, each and every day there is something different. I've been on this board, as I stated, for 13 years, and I never even imagined someone not wanting to parole. I don't care if you have 60 days. We are paroling people with 60

days. It doesn't look very good for 30 days, but you know what, we'll try. And there's nothing wrong with that except for it may be more work, but that's okay. We do have a prison that's overcrowded and we are going to try to do the best we can. As Director Frakes stated earlier, we speak monthly, and sometimes weekly, depending on the circumstances. Whatever comes out of this bill, the bottom line is, we as a board still have a job to do. So if that means that I have to go above and beyond the other things that I've stated in my testimony today, that's something that we will continue to do and we try every single day. And that would be my answer. Other alternatives, and we already have two in place that I mentioned to you in the LR127 Committee, and we already are piloting one of those, but once again, you can only pilot so many individuals because, guess what, now we're talking about more tax dollars. But that's okay. The bottom line is we're going to try to make the best that we can with what we have as a constitutional agency. And that would be my answer. [LB675]

SENATOR EBKE: Chair Cotton, you might just make mention of the alternatives because I think I'm the only one that was on the LR127 Committee. [LB675]

ROSALYN COTTON: We had an alternative of those particular individuals that were low risk, one, low risk that were parole eligible that we could parole to the community with treatment recommendations, whether that's intensive outpatient, whether that's substance abuse, inpatient in the community. We have another alternative where we look at individuals based off the fact that even though they may have a short time and they are requiring residential, I just actually piloted one of those individuals last week during a hearing. This individual and this is...this bothers me. This bothers me, and I'm going to be real honest with this committee. This individual came before us for non-child support. He was on probation for two and a half years. His probation was violated. He came back on an assessment, a residential assessment. He literally has approximately eight months, no way he can complete residential in eight months and still do time on parole based off LB605 which requires nine months of parole. So I actually chaired the case and said we're getting ready to do this pilot project and I actually told the individual I am going to be responsible for this pilot project. We set him a hearing for March which is going to be to a residential treatment program, and I used specifically the ARCH treatment program. Parole Administration, Julie Micek is going to be working on that project, which is one of those alternatives that we talked about with the LR127 Committee, and we're going to parole that individual in March to that treatment facility. I gave you handouts, books of these individuals, for these individuals, and what that basically will do is it gives that individual the opportunity to start setting up a treatment plan for that particular project. Those are the particular two alternatives that we're looking at, at this time, and we only got to work within actual dollars that we have in our budget. But if it works, then that's a good thing. We will continue to roll on. So that's...those are the two alternatives I'm looking...we're looking at, at this time. [LB675]

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SENATOR EBKE: Questions? Senator Pansing Brooks. [LB675]

SENATOR PANSING BROOKS: Yes. So I guess I'm discouraged because I'm hearing that there's nothing else you can do, basically, we're status quo on how we get people through parole. There's a new small program that I don't understand anything about, so I don't...I haven't heard about that so I don't know what it is. But so that's discouraging to me to hear you say your hands are tied, it's going to cost more money. How many millions did California get sued for this overcrowding process? How much are you going to have in your budget once a suit comes down with an actual decision? We have got to work together and think out of the box. I'm not hearing we could parole and work with the RAN members, we could do...we could bring in portables. There are all sorts of things that could happen and I'm not hearing any of it and that's what's disappointing and aggravating to me right now. [LB675]

ROSALYN COTTON: Well, Senator Pansing Brooks, and I'm sorry that you're irritated about that now, but I will say to you, whatever it is that we need to do, we're going to do that. And that's why I used the example of the two pilot projects, the two alternatives. Whether we're... [LB675]

SENATOR PANSING BROOKS: And how many are in the pilot project? Excuse me for interrupting. [LB675]

ROSALYN COTTON: At this particular time, we're working and we're looking at between seven and ten. It just kind of depends on, again, those individuals that's going to fit that particular... [LB675]

SENATOR PANSING BROOKS: Seven or ten people? [LB675]

ROSALYN COTTON: That's a start. It's a start. [LB675]

SENATOR PANSING BROOKS: Oh, my gosh. [LB675]

ROSALYN COTTON: It's a start and they're eligible. [LB675]

SENATOR PANSING BROOKS: By 2020, how many would you be able to get through that program? [LB675]

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ROSALYN COTTON: No, no, no, no, no. They'll be already in the community. They're already...it's a community program. They're going to be released to a community program. [LB675]

SENATOR PANSING BROOKS: How many per year can you release in that seven to ten, whatever you're talking about? [LB675]

ROSALYN COTTON: It depends on how many of those individuals are eligible for parole and how many of those individuals will fit our criteria for that. I really think that at this particular time, moment, it's still a work in progress, it's something that we still need to, as you stated, with our stakeholders, with individuals that's going to assist us, such as Department of Correctional Services, with how we can get these people out. That's going to be a day-to-day operation and I am just saying to you that's the...I'm going to do and work as hard as I...which I have been, as well. [LB675]

SENATOR PANSING BROOKS: And would you admit that there are a number of inmates that aren't necessarily violent that we can be talking about, about when we're looking at parole ready, because what I'm hearing is, oh, the Legislature wants to release all the dangerous inmates into the community. And that's not what we're talking about. [LB675]

ROSALYN COTTON: Okay, okay. [LB675]

SENATOR PANSING BROOKS: My knowledge is...okay, what? [LB675]

ROSALYN COTTON: What I would say to you is this. The individuals that are low risk, that are not a public risk, we are taking a look at them anyways and they should not be there. However, just as Senator Hansen asked me earlier about the individuals that are not released, there's a reason why. And I stated that in my testimony. So it's not all the fact that they're not parole ready or they're not...they don't have the programming. Some of these individuals just don't want parole. But I... [LB675]

SENATOR PANSING BROOKS: They still what? What did you just say? [LB675]

ROSALYN COTTON: They just don't want parole. And I think I gave you a list of those 308 individuals that fits that particular criteria that you're talking about. It is just my interest as a Parole Board member to do the duty that I'm required to do and that is to parole individuals. However, if they're parole ready, they're programmed and there's no public threat, they will be paroled. And that's what I can say moving forward. [LB675]

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SENATOR PANSING BROOKS: Well, that's a giant "if," isn't it? [LB675]

ROSALYN COTTON: Well, we'll see what we can do. We're going to do our best, which is what we're doing every single day. [LB675]

SENATOR PANSING BROOKS: And how long have you been doing this, Ms. Cotton? You've been working with Parole for how long? Because I know it's been quite a while and we're grateful for your work. [LB675]

ROSALYN COTTON: I would say probably about 28 years total. [LB675]

SENATOR PANSING BROOKS: Thirty-eight or three to eight? [LB675]

ROSALYN COTTON: Twenty-eight total, full, with Parole. [LB675]

SENATOR PANSING BROOKS: Oh, 28. [LB675]

ROSALYN COTTON: I was a parole officer for 13 years and I've been in this capacity. And if I could have the time to tell you the stories that I actually experienced as a parole officer trying to keep people out, it's a task, it's a task. When we even parole the individuals and they come back on law violations that are serious law violations, felonies, because most of the time with the conditional sanctions we don't even revoke them, we're still working with them... [LB675]

SENATOR PANSING BROOKS: Because they've jammed out, correct? They're jamming out, a lot of them. [LB675]

ROSALYN COTTON: Not necessarily, not necessarily, not necessarily... [LB675]

SENATOR PANSING BROOKS: So they're getting their courses and they're coming back with violent... [LB675]

ROSALYN COTTON: Yes. [LB675]

SENATOR PANSING BROOKS: That's... [LB675]

ROSALYN COTTON: Yes. [LB675]

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SENATOR PANSING BROOKS: What percent is that? Because that really puts the community in a panic with that kind of information. [LB675]

ROSALYN COTTON: I don't know what percentage. I can kind of get you that percentages, but what I do know is... [LB675]

SENATOR PANSING BROOKS: I would appreciate that. [LB675]

ROSALYN COTTON: ...if it's violent, if it's a felony, we're going to take another look at it after they go to court, which will probably be within that three to six months period depending on their sentence structure. So we're continuing to work with those individuals. [LB675]

SENATOR PANSING BROOKS: Okay. The insinuation is that the Judiciary Committee and others want to release these dangerous felons and look at this. With this kind of testimony about, oh, they've been released and they come back, that's what's going to hit the news. And that's not what we're talking about; we're not talking about releasing all the violent felons. There are a lot of other felons in there that are not subject to...aren't there because of violent felonies. [LB675]

ROSALYN COTTON: And... [LB675]

SENATOR PANSING BROOKS: And we heard all that testimony. [LB675]

ROSALYN COTTON: And again, as I stated to you earlier in my testimony, if they're parole ready and if they're eligible, the Parole Board is working with them,... [LB675]

SENATOR PANSING BROOKS: Okay. [LB675]

ROSALYN COTTON: ...no matter what. [LB675]

SENATOR PANSING BROOKS: It's turning the boat, isn't it? [LB675]

ROSALYN COTTON: Well, I'm optimistic. [LB675]

SENATOR PANSING BROOKS: Thank you. [LB675]

SENATOR EBKE: Senator Chambers. [LB675]

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SENATOR CHAMBERS: I've got letters from inmates, from families, from people who work with people in the prisons, and they say there are people ready but they haven't gotten programming because programming is not there. And I'm not going to argue but I'll say this. I want the ACLU to win that lawsuit, then I want the Governor and the Parole Board to tell the court we're not going to let them go. See, things can be told to the senators. Senators are not going to be watchful; they're not going to pay attention to what is happening and not happening. Parole Board members are employees of the state. They don't dictate to the Legislature. To some legislators, they do. When that lawsuit wins--I think the ACLU will win--and the court says reduce the population by this much, regardless of what you, Mr. Frakes, if the Governor happens to win, says, will make no real difference. And sometimes this bantering back and forth means nothing. I've been in the Legislature 43 years. I've seen a lot. I've gotten laws on the books. I used to visit the prison almost daily. I've been in public office, so far, a total of 48 years, 47 because I served on an education operation for the four years I was not in the Legislature, and I hear the same stories. I've been through directors. The job outgrows them. The Governor who makes the appointment has invested something in making that choice and does not want to appear that he made a mistake. The Governors come, they go, and the problems not only continue to exist in the prison system, but they grow increasingly severe. There have been more riots in the last few years than occurred the whole time I was in the Legislature, more killings. Nikko Jenkins continues to get implements by which he mutilates himself. And I'm not going through all that with you because I went through it with Mr. Frakes. And even after we had our conversations, he's not able to walk out that prison and get these implements. They're fed to him by guards, prison employees, and nothing is done. I'm saying that for the record, not to engage you in a back-and-forth. That's why it's not in the form of a question. But I know what I know and nobody can tell me anything other than that. And I wanted my comments on the record as others have done, and that's all that I have. [LB675]

ROSALYN COTTON: Senator,... [LB675]

SENATOR PANSING BROOKS: Can't help it. [LB675]

ROSALYN COTTON: Senator Chambers,... [LB675]

SENATOR CHAMBERS: I don't want to have a back-and-forth with you, so. [LB675]

ROSALYN COTTON: Okay. That's okay. I just have one comment. Is there a possibility when you get those letters that you can ask them to write me personally so that I can address their concerns accordingly? Is that a possibility? [LB675]

SENATOR CHAMBERS: No. [LB675]

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ROSALYN COTTON: Okay. All right. [LB675]

SENATOR CHAMBERS: They write to me because they think that it's not going to do good to send it anywhere else. [LB675]

ROSALYN COTTON: Okay. [LB675]

SENATOR CHAMBERS: And I don't want repercussions... [LB675]

ROSALYN COTTON: Okay. [LB675]

SENATOR CHAMBERS: ...for inmates which will occur. [LB675]

ROSALYN COTTON: Okay. Thank you. [LB675]

SENATOR PANSING BROOKS: So do you have a feel for how many parole-eligible individuals are low risk? Because there's been all these studies, when they're coming in, they're taking these assessments, so we should have a really good idea who is and is not low risk. [LB675]

ROSALYN COTTON: As I promised you in the LR127 Committee... [LB675]

SENATOR PANSING BROOKS: I wasn't on that (inaudible). [LB675]

ROSALYN COTTON: Well, my testimony, my testimony which you asked for, give you numbers, I can get, specifically get those numbers that are low risk that are eligible. [LB675]

SENATOR PANSING BROOKS: Okay. And so have you created a risk assessment or are you using what the Department of Corrections... [LB675]

ROSALYN COTTON: We have our guidelines and we're using STRONG-R from the department. [LB675]

SENATOR PANSING BROOKS: Okay. [LB675]

SENATOR EBKE: Senator Hansen, do you have a question? [LB675]

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SENATOR HANSEN: Yes, I did. Thank you, Chair Ebke. And thank you, Ms. Cotton. You've brought up your budget a couple times, so I guess my question is, are there parole-eligible inmates who would be safe for the community who are not being paroled or not being paroled quickly due to budget limitations? [LB675]

ROSALYN COTTON: No. [LB675]

SENATOR HANSEN: Okay. [LB675]

ROSALYN COTTON: Everybody is being paroled that are eligible, that are parole ready, they're being paroled. That does not have anything to do with our budget. Those individuals are being paroled. [LB675]

SENATOR HANSEN: Okay. Is there any...I guess I don't know the question. So do you feel like that process is as efficient as it can be? Can more staffing, more help, more anything speed up that process or are you kind of running as fast as you think you can? [LB675]

ROSALYN COTTON: No, I think we're pretty...we're running as fast as we can. I think if that was a concern, I think we would just try to work around that. But for the most part, of the individuals that have been eligible, that are ready, they are being paroled. [LB675]

SENATOR HANSEN: Okay. Thank you. [LB675]

SENATOR EBKE: Okay. I don't see any other questions. Thank you. [LB675]

ROSALYN COTTON: Thank you very much. [LB675]

SENATOR EBKE: Next opponent. Director. [LB675]

SCOTT FRAKES: (Exhibit 7) Good afternoon, Chairperson Ebke, members of the Judiciary Committee. My name is Scott Frakes, F-r-a-k-e-s--I'm going to do that one more time, F-r-a-k-e-s--and I'm the director of the Nebraska Department of Correctional Services. I'm here today to testify in opposition of LB675. Nebraska Revised Statute 83-962(1) currently says, "Beginning July 1, 2020, a correctional system overcrowding emergency shall exist whenever the director certifies that the department's inmate population is over one hundred forty percent of design capacity." LB675 would change that date to July 1, 2018. July 1, 2020 is not an arbitrary date. The year 2020 was chosen to allow for Nebraska's justice reinvestment policies enacted by

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LB605 to take effect. A great deal of time and effort went into crafting LB605. There's never been an expectation that the state would realize its impact overnight. As of last year, LB605 has been fully implemented and the state is seeing results. The population is not declining as quickly as the Council of State Governments predicted, which is why, in addition to preparing individuals for parole, we are also adding capacity. We've been thoughtful and measured in our approach to adding capacity to ensure we add new beds at the appropriate security levels. NDCS also has public safety concerns with moving the date up to 2018. During a correctional system overcrowding emergency, the Board of Parole must immediately consider or reconsider committed offenders eligible for parole who have not been released on parole. Releasing individuals on parole because of capacity does not serve public safety. Sixty percent of the individuals who are parole eligible are serving a sentence for a violent crime. Nearly one-half of those parole eligible have served prior sentences with NDCS. About one-third have been paroled during this incarceration, having had their parole revoked or rescinded. This makes it even more important to stay committed to the original date of 2020. The average daily population of individuals at or past their parole eligibility date has steadily declined during the past 18 months, from 25.3 percent in January of 2016, to 19.6 percent in December of 2017. This downward trend shows great progress. NDCS is committed to doing what it can to help prepare inmates for parole. We've worked hard over the last three years to increase the availability of clinical and nonclinical programming and change the way we assess individuals in order to move them through the system more quickly. There are individuals who need programming and are past their parole-eligibility date. With regard to mental health treatment--such as violence reduction program, anger management, and sex offender treatment--with regard to mental health treatment and the parole-eligible population, there are 85 individuals who have been in treatment and failed, 68 individuals who have refused to participate in treatment, and 119 individuals who are on a waiting list. The substance abuse waiting list includes 91 individuals who are parole eligible. These numbers do not represent unique individuals. One person may be on multiple waiting lists due to his or her specific needs. There are many factors that can contribute to a person not accessing treatment prior to parole eligibility. We are completing assessments sooner, providing greater access to treatment, and improving treatment delivery to ensure we meet the need. It's NDCS's responsibility to provide individuals with opportunities to address their needs and be ready for parole consideration at the time they become eligible. We are well on our way to meeting that goal. I'm a strong proponent of parole and believe it makes good sense for public safety to provide a period of supervision upon release, after release. The decisions of the Parole Board must be based on the level of risk the individual presents to the safety of our communities. And I'll try to answer any questions. Thank you. [LB675]

SENATOR EBKE: I have a question and then I will let others jump in. The basics behind LB605 and getting down to that 140 percent of capacity assumed that we would have fewer people going in and more people going out and that that would drop. Now you have to have some combination of fewer people, right? [LB675]

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SCOTT FRAKES: Correct. [LB675]

SENATOR EBKE: So where are we at in terms of intake? [LB675]

SCOTT FRAKES: You know, we're up a little. I don't have an exact number off the top of my head. We're up a little bit. The question that we're working to answer right now is length of sentence, because that's the other factor that contributes to it. So the overall number of people coming in might not change, but if there's a noticeable increase in length of sentence, then ultimately that will contribute to people not coming back out. So we're trying to assess that piece of it right now. [LB675]

SENATOR EBKE: Okay. Is there something that we can be doing as the Legislature that you would encourage us to do as a Legislature to reduce your numbers faster? I mean what do we do come, you know, two and a half years from now if we wait, if, you know, if we're not on the downward trajectory that we thought that we would be? [LB675]

SCOTT FRAKES: Well, so we, "we" being my department, as I said, has an obligation to do everything they can to ensure people are ready when their parole eligibility occurs. We've still got more work to do. We are at...one of our goals was to get that risk-needs assessment completed within 30 days of intake. When I checked last week, we were at about 35 days, so we're pretty close, so that's an important foundational piece to all of this. Next piece is that we would have clinical...initial clinical assessments done within 90 days. I think we're hitting the mark with sex...or, I'm sorry, with substance abuse treatment. I believe we're now hitting the mark, maybe even beating it, with violence assessments. Sex offender treatment, we had significant change in leadership. It kind of came off track for a while. We are back on track. Right now they're assessing people that are 18 months from their parole eligibility. They tell me that within about three months they should be looking at people that have parole dates of 2030 and beyond, so, and ultimately the same goal that they get...no matter what their time structure is, they get an assessment within 90 days of arrival. Then it's capacity and ability to address the waiting list. We've greatly increased violence reduction programming, the violence reduction program, and we increased capacity last year and we increase it even more. We now today have 79 people in violence reduction program. We believe that by the end of the year we should be ahead of our wait list and so substance abuse, on track, delivering well; violence reduction delivering what it needs to; sex offender treatment we've still got work to do and we're really focusing on that piece of it. So that's kind of the high, you know, the 30,000-foot piece of what we do. The other really critical piece Chairperson Cotton talked about is all of these people that aren't interested. They are not interested in parole. They think that they would rather jam out because they don't like supervision, don't want to be supervised. They spend a fair amount of their sentence thinking about other things and then suddenly realize they have a parole date and

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now they're mad because they don't have access. But often when I check back I find that they were assessed years ago, offered opportunities, declined, went in, failed. I'm not going to say that we are doing everything the way we need to. We've got work to do. But we've also got to figure out how do we get these people engaged. So we've got a project that's underway right now to do a lot more work at arrival with reentry preparation, try to really start getting people engaged, and that includes education about why parole is an important part of getting out of the system and staying out of the system, so. And then, I'm sorry, but there is a large chunk of that population today that's past their PED for lots of legitimate reasons, and if we look at each individual case, I think collectively we'd go, yeah, it's probably right that they're not out on parole. But are we getting everybody out that could be out right now from my department and preparing people? No, we've got work to do. Then you really asked, what can you do? Well, I have the resources. I have the behavioral health staff. I've got incredible leadership now, both with Dr. Deol and with Dr. Mitwaruciu in behavioral health, they are...just continue to amaze me with what they're accomplishing. I've got a request coming up for here in a few weeks to talk about continuing to fund the staffing analysis. That's a critical piece. And then I think it's asking us more questions, getting clarification, work with the LR127 Committee. It's seeing what we do and, if it doesn't make sense, helping us explain. And when you see things that, even though we've explained them, doesn't seem to line up with your observations, you know I like to be challenged, so push me. [LB675]

SENATOR EBKE: Okay, so here's a question. As we're talking about the declaration of an emergency, and I don't want specifics necessarily, but, I mean, can you provide us any assurances that we're trying to be prepared, that...you know, at the current rate we're going, it doesn't seem that we're going to get to 140 percent. [LB675]

SCOTT FRAKES: Yeah. [LB675]

SENATOR EBKE: Okay. So are we being prepared, are we ready, are we developing a plan? [LB675]

SCOTT FRAKES: Absolutely. And that begins with all of the foundational work that I just talked about to create a system that prepares people to be ready for parole and looking at our capacity issues as we, you know...one of the things that I recognized early on was we had a need for more low-custody, community-custody, minimum-custody beds. We've got the project that was provided to me by the Legislature, the 100-bed unit opened in September. We've got the 160-bed expansion project at CCCL that's on track to open next January. I have a request to be considered here again in Appropriations for an additional 100 beds at minimum custody because bids came in so low on the CCCL expansion project. I'll be looking at what additional bed space should be considered as we come into the next biennium budget. I've got the project over at RTC

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which adds 64 beds. It's not really a big bed project, but it is a critical bed-space project. So that's roughly 400 beds towards capacity. So that's one of the efforts, that's one of the things that's, you know, looking forward. And then I knew that as we approached this year, that if it looked like we were going to struggle to get to the 140 level, then we needed to start having those conversations. We have a meeting scheduled for next Monday with the Parole Board, my leadership, Parole Board leadership, to begin this discussion about, you know, what do we need to do differently. And that wasn't a meeting that was scheduled because of these bills. That's a meeting that's been on the calendar for several weeks. [LB675]

SENATOR EBKE: Other questions? Senator Chambers. [LB675]

SENATOR CHAMBERS: Mr. Frakes, you have appeared before committees on which I've sat any number of times, isn't that true? [LB675]

SCOTT FRAKES: Yes, it is, sir. [LB675]

SENATOR CHAMBERS: And generally I've questioned you very closely, harshly, and critically, isn't that true? [LB675]

SCOTT FRAKES: But fairly, yes. [LB675]

SENATOR CHAMBERS: And on more than one occasion I've said it is my opinion that the job has outgrown you--this is for the record, and I can establish it, but I have a point I'm getting to--isn't that true? [LB675]

SCOTT FRAKES: It is. [LB675]

SENATOR CHAMBERS: And I have suggested to you and not said it behind your back, that you should either resign or be terminated, and I've said that to you. [LB675]

SCOTT FRAKES: Believe me, I'm... [LB675]

SENATOR CHAMBERS: Well, the record won't show. Would you answer? [LB675]

SCOTT FRAKES: I remember that I should resign, terminated,... [LB675]

SENATOR CHAMBERS: Okay. [LB675]

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SCOTT FRAKES: ...but I'll agree with you. I won't disagree with you. [LB675]

SENATOR CHAMBERS: Okay. And I have complained on more than one occasion that Nikko Jenkins was obtaining instrumentalities with which he mutilated himself, and you were not able to deny that because it had actually happened on more than one occasion, isn't that true? [LB675]

SCOTT FRAKES: Yes. [LB675]

SENATOR CHAMBERS: Do you think that your opposing these bills today comes as a surprise to me? Do you think I'm surprised that you oppose these bills? [LB675]

SCOTT FRAKES: I haven't given it any thought. [LB675]

SENATOR CHAMBERS: No thought? [LB675]

SCOTT FRAKES: No. [LB675]

SENATOR CHAMBERS: Do you think I expected you to be here today? [LB675]

SCOTT FRAKES: I think you expected me to be here today. I didn't give any thought as to what you would... [LB675]

SENATOR CHAMBERS: Have I put many questions to you today, as I've done in the past? [LB675]

SCOTT FRAKES: No. [LB675]

SENATOR CHAMBERS: Have I been confrontational, as I've been in the past? [LB675]

SCOTT FRAKES: No. [LB675]

SENATOR CHAMBERS: Have I said that you should quit or be fired as my opinion? Have I said that to you today, other than in the form of this question? [LB675]

SCOTT FRAKES: No. [LB675]

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SENATOR CHAMBERS: Did you expect there to be a different approach that I would be likely to take from the one that I've taken today? This is not the approach you expected from me, is it, just laid back, an elderly gentleman, letting the tide ride and the flow go? You didn't really expect that today, did you? [LB675]

SCOTT FRAKES: Senator Chambers, I'm never sure what exactly to expect. I thought our last exchange that we had recently was productive and cordial and I enjoyed it, and so I had no reason to believe that today would be any different. [LB675]

SENATOR CHAMBERS: I will tell you a difference. I wanted things said for the record so that my colleagues in the Legislature could check these things out and see if I was making them up, but they didn't have much interest. The Governor knows that the Legislature doesn't have the belly to do what needs to be done, so he disregards what is said by legislators. His office said that it was ridiculous for me to say that the head of State Patrol should be fired, then less than a week later he fired the head of the State Patrol. I don't need, at this point, to hope that my colleagues will get the belly and the grit to do what we all know we need to do. I'm confident that the lawsuit filed by the ACLU is going to produce results. I don't have to persuade the court to do what ought to be done. The courts have taken action in these types of lawsuits of the kind that I would want to see taken in Nebraska. It wasn't done because they were browbeaten by legislators. And I don't have to go through all of the things I was going through before because there was no action during those days that I could look to, to bring about a change. There is action going forward now, and I have been more than heartened by the decision taken by the court yesterday. There were three...I'm being arbitrary. There were six long passes by the ACLU and each one went for a touchdown. There were...there was, but it involved two or three institutions, some off-side penalties, which amount to nothing. I see this lawsuit moving forward. And when the court gives an order, you cannot reject it. You can if you want to, but the court has the means to enforce its orders and its directives. The Governor, as rich as his daddy is, cannot tell the court we're not going to do what you say without there being consequences. So when the need for something no longer exists, I don't do what I had been doing. I don't have to try to persuade you to do anything. I don't have to try to browbeat you into doing anything. I don't have to raise and itemize the riots, the property damage, the killings, the attacks on staff and other inmates. That could be done, but there is no purpose for me doing it now. The record makes it clear that those things have happened. I thought that I could stir you into what I would call a star of manhood. But I'd venture to say if I put some questions to you, it would sound like the same old me, if I talked about, if I asked about the staff morale, is it high, medium, or low, is there overtime still being required, is there still an unacceptable turnover, is there still an unacceptable level of vacancies, are there still episodes of Nikko Jenkins mutilating himself, and I know what the answers would be. So I don't want you to have to leave here today wondering why was there a difference. I want to say on the record why I've comported myself today the way that I have. And I'm going to put you in a position where you can respond to anything or everything that I

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said, or not respond at all. Is there anything you'd like to say in response to what I've said?
[LB675]

SCOTT FRAKES: No. [LB675]

SENATOR CHAMBERS: That's all that I'll add. [LB675]

SENATOR EBKE: Thank you, Senator Chambers. Any other questions? Thank you for being here today. Other opponents? [LB675]

KELLEE KUCERA-MORENO: I would like a chance to share again. [LB675]

SENATOR EBKE: Are you opponent? [LB675]

KELLEE KUCERA-MORENO: Pro, pro. [LB675]

SENATOR EBKE: Pro is done. We're now on the opponent testimony. [LB675]

KELLEE KUCERA-MORENO: (Inaudible) I can't speak again on this? [LB675]

SENATOR EBKE: You can speak in the neutral...in a neutral capacity. [LB675]

KELLEE KUCERA-MORENO: I will do that. Thank you for listening again. Kellee Kucera-Moreno, Kellee, K-e-l-l-e-e, Kucera, K-u-c-e-r-a, Moreno, M-o-r-e-n-o. I feel it necessary to speak again because what those two people said was not accurate. There was information according to my husband and the men that are locked up, men that were at D&E when the fire started. [LB675]

SENATOR EBKE: I'm sorry. Hang on just a second. You already spoke on this bill? [LB675]

KELLEE KUCERA-MORENO: Pro, yes. [LB675]

SENATOR EBKE: You can't speak twice on a bill. I'm sorry. [LB675]

KELLEE KUCERA-MORENO: Oh, I can't speak neutral? [LB675]

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SENATOR EBKE: No, you already spoke once on it, so you can only speak once on a bill. [LB675]

KELLEE KUCERA-MORENO: Okay, thank you. [LB675]

SENATOR EBKE: I'm sorry. I... [LB675]

KELLEE KUCERA-MORENO: Thank you. I'll speak again. [LB675]

SENATOR EBKE: Okay. Okay, is there any other neutral testimony? Losing track of who's speaking when. Senator Krist. [LB675]

SENATOR KRIST: Thank you all for participating today and for listening and for all those who came in opposition or proponent category, or in deference. Hang on to this fiscal note, because as we lead ourselves up to 2020, if we continue to move at this pace, this is what it's going to cost to move forward quickly, in my estimation, or more. So this fiscal note, if you look at it, in adding the number of people, it is, according to our own Fiscal Office, maybe a little too many. I would say that it's not enough. It is what it is. It's going to take a lot of money if we wait and don't do something more aggressively and think out of the box in terms of where we are now. I want you to also note that what the department has just said is that to deal with the overcrowding situation, over a period of time, we will have added 400 more beds. Did you absorb that? Because the whole goal of LB605 and of trying to restore our system was to reduce the prison population and not build another prison. But we're building more beds, we're spending money building more beds. And I would venture to guess that by the time we get to 2020, we may be building even more beds. And I think you heard testimony earlier that instead of dealing with the situation in 2000, we built Tecumseh. So when does it stop? When do we stop building to capacity and when do we start doing something about the folks who are in prison and escalating those things that we need to do? What I heard Ms. Cotton say is they're doing everything they can do, they don't need any more money, they don't need any more help, and yet the fiscal note, again, does not reflect that mentality in terms of the administration. This Legislature and I personally are not asking--say it again so the press can take note of it--we are not asking for the most violent offenders to be let out on the street. We're not asking for what will happen and what did happen in California. We're not asking for an escalation to that point. We're asking people to take particular attention to the fact that the time is running out, the hourglass is now down to a point, and the relationship to government and how government works, two years is not a long time. It is not a long time. It's another fiscal budget process. That's it. Think about that for a second. It's another biennium. I think there was mention, too, and I think that we ask...should ask Ms. Cotton for a differentiation, and Senator Halloran may have already done this, but there are people who are...don't want to be paroled because they don't want to face an INS or an ICE issue

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on the outside. Why are those people allowed to stay in our prison systems as a safe haven for other issues? And do we have another bill that may create vacancies within our system? And then back to the original conversation: behavioral health, mental health, substance abuse. Thanks for listening. [LB675]

SENATOR EBKE: Any questions? Senator Chambers. [LB675]

SENATOR CHAMBERS: Senator Krist, for the record again, I've been in the Legislature for over four decades and I've been a member of the Judiciary Committee for that period of time. And I'm aware of things that other people may or may not be aware of. But because of the way some people are dealt with and talked to by members of the Parole Board, that's why they will not go back for a hearing. They do not want to be put through the put-down, through the degradation, the insults, the retrying of the case, and then be told you're not going to get paroled, come back in such-and-such a time. They know they're not going to be paroled. There's no need in going there, sitting through that, and it being a waste of time, and that's why a lot of people say, I don't want my hearing. They don't say, I don't want to get out of this place. And I just want that in the record. But as I stated earlier, I'm not interested in arguing with these employees who have got to say what is in line with what the Governor has made clear he intends, what he wants to do. When the former head of the Parole Board refused to do what the Governor wanted, she was fired, and I'm sure all employees are aware of those kind of things. The Department of Corrections has always been duplicitous, it has always been less than forthcoming to the Legislature, and they know they can get away with it, but they're carrying out, by and large, what the respective Governors have wanted. And I'm not a partisan. I attacked former Governor Nelson harder than anybody else. He was a Democrat, I believe. And the question I asked repeatedly to the people in the Legislature: If there were a Republican Governor, would you be supporting what's being done now? I was the one who fought just about single-handedly about consolidating all of these entities and creating an HHS as exists now. And I told them this is a ruse by the government, by--Governor Nelson was there--a ruse by the Governor to make it appear that the size of government is being shrunk, that there is less government, by keeping the number of entities but putting them under one label because the public is not attentive. I fought against the building of the Tecumseh prison. They were going to build it way out west and I was able to keep that from happening. I pointed out that most of the inmates will come from the eastern part of the state. That's where their families, any support groups that they have would be there, so they put it in Tecumseh, in a rural area, and the records will show this. I said these white people want black people, by and large--that's who were being contemplated--to come there and be a source of revenue for them in a prison but they don't want them to live in their communities, and that's the way it is to this day. So my record has been fighting against the bureaucratic game playing with people who wind up in prison. They wanted to build some Quonset huts, as I call them, that could tack on to Tecumseh, and I--and at that time, Senator Pedersen joined me--said, no, if you build them, they'll fill them. And that was my mantra. If you

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build it, you're going to fill it. These county attorneys are going to have places to lock more people up. There's no coordination between law enforcement at the state level, the county level, and the city level, so the county attorneys, when they have to make it look like they're tough on crime so they can get elected, they get as many convictions as they can and ask for prison time. And all of those people wind up in the prison. The state is left with the burden of handling them. And it just continued to snowball and snowball until we're where we are now, today, where, as you suggested, they're talking now about doing additional building. As one man who cannot do everything I'd like to do, I will fight against the adding of beds, building anything, and the only thing I have at my disposal is to try to clog up the activity, clog up the channels of this Legislature, and that's what I'm going to give my time to doing. You'll be gone in a year, I'll be gone in three years, unless some people get their wish and the international harvester decides to harvest me before then. But until that day comes, I will fight hard against the things that I think ought not to happen. We've never had a rational policy toward prisons, toward the purpose of a prison. And I can even show articles that were written in the early days of what they call prison reform, where people with that law firm Kutak Rock and Campbell--that was their name--they saw I was virtually standing alone for what was called prison reform and said, whatever you do, don't stop, this is the wave of the future. That's how long ago I was doing this. They had segregated cells at the prison. They had farms at the prison. I objected and said these people are not going to be farmers when they leave the prison, this is a waste of time, a waste of money. They found out that former Warden Sigler had deals with various entities purchasing the products produced through the farm labor of these inmates and just all kind of corruption. I have wanted the day to come for a lawsuit, which is here. And since this will be your last year here, I want to say this for the record. I appreciate the fact that merely because this is the final session, you did not back away from the things you believed in, you offered legislation which I think is very, very good, I think it's essential, it is reasonable, and I'm going to miss you when you're gone. And I'm starting to feel that way already, and maybe that's the sentimentality that they say falls over old people, but in my case I don't think it's that way. It's a case of me being realistic enough to see the reality that's going to be here, to know that nothing I can do or say is going to change it. And you could croak before you get home, I could croak before I get home, and I want what I have to say to be said on the record. And if there are others who are going to leave the Legislature and I think there's something I should say toward them, I'll say it there. But you and I are on the same committee, so I can say it here, you can hear it from me. [LB675]

SENATOR KRIST: Thank you, Senator Chambers. [LB675]

SENATOR EBKE: Any other comments, questions? Thank you, Senator Krist. This closes the hearing on LB675. I'm going to take a five-minute break so that our staff can get up and move around and we'll start back up shortly after 4:10. [LB675]

BREAK

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SENATOR EBKE: Could members be seated, please. We're going to go ahead and get started on LB841, Senator Pansing Brooks. [LB841]

SENATOR PANSING BROOKS: Thank you, Chair Ebke, and good afternoon, fellow members of the Judiciary Committee. For the record, I am Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28 right here in the heart of Lincoln. I am introducing LB841 today to help ensure preparation, planning, and public safety in the event of a prison overcrowding emergency. By statute, as we have heard ad nauseam today, Nebraska has a looming deadline on July 1, 2020. That is the date by which we have to get our prisons to 140 percent or below of design capacity. If we are over 140 percent at that time, an overcrowding emergency shall be deemed to exist and the Board of Parole shall immediately consider, or reconsider, committed offenders for suitability for accelerated release on parole, until which time we are at operational capacity of 125 percent or below. In preparation for this process, we must ensure public safety and determine whether additional legislation or funding will be necessary. Therefore, I am introducing LB841 which directs the Nebraska Board of Parole and the Nebraska Department of Corrections to implement an accelerated parole review process. To ensure our public safety, the Department of Correctional Services and the Board of Parole shall submit to the Legislature a proposed plan on or before December 1, 2018, this year, which describes the process of implementing the accelerated parole review plan process required under Nebraska Revised Statute 83-962. This proposal follows the recommendations that were laid out by the LR34 Department of Corrections Special Oversight Committee that I chaired. And it also follows the LR127 Special Investigative Report which says, in part, "The Legislature, the Department of Corrections, and the Board of Parole should develop a framework for a response to a declaration of a Correctional System Overcrowding Emergency," and, "the LR127 Committee believes that the Board of Parole and Parole Administration should review the implications of an overcrowding emergency and should work with the Department of Correctional Services to determine the costs of such a situation and determine the type of inmates that might be impacted by such a situation." This bill is simple: plan ahead. The numbers show we need to start planning now. According to the 2017 Inspector General's report, Nebraska's prison overcrowding rank is now second only to Alabama. The average daily population of Nebraska's prison system is 5,343 inmates and our total design capacity is 3,435; again, 5,343 and we're supposed to be at 3,435, according to Corrections data, which is putting us up above 155 percent of design capacity. We are in an overcrowding emergency now. LB605, which implemented a number of criminal justice reforms in 2015, moved us in the right direction but has not moved us far enough. It has resulted in a...and it has not resulted in the dramatic reduction of the overcrowding numbers that we need to have. In fact, our prison population has decreased by only 142 inmates in total numbers since the passage of LB605. At this point, the trajectory is not moving fast enough for 2020. We must continue to monitor the progress of LB605 but we must also take action now. I have other proposals this session on sentencing reform. There is no question that lack of programming, understaffing in our prisons have all

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exacerbated our overcrowding crisis, but so have our policies on sentencing. While we look at those necessary changes, we must take action now to ensure that individuals are released back into the community in a way that keeps all of our citizens safe should an overcrowding emergency finally become declared. We need to look at all options available to facilitate a looming gubernatorial declaration of an emergency. LB841 represents a commonsense, bipartisan approach to ensuring we meet our statutory requirements in a safe and collaborative way. I want to thank the LR127 members who signed on as bipartisan cosponsors of LB841. Further, Director Frakes said today in his written testimony for LB675, "Releasing individuals on parole because of capacity does not serve public safety." I totally agree with that statement. I agree with it whether it's today or whether it's in 2020. This bill is about protecting the public's safety. I call it the three Ps: preparation, planning, and public safety. We must all work together. We need to quit pointing fingers and use all of the strong minds around every table to solve the issues that are critical to the safety of our communities. I ask you to advance this bill to General File and with that I'll answer any questions you might have. [LB841]

SENATOR EBKE: Questions for Senator Pansing Brooks? None yet. [LB841]

SENATOR PANSING BROOKS: Thanks. [LB841]

SENATOR EBKE: First proponent. [LB841]

DOUG KOEBERNICK: Good afternoon, Senator Ebke and members of the Judiciary Committee. My name is Doug Koebernick, K-o-e-b-e-r-n-i-c-k, and I am the Inspector General for Corrections for the Legislature. I'll make this really brief. I've been public on this. I've testified on this issue before. In 2016 and 2017, in my annual reports I made this recommendation to do this plan and I...it's kind of whatever...pretty much what Senator Pansing Brooks said I would echo and would just ask for your support of this legislation because it's important to plan and know what we need as far as resources in Parole, the community, and everything as we move forward on this, as the state moves. [LB841]

SENATOR EBKE: Thank you, Mr. Koebernick. Any questions for the Inspector General? Okay. Thanks. Next proponent. [LB841]

KELLEE KUCERA-MORENO: Kellee Kucera-Moreno, K-e-l-l-e-e, Kucera, K-u-c-e-r-a, Moreno, M-o-r-e-n-o. First of all, I'd like to thank all of you. I did not know anything about the newspaper until I was put on the front page. I didn't really know anything about what you guys all do, and I've done a lot of Googling and I just appreciate everything you've done. There was a special investigative...you guys already did this. You guys already checked into this. There is a problem and it needs to be addressed. And I'm mad about it. You know, I tried to be nice. I tried

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to go talk to, you know, Mr. Frakes and offer Al's and my service. I would like to offer that again, Alfred as an inmate and me as family. I don't want to call him an inmate. He's an incarcerated person and he shouldn't be. If there's anything that we can do that kind of clarifies, because that's the root of it, the root of this is how do we get people to...what do we do with people? And if I could read something to you on addiction, I guess I would do that real quickly. "Addiction is a complex disease of the brain and body that involves compulsive use of one or more substances despite serious health and social consequences. Addiction disrupts regions of the brain that are responsible for reward, motivation, learning, judgment and memory. It damages various body systems as well as families, relationships, schools, workplaces and neighborhoods. Addiction is defined as a disease by most medical associations," including AMA and the associate...or American Society of Addiction Medicine. I've been in recovery since 1986. I know what it's like to drink, use drugs, get clean and sober, and then choose that lifestyle. I met Al in 2014 in a recovery program. He was incarcerated at 2005, chose recovery reform. He did what was asked of him in 2005. Prior to that, it was drugs and weapons charges. When he's looked at again, they go back to that time. They don't look at the fact that he's been sober ten years, running sweat lodge, helping a lot of people in recovery. Other information that was brought up, I would talk to somebody after this, but what Mr. Frakes and the parole officer stated is not true, it's not completely correct, as far as I'm concerned. One more thing, I have 100 names of people, of a witness list that were affected by the fire out at D&E. There's 100 people that have not been...that the ACLU have not...we're ready to do something about it. It's not okay. So we're here if you need us. [LB841]

SENATOR EBKE: Thank you. Questions? Okay. We're good. Next proponent. [LB841]

SPIKE EICKHOLT: (Exhibit 2) Good afternoon, Madam Chair and members of the committee. My name is Spike Eickholt, S-p-i-k-e, last name E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska, testifying in support of LB841. I want to thank Senator Pansing Brooks for doing this bill. Senator Pansing Brooks explained the bill. It's fairly straightforward. And we've talked about these other bills today, about the deadline or the date or whatever you want to call it, of the emergency date of July 1, 2020. I think it just makes sense and we think it would make sense for the Legislature to instruct these, both the Department of Corrections and the Board of Parole, to sort of in some detail, or at least in some formal detail, explain what their plan, proposal, how they envision the emergency declaration working if we get to that point. As I said earlier on another bill, it's been on the books since 2003, this emergency provision or the emergency declaration option. It's never been used. It's never been implemented. And as Senator Pansing Brooks explains, it would just make sense to have some sort of idea of how this would work in practice if it ever comes to that. I suspect that Director Frakes and Chairperson Cotton have already sort of looked at this possibility internally. I would still urge the committee and the Legislature to do something formally. As you know, when sometimes there's assurances that we'll provide, we'll share with you, but unless you have it in formal statute or at least some sort

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of explicit date, sometimes those things can just get lost in the legislative shuffle. Other issues come up and things just kind of get lost by the wayside. So we would encourage the committee to advance LB841. [LB841]

SENATOR EBKE: Thank you, Mr. Eickholt. Any questions? I see none. Thank you. Are there any other proponents? Do we have any opponent testimony? Do we have anyone testifying in the neutral capacity? Senator Pansing Brooks, do you want to close? [LB841]

SENATOR PANSING BROOKS: I think I'll waive. It's pretty... [LB841]

SENATOR EBKE: Waive? Okay. That concludes the hearing. I do have a couple of letters to read in, and we missed them in LB675, so these first two letters are from LB675. We have a letter from Debrah Boye, on behalf of herself, in support, and from Fran Kaye, from herself, in support. (Exhibits 1 and 2) And then on this one we have, from LB841, Debrah Boye, so on behalf of herself, in support. (Exhibit 1) That closes the hearing on LB841. Let's move to LB692. And, Senator Blood, thank you for being here today. [LB675 LB841 LB692]

SENATOR BLOOD: Good afternoon to the Judiciary Committee. Apparently it's Corrections day. [LB692]

SENATOR EBKE: It is. [LB692]

SENATOR BLOOD: I'm happy to be presenting the last bill, I think, of your agenda. [LB692]

SENATOR EBKE: We're happy to have you presenting the last bill. [LB692]

SENATOR BLOOD: And I will do it with a kind and happy heart. [LB692]

SENATOR KRIST: Great. [LB692]

SENATOR BLOOD: (Laugh) So good afternoon to you all. My name is Senator Carol Blood, and that is spelled C-a-r-o-l B-l-o-o-d, and I represent District 3, which is western Bellevue and southeastern Papillion, Nebraska. First let me thank you for the opportunity to share LB692 with you this afternoon. LB692, as you know from today, is my part of what is a larger package of bills which arose from the LR127 report which was released by that committee in December. These bills are all aimed at helping the Nebraska Department of Corrections address a wide variety of problems that have plagued them for far too long. This bill is meant to create a focus

to help solve problems the department has acknowledged it has when it comes to getting and keeping staff, especially in the areas of mental health. LB692 requires the department to conduct a departmentwide staffing analysis. The analysis should be tailored so that the end result is a definitive and comprehensive statement on the staffing needs for the department. A staffing or workplace analysis is the foundation of any successful organization attempting to move forward in a successful and strategic fashion. This is how the Department of Corrections can maintain a sufficient and sustainable work force when performed correctly and when the data is implemented properly. It ensures that organizations such as Department of Corrections has the right people with the right skills at the right time. This particular model clarifies what and where gaps may be in the current work force. I should note that this can easily be accomplished in house, and is usually facilitated by an HR team and, in this case, as well as the director, the NDCS executive team, of whom six directly already oversee areas that involve staff, as well as five additional competent leaders that are also part of that executive team. The usual process for an assessment is actually very uncomplicated, and if you're told otherwise, that's not true. To begin, you create or update the strategic plan for your organization. And I am confident, with the hard work that's been put in by Director Frakes, this has been accomplished recently, because a strategic plan is a living, breathing document that must be revisited on a regular basis to ensure an organization's success. Now this sets the foundation for the process by providing the mission and measurable goals, objectives, and time frames for accomplishing them. Next, the team will select the scope for the workplace analysis. This determines the focus of the workplace planning initiative, and after the scope is determined they will identify what work functions apply to the Corrections work force. In other words, what needs to be performed by staff to meet the aforementioned strategic goals? Next the team will identify key positions, such as mental health. They will identify the staff by competencies and the number required to accomplish the needed work functions. With that information, the team then needs to project the future staffing supply. They will project the work force needed, including competencies and numbers to accomplish the goals for the projected staffing supply. Once gathered, they will compare the staffing requirement gleaned from step four with the work-force supply projected in step five. This will show where they may...where there may not be an adequate work force to perform further work functions or staffing may exceed the need. And now they have the information to develop the staffing priorities and create solutions. This will establish the priorities for the gaps intended...excuse me, for the gaps identified, and meet the goal of creating solutions to meet those needs. And now the Department of Corrections can implement solutions with a written implementation plan. They will take the plan and evaluate it by assessing what is working and what is not. Adjustments can be made as needed, and the organization can then address new work-force and organizational issues. To put it in a sentence that we can all understand, we must measure what we treasure. Numbers don't lie. I want to be clear that we have put in the bill that while this larger analysis is going on, the department can still make short-term recommendations based on what it thinks it needs in order to staff up. These staffing areas, which can be looked at and suggested, include facility administration and support staffing. However, after reviewing the proposed fiscal note, I

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personally question if this practice is taking place and I find that concerning and I would encourage you to look at both sides of your fiscal note because I see two different opinions when it comes to the true cost of doing this type of programming. The staffing analysis must be completed and submitted to the Legislature by December 15 of this year. That is just the start of this process. We cannot allow the department to carry out this report and then rest on its laurels. If we do this, we are not doing the process justice, nor are we truly helping to lift up the Department of Corrections. Because of this, I have put in a provision that will require the department to continue evaluating and analyzing their staff needs in an ongoing process. They will need to submit an updated report to the Legislature on or before December 15, 2020, and then they will need to continue to do this every two years. In addition to placing this process in statute, it gives the Legislature a document that has been well researched with valid information that can easily be interpreted. I want to say that I truly understand the Department of Corrections may not like having this kind of staffing analysis mandated on it, but I think if Director Frakes and his staff take a good, long look at this language, they'll understand a few things. I absolutely am not attempting to get in the way of them doing their jobs. I truly believe in regards to a mandate like this that I'm removing some barriers. This is the kind of thing they might have problems justifying to certain individuals if they were doing this kind of analysis on their own on a rotating basis. By legislating them to do so, the decision is out of their hands. Many of you know that I have past experience in Corrections. I've seen the good and the bad the department has to offer on a daily basis. I've also seen the same problems in the system repeat themselves over the decades. I've felt the strain that is put on employees and inmates when a facility is not staffed correctly. That is why I wanted to carry this bill. This isn't about any sort of perceived power struggle and personally I don't think that power struggle exists. I think everyone involved truly wants to fix the problems that have been going on in the Department of Corrections long before Director Frakes, before Governor Ricketts or any one of us, with the possible exception of Senator Chambers. I believe that we all want our Corrections--wanted to make sure he was listening--I believe that we all want our Corrections Department to shine, raise the bar, and become an exceptional example to other states. I believe they have the ability to do this and I want to support them in their ongoing efforts. I also believe the problem, when it comes to staffing, is one that needs a fresh approach. I think we need to take a deep dive into where we are and what we're going to need moving forward, and that's the purpose of this legislation and that's why I would ask you to advance the bill out of the Judiciary Committee and on to the floor of the Legislature for debate. Thank you, and I'd be happy to answer any of your questions at this time. [LB692]

SENATOR EBKE: Questions for Senator Blood? Senator Chambers. [LB692]

SENATOR BLOOD: Yes, Senator. [LB692]

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SENATOR CHAMBERS: Senator Blood, you've had experience with the Department of Corrections, haven't you, not as an inmate... [LB692]

SENATOR BLOOD: No, not as an inmate,... [LB692]

SENATOR CHAMBERS: ...as far as I know,... [LB692]

SENATOR BLOOD: ...not as an inmate of an... [LB692]

SENATOR CHAMBERS: ...so in what capacity? [LB692]

SENATOR BLOOD: As an officer, a corporal, and a caseworker. [LB692]

SENATOR CHAMBERS: Say it again? [LB692]

SENATOR BLOOD: As an officer, a corporal, and a caseworker. [LB692]

SENATOR CHAMBERS: All right, officer, corporal, and caseworker. [LB692]

SENATOR BLOOD: Yes. Back then, you could not get hired as a corporal off the streets; you would have to test to become a corporal so you would understand the rules, especially when it came to safety while working face to face with an inmate. [LB692]

SENATOR CHAMBERS: So from your experience, you have an awareness that there is a direct relationship with what you're recommending and the goal to be achieved. You're not just theorizing and speculating. [LB692]

SENATOR BLOOD: I actually speak from more than just that one hat. I also speak as a business consultant. When I saw the fiscal note on what the proposed cost of a work force analysis would be, I thought it was a typo. This is something that any successful organization does on a regular basis, so I also wear my business consultant hat. This is an easy process that people dig their heels in when they have to the first time, but after you get into the groove of doing it, it becomes second nature. And it's...it is truly a foundation for the success of any organization, and it helps set the bar high. And it's going to make for a happier work force and it's going to make for happier executives because they're going to not have to worry about it anymore because it's already put into process. They're going to know what they need, when they need it, why they need it. [LB692]

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SENATOR CHAMBERS: I'm convinced. Thank you for your help. [LB692]

SENATOR EBKE: Any questions? [LB692]

SENATOR BLOOD: All right. [LB692]

SENATOR EBKE: Okay. [LB692]

SENATOR BLOOD: Thank you. [LB692]

SENATOR EBKE: Thanks. Going to hang around to close? [LB692]

SENATOR BLOOD: Sure. [LB692]

SENATOR EBKE: Do we have any proponents for LB692? [LB692]

DOUG KOEBERNICK: Good afternoon, Senator Ebke and members of the committee. My name is Doug Koebernick, K-o-e-b-e-r-n-i-c-k. Almost forgot how to spell my own name. Must mean I need to go home. I am Inspector General for Corrections for the Nebraska Legislature. I'm here to testify in support of LB692 and want to thank Senator Blood for initiating this discussion. In 2016, the department conducted a staffing analysis of their protective services positions at each correctional facility and found that they had a need for an additional 138 positions within the department. Those were like correctional officers, corporals, caseworkers. In my 2016 annual report, I recommended that they conduct a departmentwide staffing analysis of all the positions. I included that again in my 2017 annual report after hearing from numerous staff during the course of that year. When they talked about the need to establish positions in other areas, not just those protective services positions, they talked about the need in administrative support, medical, recreation, maintenance, and even higher ranked security and case management positions. One of the main reasons for the need for this analysis, in my opinion, is the role of many positions in parts of each correctional facility has changed over the last several years. We've seen a shift in the populations at each facility, we've seen growth in the numbers, things like that, and I think that's impacted the ability to deliver services, whether in education, programming, health, or recreation, to the population. There might be a need for more recreational staff due to increase in population, but at this time we don't really know, at least in my opinion. I don't...I haven't seen anything that shows that they have looked at issues like that. But I hear from those staff that feel like they need more supports around them continually. Having an accurate assessment of the true staffing needs will not only provide the Governor, the Legislature, and the department with a greater understanding of what needs to be done to

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enhance our correctional system, it could also positively impact the lives of the inmate population and the existing staff. And with that, I ask for your support of LB692. [LB692]

SENATOR EBKE: Thank you. Any questions for the Inspector General? Guess not. Thank you. Next proponent. [LB692]

KELLEE KUCERA-MORENO: Kellee Kucera-Moreno, K-e-l-l-e-e, Kucera, K-u-c-e-r-a, Moreno, M-o-r-e-n-o. Thank you guys again. This isn't as scary as I thought it would be because you guys are real and I know what you guys have done because I've like looked it up. And Senator Krist isn't here, but I guess that's going to be our new Governor. Yay! I'll do whatever I can for these five things to go through. I mean it's practical. Thank you for doing this, by the way. I mean that sounds so...this is neutral. This bill is a neutral bill. This isn't pro or con anybody. You have to talk to the inmate and the inmate families. You know, if you want things to be changed, you got to see what do people want to do. People don't want to be told what to do. What are they willing to do? You know, an inmate might not be willing to quit drinking, but is he willing to quit beating his wife? You know, can he stay home and pretend to be a deadbeat dad or mom? I'm sarcastic, but people, most people don't want to change. Most people aren't going to change because they're addicts. They are wired a certain way. And we're wired to want pleasure and we're going to get pleasure wherever, you know. What the system has to offer is not pleasurable. People are being punished in there. They already feel bad about themselves. My father died January 3 and my husband should have been out here by my side. Every day \$100 comes out of my income. Our household income is not there because he's somewhere else, and he shouldn't be, because of the gaps in the system. On the inside and on the outside, we are both doing what we can. He talks to staff in there. There's things that can be done. I spent \$88 and I sent my husband "12 Steps to Wellbriety," a treatment packet. He's not getting what he needs in there. These men are addicts and they're not...their medical needs are not being met. They're sitting there doing nothing. You know my thought to...I talked to the deputy warden at D&E and suggested that at the beginning of the day give them a flier: Do you want to work on criminal thinking or criminal behavior? Give them a paper and a pencil. Find out what they want to do. It's not that complicated. And, Senator Chambers, I'm really sorry we've dropped the ball. And I don't know what all you've done, but it's a lot and we're going to pick that up there. We're not going to...we need to find out what you want and we're going to do that in honor of you. Thank you. [LB692]

SENATOR EBKE: Okay. Any other proponents? [LB692]

SPIKE EICKHOLT: (Exhibit 2) 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 ACLU of Nebraska, testifying in support of LB692. Senator Blood explained the bill very well. I'm not going to

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restate anything she said. I think the bill's proposal is straightforward, it makes sense. This committee has heard a number of different Corrections bills over the years and I know the committee is familiar with the problems of staffing at the Department of Corrections, the problems with excessive vacancies, the overtime, the mandatory overtime, retention policies, stagnant pay, and all of those interrelated problems and the interrelated problems that that has with the overcrowding problem with Department of Corrections. I think this is one part of, area of focus the committee ought to consider and we would urge the committee to advance it to the legislative body. [LB692]

SENATOR EBKE: Thank you, Mr. Eickholt. Any questions? Thank you. Are there any other proponents? Opponents. [LB692]

SCOTT FRAKES: (Exhibit 3) Once again, good afternoon. Chairperson Ebke, 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. I'm here today to provide testimony in opposition to LB692. LB692 requires NDCS to conduct a departmentwide staffing analysis by December 15, 2018, and update the analysis every two years thereafter. Addressing staffing needs is a top priority for NDCS. In order to address these needs, NDCS developed a protective services staffing model in 2016 and is currently in the process of reviewing our staffing as part of the biennium budget process. The current NDCS staffing priorities are protective services and behavioral health. The recently completed protective services staffing analysis required over a year to train staff, conduct the analysis, and develop a staffing model. It would be premature to repeat the protective services analysis before we have fully implemented the initial model. With regards to the other areas of the department, it would require outside consultants to complete the staffing analysis required by LB692 by December 15, 2018, due to the need to train staff, conduct the analysis, and develop a model. An example of staffing review we are currently undertaking as part of the biennium budget process is the work our medical director, Dr. Deol, as...who has been reviewing the current medical and behavioral health staffing across the department. Any identified needs will be addressed through our budget request that I must submit in eight months. Thank you for the opportunity to testify today, and I'd be happy to answer questions. [LB692]

SENATOR EBKE: Questions for Director Frakes? I see none. Thank you. Are there any other opponents? Any to speak in the neutral capacity? Senator Blood, would you like to close? [LB692]

SENATOR BLOOD: I would. (Inaudible) get out of here by 5:00. [LB692]

SENATOR EBKE: That's amazing. [LB692]

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SENATOR BLOOD: I know. And you're going to end with a smile. [LB692]

SENATOR EBKE: That's right. [LB692]

SENATOR BLOOD: I would actually like to say that I think that Commissioner (sic) Frakes and I are actually closer together than he may believe, because he sat here and he's already told us that he's already got part of the work completed that he's going to need for this analysis. If outside assistance is required for this type of workplace analysis, as a professional, this tells me one important thing. Either they're not capable of doing it and that new staff needs to be brought in that understands this concept, or they're digging in their heels because we're asking them to do one more thing. This is not a difficult thing to do. This is just something that's new and, as we know, it's just human nature when there's something new to do that people dig in their heels and they're resistant because people in general don't want/like change even though change is truly the norm. We all know sitting here that the issues that are going on in the Department of Corrections are not new issues. They're cyclical. So what we do today on these bills, but mine especially, are going to make a difference in the future. If we don't start planning for the future, we're going to keep repeating the same issues over and over and over again, and I think that's humiliating because there are so many smart people sitting at these tables in front of me, so many, in general, smart people on the floor of the Legislature that understand that we need to be forward thinking and that we need to create change. And this is a really simple, cost-effective way. It is not going to be \$150,000. I'd also like to address that one thing. The one thing I've learned being a public servant for over nine years is that government gets screwed a lot when it comes to contractors, so they may very well have been quoted \$150,000. But I guarantee there are capable and qualified consultants that would do it for \$5,000-10,000 here in the Lincoln area. But again, I don't think a consultant is necessary. I think that's a cop-out. So please consider moving this bill forward. I hate being so blunt, but the bottom line is it needs to be done. I believe it's on page 23 of LR127. They're very specific it needs to be done, and this is not the first time they suggested this has been...needs to be done. So I look to your expertise and your intelligence to help me move this bill onto the floor. Thank you. [LB692]

SENATOR EBKE: (Exhibit 1) Thank you, Senator Blood. Any questions? Okay, we have one letter in support from...on LB692 from Michael Steadman of NAPE/AFSCME in support. That will conclude our hearing for LB692 and concludes our hearings for today and we'll see you tomorrow at 1:30. [LB692]