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Judiciary Committee
Nebraska Unicameral
LB 771

Chairman Ashford and members of the Judiciary Committee, my name is Marla Fischer-Lempke and I am the Executive Director for The Arc of Nebraska. The Arc of Nebraska is a support and advocacy organization working with and for people with intellectual and other developmental disabilities. The Arc of Nebraska is a statewide organization with 17 local chapters and approximately 1,500 members across Nebraska. We are an affiliate of The Arc of the United States.

The Arc of Nebraska operates under a system of Core Values which correspond with our support for the right of people with developmental disabilities to live in communities of their choosing with the supports and services they need.

The Arc of Nebraska is opposed to LB 771 in regard to the expansion of felony classifications. We are particularly concerned about the inclusion of persons confined in youth rehabilitation and treatment centers as well as persons who have been committed under the Nebraska Mental Health Commitment Act. Broadening assaults and other felony offenses to include groups as those just mentioned creates problems on several levels. First, people who are seeking treatment are there because of mental illness for which they need acute intervention.

Secondly, some of the actions people seeking treatment may engage in are beyond their control and cannot rise to the level of the necessary formulated intent required to prove the commission of a felony. This is particularly true in individuals with mental illness and co-occurring intellectual and developmental disabilities. Often people with such disabilities have barriers expressing themselves through verbal language skills that others without intellectual disabilities do not have. Instead, expression of frustration or dissatisfaction with a situation, person, or oneself is expressed through physical actions or behaviors. Potentially, some of the behaviors used to communicate can be misconstrued. While these behaviors may result in harm to others, it is the responsibility of those who are in custody of them to find a way to understand that communication and ensure that situations do not present themselves in which these actions may occur. Additionally, if staff in a treatment facility know what events are likely to trigger violent responses from a person with an intellectual disability, it is up to the staff to assist the person in preventing those from happening. This is part of effective treatment.

Statistics show that people with intellectual and developmental disabilities are already overrepresented within the criminal justice system. According to research from The Arc of the United States, there is a prevalence rate of 4.2% of the inmate population having an intellectual or developmental disability. It would be shameful to strictly construe behavior most likely connected to a person's disability as criminal. Nebraska can do better.

Not only is The Arc of Nebraska concerned about classifying the behavior as a felony, we are gravely concerned of the ramifications that felony charges will bring to a person with an intellectual or developmental disability. Research shows that people with intellectual and developmental disabilities involved in the criminal justice system are extremely disadvantaged when it comes to due process. Often, evaluations to investigate competency are not done by qualified professionals, those who are experienced with people who have an intellectual disability, not just a mental illness. Further, people with intellectual disabilities and their family members may not fully understand the rights of the person with a disability. Finally, many attorneys are also not familiar with how best to communicate with persons with intellectual or developmental disabilities, thus acting as another aspect that may impede the process.

In summary, these along with other reasons you will hear from Nebraska Advocacy Services and others are enough to raise the question about whether the rights of some are more important than the rights of others and who will become victimized if this legislation is passed. While employees may be better protected, it is those who are already vulnerable who bear the greatest risk.