

Judiciary Committee February 27, 2019

LATHROP: [00:00:00] --ship around here. It's cold but we--

MORFELD: [00:00:05] We'll stay awake.

LATHROP: [00:00:05] We stay awake. [LAUGHTER] OK. It looks like it's 1:30, so welcome and good afternoon. Welcome to the Judiciary Committee. My name is Steve Lathrop. I am the state senator from Legislative District 12, which is part of-- all of Ralston and part of southwest Omaha. I'd like to, let's see, I'm gonna introduce people a little bit later when a few more folks show up. On the table inside the doors that you came in you will find yellow testifier sheets. If you are planning on testifying today, please fill out one of those sheets and hand it to the page when you come up to testify. This helps us 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 to record your position on the bill. And for future reference, if you're not testifying in "purpose"-- in person on a bill and 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. This is sort of the process. We'll begin with the introducer's opening statement. Following opening, we will hear from proponents of the bill, then opponents, and finally anyone speaking in the 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 your name for the record. We utilize an on-deck chair to the left of the testifiers' table. That's near where Senator Crawford is sitting right now. Please keep the on-deck chair filled with the next person to testify to keep the hearing moving along. In fact, what we try to do is keep the front row filled up with testifiers so that you can just hop into the chair and keep things moving along. If you have any handouts, please bring 12 copies, and that way we have enough for the committee. You can share them with the page and they will

hand them out. If you do not have enough copies, they'll make more for you if you need to. We use a light system here. That's what's found right here on my desk. When you begin your testimony the light on the table will turn green. It will be green for two minutes. Then it will turn yellow and that's your one-minute warning. When the light turns red we ask that you wrap up your final thought and stop. As a matter of committee policy, I'd like to remind everyone 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 would ask everyone to look at their cell phones and make sure they're in the silent mode. Also verbal outbursts and applause are not permitted in the hearing room. Such behavior may be cause to have you asked to leave the hearing. You may notice committee members coming and going That has nothing to do with how they regard the importance of any particular bill, but senators have other bills to introduce in other committees or other meetings to attend to. We are holding our hearings in the Warner Chamber, which is really a cool place. One thing about it, a couple of things about it, you got to make sure that mike is close if you're going to talk, so everyone can hear. And the other thing is it's a really historical place and so please don't put water, coffee, pop, or anything like that on the desks so that we don't end up with water rings. And with the housekeeping stuff disposed of, we will have the senators introduce themselves, beginning with Senator Slama.

SLAMA: [00:03:49] Julie Slama, District 1 covering Otoe, Johnson, Nemaha, Pawnee, and Richardson Counties.

MORFELD: [00:03:52] Adam Morfeld, District 46, northeast Lincoln.

BRANDT: [00:03:52] Tom Brandt, Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster Counties.

DeBOER: [00:04:02] Hi. I'm Wendy DeBoer. I'm from District 10 and that is Bennington, the surrounding areas in northwest Omaha.

WAYNE: [00:04:13] Justin Wayne, District 13, Omaha, northeast Douglas County.

LATHROP: [00:04:18] All right. Assisting the committee today are Laurie Vollertsen, who is our committee clerk, the lady that sits back here; Neal Erickson and Josh Henningsen are our two legal counsel; and the committee pages are Alyssa Lund and Dana Mallett, both students at UNL. And with that, we will take up our first bill of the day, Senator Crawford and LB365. Senator Crawford, welcome to the Judiciary Committee.

CRAWFORD: [00:04:48] Thank you. Good afternoon, Chairman Lathrop and fellow members of the Judiciary Committee. For the record, my name is Sue Crawford, S-u-e C-r-a-w-f-o-r-d, and I represent the 45th Legislative District of Bellevue, Offutt, and eastern Sarpy County. And I'm honored to bring LB365, the Health Care Directives Registry Act, before you today. LB365 would establish an on-line registry administered by the Department of Health and Human Services where advanced healthcare directives or documents containing a patient's wishes for treatment in life-threatening situations could be kept and accessed when needed. The idea for this bill came to us as a result of a conversation with one of my constituents whose niece had a lung condition and was given a short prognosis. The patient's doctor asked the family what they wanted them to do when the patient's lungs stopped working if she could not communicate for herself. My constituent wished there was a centralized way of sharing this kind of information among patient's families and providers, so that providers could adhere to the patient's wishes for their care when life-threatening situations arise and the patient is unable to communicate those wishes. Based upon this idea, this bill creates a centralized registry where advanced healthcare directives, or legal documents containing a patient's wishes for end-of-life care, can be kept and accessed when needed. Per the

bill, an advanced healthcare directive includes a healthcare power of attorney, and organ donation form authorized under the Revised Uniform Anatomical Gift Act, a declaration specifying the circumstances under which life-sustaining treatment can be withheld or withdrawn in accordance with Nebraska statute 20-404, or any other legally recognized and executed instrument for conveying an adult's healthcare intentions in this or another state. This registry would be administered by the Department of Health and Human Services and would eventually become self-sustaining through registration fees. Registration would be voluntary and registrants would be issued a card indicating that they have a healthcare directive on the registry and would contain information needed for providers to log in and access the directive. Access to the registry is granted only when the registrant required-- when required pursuant to lawful court order, when requested by the registrant or the representative or by healthcare provider or emergency service agency for the purpose of providing healthcare to the registrant. The-- this includes emergency service dispatchers and first responders who may need access to the information quickly in an emergency or dictate it to providers on the ground over the phone. As part of a growing movement to facilitate better access to information among providers, patients, and families, 12 states have implemented state registries like this for advanced healthcare directives like the one provided in LB365. This type of registry would move us forward into a more integrated and seamless system between in-hospital and out-of-hospital care. Traditionally, these documents have been kept on the refrigerator or in a file in a cabinet at home. An on-line system for storage and access to these documents would be much more efficient and effective in ensuring patient's wishes are communicated, especially if they are unable to communicate themselves. We've been working with the Catholic Conference on an amendment to tighten up some of the definitions of accepted legal documents in the bill. This amendment ties healthcare power of attorney to an existing statutory definition, tightens up Section 2(e) to declarations of healthcare powers of attorney legally executed in another state, and removes a durable power of attorney from the definitions. It replaces the amendment you previously received. And we had one small change that didn't get caught in the amendment, so I'm not passing it out to

confuse you, but we'll give you the amendment tomorrow. We intend to make one small change so that's why I don't have the amendment for--in front of you right now. But we'll be sure to get that to you tomorrow. We think of this as an additional tool that patients and families can use to communicate with their healthcare providers and to be proactive about making decisions for their own care. The program is self-sustaining through registration fees. The proponents speaking today can help elaborate on the utility of this tool for patients and healthcare providers. Please consider sending LB365 to the floor for a vote. Thank you.

LATHROP: [00:08:45] Thank you, Senator Crawford. I do not see any questions. Are you going to stay to close?

CRAWFORD: [00:08:50] I will stay, yes.

LATHROP: [00:08:51] OK. Terrific. Can I see how many people are here to testify today on this bill? One, two, three, four. OK. We can alert Senator Vargas that we have four testifiers. First proponent.

KATIE ZULKOSKI: [00:09:14] Good afternoon, Chairman Lathrop, members of the Judiciary Committee. Katie Zulkoski, Z-u-l-k-o-s-k-i. I'm testifying today on behalf of the Nebraska Emergency Medical Services Association, a group of volunteer and paid EMS providers across the state, all professionals. And we do really appreciate the efforts of Senator Crawford and her staff to bring this bill forward and address what we see as the critical and timely flow of information, and think that this would help to provide those, the flow of that information, if we can get this appropriately designed. So we're here in support of Senator Crawford's bill and are happy to answer any questions.

LATHROP: [00:09:57] I see no questions. Thank you. Next proponent. Good Afternoon.

AJA COOLEY-LOVE: [00:10:10] Afternoon. My name is Aja Cooley-Love, A-j-a C-o-o-l-e-y-hyphen-L-o-v-e. I'm here representing myself and as well as the Love family. I personally am a proponent of this bill, having recently gone through this experience with my grandmother. Last year when she passed away, initially she went in for a blood clot in her leg. She told them at that time when she went in, being of sound mind and body, that she didn't want to be resus-- resuscitated. Unfortunately, that information was not passed along to all of the doctors. And during the process she did pass away but was brought back, and she spent the la-- the next ten days in the hospital slowly passing away, which was not her wish at all, with a tube in her mouth, with having her family have to witness all of that. So I would definitely be a proponent of this bill so that that information is passed along, even if other doctors in that moment aren't able to speak to the-- to the patient at that time.

LATHROP: [00:11:09] OK. I don't see any questions. Thanks for coming and testifying today.

AJA COOLEY-LOVE: [00:11:14] Thank you.

LATHROP: [00:11:14] Next proponent. Anyone here to speak in opposition? Anyone in the neutral capacity? Welcome.

MARION MINER: [00:11:47] Thank you. Good afternoon, Chairman Lathrop, members of the Judiciary Committee. My name is Marion Minor, M-a-r-i-o-n M-i-n-e-r, testifying on behalf of the Nebraska Catholic Conference which advocates for the public policy interests of the Catholic Church by engaging, educating, and empowering public officials, the Catholic laity, and the general public. I'm-- I'm testifying on behalf of the conference in a neutral capacity today just to say thank

you to, Senator Crawford and her staff, for working with us to ensure clarity in the bill. And that-- that concludes the testimony on behalf of the conference.

LATHROP: [00:12:25] OK. Thank you.

MARION MINER: [00:12:28] Thank you.

LATHROP: [00:12:28] Appreciate it, Mr. Miner.

JERRY STILMOCK: [00:12:33] Thank you. Mr. Chair, members of the committee, my name is Jerry Stilmock, J-e-r-r-y, Stilmock, S-t-i-l-m-o-c-k, testifying on behalf of my clients, the Nebraska State Volunteer Firefighters' Association and the Nebraska Fire Chiefs' Association. Both those associations formulate volunteers throughout the state. Even though the title implicit in the first association states firefighters, they are both firefighters and EMS personnel. We're appearing as in a neutral capacity recognizing the importance of all the information that could be obtained ahead of time in a medical situation, in the-- the trying situation that Senator Crawford illustrated and the reason why she brought the bill. Excuse me. There are states that are taking act-- action in this. I really want to present two caveats, one is a standard of care. When a standard of care for EMS situation is once that 911 call, the summons is made, I believe that the EMTs, the EMS providers, the first responders, they have a standard of care in order to-- in which to respond and reach out to that victim, that injured person or the person suffering illness. And it becomes somewhat difficult when adrenaline is running and the call is made that the intervening portion of, is there time to get a medical directive. What does the medical directive say? If the medical directive is authored by an attorney, it might be rather lengthy. Not implying that an attorney is lengthy but that there might be several items within that document, and at a moment's notice perhaps it may be difficult to discern what the wishes of the patient are. The second item is, is just anecdotal and it was brought up a few

years ago when a senator brought a similar piece of legislation. And that's why I think it's so important to gain the information that you're able to gain in the medical side. It was recounted to members of the committee in a similar hearing where the spouse was terminal. The spouse was at home working in the backyard. The other spouse was inside working, looking out the back, backyard and through a window. The person outside went down. The person inside, and because the person was terminal, the person inside suspected that that may be it for that person's life outside. The person inside could not bring herself to go out and witness the final moments for that person outside. But the dilemma with the inside-the-home spouse had was she knew if she called 911 they were going to do what? Under the standard of care in which EMTs are trained, they were going to administer life-sustaining efforts. That's why it's important, I think, the more information the better. And it's-- it's a good thing to see this coming, coming again, and hopefully we can work to get the proper information to all first responders. Thank you, Senators.

LATHROP: [00:16:05] Very good. Thanks, Mr. Stilmock. Appreciate your-- I don't see any questions. Anyone else here in a neutral capacity? Seeing none, Senator Crawford to close. And as you approach the testifier table, we do have three letters in support: Kelly Keller, National Association of Social Workers; Andy Hale, Nebraska Hospital Association; and Britt Thedinger at the NMA. Senator Crawford.

CRAWFORD: [00:16:31] Thank you, Senator Lathrop. And thank you, committee members, for your patience. And I want to really appreciate-- thank the testifiers who came to share their testimony today on behalf of-- of LB365. Think it's an important conversation for us to have in terms of how do we make sure that people's wishes are known and what's the best means to do that. And this LB365 is one tool to achieve that. We've also had conversations with some of the advocates about the importance of uniform documents and some other pieces of the puzzle that still need to be worked on as well. But having a database for those documents is an important piece of the puzzle.

And so I appreciate your time and attention in hearing about this bill and hearing about it from the testifiers on the bill. Thank you.

LATHROP: [00:17:18] Very good. Thank you, Senator Crawford. Good to have you here. That'll close our hearing on LB365, and bring us to LB739 and Senator Vargas. How many people are here to testify on the bill to be introduced by Senator Vargas, if I can see a show of hands? One. OK, thank you.

VARGAS: [00:17:44] It's four? Four people raised their hand.

LATHROP: [00:17:45] Four or five, yeah. OK. Senator Vargas, welcome.

VARGAS: [00:17:56] Thank you very much, Chairman Lathrop. Members of the Judiciary Committee, I am here-- my name is Tony Vargas-- my first time this year. I represent District 7, the communities of downtown and south Omaha in the Nebraska Legislature. LB739 changes statutory procedures regarding the use of restricted housing for inmates at the Department of Correctional Services. As the committee's aware, "restrictive housing" is the term that our statutes and the department use to describe what many others would call solitary confinement. In the last several years our Legislature, and in particular this committee, has demonstrated great leadership by passing a number of bills intended to enact meaningful, significant, and comprehensive reform to address our overcrowding problem in our prison system. And I know that we're not done doing that. The department's excessive use of restrictive housing is directly related to the overcrowding problem, which is the reason for this bill. Legislature passed LB598 in 2015, which ultimately led to some of the reforms that we see in restrictive housing. However, the use and the frequency of the use of restrictive housing, the length of inmates placed in restrictive housing is still troubling high. This bill seeks to provide for further reform. LB739 limits the use of restrictive housing for inmates

who are members of a vulnerable population. The bill also limits the amount of time an inmate can be placed in restrictive housing unless such inmates are found to be a threat to others or the institutional environment, as defined in the bill. The bill provides that beginning July 1, 2019, inmates who are members of a vulnerable population shall not be placed in restrictive housing. And members of a vulnerable population include inmates who are 18 years or younger, pregnant, diagnosed with a serious mental illness, have a developmental disability, or have traumatic brain injury. Members of vulnerable populations may still be assigned to immediate segregation for their own protection or the protection of others, if necessary. This bill also allows the department to develop secure mental health housing to serve the needs of members of vulnerable populations in the event such inmates need to be removed from general population. Now the distinctive treatment of members of a vulnerable population in LB739 is an adoption of a recommendation from experts who have examined our prisons. In 2016, the Vera Institute of Justice, an independent, nonprofit, national research and policy organization, focused on prison reform, and that has been cited previous instances where-- where a similar bill has been introduced, looked at our state's prison system. In its report, the Vera Institute noted that historically disciplinary segregation was overused, typically for low-level violations. Notably, the Vera Institute strongly recommended that the department, quote unquote, enact far-- firm policies that prohibit placing youth, pregnant women, and people with serious mental illness in any form of restrictive housing. Decades of research and the repeated findings in courts support the exclusion of individuals with mental illness from restricted housing due to their unique vulnerability to its harms. Federal and state courts have also repeatedly held that placing individuals with serious mental illness in such conditions is cruel and unusual punishment under the Eighth Amendment to the Constitution. Now for this reason, prisoners with serious mental illnesses should be excluded from restricted housing. Professional research is also pretty clear about the psychological harms to youth being placed in solitary confinement. The exclusion of those who are 18 years or younger from being placed in restrictive housing in the adult criminal system is consistent with many of the reforms that Senator Pansing

Brooks has championed and that this committee has supported this session and in recent years. Now in addition to limiting the use of restrictive housing for vulnerable populations, LB739 also limits placement of prisoners in restrictive housing to no more than 90 days in any calendar year due to a security threat. If the department wishes to place an inmate in restrictive housing for more than 90 days, a specialized Inmate Classification Committee must take an individualized determination based on the preponderance of evidence from a hearing. The Inmate Classification Committee is made up of employees of the Department of Corrections and must include at least one mental health professional or therapist. At the hearing, an inmate would be entitled to some of the procedural protections and given the opportunity to appeal the committee's decision to district court. I think it's reasonable that if the department is going to place someone in restrictive housing for longer than three months in a year that we should make sure that these inmates are not arbitrarily placed there. Responses from the department about the excessive use of restricted housing or solitary confinement are that it is a security measure that must be used to maintain order in prisons due to low staffing levels. Now I understand the challenges the department faces. I hear it also as a member of the Appropriations Committee. I also think it's appropriate to provide a clear process to place people in restrictive housing for a lengthy period of time. Now like many of you, I've heard instances in which inmates are in restrictive housing for months and even years. I'm not here to say that it is, you know, while inappropriate in every case, but I do argue that if it is deemed appropriate by the department's staff that there should be an opportunity for the inmate to be heard as well. For those of you on the committee last year, you'll recognize this bill as a similar bill to my former colleague Senator Schumacher, LB560 from 2017. Now I brought LB739 to continue the focus and discussion on this unique problem in our dura-- Department of Correctional Services. There are some who are here to speak in support of this bill and can provide more specific expert testimony about the use of restrictive housing and the history of the issue with the Department of Corrections, so I'd ask that you reserve those questions for them. I'm happy to answer any other questions you may have at this time. And just as an aside, I-- in Appropriations we've been constantly having this

conversation about what we-- what the needs are in Corrections. And I don't think anybody is debating whether or not there are needs. I ask that you independently weigh this argument from the other reforms that are happening. We're not saying that this is a black or white issue. Some-- it's either not happening or it is happening. We're saying that when you look at the best policy recommendations moving forward, this is in line with many of them. And it's not just general policy recommendations. I think we-- we've seen the Vera Institute but we've also seen general policy recommendations from our own LR34 study in the past. And so, given the pragmatic base of the research and the body of research and then our own recommendations, I think it's important that we move forward in a step that is in line with what we had studied. With that, I welcome any questions.

LATHROP: [00:24:56] Senator DeBoer.

DeBOER: [00:24:59] Thank you. Senator Vargas, I'm looking at the fiscal note for this. Can you speak to that?

VARGAS: [00:25:06] Yeah, it's high. [LAUGH] I don't doubt that. I approached this the same way that I think we have been generally approaching most bills. The fiscal note is high and the fiscal note is, you know, the most independent you can get conversation between our Fiscal Office, the department, and our agency in figuring out what the costs are going to be. I-- I urge you to consider that. And what we're seeing in the Vera Institute's studies consistently is that the long-term cost savings of making sure we're placing people in restrictive housing and creating determinations and not keeping them in the most constrained housing is-- is actually a cost benefit. What, we will see. No different from some of the things that we've been debating recently, I'm asking you to consider the policy on its face rather than the sticker note that you're seeing, because I-- I do see the data supports we will see cost savings as a result of making sure we have the least restrictive housing specified in this bill.

DeBOER: [00:26:13] Thank you.

LATHROP: [00:26:15] Oh, Senator Slama.

SLAMA: [00:26:15] So I've got a few questions regarding the fiscal note as well, the first one being as an inmate goes through the appeals process on their restrictive housing decision, they can take it all the way up to the courts, correct?

VARGAS: [00:26:29] Uh-huh. District court, yeah.

SLAMA: [00:26:30] Yeah. OK. Well, in the fiscal notice says that this would be handled by the county court.

VARGAS: [00:26:37] Oh.

SLAMA: [00:26:38] Yeah, Lancaster County and Johnson County.

VARGAS: [00:26:41] Apologies then. Did--

SLAMA: [00:26:42] North.

VARGAS: [00:26:43] --the County Court.

SLAMA: [00:26:43] Sure. So would the county be expected to cover the costs of this expected workload, because they're saying around 300 appeals could be made.

VARGAS: [00:26:54] Uh-huh. Yeah. I mean this is a-- a genuine concern. I-- my take on this is that if, just like any different, you know, appeals, even outside of Corrections, it will be taken up by the county. But the cost savings for the state and the cost savings for different entities within the Department of Corrections are going to help provide an offset here--

SLAMA: [00:27:17] But where--

VARGAS: [00:27:19] --and--

SLAMA: [00:27:19] --cost savings for Johnson County in this?

VARGAS: [00:27:19] The cost savings for Johnson County, not necessarily, necessarily identifying direct cost savings for Johnson County, but I would make this determination that if we can find cost savings for our corrections system on the back end, that this is going to provide indirect cost savings to counties in the long term, no different from many of the bills that we've passed recently or we'll be looking at that have a fiscal note. It is going to be a direct cost if there's gonna be a hearing in a county, so I'm not going to "debute," you know, debate that. So that will happen, no different from any mandate that we ask of a county that has to take up a cost of anything. And that is going to be taken up by a county, a school district, a local municipality. They will take it up. But what we want to make sure, there's also due process in here. And if it gets to the case where it's-- comes outside of this committee, we want to make sure there's due process that's outside of the committee within the Department of Corrections.

SLAMA: [00:28:23] Sure. And I mean my big concern with going through the county court is, especially for Johnson County, this could get-- get very expensive very quickly, so.

VARGAS: [00:28:32] No, and I-- I definitely hear you. But there's not a-- a guarantee that that cost is gonna be there, especially at the rate that we're-- you're projecting. It's just making a conservative estimate.

SLAMA: [00:28:47] Thank you.

VARGAS: [00:28:49] Thank you.

LATHROP: [00:28:52] I see no other questions. Thanks, Senator Vargas.

VARGAS: [00:28:55] I'll stick around.

LATHROP: [00:28:56] Good. We'll look forward to your closing. First proponent. Good afternoon and welcome.

JAMES DAVIS: [00:29:21] Good afternoon, Senator Lathrop and members of the Judiciary Committee. I am the deputy ombudsman for Correction and my name is James Davis, D-a-v-i-s, and I'm testifying in support of LB739 as it pertains to the vulnerability, due process, and increased out-of-cell time for restrictive housing. I want to thank Senator Vargas and Senator Wayne for bringing the bill. I want to touch on three areas. I'm not going to go over what Senator Vargas already talked about but just give you a brief history of how this came about with the LR424 Committee in 2014, what dealt with the Nikko Jenkins incident. That sparked the LR424 in 2014 and then, basically, we went to LR34 in 2015. Senator Lathrop was a part of that whole process. Basically what I want to do is look at why it's important for LB739. If we look at what Vera had assessed our system, Senator Vargas went into they made some recommendations. I won't go into it.

I'll provide it to you. What couple of recommendations that interests me was to protect the vulnerability of the population. And when we talk about vulnerable population, Senator Vargas already explained, but I want to give you a case in which I started working in 2013 of a juvenile who was placed in restrictive housing at 16. He came from Kearney and basically he made his way from Kearney and into NCYF, the Nebraska Youth Correctional Facility. Upon arriving there, it didn't take him long to be placed in restrictive housing. From there Ryan Mahr sent him down to LCC, which is the control unit. The control unit now is closed. Director Frakes did close that, but we had this young man in that facility for a very long time. And then we pulled him out and we put him in general population. And remind you, he was 17, between 17 and 18, and we moved him to E Unit. E Unit is the sex offender unit. So not only did we have this guy surround-- in vicinity of sex offenders but also adults. Then he went back into segregation. Then we sent him to Tecumseh and we placed him at SMU. He was there for a very long time. Basically, we followed the case and advocate for him to come out of restrictive housing. Eventually he did come out and they sent him to LCC. He had some problems at LCC. Then they put him back in the control unit South 40 at NSP. So the bottom line of this story is this young man came in on a one-to-ten charge for escape. He picked up additional charges at Department of Correction so it lengthened his stay. He also lost approximately 2,100 hours-- or 2,100 days of good time. So, therefore, we're looking at a vulnerable pop., a young man who was placed in restrictive housing very young and now currently he's probably back in restrictive housing. I did provide you guys with some data and some sheets that you guys can look over how the department rates across the country in restrictive housing.

LATHROP: [00:33:38] We have that.

JAMES DAVIS: [00:33:38] OK.

LATHROP: [00:33:39] Yeah.

JAMES DAVIS: [00:33:40] You have that?

LATHROP: [00:33:40] Yeah. Let me see if there's any questions.

JAMES DAVIS: [00:33:42] Oh.

LATHROP: [00:33:44] I don't see any. We do have it and we'll take a look at it.

JAMES DAVIS: [00:33:48] OK.

LATHROP: [00:33:49] I appreciate it. I gotta hold everybody did the three minutes,--

JAMES DAVIS: [00:33:53] All right.

LATHROP: [00:33:54] --Mr. Davis. Thank you though. Any other proponents to testify on LB739?

KELLEE KUCERA-MORENO: [00:34:04] Hi. My name's Kellee Kucera-Moreno, K-e-l-l-e-e K-u-c-e-r-a-hyphen-M-o-r-e-n-o. I am here on behalf of Terry Berry, who was an inmate that was being double bunked at Tecumseh State prison. I know of him and of his story through-- through following it on the new-- newspapers. I didn't know him personally, but I grieve for-- for him every day and I think of him and I'm-- I'm saddened by the fact that he was allowed to be double bunked with-- with a murderer. He was placed in a cell the size for one person, but two people were in that cell. And it's like 12-foot by-- I-- I can't remember exactly. On April 15, Terry Berry was found unresponsive in a solitary confinement cell, which was 7 feet by 12 feet and 7 inches. I don't know

if you have dogs that are in kennels in the backyard but that's the size of-- of a kennel, and people are placed in that and that's restrictive housing. We just use these terms as if it's nothing, but it is. It's putting people in a confined space. This was double bunking. They put him in a-- the cell with a prisoner who had spent the majority of his ten years while incarcerated in solitary confinement by himself. The practice of doing that, it shouldn't happen, period. Doug Koebernick, who reviews the Department of Corrections, has wrote extensively about things that are going on at the Department of Corrections. This Legislature is awesome. The Judiciary Committee has done so much to help prison reform in Nebraska, and we are falling way short of it. As a constituent, as constituents, we need to take a look at putting ourselves in these people's shoes. What would it be like if I were placed in a kennel with-- the size of a dog kennel with a person who is a murderer? Would I feel safe there? Who am I being protected from? I-- I apologize for the unprofessional information I have to share, but this-- this is a moral and ethical dilemma. And I do understand that there's fiscal questions about-- that people have. But I know that housing people in restrictive housing is not beneficial. It hasn't been shown to be beneficial. And even the President at the federal level is stating that we need to take a look at this. So, please, take a look at what's going on in our prison system.

LATHROP: [00:37:16] We'll do that.

KELLEE KUCERA-MORENO: [00:37:16] And thank you, Legislature.

LATHROP: [00:37:17] Sure. Thank you for your testimony. Good afternoon.

MORGANN FREEMAN: [00:37:25] Good afternoon. Thank you, Senator Lathrop. And thank you, Senator Tony Vargas, for bringing this bill. I am in support of LB739.

LATHROP: [00:37:35] Can we have your name?

MORGANN FREEMAN: [00:37:36] Sorry. My name is Morgann Freeman, M-o-r-g-a-n-n F-r-e-e-m-a-n, like the actor but an extra N. I'm in support of this bill for a multitude of reasons. Having witnessed firsthand the impact that solitary confinement can have on an individual, how it has an impact on how they navigate their lives in their worlds but also how that can have a residual impact on the communities that they operate in once they leave confinement. Having-- to the point of the fiscal concerns of what this could cost for, especially going through individual county courts of appeals, for rural communities especially, like my partner who's from Platte County, and for Madison County and for all of these smaller communities that have a tighter-knit community but also still have people that are incarcerated and people that are experiencing the same trends that are in the larger counties. The question, while also recognizing that financial concerns are valid, the question should also be, what is the cost of inaccurate and/or inefficient practices already? Because if you're having people that are being incarcerated, being put into sol-- solitary confinement because of inaccurate or poor or unjust practices, what is that cost already and how could we potentially do better within our criminal justice system with all of our policies if we're thinking about fiscal concerns, having witnessed firsthand what that impact can be, not just on an individual level but a greater systemic level as ACLU will point to, as I'm sure. I think we should start taking the steps to do more and to do better.

LATHROP: [00:39:42] Very good. I see no questions. Thank you for your testimony, Ms. Freeman.

MORGANN FREEMAN: [00:39:46] Thank you.

LATHROP: [00:39:54] Welcome.

AMY MILLER: [00:39:54] 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. I'm handing out to you the most recent data from the nationwide survey of number of hours out of cell. Nebraska is third in the nation for the most prisoners per capita in solitary confinement. Third in the nation, that is the other reason probably that our suicide rate is more than three times the national average, why we've had fatal riots, and why staff assaults are up. The troubling use of solitary confinement has such severe impacts on people's mental health that continues long after they've left, whether they return to general population or to their home communities. The concern here is that despite all of these tragedies the department has doubled down on the use of solitary. After the Vera recommendations, after the committees convened by the Legislature, and after our lawsuit in federal court challenging these conditions of confinement, the numbers of men, women, and juveniles in solitary continue to go up. Concerningly, there's an overrepresentation of people of color behind the solitary confinement units. And according to the last available statistics, almost a third of the people in solitary confinement in Nebraska are people with a serious mental health condition. Now the bill is necessary to ensure that rather than continuing to rely on the possibility that the department will clean their own house that it's necessary to start providing firm reform to wind down the use of solitary. If you look at that chart of which states have the least use of solitary, Colorado, Iowa, South Dakota, North Dakota are on the far end of barely having any prisoners in solitary. It's our neighboring states who have figured out how to do this. We have a road map that we can follow, both from Vera and from our sister organizations across the country. Want to speak briefly to the fiscal note. You'll see that from the most recent statistics there are approximately 404 prisoners in solitary confinement on any given day in 2018. The department is estimating that there would be 300 prisoners that would bring one of these cases to the district courts as an API appeal. That suggests they're not planning on making any changes to their use of solitary, that they're going to retain that population. And so all of those folks are going to have the opportunity to file outside

cases. You'll see on the last page of my testimony a quote from the Colorado Department of Corrections head. They've almost eliminated the use of solitary. They're the lowest use in the nation now and they say that assaults, forced cell entries, and the use of heavy restraints declined by 40 percent. It's a cost savings for the staff who are not injured. It's a cost savings to not have the heavy-duty staffing necessary to go in on those situations. And it's a cost savings to the courts to not have any new criminal charges flowing out of these incidences. I would suggest that you look with great skepticism to that fiscal note. There would be indeed a cost savings if we finally wound down the number of people in solitary confinement. And we thank Senator Vargas for his leadership in bringing this bill forward. I'm happy to answer questions about our lawsuit. I've toured most of the facilities and the solitary confinement units myself, and I'm happy to answer any questions I might be able to.

LATHROP: [00:43:15] I appreciate your testimony. We appreciate your testimony. I don't see any questions however.

AMY MILLER: [00:43:20] Thank you.

LATHROP: [00:43:20] Thank you.

PAUL FEILMANN: [00:43:38] Good afternoon.

LATHROP: [00:43:40] Good afternoon.

PAUL FEILMANN: [00:43:40] My name is Paul Feilmann and I live at 5152 Jones Street. I'm a retired, licensed mental health therapist. I'm here testifying in strong support of LB739, which will restrict the use of solitary confinement for individuals who have serious mental illness. In my 25-

year career in the mental health field, I had many opportunities to work in psychiatric hospital settings and become famil-- very familiar with the serious and dangerous potential of the impact of this level of mental illness. This is a category of mental illnesses which falls under the terms of "serious" because they pose a major threat to overall functioning of the individual. This category of illness cause-- causes a major disruption in cognitive, emotional functioning. Such disruptions can lead to suicidal or homicidal behavior or significant disruption in capacity to function in a normal adult environment. Due to the severe overcrowding in the Nebraska Department of Corrections, there has been an extensive use of solitary confinement, confinement for these for control purposes. Many of these individuals are plagued with chronic, serious mental illness. I believe this poses a serious threat to the health of prisoners and to safety of the community. I passed out a set of materials that I would like to review with you to clarify my justification for these safety concerns. The first article is written by JoAnne Young, the Lincoln Star Journal. In this article she described several professionals who have investigated Department of Corrections solitary confinement units and addresses the extreme dehumanizing and unsafe conditions of solitary confinement, particularly in the Nebraska State Penitentiary. The attached photo is the control unit. It's 7 by 9. I've-- I put an arrow there that shows where the communication goes for mental health therapy. You go, you talk through that grated window This article summarizes a severe pattern of solitary confinement leading to serious mental illness and suicide. It also documents a murder that took place in a double-bunked solitary confinement cell. Beginning on page 4 you will find several pages from the Department of Correction Services Special Investigative Committee report to the Legislature from December 15, 2014, regarding Nikko Jenkins. Several pages of this report that I've attached summarize the six years, let that sink in, six years' history of Mr. Jenkins' involvement in solitary confinement and his attempt to get help for his serious mental illness. This material is very disturbing and clarifies why it is so critical that this category of mental illness be carefully handled and not be dealt with in a restrictive setting, such as solitary confinement. On page 13 you'll find-- you'll see the final conclusions from this committee's report. The committee found that Mr. Jenkins

was continually denied adequate mental health treatment for six years and failed to give him the mental healthcare that he desperately required previous to his discharge to the community, this, despite his continued statements that he would not be able to control his homicidal urges once he was released. Mr. Jenkins specifically requested a civil commitment so he could be kept in a safe mental health treatment facility upon his discharge from Corrections Department. This request was denied. Upon his release from prison, the promise that he had made for six years, he killed four people in the city of Omaha. I've also attached a summary of the number of individuals diagnosed with serious mental illness currently housed in solitary confinement in Nebraska Department of Corrections. The type of mental illnesses is also described in this material. Finally, I've also put the direct release data regarding the number of individuals who've been released directly into the community from solitary confinement in 2018. Finally, I have also concluded on page 3 the link to the documentary regarding the Maine solitary confinement unit called "The Last Days of Solitary." Because of your role in managing the legislation regarding the Corrections Department use of solitary confinement, I believe it is critical that you take some time to watch this video. It truly gives you a clear, powerful picture of what solitary confinement can do to a person with mental illness. I "summari"-- in summary, I believe it is very likely that if we continue to use solitary confinement for individuals with severe mental illness, these individuals will pose a serious threat to their own health and well-being, as well as people they are incarcerated with and community members who they will impact when they are released from prison. This is a humanitarian, safety issue which cannot be ignored or we risk a situation similar to Mr. Jenkins' reoccurring. Thank you.

LATHROP: [00:48:31] I do not see any questions. Thank you for your information and your testimony

TOM MILLER: [00:48:41] Hello.

LATHROP: [00:48:45] I think we have some people leaving the room and I don't think it's because you're test [INAUDIBLE].

TOM MILLER: [00:48:51] OK. [LAUGHTER]

LATHROP: [00:48:51] Why don't you give [INAUDIBLE].

TOM MILLER: [00:48:51] I wouldn't be surprised. No. My name is Tom Miller. Good afternoon, Senator Lathrop and members of the committee. My name is spelled T-o-m M-i-l-l-e-r and I am here to support LB739. Professionally, I've worked with children and adolescents since 1986. I'm recently retired-- good for me-- and so I have some time to reflect on what I want to do to help my community. I am reading to 1st graders. I'm also a Teammates mentor. And I've been involved with children and so-- which is great. In addition, through articles in the newspaper and from research by my friend Paul Feilmann, I have learned about Nebraska's correctional system. I've read about the overcrowding and staff hiring issues. I've also read reports from Doug Koebernick about the state of Nebraska's correctional facilities and I have met with Doug. What really changed me, though, really affected me more than anything and made me an advocate for prison reform was when I saw "The Last Days of Solitary," a FRONTLINE documentary video about Maine's State Prison and the psychological damage that happens when humans are given prolonged solitary confinement. FRONTLINE was given three years to see what happened to prisoners within the special management unit at the Maine State Prison. The most dramatic part of the video was the first half hour which showed the special management unit before the prison officials had reduced the number of prisoners in the unit and began offering more programming and therapy. That first half hour was the most disturbing video that I have ever seen. I kept thinking about how can human beings be a party to the destruction that takes place in prisoners' lives when they are locked in a cell for 23 hours a day without social interaction? The video shows dramatically the violence, boredom, self-

mutilation, hallucinations, and mental pain that prisoners encounter. Solitary confinement is shown in the video for what it is-- a dehumanizing and demoralizing way to treat another human being and to add to their trauma. And to think that some prisoners are in solitary who have mental illness and some who have been there for years and some are released from solitary directly into their communities, that is truly frightening. So I urge you all to spend at least a half hour to view the first part of "Last Days of Solitary." I am sure you will no longer be able to think about solitary in the same way; you would be moved to act. So again, I support LB739.

LATHROP: [00:51:27] Very Good. Thank you for your time and your work on this topic in your retirement.

TOM MILLER: [00:51:31] Thank you. Thank you very much.

LATHROP: [00:51:36] Just as an aside if you're in this room, I've asked somebody to turn the heat on. Hopefully, they will and hopefully we'll regularly have heat in here for committee hearings [LAUGHTER] or blankets. We'll start handing blankets like they do on the decks of some cold environments. Anyway,--

BRAD MEURRENS: [00:51:56] Whatever you got to do, right?

LATHROP: [00:51:57] --welcome. Yeah.

BRAD MEURRENS: [00:51:58] Well, good afternoon, Senator Lathrop, members of the committee. For the record, my name is Brad, B-r-a-d, Meurrens, M-e-u-r-r-e-n-s, and I am the public policy director at Disability Rights Nebraska. I'm here today in support of LB739. In 2014 we produced a report outlining the psychological and physical impacts of solitary confinement on

inmates. The use of solitary confinement often has drastic and deleterious effects on inmates. For example, once in segregation, their psychiatric symptoms and mental condition generally worsen. Symptoms commonly expressed by inmates exposed to solitary confinement include social withdrawal, anxiety, panic attacks, paranoia, irrational anger and rage, perceptual distortions and, as Tom said before me, hallucinations. It does not require much of a stretch to understand that solitary confinement could create additional or exacerbate underlying mental health conditions for persons who are in one-- one or more of those vulnerable populations listed in the bill. We support the prohibitions in the bill of using solitary confinement with these individuals. Additionally, we support the limit of 90 calendar days if solitary confinement is used and a vigorous hearing process to determine if this limit is to be surpassed. And with that, we recommend that this bill be advanced.

LATHROP: [00:53:27] Thank you, Mr. Meurrens. We appreciate your testimony. I see no questions.

BRAD MEURRENS: [00:53:31] Thank you.

LATHROP: [00:53:31] Any other proponents to testify? Good afternoon.

TYLER WILSON: [00:53:41] Good afternoon. My name is Tyler Wilson, spelled T-y-l-e-r W-i-l-s-o-n. I am speaking in favor of this bill, LB739. I am not a mental health practitioner. I can't give you big fancy words or some raw data. What I can give you is firsthand experience. I'm a state certified correctional officer. I completed my training at the staff training academy for the Nebraska Department of Correctional Services. I have firsthand experience as an employee at the Nebraska State Penitentiary. I'm no longer an employee with the Nebraska Department of Correctional Services and I'm not speaking on behalf of their union or any current employees. What I can tell you is you will see a direct correlation between the increase in use of solitary confinement to when

we got to that really bad, troubled red zone of overcrowding. The Nebraska prison system is broken. We have too many inmates and too little staff, and that's a bad problem to have. Double bunking in a solitary confinement unit should never happen. It goes against best practices. But when you have no place to put people, I mean, that's your last resort. I responded to the riot-- well, excuse me. I will quote Director Frakes-- the disturbance at the Tecumseh State Correctional Institution in 2017. I'm a firm believer that if we did not have such an overcrowding issue that that riot would have never happened. If we would have had adequate staffing, we would not have had to wait for response teams from the state penitentiary and other correctional institutions. Me personally, I was an employee at the Nebraska State Penitentiary. It was my day off. I saw it on the news. I called in to the institution and they said they needed as much help as they could get. So there I was driving an hour drive to Tecumseh. Our prison system is-- is very broken and it's going to take a lot to fix it, but we have to start somewhere and this is a good starting place. Getting the use of solitary confinement down to a manageable level is a necessity in our state prison system. Solitary confinement is a tool that is overused by the Nebraska Department of Correctional Services. It is something that is needed in very extreme circumstances and very extreme cases. But we-- we overuse it. When you have a segregation unit that is full and then is double bunking because that's a bed and that's for someone to sleep in, we don't look at the drastic behavioral change. Working there I see someone that gets pulled from general population, put into solitary confinement, and then, whether they're in there for a month or whether they're in there for 90 days, when they come out of solitary confinement, they are a different person. And I say that in the sense of when you are restricted to a 12-by-10 cell for 23 hours per day with hardly any human contact outside of the correctional officer that comes by every hour to say, hey, are you alive and are you doing OK, that is a serious problem and we need to seriously address it. Thank you.

LATHROP: [00:57:06] OK. Yeah. We've studied this issue. I think we've-- we appreciate your testimony, we really do. And, yeah, I appreciate you coming down today. You're now-- are you

working as a-- in security somewhere now?

TYLER WILSON: [00:57:30] Yes, but not with the state of Nebraska.

LATHROP: [00:57:32] OK. OK. Yeah, thanks for coming by.

TYLER WILSON: [00:57:35] Thank you.

LATHROP: [00:57:35] Appreciate it. Anyone else here in support of LB739? Anyone here in opposition? Welcome, Director.

SCOTT FRAKES: [00:58:04] Good afternoon, Chairman Lathrop. Members of the Judiciary Committee, my name's Scott Frakes, F-r-a-k-e-s. Pardon me. I am-- excuse me-- I'm the director of the Nebraska Department of Correctional Services and I'm here today to provide testimony in opposition to LB739. Before I start, which I say that out loud, it doesn't make sense, I want to point out that the two additional documents that I'm sharing with the committee, the first is the copy of our promulgated rules and regulations for the operation of restrictive housing and the guiding restrictive housing documents for this department. The second document is the 2018 restrictive housing annual report, which was provided to the Legislature in September. Both of these documents demonstrate Nebraska's commitment and NDCS's commitment to restrictive housing reform. I'm very troubled by the proposals included in LB739. I feel they demonstrate a profound misunderstanding of the use of restrictive-- of the use of restrictive housing, how people are assigned, and the efforts made to meet the needs of people held in restrictive housing. It is a reality that people commit violent or disruptive acts in prison which require them to be separated from the general population for their own safety, the safety of others, and the security of the institution. Our goal is to house people in the least-restrictive environment possible. Restrictive housing is utilized

as a last resort. Despite the perceptions of some people, use of restricted-- restrictive housing is not capricious, punitive, random, or without reason. Every case is reviewed at multiple levels and at multiple times throughout the duration that someone is there. It's a well-functioning system that ensures physical and mental needs are addressed. Programming is available for those willing to participate. Work to minimize the use of restrictive housing and improve conditions is not finished. Since I arrived in 2015, NDCS has made significant progress in the following areas: we eliminated the use of restrictive housing as a disciplinary sanction; we improved tracking of those assigned to restrictive housing or alternative housing placements, collective and-- collecting and reporting data regarding the number of people in restrictive housing, which includes the reasons they are there and the length of their stay; established a multidisciplinary team, review team, the MDRT, to manage the assignment to and release from longer term restrictive housing; improved coordination between facilities, the wardens, and the MDR-- MDRT to provide thorough and expedited reviews of housing assignment; we expanded programming to those in restrictive housing; we have a constant review and revision of policies related to restrictive housing; staff training for those who work with individuals housed in restrictive housing and daily involvement, and I mean this, daily involvement of the agency director in the use and operation of restrictive housing. I cannot emphasize enough that people placed into restrictive housing are there for justifiable reasons. We continue to make improvements to reduce the need for restrictive housing. Over the last four years we've established a wide variety of mission specific housing areas that greatly reduce the need to rely on restrictive housing as our primary intervention. The Behavioral Health Unit under construction at the Reception and Treatment Center will give NDCS a full continuum of residential mental health beds, both new and existing, providing safe housing for people who should not be in a restrictive housing setting. The 384-bed project included in my budget request is another important piece of the progress that needs to happen to better manage people in a high-security environment but an environment that is conducive to the needs of those who need to be there or have to be there. So thank you for the opportunity to testify and I'd be happy to try and answer questions.

LATHROP: [01:02:04] Senator Chambers.

CHAMBERS: [01:02:06] Director Frakes, you have read, I'm sure, extensively material on penology, the science of it.

SCOTT FRAKES: [01:02:17] Yes.

CHAMBERS: [01:02:18] And did you read anything about the detrimental effects of restrictive housing or solitary confinement?

SCOTT FRAKES: [01:02:27] Yes.

CHAMBERS: [01:02:28] And you did not use restrictive or solitary confinement to the extent you use it here when you were in Washington, did you?

SCOTT FRAKES: [01:02:37] Could you "rephra"-- could you phrase that or repeat that?

CHAMBERS: [01:02:39] OK.

SCOTT FRAKES: [01:02:39] I'm not sure the question.

CHAMBERS: [01:02:41] You're using restrictive housing or solitary confinement to a greater extent here than you did when you were in Washington. Isn't that true?

SCOTT FRAKES: [01:02:50] No.

CHAMBERS: [01:02:51] OK. That's all I have, because that's something that we can verify.

SCOTT FRAKES: [01:02:56] Agreed.

CHAMBERS: [01:02:57] I'm going to give you one more chance. Did you understand the question?

SCOTT FRAKES: [01:02:59] Yes.

CHAMBERS: [01:03:00] And you answered truthfully.

SCOTT FRAKES: [01:03:02] I did because the numbers that you see often do not reflect where-- it's not-- there's no apples and apples comparison. When we talk about Colorado, we talk about a situation where they define restrictive housing as being in confinement or being out of confinement for less than an hour a day. So they have situations where they have people that are out of confinement for two hours a day and they don't count that as restrictive housing. In Washington, we counted our administrative segregation numbers, which are still the numbers that are reported, but we had disciplinary segregation and a form of immediate segregation, and those numbers weren't rolled into the tally. So the number that you see, that you would see in the Liman Yale report today that was just issued last fall only reflects their long-term use of restrictive housing.

CHAMBERS: [01:03:50] But there could be different interpretations of the amount in Washington and the amount in Nebraska. Is that what you're saying?

SCOTT FRAKES: [01:03:58] That is what I'm saying. And I think if you look for an apples and

apples comparison, you're not going to find significant difference. That's my belief.

CHAMBERS: [01:04:06] But it is possible that somebody who is objective could find that there's a more extensive use of it in Nebraska than in Washington.

SCOTT FRAKES: [01:04:17] No, I don't believe so, but--

CHAMBERS: [01:04:18] OK.

SCOTT FRAKES: [01:04:19] --you know--

CHAMBERS: [01:04:20] So I don't want to be argumentative. I just want the record clear and I think it's clear.

SCOTT FRAKES: [01:04:26] OK.

LATHROP: [01:04:26] Senator DeBoer.

DeBOER: [01:04:28] Thanks, Director Frakes, for coming in. Actually referencing the exchange you just had with Senator Chambers, in Nebraska it's typically less than an hour out a day or an hour out a day of restrictive housing. Restrictive housing is 23 hours in a cell. Is that correct?

SCOTT FRAKES: [01:04:49] Yes, it is.

DeBOER: [01:04:50] Would-- would you be-- what-- what would happen if we changed that so that there was a few more hours out? What would that look like? Is that something that-- can you

Speak to that issue?

SCOTT FRAKES: [01:05:01] I can. So the current population, which today was 317 people across our system, the bill I believe proposes that we would have to get people out for at least two hours a day or it would be solitary confinement, and that's against the law. So even though that term is used a lot, it's already against the law in Nebraska to use solitary confinement. So two hours a day would be a doubling and even a little bit more, unfortunately, in some situations of our current practice. That's why the fiscal note includes additional staffing. And unfortunately, it would probably drive 24/7 operations, which I've experienced in the past in my previous life in Washington State, where you're getting people up for their yard at 2:00 in the morning because, you know, that's-- between the number of staff and the amount of space and the number of yards and the amount of movement, plus you have to feed, count, everything else, you pretty much have to use the entire day to provide that level of out-of-cell time. So under the current population, when we achieve what we're looking for, which is a significant reduction in that population, you know, then the math gets better.

DeBOER: [01:06:16] So is the reason that it's restricted to one hour right now then these logistical issues of not wanting to wake someone up for their yard issue at 1:00 in the morning or is-- or is there some other issue?

SCOTT FRAKES: [01:06:28] It's more today would be that, you know, our current assigned staffing levels, which are the right staffing levels for what we accomplish in that unit, wouldn't allow us to significantly increase the amount of out-- out-of-cell time.

DeBOER: [01:06:41] So now let's imagine for a second that we have the staff. I know we don't, but let's imagine for a second that we do. Is there any reason with respect to your talking about wanting to use restrictive housing or using restrictive housing as your-- I can't remember the word, I'm sorry,

that is sort of the incentive or disincentive or whatever it is, it's-- it's the way to kind of keep-- keep things safe in the prison or whatever. So if we switch that to two hours, if we switch that to four hours, does that undermine the use of restrictive housing in that way?

SCOTT FRAKES: [01:07:21] As long as we have the staff to accomplish it and an acknowledgement that given our current physical plant that we'd be 24/7 operations, which again, I have done it in the past so I know it can be done. No, we use segregation for risk. That's why we put people there, so you know. And I use-- I drop back to old language. So that's what I called it for 25 years, was segregation. So restrictive housing.

DeBOER: [01:07:49] OK. Thank you.

LATHROP: [01:07:52] Senator Slama.

SLAMA: [01:07:57] Thank you for coming out today, Director Frakes. So one of my questions on the fiscal note, besides the cost that I think is coming towards Johnson County if this goes through, is the staff that's going to be required to fulfill the requirements of this bill. Could you just go into more detail of what we're looking at in terms of additional staffing, where those would be and why?

SCOTT FRAKES: [01:08:18] Well, I think Senator DeBoer gave me, you know, the perfect opening or actually allowed me to get into that to some degree. In most situations, it takes two staff to escort, to do that safely. And so there are some situations where it's possible to do single-person escort, but mostly it takes two staff to move someone that's restrict-- in restrictive housing, especially if they've demonstrated violence. So for-- for every escort, two staff. So if you think about Tecumseh and the secure, sorry, special management unit that has the potential, actually has potential to house 300, I would never even think of that. But-- but original design was about 196, I

think was what the number was, and we've come close to that or maybe have hit that number on occasion. We're down from that. So say there's 160 people housed in that building today. That's then 160 people that would need to be out of cell for two hours a day. So you think about the number of staff it takes for the escorts, you think about the number of yard spaces. Hopefully, you've got-- not hopefully, we've got a little bit of programming space. It was designed under the old method so there's not a lot of programming space. If we built something today, we would build it quite a bit differently. The advantage, of course, of programming space is now you might be able to get six or eight people out at a time and put them in a classroom and give them two hours of out-of-cell time. So is that combination of the number of staff it takes to move people back and forth, complete the searches, do all the other things for safe movement, and then having the space to put people into and that's-- then drives that. You know, the more activity, the more movement, the more out-of-cell time, the more likelihood then you're going to have to use the 24-hour clock to achieve that.

SLAMA: [01:10:16] Thank you.

LATHROP: [01:10:21] You, Director, indicated that you use it for risk and not for punishment.

SCOTT FRAKES: [01:10:28] Yes.

LATHROP: [01:10:29] OK. And you also mentioned the 384 beds that were part of the Governor's proposed budget. What's the relationship? Those beds would be high-security beds?

SCOTT FRAKES: [01:10:41] Yes, high-security general population.

LATHROP: [01:10:43] OK. And-- and what campus would that be built on?

SCOTT FRAKES: [01:10:48] The Lincoln Correction Center.

LATHROP: [01:10:50] What's the relationship between that, building that unit, and restrictive housing? Would be-- would we be using restrictive housing less if that unit were built as proposed?

SCOTT FRAKES: [01:11:05] Yes.

LATHROP: [01:11:06] OK. Tell us why that is.

SCOTT FRAKES: [01:11:09] Because today we have a gap in our physical plant, you know, bed spaces, both just the total number of beds and having beds at the right custody level. We've done a good job of building our low-security beds to the numbers that I think are consistent with the population that we house in Nebraska. We've got a good collection of beds that would class-- that I classify as medium security. What we lack in our system is beds for-- you could call it Level 4 security. We call it max. Where I came from in Washington it was called close. It's the highest level of general population housing. The most noticeable difference would be all of the doors are controlled by staff, as opposed to being controlled with, we call them, pop doors, you know, where you release the door and then it had-- depends on someone then to close the door to secure it. So all the doors slide open and close. The booths are hardened. So very high, secure setting, in many ways similar to the special management unit at Tecumseh in terms of the security operations. The big difference would be you have a large day room. You have an attached large exa-- exercise yard. You have programming space on the living unit. You have space for the counseling staff and others there. So that you can do much of the day-to-day activity on the living unit, and then where there's-- whether it's access to mental healthcare or healthcare, the option to feed off the unit exist. So there's some opportunity for movement outside of the living unit and engagement, but a lot of it can be

done within small, controlled groups.

LATHROP: [01:12:58] What would that do to our restrictive housing numbers?

SCOTT FRAKES: [01:13:02] If I had those beds today I think I'd probably be able to cut the-- I'd say I could cut the number in half. That's kind of just guessing.

LATHROP: [01:13:08] So you're at 317 now.

SCOTT FRAKES: [01:13:11] Yes, this morning. Yes.

LATHROP: [01:13:13] So we'd be around 150 people in restrictive housing at any given time. How long are these people spending there?

SCOTT FRAKES: [01:13:23] Oh--

LATHROP: [01:13:23] And while you're thinking let me--

SCOTT FRAKES: [01:13:25] Yeah.

LATHROP: [01:13:25] --just say, as I look at the bill, this particular bill, it talks about it-- it-- it chooses a 90-day time frame and says, look, if you're gonna have somebody in there beyond 90 days, we got to have somebody look at this. And I think it's the idea behind the bill is we're gonna have a particular panel look at it. That's subject to some review and ultimately the Procedures Act and some judicial review. And it seems to be an expression, as I read the bill and the intent, an expression of some frustration that people are in there more than 90 days. Because, frankly, a

number of us listened to the whole Nikko Jenkins situation, that LR464 [SIC] Committee that was back in 2014. It not only included sort of what happened to Nikko Jenkins while he was incarcerated, a great deal of time in solitary, but also we had somebody-- some experts talk about it, too, the-- the problems it causes with mental health. I think even Director Houston acknowledged that it causes problems with people's mental health. And people that have mental health difficulties get worse in there. And so the idea behind this bill is, is at some point we need to have somebody take a look at this and say do we have a compelling reason. And I'm wondering if the-- if the answer to that question is, well, we don't have good restrictive housing and so some of these people spend more than 90 days there. I don't know, but at some point being in there beyond 90 days is making these people worse. Do you agree with that proposition?

SCOTT FRAKES: [01:15:14] Hmm, I think that potential exists. I don't necessarily buy into all of the beliefs of different opinions that have been expressed across those issues. [INAUDIBLE].

LATHROP: [01:15:28] I-- I appreciate you don't buy into all of them, but you can accept that some people get bad and some people that have problems get worse when they spend extended periods of time.

SCOTT FRAKES: [01:15:37] Which is part of why we have dedicated mental health staff tied to our restrictive housing now. That's part of the reforms that we've implemented. So we have people on-site, paying attention, interacting with. And-- and when people are decompensating, we're removing them from restrictive housing.

LATHROP: [01:15:53] As you testified, did I understand you to say that you believe there's already a panel of some kind that's in place?

SCOTT FRAKES: [01:16:00] We do. We--

LATHROP: [01:16:01] Did you call it the MRT or something?

SCOTT FRAKES: [01:16:03] That's good. We have, at the facility level, we have the class-- unit classification team that does the first level of it for-- the facilities handle the immediate segregation process as it's always been, and that's short term, ideally 30 days or less. There's a process that can get it out as far as 60 days with my approval, but we try to keep it to 30 days. If there is the belief at the facility level that a person should be put on longer term restrictive housing, an extended process, then it comes to the multidisciplinary review team at the Central Office, which includes the two deputy directors, the head of Behavioral Health, a person from research, our intelligence director or administrator, the restrictive housing coordinator, and then occasionally we try to have facility staff sit in as well so they get a sense of how that process works.

LATHROP: [01:17:04] And there they roundtable this and say, yeah, leave them there.

SCOTT FRAKES: [01:17:07] Or not.

LATHROP: [01:17:08] Who's-- who's the mental health person?

SCOTT FRAKES: [01:17:11] Dr. Alice Mitwaruciu.

LATHROP: [01:17:14] Pardon me?

SCOTT FRAKES: [01:17:14] Mitwaruciu. And I try not to--

LATHROP: [01:17:16] Mit, Mitwaru-- I'll just say doctor, your mental health--

SCOTT FRAKES: [01:17:16] She's often referred to as Dr. Alice because--

LATHROP: [01:17:16] OK, Dr. Alice. Does she go and see these people before she passes judgment on them on this panel?

SCOTT FRAKES: [01:17:28] No, she works with-- on rare occasion but it's fairly rare because she's the administrator for behavioral health. She works with the psychologists that are assigned to the different units and communicates directly with them.

LATHROP: [01:17:40] So she's just going to do a records review and then weigh in on--

SCOTT FRAKES: [01:17:45] Yeah, and sometimes circle back, ask more questions, you know, look for more [INAUDIBLE].

LATHROP: [01:17:49] So if this isn't about punishment, these people that are there beyond 90 days aren't being punished, they-- they are what you regard as some kind of a security risk?

SCOTT FRAKES: [01:17:57] Yes.

LATHROP: [01:17:58] And if they're a security risk, is there-- does that person have an opportunity to participate in that?

SCOTT FRAKES: [01:18:05] In?

LATHROP: [01:18:06] In the-- in this MRT.

SCOTT FRAKES: [01:18:09] They participate face to face if they choose to at the unit level, so they meet with the unit classification review team. There's not a face to face with the multidisciplinary review team though.

LATHROP: [01:18:19] Do they ever know what the-- what the allegation is or what the concern is?

SCOTT FRAKES: [01:18:28] The only exception would be those that are being held because of their security threat group activity. It's based on information and intelligence that we have, as opposed to a specific incident of violence or a specific incident of introducing serious and significant contraband.

LATHROP: [01:18:48] Oh. So people on this panel appreciate, especially those that went and did the tour, that you have folks that are with their ear to the ground.

SCOTT FRAKES: [01:18:56] Yes.

LATHROP: [01:18:56] OK. They're talking to various inmates and they may find out somebody is in a gang and a gang's up to something.

SCOTT FRAKES: [01:19:03] It's usually a collection of both information gathered from a variety of sources, including mail, things that are found during searches, information that is shared from sources. So it's not just based on a single inmate who says that guy is doing something bad.

LATHROP: [01:19:23] OK. And now you think if you didn't have-- if you had these 384 beds, some of these people who are security threats can be in maximum security housing without having to be. What would you be-- what would the 150 people represent, short termers?

SCOTT FRAKES: [01:19:41] There would still be a long-term piece. We still would have those people that engage in serious violence, serious and significant violent incidents, which we hope to, you know, continue to reduce through the interventions that we're trying. But we have-- 57 percent of our people are in on a violent offense. About another 10 percent demonstrated violence in some documented way, either while in prison or in prior offenses. So two-thirds of our population's got a history of violence. And unfortunately, a relatively small percentage of that but a measurable percentage of that still engages in violence as a tool to achieve what they want. They attack my staff. They attack other people. And when they do that, that's a very high-level risk and the best answer I have is to separate them from others. We talk-- I'm 20 years focused on this issue. This isn't anything new for me. I really do care very sincerely about the effects of restrictive housing and how we can do things differently and how we can keep people out, and those that need to be there, how we can provide different opportunities and get them to see the world differently and behave in ways that are less risky. So I've got, you know, I brought Vera to Nebraska. That wasn't something that someone else did. I'm the one that called them while I was driving here to take this job and said, will you come to Nebraska and help us out? I worked with Senator Schumacher on LB598. LB598 was lofty legislation. If you were to look at legislation around restrictive housing across America, it's-- it's up on the top end, especially the standard of 24 hours of out-of-cell time is the minimum bar. Most states either have little direction on that issue or they may say it's defined as 23 and 1. But here in Nebraska, if I can't get people out of cell and in some level of freedom of movement for close to four hours a day, then that qualifies as restrictive housing. And if you look across all the things that LB598 asked us to do and which we've made significant progress on, it's a good piece of legislation. We're not done with it. That's part of why I'm not saying that there isn't

some pieces of LB739 that have value, but we're still moving on LB598 to get it to do everything we need to be-- need it to be. And the-- the other advantage that will come when we're able to have the right kind of housing for everybody in our system, I have no plans, I have no plans to reduce the current staffing levels in our restrictive housing. I want to close the control unit-- I've said it publicly and I'm saying it again today, when I-- as soon as I can close. I closed the small control unit at LCC. I intend to close the control unit at the penitentiary when we can. I want to maintain the same staffing levels. So if I have the same level of staffing that I have today at Tecumseh and I have half as many inmates, three or four hours of out-of-cell time, more programming activities, all of those pieces will be very easy to accomplish.

LATHROP: [01:22:51] Is that a problem with staffing or is that a problem with overcrowding or both?

SCOTT FRAKES: [01:22:58] Today, it's-- it would take more staffing to achieve greater out-of-cell time.

LATHROP: [01:23:05] Right.

SCOTT FRAKES: [01:23:06] And that's, you know, we're staffed at a level that's consistent with the model that was used for the operation of kind of standard restricted housing or segregation. We're-- we're well staffed from a safety standpoint at our-- specifically--

LATHROP: [01:23:19] Yeah.

SCOTT FRAKES: [01:23:19] --at Tecumseh, but not to do the out-of-cell programming, those other components. And then it's a space issue.

LATHROP: [01:23:28] That's right. And that is a-- that is a significant issue, I think, in terms of how soon people can be parole eligible and the like and public safety. Because I think you've testified in front of me before that if you keep these guys engaged in something if they're out of their cells, if they're doing programming, you're less likely to have staff assaults and so on. I don't want to tie people's time up and I know that this is only our second bill so I'm going to move on. I do want to say this. I do have some concerns about the staffing, the issues that-- that surround pay. I had an opportunity to talk to several of the people that work there and I don't know that, well, I'm not going to characterize their testimony other than to say I think there's grave concerns about the pay and the-- the pay circumstances. And your ability to hire and retain people, in my judgment, and we've looked at this for four or five years now, is a direct result of what they're getting paid or how they're paid in relationship to what county jailers are paying these guys, and they're stealing them from you. And I would-- I would say that it's-- that it's reached a level that I would call a crisis. I would call it a crisis. And I don't know how much control you have over pay and maybe that's something that happens in the Governor's Office and you just have to accept whatever that is. But I'm-- I'm very, very, very concerned about this latest round of negotiation. And if it doesn't go well, I think you're going to lose a lot of senior people. And we can't have National Guard running the prisons because they're not trained to do that kind of stuff, right? That's not a good substitute for the people that have been through the proper training.

SCOTT FRAKES: [01:25:19] No, that's what you use for an emergency situation.

LATHROP: [01:25:22] Right. I see no other questions. Thank you for your--

SCOTT FRAKES: [01:25:25] Thank you, Senator.

LATHROP: [01:25:27] --your testimony and your answers to my questions. Anyone else here to testify in opposition? Seeing none, Senator Vargas to close. Oh, I'm sorry. I'm sorry. We have one more in opposition. Are you in neutral or opposed?

MICHAEL CHIPMAN: [01:25:52] I put opposition [INAUDIBLE].

LATHROP: [01:25:53] OK. OK. I don't think I-- didn't announce the neutral. Go ahead.

MICHAEL CHIPMAN: [01:26:00] Hi. I'm Michael Chipman. I represent the Fraternal Order of Police, 88. I'm the president. My name's M-i-c-h-a-e-l C-h-i-p-m-a-n. I am in opposition of this bill on the-- on the grounds that we use segregation in our state penitentiary. I worked there for four years. I now currently work at the Community Corrections Center. But during those four years there, because of how overcrowded we are and-- and our staffing crisis, it-- when we have inmates that come, that assault someone, then they come out and then they commit another assault, go back into seg., we have a lot of inmates that do things like that. And also security threat groups, or gangs as everyone else would call them, we a lot of those issues and it causes a big issue. I would say the biggest issue with this, the segregation is it comes down to, like I said, overcrowding and the staffing crisis. At the Nebraska State Penitentiary alone I had a meeting with the administrative staff and they admitted to me that they are 72 positions down just for corporals. So I mean when you add that number, that explains a lot of your issues. So when you're that short on staff, you can't do programming for these guys in segregation, not the appropriate amount of programming. There's no way that you effectively can, because then you're-- you're "mandatorying" people and you have to go to minimal staffing and, you know, you're just trying to fill posts. And so that's our concern is that by forcing less segregation at this moment would cause a bigger safety crisis and a bigger staffing crisis. We do agree that there needs to be-- this issue does need to be addressed, but we think it would be better addressed through solving this overcrowding issue and solving the staffing

crisis.

LATHROP: [01:27:58] OK. I don't see any questions for you. Thank you for your testimony.

Anyone else here in opposition? Good afternoon.

CARLA JORGENS: [01:28:21] Good afternoon. My name Carla Jorgens, C-a-r-l-a J-o-r-g-e-n-s. I am the secretary of the Fraternal Order of Police, Lodge number 88, which is currently the union for the line staff with the Nebraska Department of Correctional Services and some of the DHHS staff that work in the mental health facilities. I'm in opposition of reducing solitary confinement and restrictive housing. I've been with the department for 21 years and I have never seen anyone being placed into a restrictive housing, housing unit, because that was the only bed we had. If they don't belong there, they don't go there. There's usually a reason. They've committed some sort of crime, assault, violence on other inmates or other staff. The last big legislative bill that we had that reduced or tied our hands with our solitary confinement or restrictive housing, the staff-- was in 2015. Staff assaults more than doubled. I saw more people at the penitentiary being beaten, staff workers being beaten, in one year than I had the entire 17 years of service prior to that bill being passed. When you tell the inmates that there is no repercussion for their violent and aggressive behavior toward staff, they do it even more. If there's no deterrent for bad behavior, they're going to continue to perpetuate bad behavior. Staffing wise, we don't have the staff. We're losing staff daily. LCC in one month, just in this last month, their vacancies doubled. That was not a troubled institution compared to the two cauldrons that are boiling right now, considering NSP and TSCI. If you tie the hands of the people that are running these institutions and take that tool-- as we use it as a tool to deter that behavior, to keep people safe, not just the workers, the other inmates as well. The double bunking in restrictive housing I am absolutely opposed to. But there are individuals that do belong there. And if we have to double bunk them to keep the rest of the population safe then that's what we have to do. It's not an ideal situation but that is what we have to do. These people are not there for singing too

loud in church. They're hurting people. They're putting people in the hospital. People-- I have coworkers who have had to have reconstructive surgery, metal plates put in their face because of the behavior of these individuals. I'm no-- have no doubt that their mental capacity probably was already deteriorating before that assault happened, and it's probably not going to get any better if we don't get them some mental health help while they're locked up. But reducing the restrictive housing is not the answer. Provide them with more mental healthcare because they are where they need to be.

LATHROP: [01:31:56] OK. Senator DeBoer.

DeBOER: [01:32:00] Thank you very much for testifying. And thank you for the work you do. All of us here, the whole state, we all appreciate the work that you do, so thank you very much for doing that. I was wondering if you could speak to, you know, we've heard that there's a risk assessment which is performed to determine, you know, who should be in restrictive housing. Is your testimony today-- are you saying that, that what the risk assessment which is currently used is not effective, it's not adequate to sort of isolating the risks, the at-risk individuals away?

CARLA JORGENS: [01:32:37] Segregation has completely changed in the last six years and it's completely affected the culture inside the institution, especially the inmates' behavior. We used to do short-term immediate seg. or short-term disciplinary seg. for inmates that were, say, to get into a fight on the yard. Both individuals would get placed in segregation. Usually they would do two weeks. Right now we're to the point if they get into a fight they'll get locked up in segregation for-- sometimes they're out the next day. There's no deterrent there. If you can't-- I'm not-- I'm not for corporal punishment. I know lock 'em up and throw away the key, that's not conducive to what we're trying to do here. We're trying to rehabilitate these people. We're trying to change their mind, redirect their thought process.

DeBOER: [01:33:33] If-- if there were some other methods which were being employed, right, I think you mentioned significant mental health--

CARLA JORGENS: [01:33:44] Absolutely. If you were going to lock somebody up and put them in, as what we call, the control unit, I-- I have worked down there several rotations. Our rotations are four months at a time. It's been a long time since I've been down there. I was down there prior to the legislation that was passed in 2015 and I saw several inmates that spent years down there. One of them now is currently out on the streets in Omaha functioning well in society. He occasionally still calls back to the institution to speak to some of the staff that work in that housing unit and thank them for the work that they did with him. He was a problem child when we had him. We'd walk in the door in the morning and he would look at you and he'd say it's on today, we're gonna fight. And there would be a use of force with him. He would, whether it be him throwing feces on you or urine or whatever, he picked and chose the days that he wanted to interact with you. And we stuck with him. And he got mental health help. He ended up being a porter in the unit, got relay-- released back to general pop., and got put at work release in Omaha, and finally got out there and he's functioning. It's not always doom and gloom. If we can get them the help they need, they can succeed from that point. And that is the last stop.

DeBOER: [01:35:10] The gentleman you're referring to, though, changed his behavior when he got the mental health help.

CARLA JORGENS: [01:35:16] He changed his behavior when he had the support of the staff that worked in that unit.

DeBOER: [01:35:21] OK.

CARLA JORGENS: [01:35:21] He had a unit manager that knew how to talk to him. He had consistent staff working in that unit. Every day he knew whose face was coming through that door. The more you interacted with him the better his behavior became. It's-- it-- the control unit is a-- it is a sad, dreary place, but it holds its place for certain individuals. I agree absolutely mental health needs-- there needs to be more presence of mental health practitioners in those units to avoid any more deterioration. But a lot of those individuals, their mental health was deteriorating prior to them getting there. That was causing them to make the decisions that they were making that caused them to get put there.

DeBOER: [01:36:13] Thank you very much for testifying.

LATHROP: [01:36:18] Thank you. And thank you for being here--

CARLA JORGENS: [01:36:20] Thank you.

LATHROP: [01:36:21] --today. Anyone else in opposition to LB739? Anyone here in a neutral capacity? Seeing none, Senator Vargas to close. And I will say we do have a letter of support from Sherry Miller with the League of Women Voters. That's our only letter on this bill. Senator Vargas, interesting hearing.

VARGAS: [01:36:48] Yeah, it's not done yet. OK. I love closings. Let's, first, I want to thank everybody for this, a great conversation. And I want to take a step back because, yeah, I'm reminded of why I even ran for the Legislature. Decided to run in 2016 because I wanted to enact policy, you know, be a pragmatic idealist, find the solutions that are gonna help hold systems accountable. I don't think we're saying here that there's not problems staffing. I don't think we're saying there's not

problems with overcrowding. And I'm going to be the first to tell you that for the last two years when we have budget requests from the Department of Corrections we have honored pretty much everything they asked for and we are still looking for more ways to reform the system and we've been supportive of the director. That doesn't mean that we can't disagree on policy recommendations that are going to continue to push the needle forward, which is what we're talking about now. So I ask you to really consider, do we have information that's telling us that at this moment, at this juncture we need to then provide some exceptions to restrictive separation and restrictive housing? And I want to address some of those points because that's what we're talking about, not as much as staffing because we're going to get to that. I know we have a lot of FTEs that are open and I'm going to continue to provide reappropriations and continue to fund these positions because we want to make sure we get-- get, you know, get the people they-- the people they need. But let's talk about the content of this. I respect Director Frakes. I'm going to veer away from this because, you know, part of his testimony, saying he's troubled, he's troubled that somehow I have a profound misunderstanding of the system. I'm-- I'm troubled that that was part of his testimony. Because I think what we're talking about here when we look at the numbers, the Vera Institute, when you look at some of the numbers that we're seeing, it's telling us a different story. It's not saying again black or white that there hasn't been improvements, but what we're still seeing is that there are higher numbers of individuals that are being placed in restrictive housing. We're looking at right now the Association of State Corrective Administrators. We are still in very high top ten, five to top ten in the percentage of prisoners in restrictive housing compared to all other states. So when I hear that we're troubled by this, that you can't compare apples to apples, I-- I just don't see the argument there. We may not be able to compare ourselves apples to apples. We can't. We're not exactly like every other state. But we can sure compare ourselves to generally the population of the general, you know, all the states we're seeing. And if we're seeing that in across the country we're still in the top five to ten states in terms of the number of, you know, male and females that we are placing in restrictive housing, that's a data point that tells me that there's a policy solution that may

need to then exist, that needs to be examined, and needs to be pushed forward. And when we see that we're number three, we're looking at Louisiana, Alaska, and then Nebraska for the percentage of male prisoners in restrictive housing, the percentage, that is a data point that's telling me that I'm troubled. I also want to point to the fact that this is-- in this data point that I'm using but the Vera Institute specifically, and I-- and I appreciate him saying that we brought this in and I think as good as a practitioner and a director and a leader that they're self-reflecting in figuring out mechanisms to improve themselves and then hold themselves accountable, in doing that we saw reports from the Vera Institute that's telling us that in Nebraska, and this is based on 2015 data still but I just gave you more recent data from 2018, that in Nebraska-- and this is going to answer your question, Chairman Lathrop-- the average length of stay in administrative segregation was about 172 days. We can play semantics with what-- the segregation, but a lot of the different definitions are-- are fairly coinciding, 172 days, and 16 percent of the people in this type of housing spent at least 300 days there. These numbers are telling us a completely different story. This isn't something I'm making up. This is-- this is research. This is data that is telling us that there's a policy solution to a problem, not a silver bullet to fixing our entire correction system but some way that we can then provide a pathway forward for then making sure that people aren't just staying in restrictive housing for any reason. I also want to react to this notion that there are justifiable reason. I think nobody is going to question that there's justifiable reasons. The Vera Institute also goes into a little bit more of what these justifiable reasons are, so I just want to give you some of them, because there are always justifiable reasons but sometimes they're not justifiable. I hope that you and I would be able to agree we all have an inherent [INAUDIBLE] bias. We don't check that bias, systems cannot be held accountable to the best standard. It's why we exist. You look at the top five infractions leading to disciplinary segregation sanctions in Nebraska: 28 percent, disobeying an order. I-- we heard that people are entering the system because of a reason. I don't think there's any debate that they entered the system because of a reason. But disobeying an order was one of the reasons why they were held in disciplinary segregation. Swearing, cursing, or use of abusive language or gestures, 7 percent;

disruption, 6 percent; use of threatening language or gestures, 20-- and fighting, 25 percent. There may be instances that are justifiable, but I urge you to consider some of these different sections whether or not they're fully justifiable for some of the numbers we just saw in terms of the number of days and the percentage of people that are actually held in-- in separate confinement, because I don't think it-- it is justifiable, at least that-- that generalization. I know we can't compare ourselves to Colorado, but part of our job is to then have some level of a north star. And as a result of looking at Colorado and seeing that means of policy change have dramatically changed the percentage of their population that is actually in solitary confinement or restrictive housing means that it's possible; it's just very hard. I'm not necessarily having a conversation with Director Frakes and Department of Corrections on whether or not more can be done internally, because we've seen that with the 300 cases that we have, clearly there's more of a problem that we're seeing even with improvements. And now I'm trying to seek a policy change which gets me a little bit to the content of the bill. I'd like you to really view the different aspects of the bill not as the entire solution but as different components. View these exceptions for-- for a specific population, exceptions for those under 18, for those with mental health needs, for those with disability. View this component of the due process component as different entities and policy recommendations that you can take up. I am more than willing and happy to work on that because I think one or a piece or parts of this are a good step way forward to addressing some of the issues of what we're seeing. As a point of just a little bit on the conversation we have about whether or not we, quote unquote, I don't necessarily buy into these different beliefs, and I know you asked that, Chairman, the numbers are overwhelmingly supporting that there is a need. And Director Frakes did mention this, in 2015 he supported and we passed some legislation in this arena. So it's not that it's-- and I appreciate him saying this-- it's not that he is not for less-restrictive housing. I'm just now seeing that there's more of a reason for us to continue to push forward for legislation that's going to help, you know, move the tide in the opposite direction while we're still funding and providing the resources he needs to then make sure we have staffing in-- in the Department of Corrections. I don't think that's unfair.

I'm not a very big believer that we sort of do a wait-and-see approach or we sort of piecemeal and say we can't work on other things while other things are moving forward. I do not think that's the best pathway and I know that's not how we normally operate here. And so what I'm really asking is to consider that we have the data points telling us there's a problem. We have different comparisons. We can't compare apples to apples but we're in the top 5 to 10 percent in these numbers in terms of percentage, in just the raw numbers of a percentage of our population that are in restricted housing. We see that there are possible solutions in other states that are being enacted that are helping us in this, in this-- in this arena. We have research reports that are telling us from our own data that there was and is a problem, even though we're making headway. But now I'm forcing are imploring you to consider a policy recommendation that can help us do even more, because we're not talking about whether or not the system is perfect or right. We're talking about what is currently within our locus of control, and that's this. With that, I did have other points, but I do want to end just on I appreciate everybody having this conversation. If you hear me very exasperated, it's because this-- I said this recently-- this-- this-- this room, the work-- the work we're doing is-- is a bit of a debate, right? I'm-- I'm as pragmatic as you can come. You've-- you've most of you have worked with me in some way, shape, or form. And I like data. And when data is telling me a different story from what the qualitative-- what I'm hearing, it doesn't discount what I'm hearing qualitatively. It just means that we're not digging in deeper into the real underlying reasons why something is happening. The data is telling us overwhelming that something can and should be done in this arena, and that's what I'm asking this committee to then find a pathway forward to then accomplish. Thank you.

LATHROP: [01:47:15] Very good. Thank you, Senator Vargas, for your close. Oh, I'm sorry. Senator Chambers, I--

CHAMBERS: [01:47:21] Senator Vargas, I've been in the Legislature a long time. You can never count on any prison system to correct itself. Often the prison system itself is the problem. That's

why there is a legislative branch. We establish policy. We determine the way things are going to be done and we cannot leave the running of jails to jailers. We are not getting people who are highly qualified because they will get a job someplace else. We have a director who has down through the years alibied and alibied. And he did differently when he was in Washington State from what he's doing here. We are all grown people. There are lives at stake. I think it was a crowning act of irresponsibility to put those two men together where one wound up being murdered. That could have been foreseen by anybody. It shows a total lack of responsibility, a lack of regard for humanity, the feeling that people who are in prison are no longer people and that we're just going to live-- leave them to people who are overworked, who are underpaid, who lack qualification, who lack training. And it is time for the Legislature to assume our responsibility. If we don't assume ours, we cannot expect those who are employed in the prisons to assume theirs. Most people who work would like the job that they do to be easier and it's up to us to make sure that an attitude like that does not result in men and women being locked away under circumstances which are considered torture under international law. I'm glad you brought the bill. It's good that we let people come and testify. But ultimately, it's our responsibility and a state that has a population of less than 2 million, less, is what-- I can't believe what I heard. What rank is Nebraska in terms of people and solitary, whatever term is used to describe that? Is it there about 48th?

VARGAS: [01:49:44] We are, the percentage of male prisoners in restrictive housing by percentage, we are third: Louisiana, Alaska, then us.

CHAMBERS: [01:49:55] Third?

VARGAS: [01:49:56] Uh-huh.

CHAMBERS: [01:49:56] Out of the 50 states. That would include New York?

VARGAS: [01:50:01] Uh-huh.

CHAMBERS: [01:50:01] California?

VARGAS: [01:50:01] Yep.

CHAMBERS: [01:50:02] Illinois?

VARGAS: [01:50:02] Correct.

CHAMBERS: [01:50:03] Texas?

VARGAS: [01:50:05] Correct.

CHAMBERS: [01:50:05] Oklahoma?

VARGAS: [01:50:06] Yes.

CHAMBERS: [01:50:09] Something is wrong and I'm glad that you're giving us the opportunity to right it. And I didn't ask questions of people. I engaged the director just a little bit. So he's aware that I know he's here. But we can't count on them to make this problem right. And we need to start doing something about shifting the blame where it belongs, which is on the Governor. In other states a governor would be in serious political jeopardy if the prisons were run as incompetently as they are in Nebraska. And I wanted to make that comment to you so you wouldn't think that because I was not my usual loquacious self that I'm not hearing. I'm listening very carefully. I have

been in this Legislature 40-some-odd years and when there have been changes, they were instigated by the Legislature, never by the prison system itself. So I'm just saying all this to indicate that I appreciate what you brought and I'm willing to work with you. And I know you'll work with us to see that some significant changes occur.

VARGAS: [01:51:19] I appreciate it. I knew you weren't your most loquacious self this time, but looking at the past hearing testimony you were in the past on these different issues. So thank you.

CHAMBERS: [01:51:32] There's a time when a man is silent.

LATHROP: [01:51:34] I was going to say this may be the first time I've seen you--

VARGAS: [01:51:38] Actions speak louder than words, is that the phrase?

LATHROP: [01:51:40] --like he was out of things to say. I've never seen it.

VARGAS: [01:51:44] Tell-- just a--

LATHROP: [01:51:45] OK. Senator DeBoer.

DeBOER: [01:51:47] Senator Vargas, in your closing you mentioned a list of reasons why people were put into restrictive housing.

VARGAS: [01:52:01] Yeah.

DeBOER: [01:52:01] Where did you get from? I was looking for it and all the stuff that were

handed and I couldn't see that.

VARGAS: [01:52:07] So this is from the May 2008, "Rethinking Restrictive Housing," Vera Institute, Leon Dugard, Elena Vanko, and Sara Sullivan. Bureau of Justice Alliance [SIC], U.S. Department of Justice report. I'll make sure to get it to you.

DeBOER: [01:52:23] Thank you.

LATHROP: [01:52:26] I think that's it.

VARGAS: [01:52:28] Thank you very much. I appreciate it.

LATHROP: [01:52:30] No. Thank you. We appreciate the-- the bill being introduced and the policy offered. That will close our hearing on LB739 and bring us to Senator Bolz and LB331.

BOLZ: [01:52:50] Good afternoon, Committee.

LATHROP: [01:52:51] Good afternoon, Senator Bolz.

BOLZ: [01:52:52] I am Senator Bolz, that's K-a-t-e B-o-l-z, and I am introducing LB331. LB331 in-- re-envision how Nebraska would transition incarcerated individuals back into our communities. The bill would make reentry services a part of the Board of Parole and would require planning to transition post-release supervision and community corrections responsibilities to the Board of Parole. As you are all aware, the Nebraska Revised Statute 83-962 states that beginning July 1, 2020, a correctional system overcrowding emergency shall exist whenever the director certifies that the department's inmate population is over 140 percent of the design capacity. As you

also know, in 2018 our own Senator Patty Pansing Brooks introduced and the Legislature passed LB841 and required the Department of Corrections to develop a plan in the event that Nebraska must declare an overcrowding emergency. The December 2018 report that was provided by the department concluded that, quote, at this time no statutory changes are required to accommodate a possible overcrowding emergency status or gubernatorial declaration of such emergency that may or may not occur in the future, unquote. The December 1, 2018, report and Director Frakes's January 18, 2019, testimony to the Judiciary Committee of the Legislature both indicated that a July 1, 2020, emergency overcrowding declaration is in fact likely. It is for that reason and in addition to my ongoing participation and work on these issues that I bring you this bill. LB331 requires reporting of specific data from Parole- and Probation-related numbers of program participants and the achievement of certain reentry outcomes. It requires coordination between the Nebraska Department of Correctional Services and Parole in the completion of individualized reentry planning for inmates. It transfers the administration of reentry programming and its staff and funding from the Department of Corrections to Parole effective July 1, 2020, and requires Parole, in partnership with NDCS, to hire a consultant and develop a comprehensive plan with an implementation start date of July 1, 2021, to transition the administration of services for certain inmates eligible for community level supervision to Parole. And finally, it requires Parole, in partnership with Probation, to hire a consultant to develop a comprehensive plan with an implementation start date of July 1, 2021, to transition the administration of post-release supervision of NDCS inmates from Probation to Parole. LB331 looks beyond the short term and proposes a structural realignment designed to ensure that we reduce overcrowding for now and have a more effective system for managing our population in the future. The promise of this restructure is to match agency responsibilities with the mission and strength of each agency. LB331 envisions capitalizing on the demonstrated strengths of each component of the system. The Board of Parole has capacity to manage reentry services. They have capacity to manage post-release supervision because some of the nature of the services is work with community and building capacity within the

community. LB331 also has the potential to relieve pressure on the Department of Correctional Services by developing plans for how components of community corrections can be transferred, and transitioning reentry post-release supervision and community corrections responsibilities could also relieve pressure on staffing and the mission of the Nebraska Department of Correctional Services, instead, allowing the focus of this agency to serve higher security individuals. LB331 I think also has the potential to increase access to programming, which is a theme that the Judiciary Committee has hit on several times over the years. Helping more people transition into the community can afford more opportunities for them to access support. I think this committee has heard frequently the limitations of being able to provide programming within the Department of Correctional Services due to staff and facility limitations. I think this plan has the potential to ensure that inmates who are preparing for release are better connected with supports and resources. And assigning one agency multiple responsibilities regarding transition to the community I think can improve efficiency and best practices. Streamlining communication, integrating plans, all of those things can improve timeliness and accountability, and it will capitalize on Parole's existing community collaborations. LB331 provides opportunities for planning and data collection to inform the state of Nebraska ways to better utilize systems outside of the Department of Correctional Services and to prepare better for the contingency of an overcrowding emergency. I realize that what I am proposing is an ambitious and visionary plan. I don't think that there's any singular best practice in terms of how you set up a correctional system or a reentry system. Other states have different functions housed under different agencies with different responsibilities. I don't want this bill to be perceived as a judgment on the people who are currently doing the work. Rather, it's a way to re-envision the way that we could share responsibilities and better maximize the strengths in the community. It's certainly not change for change's sake. It is a change envisioned as a structural shift to move people outside of the Department of Correctional limitations and more into the flexibility of the community. So I-- I do think that it is time for consideration of more bold action, given the work and the challenges that we have faced over a significant period of time. That was somewhat

lengthy so I'll wrap it up. If there are any questions, I'd be happy to answer them.

LATHROP: [01:59:08] I do not see questions at this time.

BOLZ: [01:59:10] Thank you.

LATHROP: [01:59:12] How many folks are gonna testify on this bill, if I could? Looks like four. And we'll begin with the first proponent.

DOUG KOEBERNICK: [01:59:34] Thank you, 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 work for the Legislature as the Inspector General of Corrections. For the past several years Senator Bolz has been actively engaged in the reform of Nebraska's correctional system, and I want to thank her for those efforts and for the introduction of this bill. The part of LB331 that I'm here to support is the moving of the department's reentry program to the Division of Parole Supervision. Currently the department's reentry program consists of the Vocational and Life Skills Grant Program and the staff who run it, and the reentry staff who work with incarcerated individuals at various stages of their incarceration to develop reentry plans that are focused on their future plans when they leave the department. In my annual report I reference more than once the possibility of moving the reentry programs from the department to the Division of Parole Supervision. I wrote that consideration should be given to placing the reentry specialists in the Vocational and Life Skills Program under the oversight of Parole due to the obvious connection between Parole and reentry efforts. I made this statement for a number of reasons, including the fact that Parole is focused on what is going to take place for an incarcerated individual when they leave a correctional facility. While it is true that reentry should start when someone enters the correctional system, it does not mean that reentry planning has to be a function of correctional staff. It would make sense to develop a

continuum of-- continuum of reentry that results in those people who are focused on the outside of the correctional system to work with those on the inside in developing those reentry plans. In fact, Parole has already created reentry positions to-- to develop reentry plans with those that will be paroling, so in some ways this is a duplication of efforts. In addition, just like in many parts of the correctional system, these reentry staff have had a high rate of turnover and are impacted by staff shortages throughout the system as they've been pulled from reentry duties in order to assist with other functions of the department, including travel orders. While I appreciate the efforts put forward by the reentry staff, and-- and I see that Director Frakes has a big pile of documents back there that demonstrates some of their work, it would seem to be a better fit to have them under Parole. The Vocational and Life Skills Grant Program was created by the Legislature in 2014 and it is my belief that this would also be better served by being overseen by Parole for the same reasons. Who better to determine what reentry programs are needed on the outside than the entity that works on the outside? For these reasons and for my full support of the data collection contained in the bill that Senator Bolz talked about, I support LB331 and would ask for your support.

LATHROP: [02:02:10] OK. I was making a note on your testimony. Thank you. I don't see any questions. Good afternoon.

JERALL MORELAND: [02:02:27] Good afternoon, Senator Lathrop, members of the Judiciary Committee. My name is Jerall Moreland, J-e-r-a-l-l M-o-r-e-l-a-n-d. I am here today representing the Ombudsman's Office in the-- in the capacity of deputy ombudsman for institutions. I am testifying in support LB331 and its conceptual ideal in addressing the severely overcrowding issues that we know the corrections system faces today. We know that one way to reduce overcrowding is by increasing capacity. This can be accomplished by building new facilities or by adding beds at existing facilities. Another way to reduce overcrowding is by examining best practice policies that provide opportunities to impact recidivism. The Ombudsman's Office favors the latter when

addressing the problem of overcrowding, especially since many states have attempted to build their way out of similar overcrowding conditions with arguably unsuccessful results. Another point that I will make deals with the transfer of community corrections to the Parole Board. In some sense we asked the question if the bill really does enough, as it would be different if we were talking about a situation that is not a crisis. But this is a crisis, one that requires immediate action. Therefore, in our review, creating more community beds is really the logical answer to not only reducing beds in the short term but also improving the community systems overall. Finally, studies have shown that post-prison outcomes will tend to be better for those inmates who participate in work release programs prior to their discharge from custody. Specifically, findings indicate that those inmates who participated in work release programs had a higher likelihood of obtaining post-release employment within the first quarter after their release and also had a significantly lower rate of recidivism than those inmates who did not participate in work release programs prior to discharge from custody. We have heard and will probably hear today and have heard today that the state corrections system does need more beds but not community beds. We continue to not support this finding for the following reasons below, in part: one, the department does have a pool of inmates who could be on community status but are not; and two, the inmate who does get to get-- go out on community do not stay as long as they should. It is this reason that we believe allowing Parole Administration the ability to obtain community housing as a toolbox would be beneficial to not only the system but also to the inmates and the public. Thank you. And I am happy to address any questions.

LATHROP: [02:05:21] I do not see any questions, but thank you for your testimony, Mr. Moreland. Anyone else here to speak in favor? Good afternoon.

DIANE GOOD-COLLINS: [02:05:39] Good afternoon. My name is Diane Good-Collins, D-i-a-n-e G-o-o-d C-o-l-l-i-n-s. I am the director of the 180 Re-entry Assistance Program at Metropolitan

Community College in Omaha. Metropolitan Community College currently provides service and support to individuals incarcerated at "stevan"-- at seven Nebraska prisons: Omaha Correctional Center, Tecumseh State Correctional Institution, Nebraska Correctional Youth Facility, Lincoln Correctional Center, Nebraska Correctional Center for Women, Nebraska State Penitentiary, and the Community Correctional Center-Omaha. MCC offers both credit and noncredit offerings at these facilities. In addition, MCC has received national recognition for on-campus support to individuals as they transition back to society by creating the nation's largest reentry center on a college campus. By-- Vera Institute of Justice is now considering us experts and we have received best practice requests from other universities and colleges nationwide so they, too, can duplicate our reentry service. The main goal of MCC is to connect the reentry population to gainful, meaningful employment so they do not recidivate. I'm here today to testify on behalf of Metropolitan Community College's general support for LB331. MCC's 180 RAP has established a strong reputation for service and collaboration with other agencies and organizations involved in helping formerly incarcerated individuals successfully transition from Nebraska's Correctional Services. We specifically applaud this bill's requirement to provide the opportunity for individuals to access state identification cards or motor vehicle operator licenses. Our team has assisted numerous individuals with identification issues and can personally attest to the significant challenges this task has caused upon reentry. MCC has worked collaboratively with the Nebraska Board of Parole to the benefit of our shared clientele and would continue to do so should the Board of Parole assume responsibility for developing, maintaining, and administering the statewide reentry program. Likewise, as a recipient of vocational and life skills programming funds, MCC has established a positive working relationship with the Department of Correctional Services and would continue to support VLS programming under the new administration as well. On behalf of Metropolitan Community College, thank you for the opportunity to testify in support of LB331.

LATHROP: [02:08:27] I don't see any questions. But thank you for what you do for this

population in helping them make that transition.

DIANE GOOD-COLLINS: [02:08:38] Thank you.

LATHROP: [02:08:40] Anyone else here in support? Anyone here to testify in opposition to LB331? Good afternoon.

SCOTT FRAKES: [02:09:03] Afternoon. Good afternoon, Chairman Lathrop, members of the Judiciary Committee. My name is Scott Frakes, F-r-a-k-e-s. I'm the director of the Nebraska Department of Correctional Services and I'm here today to provide testimony in opposition to LB331. Reentry is the heart and soul of what we do in NDCS. We often say that reentry begins at intake, which means that the focus of getting someone through their sentence, back on their feet and reestablished in society begins the moment they walk through our doors. It's a responsibility that we do not take lightly. It's a mission to which NDCS devotes a tremendous amount of time and resources. As a small tangible example of that investment, I've handed out copies of the recently published reentry guide and reentry workbook produced by NDCS. These are the latest additions to our reentry toolkit. They provide information, an orientation, if you will, to the programs and opportunities available within NDCS, as well as an action plan for creating a pathway to success. I've also provided copies of the latest quarterly report pertaining to the use of our Vocational and Life Skills Grants. When someone is admitted to NDCS, they meet with a reentry specialist within the first two weeks of incarceration and several times again throughout his or her sentence. Reentry specialists work with each person to prepare them for their supervision, as well as to meet the needs-- help them meet their needs for their life in the community. As Senator Bolz explained to me, this bill would ultimately move community correctional services to the management and supervision of the Board of Parole. If that were to take place, someone would have to be paroled in order to be placed in a community correctional center. As it stands, an individual continues to serve

their sentence at a community correctional center before being deemed by the board to be eligible for parole. This bill would preempt that process and, I would argue, reduce the amount of time that someone would have to be engaged in reentry services. LB331 would piecemeal out what is a highly integrated, rehabilitative process. If you separate reentry or community corrections from the mission of NDCS, it will be difficult to maintain that continuity of purpose without the agency having to tap into additional funding to continue making those services and programs available to those who remain within NDCS. Lopping off bits and pieces of NDCS will not add anything to the functionality of the system. Ultimately, it will handicap it to the detriment of those we are attempting to serve. Thank you for the opportunity to testify, and I'll try and answer questions.

LATHROP: [02:11:48] Senator Chambers.

CHAMBERS: [02:11:51] Mr. Frakes, for the record, how long have you been director of Corrections?

SCOTT FRAKES: [02:11:56] Four years and--

CHAMBERS: [02:11:58] That's-- that's good enough just for the ballpark figure. Are you aware of the fact that there are inmates who've gone before the Board of Parole, and what keeps them from being allowed to be paroled is that there is programming that they should have had or that the board wanted them to have but such programming had not been made available and that is the only thing that prevents them from being paroled? Are you aware that that happens?

SCOTT FRAKES: [02:12:24] I continue to look for the specific case that's-- is nothing except the department's failure to provide programming, and I-- I don't find those cases. I'm not going to say they aren't out there, but each case that we dissect we find a variety of reasons for why the person

did not complete programming.

CHAMBERS: [02:12:43] But here's what I'm asking. Are you aware of situations where the Parole Board would not parole somebody for the sole reason that certain programming had not been completed and, as a matter of fact, it was not available?

SCOTT FRAKES: [02:12:57] That's--

CHAMBERS: [02:13:01] You've not heard of any situations like that in the department?

SCOTT FRAKES: [02:13:05] I don't have a specific case. I'm not going to say that it doesn't exist, but no. Each one of them that I take apart and look at in detail I find there are a variety of factors, including the inmate not engaging or the inmate having taken the programming and then failing to complete it, and a variety of other factors to say that their behavior kept him from it. But I'm not going to tell you that there isn't a case out there because, for a big system, we move through a lot of people. And so I'm sure there's one out there.

CHAMBERS: [02:13:36] I'm not gonna beat around the bush or run around the bush, but in private industry, and the Governor talked about operating the state like a business, if a person had been hired to do a job and that person, after four years, had not done the job and things were worse after four years than when that person came, that person in private industry would not be there and would not have been given four years. So I'm putting this on the record and I think the facts will bear it out. And something that destroyed what little hope that I had for a betterment of circumstances was when I found out that the Governor and you had deliberately concealed a report that existed and the only way any of us knew about it was because its existence came out during a court proceeding. I've gone around and around with you before and I'm not going to do it now. It wastes my time. But I

want those things into the record. There has got to be a change. I don't think you're up to the job. Either you weren't up to it when you came here or it has outgrown you. Either you don't have the ability that I was led by Mr. Clarke, who was your boss in Washington State, either I was misled by him and you don't have the ability. But when I think of that I also consider articles that I read that seem to say the same thing. When you came here, and I've said this before and I'll say it again and I hope this is the last time because I'd like to see a change at the top. Either Mr. Clarke was deceived and misled me because he didn't know or he was not deceived and he told the truth that you indeed were competent. Either those articles that I read about some of the housing programs and other things that were going on were based on falsehood or when you came here there was something that prevented you from doing here what you did out there. And here's the way I framed it and I think you'll remember it. Either we were all misled or there were restraints and constraints put on you that prevented you from doing here what you did in Washington. I'm not going to ask you to respond because I'm able to think, I've observed, and I've been here longer than you. And I've looked at other directors. And, frankly, I'd rather see Mr. Houston come back than to retain the current administration. There were things he did with which I disagreed, but this idea of deliberately withholding a report is inexcusable. So I don't see any point in my asking you questions. We've been through that for four years. And as they used to say on a commercial with a medical program, if your condition persists and grows measurably more severe then see your doctor. And I think it's time for us to stop using aspirins and perform major surgery. That's all I have, Mr. Chairman.

LATHROP: [02:17:17] Senator Morfeld.

MORFELD: [02:17:19] Thank you for coming in, Director Frakes. I was just looking through the reentry workbook that you provided and--

SCOTT FRAKES: [02:17:23] Yes.

MORFELD: [02:17:23] --really comprehensive and useful. Is-- is this just provided in English or are there other languages or Braille or-- ?

SCOTT FRAKES: [02:17:32] I'm not sure if the Spanish version has been done yet.

MORFELD: [02:17:38] OK.

SCOTT FRAKES: [02:17:39] So definitely on the list to do but I don't want to say that's been done. And Braille? No, but actually thank you for saying that. We--

MORFELD: [02:17:47] It just seems like a great resource and if it's out on-line, too, I think it'd be really useful.

SCOTT FRAKES: [02:17:53] It is on our Web site.

MORFELD: [02:17:54] OK. Great. Thank you.

LATHROP: [02:17:57] I see no other questions. Thank you,--

SCOTT FRAKES: [02:17:59] Thank you.

LATHROP: [02:17:59] --Director. Opponents, next opponent. No opponent, no additional opponents. Neutral testimony then. Good afternoon.

DEB MINARDI: [02:18:27] 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 with the Nebraska Supreme Court as the Probation Administrator. I'm here today to testify in a neutral capacity for LB331. The Administrative Office of the Courts and Probation has worked diligently to implement this Legislature's objectives to justice reinvestment, specifically LB605 since its passage in 2015. This has involved the evolution of the post-release supervision client who remains within their-- under the judiciary, under the ju-- under the-- under a judge. [LAUGHTER]. Post-release supervision clients receive transitional planning while still in the institution. As these clients transition back into the community, they are intensively supervised by skilled probation officers. This supervision also includes updated risk assessments, transitional housing as needed, and targeted rehabilitative services, whatever it takes to create a successful transition. On any given day there are 1,300 post-release supervision clients across the state. This includes every judicial district and every probation office, and the numbers continue to rise. While the post-release supervision client does tend to be assessed at a higher risk to recidivate than a traditional Probation Office probationer, to date, 65 percent of the post-release supervision clients are not revoked. Strategically, sequentially, and innovatively the courts and Probation implemented new concepts to deal with the post-release supervision client. This includes navigation officers that go into the institution to create transition plans. We have partnered with local providers to expand transitional housing. We have expanded our cognitive programs in the community, GPS, and, more importantly, two model problem-solving reentry courts have started whose sole clientele encompasses the post-release supervision population. The courts and Probation are doing their part to aid in Nebraska's justice reform efforts. While I am testifying in a neutral capacity today, I do want to say that our work force specifically hired as a result of LB605 did so because they wanted to work for the judiciary and specifically Probation. Having had the opportunity to speak with a number of staff, it is in my opinion that they would be opposed to the changes that would be created by LB331. The message to me has been they have worked very hard to successfully implement LB605 and believe they are making a difference with the post-release supervision population. Thank you. And I appreciate your

time and would be happy to answer any questions.

LATHROP: [02:21:24] I do not see any questions but thanks for being here today. Anyone else to speak in a neutral capacity? Good afternoon once again.

MICHAEL CHIPMAN: [02:21:48] Yeah. Hi. I'm Michael Chipman. I am the president of FOP 88, who represents the protective services bargaining unit, which is Nebraska Department of Corrections and some people in the DHHS. And you spell my name as M-i-c-h-a-e-l C-h-i-p-m-a-n. The only concern we have with the bill is purely a labor perspective. So we have a lot of corrections caseworkers that work at these facilities. Our only concern would be is if it's taken over by Parole would they lose that title and be reclassified and put in a different bargaining group? So like we said, we represent protective services. The people that we represent want to stay in the protective services. We just went through a long, drawn-out process to get rid of our old union and go into this new union. The current union that represents the Parole officers is NAPE. So the concern that has been brought up by my people is that they could be reclassified and re-thrown back into NAPE. So we just want-- we'd ask that if it's possible to get that in the bill that our classification would say same; we'd stay under protective services.

LATHROP: [02:23:04] OK. Appreciate hearing from you.

MICHAEL CHIPMAN: [02:23:06] Yeah.

LATHROP: [02:23:06] Thank you.

MICHAEL CHIPMAN: [02:23:08] Uh-huh.

LATHROP: [02:23:08] Anyone else here in a neutral capacity? Welcome back.

CARLA JORGENS: [02:23:22] Thank you, sir. Carla Jorgens, C-a-r-l-a J-o-r-g-e-n-s. I just kind of want to reiterate what Michael stated. This, I'm here for the labor aspect of it. The employees that currently work in the work release centers in Omaha and Lincoln are very proud of the jobs that they do. A lot of them are long-term employees with the Department of Corrections. Their concerns are, are they going to have to now go back into the maximum security facilities that they were either not hired for or transferred out of? Wanted basically to get away from the maximum security facilities. They're good at what they do there and they like their jobs. And it is a concern of theirs as to whether or not they will be under Board of Parole or if they'll still be correctional employees and be able to maintain their status in this bargaining unit. It's a big concern of theirs to lose their union and have to revert back to the union that took us two and a half years to decertify. They don't feel that they had a voice with NAPE. They feel like they have representation now with the Fraternal Order of Police and they would ask that you please consider allowing them to stay in the protective services bargaining unit if this transfer takes place.

LATHROP: [02:25:07] OK. I don't see any questions. Thank you for your testimony today, Ms. Jorgens. Anyone else here in a neutral capacity? Seeing none, Senator Bolz to close. And I'll indicate for the record we have letters of support from Jose Rodriguez, Mary Sullivan at the National Association of Social Workers, and Spike Eickholt at the ACLU.

BOLZ: [02:25:29] Thank you. Thanks for your kind attention. And if-- if you would again be patient for just a few more minutes to make a couple of points. I do appreciate your time but if you'd be patient with a quick story, I have a friend named Ellen. Ellen is in a wheelchair. Ellen uses a wheelchair. Ellen got a new pink coat. She really likes her pink coat. But her-- her mom was-- was just frustrated to no end because the way the coat was cut, the way it worked for Ellen, she could

never get it on Ellen. It was-- it was really difficult. It was a, you know, tears every morning getting the coat on. And one day Ellen's mom finally figured out that the easiest thing to do would be simply to turn the coat around and put it on Ellen backwards. And then Ellen got to wear the coat that she liked and there were no tears in the morning. And it might be a little bit of a silly story, but the point is that sometimes you have to rework the tools that you have. Sometimes you-- you have something that works and you like and you have to find a different way to make it happen to make the system work together. And I think that's-- that's part of what we're talking about today. I want to address some quick points here. The first is the point that reentry begins at intake. I don't disagree. I don't think that has to change under this piece of legislation. Neither does reentry end at intake, right? Neither does it end within the system. It's a continuum. I think we can consider innovation there. The second point is I absolutely hear what the employees are saying and respect their perspective, agree with the position about maintaining the Fraternal Order of Police. I think that could be a part of the-- of the transition plans contemplated in the bill. And I also appreciate what the court representatives have said about the work and dedication of their staff. Absolutely, there's no reason that those employees couldn't continue doing this work under a new system. I do want to say that the Board of Parole already works within the Department of Correctional Services. So this idea that someone would have to be paroled in order to have the Board of Parole start to take over some of these processes or systems, I'm not sure that that is the full story that should be told to this committee. And the last thing I would say is that I think we all need to think about this and you all know, you work on these issues every day, we need to think of this as a continuum of services. So we're not just talking about programming. We're also talking about risk assessments and whether or not those have to be duplicated. We're talking about making housing plans and whether or not that's better positioned in the community level. So I think it's time to think outside of the box. I won't take up any more-- any of your time. But I'd be happy to answer any final questions or clarifications.

LATHROP: [02:28:23] I don't see any questions. Thanks. Senator Bolz.

BOLZ: [02:28:27] Thank you.

LATHROP: [02:28:28] We appreciate you being here today. That'll end our hearing on LB331. That'll bring us to LB286 and Senator McCollister. Welcome. Thank you for your patience.

McCOLLISTER: [02:28:48] Not at all. Thank you, Committee, for your hard work. Good afternoon, Chairman Lathrop and members of the committee. I am 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. I'm here today to introduce LB286 to establish the Coordinated Reentry Council. Senator Krist introduced this legislation last year. It was originally included in the committee amendment to LB841 but was later removed by Senator Epke, the Chairman of the committee. LB286 would establish the Coordinated Reentry Council. The bill outlines two reasons for this coordinated reentry effort: to establish a comprehensive and successful system of correctional reentry programs throughout the state, and to involve the individuals with diverse and relevant experience in the establishment and growth of this system. The council would include a number of members, both voting and nonvoting, several, several representatives of state government, and the following stakeholders: the executive director of the state Community College Association, a business owner who employs formerly incarcerated individuals on a regular basis, two individuals who were formerly incarcerated in a state correctional facility, one mental health and substance abuse professional, one social worker, a researcher in the field of criminal justice in a university or college setting, one full-time officer or employee of law enforcement agencies. It was also suggested to me the council include the State Court Administrator, so I am offering AM323 for this committee's consideration. Section 3 of the bill as drafted outlines the four responsibilities of the council. They are: to develop and implement a plan to establish the statewide operation and use of a continuing of reentering-- reentry programs; to review efforts by individuals and organizations that provide reentry services in Nebraska; to review

best practices regarding reentry policies and programs in other states; finally, to make recommendations to the Legislature and the Governor regarding reentry policies and programs. The Legislature addressed the issue of reentry in 2014 with the passage of LB907. It included the legislation that was a creation of the Vocational and Life Skills Program in the development Department of Correctional Services. The program was established to re-- reduce recidivism and increase employment for individuals who were incarcerated, who have been incarcerated in the last 18 months who are currently being supervised by Parole or Probation. It led to successful efforts in the reentry arena. For the past year a group of stakeholders has met each month to gain a better understanding of the reentry needs of Nebraska and the efforts that are currently underway across the state. The Sherwood Foundation has assisted in this effort. It has identified a number of challenges in our state that hinder successful reentry. If the foundation's efforts can be combined with the provisions outlined in LB286, Nebraska would be able to establish a com-- comprehensive and successful reentry program. I ask for your support of LB286 and would be happy to answer any questions if I can.

LATHROP: [02:32:59] I do not see any questions.

McCOLLISTER: [02:33:02] Unfortunately, I won't be able to close.

LATHROP: [02:33:08] OK. Thanks, Senator McCollister. First proponent. Good afternoon.

DOUG KOEBERNICK: [02:33:19] 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 work for the Legislature as the Inspector General of Corrections. First, I want to thank Senator McCollister for introducing this legislation and for his introduction. That did a great job of explaining the contents of the bill so I won't even go there. And like he said, this is basically a reintroduction of the bill

from last year that I worked on with Senator Krist. During my time as Inspector General, I've spent a great deal of time reviewing the reentry process and reentry efforts. I came to the conclusion that while there are efforts going on by various parties, it is actually a disjointed effort that would benefit from a long-term strategic plan or vision. I think this is backed up by the work of the group formed with the assistance of the Sherwood Foundation that Senator McCollister mentioned, and that group has been meeting for over a year. The goal of this bill is to bring together key stakeholders and collaborate in order to come together and develop sound public policy on what we need to do as a state in the field of reentry. It is not unusual for the Legislature to convene a group to do something like this. There's lots of examples out there, including work groups or task forces in the areas of juvenile justice, probation, education, State Patrol, and many others, including the Community Corrections Council that was formed about a decade and a half ago. The Crime Commission has provided you with a letter indicating they are neutral on this bill. The commission wrote that placing nonvoting members from the judiciary and legislative branches of government could cause constitutional issues due to the separation of powers. I do not believe that this is a valid argument as some of the examples I cited included similar membership. The Coalition for Juvenile Justice, which administers grants and is housed in the Crime Commission, actually has two judges on it. The Community Corrections Council was administered by the Crime Commission and it had both senators and judges on it as well. The commission also stated that this bill could be creating redundancies in state government because the Department of Correctional Services, Parole, and Probation are already working on a seamless system of services in community corrections. I know they are meeting on a regular basis, but I haven't seen a work product from them on reentry efforts or planning. If they are already doing that work then I hope that they can present this to the Legislature and other interested parties. If not, an option for the committee would be to amend the bill to require those three agencies to present a plan to the Governor and the Legislature so that they could utilize the expertise, and utilize the expertise and input of key stakeholders to develop this plan. This would address the concerns expressed by the Crime Commission and could also take

away the fiscal impact of the bill. That's just one idea that I have right now. And I'm hopeful that these agencies will also weigh in with their reentry efforts, as well as any suggestions to improve this legislation. Once again, I want to thank Senator McCollister for introducing this bill and I'm open to answering any questions that you may have.

LATHROP: [02:36:05] I do not see any questions. Thank you for your testimony. Welcome to the Judiciary Committee.

KENT ROBERT: [02:36:21] Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Kent Rogert, K-e-n-t R-o-g-e-r-t, and I'm here today to offer support to LB286 on behalf of Trilogy Integrated Resources. The page is pass-- passing out a packet that has some screenshots of-- of a computer system that the state of Nebraska is currently using called the Network of Care. The information is a couple of years old. I think it says 14 years ago, but it's about 16 years ago now, an individual who was a former legislator and served on the Judiciary and Health Committees in California formed a company that created this service coordination system called the Network of Care. Nebraska is currently using it and has invested a couple million bucks into it over the past several years, starting with behavioral health and public health. We now use it for aging and vets. They have a new portal that they're starting to move around for prisoner reentry. And what it would do, it provides a Web site for all folks coming back into the community to go to a single spot where they can find all kinds of services that they might want to use when they come out, come back into the-- into the public system of jobs, health, behavioral/mental health places they can go, libraries, all types of stuff they can use to help reintegrate themselves into the system. Our first goal is to assist, assist those individuals, and the second goal is to reduce recidivism to making sure that these folks have ample access to the places that they need to go to get services. And I'll be going back over to Appropriations later in the month to support Senator Pansing Brooks's bill to invest some money into the system and then talk to those guys about spending one-time \$60,000 to put

this up, and it will work forever basically.

LATHROP: [02:38:18] OK. I do not see questions. Thank you.

KENT ROBERT: [02:38:24] Thank you.

LATHROP: [02:38:24] Oh, I'm sorry. Hang on a minute. Senator Pansing Brooks.

KENT ROBERT: [02:38:27] Yeah.

PANSING BROOKS: [02:38:27] Thank you. So who-- who produces this again? I'm sorry.

KENT ROBERT: [02:38:31] It's a company called Trilogy Integrated Resources out of-- right, right out of Sonoma, California. I have to go visit them because they're in a great spot and I haven't been there yet.

PANSING BROOKS: [02:38:41] And-- and do we use any portion of this?

KENT ROBERT: [02:38:43] We're using all those that you have in your hand except for the top sheet. So we use behavioral, aging, public health, and vets, veterans.

PANSING BROOKS: [02:38:59] And so the services that-- the services are all listed here.

KENT ROBERT: [02:39:03] Yeah. So if you look up on, on each sheet there's a little inset box there and that's what the page would look like if they went to it with the Department of Health and Human Services' logo on there. And you can see there's a couple blank boxes. They would just

search whatever service they want to the area that they're in. They hit "center"-- hit send, and it brings up a map and basically shows every service provider in their area for it, for the particular service that they're looking to get.

PANSING BROOKS: [02:39:28] And how can we find out which departments are using these services?

KENT ROBERT: [02:39:32] You can go to-- I'll get you-- I'll show you the Web site. I'll bring it to you. So it's on there. If you just search Nebraska Network of Care, it'll pull it all up right there. And it-- it asks for which service, which sometimes it's a county, sometimes it's an area, and then-- so it's-- it's pretty well used. Thousands of people in Nebraska are using it every day.

PANSING BROOKS: [02:39:50] This is a little bit the left hand not knowing what the right hand is doing. Especially, I just had a bill in-- in Veterans Affairs regarding the military benefits. So thank you. I'd like to talk with you about this later. Thank you.

KENT ROBERT: [02:40:02] Absolutely.

LATHROP: [02:40:04] So this is a computer program?

KENT ROBERT: [02:40:07] Yeah.

LATHROP: [02:40:07] And if I'm an offender and I'm getting out of prison and somebody tells me, you know, you need to look at this Web site or--

KENT ROBERT: [02:40:17] Uh-huh.

LATHROP: [02:40:18] --[INAUDIBLE], if I feel like I need to, say somebody says you need to get some behavioral healthcare, I can go on the Web site, find-- type in my address. And is it going to show me the people that are going to do it and then have them paid by some reentry program?

KENT ROBERT: [02:40:34] Yeah. These are all people that are probably getting through-- either getting paid through Medicaid or through the Probation system or whatever, or the Veteran's Administration or the public health system or the Area Agency on Aging. So whatever particular area that's working with, those are all service providers that are contracted through the state to get that work done.

LATHROP: [02:40:53] OK. And in relationship to this bill, the bill's about reentry and improving reentry. And your point is--

KENT ROBERT: [02:41:00] We can help.

LATHROP: [02:41:01] This is a tool.

KENT ROBERT: [02:41:02] Uh-huh.

LATHROP: [02:41:02] OK. I think I understand.

PANSING BROOKS: [02:41:05] I have one.

LATHROP: [02:41:07] OK. Senator Pansing Brooks.

PANSING BROOKS: [02:41:07] Sorry. So is this being used at all by Corrections to your knowledge?

KENT ROBERT: [02:41:10] Not here in Nebraska.

PANSING BROOKS: [02:41:13] OK.

KENT ROBERT: [02:41:13] It's a new-- it's a new part of the Network of Care that we're starting to push around the country and so we're not using it currently.

PANSING BROOKS: [02:41:18] Thank you very much.

KENT ROBERT: [02:41:20] Uh-huh.

LATHROP: [02:41:20] I think that's it,--

KENT ROBERT: [02:41:21] Thank you.

LATHROP: [02:41:21] --Mr. Rogert. Next proponent of LB286. Welcome back to the Judiciary Committee. You were-- you were frequently when I served my first eight years. It's good to see you.

JOHN KREJCI: [02:41:46] Frequent flier. I'm John Krejci, and that's J-o-h-n K-r-e-j-c-i, and I'm testifying in support of LB286. I thank Senator McCollister for introducing it. I've been around for a while and I-- this is in keeping with several committees. They have the Community Corrections Commission under Senator Brashear years ago. And then last year, if you see that handout, there

was a-- a meeting of the Nebraska Justice Reinvestment Implementation Coordinating Committee. These are kind of similar things. So this is a tradition of things that are valuable and good. And the important thing that I like to mention is the cross-fertilization of ideas. I remember Judge Icenogle said, come down from your silos and interact with other groups. In other words, we have, as Senator McCollister said, you have legislative, judicial, executive branches. Involve law enforcement, Corrections, Probation, Parole, the courts, mental health, inmates, former inmates, community, all these, you know, and people are talking to each other. I remember Joe Kelly said, I'm on this committee; why should I be on it? And then he says, you know, I realize it's really valuable for us to talk to one another, to learn from one another, Probation Parole, law enforcement, the judges. So we know we've got a huge problem with overcrowding. The prisons are in crisis really and they're not getting any better. And from what I understand, Director Frakes, is not going to respond very well to the 2020 state of emergency that we need to get a number of people out of jail. They want to build, what, 40-- this is a little off the subject but they want to build a \$45 million, 384 beds. They can't even staff what they've got. So they're doing the same thing that they did. You can't build your way out of it. So this is a way of overseeing it. As Chambers said, we need to, the Legislature, is set up policies and then make the Department of Corrections and the Governor follow those policies and then, otherwise, we're going to just keep going down the road to failure. So I'd to-- Pansing Brooks has got a bill coming up again working towards changing a policy. So I'd like to support this bill and-- and get that Reentry Council in, because we need to get more people out. And a lot has been said about that, so that's-- that's what I have to say. And, you know, do support the bill and I'll be back.

LATHROP: [02:44:53] All right. Thanks, Mr. Krejci. We appreciate your testimony--

JOHN KREJCI: [02:44:57] Thanks.

LATHROP: [02:44:57] --and your advocacy. Anyone else here in support? Anyone to speak in opposition? Welcome back.

SCOTT FRAKES: [02:45:21] Thank you. Good afternoon, Chairman Lathrop, members of the Judiciary Committee. My name is Scott Frakes, F-r-a-k-e-s, director of the Nebraska Department of Correctional Services, here to provide testimony in opposition to LB286. LB286 proposes the creation of what would be called the Coordinated Reentry Council. Simply stated, this proposed legislation resembles two committees in which our agency is already involved and includes representatives from Parole, Probation, the courts, and the Crime Commission. Meetings are held throughout the year with the purpose of addressing criminal justice from a holistic approach. While I recognize that this particular group would focus specifically on reentry, the problem with creating multiple committees to address similar issues is that inevitably ideas presented by each group must be reconciled. You waste time dealing with duplicative effort. The committees that are already in place are doing good work. To the extent that NDCS has already been actively involved with external partners, this council would only serve to take away from the time that members are already devoting to address these issues in other forums. Thank you for the opportunity to testify and I'll try to answer questions.

LATHROP: [02:46:29] What are the two groups [INAUDIBLE]--

SCOTT FRAKES: [02:46:33] The two I specifically referred to are the--

LATHROP: [02:46:33] --already doing the same thing or already meeting?

SCOTT FRAKES: [02:46:39] Similar in nature. The steering committee, which is made up of the directors of Corrections, the chair of Parole, the head of Probation, and the head of court

administration-- I'll probably get his title wrong-- Corey Steel. So that's one group, and--

LATHROP: [02:46:55] It's called the steering committee?

SCOTT FRAKES: [02:46:56] That is the steering committee. It comes out of LB605--

LATHROP: [02:46:59] OK.

SCOTT FRAKES: [02:46:59] --and is related to the justice reinvestment work. So that's a group that's been meeting now since 2015. And then an offshoot of that is what we call the seamless meeting or the system of seamless something, and that is the next layer down and really it's then the technicians, the practitioners from the different agencies or-- I'll use the word agencies, that come together and figure out solutions to problems they identify. So again, it's Probation, Parole, NDCS, normally not the courts, represented in that meeting, but.

LATHROP: [02:47:38] OK. I do not see any questions. Thank you,--

SCOTT FRAKES: [02:47:43] Thank you.

LATHROP: [02:47:44] --Director. Anyone else here to speak in opposition to LB286? Anyone else here-- anyone here in a neutral capacity who wants to be heard? Seeing none, Senator McCollister waived close. I do have four letters: Greg Adams from-- pardon me, five: Greg Adams from Nebraska. Community Colleges. These are in support. Spike Eickholt, ACLU; Kelly Keller, National Association of Social Workers, Nebraska Chapter; Shakur Abdull-- Abdullah. And in a neutral capacity, Don Arp Jr. from the Nebraska Crime Commission. And with that, it'll close our hearing on LB286, and bring us to Senator DeBoer. Laurie, you OK? OK. Senator DeBoer and

LB262.

DeBOER: [02:48:53] Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Wendy DeBoer, W-e-n-d-y D-e-B-o-e-r, and I represent Legislative District 10, which includes Bennington and northwest Omaha. Today I'm introducing LB262, a bill that would change membership and duties of a long-term restrictive housing work group. In 2015 the Legislature established the long-term restrictive housing work group through the passage of LB598. As explained by the then introducer of the bill, Senator Pom-- Paul Schumacher, the purpose of the work group was to offer advice on policies and procedures related to the proper treatment and care of offenders in long-term segregation due to the need for the reform of restrictive housing that was identified by the LR424 Special Committee in 2014. This work group was supported by deck-- Director Frakes, who said that he welcomed the inclusion of outside groups and that he believed the work group, quote, must be large enough to include diverse perspectives and reach a level of synergy necessary for change and yet small enough to make decisions effectively and efficiently. The work group has been meeting for over three years. The Inspector General of Corrections, Dub-- Doug Kaburn-- Koebernick, asked me to consider introducing this legislation based on his 2018 annual report. In this report he recommended that the state's policymakers "refew"-- review the work product of the external restrictive housing work group to determine whether it has met the goals of the legislation-- Legislature, and whether or not it should be terminated or have its membership and/or duties amended. He will testify after me on this legislation to share his observations and more insight on his recommendation. LB262 is an attempt to improve the work group by amending its memberships-- membership and the process involved with the work group. The membership would be expanded to include additional external members, including: a nonvoting member who is a senator from the Judiciary Committee; one representative from a nonprofit prisoners' rights advocate group; three individuals who have demonstrated an interest in correctional issues, preferably who are mental health professionals or have previously

been employed in a restrictive housing unit, have advocated for the rights of incarcerated individuals, or have otherwise been engaged in activities related to Nebraska's correctional system; and two individuals who were previously incarcerated in Nebraska's correctional system. These changes would provide for a wider range of viewpoints and experiences in the work group's membership. LB262 would also require the work group to meet three times a year instead of twice a year. One of those meetings would take place at least ten days prior to the release of the department's annual report on restrictive housing so that the work group could provide input on the report. Finally, the bill would require the director to provide any information related to long-term restrictive housing requested by a member of the work group. Making these adjustments to the membership and process of the work group would provide for additional input and discussion on restrictive housing policies in Nebraska's correctional system, and assist the work group in meeting its initial goals established by Senator Schumacher and by Director "Franks" Frakes in 2015. I would like to note that a robust work group of this sort will be able to respond to changing and developing needs and take a variety of perspectives into consideration. With that, I ask for your support of LB262. And I would be happy to answer any of your questions at this time.

LATHROP: [02:53:09] I don't see any questions at this time, Senator. Thank you for your introduction. We'll take the first testifier in support.

DOUG KOEBERNICK: [02:53:23] Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name again is Doug Koebernick, spelled K-o-e-b-e-r-n-i-c-k. I work as the Inspector General of Corrections for the Legislature. I want to thank Senator DeBoer for introducing this legislation that is the result of a recommendation from my 2018 annual report. Within a year of the existence of this work group, it was formed back in 2015, and I actually attended the very first meeting the day before I started this job. So I've been with that group the

entirety of my time as the Inspector General. I expressed my concerns in 2016 that it was not having the impact that the Legislature envisioned. The excerpt I provided you from my 2017 report indicates the concerns I expressed in 2016 and '17. In my 2017 report, I recommended that the work group be reviewed to determine whether or not the membership, role, or mission of the work group needed to be changed to make it more effective. In response to my 2017 recommendation, it appears that Director Frakes shared my-- some concerns because he wrote, consideration will be given to particular ways to more fully engage work group members for the most beneficial discussions and outcomes. However, to be honest, I saw no improvement in 2018. I've also provided you with an excerpt from my 2018 report that discusses that. And I made a similar recommendation in that report and, as a result, I asked Senator DeBoer if she would consider introducing this bill so that the issue would be in front of your committee. What this bill seeks to do is strengthen the work group in order to meet the goals of the original legislation. In its current form, in the way that it's currently utilized, I do not feel it is doing that. Currently there are four members of the work group that are not correctional staff. Two of those positions have been vacant for the past year. Last week the department finally sent out a notice seeking applicants for those two positions. Prior to that, another position on the work group was vacant for probably a year. Not having these positions filled did not serve the work group well. Expanding the nondepartment membership would provide the work group with additional insights and viewpoints and I see that as a positive change. As mentioned, LB262 also makes some procedural changes to the work group by requiring at least three meetings per year. Having attended every meeting for the past three and a half years, it is my opinion that the work group operated better when they met more frequently. Now they meet twice a year for a couple hours each time. Most of that time is spent getting the nondepartment members up to speed on restrictive housing changes since efforts have not been made to keep them informed in the time period between meetings. The law currently requires the director to provide quarterly updates on the department's policies to the work group and this has not been done. LB262 would also add the requirement that-- that the director provide any other information that is requested by members of

the work group. As an example, the department recently published a report on The Challenge Program, which is kind of a transitional program but it also takes place within a restrictive housing setting. So this directly impacts restrictive housing. As far as I can tell, they put it on their Web site but didn't send it to the members of the work group or even publicize it. I actually found it by accident the other day when looking for a different report. I did find it valuable, though, and I wish that it would have been shared with that work group. In closing, the work group has had little or-- or no actual input on restrictive housing practices and I've made this known on many occasions. I think if structured and used properly, it could have a positive role. I really do believe that. And I'm hopeful that today Director Frakes will support this legislation since he did support the original legislation that created the work group and at that time saw that-- saw their potential as a group that could be used to make positive changes to the restrictive house-- housing policies of the department. That's my ultimate goal for this bill, to assist the department with making those positive changes. And I also just want to add one thing. One of the things you can talk about in those settings is what you can do differently. Earlier they were talking about, you know, ways to expand the-- the time that people can be outside of restrictive housing and-- and get more than one hour out of cell. One of those simple changes could be if you could set up just a room within a unit and set it up so you have two guys that go in there and have audio and video coverage of that. Those two guys are getting more than one hour out at a time then. So there's lots of different things that this, this work group, and can be involved in and make good policy changes and assist the department. So with that, I'd be happy to answer any questions you may have.

LATHROP: [02:57:42] Senator Brandt.

BRANDT: [02:57:44] Thank you, Mr. Koebernick. And that probably answered my question. On page three of your report, it says, update on any action by the department to establish more, quote, blue rooms. Is that a blue room?

DOUG KOEBERNICK: [02:57:58] Yeah, you can-- that's something that, yeah, I put together. In-
- in the York prison, the women's prison, they've established something called a blue room which is
kind of a, in a way, I-- you could call a time-out room or a de-escalation room, where if somebody
is acting out, they're having some issues, they go to this. It's a converted cell. It's painted a color of
blue. It also has a mural on the wall. And then they have a television screen on the wall and then
they have a place for them to sit that's not just like a cell bunk or anything. And the video that they
watch in there is kind of-- it can be a different video. There's probably four or five different ones.
And one of them that-- that I actually have enjoyed watching and has relaxed me when I'm there is
you're walking through a forest and people walk past you. They can also pipe in different scents for
the women to address what's going on with them. So that's one of the things. If they could take that,
expand it to some of the men's facilities, I think that would be a positive change. But that's what a
blue room is.

BRANDT: [02:58:59] All right. Thank you.

LATHROP: [02:59:01] I have a question for you. So if you were to grade this commission or
board or--

DOUG KOEBERNICK: [02:59:10] Work group.

LATHROP: [02:59:10] --work group to this point in time, it doesn't sound like you believe that has
been effective in bringing about change.

DOUG KOEBERNICK: [02:59:17] Correct.

LATHROP: [02:59:18] Have they made recommendations at all?

DOUG KOEBERNICK: [02:59:22] Not really. I mean, no. I mean, there's some--

LATHROP: [02:59:25] I just I wonder if the problem--

DOUG KOEBERNICK: [02:59:25] --there's some discussion and everything but the way that's set up and structured, I just haven't, haven't seen that.

LATHROP: [02:59:32] So is rearranging or putting different people in some of the seats going to make a difference?

DOUG KOEBERNICK: [02:59:39] I think it would be worth a try. I think right now there is such a small number of nondepartment people that are on the work group that expanding that-- and then when you don't fill positions when-- when they're empty, it's so one-sided with the department. I think it's really hard for some of the nondepartment people to really get engaged. And then if you don't have that, that constant knowledge being provided to them as members of the work group by the department, they come in, they don't know as much as they need to know to really make change happen in that meeting or be involved and engaged. But I think it's worth, worth a shot, at least for a couple more years.

LATHROP: [03:00:13] OK. If they haven't made a-- my next question was going to be if they made a-- if they made a recommendation or had an idea, has it been implemented or has it been received? And so it's sort of a "what's the point" question. If there are suggestions, are they implemented or would we anticipate that they might be implemented?

DOUG KOEBERNICK: [03:00:37] Actually can come up with one now that I'm thinking. The-- early on, when they were developing the rules and regulations for restrictive housing, it was recommended by Kasey Moyer from the Mental Health Associ-- Association and myself that they develop a pilot project to develop a peer support program in a restrictive housing setting. They recently did that at the Nebraska State Penitentiary and so far it seems like it's been very successful and they're looking to expand it to Tecumseh. So that was a real positive that came about early on.

LATHROP: [03:01:13] So you would tell us to make the changes and give it a couple of years.

DOUG KOEBERNICK: [03:01:16] Yes.

LATHROP: [03:01:18] See if they-- if they can influence the policy on restrictive housing.

DOUG KOEBERNICK: [03:01:21] And I think it would provide more information to the Legislature when you have bills before you on restrictive housing as well.

LATHROP: [03:01:26] OK. Any other questions? I see none. Thanks, Mr. Koebernick. Good afternoon.

AMY MILLER: [03:01:43] Good afternoon. 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. You've heard pretty extensive testimony today about the problem we have with the use of solitary confinement. In the last five years, there's been a 22 percent increase in the number of men, women, and juveniles in solitary units in Nebraska. Having the work group means that there are additional eyes on the department. Prisons are inherently closed-circuit environments where very few people in the public, even many of the family members of my clients who are behind bars, the family members don't know for sure what's going on. Having

more folks involved and more folks at the table to provide perspective to the department officials is a good idea. Having more information placed in the hands of the work group is a good idea. I know that some of the questions that have arisen even within why not provide information to the folks that have been appointed by the Legislature to have a seat at the table is troubling about the lack of transparency that we have with the Department of Corrections. And that's why we support LB262. I'm happy to answer any questions you have.

LATHROP: [03:02:50] I see no questions but thank you for your testimony, Ms. Miller. Anyone else here in support of LB262? Anyone here in opposition? Good afternoon.

SCOTT FRAKES: [03:03:18] Good afternoon, Chairman Lathrop, members of the Judiciary Committee. My name is Scott Frakes, F-r-a-k-e-s, director of Nebraska Department of Correctional Services, here to provide testimony in opposition to LB262. LB262 would expand the membership and meeting requirements of the long-term restrictive housing work group. This group was established with the passage of LB598 in 2015 and, as was noted, I worked with Senator Schumacher on that bill and supported the creation of this work group. The board serves in an advisory capacity to the department on restrictive housing issues impacting inmates, staff, and ultimately public safety. That work group assisted in the promulgation of Title 72, Chapter 1 restrictive housing rules and regulations. Three annual reports have also been produced. Currently we are working to fill two gubernatorial appointments to the board who would consist of mental health professionals with experience outside of the department. This proposal would add a member of the Judiciary Committee to the group, an additional mental health professional, two people previously incarcerated in NDCS, and would require an additional meeting during the year. With respect to all who have a genuine interest in the restrictive housing system in NDCS, this is another attempt to tinker in small ways with a process that's been established and has been effective for three years. At some point, the effectiveness of the meetings will be diminished by having too many

participants, as opposed to the 14 or so that are currently prescribed in statute. LB262 would also require prior input from the work group concerning the annual report. That report is not a product of the work group. It's a product of NDCS. The report serves as a resource for the work group, as well as for internal and external stakeholders. Thank you for the opportunity to testify. And I would try to answer questions, if any.

LATHROP: [03:05:11] No questions.

SCOTT FRAKES: [03:05:15] Thank you very much.

LATHROP: [03:05:16] Thank you. Anyone else here in opposition to LB262? Anyone here in a neutral capacity on this bill? Seeing none, we have no letters that have been received in support, opposition, or in a neutral capacity. So, Senator DeBoer to close. She waives closing. And that will close our hearing on LB262, and take us to our last bill of the day. Laurie, we still good? Pardon me? Oh, OK. Then we'll go on to LB133 and Senator Pansing Brooks. Welcome, Senator Pansing Brooks.

PANSING BROOKS: [03:06:21] Thank you, Chair Lathrop. Thank you, Chair Lathrop and members of the Judiciary Committee. For the record, I am Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, and I represent District 28 right here in the heart of Lincoln. I am here today to introduce LB133, a bill that will help ensure parole-ready individuals receive the programming they need as they prepare to come back into our communities. I am bringing this bill because my staff and I decided after the work that we did, that we all did together on the LR34 Committee, that too many inmates are being deferred when they come up for parole due to the fact that they do not-- they have not received the clinical programming that the Board of Parole requires. Further, when these deferrals happen the state is not acting as-- in a systemic way to get these individuals into

programming. The end result is more people staying in prison longer at taxpayer expense and then at greater risk to our communities jamming out. LB133 makes several simple changes to remove some of these barriers to parole. First, LB133 directs the Nebraska Board of Parole to inform the Department of Corrections within ten days when an individual has been denied parole based on lack of programming and to provide recommendations on programming or treatment in which the offender should participate in order to enhance his or her likelihood of release. Second, LB133 provides that the Department of Corrections, while-- that the Department of Corrections initiate the recommended programming within 30 days or obtain written statements from the offender, from those offenders who refuse to participate in the programming. Third, the department shall also provide reports to the Inspector General and-- of the Nebraska Correctional System on individuals who have been deferred by Parole for lack of programming and whether programming took place or the reasons why programming was not received or was denied. I know from my previous work chairing the LR34 Department of Corrections Special Investigative Committee that there is a vicious cycle of problems in our corrections system. Our cycle is that the overcrowding problem leads to understaffing and assaults, which leads to a lack of programming because there are not enough people there to take people to the programs nor enough rooms for the programs, which leads to parole-ready individuals jamming out, which leads to recidivism, which leads to more overcrowding. I have come to believe that we must tackle these problems on all fronts in order to alter this dynamic. LB133 seeks to tackle a significant part of the overcrowding problem. I have submitted a packet of information see-- sheets for the record that were put together by the Nebraska Parole Administration. The first sheet that you have shows that in 2018, of the 3,000 parole deferrals, 1,766, or 58 percent, did not have the required correctional treatment needed. This was the total number of deferrals, not an individual count or a count of specific individuals denied parole. So this means many of these individuals reviewed for parole could have been deferred multiple times for the same reason, most often a lack of programming. I had previously received additional data from Parole Administration that showed how many parole hearings there were in

2017 and why they were denied-- denied. Keep in mind that not everyone who is reviewed for parole gets a hearing. The hearings' data shows that of these hearings 308 people were denied parole for reasons categorized as, quote unquote, "other," which was by far the largest reason. Curious as to what that meant, what-- what "other," quote unquote, meant, I asked Parole Board chair Rosalyn Cotton previously to break down those, quote unquote, "other" numbers. And the numbers showed that they were denied parole because they didn't have the required programming. The information is on page 2 and 3 of your handout. Page 4 shows an updated parole hearings sheet that indicates the same issues with lack of programming, though parole reclassified some categories in 2017, or from 2017. On the fifth page of your handout, on the bottom you will see the numbers on types of offenders which shows that most of those who came before the Parole Board are nonviolent offenses, about 66 percent by our calculations. Also we know that at least 95 percent of the individuals in our prison system will be released back to our communities at some point, according to the Bureau-- Bureau of Justice Statistics. We need to prepare these inmates for life on the outside so that we are all safer. I am handing out two case plan documents put out by the Nebraska Department of Corrections to establish procedures for the development of personalized case plans for each inmate. One of these case plans is from 2017 and the other is an updated 2018 document. I'm handing these out because I believe they show how the department's own programming goals are being reduced under their administrative regulations. For instance, in 2017 you'll see that the regulations state that, quote, clinical programming should be completed within the first one-third of an inmate's sentence; nonclinical programming should be completed by the two-thirds point in an inmate sentence, and the last third of an inmate's sentence should be devoted to specific discharge planning, unquote. This specificity of programming is completely removed from the 2018 document, if you look. The frequency of personnel case plan reviews with inmates have also been specifically reduced from 2017 to 2018. The problems with staffing are contributing to this problem as case managers are being moved, as we heard on Monday, to security detail because of understaffing, and we heard that from the front-line staff. So my concern is that at a time when we

need increased attention to programming for parole-eligible individuals to help reduce the overcrowding, we're actually seeing programming being further diminished in priority. Since the department is already supposed to be providing programming prior to the first parole eligibility date, according to Nebraska Revised Statute 83-1,110.01, and I've handed that-- you that as well, we need to ensure a process is in place for accountability. This bill isn't meant as an indictment of any agency or any person, but it does represent measures that we should already be doing. In fact, the LR127 Committee's report in December 2017 said, quote, The Department of Correctional Services should continue to prioritize its efforts to provide adequate and timely programming opportunities to inmates to ensure they are appropriately prepared for reentry into the community and to ensure that they are parole ready to alleviate overcrowding, unquote. Currently there are 927 inmates in Nebraska who are past their parole eligibility dates, according to data received from Parole Administration. In the next six months another 500 will reach their parole eligibility date. So, colleagues, LB133 is a common-sense proposal to help us to accomplish these-- those recommendations that have already been made numerous times in the LR127 report, in the LR34 report, in the Vera report from the Council of State Governments, from the Inspector General and others. There is no fiscal note on LB133 and the Department of Corrections says they can meet the requirements of the bill using existing sources-- resources. With that great news, I ask you to advance LB133. I'll be glad to answer any questions you may have. Yes, Senate--

LATHROP: [03:15:04] Senator Chambers.

CHAMBERS: [03:15:07] Senator Pansing Brooks, were you here from the beginning of the-- of the hearings?

PANSING BROOKS: [03:15:11] I "wa"-- I missed the first hearings because I had a bill in-- in another committee.

CHAMBERS: [03:15:16] Did you hear somebody testify and say that they were unaware of cases of people not being paroled simply because of a lack of programming?

PANSING BROOKS: [03:15:26] I think I would have fallen out of my chair if I had heard that one. No, I did not. I missed that.

CHAMBERS: [03:15:31] OK. That's all I have. Thank you.

PANSING BROOKS: [03:15:35] Thank you.

LATHROP: [03:15:35] I do have a-- a question for you. If the-- if the point in time where we're going to ask them to report on why didn't it happen is after the parole eligibility date, these are folks that are parole eligible on, let's say, September 1, if they-- if they're not paroled on September 1 then they will be one of the statistics that we would get. And it just occurs to me as you were speaking that we've heard from Parole that they-- that they meet with these people two years before their parole eligibility date. Right?

PANSING BROOKS: [03:16:10] That's what we're hearing, yes.

LATHROP: [03:16:13] And that they then set out, this is what you're going to need to-- . I just wonder if we want to look at him in that two-year window, too, or if it's-- if it should be just let's look at the people who don't get parole on their parole eligibility date and the reason for it.

PANSING BROOKS: [03:16:30] I think it's better to look sooner and fee-- and that's what we're trying to get this, I mean, that was the actual regulation pursuant to what Department of Corrections

had. So the goal was to see them early.

LATHROP: [03:16:41] Maybe, maybe this is the right time to do it because it's a look-back sort of a-- an idea. Then we can figure out how come it's not happening. But I appreciate you bringing the bill.

PANSING BROOKS: [03:16:53] Thank you.

LATHROP: [03:16:53] I see no other questions, so we'll take the first proponent.

DOUG KOEBERNICK: [03:17:07] 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 work as the Inspector General of Corrections for the Nebraska Legislature. I want to thank Senator Pansing Brooks for introducing this legislation. I think it's a creative idea because it sets up a type of process or pathway for individuals to follow should they have their parole deferred not having taken the necessary programs. I think having that pathway explained to them in writing is-- it could be very helpful. I do believe that the depart-- department might have some legitimate concerns about the ability to meet the 30-day deadline for initiating programs for those identified individuals. This would be due to the availability of certain programs, such as like the Violence Reduction Program. But I think that with their input, that could probably be resolved. With that, I'm open to answering any questions you may have on this bill.

LATHROP: [03:18:03] I have a question. If your parole eligibility date comes up September 1 and you didn't get violence reduction programming--

DOUG KOEBERNICK: [03:18:11] Uh-huh.

LATHROP: [03:18:12] --and now this bill would say that they need to get the violence reduction programming or something-- something else has to be true. When are they next going to be up for parole?

DOUG KOEBERNICK: [03:18:24] Well, that's up to the Parole Board. They could set up a hearing for a month later or two months.

LATHROP: [03:18:30] Forty-five days later?

DOUG KOEBERNICK: [03:18:31] Yeah. They can. They can have some discretion on that. But like if you're gonna be in the Violence Reduction Program, right now that starts every January and July. So to get back, to get into it, you'd have to wait till January. It's a six-month program. So they wouldn't be able to get in within that 30 days.

LATHROP: [03:18:45] That's the practical problem.

DOUG KOEBERNICK: [03:18:47] Correct.

LATHROP: [03:18:48] So the 30 days would be 30 days or when the program's next available? Something like that?

DOUG KOEBERNICK: [03:18:54] Something like that I think.

LATHROP: [03:18:56] OK.

DOUG KOEBERNICK: [03:18:56] Yes.

LATHROP: [03:18:58] I don't see any other questions. Thanks, Doug. Good afternoon.

MARGE SCHLITT: [03:19:16] Good afternoon, Senator Lathrop and the Judiciary Committee. I am Marge Schlitt, M-a-r-g-e S-c-h-l-i-t-t. I am here representing myself but I want to say that I'm very active in a program that's been very active in the Department of Corrections for a number of years, since 2003, called the Alternatives to Violence Project, better known as AVP. We've had this violence-- antiviolence program, nonviolent conflict resolution program at LCC, currently still at NSP, and we bring men and women from the Community Corrections Center to an outside location and give weekend long workshops on how to react to conflict situations in ways that don't result in violence. This program involves the participants in a basic workshop, an advanced workshop, and then they can become facilitators. Many of our people really want to become facilitators, and I encourage that. We want them on every team because the more you're involved, the more active you are. There are two kinds of programs in the Department of Corrections: the ones offered by the department, and the ones that are offered by volunteers from the outside. I'm one of those. I care very deeply about the people who are in prison and their ability to succeed when they get out. I'm heard. I know a number of men and women who are active, who are involved in the CCCL who were denied the opportunity for parole because they hadn't had enough programming. I have long felt that all programs, both volunteer and from the department, should be offered as soon as somebody enters the department, not asking them to wait until the very end of their term and then crammed full of programming. They-- all education is valuable and people can put their education to work when they start early. And if the programs were started earlier for everybody instead of at the end, there would be less stress in getting it all in before the deadline. So I would hope that that gets worked into this sometime. I-- I passed out a flyer about our program and it's just a generic flyer. We can give you more information if you're interested. I also passed out an article that is ten

years old from the "Corrections Today," which is the department of-- well, the profession of a correctional office, department of corrections nationwide, on what goes on in Oregon. And ten years ago Oregon was doing a whale of a lot more than Nebraska is doing now. And I hope that some people can pick up some good ideas of what we might be doing better and can be done and should be done, because these people are good people if they are given the chance to give-- to succeed. That's all I have to say.

LATHROP: [03:23:17] OK. I don't see any questions for you today, but thanks for coming here and for the work you do with the offenders. Anyone else here in support of LB133?

JON STEWART: [03:23:38] Hello, Senator Lathrop and the Judiciary Committee. My name is Jon Stewart, J-o-n S-t-e-w-a-r-t. I was recently incarcerated in the NDCS system. I was sentenced to a minimum of five years and a maximum of five years, meaning I would serve about two and a half with no eligibility for parole from the beginning. I was evaluated and classified for community custody, meaning work release, and given a recommendation for a residential drug and alcohol treatment program. This recommendation necessitated an override to transfer to the Neba-- Nebraska State Penitentiary where this type of programming is offered. I was told I would get into the program right away and upon completion, after six months, I'd be transferred to community custody for the remainder of my sentence. The reality was I was transferred to the penitentiary and I was put on a waiting list for the treatment program. And I spent 24 out of the 28 months of my incarceration at a maximum security facility before I was able to complete the programming and move to a community custody facility. This, again, just referring to the thirds of an inmate's sentence that Senator Pansing Brooks already touched on, this was an administrative regulation that was in effect while I was incarcerated, and I brought it up several times to case managers, unit managers, and the department in general. And obviously, they were unable to comply with that. And I believe it's been removed, largely because inmates were referring to it when they were unable

to get the programming they needed. And I guess my experience and observation, most inmates wait years to get the programming that they need. With the residential treatment program that I had to do, most inmates didn't get into it until they were nine or ten months from their parole eligibility date or their tentative release date, whichever one of those came sooner. And that meant, at most, inmates were getting three to four months at work release. That difference in a year, an additional year if not more, spent at a maximum security facility compared to community custody has a significant impact on an inmate's safety, their ability to provide for their family, their ability to set themselves up for success upon reentry. And it has a significant impact on tax dollars as well. That opportunity for additional time at work release is also a significant motivator for the inmate to comply with recommendations and the rules of the institution. So I have some general thoughts on things that can improve the situation, one of which being improving, continuing to increase bed space at community corrections and making more of the clinical programming available at community custody to avoid these types of overrides to a max facility for inmates who would otherwise be eligible for community custody. Another positive step would be to increase the treatment staff to allow more inmates to participate at a time, hoping to cut into that waiting list and get inmates-- inmates through the program earlier in their sentence. And ideally there would be a structure in place to hold the department accountable to ensure inmates are offered any recommended clinical programming early in the sentence to allow-- allow them to spend the-- as much of their sentence at the lowest custody level possible.

LATHROP: [03:27:40] Senator DeBoer.

DeBOER: [03:27:42] I just wanted to say thank you very much for coming today. It really does help us a lot to have a variety of different perspectives when we're looking at these issues. So thank you for going out of your way to come back and talk to us.

JON STEWART: [03:27:54] You're welcome.

LATHROP: [03:27:55] I want to-- I want to use your experience to better understand. You were given a two to two?

JON STEWART: [03:28:01] A five to five.

LATHROP: [03:28:03] Oh, I'm sorry. I'm sorry. So your-- the soonest you were getting out was two and a half years.

JON STEWART: [03:28:09] Correct.

LATHROP: [03:28:09] And when you said that you were sent to maximum custody level--

JON STEWART: [03:28:14] Well, I was-- I was sent to a maximum security facility. The Nebraska State Penitentiary as a whole is a Nebraska [INAUDIBLE].

LATHROP: [03:28:20] Not at the-- not at--

JON STEWART: [03:28:21] I was-- I was in the minimum area. But, I mean, still there is regular interaction and I mean I-- to go to visits, to go to-- I was in the dog program. I mean to go to the library, there's-- a there's a lot of times where you're-- you're still in regular contact with the maximum security inmates and it is a maximum security facility.

LATHROP: [03:28:44] So how long did it take before you got any programming? That-- I assume that when you went in for your assessment you're in D&E for 60 days.

JON STEWART: [03:28:54] I was there for one month.

LATHROP: [03:28:56] One month?

JON STEWART: [03:28:56] Uh-huh.

LATHROP: [03:28:56] And then they moved you over to the penitentiary.

JON STEWART: [03:28:59] Correct.

LATHROP: [03:28:59] When you were in there, they did an assessment to see what your needs were, what kind of programming you needed before you left. Is that true?

JON STEWART: [03:29:09] Before, yeah. I mean I-- yeah, based on history, they-- they recommended the residential, six-month residential drug and alcohol treatment program.

LATHROP: [03:29:18] OK. And you were gonna have to serve a total of two and a half years,--

JON STEWART: [03:29:23] Right.

LATHROP: [03:29:24] --assuming you behaved yourself and didn't have any good time taken away. How far into your sentence then were you before you were provided that treatment?

JON STEWART: [03:29:34] Twenty months.

LATHROP: [03:29:36] OK. And how long did you say the program is?

JON STEWART: [03:29:40] Well, it's six months. So I completed a residential treatment program voluntarily prior to my sentencing. They took that into account and allowed me to do a four-month sentence, which, in effect, didn't improve my situation in that they got me into the program two months later than I otherwise would have. So I ended up moving through the system at the same--

LATHROP: [03:30:04] And your point is that you could have gone to community corrections sooner had you received your programming sooner, and you would have benefited from being in community corrections for a longer period of time before your release?

JON STEWART: [03:30:18] Yeah.

LATHROP: [03:30:19] Is that what I understand your testimony [INAUDIBLE]?

JON STEWART: [03:30:20] Yeah. I mean that's my personal experience, and so that's what I can speak to. I know this is relating to parole but I think that any inmate-- I mean just logically I think it makes sense to offer any of this help that we're trying to give people as early as possible. And like I said, the incentive to get to community custody is-- is significant. So if that's earlier, you know, and-- and longer for-- for the inmate, then that's impactful. And-- and this, you know, if the earliest you can get into the program is nine or ten months before your parole eligibility date, you know, it's not uncommon that things go wrong or get in the way, and that ends up being later. And then folks are--

LATHROP: [03:31:15] Could you get to your community corrections placement before you completed your residential program?

JON STEWART: [03:31:19] No. That's-- so that's, I mean--

LATHROP: [03:31:21] So it's sort of the ticket to the community corrections.

JON STEWART: [03:31:24] Exactly.

LATHROP: [03:31:25] And community corrections is a transition, a lower level of security, and a better place to be.

JON STEWART: [03:31:31] Yeah, absolutely. And so that's where, I mean I would have otherwise qualified for community custody right off the bat, and I-- I don't know that it's realistic that anybody was going to spend-- you know, I think it's very rare that anybody is spending two and a half years at community custody. But there's no reason I couldn't have spent at least a year more there as opposed to the four months that I ended up spending there. And you know, again, I spent two years out of and what it ended up, I ended up doing 28 months instead of 30 because I got extra good time off the back end. But--

LATHROP: [03:32:10] OK.

JON STEWART: [03:32:10] Yeah. So I only got four months there.

LATHROP: [03:32:13] All right. I appreciate your testimony. It does help us and it kind of helps me to understand sort of the-- the nuances of all this. So thank you.

JON STEWART: [03:32:23] Yeah. I'm happy to talk about it.

LATHROP: [03:32:25] OK. I see no other questions.

JON STEWART: [03:32:27] Thank you.

LATHROP: [03:32:29] Any other proponents of LB133? Anyone to testify in opposition?

Director.

SCOTT FRAKES: [03:32:50] Senator, good afternoon. Chair, does say Chairman, Chairperson Lathrop and members of the Judiciary Committee, my name is Scott Frakes, F-r-a-k-e-s. I'm the director of the Nebraska Department of Correctional Services here to provide testimony in opposition to LB133. I support efforts to ensure inmates have the opportunity to receive necessary rehabilitative, rehabilitative programming and to transition back into the community on parole. The process described for notification of individuals deferred at their parole hearing in LB133 is consistent with current practices by NDCS and the Parole Board. When the board defers someone, they provide notice to the inmate of the reasons of the deferment. Prior to the hearing, the board is made aware of any outstanding programming needs by the individual, really for the individual. If the board determines that the recommended programming is necessary for the individual to be considered for parole, that information is shared with NDCS. Our goal since 2015 has been to ensure that every person be offered access to treatment and programming prior to PED. Stipulating that someone who is deferred parole be assigned programming at the earliest available opportunity would be highly problematic. It's not in my written testimony but I interpreted the bill though that the expectation would be that we would roster or queue people within 30 days, not that we would actually engage them in programming. So if the intent of the bill is that they have to be in programming within 30 days of deferment, that is an even higher level of problem. LB133 would incentivize declining treatment until an implied promise of parole. Those on the waiting list that

have accepted treatment could find themselves pushed back on the waiting list, further reinforcing the practice of declining treatment until they receive a promise of parole. This legislation attempts to address a perception rather than a true problem. There were over 2,000 completions of clinical treatment and cognitive behavioral interventions in calendar year 2018, and over 2,000 more completions through vocational life skills, education, and privately funded promising practices. The department's made great strides to get people into programming prior to eligibility-- parole eligibility date. The solution comes through timely assessment, targeted access, ongoing engagement efforts, and education. Forcing people to the head of the line will not improve the process. In fact, it's likely to derail the path for other individuals who are also trying to make the same journey. Thank you for the opportunity to testify today and I'll try to answer questions.

LATHROP: [03:35:38] Senator DeBoer.

DeBOER: [03:35:41] So 30 days is too short, you say, for getting them into the programs for sure.

SCOTT FRAKES: [03:35:47] Yes. As Inspector General testified, we have closed programs such as the Violence Reduction Program, that if you're not available at the time the program starts you have to wait until the next start date.

DeBOER: [03:35:59] Right. Would something like 60 days or 90 days work?

SCOTT FRAKES: [03:36:08] Here again, artificially pushing people to the top of the line is going to create unintended consequences. I do see it as incentivizing people to not engage because they know when they get to that parole eligibility point and get a hearing that they then will automatically get pushed into the process rather than getting people engaged earlier in their incarceration, having them involved in different programming. And one of the issues we hear about,

yes, we had policy language that said we were going to get people in the clinical treatment in the first third of their sentence. That was wrong. That was bad language in our policy that finally got identified and we fixed, because the research says, and specifically research around substance abuse treatment and sex offender treatment, is the closer you deliver that treatment to return to the community the more successful the treatment is. And we're certainly not at a point where we're robust or reser-- resourced enough to do the treatment on the front end of the sentence and then do it again at the back end of the sentence. So we gear up to get people into that clinical treatment at two years out, and actually now we're rostering people for residential substance abuse, as an example, that are in some cases two and a half years from their parole eligibility date. So we're making the kind of progress that will allow us to not only get people in, get them to their clinical treatment, and also still have time for community custody if they're eligible, because we recognize the value of transition. I probably lost your question. You opened up an opportunity; I took it.

DeBOER: [03:37:42] No, no, no, that's fine. Yeah, that's good. Thanks.

LATHROP: [03:37:48] I got a question for you. Do you keep track of all this stuff on a computer?

SCOTT FRAKES: [03:37:54] Yes.

LATHROP: [03:37:55] I'm going to-- I want to explain a frustration that I have, Director, and that is when I talk to-- have conversations with people from the department or when I talk to Ms. Cotton about why are people not being paroled on their parole eligibility date, and then I ask this question, is it a problem with enough programming, and the answer is always, oh no, that's-- the programming is there, that's not the issue. It's always something else, and I think you said something to the effect today. And it-- and I feel like we're functioning in an area where we don't have real data about how many of these people, because-- and-- and I realize I'm all over the place

right now. When I asked you questions in 2015, during that special investigative committee, we talked about the Council of State Governments, the fact that the Council of State Governments was going to try to reduce overcrowding, and to accomplish that the goal was to have people ready by their parole eligibility date. Right? And if that happened, we would see some results. And I get some of these guys have reasons not to be paroled on their parole eligibility date. Maybe they have the family comes in of the victim's and say the guy's a rotten guy, and they don't parole him. Or maybe they beat up a guard recently or broke some rules or declined programming. But for us, for us, sit here, the policymakers and we're wondering how come, how come this isn't working or is it really programming, because we keep hearing that it's programming. And then when we ask people that should know, they tell us it's not. And here's-- so that-- that leads me to this question. Can you go into some system that you have and print off a report or detail that shows us for the last two years people who were not paroled on their parole eligibility date, here's the reason?

SCOTT FRAKES: [03:40:03] Probably not as cleanly as you'd like it to be. We could give you--

LATHROP: [03:40:11] Can the Parole Board do that?

SCOTT FRAKES: [03:40:13] The Parole Board can. I mean we have-- I have right here a report that shows January and February, because there was testimony last week that--

LATHROP: [03:40:23] Is that one of the things that you gave us?

SCOTT FRAKES: [03:40:25] I did not because--

LATHROP: [03:40:26] OK.

SCOTT FRAKES: [03:40:26] --if--

LATHROP: [03:40:26] That's OK.

SCOTT FRAKES: [03:40:27] --I wasn't going to go down the path. But it's a good example. It shows all the different reasons that the Parole Board used to defer or deny parole for the last two months for the 201 parole hearings that were held. And it gets into information, but it's not enough. Literally, without having someone who can sit down and get into our NICaM System and the other systems that support all of this data and walk through individual cases, there's always a lot of backstory that's just not captured. Whatever question or list of questions that you bring to us or bring to Parole Administration, I would say the same for Probation, we can usually get you an answer. A lot of times I can't. I need the experts that I have that work for me, there's experts that work for Parole, because our systems are complicated and not user friendly. So you have to know how to query them--

LATHROP: [03:41:21] I'd just like to-- I'd just like to get to the bottom of the question,--

SCOTT FRAKES: [03:41:24] Yeah.

LATHROP: [03:41:24] --which is, if the goal was to get people paroled on their parole eligibility date,--

SCOTT FRAKES: [03:41:30] Right.

LATHROP: [03:41:31] --that assumes cooperation on their part. I get that. But if that's the goal of the Justice Reinvestment and this Council of State Governments' approach that we embraced years

ago and we talked to people and they're like it's these folks can't get in to-- it seems to me like in 2015 we talked about the sex offender program. That thing takes like a year. And people are waiting well past their parole eligibility date just to have their opportunity to go through the program, and then it takes a year and they're well past their parole eligibility date, as an example. I'd like to, as somebody who's trying to make policy and-- and the members of this committee, I'm just going to speak for them, I'd like to have some data on how many of these people are-- that are not paroled on their parole eligibility date have not had the programming or that's the reason. I guess both because--

SCOTT FRAKES: [03:42:34] OK.

LATHROP: [03:42:34] --if you're not-- if they don't have the programming then we can always say, well, he misbehaved. And then they fall into a different category, and it doesn't look like programming's the problem. But--

SCOTT FRAKES: [03:42:48] So--

LATHROP: [03:42:48] --what can you-- what can you share with us or who do we got to talk to and what do we got to do to dig into that? Because I think that really is the point of Senator Pansing Brooks'--

SCOTT FRAKES: [03:42:59] Yes.

LATHROP: [03:43:00] --bill, which is we don't know how to fix a problem. Because if it is, if it is we need more programming, but you have been discouraged from asking the Legislature for more appropriation to hire the people to do the programming or the guards that we need to--

SCOTT FRAKES: [03:43:23] Officers.

LATHROP: [03:43:23] --[INAUDIBLE] the programming or the space they need, we're trying to put our finger on it and it feels like a moving target every time the subject comes up.

SCOTT FRAKES: [03:43:33] The only thing in terms of clinicians that I need, I don't need any more positions, we could use some more clinicians. So we're always actively recruiting and looking for the people to keep those positions filled. Substance abuse counselors, unfortunately, are not compensated at the level that they need to be, and that's not just a Nebraska problem. That's an America problem. That's a good example of where I think systems across the country struggle. So we have enough FTEs. We have the positions. But we could certainly use more staff in those positions and just to keep them full. Sex offender treatment is another tough area just because it's a tight pool, but we're actually right now I think in a pretty good place. We're definitely in a much better place than we were in 2015 in terms of sex offender, bless you, sex offender treatment delivery. We, through Dr. Mitwaruciu and her leadership, they went back and they looked at clinical programming, sex offender treatment, substance abuse treatment, and the violence program, worked with the-- the-- whatever the right source is, I think of the VRP. There's a group out of Canada that's the authors and the owners basically of that program. So I actually brought them back here, had a large meeting, spent three days with them, and made revisions to the program that did not dilute or in any way make it less effective, if anything, made it more effective. And we went from a program that was being delivered in 12 months with a terrible success rate to 6 months with a much higher completion rate. And now we're in a very good place around that program. Sex offender treatment, we finally got some really good leadership in that program, Dr. Melvin, and that program is on the right track. I'm not going to tell you that that one-- I'd say that's one that's probably-- has the most opportunity to still show improvements in terms of completing treatment in

relation to PED. It's also the toughest. A lot of people do not accept sex offender treatment or they will raise their hand because they know that without it they can't get out, but they don't engage. They don't program well. So to really answer your question, whatever questions you ask in a list of questions, we'll collectively work and provide answers. They're going to lead to more questions and in some ways I feel like we may need to have some folks come and sit down with us and we can walk through these cases one by one. Your point was good about somebody didn't complete tra-- programming in time for their PED and behavior was a part of that. So if they're actively engaged in behavior that puts them in restrictive housing or that keeps them at max custody then that creates a problem.

LATHROP: [03:46:16] That-- that may be true, but we've also heard a lot of people that come or we've heard these folks that say, you know what, it wasn't available and I was so close to jamming out I just said I don't want to deal with you, I don't want to deal with parole, I'm not going to do it, because--

SCOTT FRAKES: [03:46:32] When I got here the--

LATHROP: [03:46:34] --they couldn't-- they couldn't get the programming in a timely way.

SCOTT FRAKES: [03:46:36] --practice for sex offender treatment when I arrived was to make sure that assessments were completed by PED. I fell out of my chair. I said, how does that make any sense at all? Today our clinical, initial clinical assessments are happening and within 90 days of arrival in the system. So now we've got the first piece of it. That's why our waiting lists looks so long, because we've got everybody assessed, you know, 99 percent of people assessed for their clinical treatment needs, if any. And if they're doing ten years, they're still on the waiting list for residential substance abuse treatment or whatever it might be. But the science says you should be

delivering that in that last two years of sentence. So we're in a much different place than we were in 2015. And I'd love to--

LATHROP: [03:47:22] [INAUDIBLE] try to put a letter together that asks for--

SCOTT FRAKES: [03:47:23] OK.

LATHROP: [03:47:23] -- and maybe I'll do that with Senator Pansing Brooks, to put a letter together so that-- so that this committee has something solid to work with so that we know are we-- are we meeting the goal of having people ready by their parole eligibility date. And I heard you say, we have the-- we have the, I'll call them, vacancies. You have programming vacancies. And I am completely frustrated, I am completely frustrated with the Department of Corrections' pay scale. Like I'm talking to-- I'm talking to some of your senior people who I met with a few nights ago and there are people with 20 years of experience. And I-- I'll just you know I-- I'm like, how close are we to having all you people walk out? Like one bad decision from the CIR is-- and you are going to have a crisis beyond-- beyond the one that I-- that I think you're dealing with already. And the CIR, and I've spent some time on that subject matter, the CIR is a floor. And when we have a Governor that says, I'm a businessman and I'm a free-market guy, the answer should be obvious. If we need more alcohol counselors and we can't get them at whatever the-- whatever the pay scale is right now, then the answer is to offer them a little more money. But we just decided we're not going to spend it, and things are a mess. I-- I really, that-- that overcrowding, you-- you know that I'm very, very concerned about that. This committee and I think the Appropriations Committee is looking for what do you need. And-- and I appreciate you got to-- you got to come in here with the party line. But that's not going to get it done. I don't see how we get to 139 percent, Director. And I know we-- we did the briefing, and you're-- you're welcome to respond to this, but we're not paying the guards enough. We're not paying the-- the programmers enough. And, you know, the-- in 2015 you went

through a long explanation about all the efforts that you've made to advertise for security people,
and we both know that didn't work. Right?

SCOTT FRAKES: [03:49:50] Well, we've had really good success in bringing people in. There the
retention issue is--

LATHROP: [03:49:55] Yeah, they're leaving.

SCOTT FRAKES: [03:49:56] Yes.

LATHROP: [03:49:56] They're leaving. It's a-- it's a difficult job. They don't get paid. And then
they're worried about, I'm not going to get a-- I saw the pay scale the other day. These people, the
security guy, just the-- the-- I don't--

SCOTT FRAKES: [03:50:12] Corporal.

LATHROP: [03:50:13] --I don't know what to call them,--

SCOTT FRAKES: [03:50:14] A corporal--

LATHROP: [03:50:14] OK,--

SCOTT FRAKES: [03:50:15] --is a good example,--

LATHROP: [03:50:16] --we'll call him a corporal.

SCOTT FRAKES: [03:50:16] --about \$18.40 an hour.

LATHROP: [03:50:16] He has a wage range, right, and let's say it's \$18 to \$23.

SCOTT FRAKES: [03:50:22] Right.

LATHROP: [03:50:22] They never get off of \$18. They're stuck there. The range isn't a range. It's you're gonna be at the minimum basically forever. And I guess we're talking to you because the Governor doesn't come in on these things and we can't really bend his ear on paying these people enough. But we're not going to solve overcrowding. And I feel like this committee is listening to bills that are-- address symptoms and the symptoms, they're symptoms of a problem with overcrowding and a problem with not paying people enough money to run the place. And then we try to legislate, as we are here, how come these people aren't getting the programming they need by the time they need it, and that really is a symptom of not having the people in place, being not having the staff to take him to, or maybe it's a-- maybe it's a space, maybe it's a-- having enough security staff to take these guys to their programming, if that's what needs to happen. But it is frustrating.

SCOTT FRAKES: [03:51:32] Yeah.

LATHROP: [03:51:32] And it's got to be incredibly frustrating if you're the director and you want to run the place. But it seems like a resource issue and I don't feel like the Legislature gets a straight story. And then I-- I listen to the people on Appropriations Committee, Mr. Director, and they're like, they come in, they tell us the vacancies, we give them the money to fill the vacancies, and at the end of the year they haven't. And-- and when we had you in front of us in 2015, you talked about how many more people you need than the vacancies you have, and it's staggering. And when

I talk to the security people, I apologize to the committee for this, when I talk to the security people, they are sick of this mandatory overtime. We talked to a guy last night who-- or two nights ago who said there was a person that worked like five sixteens over at the regional center.

SCOTT FRAKES: [03:52:31] The regional center?

LATHROP: [03:52:34] I don't know if he was-- we had some regional center people and some corrections people, but one person was talking about being mandatory "overtimed" like five days in a row.

SCOTT FRAKES: [03:52:43] Right.

LATHROP: [03:52:44] It's no-- no-- it's not hard to figure out why you have retention issues. But I don't know. We'll-- I'll-- I'll be involved with Senator Pansing Brooks and we'll put a letter together asking--

SCOTT FRAKES: [03:52:57] OK.

LATHROP: [03:52:57] --for information because-- and then an explanation for the why, the how come, because that's what we're trying to drill down to. And-- and maybe it is as useful or-- or even more informative than bills and asking you to give us reports through legislation.

SCOTT FRAKES: [03:53:18] If you'll believe what I tell you.

LATHROP: [03:53:20] Well, you know what? I want to.

SCOTT FRAKES: [03:53:26] I had to say that. I'm sorry.

LATHROP: [03:53:26] I want to, but I'm going to-- I'm going to-- I'll just say this, as long as you make that statement. When we had a briefing and I asked you what you needed, I meant it sincerely, as a member of this body and a Chair of this committee. And your answer was, I don't need anything, just give me what I've asked for. And to be honest with you, Director, it felt like a lot more of the same. Because I know, I know what you asked for and the "ask for" wasn't going to get yours-- wasn't going to solve the turnover problem or the retention issue, because that's a pay scale thing, and that wasn't in your ask. And if we're not going to pay the programming people, the alcohol counselors, the mental health people enough to get them hired, then we're-- we're-- we're not going to solve the problem.

SCOTT FRAKES: [03:54:15] You've been here much longer than me. You know how compensation works. You know union negotiation processes. I have the things that I can influence, but I don't--

LATHROP: [03:54:27] I have been here.

SCOTT FRAKES: [03:54:28] --I am not the keeper of compensation.

LATHROP: [03:54:28] I have been here and I, as a matter of fact, I-- I've hired paralegals and I've hired secretaries and I've hired lawyers. And I know I have to go out and find out what the market is, right? Your market is the Douglas County. You know you're competing with Douglas County.

SCOTT FRAKES: [03:54:46] I don't agree with that.

LATHROP: [03:54:48] Well, we can agree that whatever you're paying isn't enough or you wouldn't have the retention issues you have. Is that true?

SCOTT FRAKES: [03:54:54] What I would, no, I would agree that if we had a "parrot"-- a merit and progression pay scale that I think it would be beneficial. There's--

LATHROP: [03:55:03] I'll bet that [INAUDIBLE]--

SCOTT FRAKES: [03:55:04] --contract language that addresses it and--

LATHROP: [03:55:05] --I'll bet that would take you 90 percent of the way there.

SCOTT FRAKES: [03:55:07] Yeah. All right.

LATHROP: [03:55:08] Why don't we? Why wasn't, why isn't that part of the ask?

SCOTT FRAKES: [03:55:12] Because that's not my ask. That's part of the compensation process. It's part of the negotiation process. That isn't my role. I influence it, but I don't sit at the table and I don't direct that.

LATHROP: [03:55:25] OK. I appreciate your answers today and you taking the time. Does anybody else-- ? Senator Chambers.

CHAMBERS: [03:55:32] I'm going to use a metaphor, Mr. Director. Stores, people who are interested in selling, are not thinking about brick-and-mortar stores anymore. They're looking at technology, on-line delivery, sales, airplanes, and things that people never thought of as a part of

retail sale-- selling and delivering. You all are blind. You're talking about building brick and mortar. Look at how much money it would take to add brick and mortar. And instead of doing that, spend the money on the services that are needed, adequate seller-- salaries for the people. And you can let people go through that system. They can come out somewhat rehabilitated, if not completely. When you have people who are compelled to work overtime and, as the Chairman said, five days in a row, your nerves get frayed. You're angry. You are the one with a short fuse and you've got a ready pool of people you can mistreat, and they'll be punished because you provoked it. And you can say the inmate attacked me. But if you curse out an inmate, it doesn't matter. If you punch an inmate and the inmate punches back, then the inmate is always the perpetrator. What you all need to do is to get some counseling for yourselves, and not because you are insane but you would probably call it business advisers and they would tell you. Suppose the Governor said, you will work as many hours a day as the people who are working overtime, and not at home but in a confined place. And you would see, if you haven't worked a job, how that can get on your nerves. You can say you like a job, but that doesn't mean you want to live on the job. It means you have to work. And if you must work, this is the work you'd rather do. But you'd rather not have to do any of this kind of work at all. So I think the Governor, if he's telling the truth, which I don't believe, if you're telling the truth, which you can't tell the truth, but if all of that were put aside and you were gonna look at the expenditure weighed against the return, you would see that talking about building more prisons, and prisons have always failed. Instead, get some money so that you can hire people who are able to do the job, who are interested in doing it and will not take it because they can't get anything else anyplace else. It's a stopgap and they know that nothing is going to be required of them except to be the traditional image of the prison guard: dumb, prone to violence, a liar, knowing he or she is going to be backed up no matter what they do. And all rivers and most people are crooked because they follow the path of least resistance. So now I'm going to boil it down because I gave my metaphor or analogy: building brick-and-mortar stores versus what all these successful on-line people are doing. Sit down with some people in whom you have confidence, who you know are

understanding. You could even ask Warren Buffett is he willing, since he lives in Omaha and in the state of Nebraska, does he know some people who-- with whom you can consult to show you which will bring the greatest return in terms of what a prison is to do: spending however many millions it's going to take to build the brick and mortar that the Governor and you were talking about building or using that money to alleviate these employment problems, a high turnover, forced overtime, unwillingness of people to even take the job because the starting salary is so low. And again, I'm not even looking for you to respond. Mr. Frakes, I have more confidence in you than you have in yourself. I know you can do better but you're not allowed to do better. I've been telling you that. If you were as dumb as what appears from the way you operate, you wouldn't know whether to cross the street on a red light or a green light. You do have expertise. You do know something about penology and you do know what will bring results. You have a boss who is talking all the time about, we got to cut spending, we're gonna lower taxes. And the message gets across to you because you're not stupid. You want a job. Corrections are an activity out of the public's eye. They don't care what happens in corrections. So the Governor will cut there. And if there's a riot he will say, well, that's 'cause you got bad people in prison, that's why they're there. But you and I know that conditions can turn somebody who is ordinarily sane and reasonable into somebody who seems as crazy as a bedbug. And here's why I'm saying all that, this right now, because we're in that area of discussion. I want you to know that I believe if the chains were taken off you and you were allowed to put together a program and allowed to come to the Legislature and ask for the amount of money that would be needed, you might not get it all but there are people now who are aware of how serious the problem with corrections is. And a key to success is striking while the iron is hot. Tell the Governor how much pressure we put on you. He doesn't come here. He's the head of the state. He is the one who should be coming to tell us what the plan is. You even hear pundits talking about the President sitting down with Kim Jong-un and saying, it's not enough to say he's my friend. We talk to each other. We like each other. And when we met, I fell in love with him. That's what Trump said. But the experts, the diplomats, the intelligence community are saying, Mr. President, please.

We've been in this game a long time. We know how it's played, and you're being played now. You've let this man, who is half your age, play you like you're a 3rd grader. He smiles at you. He shakes hands with you. He'll drink a cup of tea with you and he'll stroke your ego, because that's what you want. Don't fall for it. But since he's the commander in chief, he can do that. You can turn it around and tell the Governor that you're taking all kind of heat. Chambers is potshotting you every time you come. You're not able, without lying, to say that we have everything we need and we're doing the best we can. I'm not gonna talk to you like this again but I had to say it this once. And I'm not gonna tell you again that I have confidence in you, because my confidence is misplaced if you're unwilling to stiffen your back and go talk to the Governor man to man and play on the point he makes about being a businessman who's gonna operate the state like a business. Tell him you cannot operate corrections like a business if you don't have the money to hire the people to do the work. And the work includes programming, competent people who can execute those programs; clinicians, who are not gonna work for a janitor's salary; counselors the same. You're the only one who might be getting a decent salary and that's why you're, I guess, willing to go along. And I'm not looking for a response, but one of these days you and I are going to find a time that's convenient for both of us and just talk man to man. And I bet you will agree with what I've said and you're glad that I'm saying it, because now gives you something. Get the transcript and let the Governor read it. I know you can do things. I'm telling you, man, I read articles about you and what you did in Washington. You know some of the articles I'm talking about I'm sure. They can't be written about you in Nebraska because you're not doing that work, and you're not doing it because you're not allowed to. Now I'm through. Mr. Chairman, I just had to tailgate on what you said and I will not extend--

LATHROP: [04:05:24] That's all right.

CHAMBERS: [04:05:26] -- this hearing.

LATHROP: [04:05:27] That's all right. I think that's it for you.

SCOTT FRAKES: [04:05:29] OK.

LATHROP: [04:05:29] Thanks for being here.

SCOTT FRAKES: [04:05:29] Thank you.

LATHROP: [04:05:29] Anyone else here to testify on LB133? Seeing none, Senator Pansing Brooks to close. Give me just one second.

PANSING BROOKS: [04:05:41] OK.

LATHROP: [04:05:43] We have a letter of support from Kayla Allmendinger from the National Association of Social Workers, Nebraska Chapter; three letters in opposition from Wayne Smith, Ron and Lynette Nash, and Rosalyn Cotton at the Parole Board.

PANSING BROOKS: [04:05:57] Thank you all for listening and for participating in questioning. We have heard that-- that programming has improved. But what the statistics also show is that we are not prioritizing, especially some of the clinical programming, to get the inmates out. If we can get people programming and get them out into community corrections, we will be saving the taxpayers money and we will be creating and helping inmates to become safer as they come out into the community. The LR34 Committee asked for exactly those numbers that your ask-- that you're talking about, Chairman Lathrop. Thank you. Specifically, we talked about and asked for waiting lists for programming. We've asked at what point are these-- are these inmates getting into

programming in there during their term and during their sentence. And we were told at that time that none of that information is available. And I specifically asked Director Frakes, well, don't you know where the inmates are at a certain point? It seems like it'd be pretty easy to keep track of where the inmates are at a certain point. And if they're not in their cell, hopefully they know that whether or not they've gone to programming and whether or not they actually need that programming to which they have gone. And so again, I would happily send a letter with you, Senator Lathrop. Maybe we can get that information. It needs to be comprehensive, and what we've received to date is-- is not comprehensive or very detailed. Again, I want to refer you to the parole hearings on 2017. It says, why does the-- why does the board defer or pay [SIC] inmates at parole hearings? You can see that 38 percent was "other," and I talked to you about that. It also talks about inmates refused programming or parole. It's a minuscule number, comparatively. So the comments that we just heard about, oh, well, they're all-- they're all, you know, refusing that, well, if they are all doing that or great numbers, which did not occur in 2017, then my bill requires the inmates or requires the Department of Corrections to get the inmates to sign, number one, that they refuse it. And-- and if they're not willing to sign it, then they can, then the department can also say that, could also say that they are refusing treatment. But then the inmate must sign it. So then you look at 2018, which is-- is the-- is number four of the sheets that I passed out, and again what's happened is it looks like programming deferrals and denials have gone down by about a third, because it shows about 190, maybe, under the "other" category. But if you add in two new categories, which are "no parole plan," which is about 75, and "failed to complete residential substance use treatment," that-- that one is about 50, that adds back up to the-- to the 300-plus that were denied before. So it clearly shows we have a lack of programming. It's a great idea to track the refusals. And I-- I just think this-- this has to do with the fact that we do not want to spend money on what-- what I think some people consider throwaway people. And it's a lot easier just to, you know, offer it at the very last moment or let the people jam out. Something has to be done to hold the Department of Corrections and the Parole Board accountable for what's going on. It's easy for each one to point to the other and

say: oh, well, this is the Parole Board's decision; oh, well, this is Department of Corrections' fault.

OK. No one's taking responsibility. Then we need to step in as policymakers. I appreciate your time. One other thing that I just wanted to add is that the-- the letter that we received in 2017 from Rosalyn Cotton "recard"-- regarding the data request of the 308, 308 individuals who-- who fit into the "other," their reasons for denial, I'm going to quickly read it into the record because I think it's important to have it in the record: 101 included a note needing to complete substance abuse treatment; 55 had needed to complete or finish programming, with no additional details; 28 reasons included a note about needing to complete domestic violence treatment; 25 reasons included a note about needing to complete anger management; 22 reasons included a note about needing to complete a parole plan or secure residence; 21 reasons included a note about needing to complete VRP, the violence reduction plan; 16 reasons included a note about needing to complete sex offender treatment; 14 reasons included a note about needing to transition to commun-- community custody or about removable-- removal from community custody; 7 reasons included a note about needing more time on work release; 6 reasons included a note about needing to establish positive institutional time or about the continued accumulations of MRs; and 4 reasons included a note about needing to receive discharge reports or reports from either CVORT or CSORT. So again, those are the 308 re-- 308 "other" reasons for denial for being able to get parole, paroled. So again, we need to do this earlier in the process, as you had talked about, and we have to work to make our-- our communities safer. This is our duty. Thank you.

LATHROP: [04:12:03] Thank you. I see no questions for you. That will close our hearing on LB133 and our hearings for today. Thanks, Senator.