

**Testimony on LB 666**  
**Before the Health and Human Services Committee**  
**February 21, 2007**

**Bradley A. Meurrens**  
Nebraska Advocacy Services, Inc.  
The Center for Disability Rights, Law, and Advocacy

Good afternoon Senator Johnson and members of the Health and Human Services Committee. For the record, my name is Brad Meurrens, M-E-U-R-R-E-N-S, and I am the public policy specialist at Nebraska Advocacy Services, Inc. Nebraska Advocacy Services is the designated protection and advocacy organization for the state of Nebraska and our charge is to advocate for the rights of people with disabilities. I am here today to offer our strong support for LB 666.

We would like to thank Senator Pedersen for introducing LB 666 on our behalf. The legislation before you springs from model legislation compiled by the Bazelon Center for Mental Health Law. As the Protection and Advocacy organization, Nebraska Advocacy Services, Inc. is part of a national network of disability advocacy organizations, and the Bazelon Center provides technical assistance to that network. LB 666 is an opportune vehicle to begin public discussion surrounding the issue of persons with psychiatric disabilities in our corrections systems and how Nebraska's corrections and health systems can collaborate on ways to provide the care, treatment, and support these individuals need so that they can recover, manage their conditions, and live lives of quality across the entire corrections spectrum—from incarceration to release. For several years, Nebraska Advocacy Services has been engaged in addressing the issue of corrections and persons with psychiatric disabilities. In our work, we note that stronger attention must be given to effective discharge planning. Addressing just the front-end, pre-incarceration (e.g. screening), or the intermediate (e.g. treatment while in prison) misses the other critical component to an effective solution—the back end, or discharge planning.

LB 666 directly addresses one of the most important aspects of the issue—building the transition from incarceration to community living. The Council of State Governments (CSG) recently completed two years of study and meetings of hundreds of individuals involved in criminal justice or mental health systems at the state and local levels. As the CSG found, “individuals

with mental illnesses leaving prison without sufficient supplies of medication, connections to mental health and other support services, and housing are almost certain to decompensate, which in turn will likely result in behavior that constitutes a technical violation of release conditions or a new crime.” This confirmed a 1991 study finding that within 18 months of release from prison, 64 percent of offenders with mental illnesses were rearrested and 48 percent were hospitalized. Given the high cost of incarceration, LB 666 is an investment in our corrections system and our communities, and moves the cost of providing services and supports from strictly state funds to a blended federal/state/local funding stream.

There is a growing awareness of the interrelationship between the public mental health system and the criminal justice system. Where the public mental health system fails, the criminal justice system serves as the default system for those individuals who fall through the cracks of the mental health care system. National and state-level statistics clearly demonstrate the pressing need to address prisoners’ mental health: The Bureau of Justice Statistics (2000) estimated that 16% of the national prison population had a mental illness; Human Rights Watch (2003) noted that nationally, there are 3 times more individuals with mental illness in prisons than in mental health hospitals, and rates for mental illnesses within the prison population are 2 to 4 times more prevalent than for the general public. Jails and prisons, although not designed to offer a therapeutic mental health continuum of care, are quickly becoming our nation’s front-line mental health providers.

Currently, prisoners with mental illnesses are not given adequate supports upon discharge from the prison. Human Rights Watch reports that “In Nebraska...No appointments with providers are made in advance, and no provisions are made for the severely mentally ill who may not be able to explore treatment options independently” and that Nebraska prison officials told them “they did not know how recently discharged prisoners go about applying for Medicaid and other benefits and they do not help prisoners apply prior to release”. LB 666 directly addresses this need.

Moreover, Nebraska currently terminates Medicaid, upon incarceration; upon release the individual must re-apply for those benefits. It is unlikely that during the wait for acceptance into the Medicaid or Social Security programs that the 14-day allotment of medications given to the

prisoner with mental illness upon discharge will hold out. Without adequate contacts and referrals to treatment once released from custody, it is very likely that prisoners with mental illnesses will experience a high rate of recidivism.

Without such services and supports, the odds of a successful transition to community living are long. As the CSG report recognized, people with psychiatric disabilities rely heavily on federal benefit programs to pay for housing, food and other necessities and to receive health and mental health services. Disability benefits such as SSI and SSDI provide a cash benefit that is often essential to securing housing. Medicaid provides access to health, mental health care and substance abuse services. Although these are federal programs, states can put in place policies that will enable inmates with psychiatric disabilities to be enrolled or reinstated in these programs, receive needed services speedily and establish connections to the community-based mental health system prior to release. As the CSG noted, access to these services “is the most effective ‘pre-contact’ diversion from the criminal justice system for people with mental illness.”

Rather than terminating benefits, Section 4 calls for the *suspension* of federal benefits for the duration of a person’s sentence. If prisoners with psychiatric disabilities are to access community treatment services, these individuals need speedy access to Medicaid mental health coverage. The Vera Institute’s study of post-incarceration experiences in New York City found that the lack of Medicaid was the biggest obstacle to accessing treatment (psychiatric treatment, addiction treatment or medical treatment) following release from incarceration. Federal law prohibits Medicaid payments for “care or services” for any individual who is an inmate in a correctional facility. However, state officials are permitted “to use administrative measures that include temporarily suspending an eligible individual from payment status during the period of incarceration to help ensure that no Medicaid claims are filed.” States are not required to terminate an individual’s Medicaid eligibility upon incarceration. In fact, according to The Bazelon Center, states have no authority under Medicaid law to drop inmates from the Medicaid eligibility rolls upon incarceration.

Section 5 requires that prisoners with psychiatric disabilities receive assistance in filling out applications for federal benefits. Federal Medicaid law directs that individuals be permitted to have assistance in applying for benefits. Federal Medicaid dollars may be used to pay for costs

incurred in helping individuals to complete Medicaid applications, at the normal Medicaid match. The Americans with Disabilities Act requires that individuals with psychiatric disabilities be aided in completing applications for public benefits.

Section 6 calls for the development of pre-release agreements for prisoners with psychiatric disabilities to expedite the application, eligibility determination, and dispensation of benefits processes. A pre-release agreement is an agreement between a correctional agency and the Social Security Administration (SSA) to cooperate in the processing of SSI applications under SSA's "pre-release procedure," which is designed to "assur[e] eligible individuals timely SSI payments when they reenter the community." Under this procedure, SSA (a) processes SSI applications from incarcerated individuals months before their anticipated release and (b) makes a prospective determination of potential eligibility and payment amount, based on anticipated circumstances. Through this approach, SSI cash benefits are payable as soon as feasible after— sometimes even on the day of—release.

Sections 7 and 8 create "bridge programs" by which prisoners can apply for temporary Medicaid and SSI payments post-incarceration. The bridge programs are available to released inmates who have applied for federal benefits but whose applications are still pending. Released inmates qualify for the bridge programs if their applications for federal benefits were filed during incarceration or within three months of their release. The bridge programs provide temporary health care coverage and income benefits during the period that federal benefit applications are pending. Without bridge programs, many released inmates will lack access to health care coverage and income support and be at risk of decomposition and re-offending.

Section 9 requires that photo identification be given to prisoners with psychiatric disabilities upon release. Photo identification is necessary for adults and emancipated minors because it is required to conduct so many daily transactions. Applications for benefits require proof of identity, as do many basic activities, such as cashing a check. Often, whatever ID an inmate had prior to incarceration has been lost. The ID provided should be generic and not in any way identifiable with the correctional system.

We recognize, given the fiscal note and current political climate, that the legislature may have some justifiable concerns about the details and implementation of the provisions in LB 666.

However, we believe that those concerns can be worked out through dialogue and collaboration between all stakeholders. We would be pleased to assist in creating and maintaining this dialogue and collaboration in any way possible. We would hope that, if the legislature is hesitant to enact LB 666 fully, then perhaps a pilot project could be established. If not a pilot project, then perhaps an interim study resolution could be conducted to address and work out any problems.