

Judiciary Committee February 6, 2019

LATHROP: [00:00:03] Good afternoon and welcome to the Judiciary Committee. My name is Steve Lathrop. I am from Douglas County, representing District 12 which is Ralston and parts of southwest Omaha. Let's see-- I got a few things I need to read as we start to kind of let people understand how we function here. On the table inside the doors that you-- that you came in by, you will find yellow testified sheets. If you are planning to testify today, this helps keep-- allows us to keep an accurate record of the hearing. There is also a white sheet on the table if you do not wish to testify but would like us to record your position on the bill. Also, for future reference, if you are not testifying in person on a bill but would like to submit a letter for the official record, all committees have a deadline of 5:00 p.m. the day before the hearing. We'll begin bill testimony with the introducer's opening statement. Following the opening, we will hear from proponents of the bill, then opponents, and finally, anyone speaking in a neutral capacity. We will 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. We utilize an on-deck chair to the left of the testifier's table. Please keep the on-deck chair filled with the next person to testify to keep the hearing moving. If you have any handouts, please bring at least 12 copies and give them to the page. If you do not have enough copies, the page can help you by making more copies. We will be using the light system. It's right here. I point that out because apparently not everybody can see it. [LAUGHTER] When you begin your testimony, the light on the table will turn green. The light will turn-- when the light turns yellow, that's your one-minute warning. It's a three-minute opportunity to testify. When the light comes on, we ask that you wrap up your final thought and stop. As a matter of committee policy, we remind everyone to use-- that the use of cell phones and other electronic devices is not allowed during public hearings, though senators may use them to take notes or stay in contact with staff. At this time I'd ask everyone to look at their cell phones and make sure they are off or in the silent mode. Also, verbal outbursts or applause are not permitted in the hearing room.

Such behavior may be cause for you to be asked to leave the hearing room. You may notice committee members coming and going today. That has nothing to do with how they regard your bill or the bill being heard, but senators may have bills to introduce in other committees or have other meetings to attend. And one last thing, since we are holding our hearings in the Warner Chamber while our regular hearing room is being renovated, please remember that water bottles, soda cans, or cups are not permitted on the desks to avoid any damage or watermarks. We're also going to take a moment and allow the senators to introduce themselves and we'll start to my left with Senator DeBoer.

DeBOER: [00:03:23] Hi. My name is Wendy DeBoer. I'm the senator from District 10 which is Bennington, the surrounding areas, and northwest Omaha.

BRANDT: [00:03:31] I'm Tom Brandt. I have Legislative District 32 which is Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster Counties.

PANSING BROOKS: [00:03:41] Good afternoon. I'm Senator Patty Pansing Brooks from-- representing District 28 right here in the heart of Lincoln. And I'm Vice Chair of the Judiciary.

MORFELD: [00:03:52] State Senator Adam Morfeld, District 46, Northeast Lincoln.

SLAMA: [00:03:57] State Senator Julie Slama, District 1, covering Otoe, Nemaha, Johnson, Pawnee, and Richardson Counties in southeast Nebraska.

LATHROP: [00:04:05] Assisting the committee today are Laurie Vollertsen, who is our committee clerk here. Neal Erickson and Josh Henningsen, our-- are our two legal counsel. And committee pages are Alyssa Lund and Dana Mallett, both UNL students. And with that, we'll begin with our

first bill which is for consideration today, which is LB277 and Senator McCollister. Welcome.

McCOLLISTER: [00:04:31] Yeah, thank-- thank you, Senator Lathrop, and good afternoon, and members of the committee. I'm John, J-o-h-n, McCollister, M-c-C-o-l-l-i-s-t-e-r, and I represent the 20th Legislative District in Omaha. Today I'm introducing LB277 to start a discussion about the future of our Board of Parole. The ideas in this bill are not meant to criticize the current or former board members. It is, however, for the Legislature to consider the current makeup and appointment process for the board and to decide if any improvements are needed to our current parole system. Before I highlight the main provisions of LB277, I want to offer a brief overview of this independent agency of our state government. Current state law requires the Governor to appoint five members to the board-- to the board. Members are full-time employees and the statute says the members shall "be of good character and judicious temperament." All members are subject to the confirmation of the Legislature. Members are appointed to a six-year term. No term limits are placed on them. At least one member of the board must be an ethnic minority person and at least one member of the board must be female. At least one member of the board must have a professional background in corrections. The chairperson of the board is appointed by the Governor. LB277 would make three changes to the Nebraska Board of Parole. First, the first change in LB277 would require that starting in 2020 one member of the board must have professional experience in treating mental illness or substance abuse. Many states like Nebraska have specific criteria in their law regarding the background of board members. Some require individuals to have experience in the law, criminal justice, and human resources. Iowa requires one member to have a counseling background. Montana requires one member to be a mental health professional. Due to the increase in behavioral health issues in our criminal justice system, and especially in our correctional system, this would make sense to have a member with training and experience with these issues when the board considers the release of inmates who may struggle with such issues. Second change would require that the board elect its own chairperson. At least five states allow their parole boards to

choose their own chair. In 2015 the Legislature made the Nebraska Board of Parole an independent agency. This procedural change would enhance the board's independent status. LB277 would require board members to appoint a chair to a four-year term. I see this as a starting point in the discussion. The third change would limit each member's appointment to one term of eight years. Board members are appointed to a six-year term-- would be appointed to a six-year term and can be reappointed to additional terms, as present. There have been concerns for some time, whether real or perceived, that a board can face political pressure because it takes a decision that can be heavily scrutinized-- because it makes a decision that could be heavily scrutinized and politicized.

Eliminating concerns about a board member's eligibility for reappointment based on previous parole decisions might grant the members an even a larger degree of independence in performance of their duties. I would call your attention to a letter of support for LB277 that was submitted by one former and long-serving Legislative Ombudsman Marshall Lux. Marshall's-- Marshall's letter contains a thoughtful and compelling observation that we should at least heed as we consider the changes as proposed in LB277. In his first paragraph he stated, "I would suggest that LB277 is one of the most important measures that will come before the Judiciary Committee in 2019." In closing, I want to thank the current board for its work on behalf of the state. Theirs is not an easy job. I suspect the members seldom feel their work is appreciated. My hope is that LB277 will start a discussion that may result in enhancements to our parole system. Thank you.

LATHROP: [00:09:19] Thank you, Senator McCollister. I see no questions. You're going to stay to close?

McCOLLISTER: [00:09:25] Yes.

LATHROP: [00:09:26] Perfect. If you're here to testify as a proponent, you may come forward.

Anyone here to testify as a proponent? Anyone here to testify in opposition to LB277? Anyone here

in a neutral capacity? All right. Senator McCollister to close.

McCOLLISTER: [00:09:53] No closing.

LATHROP: [00:09:55] OK. Very good. Thank you. Before we close the hearing, though, we'll-- the record will reflect that we have three letters of support, one from Kelly Keller from the National Association of Social Workers, a second from Marshall Lux on behalf of himself, and Spike Elliot [SIC--Eickholt] with the ACLU of Nebraska, no letters in opposition, and one neutral from Rosalyn Cotton, Nebraska Board of Parole. With that, we'll close the hearing on LB277, and that will bring us to Senator McCollister once again and LB443. Thanks for that assist.

McCOLLISTER: [00:10:38] I come here so often I can even change my own signs.

LATHROP: [00:10:41] Yeah. [LAUGH] Well, all right.

McCOLLISTER: [00:10:45] Good afternoon, Chairman Lathrop and members of the committee. I'm John, J-o-h-n, McCollister, M-c-C-o-l-l-i-s-t-e-r, and I represent the 20th Legislative District in Omaha. Today I'm introducing LB443. Last session I introduced LB776, a bill to provide the Crime Commission with the authority to regulate the costs of telephone calls by inmates in our county and city jails. LB776 was passed by the Legislature and signed into law by the Governor. LB776 provided that fees would not be assessed for calls made by inmates to their attorneys, nor would they be monitored or recorded by jail staff or law enforcement. During the public hearing and floor debate of this bill, this committee and the Legislature heard of numerous reports about calls made by inmates to their attorneys that were improperly monitored and recorded by authorities. Courts have been clear that this is a violation of the Sixth Amendment right to counsel. After passage of LB776, it is now a violation of statutory law in Nebraska. LB443 would further recognize the

principle that inmates must have meaningful and confidential access to their counsel. LB443 would extend the existing protection that jail inmates currently have to the inmates of the correctional system, the Nebraska correctional system. It would provide that inmates be able to contact their attorneys by telephone at no charge, just like the bill we passed last year for city and county courts or jails. Additionally, their telephone calls must not be subject to monitoring or recorded by prison staff or law enforcement. Many of the inmates in our state prisons are indigent. They cannot afford the cost of telephone calls. While a state prison system does not charge the excessive and arbitrary fees that some companies charge in jails, the cost of calls also can be a financial hardship when they are directed to inmates' attorneys. LB443 seeks to mitigate the financial hardships for DCS inmates and their attorneys. It is my hope that prisons will allow meaningful telephone access for inmates to their attorneys. This means of communication is much more convenient for all involved. It would reduce attorneys' travel and in-person meeting time with clients. Since many of these attorneys are appointed at county expense, it would reduce court appointed costs. Prison staff would undoubtedly spend less time and effort accommodating in-person professional visits by attorneys. We should make sure that telephone communication is affordable and protected. Thank you.

LATHROP: [00:13:48] Thank you, Senator McCollister I don't see any questions, John. We'll see if there are proponents on this one.

McCOLLISTER: [00:13:58] OK.

LATHROP: [00:13:59] Proponents can come forward to testify. We're going to try to have people, if you're a proponent, go ahead and sit in these seats over here. And this is going to become our on-deck circle, if you will. That helps keep the hearing moving, if you don't mind. Thank you, and welcome.

AMY MILLER: [00:14:29] Good afternoon, Senators. My name is Amy Miller. It's A-m-y M-i-l-l-e-r. I'm legal director for the ACLU of Nebraska. We're handing out to you a copy of the report we issued last year that Senator McCollister and other senators then used to establish why LB776 was necessary last year. It outlines the psychological studies that talk about making sure that prisoners can remain in contact with their families, which is important here because many of the state prisoners I talked to say they have to choose between calling me or calling their mom. For indigent prisoners, even the very reasonable rates that the State Department of Corrections is choosing is still far out of reach. And no one should be required to choose between that rehabilitative supportive relationship of family or their protected right to counsel. I note in our testimony that's being handed out as well that we remain somewhat concerned that although the Department of Corrections has a clear existing policy saying that they won't record phone calls, front-line staff have told us differently. We have a pending lawsuit against the Department of Corrections right now and in December front-line staff told our cocounsel, Robbie McEwen at Nebraska Appleseed, that all calls are being recorded. This has left our clients uncertain whether or not they can talk to us about the pending lawsuit and the conditions of confinement. Now we had an exchange with the department's counsel and she assured us that they are not recording. If that's true, then LB443 should not be difficult for them to put into place. Our last concern of course is, even though I trust the good statements of the department, they are currently working with Global Tel Link, or GTL. This company unfortunately has had nationwide scandals and one of the items we're handing out right now is a newspaper article about the fact that they were consistently recording in California not just a couple of thousand calls over a short period but tens of thousands of phone calls between attorneys and their clients. This is why, both for the cost and for confidentiality, that we think that LB443 is necessary. It's a commonsense reform that brings state prisons into line with the county jail systems and makes sure that that essential attorney-client privilege is protected. This, unfortunately, is particularly necessary because, as the committee has heard testimony on previous bills, there's an increase in the number of new charges arising for people in custody. So more public

defenders are currently in the state prisons needing to prepare for trial for clients who are serving time but also still pending new charges. For that reason, we thank Senator McCollister for extending the commonsense reforms the Legislature passed last year and we urge you to advance LB443.

LATHROP: [00:17:07] Thank you, Amy I don't see any questions.

AMY MILLER: [00:17:12] Thank you.

LATHROP: [00:17:12] Appreciate your testimony. Welcome.

ROBERT WILLIAMS: [00:17:17] Mr. Chairman, committee members, my name is Robert Williams, R-o-b-e-r-t W-i-l-l-i-a-m-s. I am a criminal defense attorney from the Omaha area. I was initially employed as a public defender for a number of years in Douglas County and then have been out in private practice for about the last eight or nine years. The thrust of my practice has to deal with criminal defendants that are charged and convicted at times and serving sentences in the State Department of Corrections. And I can tell you that throughout my time as a public defender and a private attorney I've had court-appointed clients that have been sentenced to the Department of Corrections, and I have on many occasions had to drive down to Tecumseh or to Lincoln or even down to Omaha Corrections to sit with my clients for maybe a few minutes only to garner a signature or have them make a crucial decision on their case. Now in all of those cases, that money is coming out of the county pockets and I'm-- unfortunately have to bill the county for the time on those. Now there's three different types of persons I represent that actually are housed in the Department of Corrections. We've got persons that have obviously been sentenced on cases and that may be serving time on-- or, pardon me, serving time on those cases. They may be sitting and waiting for disposition on new cases. And then probably a lesser known situation is where the

D&E, Diagnostic and Evaluation Center, may house individuals for other counties that don't have the sufficient space. In fact, currently I have four or five individuals that are in that situation in addition to my other clientele that are serving time. We're looking for some fluidity in communications. We're looking for the ability to make decisions without having to go through the great means of traveling and incurring our own personal time and expense for our practices. At times we'll get calls into my firm. Now I-- I fortunately have the-- the ability to have staff field my calls at my office. A lot of attorneys in the defense world field their own calls on their cell phones. But in many situations when we have inmates calling from the Department of Corrections, we've been asked to enter credit card information to process payment for-- for such calls or to accept collect calls. And quite frankly, a lot of those calls are missed or staff does not know what to do with those calls and, therefore, we have to implement other ways of communicating with those clients. So I think basically the thrust of my argument has to do with the cost to the counties, the efficiency and proficiency in which myself and others similarly situated can practice criminal defense. And I do represent the interests of the Nebraska Criminal Defense Attorneys Association.

LATHROP: [00:20:01] Thank you, Mr. Williams. Senator Brandt has a question for you.

BRANDT: [00:20:05] Thank you, Mr. Williams. Could you clarify something for me?

ROBERT WILLIAMS: [00:20:08] Yes.

BRANDT: [00:20:09] Not being familiar with how-- how the system works, can you call your client.-- can you call in that direction and then they could connect him?

ROBERT WILLIAMS: [00:20:20] I would say this, Senator. It varies by the facility. At times I have had luck at the Diagnostic and Evaluation Center setting up a time to where I can call and

potentially have a client made available during times when they're not eating or doing their other formal activities. I would say that is not the norm, but I have worked in situations where that's been possible, but it certainly is not the norm.

BRANDT: [00:20:47] All right. Thank you.

LATHROP: [00:20:50] I see no other questions. Thanks for being here today.

ROBERT WILLIAMS: [00:20:53] Thank you, Mr. Chairman.

LATHROP: [00:20:54] Appreciate your testimony.

TIM HRUZA: [00:20:59] Good afternoon Chairman Lathrop, members of the Judiciary Committee. My name is Tim Hruza, last name spelled H-r-u-z-a, appearing today on behalf of the Nebraska State Bar Association. We support the concept of allowing reasonable access to attorneys for purposes of client-attorney communication. On behalf of the lawyers who work with these individuals, we believe it is essential to allowing people access to justice. I would be happy to answer any questions, but we are in support of Senator McCollister's bill.

LATHROP: [00:21:35] I see no questions. I have--

TIM HRUZA: [00:21:37] Thank you. Oh, yeah.

LATHROP: [00:21:39] Hang on a minute. I-- I have one for you. Do any of the members of the bar report that they think they're being recorded? So the bill does a couple of things.

TIM HRUZA: [00:21:47] Right.

LATHROP: [00:21:47] And one of them is to end or to ensure that attorney-client calls aren't recorded. Are you hearing anything through the Bar Association that that's actually-- people are actually having that experience?

TIM HRUZA: [00:22:01] During our discussions about this legislation, that specific claim or instance with respect to the Department of Corrections did not get voiced with any of our committees. I know it has been a discussion in the past, particularly related to some of the county jail stuff that was discussed last year with Senator McCollister's bill too. But this year in our discussions about this bill, nothing-- nothing was voiced in terms of serious concerns. I am sympathetic, though, to the-- to the concerns of the ACLU and those that they have explained, specifically in light of the feedback that we had related to county jails in the last few years.

LATHROP: [00:22:39] OK. I don't see any other questions. Thanks, Tim.

TIM HRUZA: [00:22:44] Thank you.

LATHROP: [00:22:44] Any other proponents here to testify on LB443? Anyone here in opposition? Anyone in a neutral capacity? Seeing none, Senator McCollister, you're good to close. While you're sitting down, we do have one letter of support from Marcia Blum, National Association of Social Workers.

McCOLLISTER: [00:23:15] Thank you, members of the Judiciary Committee. I'd certainly like to thank the proponents that spoke here this afternoon, Amy Miller, Mr. Williams, and Tim Hruza. I'm a little suspicious, I should say, about the fiscal note on this bill. At \$25,000, it seems a little-- a

little high to me. But, you know, I-- I can't base that on any particular reason. But I think as-- as we've heard, it would in fact save the county some money because if they don't have to come down to the facilities themselves. It would save them time and money and I-- I offer that as maybe a compelling reason to move this bill forward as well. Should also tell you, many of you-- many of you may have seen the article in The World Herald, that the inmates in South Carolina prisons are being given tablets, tablets. And, you know, the purpose of those tablets is to aid in communication with families at no cost, talk to their attorneys, deals with required programming they can perhaps get on a tablet and maybe even finish their GTD. So that's maybe a refinement that the Nebraska corrections system could look-- look toward. It also helps deal with the problem of counterfeit cell phones that are sometimes smuggled into-- into the facilities. So with that, I'm-- I'm grateful for your time and I would plead to move this bill forward on to the floor.

LATHROP: [00:24:53] Very good. Thanks, Senator McCollister. That will close our hearing on LB443 and bring us to Senator Friesen and LB376. Senator Friesen, welcome to Judiciary Committee. This might be your first time this year.

FRIESEN: [00:25:16] Thank you, Chairman Lathrop. This is my first time in all five years that I've ever been in front of Judiciary, so be nice to me.

LATHROP: [00:25:27] We'll see. [LAUGHTER]

FRIESEN: [00:25:28] He laughs.

LATHROP: [00:25:29] Go ahead. Go ahead, introduce your bill. How's that?

FRIESEN: [00:25:32] Chairman Lathrop, members of the Judiciary Committee, my name is Curt

Friesen, C-u-r-t F-r-i-e-s-e-n. I represent the 34th District in the Legislature and I'm here today to present LB376. Something that happened recently in-- in my county, at least, and-- and there's a little bit more of a long history to this, but we're talking about prisoners that are now held in county jail. And sometimes, you know, jail facilities in some of the smaller counties, the dispatcher runs the jail and so they're not as highly trained as they are in some of the other localities. But what-- what this bill does is it allows the county to transfer a prisoner to a state facility or another county facility if the county feels the prisoner is a safety risk to themselves, the jail staff, or other individuals. And so many of these small jails, like I said, they just-- they-- they're not equipped to handle some of the mental health issues that are showing up and they're-- they're getting into these county jails and the staff is-- is not properly equipped to handle them and sometimes the safety of the prisoner and the jail staff is at risk here. The cost of housing these prisoners would still remain with the county of original jurisdiction. There would be no cost to the state for-- or, you know, or to the receiving county, wherever they may end up. Prisoners would only be returned to the county of original jurisdiction after they're deemed not to be a risk to themselves or anyone else and the sheriff and other county officials agree to accept custody. The cost to house these prisoners ranges from \$80 a day to a couple hundred dollars a day. This rate is set by the Department of Correctional Services on a case-by-case basis, depending on the needs of the prisoner. In the past there have been about 70-150 requests for safe-- safekeeping annually. These are members-- there will be members of law enforcement here today to testify and to give you examples of what-- what has happened. And they'll-- they'll speak about some of their experiences. The fiscal note shows no impact. And again, this is about the safety of staff and the prisoners and sometimes with-- again, we've talked numerous times about the mental health issues that are out there and it's contributing to the overcrowding of our prisons, so to speak. But these are sometimes the patients that they are just not equipped to handle and there is really no place for them to go. Some facilities are full. But we-- we need to-- we need to have a place where they can go with these and it has to be on short notice. So that's kind of the purpose of this bill. I'd be happy to answer any questions, if I could.

LATHROP: [00:28:14] I don't see any questions. Thanks Senator Friesen, for introducing LB376.
Proponent testimony. Welcome, Sheriff.

KIRK HANDRUP: [00:28:39] Good afternoon. My name is Kirk Handrup, K-i-r-k H-a-n-d-r-u-p.
I'm sheriff of Hamilton County and I want to thank you for giving us the opportunity to talk with
you about the concerns smaller jails have with housing misdemeanor offenders.

LATHROP: [00:29:01] Hey, Sheriff, can you pull that mike towards you a little bit? This-- the
sound in this room's not great, so--

KIRK HANDRUP: [00:29:06] I apologize.

LATHROP: [00:29:06] -- it makes that mike all the more important.

KIRK HANDRUP: [00:29:08] OK. Some, not all, misdemeanor offenders are violent. Some are,
though. Some are even a threat to other inmates who are either awaiting court or serving their
sentence. I've had inmates who have expressed concerns for their own safety because of the violent
behavior of the inmate that's in their cell. The inmates that are violent is also a threat to do harm to
themselves by hitting the walls with their hands, fist, and head, kicking the walls or door with their
feet. Of course, if you hit it with your head, you're going to get concussions, and fist, break
knuckles and wrists, so. They're also a threat to the staff who tries to keep the violent inmate calm
and they're also a threat to the staff who needs to restrain that inmate. They put themselves at risk.
By using a state facility, the inmate can get professional care that smaller jails are not able to offer.
The state has the professional care and manpower and the equipment to safely handle violent
inmates. The county is still responsible for the daily charge, as Senator Friesen stated. The costs

vary depending on the circumstances. The county is still responsible for any medical expense that the inmate may have. The county is also responsible for any damages that the inmate causes while housed at a state facility. Hamilton County recently paid over \$4,100 in repairs to York Women's Reformatory for damages to a cell that a violent inmate who was originally charged with DWI sitting out a 30-day sentence until she assaulted an officer. Now she is sitting one year for that assault. There will be not-- there will not be additional cost to the state for providing us with this option. The county will not want to keep the inmate at the state facility for very long because of the cost. This would only be for those occasions when the safety of other inmates, the safety of the violent inmate, and the safety of staff. I do have firsthand experience with such an inmate and I'll answer any questions if you have any.

LATHROP: [00:32:00] OK. Senator Brandt has a question for you.

BRANDT: [00:32:04] Thank you, Sheriff Handrup, for showing up today.

KIRK HANDRUP: [00:32:06] Thank you.

BRANDT: [00:32:07] In your experience, on an annual basis how many of these prisoners would you have?

KIRK HANDRUP: [00:32:13] Hamilton County would probably have-- we had one-- I'd say four or five.

BRANDT: [00:32:20] A year?

KIRK HANDRUP: [00:32:21] Correct.

BRANDT: [00:32:21] Thank you.

LATHROP: [00:32:24] I do have one. Oh, I'm sorry. Did you have a question?

PANSING BROOKS: [00:32:27] That's OK. I can-- when you're done. Go ahead.

LATHROP: [00:32:28] Oh, no. Go ahead, Senator Pansing Brooks.

PANSING BROOKS: [00:32:30] Thank you. Thank you for coming, Sheriff Handrup. I was wondering, I don't know if you have the bill in front of you, but on page 6, line-- let's see, line 18, it's-- it talks about that the sheriff or other county official couldn't place an inmate in any other-- "or any other secure and convenient place of confinement in this state."

KIRK HANDRUP: [00:33:01] Correct.

PANSING BROOKS: [00:33:02] "Convenient place of confinement" seems like an unusual turn of phrase because, I don't know, I'm sitting there thinking to myself, what is convenient if-- if there's no room at the inn for the prisoner in either Department of Corrections or-- or other places, do you have an idea what that can entail, because I can think of it extending to the worst situation where we put them into some sort of strange housing place or someplace that isn't really meant, as long as it's secure and convenient to the sheriff. I just don't know what that means. I am interested in what your take on that is.

KIRK HANDRUP: [00:33:46] Sure. Convenient would be, for instance, the one that I have firsthand knowledge of. I am the one that she assaulted and I contacted--

PANSING BROOKS: [00:33:59] I'm sorry for that, that that happened.

KIRK HANDRUP: [00:33:59] Thank you. I contacted 14 counties to ask if they would house her and they would not. The 15th one said that they would try. I believe it was Saline County if that's where they house-- I believe they house federal prisoners there-- and they said they would try. I got a call at 4:00 in the morning saying that she assaulted their staff, so I had to go pick her up. Convenient place, I would not take a prisoner to another smaller jail such as ours because, again, they do not have the manpower. I would check with larger departments, Douglas County, Sarpy, Lancaster. I'm sorry, I don't know the county for Wahoo-- Saunders, I believe. But convenient place, that-- that is how I-- someone that would be able to take them, because I knew York Women's Reformatory would not because she wasn't charged with a felony at that time.

PANSING BROOKS: [00:35:05] Well, I appreciate your answer and what you're going through because of our overcrowding whole mess that we're in right now in the state. But you are emblematic of exactly what is happening with our overcrowding crisis. So thank you very much for your--

KIRK HANDRUP: [00:35:17] Thank you, Senator.

LATHROP: [00:35:19] Just as a follow up to Senator Pansing Brooks, that maybe should say "convenient jail facility."

KIRK HANDRUP: [00:35:25] OK.

LATHROP: [00:35:25] Right? So we're not taking them to a hotel or--

KIRK HANDRUP: [00:35:30] Correct.

LATHROP: [00:35:30] OK. And one-- one point I wanted to make. It's more expensive for the county to take them and pay the Department of Corrections than to keep them?

KIRK HANDRUP: [00:35:40] Yes, sir.

LATHROP: [00:35:40] OK. So we don't have any incentive on the part of the county--

KIRK HANDRUP: [00:35:43] Correct.

LATHROP: [00:35:43] -- to do this except when it's absolutely necessary.

KIRK HANDRUP: [00:35:46] Correct. I have a budget for border prisoners and it costs approximately \$2,500-3,000 a month to house a prisoner there.

LATHROP: [00:35:57] OK.

KIRK HANDRUP: [00:35:58] So it would not be for long.

LATHROP: [00:35:59] Thank you, Sheriff. I don't see any other questions. We appreciate your testimony today.

KIRK HANDRUP: [00:36:04] Thank you, Senator.

LATHROP: [00:36:05] Anyone else here to testify as a proponent? Good afternoon and welcome.

DANIEL SCHLEUSENER: [00:36:21] Good afternoon, Chairman Lathrop, members of the committee. My name is Dan Schleusener, D-a-n S-c-h-l-e-u-s-e-n-e-r. I am the chief deputy sheriff at the Buffalo County Sheriff's Office in Kearney. I'm here to testify in support of LB376. Some of the unintended consequences of LB605 in 2015 resulted in counties not being allowed to "safekeep" misdemeanor offenders. Counties would only ask in those most extreme cases of medical treatment or mental health crises to house a "safekeeper." Some of the jails are ill equipped to provide for either the staffing or the limitations in the availability of service providers. Over the years, the Buffalo County Jail has seen an increase in the medical needs and care of those in our care and custody. We have increased our medical department to include a doctor that is on call 24/7. He's on site once a week. We have two registered nurses on site seven days a week and we also have a part-time licensed mental health practitioner on site. But still there are those instances that are outside of our capabilities at the Buffalo County Jail. Last summer we had an offender come through. He was facing felony charges. He came in, in a severe mental health crisis. He was not on his-- on his medications. He refused staff and our medical department's attempts to get him back on his-- his mental health medications. It affected his ability to meet with his defense attorney to keep his case current and proceeding through the through the system. He would either refuse to meet with the-- his defense attorney or refuse to talk with him. Buffalo County Jail made a decision to transfer him to safekeeping at the Nebraska Department of Correctional Services. After time, the department was able to get him back on his medications, which then resulted in him being able to productively meet with his attorney to get his case resolved and he was ultimately released from custody. But had that inmate been a misdemeanor offender, I don't know what would have happened. We-- we were not able to get him back on his meds while he was at the Buffalo County Jail. LB376 would remedy that disparity between the felony offenders and the misdemeanor offenders. Currently the Buffalo County Jail's biggest issue is staffing, the recruitment and retention of experienced employees. I can

only presume that smaller jails in less populated areas than Kearney are experiencing the same issue. It becomes a staffing and security issue when taking a high-escape-risk offender with assaultive behavior tendencies out of a secure facility for treatment or services. The Nebraska Department of Correctional Services-- I see the red light.

LATHROP: [00:39:45] Yep, we're there.

DANIEL SCHLEUSENER: [00:39:46] OK.

LATHROP: [00:39:48] Your-- your point was that you want the misdemeanants treated the same way as the felony folks and have access to the Department of Corrections.

DANIEL SCHLEUSENER: [00:39:56] Access to the same treatment and services that the-- the felony-level offenders do, yes.

LATHROP: [00:39:59] Is the-- is the-- do you get a lot of misdemeanor folks that are incarcerated pretrial that have drug problems or mental health issues that you can't-- that you can't get ahead of?

DANIEL SCHLEUSENER: [00:40:12] I would say not-- not that many that we can't get ahead of. Last year we only had two "safekeepers" at the-- at the felony level with-- with the state. There was maybe a handful that we were turned down on from-- from the state. It's just those most extreme cases of where the medical condition, treatment, mental health issues that we just-- we just can't handle at our jail.

LATHROP: [00:40:42] OK. I do not see any other questions. We appreciate you taking the time to come here, share your experience from Buffalo County.

DANIEL SCHLEUSENER: [00:40:49] Thank you for having me.

LATHROP: [00:40:49] Thanks. Next proponent. Good afternoon.

JON CANNON: [00:41:04] Good afternoon. Chairman Lathrop, distinguished members of the Judiciary Committee, thank you for allowing me to be here. My name is Jon Cannon. J-o-n C-a-n-n-o-n. I'm the deputy director of the Nebraska Association of County Officials here to testify today in support of LB376. I think most of the ground has already been covered by Sheriff Handrup and Deputy Schleusener, but I will point out that the-- LB605, when it was passed, it had the unintended, but in hindsight probably foreseeable, consequence of what we're talking about here. It created a distinction between felony, those persons that have-- have felony convictions, and those misdemeanants to the extent that those persons that are a danger to themselves or to others or to staff are not going to be able to be placed where they need to be, where they'll have the resources available to them that they should have. All we are asking for is for this committee to allow for our inmates to be put into the right place at the right time with the right resources available to them. While we note that there is no fiscal impact to the state, and also the cities of imperial and Lincoln said there is no fiscal impact to them, I think Sheriff Handrup already covered that it is a budget item for them and it certainly would be for just about any other county that's out there that has to deal with this issue. And with that, I would urge that this committee advance LB376, and I'd be pleased to take any questions you might have.

LATHROP: [00:42:31] Senator Brandt.

BRANDT: [00:42:33] Thank you, Mr. Cannon, for testifying today. Because you represent all the counties, do you have an idea of the scope of this problem?

JON CANNON: [00:42:42] I do not, Senator, and that's something that we could probably find out and get to you.

BRANDT: [00:42:47] All right. Thank you.

JON CANNON: [00:42:47] Thank you, sir.

LATHROP: [00:42:51] I see no other questions. Thanks for your testimony today.

JON CANNON: [00:42:54] Thank you.

LATHROP: [00:42:55] Anyone else here to testify as a proponent? Good afternoon.

ELIZABETH LAY: [00:43:13] Good afternoon. Good afternoon. My name is Elizabeth Lay, E-l-i-z-a-b-e-t-h L-a-y, and I am a deputy county attorney from Platte County, Nebraska. At my county, I do quite a bit of prosecution and domestic violence and sexual assault. I do-- I am also the civil advisor for the county board and for the elected officials and I also do all of the Mental Health Board commitments and any prosecution that involves a component of mental health, either with the victim or the defendant, or a developmental disability. So I'm going to come at this from a little bit of a different way because in my capacity as a deputy county attorney dealing with mental health, we've seen how the mental health system is working. And that portion of the system is already privatized, which does allow for hospitals to decline to take patients when we feel that it's necessary for them to be EPCed. And in a lot of those instances when that happens, our only other recourse is to take them to D&E and have them independently evaluated, which then gives the prosecutor an opportunity to continue to use those alternative forms of justice, which might be

rehabilitative needs, it might be transitioning them into the regional centers or transitioning them into treatment programs. And allowing us to have a place to take those people where they are safe while they await that evaluation or that treatment is very instrumental in-- in what we do as prosecutors. Also, because I am the civil adviser for our county, I-- I assess those risk and liabilities and with the mental health system already privatized and their ability to decline to take our-- our people that are in serious crisis, if we can't take them to the state, I really don't know what the Legislature expects us to do. As a prosecutor, I have a legal and ethical obligation to treat inmates with respect and to treat them humanely and to ensure that they have appropriate access and adequate access to appropriate medical care. They may be an inmate but they have constitutional rights to that care as well. And so because we cannot count on our mental health system to always be there in the situations in which they need to be there, and in situations where they need that, that mental healthcare, I am really disturbed with this idea that now we also can't use the state resources to get these people the care that they need, because in rural Nebraska we just do not have the resources that are needed to care for these people in the way that they need to be cared for. And I've been here several times testifying on mental health and what's needed in that capacity, and I really just don't want the Legislature to tie our hands. I'd like you to give us back the ability to treat these people in the way that they need to be treated as opposed to just shoving them in jail and just hoping that it doesn't get worse while they're in there, because that's-- that's the point that we're coming to. And I'll take any questions that you might have.

LATHROP: [00:46:35] I do have a question for you.

ELIZABETH LAY: [00:46:37] Sure.

LATHROP: [00:46:38] So in your testimony you haven't even brought up the Regional Center and I assume that's because it's just not even an option for you any longer.

ELIZABETH LAY: [00:46:46] Right. Like I said, I've been here testifying on-- on mental health in front of the Judiciary Committee a few different times before where we've had-- you know, we have sometimes eight-, nine-month waits. Right now the wait has been shorter for court commitments. But our mental health commitments, they-- they take a long time to get into the Regional Center at times. We have people who are in serious crisis who are either suicidal or they're dangerous to the community. And we have, you know, court proceedings that deal with those, especially when they're incapacitated or can't understand the proceedings. And those people have to wait in jail while regional centers become-- those bed spaces become available. And I've actually had in-- in county court in a misdemeanor case a judge say to me, with all of your knowledge of the system, you need to find something else because I don't want to let this person sit in jail for three months waiting on a bed, or five months or six months or eight months waiting on a bed in the Regional Center when we know that at our detention facility we don't have the adequate resources to help that person. And we also know that now D&E is not going to take that person because they're-- they're convicted or charged with a misdemeanor. So it's now tasked to me to figure out what can we do to try to get this person the help that they need in the meantime when they're incapable of standing trial. I am not a social worker. I don't have that qualification. But it's then-- this is what it's coming to because no one else wants to do the job that they are put there to do and that they have the resources to do. It's coming back on-- on local communities to find placement for these people, to find resources for these people, and a lot of your rural communities don't have that.

LATHROP: [00:48:40] You make a great point. And I know when a number of us toured the Diagnostic and Evaluation Center, and I see the director here, I don't know if he's intends to testify on this bill, but they have 30 -some beds now, is that right, at D&E, something like that? Diagnostic and Evaluation Center has some 30-some beds, some of which are used for that purpose?

_____ : [00:49:07] Yes.

LATHROP: [00:49:08] Something like that. He'll-- we'll get that from him on the record. But it seems like that's just overflow from what should be the proper functioning of the Lincoln Regional Center because people have just given up trying to get folks in there. And-- and that leaves us putting people in prison or in jails that have mental illness that goes untreated there. Is that what your testimony is?

ELIZABETH LAY: [00:49:30] That is what my testimony is. And I will say that if you want to see the prison overcrowding problem get worse, take away a prosecutor's discretion to use those alternative forms of justice, to-- to look at it--

LATHROP: [00:49:43] Yeah, we're not going to do that.

ELIZABETH LAY: [00:49:45] -- at case by case by case because that is what's important is for a prosecutor able to look at a case and say this is what's legally and ethically right for this person, this is what needs to occur because of their medical needs, whether physical or mental, and we don't have the resources to treat them in a humane manner or in an ethical manner.

LATHROP: [00:50:03] You don't have any place in Platte County to take somebody who's in crisis?

ELIZABETH LAY: [00:50:09] Oh, heavens no. We-- we can barely get our--

LATHROP: [00:50:10] And so your only alternative is to try to find someplace in Omaha or take them to a regional center--

ELIZABETH LAY: [00:50:17] Well, it depends on--

LATHROP: [00:50:19] -- or D&E if this passes?

ELIZABETH LAY: [00:50:20] Um-hum. It depends on how-- it depends on what system we're in. We do-- we contract with private hospitals through the region on a behavioral health-- on the behavioral health side. But those, those hospitals are privatized. And so we have-- we do have an issue at times with them not wanting to take prisoners that are high risk, combative, assaultive, things of that nature. And so once they decline to take people, we-- and we-- have also had recently a problem with this sentiment that they're not mentally ill, they're just a criminal, when they have been over and over and over diagnosed with mental illness. We get them to a hospital and just because they're in jail and charged with a crime, the hospital says, not our problem, take them back to jail. And so then we can take them back to jail but we know that once they get back to jail, they're going to be suicidal and we need another place for them to go, regardless of whether it's a felony or a misdemeanor. That doesn't matter in the-- in the grand scheme of things. We have to find a safe place to take that person. And right now, I mean, and in that situation, D&E is appropriate. They have the resources there. We pay for the service as a county. We pay for the service to do that. And-- and they have the resources to take care of it.

LATHROP: [00:51:34] Did you just say the Regional Center has the resources?

ELIZABETH LAY: [00:51:38] D&E would have--

LATHROP: [00:51:39] D&E, OK.

ELIZABETH LAY: [00:51:39] -- the staffing and the resources to ensure that the person is safe while we figure out what's the next step.

LATHROP: [00:51:47] OK. I don't see any other questions. I appreciate your concern for this population and for the subject.

ELIZABETH LAY: [00:51:56] Thank you.

LATHROP: [00:51:57] Yeah. Thanks for coming here today.

ELIZABETH LAY: [00:51:58] Thank you for having me.

LATHROP: [00:51:59] Anyone else here to testify as a proponent? Anyone here in opposition?
Good afternoon, Director Frakes. Welcome once again to the Judiciary Committee.

SCOTT FRAKES: [00:52:17] Good afternoon, Chairperson Lathrop. Members of the Judiciary Committee, my name is Scott Frakes, F-r-a-k-e-s, and I'm the director of the Nebraska Department of Correctional Services, NDCS. And I'm here today to provide testimony in opposition to LB376. County "safekeepers" are inherently high-risk inmates and typically require extra resources either because the "safekeeper" exhibits violently aggressive behavior that cannot be managed effectively at the county level, needs protection from other inmates, or requires medical or mental health treatment that is beyond the capability or the ability of the county jail to provide. NDCS recognizes the importance of continuing to work with counties to assist with managing high-risk prisoners when the department can safely do so. LB376 would give the counties sole authority decide-- to decide when a "safekeeper" should be housed at NDCS, tying my hands completely when it comes to determining when it is no longer suitable or appropriate for a "safekeeper" to continue residing

within NDCS. Not only will this legislation continue to feed people into an already crowded state prison system, but the additional burden would certainly tax resources that are needed by other "safekeepers" and inmates within NDCS. For example, if the "safekeeper" is in need of a skilled medical or mental health-- of skilled medical or mental healthcare, they're housed in the medical units at NCCW or DEC, referred to often as D&E. DEC has a licensed skilled nursing facility with 14 beds. LB376 would allow any number of counties to deliver prisoners in need of that level of care when in fact we may not have the bed space available within our skilled nursing facilities. It's incumbent upon me as the director of NDCS to be able to evaluate county "safekeepers" to determine whether the person can be safely returned to the county, placed with another county, or retained within NDCS. Placing all of the discretion in the hands of counties-- going to say that again. Placing all of the discretion in the hands of the counties hampers my ability to make decisions about managing the NDCS population, of which I am given statutory responsibility. Thank you for your-- for the opportunity to testify today and I'd be happy to try and answer questions.

LATHROP: [00:54:44] I don't see any other question--

PANSING BROOKS: [00:54:45] I have a question.

LATHROP: [00:54:45] Oh, I'm sorry. Senator Pansing Brooks.

PANSING BROOKS: [00:54:47] Thank you for coming today, Director Frakes. I'm interested. I mean we've heard these concerns that the counties are having. Well, is there any kind of communication, like if-- if they're really having trouble with somebody, do you communicate back and forth to-- to try to work together? I mean, since you are over all of this, it seems like you also need to be aware of what's going on in the counties and what kind of burden is being placed on

them and whether or not somebody has been mis-- I don't know how to-- placed, misplaced, then is there some way that you communicate with the counties and say, OK, well, maybe we shouldn't have had this person here, we can trade somebody or-- I-- I just didn't know if there's an ongoing effort to communicate.

SCOTT FRAKES: [00:55:34] Yes.

PANSING BROOKS: [00:55:36] That was a quick answer to my long--

SCOTT FRAKES: [00:55:39] We-- I mean, first of all, I hope at this point, after four years, you recognize and believe in my commitment to this issue of mental health and all of the challenges it presents to our, you know, our communities and our society today. And I've tried to address that in every way that I have resources to do and continuing to look for more resources as well. So I have-- the last person who testified, I have great empathy for exactly what's described. My concern is, first of all, I do not believe misdemeanants belong in prison. That's why we have misdemeanor crimes and felony crimes, and prisons were designed to house and take care of felons. So that's one component. And then we try our very, very best to be a very good partner both because I want to help them meet their need, I want to help them take care of these people that need to be taken care of; and we're also partners because I rent beds from people, so I-- I want that to be a reciprocal relationship. And so but the short answer still is, yes, absolutely. And it's not very often that we find ourselves in conflict. Every once in a while, either we believe that the person no longer-- you know, has become treatment/medication compliant, is not demonstrating the behaviors that they were when they were brought to us, and we ask the county, you know, can you take them back, and sometimes for a variety of reasons they may not be ready to. That's pretty rare. A recent situation, there was a "safekeeper" that clearly exceeded the level of-- the level of care he needed exceeded our abilities, severe frostbite case, and so because the-- and the hospitals were saying, no, the person

just needs a very high level of skilled nursing care; pretty much 24/7 direct nursing care is what this person required because they had no mobility, etcetera. So in the end we were able to reach a resolution. But I know that the county jail was at a loss as well. The hospital says, we won't care for them. They in no way could provide that care. And we're saying, you know, we don't feel that we can meet the need either--tough situations. We also have two-- you open this up. We've got two people right now that are with us by court order to be held by us while LRC does restoration, competency restoration. So it's another example of how we are all working together in this criminal justice system to try and address this problem. But I-- we should not be the de facto mental health system.

PANSING BROOKS: [00:58:28] OK. So you-- you said that you're looking for resources and to solve the problem. If you found the resources, what would be some-- what would be a solution to that problem? More beds, building more--

SCOTT FRAKES: [00:58:46] Well, one of them is the project that's funded and currently underway. So that reception and treatment center, a big part of that is the new skilled nursing and behavioral health unit.

PANSING BROOKS: [00:58:57] And I forgot how many beds, I'm sorry.

SCOTT FRAKES: [00:59:01] Sixty, 62 beds in total, so that's a big piece of what'll help move us forward as an agency.

PANSING BROOKS: [00:59:08] And so I presume you have an understanding of what's happening in the counties, how many are being put out in those counties. How-- will that-- will that take care of everyone in the-- in-- that are being put in the county jails or what-- what percentage

will those 60 beds be able to accommodate?

SCOTT FRAKES: [00:59:30] The intent was to meet the needs of my agency-- or, excuse me, the Nebraska Department of Correctional Services. And the current statute around "safekeepers" works. The jails have the ability to bring someone to us without notice and we accept them. We process them. If they have crisis-care needs, we deal with those. All of those components are already currently working. The two pieces in the current legislation that change would be, one, that it would restore the practice of bringing misdemeanants to NDCS, which was a, you know, part of the efforts of LB605 and to helping to try to bring down the prison population. And it would no longer give me any voice in saying, OK, we believe the person is stable and ready to go and please come get your person.

PANSING BROOKS: [01:00:29] Thank you, Director.

LATHROP: [01:00:32] Senator DeBoer.

DeBOER: [01:00:33] Senator Frakes [SIC]-- or [LAUGH] "Senator Frakes." Sorry, Director Frakes.

SCOTT FRAKES: [01:00:36] It happens-- it happens a lot. I-- the suit or what it is.

DeBOER: [01:00:40] Director Frakes, I'm trying to kind of understand how many current-- how many "safekeepers" of like a level are currently at any given time in-- in your care?

SCOTT FRAKES: [01:00:53] Forty to 45 on average.

DeBOER: [01:00:55] OK. And those are coming from all the different counties?

SCOTT FRAKES: [01:00:58] Yes.

DeBOER: [01:01:00] So the concern is that if this includes misdemeanor convictions or folks-- that that will become drastically larger because that's a larger population of folks in the county jails? Or walk me through like where you're getting your numbers and how you are kind of coming to that.

SCOTT FRAKES: [01:01:22] It is a concern that it could result in additional people being brought in as "safekeepers." Don't have-- I'm not going to try to guess. It was enough of a-- an issue in the creation of LB605 that it was identified as part of a strategy to help address population needs within my department. So-- and as was-- as we heard in testimony, there's a cost associated, so I'd respect that. I don't expect jails are going to go, well, we just-- we'd like to have ten less people today because we want to spend, you know, \$900 a day. But it's not only-- it's-- it's a bed space issue for us and it's a resource issue for us as well. We have already a challenging population that we house. We have dangerous, violent, and seriously mentally ill people that are housed with us that belong to us and so-- so it's all those components. I'm not going to try and tell you whether it means it'll be 10 more or 50 more. Today I don't know. And in-- in the last-- I want to say this again. Again, this is really a philosophical belief, but I don't believe misdemeanants belong in prison and I really don't like the idea that we sometimes end up with unadjudicated people sitting in our prisons, as well, but that is a part of it. So, you know, we want to-- we want to be a good partner in this process, but there's got to be some lines of responsibility.

DeBOER: [01:02:55] Thank you.

LATHROP: [01:02:55] Are most of these "safekeepers," Director, folks that would-- we could

characterize as having a mental illness?

SCOTT FRAKES: [01:03:11] I don't know. I think it's a combination. I think we get a reasonable number, and I don't-- this is just off the top of my head, that have just demonstrated violence. Now there may be behavioral health issues or-- or specific mental health issues behind that, but that's often why they come to us. They have-- they're very aggressive.

LATHROP: [01:03:29] I was just wonder if what we're hearing-- you know, if you take somebody who's charged with a misdemeanor, an offense that it-- that that potentially carries less than a year in jail, or up to but not greater than a year in jail, and they come in and they can't be kept safely, if we're talking about sort of the EPC crowd.

SCOTT FRAKES: [01:03:48] Could very well be.

LATHROP: [01:03:49] And really what we're hearing today is the frustration of Platte County and other places that they have no place to take somebody that is in emergency protective custody, mentally ill and a danger to themselves or somebody else, and so we throw them in the Platte County Jail and the sheriff says, I don't know what to do with this person because we have no place to take him.

SCOTT FRAKES: [01:04:12] Right.

LATHROP: [01:04:14] You don't have any jurisdiction over the Lincoln Regional Center?

SCOTT FRAKES: [01:04:17] No.

LATHROP: [01:04:18] OK. That's a Health and Human Services facility?

SCOTT FRAKES: [01:04:21] Yes.

LATHROP: [01:04:22] I'm completely frustrated them right now because as we saw when we toured Diagnostic and Evaluation, some of those folks that you have in there are really overflow from what should be the Lincoln Regional Center. Am I right?

SCOTT FRAKES: [01:04:39] There's always that potential. Of course, if they're with me, then they've been-- they went through the system, they were adjudicated, and they were, you know, found to be competent to stand trial and to be held accountable. On occasion, I have to admit, some of the people that I interact with, I wonder how that occurred. But that is our process.

LATHROP: [01:04:58] OK. That was helpful. Senator DeBoer has a question, I think.

DeBOER: [01:05:05] Sorry. I have one more.

SCOTT FRAKES: [01:05:08] Yes.

DeBOER: [01:05:08] When I'm thinking about this, can you speak to-- I'm kind of thinking about economies of scale in dealing with these sort of higher-risk inmates or-- does it work like you'd imagine that, OK, you know, you have a higher-- higher security facility or you have an intensive secure facility of some sort and you're able to sort of at a lower cost per person deal with them? Or is it in fact a situation where you get more folks together and it makes it more expensive to deal with each individual? So kind of where are we on that?

SCOTT FRAKES: [01:05:51] Today we're probably closer to the each new person that comes in with high level of need further taxes the system. With the completion of the reception and treatment center phase one project, that's exactly an important part of that is a consolidation of resources, creating one large skilled nursing facility and being able to bring in the staff to run that in one location; having a large behavioral health, high-end, high-security, but also high-need behavioral health unit, so that we can bring in our mental health, behavioral health resources instead of having a few in different facilities, then trying to manage both the movement of people and just the other things that come. There is an economic [SIC] of scale. Is that the right term? Close to it, yeah.

DeBOER: [01:06:44] So right now we're not there, but you're--

SCOTT FRAKES: [01:06:45] Economy of scale.

DeBOER: [01:06:45] -- you foresee the possibility of having this more, I don't know, efficient economies of scale sort of system once you complete the 60-odd beds that you're getting done. Is that correct?

SCOTT FRAKES: [01:06:58] Yes, we will. It's--

DeBOER: [01:06:59] All right.

SCOTT FRAKES: [01:06:59] -- April of 2021.

DeBOER: [01:07:04] But right now each additional person adds, say, more than what your average cost is right now for these folks.

SCOTT FRAKES: [01:07:10] It does and we also, because there's-- we're responsible for every single person we house and we're responsible for their safety and our safety and everyone else that's involved. But "safekeepers" add just another-- another element. So we try our very best and with rare exception do we house them anywhere except at the Diagnostic and Evaluation Center or at the Lincoln Correctional Center that's next-door where we have our higher security mental health resources. So all-- it's all on the same campus. So we don't-- so there again--

DeBOER: [01:07:45] But that seems like that would make it more efficient then if they're all together. I'm missing something, clearly.

SCOTT FRAKES: [01:07:52] It's only because there are only so many resources and so much space currently in that facility and then we have additional resources and space at the Nebraska State Penitentiary. And, yeah, so the--

DeBOER: [01:08:06] [INAUDIBLE]

SCOTT FRAKES: [01:08:07] -- consolidation that's coming is going to--

DeBOER: [01:08:08] OK.

SCOTT FRAKES: [01:08:08] -- will help us address some of those issues. But, as I responded to Senator Pansing Brooks, we designed that project, you know, to meet the prison population needs. So if we increase that through "safekeepers," as an example, misdemeanor safe keepers, we will probably be back in a situation where we don't have enough resources.

DeBOER: [01:08:33] OK. Thank you.

LATHROP: [01:08:33] I did forget to ask you this. Do these people count against your census?

SCOTT FRAKES: [01:08:39] We do count them.

LATHROP: [01:08:40] So when we look at where are you at relative to design capacity, the "safekeepers" are included in that count.

SCOTT FRAKES: [01:08:46] Yes, they are.

LATHROP: [01:08:48] OK.

SCOTT FRAKES: [01:08:48] Yes, they are.

LATHROP: [01:08:49] I don't see any other questions. Thank you, Director.

SCOTT FRAKES: [01:08:51] Thank you.

LATHROP: [01:08:55] Any other opposition testimony? Anyone here in a neutral capacity on LB376? Seeing none, Senator, you are good to close. I have two letters of support, one from Jennifer Brinkman, Lancaster County Board of Commissioners, the other from Pam Goldsby, Nebraska Correctional Administrators and Managers Association. Senator Friesen.

FRIESEN: [01:09:25] Thank you, Chairman Lathrop. Again, I'm willing to work with the committee on-- on any language changes we need to make. One thing I wanted to keep in mind is maybe, you know, any other secure facility. I'm looking ahead maybe to maybe someday we open

up a Norfolk or a Hastings treatment center. And I don't know what else is available. And I don't know why those words were put in there for sure, I couldn't say, but the way I read the bill, I mean, I don't think anyone is forced to take this prisoner yet. It says "to be procured by" the sheriff and to me that says if you're full and can't take him, you-- I don't just show up at your doorstep and dump him off. There has to be room to take that prisoner. But-- but again, we can work on language. And if we don't do something, it just looks to me, like in the case of what I'm-- we started about with the Hamilton County Sheriff, this person was in for a 30-day misdemeanor and it ended up being a year stay in the women's reformatory. It adds to numbers, it adds to cost. If this person could have been safely transported to a treatment place that was capable of handling her, we probably wouldn't be talking about this today. So we need to open up some-- we need to have some space. We need places for these people to go because these jails aren't equipped to handle them.

LATHROP: [01:10:44] It does seem to me, just listening particularly to the testimony of Ms. Lay from count-- the Platte County, that this does seem to be more of a mental health, what do we do with these folks that roll into the counties with significant mental health needs, and we are looking to the Department of Corrections because we've given up on the Regional Center.

FRIESEN: [01:11:06] We-- we have to find something because, I mean, if you want to go talk to any sheriff out there in the rural areas, they're all dealing with a patient like this now and then.

LATHROP: [01:11:13] I think in Douglas County, Sarpy County, they have times where they have no capacity for an emergency protective custody person.

FRIESEN: [01:11:23] I think that's why sometimes they've changed some of their rules now and they're not taking people in when they maybe should. And I think it-- in the end it causes more violent crime to maybe happen and we have more cost associated than if we'd just deal with it up-

front. That's all. If I-- I could answer any questions, I would.

LATHROP: [01:11:44] I don't see any other questions. Thanks for bringing the bill to the committee.

FRIESEN: [01:11:47] Thank you.

LATHROP: [01:11:48] That will close our hearing on LB376 and bring us to Senator Kolterman and LB216. Good afternoon, Senator Kolterman.

KOLTERMAN: [01:12:04] Good afternoon, Senator Lathrop. Just a general question, did you have something to do with the new lighting in here?

LATHROP: [01:12:12] You like it?

KOLTERMAN: [01:12:14] I like it.

LATHROP: [01:12:17] Yeah, it's a little brighter than it usually is.

KOLTERMAN: [01:12:18] You should use your influence on the other side of the building.

LATHROP: [01:12:19] OK. We'll have you introduce your bill now. [LAUGHTER]

KOLTERMAN: [01:12:25] Thank you very much.

LATHROP: [01:12:27] Welcome to the Judiciary Committee.

KOLTERMAN: [01:12:28] Good afternoon, Senator-- or Chair-- Chairman Lathrop and members of the Judiciary Committee. My name is Senator Mark Kolterman, M-a-r-k K-o-l-t-e-r-m-a-n. I represent the 24th District of the Nebraska Legislature which encompasses Seward, York and Polk Counties. And I'm introducing LB216 on behalf of the Nebraska Hospital Association. LB216 prohibits law enforcement from releasing a person in custody to a healthcare provider to specifically avoid the cost of medical services. Nebraska law is clear. Once someone is in custody of law enforcement, law enforcement is responsible for the costs of treatment unless the individual has health insurance. Hospitals around the state are having problems with law enforcement taking an individual who is in custody and dropping them off at emergency departments for treatment and claiming the individual is not in custody. Law enforcement then asks the hospital to contact law enforcement prior to that person being released so they can take them into official custody. The question is, are they doing this to specifically avoid paying for the cost of medical services? This poses several problems for hospitals. The hospital is on the hook for the services if the person does not have health insurance. The hospital cannot restrict use of services so that this person is free to use the phone, wander around the facility, or even leave. The hospital has had several instances where a person causes physical harm to staff members and other patients and/or damages property because they are not secured. And finally, there is a HIPAA issue with the hospital contacting law enforcement prior to their discharge. The Nebraska Hospital Associations has asked their members to work with law enforcement to discourage this practice. Some effort-- some areas have stopped, but it continues in Cherry, Dawson, Lincoln, Nemaha, Saline, Valley, and York Counties, just to name a few. We have hospital officials from Great Plains General Hospital in North Platte to provide greater insight into the problem that they continue to experience. I will tell you that I've worked with NACO, the League of Municipalities, and tried to discuss this issue. Very open, open to the idea of remedying the problem. But we dropped the bill so we could have the hearing and talk about this publicly. I think I would try to answer any questions you might have, but I think there are

some people that can lay out the situation to you coming up, and then I will be here to close. So thank you.

LATHROP: [01:15:17] Senator Kolterman, just to be clear, and you and I talked about this earlier today, the-- the practice you are concerned about and this bill addresses is if law enforcement picks somebody up, they might have been involved in some kind of an accident, they have some kind of an injury. Your concern is that they are at times left at a hospital, law enforcement says they're not in custody but call us when you're done treating them, and then they call and you pick-- they come pick them up and then arrest him after the care is done, and then the hospital has to absorb the care rather than the law enforcement agency or that county.

KOLTERMAN: [01:15:55] Correct. The real question is, are they in custody or are they not in custody? And I don't know. I hope we can get to the bottom of it through--

LATHROP: [01:16:03] OK.

KOLTERMAN: [01:16:03] -- through this hearing.

LATHROP: [01:16:05] I don't see that that's brought on any other questions, so we'll take the proponents.

KOLTERMAN: [01:16:09] Thank you very much.

LATHROP: [01:16:09] Thank you, Senator.

ANDY HALE: [01:16:10] Thank you, Chairman Lathrop. Members of the Judiciary Committee,

my name is Andy Hale, A-n-d-y H-a-l-e, and I am vice president, of the Nebraska Hospital Association, for advocacy. And I guess I'd just like to use kind of a hypothetical scenario and I'll use myself as-- as the individual. Let's say I'm out with my neighbor having a beer, we get into an argument, and I punch him in the face, I assault him. I wander down to the corner bar and have a few drinks. He calls law enforcement. They show up. In between law enforcement coming the house and the bar, I've punched the window in the bar, broken my hand and cut it. Now I need to be treated. So officers arrive. They place me in custody. I'm sure I'm in handcuffs. I'm sure I'm being transport-- "transportated" in a law enforcement vehicle in the back seat. And we all know I'm probably handcuffed and that's custody. What's happening is I show up at the hospital with law enforcement and they say, hey, how long is it going to take to treat Andy? They'll say about an hour. They said, all right, we're going to do some paperwork around the corner, give us a call if it's done earlier. Well, I don't have insurance, so now who's on the hook? And that's what we're here to discuss. Let's say the hospital does a good job treating me. I'm done in 30 minutes. Now that nurse or hospital official has to call law enforcement and say, hey, Andy's going to walk out our facility here in a couple minutes, why aren't-- don't you wait outside? And that's when they put me in--air quotes--official custody. And so the issue is, as Senator Kolterman laid out, they're doing this to avoid the cost of payment. There's a fiscal note attached, the State Patrol, and they have an anticipated cost of \$200,000 to \$700,000. Now I think they're basing this situation-- or their-- this cost on an incident that occurred in Omaha where the Omaha Police Department was fired upon, they returned fire, hitting the individual, and then he spent some time at Nebraska Medicine. And to Nebraska Medicine's Credit and the city of Omaha, they worked out to reduce that bill. But that's where that high number is coming from. But number two, as mentioned, and we have a CEO from one of our hospitals and a critical-- or intensive care nurse that will kind of talk about some of the bad stories she's seen. But I can run amok at our facility. I'm not handcuffed. I'm not guarded. And the third and the most important, now arguably one of maybe one of the most important things, is the HIPAA violation. I'm walking out the door and they're calling me. What happens if I walk out

the side door and I go back to that neighbor and I'm upset with them and I-- I kill him, assault him? Who's on-- who's liable for that? His family's going to say, look, we-- they called law enforcement, they picked up Andy at the bar. The bar owner is going to say, yeah, we were going to, you know, prosecute Andy for punching the window, and here I am walking, wandering off. So there's a variety of issues here. And I understand and empathize with-- with the costs that the city and county have to pay. But I don't think it should be put on the hospitals.

LATHROP: [01:19:29] Senator Slama.

SLAMA: [01:19:30] Yes. Thank you for coming out today. I think that you provided a pretty good illustration of the issue at hand here. Do you have any specific statistics on the prevalence of this issue [INAUDIBLE] ?

ANDY HALE: [01:19:44] We conducted an annual survey of issues with the Hospital Association just-- so we have 90 member hospitals and we had almost about 12 to 15 respond that this is a serious issue. Other hospitals around the state have said it's been an issue. As Senator Kolterman said, I wanted to bring this bill about two years ago. And we met with NACO and said, you know, is there some way we can try to not have this decided statutorily? Mel McNea, who's going to testify behind me, has worked with law enforcement. So we encouraged our members to say sit down with law enforcement and try to come up with a scheme. And he'll tell you there was-- they're still doing it. In fact, Bill [PHONETIC] asked Mel to have his hospital officials call when they're releasing the individual. Mel doesn't do that anymore. So here's this individual that has been in custody that's been released, is walking outside of his facility, and where they go. So to answer your question, it is prevalent in about ten of our county's hospitals that we've seen.

SLAMA: [01:20:48] And how would you define, or were your members asked to define what a

serious issue was, like is this happening more than once with each of these members who have said that it's a serious issue or were they asked to quantify?

ANDY HALE: [01:21:01] The people that it happens with, it continues to happen.

SLAMA: [01:21:04] OK. Thank you.

ANDY HALE: [01:21:04] Yep, um-hum.

LATHROP: [01:21:08] I see no other questions. Thanks, Andy.

ANDY HALE: [01:21:09] Thank you.

LATHROP: [01:21:22] Good afternoon.

MEL McNEA: [01:21:23] Thank you, sir. Go ahead?

LATHROP: [01:21:28] Yeah.

MEL McNEA: [01:21:29] My name is Mel McNea. M-c-N-e-a is the last name, first name Mel. I'm CEO at Great Plains Health in North Platte, Nebraska. And thank you for allowing me to testify today. Through some of the testimony, just on some of the previous bills, has actually been educational for me so I'm going to ad lib here a little bit. So I think what our-- we're facing is really a crisis that is stemming through law enforcement and filtering down into the healthcare industry. I spoke to my colleagues in Kansas and they have been talking to their colleagues in Missouri. Both Nebraska Hospital Association-- the Kansas Hospital Association has already passed similar

legislation and the Missouri State is looking at it too. This really isn't an issue for me of getting reimbursed. I think what we have to understand is the regulations that hospitals are put under. And CMS regulations require us to-- to participate in our Medicare/Medicaid programs, we have to keep a safe environment. And I've been involved in surveys in my hospital where that has become questionable because of the activity of some of the patients that have been released from law enforcement. I have one of our nurses here that will describe an incident that I was also involved in. One of the graphs you have in front of you shows the increased opioid use in Lincoln County, and since 2014 it's almost doubled. So it's not just an issue of mental health. We have a behavioral health unit. We're a non-for-profit hospital and our behavioral health unit is not a profitable part of our hospital, but we do that because that's what's important for our community. Patients that go up behavioral health have to be screened for medical reasons first. A patient being admitted for mental health psychosis, if they have medical issues and they've been involved in drugs and alcohol, they have to be treated before they can go up to that level of care. What we experience is a lot of the drug and alcohol and patients detoxing and during that period of time they can become very violent. We are not equipped to be a detox center and there isn't one in western Nebraska at all. We have to work with these patients in law enforcement to try to detox them, but they create that unsafe environment, like Medicare is alluding to. It puts us at jeopardy for loss of our Medicare funding but most importantly, it puts my staff in jeopardy. When a patient is admitted and released from law enforcement and we admit them, they have all the rights of a regular patient. I have to give them access to a phone, the Internet, access to visitors. We actually had one drug deal go down in our hospital because we could not prevent it. So you ask yourself, if you're the patient next-door recovering from a gallbladder surgery, do you want somebody that's coming down from an opioid high or a meth high reacting? If you're a nurse that's decided you want to do a "med-surg" or ICU floor, then do you quit your profession because of the risks associated with it? There's much more to this issue than just what we're talking about here today, but I think collectively it paints just opportunity for us to make improvement throughout the system. I'm not worried about the cost. I'm

worried about the safety of my staff and saying with-- staying within the requirements of the federal government.

LATHROP: [01:25:11] OK.

MEL McNEA: [01:25:13] I'd open to any questions if you have.

LATHROP: [01:25:17] I do not see any questions for you but thank you for coming here today.

MEL McNEA: [01:25:20] No, you're welcome. Thank you, sir.

LATHROP: [01:25:31] Good afternoon.

PAULA BAGNELL: [01:25:32] Good afternoon. My name is Paula Bagnell. Last name is B-a-g-n-e-l-l, first name Paula, P-a-u-l-a.

LATHROP: [01:25:44] Go ahead.

PAULA BAGNELL: [01:25:45] And I am here as a representative for nurses in the hospitals. I've been an RN for almost 37 years now. Background, I've been a prison nurse for two years, been a traumatic brain injury, critical care flight, I was an Army nurse for four years, lots of experience. And my prison helped a lot. My prison, that was in Colorado. So today I'm here about a-- there's been multiple situations, it isn't isolated, but the one that stands out most recently in my mind, I came to work not long ago to a 32-bed floor, 16 beds ICU, 16 beds PCU and observation, 8 nurses, 6 nurses' aides, families, and 32 patients. Five-thirty in the morning, I'm making rounds. We have a patient that was transferred from the jail in the middle of night for a seizure, which is not

uncommon--we get people-- a lot of people from the jail with seizures, with passing out, with suicide attempts, all kinds of things--and that this person was released from custody to be admitted to the hospital. No problem, we don't judge that. I went around making rounds like I always do in the morning, walked in, talked to this, kid who is probably about 5'11", a good 250 pounds, very well-built muscle. Talk to him--nice kid, real polite. I told him what-- this is what you're going to have today, EEG, you're going to see the doc, going to have a neuro consult. And as I'm standing there talking to him-- we have in our hospital a system where there's a TV screen on the wall, they get a keypad so they can do Internet, they can do Facebook, they can play video games, they can watch TV. Well, I was talking to him. He was on Facebook saying, hey, hey, man, I'm out of jail, come on up to Room 3332, I'm out, come on up, multiple people up there. And so I said to him, you know, this isn't a social place, you're here to have an evaluation for seizures. You know, I didn't say you can't have visitors because I can't say you can't have visitors, but I said this isn't-- you know, you're going to be doing a lot today so keep it on the down low. And he was fine, polite, nice. Went about my day. About 12:30 when the nurses in the ICU comes to me-- I was the charge nurse that day, responsible for that whole floor-- comes to me and says something is going on a Room 30-- 3332. And I said, what? And he said, I don't know but something's going on. I walk in there. There's two guys standing there with long coats. One has a paper bag in his hand. Patient is totally different. And there'd been other people in and out of there all day, I've noticed, but there wasn't-- I mean I'm in charge of an ICU. I can't be monitoring everybody coming in and out of the room because it wasn't anything I could do. The patient was mad. He was red. And I went over and said, what's going on? And he was just-- if you've ever stood in front of somebody that's just taken a hit of methamphetamine and look them eye-to-eye, you would understand what I'm seeing. And I have many times, being the prison nurse, and being an ICU nurse, unfortunately, I've done the same thing. That's what had happened. Sometime during that morning he had gotten meth from somebody that walked into his room, because there wasn't anybody watching him, took the meth on my floor that I'm responsible floor-- for. I asked the two guys to leave. They left. The patient gets

up. He comes at me. It's a Sunday afternoon. And so in my mind I go straight to I've got to keep everybody safe. And he came out of the room. I put my hands on his chest thinking, OK, what I've got to do is keep his mind on me because I have all these people up here. He backs me out of the room. I've got my hands on his chest. He backed me all the way down-- at least 50 feet down one hall. And I'm talking to him. I hear people closing doors behind me, but I'm keeping his focus on me knowing that if I don't-- I know what can happen when methamphetamine people get crazy-- people can get hurt. He backs me all the way down one hall, across, and all the way back up the other hall before the security guard even got up there. And by that time, the other nurses that could see what was happening had called the police. The police came up. One of the nurses called Mel, my CEO, on a Sunday afternoon. He shows up, then the county attorney shows up and the officers show up. Patient is in his room just-- he's breathing fast, his eyes are wide open, he's red, he's mad, he's angry, and it's just because he's-- he's on meth. So the officers ultimately took him to jail. The county attorney shows up and says, what do you want me to do, to my CEO. He says, I want my nurses safe, this is not safe. So in my opinion-- and this isn't an isolated incident, this is just different from others that have happened, and it's only by the grace of God in my mind that something bad didn't happen that day. There was probably a good 20 minutes in this floor that I had my hands on his chest trying to keep him focused, to not go in a patient room or a nurse or a family member, and something like that shouldn't be happening. He should not have been-- and he had crimes of violence in his past-- he'd been on our floor once before-- even violent crimes with a gun.

LATHROP: [01:30:56] OK.

PAULA BAGNELL: [01:30:56] So if there had been an officer there that day, that wouldn't have happened.

LATHROP: [01:31:01] So your-- your point is that it's kind of a different-- there's-- there's coming

in and saying he's not in custody any longer.

PAULA BAGNELL: [01:31:11] Yes.

LATHROP: [01:31:11] And then there's coming in, we want him but he needs care and we're not going to stick around, which is also an issue.

PAULA BAGNELL: [01:31:18] Right. To knowingly release an inmate into the hospital, especially-- we have people withdrawing all the time that come from the jail. They get arrested. They start withdrawing from whatever drugs or alcohol they're on. They send them to the hospital, end up in the ICU. They don't have an officer there anymore.

LATHROP: [01:31:34] OK.

PAULA BAGNELL: [01:31:34] So it's just us and them.

LATHROP: [01:31:36] Senator Brandt has a question for you.

BRANDT: [01:31:39] Thank you for your testimony. Do you get prisoners in your hospital that are in custody?

PAULA BAGNELL: [01:31:46] Occasionally.

BRANDT: [01:31:48] And then when that happens they do have an officer at the door 24/7?

PAULA BAGNELL: [01:31:51] Occasionally.

BRANDT: [01:31:53] OK. Thank you.

LATHROP: [01:31:56] I don't see any other questions. Thank you for coming all this way to share your account. Any other proponents? Anyone here in opposition? Good afternoon again.

ELIZABETH LAY: [01:32:23] Good afternoon again. My name is Elizabeth Lay, E-l-i-z-a-b-e-t-h L-a-y. And again, I'm the deputy county attorney in Platte County, Nebraska. I've been listening to the testimony and I think-- and I just-- I don't have time to say everything that I want to say. I think there has been a misstatement of the actual law. And I would like to clear that up if-- if given the chance to do so because a lot of people just focus on-- on 47-703 and they don't focus on 47-702, which doesn't just say that a person is-- or a law enforcement agency is only responsible if they don't have health insurance. 702 actually says that the hospital must try to collect from any other available source, which in my legal opinion, for what that's worth, would also be from the person themselves and that they have to make a showing with a sworn affidavit saying that they've tried to collect from any other available source prior to presenting that bill for law enforcement payment. And then that payment would go to the law enforcement agency or the detention facility where the person is kept. That's where 703 comes into play. I have a real problem with this bill because I am the civil adviser for our county, our elected officials and our county board, because you're basically giving the doctors arrest capability and you're taking away from law enforcement the discretionary authority to do what's best in light of the totality of the circumstances. I can tell you in Platte County that we never "unarresting" someone or giving them a PR bond or doing any of those things for the purposes of avoiding a medical bill. More often times than not, it's because we don't have the staff to sit someone at the hospital 24/7. We don't have the staff, we don't have the resources, and we can't pay the overtime to become a security system for the hospital. That's not what our law enforcement officers are there for. And I have a lot of sympathy to hospitals for having to deal with

things like the opioid crisis because it causes people to behave in ways that are-- are unforeseeable. But in addition to that, as a rural county, I can tell you that the majority of counties out there, with the exception of your larger ones, don't have the resources. And that's their primary-- that's their primary concern is we don't have the staff because if we take one of our road deputies off the road to sit on this person for 24 hours a day, we no longer have a road deputy, because a lot of rural agencies are just dealing with one. And so there is a totality of the circumstances analysis that has to come into whether or not a person is arrested, not to mention the fact that law enforcement officers have the ability to cite and release per statute. And they should be able to do that regardless of the location in which it's done, whether it's beside the road and they're looking at the-- the totality of the circumstance as a whole there, or whether it's in a hospital setting where they're saying, OK, you know what, there's a lot of things going on here, we're just going to cite and release, we know that this person is in a safe place, we're going to cite and release and we'll give them a court date and we'll see them in court. So I am obviously an opponent of anything that takes away our law enforcement's discretion and their ability to-- to do their job in those situations.

LATHROP: [01:35:46] OK. I got to tell you, I'm a little concerned about what you just said. I had in my law practice an opportunity to represent somebody in the exact same situation Ms. Bagnell was in, except that this particular nurse got punched in the face and ended up with vision problems for the rest of her life. And the idea that somebody who needs law enforcement intervention would be dropped off at a hospital and the answer is we don't have enough people to leave a deputy to watch that person while they're getting care and we're going to turn them loose on a bunch of nurses and hospital staff, that's unacceptable. That doesn't work because people get hurt by criminals that law enforcement is supposed to be taking care of.

ELIZABETH LAY: [01:36:38] And I understand. I do understand that. I understand that component and I can say that in a situation where we have a violent offender, we would-- we would

never let them out of custody, so I don't know what's happening in that particular county. There's a lot of different instances in which Platte County has-- a person has been transported to Omaha, for example, for life-threatening injuries. it's a violent offender, and we hire out a security system to-- or security staff to sit with that person in Omaha to ensure the safety of the hospital staff. And so my testimony isn't that a person should just be released from custody for the purposes of just releasing them for custody or because there's not staffing. I'm talking about those situations where you come into the emergency room and an officer is walking the person into the office or into the hospital and says, you know, the testimony where we were talking about before where they're-- they're saying, call me when they're done, you know, a lot of-- a lot of different types of-- of analysis go into to that particular part of this bill. And that's the part-- that's what this bill really encompasses. It doesn't encompass letting someone-- giving someone a PR bond because that can happen at any time. That, I think, I feel, is a discussion for a different bill. I don't see that encompassed into this bill because it's not the detention facility that's allowing them out of custody; it's the judge the screening that. If they're already in custody, in the detention facility, you're going to have to get them out a whole different way, through the court system.

LATHROP: [01:38:22] OK. I don't see any other questions but thank you for your testimony.

ELIZABETH LAY: [01:38:24] Thank you.

LATHROP: [01:38:26] Any other opponents? Afternoon once again. Welcome.

JON CANNON: [01:38:52] Good afternoon , Chairman Lathrop. Distinguished members of the Judiciary Committee, my name is Jon Cannon, J-o-n C-a-n-n-o-n. I'm the deputy director of the Nebraska Association of County Officials and we are here in opposition to LB216. I think most of the issues in the ins and outs of this have already been described. I do want to thank Senator

Kolterman for having brought this. This is an important discussion I think for this committee to have and certainly we're-- we're happy to provide whatever input we can. I want to go back. Earlier we had the distinction between I get into a bar fight, please come pick me up, cite-- cite and release me, take me to the hospital, and then the more extreme example, those offered by Ms. Bagnell. There's a subtle difference between those two situations and I think that this committee needs to be aware as to which one they want to make sure is covered. One of the other issues that we have certainly with language is the use of the word "merely." We say that with-- law enforcement can't drop someone off merely for the purpose of avoiding the costs. As I read "merely," you know, rules of statutory construction tell me that that is read as "only." I think that any law enforcement officer is going to say, well, no, we dropped them off because they needed medical attention and, you know, whether or not that was avoiding the cost is kind of a secondary issue. So I think that that term almost reads the-- the provision that we're trying to address out of the statute entirely. I want to kind of address what if you've got a domestic abuse situation where you've got two people that are-- that are beating each other up and both require medical attention, one gets cited, the other one doesn't, and for whatever reason they both don't have health insurance. I guess the reading here is that law enforcement is responsible for one party but not both. That doesn't make a heck of a lot of sense to us either. Perhaps there needs to be a better definition of custody as well. Right now what we've got is this notion of, well, you've been picked up by the police and that should count. There's a difference between I think having-- someone having been processed, sent into jail, and the cite and release that we've talked about previously. Also I don't think this addresses those situations where that person has been released from jail because of a judge's furlough. This bill certainly isn't going to address that. And you could have the exact same parade of "horribles" that we've been describing but with the judge's furlough, then it's out of the hands of law enforcement and this doesn't address that. And so I think those are issues that this committee needs to address and probably consider. Again, we would urge you to not advance this bill out of committee and with that, I'd be happy to take any questions you might have.

LATHROP: [01:41:29] I see no questions, but thanks for your testimony.

JON CANNON: [01:41:32] Thank you.

LATHROP: [01:41:32] Anyone else here to testify in opposition?

CHRISTY ABRAHAM: [01:41:41] Senator Lathrop and members of the Judiciary Committee, my name is Christy Abraham, C-h-r-i-s-t-y A-b-r-a-h-a-m. I'm here representing the League of Nebraska Municipalities. And for the new senators, we are a nonprofit member organization that represents the 529 cities and villages all across this great state. And I first want to start by thanking Senator Kolterman for bringing this issue to our attention. We were very grateful to be invited to a meeting with the Hospital Association, with the counties and us, to learn about this problem. After we had that meeting, we did reach out to some of our law enforcement to talk about this. The Hospital Association was also very gracious to give us a copy of their survey results. And Mr. Hale may have a more complete copy of that results than I do, but with the results that we were shared, most of the hospitals indicated that this issue was resolved after talking to law enforcement and having continuing conversations about it. We understand that North Platte may be having continuing issues on this so we did reach out to the North Platte police chief. He said they met last week with the hospital-- with the hospital, I apologize. The CEO was not there but members of the emergency room were there and they indicated this hasn't been a problem recently. The police chief has committed that they are not going to leave a violent offender alone at the hospital. They are going to do everything they can to make sure those situations that the nurse-- so, you know, did a great job of explaining what a terrible situation that is. The police chief is committed to making sure that that doesn't happen again. So at this time we would ask that this committee hold this bill. The league is committed to doing further training on this issue, to have continuing conversations with

law enforcement, and we think at this point that is the better route to go. We think a lot of these issues can be solved with further education and training. And I'd be happy to answer any questions, Senator Lathrop.

LATHROP: [01:43:43] I see no questions.

CHRISTY ABRAHAM: [01:43:45] Thank you.

LATHROP: [01:43:46] Thank you for your testimony, Ms. Abraham.

DANIEL SCHLEUSENER: [01:44:00] Good afternoon, Chairman Lathrop, members--

LATHROP: [01:44:00] Good afternoon once again.

DANIEL SCHLEUSENER: [01:44:00] -- members of the committee. My name is Dan Schleusener, S-c-h-l-e-u-s-e-n-e-r. I'm the chief deputy sheriff with the Buffalo County Sheriff's Office in Kearney. I'm here to testify in opposition to the legislative bill. We in Kearney have a-- personally, a good working relationship with our hospital and frankly we-- I guess we don't see the need for-- for the --for the legislation from Buffalo County. That's all I have. Welcome any questions.

LATHROP: [01:44:36] Senator Pansing Brooks.

PANSING BROOKS: [01:44:38] Thank you for coming today, Sheriff Schleusener. I-- I'm just interested. This is all just really sort of surprising to me because I didn't realize this was all going on. And so how do you look at it? Do you-- are there times that you ask the hospital to keep this

person there and call them when they-- call you when they're done with them?

DANIEL SCHLEUSENER: [01:45:02] Not-- not from our-- our agency, no. I mean, the-- the example that the first testifier presented from the Hospital Association, to me that sounded like a cite and release where the officer could have cited and released him and he was just providing a ride to the hospital. Our agency wouldn't provide the ride to the hospital. We would call for an ambulance just to-- so that there is no question about that.

PANSING BROOKS: [01:45:35] I think that makes a lot of sense. It seems to me that to all of a sudden start asking the hospitals to become sort of the-- the caretakers of people that the police want to later deal with, I just don't even understand this new theory. So I'm grateful that Senator Kolterman brought this to us. We need to figure out if this is truly an issue or not. Thank you for coming.

DANIEL SCHLEUSENER: [01:46:03] Thank you.

LATHROP: [01:46:05] I see no other questions. Thank you for your testimony. Anyone else here to testify in opposition to LB216? Anyone here in a neutral capacity? Seeing none, Senator Kolterman to close. And as you approach, I have some letters that I'll read into the record in support from Annette Dubas, Nebraska Association of Behavioral Health Organizations; Amy Miller from the ACLU; and a letter in opposition from Don Kelly on the Sarpy County-- County Board. Senator Kolterman.

KOLTERMAN: [01:46:44] Well, thank you very much. First and foremost, as I listened to those opposed, citing and releasing isn't an excuse when we're asking for release information from the hospitals, and I don't see that as even legitimate. And also, not addressing the HIPAA issue to me is

a concern. As I look at this distinguished committee, six of the eight of you are attorneys or have law degrees. I'm not an attorney. I'm willing to work on the language if it needs to be cleaned up, but I think there's got to be a way we can solve this issue. I believe both the League of Municipalities as well as NACO are willing to sit down with us, the Hospital Association, but more than anything I think we need to get on the record that this has occurred. If we have this occur once or twice, that maybe is too many. In my own district we, and this person wasn't in custody, but we had a person at the emergency room that was shot and killed by a law enforcement officer. There are dangerous people out there. We can't afford to put our hospital employees at risk in any case. If it needs to be hiring more employees on the part of counties and cities to protect the people, we need to do so. I like the idea that Platte County actually hires security people to watch these people if they can't do it themselves. It's not-- maybe it's isolated, maybe it's not, but I have had-- the Hospital Association gave me those eight names of the counties that were involved. I think it needs to be addressed. With that, I would try to take any questions you might have. I'm more than willing to work with any of you and all of you on this issue. Thank you.

LATHROP: [01:48:41] I don't see any questions. But thanks for bringing the bill here.

KOLTERMAN: [01:48:44] Thank you.

LATHROP: [01:48:45] That'll close our hearing on LB216 and bring us to LB108 and Senator Bolz. Welcome, Senator Bolz, to the--

BOLZ: [01:48:59] Thank you.

LATHROP: [01:48:59] -- Judiciary Committee.

BOLZ: [01:49:01] I've got some handouts for the page. I am in fact Senator Bolz; that's K-a-t-e B-o-l-z. And today I bring LB108. As you know, our Department of Correctional Services continues to face the challenges of overcrowding and understaffing. LB108, through the use of the county jail program, is an attempt to help mitigate some of these challenges. As a member of the LR127 special oversight committee, my colleagues and I reviewed the status of Nebraska's correctional system, evaluating facility, population, programming and staffing challenges, and reporting out finding and recommendations. LB108, which would establish use of county jails by the Department of Correctional Services in statute, would be one way of implementing one recommendation in the 2017 report which was supported unanimously by the committee. Utilizing the county jails can be effective and timely release valve for the department absent the ability to immediately construct additional facilities or secure more staff. The Legislature has appropriated funds for this purpose in the past but without much statutory definition for the use of these funds. There were not clear guidelines for who would be served in our counties or how they would be served. In past testimony Director Frakes has reflected on the program saying: My goal is to utilize these beds for as long as I need them to provide that extra space within the system and some breathing room. The director has also indicated that he has not made a funding request for this program because it is his intention to resolve capacity concerns within the department and discontinue use of the county jail program, stating, for example, during the 2016 Appropriations hearing on the Corrections budget: As the population decreases based on the impacts from LB605, I plan to house all inmates in NDCS facilities by the end of fiscal year 2017. Nonetheless, the program has continued and the information provided to me from the Legislative Fiscal Office has shown that from July 2017 to June 2018 over \$3 million in vacancy savings were spent on this purpose. The director also testified at the January 18 information session that it was not likely that we would achieve the goal of a level of overcrowding relief needed to avoid the pending 2020 emergency. Further, the average number of inmates in county jails over the last year was over 90 inmates per month, including "safekeepers." I believe that it is our duty to ensure that if we continue to use this program, we do so

in a manner that is intentional and strategic. LB108 authorizes the department to continue contracts with county jails to house Department of Correctional Services' eligible inmates. That bill defines that inmates who are eligible for participation in the county jail program could include: inmates with one year of parole or sentence release-- within one year of parole or sentence release or inmates requiring only community or minimum level supervision. The statistics I have are that there are about 1,000 inmates at the community or minimum custody level of supervision. Beyond safety, one of the concerns of the current practice is that the department may be placing inmates in this program who have not yet received the necessary program-- programming required for them to become parole eligible and the county jails don't have the capacity to meet those needs. LB108 provides the department may only place inmates for housing in county jail facilities that have the capacity and agree to offer services to meet one or more of an inmate's parole-specific prerelease programming requirements. It also provides that the department can house inmates in jail facilities who do not require programming to become parole eligible. The goal of LB108 is to ensure that we don't overlook the safety or our obligation to-- overlook safety or our obligation to provide rehabilitative programming. It's critical to the safety of the receiving county jail and to all of the individuals being detained therein that we ensure that the risk level and inmates participating in this program does not exceed the capacity of their facility or staff. I want to clarify that LB108 in no way requires county jails to change their program offerings. It's my intent to prevent inmates from being housed in facilities unable to meet their parole-specific programming requirements and subsequently jeopardizing the timeliness of program completion and the parole readiness of these inmates. I think it's in the best interest of the receiving facility, the inmate, and our community to match up the risk and needs of confined offenders with the strengths of the jail in the neighboring community where they are housed. I will say that I have had discussions with Director Frakes regarding this bill. He's always very professional and informed in his interactions with me. I will not in any way try to represent his point of view on this issue. I can appreciate that from a DCS standpoint there may be concerns about losing flexibility offered by partnering with county jails.

This may be especially true as we bring up more minimum-custody beds. However, I would argue that this is an important conversation to be had between the Legislature and the Department of Correctional Services. The question here is how do we best use the county jail program to achieve shared goal-- shared goals and ensure quality outcomes with taxpayer dollars. I would request-- suggest-- ask that you also review the fact sheet I provided which provides you a little bit of history. And when I say a little bit of history, that's a one-and-a-half-page fact sheet that talks about really six years of history because this has been a part of the conversation since the beginning. LB108 just offers one strategy for how we could clarify the use of the county jail program. I'll wrap it up, I promise. Just one last thing, I wanted to describe the amendment offered to you. The amendment adds a requirement to prioritize individuals for placement that meet all three of the following criteria: offenders whose sentences include postrelease supervision and are three months or less from mandatory release and can be housed in a jail in the county they came from or one that is in 100 miles of the county they came from. I'd be happy to answer your questions and appreciate your attention.

LATHROP: [01:55:04] I do not see any questions. Thank you, Senator Bolz. Proponents may testify. If you're going to testify as a proponent, we'll just have you come in the front row so we can kind of-- the on-deck circuit. Good afternoon and welcome to the Judiciary.

JERALL MORELAND: [01:55:25] Good afternoon, Senator. Senator Lathrop and members of the Judiciary Committee, good afternoon. My name is Jerall Moreland, J-e-r-a-l-l, Moreland, M-o-r-e-l-a-n-d. I'm here today representing the State Ombudsman's Office in the capacity as deputy ombudsman for institutions. I would like to thank Senator Kate Bolz for the invitation to offer our views on LB108 as it relates to the use of county jail facilities by the state corrections system. Today I will submit my written testimony into the record and offer a couple of remarks related to the bills for this committee's consideration. First, in 2015, the department sought to reduce

overcrowding by temporarily housing inmates in county jails. Several years later, the department continues to rely upon county jails to address its overcrowding issues. For this reason, direction for the program of housing state inmates in county jails is needed. LB108 provides this important direction. Second, while the department has indicated a desire to discontinue the county jail program, at this time, with the DCS capacity around 160 percent of capacity and the 2020 deadline fast approaching, it seems unlikely that the department will discontinue the county jail program for the foreseeable future. Finally, four years ago, there were approximately 189 inmates in the county jail program. Fast-forward to today, we have 102 inmates housed in our county jails. The reduction is largely due to 100 new community beds that were added to the system. Hence, if we add the 100 new beds with the 100 new inmates housed in county jails, we still have not recognized the reduction of population that we need to see. The department's overcrowding issue is particularly evident at D&E where at the end of February 2015, the Corrections intake facility census was at 533 inmates, or 33-- 333 percent of design capacity. Today, DES [SIC] census is at 538, or 336 percent of design capacity. Therefore, if you were to add the 102 inmates back into D&E's census today, D&E would have over 600 inmates, exceeding the levels we had in 2015. In other words, by housing inmates in county jails, the overcrowding numbers are reduced. However, we perceive that careful attention needs to be given to the best strategic use of the jail placement. LB108 provides strategic guidance to the department for operating the county jail program. It identifies minimum eligibility requirements for placing state inmates in county jails. I've also included in my written testimony other eligibility requirements that could be considered. These requirements would require the department to identify principles to be incorporated into agency rules and regulations. With that said, we would encourage the department to develop operating policies and procedures for the county jail program. Thank you and I'm open for any questions.

LATHROP: [01:58:45] Thank you, Jerall. I do not see any questions.

JERALL MORELAND: [01:58:50] All right.

LATHROP: [01:58:50] Thank you for your testimony. Next proponent. Good afternoon.

DEB MINARDI: [01:58:59] Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Deb Minardi, D-e-b M-i-n-a-r-d-i. I'm employed by the Nebraska State Supreme Court as the probation administrator with the Administrative Office of the Courts and Probation. I'm here today to testify in support of LB108 as amended. Should LB108 be passed by this Legislature, the Administrative Office of the Courts and Probation would take advantage of this opportunity to start reentry programming in jails with postrelease supervision clients whenever possible. We believe this prerelease programming would increase successful reentry for postrelease supervision clients as they transition back into their community. Programming offered would be done so when authorization and cooperation of local jails permitted. With that, I'll be happy to answer any questions.

LATHROP: [01:59:55] I see none. Maybe I'll make this point with your testimony, which is, if we're going to use the counties, county jails, your thought is, as somebody that deals with the postrelease supervision, that we start them out in the county jails if they're getting close to their release date so you can start providing services or at least meet with them and do whatever assessments--

DEB MINARDI: [02:00:18] That would be correct.

LATHROP: [02:00:20] -- probation needs to do.

DEB MINARDI: [02:00:22] Yes.

LATHROP: [02:00:23] OK. I think I understand your support. I see no other questions. Thanks, Deb.

DEB MINARDI: [02:00:27] Thank you.

LATHROP: [02:00:37] Good afternoon.

DOUG KOEBERNICK: [02:00:37] Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Doug Koebernick, spelled K-o-e-b-e-r-n-i-c-k, and I am the Inspector General of Corrections for the Legislature. First I want to thank Senator Bolz for introducing this bill and I would like to say also that most of the thoughts that I had on it were covered by her or Mr. Moreland or Deb Minardi. I got a couple quick points I want to say. One is I do think it is important to have some guidelines in place for the use of the county jails in the future. I think that's just good public policy. We don't want to turn those county jails into warehouses really for our state inmate population. And finally, when a similar bill was introduced last year, I went out and visited the county jails that housed those state inmates. As a result of those visits, I presented my findings and recommendations to the Legislature and to the department because there were many issues that needed to be addressed, in my opinion. I think even the department would probably admit that they dropped the ball a bit because they thought the program was going to end, and I am glad to say that of the recommendations that I made at that time, that they have responded to pretty much all of those and I think the program has improved as a result of that. So in closing, I just think it is important to have this discussion and I support this piece of legislation.

LATHROP: [02:01:53] Thanks, Doug. I see no questions. Appreciate your testimony. Anyone else here to testify in support of LB108? Anyone here in opposition? Good afternoon, Mr. Director, once

again.

SCOTT FRAKES: [02:02:19] Good afternoon, Chairman Lathrop, members of the Judiciary Committee. My name's Scott Frakes, F-r-a-k-e-s. I'm director of the Nebraska Department of Correctional Services and I'm here today to provide testimony in opposition to LB108. As of last week, we had just over 100 state inmates-- we heard 102 this morning-- in jails located in Buffalo, Dawson, Lincoln, Phelps, and, Platte Counties. Previously, we have also contracted to house people in Hall and Saline counties and we're currently talking with Scotts Bluff. The average length of stay for inmates housed in county jails is 115 days. We have nine inmates who have exceeded a year in length and they have volunteered to do so. There are more individuals who have volunteered to stay but have not yet reached the one-year mark. Of those who are in county jails and have not volunteered to stay, the average time spent in county jails is 80 days. For the most part, inmates are moved to county jails-- jails following the intake process at the Diagnostic and Evaluation Center until they can be moved to a facility operated by NDCS. Over the last five fiscal years, only in 2016 did the-- pardon me-- average daily population of county jail inmates exceed 150. While we've managed to keep the ADP to a reasonable level in county jails, it's undeniable that having access to those beds provides flexibility of inmate movement and to a certain degree, it alleviates pressure on the state prison system. Having access to county jail space is important. The more requirements and restrictions placed on that process infringes on the ability to safely and effectively manage the inmate population. Legislation should not dictate every aspect of a system as complex as NDCS. It's full of moving parts and the proposals included in this bill would greatly constrain who we place in county jails, effectively eliminating this important resource. NDCS has 820 community beds; that's based on 160 beds that will come on-line at the end of March. We do not need county jail beds for reentry or community transition. Thank you for the opportunity to testify today and I'd be happy to try to answer questions.

LATHROP: [02:04:41] If I may, there are different aspects to this bill and your testimony is in opposition and it sounds like you're-- you've described general opposition to the bill. Are there specific aspects to it? Is it the limitation on the number of beds? Is that the-- the priority that's set out in the amendment? What-- what part of the bill is-- is there any-- well, maybe I ask-- ask it differently. Is there any part of the bill that's acceptable or is it every aspect of the bill that you find objectionable?

SCOTT FRAKES: [02:05:21] So I'm working from memory. I can't remember if there's specific language in the bill that talks about the need for clearer policy by the department. I know that was part of my conversation with Senator Bolz and I agree. Whether or not that's specifically mentioned or not, I can't recall. Really the central issue is specifically defining who we can house in those beds by custody level or by security level. We-- we are not short on minimum or community custody beds in our system, so-- and we rarely house high-security inmates in those beds because the jails also have some expectations about who they will accept as well, so-- but to say that it's only those people that are near release, then they'll be competing for the same beds I have to meet that purpose.

LATHROP: [02:06:15] OK. So when we did a briefing a few-- few weeks ago and you came in and you talked about-- I think we were-- we were discussing whether or not you needed anything to get to 139 percent of capacity and what your plan was before July of 2020. My recollection is you said we hope to do away with the use of county beds.

SCOTT FRAKES: [02:06:42] That's true.

LATHROP: [02:06:43] OK. And is that still your intent?

SCOTT FRAKES: [02:06:49] That will always be my intent. Yes, other than-- I think I said

something. If I didn't, I intended to say, there are on occasions where access to being able to rent a county bed can be beneficial for someone with high-level protective management needs, as an example, so, you know, but in general to use it just as a safety valve or as a-- you know, to manage the population issues, I definitely want to get away from that.

LATHROP: [02:07:17] So is there-- and when we talk about this and you say it's my intent or I want to get away from it, I don't know if that means you're going to end the practice in some period of time. Do you have a--

SCOTT FRAKES: [02:07:30] Yeah.

LATHROP: [02:07:30] Do you have a plan where you can tell us by this-- this summer I'm not going to use county jails anymore, or do you expect that's always-- needs to be a tool in your tool box for the foreseeable future?

SCOTT FRAKES: [02:07:43] I believe that it should always be a tool that's available. It's the only tool that I have in this system because of state law, unlike other states where there are other options to contract out beds, so.

LATHROP: [02:07:56] OK. And the confusion for me is what you expressed at the briefing, which is I want to do away with this program. In the foreseeable future, it's going to become one of the tools you use to try to get the population to some lower percentage of design capacity. That'd be true?

SCOTT FRAKES: [02:08:16] I see it more as the immediate need to do everything we can to keep Diagnostic and Evaluation Center at a more manageable level. As was noted by Mr. Moreland, our

population there has shot up again, a reflection of this jump in population that started late in September of 2018, or actually mid-September 2018 and that we have-- it did level off again but it has not dropped back down.

LATHROP: [02:08:41] So when we toured the D&E, and I think you were there, I recall that you were, my understanding was-- is that people that enter-- men that enter go through D&E, they have an evaluation which is typically done within 30 days, and their average time is 63 days, the last 33 days being trying to find them a place.

SCOTT FRAKES: [02:09:03] That's a reasonable assessment.

LATHROP: [02:09:06] Are these people going to the county jails right now?

SCOTT FRAKES: [02:09:08] Sometimes.

LATHROP: [02:09:08] Who are we putting-- what's-- what's your practice for using the county jails right now?

SCOTT FRAKES: [02:09:15] Primarily it is staging as we're-- if, as an example, if they qualify for the Work Ethic Camp but the Work Ethic Camp population is full on a given, you know, given time period, we may stage someone in a county jail bed and then when a space opens up at the Work Ethic Camp-- and know that all of this is fluid because we're turning over roughly 200 people a month, 200 coming in, 200 leaving. So we're always-- what's today's priorities can shift tomorrow just by who comes into our system. But in general that would be the intent. We would put someone somewhere in anticipation of the right bed within the system opening up, which, as I talked about, if you take out the math of those that are staying for a long time, primarily because that's what they

want, and those are people usually either they have significant protective management custody needs that there's just no place in our prison system where they can safely be out in population, protective management or general population, or it's close to home and it actually affords them a better chance to have family visits and they don't have-- their programming and treatment needs are farther down the road. So it's an opportunity for us to free up a bed and manage that person. Take out those numbers, we're looking at a population that's churning in about 80 days.

LATHROP: [02:10:41] OK. The amendment, AM154, talks about a prior-- a prioritization and one of them is a person's sentence includes a term of postrelease supervision and there are three months left-- three months or less left from their mandatory release date. Deb Minardi was here and suggested that if people are coming out of the Department of Corrections, they're going-- they're within three months of their mandatory release date, that it would permit those folks that need to work on postrelease supervision to have them available near where they will be released, to begin the process of assessing them for programming that might-- might go along with their postrelease supervision. Do you see a problem with that prioritization?

SCOTT FRAKES: [02:11:34] Well, I'm interested. It's unfortunate that we weren't able to have a conversation prior to this. We could have explored some of the options. But again, this is the population that currently we're able to house in our community custody centers, the Work Ethic Camp. So if I remove those people, the question would be, do I have others that I could place in those same beds? So I definitely have to take a hard look at whether or not it makes sense for us to-- to go in that direction. It's a conversation I do intend to follow up on.

LATHROP: [02:12:07] OK. You'll do that with Senator Bolz?

SCOTT FRAKES: [02:12:09] I will.

LATHROP: [02:12:09] Good. And Senator Pansing Brooks.

PANSING BROOKS: [02:12:13] Thank you. Thank you for coming, Director Frakes. So I get the arguments that you made. I understand them on-- on Senator Friesen's LB376 regarding the safekeeping of prisoners and how you don't think that-- basically a couple of your responses were that misdemeanants shouldn't be in prison and that's also not great to imprison preadjudicated individuals. Is that right?

SCOTT FRAKES: [02:12:42] Yes.

PANSING BROOKS: [02:12:42] And so I would agree with you on that, so-- but meanwhile of course what that bill was trying to address was-- was the-- the county jails holding people who are the most dangerous and have the-- that they aren't prepared to-- that the counties are not prepared to really take care of because they don't know how to take care of the unfortunate trend we're on, which is overincarceration of people with mental health issues. That is not your doing, necessarily, but it is a terrible cycle we're in right now. So I'm just trying-- so if we are doing that and-- and the-- and the county jails are having issues with the people that-- that are-- are mentally challenged or that they're having terrible mental health issues, why isn't it a better idea to use those county jails for those that would be safer and almost ready for release and able to get into some programming? Which is, of course, what I've been trying to work on since I arrived in this Legislature is programming, and it just seems like this is a really good idea to be able to shift it rather than putting the people at the beginning into those county jails and holding them and hoping that the counties can handle them. You are better prepared to handle that kind of inmate than the county jails are, in my opinion. So why not let the county jails handle the people on the end of it?

SCOTT FRAKES: [02:14:22] So our contracts with the county jails include caveats that say we would not send those people that you just described that have high mental health needs or other behavioral health needs or they're demonstrating violence, so --and if someone that we send to a county jail demonstrates any of that, then they come back to us fairly quickly, sometimes very quickly. Doesn't happen very often because we have a really rigorous process before we send someone to a jail. It's a-- honestly, a business relationship, so we work with those jails that have additional beds and have the space and desire, you know, to actually rent the beds. So it's not that we're taking space or resources from them. They are looking for it. But again, the-- really, to me the most important component of this is we have built new capacity to provide the right kind of housing for the custody level that's specifically talked about in this bill. So if I make full use of all of the community custody beds I have and the minimum custody beds I have, and that's, again, the only people that by statute could be put into county jail beds, I won't be sending them to county jail and now I've lost that resource as well. That's, you know, really the bottom line for me. I need the ability to put people where they can most safely, most effectively be housed. We're not going to send people to a county jail bed that have a treatment need that needs to be met. We're not going to send them there if they have a programming need that needs to be met that's going to delay their parole eligibility because that's counter to the work we're, you know, trying to carry out. In the early days when-- the term "program" is still assigned to it. I don't see it as a program. I rent bed space from jails and I try to do that on as temporary a basis as possible. I'm not looking for any other services than safe, secure, that they receive adequate food, good medical care, and those components. I'm not looking to the jails to provide treatment or programming or am I looking to lead people there for any length of time, well, unless some small-- unique situations where it truly makes sense. But if one of those person that's-- that's currently there has been there for more than a year, if they have a treatment need and they are approaching parole eligibility, we'll be bringing them back to our system to meet that need.

PANSING BROOKS: [02:16:59] Well, I do think this is a really unique way to look at it, rather than using the jails for the front end, to use them more for-- the county jails for the back end. And we-- we just heard Sheriff Handrup's testimony that he went to 14 different places because he had somebody who was violent and he didn't have any-- there was no room in any "inn." And so he had to try to find someplace and they wanted to send him back to him. So I hear you saying that you will bring them back but in that case, it did not occur--

SCOTT FRAKES: [02:17:34] But that wasn't my--

PANSING BROOKS: [02:17:37] [INAUDIBLE] testimony.

SCOTT FRAKES: [02:17:37] -- my inmate. We don't-- again, we don't send people out there demonstrating violence or other high needs. That's part of our agreement for the rentals of beds. So just to be clear, it's not that there couldn't be some other things that we could do in a more structured way and, you know, we're currently talking to Scotts Bluff about some options that we might have. I will circle back with Deb Minardi as well have some conversation. But I have a finite number of people that qualify for community custody. Senator Bolz referenced a number of about a thousand. That's probably pretty close. But not all 1,000 of those people can be safely housed at community custody. They may still have a lengthy sentence. They may have significant mental health needs that-- or other factors that require they still be kept in a secure facility. So when it gets down to it, I think with the beds that are about to come on-line, I've got the right number of beds for the people that meet that classification, have those needs. And so that's why I say with these kind of constraints, I don't know I'd have anybody left to send to the counties or if I did send them to the counties, I'd have empty beds at community custody that I couldn't put people in. And that's not good business.

PANSING BROOKS: [02:18:56] Thank you, Director Frakes.

LATHROP: [02:18:57] Senator DeBoer.

DeBOER: [02:19:01] I think you may have just answered this question, but let me see if I can get it straight in my head. You're saying that as soon as the new beds come on-line, you will essentially have all the community custody eligible folks housed, you'll have enough room for all of them. Is that correct.

SCOTT FRAKES: [02:19:19] I believe so, yes.

DeBOER: [02:19:20] And community custody would be then the lowest level Oof, I don't know, risk or custody level?

SCOTT FRAKES: [02:19:29] Security level, talking about--

DeBOER: [02:19:30] Security level, thank you.

SCOTT FRAKES: [02:19:30] Yes.

DeBOER: [02:19:31] Yeah.

SCOTT FRAKES: [02:19:31] So, no, it's pre-- I call it prerelease. You know, you can call it transition release, and then work release we classify 4A and 4B and we work with the Parole Board on those that are parole eligible, but these are the people that are housed in facilities that don't have a security perimeter and that routinely have people that are going into the community for work,

education, furloughs, and not under escort.

DeBOER: [02:19:56] OK. So then if you sort of have space for all of them, you would be relying on the jails for a more medium custody level or a medium security level of-- of beds, as you say?

SCOTT FRAKES: [02:20:14] Medium, minimum-- it would vary, so--

DeBOER: [02:20:16] Not the most minimum? I'm just trying to get a sense.

SCOTT FRAKES: [02:20:18] But not -- I shouldn't need to put anyone that's community custody eligible in a jail bed unless there's some unique situation that I can't think of off top of my head.

DeBOER: [02:20:29] And I think I've heard you testify that you wouldn't put the most high risk or dangerous, or something like that, folks into the jail system. Is that something that you've sort of set out some criteria and you say we won't put them after a certain level?

SCOTT FRAKES: [02:20:47] Our agreements talk about the different conditions and the expectations. Don't know that it's definite-- I don't know that it's specifically built around classification level because, again, someone that has done a fairly heinous crime 20 years ago and is now behavior compliant, odds are good they probably would be medium custody anyway, so-- but what we do is stick to a commitment to not send people to the county jails that will create problems for them. And if that behavior changes when they arrive, we take them back.

DeBOER: [02:21:21] And do you have a criteria system for how you evaluate? Is it a case-by-case basis? What's the system that's in place? Because this, it seems to me, wants to set a system in place for determining just exactly who those inmates are on a kind of systemic level.

SCOTT FRAKES: [02:21:37] Yes.

DeBOER: [02:21:40] And what systemic level do you currently have now?

SCOTT FRAKES: [02:21:41] Our classification tool, and then we do have a checklist that we use as well so that we're looking at mental health needs, healthcare needs. There's other things on it but I can't off the top of my head-- I don't do the work, so-- but, yes, what we don't have is a specific policy that speaks to the use of jail beds because we have a classification policy and we have other policies and procedures for the department on how to manage and safely house people. And we, from our perspective, consider jail beds to be just part of that, really no different than assigning someone to the penitentiary, to the Work Ethic Camp, to a community custody bed.

DeBOER: [02:22:33] OK. And-- okay, thank you. That's what I need to know.

LATHROP: [02:22:36] I see no other questions. Thanks, Director.

SCOTT FRAKES: [02:22:38] Thank you.

LATHROP: [02:22:39] Anyone else here to testify in opposition? Good afternoon once again.

DANIEL SCHLEUSENER: [02:22:54] Good afternoon, Chairman Lathrop, members of the Judiciary Committee. I am Dan Schleusener, D-a-n S-c-h-l-e-u-s-e-n-e-r, chief deputy sheriff at the Buffalo County Sheriff's Office, here to testify on behalf of Buffalo County in opposition to-- to the legislative bill. I will, as it has been a long afternoon, I will keep my remarks brief. I just wanted to give the perspective from a jail, from a county that is a participant in the county jail initiative with

the Nebraska Department of Correctional Services. We have been a member or participant since 2015. We have had no issues with the department, with any of the inmates that they have sent us. The inmates that come here are-- that come to Buffalo County have been asked if they want to come to Buffalo County. Nobody comes-- comes to Kearney unwillingly. If after they arrive-- we've had several that have changed their mind. We'll notify the department, let them know, and within a day or two they're out to pick them up, bring them back to Lincoln. We-- we have not ever had a violent inmate come to us. If they do develop behavioral-type issues, again, all we have to do is call the department and they will come get them. The high percentage of the inmates that do come to our-- to our county are-- are low maintenance. We don't-- we don't hear about them as far as I mean from the administration, grievances, requests. I mean they're just-- they're low maintenance. Currently we have two or three that are on our-- as kitchen trustees, laundry trustees. I mean those are jobs within the facility that require a low maintenance level requirement from our facility. So that was just our perspective from-- from the county and from what we've seen participating in the county jail initiative. I'd welcome any questions.

LATHROP: [02:25:11] Oh. Senator Pansing Brooks.

PANSING BROOKS: [02:25:12] Thank you for coming, Sheriff Schleusener. So I am trying to reconcile your testimony before on-- on Senator Friesen's bill which was LB376, and I have that-- that you said that the jails are ill-- ill equipped. I know we were talking about people with mental health issues at that point, the "safekeeper" issue. But wouldn't it be easier in a way to instead of-- of having people on the front end of-- of their sentencing, to instead be-- to be getting people that are on the back end where they're coming and they're a few months from release? And obviously they're probably, hopefully, less troublesome than-- than those who are just coming in when you don't really know what their-- what-- what their issues are, what kind of disabilities they may have. It seems to me that coming in on the-- on the back end, it would be easier for the counties to be able

to handle these inmates.

DANIEL SCHLEUSENER: [02:26:18] We-- historically we have not really had any issues to deal with. We don't-- we've not seen those, those behavioral type issues coming in. The mental health issues, we don't-- we don't.-- they don't-- they don't make it to our-- to our facility from the state. I guess we look at as-- as a give-and-take relationship between the local government and state government. If we have available beds in our facility for those lower risk inmates and if we are able to help the state with the overcrowding issues, the give-and-take then is-- then piggybacks off of LB376 where we will do our share if you help us out in those instances that I testified earlier about, on those-- those inmates or the-- the offenders that have-- have those mental health issues at the time that we don't have the capabilities to-- to deal with. But the inmates that we're getting from the state aren't-- aren't those types of inmates.

PANSING BROOKS: [02:27:24] OK. Thank you.

LATHROP: [02:27:30] I see no other questions. Thanks, Sheriff.

DANIEL SCHLEUSENER: [02:27:32] Thank you.

LATHROP: [02:27:33] Anyone else here in opposition? Anyone here to testify on LB108 in the neutral capacity?

ELAINE MENZEL: [02:27:47] Good afternoon. Chairman Lathrop and members of the Judiciary Committee, for the record, my name's Elaine Menzel, E-l-a-i-n-e M-e-n-z-e-l, and I'm here on behalf of the Nebraska Association of County Officials in a neutral capacity. First we'd like to express our appreciation to Senator Bolz for introducing this legislation. We didn't take an official

position on this bill. There's just a couple of things that I want to bring to your attention. It's my understanding that our executive director has talked to Senator Bolz about some of these issues. I guess before I bring that up, I should mention to you the handout that I sent around, and it's of the Nebraska counties that have jails and it's their capacities. That doesn't necessarily tell us what they would have in terms of their average daily populations at this point for capabilities to hold in prisoners for purposes of this program, but at least gives you an idea of an overview of what the counties have in this respect, which leads me to bring up the concern that we have with the AM154 that has been filed. And it primarily relates to those counties that currently contract with the Department of Corrections and the ability to house inmates within 100 miles that had originally been sentenced there. I can certainly go through a number of examples, but I think you can tell by the map that there would be a number of those places that would not be eligible to be utilized or counties that would not be able to have individuals from their original sentencing utilizing the contracted program. With that, I-- we are certainly open to any additional communications and willing to further facilitate if individuals would like that. And I would open-- be open to any questions if you have any.

LATHROP: [02:30:13] Ms. Menzel, I don't see any questions.

ELAINE MENZEL: [02:30:15] Thank you.

LATHROP: [02:30:15] Thank you for your testimony. Anyone else here to speak on LB108 in a neutral capacity? Seeing none, Senator Bolz to close. I have no letters for the record, so.

BOLZ: [02:30:30] I respect your time. I don't really have anything further to add other than a willingness to continue the dialogue to find the right fit for this initiative and willingness to answer any final questions if you've got them.

LATHROP: [02:30:44] OK. I don't see any questions. That'll close our hearing on LB108-- thanks, Senator Bolz-- and bring us to Senator Blood and LB114. Welcome, Senator Blood.

BLOOD: [02:31:01] Well, thank you, Chairman Lathrop, and good afternoon once again to the Judiciary Committee. My name is Senator Carol Blood. That is spelled C-a-r-o-l B, as in "boy," l-o-o-d, as in "dog," and I represent District 3 which is comprised of western Bellevue and southeastern Papillion, Nebraska. Today I bring forward LB114. This bill would amend Section 83-1,107 which has to do with good time when it comes to the inmates housed by the Nebraska Department of Corrections. LB114 looks to set a limit on the amount of good time that an inmate can lose for a violation of the regulations set forth by the Department of Corrections for its detention facilities. The limit would be set forth-- the limit that would be set forth would be up to six months per event for a violation not involving assault or serious injury to a person; up to two years per event for a violation involving assault or serious injury to a person. I put the emphasis on event because my bill also makes it clear that there can be several incidents that occur that are all encapsulated in the same event. One example of what I'm talking about might be if an inmate is ordered by corrections officers to step out of their cell but the inmate refuses that lawful order. As a reaction to the refusal, several corrections-- corrections officers go into the cell in order to remove him or her. The inmate, in retaliation, swings an object at the lead officer but strikes the other two as well. Current accepted rules and regulations do not allow the department to exceed two years' loss of good time for an assault event. However, we have observed that the department has, not necessarily intentionally, violated this rule. When I certainly don't believe that an inmate should be allowed to assault an officer, and I'm very clear on that, it's pretty clear that this one event, the officers entering the cell-- sorry, it's the end of the day. It's pretty clear that this was one event, the officers entering the cell and the object being swung. As was the case with my other bill that had to do with the Department of Corrections, this isn't about being a bleeding heart. This is about ensuring fairness in the way the

DOC executes these policies. That also accounts for the other part of LB114. This allows the chief executive officer of a corrections facility to restore any good time the inmate has lost, as long as he has the support of the director of the Department of Corrections, or Mr. Frakes who is the director of the Department of Corrections--just thought I'd better clarify for the new people. We're making it explicit that any good time loss can be restored because there appears to be some confusion in the department when it comes to a designation they use called "nonrestorable good time." This is usually brought up when an inmate is charged with assault. This is a delicate situation because there are times when the department is behaving as though there are some violations that take the punishment out of their hands. They inform the inmate that the forfeiture of good time cannot be restored under any circumstances. If you apply that to the case that I just cited, you're talking about an inmate who lost three times as much good time than they should have lost and then being told that there was no recourse, nothing they could do, even if the warden or director wanted to in order to get that good time back. This leads to the inmate not even attempting to appeal the loss of good time. Current laws make it very clear that good time or other reductions of sentence granted under the provisions of any law prior to July 1, 1996, may be forfeited, withheld, or restored in accordance with the term [RECORDER MALFUNCTION] Nebraska treatment and [RECORDER MALFUNCTION] 83-170. The Department of Corrections crafting policy that takes the ability of restoring good time out of the hands of the director is in direct conflict with existing-- existing state statute. More than fairness and more than making sure that an executive agency isn't violating the law, I feel like I need to point out that the DLC has a rather large ongoing problem. I'm not even sure we should be referring to overcrowding as a problem as it's more like an ongoing disaster. It would be foolish to think how good time is being managed isn't contributing to that disaster. I've provided a couple of tables that at least a few of you might recognize from the LR424 Committee. These deal with trends in good time years lost and good time years restored. As you can see, the years lost are expected to increase by almost 500 hours in the span of just four years. By contrast, from 2013 to 2017, the years restored have been cut by more than half. I want to make sure that you

and anyone watching understands that I am not advocating allowing violators out sooner than they should be. What I'm wanting to see is people who have lost good time and want to get it back and who see the incentive to work hard and practice exemplary behavior and possibly earn that good time back. Make no mistake, making LB114 is going to have several positive benefits. First, it could clarify a law the Department of Corrections has honestly been misunderstanding up until now. Secondly, this could help ease the prison overcrowding issue in a way where the people who are supposed to be getting out are getting out when they are supposed to get out. Third, and this one is near and dear to my heart since I worked in corrections, it can help make these facilities safer for the personnel who work there. Even if the inmates who have committed a violation should be able to see the light at the end of the tunnel, we've seen over the years what a powder keg these facilities can become. An inmate knowing they would-- they could have the recourse to get their good time back could help diffuse frustrations. Senator Brandt earlier today had asked me about incidents and what this bill was all about. And for those that haven't had an opportunity to really dig into Corrections and what happens behind the walls, you should know that if you are a corrections officer, a corporal, a caseworker, a case manager, and there is an incident that happens five minutes before you're ready to leave that institution, you're not going anywhere and each and every person is going to be writing an incident report and not going home until that incident report is written. And so when the inmate is taken to the internal court system that they have within the prison system, all of those reports are going to be used as evidence. All of those reports are not different incidents. They're all part of one event. So I just wanted to kind of clarify how that works. And I want to say as well that I think that this is systemic. I think this is something that happened or started happening before Frakes even came on board. And I know that there's probably a lot of little things that have fallen through the cracks. And he has a very big job right now trying to help us fix things within the corrections system. So I don't necessarily fault Mr. Frakes, but I think sometimes things need to be brought to light so we can address them and make sure that we are following the existing state statute. So with that, I do know that we have at least one person here to testify on behalf of the

Ombudsman's Office in favor of the bill and also might be able to guide you better through the process of how an inmate goes about having their good time restored after it has been forfeited, and other technical questions. But I'm also willing to take any questions you may have. But I do hope that you will vote to advance LB114 out of committee alongside with my other bill, LB113, and put them in front of the full Legislature for debate. Thank you.

LATHROP: [02:39:07] I don't see any other questions, but I have one for you. And I'm going to--

BLOOD: [02:39:10] Yes, sir.

LATHROP: [02:39:10] -- maybe throw this out there and-- and both you and James can address it. We had a bill in here last week, I think it was, that Senator Wayne brought that would have the State Patrol investigate as opposed to having somebody from inside the institution involved in the investigation. And in the course of that, what we learned from the testimony was, and this was sort of the FOP's point of view, if you will, is that there are assaults on guards committed by the inmates that are not being prosecuted because the local county attorney says, what's the point in prosecuting this person, because they're doing 20 years and it would-- it would not-- it didn't result in a serious bodily injury so it's not a felony, we're going to let it go, we're just not going to prosecute it. And that's what we learned is happening inside the institution. And now it appears that the institution is saying there's some things we're not going to restore good time for. And I'm wondering why would-- why are we interested in restoring good time for an inmate that assaults a guard when on the other hand we can't get the county attorneys to prosecute him? And so I'd be happy to hear your thoughts on that, and Mr. Davis', as well, when he testifies.

BLOOD: [02:40:41] And I think that's a very fair question and-- and frankly I-- I in no way support staff being assaulted. I've been assaulted. It's not something that I would like to repeat. But I can say

that if you-- if you listened to the introduction, which I know you did, we were very clear that when it comes to restoring that good time, that there's multiple parties involved and there are multiple parties that are involved that should have documentation as to what happened, what were the circumstances to that assault. And I'm not-- I am not trying to rally the troops and say, hey, you need to restore all good time. What I'm saying is, if we're going to take away good time, we need to do it based on the existing language that we have in state statute. And we also need to give them the opportunity to have it restored should they deserve to have it restored.

LATHROP: [02:41:28] What offenses will earn you a loss of good time that's nonrestorable?

BLOOD: [02:41:34] I think that would be a better question for the Ombudsman--

LATHROP: [02:41:35] OK.

BLOOD: [02:41:35] -- because it's been a long time since I've been in the system, working as an employee. [LAUGH] Thought I better add that.

LATHROP: [02:41:43] We'll stipulate that you've never been an inmate.

BLOOD: [02:41:45] Thank you.

LATHROP: [02:41:46] OK. With that, thank you, Senator Blood. Proponents. Good afternoon. Welcome to the Judiciary Committee once again.

JAMES DAVIS: [02:42:05] Thank you. Do you want me to answer your question first before I go with mine?

LATHROP: [02:42:08] No, go ahead and--

JAMES DAVIS: [02:42:09] OK.

LATHROP: [02:42:11] -- why don't you give us your name--

JAMES DAVIS: [02:42:11] OK.

LATHROP: [02:42:11] -- and spell it for us and--

JAMES DAVIS: [02:42:12] No problem.

LATHROP: [02:42:13] -- tell us your testimony-- give it.

JAMES DAVIS: [02:42:14] Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is James Davis, D-a-v-i-s, and I'm the Deputy Ombudsman for Corrections. I'm here to testify in support of LB114. I also want to thank Senator Blood for bringing this bill. The Nebraska-- of Correction for years set a policy on reduction of good time. In 2013 this policy changed in part to allow the reduction of good time for Class I major offense from one year to two years. The new policy was implemented through the department appeals board which provides guidance and-- implement through the department appeals-- excuse me-- guidance to the facilities. The appeals board decisions are generally based on district court rulings and state law. Since changes to the department policy on good time has changed, we believe there may be an excessive forfeiture of good time, potentially "exuberating" overcrowding. This practice falls into the following three categories: 1. Nonrestorable good time: The department current-- publish to its

inmate population that good time is nonrestorable. In our view, there are several problems with this action taken by the department in this area. First, Neb. Rev. Stat. 83-1107 does not include nonrestorable language in its provision. Second, the director appears to be abrogating his responsibility in this matter, as a policy allows for hearing officers to make determinations on forfeiture of good time. Finally, currently the Department practice discouraging inmates from requesting good time restoration by informing inmates that good time is nonrestorable for serious assaults, when the director has the authority to restore loss of good time. Second, violation of Title 68, Nebraska Administrative Code: The Ombudsman's Office understands the need for the department to manage its population with many tools, including the use of disciplinary process. However, we believe that the tools at the Department's discretion should be wielded thoughtfully and responsibly-- I mean, excuse me, reasonably. One case which we believe did not meet that the threshold of thoughtfulness and responsible involved an inmate who was involved in a major event that resulted in two officers being struck. And I just want to go on the record that we don't condone violence against correctional staff or other inmates. It should be noted that the department has a rule that provides that maximum sanction involving loss of restorable good time shall not exceed two years for violation involving assaults or injury to person. I passed out a chart to you guys. Hopefully, you guys will give me enough time to go back and go over that and I will explain some of the Class I offenses, serious offenses. The department also adheres to the rule that maximum sanction out of one incident involving good time shall not exceed the maximum for all charges arising out of one incident. That's the department's policy. So if you have a serious assault, the maximum time that can-- good time that could be taken away cannot exceed two years. In this case, 1,460 days, 1,460 days, or four years, of good time was taken from the inmate out of one major event. In these series incidents resulting in large amounts of good time loss, the sanctions of inmates are essence of being extended. We believe there should be limits to those extensions absent through [SIC--thorough] criminal investigation, prosecution, conviction, and scrutiny by the courts. So if I go back and look at that one individual case, the individual was charged for assault by the county

attorney and the second assault did not reach the county attorney, so there you have a problem.

Third, excessive forfeiture of good time: The use of good time within the department is an important tool the department can use to manage its population. The intent of good time laws is to create incentives for inmates' good behavior. I mentioned earlier in my testimony that there was a significant change in the practice of how much good time was being taken away from inmates by the department for Class I actions. Based upon the amount of good being taken, the Inspector General for Correction recently provided a data chart to LR127 Committee concerning this issue. It should also be noted that based on our observation, in 2014, there were 305 years of good time forfeiture, whereas in 2018 there were 636 years of good time taken. If you analyze the cost to the-- incarcerated an inmate, annual data would reflect approximately \$22 million additional dollars to the system. I provided you guys those charts so you can look at them of good time taken, good time restored. So if you'd oblige me on just one of the charts that I gave you, this chart right here, the Class I offenses are serious offenses.

LATHROP: [02:48:05] Right.

JAMES DAVIS: [02:48:06] OK. So that's where you lose bulk of your good time for assault, escape, having a weapon, so that's your Class I offense and basically what that--

LATHROP: [02:48:18] So that's where-- that's-- the Class I offenses is where we're running into some standard employed by the department to take away good time and make it nonrestorable.

JAMES DAVIS: [02:48:30] Correct.

LATHROP: [02:48:31] I want to stop on that because we talked and you heard me a moment ago say the FOP came in here in support of having the State Patrol investigate because their concern is

that there are assaults on security staff that aren't being prosecuted, whether that's because the police reports never get to the county attorney or they get to the county attorney and the county attorney says, the guy's doing 25 more years, what's the point? So then we've also-- and it wasn't-- it may have been back when we were doing the special investigative committee, we heard security staff at the corrections facility say this. These guys are misbehaving because no one's doing anything about it; we're not punishing them for their misbehavior, specifically assaults. That's also a consideration, right? So we're hearing that as sort of what's going on at the Department of Corrections from the security staff's point of view, and what you're telling me, or basically the point of this bill is, we want to make the good time that's been taken for these assaults restorable.

JAMES DAVIS: [02:49:50] What I--

LATHROP: [02:49:51] Am I missing something?

JAMES DAVIS: [02:49:52] Yes, you are.

LATHROP: [02:49:52] OK. What am I missing?

JAMES DAVIS: [02:49:53] OK. When I went back and talked about the Neb. Rev. Stat. 83-1107, that talks about good time, it talks about who can restore good time, which is the director or the chief executive. That's-- that's already in statute. There's no language in "stat" to say nonrestorable good time. If-- if the warden or the director wishes to restore, withhold, or give good time, that's already on the table. But what you have here is when an inmate go in front of a disciplinary hearing committee and that person says "nonrestorable," the director cannot de facto that responsibility and give it to the hearing officer.

LATHROP: [02:50:43] OK. So the point of the bill is to require that the director at least consider an appeal to have good time restored for these Class I offenses.

JAMES DAVIS: [02:50:56] The inmate can appeal but when he goes in front of that committee and the committee disciplinary hearing committee person say it's nonrestore-- nonrestorable, then they're under the impression that they can't appeal.

LATHROP: [02:51:10] Isn't this a little bit like the Pardons Board where you have a right to go there but-- say to get a life sentence commuted to a term of years, and they go, yeah, we've considered it, no, we're not going to, so everybody's doing life and that never changes? I mean, what if we tell them, OK, Director, you're going to consider these and you can't have a regulation that says they're nonrestorable? If that's what they want to do, aren't they just going to do it every time the appeal happens?

JAMES DAVIS: [02:51:42] Well, that's true. But what that's--

LATHROP: [02:51:45] You follow that question?

JAMES DAVIS: [02:51:45] Yeah I do. But with this appeal, basically, it goes through APA, so it goes through not only the director, but it goes through the appeals board and then they can take it to district court.

LATHROP: [02:51:58] OK. I think I understand. Is that--

JAMES DAVIS: [02:52:02] But just one-- just allow me just a little bit more latitude.

LATHROP: [02:52:05] OK, sure. Go ahead.

JAMES DAVIS: [02:52:06] Now basically on this chart we have a Class I, and I just highlighted it so you guys don't have to read all that, but if you go to Class I, 0011.01B, and just look at where I highlight: Loss of good time not exceed two years for violations involving an assault or injury to a person. The disciplinary committee may designate loss of good time involving assault or injury to a person-- well, the part is, not exceed two years. So we're not saying that they're not supposed to take away the good time, but it shouldn't exceed over two years. This is their own policy and it's promulgated. But if you drop down here to 0011.03B, which is a Class III, you can see where I highlighted Class III, and then basically it says, "The maximum sanction involving loss of good time shall not exceed six months for all charges arising out of one incident except for violations involving assault or injury to a person." This right here is a catch-all. So in other words, if you have like several misconduct reports that involve an assault, you only can use that one right here on Class I. But what the department has done is use this language and say, well, yeah, we could charge you for up to six years for one major incident, and you can't do that.

LATHROP: [02:53:38] OK. And that's not because of state statute but because of the regulations promulgated by the Department of Corrections.

JAMES DAVIS: [02:53:45] Correct.

LATHROP: [02:53:46] And what you want us to do with this bill is basically to overrule the regulations that have these mandates in them.

JAMES DAVIS: [02:53:57] What-- what I want is that they follow their policy and not put a catch-all down here in Class III to use it for a Class I.

LATHROP: [02:54:07] OK.

JAMES DAVIS: [02:54:08] And so-- and it's not even a standalone. It's fused in with the Class III offenses. If it was to-- if they wanted to do the multiple, then they could have come back and put that under the Class I and wrote it right on the-- the Class I instead of a Class III, if it makes any sense.

LATHROP: [02:54:28] OK. I think so. I think I'm getting it. Senator Pansing Brooks.

PANSING BROOKS: [02:54:35] Thank you. So are you saying that they are-- they're stacking offenses, is that what's going on?

JAMES DAVIS: [02:54:41] That's correct. We've had some cases in our office where they have charged an individual or stack the charges in one major incident and an individual had four years taken instead of two years.

PANSING BROOKS: [02:54:59] I see, so like they might punch somebody, but then they also spit on them and they also-- so they're getting-- even though-- and that's why you're saying one event, that it's-- it's one event and we shouldn't just be stacking and stacking and taking away everything for every infraction, including like, I don't know if there's disturbing the peace in prison, but disturbing the peace, spitting, and assault, so that would get you up to six months on the spitting and the swearing or something, and then two years on the-- on the assault, is that correct?

JAMES DAVIS: [02:55:37] For some, but let me just give you an example. If I was an inmate that was placed in segregation for 807 days, I have a psychotic episode, so we-- what they would do is

get a team to come in, an extraction team to come in to take you out. In the meantime, this individual is having a psychotic episode, so three of the officers get hit doing the extraction, so they treat that as three separate assaults. It should be one major incident. You can write the reports and it should run consecutive, not concurrent, so you-- out of that whole incident there should only be-- if they take the good time away from that individual, it should not exceed two years, not six years.

PANSING BROOKS: [02:56:36] I agree. Thank you very much for that explanation.

LATHROP: [02:56:41] I don't think there's any other questions. Thanks, James.

JAMES DAVIS: [02:56:49] All right.

LATHROP: [02:56:49] Good afternoon.

CARL ESKRIDGE: [02:56:50] Good afternoon, Senator Lathrop. Members of the committee, Carl Eskridge, E-s-k-r-i-d-g-e, acting State Ombudsman. Just wanted to follow up with a couple of things relative to James's testimony. James is obviously our expert doing corrections. And so one of the issues I think concerns the process where you-- you have somebody, inmates, say, who is guilty of an assault, a proceeding that is within the Department of Corrections, also a crime on the outside, but it's prosecuted internally, then that good time is taken away from them, and so their sentence is effectively extended. It's like they get another sentence, in a way. Oftentimes this happens when inmates are, such as the example James just gave, a psychotic episode, somebody who might have been in segregation for-- for a very long time; oftentimes, it's somebody who's-- who's younger, early into the system and-- and they're combative. But then as they age, as they get used to things, as they get treatment from within the department, they get better, they become less combative, they aren't the same person necessarily several years down the road that they were at that time when they

had that incident. But they've lost this good time, this nonrestorable good time. That changes-- that's adding years and years to that individual sentence, to other-- other sentences of other inmates. Consequently, it's one of the tools that could be available for addressing overcrowding issues by encouraging the director in those appropriate circumstances to-- to consider whether that person is a good candidate to have that good time restored based upon their improved behaviors.

LATHROP: [02:58:49] To be clear, though, at this point in time, the director could do that except that they have promulgated regulations at the Department of Corrections that's-- that identify certain losses of good time as nonrestorable.

CARL ESKRIDGE: [02:59:03] Correct.

LATHROP: [02:59:04] So they've taken away their own ability to restore the good time.

CARL ESKRIDGE: [02:59:08] That's true.

LATHROP: [02:59:09] So the one thing that I keep thinking about while you're testifying is when we did the first special investigative committee, it struck me that the department was-- they-- they created a furlough program and they were letting people out just because they couldn't get them out of there fast enough and it seems like this idea should have been brought by the Department of Corrections, you know? Not-- not from an inmate perspective, but the department should be interested in saying there's another way that we can reduce overcrowding, by restoring good time. Why isn't that happening? Why aren't they-- why aren't they changing their regulation? What is it about running the place that makes them so willing to take away good time and increase or exacerbate the overcrowding?

CARL ESKRIDGE: [03:00:00] You know, Senator Lathrop, that's a great question. Another kind of related question to it is it's also a great management tool to encourage those inmates who in the past have been combative to then improve their behaviors as they would have that opportunity to have that lost good time restored.

LATHROP: [03:00:19] So the idea-- I'm-- I'm-- if you can't tell, I'm a little troubled by this--

CARL ESKRIDGE: [03:00:25] Yeah.

LATHROP: [03:00:25] -- but not a lot, a little troubled by it. The idea is that somebody who gets a ten-year sentence starts out, they show up and they say, you get out of here in five years, just don't screw up.

CARL ESKRIDGE: [03:00:36] Right.

LATHROP: [03:00:36] Right? They know that they've just had their sentence cut in half by virtue of the good time law and in order to get out in five years, in my hypothetical, they just need to not do any offenses. Some of these people insist on doing it.

CARL ESKRIDGE: [03:00:55] They're there for a reason, yes.

LATHROP: [03:00:57] Right. I can see-- I don't-- I don't know that-- that it's our place to say how much good time or limit what the director or the Department of Corrections can do in terms of withholding it. Maybe what we can do, it seems to me, is to say in statute that there-- that there shall be no loss of good time that is not restorable at the discretion of the director. Then they can take away 20 years for an assault and restore it if they choose to. Wouldn't that get us to where you want

to be?

CARL ESKRIDGE: [03:01:37] There-- yeah, I think there's some-- some limits, and there are in their rules, too, and-- and I think the issue has been the-- the stacking problem of-- of adding other charges and then-- then you go beyond the two years.

LATHROP: [03:01:50] But aren't they incentivized to try to get people out of there that are no longer dangerous?

CARL ESKRIDGE: [03:01:53] Yes.

LATHROP: [03:01:53] I mean they're at 160 percent of capacity and we're breathing down their neck.

CARL ESKRIDGE: [03:02:00] Seems like you should be looking at all the options. Yes. And-- and one thing before-- and Senator Blood, I mean, as-- as a former correction employee, somebody who as an employee was assaulted, it takes a lot of courage and-- and thank you for that.

LATHROP: [03:02:17] No, I [INAUDIBLE] believe me, I appreciate it, and I appreciate all the discussion we have because every time we have one of these bills, I learn something else and have a better understanding of the overcrowding and the-- and the challenges at the Department of Corrections. But it seems to me like this bill addresses two things. One is how much you can take away from somebody, and two is, is it restorable at some point? And the statute would permit it to be restorable, but they've developed their own regulations and-- and developed some classification that calls it nonrestorable.

CARL ESKRIDGE: [03:02:54] That's correct. Thank you.

LATHROP: [03:02:55] OK. I think I understand it better. Senator Pansing Brooks.

PANSING BROOKS: [03:02:59] Thank you for coming, Mr. Eskridge. I-- I'm just-- I just have one more question. So I'm thinking about these events and I'm also thinking about I'm bringing a bill on school resource officers. And in that bill there's discussion about making sure that there's training for special needs and on trauma-informed training so that if you have somebody who is autistic and they're touched in a certain way, they're going to lash out. They can't control it. That's just what happens. So to be taking people with these special needs into prison and having officers-- I'm not blaming the officers. I'm just wondering, is there training for the officers so that they know that certain actions will cause a reaction in people that they are not able to control? And yet we're just putting them away for longer because the rule of the law says we must keep them in and it's nonrestorable and you just stack that time.

CARL ESKRIDGE: [03:04:03] There is training. The extent of training in that specific area, I-- I don't know the answer to that question. This could happen anywhere within a facility, but I think most often where we see it happening would be in the segregation area, where those inmates are-- are in that-- that restricted custody for a long period of time and then, you know, they just decompensate at some point in time and it happens.

PANSING BROOKS: [03:04:32] OK. Then I would also ask, then has the Ombudsman's Office-- and I should have asked this to Mr. Davis. But has the Ombudsman's Office talked to Director Frakes and-- and said get rid of that part of the-- of your rules that says it's nonrestorable? He's nodding yes.

CARL ESKRIDGE: [03:04:52] He's nodding, okay. Yes. Mr. Davis is nodding, okay.

JAMES DAVIS: [03:04:57] Yes.

CARL ESKRIDGE: [03:04:57] There he is.

JAMES DAVIS: [03:05:00] Talking to Director Frakes and also the [INAUDIBLE]

LATHROP: [03:05:02] We're-- we're not going to be able to pick him up.

CARL ESKRIDGE: [03:05:05] Yep. All right.

PANSING BROOKS: [03:05:06] So I am now understanding that there has been discussion and so-- and the problem is that-- that nothing's been done, so we have to figure this out because this totally exacerbates the overcrowding issue.

CARL ESKRIDGE: [03:05:21] Yes.

PANSING BROOKS: [03:05:21] And there are times that of course there should be increasing punishment. I have no problem with that. But the stacking issue and the nonrestorable issue when somebody has been a better inmate, you know, through an eight-year period, that doesn't make any sense. Thank you.

LATHROP: [03:05:41] Senator Wayne, did you have a question?

WAYNE: [03:05:42] I guess mine's more of a philosophical question. I don't know if it's fair to ask,

but I want to put it on the record. It seems to me, kind of to Chairman Lathrop's point, if someone's in for 10, 15 years and there's an assault on a guard, maybe not a major assault but at the end of the day it's still a misdemeanor crime, they could face up to one year in jail essentially, or six months, depending on the level. If there's no consequence, is this regulation the result of local prosecutors not putting a consequence to actions? So they have to come up with some way to say if you do something, assault a staff member, there has to be a consequence. Is that-- is that the fundamental issue? We can get into the-- the-- the tree limbs of whether they do it too much, whether they compile, whether they don't. But is the fundamental issue-- if people don't have any consequences, why wouldn't they keep doing it? Is that-- is that-- I'm trying to figure out the main issue here.

CARL ESKRIDGE: [03:06:56] OK. If I understand what you're asking, and help me if I have missed, your question is kind of prosecutor-- prosecutorial within the facility, is that right? OK. And-- and so, yeah, why would they-- why would they write up an inmate, why would they go through this proceeding if it's going to be taken away sometime later, if they weren't held accountable, is that--

WAYNE: [03:07:21] Correct.

CARL ESKRIDGE: [03:07:21] OK.

WAYNE: [03:07:21] Correct. Well, because if you were on the outside, you would get charged with assault and there would be an additional time.

CARL ESKRIDGE: [03:07:26] Right.

WAYNE: [03:07:27] And since there isn't--

CARL ESKRIDGE: [03:07:27] Right.

WAYNE: [03:07:28] -- is this our prisons' way of saying this is all we can do because local authorities aren't doing their job?

CARL ESKRIDGE: [03:07:35] Thank you. I absolutely think that's a possibility. If-- if it's an assault, if it's an assault on an officer, like Senator Blood, when-- you know, why-- to me that seems serious. I mean it seems like something that a prosecutor should have an interest in. And if that-- that's something that should be an added crime, it is an added crime, but they aren't prosecuting it that way. They're prosecuting it within the court system of the Department of Corrections when there's been a crime done to one of their own, which may impact the fairness of how that's prosecuted within the system. And so-- so, yeah, I mean, it is a complicated thing. It's-- it's-- it relates to the prosecutor's decision in the-- in the county or determination made within a facility.

WAYNE: [03:08:33] And from there-- you know, nonprofits would call it mission creep in other-- you know, from there, the creeping and combining and making minor violations add up to over four or five years of good time--

CARL ESKRIDGE: [03:08:47] Yes.

WAYNE: [03:08:47] -- is just a natural consequence of, well, if they're not going to prosecute a semimajor-- what I consider a major assault, then they're not going to really prosecute these small things. And so we'll just have to keep combining it until--

CARL ESKRIDGE: [03:08:59] Yes.

WAYNE: [03:09:00] -- sooner or later you lose all good time.

CARL ESKRIDGE: [03:09:01] And that happens.

WAYNE: [03:09:04] All right. Thanks.

CARL ESKRIDGE: [03:09:04] Yes, um-hum.

LATHROP: [03:09:08] I think that's all the questions we have for you. Thanks, Carl. Anyone else here to testify as a proponent? Anyone here in opposition? Anyone here in a neutral capacity? Seeing none, Senator Blood, I have no letters on this bill so we'll let you close and that will close our hearing.

BLOOD: [03:09:32] Thank you, Chairman Lathrop. I travel light, so we usually don't have a lot of people. There's a lot of things I'm going to quickly answer because I know it's the end of the day. You know, the-- one of the things I'm concerned with the prison system is that we're trying to build our way out of the current problem that we have. And I know Senator Wayne, Senator Morfeld, and Senator Pansing Brooks, they've all heard me say this and I'm going to say it again. The problems that we're having are not new problems. They are problems that were going on from the first day that I started 28 years ago and that scares me. That concerns me. I believe, especially when a staff person is assaulted, that those inmates should be held accountable without exception. I believe strongly that bad guys that do really bad things, they should be incarcerated without exception. But you have to remember, especially the young people that we put-- that we incarcerate, that their brains are very different at age 18 when-- than when they're age 28. So young kids in the system do a lot of really stupid things, but then they get onboard and they do their programming and they try

and look for a way out. But when we take that way out, what do you think we have then left? Are we going to continue to punish them for being stupid and young or are we going to give them a way out? Part of Corrections isn't just about putting people away. It's about making them better citizens because one day they're going to be our neighbors whether we like it or not. And I don't know about you, but the people that I want to-- that are leaving corrections, I want them to be better people when they get out because then they'll be a better neighbor. We have to give them some way to believe that they can change their behavior and use that as a path to being a better citizen and eventually coming out onto the streets and hopefully making something good out of it. Speaking as a correction officer, I want to say that I still bear the physical scar from what happened to me, and it happened to me because of somebody that did something that was against the rules in the prior shift. It was another staff person who broke the rules, making it easier for the person in the hole to assault me. The staff person wouldn't be held accountable but the inmate would, and the inmate should be held accountable. There are a lot of instances that I want you to understand. For instance, somebody has a shank, somebody has made a weapon, and they put it in their cell. Who do you think is going to be held accountable if there's more than one person in the cell? The inmate that-- that rooms with him may not know that the other inmate has a shank but they might be-- both be held accountable and they might both lose good time. There's so many circumstances that you have to understand that go on daily. All I'm saying is that our Ombudsmen are there-- our Ombudsman's Office, they're there all the time. They're talking to these inmates. They're not trying to let bad guys out. They're trying to make sure the people that are doing better have an opportunity to get out. And so with that, I'd be happy to answer any questions. And I do encourage you to really look at this, this legislation. I know it's a little different than what we usually do, but I think it's for the greater good and I think it's going to also protect a lot of staff people in the long run because when you have people that know that there's an opportunity eventually get to the streets, they're-- they're more like-- likely to comply and they're more likely to be respectful to staff.

LATHROP: [03:13:28] Senator Pansing Brooks.

PANSING BROOKS: [03:13:31] Thank you. Thank you for bringing this. I think it's creative. I'm just interested, why do you think that there isn't, as Senator Wayne suggested, why is there not as much-- is it cost that they are charging and-- on assault and having an actual due process hearing?

BLOOD: [03:13:48] You know, it-- to be really frank, it beats me. I mean I can think of multiple incidents where staff were seriously hurt, and that was not my case, where there were no outside charges filed. And to be really frank, until we sat here today, I never really thought about it. It was just something that was kind of accepted. It's like, you know, that's the risk you take when you work in a maximum security prison. And I can never remember ever a supervisor talking to another staff person who'd been assaulted and saying, hey, you can press charges and, you know, we'll take that to an outside court. And again, it's been a long time since I've worked, but I still have friends that work there. They're getting really old but they-- a few of them still work there. And you know, again, I hate to keep saying it, but a lot of things haven't changed, and as staff strives to try and get a raise, they're basically making the same thing that I made. So angry inmates, underpaid staff sounds like a bad combination to me.

PANSING BROOKS: [03:14:53] Thank you.

LATHROP: [03:14:53] I'm just going to make this observation. I-- my first concern is for the staff over there.

BLOOD: [03:14:59] Absolutely.

LATHROP: [03:15:00] It seems to me if we say, you beat up staff, there's going to be some

limitation on how much good time you have taken away, somebody could say, well, I'm only going to lose X instead of something that's a lot worse than that. Maybe they go, I'm going to do it. I can see where all-- making it all restorable would make them, after the assault, better inmates because they're working towards a point where it might be restored one day. I don't know about putting in statute a limitation on how much time you can take away from somebody, but I certainly understand why we would say you can't have a regulation that says it's nonrestorable.

BLOOD: [03:15:46] And that's fair.

LATHROP: [03:15:47] Whether-- whether any director in the future ever restores any of it or not, we don't have any control over.

BLOOD: [03:15:52] Exactly.

LATHROP: [03:15:52] But at the end of the day, they've got to run the place and not us.

BLOOD: [03:15:56] Well, and you should know-- and again, Senator, I think that's very fair. But you should also know, and-- and the Ombudsman's may correct me, but in the past it used to be that when you were incarcerated, one of the first things they give you, besides your new duds, is a rule book, and in the rule book it talks about what an infraction is and what the punishment is. So imagine then going to the inmate-- and I can't remember what they call it, the inmate court that's in-house. And then it's doubled, tripled, you know, so you're-- in writing you're told what's going to happen and then what really happens is something different, and then they say, sorry, this is just how we want to do it. And so I don't think any staff is going to disagree that these people should absolutely, positively be held accountable if they assault staff, without exception. However, I also think that staff is going to tell you, when you're locked in with them all day long and they have

nothing but time on their hand, nothing but time on their hand, and they're not getting the services that they're supposed to be getting because for some reason we still can't seem to get that together, that is a bad combination, you're just endangering their lives more.

LATHROP: [03:17:12] OK. I think that's it. That'll close out our hear-- hearing on LB114 and our hearings for today.

BLOOD: [03:17:18] Thank you, Senator.

LATHROP: [03:17:19] Thank you, Senator Blood, and all those who testified.