

**LATHROP:** You ready, Laurie? Good afternoon, welcome to the Judiciary Committee. My name is Steve Lathrop, I represent Legislative District 12 in Omaha, and I Chair this committee. Committee hearings are an important part of the legislative process and provide an important opportunity for legislators to receive input from Nebraskans. If you plan to testify today, you will find yellow testifier seats on the table inside the doors. Fill out a testifier sheet only if you're actually going to testify before the committee and please print legibly. Hand the yellow testifier to the-- sheet to the page as you come forward to testify. There is also a white sheet on the table if you do not wish to testify, but would like to record your position on a bill. This sheet will be included as an exhibit in the official hearing record. If you are not testifying in person on a bill and would like to submit your position letter for the official record, all committees have a deadline of 12:00 p.m. Central Standard Time, the day-- the last workday before the hearing. Please note that there is a change this year and position letters to be included in the official record must be submitted by way of the Legislature's website at [nebraskalegislature.gov](http://nebraskalegislature.gov). This will be the only method for submitting letters for the record, other than testifying in person. Letters and comments submitted by way of email or hand-delivered will no longer be included as part of the hearing record, although they are a viable option for communicating your views with an individual senator. Keep in mind that you may submit a letter for the record on the website or testify at a hearing in person, but not both. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents and finally by anyone speaking in a neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We ask that you begin your testimony by giving us your first and last name and spell them for the record. If you have copies of your testimony, bring up at least 10 copies and give them to the page. If you are submitting testimony on someone else's behalf, you may submit it for the record, but you will not be allowed to read it. We will be using a three-minute light system. When your testimony begins, the light on the table will turn green. The yellow light is your one-minute warning. And when the red light comes on, we ask that you wrap up your final thought and stop. As a matter of committee policy, we'd like to remind everyone the use of cell phones and other electronic devices is not allowed during public hearings, though you may see senators take notes or stay in contact with staff using their phones. As a reminder, verbal outbursts or applause are not permitted in the hearing room. Such behavior may be cause to have you escorted from the hearing room. Since we've gone

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

paperless in the Judiciary Committee, senators will be using their laptops to pull up documents and follow along with each bill. You may notice committee members coming and going. That has nothing to do with how they regard the importance of the bill under consideration, but senators may have bills to introduce in other committees or other meetings to attend to. And with that, I'll have the committee members introduce themselves, beginning with Senator DeBoer.

**DeBOER:** Good afternoon, everyone. My name is Wendy DeBoer. I represent District 10, which is in northwest Omaha.

**BRANDT:** Tom Brandt, District 32: Fillmore, Thayer, Jefferson, Saline and southwestern Lancaster Counties.

**PANSING BROOKS:** Good afternoon, I'm Patty Pansing Brooks, representing Legislative District 28, right here in the heart of Lincoln. And I'm Vice Chair of the committee.

**McKINNEY:** Good afternoon, Terrell McKinney. I represent District 11: north Omaha.

**GEIST:** Suzanne Geist, District 25, which is the southeast corner of Lincoln and Lancaster County.

**LATHROP:** Assisting the committee today are Laurie Vollertsen, our committee clerk; and Josh Henningsen, one of our two legal counsel. Our committee pages are Bobby Busk and Logan Brt-- Brtek. Pardon Me, Brtek, both students at UNL. And with that, we will begin our first bill today, which is LB920.

**PANSING BROOKS:** OK. We're going to start with LB920, Senator Lathrop. But first we'd like to have a show of hands of how many people are going to testify on this bill, because we want to know-- we want to be able to call up the next senator-- thank you, on the next bill. Thank you. Thank you very much. Welcome to your Judiciary Committee, Senator Lathrop.

**LATHROP:** Thank you. Good afternoon, Vice Chair Pansing Brooks and members of the Judiciary Committee. My name is Steve Lathrop, L-a-t-h-r-o-p, I have the pleasure of representing Legislative District 12. And today I'm here to introduce LB920. In 2014, pardon me-- in 2006, Governor Heineman was presented with a facilities study done by the Department of Corrections, which projected the population and the need for additional capacity at the Department of Corrections. And for those of you unfamiliar with a facilities study, they are done before we do construction or make capital improvements at the

Department of Corrections. And a facilities study does a number of things. The first thing, and an important thing a facility study does, is it projects the population. And this is a science, and we've had a number of population projections done. And surprisingly, they're very, very close to accurate when you look back at them historically. So in 2006, we had a facilities study that projected the population. A facilities study will also tell you what security level you need beds for and then do an inventory of how many beds you have at each security level and then conclude how much of a-- how much additional capacity and in what security levels do we need to have additional capacity. That report was presented to Governor Heineman back in 2006. Governor Heineman put that in a drawer and did not act on it. There was never a recommendation to build more capacity during the Heineman administration. And that's true notwithstanding the fact that at different times, Director Houston, who was then the director of the Department of Corrections, went back to the Governor on a number of occasions and made a pitch for additional capacity. And that never, that never took place. So I have a chart that you've each been provided and we have some at the doors as well. This chart is-- documents our capacity as well as our, our pop-- our actual population and our projected population. And you will see on this chart from 2005 to 2018 that the blue line, which represents design capacity, and the red line, which represents statutory operational capacity, 125 percent of design capacity, those lines are flat. And that's because we added no capacity from 2005 to 2018, notwithstanding the fact that our population was growing. The line above those two lines, the black solid line, is our actual daily average population for each of those years. And the dashed line that you see beyond that is the population projection, most recently done and commissioned by the Department of Corrections about a year ago. So we know what our population has been, we know what our population is going to be by 2030, and we also know what our capacity is. You will notice in the chart that the red and the blue lines start to move upward beginning in 2018. Each one of those movements upward represent additional capacity. And I should add in 2014, before Governor Heineman left, he had another facilities study commissioned that was done and essentially handed to the next administration. And to his credit, Governor Ricketts has tried to add capacity. This Legislature has supported the attempts to add capacity. And if you look at the red and blue lines, you will see that we have added capacity. The last increase is the proposed new prison. So those lines that move upward represent improvements in capacity, we added 100 beds to the Community Corrections Center in Lincoln in 2019. We added 160 beds to Community Corrections in Lincoln for the women. That was done in 2020. Also in 2020, we added an additional 100

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

minimum-security custody beds at NSP. And then we have two projects that will come online this year, and they are part of this chart. We have the CR-- pardon me, the RTC critical health care beds, 64 of them. This is on the LCC, D&-- Diagnostic and Evaluation Center campus. That will add 64 beds. And then we also authorized at \$50 million, 384 high-security beds, and they're represented on this chart as well. So in addition to the improvements that we made and in anticipation of trying to build a new 1,500-bed prison, we had an engineering study done. And you've all received a copy of this. I hope you'll take the time to read this engineering study. I went through it page by page, building by building. And I can tell you as I look at the engineering study of the penitentiary, virtually every building, excluding guard towers, perhaps the chapel and that's about it, needs to be replaced, removed or replaced. So our penitentiary is beyond its useful life. The last increase that you will see on this chart is if we were to replace the penitentiary with the 1,500 beds most recently proposed by the Governor. And what you'll notice about the chart colleagues is that even if we were to build a new prison, even if we were to build a new prison, we will never reach a point where we're no longer in an overcrowding emergency, we will never reach a point at which our population is rightsized into operational capacity. And in fact, our latest projection is the 2020 JFA projection of population. It projects the population assuming no changes in any criminal statute at 7,327 by 2030. That's as far as our population projection goes. And if we build the new prison, we will still be short 1,326 beds in 2030. So think about that. If we build a new prison, which will take a few years, and the population continues to grow as projected, by 2030, just a few years after we complete a new prison, we'll be 1,300 beds short of operational capacity and far shorter of design capacity. And that's why we're here today. This, this chart demonstrates historically our attempts to chase a growing population with bricks and mortar. We asked CJI to come in because those of us that have been paying attention to these numbers recognize that we cannot build our way out of this problem. As long as that line grows faster than we can build, we will always be underwater. We will never have enough capacity. And the only way we can make progress on the overcrowding emergency is to address it through some form of sentencing reform. It is for that reason that CJI was brought into Nebraska. CJI came in in April of last year, 2021, at the invitation of Governor Ricketts, Chief Justice Heavican, Speaker Hilgers and myself. They have been in, I think, 13 other states where they have provided their analysis and worked with legislatures who are interested in addressing the very problem we have. Our population is growing in prisons faster than we can build capacity to handle it. And it's not an accident. Since 2011,

we've had a 21 percent increase in our prison population, while nationally prison populations have dropped by 11 percent. Nebraska is only one of four states with an increase in their population between 2009 and 2019. And the increase in population and our average daily population is growing even though our admissions are going down. So stop and think about that for a second. Our population, our average daily population at the Department of Corrections is going up, even though we have fewer people coming in the front door than we did 10 years ago. And there's a reason for that. That's because the time people are spending in prison has grown over the last 10 years. An individual sentenced to the Department of Corrections will spend on average 38 percent longer in prison versus had they been sentenced in 2011. And that's a consequence of two things. It's a consequence of enacting mandatory minimums, and you've all read about that in the paper, but it's also an increase generally in sentence lengths that have grown over the last 10 years. And the effect has been to stack inmates into the Department of Corrections, increase our average daily population. CJI came into this state and did a full analysis. It's called the Justice Reinvestment Initiative, and the process involves them coming in and looking at our data. From the time someone is arrested, are they diverted? Do they go to a problem-solving court? How are they handled before they are convicted? Once they are convicted, what sentence do they receive? And when they are discharged, are they supervised? Do they receive services? That's the analysis that's been done by CJI. I think all of you were here for their presentation on the data. That data was presented to the larger CJI, CJI group in two different meetings that took place over the summer and fall. The larger CJI group, which consisted of probably around 15 people, Senator Geist and Senator McKinney were on that group as well. Those groups broke into three smaller groups and those three smaller groups looked at different aspects of these issues and offered ideas. Some of those ideas have been accepted as recommendations by consensus. In other words, everybody in the group thought this was a good idea. Things like expanding problem-solving courts, working on diversion, providing more mental health services, substance abuse in the community. Other recommendations-- I won't even call them recommendations. Other ideas were presented for the Legislature's consideration. LB920 has each of those ideas, recommendations, however you want to characterize them, they are found in LB920 so that we can put out for the Legislature's consideration and for the consideration of this committee each of the ideas that came out of the CJI process. That's what's in LB920. And I'll go through it by section in just a moment, but let me just add this. Some of the recommendations don't require legislation. Some of them may be

an appropriations issue. But those that involve or come within the jurisdiction of the Judiciary Committee are included in LB920. Section 1 would amend-- and I'll go through this, and primarily, for the record, because you have this form in front of me and the people that are here to testify have already read it. But I'd like this, the record to reflect-- that's my section-by-section narrative, if you don't mind. Section 1 would amend 24-1302 to provide additional statutory requirements for problem-solving courts. The new language would require problem-solving courts to meet national best practices and would expand potential eligibility for individuals at various stages of the criminal justice process. The new language would also include the legislative intent to fund at least one problem-solving court in every judicial district and require the state court administrator to prepare an annual report about the impact of problem-solving courts and the barriers to properly serving each judicial district. The working group found that there are areas in Nebraska where access to problem-solving courts is unavailable due to prosecutorial discretion, limited community-based services or insufficient judicial resources. Section 2 would create a pilot project to use judicial branch space and technology to access behavioral telehealth resources for court-involved individuals. The working group heard from stakeholders that physical infrastructure can be a barrier to further expansion of behavioral health telehealth services. Section 4 and 6 would create an exception to Class IC and Class ID mandatory minimums for possession with intent to deliver a controlled substance. Section, Section 6 would add an exception in a new section and Section 4 would amend 28-105 to add a reference to the new exception. The use of mandatory minimums have more than doubled in Nebraska since 2011. The working group discussed returning discretion to judges to allow them to determine the appropriate sentence for offenders with drug possession convictions, but no conviction for a violent offense. Section 7 would amend 28-416 to create a misdemeanor-level offense for less than a half a gram of a controlled substance. Drug possession is the leading offense-- drug possession was the leading offense at admission to Nebraska prisons in 2020. The working group discussed, discussed distinguishing individuals that possessed drugs for personal use and reserving state prison beds for offenders that are selling drugs. Section 8 would amend 28-507 to create a second and third degree burglary. Second degree burglary would involve breaking and entering into an occupied building other than a dwelling, and would be punishable as a Class III felony. Third degree burglary would involve breaking into an unoccupied building other than a dwelling and would be a Class IIIA felony. Burglary was the leading property offense admitted to prison in Nebraska in 2020.

Unlike other states, burglary-- Nebraska's burglary statute does not distinguish between different types of conduct that can lead to inconsistent sentences. Section 9 would amend 28-518 to provide that previous theft convictions used to enhance a second or third offense to a felony must have occurred no more than 10 years prior to the current offense. The working group discussed ways to limit the use of state prison resources for low-level theft. Section 12 would amend 29-2204 to prohibit flat and nearly flat sentences. For the listed sex crimes, the minimum sentence would be no more than 70 percent of the maximum sentence. For other crimes, the minimum could be no more than 50 percent of the maximum. The working group found that 27 percent of offenders released in 2020 served their entire sentence and were released without supervision. Over the last 10 years, half of jam outs have been the result of flat sentences. Under Nebraska law, the amount of time available for parole supervision is the gap between the minimum and maximum sentence. The working group also noted that flat and nearly flat sentences also limit the incentive for inmates to participate in programming while incarcerated. Sections 12, 13 and 14 would require courts to find specific aggravating factors before imposing consecutive sentences that are not otherwise mandatory. The aggravating factors listed in Section 14 are the offenses-- in 14 are the events this occurred on different days. The offenses involved the use of force, force or threat of serious bodily harm against separate victims. The offenses involved a sexual assault or one of the offenses especially heinous, atrocious, cruel or manifest exceptional depravity. The working group found the number of consecutive sentences has increased 5 percent over the last decade, and most are widely used for Class IV felonies and drug and property offenses. The working group found, or the data reflects, that 86 percent of consecutive sentences were discretionary, meaning they were not required to be imposed. Section 15 would amend 29-2221 to limit the habitual criminal enhancement. Under the change, the two previous convictions must be a sex offense or a violent offense. A conviction for a felony with the habitual criminal enhancement must receive a 10-year mandatory minimum. However, current law allows the enhancement to be applied to any felony, including property and drug possession. The working group discussed ways to prioritize prison beds for serious offenders that have been convicted of violent sex offenses. Section 16 would amend 29-2263 to require a notice of the process to set aside a conviction at sentencing upon satisfactory completion of probation. The working group heard various, various suggestions from stakeholders on how to make it easier for individuals that are completing supervision to successfully return to the workforce. Section 18 would create a pilot project to hire assistant probation officers. Assistant probation

officer, officers have limited power, but can provide additional support and supervision to probationers. The working group found that as the number of people on probation increases, additional supportive staff can provide a cost-effective way to improve successful case management. Section 19 would create a pilot project for probation or incentive. The program would allow a single probation district to develop policies and guidelines to provide tangible reward, rewards for probationers that successfully complete probation. The working group heard from stakeholders about the need for additional case management flexibility to reward positive behavior and motivate continued compliance, which, by the way, is one of the things that makes problem-solving courts so effective. Section 23 is a new section that would create the Criminal Justice Oversight Task Force to continue the work of the Working Group. Section 24 would amend 50-434 to sunset the Legislature's Committee on Justice Reinvestment Oversight on September 30, 2022. The working group acknowledged that it would be an ongoing process to continue to monitor the implementation of these reforms and identify potential reforms for the future. Sections 25, 26, 27, 28, 29 and 30 would amend the Rural Health Systems and Professional Incentive Act to include psychiatrists. Section 27 would amend 71-5663 to increase financial assistance to the full amount of student loans for people that devote a majority of their practice to serving the community supervision population. The working group identified gaps across the state in the availability of behavioral health treatment services. It is anticipated that expanding the Rural Health Systems and Professional Incentive Act will contribute to an expanded workforce and increase the availability of behavioral health services across the state. Section 32 would amend 83-1,100.02 to further align Nebraska's parole supervision process with best practices. Specifically, the language would add responsivity factors to the existing requirement to assess a parolee's risk factors and the individual needs. Section 30 would amend 83-1,110 to provide that a committed offender would be parole-eligible after serving half of the minimum term, but no less than two years before the mandatory discharge for a sentence over five years. This new requirement would not apply to offender serving a mandatory minimum until the offender has served all of the mandatory term. The working group found that 27 percent of offenders released in 2020 served their entire sentences and were released without supervision. Over the past 10 years, half of jam outs have been the result of flat sentences. Under Nebraska law, the amount of time available for parole supervision is the gap between the minimum and maximum sentence. The working group also noted that flat and nearly-flat sentences also limit the incentive for inmates to



participate in programming while incarcerated. This section would also allow good time to accumulate while a person is serving a mandatory minimum, but the reduction would not be applied until after the full mandatory minimum sentence has been served. Nebraska court decisions have interpreted this statute in such, such that the effective mandatory minimum is often longer than the mandatory-- the statutory mandatory minimum. This effective increase in the minimum can close the gap to the maximum and limit the amount of time for parole supervision. Section 34 would amend 83-1111, and Section 35 is a new section that would create a stream-- streamlined parole process. Section 35 would define qualified offender as a person serving an indeterminate sentence for a felony offense that does not involve sex or violence. Qualified offenders would be allowed to enter into a contract with a board of parole two years before their eligibility date. If the offender completes the required evaluations and programming, does not commit a Class I disciplinary offense, and otherwise complies with the terms of the contract, the Board of Parole would parole the offender on a date certain without a further hearing. The working group found that the Nebraska Board of Parole could operate more effectively for offenders with nonsex, nonviolent offenses. The working group also found that by establishing a date certain for the release of parolees, it would improve the availability to the parolee and services and parole supervision to prepare for the release and supervision. I will also add that it will allow the Board of Parole to focus on the high-need, high-- the high-need parolee and as they come through the process. Section 36 is a new section that would create geriatric, a geriatric parole option. A committed offender would not be eligible for geriatric parole consideration if they are serving a sentence for a Class I or a IA felony or serving a life sentence. An eligible offender could be considered for geriatric parole if they are over 70 and have served at least 10 years of their sentence. The working group discussed mechanisms used in many other states for parole of older inmates that no longer present a significant risk to public safety and are increasingly expensive to incarcerate due to high medical costs, but cannot be considered for parole due to their sentence structure. In 2015, the Department of Corrections found that the percentage of inmates 55 and over had increased 63 percent and health care costs had increased 13 percent over the previous five years. Two more sections. Section 36 would amend 83-1114 to clarify the factors the Board of Parole must consider when making a determination on whether to release an offender on parole. The working group found that the factors in the current statutes could be unclear, confusing, reluctant and inconsistent with best practices. Thirty-eight-- what Section 38 would create a pilot

project for establishing the Technical Violation Residential Housing Program. The program would provide a structured residential environment to provide counseling and services for parolees that have committed technical violations. Admissions to the department due to parole violations increased from 2011 to 2020, and the length of time served following a revocation increased 78 percent over that time. More than 40 percent of parole revocations were for technical violations. The working group identified a supportive housing program that could provide accountability and intensive support for technical violators without the need for full revocation back to prison. That's the summary of the bill. I'd just make a couple more comments that this is not a left-wing exercise. This isn't people feel sorry for the people in prison. This is about what direction the state is going to take with respect to Corrections. Are we going to try to build 200 beds a year, and assuming we can staff them, staff them and pay the operating costs? Or will we identify those people that we truly want in prison and how long those people need to remain in prison to effectively accomplish public safety purposes? I will add two more, two more things and then I will finish my opening. One is 95 percent of the people sent to the Department of Corrections will get out, 95 percent of them. So when we look at this, I look at it in this way: Are we safer because somebody spent 20 years instead of 19? Would we be better having someone serve 19 years and get services when they're released, transitional housing, substance-- a good substance abuse program? Or are we determined to have all 95 percent of the people sent to the Department of Corrections serve the full sentence? Are we safer? That's the question we have to answer, colleagues, in this bill, and in the debate that will follow. I guess that's all I have.

**PANSING BROOKS:** Thank you, Senator--

**LATHROP:** Happy to take questions.

**PANSING BROOKS:** Thank you, Senator Lathrop. Certainly a comprehensive and a huge yeoman's effort here. Senator Brandt.

**BRANDT:** Thank you, Vice Chair Pansing Brooks. Thank you, Senator Lathrop, for bringing the bill. You inadvertently skipped page 12, Sections 20 to 22. I don't know if you want to read that into the record, if that was your--

**LATHROP:** I will.

**BRANDT:** --if that was your intent.

**LATHROP:** Yes, thank you. But you're exactly right, I missed two sections. Section 20 would have amend 29-2281 to provide that partial payments made by defendants be applied to restitution before fines and costs. The working group heard from stakeholders that current practices do not adequately prioritize restitution to victims. 21 would amend 91-3603 to prohibit pretrial diversion guidelines from categorically excluding Class IV felonies if the person has not been previously convicted of a felony or completed felony diversion. The working group found that access to diversion programs varied widely across the state. The working group found that counties needed more support in establishing best practices in providing the necessary resources for effective diversion programs. Section 22 would amend 47-706 to require the department to report the number of notifications to the Department of Health and Human Services of an exiting inmate eligible for suspended Medicaid. This section would also require Department of Health and Human Services to report the number of Medicaid suspensions ended for exiting inmates. The working group heard several suggestions for stakeholders about improving reentry practices, including re-- improving access to healthcare and behavioral healthcare. The working group found that additional data should be gathered to identify potential areas for improvement in restarting Medicaid eligibility for exiting intimates. Thanks for bringing that up, Senator Brandt. Apologize for the oversight.

**PANSING BROOKS:** OK. Any additional questions?

**GEIST:** I have a quick one.

**PANSING BROOKS:** Yes, Senator Geist.

**GEIST:** Senator Lathrop, during our-- thank you, Vice Chair. During our time on the committee, you and I had an exchange about good time. And I just indicated that I prefer to have good time be earned. And you said that that was unconstitutional, that we earn good time. And yet on the mandatory minimum, they can earn good time while they're serving it. So how is that different than earning good time?

**LATHROP:** OK, first of all, I did not say it was unconstitutional. During Heineman's administration, Governor Heineman had a proposal to take us from the current good times process, which essentially is you get half of your sentence knocked off when you walk in the door and you can lose some of those credits. It was my understanding when we had a proposal before this Judiciary Committee in my previous service that-- it was a county attorney, frankly, that expressed concern that if you have earned good time, which is, you have to do something. His

proposal was you got to be getting programming. Well, part of the problem is they can't get the programming, so how do they earn it? The inmate would have a property interest in the good time and therefore be able to file a lawsuit because they're aggrieved. They thought they should have gotten something they didn't get, and now they can't get their earned good time. And in my conversations with a particular county attorney or deputy county attorney, I was told that earned good time, real true earned good time is something that just leads to an awful lot of litigation and a less preferred method.

**GEIST:** So in this case, though, that would be doing the same thing, correct?

**LATHROP:** No, it's not-- they're not earning the good time, they're being credited with good time.

**GEIST:** Oh.

**LATHROP:** But it's not a credit that they can apply to a mandatory minimum. It can be applied to what, whatever the balance is.

**GEIST:** Whatever is left after that.

**LATHROP:** Right. Oftentimes people who have a mandatory minimum will have other charges--

**GEIST:** Sure.

**LATHROP:** --and a, and a required consecutive sentence. And the good time, or the time spent during the mandatory minimum, would be applied to what's left of their sentence.

**GEIST:** So if what's left to their sentence is already cut in half, the earned good time would apply towards the half of the remaining sentence. Is that correct?

**LATHROP:** They would, the way you would calculate it is if somebody were to receive 20 to 10 and 5 of it is mandatory, you would-- your-- let me use a different example. Let's say a 30 to-- a 30 to 50. Your good time would be--

**GEIST:** After?

**LATHROP:** --applied to the entire period, but you can't get out sooner than your mandatory minimum. So you add the, the, the sum of the mandatory minimum and the lower number, find the midpoint, and that

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

would be their, that would be their good time release date. Unless it's inside the mandatory minimum, in which case they would not be able to get out early.

**GEIST:** OK, thank you.

**PANSING BROOKS:** Any other additional questions? I don't see any. I'm hoping your staying around for closing.

**LATHROP:** Oh yeah, absolutely.

**PANSING BROOKS:** Wonderful. Thank you.

**LATHROP:** Thank you.

**PANSING BROOKS:** And now we will start with proponents. Proponents. Welcome.

**TOM RILEY:** Good afternoon, Vice Chair Pansing Brooks, members of the committee. My name is Tom Riley, my last name, R-i-l-e-y. I'm Douglas County public defender, HO5 Civic Center in Omaha, and I'm here in support of LB920, representing the Nebraska Criminal Defense Attorneys Association and as well as our office. Obviously, this is an omnibus bill that had many tentacles, and in the three minutes, there's no way on Earth I can address all of these things. So let me just start by saying that the, the-- I was a member of that committee along with Senators McKinney, Geist and Lathrop. And it would appear to me that the overriding purpose was to try to deal with the overcrowding in prisons. How do we how do we deal with it? Do we build more prisons or do we do sentencing reform? Many of you that have been on this committee over the last years have probably heard me come down in support of bills that Senators Lathrop, Pansing Brooks and some others have sponsored with similar provisions, getting rid of mandatory minimums. Think along those lines. And at the risk of being somewhat redundant, I think the, the number of issues that are presented or the number of solutions that are presented in this bill go from probably low-hanging fruit that pretty much everyone in here will agree upon. And the things that as the working group CJI said, there was not a consensus on. So I'm sure you've all had an opportunity to read the report, and I'm going to be speaking more to the things that have not been reached on a consensus. The thing that struck me the most when the data was gathered, and by the way, the CJI group that did the data gathering did a phenomenal job. I've been on several of these committees over the last decades that we're dealing with the same problem. And the data, it's right in front of you. It's right there

and it's pretty clear. But the thing that struck me the most was that there's no increase in people coming in, but the population is going through the roof. And the reason, in my opinion, is mandatory minimums and the lack of a cap of how much a sentence, an indeterminate sentence can be. These 49 to 50, 79 to 80 sentences are asinine. They serve no purpose whatsoever other than pure punishment. I thought we had a prison that was a Department of Corrections. Well, let the Department of Corrections do the correcting. Instead of saying you have no chance for parole, you're never going to get out until you've jammed out. That is very bad policy. The thing that we should be looking at is, are there people in prison right now that don't belong there because they, they have not-- they're not eligible for parole because of that sentence that was imposed? This obviously takes away some discretion to, to the courts. I'm, I'm opposed to mandatory minimums because I like the fact that a judge should have some discretion. And just let me close by saying the difference is when a judge is imposing a sentence on someone as to whether probation or prison is appropriate, they're exercising discretion on all of the information they have in front of them at that time. I don't know of any judges that can see into the future and to tell what someone is going to be like after 10, 15 or 20 years in prison. And to say, I don't care, I'm going to make you do 50 years, is totally counterproductive. And this is the end result. Because that's-- when I started in '75, 1975, we didn't have these things. We had a cap, a one-third cap, as many of you know. And this bill only makes it a half and 70 percent. I wish it was lower, but we'll take what we can get.

**PANSING BROOKS:** Thank you.

**TOM RILEY:** Then I'll shut up.

**PANSING BROOKS:** Thank you, Mr. Riley. It's a really short time and I'm sorry, and you have a wealth of information.

**TOM RILEY:** I get it.

**PANSING BROOKS:** And I know a lot of people do, and unfortunately, we have to keep at a pace. But does someone have a question for Mr.-- yes, Senator McKinney.

**McKINNEY:** Thank you. Thank you, Mr. Riley, for your testimony. What do you say to those that are probably going to come up and say pretty much the sky is going to fall and this is bad for the state?

**TOM RILEY:** Well, I think I, I wrote an email, maybe you got a copy of on when we were talking about the final report. And what I had said is when I first started, the judges, if the penalty was one to 50, the maximum sentence you could get was 16 and two-thirds to 50, and Western civilization did not come to an end. I think what we need to do is recognize-- when I was on one of the other committees, I was talking about how these, these things-- we have to trust the parole board to ferret out the people who are ready for parole and those who aren't. And one of the senators that is no longer in the body at the meeting with the committee, similar to what we just had said, I don't trust the parole board. Well, then what, what's-- what are we doing here? We have, we have entities like the parole board that are out there to serve a function. And I'd like to think that they serve a function with public safety in mind, as well as what is best for the prisoner that is up for release. And these, these types of sentences are not the kind of sentences that are utilized in many states across the union. And I don't see too much-- you know, obviously there's lots of crime going on if you watch TV that every day there's a police officer getting killed or whatever. That's terrible. But we can't look at things by anecdote. And that's one of the things that always kind of makes me nervous is we legislate by anecdote because some horrible thing happened and we react knee-jerk. I can tell you over the, you know, 40-something years I've been here, the first 20 of which had this one-third rule, there was, there was no horrible problem that said, oh my God, we have to do this. As you know, when they changed the rule from one-third to no, no maximum-- no minimum at all, it was done surreptitiously. I've talked about that in the past. There was no Judiciary Committee hearing, there was no floor debate. It snuck in a bill that at least now we're having the debate.

**McKINNEY:** And I guess my last one for you. Do you think the philosophy of being tough on crime and saying no, no, no to reforms has worked?

**TOM RILEY:** Well, it sure doesn't appear to, to have worked, given the population numbers that we have and the data that CJI accumulated and that Senator Lathrop just iterated about the number of people are in jail on, you know, drug charges, who are more of a danger to themselves than they are to the community. Certainly there are people that belong in prison, and I'm not advocating here, here for some abdication of our role for public safety. But we've tried all of this tough on crime stuff, and here we are. It's time to look at the facts as they are presented, they're right in front of you. And it's time to act on them. Yeah, some of this is kind of tough stuff for, for the people that are tough on crime, want to be tough on crime. And I've heard Senator Lathrop say numerous that we have to be smart on crime,

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

not just tough on crime. And he's right. It's not just a catchphrase, it's true.

**PANSING BROOKS:** Thank you. Yes, Senator DeBoer.

**DeBOER:** Thank you. Thanks for your testimony. Thanks for being here. So the one-third rule, can you explain that, because I'm not sure that-- I want to make sure I understand it. So can you explain how the one-third rule operates, operated?

**TOM RILEY:** Operated, sure. There was-- the statute, the sentencing statute in Nebraska said that when you were imposing an indeterminate sentence, the maximum sentence could not, could not surpass one-third of the statutory maximum. So if it was a one to 20 years sentence, by statute, 6 and two-thirds to 20 would be the maximum that you could receive, which would mean you'd be eligible for parole on the 6 and two-third, your mandatory released on the 20. Similarly, on a one to 50, it would be 16 and two-thirds to 50. OK, so if, if and when I started, if a guy was charged with or convicted of a robbery, I believe at the time that was one to 50, the judge could, if he wanted the maximum, he could say: Your sentence is not less than 16 and two-thirds, no more than 50 years in prison. And then a good time law that was applicable at the time would, would determine their release eligibility and their mandatory release. What happened is through machinations of-- that I won't go totally into other than to say all that happened was there the amendment by interlineation that took out the, the sentence about not to exceed one-third of the statutory maximum. And all of a sudden we went from going to a sentencing for a robbery of 16 and two-thirds to 50, telling your client that's what you're facing, to saying you're facing possibly 49 or 50 or 50 to 50 because there's, there's no rule that tells the judge you can't go beyond the one-third, or in this bill, one-half or 70 percent, depending on what the nature of the offense. Does that answer the question.

**DeBOER:** Sort of. Let me see if I can get a little more out of that. You said that it would be a 50-year maximum sentence then they would have 16 and two-thirds or whatever as their--

**TOM RILEY:** Parole eligibility number.

**DeBOER:** Parole eligibility number. So that doesn't--

**TOM RILEY:** Minus the good-- plus the good time.

**DeBOER:** So plus the good time, so it would be eight and--



Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

**TOM RILEY:** Well, in those days, the good time law-- they have changed the good time law more times than God knows. If you look at the prison logs, different prisoners are under different good time laws. At that time, it wasn't 50 percent. So if you got a sentence of 10 to 20 back then, it wasn't 5 to 10. It was more like eight-- it was a higher percentage, though, when they changed, when they changed the, you know, the mandatory minimums-- I'm sorry, when the minimum sentence that you could get, the cap, 16 and two-thirds to 50. At that time, it wasn't 50 percent, it was something higher than 50 percent. But it wasn't-- you had to do day per day. I would say, and I'm going to ballpark this, if I had a client that got a 16 and two-thirds to 50, I would tell him he's probably going to be eligible for parole in about 11.

**DeBOER:** OK, so at that time, you have a judge who has a zero to 50, gives them the maximum he can give them, or she can give them. They end up in jail for 11 years before they come up for parole the first time. Is that right?

**TOM RILEY:** If you gave them 16 and two-thirds to 50, yeah.

**DeBOER:** Yeah. So they come up for parole there. That doesn't mean that they are paroled.

**TOM RILEY:** Oh, absolutely not.

**DeBOER:** So then at 16 and two-thirds, are they paroled?

**TOM RILEY:** No, no. The 50 number controls when they could-- have to be released. So all the, all at the low number does is tell you when you're eligible for parole. And if you don't get parole, you can, you can go back in front of them in whatever duration the parole board sets, a year, two years, whatever. So let's say on that example I gave, person is in their 11th year, 11 years, goes up to the parole board and they say, you're not ready. They come back at 13 years, oh, you're not ready. Come back in 17 years, oh, you're not ready. You could keep going for, for your hope to get out of parole until the parole board says you're ready, or you jam out on the number 50.

**DeBOER:** Yeah.

**TOM RILEY:** Which would have been back then, probably in the area of 38, 39.

**DeBOER:** Thirty-eight or 39 because of the good time.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

**TOM RILEY:** Yeah, and that's ballparking it, I don't have--

**DeBOER:** Because of the good time. Yeah.

**TOM RILEY:** Yeah.

**DeBOER:** But they could have, they could have continued to go until they've jammed out, or maybe they lose good time. Can they lose some of that good time or no?

**TOM RILEY:** Back then you could always lose good time.

**DeBOER:** Yeah, so they could go still 50 if they--

**TOM RILEY:** If you're a real troublemaker in prison.

**DeBOER:** Yeah.

**TOM RILEY:** You can-- they, those rules have changed again--

**DeBOER:** Yeah.

**TOM RILEY:** --over time, and I'm not an expert in that other than to know that you can, you can lose your good time.

**DeBOER:** OK. And the purpose of having that one-third rule was to create a large enough block of time in which the person was eligible for parole, but before they were jammed out so that they would have that incentive, arguably, so that they would become reformed or participate in their own rehabilitation?

**TOM RILEY:** Absolutely. That's part of it. There is an incentive to, to take whatever programming is available and to prepare yourself for release, as Senator Lathrop accurately stated. Even back then, 95 percent of people are getting out at some point in time. And some, some prisoners that were, you know, harder cases didn't, didn't want to do anything and they jammed out. But now, even if you want to do something, if you're getting 49 to 50, you're jamming out.

**DeBOER:** Yeah.

**TOM RILEY:** So, so by, by limiting the minimum number to one-half or even 70 percent, that says, OK, you have a chance for parole. OK? If you do what you're supposed to do it, if you don't commit a bunch of misconduct while you're, while you're in prison and get good time, you have a chance to get released before you turn 65. I mean, that's what a lot of these judges are doing, to be honest with you, getting a

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

19-year-old kid, saying, OK, I'm going to add up until till he's 65. So you're going to get a sentence where I'll release you when you're 65 or 70, because then you're harmless. So that's pretty sick.

**DeBOER:** As the, the public defender, you see quite a few people, maybe you see some repeat people that you've had before, that you've represented before?

**TOM RILEY:** Well, certainly there's a, there's an element of recidivism.

**DeBOER:** OK.

**TOM RILEY:** And to be honest with you, the people who have been in prison for some of the more serious crimes and get released are the least likely to recidivate.

**DeBOER:** And--

**TOM RILEY:** A lot of the people who have the drug problems and things like that who we keep putting them in this vicious cycle of, OK, staying in prison for a year or two with a drug problem, you don't get the programming, you get out and within, you know, two years, you're back using meth and you're back in prison and you get a couple more years.

**DeBOER:** So have you seen-- have you noticed, is there a, is there a greater chance that they're coming back to you if they've jammed out than if they were paroled?

**TOM RILEY:** If you're jammed out, you have no programming whatsoever. There's no parole, there's no nothing. I mean, we tried the post-release supervision thing and that, it turned into kind of, you ask any judge, they hate it. It was well-intended. It just didn't work. Had that, what LB605, I think it was back then. But like I said, I think we have to as a society, if we have a parole board, we have to trust them that they are going to do their work, do their homework and find out is this person someone who I can, in our opinion, safely release from prison? And is unlikely-- you're never going to bat a thousand, but is unlikely to commit another crime and have some supervision while out on first getting out of prison. They have reentry services. They have parole, maybe we need to spend more money on parole and probation than we do on edifice. I don't know what the plural of that is.

**DeBOER:** All right. Thank you.

**PANSING BROOKS:** I'll just-- I'm just going to add one second before-- thank you for talking and giving the explanation on the one-third rule, which then became the one-half. I've brought that bill every year since I got here, and it is definitely a cost-savings plan the way it was used before, and it was secretly and surreptitiously removed from the statute. So I appreciate that. It's, it's really important. The whole plan is to get the, to get them to the point of being parole-ready so that they could have-- take their programming and give incentive to be able to get out. And now when you jam out, there's no incentive whatsoever.

**TOM RILEY:** There are many, many people in prison that don't need to be there any longer--

**PANSING BROOKS:** Right.

**TOM RILEY:** --but they can't get out because they're not eligible for parole.

**PANSING BROOKS:** Yes. Thank you. Thank you for talking on that. Yes, Senator Geist.

**GEIST:** Thank you for your testimony. I have a couple of questions. One is that have you found in your experience that when we lower penalties for crimes, that crime decreases?

**TOM RILEY:** When we lower penalty for crimes, that crime decreases? I don't know that there's any correlation between the two. You know, I-- you know there are some basic premise is that I guess you have to accept to get there, and that is that people before they commit a criminal act, say, OK, I think if I do this and get caught, I'm going to get five years. And now the Legislature has made it two years, so I'm only risking two years. I, I don't buy into that. I would be a liar if I told you that I have a lot of research on that. I don't know--

**GEIST:** OK.

**TOM RILEY:** --the data on it. There probably a few people back here that could answer that question for you.

**GEIST:** I'll ask. And the other thing is, so you've, you've done this for a long time. Have you noticed a time in our state's past that we focused intensely on treatment, programming, reentry, things that help people be successful when they leave? Has there ever been a time that as a state, that's been our focus?

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

**TOM RILEY:** Not a primary focus, in my opinion. No.

**GEIST:** Thank you. Thank you.

**TOM RILEY:** I think now's the time.

**GEIST:** Yeah, I agree. Thank you.

**PANSING BROOKS:** Any-- anybody else. I guess I would just add on the, on the opposite side of that, have you seen that by increasing penalties, that the crime, that crime decreases?

**TOM RILEY:** I, I, I view the same answer. I don't think people say, I'm-- here's what's going to happen to me if I get caught.

**PANSING BROOKS:** Right.

**TOM RILEY:** I don't know that the data is out there, supports or doesn't support those premises. From my point of view, the answer is no.

**PANSING BROOKS:** Yeah. And and when we look at what other states are doing, like Texas and other states, by decreasing those crimes and by decreasing the penalties, what's happening?

**TOM RILEY:** Yeah, it's going down.

**PANSING BROOKS:** Yeah, it is going down.

**TOM RILEY:** Yep.

**PANSING BROOKS:** The other thing is there have been a lot of efforts in which I've been involved to try to get programming into the, into the prisons to help make sure that we are releasing prisoners who are more educated and capable and ready to participate in our communities. We have been working significantly in the past on all that, and it's all fallen on deaf ears. So I, I would just say yes, there have been efforts on this and the goal has been no, lock people up. Forget the programming, forget everything else. We're going to put people away and throw away the key and not let them out, not help them with post-supervision. I'm happy to work with Senator Geist on, on getting more supervision and programming and all of that. That's what I've been trying to work on since day one in this body.

**TOM RILEY:** Yeah, that's what-- we have to go all in. We can't do this--

**PANSING BROOKS:** Absolutely.

**TOM RILEY:** --peripheral stuff. That's, that's where-- that's when you say, oh, it doesn't work because we haven't really given all the resources that we need to give to it. And this is an opportunity to do so.

**PANSING BROOKS:** And that was part of the advantage of the one-third rule, which became the one-half rule is to let the people come up to their parole time and tell them they have to take this class. It gives them a carrot to get out. They become safer members of our society. They then are-- then they do have post-release supervision. All of that follows. But at this point, we just want to keep people in and, and throw away the key. So thank you for your time.

**TOM RILEY:** Hope, hope is a very, very motivating emotion.

**PANSING BROOKS:** It is motivating. Thank you for that. Thank you for your testimony all the time. Thank you.

**TOM RILEY:** Thank you.

**PANSING BROOKS:** OK, next proponent. Oh, did you have another question?

**GEIST:** No, go ahead.

**PANSING BROOKS:** OK, sorry. OK. Welcome.

**JOE NIGRO:** Thank you, Senator Pansing Brooks, members of the committee. I'm Joe Nigro, J-o-e N-i-g-r-o, I'm the Lancaster County Public Defender. I appear on behalf of my office and the Nebraska Criminal Defense Attorneys Association in support of LB920. I want to thank Senator Lathrop for introducing this bill. LB920 does many things which will improve the criminal justice system and reduce prison overcrowding, including strengthening problem-solving courts. I want to focus on two things. LB920 would make possession of a controlled substance other than marijuana weighing one half of a gram or less a misdemeanor. Currently, any amount is a felony. I've talked to this committee before about residue cases, residue is what's left in a pipe after you smoke it. You can't get high from it, but it gets charged as a felony. About half of our office's felony cases are drug cases. Eighty percent of our drug cases are possession cases. With this change, about half of our possession cases would become misdemeanors. I think the most common charge in our prison system is possession. I'm not positive about that. This change would reduce our prison population. The bigger issue is why should we treat a health

problem as a felony? The other thing this bill does, and I want to discuss, is habitual criminal. This allegation can be added when someone has twice before been sentenced to prison. It changes the penalty to 10 to 60 years, and the 10 years is a mandatory minimum. So you have to do 10 years before you order to earn good time. Prosecutors frequently threaten to add habitual criminal to compel pleas. If you're facing up to two years on a Class IV felony, three years on a IIIA, four years on a Class IV, you cannot risk 10 years before you even earn good-- earn good time. So even if you might have a good defense, you can't risk it, and people wind up pleading. I think there's currently about 146 people in prison serving habitual criminal sentences. Now, that may not be that many of the total, but as I said, there are many more people that are serving time who were just threatened with habitual criminal. But let's look at who's there on habitual criminal. Over half are people of color. Lancaster County has sent more people to prison than any other county over the last decade, and 56 percent of the people from Lancaster are people of color. From Douglas County, 21 out of 29 people are black. Scotts Bluff has sent the most people over the last five years, 14, and 78 percent are people of color. This proposal would limit the use of habitual criminal to violent offenses and a few others, including burglary. Fifteen people were sentenced with the habitual criminal last year, and as many as seven would not be eligible under this charge-- or under this change. This is a good idea. I urge the committee to advance LB920. It makes a lot more sense and is much less costly than building a prison. Because prison only makes people worse and, and trying to look at these other programs is a good idea. And I, I also have been an attorney long enough to have dealt with the one-third rule and some of these other things, so I'm happy to answer questions about any of those or the matters I have discussed. Thank you.

**PANSING BROOKS:** Thank you, Mr. Nigro. Any questions? Senator Geist.

**GEIST:** Of course I have a question. One of the concerns I have about the, the residue or whatever you want to call that, the half gram, is that our statutes don't really delineate the difference between fentanyl and other drugs as far as weight goes. Because a half a gram of fentanyl is like one 125 lethal doses. So, so that's a problem, correct?

**JOE NIGRO:** Well, fentanyl is dangerous.

**GEIST:** Yes.

**JOE NIGRO:** So--

**GEIST:** All drugs are dangerous.

**JOE NIGRO:** Yes, but some more than others, yeah. But I think that, you know, there-- I've been in, I've been here before on bills to make residue a misdemeanor, and we've had this discussion because obviously there's a difference between scraping residue out of a pipe that's meth and somebody finding some, some fentanyl in a baggie or something. And so certainly that definition, you know, that definition could be changed. A half a gram is a pretty small amount, but I also think that--

**GEIST:** But it's a big amount of fentanyl.

**JOE NIGRO:** But whether fentanyl is more dangerous than another substance, is, is making it a felony gonna cause people not to do fentanyl? And I don't think the answer is yes. I think people do drugs for various reasons. Many people have a biochemical predisposition towards addiction. People, I mean, we know with the opioid crisis that many people started doing opioids, I mean, maybe they had some injury, they started doing opioids and then they become tolerant and they, and then they need a greater amount--

**GEIST:** Right.

**JOE NIGRO:** --and they wind up doing street drugs.

**GEIST:** So let's just suppose that, that this passes and you have people who are addicts who now have a, have a misdemeanor as opposed to a felony. Does that decrease the person's likelihood of wanting to clear their record and therefore attend drug court?

**JOE NIGRO:** Well, obviously, you're going to have fewer people. I mean, if the charges are misdemeanors, there may be fewer in drug court. But given, I mean, I've been, as you know--

**GEIST:** And that's a program that helps them.

**JOE NIGRO:** --I've been quite involved in our drug courts. I don't know that--

**GEIST:** That helps people get better.



Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

**JOE NIGRO:** Oh, absolutely. But I don't know that we're going to decrease the number of people in drug court. There are a lot of people who can't get into drug court now for a variety of other reasons.

**GEIST:** But this would be a disincentive to go to drug court.

**JOE NIGRO:** Well, I--

**GEIST:** In my opinion. A disincentive.

**JOE NIGRO:** Yeah. Well, and, and, and if you were sitting here on the Appropriations Committee, I would say let's spend more money on treatment, because I really see that.

**GEIST:** But that is drug court.

**JOE NIGRO:** I mean, there are so-- but there are so many people in the system because of mental health and substance abuse. And if we adequately treated those things in the community, those people would never come in in the first place. When we're doing drug court, we're kind of at the back end. You're here now, you've got this serious problem.

**GEIST:** But often that is the impetus that gets someone low enough. You have to want treatment for treatment to work.

**JOE NIGRO:** Well.

**GEIST:** So often having that felony is the impetus to get someone to change their life.

**JOE NIGRO:** Yes, I just think in general, I think that we've made a mistake in treating what I consider a health problem in the criminal justice system. As long as it's illegal, I would rather have people in drug court than in prison.

**GEIST:** Yes.

**JOE NIGRO:** But I think in general, we've taken the wrong approach in how we deal with it. And I would so much rather we help these people in the community before they got in trouble.

**GEIST:** I agree. But that's all.

**JOE NIGRO:** And, and if, and if changing the bill so that we exempted fentanyl would cause you to be supportive--

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

**GEIST:** It would not.

**JOE NIGRO:** --I could live with that.

**GEIST:** It would not.

**JOE NIGRO:** But I'm just, you know, because I've heard that argument before on residue, and that always is the drug that's pointed to. And I think--

**GEIST:** Well.

**JOE NIGRO:** --OK, well, then let's, let's treat that differently. But I don't think it's--

**GEIST:** But it would fall under this and it would fall-- currently, if this passes this session, it would fall under that law and then it would therefore--

**JOE NIGRO:** Sure.

**GEIST:** --be a dangerous amount of fentanyl.

**JOE NIGRO:** I just think--

**GEIST:** Compared to what you're comparing everything else.

**JOE NIGRO:** Yeah, I just don't think it's going to change the people who wind up doing opioids or opiates.

**GEIST:** It may not, but that's all I have. I don't--

**JOE NIGRO:** Sure.

**GEIST:** --need to keep belaboring the point. Thank you.

**JOE NIGRO:** Sure. Well, and I appreciate your support for problem-solving courts.

**GEIST:** Sure. That's huge.

**JOE NIGRO:** And hopefully, we'll get a mental health court in Lancaster County at some point.

**PANSING BROOKS:** Thank you, Senator Geist. Anybody else have a question? Well, thank you for coming--

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

**JOE NIGRO:** You're welcome. Thank you.

**PANSING BROOKS:** --Mr. Nigro. Next proponent. Welcome.

**GREG HOLLOWAY:** Good afternoon.

**PANSING BROOKS:** Good afternoon.

**GREG HOLLOWAY:** I am Greg Holloway, G-r-e-g H-o-l-l-o-w-a-y, and I'm here representing the Nebraska Veterans Council. I'm the duly appointed spokesman for the Nebraska Veterans Council, which is eight veterans organizations and the County Veterans Service Officers Association. Also, I am a member of the veterans boards as a mentor, and I feel wholeheartedly about all of this. Nebraska Veterans Council supports this bill because it will enhance the ability for the veterans in the state of Nebraska that fall into the criminal justice system, those that are incar-- incarcerated already and those that could be incarcerated. So my point is that we do support this bill and we think that we should do everything we can, because you're not only when you're assisting a person, getting their life back on track and to better, you're helping their dependents, their spouses, their dependents, their children and their families to get back on track and be able to be a good-- good thing for, for everybody. My, my veteran that I'd sponsored at the veterans court was looking at a long time in jail because selling drugs was easy money, he told me, until he got caught. You know, so he went through the veterans court, now he's educated at the university and working at the job that he wants to do and is good at, and is married and living in a very productive life. So I'm very proud of him. So please get this going and get it done. I would love to see more enhancement in the veterans courts. Be honest with you, in, in all these problem-solving courts will assist everybody. That's really all I have to say. So I'll keep it short.

**PANSING BROOKS:** Thank you, Mr. Holloway, and thank you for your service and for your service on the veterans courts and the Veterans Council. It's wonderful to have you here and also to hear that story. It's an important one to tell. So thank you for that. Any, any questions from anybody? No? We're grateful you came. Thank you very much.

**GREG HOLLOWAY:** I'll save some time.

**PANSING BROOKS:** Thank you very much. Next proponent. Welcome.

**ANNETTE DUBAS:** Vice Chair Pansing Brooks and members of the Judiciary Committee, my name is Annette Dubas, A-n-n-e-t-t-e D-u-b-a-s, and I'm

the executive director for the Nebraska Association of Behavioral Health Organizations. We are a statewide organization advocating for behavioral health providers, hospitals, regional behavioral health authorities and consumers. We are testifying in support of LB920. Specifically, we support the increase in education for stakeholders about young people to enhance the understanding of brain development, especially as it's related to their offenses; improving reentry practices, especially access to resources and completion of Medicaid enrollment; increasing incentives for students to pursue behavioral health careers, and especially to serve in provider shortage areas; using the courts as access centers for virtual behavioral health treatment; and finally, the expansion of problem-solving courts. We believe the expansion of problem-solving courts can go a long way in helping people be proactive in addressing their issues and receiving the services that will help, help them lead healthy and productive lives. A number of our members are involved with different problem-solving courts and offer a wide range of services such as classes in behavior change, employment services, parenting, as well as treatment for diagnosed mental health and substance use disorders such as communities support, short-term residential and outpatient. They see the benefits of these focused and specialized courts, and we know a very high percentage of inmates have a diagnosed mental illness or substance use disorders. So why not try to have them-- get them help sooner and provide them effective treatments? Ensuring that there are adequate services and providers across the state will be important to the success rate of these courts. Telehealth can be a valuable tool, and using court facilities would make these services more readily accessible while maximizing the current workforce. NABHO is also prioritizing the adoption of certified community behavioral health clinics as a model of service delivery. This model fits hand in glove with corrections reform. We currently have three of these grant-funded CCBHCs in Nebraska, two in Lincoln and one in Omaha, with the hopes of getting an additional one in Hastings. These clinics are required to provide nine types of services, with the emphasis on 24-hour crisis care and the use of evidence-based practices. These clinics are also required to collaborate with law enforcement and other criminal justice partners. Across the nation, 430 of these CCBHCs-- out of the 430 CCBHCs, 76 percent of them are involved with problem-solving courts, 70 percent provide prerelease screening and referrals to ensure continuity of care, and 63 percent have enhanced outreach and access to individuals who have legal system involvement and are at risk for being involved with the system. NABHO believes that by adopting this game-changing model of whole person care, we can support and bring improvement to many of the issues that are identified in

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

LB920, and we stand ready to help Senator Lathrop and this committee make our correctional system one that is truly does offer rehabilitation, can reduce recidivism and offer hope. As Mr. Riley said, hope is the greatest incentivizer. And we believe that these types of services can take us that direction. I'd be happy to answer any questions you may have.

**PANSING BROOKS:** Thank you, Senator Dubas, for coming. Anybody have a question? I don't see any. Thank you.

**ANNETTE DUBAS:** Part of that handout that I gave you is from a recent National Council report on the interaction with CCBHCs in the judicial system.

**PANSING BROOKS:** Thank you very much. We'll look at it. Next proponent. Welcome.

**KENNETH ACKERMAN:** Thank you. Good afternoon, Senator Lathrop and Senator Pansing Brooks, committee members. My name is Kenneth Ackerman, K-e-n-n-e-t-h A-c-k-e-r-m-a-n. I'm part of the Nebraska Criminal Justice Reinvestment Working Group as a reentry service provider. This is a study-- this is the foundation of bill, LB920. Can I ask, is this in the record or could I put this in the record as part of--

**PANSING BROOKS:** You're passing it out to us, so it will be part of the record. Thank you.

**KENNETH ACKERMAN:** Thank you. OK. I've testified in the-- I have testified in the past. I am a veteran and my wife and I work with people who enter or leave the prison system. I also work with Nebraskans Unafraid and the Reentry Alliance of Nebraska. We have learned the most significant challenge for returning citizens is readjusting to life with all the new challenges of community living. After providing everything needed in prison for five, 10, maybe 20 years, reemergence and finding acceptance outside can be overwhelming. Learning how to use cell phones, apply for a job on a computer, shopping, banking, driver's license, clothes, preparation of meals, toiletries, adjusting to the higher prices of everything. There are also challenges for new job skills to succeed. A transition program in prison for the final number of years of incarceration will significantly increase the success of the new life for a responsible citizen. We can address this transition by opening more community prisons like the Work Ethic Group in McCook, or work release in Omaha. Open them in the communities where the offenders will be released.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

They can be refurbished buildings, including meeting rooms in old spaces like hotels to save construction and managerial costs. Offer recovery, counseling and faith programs. Job training and education courses will be given-- will give those in the community a way to interact with their graduating citizens and future community residents. Please include those in the registry as they also have proven success in following the [INAUDIBLE] risk registry regulations, and have the greatest need for creating community connections. Of course, the quickest way to solve the prison overcrowding would be to eliminate all mandatory minimum sentences, allowing judges to evaluate each; also establishing drug treatment facilities instead of prison terms, saving money and providing the most successful way to treat an addiction. So I stand beside Senator Patty San-- Pansing Brooks and all of the things she's tried to do to move in that direction. But as Senator Lathrop pointed out, 95 percent of the people are coming out. I should mention the five percent are not lifetime people, they just spend their life there and die in prison.

**PANSING BROOKS:** OK. Thank you, Mr. Ackerman. Any questions for Mr. Ackerman? I'm sorry, I thought you were having that, that report passed out, but I do think it's on the legislative website. Yes, it is on our legislative--

**KENNETH ACKERMAN:** I am a member of the committee that did this.

**PANSING BROOKS:** It is, yes. It's on our legislative website. Thank you.

**KENNETH ACKERMAN:** And Senator Lathrop did a wonderful job following the recommendations.

**PANSING BROOKS:** Wonderful. Thank you. Any questions for Mr. Ackerman? I don't see any. Thank you for coming today. OK, next proponent. Welcome.

**JUDY KING:** My name is Judy King, and I'm a proponent of Senator, Senator Lathrop's bill, and spelled J-u-d-y K-i-n-g. And my husband is Steve King, and he worked for the Department of Corrections-- Correctional Services for 30 years. As a planning research and accreditation director, he has worked with multiple agencies and other individuals and outside sources with Legislature and senators to reduce overcrowding studies. His experience has shown him that the state has repeatedly wrestled with the problem of prison overcrowding and growth through the decades. Three decades of studies and research has repeatedly been shown to the state-- that the state cannot build

its way out of overcrowding crisis. The state must seek other alternatives to ease growth, and Senator Lathrop's bill is a step in the right direction, along with Senator McKinney's bill. The state-- let's see. With the building of a prison becoming a twinkle in the eye of the Governor, we need to stop the spending taxpayer-- we need to stop spending taxpayer money. There should not be a prison built unless the State Legislature shows initiative in saving the taxpayers money by showing initiative and passing LB920 out of the committee. My husband being in the corrections for so long, he is familiar with the bill-- with in 1988, professors Dennis Hoffman and Vincent J. Webb published a study at the Public Policy Center University of Nebraska Research, UNO, titled Prison Overcrowding in Nebraska: The Feasibility of Intensive Supervision Probation. That's 1988. I'm going to skip with the rest of this, but it tells about the study. What because-- what became of the recommendations from the Hoffman and Webb study and the other studies that followed during 1990, the 2000s? Each decade produced a study. Each decade a governor had corrections work with an outside criminal justice organization to produce a study published report, make recommendations. What happened in the past? This is what happened. The governor failed to lead. Legislators, not any of you, because you're doing the work, failed to do their work. It was ultimately always easier to be tough on crime, but never smart on crime. So now Nebraska has the most crowded system in the nation. Our system is ripe for failure. Why? Because we refused to do what is necessary. We pass the buck to the let the next governor or legislator worry about, you know, worry about it. Screw the taxpayer. Tell them they are tough on crime, build another prison. That's just what-- because we can fill it, but we can't staff it. Screw the taxpayer. We do not need, nor do we-- can we afford a new prison. It's not the answer. Pass LB290 [SIC-- LB920]. Make sure the necessary reforms are funded. Other states like Texas have been far worse off than Nebraska, yet the change sentence-- they change sentencing laws, deleted mandatory sentencing laws, made real penal reform throughout their system, and they did it while closing facilities. Texas did it. If they can do it, so can we. And I just want to thank everybody that's working on this because my husband normally doesn't cuss. But when he knew this bill was coming up again, he's grateful to everything you're doing to get it passed, 30 years of dealing with this so.

**PANSING BROOKS:** Thank you, Ms. King. Anybody have any questions for Ms. King? No, thank you.

**JUDY KING:** Thanks.

**PANSING BROOKS:** OK, next, proponent.

**CAROL DENNISON:** Good afternoon, Senator Lathrop and committee. I'm Carol Dennison, C-a-r-o-l D-e-n-n-i-s-o-n, and I am representing the League of Women Voters of Nebraska. The League of Women Voters of Nebraska, with appreciation for the wide-reaching fiscal and public safety impact of LB920 supports this effort to decrease the prison custody population, which is currently 150 percent of capacity. We support a correctional system that provides realistic and humane treatment of accused and sentenced offenders, as well as protection of the community. We view this legislation and other related smart justice bills as an opportunity to change our correctional system from one of prison overcrowding, chronic recidivism, unsafe conditions for prisoners and staff and poor return on investment for Nebraskans' tax dollars to one that takes a comprehensive approach to reducing the root causes of excessive incarceration. A group of 200 police chiefs, prosecutors and sheriffs commented: We cannot incarcerate our way to safety. In 2015, Nebraska passed LB605 to reduce prison overcrowding. But it has fallen far short of reduction predict-- projections primarily because sentence reform recommendations for nonviolent crimes weren't adopted. While prosecutors complained and successfully discouraged some changes in sentencing, most citizens, judges and legislators can agree the ultimate goals are to reduce crime, incarceration, recidivism. The 2015 bill didn't go far enough and overcrowding worsened. Now is the time to make those necessary changes to significantly reduce overcrowding while maintaining public safety like many states have done before us. According to a 2018 Brennan Center report, 27 states have successfully reduced prison populations and crime rates in the last decade. Last year in Chicago, 3,590 individuals were reported to have successfully graduated from felony diversion programs. In Durham County, North Carolina, the county's total jail and prison population was decreased by 40 percent without causing an increase in arrests or failures to appear in court. From 2014 to 2019, Utah reduced 1,200 from their prison population, but saw a dramatic increase in drug crimes in 2020. Much like us. Without sufficient state support for reform to probation or for parole and diversion for low-level offenders, prison populations continue to grow. Reforms need to allow the State Parole Board to assess which inmates can be safely released early based on current behavior and data, rather than enforce mandatory minimums and consecutive sentences given many years prior. A UNL thesis on the topic of Nebraska's mandatory minimum penalties compared to Texas, California and Alabama offers several alternative reforms. For example, the author recommends ridding our penal code of mandatory minimums, opting to rely on judicial discretion instead. The use of mandatory minimums and consecutive sentences have contributed to 35 percent longer stays in



Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

prison since 2011. The example outlined in the World-Herald, January 9, 2022, demonstrates the human, community and fiscal costs. An 18-year-old with mandatory minimum consecutive sentences will serve 27.5 years before being eligible for parole. At \$40,000 annually per inmate, the cost is \$1.1 million while preventing rehabilitated reentry into the community, his family and the workforce prior to age 45. This is a cost--

**PANSING BROOKS:** Ms. Dennison, could you just wrap up quickly?

**CAROL DENNISON:** --too great.

**PANSING BROOKS:** Thank you.

**CAROL DENNISON:** I'm done. Yes. LB920 is a comprehensive approach to reforming corrections, reducing our prison population. We need an all-fronts commitment to make meaningful and long-lasting differences in our state.

**PANSING BROOKS:** Thank you.

**CAROL DENNISON:** Please advance this bill.

**PANSING BROOKS:** We just sorry we have to keep to our time limit so. Too many people. Any questions for Ms. Dennison? Seeing none, thank you for coming today. Next proponent. And I'm sorry, we do have to keep people at the time limit, too many people in here that want to speak tonight-- today. Thank you. Welcome.

**CARMEN BUNDE:** Good afternoon and thank you, Senator Pansing Brooks and Senator Lathrop and the Judiciary Committee. My name is Carmen Bunde, C-a-r-m-e-n B-u-n-d-e. I am a proponent of LB920. And without going into data, I will say from a human perspective, I think it is most important that we look at people, offenders and inmates as humans and not just as numbers. And there was something that Senator Geist brought up not too long ago and you said that you wanted to help motivate people with regard to a certain amount of drug possession, you wanted to motivate them to be able to get help by considering it a felony versus a misdemeanor. And it was-- your question was whether a felony would be more motivating to get people to show up versus a misdemeanor--

**GEIST:** To drug court.

**CARMEN BUNDE:** To drug court. I don't know if you have data on that. I do not. But from a human perspective, I will say a really brief story.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

My 19-year-old son in college with his car, through a series of dumb events, broke the arm to a gate to a parking lot. I called a friend who is an attorney because turns out he didn't turn it in himself, and he got a citation a month later for leaving the scene of property damage. Now I'm suddenly in the system trying to figure out what does this mean? The first thing that I didn't know should scare me, but did once I heard it from the attorney with relief, he said, well, the good news is there's no mandatory minimum. My 19-year-old son didn't think that the maximum \$1,000 and six months in jail or potential minimum, a misdemeanor or something else, was going to be the determinant on his behavior. He made a dumb mistake, and he's paying financially for that and perhaps otherwise. So when I look at humans who have drug possession charges, I think we all can agree that there is usually past or current trauma happening or has happened that has caused drug use. So prior to getting them into a very costly court system, and certainly before you get them with a scarlet letter of a felony on their back, if you want them to get well, we need to provide them supports before they end up into the courts. And once they have a felony, there is much less hope and there is much less ability to reform their life. And I believe Mr. Riley said, hope is powerful. And I would like to prevent people from getting felonies in order to help them have more hope to do better and get on a better path. Thank you very much.

**PANSING BROOKS:** OK, thank you, Ms. Bunde. Do you have any questions? Anybody? And just it's, it's difficult to address the senator specifically and so hopefully we're addressing everybody on that. So thank you. OK, welcome the next proponent.

**TEELA MICKLES:** Good afternoon--

**PANSING BROOKS:** Welcome.

**TEELA MICKLES:** --everyone. My name is Teela Mickles, and I am the founder and CEO for Compassion in Action, and I have been working with this pop-- oh, Teela, T-e-e-l-a, Mickles, M as in Mary-i-c-k-l-e-s. I've been working with this population for-- since 1994, and I too am here to put some flesh and bone and heart on the individuals that we're speaking of. And I would just read my letter since I'm so short on time. And then all the information that you have, including research from University of Nebraska Medical Center, that they did on our program and also a program that I do, "Ready or Not, Here They Come" and showing the face of the inmate. We all-- we all started as babies. Greetings. The citizens of the state of Nebraska are mindful of the desperate need for change in the Department of Corrections with

regard to the above caption and the above caption is the Senator Lathrop's bill, as well as others that are going to be addressing our people. Many issues pertaining to the confined population in Nebraska are outdated, not productive and have been ignored over several decades. Now, the matter calls for immediate change to seriously overcrowded facilities and inadequate staffing. The confined residents and their families suffer the loss of visits, which are vital for the substantial-- for the stability of family relationships. In addition, communication from the outside inspires and encourages residents to preserve-- to persevere in their current environment, which we know nothing about because we don't live there. Compassion in Action has been actively serving this population since 1994 and observed the continual negative cycles for almost three generations. We believe with more community awareness and involvement, significant improvements and changes can be made to benefit our state. The above mentioned proposed bills represent the voice of citizens regarding important issues that warrant immediate action. Please hear each one of them and keep the matters up front and visible for substantial change in our system. We are all too familiar with the astronomical cost for housing residents in the Nebraska correctional facilities, from four-- \$40,000 to \$60,000 per year. The \$60,000 is for the so-called criminal people higher, high maintenance, a very substantial scholarship for any university. Currently, the recidivism rate for Nebraska is an average of 30 percent, with drug crimes, 62 percent; felonies, 74 percent; and property crimes, 66 percent. Each bill being presented could impact those high percentages and benefit our economy. One of the percentages not mentioned in the above is the life sentence servers, who in Nebraska are considered the forgotten lifers. There are 114 men and women serving life who are sentenced at a young age and would not be a threat to society if they were considered for parole and released. The recidivism rate for released life sentence servers is three percent, and when given the opportunity to reenter society, they become productive citizens and do not reoffend. Nebraska has a variety of community agencies working effectively with this population for the successful transition back into society, saving millions of taxpayers' dollars. We don't need another prison when we have the capability to reduce the population in our present facilities.

**PANSING BROOKS:** Ms. Mickles, we need you to summarize. Thank you.

**TEELA MICKLES:** OK, any questions?

**PANSING BROOKS:** Does anyone have a question? Yes, Senator McKinney.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

**McKINNEY:** Thank you. Thank you, Ms. Mickles, for coming down and providing your testimony. I have a question. I recently became aware of a study that was done by the, by Harvard University and it tracked the economic and social outcomes of a cohort of people born between 1978 in 1981 and were aged 29 to 32 at the time of the 2010 census. In this study, it shows that in some north, north Omaha census tracts more than 20 percent of that cohort that grew up in the tract or incarcerated by the age of 2010. The rates are higher than any seen in Watts or other census tracts in south Los Angeles. The four tracts at 20 percent or above run between Bedford and Ames, 16th to 40th, and from Ames to Norfolk, 20th and 30th. Does that surprise you?

**TEELA MICKLES:** No, that does not surprise me. I am a native of Omaha. I've been there all my 73 years and that surprised me not at all.

**McKINNEY:** Thank you.

**PANSING BROOKS:** Any other questions for Ms. Mickles. This, I'm pleased to see this book that I understand you helped produce, and I'll be looking at it carefully. Thank you for that.

**TEELA MICKLES:** Thank you so much.

**PANSING BROOKS:** I see no other questions, thank you. Next proponent. Welcome.

**JASMINE HARRIS:** Hello. Double-masked. Hello, Senator Pansing Brooks, Senator Lathrop, members of the Judiciary Committee. My name is Jasmine Harris, J-a-s-m-i-n-e H-a-r-r-i-s, I'm the director of public policy and advocacy with RISE, and I'm here today asking that this testimony is on record in support of LB920. RISE is the largest nonprofit organization in Nebraska, focused solely on rehabilitative programming in prisons and reentry support. At RISE, transformation starts prerelease and continuous post-release. Our inside out model brings-- bridges incarceration to the community and considers all the critical steps in that journey. We prepare and train people for each phase through intensive character development, employment readiness, job creation through entrepreneurship, family programming and case management. We've grown. We want to thank Senator Lathrop for introducing this bill, Senators Geist and McKinney for serving on the workgroup, CJI, for coming in and doing this and allowing us to create space for people who have been impacted by the system and justice-involved so that their voices were heard in this process. There was a lot in this bill, so my testimony is going to focus on the sections that have to do with parole. We support all opportunities

that allow more people to have the opportunity to parole. As we provide a reentry case management services to individuals that graduate our program, we'd begin about a year prior to their release working on their reentry plan, which includes housing, employment, medical and behavioral health care, and even preparing them to appear in front of the parole board. We'd rather see these opportunities available for more of our participants because the more reentry preparedness that they have, the likelihood of success increases. We also attend parole hearings so we can see firsthand the interaction that they have with the parole board, hear any reasons for revocation of parole. Creating a streamlined parole contract process and changing the guidelines to focus on more concrete objectives would help ensure more people would have shown-- that have shown great strides have that access and are granted parole versus just on some subjectivity from a parole board member. We also support the process for creating geriatric parole. Out of the members that we serve, our participants, about five percent of them are 60-plus years old. So we see them, we see the great strides that they have to become rehabilitated, and they bring such wealth of knowledge and insight to the younger participants in our group. And we believe that they should have access to that opportunity to parole as well. We also support the creation of the pilot for a halfway back house, if you will, for people who have technical violations. The report says that 40 percent of individuals that go back are on technical violations, and that trend is true for our individuals as well. A lot of that has to do with mental health and substance use, so we'd rather see them go back to somewhere where they can actually get help versus being reincarcerated. So we support LB920. We stand at the ready and are here to serve our population of people and ask that you advance this on to General File. Here for any questions.

**PANSING BROOKS:** Thank you, Ms. Harris. Any questions for Ms. Harris today? Yes, Senator McKinney.

**McKINNEY:** Thank you, Senator Pansing Brooks. And thank you, Ms. Harris, for your testimony. Kind of to follow up on what I was asking Ms. Mickles, would it surprise you that Omaha, which is in Douglas County, had the eleventh highest black incarceration rate in the nation's top largest metro area based on a race-based incarceration rate?

**JASMINE HARRIS:** No, just like Ms. Mickles, I'm born and raised in Omaha in those tracts that you have said. So I've witnessed it and it doesn't surprise me.

**McKINNEY:** Thank you.

**PANSING BROOKS:** Thank you. OK. Senator DeBoer.

**DeBOER:** I've heard this a couple of times, and I just, I wondered if you could clarify for me. I think you probably know the answer to this question, what a technical parole violation is.

**JASMINE HARRIS:** Those are things. There's no definition, but those are things that people would not normally be arrested for or create a new law violation. So it could be things of maybe being in a jurisdiction that they weren't supposed to be in. So if someone didn't know that they weren't supposed to cross the bridge to go to Council Bluffs and they were technically violated on crossing the bridge and going to Council Bluffs versus just staying in Omaha, that could be considered a technical violation. We've had stories of an individual who went to the pumpkin patch with their daughter, that was considered a technical violation for them. So those are things that people can technically be arrested on for and charged.

**DeBOER:** OK, thank you.

**PANSING BROOKS:** Thank you, Ms. Harris. I don't see any other questions.

**JASMINE HARRIS:** Thank you all.

**PANSING BROOKS:** Thank you for coming. Next, proponent, please. OK, welcome.

**RILEY COLWELL:** Thank you.

**PANSING BROOKS:** Welcome.

**RILEY COLWELL:** Thank you. Thank you. Good afternoon, members of the committee, Vice Chair, Senator, Ms. Brooks and Mr. Lathrop. My name is Riley Colwell, R-i-l-e-y C-o-l-w-e-l-l, I am a deputy public defender in Scotts Bluff County, Nebraska, and I am here on behalf of the public defender's office in Scotts Bluff County, as well as the Nebraska Criminal Defense Attorneys Association in support of the proposed bill, LB920, particularly focused on the habitual criminal enhancement outlined in Section 15 of the proposed bill in regard to the quote unquote covered felonies. I've provided the members with an article from the Lincoln Journal Star dated December 6 of 2021. That article outlines the habitual criminal statute statistics around the state of Nebraska and Scotts Bluff County is highlighted in that

article. Scotts Bluff County has approximately 37,000 people in the county. I have used a reference point of Hall County as well, which has approximately 60,000 people, so the article outlines that Hall County from 2011 to 2020 had convicted six people of habitual criminal statute in that 10-year period, whereas Scotts Bluff County has actually convicted 19 people of habitual criminal in that same 10-year period, despite 20,000 people less populated in that, in that county. You compare it to Douglas County and Lancaster County, which of course by far the most populous counties in the state of Nebraska, and Scotts Bluff comes in third behind those two counties. There is additional components of the bill, the misdemeanor of drug and narcotics possession, as has been outlined by some of the previous speakers. Those types of charges are used, and I would say almost on a regular basis in Scotts Bluff County. I am currently representing a client with 0.3365 grams of methamphetamine, and he was just convicted at trial of possessing that amount with the habitual criminal and is set for sentencing in the next coming months. So the prosecutor has left the habitual criminal on 0.3365 grams of methamphetamine and has sought to put that individual in prison for 10 years. He does have prior offenses, of course, that is part of the habitual criminal. But I've seen newspaper articles around the state, northeastern part of the state there was an individual who is convicted in federal court of Iowa for dealing three pounds of methamphetamine. And he was, he was sentenced to 10 years of federal prison and may actually do less time than my client. And my client, that's about one-fourth-- that's 4,000 times approximately what my client was convicted of for possessing. So I am here on behalf of Scotts Bluff County public defender's office in support of LB920, and I do hope that this committee does advance LB920. Thank you.

**PANSING BROOKS:** OK, Mr. Colwell, thank you for your time. Senator Brandt.

**BRANDT:** Thank you, Vice Chair Brooks. Thank you, Mr. Colwell, for your long drive today.

**RILEY COLWELL:** Yes, sir.

**BRANDT:** You can enlighten me. If, if that were the case, is there a way to move from state court to federal court? Do you have any options if the federal charges would be less than the state charges?

**RILEY COLWELL:** I do not believe so. The, the proposal, I believe, would just be for the state. That was just for sheer example, based on quantity. So that individual was convicted in a federal court, which

of course takes precedence over state court. And he had been convicted of dealing three pounds of methamphetamine and was given a 10-year sentence for that conviction. And just in comparison to my client with 0.3365 grams, so approximately one-third of one gram of methamphetamines, just for comparison to that.

**BRANDT:** In your experience, are there many situations where the state has higher penalties than the feds do?

**RILEY COLWELL:** Oh, not in my experience.

**BRANDT:** So that would be an unusual circumstance?

**RILEY COLWELL:** Well, I just don't have any experience in federal courts. So my, my experience is strictly in state courts. I have served as a deputy county attorney in the past as well. That was in a northeastern county, Dakota County, Nebraska. So I've served in-- as a prosecutor up there, but the entirety of my experience is only in state court--

**BRANDT:** All right.

**RILEY COLWELL:** --Senator.

**BRANDT:** Thank you.

**RILEY COLWELL:** Yes, sir.

**PANSING BROOKS:** Thank you, Mr. Colwell. Any other questions? Senator McKinney.

**TOM RILEY:** Thank you. Mr. Colwell, I'm curious, why do you think there's disparities in Lancaster, Douglas and Scott Bluffs between white defendants and defendant of color?

**RILEY COLWELL:** That's a great question, Senator McKinney. I believe part of it is, is old law as well. And what I mean by that is an old simple possession case where a person might have been convicted of possessing methamphetamine, say, in 2015, that individual might have gotten a prison sentence back then. So that's why I refer to that as old law. And I do believe in older times and even in today's day and age that people of color can be punished more harshly. And that seems to be the case, as outlined in the article, where 14 people in Scotts Bluff County have been convicted of the habitual criminal statute since 2016 and 78 percent of those 14 people were people of color,



despite the fact that Scotts Bluff County consists of about 87 percent Caucasian population.

**McKINNEY:** Thank you.

**RILEY COLWELL:** Yes, sir.

**PANSING BROOKS:** Thank you, Senator McKinney. Senator DeBoer.

**DeBOER:** Thank you, Vice Chair Pansing Brooks. Thank you for being here, yeah, for the long drive.

**RILEY COLWELL:** Yeah.

**DeBOER:** So you have served both in a prosecutorial and in a defense attorney capacity?

**RILEY COLWELL:** Yes, ma'am.

**DeBOER:** So when we're talking about the habitual criminal statute, when you were in the prosecutorial side, did you have any interactions with that?

**RILEY COLWELL:** No, absolutely not. And the county I was in, actually, I don't believe, utilized the habitual criminal. They-- and what I mean by that is they might charge it initially, but they would not convict a person with the habitual criminal still on there. And the-- in the materials from the Lincoln Journal Star outlines there's actually 18 counties in the state of Nebraska that convicted three or less people on the habitual criminal statute over that 10-year period. So to me, that shows that there are counties that don't even utilize the habitual criminal. And when I was a prosecutor in the northeastern part of the state, it seemed to be the office policy that they did not convict people of the habitual criminal in that office.

**DeBOER:** So that brings up an interesting point. One of the things this committee has heard from time to time is that even though maybe some prosecutors do not pursue a conviction on a habitual criminal statute, that they will use the threat of a habitual criminal prosecution in order to perhaps induce a plea deal? Is that something that you have seen in your experience, either as a prosecutor or as a defense attorney?

**RILEY COLWELL:** Yes, absolutely. And that's exactly, exactly what I believe is a challenge with this statute, is it, it deprives the judge of using the judge's discretion. So the judge is not able to make that

decision. And so the prosecutor makes the decision from the beginning to the end of the case. And I have an example. Within the last six months, I had a client who was charged with simple possession of methamphetamine. The prosecutor charged him with habitual criminal and then decided to drop the habitual criminal off of the information. And so my client pled guilty to the simple possession. The judge gave him 22 days in jail. So that decision would not have been able to be made by the judge. The judge gave him 22 days in jail for felony possession of methamphetamine. But if the prosecutor would have chosen to take that the length, we would have had a trial, you know, possibly pretrial motions. If we would have lost at trial, my client would have served 10 years in prison for a sentence that the judge gave him 22 days for, when he, when he was able to make that decision.

**DeBOER:** So are you saying that in other jurisdictions or under a different understanding of the habitual criminal rule, the judge would have more discretionary power? How would that work?

**RILEY COLWELL:** So the-- what it would do, the bill would eliminate certain charges. So like simple possession of narcotics, you know, and it would save those types of enhanceable offenses for violent crimes, sex crimes, crimes in violence-- involving violence, that I believe is more appropriate for the habitual criminal enhancement. But the bill would modify the law to eliminate certain felony offenses from the classification. It's called quote unquote covered felonies, and so certain felonies would not apply to where the prosecutor could attach the habitual enhancement to.

**DeBOER:** OK. Thank you.

**PANSING BROOKS:** Thank you, Senator DeBoer. Any other questions? Thank you for coming today, Mr. Colwell.

**RILEY COLWELL:** Yes, thank you.

**PANSING BROOKS:** All the way from Scotts Bluff.

**RILEY COLWELL:** Thank you very much.

**PANSING BROOKS:** Next proponent. Welcome, Ms. Kaye.

**FRAN KAYE:** Welcome, Professor Pansing Brooks. My name is Fran Kaye, I am testifying for LB920 for myself and as a representative of the Racial Justice Policy Committee of Reentry Alliance in Nebraska. And because this is a long and complex bill, I am focusing on three provisions: strengthening problem-solving courts, establishing--

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

**PANSING BROOKS:** Ms. Kaye, could you spell your name just for the record, please?

**FRAN KAYE:** Kaye, K-a-y-e, F-r-a-n K-a-y-e. I'm focusing on three provisions: strengthening problem-solving courts, establishing a Justice Reinvestment Task Force and enhancing parole opportunities. I'd like to thank everybody on the committee, Senator Pansing Brooks, Senator Lathrop, and my own senator, Senator Geist. And problem-solving courts offer us a way to curb harmful behavior by addressing each person in a structure that holds him or her directly to account. Drug courts work much better than incarceration in reducing drug use. And more important, for reducing the problem behaviors, such as committing other crimes to support a drug habit caused by drug use. Veteran courts call upon the discipline instilled in persons by their previous military service to help heal PTSD and other difficulties, both service-related and not, that cause veterans to offend against society that they had served to protect. Such courts are cheaper and more effective than prison sentences. We might also consider parent courts, since parental incarceration is often a precursor to increasing intergenerational incarceration and helping offenders to be better, pare-- parents have been shown to reduce their offenses as well. Law exists in all communities to enable and encourage people to live together as decent human beings. Balancing rights and responsibilities, privileges and penalties. The endgame of incarceration has to be rehabilitation, otherwise, we are just spinning our wheels. The proposed Justice Reinvestment Oversight Task Force continues the work that has been done by the CJI and the Nebraska Criminal Justice Reinvestment Working Group to produce systemic change and reinvestment in the whole community to reduce crime in the first place, enhance rehabilitation in the prisons and improve parole and other post-incarceration supervision. Other states have used the work of CJI to produce leaner, more effective criminal justice system. We can, too. The more we can use parole is an opportunity for individuals returning to the community to demonstrate responsibility and less as a privilege that must be won through a series of confusing regulations, the sooner we can reduce prison populations and decrease rec-- recidivism. Geriatric parole allows the state to express mercy and also save money. Thank you for the clarification of parole introduced in LB920. Ideally, the Judiciary Committee could even combine it with LB980, which will be talked about later, on provide parole options for people serving sentences that are now ineligible for parole. Thank you very much.

**PANSING BROOKS:** Thank you, Ms. Kaye. Anybody have any questions? No, I think not. Thank you very much for coming.

**FRAN KAYE:** Thank you.

**PANSING BROOKS:** Next proponent. Welcome.

**SHAKUR ABDULLAH:** Good afternoon, Senator Pansing Brooks, Senator Lathrop and committee. My name is Shakur Abdullah, S-h-a-k-u-r A-b-d-u-l-l-a-h, I'm here today representing the Community Justice Center headquartered here in Lincoln, Nebraska. We are a restorative justice public safety agency that provides services throughout the state, all 12 probation districts, all 10 facilities operated by the state of Nebraska and various county jails. I'm here today to support on behalf of our agency, LB-- LB920. We believe that it is a step in the right direction. There's two quick points I guess I want to make. One is as I listened to all of the testimony today, I am just aware of the fact of how much the victim or survivor of these harms pretty much has been left out of the picture. And I think that that is a crucial part that needs to be kept in mind as we talk about reform. As you look at other states that have employed a lot of restorative justice practices, they attempt to include the person that has been harmed the most in the process, from [INAUDIBLE], to make sure that their needs are met. Most of these harms that occur [RECORDER MALFUNCTION] January 6 United States Capitol offenses, they are offenses that harm actual people that don't oftentimes get their needs met in a way that they feel that justice has been met. We think that there should be other steps included in this bill that would allow for that to happen. The other point I want to make is the importance of programming. All of the facilitators, trainers at the C-- CJC are like me. We have all been justice-involved at various lengths of time, even in county jail or, or in prison. It has been our experience that the types of programming that work are things like AA or programs that bring some personal experience into the programming that people can relate to in a way that makes them buy into actual change, oftentimes, by building a certain sense of hope that they may not have. Thank you very much.

**PANSING BROOKS:** Thank you, Mr. Abdullah. Any questions? No, I don't see any. Thank you for coming today and waiting for so long. OK, any more proponents? Welcome.

**SPIKE EICKHOLT:** Thank you. Good afternoon, Vice Chair-- Madam Vice Chair Pansing Brooks and members of the committee. My name is Spike Eickholt, S-p-i-k-e, last name is E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska and the Nebraska Criminal Defense Attorneys Association. I hope it's OK with the committee that I do it at the same time to save you some time. I wanted to go last because I just want to kind of try to summarize some of the things that you've heard

today. I want to thank Senator Lathrop for introducing LB920, which we are in support of. The data from the Working Group Report that, that you-- that's been referenced, makes it clear that Nebraska is moving in the wrong direction when it comes to its prison policy. We have an increasing prison population where most other states are decreasing their population. The findings, if you will, or the examination shows that the path that we are on is not only fiscally unsustainable, but we would submit that it's morally unsustainable. What you have is you have people who are serving longer sentences in prison, as you heard from, I think, from Senator Lathrop. The average length of stay has increased 38 percent. You have a consistent and steady number of people going to prison for nonviolent and drug offenses; 56 percent of the admissions in 2020 were for nonviolent offenses, 26 percent were for drug offenses, and a significant number of those were for simple possession offenses. You have fewer people who are being paroled or are on parole, and in part that's because they are not eligible for parole because of the stacking of sentences by the consecutive sentence options that judges can do and also because of the mandatory minimum calculation. And for those people who are on parole, the biggest reason they are denied parole is, quote, continued correctional treatment needed, end quote, which means they're not getting the programming, which is related to the overcrowding system that you have in your prison. And even as Senator Lathrop referenced, if you build your way out of this or try to build your way out of it, you're still going to be faced with an overcrowding problem, staffing problem, and inability to rehabilitate those people in your prison systems. What you also have is about 27 percent of the population jamming, which means they're walking out the door completely unsupervised. And what you have throughout all of this is you have a steady and constant disproportionate representation of race from the beginning and end to the case. And that's manifest most explicitly in the use of the habitual criminal for nonviolent offenses for against people of color. Now, the CJI blueprint has been used in other states. I looked at their website, it's worked at Tennessee, Oklahoma, Utah, Texas, Louisiana. They've identified some of these features and you've heard some of these ideas come to the committee before, whether it's mandatory minimum reform, indeterminate sentence reform, the misdemeanor drug things. But what you have now is different, is you have the actual data to look at. You've had an outside organization that offers some technical expertise and has identified some of these issues. And you can act on it. One of the things that's good about this bill is it is a start. It is a beginning to continue to look at this because it creates a working group that's going to continue to look at this and work from there. One other thing, there's four areas

that are sort of nonconsensus items. I think you've heard from the misdemeanor for residue cases. I'll just tell you that they are charged as felonies, residue cases are people are found guilty and they go to prison. I know that for a fact, you know that for a fact. I'm going to keep using it as an example. I was representing a person on trial, a state senator now, Anna Wishart, was on that jury panel. You can ask her, it was a misdemeanor residue case-- or felony residue case, and she went to prison on the maximum sentence. I'm going to keep using that until she's no longer in office, but I'll answer any questions if you have any.

**PANSING BROOKS:** Thank you, Mr. Eickholt. Senator DeBoer.

**DeBOER:** Thank you, Mr. Eickholt. So I want you to finish because you were saying the four areas that they were the disagreement. You said the residue case is a misdemeanor.

**SPIKE EICKHOLT:** The modification of the habitual criminal law you've heard before, too, and that is you've got-- the Legislature has determined that whether it's a felony possession or if it's a misdemeanor residue, whatever, the penalty that the Legislature is determined for possession of controlled substance is up to two years imprisonment. It's not ten years or it's not at the whim of a prosecutor. And it seems like particularly in reading the Journal Star article, we had this arbitrary enforcement of that level of penalty that's based on really the individual whims of that prosecutor, whether they are personal, professional, what have you. In any event, the Legislature, admittedly, because you don't exclude the use of habitual criminal, you have sort of left that as an option, but we would submit it's being misapplied. You heard the earlier testifier talk about the situation where when a judge-- and again, I would submit that the bench in the state is generally prosecution friendly. That the judge, given the option, will impose a very minimal, probably like a time served 22-day jail sentence. But the prosecutor has the ability to leverage a hard ten years for sentence, and we would submit that that's not something that is good, sound, consistent criminal law policy as the Legislature has the prerogative to determine. So that's one point. The other point that is not consensus is the geriatric parole. The study talked about how 10 percent of the prison population is 55 years of age or older as of 2015, and they're just getting older. You know, many of you, if not all of you have been out to the State Prison facilities. You see people walking around with walkers, oxygen tanks. Even if they've done horrible things, at some point they become less of a threat to the community and perhaps better serve for everyone to not be in a prison setting. And then the indeterminate

sentencing reform is, as you've also heard before, about sort of that opportunity to have a meaningful chance for someone who's in prison to become parole eligible and be paroled. And really, the, the jam part, I would just submit, is a real failure, if you will, of the prison system. You don't want people just coming out of a maximum security prison immediately on the street. There's no leverage that law enforcement has on them other than maybe just they have on any other person. You know if someone's on parole, cops can track their movement, cops can go to their home, cops can search their car at any, any whim. They don't have that for someone who just walks out the prison system and you've got a significant number of people just walking out the door.

**DeBOER:** Someone else mentioned the failure of the post-release supervision portion of LB605. Can you speak to that? Do you know-- because you talk about having someone on parole and they're supervised and that. So can you tell us what was the failure of that program?

**SPIKE EICKHOLT:** Well, it was-- the, the post-release supervision was a, a sentencing feature that was adopted in 2015 with a 605 group-- with LB605 and the CSG group. And what it required that for certain low-level felonies, Class IV or Class III and Class IIIAs that the judge imposes any sort of sentence of incarceration. The judge has to impose at least some period of post-release supervision, which is a type of probation. The judge does not have any discretion other than for Class IV felonies because the Legislature subsequently modified that. But the judge does not have any discretion for the IIIs and the IIIAs for post-release supervision. So somebody gets 30 days jail, they've got to be post-released supervised for a year. Where that doesn't always work, sometimes is that if there's a violation, it's a lot of work for prosecutors and, and defense to sort of litigate the subsequent sort of post-release time. I don't know that it's necessarily a failure. Mr. Riley apparently thinks it does, think that is. I think there's some sort of debate on that. It's handled by the Probation Department, which is a little different than Parole, which is different agencies. So some of that is, is, I think, the source of the frustration. Some of it is then on a post-release supervision violation that sentence is served in a jail for the most part, if it's less than a year instead of prison, which is another thing because the jails really don't offer a lot of rehabilitative options, even if you were in the prisons, too. So that's another feature of that, of the post-release supervision. This is something that the Working Group, that's envisioned by this bill, could look at, and I think that's hinted to in their report.

**DeBOER:** Thank you.

**PANSING BROOKS:** Thank you. OK, Senator Morfeld.

**MORFELD:** Thank you for coming today, Mr. Eickholt. Can you talk a little bit-- I mean, I think there's a notion that's been brought up a few times that reducing the penalty level somehow incentivizes crime. Can you talk about that a little bit and maybe some of your experience on that?

**SPIKE EICKHOLT:** The only-- and this admittedly anecdotal, but for a period of time, the Lancaster County Attorney's Office and a number of other prosecutors around the state charged possession of wax or small amounts of marijuana, like in either gummies or processed form, they charge that as a felony under the theory that it was THC and that's a controlled substance. That was frustrating because many times you would have somebody who would be cited for possession of marijuana less than an ounce, which is an infraction up to \$100 fine. For a long time, particularly in Lancaster County where I practice, they would charge those things as felonies up to two years in jail. Even before that, it was up to five years, up to two years in prison. And you've got a lot of people, admittedly, they go to diversion for a year. They sometimes could get into the drug court, but they have these felonies overhead. At some point, I think in 2018, there was a district court judge in Lancaster County who ruled on behalf of a defendant and basically wrote an Opinion where the county attorney's office interpretation of that statute was incorrect. And at that point, they stopped charging those as felonies. And then when the Legislature passed a law relating to industrial hemp, for the most part, the Lancaster County Attorney's Office doesn't charge a small amount of marijuana as a crime at all. I say all of that because I did not notice any difference between a marijuana possession, consumption, between any of what I just described. When it was a felony or possible felonies, the kids on the street didn't have any idea about that, and they didn't use it any less or any more. And now that at least I've said it on, on line here, for the most part, they don't charge you small amounts. I don't think, I don't think possession or use has increased whatsoever. In my opinion, I think all crime, for the most part, is really dictated by whether you're going to get caught or found out versus whatever kind of penalty may be behind it.

**MORFELD:** Thank you.

**PANSING BROOKS:** Thank you, Senator Morfeld. Senator Geist.



**GEIST:** Thank you. And I will just correct the question. My question was, does lowering penalties lower crime? It wasn't that does it incentivize crime? I was asking if it lowers crime. So the question was turned a little bit. But that's not my question for you. I just wanted to clear that up. So for those who are jamming out currently, can you speak to what to do if that individual chooses not to avail themselves of programming?

**SPIKE EICKHOLT:** Well, I mean, we've heard that in other bills, but that I think that people on the Board of Parole testified and they talked about people just refusing to do it. In my opinion, I think it's because of the flat sentence feature. They can just sit inside in prison for another 18 months and they're done with it. You know, the, the idea of being paroled and being drug tested and not being able to use drugs when you can use drugs in prison is not very appealing to some people. And the comment I have is that we're going to somehow just let people decide not to do programming. I mean, that's just sort of, of an incorrect way of looking at it. You don't get to choose your punishment. You know, being on parole is not easy. A lot of people think it's somehow-- it's better than prison many respects, but it's, it's meant to encourage them to rehabilitate. You're going to have to get a job, you're going to have to come in and check in regularly. We are going to drug test you. You go, if you mess that up, you're going back inside.

**GEIST:** But we do know that if they opt for that, the likelihood of that being to their benefit is much greater than if they're forced to do it.

**SPIKE EICKHOLT:** Right.

**GEIST:** But, but I also think that to be fair to the whole-- the jam out percentages, we need to recognize that there are some people that just say, I'm not going to do that. I don't want to go to anger management. I don't want-- and, and that's part of that percentage. It's not necessarily that this isn't offered. There are people that just say, I'm not going to do it. And, and I think that being fair to, to what those percentages are, I think that needs to be recognized. The other thing I wanted to ask is, is you gave a, a percentage as well about the nonviolent people that are incarcerated and those that are incarcerated on drug-- simple drug charges, I think, drug use charge. So are you saying that you think we're incarcerating the wrong people?

**SPIKE EICKHOLT:** Not necessarily. I think that some people probably who are charged with drug offenses, perhaps need to go to prison maybe for a while, but they don't need to go as long as they're going. And if they're going, they should have a meaningful period of time that they can be rehabilitated before they're released.

**GEIST:** But I, I, I would ask to follow up that. A lot of what we see with, with lower-level felons, it's hard on a single, first-time drug charge to find yourself in the Penitentiary unless it's a large amount. So I would ask, do many of those individuals have prior convictions and therefore the sentence is longer because this is the ninth time they've been arrested and what's a judge to do?

**SPIKE EICKHOLT:** Respectfully, I don't agree with the assumption in your sentence-- or in your question. There are people who are for first-time or near first-time offenses do receive prison sentences for drug offenses. But to answer your question, they have--

**GEIST:** But is that that 30 percent that you were whatever--

**SPIKE EICKHOLT:** Well, what I--

**GEIST:** --the user percentage was?

**SPIKE EICKHOLT:** I just mentioned that of the admissions in 2020, 26 percent were for drug offenses and, I think, 13 percent in total were for possession. I don't know how many, and I don't know that that was something the Working Group was able to delineate by looking at the numbers.

**GEIST:** But I do think that's an important difference simply because someone who's in jail or prison for, for a, a singular drug use versus someone who's pled down a violent crime to possession with intent to deliver, for instance, and has eight years or whatever the sentence might be. Those are two very different people, and lumping that all into a drug possession crime kind of muddies the water and who we're really talking about is there. Do you agree?

**SPIKE EICKHOLT:** Not necessarily. I think that you-- the numbers, the data is the data. You have people going to prison for their first time in prison for possession charges, 13 percent in 2020. That's the number, but the numbers can be realized. And I can't speak to numbers, I'm not on the Working Group. I didn't look at it,--

**GEIST:** Right.

**SPIKE EICKHOLT:** --but that's the data you have as a policymaker.

**GEIST:** Correct. But, but does that mean they've been in county jail? They've been in diversion? They've been in probation? I mean, it doesn't tell the whole story. And that's the confusing part of the data is that you get, yes, they're there for a possession charge. But what have they done prior to that? That's my challenge. And that's one of the things, I think, is a bit misleading about saying this is a simple possession charge.

**SPIKE EICKHOLT:** I don't know if that was a question, and I don't know if I can speak to that.

**GEIST:** It was.

**SPIKE EICKHOLT:** OK.

**GEIST:** That's all right. Thank you.

**PANSING BROOKS:** OK. Thank you, Senator Geist. Senator Slama.

**SLAMA:** Thank you, Senator Pansing Brooks. And thank you, Mr. Eickholt, for being here. I, I just wanted to follow up. I think Senator Geist raised some excellent points about what the data is. Do you have any information if these-- this 26 percent or whatever it is being newly admitted for a possession? Does that include possession with intent to deliver?

**SPIKE EICKHOLT:** No, they are delineated as separate. I think 20 per-- yeah, 26 percent does include some possession with intent to deliver. And I-- I've got the report here, I think, and it actually sort of explains it here. But to answer your question, yes, it does include some kinds of possession with intent to deliver.

**SLAMA:** So just in your experience with the criminal justice system, like, you're, you're pretty well-versed in this field. Most of those charges, whether it's possession with intent to deliver or even just simple possession, would you say it's likely possible, plausible-- you can just give me your range that you feel comfortable with-- that these charges have been pled down for-- from something like possession, in addition, you are in possession of a firearm or possession to deliver being pled down from a higher level of possession to deliver. What's, what's your take on the amount of these that are pled down from a higher charge?

**SPIKE EICKHOLT:** I think it's probably fair to say the name of the game in the system is plea. Most cases, I think 90-some percent are pled. They're not always pled down, right? Sometimes you simply don't have a lot of negotiation on my side of the table in these situations.

**SLAMA:** If you're pleading up, that's, that's kind of a problem.

**SPIKE EICKHOLT:** Well, that's true. Well, a lot times the only thing you really have is just the leverage they have a trial. And many times your client's position is simply indefensible and you're not going to risk that because you're going to get the judge sentence.

**SLAMA:** Sure.

**SPIKE EICKHOLT:** And we all know what that means. Possession with intent is not any kind of magic amount. Possession with intent, as interpreted by our Supreme Court in repeated cases, is simply the opinion of the officers at the amount of drugs or how they have it, or maybe was intent to deliver to somebody else. It can even be the simple, innocuous admission I was holding this to give to my friend. I'm possessing it with intent to deliver. So it's not big-time drug dealers. It's not a lot. It can be more serious charges. But in my opinion, and I think the law is on my side, can be easily alleged.

**SLAMA:** Sure. But I mean, when we're talking about possession charges or even possession with intent, you're right, it is sometimes a subjective measurement, not necessarily an amount. But the way our statutes work, these aren't necessarily minor amounts. I mean, a half-gram of fentanyl is treated the same in our statutes, and that's on the Legislature,--

**SPIKE EICKHOLT:** Right.

**SLAMA:** --as something like a half-gram of cocaine. Is that correct?

**SPIKE EICKHOLT:** Yeah, I mean, any amount--

**SLAMA:** Yeah.

**SPIKE EICKHOLT:** --less than ten less, than ten grams for most of those things, or I'll set up a school zone or, like you said, any other offense, it's all basically simple possession, that's correct.

**SLAMA:** Sure. So I mean, you're talking about a possible simple possession charge of ten grams of oxycodone or whatever else falls into that category, or ten grams of fentanyl, which could kill a

village. So I, I think when we're talking about possession, possession with intent to deliver, it's important to also take into account like these aren't small amounts of some of these drugs. And some of-- this isn't a question, this is just more on the Legislature that we do need to do more to delineate because there is a difference, a very strong difference and our statutes--

**SPIKE EICKHOLT:** Well, the bill does that.

**SLAMA:** --aren't teaching that.

**SPIKE EICKHOLT:** The bill does that. It makes at least a distinction between--

**SLAMA:** Well, I mean, not in the way that I'd like to see it happen.

**SPIKE EICKHOLT:** OK.

**SLAMA:** So thank you, Mr. Eickholt.

**PANSING BROOKS:** Thank you, Senator Slama. Senator McKinney.

**McKINNEY:** Thank you. Spike, quick question. If someone pleas down to an offense, does that mean they were possibly guilty of the higher offenses?

**SPIKE EICKHOLT:** No, not at all. Particularly, when we talk about mandatory minimums and habitual criminal, you can have someone who's factually innocent or at least legally not guilty, right? They may have a defense where they-- oh, I don't need to get into it, but they may have a defense, something that's mitigating. But the fact that you take a plea, doesn't necessarily mean that you were guilty.

**McKINNEY:** Thank you.

**PANSING BROOKS:** Any other questions? Yes, Senator Geist.

**GEIST:** One more short. So in your opinion, would a felon who's in possession of a firearm be a low-level criminal?

**SPIKE EICKHOLT:** No, that's a mandatory minimum. That's mandatory 3 to 50.

**GEIST:** OK, so that wouldn't be lumped into the low-level nonviolent?

**SPIKE EICKHOLT:** No, and I don't think the numbers-- I think they actually-- well, I, I don't-- can't speak for the CJI, but when I read

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

the report, I think they make a distinction between weapons offenses versus possession offenses and nonviolent, nonperson crimes.

**GEIST:** OK. Thank you.

**PANSING BROOKS:** Thank you, Senator Geist. Mr. Eickholt, I was just wondering, have you seen studies across the nation that say that increasing penalties or making-- having habitual criminal laws or mandatory minimums helps improve the safety of our communities?

**SPIKE EICKHOLT:** Well, not like that, not that ever come with that thing. I mean, I've looked at the reports before because we've done-- we've talked about these bills before, and I think maybe I've given some stuff to the committees in the past. I haven't seen the, the correlation. I think the bill actually strikes the right balance. I think that one could argue, although I don't necessarily agree with it, but I think that Mr. Colwell, is his name, I just met him earlier today, explained that habitual criminal might have some utility. You might be able to avoid a trial as a prosecutor to spare a child victim from having to see the offender or to have to testify or those kinds of things. But we're talking here about excluding under the category that cover felonies, those nonviolent, possession-type charges. So I don't, in my opinion, I don't know. I think that when it comes to, I think, apprehension, likelihood of getting caught matters more to someone out there who is committing a crime versus what may lay behind it.

**PANSING BROOKS:** Thank you, Mr. Eickholt. OK, Senator McKinney.

**McKINNEY:** And this is probably not to you, Spike, but I would just say I was born in 1990, and our country and our state decided to get tough on crime. But every year of my life, specifically, I'm using my district specifically, we still had situations of violence and gang violence and things like that. But we have all these tough on crime laws on the books. So in my opinion, I'm just going to use my opinion, I don't think they work. I think we have to get smart on criminal justice. And just saying the bogeyman is going to jump out of the closet if we decrease an offense is something I don't agree with because throughout my whole life, the philosophy of my community has been to be tough on crime and over police. But we still get the same results. Just the other day, I laid in my bed and all I hear is police sirens for like 30 minutes because a young man was killed. That has been a reality my whole life. And just to sit here and just keep hearing, oh, we shouldn't increase it, because maybe this is not going to happen it or this is going to happen. The reality is for people,

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

I'm using my district specifically, being tough on crime and over policing hasn't solved anything, not for us. Because when I go to the prisons, only people-- the majority of the people I see is people I grew up with or grew up with my parents. So the philosophy of being tough on crime and over policing just doesn't work. It's not true. Thank you.

**PANSING BROOKS:** Thank you, Senator McKinney. Thank you, Mr. Eickholt. Any other proponents? OK, before we go to opponents, could I-- could we see a, a raise of hands for propon-- or opponents and neutral? How many are still so we can get Senator Wayne in? Four, thank you.

**DeBOER:** Six.

**PANSING BROOKS:** What?

**DeBOER:** Six.

**PANSING BROOKS:** Six? Oh, OK six. OK, opponents. Welcome. Go ahead.

**AARON HANSON:** Senator Pansing Brooks and honorary members of the Judiciary Committee, my name is Aaron Hanson, A-a-r-o-n H-a-n-s-o-n. I am a sergeant with the Omaha Police Department, a 25-year veteran, and I'm here on behalf of the men and women of the Omaha Police Officers Association. Prior to this testimony, I did speak with Chief Schmaderer and he did want me to make sure that I was clear that he is in support of the topics which-- in which there was consensus from the CJI committee, and he is not in support of the topics that came out of CJI committee in which there was no consensus. I did have some prepared statements. I'm going to put those to the side because I think a lot of, a lot of things that were discussed here need to be flushed out today. Number one, there's been a lot of questions about no studies. What's the data? What's the impact on crime? Omaha and Nebraska is the study. Omaha and Nebraska is the proof. When we did get tough on gun crime in Nebraska, the trend line for violence in Omaha, Nebraska, went down. That is incontrovertible. That has been reported in the World-Herald. The indictments, the arrests for guns went up and as did the number of people put in prison for serious gun crimes. But our community got safer. There was less shootings. There was less homicides. And I think if you look at some data that the Omaha Police Officers Association pulled together, it'll show you we've under built for years compared to our other states. We've under built. We have less beds per capita and that's why we are significantly overcrowded. Also, we did a, we did a survey not too long ago, indicated there is strong support for additional prison

infrastructure in the state of Nebraska from corner to corner. Why? Because people want to be safe. They want the outcomes that we are getting in Omaha, for example, the downward trend lines in violence and shootings and homicides. And they're OK investing in more prison infrastructure. But I think everyone also wants better outcomes for the offenders themselves. We've not only under built in prison infrastructure, we've underinvested in, in rehabilitation. And I said at the beginning, I speak on behalf of the Omaha Police Officers Association, but I also speak on behalf of honest, law-abiding, innocent citizens because no one is in here right now that's testified in the association of law-abiding citizens or the association of victims of crime. That's an important voice that needs to be heard. Again, I can't think of the last time there was a public defender's race where people were upset about rise in crime. It's their job to defend defendants. I'm here to advocate for law-abiding citizens and also to make sure we, we focus on true better outcomes. I'll take any questions you have.

**PANSING BROOKS:** Thank you, Senator-- or Sergeant Hanson. Senator McKinney.

**McKINNEY:** Thank you. And thank you, Mr. Hanson. Are-- is, is it good to say you're here to advocate for our state to be with the 11th highest in the country for black incarceration?

**AARON HANSON:** No, no, Senator, that's-- that is a travesty. That is a civil rights violation of our time, in my view. And I think that is a direct result of poverty, of cycles of poverty that need to be broken. That should be broken. But Senator, I don't know that simply releasing people from prison sooner or dropping penalties and not truly rehabilitating people who need rehabilitation the most. I'm not sure that's going to help that number as well.

**McKINNEY:** In your time with the police department, how often have you came down to the Legislature and advocated for legislation to address poverty?

**AARON HANSON:** I have been down here constantly speaking in support of rehabilitative efforts. And by extension, if we can truly rehabilitate individuals while they're incarcerated, while they're under, while they're under supervision, that will be a huge positive impact for reducing poverty.

**McKINNEY:** See I'm, I'm not talking about rehabilitative efforts. I'm talking about, you said poverty is the driver. When have you came down



Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

here and advocated for legislation to address and reduce poverty to prevent the individuals from going inside, inside the system? How often have you done that?

**AARON HANSON:** Well, I can tell you that this session I plan on coming down and supporting a bill which will give tax incentives to employers who hire people with reentry backgrounds. So primarily our focus, at the Omaha Police Officers Association is public safety matters. But I will tell you that President Conner is really pushing the organization to get more involved in economic development issues like, like the issues that you're speaking about when it comes to ARPA funding. But then also issues such as tax incentives to hire reentry individuals. We want to get more involved in those issues because we need that balanced answer.

**McKINNEY:** What has been the hesitation in the past?

**AARON HANSON:** Well, I think that we-- collaboration requires trust and communication. And I think that we are to the point now as an association that we appreciate that even though we are not invited to the table typically on these discussions, we need to be more proactive about inviting ourself to the table and trying to assist with those efforts, which may truly help get to the root cause of poverty.

**McKINNEY:** All right, thank you.

**PANSING BROOKS:** Thank you, Senator McKinney. Senator Slama.

**SLAMA:** Thank you, Senator Pansing Brooks. Sergeant Hanson, thank you for being here today. You reference this a bit in your opening, and I was hoping you could expand it a little bit more. I think when you were talking about the impacts of LB605, you alluded to the increase in gun-related offenses, gun-related arrests. How has that worked in practice and how has it lowered crime rates, lowered homicide rates in your experience?

**AARON HANSON:** Sure. Well, if you look at the crime package that was passed in, in approximately 2019 or 2009, rather, that was in response to a real explosion that we were dealing with, a real uptick in violence and specifically gun violence and gang violence. That legislation, the mandatory minimums, which resulted as a result of being a felon in possession of a firearm or committing a drive-by shooting, that was truly homicide prevention because it gave those most highest-risk offenders, the ones that were the gun offenders today who are probably going to be a-- either a violent aggressor

tomorrow or maybe a victim of violence themselves. It got them off the streets. Now one thing that's always frustrating for police professionals is once they're in prison, our hands are tied. We're not involved in rehabilitation. It's not our function. We sure would love to see it be more robust because we're in these individuals' homes and we know their families, we want them to get better. But those laws truly are the reason why Omaha's violence trended down after those laws were passed. And I think if you look across the country states that CJI has been to, it's the contrary. Sure, their prison populations have reduced, but their violence in their large urban cores had increased. That's the metric that we need to be looking at. What's the safest outcome for innocent people and the public, not how many beds are open or filled in prison. Or do we have a safer community? And are we truly rehabilitating people?

**SLAMA:** Thank you. And I think-- I, I really do like you bringing up safer outcomes because I think everybody in this committee has a commitment and would like to see that, we just kind of disagree on ways to get there. You mentioned Chief Schmaderer let you know that he supports the concepts in this bill that advanced unanimously. What parts of this bill specifically do you have the most concerns about and what kind of consequences are we looking at just based on your expertise if those come into being?

**AARON HANSON:** Can I touch on some of the positives and then the negatives?

**SLAMA:** Absolutely.

**AARON HANSON:** Is that OK?

**SLAMA:** Sure.

**AARON HANSON:** So real quickly the positives. You know, I think the problem-solving courts is a huge positive. We like that. Geriatric parole is something that worth-- is worth being discussed. The parole housing project or the parole, parole proying-- parole, parole housing program is a huge potential opportunity. I've had young men that I've mentored that had to go back to prison for 30 days and lost a job because they violated parole. Having this transitional housing for parolees, not just ones that offend, but all parolees when they get out would be hugely impactful. Additional assistance for probation officers to have assistant in-- for high-risk case loads is great. Let's go to the ones that are concerning: degrading the impact of the IC and ID felonies. Those are a lot of, again, our high-risk gun

crimes. That is, that is a problem. No mandatory minimums for drug dealers with a, with a emphasis on high-level drug dealers. I can't tell you how many murder scenes and shooting scenes I've walked into that have been precipitated by drug deals. We cannot minimize the impact of that on the community. You know, again, I share the concerns about downgrading possession of hard drugs and especially fentanyl to misdemeanors. I don't think that's going to incentivize people to go to drug court and to try to get rehabilitation. The burglary reductions and the impacts of burglary and the consequences for burglary, hugely concerning. And I think our business communities would be very upset to learn that people that victimize their stores after hours as long as no one's in it will essentially face 1.5 year maximum after you apply good time--

**SLAMA:** Yeah,--

**AARON HANSON:** --because it's that low of a felony.

**SLAMA:** --we watched that play out in L.A. and New York with the snatch and grab, smash and grab whatever they're called [INAUDIBLE].

**AARON HANSON:** Exactly. These are, these are California concepts which are not working in Nebraska. I mean, they're not, they're not, they're not working in California. So why would these California concepts work in Nebraska? Why do we want to take the risk?

**SLAMA:** And, and I mean, just off of that, not just California concepts, I think the state of Oklahoma, one of our closer neighbors, has implemented some of these policies. And unfortunately, like you had referenced, we've seen violent crime, especially in those urban core-- urban cores escalate very quickly just in a few years. So that's definitely a concern.

**AARON HANSON:** I was given a list of cities that CJI went to, states that they went to. Texas, for one, I couldn't find one large city in Texas other than Dallas that was not being crippled with a massive increase in homicides. It's the same in Utah. It's the same in most of these states that CJI has been to. Again, the metrics should be safer communities, not necessarily less people in prison, but all the while we need to have balance of rehabilitating people while they're in prison. That's crucial.

**SLAMA:** Absolutely. I agree with you. Thank you, Sergeant Hanson.

**PANSING BROOKS:** Senator DeBoer.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

**DeBOER:** Thank you, Senator Pansing Brooks. Thank you for being here, Sergeant Hanson.

**AARON HANSON:** Thank you.

**DeBOER:** So I'm trying to understand some of this discussion around mandatory minimums. If the-- instead of-- so if we took them out of mandatory minimums and made them, let's say, more a higher-level crime, right, so you take intent to possess or intent to distribute and you put it to a higher-level crime. I don't know how far we move it up, but so that the sentence is longer, but it's not a mandatory minimum. Would you be OK with that? Is there something specific to the, the mandatory minimum concept itself that you're sort of drawn to?

**AARON HANSON:** Sure, Senator, that's a great question. It's one that I think about a lot. And when I'm studying the sentencing schemes of other states versus Nebraska, I do think that there would be a valuable discussion to be had in terms of just potentially wiping the slate clean on how Nebraska does it, start over from the beginning, look at it, just tabletop it with various stakeholders. You know, look at Texas. You know, why not, why not look at determinant sentencing like Texas, where you get ten years on a robbery and you're parole eligible at a certain factor of that ten years? But then you're supervised throughout the entire duration of that sentence of ten years once you're released. In Nebraska, a ten-year sentence for robbery means five. And then you get a minimum sentence, too. Which if it's five years, it means your parole eligible in two and a half years. I think we're pushing the sentencing farther back the other direction when instead we need truth in sentencing and more supervision and more rehabilitation time. I think if we do that, then we'll see lowering of our re-offending rates.

**DeBOER:** So let me, let me push back for a second on that. The determinate sentence idea is not as appealing to me because of the idea that there are judges who can look at the, the totality of the circumstances in front of them and make some kind of decision like this was, you know, the crime of possession with intent. This was also-- this guy's really-- like, this is, this is a whole bunch of bad stuff with that guy. This guy did it. He's probably not going to, you know, cause as much trouble. We're going to give this guy a different sentence than this guy. So like having different sentence options, I think that's part of the, the trouble I have with mandatory minimums as well is taking away the judicial discretion there. So, so if we could satisfy you that the, the worst folks were going to go away for

a long enough period of time, are you-- would that help you feel better about the loss of the mandatory minimum?

**AARON HANSON:** I think it would have to be a, it would have to be a solution that was all in one, and I don't think that's one that we're going to solve at this point in a short session. We've always been open to having very detailed, difficult discussions over these things. Again, it's hard to look at sentencing reform in Nebraska when our current sentencing scheme is so confusing. I was watching earlier testimony and I heard people throwing out numbers left and right and cutting them in half and cutting them in a fourth and cutting them in a third and 75 percent of that. Honest, law-abiding citizens at home want to be safe. They don't understand what any of that means. They don't have time to do a calculator for this. Maybe if we start to focus on more truth in sentencing and we have longer, more intensive supervision and more rehabilitation, Senator, you might be surprised what people even on my side of the debate might be willing to look at in terms of change.

**DeBOER:** Thank you. That's helpful. Have you seen much of the post-release supervision sort of-- have you interacted with folks who are on post-release supervision?

**AARON HANSON:** Absolutely, yes.

**DeBOER:** And what's your assessment of how that's going?

**AARON HANSON:** Terrible. Unlike the federal system, the judges or Corrections has no control over that number in the event that an offender violates. So let me give you an example. Let's say someone is on 12 months of post-release supervision and they violate on the day that they're released, they are sent back to prison. But because of automatic good time, they will be-- they will guarantee they'll be released six months later. We have many offenders that I've seen, that I've known, that I've talked to their probation officers who have intentionally violated their post-supervised release because they would rather spend their time back in prison, get their automatic good time, and jam out with no supervision. And again, that's, that's part and parcel to a larger problem. That's why it's harder to rehabilitate someone that's in that category, and that's why we need to be smarter and invest more time and effort and rehabilitation tools in an individual like that.

**DeBOER:** Isn't, isn't what you've just described also partially a problem of flatter sentences. I mean, you can tell me it's not, but it

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

sounds to me like if you have a flatter sentence, then you have less time in which they're going to just jam out anyways. They might as well just go back to, you know, violate, go back, sit, and then jam out.

**AARON HANSON:** I, I, I think the answer would be looking something more similar to the federal model. And that is there's a sentence. There's good time applied to the sentence. But then there's also a period of post-supervised release, which can be modified by the judge or by some other controlling entity in the event that individual has to go back to prison and come back out on more supervised release. I think we need more flexibility for supervision options, especially on the most challenged individuals, because the ultimate goal is to help them get better. We want them to be contributing members of society. I think that's, that's a direction that we need to very seriously look at if we're truly focused on better outcomes and a safer community.

**DeBOER:** So if we did it properly, you think that post-release supervision might be a, a useful tool in rehabilitation?

**AARON HANSON:** Could be a great tool if it was designed appropriately.

**DeBOER:** Do you come across folks very often in your work that have jammed out of prison?

**AARON HANSON:** Quite often.

**DeBOER:** And do you-- yeah, I don't know how to ask the question, so I was going to kind of ask you to compare between jam outs and non-jam outs, but I don't know how you would do that.

**AARON HANSON:** Well, I think if you-- I've dealt with, I've dealt with former inmates that have both earned their way onto parole, earned their way out with good time. Those individuals typically will have a better outcome. It's unfortunate that not enough of those individuals get as much rehabilitative efforts in programming as they would like in prison. But the ones that choose to jam out, that choose to get in fights in the, in the prison yard, not follow the rules and jam out, they would rather jam out than be supervised. Those are, those are the most terrifying inmates, in my view. And those are the ones that we need to formulate specific statutory tools to either try to get their head straight and get them through whatever phase they're in, or realize that prison might be the best place for them.

**DeBOER:** OK, thanks.

**PANSING BROOKS:** Yes, Senator Geist.

**GEIST:** Just have a short question. Same one I've asked the other people. So in your experience, when we lower penalties, do we lower crime?

**AARON HANSON:** What I've seen around the country is, no. I think that when you look at states that have lowered penalties, you have seen a dramatic upswing in crime. To the contrary, when you look at Omaha, Nebraska, when we had serious penalties for certain serious crimes, we saw a reduction in those associated crimes. And the final piece is let's finally get rehabilitation right. And I think we might be one of the safest communities around if we can strike that perfect balance.

**GEIST:** Thank you.

**PANSING BROOKS:** Senator McKinney.

**McKINNEY:** Thank you. In a recent article that was released by the World-Herald, it mentioned that 2009 bill, I believe it was LB63. In the title of it, I believe it said paying the price. Is it a fair assessment to say that the Omaha Police Department and others are in support of legislation that will cause taxpayers to pay more on criminal justice?

**AARON HANSON:** I'm speaking for the Omaha Police Officers Association and for myself. I, I think that when you ask your typical police officer and, more importantly, when you ask you're typical law-abiding citizen who just wants to be safe and keep their family safe, I think that their safety and investment in their safety, whether it be by building a new prison, investing in additional rehabilitation or both, I would tend to think the typical law-abiding citizen or police officer would say that's a price worth paying, that the better outcome is, is the price worth paying for.

**McKINNEY:** So when they come to us and send us emails and calls and say we want our property taxes lowered, should I just reply, we can't lower your property taxes because the police would like to continue to push forward laws and keep building prisons?

**AARON HANSON:** Senator, property taxes don't pay for prisons and they don't--

**McKINNEY:** Taxpayers pay for prisons.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

**AARON HANSON:** --pay for state rehabilitation. Taxpayers do pay for prisons. Property taxes do not.

**McKINNEY:** Yeah.

**AARON HANSON:** But I agree with what you're saying. And I think there's a balancing act when it comes to public policy and decisions because I guarantee you right now there's a lot of taxpayers in Portland and San Francisco and L.A. and Fort Worth and Houston that are really wishing that they had done that balancing act appropriately because they're seeing slaughters in their streets.

**McKINNEY:** And lastly, you're, you're in support of building a new prison?

**AARON HANSON:** I am in support of the new prison. Yes, as long as it's designed smart and in a way that will help facilitate proper rehabilitation.

**McKINNEY:** We probably could to do a poll of the body. I don't think that's a consensus item either, but thank you.

**AARON HANSON:** We did do a poll, Senator, it's on the back of--

**McKINNEY:** No, I'm not talking about your poll.

**AARON HANSON:** Oh.

**McKINNEY:** I'm talking about a poll of the body.

**AARON HANSON:** Oh, OK. Well,--

**McKINNEY:** I don't think that's a consensus item. And even in your poll, it's not 100 percent. So that wouldn't be a consensus item either.

**AARON HANSON:** You are correct.

**McKINNEY:** Thank you.

**PANSING BROOKS:** Thank you. I just have one thing. First off, Sergeant Hanson, thank you for-- I've seen some of your work and met, met your mentees, and I appreciate that work that you do. It's, it's very important in the community. And as far as the discussion about getting rehabilitation and supervision, part of the bill is basically a one-half rule and going back to that kind of rule and that becomes a carrot. It's a carrot to get people to go before the Parole Board, the



Parole Board says, we're not going to, we're not going to parole you because you haven't had X, Y, Z course. We aren't even willing to do that because we create these flat sentences. So they're two months or a year from jamming out and they just jam out. So somehow something has to be done to encourage offenders to be willing to take these courses and if we just continue to do this. So I, I don't know if you have any suggestions on that and are you against having-- do you want to maintain the flat sentences?

**AARON HANSON:** Well, in a perfect world, again, I wish we had a determinate sentence that the, the year sentence was the sentence and that either there was a percentage of parole eligibility on that sentence based on the crime, whether it's a violent crime, a gun crime, or a property crime. And again, in Nebraska, it's so convoluted because it's not really a one-half rule, it's really a one-fourth rule. And that's why, you know, I think the typical person, the typical police officer, would rather have more truth in sentencing on those issues. And but, but definitely, I agree with you, Senator, jamming out is, is not optimal. That's why I'm a firm believer in there should be a mandatory period of post supervision for any inmate that jams out that should be per law and that should be flexible so they can be adjusted if the individual just is not following along with their rehabilitation plan. But again, we'd love to have that very serious tabletop discussion about how could we truly change Nebraska's sentencing structure to make it make sense, not only for the defendant and for the inmate, but also for the public?

**PANSING BROOKS:** OK. Thank you, Sergeant Hanson. Appreciate it. Any other questions? Nope. Thank you. Next opponent. Welcome.

**DON KLEINE:** Good afternoon. Senators, my name is Don Kleine, K-l-e-i-n-e. I'm the elected Douglas County Attorney. I'm here in that capacity. I'm also the representative of the Nebraska County Attorneys Association in regards to this bill. And there's a handout I've given you because this bill is lengthy. I only have three minutes. We support some areas of this bill just as the committee supported some. We have monitor on some of these. And then there's obviously some that we oppose. Just a little bit of background, I've been practicing law as a trial attorney for 40, almost 45 years, and 10 years of that was in private practice and I did criminal defense work. I represented people in federal court. I won some jury trials as a-- murder trials as a defense attorney, several, and many other trials. And I've won many more as a, as a prosecutor. But I have that kind of mixed background there that's, that's in my history that maybe people don't realize. One of the most important factors here about this CJI's work

was, you know, admissions are down 21 percent in the last 10 years, and that's significant. That is significant that there's 21 percent reduction in admissions. And Nebraska, we-- it's a little bit deceiving to people. I hear, well, we're right at the top there because of our increases, we're one, one of four states. Well, we're 36th in the nation as far as incarceration per 100,000 people. There's only 14 states that have lower incarceration rates than Nebraska does. And that's important to recognize. Douglas County, I can speak for Douglas County. We have, we have drug court, which started in 1996. We were the first drug court kind of in the Midwest area. It's been very successful. We have young adult court. We have veterans treatment court. We have diversion and we have mental health diversion. We have more problem-solving courts than anywhere else in the state and we've kind of been ahead of the curve in that regard. And that's important. We have 300-some people that we divert out of the system in those problem-solving courts and diversion and otherwise that, that aren't in the system with those courts more than any other county. You know, a lot of the criticism I hear about the sentencing and everything else, it's about judges. It's like, come on, I'm sorry, those judges work very hard and I give them examples of what I knew I would hear today about, well, they're, they're sentencing people to prison on possession charges, or they're sentencing people to too long of sentences. They read the presentence investigation. They know the history of the defendant in the case. They study it. They hear allocution from the defense counsel in the case, and they make a decision based on what they think is in the best interest of everybody involved as to what that sentence should be. And to, to criticize them for doing their job appropriately is, is, is wrong. When I talk to them about-- I've talked to many judges about the possession cases of people going to prison. They, they kind of snicker at me. They go, what are you talking about? We don't send people unless they've had-- they've been here before us on probation. They've been to county jail or they've been to drug court. And then maybe finally, we'll, we'll, we'll have to send them. And I see my time's up and I apologize. There's a lot of things that I would like to continue to talk about, but I'd be happy to answer any questions.

**PANSING BROOKS:** It does go fast. Thank you, Mr. Kleine.

**DON KLEINE:** It does go fast.

**PANSING BROOKS:** Yes, Senator DeBoer.

**DeBOER:** Thank you, Senator Pansing Brooks. Thank you, Mr. Kleine, for being here. So you were making some great points about the, the, the

bench and how, you know, they take the totality of circumstances into effect. One of the things that I worry about with a flat sentence is it takes away some of the judicial discretion, right? There's the prosecutor's sort of discretion. They kind of decide what they're going to charge and all of that. But there's also the judicial discretion, look at the totality of circumstances. If they have these flat sentences, their hands are tied. Isn't that right?

**DON KLEINE:** Well, are you talking about flat sentences or are you talking about mandatory minimums?

**DeBOER:** We'll go with mandatory minimums.

**DON KLEINE:** Yeah, I mean, mandatory minimums, sure, their hands are tied about the mandatory minimum if that person is convicted of that crime, but there's a very-- purpose to that. You know, we said if you're going to do a gun crime, you're going to do time. If people use a gun to commit a felony, we wanted to make sure that they understood they're going to do a mandatory minimum of five. If you're a prohibited person and you possess a firearm, you're going to do three years. I don't know if you've ever been on the other side of that where somebody takes a gun and points it at you and pretty much tells you by pointing the gun to you, your life is in my hands and you're going to do what I say. And for that kind of crime, we think there should be a mandatory minimum of five years, at least, the judge still has discretion to give them up to 50 years. If you're a prohibited person who's carrying around this gun, he's not supposed to have a gun in the first place, then you're going to do a mandatory minimum of three years. The message is don't do gun crimes. And that's, that's the purpose. So it does tie the hands of the judge because it gives-- takes away their discretion. But you talk about discretion and then-- and the other part of it you say, well, we don't want the judge to have discretion if it's a mandatory, not a mandatory, but a sentence of 50 years. We want by this law to limit their sentencing parameters to 50 percent. OK? So we're going to take away the judge's discretion and we're going to tell people-- we'll tell the citizens, hey, the maximum penalty of this crime is Class II felony is 50 years. But under this law, we can-- I can only give them 50 percent of that. We aren't going to say we're going to change the maximum, which would be honest with the citizens to, to 25 years, we're just going to say, hey, you can't sentence them to more than 50 percent of what the maximum is.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

**DeBOER:** Isn't that the minimum, though? The minimum is that you couldn't charge them-- or you couldn't sentence them for their minimum to 50 years. Is that right-- 50 percent? I don't know.

**DON KLEINE:** Well, you, you could always-- the, the most you could sentence them to is in effect if you say 50 percent, that's it. You could send them to 25 to 50. OK?

**DeBOER:** Yeah.

**DON KLEINE:** But they're eligible for parole in 12 and half years. Under the, the way the law is now, you can sentence them to 40 to 50, which I could give you a couple examples of. We see them all the time. They're not anecdotes of, you know, a guy was videotaping himself strangling a little two-year-old on two different occasions and videotaped it. The judge looked at that case on the background of it, he gave him 40 to 50 and consecutive 40 to 50 on the other one. A guy just last week by one of our judges, who's a very fair judge, Judge Wheelock, had a guy that was going 160-- 106 miles an hour down Dodge Street at 4:00 in the morning. He was at .412, killed another man who was going to work. Judge gave him 16 to 20. Under this provision, he would only have been able to give him 10 to 20, and the person who strangled a little child would only give him 25 to 50 or 25 to whatever that might be. So that, that sentence would have been pared down. And I haven't, I haven't heard-- I heard examples earlier today about, well, you know, judges give 79 to 80. I, I don't-- I've never heard of a 79- to 80-year sentence or even a 49 to 50. And I don't disagree that there needs to be a separation between them. The bottom number and the top number, as you said, to, to have some, some incentive for parole. But I think to say we're going to knock the sentence down to 50 percent, or sexual assault cases, we're going to make it 70 percent. I, I don't think that's a good idea.

**DeBOER:** That's-- I'm sorry, I wasn't. I was still [INAUDIBLE].

**DON KLEINE:** And there's-- like I said, there's a-- I think there's a very good purpose for the mandatory minimums. We use our discretion a lot, too, with regard to mandatory minimums. We don't charge them--

**DeBOER:** So, so--

**DON KLEINE:** --at times.

**DeBOER:** --so help me out here because it is confusing.

**DON KLEINE:** It is confusing.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

**DeBOER:** OK, so if they charge, if, if we did the 50 percent on a crime and it was 25 to 50 then instead of whatever,--

**DON KLEINE:** Whatever, 40 to 50 or 30 to 50.

**DeBOER:** --something else, something else.

**DON KLEINE:** Yeah.

**DeBOER:** So then at that 25-year mark-- well, so first at the twelve-and-a-half-year mark, then they come up for parole. Do they jam out at 25?

**DON KLEINE:** Yes.

**PANSING BROOKS:** Because of the 50.

**DeBOER:** They jam out-- they don't jam out at 50?

**DON KLEINE:** No, they-- if you're, if you're under the-- that is very confusing. If somebody gets 25 to 50, they are eligible for parole in 12 and a half years.

**DeBOER:** Right.

**DON KLEINE:** OK, and I think they jam out at 25. That's my understanding. Maybe I'm wrong. I don't know.

**DeBOER:** OK, well, all right.

**DON KLEINE:** But it's not the, not the total maximum sentence. Well, it depends on what the-- again, what the, what the sentence is, if it's 25 to 30, 25 to 40, 25 to--

**DeBOER:** I think they-- well, I don't know. OK, thank you.

**DON KLEINE:** Sure.

**DeBOER:** I'll find out.

**DON KLEINE:** Sure.

**PANSING BROOKS:** So I think that-- excuse me, I'll just add in the, the confusion is the 50 because then the, the, the range at, at half is if it's 25 to 50, then it would be 12 and a half to 20-- to 25.

**DON KLEINE:** Right.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

**PANSING BROOKS:** Yes. Yes.

**DON KLEINE:** Right. So I mean--

**PANSING BROOKS:** So that's how you're thinking of that.

**DON KLEINE:** --the 12 and half, they, they-- they're eligible for parole, at 25 they end up-- can get out or jam out. But the 50 doesn't really have much to do with it because you're cutting it in half.

**PANSING BROOKS:** But can-- I'll just continue this just a little bit since we're on this discussion, so I, I presume that judges understand that when they're sentencing that, that, that as we-- as our statutes are now that we do have good time.

**DON KLEINE:** I think they, they have a-- they get educated on, on good time when parole eligibility is-- yeah, like the 40 to 50, 40 to 50 example consecutive, that judge pretty much was sending a message saying I don't want this person to probably ever get out. And that's part of the sentencing, that that judge looked at all the circumstances there and what happened and said 40 to 50 plus 40 to 50.

**PANSING BROOKS:** And, and I just want to add that we've not-- I've not heard great complaints about our judges in here from this committee. So anyway,--

**DON KLEINE:** Well, I, I--

**PANSING BROOKS:** --next person.

**DON KLEINE:** They really do work hard and they really try to do the best they can.

**PANSING BROOKS:** Clearly, yes. I don't think this committee is questioning the judges on that. Yes, Senator Slama.

**SLAMA:** Thank you, Senator Pansing Brooks. And thank you, Mr. Kleine, for being here today. You raise the point both in your testimony and in your response to Senator DeBoer about the possession cases. We've heard a lot today about the CJI, 26 percent number, split about half and half between possession with intent to deliver and just simple possession. Can you walk me through what those numbers actually are?

**DON KLEINE:** Of-- I--

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

**SLAMA:** Twenty-six percent of new admissions are either possession or possession with intent to deliver with the implication that we're sending them to prison for those?

**DON KLEINE:** I think, I think-- Mr. Frakes, I think said at one time possession cases that come to the Penitentiary, they usually have at least 25 contacts with law enforcement prior to them coming on that particular event. OK? And, obviously, the possession with intent to deliver somebody who's dealing drugs, dealing narcotics, and you know, the message needs to be that those people need to go to prison. On the-- as far as the possession cases also with drug court-- you know, one of our judges has told me, well, if you take these and make them all misdemeanors, you're going to destroy our drug court. And as I said, I was in private practice, I represented people that would come in and say, maybe I've got to-- I want you to represent me on a DUI or whatever it might be. And what's the first question I ask? Do you think you have a problem? And what was always the answer? No, I don't have a problem. I said, well, it's kind of a problem when you're in here paying me to represent you in court and a judge is going to make a determination on what's going to happen to you. So maybe you ought to think about that. But I think sometimes and like Senator Geist said, you know, people have to want to take treatment, that it takes that thump in the head sometimes maybe even sitting in a jail cell for a few days before they go, my God, what am I doing with my life? And they're offering me to go drug court, and maybe I need to take that opportunity to do something about changing or doing something about where I'm at in my life. Because our drug courts are very successful. They're not easy. And some people opt that they don't want to go to drug court, but they have that opportunity and it's to, to prevent them from getting a felony. It's to prevent them from going to prison. And it's very successful. I'm very proud. I've had a guy walk up to me, he said Mr. Kleine, you don't remember me, you let me in drug court. I've got a terrible methamphetamine problem. I always will. But you know what? I'm doing great. I got a job. I got a family, and it's been two years now. And that's something to be-- that's, that's-- it's a, a very good thing.

**SLAMA:** Absolutely. And I mean, to your point about drug courts, I think they've been wonderful. We just got one in Nemaha County and something that my sheriffs are running into down in southeast Nebraska are those meth arrests. You're on your 30-- or your 40th arrest or contact with police in two years. It's, it's a constant stream for some of our sheriff's departments, and it's a, it's a horrible deal. And I think the drug courts make a lot of progress there and I, I share your concern that--

**DON KLEINE:** Well, and if you don't-- and if we don't do something about those people that have addiction problems, you know what, most of our assaults, thefts,--

**SLAMA:** Murders.

**DON KLEINE:** --whatever are, are fired by people who have addiction problems. So we've got to solve that problem. It prevents a lot of other crimes. Also, we let people in drug court that don't even have a drug possession offense. It might be something else, but it was from drugs that they got them into trouble in the first place. So sorry.

**SLAMA:** Yeah, absolutely. And can you just talk a little bit more about how you approach mandatory minimums because I know this bill eliminates them, what purpose you use mandatory minimums for?

**DON KLEINE:** If it's a serious gun crime, if somebody uses a firearm, as a example, sticks a gun in someone's face or fires a gun in somebody's house, or, you know, we're going to have them plead to the underlying charge and the use charge. On a prohibited person case, we're going to look at that person's history and sometimes we use our discretion. If you look at our files, sometimes we'll make it an attempted possession by a prohibited person. What does that do? It makes it no mandatory minimum. It just makes it a 1 to 50. But it just depends on the circumstances of the case, that person's criminal history, what they were doing. Sometimes somebody might say, I had this gun for my own protection. I was worried somebody was going to do something and maybe we'll consider doing something else with it. So we use our discretion in that regard.

**SLAMA:** And this bill would eliminate a lot of that discretion, would it not?

**DON KLEINE:** Absolutely. Yeah.

**SLAMA:** All right. Thank you, Mr. Kleine.

**DON KLEINE:** Sure.

**PANSING BROOKS:** Senator McKinney.

**McKINNEY:** Thank you. And thank you for your testimony. I've got a few questions. Is it fair to say you're comfortable with how, how you prosecuted cases in Douglas County over your tenure?

**DON KLEINE:** Over my tenure?



**McKINNEY:** Yes.

**DON KLEINE:** Yes. Yeah, I mean, you always look for ways to improve and things that you can do better in the criminal justice system. Our mantra there is-- and I tell our lawyers what we do today is make Douglas County a better place to live for all our constituents on all sides. That's the great thing about being a county attorney is you, you don't look at it just from an individual perspective. You look at it from a, a big picture perspective.

**McKINNEY:** OK.

**DON KLEINE:** And so that's-- yes.

**McKINNEY:** So are you also comfortable knowing that Omaha, which is in Douglas County, has the highest, the 11th highest black incarceration rate in the nation?

**DON KLEINE:** That's very sad. And you know, Senator, if you look at last year's statistics in 2021, 60 percent of the homicide victims in, in Douglas County in Omaha, Nebraska were black, African-Americans. That's terrible. So look at it from the victim's perspective also, you talked about the defendants.

**McKINNEY:** I look at it through the victim's perspective because I've had family and friends that were killed. So just because I asked that question doesn't mean I'm disregarding victims because my family has been a victim to gun violence.

**DON KLEINE:** Yeah, but I'm saying in this portion and that part also.

**McKINNEY:** But, but I'm just saying don't, don't just say, look at it through the lens of victims because I've been on the other side of that table.

**DON KLEINE:** I don't know what you mean by the other side of the table.

**McKINNEY:** Meaning my family was considered the victim's family at a time.

**DON KLEINE:** Yeah, well, I sat--

**McKINNEY:** That's what I'm saying. So also, are you an advocate for public safety?

**DON KLEINE:** Of course.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

**McKINNEY:** Is reduction of poverty a part of public safety?

**DON KLEINE:** Absolutely, yes. There's a lot of things much more than just poverty.

**McKINNEY:** No, I know that, but I have a follow up. So when have you and the county attorneys came down to the Legislature and advocated for legislation to reduce poverty in communities like north Omaha?

**DON KLEINE:** When have I advocated?

**McKINNEY:** When have you or the county attorneys done something?

**DON KLEINE:** I do stuff every day to help.

**McKINNEY:** No, I'm saying, when have you came down to this body?

**DON KLEINE:** I haven't come down to the Legislature--

**McKINNEY:** Why?

**DON KLEINE:** --and say, give me some money to send to whatever.

**McKINNEY:** Why not?

**DON KLEINE:** Because I do things in other ways.

**McKINNEY:** But are you for public safety?

**DON KLEINE:** Of course, I'm for-- I just said I was for public safety.

**McKINNEY:** But isn't poverty a part of public safety?

**DON KLEINE:** Sure, and so is education,--

**McKINNEY:** So why don't you--

**DON KLEINE:** --hope, jobs, and those things are all things that I've been about, coaching kids, being involved with them for 30 years. Those are all things that I think we can do besides--

**McKINNEY:** And I've got another question. So in the '90s, you were a county attorney, right?

**DON KLEINE:** In the '90s?

**McKINNEY:** Yes.

**DON KLEINE:** I was chief deputy county attorney in Douglas County.

**McKINNEY:** OK, so in the '90s, how many individuals that smoked crack did you try to divert to drug courts?

**DON KLEINE:** Well, we started our drug court in 1996. OK?

**McKINNEY:** So how many people?

**DON KLEINE:** So I don't know, I don't know. I don't have an answer.

**McKINNEY:** Is it a good number?

**DON KLEINE:** [INAUDIBLE].

**McKINNEY:** I bring this up because growing up, there-- in my-- not addressing my opinion, a lot of data and things show that. We treated individuals that smoked crack like criminals and over policed them and incarcerated them. But when our nation and our state had a meth epidemic, there were more efforts around public health. And I was just curious to see if you were an advocate to encourage those individuals who had that addiction to get into drug courts to prevent them from having felonies?

**DON KLEINE:** I would. Yes.

**McKINNEY:** You would. But did you?

**DON KLEINE:** You know, I don't, I don't know the numbers, but I'm sure we did. If it was anybody that's in a possession charge, we would try to put them in drug court. So smoking crack would be a possession not a, not a, a dealer So I'm sure we would.

**McKINNEY:** And you're also OK with the philosophy of charging, charging an individual that has an addiction with a felony to get them help?

**DON KLEINE:** Well, it's not charging somebody that has an addiction.

**McKINNEY:** You are though.

**DON KLEINE:** OK, first of all, we charge them based on the evidence that we have and it's usually the possession.

**McKINNEY:** But you did, but you did say we recognize that these individuals have an addiction and to get them away from that addiction or get them healed or whatever, we want to charge them with this

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

felony to push through the system. So are you-- that's pretty much what I've got from it.

**DON KLEINE:** Well, I want to get-- I want to get them help.

**McKINNEY:** Why can't we charge them with misdemeanors and get them help?

**DON KLEINE:** Well, because I don't think there's an incentive and I don't think we should, I don't think we should decriminalize things or reward people for possessing heroin, possessing crack, possessing methamphetamine, possession, possession of fentanyl. Those are bad things.

**McKINNEY:** I'm not, I'm not saying reward them. I'm saying, getting, getting-- get them help. And I just don't understand why we need to charge people with felonies to get them help. That just makes-- at no time in my life ever any universe I ever arrive on once I'm gone, will that ever make sense to me. Thank you.

**DON KLEINE:** Well, that's not what I said, because I wish people would get help without getting charged with a felony. So we do things like that, too. We encourage people to get help, get rehabilitated before they get in trouble. And sometimes they-- sometimes it's a situation where somebody is a shoplifter and found that they have a drug addiction problem. So we try and get them into drug court because they tell us, hey, I'm shoplifting because I got a, a habit that I need to support or whatever it might be. So, yeah, I'm just saying that's one step. And I don't see-- I don't think it's much of an incentive to say, let's make it a lesser event in their life as far as a crime, and, and hope that somehow they, they get some help. Let's, let's try and make them do something about it.

**McKINNEY:** By charging them with a felony?

**DON KLEINE:** Yeah, if that's what it takes.

**McKINNEY:** All right. Thank you.

**DON KLEINE:** Sure.

**PANSING BROOKS:** OK, thank you, Mr. Kleine. I don't see any further questions. Thank you for coming tonight.

**DON KLEINE:** Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

**PANSING BROOKS:** OK, next proponent-- or opponent. Sorry, opponent. Welcome.

**JOE KELLY:** Members of the committee, Vice Chair Pansing Brooks, my name is Joe Kelly, K-e-l-l-y. I am the criminal bureau chief for the Nebraska Attorney General. I'm here to oppose LB920. I've handed out to you a letter for brevity sake that lists those sections in particular that we find most difficult, most troubling, and, and oppose. I, I want to answer questions for you. But the second thing I handed out was a piece of paper, and I just today took those recidivism numbers straight out of the, the study that you had done and, and demonstrated to myself how little-- how big of a change we can make if we just knock that recidivism rate down a little bit. And what I've done is shown you that based on some of those numbers, if we took the 2020 inmates who are new admissions and used the difference between those two, 31 percent and 27 percent recidivism, we're talking about 99 fewer inmates by getting down to 27 versus 31. So when it does come to prison overcrowding, I, I, I sure think and I, I, I sure look positively towards those efforts that help us reduce recidivism the day that person walks out of prison. A second observation I want to make in my limited time is this, I was very involved with LB605. I represented the county attorneys in that process. I worked with Senators Pedersen and Brashear years before that on several of their working groups where we looked at some of these issues. And I'll say one problem that always occurs, and I hope we would end it this time, we walk past each other because we never pull actual jackets or records of the people we're talking about to see what do we think about that person? Would I, as a judge under these laws, have put that person behind bars? I think we are in agreement more than we think on some of those issues if we look at the totality of that person's life. Juvenile court, adult court, the diversions, all of that. One final thing to set the record straight. The, the number I had from the-- from Mr. Frakes was that on the average, people incarcerated for drug offenses have 22 prior convictions, prior convictions.

**PANSING BROOKS:** OK, thank you, Mr. Kelly. Yes, Senator Morfeld.

**MORFELD:** Thank you for coming, Mr. Kelly. One of the things that's been brought up, I think once by the the proponents and another time maybe by one of the, the opponents is plea bargaining. And it's tough to really be able to track that in the data, mainly because I don't think it's tracked probably at the county attorney's office. There might be some county attorney's offices that track it. How do we-- is there a better way to, to account for that, to track for that, to see

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

how that has an impact and how it doesn't have an impact on some of them? Do you get what I'm saying?

**JOE KELLY:** Oh, I, I think it's a very valid point. When I was county attorney, I invited the Pew Trust in to conduct a study, and they did. They looked at lower-level, misdemeanor offenses to see, number one, if there was racial bias going on, and secondly, to see how we were treating people on some of those crimes. They made no findings of any particular bias at all. But that's an important question if you're really studying everything that's going on behind the curtain, I want to know, where did you start and what did you plead to?

**MORFELD:** Is there a good way, is there a good way to track that or start collecting that data as a state so that we can start making some informed decisions on that or--

**JOE KELLY:** I, I don't know. Here's what I say about on a broader sense about plea bargaining. The alternative to plea bargaining, because it's always going to be there. If you committed a crime that's punishable by five years, what are you going to do if you're defending, you're going to try and get something less than five years, so you get it down another notch. There's always-- you can misrepresent the most serious penalty by calling it a hammer or something that's used to drive somebody to a plea agreement. But the bottom line is that's what you charge-- that's what the facts support so that's what you can be charged with. Now if your alternative is I don't want to be plea bargaining, then you're getting a lot closer to the federal system where not only in the administration that I serve, but those previous and those presently, as far as I know, abide by a plea memo that says you charge for the most serious, provable offense. And in doing so, you're basically-- your goal is to stay with that offense so long as it's provable. Now on the state level, we have a great more deal of latitude that we give to our prosecutors and rightly so to-- on some of the smaller, I should say, less serious offenses to have that latitude to look at the person and get them into some other programs. But plea bargaining is part of the process, and it always will be as long as a particular act could be punishable by two or three or four different statutes.

**MORFELD:** Thank you.

**PANSING BROOKS:** Yes, Senator Brandt.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

**BRANDT:** Thank you, Vice Chair Pansing Brooks. Thank you for testifying and hanging around today. Were you guys part of the CJI report, the Attorney General's Office?

**JOE KELLY:** The Attorney General's Office? No.

**BRANDT:** So when the Chief Justice and the Legislature and the executive branch went through this exercise, nobody thought to ask the Attorney General's opinion?

**JOE KELLY:** I have no idea. I don't know.

**BRANDT:** All right. Thank you.

**PANSING BROOKS:** Anyone else with a question? Nope. Thank you, Mr. Kelly, for coming. Appreciate it, being here all day. OK, next opponent. Welcome.

**JOHN BOLDUC:** Thank you. Vice Chair Pansing Brooks, committee members, my name is Colonel John Bolduc, B-o-l-d-u-c. As superintendent of law enforcement and public safety for the state of Nebraska, I'm here today on behalf of the Nebraska State Patrol to testify in opposition to two specific provisions of LB920. Specifically, the proposal to move possession of less than one-half of one gram of hard drugs to a Class I misdemeanor and removing the mandatory minimum sentence requirement for Class ID and IC felonies. The Patrol opposes these provisions from a public safety perspective because they may ultimately harm the people they purport to help. Drug-related offenses under the Nebraska Criminal Code include offenses ranging from possession of a small amount of heroin to dealing large quantities of dangerous drugs such as methamphetamine. These are not victimless crimes. These drugs are dangerous not only for the users, but for their families, friends, and our communities at large. The elimination of the mandatory minimum sentences for Class ID and IC drug-related felonies automatically reduces the protection afforded to communities from some of the most serious drug offenders. For example, under the current statutory scheme, a person must be in possession of at least ten grams of methamphetamine to be charged with a ID misdemeanor-- ID felony. Methamphetamine is typically sold in quantities of one-sixteenth of an ounce for personal use, meaning a person in possession of ten grams of meth can make almost six individual sales. Since meth is used in smaller quantities, each individual sale may result in many more actual doses of methamphetamine being available to harm individuals in our communities. For the first time in our history, we eclipsed 100,000 drug overdoses in a 12-month period in

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

2021. An increase of 28.5 percent from the 20-- the 78,000 deaths during the same period the year before. In Nebraska, overdose deaths rose by 43 percent in 2021. For drug possession offenses, incarceration is typically the last resort. It is not uncommon for first-time offenders in possession of a user quantity of drugs like less than one-half of one gram to be afforded an opportunity to attend drug court, a diversion program, or plead to a misdemeanor offense. LB920 would ensure that a person addicted to hard drugs could be on their tenth offense for possession of one-half of a gram and not be subject to current Class IV felony mandatory presumption of probation, which is currently under Nebraska statute. In closing, I want to thank you for your time and considering my testimony today, and I'd be happy to answer any questions you might have.

**PANSING BROOKS:** Yes-- thank you for coming. Go ahead, Senator McKinney.

**McKINNEY:** Thank you. You mentioned the rise in overdose deaths in 2021. And if my memory serves me right, some of those deaths were or could be probably linked back to the State Patrol's Office. And you mentioned public safety. What has the State Patrol done to ensure that the situation that occurred last year doesn't happen again?

**JOHN BOLDUC:** Well, thank you for the question, Senator. The person responsible for the theft and distribution of those drugs is being held accountable. That person was terminated and is facing federal charges. That has not gone to trial yet, of course, so those details we won't be able to get into at this time.

**McKINNEY:** What, what-- have you put any new policies in place to prevent that from happening? That's what I'm asking.

**JOHN BOLDUC:** Oh, thank you, Senator, for the question. Yes, so there's a number of technology changes that we've made within our systems and policy changes that address some of the specific issues that this person who committed these crimes was able to exploit and the details of which we will go into great length at the conclusion of the criminal trial.

**McKINNEY:** OK, I just wanted to point that out because you talked about the rise in the numbers, and I just wanted to make sure it was clear some of those numbers are--

**JOHN BOLDUC:** I'm painfully aware of that, Senator. Thank you.

**McKINNEY:** Yes. All right. Thank you.



Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

**PANSING BROOKS:** Any other questions? Just, just for the record-- thank you for being here. I appreciate it. The-- your, your written testimony says eclipsed 100,000 drug overdoses in a 12 year.

**JOHN BOLDUC:** Yeah, that's a, that's a error.

**PANSING BROOKS:** You meant a 12 month. Is that correct?

**JOHN BOLDUC:** It's 12 month. That's correct, ma'am.

**PANSING BROOKS:** Thank you for being here, Colonel. Appreciate it.

**JOHN BOLDUC:** Thank you.

**PANSING BROOKS:** OK, next opponent.

**ELAINE MENZEL:** Good afternoon, or perhaps evening, Vice Chair Pansing Brooks and members of the Judiciary Committee. For the record, my name is Elaine Menzel. It's E-l-a-i-n-e M-e-n-z-e-l, here today on behalf of the Nebraska Association of County Officials. Like other testifiers today, we have aspects of the bill that we are supportive of, as well as those that we oppose. And then we do have one issue that we will bring to your attention later regarding something that would be considered in neutral and aspects that we are supportive of are certainly the problem-solving courts, as well as dealing with mental health and behavioral health issues and hoping that that will help alleviate some of the need for the prisons or jails in the future. Despite our support of those initiatives, though, our legislative committee discussed various bill-- this bill and opted to oppose it based on various portions that relate to pen-- various penalties, sentences and the elimination of mandatory minimums for controlled substances, as testified by previous individuals. The final comments that I'll relate to you have to do with information that was submitted by our legislative liaison, Janet Wiechelman, who you've all heard before, and she's the Clerk of the District Court representative. She submitted comments to the legislative committee. And perhaps you've seen them, or at least you will see them related to the restitution component within Section 20. And while I don't understand it entirely, I understand at least enough to know that there's not a time frame, time frame specific and what they would propose is to potentially have it-- have a time frame implemented so that they could send it into uncollected provisions or something of that nature because they do apparently get dinged for lack of a better word from the State Auditor's Office on this issue. With that, I'll conclude my testimony and be available for questions if you happen to have any.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

**PANSING BROOKS:** Thank you, Ms. Menzel. Anybody have a question? I don't see any. Thank you for coming and being here so long tonight.

**ELAINE MENZEL:** Thank you.

**PANSING BROOKS:** Thank you. Any other opponents? Opponents? OK, what about in the neutral? Is there someone from the neutral? Welcome.

**TIMOTHY LOPEZ:** Hi, everybody, thank you for allowing me up here to the committee. My name is Timothy, T-i-m-o-t-h-y, my last name is Lopez. The reason why I'm in a neutral capacity on this is because there's more crimes than just drug offenses. And I understand that more are heinous and things as well. But trauma is trauma. And so is harm is harm. But we have to take the empathetic approach to this as well. I spent 15 years within the Department of Corrections from the age of 15 to the age of 30. While I was incarcerated during this process, I wasn't allowed programming and all the way up until about after I was eligible for parole. And changing things for the sentence structure of all that really won't matter. I lived the life. I was in within the prison confines. And I know what the "overcrowdingness" has to consist of. I slept on floors because they ran out of cots. I slept on hard concrete floors because they didn't have beds. So I understand that. I had to sleep next to a toilet with two people in my room who didn't have cots or beds, while there was bunk beds and some of the guys were cool and grew up together, so they decided just bunk on the same bed together. These are struggles that happens within the prison. One of the major problems with the programming in the prison is individuals who have a drug addiction, who has drug problems, who go into the prison system and go into the drug program or refuse it, they still stay on the list in their same rotation. So a person who ain't eligible for parole yet who moves up trying to do a program won't move up into the rotation of your drug, your drug program. They refuse that. A person who gets kicked out of drug treatment multiple times will be allowed back into drug treatment before somebody who is not eligible for parole. And it's a problem because these are the things we need to tackle outside of just saying, hey, if we adjust the sentence structure, this is how we could assure that somebody could probably get, get into a program. No matter what we do, or no matter how hard we try with this, it's not going to change. We need to address on how right away when individuals get into the prison system, they can get treatment. Lack of treatment for me during my incarceration led to multiple attempts of suicide. I sat in a coma, because you know why? Because I couldn't get nobody come on a gallery and talk to me. Mental health wasn't a thing when I was in there fighting for my life. I chose to go the gang route because that's the

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

only way I knew. I grew up in, in Omaha. I grew up on the south side and the north side. I'm a product of what my environment was. We're sitting here trying to tackle the end result rather than the source of why this is becoming what it is. I got a bullet wound in my leg right now because I was five years old walking in the projects. I got gashes on my head because I chose a gang life and I was walking down the street in the wrong street color. But a lot of the individuals in here won't identify with that because you don't understand that life, and, and I'm not trying to be rude, but a lot of individuals in here are privileged and they won't understand the empathetic approach of that. Now if it's you sleeping on the floor next to the feces, sleeping on the floor having to eat your food in a room full of crap that was smeared down there before the next person, tell me how you'll feel. Here's a challenge to everybody, lock yourself in your bathroom for a week and only eat your food in there, what somebody would give you a baloney sandwich and then don't even take a shower, but every other three days. And then tell me how each one of you individuals feel. That's the product of how I grew up. I'm a product of my environment. Thank you.

**PANSING BROOKS:** Thank you, Mr. Lopez. Just a second. Does someone have a question for Mr. Lopez? We appreciate your testimony--

**TIMOTHY LOPEZ:** Thank you.

**PANSING BROOKS:** --today and the difficulties you've come through, and we wish you well. OK, another neutral?

**MOLLY ROBUSTELLI:** Good evening, Vice Chair Pansing Brooks and members of the Judiciary Committee. My name is Molly Robustelli, R-o-b-u-s-t-e-l-l-i, and I'm here to provide neutral testimony on LB920 in my capacity as a policy specialist for the Crime and Justice Institute, or CJI. As has been talked about today a few times already, LB920 is the product of the recommendations developed by state leaders as a part of the Justice Reinvestment Initiative or JRI. And so the inception of JRI in Nebraska is that the state leaders came together to apply for JRI and were awarded it last spring in 2021. And the goal of the grant is to assist states that have a growing prison population in understanding what is driving their system through qualitative and quantitative data findings, equipping state leaders to develop policies that reduce recidivism, and shift resources towards more cost effective public safety strategies. And so CJI is a technical assistance provider for that JRI grant. And our role is to be a resource to the task force. In this case, the Nebraska Criminal Justice Reinvestment Working Group that is created to facilitate that

grant. And so we provide support in the comprehensive study of the system. I'm here testifying not in support of any specific policies of LB920, but instead to clarify what our role is in the process to establish an open dialogue with you all and to answer any questions that you may have about the data and research that was presented to the Working Group. So I just want to be clear on what our role as technical assistance providers was in this process, not to create any recommendations for the state to pursue, rather, we just provide the data and system analysis, the research and state examples that can serve as tools for the Working Group to make informed policy decisions. Our team is not from the state of Nebraska, so we don't know what will work best for your state. You all do. And so we just serve to provide the foundational data and research for the state leaders to then choose the path that works best for their state. I will quickly just walk through what the process looked like. And as I mentioned, state leaders requested the technical assistance through JRI, the federal grant, and between May and September, our team conducted a deep, qualitative and quantitative assessment of the state's criminal justice system. We gave three data presentations to the Working Group. The Working Group then split up into smaller subgroups to have more focused discussions about policies, and then we provided data and other state examples during the smaller subgroups. Ultimately, the subgroup policies were put forth to the full group, which resulted, as you know, in 21 total policies, 4 of which did not receive the full consensus of the Working Group and 17 that did. And I will stop there. But as I mentioned, really just looking to help provide some clarity about what our role is and have an open dialogue with the members of this committee.

**PANSING BROOKS:** Wonderful. Thank you, Ms. Robustelli. Senator Morfeld.

**MORFELD:** I don't know if you were here earlier for the question. Thanks for coming today. I don't know if you were here earlier for the question on plea bargaining and how maybe we track that a little bit more to see how it impacts. How have other states in your experience tracked plea bargaining and, and use that data to talk about policies?

**MOLLY ROBUSTELLI:** Sure. Plea bargaining is something that happens in every state, and the majority of cases are ultimately disposed in that way. I would say that it's also a challenge for most states that we have worked in, in tracking how plea bargaining and plea deals influence their system. It was a question that we received during the Working Group process, and while we were not able to answer that at the aggregate level in the data that we had received from the state criminal justice agencies, we did look to do a file review. So we had

a smaller but random and representative sample of cases where we looked into the number of offenses that were originally charged and what those offenses were and then what was the ultimate conviction. And so again, it's a random and representative smaller sample. So I give that caveat just that it might not represent the entire actual population. But in looking at that, we found that 66 percent of the cases reviewed had the same nonviolent, violent distinction type of charge at original charge and then conviction. But the 68 percent had a fewer total number in charges.

**MORFELD:** Thank you.

**PANSING BROOKS:** Thank you, Senator Morfeld. Senator Slama.

**SLAMA:** Thank you, Senator Pansing Brooks. And thank you very much for being here today. I, I appreciate getting the perspective of the data side of it. Obviously, we're focusing a lot on the policy outcomes.

**MOLLY ROBUSTELLI:** Sure.

**SLAMA:** Just a quick question. I, I think this question has been asked earlier today, and I think you could provide some insight. So if we're talking in Nebraska, were we considering in this data collection, a felon in possession of a gun? Is that considered under your metrics, a low-level, nonviolent crime?

**MOLLY ROBUSTELLI:** So we didn't provide any of our own metrics or categorizations of the offenses. We used what NDCS uses, and they have a hierarchy to categorize offenses. There are a few ways to do that. So you could break crimes out by nonviolent and violent, or you could break crimes out by person, property, drug, other, and sex. So it depends on which way that you break those out. So the offense that you requested was?

**SLAMA:** Like, felon in possession of a gun.

**MOLLY ROBUSTELLI:** OK.

**SLAMA:** It's been asked a couple of times.

**MOLLY ROBUSTELLI:** Sure. So that by NDCS would have been categorized as violent in the nonviolent versus violent distinction is my understanding. But as in other offense, with those distinctions between person, property, sex, drug, and other. It would have been other.

**SLAMA:** So nonperson, nonproperty, nonsex type crime?

**MOLLY ROBUSTELLI:** Yes.

**SLAMA:** OK. So when you're collecting data, is your focus on analyzing solely prison populations and what, what the individuals are in the prison for, were in the prison for?

**MOLLY ROBUSTELLI:** So, so that the, the grant is looking to understand the drivers of the prison population. So yes.

**SLAMA:** OK.

**MOLLY ROBUSTELLI:** Just the adult side, just felonies.

**SLAMA:** But not the overall outcomes for public safety?

**MOLLY ROBUSTELLI:** We look at recidivism.

**SLAMA:** Overall crime rates or--

**MOLLY ROBUSTELLI:** Overall crime rates were presented as well. Yes.

**SLAMA:** So is the focus more on why, why the individuals are in prison or what the outcomes are as we lower our prison population?

**MOLLY ROBUSTELLI:** Sure. Sure. So the, the goal of the grant is to understand what's driving the prison population with the ultimate goal of shifting resources towards more cost effective public safety strategies and reducing recidivism.

**SLAMA:** Are lower prison population rates correlated in any way with lower overall crime rates, higher public safety [INAUDIBLE]?

**MOLLY ROBUSTELLI:** Sure. So from 2008 to 2019, 39 states have seen a decline in both their imprisonment rates and their crime rates.

**SLAMA:** Does that include when you take into account violent crimes?

**MOLLY ROBUSTELLI:** Yes, that crime rate would include violent crime.

**SLAMA:** And does that include-- focuses on urban centers or just overall crime?

**MOLLY ROBUSTELLI:** Statewide populations.

**SLAMA:** Statewide populations.

**MOLLY ROBUSTELLI:** Um-hum.

**SLAMA:** OK, thank you very much.

**MOLLY ROBUSTELLI:** Yeah, of course.

**PANSING BROOKS:** Senator Geist.

**GEIST:** Yeah, I just have a couple of quick questions. So a, a few minutes ago, when Sergeant Hanson was here testifying, he indicated about these urban cores whose-- where states that you guys had been and their homicide rates significantly. Do you have any comment about that?

**MOLLY ROBUSTELLI:** I do. We have never worked in the state of Texas, so that one specifically I can't speak for. However, we typically look at statewide trends as opposed to urban centers. So I think that is something that we're interested in following up on further and taking a closer look at. Because now that that's been brought to our attention, we definitely are interested in pursuing that.

**GEIST:** OK. And I know you and I have had lots of conversations, and I often said that I felt like there was an agenda, and so I'll just be out with that. But you guys also have a lobby group that's going to be talking to all of us about this legislation, and so help me understand how that's all about the data.

**MOLLY ROBUSTELLI:** Sure. The lobbyist group is here because, as I mentioned before, we, we don't live here, so we know that there will be questions about the foundational data that underlie the policies and questions about the Working Group process. So that's simply to just make sure that we have the capacity to answer those questions that we know what's being asked and can be in the room like today.

**GEIST:** So it's not to forward that the bill passes?

**MOLLY ROBUSTELLI:** Not the bill specifically, but to educate the legislators on the underlying data and the research.

**GEIST:** OK, thank you.

**MOLLY ROBUSTELLI:** Yeah.

**PANSING BROOKS:** OK. Do you have something? OK. I just, I just have one question. Thank you for coming and staying so long.

**MOLLY ROBUSTELLI:** Yeah.

**PANSING BROOKS:** I'm-- do you have states that have used your data and had positive results--

**MOLLY ROBUSTELLI:** Yes.

**PANSING BROOKS:** --about decrease in crime and--

**MOLLY ROBUSTELLI:** Yes. Yes.

**PANSING BROOKS:** --could you talk about that a little bit, please?

**MOLLY ROBUSTELLI:** Absolutely. So the majority of--

**PANSING BROOKS:** And decrease in prison populations.

**MOLLY ROBUSTELLI:** Sure.

**PANSING BROOKS:** Yeah.

**MOLLY ROBUSTELLI:** Absolutely. So as I mentioned, just kind of an overall trend across the country is that from 2008 to 2019, 39 states have seen both a decline in their crime rates and their imprisonment rates at the same time. But specifically to those who have gone through the JRI process, the majority of states that we have worked in that have enacted sentencing policies as a result of the Working Group task force process have seen a reduction in incarceration and statewide reduction in crime. I can provide more, more specific details to you. I don't have it in front of me, but I'm happy to get that.

**PANSING BROOKS:** OK, if you could get that information for the committee, that would be great.

**MOLLY ROBUSTELLI:** Absolutely.

**PANSING BROOKS:** I would love to have that. Thank you.

**MOLLY ROBUSTELLI:** Yeah.

**PANSING BROOKS:** And thank you for coming into the state and being here.

**MOLLY ROBUSTELLI:** Yeah, absolutely.



Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

**PANSING BROOKS:** Any other questions? I don't see any. Thank you, Ms. Robustelli.

**MOLLY ROBUSTELLI:** Sure. Yeah.

**PANSING BROOKS:** OK, any other neutral testimony? Wow. Nope. OK, Senator Lathrop, would you like to close?

**LATHROP:** Yes, and first of all, my apologies to everybody who has a bill after this one. I had no idea, honestly, that this would go till this hour, so I'm going to apologize upfront for scheduling more bills after this one. The second thing I want to, I want to say is, first of all, I really appreciate Mr. Lopez coming. I'm just going to say this. This is the second time he's come here. I think I met him through a little port in a prison cell when Doug Koebernick and I were touring a place and he was in a bad place and, and Koebernick has made a point to stop by and talk to him frequently. And he said, I'm not going to screw up this time. I'm not coming back. And for him to come back here and, and tell us, give us some insight into what it means to be an incarcerated person. I, I-- it means an awful lot to me, and I'm glad you're doing well. I also want to say I appreciate what law enforcement does. I have-- I've known Aaron Hanson since we worked on public employees right to collectively bargain when that was threatened. I've known Don Kleine for 40 years since I got out of school. I appreciate what prosecutors do, and I appreciate Joe Kelly's service to the state when he was a U.S. attorney. He works in the Attorney General's Office. Those guys do sort of this stuff that the rest of us don't really have to bother ourselves with. The things that, that where we're dealing with crime and some of it's pretty ugly stuff. I appreciate what they do. That said, this process began because we are at over 150 percent of capacity. We have a Penitentiary that is falling apart. Alvine Engineering went through it since our last session, and they have essentially condemned every housing unit and most of the buildings on there, so we'll be down 800 beds. The Pen is done and we can build 1,500 beds. By the way, they ought to be the right ones. Not just everything high security. It should be done after a facility study, which we funded last session. But the point, the point, and I'll end where I began. Look at that chart. Look at the chart that I handed out at the beginning of my testimony, my friends, because this is why we brought CJI here. We didn't need CJI to expand problem-solving courts. We were doing that on our own. Right? You guys have been party to expansion of, of problem-solving courts. The point was is that we needed to do something about this line, this dotted line, because until we do that, we have chosen a policy course of building our way out of this. But look at what's happened between 2018

and 2025, presuming we build the prison, we can't, we can't get ahead of this. We literally can't get ahead of it. And all we need to do is figure out what to do with the population projections. And so we included in the CJI process, Don Kleine, a county attorney. We had Chief Schmaderer there. We had a sheriff from Scottsbluff. We had judges. We had three members of this panel who participated in that. We didn't need CJI. It's justice reinvestment. How do we get ahead of this problem and other states have done this. We're now the outlier. We're now the outlier. And we find ourselves in a place where we're number one in overcrowding. We're one of four states over the last ten years that's grown its population, and they've given us an analysis of what that looks like. And by the way-- and I'm just going to say this because Sergeant Hanson came in and talked about gun crimes and violence. But this, this bill doesn't get rid of mandatory minimums for gun violence. That's not even in here. I appreciate that that's something that's scary. And it's something consequential, and it's something that was-- came about when we were having significant problems in Omaha with gun violence. But this bill doesn't get rid of that. It deals and it talks about other things. And we got to find a way where we are committed and I'm looking at you, Senator Brandt, because this is property tax relief, right? We're going \$270 million to build ourselves to a position where we'll need another prison just like it built by 2030. Now they don't have to worry about that. I appreciate that counties don't contribute to the cost of these incarcerations and the cities don't and their prosecutors and their law enforcement. Believe me, I'm sure they care, but they're not paying for any of this. We are. And as policymakers, at some point we have a right to say, wait a minute, what are your solutions? And I'll tell you, when I got elected three years ago and came down, I met with the county attorneys and I said, we have an overcrowding problem. Who, who, who do you think doesn't need to be there or who doesn't need to be there as long as they are? Nothing. Nothing. Nobody's got an answer. The opponents don't have an answer for how do we level this line or lower the rate at which it is growing because it is growing at 150 people a year. And by 2030 we'll incarcerate 7,327 people with a new prison. All of our capacity will be at operationally, which is 125 percent of design capacity. We'll be 1,300 people behind. We won't have space for them. So we need to tell Stinner over in Appropriations, do we need a half a billion dollars for more prisons or are we going to do something about it? That's our problem as state policymakers. And I'm happy to have those guys at the table and they can tell me what they think are the solutions instead of telling me that nothing will work but expanding problem-solving courts. This is the-- this issue Governor Heineman kicked down the road for the entire

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

time he was there, and Governor Ricketts, to his credit, tried to do something. But you can see the futility in trying to build your way out of this, and that is represented on this graph from 2018 through 2025. We can't do it. We can't. Because as soon as we get done adding 1,300 more to meet our, our capacity requirements for 2030, the line is still going to be going up. So I very much appreciate your patience. I'm happy to answer any questions. I can't believe there are any, but maybe there are. And again, my apologies to those senators who still have bills to introduce.

**PANSING BROOKS:** Thank you, Senator Lathrop. Anybody have a question?

**LATHROP:** OK.

**PANSING BROOKS:** I don't see any. And before I close the hearing, I just wanted to say that we had 56 proponent position comments and 2 opponents and 1 in the neutral, so. And with that, we'll now close LB920, the hearing for LB920.

**LATHROP:** Thank you.

**PANSING BROOKS:** Thank you. What's the next one?

**BRANDT:** LB918. Go ahead and call LB918.

**PANSING BROOKS:** I think the next, the next bill is LB911, Senator Lathrop.

**DeBOER:** LB918.

**BRANDT:** LB918.

**PANSING BROOKS:** Oh. Oh, LB918. Sorry. And is that Senator Wayne?

**BRANDT:** No, that's Jake. [INAUDIBLE].

**PANSING BROOKS:** All right. Welcome.

**JAKE SEEMAN:** Thank you for the warm, warm welcome here.

**PANSING BROOKS:** Yeah, thank you. Sorry, you've been here so long. OK, you can go ahead and start.

**JAKE SEEMAN:** Thank you, Vice Chair Pansing Brooks and members of the Judiciary Committee. My name is Jake Seeman, J-a-k-e S-e-e-m-a-n. I'm Senator Wayne's legislative aide. He planned on-- planned to be here today, but he had a meeting this after-- this evening in Omaha that he

needed to attend. He represents the 13th legislative district, encompassing north Omaha and northeast Douglas County. My intro will be brief, but Senator Wayne just wanted me to touch on a couple of points here. And also, I'm here to introduce LB918 on his behalf, which would take the cash value thresholds of crimes in the state and double them. It's important to keep the values necessary to trigger certain levels of crimes up with the times and for legislators to make sure that inflation rates don't make our criminal justice system any more harsh than it rightfully should be. Thanks to inflation, we are nearing the point where people could become felons for stealing a cell phone. Right now, the iPhone 3 [SIC] is retailing for \$1,200. Tack on a fancy case or some pricey accessory, and they're a felon. There are other examples of this as well. The prices of everything have gone up since these figures were last adjusted seven or eight years ago. There are different ways that different states stay ahead of this inflation erosion. Senator Wayne personally thinks Alaska's method, which automatically updates their felony cash thresholds with inflation, makes the most sense and takes a lot of politics out of the process. But that was a larger change that he was trying to tackle with this bill. But he wanted the committee to be made aware of that, that method. Senator Wayne said that he is open to collaboration and friendly amendments to help get this over the finish line and wanted to make sure that Nebraska's value-based penalties are regularly taking inflation into account. Chairman Lathrop, thank you for your time and consideration, and I waive my closing.

**LATHROP:** I will share with Senator Wayne that you did a marvelous job standing in for him today. I saw him. I extend my apologies, my most sincere apologies. If I'd known this bill was going so long, I certainly would not have scheduled more bills behind it and making you wait.

**JAKE SEEMAN:** Appreciate it.

**LATHROP:** But thanks for your intro. We don't generally ask questions--

**JAKE SEEMAN:** All right.

**LATHROP:** --of the legislative assistant, so I appreciate you being here. Are there proponents of this bill who care to be heard? Good evening.

**JOE NIGRO:** Good evening. Senator Lathrop, members of the committee, I'm Joe Nigro, J-o-e N-i-g-r-o. I'm the Lancaster County Public Defender. I appear on behalf of our office and the Nebraska Criminal

Defense Attorneys Association in support of LB918. I want to thank Senator Wayne for introducing this bill. Prior to 2015, the dollar amounts determining the classification of property crimes as different levels of felonies and misdemeanors hadn't changed since the early 1990s. LB605 standardized those amounts between offenses and increased the amounts to account for inflation. The Legislature needs to do this every few years to keep up with inflation. It's wrong to let it go over 20 years. This is the right thing to do. It will also help with the prison popula-- prison overcrowding given the large numbers of people in prison for nonviolent offenses and I urge the committee to advance LB918 for those reasons and I'm happy to take questions.

**LATHROP:** OK. I don't see any questions, Joe. Thanks for being here.

**JOE NIGRO:** You're welcome.

**LATHROP:** Appreciate your testimony. Next proponent. Anyone else here to testify in support of LB918? Seeing none, anyone here to testify in opposition? Good evening and welcome.

**ANSLEY FELLERS:** Thank you. Thank you, Chairman Lathrop and members of the committee. My name is Ansley Fellers, A-n-s-l-e-y F-e-l-l-e-r-s, and I'm here on behalf of the Nebraska Grocery Industry Association testifying in opposition to LB918, which would increase thresholds for felony classifications. Theft, including shoplifting, costs retailers billions of dollars each year. In an effort to discourage theft, but also reduce contact with police and incarceration, all 50 states and the District of Columbia have established thresholds to distinguish offenses. Since 2000, at least 40 states, including Nebraska, have raised their felony thresholds. Nebraska's was raised as recently as 2015. I've handed to the committee a list of felony theft thresholds by state, which includes D.C. that was of-- as of 2018. There's a note at the bottom of the page as to why there are stars next to some of those dates. You'll note 36 states actually have thresholds lower than Nebraska, 9 are equal to ours, and only 6 are higher, and none are as high as \$3,000, which would, which would take-- that-- that's what the threshold would be under this bill. Theft or shrink effects retailers of all kinds. But grocery convenience and drugstores, which stock small, easy to steal and flip products, tend to have fewer staff-- and tend to, tend to have fewer staff experience more sales for theft than any other types of retail. I would ask you consider not only the hundreds of independent business owners I represent, but also their employees who deserve to feel safe when they go to work. You may have seen in the news as of late a great deal of coverage-- of people smashing windows or burning private property. In smaller stores, the

interactions between criminals and employees can be even more personal and in both cases, the events can be traumatizing. We understand why Senator Wayne brought this bill, but would ask the committee to address Corrections in a way that doesn't diminish the seriousness of these crimes. We also would ask you consider targeting higher-level criminals who are increasingly turning to online marketplaces to move stolen merchandise by advancing LB603 from committee. These are commonly the offenders behind what you see in the news. They're becoming more bold and violent and are often linked to other criminal activity. Thank you. I'm happy to answer any questions.

**LATHROP:** OK. Any questions? I see none. Thank you for being here. Good afternoon--

**RICH OTTO:** Good evening.

**LATHROP:** --or evening, yeah.

**RICH OTTO:** Chairman Lathrop, members of the committee, my name is Rich Otto, R-i-c-h O-t-t-o. I appear before you on behalf of the Nebraska Retail Federation in opposition to LB918. We all agree we have a problem. Let me tell you the retail industry's perspective of this problem. Shrinkage or retail's term for the loss of inventory is arguably the biggest threat the retail industry faces today, in tune-- to a tune of \$68 billion nationally on an annual basis. And for the state of Nebraska, it's hundreds of millions of dollars annually. The vast majority of that shrinkage number can be attributed to organized retail crime. Let me explain how organized retail crime has thrived over the last 20 years. The Nebraska Retail Federation represents merchants with Nebraska locations. These are businesses that employ local workers, pay local taxes, collect sales and occupation taxes, and, unlike many online retailers, don't sell stolen merchandise. Most people don't realize that the majority of merchandise sold through major internet marketplaces are sold by third-party sellers, with the platform receiving a significant percentage of this sale. The majority of these three par-- third-party sellers are legitimate individuals or small businesses. But unfortunately, these online platforms have become the go-to place for criminals to unload stolen merchandise while remaining practically anonymous. In the past, pawn shops and public markets were typical places for these illicit items to show up. It isn't true today. Pawn shops have a much greater threshold. They check lists of stolen property and have many more ordinances at the city level that they must comply with. These organized retail crime syndicates have been able to do business selling stolen goods via online marketplaces that have intentionally given them cover as

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

legitimate. Unless we act to require some kind of corporate responsibility from these tech giants to vet their third-party sellers on these marketplaces, the problem will continue to spiral out of control. The Integrity, Notification, and Fairness in Online Marketplaces for Consumers Act [SIC], or INFORM, is the first step that this committee should consider to address the organized retail crime issue. It's LB603, it was introduced by Senator Aguilar, and it still sits in this committee. Unfortunately, we do not see LB918 as the solution, but we would encourage the committee to advance LB603. I'm happy to answer any questions you may have.

**LATHROP:** OK. So you were pitching a different bill just now. To be clear, that bill was something we heard last year that requires that the, the online retailers identify where they got the product from.

**RICH OTTO:** You're exactly right.

**LATHROP:** OK.

**RICH OTTO:** LB603 is the solution we see.

**LATHROP:** OK, I just want to make sure no one gets confused. We're talking about the threshold for basically shoplifting.

**RICH OTTO:** You are. Correct, Senator.

**LATHROP:** OK. OK, very good. Mr. Otto, I don't see any other questions. Thanks for being here. Anyone else here to testify in opposition to LB918? Anyone here to testify in a neutral capacity? Seeing none, we will-- there's no close on this one. We do have one position letter in opposition and none in the proponent or neutral position. And with that, we'll close our hearing. Thank you once again and my apologies. Thank you for your patience. That will close our hearing on LB918 and bring us to Senator John Cavanaugh and LB952. Senator Cavanaugh, welcome back.

**J. CAVANAUGH:** Thank you, Chairman Lathrop. I know you all missed me-- my, my prepared remarks here. Thank you, Chairman Lathrop, members of the Judiciary Committee. My name is John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, representing the 9th Legislative District in midtown Omaha. I'm here today to introduce LB952. This bill improves reentry practices by connecting those leaving prison or jail to Medicaid healthcare coverage. When individuals are leaving prison or jail, reentry practices are pivotal. The Criminal Justice Reinvestment Working Group unanimously supported improving reentry practices for those released from prison. They also recognize that even though

accessing healthcare was identified as a common barrier faced by those reentering, reentry practices do not necessarily include steps to address access to medical care, which is unfortunate for many reasons. First, we know that data shows the incarcerated population has disproportionately high rates of complex medical needs and first-- and the first few weeks after reentry is formative time period for long-term success. Second, we also know that many of those leaving incarceration are eligible for healthcare coverage under Medicaid expansion, which provides coverage for managing chronic illnesses, prescriptions, and behavioral health services like substance use disorder treatment, which are particularly important for this population. Third, connecting those leaving prison and jail to healthcare can also have long-term positive impacts on our state. This bill leverages federal funds to help support our state budget while seeking to decrease the burden on healthcare facilities and Corrections by providing healthcare in a more cost-effective setting and reducing uncompensated care. Finally, this bill helps keep reentering Nebraskans and their communities safe by connecting them to the care they need, they need to be well, which evidence indicates can reduce recidivism. This bill provides the bridge needed to connect those reentering with healthcare coverage by creating strong reentry practices with the support of the Department of Health and Human Services. DHHS was selected as the agency to provide enrollment and application assistance for both technical and logistical reasons. DHHS is the agency that is charged with operating the Medicaid program and DHHS routinely processes applications and answers questions from the public about Medicaid. Not only will their expertise be helpful, but using DHHS will also help those reentering build relationships with agencies they will interact with outside of Corrections, which is important for reentry. Furthermore, using DHHS instead of Department of Corrections reduces the burden on the already overtaxed Corrections staff and permits the enrollment application assistance to be provided in jails and other detention facilities outside of the Department of Corrections. This bill also directs DHHS to maximize federal Medicaid funding, which may be available to cover significant costs associated with the changes required in this bill. For example, federal funding may be available to pay for the majority costs of the system improvements necessary to make these changes and cover a portion of the costs for the on-site enrollment assistors. Other states have similar reentry policies. For example, Indiana passed a bill that includes provisions providing for Medicaid enrollment assistance to those leaving incarceration, which was signed into law in 2015 by then-Governor Mike Pence. Understanding that reentry individuals need immediate access to healthcare to be successful in that reentry is a



practice that continues to gain traction across the country. I want to address a couple of the questions raised by the department. First, the fiscal note estimates that the Department of Health and Human Services estimate, estimate from the Department of Health and Human Services, which states that we would need 77 full time employees to implement this bill on the questionable assumption that every facility, even the smallest county jail, would require a full-time social worker for the sole purpose of assisting in Medicaid enrollment. I think the Fiscal Office has laid out a solid argument why that wouldn't be necessary and I think those behind me can go into more detail. The Fiscal Office estimates-- estimate is much more realistic and as I stated earlier, federal funding would likely be available to cover much of the cost. Second, the letter from the Department of Corrections, which claims, quite in contrast to DHHS, that DCS is already doing everything that is required of it in this bill by, by this proposed legislation, thus the legislation is unnecessary. I must say I'm disappointed. At the time-- at a time when the committee and the Legislature are debating policy solutions to reduce prison overcrowding, the director is opposing a meaningful step to reduce, reduce recidivism and aiding in successful reentry into society. And it gives me serious pause when I consider the debate later in the session on whether to build a new prison, which is safe to say I'm a skeptic. This bill is considering some big decisions-- this committee is considering some big decisions about how to address the problem in Nebraska Corrections System and effectively reducing recidivism and aid in reentry. I would submit to you that LB952 is one piece of that puzzle. LB952 provides a simple, reasonable fix to ensure that those leaving incarceration are connected to healthcare, which will in turn help our communities, reduce pressures on Corrections. I urge you-- the committee to advance LB952 and be happy to take any questions. Thank you.

**LATHROP:** Very good.

**J. CAVANAUGH:** Trying to--

**LATHROP:** Senator Geist.

**GEIST:** I, I do have a quick question and I love this idea. It's a problem that we've had for a while, but I'm curious about the workload. Is DHHS, in your opinion, in this-- because I-- I'm reading the fiscal note as well-- replacing the workload that's taking care of this or attempting to with the, the people who are trying-- my mind just went blank what they're called, but they follow the inmate to transition out--

**J. CAVANAUGH:** Like parole officers?

**GEIST:** No, they're--

**LATHROP:** Navigators?

**GEIST:** Navigators, that's--

**LATHROP:** That's probation.

**GEIST:** Well, are they replacing the people that take care of some of this currently with DHHS workers? Are there currently correctional people who are fulfilling this role, that they're attributing that DHHS will then be taking this role instead?

**J. CAVANAUGH:** So that's, that's a good question. And the department submitted a letter kind of saying that-- what they're already doing and that they don't think that's necessary. So under current statute, somebody who comes in with Medicaid, gets suspended, they have to notify and then they get it reinstated when they, they get released. So the department is already undertaking that process and the department says that they are also facilitating individuals who are high need to get signed up when they're leaving and then they provide everybody else with documentation. So I do think the department has a social worker who is working with people on exit and they have an exit kind of, I don't know, program, which I'm sure people around here are familiar with. So there are people doing that. This also includes counties as well. The big part of this is one, it requires the department-- DHHS to be the responsible agency to make sure that these applications are being submitted in a timely fashion and that people have their insurance in place when they leave. So under the current system, people are getting an application when they leave and then--

**GEIST:** But it's not--

**J. CAVANAUGH:** --the processing going after. An additional aspect of it is it does empower the DHHS, the department-- I'll keep confusing-- conflating departments-- but DHHS to contract with someone else to perform the action of the enrollment so that there doesn't have to be a specific DHHS employee doing it. They're just responsible to make sure that it is actually done. So how it would go and how it would function and that step, I don't know exactly. That's going to be up to DHHS probably whether they want to duplicate or contract out.

**GEIST:** Thank you.

**LATHROP:** I do think we need to sort that out and make sure-- find out what's being done and who's falling through the cracks under the current system and make sure that, that that gets done because these guys coming out, a lot of them need substance abuse or mental health treatment the day they get out and if we do the-- in LB920, we have the streamlined parole. That will allow some people that are going to get out on parole to know an exact date, unlike most parolees not going through a streamlined system. But that would include people on a flat sentence for a lower-level felony. We know the day they're getting out. We know the day people are jamming out and we'll know the date people on a, on a streamlined parole date would get out. And making sure all of them have coverage from the moment they leave is very, very important.

**J. CAVANAUGH:** I obviously agree with that and I would say that I think LB920 also has some more data collection around this that would help us get a better, better picture of exactly what's going on, but I would agree 100 percent. People-- we release people on these from custody and we ask them to undertake more services to-- that we, we believe, and I think rightfully so, that will reduce recidivism and we are not giving them the tools to successfully complete those. And this is one more tool that will help people successfully complete the programming that we're asking them to do.

**LATHROP:** Yeah and we want them to get it right away when they leave.

**J. CAVANAUGH:** We do.

**LATHROP:** Yeah. I appreciate it. Thanks, Senator Cavanaugh. If you're here to testify in support of LB952, you may come forward. Good evening. Welcome.

**SARAH MARESH:** Thank you. Chairperson Lathrop and members of the Judiciary Committee, my name is Sarah Maresh and that's S-a-r-a-h M-a-r-e-s-h and I'm the program director for the health care access program at Nebraska Appleseed, testifying on behalf of Nebraska Appleseed. We're a nonprofit legal advocacy organization that fights for justice and opportunity for all Nebraskans and one of our key priorities is ensuring that every one has access to quality, affordable healthcare. And before I jump into my testimony, I did want to offer-- at the end of the testimony, I'm happy to take any questions about some of the technical aspects of the bill that were raised, in particular regarding the information we know about what the Department of Corrections does now and what can be done under this bill when we don't know if there's a date-certain release. But with

that, I'll go ahead and jump in. In general, we can do more to make sure that Nebraskans have access to healthcare when leaving prison or jail so they can safely and successfully return to their community. This bill will not only help Nebraskans connect to the care that they need to be well, but it can also help strengthen our communities. We've heard a lot about this today, but the Criminal Justice Reinvestment Working Group unanimously recommended improving reentry practices and this bill seeks to do just that through some concrete changes to reentry practices. Problems accessing healthcare at reentry are common in Nebraska, which is confirmed by our organizational outreach and the CJI final report. Current reentry plans we know primarily focused on housing but not medical care. Before Medicaid expansion implementation in October 2020, many individuals reentering were not eligible for Medicaid coverage. But now estimates indicate that a vast majority of those reentering are now eligible thanks to Medicaid expansion. However, we know that current reentry practices indicate-- and from information we know from that community-- that many are likely not enrolled in Medicaid when they are reentering. This bill, which improves reentry practices by requiring enrollment assistance before release, provides the needed connection to care. Prompt access to healthcare upon reentry is critical because people reentering have more complex health needs than the general population, making continuous care especially important during those first few foundational weeks after reentry. Evidence has also indicated that the formerly incarcerated connection to healthcare can help reduce recidivism and many other states have recognized the importance of connecting those reentering with coverage. Simply put, the department-- this bill requires the Department of Health and Human Services provide enrollment assistance to those leaving jails or prisons before release and process applications so coverage is effective upon release or as soon as, as soon as practicable thereafter. We also know-- and Senator Cavanaugh touched on his introduction on this-- that there is significant federal funding possible, include the enhanced federal funding from Medicaid expansion covers that many folks would be eligible for. Because this bill will help reentering Nebraskans connect to the healthcare they need to be safe and healthy and successful at reentering while also strengthening our communities, Nebraska Appleseed supports this bill. And thank you and I'll take any questions you may have.

**LATHROP:** Just briefly, so are people getting out that have a hard release date-- so people that are jamming out and, and folks that are getting out on a flat sentence with post-release supervision. So two

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

classes of people, we now know the date they're getting out. Are they being enrolled before they're out?

**SARAH MARESH:** Right now, we don't know that people are consistently getting enrolled, but under this bill, there's two classifications. So if people have 60 days or more notice of their release, so definitely those jam-out folks that you're talking about, then they have enrollment assistance provided at specific days before release. And then there's a second classification under this bill. If people have less than 60 days notice of their release, they are to be provided enrollment assistance and have coverage effective as soon as practicable.

**LATHROP:** OK. Do we know that it's not happening for those two classes?

**SARAH MARESH:** I think we know now that only a small amount-- I, I shouldn't say-- we don't know for sure how many and so I think the Department of Corrections and Health and Human Services would have to give us hard numbers. But what we know now, from our experience talking to communities and from information from the Department of Corrections, is that they're only enrolling folks in Medicaid with high-priority medical needs. And that, I think, is something that is problematic because we know, you know, there's a shortage of staffs and there's a lot of gaps when you only prioritize folks with high medical needs.

**LATHROP:** OK, so what they're doing and what they're not doing is not clear. We're hearing anecdotally that people that are high priority-- so if they got a heart issue and they're, and they're released on a date certain, they're enrolling those people, but we don't know if they are or they are not enrolling everyone else.

**SARAH MARESH:** Correct. I think we know they're not enrolling everyone else, yes.

**LATHROP:** OK. Senator McKinney.

**McKINNEY:** Thank you. It's probably not a question. I'm just curious. What happens if somebody is denied? What's the process to make sure they figure out the issues of the, of the denial so they can get those services?

**SARAH MARESH:** Yeah, that's a great question. And I think one of the benefits of having enrollment assistors-- and so right now, the practice we know of DOC is that they provide-- I think they said they provide folks information on Medicaid and Medicaid expansion, but

there's no one to walk through that process with them and explain it in culturally competent ways. So if folks are tasked with completing a complicated application without assistance, then oftentimes you run into problems. So one of the benefits of having the Department of Health and Human Services there to help them walk through that application is we're hopeful that it would decrease the number of denials, especially mistaken denials, because they'd be able to help process that information. But I think you bring up a great point that this won't cover everyone. We know, you know, for various reasons, Medicaid eligibility is limited based on, you know, income levels and other factors. And so I think this is definitely one huge step in the right direction to make sure folks have care, but I think that there still will be a small gap of folks who just aren't eligible for Medicaid. And I think making sure when this bill is implemented that the department or the other enrollment assistors that are tasked with helping folks through that process also have an administrative process to kind of, kind of go through when those applications bounce back.

**McKINNEY:** Thank you.

**LATHROP:** OK. I don't see any other questions. Thanks for being here.

**SARAH MARESH:** Thank you so much.

**LATHROP:** Appreciate your-- patiently waiting for your opportunity. Anyone else here to speak as a proponent on LB952? Good afternoon or evening and welcome. I'm used to saying afternoon--

**CHRISTA YOAKUM:** Yeah. Good evening--

**LATHROP:** --not anymore.

**CHRISTA YOAKUM:** --and thank you. Good, good evening, Senator Lathrop and members of the Judiciary Committee. My name is Christa Yoakum. That's spelled C-h-r-i-s-t-a Y-o-a-k-u-m and I'm appearing before the committee in my capacity as the vice chair of the Lancaster County Board of Commissioners. And in that capacity, I want to thank you for your diligence today and for this, this hearing. I was down the hall and I did listen to all the prior testimony and, and you have a big task before you and I, I really appreciate the work that, that has been done and, and all of the testimony, a lot to think about. But I'm here to testify on behalf of the board in support of LB952. The board supports efforts to enact criminal justice reform, including efforts to increase success upon reentry and to reduce rates of recidivism. We believe that individuals who have affordable access to medical care

and medication are more likely to experience a smooth and stable transition to the community upon release, making them much less likely to return to jail. Ensuring that individuals being released from jail are signed up for Medicaid institutes constitutes a critical piece of the support necessary to set former inmates on the path to success after confinement. LB952 will provide a vital supplement to current efforts by the Lancaster County Jail. The jail program staff know from working with their clients that one of the biggest obstacles for individuals returning to the community is consistent, dependable access to affordable medications and medical, mental, and behavioral healthcare. Therefore, since the implementation of Medicaid expansion, jail program staff have provided Medicaid enrollment paperwork to each program-eligible inmate. But these staff are not subject-matter experts and cannot answer complex medical questions. Unfortunately, the difference between receiving an application to actually completing an application frequently amounts to the absence of expert guidance and support. LB952 perfectly fills this gap in the discharge process. Providing DHHS staff to assist discharging inmates with their enrollment in Medicaid comprises an integral portion of a more complete release plan and fosters better criminal justice outcomes by ensuring that inmates' medical needs can be met upon their release. Lancaster County affirms that LB952 would not increase any staff burden at the Lancaster County Jail and we're committed to providing the necessary space at the jail or whatever process happens to allow for DHHS staff to meet with inmates to expedite their access to medical care upon discharge. Thank you for the opportunity to testify and I'd be happy to answer any questions.

**LATHROP:** I have a quick one for you. How many people are discharging that we expect are Medicaid, Medicaid eligible, don't get the forms filled out-- they fall on the floor, they get lost, they are never completed-- how many people are doing OK under the current system? How many people are we helping that would-- can't, can't do it themselves?

**CHRISTA YOAKUM:** Yeah, we don't have a number for you. I can see if there's anything I can get, but I don't think there is a number. We suspect that many of them, that paperwork is lost. Discharge is chaotic. You know, as many people are reuniting with families and does that get left in a car? Does it get sat on a table and buried under something else? But because we see people coming back in without treatment in between, that could be an indicator.

**LATHROP:** If I'm in-- Medicaid enrolled, how-- what period of incarceration gets me unenrolled?

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

**CHRISTA YOAKUM:** That I don't know.

**LATHROP:** OK. All right. Those are the only two questions I have and I don't see any others.

**CHRISTA YOAKUM:** Thank you.

**LATHROP:** Thanks for being here. Other proponent testimony?

**ELAINE MENZEL:** Sorry about that--

**LATHROP:** Good evening.

**ELAINE MENZEL:** --Chairman. Good evening. Chairman Lathrop and members of the Judiciary Committee, for the record, my name is Elaine Menzel, E-l-a-i-n-e M-e-n-z-e-l, from the Nebraska Association of County Officials, appearing here today in support of LB952. As has been previously testified, this would assist with reentry efforts and by connecting those importantly from prisons or jails with much-needed health services. I hesitate to do this because it's going from memory versus actual researching it before I came and talked to you, but there-- when Senator Krist was here, there was legislation that went before the Health and Human Services Committee that related to Medicaid-- or suspension of Medicaid during the admission of serving in jail or prison. And as I recall, it was 60 days and the Legislature ultimately adopted that legislation. During that discussion, our association worked with Senator Krist and the Health and Human Services to develop a plan to try to implement what was happening at that time. To the best of my knowledge, it occurs for purposes of suspending that Medicaid immediately upon them being admitted to a correctional facility such as Corrections or jail. So I believe that answers your question, but I can confirm that.

**LATHROP:** OK.

**ELAINE MENZEL:** There, there's some distinction in terms of whether it's 24 hours that they have-- that they're outside the jail for purposes of when there's health issues going on and those types of things while they're serving in jail. So there's some issues related to that, but--

**LATHROP:** OK. I don't see any questions, but thanks for being here today.

**ELAINE MENZEL:** Thank you.



**LATHROP:** Other proponent testimony? Anyone else here to testify in favor? Seeing none, opposition testimony, any-- if you intend to testify in opposition. Good evening.

**KEVIN BAGLEY:** Good evening, Chairman Lathrop, members of the committee. My name is Kevin Bagley, K-e-v-i-n B-a-g-l-e-y. I'm the director for the Division of Medicaid and Long-Term Care within the Department of Health and Human Services. I'm here to testify in opposition to LB952, which would require DHHS to provide on-site Medicaid enrollment assistance to inmates prior to their release from incarceration. I would like to start off to provide some context related to our opposition and our current practices. Medicaid currently partners with the Department of Corrections to arrange for coverage for inmates scheduled to be released due to medical need. Our division is also notified when an incarcerated individual previously eligible for Medicaid is scheduled to be released in order to resume coverage when appropriate. This is an area where progress is needed and one that requires continuous evaluation and improvement. We are committed to ensuring all eligible Nebraskans are able to enroll and access needed benefits in a timely and efficient way. Rather than facilitate improvement, however, this bill limits the executive branch's flexibility to improve our constituents' experience by legislating the process rather than the desired outcomes. As written, the bill could apply to some 77 public institutions throughout the state. This would potentially require hiring additional new staff in a labor market unlikely to offer up the volume of potential new hires needed to support those different locations. I'll divert a little bit from my prepared remarks to note in the, in the fiscal note that the Legislative Fiscal Office provided, there was an estimate of requiring fewer staff. The reason why we selected the number we did is really about the logistics of having to have a person on site to assist whenever there is need. If that's the case, it may be difficult for us to provide adequate coverage with 10 to 20 individuals who have to cover the entire state. In addition, there are a lot of additional requirements, such as secure location, secure file storage, and some of the technology improvements that would need to be made. Now those are overcome if we decide to move forward. The large issue for us here on the fiscal note is the number of staff. Currently, Nebraskans can apply for Medicaid in person, online, over the phone, by mail, email, or fax. This bill requires applications to be completed in person, removing some of those efficiencies that we might otherwise capture. If the goal of the legislation is to shorten the time between an eligible inmate's release and their enrollment in Medicaid, we support that. We're actively working with our partners in the Department of

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

Corrections to improve that process. We hope that we would be able to have the flexibility to improve on the process with desired outcomes in mind. And with that, I will close and thank you all for your time today and--

**LATHROP:** OK.

**KEVIN BAGLEY:** --offer any questions.

**LATHROP:** Senator Morfeld.

**MORFELD:** Thank you for coming today. So I've just got a few different questions that I've typed and write-- written down here. So how many are assisted when you enroll by medical need right now?

**KEVIN BAGLEY:** How many?

**MORFELD:** Yeah.

**KEVIN BAGLEY:** So I was going to try and dig out those numbers. It's a little bit hard to dig those through because of the limitations on the technology that we've got. But I can tell you that we process about 50 a month where we have those suspensions for incarcerated individuals. Now those could be processing that for someone who may not ultimately be eligible. I don't have the outcomes associated with those, but roughly 50 a month.

**MORFELD:** OK, so then how many are suspended and have coverage effective when you leave? Do you know?

**KEVIN BAGLEY:** I couldn't tell you that for sure, Senator.

**MORFELD:** OK. You talked a little bit about continuous evaluation and, and analysis on how you maximize enrollment into Medicaid. So can you tell me a little bit about your process to address this specific issue that's being addressed in this bill? What kind of continuous evaluation are you doing right now and how are you going to get to the point where we will address what is in this legislation?

**KEVIN BAGLEY:** So one of the things we're doing right now is spending a considerable amount of time in discussion with Department of Corrections to understand how we can share data effectively. These are two sets of data that are heavily protected. We don't want to share incarceration data broadly, nor do we have the ability to share public health or private health information broadly and so being able to navigate that is difficult. But we're working through that to try and

identify how we can ensure people have the information they need to apply and that they are able to be communicated with effectively. I think part of this is just collecting the right amount of data to really understand where the deficiencies lie.

**MORFELD:** So if it's just a data issue then-- or it sounds like it's just a data-- the primary issue is a data issue?

**KEVIN BAGLEY:** I think there's--

**MORFELD:** Is there a workforce issue?

**KEVIN BAGLEY:** I think our first hurdle is data.

**MORFELD:** OK.

**KEVIN BAGLEY:** If we're talking about adding additional workforce, we're currently 23 people behind on our, on our eligibility workforce. To add even 10 to 20 individuals on top of that, I think, is incredibly difficult in an economy where we have 1.7 percent unemployment.

**MORFELD:** So on the data side, you know, my understanding is that you'd be able to get an FMAP match if you wanted to improve your data systems as well. Is that, is that possible or is that--

**KEVIN BAGLEY:** Certainly and we've incorporated that into the fiscal note estimates.

**MORFELD:** OK.

**KEVIN BAGLEY:** There's enhanced federal match for those employees. It's 75 percent federal match and there's enhanced federal match for system improvements that we might make.

**MORFELD:** OK. So what I'm hearing from you-- and correct me if I'm wrong-- is that you want to do what's in this bill. Eventually you want to get to what's in this bill. That's the goal at the Department of Health and Human Services?

**KEVIN BAGLEY:** I think our goal is to ensure that everyone has consistent access, regardless of their situation, to be able to apply, get a timely response. I think I'll stop short of saying I support what's in the bill because I think there's some prescriptive process here that may not be the most appropriate way to do this. But I think

until we've taken the time to dig into some of that data, I don't know that that will be clear to us.

**MORFELD:** So do you guys have like a timeline or a goal that you want to get to that point where you're able to make sure that-- I get that you probably don't want the statutory prescriptions and requirements under here, but to-- what is the timeline to get to that point?

**KEVIN BAGLEY:** I couldn't give you a good timeline.

**MORFELD:** Yeah and see, sir, that's my problem, I think, is that, you know, even after we passed Medicaid expansion, it was delayed for two years. So I had constituents, after they voted for it, after people voted for it, that had to wait two years to be able to get services, two years, a year and a half longer than any other state that expanded Medicaid. So to sit here and listen to you say that we're continuously trying to evaluate and analyze on how we get there, improve our processes, make sure that everybody is able to enroll that should be able to enroll as an eligible to enroll, but we don't have a timeline? That's not good enough for me because I had constituents that suffered for a year and a half longer than what they needed to, lost their homes, lost some of their livelihoods because they didn't have coverage because you guys unnecessarily delayed. And I'm a little upset about it and they're even more upset about it. And so what I'd like to see is what's your timeline? What's your timeline to make sure that your processes are in place so that people who deserve access to this, whether they're incarcerated or not, have the ability to get the resources that we as taxpayers already pay for and expect for them to get?

**KEVIN BAGLEY:** So let me, let me say I can't speak to the delay in rolling out Medicaid expansion. That was before my time.

**MORFELD:** I understand.

**KEVIN BAGLEY:** But I appreciate, I appreciate where you and your constituents are coming from on that. In terms of the timeline here, we have a process in place by which when we hear about a need to navigate this, we're open to providing that assistance. We're already doing that. When I say we, we need to continuously improve, improve, evaluate, and analyze, to me, that speaks to the process of continuous improvement. We need to understand where our members and potential members experience is and then how do we overcome some of the difficulties that they're experiencing? But I think what I heard, even in the testimony from proponents of the legislation today, is that

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

there isn't a lot of data available on what the issue is. And so I think if, if the notion is that we're going to solve it without data, that doesn't line up for me.

**MORFELD:** OK. I guess from my perspective, there needs to be a timeline put in place in order to figure out where you need to be and then where you need to work back to get from because otherwise my experience-- and I know that was under different leadership and I don't know too much about your leadership at this point-- I don't have any examples. I can only base my experience-- based on my experience and my constituents' past experience-- is that unless there's a timeline, unless there's a plan, it doesn't happen with DHHS generally. And, and so that's, that's what I, I would like to see. If-- I can't speak for my other colleagues. I don't know where they sit on this bill, but for me not to pass this bill out of committee, I've got to understand what the plan is and then how you're going to get there and how you're going to get that data. Because otherwise I'm going to assume that you're just not going to do it because that's the history and that's the, the facts that I've had to experience and had to experience with my constituents. So, so I'd like to follow up with you after this, figure out what that looks like, figure out what the timeline is, and if there's things that we need to do to get there.

**KEVIN BAGLEY:** And I'd say we're happy to have a discussion with, with the sponsor, with anyone on the committee, or any stakeholders about how we do that better.

**MORFELD:** You said that on your letter, so I--

**KEVIN BAGLEY:** Yes.

**MORFELD:** --will hold you to it. OK.

**KEVIN BAGLEY:** Thank you, sir.

**LATHROP:** I have a question for you. If I am on my way out of the Department of Corrections, it's the first day of the month-- we'll say February 1. I'm leaving the department and I am Medicaid eligible and I get online or I fill out one of these paper forms and submit it. How long does it take before you guys are approving people right now?

**KEVIN BAGLEY:** Our average time to determine eligibility is about 11 days.

**LATHROP:** So I, I-- so do I get a card?

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

**KEVIN BAGLEY:** We would, we would mail that once that eligibility is determined, yes.

**LATHROP:** So what, what would be the average time currently-- from my February 1 release date, I apply and your average time is 11 days to confirm and then mail me out. How soon before I have that card and go to get my care?

**KEVIN BAGLEY:** I'd say 11 days plus however long it takes to get that mail. I'm not sure how long that would be. It would probably depend on where you are in the state, but

**LATHROP:** OK. Next question: what's it take to fill one of these forms out?

**KEVIN BAGLEY:** So we currently have a form that is effectively, I'll say, thrust upon us by our federal partners. It's a pretty onerous process to change that. That being said, over the last several years--

**LATHROP:** It would be onerous to change the form--

**KEVIN BAGLEY:** To change that form.

**LATHROP:** --the Feds are making you get filled out.

**KEVIN BAGLEY:** That's correct.

**LATHROP:** But is it onerous to complete the form? That's what I'm--

**KEVIN BAGLEY:** You know, I would say it is not the easiest form to fill out. Over the course of the last year or more, as part of one of the Governor's initiatives for technology improvement, we have been working on an online portal that would provide a new mechanism by which those questions could be answered in a much more user-friendly format. That's due to be released later this spring.

**LATHROP:** OK. So people generally are going to need some help filling these forms out unless they're--

**KEVIN BAGLEY:** I, I would say my experience is that people often need assistance filling out these forms.

**LATHROP:** OK. Well, I appreciate Senator Morfeld's concern and I'm-- and he's adequately expressed that. Here's mine. A lot of these people, as we work on these issues, we know that whether somebody is on post-release supervision or jamming out or more likely somebody

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

who's got some level of supervision and requirements for what they need to do when they get out, they need to be able to get to mental healthcare and they need to be able to get to substance abuse. And we, we don't want a window of time where that's not available to them where they get sideways, sometimes sideways with the law and then end up back in there. So I think this is a really, really important issue. It's very important. It's why it's in the, the CJI report. It's-- it came out of our working group and I, I share Senator Morfeld's frustration. We really need to know. What's the process? Do we train the people that run the jails or the correction facilities to complete these forms? I get it. I get your fiscal note. This would be we need one guy for four counties in western Nebraska and another guy for another four counties and pretty soon we have 20 people driving all over the state, filling out forms. There's got to be a better way and I hope you will work with Senator Cavanaugh to come up with that solution so that when we start moving things relative to corrections reform or criminal justice reform, that we have a solution and we know people are leaving insured because a lot of them are leaving with a requirement that they get substance abuse treatment.

**KEVIN BAGLEY:** Absolutely and I think any opportunity we have to improve that process we're open to. I think we want to make sure we do it right and in a way that, that makes sense for the individuals we serve and for the department as well.

**LATHROP:** Did you bring some business cards with you today?

**KEVIN BAGLEY:** I did not, but I'd be happy to chat with any members of the committee and provide contact information.

**LATHROP:** OK. I think Senator Morfeld-- I'm going to put him in charge of following up with you and Senator Cavanaugh.

**KEVIN BAGLEY:** Happy to provide information.

**LATHROP:** OK. Very-- this is a really important issue and I, I realize the later hour, but. Senator Brandt.

**BRANDT:** Yeah. Real quick question. On the fiscal note, it says there are 77 public institutions in Nebraska. You got a list of those 77?

**KEVIN BAGLEY:** I--

**BRANDT:** Have you guys identified them? I'd like to see those. Are these jails? Is that what you listed?

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

**KEVIN BAGLEY:** I believe it would include any county and city jails. Those would all potentially qualify--

**BRANDT:** The only reason I say that is Thayer County Jail is eight cells, no waiting unless they put a woman in there, then it's five. Thayer County-- or Fillmore County, same way. So if you guys are identifying these, these towns that have one and two cells, that's ridiculous, guys. Come on. Let's, let's get this, let's get this sorted out. Also, in our counties, in every courthouse, we have an HHS presence that I'm sure has adequate time to help somebody fill out some forms here, do we not?

**KEVIN BAGLEY:** So we have, we have staff in most counties, I believe. I couldn't tell you exactly right now. I have a list back at my office, but--

**BRANDT:** And I would guess also the majority of this problem is going to be in the populated counties. It isn't going to be out in the really rural, rural, rural areas, so. Anyway, that being said, thank you for your testimony today.

**KEVIN BAGLEY:** Thank you, Senator.

**LATHROP:** I do not see any of the questions. Thanks for being here.

**KEVIN BAGLEY:** Thank you.

**LATHROP:** Appreciate your willingness to answer our questions--

**KEVIN BAGLEY:** Absolutely, yeah.

**LATHROP:** --such as they were. Any other opponents? Anyone here to testify in the neutral capacity on LB952? Senator Cavanaugh, you may close. We have 24 proponent position letters, 2 opponents, and 1 in the neutral-- or pardon me, zero in the neutral. And with that, Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman Lathrop, and thank you, members of the committee. I appreciate the discussion. Just by way of some clarification-- and I think it actually got cleared up there, but just wanted to make sure that everybody knew. When people go-- have Medicaid before they go into custody, it gets suspended by statute and the, the institution has to notify DHHS and then it gets reactivated when they are being released and that is by statute, regardless of the term of incarceration. And that is something that's already contemplated-- if you take a look at the Department of Corrections



letter, they talk about that they're already processing those individuals, which is-- they are required to by statute. So you heard, obviously, that-- I think everybody here knows, you don't need me to reiterate the importance of getting people healthcare coverage when they leave these institutions. Senator Lathrop, I think, did a nice job of summing that up. But-- and I, of course, as always, am willing to work in good faith with anybody to fix issues in bills that I bring to this committee or any committee to-- that does not undermine the intention and that actually pursues the interest of good faith. I, I do take issue with the department coming in first being in opposition to this bill when their opposition seems to be that it will be difficult to implement and not that we shouldn't do this. Their position is that we should do this. And the statement that they're working heavily with the Department of Corrections to accomplish this goal and the Department of Corrections stated position, as they said, here is they're doing just fine doing what they're currently statutorily ordered to do and then just getting insurance for the people who have serious medical conditions when they leave. So I find it hard to imagine that that work that is going on with the department includes expanding it to other individuals who qualify if the department's position is that they are not-- it is not necessary. This is necessary and we need to find a way and I'm willing to work to find an efficient way to do this, but to Senator Brandt's point-- Senator Brandt, I did pull the list of all the institutions in the state. There are about 20 that are about the size that you articulated that are less than ten. And I think the bill has a very flexible mechanism. It has a 60-day requirement that it needs to be done within and that they-- that are approved by the time they leave. That doesn't mean they have to come on a specific day. So there is flexibility there. There's flexibility to contract with an outside agency. And then when there is not a date certain for someone's release, the, the statute will-- says as nearly as practicable. So it is not, I don't think, an onerous task for the department if they are actually genuinely interested in accomplishing this goal to figure out a way to do it under this structure. But if there is a more efficient way that's going to get more people covered, of course I am interested in doing that. I, I, of course, will pursue that, but I caveat that with the fact that I will work with people in good faith on that subject. So if you have any other question, I-- as Senator Lathrop pointed out, there are a lot of good stories-- good comments in the letters, individuals who were in the exact sort of window that you described of that 11-day gap where they applied, didn't get their coverage until later, and went through some bad, bad situation while they waited. We as a state derive a benefit from people being covered and we should pursue that,

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

right? We should make sure that people have coverage and we are accomplishing the goals that we set out to do. So I, I will work in any way, shape, or form I can to make sure that we get people covered sooner and more people covered. Thank you.

**LATHROP:** OK. I don't see any questions. That will close our hearing on LB952. Thank you, Senator Cavanaugh, for bringing that before the committee. Our final bill of the day will be LB980 and our own Senator McKinney. If you can wait just a moment before you open so we can have a little movement around here? On this last bill, how many people are going to testify? One, two, three, four, five, six, seven, eight, nine. OK. OK, that help? Senator McKinney, you may open. Welcome. Good evening.

**McKINNEY:** Thank you. Good evening, Senator.

**LATHROP:** By the way, I should apologize. If I thought the last bill-- the first bill was going to take so long, I would not have scheduled more bills. So my apologies to you and the folks that are here to testify.

**McKINNEY:** Thank you, Chairman Lathrop and members of the Judiciary Committee. Today, we are discussing LB980, which would provide for release for medical treatment, change provisions relating to medical parole, and provide for parole eligibility for persons serving sentences of life imprisonment. I decided to introduce this, this bill for two very important reasons. The first is that we have a prison overcrowding crisis, which is in part due to lengthy sentences, which is has been-- which has been identified throughout the CJI process. Over the interim, I made it a point to visit multiple prison, prison institutions to better understand this issue. What I found was that many individuals who are serving lengthy sentences are also some of the model citizens that have taken advantage of programming and other resources inside to not only improve themselves, but to also work to assist others to better themselves. I fully understand the concerns of victims and their families, but it's important that we remember this bill is pursuant to incarcerated individuals who pose no risk via the state of their health and those who are eligible for parole provisions can still be denied. It, it doesn't say allow them to get access to parole and they just get let out. They still have to go through the process. And as mentioned earlier today, I believe if we have a Parole Board, we have to trust the Parole Board will make the best decisions. Additionally, there are statistics that show most people convicted of murder who have served a considerable amount of time rarely reoffend. The national average of recidivism for this class is 1.2 percent. That

is the lowest rate of recidivism out of all classes of felonies. This policy would also be supported by the fact that most people age out of criminal behavior later in life. By the age of 40, the rate of recidivism is extremely low, nearly zero for all types of crimes. That makes the practice of offering parole eligibility to persons convicted of homicide a smart-on-crime policy where the least likely to offend are released when they are safest by statistical account, which-- with the highest rate of success. Article IV, Section 3 [SIC-- 13] of the Nebraska Constitution states the board, or the majority thereof, shall have the power to grant parole after conviction and judgment in all cases, except for treason and impeachment. Two very specific exceptions are named in this article to indicate that the, that the writers meant for only two exceptions to exist in relation to the power of the Parole Board. The separation of powers clause, Article II, Section 1 of the Nebraska Constitution, ensures that one branch of government does not encroach upon the powers and duties of another by failing to provide a means by which to calculate parole eligibility in all cases, except treason and impeachment, the Legislature, in my opinion, has denied a power granted to the Parole Board and thus the statutory scheme as it relates to first-degree murder and parole eligibility is unconstitutional. The second reason for this bill is one that's very close to my heart. It's for a young man by the name of Xavier Valentine that wasn't sentenced to death or life, but in his last days, had the criminal justice system deny him the ability to spend his last days at home with his family. I became aware of his situation towards the end of the last session and tried to do all I can to assist him and his family. In doing so, the Parole Board and the Department of Corrections played systemic and political football with this life. I was able to visit him at the Nebraska State Penitentiary before he passed. While visiting him, I realized that the, that the report of him being a potential threat to society was unfounded. He was restricted to his bed because of weight gain and the effects of dealing with a terminal illness. This young man spent the last days of his life in pain, being transferred back and forth from the prison to hospital in which his family was left in the dark many times. His family also spent resources in hopes he would be allowed to spend his last days with them at home. Before I left the State Pen, Xavier asked me as I was walking out his room if he was going to die here. I didn't know what to say and those words have stuck with me and will forever stick with me. Individuals in a situation shouldn't have to suffer because those tasked with making decisions have no political will or empathy to do so, which is why the director must authorize such persons under prescribed conditions, as spelled out on page 3, lines 17 to 23, part (d). For persons with a terminal illness,

permanent incapacity, or debilitating medical, medical condition, leave the facility to receive medical care and treatment and return to the same or another facility. Such placement for medical treatment may be for a definite or, or indefinite period in a hospital, a hospice, or another housing accommodation suitable to the person's medical condition, including, but not limited to, the person's family's home. I think this bill is important for both reasons. We have-- we're, we're going to have an aging prison population. And as identified in the research and the data from the CJI process, if we don't do nothing about the current population, we are going to be forced to build another prison if we build a prison. Visiting the prisons, you will see that those with the longer sentences are the role models inside. They are the ones doing the peer mentoring. For example, one individual that was doing great inside the NSP got transferred to the juvenile youth facility in Omaha because he was doing such a great job. I'm not saying that these individuals don't need to be held accountable for their actions, but when it, when it clearly shows that-- the statistics show that these individuals rarely reoffend, we have to look at it. This doesn't guarantee that they will be released, but it at least allows the Parole Board to look at them and give them a shot. And lastly, I just strongly don't understand-- and I didn't understand at the time-- why the department and the Parole Board kept playing ping-pong with a young man's life. They deemed him a threat to society and I went to visit him and he was stuck in his bed on his last days. That is sad that there is not humans or some type of empathy inside these institutions to see that-- I under-- OK, I understand somebody committed a crime. There is accountability there, but there has to be a human aspect to this. We can't just keep saying, let's be tough, these people are criminals, let's throw them down the river. A lot of these individuals are improving their lives. A lot of them went in when they were juveniles. By the age-- I met a man when I was at Tecumseh, went in when he was like 17. He's 40 and he's one of the best peer mentors inside that facility. Individually, I ask you all: are you the same person you were at the age of 17 that you are at the age of 40? We all change and evolve and that's what this is for is to allow somebody the opportunity to evolve as an individual, but also provide a mechanism for those who are terminally ill to be home with their families. Thank you. I'll answer any questions.

**LATHROP:** Can I just ask what's the current process? So if somebody is terminal and let's say they're not eligible time wise for parole, do we have a furlough process or any kind of a process for hospice?

**McKINNEY:** It was really, it was really unclear. They were saying they could call an emergency meeting he-- when he was deemed terminally

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

ill. Then the doctor, for whatever reason, went back on that determination and said he wasn't terminally ill and it just-- it, it wasn't clear at all.

**LATHROP:** After that complicated it.

**McKINNEY:** Yeah.

**LATHROP:** OK. Any other questions? Senator DeBoer.

**DeBOER:** How long of a sentence was the young man-- what-- did you say his name was Xavier?

**McKINNEY:** Yes. I forget the length of his sentence, but I knew-- he, he wasn't within his two-year-- ten to thir-- he wasn't within his two-year window, but he would have been eligible, I think, in about four more years.

**DeBOER:** What was he, what was he convicted of?

**McKINNEY:** It was for a gun. Shooting, I believe.

**DeBOER:** OK.

**LATHROP:** OK.

**DeBOER:** Thank you.

**LATHROP:** I think we have some proponent testimony.

**McKINNEY:** All right. Thank you.

**LATHROP:** OK, thanks, Senator McKinney. Are you going to close?

**McKINNEY:** Yeah, I'll be here.

**LATHROP:** I know you'll be here, so I guess we'll let you make that decision. If you are here to testify in favor, you can come forward.

**JOE NIGRO:** Well, at least it's good evening and not good morning.

**LATHROP:** Well, we've done that or gotten close before. Good evening.

**JOE NIGRO:** Good evening. Senator Lathrop, members of the committee, I'm Joe Nigro, J-o-e N-i-g-r-o. I'm the Lancaster County Public Defender. I appear on behalf of my office and the Nebraska Criminal Defense Attorneys Association, in support of LB980. I want to thank

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

Senator McKinney for introducing this bill. LB980 would expand the ability of people in the custody of DCS to be released for medical treatment. It would allow the possibility of parole for people serving long prison sentences. It doesn't mean that those people will be paroled, but the chance of parole is a really important behavioral motivator for people serving sentences and release of-- on parole leads to a lower chance of recidivism for those who are released, rather than people who just jam their time and, and are released without supervision. So for those reasons, I would urge the committee to advance LB980. Thank you.

**LATHROP:** OK. I don't see any questions. Thanks for being here, Mr. Nigro.

**JOE NIGRO:** You're welcome.

**LATHROP:** Other proponent testimony. Good evening. Again, my apologies for setting four bills and you having to wait all day long. So I apologize in advance to you and your family.

**TAMIKA MEASE:** Good evening, everyone. My name is Tamika Mease and--

**LATHROP:** Can you spell out for us, please?

**TAMIKA MEASE:** Yes, Tamika, T-a-m-i-k-a, last name, Mease, M-e-a-s-e. I represent North Omaha Community Partnership in Omaha, Nebraska, and also the family of Xavier Lakihel Valentine. I am in support of LB980 and I do thank Senator Terrell McKinney for presenting. Xavier Valentine was 22 years old when he passed away on August 18, 2021. He passed away as an inmate of the Nebraska State Penitentiary. His last moments on this earth were spent in a hospital room chained to his bed in a coma with no brain activity, no brain function at all. On approximately March 28, 2021, or at least that's when the family was notified, Xavier had been diagnosed with a rare cancer, a rare brain cancer called glioblastoma. It is a rare brain cancer. It is an, an aggressive brain cancer and at that point, he was at stage 4. It was determined, as the result of testing, because Xavier was found in in, the in his area within the prison unresponsive, he had suffered a stroke, which a progressive-- the progressive state of the cancer does cause strokes and seizures, amongst other symptoms. So Xavier was on life support during that time, back at the end of March. His family was told that he had about six months to live, given the progression of the tumor, the size. They also tried to-- well, they did radiation and the tumor did not shrink. It actually grew. From the time that he was first hospitalized in March to the next time he was hospitalized a

couple of months later, the tumor had actually grown in size. For this particular cancer, the survival time is 12 to 18 months and only 25 percent of the patients survive more than one year. The family had petitioned for a compassionate release upon hearing that news and the hearing was set for June 26, 2021. Xavier passed away on July 22, 2021. The hearing that was originally set for June 26, 2021, was rescinded. Xavier was given notice via letter and his mother was given notice over the phone that same week, just a few days prior, just a few days prior to the hearing, and saying that his condition had improved. That was the reason with speaking with the board, board member, Parole Board member that his hearing-- that his condition had improved, the only condition that had improved at that point was him having a stroke. He went from being on life support to having a trach and a feeding tube installed in his stomach. He could not do anything on his own and he still had the terminal illness, which was a stage 4 cancer. Xavier--

**LATHROP:** Can I ask, can I ask a question?

**TAMIKA MEASE:** Yes.

**LATHROP:** We have to stop--

**TAMIKA MEASE:** OK.

**LATHROP:** --when you get to the red light.

**TAMIKA MEASE:** Oh, I'm sorry.

**LATHROP:** Was there a process in place? I understand that the doctor said, no, no, no, no, he's getting better and so that-- they used that as an excuse to cancel the hearing, but if the hearing had gone as scheduled, would he have had an opportunity had the doctor not recanted--

**TAMIKA MEASE:** Most--

**LATHROP:** --the prognosis?

**TAMIKA MEASE:** --most definitely and they had already started the process prior to the hearing, with members from the Parole Board visiting with the mother. They had actually denied her residence, where she was originally saying-- staying at, saying that it was in a crime-- a high, a high-crime rated area and that she would need to move for consideration of placement.

**LATHROP:** But here's my point.

**TAMIKA MEASE:** Uh-huh.

**LATHROP:** Is there already a process in place for this kind of compassionate release and--

**TAMIKA MEASE:** There-- uh-huh.

**LATHROP:** --and the-- and you-- and it requires some medical support and you didn't get it or we don't have a process at all and we need to do something about that. Obviously, we can't--

**TAMIKA MEASE:** OK.

**LATHROP:** --do anything about the doctor.

**TAMIKA MEASE:** Right. I think that going forward, there is, from my understanding, a process in place, but that is not practiced often enough for them to do that process correctly and for everyone to do their due diligence, due diligence. There was a lot of bouncing back and forth between the hospital, the Parole Board, and Corrections. And the, the prison placed the inmate at Bryan West and it was Bryan West healthcare professional stating that he had a terminal illness. And it's hard to believe that that information was communicated with the family, but not to Corrections.

**LATHROP:** OK, one more question for you, at least coming from me. When you said the problem turned out, the doctor said no, the condition has better, so that became the reason for canceling the hearing, was that a doctor from the Department of Corrections or was that a doctor from Bryan?

**TAMIKA MEASE:** That was from the, the doctor from the Department of Corrections.

**LATHROP:** So it was that Dr. Deol?

**TAMIKA MEASE:** Terrell McKinney can-- Senator Terrell--

**LATHROP:** OK. That's all right. I'll ask--

**TAMIKA MEASE:** --McKinney can answer that question.

**LATHROP:** You've answered my questions and I appreciate that. I do not see any other questions. Thank you for being here. Thank you for your patience.



**TAMIKA MEASE:** OK.

**LATHROP:** And was this a family member?

**TAMIKA MEASE:** Yes, he was. If I could add just one more thing that is very important. Xavier Valentine's tumor is not what killed him. It was a staph infection that he developed from his feeding tube because the feeding tube fell out and the staff put it back in nonsterile and he developed sepsis and that was his final cause of death and we were told that they could not handle his care. So that should definitely be taken into consideration when you have terminally ill inmates in our system and their care could be very overwhelming for the staffing, especially with our staffing situation that we're facing today.

**LATHROP:** OK. Thank you for your testimony.

**TAMIKA MEASE:** Thank you.

**LATHROP:** Next proponent. Good evening.

**FRAN KAYE:** Good evening and thank you again. My name is still Fran Kaye, F-r-a-n K-a-y-e, and I am testifying for LB980 not for any group, but as a Department of Corrections volunteer for more than a quarter of a century. I did not know Mr. Valentine. I have known other people who were in, in care in the hospital and, and sometimes with not really great choices. LB980 moves us toward a safer and more just society by allowing for medical parole and by introducing parole opportunity into life and virtual life sentences for incarcerated persons who have served more than 25 years. Canada has such a system with 25 years the maximum sentence, except for very few dangerous offenders who are individually adjudicated as posing unacceptable risk to the rest of the society. Most persons serving 25-year sentences are actually released before that date. Canadian crime rates are very similar to American rates, but the murder rate in Canada is half that of the United States and the incarceration rate is less than half that of the United States. In fact, the incarceration rate in Canada is about one-fifth of the incarceration rate in the state of Nebraska. The well-respected sentencing project recommends a 20-year maximum sentences before parole eligibility in the U.S. overall. Most persons serving life sentences are no likelier than anyone else to be irretrievably evil. Murders are usually committed by persons whose first exposure to violence was their own victimization. People with long sentences, as Senator McKinney said, usually age out of crime and many, through coming to terms with their own acts of lethal or near lethal violence, develop extraordinary compassion and keen insight

into the costs and causes of crime. While some survivors of horrendous violence and murder victims' families and friends believe it is an insult to victims to ever consider freedom for persons serving life sentences, others recognize that the good these compassionate offenders can do for the community is a far better monument to their loved ones than the cold comfort of perpetual punishment. As Senator McKinney said, many of the people serving life are the leaders within the prison. Their impact and inspiration would be even greater if they were allowed to parole and still work inside the prisons, as MHA members already do, and their positive impact on interrupting and redirecting street violence cannot be overestimated. Fewer than half of Omaha murders are ever solved, so punishment and incarceration are never part of the equation. How much better it would be to prevent these murders through the work of people who had reformed their own lives. Even parolees who just worked and minded their own business and lived normal lives would counter the allure of gangs and the despair of young people who see no future for themselves in our current society. I support LB980. Thank you.

**LATHROP:** Thank you and thank you for being here today and your testimony. Next proponent. Anyone in-- oh, I'm sorry, Mr. Lopez [SIC]. Welcome back.

**ALEXANDER RAHE:** Thank you.

**LATHROP:** I thought I-- I didn't realize it was you. Good evening, I should say. You haven't testified before.

**ALEXANDER RAHE:** No, haven't. Chairman Lathrop, members of the committee, my name is Alexander Rahe, Alexander, common spelling, Rahe, R-a-h-e, and I appear today in support of LB980. Before I begin, I'd like to tell you a little bit about myself. I'm a former resident of the Department of Correctional Services. Since my time there, I finished an undergraduate degree in criminal justice and psychology and I will be finishing a master's degree here shortly with my candidacy for a Ph.D. through UNO. So I come before you not only as an experienced inmate, I come before you as an academic with a little bit of information and research. I think that this bill will greatly enhance the mission of the Department of Correctional Services and bring more humane treatment to the offenders that are currently in their care. A little bit of facts for you. As of 2018, there were 45 states with medical parole laws. Nebraska is one of those states. However, as previously discussed, the issues around medical parole are somewhat ambiguous and certainly confusing and complicated. The problem that most inmates experience that have serious medical

conditions-- and many of them do. I, I was one of them-- is that they can only be released in Nebraska under a very narrow set of situation, circumstances. And with the current statute stating that it must be a determination that it's a terminal illness or a permanent incapacity, there's a lot of question as to who makes that decision, whether it's a team of people, whether it's a single doctor, and whether or not there's any sort of appellate process for that determination. In the case of Mr. Valentine, which-- who I did not know and was not aware of prior to today, if it was a department doctor that made that determination, what recourse does anyone have? Many inmates within the system constantly hear, well, there's no appeal for the, for the safety and security of the institution. If this man was determined to be a threat, I, I would love to understand more about what constitutes a threat. If he was bedridden with a feeding tube, I can't imagine that he was going to run out and commit more crime if he was released on compassionate release. Furthermore, the inclusion for sentencing to allow parole for somebody who had served 25 years or more, organizations like the Marshall Project, The Sentencing Project, and even the United States Sentencing Commission have all published reports over the past decade that show that offenders that reach a certain stage of life have essentially aged out of criminal behavior and I know Senator McKinney touched on this as well. Specifically, the sentencing commission has studied recidivism since the passage of the Sentencing Reform Act in 1984 and they have consistently included that the age of the offender at the time of their release is directly related to their recidivism. Obviously, the older they are, the less likely they are to commit crime. There are many other states, including California, Alabama, Mississippi, Oklahoma, that have some form of consideration and bringing us in line with other states' best practices is really the goal of this bill and I believe that it should be advanced out of this committee and supported by the Legislature.

**LATHROP:** OK. Well, it's always great to see somebody that's a former resident doing so well.

**ALEXANDER RAHE:** Thank you.

**LATHROP:** Thanks for being here and, and your concern. Hopefully, you're going to be involved in providing mental healthcare for some of the people that are incarcerated or on their journey.

**ALEXANDER RAHE:** Well, I'm hoping that this is the first step in, in my future of advocacy, working to try to bring light to situations where there's not a lot of information as far as what life is like inside. If I may, when I was sentenced, my judge told me specifically that I

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

needed mental health treatment because I was in the middle of a mental health crisis when I caught my crime. I was sentenced to a term of 2 to 12 years and I never once received a single day of mental health therapy within the Department of Correctional Services. So the whole purpose of sending me to prison was to receive mental health and put me on parole. I received no mental health and I kept getting denied for my programming well past the statutory requirement for it to be provided to me to the point where I jammed my number. And it wasn't for a lack of trying. I actually took the Department of Corrections to federal court to receive my programming.

**LATHROP:** That was in Nebraska?

**ALEXANDER RAHE:** Correct.

**LATHROP:** And what year were you first--

**ALEXANDER RAHE:** I entered the system in 2013--

**LATHROP:** OK.

**ALEXANDER RAHE:** --and I left in 2019.

**LATHROP:** OK. Well, there's an example of-- well, people are worried about parole eligibility being the same thing as the day you get to leave and it's not.

**ALEXANDER RAHE:** No and it's, it's misunderstood by many people, just the, the, the nature of how our parole board works and how much of what they do is done in secrecy. Their decisions are so arbitrary and so closely held that my family actually hired a consultant and he reached out to the Board of Parole and he received a no comment, he was hung up on twice, and he got a letter saying that they would not be sharing any information with him.

**LATHROP:** OK.

**ALEXANDER RAHE:** Whether or not that's, you know, everybody's experience, it was certainly mine. And as a result, I actually jammed my number after being told repeatedly that I had to take programming that they weren't allowing me to take.

**LATHROP:** OK. Thanks for being here.

**ALEXANDER RAHE:** Thank you very much for your time.

**LATHROP:** You're very welcome. Next proponent.

**TIMOTHY LOPEZ:** Thanks, everybody again.

**LATHROP:** Welcome back.

**TIMOTHY LOPEZ:** Yeah, for sure. This one might be less emotional. My name is Timothy Lopez, T-i-m-o-t-h-y L-o-p-e-z. I spent most of my life in the Department of Correctional Services. While I was incarcerated, I met a lot of people to help transform my life: David Ware, sentence began on 06/1984; Michael Jackson, sentence began on 04/1993; Robert Norfolk, sentence began 12/1984. The cost about-- it costs about \$45,000 a year to keep a guy incarcerated under the terms of life without parole. Combined, they have 105 years of incarcerated-- incarceration, equaling out to about \$4,725,000 spent over the years to keep them locked up without a chance of parole. There would be times that I feel like my life didn't matter and I just wanted to take myself out of this world by the ways of suicide. I wouldn't trust to talk to no one. I would look to Dave for help and guidance. I would never get judgment nor negative feedback from him. He has impacted my life in ways that I can't even really explain with the amount of words. I was released out of the prison on 01, on 01/28/2020. At the time I released, David Ware was housed in the mental health unit at the Lincoln Correctional Center. Dave Ware was a medical porter who was asked to help with individuals who have difficulties with mental health. Dave would partake in programs called the restorative justice intervention, teaching people the impacts of their harm they displayed onto others. This program takes an empathetic approach to the impact of our harms. Dave has become a trusted individual within the system. Dave has been a mentor to myself and others and, and he is a real, true father figure to most inside the system. I credit most of my success to Dave Ware. Dave has been a peer facilitator for the restorative justice intervention program for quite some time. Dave was acknowledged for his actions for rushing into action to save a female caseworker who was being attacked by another inmate. The caseworker was said to have called Dave Ware and the other inmate a hero who saved her life. Michael Jackson. I met Michael-- I met him at the Omaha Correctional Center. He knew about my violent past. Once I was able to meet him, we took a walk and he told me that I am one of the ones that he believes in can be something of success once I would be released. There would be days that I didn't want to do anything and I didn't even want to live life. I was reminded of my purpose in life. I would try to sleep my days from the confines of the system and was ready to cave and give up. Michael would wake me up, wake me up to help him with dealing with education.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

After some times, I would eventually find out that it wasn't for him, but yeah, it was for myself. Michael would partake in programs called the restorative justice intervention, teaching people the impact of harms they displayed onto others. This program takes an empathetic approach to impact of our harms. Michael has been a very trusted individual within the system. Michael has been a mentor to myself and others. He is a real-life father figure to most inside of the system. I credit some of my-- most of my success to Michael. Michael has been a peer facilitator for the restorative justice intervention Program for quite some time. Michael is housed at the Youth Detention Center here in Nebraska to help guide at-risk youth and get them prepared to enter into the adult facility. This is a person that's doing life without parole because of choices, but we're trusting him with our kids. And then, Robert--

**LATHROP:** Mr. Lopez, I, I see you have a third person you want to talk about, but we got to enforce that light.

**TIMOTHY LOPEZ:** Right, for sure. Yeah, no, that's fine and--

**LATHROP:** But I appreciate your testimony.

**TIMOTHY LOPEZ:** --and it-- all right, that's fine.

**LATHROP:** I did meet Mr. Jackson--

**TIMOTHY LOPEZ:** Yeah.

**LATHROP:** --at a RISE program at the Omaha Correctional Center and I'm pleased to hear that he's now being a mentor at the Youth Center.

**TIMOTHY LOPEZ:** For sure.

**LATHROP:** That's, that's somebody trying to find a purpose--

**TIMOTHY LOPEZ:** Right.

**LATHROP:** --from-- on the inside.

**TIMOTHY LOPEZ:** Yeah.

**LATHROP:** Senator DeBoer.

**DeBOER:** Thanks, Senator Lathrop. So I remember one time you came to testify before us. I don't remember when it was and you mentioned these three gentlemen before and you said that you had had some difficulty with contacting them because of whatever the, the terms of

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

your release were. Have you been able to stay in contact with them now?

**TIMOTHY LOPEZ:** I-- so I was on parole at the time. I've discharged off of parole September of last year, so I wasn't able to engage in contact legally by the parole binding and rules and everything else. But I'm also a volunteer for a lot of community outreach programs, as well as community programs that help facilitate programs in the prison. So I was able to have like a third-party contact, like basically a how's Tim doing? Oh, Tim's doing good. Well, how's Michael doing? Michael's doing good and those things and-- so I was able to have that type of communication. But now that I'm off of parole, I received a notice from an individual that knows them as well that told-- they said, continue on your straight path and keep doing what you're doing, man. I'm sorry. But because they said, they said that on the image of what they could be, there was like-- but they don't have a chance, you know? And to be honest, they deserved to get out when I was released. I didn't deserve to get out. My, my past in the prison system, as you know from seeing me in segregation, was a straight violence. I was so caught up in the gangs and, and so caught up in, in trying to hurt people that I didn't care and then eventually it caught up to me. And then when I started to care, I tried to kill myself, like for real. And I was in a coma, you know, and how to fight through that-- I had to learn to write again, walk again, talk again. They told my mom I had 10 hours to live. They came in and they wouldn't even let them take pictures of them. And I spent a majority of my time in segregation for staff assaults, for assaults on other inmates, and, and breaking the rules and regulations. These individuals who don't have a chance at, at getting out were individuals who they would literally-- the Department of Correctional staff would call to come and assist to help me calm down because they knew if they engaged with me, there was going to be violence. They knew there was going to be some type of action that was going to inflict harm, but these guys don't have a chance to get out.

**DeBOER:** Well, your continued success on the outside now is a testament to them and the work that they do, so we appreciate you coming and talking to us.

**TIMOTHY LOPEZ:** Thank you.

**DeBOER:** We really do.

**LATHROP:** Thank you. Thanks for being here again.

**TIMOTHY LOPEZ:** Yeah.

**LATHROP:** Next proponent. Good evening.

**Y'SHALL DAVIS:** Good evening. How you doing? Wanted to thank Senator McKinney for bringing forth the bill. My name is Y'Shall Davis, Y'Shall is spelled Y'-S-h-a-l-l, and I have a big brother in the State Penitentiary. He's doing life with no parole for a crime that he committed when he was 18. He was sentenced at 19 and for being sentenced at 19, he is not really qualified for the laws that allowed teenagers to be reconsidered for a lesser sentence, so he's in a bad shape. So I'm totally against life with no parole, especially for the felony murder rule when you didn't kill anyone in the first place. In my opinion, life with parole is a death sentence. I have to question is there even a need to rehabilitate or reform a person that's never going to return to society? You know, you lawmakers, you speak of rehabilitation, reform, but you fail to mention reenslavement and that's what I see; enslave-- enslavement system. An extermination center can only manufacture corpse. These penitentiaries, people are leaving in body bags. That's what y'all do. All of-- the business of imprisonment is the business of America. All lawmakers who believe in and are proponents of lengthy prison sentences, they should go on the inside for 25 days straight. I mean, you just throwing out 25 years. Well, one of y'all lawmakers go sit in it for twenty five days and see what these individuals actually go through. I mean, there is a life-and-death situations every day. I haven't been on the inside, but I know enough people to know that they are a life-and-death situations every day. And some of these crimes are minuscule. Some of them are major, I get it, but they're all on the same playing field. America has been coined the home of the free, but it has the world's largest population of prisoners serving life sentences. Instead of leaving the penitentiaries in a body bag, the humane thing is to do-- the humane thing to do is release some of these individuals for medical treatment. Mass incarceration today is the mathematical consequence of a grim series of legislative enactments, each bringing more pain to our communities than the last. I personally think it should be a crime for your penitentiaries to be over 150 percent capacity. That's criminal in itself. I read in a religious book one time where it says a person should improve him or herself every ten years, saying at 20 years old, you shouldn't be the same person you were at 10 years old; 40 years old, you shouldn't be the same person who was at 30 years old. So this unjust penal system, it refuses to recognize this individual's growth. And they just-- it's like, what are you guys doing? I mean, are we trying to experience physical slavery in America right here in 2022? Because we ought to be talking about, oh, every,



Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

every year, it's another 150 people going in. I heard Franks [SIC] come to a community meeting, if that's his name. He said they were talking about the new penitentiaries and he's like, basically already has an assessment that most of the people in the penitentiary will not even be leaving in the next five years because of these lengthy sentences when you give a person 20, 25, 35, 50. You're giving people 200, 300 years. Make that make sense.

**LATHROP:** OK.

**Y'SHALL DAVIS:** Thank you.

**LATHROP:** I do not see any questions for you, but thanks for being here--

**Y'SHALL DAVIS:** You're welcome.

**LATHROP:** --and your patience today. Next proponent. Welcome back.

**SHAKUR ABDULLAH:** Thank you. Chairman Lathrop and members of the committee, I'm Shakur Abdullah, S-h-a-k-u-r A-b-d-u-l-l-a-h, testifying on behalf of the Community Justice Center, a restorative justice agency here in Lincoln, mentioned by Lopez. He mentioned some of the guys that has helped shaped him into the person that he is today. Those very individuals help us teach some of our restorative justice programs as we go back in. They are a tremendous asset to us as we go back in and perform those services and we definitely believe that they would be the same or possess the same type of character outside as they do inside, as testified by Mr. Lopez. So we definitely support that part of the bill, the 25-year eligibility of people serving life sentences. We also support the medical parole as well. Just in concluding, I just want to say that, you know, I'm one of the individuals that is envisioned by this bill, sentenced to prison to die, 17 years old, didn't get out until I was 58. It was a very lengthy stay. But for individuals like those that Lopez described intervening in my life, I would have been a very different person. So I don't think that the humanity of other people should ever be diminished just because they are incarcerated. To quote Bryan Stevenson, none of us are the worst mistake that we ever made. We have all made mistakes, but are we going to be defined by those mistakes that we make for the rest of our life? Some would like to relegate, relegate us to that position from now on, but that doesn't have to be the case. I appreciate the opportunity to go back into places that I was once incarcerated to provide a certain sense of hope. I think that the 25-year eligibility would help to ensure that. If you take a

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

person's hope away, you end up with a very dangerous situation for everybody. With that, thank you very much. I will answer any questions.

**LATHROP:** OK. We appreciate your testimony and the fact that you come to us with those experiences is helpful. I don't see any questions, but thank you for your patience and staying around tonight. Good evening.

**NATURE VILLEGAS:** Good evening. Dinner is on its way, right? My name is Nature Villegas, first name, N-a-t-u-r-e, last name, Villegas, V-i-l-l-e-g-a-s. I threw my speech away because I only have three minutes. I'm all over the place on what to even focus on. Last year, I brought up the-- my personal case, but there are so many cases that fall under this LB980 and one that really, two stick out to me the most. We can debate on time and crime and things of that nature, but I want to take that element out on this case. Earnest Jackson, Earnest Jackson, we missed a vote by one last year. A senator quoted to me, I know he's guilty, but I can't even lie. My whole garden got rained on that day. I had no idea laws and legislation were the death that it was. I thought morale right and wrong was morale right and wrong. That's what I was told in court. I was wrong. I needed to be right. And so I, I bring him up because he's been in there for over 20 years for not only a crime he didn't commit, but a crime that someone else came-- admitted to and was let off by a jury of his peers-- and I do quote that because they were not his peers-- for self-defense, two people. And so it's not one of those things, you know, we had things thrown in our face like, hey, that's going to mean everybody's going to get out. No. This doesn't mean that if this passes, everyone just walks out. They still have to go through due process. And I'll let you know firsthand, there's a lack of accountability and oversight in Parole, so that definitely does not mean everyone would get out. There's still a process. My nana has been in prison in York Penitentiary here for over 30 years. Not only did she not commit a crime, she was trafficked and prostituted and feared for her own life. I know when we bring up sex crimes, it makes people uncomfortable and they don't want to talk about what that really means, but I urge you to get outside your box. There is more than one Earnest. There's more than one Larae [Phonetic]. There was a time I was addressed as a menace to society for the first 30 years of my life. I wasn't a menace to society. I was a rose growing through concrete and it took people like the Earnests and the [INAUDIBLE], the Shahids [PHONETIC], and the Laraes [PHONETIC] and those that had been through things that help peer support me. And I'm where I am today, not because some correctional-- DOC because there are things that go on in there that

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

no one knows about. We have this blueprint of what we think is happening. And it would be great, but I'm proof in the pudding that is not what's happening. But I'm proof in the pudding that when we invest in our people, we can grow roses in concrete and we can even give them soil in lieu of concrete. I'm proof of that. Earnest deserves to come home. Shahid [PHONETIC] deserves to come home. Larae [PHONETIC] deserves to come home and others in their place also deserve to come home. That is all I have.

**LATHROP:** OK. Thank you for being here.

**NATURE VILLEGAS:** Thank you.

**SHERRY BROWN:** Hello.

**LATHROP:** Good evening.

**SHERRY BROWN:** Oh, I'm sorry. My name is Sherry, Sherry Brown, and I am from the United States, Omaha, Nebraska. I was born and raised in north Omaha and I just actually came here to speak to the minds in the hearts of the people who matter to you, actually. Prison, I was told when I was a young age that it's to reform and I'm 59 years old and I have not seen it yet. I've seen a lot of people go in and a lot of people not come out. And I accept calls to this day, since I was like 17 years old, and there's a lot of them that sit in there who actually gunned down people and there's a lot of them who end up not-- who's in prison for gun violence, but they never actually gunned down nobody. But they took the, they took the responsibility because they don't want to tell on anyone. I'm actually a mom whose son who was, who was gunned down. He was 16 in '97 and I knew immediately I had to forgive the young man who gunned down my son even before I buried my son because I knew how and why. When you are in the prison of your own mind and you don't even know it and you locked up in it and you don't even know, you're not even aware nor conscious of it, that's a problem. So I know I had to forgive him immediately because I knew how and why he did it, which is so many others. That's why I received calls on a regular basis every week just to give them some sense of purpose because they didn't have it when they went in there. Before they went in prison, they was already in the prison of their own mind, then they get sentenced into another prison so they never had a chance. And these were teenage boys who is now in later years. Some got life. It give me chills talking about them because I was told that people really don't care. All they care about is money, game, propaganda. I know in my mind, in my heart of hearts, this-- they're innocent, but nobody wants to hear that part. That's why I came here;

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

to speak for them and others. The young man who took my son's life, he got out and went back. Right now, I'm setting up to go and sit in and visit with him because I want him to know before he went back, I had-- me and him had a talk one on one. And he asked for my forgiveness and like I told him, I forgave you the moment that I found out you're the one who did it because I know when I understood how and why. And people need to really find out what's really going on in the minds and hearts of these children. And it doesn't matter race or color or creed in my mind and my heart-- because we all have a heart and a spirit. We need to operate from that; not from the flesh, but the spirit. We're spirits first before we became flesh.

**LATHROP:** OK. Senator Pansing Brooks.

**SHERRY BROWN:** I'm sorry.

**LATHROP:** No, Senator Pansing Brooks has a question.

**PANSING BROOKS:** Ms. Barns [SIC], what an example you are to all of us. Thank you for coming and speaking.

**SHERRY BROWN:** I'm sorry?

**PANSING BROOKS:** What an example you are to all of us. Thank you for coming and speaking to us.

**SHERRY BROWN:** Thank you, appreciate that.

**PANSING BROOKS:** Thank you.

**SHERRY BROWN:** Enjoy the rest of your day.

**LATHROP:** Any other proponents?

**JASON WITMER:** I just wrote my whole testimony because I figured I'd have a hard time.

**LATHROP:** OK.

**JASON WITMER:** I'm Jason Witmer, J-a-s-o-n W-i-t-m-e-r. I thought I would have a more unique-- and I kind of presented this before, but kind of heard something. OK. My voice is my own. I do not represent my place of employment, nor any association that I am associated with. With that said, I'm a taxpaying citizen. I spend a considerable amount of personal time volunteering wherever I can assist and many years ago, I also was incarcerated in Nebraska's prisons. So when I say I

support LB980, this is from many angles; that includes being a child who witnessed his mother beat to death. Often I think of how I've been destroyed hearing of my mother beg for my life, my baby brothers wailing and him beaten the screams into silence. And it still feels like it just happened, like it just happened to me and yet it's my grandparents who buried their child, buried their daughter. I have a daughter. I have two now and I can't even begin to imagine that. Not a life sentence, not a death sentence will ever heal these wounds. I am broken. I do not forgive him. I do not have her strength. I do not forgive myself, yet I have found myself embraced by a community that has suffered harms at my hand and others in many ways and that has impacted me greatly. And what also has impacted me is men with life or the equivalent sentences who chose to educate themselves and reach out to destructive, lost boys who thought they were men like myself, men who are often convicted of murder. It was them who saw value in me until I could see value in myself, until I could see value in others. It is that investment that returned me to a free society as a neighbor worth having. I may be broken, but I will never be able to dismiss the value of people, even if many of them despise me for my past, my skin, my beliefs, my walks of-- walk of life. No man, no woman is their worst deed, although many of us have to live with the harm caused. I do not forgive him. I often hate him and I often hate both of us, but accountability is not gained by vengeance no matter how it is disguised. I support all aspects LB980, including paroling those who have been given life sentences and comparable sentences. Maturity, self-education, hope, faith, time are all real things that change the person of who they were into the human beings who they are. And I would like to add one thing is-- and I know the men inside watch and Maurice [PHONETIC], if you are watching, I support you for parole and to return to your family and may the community properly support you so that you can be both successful and regain the dignity and value that every human being deserves despite what your past holds or what their past holds. And I ask that those of you who oppose this bill think of doing the same. Thank you.

**LATHROP:** Thank you. Thanks for being here today.

**SPIKE EICKHOLT:** Good evening. My name is Spike Eickholt, S-p-i-k-e, last name E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska as a registered lobbyist. I, I wanted to wait to the end to let other people testify. It's really difficult to follow such emotional testimony, so I'll just try to go through what the good points of the bill in kind of a technical way. I think what Senator McKinney has got-- this bill does two things. One, it sort of broadens or makes it more flexible or somehow provides for an opportunity for Department of

Corrections to treat people humanely when they become ill. I wasn't involved in Mr. Valentine's case, but I kind of remember hearing about it from people who were and I kind of remember hearing steps of it where I think his illness was sort of diagnosed or came on rather suddenly. He was not actually parole eligible. He was in regular population and they tried to somehow have him meet the eligibility for the medical parole. If you look at page 5 of the bill, Section 4, that's the medical parole statute and I think somebody testified earlier it really only applies to individuals who are committed offenders who are not serving a life sentence or under a sentence of death and determined by the department to be terminally ill or permanently incapacitated. So it's kind of a narrow niche. And I think some of the confusion was Mr. Valentine didn't even fit that definition and then there was just sort of a problem with getting him parole eligible. The bill does a nice thing. It does-- sort of broadens that category to kind of capture the-- Mr. Valentine situation, someone who suffers a debilitating illness may be considered medical parole. If you look at page 3 of the bill, what Senator McKinney has done is, in my opinion, kind of a good idea. There's another statute that's referenced in this bill and that is the statute that deals with work release or release to leave the prison facilities, look for a job, or get an evaluation. And what he's got here is for-- maybe a way for the department themselves, not going through Board of Parole, where the department itself--themselves can determine if somebody who has got a terminal illness, incapacity, or debilitating medical condition may leave the facility to receive medical care. That may be the way to go. I don't think anyone-- I don't know if anyone with the department is going to be here or if there's something in the fiscal note talks about the feasibility of that, but that might be the way to do it. If you see people working at the state office building, those people are on work release. They're not parole. They're work release and prison release during the day at work-- they're at the Governor's Mansion or state office building around here somewhere. And I think what he's trying to do with this bill is to provide for an option, if you will, for someone who has what happened to Mr. Valentine, but the department can somehow just get that humane care in the final days of life where they can be with their family. The 25-year parole eligibility, that's a good idea, in my opinion. I know that the case law in Nebraska is probably kind of counter to that, but I think what Senator McKinney mentioned is kind of a pretty good argument-- I don't know if I ever researched it-- and that is Article IV, Section 13 of our state constitution provides that the Board of Parole shall have a power to grant paroles in all cases, except for people serving sentences in treason or impeachment. That

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

would kind of imply that that would apply to all of the cases, including people who are technically, at least not under current understanding, parole eligible. I'll answer any questions if anyone has any.

**LATHROP:** OK. Senator DeBoer.

**DeBOER:** Thank you, Senator Lathrop. Are you familiar with the process for compassionate release as we currently have it? Have you seen it applied ever?

**SPIKE EICKHOLT:** For work release?

**DeBOER:** No, the compassionate release portion, the, the medical release, I guess you call it.

**SPIKE EICKHOLT:** Well, it was amended-- it was broadened-- Senator Krist had a bill a couple of years ago and then Senator Bolz did as well. It was broadened. And I'm not sure how much it's used, so I'm not familiar. I've not directly represented some-- I've represented people who have been in front of the Parole Board a couple of times, but never on a medical parole request. So I'm not-- admittedly not sure how it works. When I look at the different sections of the statute, it looks like there's a number of different logistical hurdles. You have to establish the terminal status. That's determined by the department, yet presumably have to be in front of the Board of Parole and have some sort of hearing or meeting or contact them somehow.

**DeBOER:** That's one of the things I was wondering about is is it even practicable to go through all of these steps if you've got someone who's, you know, very close to the end of life and--

**SPIKE EICKHOLT:** My impression-- and this is admittedly some conjecture, but I just remember hearing from people who were working Mr. Valentine's case, that it was just that feeling. There was wait, missed phone call, we'll get back to you kind of thing and time was ticking.

**DeBOER:** OK. Thank you.

**LATHROP:** OK. Thanks for being here, Mr. Eickholt. Anyone else here to testify in favor of LB980? Is there anyone here to testify in opposition? Anyone here in the neutral capacity? Seeing none, Senator McKinney, you may close. I need to note for the record that we have

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 26, 2022

position letters; 19 proponents, 3 opponents, and no one in the neutral. Senator McKinney.

**McKINNEY:** Thank you. I hope that the committee saw through the testimony that this bill is a good option for our state. It's not something that is far fetched or, like, just overly crazy, if that's the right word. I think allowing an individual to be able to spend the last days of their lives home with their family is something that I think is important. And what this bill does, it gives the Director of Correctional Services the opportunity to be able to authorize this instead of going back and forth between NDCS and the Parole Board. It's, it's a better mechanism instead of having to go between two departments pretty much. As far as, you know, the ability for individuals serving life terms to be able to go in front of the Parole Board and present their case, I think that's a good policy option as well. And in meeting with those individuals inside who are serving those lengthy terms who are doing great inside, I think it's needed. I don't think any of these individuals who go in front of the Parole Board, if they're-- if haven't been over the 25-year period or longer doing the program and doing the peer mentorship and things like that. When you go to NSP and sit with the circle of concerned lifers, you see that there are many individuals that are tracking that course. Some are just starting and some have been doing it for 30-plus years. And I think we should at least allow them the opportunity to sit in front of the Parole Board and make their case. And maybe they don't get out, but I think it's important to provide that option. And I was sitting here thinking and I remembered in my head-- and I won't say completely fact, but I'm almost sure-- it was brought up a conversation about Earnest Jackson. It is my belief-- and I'm, and I'm almost sure of it, but I just don't want to be corrected if it's super factual, but it's almost sure-- I'm almost sure that Earnest was the one that was advocating for Xavier to get the help. And that's something-- like when, when we vote this year or last year, when we think about his life and how he's serving that term and he at least attempted to save another's life in his situation. And I thank you all for, you know, the time and if you have any questions, I'm open to them.

**LATHROP:** OK. Any questions for Senator McKinney? Seeing none, thanks for bringing that bill.

**McKINNEY:** No problem. Thank you.

**LATHROP:** Thanks for being here today. That will conclude our hearings. Same time, same place; 1:30 p.m. tomorrow. Long day.