

**LATHROP:** --afternoon and welcome to the Judiciary Committee. My name is Steve Lathrop and I represent Legislative District 12 in Omaha and I also 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, will you-- you will find yellow testifier sheets on the table inside the doors. Fill out a yellow testifier sheet only if you're actually testifying before the committee and please print legibly. Hand out the yellow testifier sheet to the page as you come forward to testify. There's 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're not testifying in person on a bill and would like to submit a position letter for the official record, all committees have a deadline of 12 o'clock central standard time the last workday before the hearing. Please note that there is a change this year in position letters to be included in the official record. They 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, viable option for communicating your views with an individual senator. Please keep in mind 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 the neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We ask that you begin your testimony by giving us your first and last names and spell them for the record. If you have copies of your testimony, bring up at least ten 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 will not be allowed to read it. We will be using the three-minute light system. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning and when the red light comes on, we ask that you wrap up your final thought and stop. As a matter of committee policy, I'd like to remind everyone that the use of cell phones and other electronic devices is not allowed during public hearings. Those senators may use them to take notes or stay in contact with staff. I'd ask that everyone look through their cell phones-- at their cell phones and make sure they are in silent mode. A reminder that verbal outbursts and applause are

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not permitted in the hearing room. Since we have gone paperless in the Judiciary Committee, senators will be using their laptops to pull up documents or 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 heard, but senators may have bills to introduce in other committees or other meetings to attend to. And with that, I'd like the members to introduce themselves, beginning with Senator Brandt.

**BRANDT:** Good afternoon. I'm Senator Tom Brandt, District 32: Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster Counties.

**PANSING BROOKS:** Good afternoon. Senator Patty Pansing Brooks, Legislative District 28, right here in the heart of Lincoln.

**SLAMA:** Good afternoon. Julie Slama, District 1: Otoe, Johnson, Pawnee, Nemaha, and Richardson Counties.

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

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

**LATHROP:** Assisting the committee today are Laurie Vollertsen, our committee clerk, Josh Henningsen, and later, we'll be joined by Neal Erickson, our committee counsel. Our committee pages today are low Logan Brtek and Natalie Reynolds, both UNL students. We appreciate their help today. And with that, we will begin our hearing today. The first bill up is LB921, which is my bill, so I'll hand it over to Senator Pansing Brooks.

**PANSING BROOKS:** Welcome to your Judiciary Committee, Senator Lathrop.

**LATHROP:** Thank you, Vice Chair Pansing Brooks, fellow members of the Judiciary Committee. My name is Steve Lathrop, L-a-t-h-r-o-p, I represent Legislative District 12, which includes Ralston and parts of southwest Omaha. I'm pleased to be here today to introduce LB921. LB921 is a very, very simple concept. It would simply require that those individuals convicted of Class III or IV felonies serve their time in the county at which or from which they were convicted, rather than at the Department of Corrections. And this concept came to me because I anticipated the response we would get yesterday to LB920. You'll recall when I introduced LB920, I shared this chart with you that shows our anticipated population growth and the need to do something, something to curb the trajectory of the anticipated population. Back in 2020, Director Frakes had commissioned and had JFA

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complete a population study. That study shows what our expected population increases at the Department of Corrections. It started back a couple of years ago, but, but now the chart picked up on current-- at the current timeline and took us through 2030. The reason it goes through 2030 is that's what the projection, that's how far the projection went out. I can't tell you what those numbers are. We can, of course, do another population projection, but without any change, there's no reason to expect our population will continue to grow-- our average daily population at the Department of Corrections won't continue to grow at the same pace. at the risk of repeating myself, and I promise you, my opening is not going to be as long as yesterday, the JFA has projected our population at in 2030, just eight years from now, to be 7,327 incarcerated individuals on average by 2030. We have a capacity issue. And yesterday I offered LB920, which represented the ideas for the consideration of the Legislature, which ideas grew out of the CJI process. Some of those were consensus items, frankly, those that dealt with how long and who we incarcerate and how they are released were not consensus items. And in fact, yesterday there was opposition to those very nonconsensus items. And you heard them come from law enforcement, you heard them come from county attorneys and you heard them come from NACO. And I'm just going to make this observation, which I made last night when I closed, they offered no solution. They have no answer to what do we do with the growing population? What can we do to curb that without having to build two new, two new facilities? Because by 2030, the facility that's been proposed, that would add 1,500 beds minus the Pen closing, we would have to add a second one. So we would be into this for a half a billion dollars to just meet the growing rate at which we are growing by 2030. It's an expensive proposition. I was disappointed, I'm going to say disappointed, that we did not have any ideas or offers. Just no yesterday from my friends in the county attorneys and my friends with the county boards and NACO. So today I offer a different solution, and you may be impressed with this. You may like these numbers. I'm sure the counties won't. On the other hand, if we send and we take inmates who have been convicted of Class IIIs and IVs and have them serve their time, which is generally pretty short time, right? This is a lot of IIs-- or pardon me, IIIs and IVs that are, that are part of the system now at the Department of Corrections. The fiscal note, apparently the department had some difficulty calculating the savings, so I did it for you. Approximately 40 percent of admissions to the Department of Corrections are for Class III, IIIAs and IV felonies. The average daily population in fiscal year 2021 was 5,355 inmates, and 40 percent of that number is 2,142. At a per diem, and this number comes from the fiscal note from the Department of Corrections, at a

per diem cost, this is the marginal cost, if you will, of \$11,551 per inmate, transferring 2,142 inmates would save the Department of Corrections almost \$25 million a year in marginal costs. Transferring 2,142 inmates to jails would decrease the average daily population at the department to 3,213. The current design capacity, that's the lower number, the design capacity of our prisons is 3,643. The design capacity is about to increase in June as we open up the 384 beds in the RTC. That will increase to 4,060 in June of this year. If we pass LB921, our prisons would be immediately at 88 percent of capacity. In June, that number, when we open up the additional beds, would drop to 79 percent of capacity. Nebraska could close the State Penitentiary later this year and design capacity would drop to 3,242. Our prison population at that point, with the Pen closed, would be at 99 percent of design capacity. According to the most recent budget requests, the operating costs for NSP are about \$36 million, and it would be unnecessary to build a replacement prison. By passing LB921, we would not need to spend \$270 million to build a new prison, and we could save \$60 million a year at NDCS, and this money could be distributed to the counties to defray the costs that they experience by housing Class III and IV felony inmates. This is a serious proposal. It is, it is important that those who send inmates down to the Department of Corrections have some skin in the game. This provides them with some skin in the game, some incentive to expand problem-solving courts, diversion opportunities to deal with these smaller-level, lower-level, not-inconsequential criminals, right, but the lower-level criminal activity at a county level. We would avoid the cost of a prison and save significant operating costs each year. That would be Steve Lathrop's fiscal note, doing the math on readily available data. And with that, I'd be happy to answer any questions you have.

**PANSING BROOKS:** Thank you, Senator Lathrop. Any questions for Senator Lathrop? Senator Geist.

**GEIST:** I do have one. I just-- I think that, that one of the things since I've been elected, which certainly is not, I've not been around as long as you have, and one thing I've not seen us do in the time that I've been here is to-- is completely focus on treatment. On putting money towards programming, really robust, good counseling, programming, treatment and focusing on that end of the spectrum, versus changing the sentencing and penalties and all of that. I suspect you would say that that's a longer-term solution to decrease-- to decrease our numbers going in. But I think if we reduce recidivism, we're going to find that those numbers going in are going to decrease as well. Do you-- has, has there been a time since you've been here, because you preceded me by a number of years, that, that the state

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itself has decided we're going to focus on this side of the equation rather than the sentencing and all of that?

**LATHROP:** OK. So I have two answers to that. One is-- well, I'll make this observation at the beginning. You and I agree that that stuff is very important. We closed the regional centers on the promise that we would invest that money into community-based care.

**GEIST:** Right.

**LATHROP:** And that was never realized.

**GEIST:** Right.

**LATHROP:** We have significant deficiencies in mental health and substance abuse across the state. And you and I are on the same page when it comes to that, Senator Geist.

**GEIST:** Yeah.

**LATHROP:** Actually, when it comes to IIIs and IVs, this idea, I think, will get more people into diversion, more people into alternatives to incarceration because now it will be closer to home.

**GEIST:** But in many of those places right now, there's no opportunity for that because they're in county jails rather than in the state facility. So is, is the cost-- is this just cost-shifting that from, from what the, the Corrections budget would be to now it's taken on by the state, plus an additional, I mean, they house them now, plus an additional investment into the community, which I don't deny needs to happen, but-- and to recreate that programming in every county jail location.

**LATHROP:** So this is a little bit of a mini version of justice reinvestment in a different way. We're going to save money by not having to build a new Department of Corrections facility, by not having the same operating costs. And I would invest that in the communities, I would invest it in the county jails so that they can provide the enhanced and robust mental health services and substance abuse.

**GEIST:** But then it also necessarily means they have to expand their facility to hold these people.

**LATHROP:** Well, that will be up to them on how they handle IIIs and IVs going forward. We heard yesterday they don't want to change how they

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handle IIIs and IVs, and they want to turn them over to the Department of Corrections and have it, have it be a state issue. I think with a lower-level felony, not inconsequential, there are victims to these things, and I understand that. OK? So I'm not minimizing the nature of the offense, but merely suggesting because they are offenses that draw a shorter sentence, that these folks can go to the counties. And now the counties who had no interest in working with us on any of this, trying to figure out a way to flatten the curve, right? The trajectory is going to have us at 7,300 inmates and they had no offers, they had nothing to offer by way of a reform.

**GEIST:** I do think, though some of that were on the committee, their offer of solution would just have been the other side of the equation. The things we all agreed upon and not the things we disagreed on.

**LATHROP:** I'm happy to-- you and I will work together. We will work together to accomplish those things. We will work together to accomplish those things.

**GEIST:** OK.

**LATHROP:** I think this is an opportunity for the counties to take a greater interest in diversion and other nonincarceration-type solutions and offer the services for mental health and for substance abuse that you and I would like to see.

**GEIST:** Thank you.

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

**SLAMA:** Thank you, Senator Pansing Brooks. And thank you, Senator Lathrop, for bringing LB921. I think I, I get the message you're trying to send with LB921. But what would your response be-- and I get your interest in investing in community services, mental health services, facilities for our counties to provide the same, if not a better standard of care than they would receive in a state facility, which I think is a very nice thought. But we're blessed in eastern Nebraska to have access to those professionals, to those resources, to a larger number of people who are qualified to take on that responsibility. What do you say to someone in-- a sheriff in Cherry or Hooker County that's looking at this and going, wow, I hope that we don't have a party where there's a bunch of IIIs and IVs because our county can't afford it. We won't have the capacity and we won't be able to provide these men or women with the services that they need.

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**LATHROP:** So I think-- so thank you for the question, I'm happy to answer it. First of all, I think that with respect to Hooker County, they probably don't send that many people to the Penitentiary, so they're not going to have that many people in their county jail under this bill. But you're right, what happens if they have somebody who needs substance abuse? I say we figure out a way to equitably provide for this because we've done two things in LB920 that Senator Geist and I can agree on. We're going to provide a way for telehealth to happen in each of the counties over at the courthouse or by some other means by which these folks who don't have access to a mental health professional in their community. Can get services through telehealth. That's in LB920, and Senator Geist and I agree on that. So the other piece is if we can, if we can bring a provider into and compensate them for services that are provided in the county jails with the savings, and it would be considerable, particularly if we avoid the operating costs of additional prison space and closing the Pen.

**SLAMA:** And I mean, I get your point about the things that we have consensus on, and I think I'm just as on board with the consensus items that Senator Geist and you have brought to me. I'm, I'm all in on those and that can be on the record. But with all due respect, whether you're looking at Hooker County or Pawnee County, telehealth is great, but when you're dealing with even like Class III, Class IV felonies, those are some violent felonies. And in a lot of these rural jails, you don't have qualified professionals who are able and trained and ready to deal with the day-to-day challenges. I don't care if it's one inmate or 10, but its--

**LATHROP:** You know what? I think, I think we should put a device in each county jail where they can in a, in a private place communicate by telehealth with a medical health-- or with a mental health professional.

**SLAMA:** Sure, no.

**LATHROP:** We'll have the resources to do that with this savings.

**SLAMA:** I'm talking about people in the county jail that are trained to if this person becomes physical, if they attempt to harm themselves or others, trained to handle those. It's something that my county sheriff has expressed as a concern just with the misdemeanors he has in the county jail.

**LATHROP:** So I'm glad you brought that up because--

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**SLAMA:** Sure, I mean--

**LATHROP:** --that's, that is a separate issue, and it's an issue Senator Friesen brought to this committee, I think, two years ago, which is safe keepers. And I don't have a problem with talking about safe keepers. This safe keepers-- Senator Friesen put a bill in and he wanted to have people who would otherwise be charged with a misdemeanor become-- make the Department of Corrections accept them as a safe keeper because they're, they're acting up in a way that they can't control in the county jail. The director came in and opposed, and understand why, because they have limited capacity. But I would support. I would support some regional place where we can have a safe keeper, because it's not just, Senator, it's not just the misdemeanors, it's the felonies. If you are somebody in Senator Brewer's district and you are a sheriff in a two-sheriff county and you need to take somebody all the way to Omaha or to Lincoln because they're acting up in a way they can't control, I think we ought to have those places dispersed across the state where they can take safe keepers.

**SLAMA:** Sure, all right.

**LATHROP:** And we can make that investment with the savings.

**SLAMA:** Thank you, Senator, and I appreciate you answering my questions. Like I, again, I get the intention behind LB921, and I'm grateful that you were open to answering some of my questions on it.

**LATHROP:** Happy to.

**PANSING BROOKS:** Senator Brandt.

**BRANDT:** Thank you, Vice Chair Pansing Brooks. Thank you, Senator Lathrop, for bringing this bill. You said there's 2,142 combined. Do you have a breakdown of the difference between IVs and IIIs?

**LATHROP:** I don't on my list, but we can--

**BRANDT:** Do we think it's half---

**LATHROP:** --we can try to get that.

**BRANDT:** Is it half and half?

**LATHROP:** I can share a copy of this with you. It has the math on it.

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**BRANDT:** So looking at my chart, my cheat sheet. So a IV is maximum of two years and a, and a III is a maximum of four years. Who gets IIIs and who gets IVs?

**LATHROP:** You're going to ask me a question I can't answer. Oh, you mean who, who incarcerates them?

**BRANDT:** Yes.

**LATHROP:** The county?

**BRANDT:** No. But what-- I guess it just depends on the severity of the crime whether I got charged with a Class III or a Class IV?

**LATHROP:** We, we grade them, a IV being the-- so in our, in our system, we have misdemeanors.

**BRANDT:** Yeah.

**LATHROP:** A misdemeanor carries, I think, no more than one year in the county jail. And anything greater than that becomes a felony. The lowest level of felony is a Class IV, and then you go up all the way to a I or a IA.

**BRANDT:** Yeah. So, so basically--

**LATHROP:** There are people that would--

**BRANDT:** And the--

**LATHROP:** --could serve one to two.

**BRANDT:** And, you know, until this guy goes to trial in Jefferson County, you know, he's just as violent, whether he is sitting in our county jail or he gets shipped up to, to D&E, you know, until the trial is done in Jefferson County. So, you know, he could be a misdemeanor or be a, you know, a violent offender in one of our county jails. Do you know what county capacity is in the state of Nebraska, county jail capacity? Do you have that number?

**LATHROP:** No. I know that some of them have excess capacity and have housed some of our state inmates in the county. I forget the name of the term, but it's a program where the department, I think they used it a lot more than they do now. Director is here, he could answer that question about how you how much utilized it is. I know there are still

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some people who are serving some time. I know that there are some jails with a good deal of extra capacity.

**BRANDT:** All right.

**LATHROP:** Hall and Scotts Bluff, for example.

**BRANDT:** Thank you.

**PANSING BROOKS:** I just have one thing. Thank you for bringing this idea and certainly thinking out of the box. I hope that you will work with Senator Geist on programming. We-- I've brought a number of bills to try to get Board of Parole to deny parole and say which programs the inmates need. There was money sent forth for that and-- but because we've heard from many people, and I heard it directly from Director Frakes, who can speak to that today, but that there, there's a belief that programming doesn't work. There's also a belief among many others that programming does work. But the problem is it costs money and people do not want to spend money on prisoners. They would rather spend money on the institution and not the program itself. And so I hope you take this. You know, this is my last year, and I hope that you work with Senator Lathrop and fix the whole problem. And I appreciate your, your passion for that, Senator Geist.

**LATHROP:** You will really like my next bill later on today.

**PANSING BROOKS:** Great. OK, thank you.

**LATHROP:** Thank you.

**PANSING BROOKS:** Appreciate it, Senator Lathrop. And now we'll take proponents. Before that, if we could have a show of hands of how many are going to testify today, because we want to be able to let Senator Cavanaugh know when it's her turn. So could you show by a raise of hands? Thank you. OK, thank you very much. Now we'll take proponents. Proponents? OK, seeing none, opponents. Opponents? Welcome.

**BRAD JOHNSON:** Good afternoon. Oh, I'm sorry, yeah.

**PANSING BROOKS:** Go ahead.

**BRAD JOHNSON:** Good afternoon, Senator Lathrop, and members of the Judiciary Committee. My name is Brad Johnson, spelled B-r-a-d J-o-h-n-s-o-n, I'm the director of Lancaster County Department of Corrections, and I'm here to testify on behalf of our county board and my department in opposition to LB921. In preparation of this

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testimony, I researched data from calendar year 2021. During this time period, 99 individuals were sentenced to the Nebraska Department of Corrections for felony III, IIIA and IV convictions while in our department's custody. We gathered each individual's sentence and subtracted the credit given by the court for time previously served on their case. We then calculated the estimated remaining length of sentence by applying day-for-day good-time credit. We also calculated the maximum sentence length without any good-time credits. Based on those calculations, we determined Lancaster County would experience an additional almost 36,000 to approximately 73,500 bed days. At our current daily rate of \$125 per day per bed, this would cost roughly \$4.5 million to \$9.1 million the first year. Based on the significant increase in our average daily population this bill would create, Lancaster County would need to add an additional three housing areas to remain in compliance with Nebraska jail standards. Based on current jail construction costs within Nebraska, this additional housing would cost approximately \$50 million. If the residents of Lancaster County passed the bond issue for this magnitude, our facility would be above capacity for several years during construction. I don't need to explain to you the perils of operating a correctional facility beyond their capacity. Although the fiscal impact to Lancaster County is significant and alarming, I also want to stress the inadequacy of Nebraska jails to house individuals, for, for such long terms. The maximum sentence on a Class III felony is four years. Our data for 2021 showed on average our 99 individuals were sentenced to 726 days, or just short of the two, two years. The range was from one year to 18 years with habitual criminal enhancement. Eleven of the 99 were sentenced to four or more years. Nebraska jails do not have the necessary resources and facilities to provide the programming needed to rehabilitate individuals serving these lengths of sentences. As a member of the Nebraska Jail Standards Board, I know if passed this bill would dictate a significant rewrite of Nebraska jail standards in order to comply with court rulings and established community standards regarding programming to these populations. Our department struggles to find enough mental health professionals and volunteers to provide needed services in Lancaster County. These services are nearly impossible, impossible to find in remote rural counties. Thank you for your time and I'll answer any questions.

**PANSING BROOKS:** Thank you very much, Mr. Johnson. Any questions? Yes, Senator McKinney.

**McKINNEY:** Thank you, Senator Pansing Brooks. And thank you for your testimony. I'm curious, how much do you communicate with the Lancaster County, County Attorney?

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**BRAD JOHNSON:** Depends on what the issue is. I honestly don't communicate a lot with him.

**McKINNEY:** I ask this because typically, or normally, the county attorney associations come into Judiciary and fight against legislation that could potentially decrease our prison population. And I was just curious if you ever had a conversation with the county attorney in hopes of getting them to become more advocates for reforms instead of saying no, which has put a huge burden on the state.

**BRAD JOHNSON:** I can tell you that, yes, we have. I mean, I have discussions with him, prime-- you know, the concern, our pop-- population. Because my, my facility, I mean, it's capacity 786. Today I'm at like 570, but come July or August, I'll be in 650, 680, almost 700 inmates.

**McKINNEY:** I ask this because-- I'll ask you this question. If they keep saying no to anything, pretty much not willing to negotiate or do anything, shouldn't the counties just take the burden onto themselves?

**BRAD JOHNSON:** I guess I would honestly answer that this is a state responsibility, and quite honestly, the state has failed--

**McKINNEY:** So my question,

**BRAD JOHNSON:** Are you going to let me answer?

**McKINNEY:** OK, go, you can answer.

**BRAD JOHNSON:** It's the state responsibility and has been for decades. And because the state hasn't dealt with this, now you're trying to push it off onto the counties.

**McKINNEY:** And the reason behind that is because your county attorneys don't act in good faith as far as being willing to meet in the middle. It's always a strong, hard no.

**BRAD JOHNSON:** I would say that the county attorney feels that these individuals need to be in a state facility, and I-- he's an elected official and I can't control what, what he does.

**McKINNEY:** You can't.

**BRAD JOHNSON:** I'm the guy that just gets stuck with whatever you guys decide to do and the county--

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**McKINNEY:** So--

**BRAD JOHNSON:** --attorney does.

**McKINNEY:** So could you possibly, I don't know if you can or, or if it's within your scope of employment, maybe have a conversation with your county attorney and get them to kind of be a little more open-minded going forward?

**BRAD JOHNSON:** I have. I have, I have done that many times. We, we just recently converted most of our misdemeanor prearraignments to PR bonds to try and get folks, folks out. I'm working on doing-- we're doing drug treatment within the facility. We've done a lot of diversion in Lan-- Lancaster County, specialty courts, night Court. I mean, there's a lot of things that I think we've tried to do, but I mean, I'm--

**McKINNEY:** We--

**BRAD JOHNSON:** I'm more than willing to try and work, work with them again. I mean, I wasn't a part of this committee that you guys are bringing up and how it's going to affect my jail. It just come, come, comes out and here, here, here I am fighting for my department, so that I don't end up in the position that you guys are in right now.

**McKINNEY:** And a part of that reason is because we have individuals that-- I don't need to repeat it, but--

**BRAD JOHNSON:** I understand your, your position, Senator. I just hope you understand mine.

**McKINNEY:** No, I do understand yours and the state would like to do some of those amazing things. But we're tasked with the overcrowding crisis, because for years the approach to criminal justice has led us down this path and--

**BRAD JOHNSON:** No, I understand. And, you know, you guys did LB605 and--

**McKINNEY:** And it didn't help either.

**BRAD JOHNSON:** It didn't help, help you, but it made it worse for, for me. And that's what I'm afraid is going to happen again.

**McKINNEY:** Well, that's why we got to come to the table and act in good faith as a whole. Not, not saying you, you're not willing to, but I'm just saying in general. But thank you.

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**BRAD JOHNSON:** I understand, Senator. I wasn't invited to the table, table though.

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

**PANSING BROOKS:** Thank you, Senator McKinney. Anybody else? Thank you, Mr. Johnson.

**BRAD JOHNSON:** Thank you.

**PANSING BROOKS:** Appreciate your showing up here today. Next opponent. Welcome.

**ELAINE MENZEL:** Thank you. Vice Chair Pansing Brooks 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. I'm appearing here today on behalf of the Nebraska Association of County Officials, and I have also been asked to record opposition for the County Attorneys Association, as well as the Nebraska Sheriffs Association. Our opposition are for many reasons that the prior testifier testified to, including items such as the transference of what seems to be an overcrowding issue that is at the state would be going potentially to the counties at this point. Many counties do not have capacity for those that they currently have for the one-year sentences. Therefore, it would be exacerbated. One of the primary aspects that would be complicated is that the suicide watches would have to-- would potentially be increased because of the size of the facility-- or the size of the room with which they're in. And while in the past I believe we've been a good partner with the state on trying to address these issues, I know yesterday and today it perhaps doesn't seem that way. But we have come to the Legislature, yes, with problems, asking for assistance on mental health issues. As Senator Lathrop suggested, with the closing of the Regional Center, they didn't fund the community-based aspect that they had suggested that they would do. So therefore those responsibilities fall back upon the counties many times and we are faced with those issues. Some of the good things that are occurring as a result of the mental health aspect and addressing those issues are jails are using an, an initiative called Stepping Up Initiative. And possibly I brought that to the committee before. I, I, I know I have talked to Appropriations about it before, but if it's something you'd like more information on, I'd be glad to talk to you about it. One question Senator Brandt asked was the capacity for jails, and I do happen to have that information. Based upon a 2017 report from the Crime Commission Jail Standards Division, and there were 67 adult detention and holding facilities in operation, with the facilities having capacities for up to 5,266

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detainees in short-term cells. We would certainly be glad to work at the committee-- with the committee on-- my time is up.

**PANSING BROOKS:** You can finish your sentence. Thank you, Ms. Menzel.

**ELAINE MENZEL:** We would be glad to work with the committee on ideas and proposals for moving forward.

**PANSING BROOKS:** Thank you, Ms. Menzel. Any questions? Senator McKinney.

**McKINNEY:** Thank you, and thank you for your testimony. I'm sure you heard, Senator Lathrop's opening and what the conversation I just had with the previous testifier. And you're saying you're going to be open, you're open to some, I don't know, compromise or something. I'm just curious, do the county attorneys plan to submit some type of information to Senator Lathrop regarding the bill that you were opponent to yesterday, LB920 and seeing where we can meet in the middle and find-- figure out a way to get some meaningful legislation across the table. Because from my perspective, it just seems as though the county attorneys are always a hard no. And I understand that they may have some reservations, and I'm not saying everything that's always put on the table is the right answer and anybody should just say yes to anything. But what I feel is though, is it's always a strong no, and there's an unwillingness to actually negotiate in good faith. So I'm asking for-- from, from me to you, could you please submit some information to Senator Lathrop-- to Senator Lathrop about some things that you're willing to actually act in good faith on so we could get some meaningful things across?

**ELAINE MENZEL:** Senator, I will just with this caveat. I am here for the county attorneys on this bill. I don't have the latitude on LB920. I have seen the information that they submitted yesterday. I believe Don Kleine presented it--

**McKINNEY:** I ask this because you heard the reason for LB921.

**ELAINE MENZEL:** Sure.

**McKINNEY:** So what I'm saying is if you're opposed to both, that's the issue. We, we-- do you get what I'm saying? You're opposed to that and you're opposed to this, so what are you supportive of?

**ELAINE MENZEL:** And as you potentially recall, I believe you were here for the testimony yesterday, there were several factors that we did testify in support of and that related to the problem-solving courts

and various mental health addressing, and those types of things. For purposes of LB920, you are correct, that it was some of the issues with which the county attorneys identified that we had concerns about.

**McKINNEY:** And the concern is that-- for me and I repeated this even through the CJI process, if we're going to go through a process for six months looking at our state's criminal justice system, it is an extreme waste of time to get into January and still have the county attorneys sitting across from us as opponents. That was my biggest fear, and I knew it was going to happen. And that's the problem. And I'm not saying they have to agree on everything, but I do believe there is a way to cross the finish line on this. But it just cannot be an unwillingness to actually be open-minded. Because just saying yes to the consensus items is cool, but there are some other things that, yeah, we may have to have a conversation about how do we actually get those things implemented in, in a way that everyone may not be overly excited about, but you're not-- you get what I'm saying? So that's, that's my issue here.

**ELAINE MENZEL:** I appreciate your comments, by all means. And I would just--

**McKINNEY:** Could you talk to them, please?

**ELAINE MENZEL:** I apologize. I appreciate your comments, Senator McKinney. I will use another, another Senator Lathrop bill, perhaps, as an example. And that was LB51, related to law enforcement last year. And initially, it was very opposed, and it came such that it crossed the finish line through negotiations and that type of thing. So from NACO's perspective, I believe that I can safely say that we would like to ultimately get to a situation such as that where there is areas that it could cross the finish line after addressing some of those concerns that we previously expressed.

**McKINNEY:** And could you just let them know crossing the finish line doesn't mean Senator Lathrop has to just gut so-- he has to fall in line with them, it has to be a middle, middle ground situation.

**ELAINE MENZEL:** Oh.

**McKINNEY:** Thank you.

**ELAINE MENZEL:** I certainly understand that. Definitely appreciate those comments.

**PANSING BROOKS:** Any other questions?

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**ELAINE MENZEL:** Thank you.

**PANSING BROOKS:** Thank you, Ms. Menzel, appreciate it. Next opponent. Welcome.

**AMBER REDMOND:** Hi. Good afternoon, Judiciary Committee members, Vice Chair. My name is Amber Redmond, A-m-b-e-r R-e-d-m-o-n-d, I'm the deputy director at the Douglas County Department of Corrections. Director Myers would be here to join you, but he is unexpectedly dealing with his own medical issue, so you get me instead. My testimony doesn't differ much from Director Johnson's testimony. I thought I would just share with you an actual snapshot that we did of our population earlier this week in order to try and provide the fiscal impact of this legislative-- legislative bill. On Tuesday, we looked through our current transfer list of inmates awaiting transfer to the Penitentiary, so they had already gone through their-- the court process and sentencing. We had 27 offenders on that list waiting to be transported to the Department of Corrections. And considering this legislation, we realized 12 of those 27 offenders would remain in our county jail. Dissecting their sentences and applying any good-time calculations, it resulted in over 2,000 additional bed days in the county jail, utilizing our own per diem to come up with a fiscal impact, that was-- and calculating that out over a year ago. Again, this is just one week's worth of a snapshot. Calculating it out over a year, we're talking about over a \$10 million impact on our local county jail. And that's, that's not to mention the facility capacity issues that we would experience by taking on that additional population of which would just result in a significant financial impact if we were in a position where we needed to expand our operational capacities. You know, beyond the fiscal impact, it's just not appropriate to take this sort of action. County, county facilities are not equipped to handle inmates with lengthy sentences such as this. As I was talking this bill over with my director, I liked the analogy that he used, which was this is just like removing somebody from the hospital and taking all of those tools and resources that they have available and serving their needs in the emergency room. We do not have the vocational work programs. We do not have drug treatment programs. We don't have the mental health resources that prisons do. And we would not be-- our, our facilities are not designed to operate with long-term services. Thank you.

**PANSING BROOKS:** OK, thank you very much for coming today, Ms. Redmond. Senator Geist.

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**GEIST:** I do have a quick question. If this were required of you, and given the space that you have currently, do you have any type of space for programming in your current facility?

**AMBER REDMOND:** We do, and we do offer programming. The challenge has always been offering programming with the population that we have. When you consider, like, the average length of stay for somebody in our facility, it's around 25 days. And when you remove those offenders that make a quick turnaround, that are often out within like those first 72 hours of their stay, then the average length of stay increases a bit to, you know, four to six months timeframe. So the challenge is in providing quality programming for the people, that population of people knowing that they're not within our facility for a long period of time.

**GEIST:** OK. Thank you.

**AMBER REDMOND:** It's not that we're opposed to programming--

**GEIST:** Right.

**AMBER REDMOND:** --it's just the difficulty of meeting the needs--

**GEIST:** The logistics of--

**AMBER REDMOND:** --of our population. Yeah,

**GEIST:** implementing that. OK, thank you.

**PANSING BROOKS:** Senator McKinney.

**McKINNEY:** Thank you. Are you aware, is the county aware that because of the overcrowding crisis, the state could barely provide adequate programming to those that we have housed currently. And I say this because I would probably encourage you to also talk to the county attorney in Douglas County and get them to come to the table in good faith and not just be a strong no.

**AMBER REDMOND:** I'm familiar with the challenges that the state faces. And I understand that. Influencing the county's attorney-- county attorney's decision as it pertains to sentencing is a bit outside of our role at the county jail. But we do continue to communicate with them some of our own capacity and operational issues, and we'll continue to do so.

**McKINNEY:** Thank you.

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**AMBER REDMOND:** Thank you.

**PANSING BROOKS:** Any other questions for Ms. Redmond? I don't see any, thank you for coming today.

**AMBER REDMOND:** Thank you.

**PANSING BROOKS:** Next opponent. Welcome.

**RYAN MAHR:** Thank you. Good afternoon, Vice person-- Vice Chairperson Pansing Brooks, members of the Judiciary Committee. My name is Ryan Mahr, and it's spelled R-y-a-n M-a-h-r, and I'm here today on behalf of Sarpy County to testify in opposition to LB921. We appreciate the efforts of this committee and Senator Lathrop in particular to address prison overcrowding in Nebraska. LB921 would only increase crowding in the county jail facilities and place long-term inmates in facilities that were designed for short-term stays. Prior to my appointment as the director of Sarpy County Department of Corrections, I worked for the Nebraska Department of Corrections for 36 years. I had an opportunity to work with inmates at all custody levels, reception to release, men and-- incarcerated adult men and women, youth and adults. I served as a warden at the Community Corrections Center Omaha for a total of 12 years on two separate occasions, the warden of the Nebraska Correctional Youth Facility for eight years. Directors Johnson and Redmond addressed the impact of LB921 on crowding, the fiscal impact. What I'd like to do is go into more detail and address the differences in the programs and services. If you were to go onto the NDCS website today and look at the programs that they have available to the inmate population, and they may not be available in every facility, but they list more than 200 programs. They've got clinical programs, nonclinical programs, vocational programs, educational programs, drug treatment programs. Sarpy County, we have five programs. The Department of Corrections would list those programs as prosocial activities, just weekly support group meetings. The other important piece of this is, is the reentry services. The Department of Corrections has two community service-- or two community corrections centers, and those facilities are designed to prepare people to release back into the community. When you're looking at Class III and IV felonies, the Class IIIs carry that post-release supervision. So in effect, what you're doing is the inmates that are sentenced, they serve the entire duration of their sentence in the county jail and then go to post-release supervision. That would be similar to an inmate in the Department of Corrections serving the Class II or I felony, primarily Class II, completing their sentence in a secure facility and then paroling from there without that transition. The

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community centers offer opportunities for people to go to college on a college campus, vocational training, job training, an opportunity to get employment and an opportunity if you have employment to provide your family with financial support. None of those things are available right now in the Sarpy County jail. I'd be happy to answer more questions, if you have any.

**PANSING BROOKS:** Thank you very much.

**RYAN MAHR:** Sure.

**PANSING BROOKS:** Could you pronounce your last name again?

**RYAN MAHR:** Sure, it's Mahr.

**PANSING BROOKS:** Mahr. OK, thank you.

**RYAN MAHR:** M-a-h-r.

**PANSING BROOKS:** Thank you, Mr. Mahr. Are there any questions? Senator McKinney.

**McKINNEY:** Thank you. Just briefly, do you plan to communicate with the Sarpy County Attorney to get whoever that is-- I'm not aware who the Sarpy--

**RYAN MAHR:** It's Lee Polikov, Senator.

**McKINNEY:** OK. And do you plan to communicate with him?

**RYAN MAHR:** Yes, and-- yes, sir.

**McKINNEY:** As you heard prior to--

**RYAN MAHR:** Yes, sir. Let me just--

**McKINNEY:** --act in good faith and come to the table so we can have a real discussion about criminal justice reform?

**RYAN MAHR:** Sarpy County is acting in good faith right now, Senator. We have problem-solving courts for drug court, we have a DUI court, a diversion program.

**McKINNEY:** I'm going to stop you. The drug courts and the problem-solving courts are the low-hanging fruit. There, there are other things that we really need to get to the table and discuss and find solutions. And that's what I'm talking about.

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**RYAN MAHR:** Absolutely. I agree with you. Yeah.

**McKINNEY:** Thank you.

**PANSING BROOKS:** Thank you, Mr. Mahr. Any other questions? I see none, thank you for coming today.

**RYAN MAHR:** OK, thank you.

**PANSING BROOKS:** OK, next opponent. Next opponent. Anybody in the neutral? Welcome, Mr. Eickholt.

**SPIKE EICKHOLT:** Thank you. Thank you, Madam Vice Chair, 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 Nebraska to testify in a neutral capacity. Respectfully, we review-- reviewed the bill. We don't necessarily support the approach, but we do understand the motivation behind it. Until 2002, if a person received a sentence of incarceration for more than a year, even for misdemeanors, for several misdemeanors, it was served at the Department of Correctional Services, the State Penitentiary. Actually, I was committee counsel when in 2002 the Legislature changed that because what we noticed was kind of a trend, if you will, that some counties, even on low-level misdemeanors, if a judge could stack, run consecutive sentences just to get over 365 days, that person would go from that jail to the state prison system. That was some benefit from doing that because most of the jails back then and even now really don't have a lot of programming. But some of the judges will deliberately send somebody to prison in the hope that they will get some sort of rehabilitative treatment there. It really wasn't working as a matter of course, so in 2002, the Legislature restricted that. But from 2002 until 2015, a person could still be sent to the prison system if they received a maximum sentence for a Class I misdemeanor, which is the most serious level of misdemeanor. In 2015, one of the LB605 reforms was that a judge could no longer sentence someone to prison for solely for a misdemeanor offense. They could still go to prison to serve a misdemeanor offense if it was sort of piggybacked on a felony offense, and that's the predicament we have now. You heard Brad Johnson testify earlier in opposition. That's when the jails around the state noticed an uptick in people receiving sentences that used to go to the prison system. I mention that because this bill sort of brings out that tension, if you will, that we have in the state where you have locally accountable, locally elected prosecutors who decide to charge certain cases as they have the discretion to do. But in many instances, the state has to pick up the costs and the consequences of

the locally made decisions. And that's what you see happening here now. This is just my observation. The county says, this isn't our problem. Don't give this to us, we don't have anything to do with it. Yesterday, you heard the opposition as well, and I'm not being critical. Don Kleine and people who are elected at the county level are accountable to the county that they're elected in. They are-- this, who they have to answer to. They see crimes as they are. They make the charging decisions, and then it just sort of leaves their way, their way of looking at-- their scope, their, their field of vision. I think what Senator Lathrop is trying to do, and I don't know that for sure, is trying to sort of highlight that, to try to build consensus. Ms. Menzel talked about LB51, last year, how the interested parties were able to come to some sort of agreement on that with respect to police reform that impacted the smaller jurisdictions. And I would respectfully suggest that's something that should be done with respect to the prison system, to bring the interested parties together, to try to build some sort of consensus. To minimize that tension and come up with some sort of solution where the local prosecutors are somewhat happy and the state can also have some sort of handle on its growing prison population. I'll answer any questions if anyone has any.

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

**McKINNEY:** Thank you. Thank you, Mr. Eickholt, for your testimony. I'm curious, how long does the average individual, the average individual, with a III or IV spend in county jail before their sentence? And what will, what will be the balance on that III or IV with credit for time served or good time?

**SPIKE EICKHOLT:** So if a person is charged with a Class III or IV felony or they're charged with felony that's dropped down to that and they have not made their bond?

**McKINNEY:** Yeah.

**SPIKE EICKHOLT:** So then they're sitting in jail from when they're arrested until they resolve the case. Now that's-- they're entitled as a matter of law to get credit for that time when they're in jail, that will be applied to whatever sentence they got. So if a person is charged with even a more serious crime or say they're charged with a Class III felony, they sit in jail. How long that takes, if they pleaded out and work out a deal, you're looking at maybe six months from when you're arrested until you get in front of the judge sentence, at least in Lancaster County, probably on average, depending

on court docket and that sort of thing. If you litigate it or fight the case or try to work out something or you have other charges or whatever, it's going to be longer. Generally, when you plead, the judges don't sentence you immediately. You're looking at them ordering a presentence report, which is an evaluation process by the probation office. Meanwhile, the defendant is sitting in jail, so that's another maybe month or two. So if a person gets six months from when they're arrested to get sentenced, and say they get two years imprisonment, they're getting two years imprisonment for that Class III, the judge will advise them at the time of sentencing that two years means they must serve one year imprisonment in the Department of Corrections, minus credit for the six months that they received, which means they're going to go to prison for six months. And on a Class III, they're not going to get paroled, they're just going to do their six months and then be on post-release supervision for whatever period the judge also orders for that. So in other words, they're sitting in jail for about six months and they go to prison for another six months.

**McKINNEY:** OK, thank you.

**PANSING BROOKS:** Any other questions for Mr. Eickholt? No? Thank you very much for coming today. Next person in the neutral. Neutral? OK, I think we're ready for a closing, Senator Lathrop.

**LATHROP:** I'll confess that when I put this in, I kind of wanted to get people's attention. And the more I think about it, the more it makes sense. When you start doing the math, when you start doing the math, I appreciated what we just heard about the, the typical person who has a Class III. Because we're talking about, well, they could get services down at the Department of Corrections. But remember, that person sits for six months before they're, before they plea, on average. Maybe it's a little more, maybe it's a little bit less. Then they wait for their presentence, they're taken back to the judge, we're at seven or eight months. Then they get two years. They'll get credit for time served and with good time they will do half. So from the year that they would do on a two-year sentence, they've spent eight months of it already in the Department of Corrections or, pardon me, in the county jail. And then when they get to the Department of Corrections, they go into D&E, right? You've probably toured D&E. They go into D&E, where they sit for 90 days. So we're not-- they're not missing an opportunity at-- they're not missing an opportunity at programming over at the Department of Corrections because they never get there. They don't have a chance to get there by the time they've done-- they're waiting in county jail, then they're waiting for their sentence, then they get credit for good time. They go down to D&E and

it's 90 days before they leave there. We have an opportunity with this bill, and I'm, and I'm going to spend the weekend contemplating this, but I'm inclined to prioritize this bill because I think we can, if you do the math, avoid building a new prison, take that savings and share it with those counties that need to expand their capacity. And the money we save on the operating expenses that have been avoided by sharing, having the counties provide the housing or the, the incarceration facilities, we can do programming, we can bring mental health treatment, we can put facilities in the jail for telehealth care and avoid the necessity of building not one, but two prisons. And you know what? We could put-- I, I'm serious about this. I think we can put-- this will become effective in two years or three or whatever it was going to take to build the new prison and then share what we would spend on the new prison with the counties. And you know what we're going to see, now they have skin in the game, and now you're going to see more interest in what do we do to avoid filling up our jail? We'll see more diversion. We'll see more noncustodial approaches to someone who has been convicted of a Class III or a Class IV. You and I can work on the consensus items, Senator Geist, but this is something that I think deserves serious consideration. And I'm not just saying you counties are on your own. I listened to the testimony of Brad Johnson, his, his concerns sound a lot like ours. Yeah, it's expensive. It's really expensive. Well, we don't want it, because it's expensive and, by the way, it's going to be more than we have capacity for and our department struggles to find enough mental health professionals and volunteers needed to provide the services in Lancaster County. Talk to Director Frakes; that sounds like his problem right now, too. I think we can make those investments in programming at the department. We can make those investments in programming at the county jails. And these are short-timers. They're short-timers. And the math that they're doing has everybody doing a full sentence. They've already done most of it by the time they get their, their case disposed of. They're provided with a certain amount of good time. This is a serious proposal. It's a serious proposal. And I don't mean to say to the counties, you're on your own. But I think there's a way to provide for a distribution of some of the money we otherwise would have spent on operating these facilities and building new ones, because that 1,500 beds is just a start. We're going to be doing that every five years at the rate we're going, or every seven, something like that. So with that, unless you have other questions, that will be my close.

**PANSING BROOKS:** Senator Geist.

**GEIST:** Of course I have other questions.

**LATHROP:** All right.

**GEIST:** So what do we do about State Pen? I mean, because if you let out the IIIs and IVs to go to the counties, you still have the Is and IIs that are at NSP, and we still need to bring that up to code.

**LATHROP:** Well, so when I did the math, it's true, we will-- by the way, UNO is doing a study that will be available to us this summer on classifications and depends on whether we're, we're out of whack or not. I read the engineering report. You probably have-- you heard me talk about it yesterday, the Pen is passed its useful life. By the way, there isn't a building on there that was built in 1886. It may be the same dirt, but the buildings, the buildings are, many of them are old. Alvine Engineering said all of the housing units, except for one that was built in '98 need to be demolished and replaced. We can, we can see what we have left after a proposal like this is worked through in the numbers. This is just sort of back-of-the-napkin math that we did when the department said it's pretty hard for us to tell.

**GEIST:** Right.

**LATHROP:** But I think we can identify, even, even through the data at the Crime Commission, how many people are going there that are doing IIIs and IVs. And then we have county, district court judges that are invested in this, prosecutors, county boards that are now going-- not with this serious stuff, right? Those people that are using the gun are not going to be in this class of defendants or inmates.

**GEIST:** Well, some could be IIIs and IVs that use a gun, right?

**LATHROP:** I don't think so. Not if they're convicted of it. No, if they're, if they're convicted of that, they're going to be bumped up to something else. These are people that are going to be doing a year or two.

**GEIST:** So my second question would be, so you think-- my biggest concern would be public safety. This would have to emphasize public safety.

**LATHROP:** This would have the very same people incarcerated that are being incarcerated now.

**GEIST:** Right, it would just--

**LATHROP:** We would just do this in the, in the consensus items you and I agree on. And then you know what, I think we'll see a lot more

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buy-in by each of the counties on noncustodial options for some of these people that involve getting treatment. By the way, I started the CJI process by saying that our North Star is public safety. OK? I'm not interested in doing one thing that will compromise public safety.

**GEIST:** OK.

**LATHROP:** You have--

**GEIST:** We agree on that.

**LATHROP:** You have my promise.

**GEIST:** OK.

**LATHROP:** OK?

**GEIST:** OK.

**LATHROP:** All right.

**PANSING BROOKS:** Any other questions? I think that's it. And before we close the hearing, we have position comments: one proponent, one opponent and zero people in the neutral. And so with that, we close the hearing on LB921.

**LATHROP:** OK. We are ready for our second bill of the day and the next two are presented by Senator Machaela Cavanaugh. First up will be LB831. Senator Cavanaugh, welcome to the Judiciary Committee.

**M. CAVANAUGH:** Thank you, Chairman Lathrop. This is my first time here this year. Good afternoon, Chairman Lathrop and members of the committee. For the record, I am Machaela Cavanaugh, M-a-c-h-a-e-l-a C-a-v-a-n-a-u-g-h, representing District 6 in west-central Omaha, Douglas County. LB831 is a combination of a pretrial diversion program and a conditional release program for incarcerated women who are pregnant or postpartum. The language is permissive and not mandatory. The pretrial diversion program outlined was first introduced by Senator Vargas in 2020. The permissive language for the diversion program for caregivers would be a gain for the county, the state, and the individual family. It will aid that person maintaining their-- in maintaining their family connections and would be an incentive to complete programming and a disincentive to reoffend. When incarceration separates a child from their parent, the outcomes for the child are rarely good. Kids often end up in foster care and the absence of strong family ties impacts children's physical, emotional,

and psychological health. A child's separation from a parent can inflict long lasting negative impacts on both parents and children. Parents separated from the children can suffer similar physical, emotional, and psychological problems and often, often have difficulty reestablishing that parental bond. The effects of pretrial-- or I'm sorry, parental incarceration have also been disproportionately towards community of colors. Seventy percent of children with incarcerated parents are black or brown, victimized by both their parents' choices and society's commitment to meting out the harshest possible punishments. Research, research has shown an arrest can lead to additional negative outcomes and consequences, including loss of employment, housing, familial connection, and diminished job prospects. LB831 has the potential to improve the lives of children and the outcomes of their families. Primary caregivers of other family members when no other primary caregiver giver is available, they also qualify. Eligibility for such a diversion program would be dependent on if the offender is a primary caregiver and is the offense-- if the offense is nonviolent and nonserious, as outlined in this bill. In addition, a person would not be eligible if the alleged crime were committed against a child. If the individual does not do well in a diversion program or doesn't complete whatever the requirements are, for some reason, criminal proceedings can be reinstated. If the person successfully completes the program, the courts can dismiss the original charges. This serves as a powerful incentive for parents to take part and complete the program. This is not a mandate from the state to require counties or cities to create this type of diversion program. Rather, I see it as an opportunity to better serve families in our communities by focusing on accountability, rehabilitation, and healing. Caregiver diversion recognizes wrongdoings, improves and provides a path for rehabilitation while minimizing the negative outcomes for families and children. This diversion program would work similarly to the current diversion programs in counties in our state. The specifics of the program are decided by each county that establishes a program. Rural counties that may lack the resources and the economy of scale to create such programs is improving as the Supreme Court, in conjunction with counties, establish a more-- establish more problem-solving courts. A caregiver diversion program is the next logical step for our counties and our state. Sorry, there have been, there have been concerns brought to my office in reference to who may be eligible for this program based on different offenses. The language allows for the county to establish what offenses are noneligible. I would encourage those who have concerns over different types of offenses being eligible to partner with your local county. Again, the language is permissive, not mandatory, when it is related

to conditional release. The Healthy Start Act of Minnesota was a Department of Corrections bill that allowed the commissioner of corrections in Minnesota to place women who are pregnant or immediately postpartum into community alternatives such as halfway houses, supervise them in accordance with current statute, and provide them treatment and programming in the place-- and the placement location for the duration of their pregnancy and for up to one year post-birth to allow for the child to be near their mother for the first year of their lives. A residential program is part of my vision for a program in Nebraska. The residential facilities exist in Nebraska. Programming exists in Nebraska. There are examples of Bethlehem House in Omaha and Sixpence programs across the state. The current nursery program at the York Women's Facility has offered a terrific opportunity for incarcerated pregnant and new mothers. This legislation is not intended to interfere with the excellent work of the York facility. A conditional release program could be another step in that continuum of alternatives. I think I'll leave it there and see if there are any questions.

**LATHROP:** OK. Senator Slama.

**SLAMA:** Thank you, Mr. Chairman, and thank you, Senator Cavanaugh. What's your reasoning-- besides the public policy standpoint of giving caregivers a chance to be with their families, is there any reason beyond that that we're prioritizing a group of people just because they've either had a child, have some sort of responsibility for a child or a person-- like, what's-- beyond that, what's the point for having a preferred group when we're talking about diversion programs?

**M. CAVANAUGH:** Well, diversion programs are often tied to specific groups such as veterans court or drug court and so this is just another step in creating a type of family court. There's no other reason then to improve the outcomes for children.

**SLAMA:** Do you have any data to indicate-- because right now we are in a position in our state where we may have gone too far and I think I've brought resol-- studies to this and Senator Bostelman has brought studies to this end where children are being left in situations-- and this is irrelevant in part to your bill. It is relevant in the aspect that we may be leaving children in situations they shouldn't be in, where the children are left in dangerous home situations, where the children are with a parent and-- left with a parent who is testing positive for drugs. But they have a three-day notice from DHHS that the home visit is going to happen so we don't separate them under the guise that somehow this child is in better shape being in the home. So

I-- you don't have to respond to that. If you want to respond to that, that's fine. I just want to see some kind of data before we made blanket statements about it's always better for this parent or this caregiver to be in their child's life because yes, if they have everything together, absolutely. But I hesitate to make that blanket statement across the board.

**M. CAVANAUGH:** I would not make the blanket, blanket statement that it is always better for a child to be left with their parent. That is not always true. Sometimes a child does need to be removed from the home. But if a parent is charged with some sort of crime and there is an opportunity for rehabilitation outside of the Corrections system, I do believe that we should explore that opportunity. And this gives the courts the oppor-- the, the flexibility to do that and for them to make that judgment call. I have talked with Judge Heavican and his office about this. We've talked about it over the years and creating additional opportunities for court diversion programs is something that they are very interested in expanding. So I don't just bring this on a whim. I would say that as far as drug testing goes in the home, that is a decision that the current administration made to waive the requirement for parents to be drug tested. That was instituted, I think, two or three years ago by the Department of Health and Human Services. And I think that there have been both benefits and-- I don't know what the right word is. You know, it's, it's been a double-edged sword. There's been some good things about not doing drug testing, but also some really bad things about not doing drug testing. And there's not a right fix, I think. I think it's an interesting experiment that the administration is trying and I'm not sure that it's working, but I haven't looked at the data that they've collected on it so I won't speak to that specifically. I just know that it's ongoing. I do think that every child in Nebraska deserves the opportunity to have the best life possible. And if that means that we can do something in our judicial system to help them and help their parent or their caregiver, then we should be looking at those opportunities, especially if they're going to cost us less money.

**SLAMA:** Well, and I, I would say that every child in Nebraska should have the opportunity to have a safe place to grow up. So I'm glad, at least on that front, generally we agree.

**M. CAVANAUGH:** Yes.

**LATHROP:** I see no other questions. Thank you, Senator Cavanaugh. We will take proponents of LB831, please. And we do have a row up here. This will be the on-deck circle, if you will. If you don't mind coming

up, that helps us know how many people we have testifying so we can-- I guess Senator Cavanaugh's next, so we don't need to alert her, but it does help if we get in the habit of using the on-deck circle. Good afternoon and welcome.

**JASMINE HARRIS:** Good afternoon, Chairperson Lathrop and 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 asking that this testimony be included as in support of LB831. RISE is the largest nonprofit organization in Nebraska, focused solely on rehabilitative programming in prisons and reentry support. We start our programming prerelease and follow through post-release. Our inside-out model bridges incarceration to the community and considers all the critical steps in that journey. You have my full testimony so I'll just kind of go over some of it. Our mission at RISE is to break the generational cycles of incarceration. So we thank Senator Machaela Cavanaugh for bringing the caregiver bill diversion, diversion bill and it's important for many reasons. It will help alleviate the overcrowding in our correctional facilities because we see that jails are feeders into them so we have to begin on that front end as well. It allows parents to continue to be providers for their children and decrease the risk of familial cycles of incarceration. LB831 takes a step in that right direction to begin addressing how do we decrease our populations in the jails? This bill would offer an alternative to incarceration for individuals with low-level felonies and misdemeanors based on having programming that will help them in those areas of parenting, drug abuse, things like that, which was kind of brought up just recently. These programs will be offered in the community that will be under supervision and would also allow them to continue working to provide for their children. These are all necessary services that people need, that people are incarcerated that are receiving. So this just gives another alternative or an opportunity for people to not have to go into a facility to be incarcerated for that. The Bureau of Justice Statistics has reported that at one point, over 77 percent of mothers and 26 percent of fathers in state prisons were the primary caregivers. The Prison Policy Initiative reported in 2019 that 80 percent of women in jails were mothers and most of them were primary caregivers. When a primary caregiver goes into incarceration, the effects on children are detrimental. Most are in the foster care system, which we know isn't the best. They have their own issues. And the foster care system, from my understanding, is to try and get people to re-- to come back with their families, to get their children back. So if we are talking about parents not being the best move and they're in the foster care system, then that's what we

need to work on too to keep children from out of there and being in those safe areas. More than 20 percent of those children are placed in kinship care, where the majority of those caregivers are elderly grandparents and those children who have parents who are incarcerated are 70 percent more likely to become incarcerated themselves. So we need some kind of opportunities that help break those familial cycles of incarceration. This is why we're really in support of that and LB831 brings in another alternative to where you have community housing and organizations that can provide that programming; organizations like RISE, organizations like Bethlehem House who already has programming, housing. Majority of the women they serve are already incarcerated. So when we're looking at trying to break those cycles of incarceration, we need to think outside of the box and these kind of divergent bills are where we support.

**LATHROP:** Very good. Any questions for Ms. Harris? I see no questions. I always want to compliment you and RISE for the work you do with the incarcerated and the formerly incarcerated. It's, it's important work and we recognize that and appreciate it.

**JASMINE HARRIS:** Thank you so much.

**LATHROP:** Good afternoon.

**JOE NIGRO:** Good afternoon. 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 LB831. I want to thank Senator Cavanaugh for introducing this bill. LB831 does a couple of things. It creates a caregiver diversion program. Pretrial diversion programs have proven to be an effective and less expensive way to resolve cases and reform people. LB831 also allows the release of women in custody to deliver a baby and to care for the child for up to a year after delivery. Minnesota passed a similar bill last year. What makes this especially interesting is that I think Minnesota is the only state with a divided legislature, with each party controlling one house, so clearly this bill had bipartisan support in Minnesota. Our system of incarceration dehumanizes people and it is not only traumatic for the person incarcerated, but for their families. This would especially be true for a newborn baby. Allowing a woman to go through delivery not in custody and then to be able to spend that crucial first year with their newborn will reduce the devastating trauma that occurs. This is the right thing to do. I urge the committee to advance LB831. Thank you.

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**LATHROP:** OK. Any questions for Mr. Nigro? I see none. Thanks for being here.

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

**LATHROP:** Good afternoon.

**SCOUT RICHTERS:** Good afternoon. Thank you. Hello. My name is Scout Richters, S-c-o-u-t R-i-c-h-t-e-r-s, here on behalf of the ACLU of Nebraska in support of LB831. I first wanted to thank Senator Cavanaugh for bringing this legislation. In the last 25 years, the number of women and girls caught up in the criminal justice system has skyrocketed by a staggering 700 percent. Many of these women struggle with substance abuse, mental illness, and histories of physical and sexual abuse and few get the services they need. The toll on women, girls, and their families is devastating. With the ongoing prison overcrowding and staffing crisis here in Nebraska and the misguided proposal to build our way out of the crisis, it can be easy to overlook the discrete issues facing women and girls in Nebraska prisons. In addition to being the most overcrowded prison system in the country, Nebraska now holds the dubious distinction of incarcerating girls at the highest rate in all of the United States. Nebraska's system of mass incarceration has grown so unwieldy that today, nearly one in ten Nebraska children will have a parent in the criminal justice system at some time in their childhood. Research suggests that losing a parent to incarceration can be as dramatic as losing a parent to death or divorce. While we know that a parent of any gender can take on the role of primary caregiver for a child, that role is often assumed by women. Given that all women who are sentenced to prison in Nebraska are sent to York to serve their sentences, it can be difficult for women behind bars, many of whom are from Lincoln and Omaha, to maintain the vital connections to their children and their families. Turning to the specifics, specifics of the bill LB831 is a smart justice reform that follows the lead of several other states and allows for local jurisdictions to, to create, create programs for certain eligible offenses so primary caregivers can complete a rehabilitative program while still serving as the child's primary caregiver. The bill further authorizes the conditional release of some pregnant and postpartum incarcerated Nebraskans if the release promotes community safety and the public interest. We, we can follow-- we have an opportunity here to follow what most Nebraskans want. By passing legislation like LB831, we can invest in people, not prisons, and we thank Senator Cavanaugh for bringing this legislation. And I'd be happy to answer any questions.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Ms. Richters for being here.

**SCOUT RICHTERS:** Thank you.

**BRANDT:** You threw out a statistic that caught my attention, something about girls and the highest rate in the United States?

**SCOUT RICHTERS:** Yes.

**BRANDT:** What statistic is that?

**SCOUT RICHTERS:** I can get that. I believe it's-- it might be a Vera Center for Justice statistic, but yes, it's-- I believe-- I can get you to the site, but it's 166 per 100,000 Nebraska girls are incarcerated.

**BRANDT:** And what age would a girl be?

**SCOUT RICHTERS:** I can-- that, I think, delineates that too, but I'm assuming it would be within the juvenile justice system so probably 18 and under--

**BRANDT:** OK.

**SCOUT RICHTERS:** --so.

**BRANDT:** Thank you.

**SCOUT RICHTERS:** I can, I can-- I'd be happy to provide because it was pretty shocking to see, so.

**BRANDT:** We'd appreciate that.

**SCOUT RICHTERS:** Yes.

**LATHROP:** Can I ask a--

**SCOUT RICHTERS:** Yes.

**LATHROP:** --a question? What are the eligible offenses and how serious is the offense before you're no longer eligible for a program that would be set up under this bill?

**SCOUT RICHTERS:** Under this bill, I am probably not the right person to ask that question.

**LATHROP:** OK. I'm sure it's in there and I can find it. I was just--

**SCOUT RICHTERS:** Yes.

**LATHROP:** --trying to read through it while you were testifying.

**SCOUT RICHTERS:** I can get it to you, but yes, I think-- and I know that it's at the discretion of the specific counties, but no, I'm probably not the best to address that--

**LATHROP:** OK.

**SCOUT RICHTERS:** --but thank you.

**LATHROP:** I appreciate that. No other questions.

**SCOUT RICHTERS:** OK.

**LATHROP:** Thanks for being here.

**SCOUT RICHTERS:** Thank you.

**AUBREY MANCUSO:** Good afternoon, Senator Lathrop, members of the committee. My name is Aubrey Mancuso, A-u-b-r-e-y M-a-n-c-u-s-o, and I'm here on behalf of Voices for Children in Nebraska. All children need stable and loving relationships with adults that they can learn from and trust. Even when parents make choices that negatively impact their families, children often continue to have a bond with their caregivers. Voices for Children supports LB831 because it recognizes the importance of prioritizing parental relationships even in the involvement of criminal justice systems. There are many children in communities across our state and nation paying a high price due to mass incarceration. Estimates from a report published a few years back show that there are about 41,000 Nebraska children who had a parent incarcerated at some point in their lives. Parental incarceration is one of a number of adverse childhood experiences known as ACEs, which are stressful events or circumstances that can trigger a prolonged activation of the body's stress response system. Left unchecked by protective factors or other interventions, this stress response can significantly impact a child's development because of the persistent racial disparities in our criminal justice system, children and families in communities of color are more significantly impacted by parental incarceration. Several years back, Voices for Children

organized a series of listening sessions with Nebraskans who had personal experience with parental incarceration and it was clear that there was a high emotional and economic cost to these children and families and often that the criminal justice system was giving little attention to their needs or the secondary impact that it had-- this has on them. Given that the majority of parents experiencing incarceration were ultimately returned to their family and community, finding ways to preserve familial relationships can contribute to better outcomes for both kids and parents. The earliest months of a child's life are particularly important for establishing a bond with a parent. Our criminal justice system already recognizes this in Nebraska with the programming available at York and LB831 would add an additional option for pregnant or parenting individuals in our criminal justice system and this could contribute positively to the future well-being of children in this circumstance. And we urge the committee to advance LB831. Thank you.

**LATHROP:** Well, thank you and thanks for being here. I do not see any questions, but we appreciate your testimony.

**AUBREY MANCUSO:** Thank you.

**LATHROP:** Any other proponents? Anyone here to testify in opposition to LB831? Good afternoon, Mr. Director.

**SCOTT FRAKES:** Chairman Lathrop, it's good to see you. So good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Scott Frakes, F-r-a-k-e-s. I'm the Director of the Nebraska Department of Correctional Services. I'm here today to provide testimony in opposition to LB831. The section of this proposal that relates to NDCS appears to be a-- appears to be modeled after legislation passed last year in Minnesota that allows for the conditional release of inmates for the duration of their pregnancy and up to one year postpartum based on the application approval by the state's commissioner of corrections. That's the Minnesota term. It's important to note that there are significant differences between the law enacted in Minnesota and the bill proposed by Senator Cavanaugh. Chief among these is Nebraska does not allow for conditional release. State law provides a process for medical parole or compassionate release, which is approved by the Board of Parole and then supervised by the Division of Parole Supervision. Based on the offenses that disqualify participation in this program, it's likely that eligible inmates would be receiving determinate sentences, which may be include-- which may include a period of post-release supervision, but not parole. NDC-- NDCS does not supervise inmates in the community,

yet LB831 would require NDCS to establish requirements for the programming inmates would be required to take in the community. Additionally, this bill would extend conditional release to an inmate who has given birth up to a year prior to incarceration, not just those who are already pregnant upon commitment. Minnesota, unlike Nebraska, does not have a nursery program within its correctional system. NCCW currently provides programs that fall under the categories outlined, outlined in LB831, including parenting classes, mental health services, vocational training, and more. In essence, it provides all the resources in one location the new mother would have access to in the community. Unlike programs that might be available in the community, our programs are already tailored to the specific needs and concerns of incarcerated mothers. As an example, women who participate in our nursery program are required to attend parenting classes that teach communication skills, child CPR, nutrition, establishing a family dynamic, and much more additional workshops and seminars that are also offered through the nursery and parenting departments. For almost 30 years, NCCW has provided a successful program for pregnant mothers that is safe and treatment focused. It has the structure necessary to support mothers who have had previous children, as well as brand new mothers. Incarcerated mothers have consistent access to trained NDCS staff and community volunteers along with robi-- reliable medical care in the community. Bonding is facilitated in the designated nursery space. In short, the goals LB831 seeks to accomplish are already supported through NDCS and I'd be happy to try and answer questions-- don't know why I got a catch in my throat.

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

**SCOTT FRAKES:** Yes.

**LATHROP:** I have toured the facility in York and it does have a nursery there, am I right?

**SCOTT FRAKES:** Yes.

**LATHROP:** So if a woman comes to your custody and is-- goes to York, they don't go to D&E, they go straight to York, right?

**SCOTT FRAKES:** Right.

**LATHROP:** So if a woman comes in and they've had a child a month before they're sentenced, will they bring their child with them to the nursery in that circumstance?

**SCOTT FRAKES:** No.

**LATHROP:** OK. If a woman comes to you who is pregnant and has a child while incarcerated, what's the, what's the program?

**SCOTT FRAKES:** Thank you very much. So it's eligible to mothers that qualify depending on crimes committed, sentence structure, input from HHS, Child Protective Services, past parenting history issues, and a host of other qualifiers. One of the key ones would be that they are typically two years or less from release. And we'll extend that a little bit, but that's kind of--

**LATHROP:** So they're relatively short-termers and I assume the disqualifying things is if, if their crime is abusing children or something.

**SCOTT FRAKES:** Or some other very, you know, serious crimes, yeah--

**LATHROP:** OK.

**SCOTT FRAKES:** --violent crimes.

**LATHROP:** Have you've reached capacity at any point in the last five years in that nursery?

**SCOTT FRAKES:** No, not to my--

**LATHROP:** So you're not-- it's not a case where you have too many?

**SCOTT FRAKES:** No.

**LATHROP:** OK. Those were the questions I had. Just-- Senator McKinney.

**McKINNEY:** Thank you, Senator Lathrop. Thank you. Director Frakes, for your testimony. If you're already offering this programming, why come in opposition? Why not neutral?

**SCOTT FRAKES:** Very specifically, the fact that I don't have the resources, components, structure, staff, or anything else to supervise this in the community. So in 2015, the Unicameral made the decision to remove parole supervision from my department and here we are today. But even that alone wouldn't be enough to address this program because participants wouldn't necessarily be under parole guidelines. As was mentioned, they could be PRS. They could have a flat sentence, unfortunately. So I just don't have, I don't have any infrastructure or way to make this program work.

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**McKINNEY:** Have you ever considered submitting a proposal to the Legislature or to the Governor about increasing your capacity to do more within this program?

**SCOTT FRAKES:** No.

**McKINNEY:** Why?

**SCOTT FRAKES:** Because at this point, the Legislature indicated to me that they wanted me out of the business of community supervision and so I've made my focus the safe and healthy operation of the prison system.

**McKINNEY:** Have you ever contacted Senator Cavanaugh about your opposition in-- to this, to this legislation or are you just--

**SCOTT FRAKES:** No, I did not.

**McKINNEY:** Why?

**SCOTT FRAKES:** For-- I guess for the same reason that I wasn't contacted and asked about the legislation.

**McKINNEY:** OK. Thank you.

**LATHROP:** I don't see any other questions. Thank you. Next opponent.  
Good afternoon.

**ANDREA FRAZIER:** Good afternoon. Have to put on my readers, my eyes are getting old. Thank you, Mr. Chairman and members of the committee for allowing me to testify today in opposition of LB831 as it pertains to DUI as an offense. My name is Andrea Frazier and I'm the program manager with Mothers Against Drunk Driving. MADD appreciates the intent of LB831, but is currently-- as currently worded, MADD opposes this legislation, as it would allow individuals charged with the crime of driving under the influence, DUI, to avoid accountability for their actions by entering into the diversion program. Diversion undermines the seriousness of this 100 percent preventable crime. According to the CDC, someone drives impaired 80 times before they are arrested. In 2019, 6,412 were arrested for DUI in Nebraska. Alcohol involvement in fatal crashes increased from 24 percent in 2019 to 33.2 percent in 2020. Crashes involving impaired drivers continue to significantly contribute to the state's fatality total. In 2020, 76 people lost their lives to impaired driving and over 80-- 876 people were injured by this 100 percent preventable crime. These are not just numbers; they're fathers, mothers, sons, and daughters. MADD works with victims

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throughout the state that have felt the devastating impact of impaired driving. MADD feels that allowing DUI sentences to not be enhanced would weaken Nebraska's impaired driving laws. Drunk driving is a choice. Lawmakers should be doing everything possible to ensure effective policies are in place to deter and stop impaired and drunk driving. In conclusion, MADD urges an amendment to LB831 to ensure that any DUI charge would disqualify an individual from being eligible for diversion. Thank you.

**LATHROP:** I see no questions, but thank you for being here today.

**ANDREA FRAZIER:** Thank you.

**LATHROP:** Is anyone else here to testify in opposition? OK.

**CHRIS WAGNER:** Good afternoon, Chairman Lathrop and--

**LATHROP:** Good afternoon.

**CHRIS WAGNER:** --members of the Judiciary Committee. My name is Chris Wagner. I'm the executive director of Project Extra Mile, which is a network of community partnerships working in Nebraska to prevent and reduce alcohol-related harms. We're here to ask you to indefinitely postpone LB831 as long as DUI is included as an eligible offense for pretrial diversion. Our state has an effective program already with the 24-7 sobriety program, which keeps offenders out of jail, clean, and accountable. The program is characterized by its cost effectiveness, both for the participant and the county, its immediate relief of jail overcrowding and its ability to reduce arrests for alcohol and drug-related violations while ensuring accountability on the part of the participant. According to Douglas County, County Department of Corrections, which has operated its 24-7 program since 2014, participants will be able to continue working or school to assist with providing their families. As you may also recall, the Legislature passed LB271, Senator Morfeld's bill, just last year. That bill was signed into law on May '21 to encourage the use of this program and establish a framework for growth for the 24-7 programs statewide. Driving under the influence of alcohol and other drugs is a serious problem across our country, but particularly in our state. Nebraska is the second-worst state in the country, with nearly double the national average of 955 episodes of self-reported alcohol-impaired driving per 1,000 population. If you look at our nearly 2 million, 2 million population currently, as is estimated, that's over 1.8 million episodes of DUIs every year, so it's really a significant problem. Over the last five years, the state has also averaged 65

alcohol-related traffic fatalities and over 700 alcohol-related injury crashes each year. It is clear that our state has a problem with impaired driving and we ought to be strengthening our DUIs, enacting, enacting other evidence-based policies to prevent the loss of innocent lives on our roads given that almost 40 percent of alcohol-impaired driving fatalities are victims other than the drinking driver. We should not be sending the message that DUIs are not serious unless you injure, maim, or kill someone. And I noted under Section 8 (E) of the bill, it-- as a disqualifying offense, it says, "the threat to inflict serious bodily injury or death on another person" and I would argue that that is precisely what a DUI is. It's, it's endangering public safety. So with that, I would urge the committee to indefinitely postpone LB831 or amend the bill to exclude DUIs as eligible offenses for pretrial diversion. Thank you.

**LATHROP:** OK. I don't see any questions.

**CHRIS WAGNER:** All right.

**LATHROP:** Thanks for being here.

**CHRIS WAGNER:** Yep, thank you.

**LATHROP:** Anyone else here to testify in opposition? Anyone here in a neutral capacity on LB831? Good afternoon.

**NATURE VILLEGAS:** Hello again.

**LATHROP:** Hello.

**NATURE VILLEGAS:** I'm good.

**LATHROP:** Welcome back I should say.

**NATURE VILLEGAS:** Thanks, yeah, yeah.

**LATHROP:** You were one of our late-timers last night.

**NATURE VILLEGAS:** Yeah, that's all right. We're here for a cause. My name is Nature Villegas. First name, N-a-t-u-r-e, last name, V-i-l-l-e-g-a-s. I'm intersectional justice coordinator with Stand In for Nebraska and I do a lot of peer support, community resource stuff, and just networking with people that come back into the community because 11 years ago, I was addressed from the state of Nebraska as inmate 97313. I have to take this down. I went to York Penitentiary. I found out I was pregnant in county jail. It was a very excruciating

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experience, but I want to speak on behalf of-- I'm neutral because I love the bill. The problem, the issue I have is maybe more of a case-by-case approach. And I know that sounds redundant when we talk about law, but if we're talking about change and prevention and things of that nature-- and in my case, I'm breaking generational curses, so I was caught up in a whirlwind of things. But when we talk about violent offender, I was in a domestic violence situation where in the state of Nebraska, there is no self-defense law. So when I defended myself, I was labeled a violent offender. Luckily, I am sand in people's shoes and pants enough that I wrote the warden repeatedly to where he was like, who is Nature and what does she want? So I had a meeting with him and I said, hey, I know what it looks like on black and white. Give me this chance. Let me pave the way for women like me because they are going to be more. Majority of us in prison, we have domestic situations. We're caught up in generational things, drug related and sometimes it's not even us on drugs. I know women that couldn't keep their babies because they were afraid of their husband or boyfriends and they hid that gun and they took that because when they get out, they're going to get beat for that or have worse consequences than, believe it or not, the state of Nebraska could ever provide. And so I just feel like there needs to be some way to get outside the box of that black-and-white thing because not every case is like that. And I'm living proof that when we are given these chances, I was let in the nursery and I was also let out on a furlough program. They started it in the men's prison first and they said, hey, what about the nursery? That would be a great place to advocate for this. And I went out on furlough and I was successful. Brad Henry [PHONETIC] in Grand Island can attest to that. It is incentive to get involved in programming, to get right for our kids and figure out the way. And the more that we have these resources, that's preventative. That-- also in the nursery, it was never full and it was a very personal, almost vendetta-like process. So if I just think, oh, I don't know about her, I'm not going to approve her. There's a bed for her and her baby, though. So there are also-- again, I know I'm sounding redundant every time I come in here-- that oversight and accountability because I think it has to have a mutuality for not only us in the community, but those that are in these higher positions. So I would also encourage that we're utilizing that nursery program. People come from New Zealand and everywhere to see that program because we're the one nursery program that we're allowed to interact with our kids. Prisons were like, hey, that's amazing. So if we can be successful in that, this is definitely a good bill if we can kind of take some of those corners off that would accommodate all mothers and not just three to five here and there. That's all I have. Thank you.

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

**NATURE VILLEGAS:** Yes.

**LATHROP:** I don't want to take up a lot of time with this, but you, you had your baby at York?

**NATURE VILLEGAS:** Yes. I found out I was pregnant in county jail and I learned about the program and that's when I started writing the warden because like I said, I was considered a violent offender. So technically that would have taken me off-- I'm not even considered. So he let me go in there, but I had stipulations. So again, it wasn't like, oh yeah, Nature. I'm going to take a chance on you. No one wants to do that, especially with inmates and criminals, right? So I had stipulations that I had to follow and if I didn't follow these, I would be reprimanded for that and the main one would be to send my child out.

**LATHROP:** OK.

**NATURE VILLEGAS:** So--

**LATHROP:** What year was that?

**NATURE VILLEGAS:** That was in 2000-- well, I went to prison in 2010, so this was between 2010 and 2013 time period.

**LATHROP:** Did you have your child with you the whole time?

**NATURE VILLEGAS:** Yes, I had my child in prison and then I fur-- I went out on furlough. I would have went to a parole hearing, but then they came up with that furlough program and they were like, hey, why aren't we trying it with the women, which women we're kind of way different than the men's prison and things just go different and--

**LATHROP:** They weren't as crowded.

**NATURE VILLEGAS:** And that too and-- but my thing is the whole time I was there and even being in contact and doing the work I do, that nursery has never been full, so it's not fully utilized.

**LATHROP:** How long were you and your child there together before you were--

**NATURE VILLEGAS:** A year and a half.

**LATHROP:** --furloughed?

**NATURE VILLEGAS:** Yeah.

**LATHROP:** And what's the, what's the maximum period of time that you can be there with the child before they say, OK, you bonded, you got more time to do, child goes to Grandma?

**NATURE VILLEGAS:** That is really a stickler because they put that weird number on it where you can only be there for up to two years. And like Frakes said, they can be lenient on it, but it's not something that they really kind of push that. I think that's something that should be looked at as well because a lot more women would qualify, even if it was that two-- and if they're a month over that two years or six months to a year over that, they're being denied when-- I mean, I've been there. It's very possible and it is a beautiful program.

**LATHROP:** One last question: how frequent of an occurrence is this that a, that a woman will have a child while they are incarcerated with the department?

**NATURE VILLEGAS:** Oh, there was a lot. I mean, a good half of-- not quite half the population of us that had either just delivered-- there were women there that were still breastfeeding their children. Obviously, they weren't DUI people getting drunk. I mean, you know, everyone-- like I said, case by case.

**LATHROP:** OK.

**NATURE VILLEGAS:** We're talking about human life, so--

**LATHROP:** OK.

**NATURE VILLEGAS:** --there's a-- almost half the population, either they had just had a child within that month or year or were pregnant having to figure out from prison, mind you-- and these women are either from out of state or even from Omaha and Lincoln in little old York and they're having to figure out where this child's going to go. Now the states involved. I mean, the money keeps rising, the drama keeps rising when we actually have things in place that we could expand on and take this bill and just-- my thought-- my request would be to have that cushion of not to oh OK, honey, to need to really look at people as people and see what this looks like because your life and my life are different so you-- your accommodations will look different than mine. And maybe I did have--

**LATHROP:** Yeah, sometimes, sometimes when we're flexible, it gets us in trouble, you know, when somebody says--

**NATURE VILLEGAS:** But if we--

**LATHROP:** --you did this for these people, but not these people?

**NATURE VILLEGAS:** No and it-- I don't think it would be one of those situations. I think we're all intelligent enough to know what this looks like because they do it already for the nursery. However, there's that personal-- I don't know another word to use for it-- vendetta thing. I don't like your attitude. You know what? You're not getting in the nursery today. Well, what did that have anything to do with your productivity and you being with your family? Eleven years later, my family and I are still putting these pieces back together. Yes, I made a decision. And honestly, if I was put in that situation again, I would do it again because I was defending myself and my family.

**LATHROP:** OK.

**NATURE VILLEGAS:** Obviously, everyone doesn't all have that story, but we are, like I've said, if we're given soil, we will grow.

**LATHROP:** OK. Well, we appreciate that reminder--

**NATURE VILLEGAS:** Thank you.

**LATHROP:** --and thanks for being here today.

**NATURE VILLEGAS:** Absolutely.

**LATHROP:** Any other opponents? Anyone in the neutral capacity? Seeing none, Senator Cavanaugh, you may close.

**M. CAVANAUGH:** Thank you, Chairman Lathrop and members of the committee. I want to start out with speaking to some of the things that were brought up in this last testimony. LB416, you all heard it last year in this committee about the nursery program at Corrections. Director Frakes came and testified in opposition to it. One of the things that that bill seeks to do is to eliminate some of the restrictions that are arbitrary in the eligibility for that program, including the 24-month age for the child. It's not that it's-- that the child has to be able to stay there for longer than 24 months, but as the last testifier indicated, if you have your child when you are incarcerated and your child is going to be 30, 36 months old when you are released or older, you don't get to even apply for the program. And the argument that was made last year for that is it's traumatic to take the child away from-- at 24 months. And for those of us that are

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mothers, I think we can agree it's traumatic to have your child taken away from you in two days. So if we have an opportunity to reevaluate LB416 and some of the many components there, including allowing women to express milk and store it and have somebody collect it from them at York Penitentiary--

**LATHROP:** That sounds like last year's bill.

**M. CAVANAUGH:** It is. I'm sorry--

**LATHROP:** OK.

**M. CAVANAUGH:** --but it was brought up. You started it, Mr. Chairman. OK, so this bill, I just really am passionate about moms--

**LATHROP:** I can tell.

**M. CAVANAUGH:** --all moms. This bill is a way for us to start to help break intergenerational poverty, provide stability for children, and create alternatives to just churning out people in the Corrections system. There was a mention about child placement and kinship placement. And kinship placement is informal and it can be great and it can be dangerous because a kinship placement can be that elderly grandparent or it could be your neighbor down the street that they don't do a background check on, that you might-- your parent might-- the parent might not even know, but it's convenient for the Department of HHS so they'll do it and it costs less money. I appreciate the concerns over drunk driving. I again encourage people to work with their local governments to determine what can and cannot constitute this type of release. I disagree that it should be an automatic thing because I think it is much more detrimental to a child to be put in an unsafe situation, such as our foster care system, where we have children sleeping in hotel rooms, or put them in with a stranger and call it a kinship placement than have them go back with a parent who is seeking help for a drinking problem. I'm not saying that's always going to be the case, but it is not a one size fits all, which is why it is not in there. I am open to any amendments that anyone in the committee would like to see. If the Director of Corrections would like to actually have a conversation with me, I would welcome that. And with that, I will take any questions.

**LATHROP:** I don't see any questions. Before we close, the record will reflect that we have position letters; five are proponents and one is an opponent and no neutral letters. With that, we'll close our hearing on LB831 and Senator Cavanaugh, you can stay in that seat--

**M. CAVANAUGH:** I will

**LATHROP:** -- and open on LB886.

**M. CAVANAUGH:** OK. I have an amendment. Good afternoon, Chairman Lathrop and members of the committee. For the record, I am Machaela Cavanaugh, M-a-c-h-a-e-l-a C-a-v-a-n-a-u-g-h, representing District 6 in west-central Omaha, Douglas County. Every time I see my colleague, Senator Morfeld, I want to say the "Fighting Sixth," but I-- we don't really fight. We play golf, I think. I am here today to introduce LB886, which will allow a pregnant incarcerated woman to choose an individual for support through labor and delivery. This support person is in addition to the Department of Corrections-- Corrections personnel. This bill does not require the state to pay for a doula or a support person. It only allows this choice to be made and requires the department to inform women prisoners of their rights to make this choice at the time of entering the facility and again when it is found the individual is pregnant. I think a person who works as a doula is here to inform us about her work and why it's important for incarcerated women and their babies to have people of personal support outside of the corrections system. I've been in conversation with hospitals and counties. AM1686 will hope-- will address some of the concerns that have been expressed. But we are committed to one another to continue having conversations to address their concerns. And I will say, if you have a copy of the, of the green copy of the bill, the very first thing that the amendment does is strike on page 2 at the bottom, the restraint portion. That was my mistake that I kept that in there, that we already addressed that my freshman year in a restraint bill for corrections. And so everyone is aware that we are taking that part out because we already have language in statute on that. There are-- you're going to hear a lot of concerns about safety from the hospital workers, and they're really important concerns that they have brought to my attention, that I am committed to working with them on. And I appreciate so much that the counties have come and worked with me and that the hospitals and the hospital workers have come to talk to me about their concerns. And after today, I intend to work with them on further amendments to this bill. I will take any questions.

**LATHROP:** Senator Geist.

**GEIST:** I do have one quickly.

**M. CAVANAUGH:** Yeah.

**GEIST:** Paying for the doula.

**M. CAVANAUGH:** Yes.

**GEIST:** They're wonderful people, but who pays for them?

**M. CAVANAUGH:** The individual would have to pay for a doula, if they wanted to, or there is the possibility in the coming months that we will be working out some sort of system with Medicaid that they might, if you're Medicaid eligible. So there is that possibility.

**GEIST:** OK. And that would be pretty narrow if you're incarcerated, right?

**M. CAVANAUGH:** Right. So it would be incumbent upon the person to pay for a doula.

**GEIST:** All right, that's all. Thank you.

**LATHROP:** The women we're talking about would be in York County when this happens?

**M. CAVANAUGH:** Not necessarily.

**LATHROP:** Well, where would they be if they're not in York?

**M. CAVANAUGH:** They could be at the county jail.

**LATHROP:** Oh, this would apply to counties as well?

**M. CAVANAUGH:** Yes.

**LATHROP:** Pardon me. OK. Got it.

**M. CAVANAUGH:** Yes.

**LATHROP:** Thank you. I don't see any questions. Other than the one Senator Geist had. No, that's fine. Proponents.

**JOE NIGRO:** Good afternoon, 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 LB886. I want to thank Senator Cavanaugh for introducing this bill. I believe LB886 contains elements similar to a law in Minnesota. Our correctional system dehumanizes people. This law demands that women in custody be treated more humanely. The woman would be allowed to have a support person present during delivery. Delivery is a stressful time. Having someone who cares about you present is important. The bill also allows a

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midwife, doula or other support specialist to be present. Again, delivery is a stressful time. Just because someone is in custody does not mean that they aren't human. Treating women in deliv-- delivery humanely will ease the stress and ultimately should assist in rehabilitation. I urge the committee to advance LB886. Thank you.

**LATHROP:** Senator McKinney.

**McKINNEY:** Thank you. Thank you, Mr. Nigro, for your testimony. I'm sure we probably will get some opposition that says this-- there will be a safety concern. And I'm guessing it will be around who, who are these individuals and things like that. And I guess, what would be your response to that? Because my, my thinking about this is there is a list of individuals who submit their information to the department or to counties to get qualified to be able to do this. And if that is [RECORDER MALFUNCTION] I don't really under-- I probably wouldn't understand opposition because they would go through the criminal background checking, all the processes you have to go through to even be able to walk inside a facility. So if that is the case, what would be your response to them saying it would be a safety concern?

**JOE NIGRO:** Well, it's hard for me to picture that there would be a safety concern. I mean, first of all, if they have to approve the person, then they can do a record check regarding the woman. I think the bill does limit the women who are eligible for this. But my experience when my wife is having babies, I don't think that the person who is in the middle of delivery is going to be much of a threat to anyone. So I-- I just-- I don't see either of those issues being a problem.

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

**LATHROP:** I do have a question for you. And that is when I look at page 3, line 30, if you have somebody that's on parole and they say, as a condition of your parole, Mr. Nigro, I don't want you to be around anybody that you knowingly know is a convicted felon. So are we authorizing, like, this seems to say to the department, you've got to let this person in. But isn't there another issue about whether a parolee can actually accompany a convicted felon or be in the company of a convicted felon?

**JOE NIGRO:** If the person who's accompanying is the person who's on parole, it seems like they would likely have to get permission from their parole officer.

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**LATHROP:** Can you get permission to do that? Or is that-- that's typically a condition of your parole, isn't it?

**JOE NIGRO:** Yes. I mean, we generally aren't dealing with-- I mean, our office is only generally dealing with people on parole when they've committed violations.

**LATHROP:** Violations. OK.

**JOE NIGRO:** It's a little bit different than probation.

**LATHROP:** But that's a common violation, right?

**JOE NIGRO:** Ah--

**LATHROP:** As a condition of your parole you shall not hang out with a felon.

**JOE NIGRO:** It's-- it's-- it's a pretty normal condition. I don't know that we-- when I think about the kinds of things that lead to charges, that-- that's not one of them, but I would assume it's probably a normal condition of parole.

**LATHROP:** I would think so. OK, that's the only thing I noticed as I was going through this. I see people on the edge of their chair behind you, so.

**JOE NIGRO:** OK.

**LATHROP:** [INAUDIBLE]

**JOE NIGRO:** Yeah,

**LATHROP:** Thank you.

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

**LATHROP:** Any other proponents? Good afternoon.

**SCOUT RICHTERS:** Hi. Hello again. Scout Richters, S-c-o-u-t R-i-c-h-t-e-r-s, here on behalf of the ACLU of Nebraska in support of LB886. Birth equality for incarcerated Nebraskans fits squarely at the intersection of the ACLU's work to support the reproductive freedom of all Nebraskans, as well as our work to ensure that Nebraskans who are incarcerated are treated with dignity and have access to life's basic necessities. LB886 builds on efforts to ensure safer deliveries, healthier outcomes, and less traumatic birth for Nebraskans who are

incarcerated. From time to time, the ACLU receives intakes from pregnant Nebraskans detained in our county jails and our state prison. We have actively investigated claims of mistreatment and civil rights violations for incarcerated pregnant women, successfully litigated one such case last year, and investigated concerns about the childbirth process in at least one instance. Allowing as a birth person, a doula or midwife in the delivery room gives the incarcerated person an advocate in an unfamiliar situation. And this is particularly important for pregnant Nebraskans who are incarcerated as a disproportionate number of whom are Nebraskans of color, because people of color face maternal mortality rates nearly four times greater than their white peers. By more specifically risk-- oh sorry, that was dealing with the deleted aspect of the bill. But I guess to sum it up, we would offer our full support and I would urge the committee to advance the bill and I'd be happy to answer any questions.

**LATHROP:** OK. I don't see any questions this afternoon.

**SCOUT RICHTERS:** OK, thank you.

**LATHROP:** Thank you. Other support. Anyone else in support?

**NATURE VILLEGAS:** Hello.

**LATHROP:** Welcome back.

**NATURE VILLEGAS:** It's been a while. My name is Nature Villegas, N-a-t-u-r-e V-i-l-l-e-g-a-s. I think it kind of goes in with what I testified last. Do I need to repeat that? Serious question. When I did deliver in York Penitentiary, I-- I was-- I was very-- I advocated for myself, but not everyone knows that that advocacy is available or even an option sometimes because we get very robotic in there. But even in my advocacy, I was-- my daughter's father was not allowed to be there. He was on the phone. I would have originally had to been chained to my bed with a guard there and I do natural home birth. So I was already intimidated by having a man doctor for my first time going into facilities. I'm indigenous, so that whole atmosphere was very intimidating. Of course, obviously I made it through. I'm here, but it is very excruciating, let alone even if you are familiar with that process. I had complications and things, so mind you, he's on the phone and it was just the weirdest experience of my life. It was very inhumane, if you will, and I think someone already said that incarcerated or not, I mean, we're still-- we're still people and humans and we're bringing an innocent life, right, nondebatable, into

the world. And-- but there is not-- there would have been a very comforting feeling having someone to be of that support that is actually from my cipher. And that was not the case. Again, I got special approval, but I would have been shackled to a bed delivering. And I don't know, there's a lot of men on this panel, but I think women can attest delivery alone, let alone natural and being chained to a bed, I don't know. I just-- I hope you can grasp as men as well, like, not something you probably want to do either. So I definitely am for this bill. I think that we again are competent enough to set boundaries, if you will, and what that looks like moving forward and we're capable of doing that. So I just wanted to testify in favor.

**LATHROP:** OK. I don't see any questions.

**NATURE VILLEGAS:** Thank you.

**LATHROP:** Thank you for your testimony once again. Other proponents. Anyone here in opposition?

**CARLE CONARD:** Hello.

**LATHROP:** Good afternoon.

**CARLE CONARD:** Hi. My name is Carle Conard, C-a-r-l-e C-o-n-a-r-d. I am the director of obstetrics at York General Hospital, which is a 25-bed critical access hospital. I'm here in opposition of the LB886. We deliver approximately 80 to 100 babies, 120 babies a year. We also serve the Nebraska Corrections Center for Women, NCCW, and do a majority of their deliveries. I'm going to first kind of just inform you how we do deliveries at York General. As a labor and delivery nurse, we strive to give every OB patient the best experience. We provide women from Nebraska Correctional Center with all the same elements we give to all of our patients. We have cared for this population for decades at York General. We strive to give them the best birth experience possible. Once an inmate arrives, only in wrist restraints, we are-- wrist restraints, they are taken off. They are not on at all during labor once they're on our unit. They're never shackled until dismissal for safety of transfer. We do remove certain things from the room for safety of our facility. They are gifted all the luxuries, such as wireless monitoring of an infant, one-on-one nursing care during labor, skin-to-skin bonding, and breast-feeding support. We recently added lactation consults, which we are now able to achieve in outpatient visits at our hospital, which will then limit them from being transferred to Lincoln for help. And I don't even know if that was an option. We try to accommodate all their requests for

needs with the exception of visitation. Once NCW patient-- NCCW patients are scheduled, we do not allow them to know the date until they are-- until the date is there. And I will touch on that later why we don't do that. We follow all ACOG, the American College of Obstetricians and Gynecologists, and AWHONN, recommendations as-- along with evidence-based practices for this population of women, along with all the amenities as much as possible. I encourage them to have autonomy in the direction of labor and delivery plan, promoting skin-to-skin, breast-- and breastfeeding for those who it is appropriate for and when it is safe for the infant. We educate them on infant and delivery protocols and procedures that are necessary. We allow a support person to be notified at delivery. The inmate also gets a person from the prison, which is usually from the nursery or maternity program there, along with extra nursing staff support. She gets-- a support person then gets to come, but has to be approved by the visitation, whoever approves that from NCCW, so background checks and all of that. Then once they come to the hospital, we then do a photo ID check along-- along with making sure they did check in at the prison. They're allowed to come in for specific visitation times. If patients are furloughed, the patient's approved support person can be in the room unlimited with specific rules for safety. We would even accommodate the support person to be able to stay longer for those-- for those allotted hours for the nonfurloughed patients if this is possible. This support person is the only visitor throughout the stay, which will help prevent staff from policing and making sure unapproved visitors are not coming in. My staff and myself have had a lot of security issues with this population guessing the day of the induction, C-section or procedures, and have-- and having all of the family and friends, those who have had violent pasts, demand to see their daughter and infant. This possesses a very big safety concern. As stated before, we are a critical access hospital that provides exceptional care to our community. One thing that we take very seriously--

**LATHROP:** Ma'am, we have a three-minute light system.

**CARLE CONARD:** Oh, I'm sorry.

**LATHROP:** --and you hit the red.

**CARLE CONARD:** Oh, I'm sorry.

**LATHROP:** Let's see if there's any questions. I know I'm going to have one for you.

**CARLE CONARD:** OK.

**LATHROP:** Senator McKinney.

**McKINNEY:** Thank you. From your testimony, it seems like somewhat you already kind of have a system where someone gets approved to be there.

**CARLE CONARD:** Um-hum.

**McKINNEY:** I guess your opposition is safety concerns. But if this individual is approved--

**CARLE CONARD:** I think that we visited with Senator Cavanaugh and some of the verbiage, it doesn't say that it's an approved. It could be anybody that the prisoner chooses. So that's pretty vague.

**McKINNEY:** But even if they choose somebody, they still would have to go through a process of approval. Is that correct?

**CARLE CONARD:** It was pretty vague, so it didn't specify that that would need to be happening.

**McKINNEY:** Okay, so--

**CARLE CONARD:** So that's where--

**McKINNEY:** --if that was put in, you would.

**CARLE CONARD:** Yeah, yeah.

**McKINNEY:** OK. All right.

**CARLE CONARD:** We just don't-- the hospital does not want to be the one that says as the person's coming in, you aren't allowed to come in.

**McKINNEY:** No, I get what you're saying.

**CARLE CONARD:** Like, we don't have the staff or--

**McKINNEY:** So if there's like a preapproval process and then it makes-- OK, I get it.

**CARLE CONARD:** Yeah,

**McKINNEY:** Thank you.

**CARLE CONARD:** Yeah.

**LATHROP:** That was going to be my question too.

**CARLE CONARD:** That's OK.

**LATHROP:** You did a great job of telling us everything you do for this population, which we appreciate. I was just trying to figure out what you didn't like about it.

**CARLE CONARD:** Oh.

**LATHROP:** That's not having the person preapproved ahead of time.

**CARLE CONARD:** Yeah, that was vague enough that it didn't say that. So we just don't want anybody coming in because we don't have the staff to try to figure out if it's OK for them to come in if they're violent. We've had so many security breaches where people just show up and demand to see the infant, and it's causing a lot of concern.

**LATHROP:** So let me ask that question.

**CARLE CONARD:** Yeah.

**LATHROP:** If-- if a woman gives birth in your hospital, what do they stay, like a day and a half or something?

**CARLE CONARD:** They get the-- the same amount of time as any other patient.

**LATHROP:** And it's been a little while for me, so that's why I'm asking the question.

**CARLE CONARD:** So for a normal vaginal delivery, it's 24 to 48 hours and a C-section is 48 to 72.

**LATHROP:** OK. So let's use a C-section because they're going to be a little bit longer.

**CARLE CONARD:** Yeah.

**LATHROP:** If I'm the father, not-- I'm not there at the birth, but I'm the father and I want to show up at the York Hospital and see my child before my significant other takes it back to the York facility, can I do that?

**CARLE CONARD:** If you are preapproved from NCCW, yes. You are welcome to come right after delivery and stay for those allotted hours.

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**LATHROP:** Oh, so even family that wants to come visit the baby at your hospital--

**CARLE CONARD:** Anybody that's on the visitor list that's preapproved from NCCW. We had recently changed that just because of a certain security situation that happened. Now we only allow one, so it's the person of whoever that inmate chooses on their visitor list to come in.

**LATHROP:** OK, that helps me understand the process.

**CARLE CONARD:** Yes.

**McKINNEY:** I got a question.

**CARLE CONARD:** Yes.

**McKINNEY:** It's probably not a question for you. It's probably for Director Frakes because I'm thinking, what if hypothetically, a woman gives birth but the father of the child is an ex-felon? He's been in prison before. How long-- how long does he-- does that individual need to be out prior to getting approval? But I'll ask that later.

**CARLE CONARD:** Yeah, I wouldn't know that.

**LATHROP:** OK. I don't see any other questions.

**CARLE CONARD:** OK.

**LATHROP:** Thank you for--

**CARLE CONARD:** Thank you

**LATHROP:** being here--

**CARLE CONARD:** Yep.

**LATHROP:** --and the care you provide. Next opponent. Good afternoon.

**MICHAEL CHIPMAN:** Good afternoon, Lathrop. Good afternoon, Chairman Lathrop, members of the Judiciary Committee. For the record, my name is Michael Chipman, M-i-c-h-a-e-l C-h-i-p-m-a-n. I'm appearing today as the president of the Fraternal Order of Police Lodge 88. This is a union that represents the protective service workers in the Nebraska Department of Correctional Services and the Department of Health and Human Services. I am here in opposition of LB886. The reason I am in opposition is because the negative mandate this bill puts on our

members. This bill, as written, requires a support person to be allowed during pregnancy. It also specifically states that the department cannot deny someone because of their criminal history. This means that someone who the department knows may help the inmate escape would have to be allowed in. This puts our members at a very grave risk. We have seen in neighboring states where it-- what happens to staff in the prisons when there is an escape attempt. It is well known that travel orders to the hospital are some of our most dangerous times in our work. We are not able to control and keep the environment secure in a community hospital. It's difficult to do that even now. As this bill is written, we would have no way to know if the support person has any weapons or malintentions. Another issue that could arise from this is this would allow someone who may have a violent history towards the inmate to come. It is a well-known fact that some survivors of-- of abuse stay close to their abuser. Allowing the situation to happen puts our staff in a much worse situation. That's our position.

**LATHROP:** OK. Senator McKinney.

**McKINNEY:** Thank you. Can you recall any situation where a mother that was incarcerated gave birth and somebody tried to help them escape?

**MICHAEL CHIPMAN:** I'm not aware of any situation recent. I would have to do some research.

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

**MICHAEL CHIPMAN:** Um-hum.

**LATHROP:** OK. I don't see any other questions for you. Thanks, Mr. Chipman.

**MICHAEL CHIPMAN:** Yep.

**JENNY OBERMIER:** Good afternoon, and thank you for having us here.

**LATHROP:** Sure.

**JENNY OBERMIER:** My name is Jenny Obermier. I'm the chief operating officer and chief nursing officer at York General Hospital, which is a critical access hospital in York, Nebraska. And I've been an RN for 34 years and I've been at York General for the past 21 years. And I'm here to testify in opposition to LB886. And I did have some time earlier today to speak to Senator Cavanaugh, and she has agreed that we would work together to try to resolve to get to a resolution of how

this would work for everyone involved. So I appreciate her time that she took earlier today with us. York General and York and Nebraska Correctional Center for Women have worked together for decades and even before I came there, and I believe we provide them high-quality care in a safe environment for our staff and for those that are inmates. We also provide medical care to them in many other settings other than just in their labor and delivery stage. So today I'm going to express concerns regarding the language in LB886 and the ability for women to choose their support person through labor and delivery. And I think we've already covered the items that are in the bill currently that we have concerns with. And then also the gentleman that just went about them being informed when they would be transferred to the facility, which I believe also causes an additional risk for flight of the inmate. Or, as I pointed out to Senator Cavanaugh, also, our concern for the risk of the baby maybe that would be born in our facility, that it may not just be the-- the-- they-- maybe there is a relationship that's not real supportive of each other and maybe the birth-- the father of the baby wants to try to abduct that child and that infant. And we have other patients and staff and other babies in our facility. And maybe if they know they're coming, they would try to abduct that child. So it would also be putting the child at risk by them being aware of when they were in our facility and-- and like that. That would be an additional concern. I feel like this bill, as written and proposed by Senator Cavanaugh, puts a risk to our hospital staff and medical staff and other patients and their visitors, and that's near and dear to my heart. And I think that we just want to make sure that we are advocating for our patients, our visitors, our-- the inmates in Nebraska Correctional Center. And I think if we can work with Senator Cavanaugh to get some language in there that talks about the preapproved visitor list that we currently have, we would feel safe that there would be a screening process for that that we currently have that I think really works well for those of us at York and at the NCCW. So we just ask you to please keep our hospital employees, our medical staff, patients, and our visitors safe in the hospital setting.

**LATHROP:** OK. I think that's-- we all want that.

**JENNY OBERMIER:** Yeah.

**LATHROP:** OK. So Senator Brandt has a question for you.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Ms. Obermier, for appearing today. On an annual basis, how many births do you have from NCCW?

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**JENNY OBERMIER:** Last year we had about 15.

**LATHROP:** Oh, my.

**BRANDT:** And that's typical?

**JENNY OBERMIER:** That would be-- we used to have more. When I first started 20 years ago, we were probably closer to, I would say, 35 or 40, but we could get those exact numbers. We'd have to work with Nebraska Correctional Center on those exact numbers, but yeah.

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

**LATHROP:** I think you've astonished this group and we've heard everything. That is an amazing number to me. I would-- I would-- I thought your answer was going to be--

**JENNY OBERMIER:** I've been a nurse for 34 years. I can promise you, you've not heard it all.

**LATHROP:** I literally thought it was going to be one or two a year.

**JENNY OBERMIER:** Oh, no. You know, and I, you know, he would be able to best address those, how that happens within the correctional facility and, you know, some of these-- I know that Senator Cavanaugh talked to us about, well, maybe we could allow this in the court system and they could decide. And I said, well, what about the mom that maybe just, you know, she's pregnant. She just comes from Douglas County. She just came there today, for example, and she's already 40 weeks gestation. She needs to be delivered somewhere safely. I would hate for her to stay at NCCW just waiting to deliver until we can get the support person approved through the court system. That's not being safe for the mom or baby. And so it's really at the focus of this is the patients and that baby and that mom and how do we make sure we have a good outcome but yet we all stay safe in a hospital setting? And we have lots of other things to worry about other than trying to keep my nursing staff safe.

**LATHROP:** I'm confident you do.

**JENNY OBERMIER:** Yeah, I do.

**LATHROP:** OK. Senator McKinney.

**McKINNEY:** Senator Cavanaugh mentioned douglas.

**JENNY OBERMIER:** Yes.

**McKINNEY:** I was curious if the state had a list of approved, preapproved doulas in the state for situations where individuals coming from Douglas County and they're due to give birth that that individual has the ability to say, hey, I would like a doula to come be with me. Would you be OK with that? Because instead of waiting for the individuals to get approved, we already would have a list of doulas already within the system that that individual may be able to say, hey, maybe they don't want that person, but at least that option might be on the table.

**JENNY OBERMIER:** Yeah, I think that's one of the things that we could explore with Senator Cavanaugh and looking at how that would help to provide that laboring person.

**McKINNEY:** Right.

**JENNY OBERMIER:** You know, maybe they wouldn't feel a connection with that doula if they've never met them. So maybe with today's technology, maybe, you know, a telehealth visit or something, with that doula so they can at least establish a relationship. Because at that point, they wouldn't be any more than just one of our stranger nurses that meets them that day either so.

**McKINNEY:** And maybe it's only-- maybe the counties could report--

**JENNY OBERMIER:** Yeah.

**McKINNEY:** --who's in their population that's currently pregnant in that. So we probably just got to work through what the process is--

**JENNY OBERMIER:** Yeah.

**McKINNEY:** --to get that done but.

**JENNY OBERMIER:** I think that, you know, the nursery coordinator has provided some of that, you know, support to them as well. And maybe it would just be, you know, working with NCCW on expansion of that role. And you know, I know fiscal dollars are all tight and all like that. Maybe it would be expansion of that role where they could maybe have already had some sort of relationship with somebody like that so.

**McKINNEY:** Yeah, thank you.

**JENNY OBERMIER:** Thank you for your time.

**LATHROP:** Thank you for being here and for coming from York to share your thoughts. Any other opposition testimony? Welcome back.

**SCOTT FRAKES:** Thanks for having me back. Good afternoon, Chairman Lathrop, members of the Judiciary Committee. My name's Scott Frakes, F-r-a-k-e-s, and I'm the director of the Nebraska Department of Correctional Services. I'm here today to provide testimony in opposition to LB886. NDCS has an obligation to provide for the safety and security of an inmate no matter where they're located or their medical status. Visits to doctors and hospitals are provided under escort and if necessary will include custody staff on site for the duration of the inmate's stay. This is not only for the protection of those who provide services to the inmate, but also for the inmate while they are outside the facility. This bill would pose a serious security risk, not only for the pregnant mother, but also for my agency staff and the doctors and nurses who are attending to the mother during delivery. NDCS does not currently allow family members to be inside the delivery room. If they are approved visitors at NCCW, they are allowed to visit the hospital following delivery. NDCS custody staff are present when this visit occurs. Current statute does not allow NDCS staff in the delivery room unless requested by the mother or medical personnel. Certainly, a woman in labor does not pose much of a security risk, but the addition of an unknown support person or more than one person certainly raises the level of risk to the mother and hospital staff. The parenting and nursery coordinators at NCCW have extensive experience assisting and supporting pregnant mothers before, during, and after delivery. Often they are the ones requested by the mother to attend the delivery because of the bonds they formed with the incarcerated mother. And I'd be able to try and answer questions. Senator McKinney.

**McKINNEY:** Thank you.

**LATHROP:** Oh.

**McKINNEY:** Thank you. Why not? What-- I understand the concerns about the security risk. But my question is if an individual goes through the process of getting screened by the department, they go into the room and just like walking into NSP, for example, they put the keys in a locker, phone in a locker, take the belts off, all the things that may pose a security risk, why can't they be in the delivery room?

**SCOTT FRAKES:** So the bill as written doesn't provide that, doesn't indicate that structure of a preapproval.

**McKINNEY:** OK.

**SCOTT FRAKES:** So that's a piece. We don't have the tools, the space, or the technology to do that visitor check-in process at a hospital like we do at a prison. So when we allow visits in hospitals and we do regularly do that, not just for pregnant women, but for others that are in the hospital with serious disease, injury, etcetera, you know, we, we work a little bit more on the honor system, but we start with the fact that those are people that have been preapproved and already have established a visiting relationship. And then the last piece of it is the statutory change that made it so that I only can have staff in the visiting, I'm sorry, in the delivery room if the mother and/or healthcare staff asks that that occur. So now I have a situation where I have an unsupervised visit occurring. That just elevates things just a little further.

**McKINNEY:** So would you be open to saying if an individual would like a support person to come, that individual may have to be open to allowing one of your staff to be present as well?

**SCOTT FRAKES:** I believe if there was an agreeable preapproval process and what you just described were the deal, essence of the deal would be if you want others in the room, then I get to have staff present, I think we could get to a place that works.

**McKINNEY:** All right.

**SCOTT FRAKES:** I'm speaking from my department, not for the hospitals.

**LATHROP:** Does your facility-- this isn't even-- it's barely related, but these women have a number of checkups leading up to delivery day, right?

**SCOTT FRAKES:** Yes.

**LATHROP:** Do they happen at the hospital or do they happen at the York facility and a doctor comes out?

**SCOTT FRAKES:** Both so if they have any need for community services, an Ob-Gyn, which typically I think most [INAUDIBLE] do.

**LATHROP:** You guys-- do you have an ultrasound machine there?

**SCOTT FRAKES:** I'm not sure.

**LATHROP:** OK.

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**SCOTT FRAKES:** No, so--

**LATHROP:** I was just--

**SCOTT FRAKES:** But I do know that we take mothers through their pregnancy out to the community for checkups.

**LATHROP:** It doesn't sound like everybody is that far apart on this one. Like, we just need to be able to run the person by you guys, get the Okie-dokie, and if they are on the yes list, then you got to have a staff person in the room.

**SCOTT FRAKES:** That's my needs.

**LATHROP:** OK, well, that sounds like something that could get worked out pretty, pretty easily. Who knows? Any other questions for the director? I see none. Thanks for coming.

**SCOTT FRAKES:** Senator, would you allow me one minute to speak to something that was said earlier today? I know it's a little out of the norm, but--

**LATHROP:** OK. But I may interrogate you on a whole bunch of other things but go ahead.

**SCOTT FRAKES:** That is a fair trade.

**LATHROP:** OK.

**SCOTT FRAKES:** Senator Pansing Brooks, here we are, eighth session together. One of the things that we continue to chase around the pole is the whole issue of programming. But if I understood you right, you said that I had said that I don't believe programming works. And as a-- as a guy who's been doing programming, facilitated programming, developed programming for over 30 years, who has actively sought every avenue to increase and make programming everything that it can be, I have never said or in any way indicated that programming doesn't work

**PANSING BROOKS:** Well, I now have to respond.

**LATHROP:** You-- we're going to open this up.

**PANSING BROOKS:** Yes.

**LATHROP:** And for the transcribers, we are well off of LB886 and on to a free exchange.

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**PANSING BROOKS:** This bill came in 2019. It was for \$5.8 million and we were in Appropriations together and I about fell out of my chair. Now, maybe you didn't mean it in the context you said it and I will find it in the-- in the legislative record. But it-- I said to you, you don't believe programming works? And I-- and maybe we're out of context and we were talking past each other, but it was about the most shocking thing I had heard in my eight years here. So I had talked about your previous-- the person that worked below you, who's left, and I can't think of his name.

**SCOTT FRAKES:** Mr. Rothwell.

**PANSING BROOKS:** Yes, who really worked and believed in fighting for programming. And that was part of why I could not get that bill forward to-- to promote programming because of what you had said. Maybe you meant a certain specific program, but there was a comment about programming that came out and I'll find it again, and I'm glad to hear you correcting that record, at least as I heard it so--

**SCOTT FRAKES:** Just, you know, my heart and soul--

**PANSING BROOKS:** Wonderful.

**SCOTT FRAKES:** --is tied to that piece and continues to be so.

**PANSING BROOKS:** So please, I wish we had worked better with that then because we could have done a lot of good in the past eight years.

**SCOTT FRAKES:** OK.

**PANSING BROOKS:** Thank you.

**LATHROP:** OK, now I got one for you. We, in the last legislative session, asked or legislated that you have an engineering study done of the penitentiary. I have been provided with an engineering study from Alvine Engineering. That report is-- is the report you and I have both seen it. Did Alvine Engineering prepare any other reports in connection with their assessment of the Nebraska State Penitentiary on the occasion of their examination that led to the report that has been released? Other words, is there another report that does any other kind of an assessment of the penitentiary done by Alvine or anyone else?

**SCOTT FRAKES:** You mean somewhere in the past or tied to this current process?

**LATHROP:** Tied to this current process.

**SCOTT FRAKES:** That is the report.

**LATHROP:** That's the only thing you asked them to do.

**SCOTT FRAKES:** Yes.

**LATHROP:** Did you do an RFP for that? Or did you simply call Alvine up and say, I need you to do this?

**SCOTT FRAKES:** I believe in this case we had authority to go without an RFP, I think.

**LATHROP:** OK.

**SCOTT FRAKES:** It's a part of how we were able to move so quickly.

**LATHROP:** About a week ago, maybe-- maybe a little bit more, I think I sent a letter to your office or to the department requesting a copy of the RFP if there was one and the scope of their engagement, whatever they were asked to do, any communication. Can you get that back to me?

**SCOTT FRAKES:** I'll make sure that happens.

**LATHROP:** OK. That's all I got. That was painless. Right? OK, thank you, Director.

**SCOTT FRAKES:** Thank you very much.

**LATHROP:** Anyone else here in opposition? Anyone here in a neutral capacity? And we will, for the transcriber's benefit, be back on LB886.

**JEFF BLIEMEISTER:** Good afternoon--

**LATHROP:** Good afternoon.

**JEFF BLIEMEISTER:** --Senator, and members of the Judiciary. My name is Jeff Bliemeister, B-l-i-e-m-e-i-s-t-e-r, and I currently work for Bryan Health as a safety and security manager. Bryan Health is neutral on LB886, and in that neutrality, we appreciate and acknowledge Senator Cavanaugh's willingness to work with us on this bill and hope to continue to work with her so we can achieve safety and support. While we support the intent behind LB886 to provide a positive birth experience for incarcerated patients as proposed, LB886 enhances the risk of escape, for contraband to be shared with the mother, and for

violence to result at Bryan Health. Our job is to keep all who enter our hospitals safe while delivering the highest level of care. LB886 is, in its current state, reduces our ability to do so, as detailed in my testimony today. Current law disallows a correction officer from being in a patient's room during labor and delivery unless specifically requested by medical personnel. The introduction of the support person that is not approved through the correctional facility processes presents an additional security risk to all parties: the patient, the baby, the staff and the providers. Correctional facilities utilize their knowledge, their training, their experience to thoroughly vet and approve visitors or support persons prior to their arrival at the hospital. We do not have these same screening capabilities. Hospital visitation for all inmates is limited to the most extreme circumstances, normally only authorized for patients who are approaching the end of life. These practices reduce the opportunity for contraband to be shared with patients [INAUDIBLE] using the visit to the hospital as a means for escape and diminish the likelihood of violence being interjected into the most critical areas of our care, such as the Women and Children's Tower at Bryan Medical Center, which houses some of our most vulnerable patients located in the neonatal intensive care and pediatric units. We rely on the expertise in collaboration with our partners at Nebraska Department of Correctional Services, the Lancaster County Adult Detention Facility, and the United States Marshal Service. Detailed procedures, continuous communication, and security measures are in place to mitigate the risk of harm to the patients, including the incarcerated, our staff, the visitors, and while keeping that focus on providing outstanding healthcare for the inmates. The combined efforts of the correctional facilities and our staff enhance the safety and security for all who come to Bryan Health. At present, LB886 hinders both entities, corrections and healthcare, from functioning in the safest capacity for all whom we serve. We do appreciate and thank Senator Cavanaugh and her team for their efforts to find common ground, and I would welcome any questions that you may have.

**LATHROP:** Senator McKinney.

**McKINNEY:** Thank you. Thank you for your testimony. Curious, have you ever heard of any situations where a mother was giving birth and she wanted also to receive contraband?

**JEFF BLIEMEISTER:** What's that? Can you repeat that, sir?

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**McKINNEY:** Have you ever heard of any situation where a mother was giving birth and was in the process of receiving restricted contraband?

**JEFF BLIEMEISTER:** No, I can't say that I specifically have in the circumstances you described.

**McKINNEY:** In your testimony, you said that was a concern. I just-- I don't know. Maybe it could happen, but I would be-- maybe I'll ask my mom when I get home: If you were giving birth, would you want to receive contraband mid delivery? But I just don't see that. But you know, I understand. But thank you for your testimony.

**JEFF BLIEMEISTER:** Yeah, we believe that some of the steps that are in place mitigate that risk. And that's why we want to work with Senator Cavanaugh, with the correctional facilities to try to reduce that potential to occur.

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

**LATHROP:** I don't see any other questions. Thanks for being here. Good to see you again.

**JEFF BLIEMEISTER:** Good to see you too.

**LATHROP:** Any other neutral testimony? Seeing none, Senator Cavanaugh, you may close on LB886. For the record, we have position letters: four that are for that are proponent, zero opponent, and zero neutral.

**M. CAVANAUGH:** Thank you, Chairman Lathrop and members of the committee. If Chairman Lathrop had gone on too long, he was going to owe my daughter an apology about me missing her recital, going straight there from here. And-- and also me for missing out on a wonderful performance from the first graders at Westside grade school. So clearly this-- this bill needs some attention and care before it's ready to be moved forward. I do, however, want to address something that was brought up a couple of times. If you have a copy of the bill, the green copy at the bottom of page 2, line 30, you will notice this is not underlined. So for those watching at home that means it is already in statute. So it's already in statute that a prisoner or detainee's admission to a medical facility or birthing center or labor or childbirth no detention facility employee shall remain present in the room during labor or childbirth unless specifically requested or approved by medical personnel. So that's already the law. This bill does not make that the law. This is the law.

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**LATHROP:** What page and line?

**M. CAVANAUGH:** It's page-- the bottom of page 2 and the top of page 3, line 30, 31 and 1 and 2. So--

**LATHROP:** OK.

**M. CAVANAUGH:** So I just wanted to make that clear because that was some opposition from a few people. Currently, the patient and/or the medical personnel can request for the-- the security officer, whoever is with them, to come into the room, but it is not automatic that they are allowed into the room. So I just wanted to make that clear. I also at the bottom of page 3, very clearly, I'm very willing to take out most of line 29-31, which is about prior criminal conviction and current probation, conditional release, etcetera. These are all things that don't have to be included, so we can let that be sort of a case-by-case situation. But with that said, I take the concerns of our healthcare workers very seriously, and I will not come back to this committee until I have worked through all of their concerns and put them together in a new amendment. So I appreciate everyone's time and I'll take any questions.

**LATHROP:** I don't think we have any questions.

**M. CAVANAUGH:** All right. Thank you very much.

**LATHROP:** Thank you, Senator Cavanaugh. That will close our hearing on LB886 and bring us to LB896.

**PANSING BROOKS:** Welcome, Senator Lathrop. Now you will have the opening for your LB896.

**LATHROP:** Thank you, Vice Chair Pansing Brooks and fellow members of the Judiciary Committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I am the state senator for District 12, which is-- includes Ralston and parts of southwest Omaha. I'm here today to introduce LB896. LB896 would require the Department of Correctional Services and the Division of Parole Supervision to contract with an independent contractor or academic institution to evaluate the quality of programs funded by these departments on a regular basis. It requires that the results of these evaluations be provided to the departments, as well as to the Office of the Inspector General of Corrections. This bill is the result of events that began in 2014, when the Legislature's Department of Correctional Services Special Investigative Committee, which I chaired, made recommendations to improve the state's Correctional system. One of these recommendations was that all mental health

professionals providing services to inmates use evidence-based therapy models, which include an evaluation component to track the effectiveness of interventions. In response to this, in 2015, Senator Mello introduced and the Legislature passed LB605, which contained the current language found in statute at Section 83-182.01, requiring the department to evaluate the quality of programs funded by the department. Within that statute, it provides that the department may, may contract for the services with an independent contractor or an academic institution if there is funding available. The evaluation component of the bill was supported by the department at that time. In the-- pardon me, in the 2021 Office of Inspector General Annual Report, the OIG, reported that they have requested copies of all NDCS evaluations of programs completed to meet this requirement since the enactment of the statute in 2015. To date, the department has only partially complied with the request, providing one report on three of its programs that were done in 2016. In the OIG's Report, the department acknowledged they had more work to do in order to fully comply with the statute. In LB896-- 8-- pardon me, LB896 will ensure that the department is able to conduct high-quality evaluations of their programs and will extend those same requirements to the Division of Parole Supervision. It would require both agencies to contract with an independent contractor or academic institution-- pardon me, to evaluate their programs, and it would ensure we appropriate funds for those evaluations. Additionally, the bill includes additional purposes for these evaluations requiring that they address the availability of their programs throughout the Correctional system, the availability to deliver the programs in a timely manner, the therapeutic environment in which such programs are delivered, and include a rating of the effectiveness of each program and a cost benefit analysis of each program, if applicable. It would prioritize the evaluation of clinical programs and require that they be evaluated every three years, while the evaluation of nonclinical treatment programs and other structured programs would be conducted on a regular basis. Similar requirements are in place for the Division of Parole Supervision, with the additional criteria that each program's impact on recidivism be evaluated. LB896 will assist the Department of Corrections and Parole in providing quality, evidence-based programs to incarcerated and paroled-supervised individuals and help ensure that our tax dollars are going to effective programming that improves public safety and achieves the goal it is intended to achieve. I'll add this one addition just to give some context here. We use risk assessment tools, parole, probation to determine what's a guy's risk of repeating, what kind of services are they going to need. And those are by statute required to be-- let me think of the proper term, validated every five

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years, and this is really kind of the same thing. What are the programs? Are we doing them sort of best practices? Are they evidence based? Are we being consistent? Are we applying the model properly? And do people have access to them? So one of the issues that we hear, and I assume the director left, so we, we frequently hear Director Frakes say no one has been denied parole because they can't get to their programming. That is a, a common thing we hear. And then we also hear a lot of people say they didn't get paroled because I, I think CJI came up with a conclusion that the number one reason people were denied parole on their first parole eligibility date was didn't have access to the programming. This is intended to kind of sort that out and to make sure that we are using the best practices when it comes to each of the programs with an emphasis, particularly, on the clinical program. With that, I will take any questions.

**PANSING BROOKS:** Anyone have a question? Yes, Senator Brandt.

**BRANDT:** Thank you, Vice Chair Brooks. And it's on the fiscal note. Is, is the \$600,000 total or is this \$600,000 from-- for Corrections and \$600,000 for Parole?

**LATHROP:** I'm not positive. I was trying to read that myself. I saw at the top the state agency was Parole.

**BRANDT:** Because there's actually two different-- each one's got a different--

**LATHROP:** Well, I looked at it and--

**BRANDT:** Actually, it's a different one for Parole and it's \$660,000 and Corrections has \$600,000. So I'm to assume maybe it's a million two.

**LATHROP:** Well, I think UNO can do it for 250 a year.

**BRANDT:** OK.

**LATHROP:** And I appreciate that, that fiscal note, but we've had-- this wasn't, this wasn't an idea we came up without, without running it by the folks over at Dr. Spohn and company at UNO.

**BRANDT:** So then I, I would assume they would work with us and the OIG to set the parameters of what we're looking for.

**LATHROP:** Right.

**BRANDT:** OK.

**LATHROP:** Well, the bill does that, but they, they certainly understand what we're after, I believe.

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

**LATHROP:** OK.

**PANSING BROOKS:** Thank you, Senator Lathrop. Proponents, please.  
Welcome.

**DOUG KOEBERNICK:** Good afternoon, Senators. My name is Doug Koebernick, spelled K-o-e-b-e-r-n-i-c-k. I am the Inspector General of Corrections for the Nebraska Legislature. First, I want to thank Senator Lathrop for introducing this bill that has its roots going back like he said to that special committee work back in 2014. And I appreciate his explanation of what's in the bill and why it is needed. In our past annual reports, the office has looked closely at programming within the Department of Corrections. And as part of that work, we've talked to those who go through the programs, to those who administer the programs and others involved in programming and in that process. In our 2020 report, we provided some really good insights on programming and followed that up with some additional information in the 2021 report. So I've taken excerpts from both of those reports and provided those to you today because I think they're very helpful with explaining why this bill is needed. This past year, I was in contact with the department about the evaluations of their programs because we'd had some concerns expressed to us about the, the, the program's not being operating like they should, and, and that came from a variety of people. And when we talked to them, we found out that the statute, as Senator Lathrop said, was not being fully adhered to. The statute directed the department to evaluate the programs and other than that 2016 report, which is described pretty well, in, in that excerpt and some other minimal efforts, not much was really being done. And this is not, I don't mean to criticize the department or anything because they have a lot on their plate. And really the intent of this bill is to help them meet that statutory requirement, but also do other things to help with people moving forward in their lives and improving and getting rehabilitated. This bill would direct them to use an outside entity such as UNO Center for Justice Research to conduct those evaluations. And when I communicated with the department last year, they acknowledged that, that more could be done to meet the requirement found in the law. And I was really encouraged by that communication regarding this, and I believe that this bill, like I

said, will help them do that. So this is more of a help for them than anything. This requirement, as Senator Lathrop said, would apply to the division of Parole Supervision, although they are conducting evaluations. And I think an argument could be made if they were-- well, they're not here, I don't think, but that, that they should have the option to do it in-- within their division or contract it out because they have proven that they are doing these things already. So if we change that, that will probably impact that fiscal note quite a bit, and we could watch them to see and make sure that those evaluations are being completed as, as needed. In closing, I think that this bill is a very important piece of the discussions taking place about our justice system because it can lead to better outcomes like Senator Geist talked about the need for better programming and, and having that for people and expanding that. In 2015-- I'll just end with this, Director Frakes in his testimony supported the program evaluation requirement. He said: I believe adherence to evidence-based practices is imperative to enhancing public safety by effectively using resources to lower recidivism and prevent future victims. I couldn't agree more, and I'll ask for your support of this bill.

**PANSING BROOKS:** Thank you, Mr. Koebernick. Go ahead, Senator Geist.

**GEIST:** Yeah, I do have a question. Would, would any of this evaluation look at outcomes?

**DOUG KOEBERNICK:** Yes.

**GEIST:** OK.

**DOUG KOEBERNICK:** Yeah, it's-- there's quite a bit in here about what it would do. And I think that we'd also have the option if the Department of Parole wanted to even do more and ask for more of an evaluation, they could even go further.

**GEIST:** So would this maybe go beyond the bill? So you can tell me [INAUDIBLE].

**DOUG KOEBERNICK:** OK.

**GEIST:** Do any of these programs go from when they're incarcerated to when they transition out and continue through that?

**DOUG KOEBERNICK:** Yeah, a really good example of that is the violence reduction program. They can do that on the inside. But then Parole actually has just recently started up a kind of a, a next phase for out in the community. So people who get out, the Board of Parole might

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indicate that they want them to continue with that next-- I think it's like a third phase of the program. And so that's-- that would be a good example. Continuing care for sex offenders, too, can be offered out of the program or out in the community. And then I think even-- I mean, substance abuse as well doing some outpatient. So there can be a flow as you go through the system and then you, you leave the, the actual Correctional facilities and get in the community, so.

**GEIST:** That'd be great. OK.

**DOUG KOEBERNICK:** Yeah.

**GEIST:** Thank you.

**PANSING BROOKS:** Is there any other questions? I, I have a couple. Thank you. So I, I, of course, love this idea. I've tried to bring bills similar in the past, and so I'm trying to figure out. It's, it's good to have this and we, we need it. But I don't see anywhere where it says like how many, how many institutions the program is being carried at and how many inmates are being effective. And how available the programs are. That's why, in, in that previous bill, I brought in 2019, I, I wanted Parole to say, listen, these are the programs you need and why aren't you getting them so that we would get a report back about-- I mean, somebody may say, yes, such and such program is available, and then you find out later it was once a year for three people. So how do we avoid that?

**DOUG KOEBERNICK:** I think-- when we met with Dr. Hamilton and Dr. Spohn at UNO about how they could help with this, they came up with some language to help us out. And in here it has language that says that the evaluation shall also make recommendations regarding the availability of programs throughout the Corrections system, the ability to, to deliver the programs in a timely manner, the therapeutic environment, things like that. I think that language would really get to what you, what you want to see and everything because it would look to see-- you know, like at Tecumseh right now, the only substance abuse program they have are for people who are actually in protective custody. So that's in one housing unit, everybody else out there doesn't have access to substance abuse treatment. Omaha Correctional Center right now is-- they have a lot of people that need intensive outpatient treatment and the professionals providing that acknowledge that. And it's kind of creating a bit of a backlog from what I've been told about people getting into community, and they would like to see that expanded. And I think these evaluations would indicate whether or not it needs to be expanded into different

facilities or more classes and things like that. So I think this could-- I actually think this bill would, would get there for you.

**PANSING BROOKS:** OK, I hope so. I would have added a timely and comprehensive manner. And I think that-- I'm, I'm concerned about that. I've been fighting this battle for five years now, so. And the other thing is that I continued to hear was, well, if we provide these programs, the inmates don't want to take them. So I provided a mechanism where the inmates could sign off and say, no, I'm not going to take it and why or-- and, and it could be reported from Parole. So there has to be some mechanism to say-- rather than just saying, oh, they just don't want to take it and it's some nebulous unwillingness to take the course, we find out actual numbers and statistics about that. So I would ask that that be added as well.

**DOUG KOEBERNICK:** OK.

**PANSING BROOKS:** Thank you very much, Mr. Koebernick.

**DOUG KOEBERNICK:** You're welcome.

**PANSING BROOKS:** OK, Senator McKinney.

**McKINNEY:** Thank you. Thank you, Mr. Koebernick. Question. Are peer, peer support groups like the concerned lifers or the community-- what is it Action Program? Are they considered programs?

**DOUG KOEBERNICK:** You know, I think in the bill-- there's always a tough-- it's always tough to, to define what those are and everything and where they fall. And, and I think in here, we say that the evaluations would be prioritized and following clinical treatment programs, nonclinical treatment programs, and other structured programs. In my mind, those would be kind of-- they might fall-- we might have to do some change or amending of the bill to make sure that that's included in that other structured programs. We could take a look at [INAUDIBLE].

**McKINNEY:** Because I ask that because a lot of the-- when I went inside a few times, a lot of the individuals I've talked to said those groups are the reason they are staying on a positive path.

**DOUG KOEBERNICK:** Um-hum.

**McKINNEY:** And so that's, that's why. Thank you.

**DOUG KOEBERNICK:** You're welcome.

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

**DOUG KOEBERNICK:** Thank you.

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

**SPIKE EICKHOLT:** Thank you. Good afternoon, members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in support of LB896. I'm not going to speak long. You've heard enough from me today and this week. I want to thank Senator Lathrop for doing-- for introducing this bill because I think it, it sort of gets to what Senator Pansing Brooks alluded to earlier, just in this hearing, and the earlier hearings. And that is-- and I've, I've been in this committee for a couple of years and I've heard the same thing. This bill sort of has a comprehensive hopefully assessment or study of the availability, the quality, the timeliness, and all those things related to programming because we've heard anecdotes about programming now here and there. I'm not blaming anybody, but you hear the department explaining that they have it available, inmates refuse to do it. I can't remember the gentleman's name that testified yesterday, the former offender, he gave a pretty unequivocal and I thought pretty convincing explanation that he was in prison for some time and have been denied programming. And I remember the listening session that was done over the interim, I think, during special session with all the workers who were coming here speaking on a different issue. But I remember a constant theme that they testified to when they were asked about conditions in prison, how they expressed concern about the lack of programming for the inmate population. So I think hopefully this study, or this assessment process, will get to that. And I encourage the committee to advance the bill. Thank you.

**PANSING BROOKS:** Thank you, Mr. Eickholt. Any questions for Mr. Eickholt? I don't see any. Thank you. Any other proponents? I see none. Any opponents? Anybody in the neutral? OK, Senator Lathrop, to close.

**LATHROP:** I just want to make a, a couple of points that I thought of while I was sitting there. This isn't intended as a, as a sort of a, a criticism of the department. It really is about as we move forward trying to chart a new course for our criminal justice system, we need to have confidence in the programming. And I have, sitting in the chairs around here for 12 years, I've always had a concern about the representation that the best thing for an inmate is to get their programming within a year before they leave. And I, I kind of have two issues with that as a non-Corrections specialist, right? I'm a-- I'm

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not a Corrections science person. On the other hand, if a person has a substance abuse disorder, is it not better to have them in a-- we'll take a four-year sentence, go through that treatment earlier, go to AA meetings, go to support groups, establish a period of time where they're sober, than to tell someone I'm going to run you through the substance abuse six months before your parole eligibility date, you're paroled, you have access to drugs inside the place, and then you are discharged out into the community with a couple of months of sobriety. I'm, I'm-- I'll be very interested to see what they come up with relative to when it should be done. A second issue on the timing, when Senator McKinney and I were in Tecumseh, we did a tour there. Was that this summer?

**McKINNEY:** Yeah.

**LATHROP:** It was, yeah. We were down there this summer and I talked to a, a fella that as we were touring or walking through the yard, he came up and said, you know, I have a lot of time to do. I have a lot of time to do. My security level is low, like, I'm not a danger. He was probably my age, which means he's probably not going to cause anybody any trouble. But he said, I can't get to Omaha Community Corrections, which if you've been there, it's more of an open campus. It's a lower security level. It's not a-- it's not club med, but it's, but it's a lower security level with more freedoms. He can't get there because he's got programming requirements and they won't let him move to a different facility. But because he's got a long time to serve, they won't give him the programming either. So I'll be very curious to see what we end up with, but mostly I want to know that it, it is available, that it's best practices, and that we are observing or, or faithful to whatever the model is that is employed and that our inmates have access to it. And that I think is going to make us more comfortable with some of the things that we're talking about here today or this week or this year as it relates to criminal justice reform. So again, I appreciate your patience. I'll take any questions you have or if you have any thoughts about this bill and how it might be improved, I'm happy to, to consider those or amend the bill as well.

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

**McKINNEY:** Thank you. And Senator, I, I just wanted to say thank you for this. I think this is probably one of the most important bills that got introduced this year because I think if we put a real investment into programming, the outcomes that we want as a whole will improve. So I just wanted to say thank you.

**LATHROP:** Yeah, yeah, it's substance abuse. It's sex offenders. Like, you know, since I've been here, there is-- there was a time when the sex offender intensive treatment was like this long. And then we heard that pretty soon it was only this long because they, they only take a few people and I'm like, I wonder if we're shortcutting something over there on the sex offender treatment program. So I'll be very curious to see what they come up with.

**PANSING BROOKS:** Senator Geist.

**GEIST:** I agree. I think this is important. I would-- I know I can't recommend because I'm-- but I'm going to because I can, because I'm sitting here and I can talk.

**LATHROP:** We can all talk.

**GEIST:** Yeah.

**LATHROP:** Say whatever you feel like.

**GEIST:** And that is that we really investigate using trauma treatment, trauma therapy in prison. I, I think you would find that the majority of people there, if they haven't come through trauma to date they will there and a huge help that it's a huge new treatment that would really be beneficial to our inmates.

**LATHROP:** I would say 95 percent of them have experienced trauma.

**GEIST:** Maybe even more, maybe even more.

**LATHROP:** Either they have seen it. The folks that are coming from-- well, probably, probably all of them--

**GEIST:** Right.

**LATHROP:** --are, are seeing dad beat on mom, somebody in the family got shot. They know somebody that's been killed or they've seen it. There is so much trauma experienced by people that end up incarcerated that is that a separate kind of a program or is it just something that's--

**GEIST:** It's, it's-- it's a therapeutic program that can-- could be introduced. It would be very easily done. There are people on the outside that do it.

**LATHROP:** Well, then we will--

**GEIST:** It's my recommendation.

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**LATHROP:** --maybe we'll add this to there and ask them to look at the--

**GEIST:** Yeah.

**LATHROP:** --the ability or the prevalence of trauma treatment.

**GEIST:** It's usually called trauma therapy or trauma-informed therapy.

**PANSING BROOKS:** It's trauma-informed care therapy.

**GEIST:** And typically, if it's trauma informed, it doesn't have to teach trauma treatment. They just have to be informed of it. So you can go--

**PANSING BROOKS:** The leaders have to be.

**LATHROP:** --even deeper if it's trauma treatment.

**PANSING BROOKS:** Trauma-informed treatment. Yeah.

**LATHROP:** OK.

**PANSING BROOKS:** Any other ideas? OK.

**LATHROP:** Look at all the stuff we agree on, Senator Geist.

**GEIST:** This is, this is our day.

**LATHROP:** Ninety-eight percent of the stuff.

**PANSING BROOKS:** OK.

**LATHROP:** We just get those county judges-- or the county jails to take the IIIs and IVs and we got this.

**PANSING BROOKS:** OK, well, that's the end of, of LB896. We have two proponents, zero opponents, and zero neutral position comments for the hearing. Thank you and that closes--

**LATHROP:** Thank you, everyone.

**PANSING BROOKS:** --the bill. Thank you. And that-- now we adjourn the Judiciary Committee.