

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

LATHROP: Welcome to the Judiciary Committee. My name is Steve Lathrop, and I'm the state senator from District 12 in Douglas County and also the Chair of the committee. And today, as we always do, I'll start out with a little intro. Looks like most of you are frequent flyers and this may not be necessary, but I'll say it nevertheless. On the table inside the doors when you come in, you will find yellow testifier sheets. If you're planning on-- planning on testifying on a bill today, please fill out one and hand it to the page when you come in to testify. This helps us keep an accurate record of the hearing. 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. Also, for future reference, if you are not testifying in person on a bill and would like to submit a letter for the official record, all committees have a deadline of 5:00 p.m. the day before the hearing. We begin testimony with the introducer's opening statement. Following the opening, we will hear from 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 name and spell your name for the record. We utilize an on-deck chair to the left of the testifier's table. Please keep the on-deck chair filled with the next person to testify to keep the hearing moving along. If you have any handouts, please bring up 12 copies and give them to the page. If you do not have enough copies, the page can help you by making more copies. We use a-- utilize a light system here. That's this box right here on my desk. When the light turns green, you'll have two minutes. That will be followed by a yellow light. That's your one-minute warning, so you have a total of three minutes to testify. When the red light comes on, we ask that you wrap up your final thoughts and stop. As a matter of committee policy we'd like to remind everyone that the use of cell phones and electronic devices is not allowed during public hearings, though senators may use them to take notes or stay in contact with staff. At this time I'd ask everyone to make sure that their phones are in the silent mode. Also, verbal outbursts or applause are not permitted in the hearing room. Such behavior may be caused to have you excused from the hearing room. You may notice committee members coming and going. That has nothing to do with how they regard the importance of the bill being heard, but some senators may have bills to introduce in other committees or have other meetings to attend. We are holding our hearings in the Warner Chamber while our regular hearing room is being renovated. Please remember that water bottles, soda cans, and the like are not permitted on the desks, and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

that's to avoid any damage or watermarks. We are assisted today in the committee by Laurie Vollertsen, our committee clerk. Neal Erickson and Josh Henningsen are our two legal counsel. Committee pages are Alyssa Lund and Dana Mallett, both students from UNL doing a great job for us this year. And with that, we will have committee members introduce themselves and we'll start with Senator Slama.

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

MORFELD: Adam Morfeld, District 46, northeast Lincoln.

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

DeBOER: I'm Wendy DeBoer from District 10. That's Bennington and the surrounding areas and northwest Omaha.

LATHROP: And with that, we are ready for our first bill today. That brings us to LB479 and Senator Wishart. Welcome back to the Judiciary Committee. Good afternoon.

WISHART: Thank you. Thank you for having me. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Anna Wishart, A-n-n-a W-i-s-h-a-r-t. I represent the great 27th District in west Lincoln. I'm here today to introduce LB479, a bill that seeks to close a loophole in Nebraska statute that deals with sexual contact with a law enforcement officer. I brought this bill after reading an article last year about a woman in New York who reported being sexually assaulted by two police officers only to learn there was no law specifically prohibiting law enforcement officers from having sexual contact with someone in their custody. These two officers claimed that this woman consented to sex. Fortunately, it-- they were charged with rape. I was shocked as I read further that as of 2018, 35 states, including Nebraska, have a loophole in their statutes that don't specifically prohibit a law enforcement officer from having sexual contact with somebody they are detaining. Currently, existing Nebraska law has increased penalties for sexual contact with an inmate or parolee and states that an inmate or parolee cannot consent to sexual contact with an employee of NDCS or the Division of Parole Supervision. Colleagues, my goal with LB479 is pretty simple. It's to extend those protections currently in state statute for inmates and parolees to all Nebraskans who are detained by a law enforcement officer and I do this in my bill by increasing-- one, increasing

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

penalties for sexual contact between a detainee and a law enforcement officer. An officer engaging in sexual penetration with a detainee is guilty of sexual abuse in the first degree. An officer who engages in sexual contact with a detainee would be guilty of sexual abuse in the second degree. And then, two, I make clear that it is not a defense to charge a person con-- it's not a defense to charge that a person consented to sexual penetration or contact when detained by a law enforcement officer. I worked on this legislation over the interim with input from the ACLU, the Women's Fund of Omaha, the Nebraska State Patrol, and the Fraternal Order of Police. I was made aware yesterday that the FOP now has concern with a portion of this bill. One of the things that they brought to my attention was to-- just to make sure that when somebody is doing a pat-down, that that isn't in itself considered sexual assault. And we do already have that for-- I believe we have that in here in terms of a body-- body cavity search, on page 7, line 6, so we can include a pat-down as well. The other issue that they brought to my attention was concern that this increases penalties for law enforcement that engage in sex-- sexual activity with a detainee. You know, that's-- that's an issue that I believe personally, you know, I'm-- we can work on it, but just my personal policy belief is that based on the power dynamic that exists when someone is being detained by a law enforcement officer, those officers should be held to a higher standard, and just as correctional officers are held to a higher standard currently in law. And so then I believe it's in the best interest of law enforcement and their code of conduct to pass this legislation so they have zero gray area and strict penalties when it comes to sexual contact of officers with detainees. So with that, I'm happy to answer any questions.

LATHROP: Very good. I do not see any questions, Senator.

WISHART: Thank you.

LATHROP: How many people are here to testify on this bill? OK. Better let Senator Lowe know. Any proponents here? Any opponents? Anyone here in the neutral capacity? Senator Wishart waives closing. We do have two letters, one from Christon MacTaggart at the Women's Fund and Sean Kelley with the Nebraska Fraternal Order of Police. And with that, we'll close our hearing on LB479. That will bring us to LB484 and Senate Lowe. And we're going to wait a couple seconds to see if we can get Senator Lowe here. He's on his way. That was a pretty fast hearing, so.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

LATHROP: Good afternoon. First hearing had no testifiers so it went a little quick.

LOWE: You guys are efficient.

LATHROP: We-- we like to be, particularly on Friday. Good afternoon, Senator Lowe. You're good to open on LB484.

LOWE: Thank you Chairman Lathrop and members of the-- of the Judiciary Committee. My name is John Lowe, that's J-o-h-n L-o-w-e, and I represent the 37th District. I'm excited to be back in front of the committee today to introduce LB484 and AM324. AM324 is a white-page amendment that would become the bill. It fixes a mistake that we made during drafting. Correction employees were removed from the statute but was not added to the definition of a public safety officer. This is addressed by this amendment. This amendment also adds security guard who works at a hospital as a person who is defined as a public safety officer. This amendment would also clarify some language and add the language concerning assault on certain positions. It adds the definition of a public safety officer, which shall include a peace officer, a firefighter, a probation officer, an employee of the Department of Correctional Services, an out-of-hospital emergency care provider, a staff member of Youth Rehabilitation and Treatment Centers in Geneva and Kearney, as well as a staff member of the Regional Centers. With this amendment the bill also adds a security officer who is employed by a hospital. Assault on a public safety officer would be a felony. LB484 is a bill that is very important to me because of my con-- conversations I've had with my constituents. The YRTC facility for young men is in my district. YRTC-Kearney has been a major concern for my community for several years. This concern led me to-- led me to organize a town hall meeting on the subject in March of 2018. During that public hearing, the staff present urged me to support a bill brought by Senator Wishart that would have accomplished similar goals as those proposed in LB484. The staff believe that by making it a felony to assault a staff at YRTC would help discourage residents' assaults on the staff, which has been an issue at the facility for some time. Some of these assaults on the staff were rather severe. That bill did not become law but I keep-- I kept thinking about the concerns that were raised by the staff at YRTC. Over the interim I introduced a study dealing with security at YRTC facilities. The interim study hearing in Kearney was the better-- at the interim study hearing in Kearney, the need for better protection for the staff was once again addressed. During this hearing with the director of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

facilities for DHHS, he testified that in 2017 there were 145 assaults on staff by the youth of the facility. At the end of 2018, there had been 97 such assaults. Of those, 13 required staff of YRTC to seek off-campus medical care. My bill-- my goal with this bill is to reduce the number of assaults that are serious enough to require off-campus medical care, such as the 13 in 2018. By adding a new penalty, it would be my hope that with this bill we could further lower the total number of-- of assaults. The residents of YRTC generally understand the way our laws work. Most of them understand what consequences they could face for assaults on staff. Right now the consequences are so minimal that they really don't fear them. LB484 attempts to change that equation. LB484 is to help ensure that men and women who work in these added positions receive the same legal protection that many of our public safety officers already receive. I passed out some letters earlier to I think all of you today. I'm going to pass them out again in case you forgot or in case you didn't bring them with you. And I will pass out the amendment. And the amendment becomes the bill. Most of these young men that are at Kearney YRTC came there from other communities. These men are not-- these young men are not-- most of them are not a major problem. Most of them are just confused and then they just-- just need some correcting. There is a small percentage of them up there that lead the others astray. We found that-- found that out just the other day when three of them escaped, stole a car and left, but they left one of them behind, so he returned to YRTC. I think he had-- he-- he knew better than to run with the other two. That happened. The car was stolen from a house right that I-- next door to the house I used to live at. So I'm very familiar with YRTC. I know the location. I know the things that are happening. We have in the past-- 10, 15 years ago, the staff was there and they were there for a very long period of time. Most of them wanted to retire from that position because they-- they were there to help the young men that were there. They fully believed in that. We are now down to a period where six months to a year is about the length of the staff period there. There are still some that have-- have maintained there. With that longevity comes a knowledge on how to treat the youth up there and how to treat them properly. When-- when you have staff turnover and staff overtime, there-- that-- it-- it's kind of like being in the Legislature here. If you're not here for a long period of time, you really don't know how things really work. And, Senator Chambers, I commend you for being here the amount of time you're here and wisdom you bring to us. So my-- my concern is with the staff turnover. My concern is with-- with the youth on the attacks on-- on the staff. And that may not always come from the youth. It may come

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

from just the staff not being knowledgeable on-- on how to control these guys. It-- but it is a very few that make the attacks on the staff members. It's sending our community members to the hospital. They don't want to work there. Unfortunately, some of the staff members that are attacked, they don't want to send a letter. I got several emails from staff members and I've talked to them in the past that they don't want to make a complaint because they need a job. Now I just argued a bill the other day that if you don't like the job you're in, you can leave. But these people feel dedicated to the position that they're in and to helping the youth and they want to see them succeed. So I would like to open up this conversation to maybe finding a solution that we might be able to do something better for the youth that are there and get them the help that they need, and the staff members, so they don't feel so afraid of-- of working with the youth. Thank you. I'll now answer any questions.

LATHROP: I have a couple for you.

LOWE: All right.

LATHROP: Tell us about the staffing problems at the YRTC.

LOWE: They--

LATHROP: Do they-- do they reflect the same sort of circumstance that we're seeing at the Department of Corrections with a 35-percent turnover and people required to work mandatory overtime and people who are-- or a facility that's understaffed at any given time?

LOWE: I would say yes. I'm going to take a quick look, see if any of the YRTC or the-- anybody showed up from their point of view. I don't see them here. Kearney and the western Nebraska is recovering from the snow so--

LATHROP: Sure.

LOWE: --there are a lot of testifiers that did not show up today. Mostly I know our sheriff was coming to testify against the bill because he doesn't want another penalty and having to have more of the youth in his jail and not where they belong. But, yeah, it-- it-- it's the changeover. It's the changeover that's-- that's-- that's hurting both the staff and the youth.

LATHROP: So when-- when a youth is involved-- and by the way, I read the letters that you shared with us this morning on the floor-- when--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

when one of these young men are involved in an assault, are they being prosecuted right now?

LOWE: A lot of them get basically a time-out. They go to Dixon and they spend a couple hours there and then they're back. It-- I believe probably the 13 assaults where the staff members went to the hospital or to seek medical care, they were probably taken down to the county jail and-- and booked there and then then later returned back to YRTC.

LATHROP: But not prosecuted.

LOWE: That I don't know.

LATHROP: So I will just tell you my thought on something like this. If-- if there is a relationship between not having that place properly staffed and these assaults, then we have a staffing problem, right? If we have people being assaulted and they're not even prosecuting them for, say, a Class I misdemeanor type of an assault and we want to make it a felony, I don't know how it does any good. It seems like the real problem is the staffing issue and we-- we have been listening to it for two months here--

LOWE: Yeah, I--

LATHROP: --when it comes to facilities run by the state. Just a thought.

LOWE: Yeah.

LATHROP: Any other questions or-- Senator Chambers.

CHAMBERS: This is just so it won't seem I have no interest. You and I had discussed this bill prior to the hearing, correct?

LOWE: Yes, we did.

CHAMBERS: And that's why I'm not asking questions, not that I am uninterested.

LOWE: I appreciate that. Thank you.

LATHROP: I don't see any other questions, Senator Lowe. You're going to stick around to close?

LOWE: I will stick around to close.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

LATHROP: OK. We'll see if anybody is here to testify. I know the weather has probably not been favorable to getting people here to testify.

LOWE: No, I have to go home to see if I have a house.

LATHROP: Yeah. Well, I hope that works out for you. Anyone here to testify as a proponent of LB484? Anyone here in opposition?

JULIET SUMMERS: Good afternoon, Chairman Lathrop. Members of the Judiciary Committee, my name is Juliet Summers, J-u-l-i-e-t S-u-m-m-e-r-s. I'm here on behalf of Voices for Children in Nebraska to oppose LB484 because we believe it represents a regressive view of juvenile justice and is not based on evidence of what works to change youth behavior for the better. So LB484 would essentially create three new felony offenses specifically for youth committed to our two youth Rehabilitation and Treatment Centers for three degrees of assault on staff member. My testimony is by no means intended to undercut or undermine the damage that any assault victim experiences. However, as we consider how we structure our policies and our systems, we have to ask what is our desired outcome and will this policy have the intended effect. And I would contend for you today that adding new felony charges for youth committed to YRTC will not protect staff members or improve the behavior of the young people. So first, it will not present-- prevent assaults. Because their brains are still under construction, youth just don't make decisions about consequences in the same rational way as adults do. Particularly when they are experiencing high emotion or tension, teenagers are especially likely to give into impulsive behavior. And as a longtime practitioner in juvenile court put it, deterrence requires premeditated thought using a cost versus benefit analysis and youth in this situation are not thinking, they are just reacting. So secondly, it actually will not change much in our possible system response to assaults. So I believe that a driving impetus behind this bill is an intention to charge YRTC youth in criminal rather than juvenile court. However, based on our jurisdictional statute and the degrees of charge as laid out in the bill LB484 would in fact change almost nothing regarding concurrent or original juvenile and county court jurisdiction. I've-- it's kind of weedy. I've put a lot of it in my testimony. Feel free to ask me questions if you'd like. But I'll say that one of the charges mirrors first-degree assault which is already a Class II felony and can be charged in criminal court. One of the charges, third-degree assault on a staff member, is graded as a Class III felony, which is too low for

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

concurrent original-- or concurrent jurisdiction in county or district court. And then the only shift in charging availability would be for the second-degree assault category. Currently, our charging statute for second-degree assault requires serious bodily injury to occur when the mens rea is recklessness in order to charge a Class IIA felony which would get concurrent jurisdiction. LB484 would lower the injury required when a youth acts recklessly with a dangerous instrument, eliminating the requirement that the bodily injury be serious in order to charge a Class II felony, and thus achieve concurrent jurisdiction. So this change to us reflects an intent to penalize reckless youth behavior, even when serious injury has not occurred, and has no place in facilities built specifically for typically reckless youth. LB484 would grant unilateral discretion to the Buffalo and Fillmore County attorneys to decide whether to charge boys and girls acting recklessly as adults when those juveniles are placed in their county pursuant to juvenile cases. However, our YRTC's exclusively are intended to serve the rehabilitative rather than retributive juvenile system, and those young people have lawyers and judges in other counties with infinitely more knowledge and understanding of their history, needs, and rehabilitative goals. I've met my time, so I'd be happy to answer any questions. But I did want to say Senator Lowe and I have had conversations about this and I really appreciate his open door in communicating about these issues and I-- I actually believe a lot of our larger goals we really do share.

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

JULIET SUMMERS: Thank you.

SPIKE EICKHOLT: Good afternoon. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association in opposition to the bill. I did visit with Senator Lowe last week and explained that I-- that we would be opposing his bill and explained why. We oppose this bill for a number of reasons. This adds to the list of designated categories that are automatically a felony to assault certain individuals based on their job, essentially, their profession. We've opposed that before. We're particularly opposed to the addition of employees at the YRTCs and employees of the Regional Centers because, and I think you've heard some of the testimony earlier, the people who are going to be charged with this are already of diminished capacity in some way. In other words, you're dealing with youth offenders only, either in Kearney or in Geneva, the boys are Kearney and the girls in Geneva. You're only

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

dealing with juvenile offenders. If you're of-- if you're not a juvenile, you can't be placed there. The only people that are going to be there are juveniles. Similarly, the people who are at the Regional Centers are there because they're being-- they've been found not competent to stand trial, they've been committed there because they're mentally-- they've been there-- they're committed they're on a civil commitment because they're mentally ill and dangerous to themselves or others. All those potential felony defendants are, I would-- we would argue, are already sort of disadvantaged, if you will, to be held to the standard of the felony criminal code. This bill would make every assault on these additional vic-- on these additional victims a felony. It's already a crime to assault anyone. If it's an assault that causes any injury, even pain, whether there's a visible mark or not, it's misdemeanor assault, zero to a year. If it's an assault with any sort of a weapon, and that's broadly defined as a Class IIA felony which is zero to 20 years, and an assault that causes serious injury is already a felony, Class II felony, 1 to 50 years. I would submit that the 13 assaults that Senator Lowe talked about, since those people required-- required some sort of hospital care, were likely at the felony level anyway due to the nature of the injury. In other words, they're already potentially able to charge serious assaults as felonies. One-- couple of things. People who are at the YRTC, the youths there, are not there necessarily because of the severity of the crime. You'll remember from the things that we talked about on the juvenile bills, once you enter the juvenile system, you can end up at the YRTCs for relatively minor offenses. And secondly, I think Senator Lathrop mentioned this earlier, this kind of reminds me of what the arguments were to add the correctional officers to the list of categories because of the working conditions. I mean Senator-- Senator Lowe, to his credit, wants to do something to be responsive to the staffing issues there and it's difficult to come up with budgetary solutions or to add more money to the state budget or something that would somehow make those positions more attractive for people to stay in there. And in a way, if at least responding to that group, whether it's LRC staff or the YRTC staff, it's to boost the penalties to give at least the staff the impression that they're going to be better protected at the job. And I don't know if that's really-- I don't think it's proved out in the adult criminal system when it comes to the correctional facilities and we would submit that it would not prove out here. So for those reasons, we oppose the bill.

LATHROP: I do not see any questions but thanks for your testimony.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

SPIKE EICKHOLT: Thank you.

BRAD MEURRENS: Good afternoon, Senator Lathrop. Members of the committee, for the record, my name is Brad, B-r-a-d, Meurrens, M-e-u-r-r-r-e-n-s, and I am the public policy director for Disability Rights Nebraska. We also do not deny or intend to trivialize the injuries that do happen to staff in the YRTCs or the Regional Centers, but our concern about this bill is that it masks the underlying problems giving rise to the assaults and presents an ineffective and unworkable solution. These assaults should be considered not just simply the act of malicious people, but also potential indicators of larger systemic or facility-related issues. HHS employees at YRTCs or the Regional Centers are not officers working to ensure public safety. They are not operating clearly out in the open like police officers or firefighters. They have differing responsibilities, duties, and expectations and face wildly different situations when and where they do their work. We believe that in order for the term "public safety officer" to retain any meaning, a clear distinction must be maintained. Blurring the definition proposed in LB484 and determining who should be included as a public safety officer based on the potential risk of injury is a problematic precedent. For cab drivers, convenience store clerks, teachers and many other professions that interact with the public and are at risk of assault, should not those individuals and categories be included as a public safety officer as well? For those reasons we recommend the committee not advance this bill.

LATHROP: OK. Thank you for your testimony.

BRAD MEURRENS: Thank you.

LATHROP: I don't see any questions for you today. Anyone else here to testify in opposition? Anyone here to speak in a neutral capacity on LB484? Seeing none, Senator Lowe, we do have a couple of letters that I'll read into the record as you get situated, one from Andy Hale, in support, from the Nebraska Hospital Association, one in opposition from Spike Eickholt from the ACLU, who we heard earlier, and in a neutral capacity from Rosalyn Cotton, Nebraska Parole Board. With that, Senator Lowe.

LOWE: Thank you, Chairman Lathrop and the Judiciary members, for letting me come and speak today. I want to reiterate to the committee that the reason I brought LB484 was to help the staff at YRTC facilities. We have heard from supporters of the bill on why LB484 is

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

a good idea. I guess I'm the only supporter today. We've also heard from the three opponents. I believe that LB484 will help address retention issues and safety issues at the facility. However, I also know that those in opposition to this bill also want to address these exact same issues. They simply do not see LB484 as the best solution. I look forward to working with the proponents and the opponents, especially the opponents of this bill, to come up with even more solutions to address the unique challenges that our YRTC presents. I want to thank Spike and Juliet and Brad for coming today to speak on behalf of this bill and-- and maybe for working with me to come up with a solution. These young men we have taken out of-- of their communities and we've accepted them into Kearney to help them. We have taken them away from their teachers and put them with our teachers. We have saved the teachers in your communities to put our teachers at risk. We have saved the members of-- of your jail departments to put them in YRTC because that's where they belong. But we need to make our staff safe. And I'd like to work with the members of the Judiciary Committee and-- and my opponents of this bill to come up with a way that we can keep our staff safe and our youth safe and get them the help that they really need to put them back on the streets, become good citizens. With that, I'd like to thank the Judiciary Committee and have a good weekend.

LATHROP: Yeah. When you talk to the folks in Kearney that work at-- at the YRTC, besides the assaults, why are they quitting?

LOWE: Assault--

LATHROP: Have to have other reasons, right?

LOWE: Yeah, the-- some of it's work, but I know that they've increased the number of employees up there so the overtime hours has come-- have come down. I believe Mark has done a really good job of doing that out there. But it's-- it's just the atmosphere of nobody having your back when-- if you get assaulted, you can't do anything about it. You have to walk in and see that same person the next day that assaulted you and they can sneer at you and make comments to you and you have no recourse.

LATHROP: The staffing, though, not having enough people around, are you getting complaints about that, that the assaults are a function of not having enough staff?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

LOWE: I have not gotten complaints on that in about a year now.

LATHROP: Ok. Well, we share your concern for the safety of the staff, as we do the corrections officers--

LOWE: Yeah.

LATHROP: --at the Department of Corrections and we appreciate you bringing the bill today. Senator Brandt.

BRANDT: Thank you, Senator Lowe, for bringing this bill. You indicated in your discussions with the town hall and with the people that worked out there that the vast majority of the people out there were not a problem and they could work with them. Did they give you any indication of what percentage of the-- the boys that are out there present this kind of a problem?

LOWE: You know, they said it is a small minority and I-- I-- I believe them. But they are the leaders. And when you have a leader in your group that's stronger than you are with-- with more aggression, you seem to fall in line behind a leader. So, you know, it-- it may be 2 to 5 percent or it may be up to 10 percent, depending on-- on the day and the week, because it's a flowing system up there.

BRANDT: OK. Thank you.

LOWE: Thank you.

LATHROP: OK, thanks.

LOWE: Thank you very much, appreciate it.

LATHROP: We appreciate you being here today. That will close our hearing on LB484 and bring us to LB176 and Senator Chambers. Good afternoon, Senator Chambers.

CHAMBERS: It is indeed a good afternoon, Mr. Chairman. I am Ernie Chambers. I represent the 11th Legislative District in Omaha, and I'm bringing this bill today. I will depart from the customary mode of my presentation. I often use metaphors or analogies. In the poultry industry, chickens may be raised-- raised in a confined setting and there are others who are free range. My testimony often mirrors the free range where I try to cover the waterfront. But today I'm going to follow the confined model, present as succinctly as I can what the bill is about, accept your questions, wait and hear what the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

opposition is, and then counter that, if necessary, during my closing. To show you how I'm going to restrict my presentation, I'm going to use the fiscal note as my text. This bill would eliminate certain mandatory minimum penalties. It proposes to eliminate the five-year mandatory minimum for class IC felonies and the three-year mandatory minimum from Class ID felonies. Both of these penalties would become regular minimum sentences. By eliminating mandatory minimum penalties, the bill allows inmates to begin accruing good time credits upon admission rather than after first serving the mandatory minimum portion of their sentence. The bill also affects the parole eligibility of inmates convicted of Class IC and ID felonies as they would be eligible for parole after serving half of their minimum sentence term rather than having to serve the entire mandatory minimum prior to parole eligibility. I will explain a bit as I go along. The way the sentencing structure is now, aside from the mandatory minimums first, you give-- the judge will give a minimum sentence; let's say 10 to 20 years. You become eligible for parole when you've served half of that minimum sentence. That does not mean you will be paroled. It means you can appear before the Parole Board. Prior to that eligibility point, then you're just there. You have good time given to you as soon as you enter the institution. Rather than earning it as you go along, it's like giving you a bank account with your money in the bank. And the management function is provided by the inmate being aware that for any violation of rules some money will be extracted from that account. So half the minimum makes you eligible for parole, but you are not automatically released, and I'm not aware of many instances where a person is released at the first eligibility plateau. The maximum is cut in half and when you have served that amount and you have not lost good time, you are mandatorily released on parole. There is still the opportunity to have some supervision. But let's say you are just a recalcitrant person and you say, I'm not going to do anything that they tell me to do, it might be hard time but I'm going to serve it all and what they call "jam out." I reach the maximum time I can be held, then I'm released, no parole, no supervision, no reporting to a parole officer. I'm on my own. So the current system was structured the way it is to allow a person to leave before they've served the maximum amount of time that they can under the sentence. But by leaving on parole, there is some level of supervision. When it comes to the mandatory minimum, you cannot accrue any good time during that period. Good time is a management tool in the prison. If you must serve five years no matter what you do, you have no incentive to do anything other than nothing. If a lawyer-- not a lawyer-- I'm sorry. If the-- if a guard tells you to do something, you can tell him, go do

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

something to yourself. I can't get good time. I don't have good time. In other words, there is no incentive to behave during that mandatory period. I don't feel that puts me into the free-range category yet. I'm trying to stick to the point. Going to the next paragraph in the fiscal note: Both of these impacts could reduce the prison population, which could reduce prison overcrowding and also save per diem costs for the Department of Correctional Services. As of October through December 2018, the prison population was 159 percent of de-- design capacity. Additionally, DCS contracts with some counties to temporarily house prison inmates. If those inmates are included in the prison population numbers, then the prison population would be one 162 percent of design capacity. The fiscal year '18 per diem cost for an individual inmate was \$8,226 per year, which includes DCS inmates in county jails. The Department of Correctional Services states that the fiscal impact of this bill is indeterminate. That's because you don't know how many people are going to be sentenced under any circumstances. If I have not made clear what the bill is designed to do, I'll take any questions, but if not, then I've said as much as I intend to for my opening.

LATHROP: I do not see any questions for you.

CHAMBERS: Thank you.

LATHROP: Thanks, Senator.

CHAMBERS: Oh, and by the way, I'm going to take my seat but I won't be asking any questions.

LATHROP: That's fine. That's fine. Proponent testimony. Good afternoon.

THOMAS RILEY: Good afternoon, Mr. Chairman. Members of the committee, my name is Thomas Riley, T-h-o-m-a-s R-i-l-e-y, and I'm here on behalf of the Nebraska Criminal Defense Attorneys Association and the Douglas County Public Defender's Office to support Senator Chambers' bill, LB1-- LB176 eliminating mandatory minimums on Class-- the IC and ID felonies. My focus today will be on the fact that the current status of the sentencing scheme we have with regard to these two degrees of felonies take all discretion away from the sentencing court. They cannot give probation to these individuals who are convicted of ICs and IDs. And I don't think that that is very good policy. The-- many of the IC and ID felonies are firearm cases and some drug cases and all-- all situations aren't the same. One-- one of the-- probably the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

most common one that I'm seeing is felon in possession of a firearm, and that's a mandatory minimum sentence. And all people convicted of a felony aren't the same. The individual who got convicted 20 years ago who's married, whose wife has a firearm in their-- their bedroom, certainly could be convicted of constructive possession of-- of the firearm. And I think that a judge should be able to consider each individual situation like that to be placed on probation. I'm not talking about the person who necessarily is walking around with a gun, has five felony convictions and is walking around and terrorizing people. But by having-- by eliminating the mandatory minimums on these, it gives the judge a bit of discretion. And I think that that-- when-- while I am a believer in discretion for judges, there certainly-- the Legislature has the opportunity to limit that to certain degrees. But I think when it comes to saying you must go to prison versus the possibility of probation, I-- I think that that is-- is better policy than what we have now. I don't think that the-- I-- I agree with Senator Chambers' assessments about the-- the lack of good time causing more prison overcrowding and no-- no incentive to the prisoner to follow the rules. But-- but my-- I just wanted to make my main focus on the-- the-- the actual sentencing judges, taking the-- the total discretion out of his hands or her hands. With that, I'll take any questions.

LATHROP: Can you take a second and share with us your thoughts on how district court judges approach sentencing? For example, when we have good time that essentially knocks off half of a sentence going in, is that factored in by the district court when they sentence a--

THOMAS RILEY: I-- I think most judges, yes. But you know, the-- the mandatory minimums were part of this truth-in-sentencing wave that went-- went around. And if you read the advance sheets, which I'm sure you do, I'm sure that you'll find that in many occasions the judges are confused by what the good time laws mean. In a perfect world, they're going to know, OK, I think this person deserves X amount of time in jail before he or she is eligible for parole. Sometimes because of the complexities and because of just the-- the lack of awareness, these things happen and it's-- you know, it's incumbent upon the prosecutor and the defense lawyer to make the judge aware of these things. But as I said, in a perfect world, they do know, but in practice it's not always the case. And there have been a number of Supreme Court and Court of Appeals Opinions where the judge imposed in-- incorrect sentences and/or made a misstatement as to what the parole eligibility, mandatory release date would be, which is very

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

distressing because if-- if the judge is saying I think you're going to be eligible for parole in five years and mandatory release in ten and then it turns out that that's an incorrect calculation, the Supreme Court has said whether-- whether-- even though the judge was wrong, the-- the sentence stands as-- as is under the correct interpretation of the law, and that's somewhat distressing.

LATHROP: Which of the-- so if you get a five-year mandatory minimum, you're not eligible for any good time on that five years.

THOMAS RILEY: That's right.

LATHROP: So which is the bigger problem, the fact that you're not eligible for good time during those five years or the fact that it's a five-year mandatory minimum?

THOMAS RILEY: Both. [LAUGH] I-- I don't-- I-- I-- I think there-- you know, they're-- they're-- they are different policy decisions. And as I said, I-- I don't like the idea of one size fits all when we're coming to sentencing. And I-- I don't like to suggest legislation by anecdote but-- but I just wanted to use that as an example as there's a difference between the two types of offenders that I just described, yet both of them would have to face a mandatory minimum sentence of prison while one probably is not deserving, maybe the other one is.

LATHROP: OK. I do not see any other questions. Thanks for being here today.

THOMAS RILEY: Thank you.

LATHROP: Other proponents.

SPIKE EICKHOLT: 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 LB176. Senator Chambers explained the bill. Mr. Riley explained some of the reasons for the change in the law. We do support it. This only affects IC and ID felonies and it doesn't necessarily reduce the minimum that would apply. It simply changes that minimum from mandatory to a minimum sentence. I know that's just some sort of terms, but they are significant terms. A mandatory minimum means you must serve that actual time. It also means you're not eligible for probation. That adversely impacts the-- and if-- the top for both of those ICs and IDs is 50 years. The judge can do all kinds of sentence between that for the offenders that, I would

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

submit, deserve it and the courts are going to exercise their discretion. It doesn't matter that much what's on the bottom as far as mandatory minimum. In other words, even with a mandatory minimum or if it's a minimum sentence, whatever, the law allows the judge to give 40 to 50 years. And for someone who's been through the system before or it's a serious enough crime, that's what that person is going to get. Who this hurts the most, you know, who it hurts, I would submit, is the people in the bottom, the people who might be considered for probation by the judge or who might not necessarily get five solid years on the bottom. That's who it hurts. And it not only hurts as far as the sentence that the person gets from the judge, but it does impact the type of sentence they're going to serve in the Department of Corrections. With overcrowding, things are not as predictable as they once were when people were going to the Department of Corrections. But having a mandatory minimum sentence classifies that person higher. They're not going to go to a medium-security place. They're going to go to Tecumseh or the Pen. They're not going to be toward the front of getting whatever programming is available because they can't be considered for parole during that mandatory minimum time anyway. The amount of time that they do is that much harsher, even though it may be the same duration as other people in the prison system, because they are serving a mandatory minimum sentence. The argument against changing this to-- a mandatory minimum to a minimum, is, one, it provides for uniformity and consistency in sentencing, and-- and that's true. But one other advantage, if you will, that the prosecution has for these mandatory minimums is that a mandatory minimum is only applied to some offenses and anytime you get somebody in trouble and they're charged of a variety of things, they have minimum sentences and mandatory minimum sentences. This is the ultimate negotiating block for prosecutors. You will have your client plead to essentially anything as an alternative to a mandatory minimum sentence for some of the reasons I argued before, and I think all that has an impact adversely to the prison population. So for those reasons the reasons that have been stated, we'd urge the committee to advance the bill.

LATHROP: OK. Appreciate your testimony and your thoughts as always. Anyone else here as a proponent? Anyone here in opposition to LB176?

COREY O'BRIEN: Good afternoon, Chairman Lathrop--

LATHROP: Good afternoon.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

COREY O'BRIEN: --members of Judiciary. My name is Corey O'Brien, that's C-o-r-e-y O-'-B-r-i-e-n, and I'm the criminal bureau chief for the Nebraska Attorney General's Office. I appear here today on behalf of the Attorney General's Office in opposition to LB176. We were opposed to this in 2015 and again in 2017 and the reason why essentially is because it is the Attorney General's view that bills like LB176 needlessly compromise public safety and don't achieve the intended purposes. As you can see from the handout I presented to you, this past Monday there were 853 out of 500 and-- 5,478 total inmates incarcerated in NDS serving a class IC or ID felony. This equates to approximately 15.5 percent of the total population. As you can also see, just shy of 80 percent of these offenders, or 681 out of the 853 inmates, are currently serving a sentence for either using a firearm to commit a felony, being a previously convicted felon in possession of a firearm, or shooting in an occupied dwelling. It's interesting to note that there's 404 that are currently serving a sentence for being in possession of a felon-- being in possession of a firearm as a convicted felon. The other 20 percent comp-- comprise those that commit child pornography offenses, on-line enticement of a child, first-degree assault on an officer, repeated sexual assault of children, or engaging in the manufacturer or trafficking of large amounts of either heroin, cocaine, or methamphetamine, or doing so while in a school zone. Of the drug offenders, there's 104 out of the 853, or approximately 1.9 percent of the entire population. Much to some people's surprise, not a single one of these offenders is doing any sentence for possession or distribution of marijuana. While much blame has been placed on cops and prosecutors for abusing mandatory minimums, the one thing that is often overlooked is these 853 inmates did incredibly bad things that inflicted substantial harm or that substantially compromised the peace and security of Nebraskans or that demonstrated a propensity for lawless-- lawlessness. While we often hear that mandatory minimums deprive judges of discretion, it's interesting to note that of this 835 [SIC] inmates currently doing a mandatory minimum sentence, 82.7 percent of those offenders received a sentence in excess of the mandatory minimum required by law. This, in my-- in our opinion, shows that judges do not feel like they're being deprived of discretion. It also further casts doubt on whether or not these people would go to prison were it not for the mandatory minimums. And obviously this will have minimal impact on the overall population numbers. In my opinion as a career prosecutor, I can tell you, and Mr. Spike Eickholt-- Mr. Eickholt kind of alluded to it, mandatory minimums serve as a deterrent, not only as something that facilitates uniformity in the law. For those reasons we'd ask you not

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

to advance LB176 to the floor. I'd be certainly happy to answer any questions members of the committee might have for me.

LATHROP: I do not see any questions but thanks for being here, Mr. O'Brien.

CHAMBERS: Thank you.

MIKE JENSEN: Good afternoon. Mike Jensen, deputy Douglas County attorney, on behalf of the Nebraska County Attorneys Association. It's M-i-k-e J-e-n-s-e-n. I've been Douglas County prosecutor for the last 14 years, so I was prosecuting before we had the mandatory minimums on the prohibited persons and on the use of a deadly weapon. I will tell you that it has worked in large part in my experience with prosecuting violent crimes in Douglas County.

LATHROP: Talk a little closer.

MIKE JENSEN: Sure. It-- it's worked. Prior to the mandatory minimums, there wasn't a good uniformity on these type of violent offenses that they would carry a penalty that is commensurate with the type of crime that was occurring. I know some of the proponents brought up a couple of examples of a person who has a felony from maybe 20 years ago and they pawn a firearm or something like that. Those things happen. I would note that the prosecutor still has discretion. And I think in large part in my history, somebody with that type of situation is someone you work something out where you're not going to face the mandatory minimum-type penalty. So there's still discretion within the system that if it's a square peg in a round hole, there's still discretion by the prosecutor. I ask that this committee obviously don't advance this. I would take any questions of the committee as I've dealt with a lot of these in Douglas County.

LATHROP: I kind of want to ask you a couple of questions as I did Mr. Riley. When it comes to sentencing, if a district court judge wants somebody to spend 10 years in prison, aren't they going to give them 20 years on the bottom end so that after good time they end up spending 10 years there?

MIKE JENSEN: It's always hard to tell what the judge is considering or not considering when he crafts the number he comes up with. I assume that they all understand that whatever number you give it's being cut in half, but I don't know for sure. I know, you know, Mr. Riley referenced that when-- early on, when the Legislature went to these

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

mandatory minimums, there was some confusion. The case is resolved. Rashad Washington, that was mine, and there was some early confusion as to how do you figure in the good time. I think, like anything, everyone's learned what the rules are and how it applies. So I hope that they consider that but I can't say if I know they do or do not.

LATHROP: In each of these classes of felonies that we're talking about that have mandatory minimums, if a judge wants them to do-- if we got-- if we passed LB176 and a judge wanted to do-- wanted them to do five years, they could give them ten and know that they're going to be there for five.

MIKE JENSEN: They could, but I would tell you in practice that wasn't happening, and that's the reason I think the-- there was-- became a minimum that you have to do because that was not happening across the board in Douglas County, at least-- I can speak from Douglas County. It wasn't happening.

LATHROP: OK. I think that's all the questions I have and I don't see any others. But thanks for being here.

MIKE JENSEN: Thank you.

LATHROP: Good afternoon.

AARON HANSON: Good afternoon. Chairman Lathrop and members of the Judiciary Committee, my name is Aaron Hanson, H-a-n-s-o-n. I'm representing the men and women of the Omaha Police Officers Association. I am currently a police sergeant with the Omaha Police Department, been so employed for the last 22.5 years, currently assigned to the gang unit. I'm going to keep my comments brief. I think Mr. O'Brien and Mr. Jensen have highlighted a lot of the important points that I was going to bring up. I'm going to leave more time for questions from the committee. But just very briefly, and if I can tell you from the perspective of police officers, law enforcement who are responsible for interacting with and protecting the public from some of the most violent offenders, the mandatory minimum statutes-- the-- the small number of mandatory minimum statutes we have are extremely valuable in our quest to address and prevent violence. There was a comment earlier about giving the prosecution undue leverage. Well, I can see that being viewed from one perspective .I can tell you from the other perspective some of these crimes are viewed as a way to help keep victims and witnesses safe so that we can find a resolution to some of these most violent crimes so they don't

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

have to put themselves in a situation where we're increasing the chance that they have to testify and be witness tampered against. Another topic that came up which I agree with Senator Chambers on is the-- the problematic nature of-- of jamming out when you do have individuals that fall into that doughnut hole of the-- of the mandatory minimum. But from our perspective, we do believe that it would be best addressed by adding some type of mandatory supervised release at the end of any such crime, similar to what the Legislature has implemented for Class IV through Class III felonies, because we do believe that rehabilitation and transition into-- back out of prison into public is crucial. Just in recap, if you look at the list, I know it's easy to say mandatory minimums or Class IC and ID crimes, but I really think we have to step back and-- and go over the list which Mr. O'Brien listed of those individual crimes and ask-- ask ourselves which one of those we do not deem is important enough for a mandatory minimum. And I'll take any questions the committee may have.

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

AARON HANSON: Thank you.

LATHROP: Anyone else here to testify in opposition to LB176? Anyone here in a neutral capacity? Seeing no one in a neutral capacity, Senator Chambers, you may close. We do have one letter of support from John Else at the League of Women Voters.

CHAMBERS: Mr. Chairman, members of the committee, free-range time. [LAUGHTER] I'm not going to take a long time. But as anybody understands who's dealt with debate or observed even trials, the one who has to respond to various assertions will require more time than the one who merely made the assertion. The first thing I want to point out, I've been in the Legislature 44 years. I have observed how crimes are created by the Legislature. It is not done on the basis of penological science. There might be a particular activity that's going on that has upset people; it's gotten a lot of publicity. For example, when the notion of gangs, which had not been in Omaha like it had been in places like Chicago, Los Angeles, New York, Atlanta, the larger cities, everybody in the Legislature wanted to find a way to do something to make it appear that they were fighting this situation. Since gun crimes would fit into a category of felony where the maximum was 50 years, they were not quite stupid enough to raise the maximum. So the only thing a senator could do to make a political statement was to say, then we're going to make it necessary that a minimum number of years be served. It was done for a political purpose. Mr. O'Brien

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

correctly pointed out that the kinds of felonies, by and large, not all the felonies would necessarily-- the conduct would not necessarily involve somebody being hurt. A prosecutor determines what the charge will be and based on that charge, the category of punishment automatically attaches. So the conduct could be charged by a prosecutor where no mandatory minimum would be involved. If he or she chose to use that as a hammer, the prosecutor could say this identical conduct can be given a different label and you will mandatorily serve this number of years. Well, there are people who are sensible enough, even though they are criminals, to realize that the evidence is such that there's likely to be a conviction. So if that's the case, why would the prosecutor want to have a plea bargain? To save time, to save money, and it makes it easier for the prosecutor. So you can be told, if you make me take you to trial you're going to lose, and when you lose you're going to have to serve five years, no good time, five flat years of hard time, but if you plead I can make a recommendation to the judge and I'll recommend a five- to ten-year sentence. Well, what's the difference? The five year sentence has a minimum that is imposed by the judge. It's not a category of felony where there would be a mandatory five years. That is automatically cut in half. It's two-and-a-half years that you would have to serve before parole eligibility. Prosecutors don't care how long people stay in jail. Police officers don't care. They don't even know. The prosecutor wants to make his or her job as easy as possible and when you have a hammer, that's what you do. The death penalty is a good example. Carey Dean Moore was executed for having killed two people. The man that I gave you an example of when I brought my bill to abolish the death penalty had murdered two people, his ex-wife and the lawyer, and did not even face the possibility of a death penalty. This situation that I'm describing has finally broken through to the conscious level of conservatives who talk about having smaller government, reducing wasteful spending, and the litany of things that will make a person a conservative. And for this reason, people like the Koch brothers, who by no stretch of the imagination would be considered liberal, are leaders in the area of prison reform with sentencing reform at the top of the list. Even with Donald Trump as the President, there is federal sentencing reform considered and enacted by the Congress. They're not trying to be soft on crime. What they're looking at is the reality in terms of the cost, the ineffectualness of these mandatory sentences. And because of that consideration, although I think he misapplied it, the judge who sentenced Paul Manafort departed from the sentencing guidelines that exist now at the federal level and said that it would be out of proportion to what was done. At this level where we're

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

talking about it, the only function that a mandatory minimum serves is as a disincentive for the one who gets a mandatory minimum sentence to behave. Good time is a management tool in corrections. A mandatory minimum does not serve as a deterrent to the commission of the crimes that carry a mandatory minimum. People don't even know what the sentence is. You could pull in 93 prosecutors, one for each county, but you wouldn't necessarily have 93 because some serve more than one county, but there are 93 counties, each can have a prosecutor, bring them all together, don't let them have crib notes, and mention a particular crime and say, what grade of felony is that, what is the sentence under the statute for that? They couldn't tell you. Mr. O'Brien had to have research done to give you that piece of paper that we got. Reform is in the air. This bill, if enacted, is not going to do anything that is harmful to the penological purposes of correctional activity. And correctional activity means that you put people who commit crimes into a set of circumstances where their conduct can be reformed and if it's not, then they're there just to be punished. But the people who speak against this bill don't worry about what happens in the corrections facilities. Inmates who have no incentive-- incentive to behave can create problems with no fear of anything being done. The sentence that they're serving is not going to be lengthened. It's set already. And since they cannot get good time for five years, they take their revenge by not behaving, by creating conflicts. And if the inmate who has a flat sentence wants to create a problem, he can slap an inmate who doesn't have a mandatory minimum. But you know what's going to happen if that inmate fights? That inmate is going to lose good time and now is going to be in prison longer, and it's going to cost that large per diem, will not be eligible for parole, and you begin to back up these people in prison who did not get mandatory minimums. So one bad apple can spoil the whole bunch. The prosecutors don't care and they haven't analyzed it in the way that I'm doing it. And I'm not a genius. These are things that people who want to bring some of the principles of valid penology into operation in the prison system are pushing for reform. And that's why the Koch brothers, among other well-known conservatives, are leading the drive. There are conservative talk-show hosts, conservative columnists who are syndicated, who are all on the bandwagon to change the way the system operates because if they do research, they see how you got where you are. There should not even be as many crimes on the books as are there. But let's say that the insurance industry is having a certain type of fraud work. They'll come to the Legislature and create a crime. We had some of those examples here this session. What about extortion by sexual whatever it is? Extortion is already

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

there. Now we just give it another name and we've created another crime, another category, more people in prison for new crimes when the conduct is basically the same. It's up to the Legislature as policymakers to behave in an intelligent way, not just respond to the public posturing of other elected officials, the Governor, the prosecutors. I don't say that the police officers are posturing in the same way. They might actually think that mandatory minimums make a difference. Brad Ashford was one of the people who wanted to fight crime so they talked about not only making certain gun offenses a mandatory minimum, but it had to be served consecutive to any other sentence, which kept the person in prison longer. The reason I want to say these things is to have them on the record, but I'm not going to take a long time and be repetitive. I'm going to make a few comments about our job as policymakers and I'll start by giving an example of what I told people when I ran for this office. I said, when I go down there I'm not going to reflect ignorance and I'm not going to be an echo; you send me down here, whether you know it or not, so that I will study and inform myself on the issues, become aware of the requirements of the law and the constitution, then use my informed judgment to support or oppose legislation, no matter what anybody else may say. And that was the deal that I made and they've kept me coming back here. I don't call it reupping like you do in the Army, being resentenced, because they know what I stand for. This that I'm doing is not sympathy for people who commit crimes. We have right now a problem of overcrowding in the prisons where the Governor is talking about spending multimillions of dollars to build more cells when that has been shown not to work. But it's a good political solution because you don't have to think or deal with anything. Overcrowding has reached such a point that a federal court may order the release of prisoners, may order-- and they've done that in other places-- you release this number of people, has nothing to do with mandatory, none of that, you release these prisoners until you bring your total population down to a certain level. Do the police have to worry about that? No. Do the prosecutors worry about it? No. They helped create it. Who expects the Attorney General to come in here and make suggestions about how we can reduce the overcrowding, or the police or any prosecutor. Even if they felt that way, it would be politically unwise because it would be said that they're soft on crime. If you have any questions I will answer them, but I want to re-emphasize this point. There is sentencing reform going on right now at the federal level being led by conservatives. There is prison reform going on in red states led by conservatives. They're looking at the cost, the fact that there is no deterrence, and all of the conservative principles

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

they say they stand for are violated by the way the prison system operates. I'm not a conservative in any sense of the term except the purest sense. I want to conserve constitutional principles. I want to conserve fair, just, equitable laws. I want to conserve a fair judiciary. So in that sense, the broad philosophical sense, I'm probably the greatest conservative in this country. But in the political sense where I appealed to the lowest common denominator, I certainly am not. So if you have any questions, I will answer them.

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Senator Chambers, for bringing this bill. And I'm on day 42 of my career and you're on year 44, so there's little difference. I need a little background. On page 2 of the bill, it lists all the felonies. And I find it interesting that the IB felony, which is more severe than a IC, the minimum is 20 years in prison, not minimum or a mandatory minimum, but it's just 20 years in prison. And then when you go down to a Class II felony, which is the one below a IB, the minimum is one year imprisonment. Why weren't those two, at-- at the time that they made these mandatory minimums, also mandatory minimum?

CHAMBERS: There was no thought to bring about consistency or rationality in the sentencing structure, as you pointed out. The types of offenses that wound up having the mandatory minimum sentences were those that were in the public's-- in the public realm being discussed at that time and the maximum sentence was already so high they couldn't raise that so they had to say, then we're going to put a mandatory minimum, for example, on gun crimes. Now if the maximum is 50 years, the judge could give a flat 50-year sentence. If you cut the maximum in half, then it becomes 25. There is no minimum. Twenty-five years would have to be served before that person is eligible for parole. When they put a five-year minimum, they didn't really change anything other than the fact that the person who gets that sentence will earn no good time during that five years. All it does is create a disincentive to behave when you get in prison. And I'll point out again, Mr. O'Brien was correct when he said that in these cases the judge will usually sentence to more years than the mandatory minimum

BRANDT: All right. Thank you.

LATHROP: I don't see any other questions, Senator Chambers. We appreciate your bringing the bill before the committee and your close.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

CHAMBERS: And it was indeed a pleasure doing business with you.

LATHROP: Thank you. The next bill that we have on the agenda-- that will close our hearing on LB176. The next bill we have on the agenda is LB131. Senator Pansing Brooks is on her way back to the Capitol. She had to be excused for a time this afternoon. So we're going to jump ahead and do Senator Wayne's bill, LB496, and hopefully be able to come back to Pansing Brooks's bill after Senator Wayne's.

WAYNE: Thank you, Chairman Lathrop and fellow colleagues on the Judiciary Committee. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent the Legislative District number 13, which is north Omaha and northeast Douglas County. Today I want to tell you why I brought this bill before I tell you a little bit about the bill. I brought this bill because there was a homicide in my district of a person named Kyle LeFlore. Kyle LeFlore was a veteran of the U.S. Army who was here on break. He was a master sergeant. He did two tours-- two tours in Iraq, two tours in Afghanistan, and one tour in South Korea. He was killed in Omaha on January 6, 2018, and he was just here, again, on a-- home for the holidays. He left behind his wife, named Tasha, and a young son. Prosecutors charged a suspect in Kyle LeFlore's murder but the murder charges were dropped when a key witness refused to cooperate. Apparently witnesses in this particular case were intimidated and threatened and refused to testify. The same suspect is now charged with multiple different-- multiple crimes-- multiple and different crimes in the Omaha area. I pledged that-- to look into increasing penalties for witness tampering so that people charged with serious crimes will not be encouraged or motivated to tamper with a witness in effort to beat their case. This is the gap or the absurdity in our law today is where if you commit a crime that is more than a Class IV felony, so if you think about that, a robbery, attempted murder, or even a murder, and you decide to witness tamper, and I created that word in this process of creating this bill, you actually are incentivized because you will only get a Class IV felony that's up to two years with the presumption of probation. So a murderer is actually incentivized to witness tamper because they know if they're caught, that's typically what they'll only get or what they can only be charged with is up to two years in prison, maximum \$10,000 fine. Now a long time ago when I was growing up, this wasn't that serious of an issue. People understood the-- and believed in the sanctity of the court system and just wouldn't tamper with witnesses but not only juries. But in the last two years, as gang violence in-- increased, but as our police officers and prosecutors increased their

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

conviction rates, this became a major issue as witnesses and gang members learned that they can tamper and get away with it. For this reason, that's why I am proposing the amendment before you. This amendment is a "kumbaya" moment that we always-- might not ever get again in this Judiciary where the defense counsels and defense attorneys and prosecutors come together and worked on issues that they both had in this bill and came up with a proposed amendment. So what this amendment does is that a Class I misdemeanor-- witness tampering or evidence tampering is a Class I misdemeanor if the underlying charge is a Class II misdemeanor or less, the Class IV felony if the underlying charge is a Class I misdemeanor to a Class II felony. The reason with that is a little different because it deals with a lot of our domestic violence issues and we try to keep it a little bit less, but we wanted to make sure there was a penalty for tampering with the witness. And the reason we wanted to keep it around there was-- typically on Friday there's some drinking involved and somebody gets in a domestic violence, by Saturday they're back out and back together, is that witness tampering versus somebody who's actually threatening the witness? And because those are such gray areas and it's prosecutorial discretion, we rely on the prosecutors to make those determinations in witness tampering, but we wanted to keep that kind of the same. But the biggest change is that if a Class II felony or more, than the underlying charge becomes a Class II felony-- or, I'm sorry, if it's Class III felony or more, then the underlying charge becomes a Class II felony. Again, this is to make sure that we discourage people to witness tampering. Similar provisions to jury tampering, however, it'll be a Class IV felony if the underlying crime is a Class II felony or less, and a Class II felony if it's higher. That's because even if it's a misdemeanor, there has to be some penalty, a higher penalty for tampering with a jury. That is the backbone of our system and we have to make sure those remain untouched. I can go on and on and more and more, and I'll maybe save some for closing, but I just think it's important that we close this loophole or gap in our system that has lived on forever but now, particularly in Omaha, violent individuals are taking advantage of. And with that, I will answer any questions.

LATHROP: Senator Chambers.

CHAMBERS: Senator, were you aware of the fact that-- oh, were you aware of the fact that there was witness tampering before Mr. LeFlore was killed?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

WAYNE: I heard about it but I never-- never really looked into it, sir.

CHAMBERS: What made you look into it was that you knew the victim personally.

WAYNE: It wasn't just that I knew the victim personally. I just assumed that as penalties were higher, that the Class IV felony was higher. I never looked at that area of the law until he was killed, and then I looked at it and that's what I said that's-- it should be changed, correct.

CHAMBERS: I knew his father, Kay LeFlore. I knew his father when he was young enough to be a boxer, and he was a good boxer. He used to walk past my house every day because his girlfriend lived up the street from me, and her name was Doris. Here's what I'm going to get to. What I was just explaining about my bill, you're proving that when a particular thing happens that gets the public's attention, then a new crime is created. That's what's happening here. Nobody had ever said what you're saying, that if the underlying crime is B, then the punishment for tampering with a witness should be-- say it again so it's in your words.

WAYNE: In that regard, it'd be like an attempted B if it--

CHAMBERS: The tampering becomes more serious than the underlying offense?

WAYNE: Not in this situation. We are trying to match the underlying crime. We are not trying to make it harder except for in the area of if you're charged with a Class-- a misdemeanor and you jury tampered, that would still remain a felony, but the rest of them we are trying to categorize with the underlying crime, so you couldn't be incentivized to get away with the crime.

CHAMBERS: Well, witness tampering affects the justice system, whether the offense that the person who is going to tamper with the jury for was a misdemeanor, a felony, or whatever, so this crime would not have come into existence if it does. Let me say this. This bill would not have come if it had been what I might call a routine murder, because we have those in our community and there have been other cases of attempted witness tampering that I'm aware of, and I presume that you would be, without specifying the cases, because you practice law. If

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

it hadn't been young LeFlore, I don't think you would have brought this bill.

WAYNE: Well, I would respectfully push back on that. I was getting ready to call you "Your Honor" because we're sitting in-- I'm always saying, "Your Honor."

CHAMBERS: Well, now, just--

WAYNE: But I'd respectfully push back because I have said on the floor for the last two years that we need an entire rewrite of our criminal code, including our felony statutes around theft, and last year I introduced a bill to fill a gap regarding juveniles. I continue to look at ways to modernize that. And so let me tell you what the remainder of the bill does. There are also issues in discovery with criminal defense attorneys not getting certain things. So I included that in this bill because I think it's important that every time, every year, we continue to look at updating criminal statutes. Now was it-- did I drop the ball my first two years? Yes. I probably should have did this my first year. Did it take somebody to tragically die before it raised my eyebrows again? Yes, on this particular section. But, Senator Chambers, I have continued to say we need to rewrite our-- our juvenile code and our criminal code every year because we have crimes on the books that have not been changed since the 1940s that need to be updated. So will it have happened this year? Maybe not, but I would have brought a bill to rectify the situation sooner or later.

CHAMBERS: You get no argument with me from the process that you're going through. I think there should be a rewrite of the criminal code. But I pick the areas that are most severe because my time is limited. But here's the point that I'm trying to get across, and it's not to accuse you or condemn you. But if instead of LeFlore it had been Jim Jones, I doubt that this bill would be here. The community would not have responded in the way that it did. Other people just as good as LeFlore have been murdered. No streets were named after them. Maybe the family and a few people who knew would have what they call a prayer vigil. It was the-- the status of LeFlore that made the difference. And so you'll know my position, I'm not for pitching and patching at the criminal law and when a certain bad thing happens we change the law. The only reason we have mandatory minimums in the recent part of it is because Brad Ashford and some others wanted to show that they were going to fight gangs. And another thing Senator Ashford did that hurts our community, some of the turn-back money that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

I'd gotten for one purpose has been diverted by him to gang fighting, as he calls it, because the Legislature was not going to appropriate any money. So he hurt our community and put mandatory minimums in place. So in the same way you want to take one approach toward the law, I'm taking a different one and opposing the creation of new offenses. And the reason I'm putting it here, I'm not going to ask you a series of questions, but I wanted that point to be made on the record. And however way you want to respond--

WAYNE: There's two ways that I will respond to that, and I think this is a good dialogue, and not just-- and this is something, Senator Chambers, I have talked about a lot. I think it's important for anybody watching this at home to see two African-American males from the community having a civil discussion about things they disagree about because we don't always see that, so I appreciate that. But more-- more importantly to anything that we're talking about is sometimes it does take a-- an event or a person to make somebody rethink the law. And I remember this committee, before I became a part of it, because of Nikko Jenkins, rethought the entire prison population. That's not to say that that took away from this committee's ability to do their job. But some things come to the forefront because of the nature of what happens, and I don't think that's a bad thing. I think it's an evolving, good thing. As it relates to the new charge, this actually is not a new charge. The charge of witness tampering has always existed and it's always been a Class IV felony. What we're seeing now is if you are charged with a Class III or a Class II or less, you get a misdemeanor instead of a felony. And if you're charged with a Class III or more, you have an increased penalty. But this is not a new charge. But I do think it's important to highlight that it shouldn't have took this long. There's been too many cases that have dropped the ball because of witness tampering. And for that reason, I think all the more reason why this is my priority bill or I have another home who said they would do it and why it's important to move forward to make sure that this doesn't happen anymore. And I appreciate the conversation and I look forward to the floor debate.

LATHROP: Senator Brandt.

BRANDT: Thank you, Senator Wayne, for bringing this. For the record and for my own edification, you've referenced Mr. LeFlore. Could you expand on that and tell me what happened?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

WAYNE: So actually there's a prosecutor here who is-- who handled the case. So actually, I didn't know this Kay-- Kyle LeFlore. I knew Kay LeFlore. I knew a lot of his family members. But he was at a bar in north Omaha and then left that bar and went to another bar. As they were walking out of the bar, somebody tried to rob his-- or steal his gold chain and rings and it proceeded into an altercation in which he was shot once or twice in the outside of a club. And he, again, here on the weekend, doesn't live here, part of the military, served our country. And to go to war and do four tours in different countries and to die in his backyard, or in the back home, what we call back home, just sent the wrong message. The police did a very good job of arresting the individual and as the trial started, there was not only jury tampering but then there was witness tampering and that-- charges had to be dismissed. And after the charges were dismissed, a mutual friend of Senator Chambers and I who lives in my neighborhood, who is not here, LeFlore and them wanted to come, but everybody is getting scared the Platte is going to close so we might want to get out of here earlier, too, contacted me and say we've got to-- we've got to fix this gap. And I went back and looked at it and proceeded to say this is important to me and I will do it this year.

BRANDT: All right, thank you.

LATHROP: I do not see any more questions. I assume you'll stick around to close.

WAYNE: Yes.

LATHROP: Very good, Senator Wayne. Thanks for introducing LB496. We will take proponent testimony. Good afternoon again.

MIKE JENSEN: Good afternoon. Mike Jensen, deputy Douglas County attorney, on behalf of the state of-- well, on behalf of the Nebraska County Attorneys Association, M-i-k-e J-e-n-s-e-n. I'm here as a proponent on this bill. I testified in a bill similar to this a couple of years ago. I had been bending Senator Wayne's ear about this particular issue for-- even before he was a Senator, that this has been a long-going problem. In a bit of an awkward situation in that the murder that Senator Wayne references, we actually bring in the-- a codefendant to that case, trial on Monday. So I won't-- I will not go into details regarding that because we still have to pick a jury, those sort of things, starting Monday I would not be here, I'm actually needed back home to be prepared for that trial, if it wasn't that I think this bill is very important. The penalty that is

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

associated with witness and jury tampering right now incents these individuals who are accused of these higher level offenses that the easy way out for them when they feel like there's no other way out is not to defend my case in the courtroom but to undermine the investigation. And the perfectly law-abiding citizens who happen to just witness one part of a particular crime, if they can harass, frighten, scare these individuals so that they will either evade service, will not tell police what happened, will not tell a prosecutor what happened, and when they are subpoenaed and appear for court, which is-- we have the authority to bring people in, will simply refuse to testify. They'd rather go to jail themselves than to risk their lives or their family's safety based upon what is being spoken in whispers outside of the courthouse and what will happen to you if you testify, if you cooperate. It's not a new problem. It's a problem that's been going on for a long time and it-- it has hurt the ability to hold people responsible for murders, shootings, rapes, sexual assaults. The-- it's these types of higher level offenses that the offender or the accused knows that my best defense attorney is to tamper outside the courthouse because even if they convict me, even if they convict me, the worst that happens is a Class IV felony. They're smart. They're in and out of this system. They understand what to do, how to get around this. I appreciate Senator Chambers-- Senator Wayne bringing this bill. We met a couple of different times with the defense bar to go over the language with regards to discovery statutes, language regarding the tampering. There was discussion of well, you know, what happens if a young man throws a marijuana pipe down in front of an officer, is that a felony offense where you're tampering with physical evidence? I understand where they're coming from. Let's go ahead and look at those lower level misdemeanors and make sure we're not overpunishing what the offense is. The offense of jury tampering, witness tampering has been on the books for a long time. What we're simply asking here is please adjust the possible penalty so that it's not such an incentive for these defendants facing these high-level felonies to do this. I never thought in my-- the red light is up.

LATHROP: Yeah.

MIKE JENSEN: I would take any questions.

LATHROP: Sure. Senator Chambers.

MIKE JENSEN: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

CHAMBERS: You said something that really caught my interest. What trial is starting tomorrow?

MIKE JENSEN: Monday is State of Nebraska v. Jason Devers. He is a codefendant with Larry Goynes charged in the homicide of Kyle LeFlore.

CHAMBERS: And that is the case where the witness tampering allegedly occurred.

MIKE JENSEN: Yes.

CHAMBERS: And what is said here will be in the newspaper. Are you going to prosecute that case?

MIKE JENSEN: Yes.

CHAMBERS: And you're testifying about this and that case before the trial?

MIKE JENSEN: Yeah, I-- I do not want to testify about that case. That's why I acknowledged that right up-front. I'm not going to talk about the details of that case one way, shape, or another. I want--

CHAMBERS: This has-- this has an impact. This will be affected by whatever happens in that case. In other words, it's like a conflict of interest. You're trying to get something done here that will have an impact on the case you're prosecuting now. Isn't that true?

MIKE JENSEN: No, I-- I would prefer that you guys would take this bill up at a different time. This is the time that was chosen. This trial has been set since December. This is just simply an issue that I have been trying to have something done about for a number of years and the circumstances in which the timing works out is a coincidence.

CHAMBERS: Well, I'm going to make it clear to you, as I did with reference to when I first heard this bill was coming up. I'm going to fight it tooth and nail.

MIKE JENSEN: I understand.

CHAMBERS: And if I have to do it by myself, this bill is not going to become law. And I'm not angry at Senator Wayne. I just think you are on shaky professional ground, and I'm going to tell you, I'm going to look into what you are doing here today.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

MIKE JENSEN: Senator--

CHAMBERS: Prosecutors get away with too much and nobody tries to call them to account. But I'm willing to do that. Couldn't you have sent somebody else to do this? Don't you have a county-- County Attorneys Association?

MIKE JENSEN: We do. Senator Chambers, I worked for the last two weeks of rewriting some of the language. I think that's why I'm here.

CHAMBERS: Couldn't that have been done by whoever is speaking for the County Attorneys Association and you would not have to be here since you're going to prosecute the case?

MIKE JENSEN: Right. I'm not talking about an individual case. I'm not here to talk about that.

CHAMBERS: The case that led to this bill being here is the one you're handling tomorrow. Isn't that true?

MIKE JENSEN: True.

CHAMBERS: So you must avoid not only unprofessional conduct, you must avoid the appearance of unethical conduct.

MIKE JENSEN: Right.

CHAMBERS: And it appears to me to be unethical. I'm going in the same way--

MIKE JENSEN: You will not hear me utter a word about that case.

CHAMBERS: In the same way--

MIKE JENSEN: Not one word will I utter about that case.

CHAMBERS: In the same way that you mentioned what you do, I'm mentioning what I'm going to do. There is the appearance of impropriety of a prosecutor coming here who is going to prosecute a case the following day testifying on a bill that grew out of the facts involved in that specific case, and it was made clear that that is the origin of this specific bill we're talking about.

MIKE JENSEN: It was not for me, sir.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

CHAMBERS: Why did Senator Wayne say he brought this bill?

MIKE JENSEN: I don't know why Senator Wayne brought this particular bill. I spoke on this same bill two years ago.

CHAMBERS: No, here's what I asked you, not to cut you off. Why did he say he brought it today? When he testified, why did he say he brought this bill?

MIKE JENSEN: He referenced the case.

CHAMBERS: OK.

MIKE JENSEN: But that's not why I'm here, Senator. I'm-- I'm here because I face this issue day in and day out in my job and have for 14 years. And, yeah, I could have sent somebody else. But maybe nobody else has the experiences that I have. I will tell you, in my-- in my career, witness tampering is a huge issue and it's not just on homicides.

CHAMBERS: That--

MIKE JENSEN: It's on all types of cases.

CHAMBERS: That does not erase the requirements of the professional responsibility.

MIKE JENSEN: Absolutely.

CHAMBERS: And if somebody had come from the county attorney's office, it would be the same thing.

MIKE JENSEN: It's not the same thing, Senator.

CHAMBERS: Your-- your organization could have sent somebody here who would have nothing to do with prosecuting that case. And if you would submit this to people, remember this. The appearance of impropriety means there was not actual impropriety. It appeared so, and the appearance is made an offense under the code because it hurts the public's confidence in the objectivity, especially of a prosecutor. Prosecutors have a higher standard--

MIKE JENSEN: Yeah.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

CHAMBERS: --to follow. I bet I know more about that code than anybody in this state because not only have I read it, I've brought successful complaints.

MIKE JENSEN: The number-one book sitting on my desk is Prosecutorial Misconduct. It's always been sitting there.

CHAMBERS: [INADUIBLE] recuse yourself as the prosecutor.

MIKE JENSEN: And I-- I want you to know I'm not here trying to influence any particular case.

CHAMBERS: That's--

MIKE JENSEN: I'm here to talk about a general problem. I'm not here to influence any potential juror or to influence out some kind of case or to have any kind of influence of impropriety.

CHAMBERS: You--

MIKE JENSEN: And-- and if that's what you think is occurring, you're wrong.

CHAMBERS: You can say that all you want to. What the code does is to use not an individual, personal standard of the one accused but an objective standard that has nothing to do with what the individual accused will say. The objective standard is that looking at the facts, does it create the appearance that there is a conflict here? And if it does, then you're in violation. I-- you're not in violation because I say so, but we'll let the Counsel for Discipline make that determine.

MIKE JENSEN: That's fine.

CHAMBERS: But I don't want you to be ambushed.

MIKE JENSEN: No, I-- and, Senator, I didn't come down here with that intention. I'm not down here to-- trying to give that impropriety. That's not the passion that I have for this. The-- why-- why I'm here is that this overriding issue I continue to run into in my job. And--

CHAMBERS: You knew that you have a case tomorrow.

MIKE JENSEN: No--

CHAMBERS: You knew--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

MIKE JENSEN: --Monday.

CHAMBERS: When?

MIKE JENSEN: Monday.

CHAMBERS: Monday, OK. Yeah, Monday. Tomorrow is Saturday.

MIKE JENSEN: Yeah.

CHAMBERS: You knew you had a case coming up Monday, you knew that the existence of this bill grew out of the facts directly connected with that case, and you come down here to testify when your testimony is not essential to this bill.

MIKE JENSEN: I hope--

CHAMBERS: Any prosecutor could have said what you're saying.

MIKE JENSEN: Any prosecutor is not me.

CHAMBERS: Well, we'll just see how that pans out. That's all that I would have.

LATHROP: Thank you. I think that's it--

MIKE JENSEN: Thank you.

LATHROP: --Mr. Jensen. Thank you for your testimony. Next proponent.

AARON HANSON: Chairman Lathrop, members of the Judiciary Committee, my name is Aaron Hanson, A-a-r-o-n H-a-n-s-o-n. I'm here representing the men and women of the Omaha Police Officers Association. I am a police sergeant with the city of Omaha Police Department currently assigned to the gang unit. Witness tampering is-- is a very real problem in-- in our community, and I suspect across the state. Specifically, my point of knowledge would be within Omaha, obviously. One thing that-- that I can say is that this has not been a new discussion amongst prosecutors and police. And I can tell you that I've-- I've personally had conversations with Senator Wayne even prior to the high and-- the high-profile tragedy that we experienced in Omaha a few years back. So I know this has been on the front of the mind of many people and I think it is because it's an-- it's an important issue. Just within the last seven days I was involved in an investigation in which a robbery victim-- we put a lot of hard work and legwork into identifying some

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

robbery suspects. And once we had these suspects identified, detectives went back to the victim to ask him if he would go ahead and prosecute and the victim had to think about it even though much of it was captured on tape. That is an indicator of just how difficult it is to be a cooperating witness or victim to begin with. We currently don't even know if this victim will prosecute even though he was a victim of a violent felony. But again, I can only imagine what would happen with that victim or any other victim who does find themselves at the sharp end of witness or victim intimidation. I will finish my statements on just saying that-- that these are conversations that I have with victims, with witnesses, with their loved ones, both in my cruiser and in the security of their own homes. This is on the front of the mind of many law-abiding citizens who we don't normally hear from but who find themselves victimized or witnesses to a crime. This is something they're very concerned about. So with that, I would be happy to take any questions from members of the committee.

LATHROP: Senator Chambers.

CHAMBERS: You're a sergeant?

AARON HANSON: I am.

CHAMBERS: OK. I don't want to put the wrong title on you. Sergeant, in my community, I believe in every community, is the fear that if a person has witnessed a crime and will testify, without anybody threatening that person, will feel that something bad might happen if they appear in court and they're seen testifying. If a person is caught and accused of having shot that mob boss in New York, there won't be anybody who will testify against the shooter because the shooter's friend will get him. Paul Castellano was shot coming out of that steakhouse over 30 years ago, and there were people who saw it, and his killer has never been apprehended. But in the ranks of the underworld, everybody knows who did it, everybody knows who ordered it. The police know who did it, they know who ordered it, but they can't get anybody to say anything. So the idea of people being fearful to appear as witnesses is not peculiar to Omaha. The one thing that is clear, if a person is given assurances by the police that if they testify they'll be protected, that was annihilated, if it ever existed, three or four years ago. A guy had not yet testified, but he was going to, and he was sitting in his car and somebody came up and shot him in the head-- I don't know if you're familiar with that case-- killed him, and he hadn't even gotten to the point of testifying yet. And that sent a shudder through everybody and the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

promise of protection meant nothing. So I'm not questioning your motives and I wouldn't challenge you the way I did the lawyer because you don't operate under the same code of ethics. And I don't mean you're unethical, but lawyers are held to a higher and a different standard. So I'm not saying you should not use every method that you can, within the law, to apprehend those you think committed a crime. But I think it would be just as wrong if you tried to put pressure on a person to make him or her testify when that person is fearful and feels he or she cannot be protected because you cannot protect anybody. You will not give 24-hour surveillance indefinitely for somebody who testifies. I know people who were approached about testifying and they asked me what they should do and I say, why do you ask me? You have to go by what you think is best for you, and I can't tell you that, but I'll tell you this. If I told you to testify, I couldn't guarantee you protection and the police cannot either. And that's as much as I'll say. Now you use your judgment and you know things that have happened before, so I'm not going to ask you any questions unless you see a question in what I said. You can respond however you want to, but I'm not going to engage you in a back-and-forth.

AARON HANSON: Sure. Could-- could I respond to one thing?

CHAMBERS: Sure.

AARON HANSON: And I think it's-- it's more to agree with you than anything. It would be nice to be able to have that potential backup plan where-- you're right, Senator. I mean, speaking honestly, I-- I can't be everywhere in the city at once, 24/7, 365. I can't do it. But one thing I do know is that witness tampering, it-- it can either be a spontaneous incident which is one and done and maybe very violent. That doesn't happen very often. Or it can be progressive and building and it would-- it would be a benefit, from my professional perspective, in the event that we do get that phone call or we get that notification that we can prove that there is witness tampering, to be able to move right in, be swift, and end it. And I think that is one area where this tool would-- would complement that-- that-- that issue.

CHAMBERS: That's why I say I see your law enforcement function different from what I see with reference to that lawyer. So you must do what you must do. But I want people to know that there's a limit to what the police can do.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

AARON HANSON: Fair.

LATHROP: I have a question for you. So the bill covers tampering with evidence which would be-- that could be a Kofoed kind of a thing if you're doing something with the evidence and you're law enforcement or you're an individual that's trying to get rid of a gun or something like that.

AARON HANSON: Yes.

LATHROP: OK. Then we have jury tampering, which is less prevalent, although we've seen it recently, but it's not particularly prevalent. It's the witness tampering or intimidating people who may have witnessed, for example, a shooting.

AARON HANSON: Yeah, that is-- that is the portion of the bill that we're focusing the most on. Right. And tell us about the prevalence of that. In your experience, you-- you-- did you say you've been at it 22 years?

AARON HANSON: Yeah. Yes, sir.

LATHROP: Is this becoming more prevalent now than it was 20 years ago?

AARON HANSON: Boy, that's-- that's a tough one to answer. I-- my assignments have changed over the years, to be honest. I spent a lot of my time on the canine unit on the interstate, so we didn't have as much problem with witness tampering out there. But I can tell you since my promotion and as a supervisor on the street level and a supervisor in a gang unit, it has been shocking, to me, the amount of prevalence that-- that we do have today. And I can think of one example. There was a young man that was shot outside of a convenience store and the entire incident was caught on tape. He was hit. Luckily, it was a graze. We had really good evidence as to who it was and he would not prosecute. He was terrified of the repercussions, and this was not one of those where it was a force-on-force situation. He was literally your textbook innocent victim who just went to the convenience store and somebody saw him and they knew he associates with certain people and they took a shot. And I couldn't understand that as an individual. But then I put myself as a father and thought about my sons and if they had to live in fear of being able to stand up for themselves and use the system if they were shot at and wounded. I can't imagine that type of an existence. That's-- that's very sad.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

And-- and if this can help fill that gap, I hope we-- I hope we proceed.

LATHROP: I have to tell you that I started practicing law in 1981, spent a fair-- a little bit of time doing some criminal defense work maybe in the first five or so years. But I see-- it seems like I see the county attorney or a deputy county attorney being interviewed more frequently saying we had to dismiss the charges because the witness wouldn't come forward.

AARON HANSON: I have noticed that, too, especially in the years that-- in the recent years and I have been investigating and involved in violent crimes. Honestly, I'm-- I'm surprised at the number of standalone violent felonies that unfortunately have to be dismissed, oftentimes because of what is suspected to be the product of witness tampering or intimidation. It's very hard to prove.

LATHROP: Do you have any ability to prove that? In other words, is the same person that's intimidated going to say-- not even help you out with that one?

AARON HANSON: Unfortunately sometimes you're going to hit that-- that dead end in the investigation. Sometimes you're lucky enough to have physical evidence. Sometimes you're lucky enough to have recorded phone calls. Sometimes you're lucky enough to have people that will give you just enough physical evidence or testimonial evidence to get you over the line. But it's-- it's not an easy case in and of itself even to prove the witness tampering.

LATHROP: OK. That's all I have. Senator Chambers.

CHAMBERS: I'm going to say this for the record. I have been very upset at the way that black people will do things to each other. But that's not just in our community. Whenever you have depressed or impoverished people, they commit crimes against each other because those are the people they're around. There was a particular murder that had been committed, and I was talking to Chief Schmaderer, and there were people who were aware but all of them were afraid. I said, Chief, I'm not afraid and I want these people who use the guns and those who supply the guns to know that there's somebody who's not going run. I had a public television program and I always spoke against the guns, the ones who supply the guns, condemn the police for not finding the ones who have got the guns and supply them, because kids in the neighborhood knew who the suppliers were and I thought the police

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

should know. That's a little background. I said, Chief Schmaderer, you tell me who this person was who did it and I will say that I have information and I will tell what you tell me and let it originate with me and it can be publicized that Senator Chambers put the finger on this person. And the chief said, well, I know what you're saying but I can't do that. I was prepared to do it. And I know what people will do but, I'm not like all these other people who talk and won't back it up. When I say I'm concerned about my community, I mean it. When the story came out the other day about the guy was shot, a lady who knew me had a discussion with me. During the '60s I went down to the police station all hours of the day and night whenever a black person was arrested because police beat people up then. And here's what this woman told me. At that time The Godfather was playing. She said, Ernie, you shouldn't do that. I said, why not? Nobody else will. She talked about some guy named Sonny. I didn't see the movie. She said he was very protective of his sister and they wanted to get him, the other bad guys, so they indicated to him that something was happening to his sister and told him-- it was an anonymous phone call-- where it was happening. So he jumped in his car, went to her. He had to go through a toll booth and they trapped him in the toll booth and blew him away. And she said that's how they're going to get you, you're going to go down to the police station and the police know it. When this incident happened the other day, that was brought back to me again how people can be set up if they really are so caught up in the idea of trying to correct a situation that is really uncorrectable. They'll throw their life away. I wouldn't feel on throwing mine away, especially now. I don't have much time left anyway. I'm 82, maybe 40 years left. That's not much time. And I'm saying it to try to make you understand that I'm glad when the police do everything they can. If I were a witness, I would tell what I saw. But I know why other people won't. I don't want to leave here prematurely, but a point is reached where some people have to stand up. There are cops who have seen other cops do wrong and they won't rat on that cop, they won't be a witness, and they swore an oath to catch all violators of the law, but they won't testify against another cop. Why should a citizen who has nothing in the way of protection risk his or her life or family to testify in a murder trial and they'd just be left hanging out there? And people have seen things happen to people who witness, not necessarily that they were killed, but there was a price that they paid. So it's easy for you all to come here and say what ought to be done, and yet you all won't do it yourself. And that's not meant as an indictment. Maybe that's the way it sounds. But all people have lines that they're not going to cross themselves, but they want other people

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

who are more vulnerable to cross that line, and I don't do that. That's why I don't tell people to go out there and risk your life. I can risk mine. When we had demonstrations during the '60s, I wouldn't let kids join it. My children were not there. Nobody else's child would be there. But some ministers wanted children there because they said maybe when they see the children, they won't do bad things. I said that's crazy. And that's a long way around to get this point. I could have left my community any number of times. My name, phone number, and address are in the telephone book. Anybody who wants to find me can find me. I say that on the floor of the Legislature. They call in threats to the woman who works in my office. I told her don't even deal with it. And I say on the floor I'm not hard to find, I don't run, and I don't hide. When a threat was made toward me and it came from Norfolk, I didn't know who made it, but I went out there and I notarized, I publicized the fact that I was coming, and I'm still here. I'm not going to run. But if anybody else told me they'd do that, I'd say you're crazy. That's throwing your life away. But we live according to what motivates us. And if I didn't mean and believe the things I'd say, I'd have a cushy job, I would have left Omaha a long time ago, and had what would be called a place on easy street. I get so upset and offended by this kind of legislation, not that I'm mad at who brings it, not that I don't understand. But then when the repercussions come up, like the bad effects of mandatory minimums, I have to try to clean up the mess that somebody else left. They're like a baby who messes up his diaper, then somebody else has to wash it. They mess up the diapers, then I have to clean it up. After they've done what they're going to do, their hands are washed. Brad Ashford went on to the U.S. House of Representatives and the problems in my community, that what he did, remain. And as long as I live, I'm going to live in my community and I'm going to do the things that I do. And I have to oppose these things that you all bring here and try to head them off at the pass. And if I can't stop it in the committee, then I'll just stop it on the floor of the Legislature any way-- any way that I can. You've got a job to do, so do my-- do I. Mine is self-imposed, though, so I have a harsher standard to reach than yours because I know when I'm not doing everything I ought to do. You can know you're not doing yours, and if you don't get caught by somebody else, then it makes no difference. The difference between an honest man and an honorable man is that an honorable man will do the hard thing even if nobody's watching, and he will not do the wrong thing even if nobody would catch him. I'm an honorable man, according to my standards. There are honest people but they're not honorable. That's not referencing you, but just to indicate I know the hard job that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

you've got and I want you all to do it the best you can. But don't-- don't cross certain lines yourself. That's all that I have.

LATHROP: Very good. Thanks, Sergeant Hanson. Next proponent. Good afternoon.

GREG GONZALEZ: Good afternoon, members of the Judiciary Committee. My name is Greg Gonzalez. I'm an assistant police chief in Omaha. That's G-o-n-z-a-l-e-z; first name is Greg, G-r-e-g. So today on behalf of the police department, behalf of the chief, I'm here to support LB496. I don't want to belabor too many the points that Sergeant Hanson had already addressed, but I will tell you, having worked violent crime over half my career-- I've been in law enforcement 27 years-- it's not so much that, you know, we want to entice folks to come wit-- be a witness. But oftentimes the witnesses are faced with situations where most of the violent crime that they-- they're an eyewitness to, they know they witnessed it. And I would ask the committee to consider that because that's a big element. This is not-- this is-- these are not people oftentimes we go out and solicit for them to be a witness. It's because they've been eyewitnesses to the violent crime. And so police, as we go out-- and I worked homicide as well and I was a supervisor in the homicide unit. It really comes down oftentimes to they know they're witnesses. The bad guy or gal know they are witnesses. And so they're-- they're in this conundrum of what do I do? Do I testify? Do I not testify? And it's not really about monetary. Oftentimes, unlike some other cases, we-- we are at an all-time high, I can tell you because it came up, for Crime Stoppers rewards and actually doing our best to protect the human life of witnesses. And that-- that comes with some relocation pieces and elements that we don't need to really discuss here today, Just feel confident that we're doing our best to protect our witnesses because it is a real problem not only with witness tampering but jurors at times. I have a list of examples I can send you, probably not worth discussing really at this point. I would just tell you that it's a real fear for family-- families and the witnesses to be put in a situation where oftentimes they want to be rid of violent crime, so they do want to testify, but absolutely they don't want the risk of testifying to be minimized by the after effect of not only testifying but what-- what does the criminal element face if they testify? So if they're not facing consequences for folks to testify, then we're surely not protecting them and things that we can do legislatively to protect them. Police can only do so much, as Senator Chambers said, there there's no question. We can't be everywhere. We can only do so much. But this is not a drug informant.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

These are not folks that we're going out to solicit to testify. Oftentimes they're-- they're regular families that they're tired of violent crime, they've witnessed a violent crime, and they look to us oftentimes to do what we can do to put that criminal element behind bars. So I would ask you and urge the committee to at least consider that-- that-- consider that human piece of it. Not suggesting this is definitely the cure-all, but it's definitely a start to ensure that victims, juries, witnesses of violent crime really kind of have a little bit more stake in the system and they feel confident that collectively we're doing our best to protect them of violent crime. And that's all I have. I'm here for any questions for you.

LATHROP: All right. I don't see any questions.

GREG GONZALEZ: Thank you.

LATHROP: Thanks for your testimony today.

GREG GONZALEZ: Thank you.

SPIKE EICKHOLT: Good--

LATHROP: Good afternoon.

SPIKE EICKHOLT: Good afternoon, members. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association in support of the bill. Our association opposes increasing penalties. I've testified I don't know how many times, 10 or 15 times at least this session, opposing the increase in penalties. And to be frank, the portion of the bill that increases the penalties, our membership, we're not excited about. When Senator Wayne over the interim contacted me and explained he was going to do something with respect to witness tampering, you know, we made the decision at that point it's better to be involved in it than not. If you look at the amendment, AM750, the bill does a couple of things. Right now the penalty for witness tampering or evidence tampering or jury tampering is the same as a Class IV felony. It was a Class IV felony before LB605, which means before LB605, a Class IV felony was zero to five years. When they reclassified and readjusted the penalties, the tampering with evidence, jury, or witnesses went down from zero to five to zero to two. And since then, there's been a couple of bills that increase it, either increase it across the board regardless of the offense or increase it for evidence tampering and witness tampering differently, and our association has opposed this.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

Senator Wayne's approach, I would submit, is more nuanced and perhaps has little more rationality. The amendment increases the penalty for tampering with evidence or witnesses to a Class II felony if the underlying charge is a Class II felony or greater. In other words, if it's anything more serious than a robbery or a sexual assault or above, then the tampering with evidence in that case or a witness in that case is increased. Also, if it's a Class II felony or above underlying and you tamper with a juror, it's also increased. The amendment actually decreases the penalty for witness and evidence tampering if the underlying crime is a Class II misdemeanor or less. And Senator Wayne gave the example of that. If you look at the definition for tampering with evidence, it's quite broad, and our Supreme Court has interpreted evidence tampering to be something as simple as when you're pulled over by a police officer and you eat a little bit of marijuana, that's a felony witness tampering. This would reduce it down to a Class I misdemeanor if the lower underlying crime or that evidence tampering is a misdemeanor. The bill also makes some changes that our association supports with respect to what defense attorneys are entitled to as far as discovery in criminal cases. These are things that we've brought to this committee in years past. Senator Hansen did a bill last year. It broadened the discovery statutes. They've been opposed by the prosecutors and law enforcement because of their, at least, perception that that's witness tampering. That's the nexus. That's what Senator Wayne wanted to somehow bridge and brought the interests together. So on whole, we do support the amendment, AM750, and we do support the bill. And I'll answer any questions if anyone has any.

LATHROP: I don't see any questions for you this afternoon. Thanks, Mr. Eickholt, for being here. Any other proponents?

THOMAS RILEY: Good afternoon again, Mr. Chairman, members of the committee. Thomas Riley, T-h-o-m-a-s, last name Riley, R-i-l-e-y, Douglas County Public Defender's Office, and I'm here in support of the bill. Mr. Eickholt adequately, I think, addressed the feelings of the defense bar concerning the penalty section. What I'm here to address is something that we've been trying to get through the Legislature for years and that is dis-- handling the discovery issue. In Omaha, by and large, the prosecutor's office has an open-file policy and gives us most of the-- the police reports when they get them. My understanding is that across the state that is not the case and many prosecutors across the state hold that police reports are not discoverable, and the statute on discovery does not specifically make

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

them discoverable. This bill does make them discoverable and I think that that should be-- we should not be having trial by ambush in any part of this state. More importantly to me, the bill addresses a terrible problem that the Supreme Court addressed negatively on our side. And once again, I-- I don't like to do anecdotes, but I think this is illustrative of some of the problems. Basically, the police were handling a case where they hired the FBI to do cell phone location information; in other words, they-- they would get the information on a cell phone, determine where the cell phone was located. The FBI created a report, which was very incriminating to the defendant, as to having his phone near where the offense occurred. The Omaha Police also contracted with an independent party who re-evaluated the cell site location information and phone-- made a phone call to the police department and said that the FBI's report was incorrect. And the officer said, OK, well, then give us a report. And the expert said, well, you don't want me to really write a report because then you'll have to give it to the defendant. So they didn't write a re-- he didn't write a report and no one knew about it. The prosecutor didn't know about it. The police knew about it, but the defendant didn't know about it. Only by happenstance this same individual who did the re-evaluation was at a seminar in Omaha and the lawyer who was handling the case went up and tried to hire him to do a re-evaluation of the cell site location. And he said, I can't do that, I've already done it with the police department. And the lawyer goes, what? I didn't even know about this. Well, what happens is the-- the case proceeds to trial. He gets convicted. The defense lawyer appeals, saying that this was a violation of the discovery rule, and the Nebraska Supreme Court said, no, it isn't because the-- there was not-- the discovery statute only requires handing over written reports and since this was an oral report, that's-- it was-- it wasn't violation of discovery. And the only other thing I would say is that it satis-- it's satisfied Brady because he-- the defense lawyer found out about it before the trial started. This-- this bill, while I have some disagreements about the penalty section, I think, weighing the pros and cons, it's-- it's important for us to get the discovery portion passed. Any questions, I'll be happy to respond.

LATHROP: I do not see any, but thanks for being here--

THOMAS RILEY: Thank you.

LATHROP: --and your patience waiting to-- for the opportunity to testify. Anyone else here as a proponent? Anyone here in opposition to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

LB496? Anyone wishing to speak in a neutral capacity? Seeing none, Senator Wayne, we have one letter of support and that's from the Omaha City Prosecutor Matthew Kuhse.

WAYNE: Thank you, Chairman Lathrop. So I want to be clear about a couple things. In my community, the community that I share with Senator Chambers, there is a theme that snitches get stitches. That is talked about in rap songs, that is talked about with kids aging from three-- third grade through high school. This is a serious issue in my community. I am not former Senator Ashford. There is no stepping stone here for anything else. This bill, I went to Hilkemann and asked him if I can carry it, because this was actually brought before this committee in 2017. Prior to that, it was brought again in 2015, and prior to that it was brought again in 2010. As a criminal defense attorney, I know firsthand this is an issue. I used to represent a lot of shooters and that's in fact how I met Sergeant Hanson. I was known as the shooter attorney, not something that I sit here proud of, but I still believe that everybody should be defended and have equal rights before the court. During that time, I learned a lot about our criminal system. And as I heard and read about what happened to the LeFlore case, at no point during discussions and negotiations between Spike, defense counsel, defense bar and prosecutor Jensen was that case ever brought up, because like with everything that this committee is familiar with where last year any policy decisions I make, it's never based off a one isolated case but on numerous of events that happened. Kenyatta Bush-- when I was young, was murdered, she went to North High School, friend of the family, that was not prosecuted because of witness tampering-- Jarrell Haynes, Tyler Thomas, three other cases that are important to me that did not move-- move forward. I could think of multiple shooting victims, including the neighbor of my house, my parents' house, witness tampering. This is an ongoing issue. The fact of the matter is, is our laws should never incentivize somebody to break a new law, and that is what currently happens in our justice system, and that is something we have to change. If we want to give people the tools to help combat the violence in our community, I'm all for it. But as I approach any policy decisions, I went to the bar-- defense-- criminal defense bar and said, what are the pressing issues for you? Nobody fell in love with this bill and you heard that testimony. That's why I know it's the best bill. Everybody had to give to get, to make this better on both sides. And that is how we do, I think, as a body push forward the best bills. We have to close more murder cases, more robbery cases, more theft cases. And if this is a tool that can be used to help them, without mandatory minimums,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

because it matches the underlying crime-- and, yes, I'm against mandatory minimums. The fact of the matter is we created a better bill and a better policy. The young person who is smoking a joint walking down the street when a cop pulls up and he flicks the joint, that is a Class IV felony when the actual crime is an infraction under current statute. So when a kid goes in front of a prosecutor, they are being threatened today that they may turn that over to a prosecutor for a felony, a \$300 fine. That has to be affected-- that has to be fixed today. That affects my community. That is why this bill is so important to me, not just because of Master Sergeant LeFlore, but how many people I've seen get a \$300 fine that could have been charged with a felony, but luckily we are in Douglas County where they file 15,000 felony cases, it seems like, and they don't have time. But guess what? In Lancaster, they do. That's why I have a bill on residue. Douglas County doesn't file them, file residue cases, but everywhere else in the state does because they can, they have the time, and in no way should flicking a joint be a felony. So I'll work on amendments, but this is the best that we can do in the beginning of this session with multiple meetings from both sides to come up with a sensible and reasonable bill that gets at the heart of the issues that we're trying to solve. And at the end of the day, I hope the term or the phrase "snitches get stitches" is removed from our dialect. And if that means I have to bring this bill every year to get that to happen, then I will. And with that, I'll answer any questions.

LATHROP: I do not see any questions, Senator Wayne.

WAYNE: Thank you.

LATHROP: Thanks for bringing this to the committee. That will close our hearing on LB496 and bring us to Senator Pansing Brooks and LB131. Afternoon.

PANSING BROOKS: Good afternoon. Thank you, Chair Lathrop and members of the Judiciary Committee. I am Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28 right here in the heart of Lincoln. I am here today to introduce LB131 which would reestablish the one-third rule, a sentencing reform measure to help address our prison overcrowding crisis. I first brought this bill in 2015 to restore an element of sentencing policy that was previously in place from-- in Nebraska from the 1970s to the 1990s and worked effectively. I continue to believe that this bill should have made it into LB605 and was actually among CSG's recommendations, Council of State Governments' recommendations package in 2015. While LB605 had

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

important reforms, it has not resulted in the reduction in prison overcapacity that we had hoped to see. We need to do more on sentencing reform and that's why I bring this bill today. As we also know, we-- have until July 1, 2020, to get our prisons down to 140 percent of design capacity. If we are over 140 percent of design capacity at that time, an overcrowding crisis shall exist and the Board of Parole shall consider or reconsider committed offenders for suitability for accelerated release on parole until which time we are at operational capacity of 125 percent. Director Frakes has now indicated to us that he doesn't think that we will make it to the 150-- 140 percent level. Given these numbers, I wanted to offer the-- a little background on what led to this proposal before you today. In the 1970s, the Legislature began to change the correctional system in Nebraska to a model that was more treatment and rehabilitation focused. The Legislature amended the criminal procedure code to provide for a sentencing framework that allowed for those inmates who were sent to prison to work toward reforming themselves and assimilating back into the community after being rehabilitated once they are released from incarceration. The Legislature developed the "one-third rule" which provided the minimum sentence imposed could not be more than one third of the maximum sentence possible for the category of the penalty available. This one-third rule provided the offender-- that the offender would have time and opportunity for rehabilitation in the prison system before being paroled and would also ensure meaningful time for the offender to be supervised once paroled into the community. Inmates had the incentive to actively participate in constructive rehabilitation programs within the prison system so they were better candidates to be paroled when they became eligible. Additionally, the one-third rule still allowed judges to impose a significant maximum sentence for offenders to be supervised while on parole or incarcerated should such inmates not comply with the terms of their parole conditions. The one-third rule was the law in Nebraska from 1971 to 1993 when it was removed. We have searched the legislative history which provides little explanation for why that particular rule was eliminated and from what I've heard, it is pretty clear that the one-third rule was removed surreptitiously in an omnibus bill. Further, to bolster that conclusion, I would add that we have been unable to locate any record of a public hearing or any discussion on the floor of the Legislature concerning the removal of the one-third rule. We have now moved forward 25 years and Nebraska has the second most overcrowded prison in the country. Judges are imposing sentences with maximum and minimum sentences that are nearly identical, leaving very little time for meaningful parole, which

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

results in more frequent jam outs. According to the Council of State Governments Justice Center, in fiscal year 2013, 17 percent of people newly admitted to prison received a sentence with a parole window of one month or less or no opportunity of parole at all. The slim or nonexistent parole windows of these flat-- flat sentence structures ensure that these individuals will leave prison without supervision when release. In fiscal year 2013, 57 percent of flat sentences for-- were for terms of one year, which equates-- equates to a six-month length of stay in prison after good time is applied. Especially considering that 95 percent of people incarcerated in our state prisons will be released back into our communities, we should all be concerned by this short window of time for inmates to become parole ready. This bill doesn't purport to by itself solve the overcrowding crisis, although the numbers from the Fiscal Office from last year, which I have passed-- distributed to you, are highly encouraging. What this bill does do is set a framework whereby people can get the rehabilitation and treatment they need so they don't stay in prison longer than necessary and jam out and thereby entering back into our communities as less productive citizens, potentially more dangerous, and at a greater risk of recidivism. The Council of State Governments, during its initial report that led to LB605, showed that the minimum sentences have grown in proportion to the maximums, which has narrowed our parole windows. I have submitted page 36 of this report which shows that the minimum sentence length as a percentage of the maximum length has been decreasing. The average inmate will have only one chance at a parole hearing, according to CSG. The Justice Reinvestment final report also says the courts frequently impose sentence structures that allow no opportunity for parole or so short a period that it provides little chance for meaningful postrelease supervision or programming. LB131 will alleviate this problem, allowing more of those-- allowing more of those 95 percent of the individuals who are going to be released back into our community either access to parole so they can enter our society ready to-- ready to be productive citizens and not recidivate-- recidivate. In turn, it will provide a cost savings to the state and keep our communities safer. I want to add that in our-- in our first-- in my first year in the Legislature, I brought this one-third rule and it was unanimously passed out of the Judiciary Committee and put in LB605 by the entire committee. It was pulled on the floor later because everyone was so convinced that LB605 went far enough and that we would be able to lower our prisons just through LB605. Clearly we now know it didn't do-- that LB605 didn't do enough and clearly C-- the fact that CSG discussed the one-third rule, they discussed it for a reason and believed that it could help reduce

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

overcrowding, so again I'm bringing it back. When I brought this bill last year, the fiscal note estimated-- and if you can look at the fiscal note that I passed out to you from last year, they-- they indicated last year that 660 inmates would be placed on parole that year because of the-- this bill. The fiscal note thus showed a cost to Parole of \$2,209,290. However, this was dwarfed by the cost savings that they also mentioned which was \$13,271 per inmate for a total of \$20,638,860. The differential would be more than \$5.7 million in saving to the state each year. So according to last year's fiscal note, this could have moved our state, and it says in the note, to 136 percent of design capacity. We're past that now because we've gone another year. But you'll notice the same agencies this year didn't provide the same information for this year's bill, even though the bill is exactly the same as last year's. Perhaps they thought something revealed too much last year. I don't know. Finally, we've heard complaints with the one-third rule that inmates will be released earlier when actually it's a mechanism to get the Parole Board-- to get the inmates before the Parole Board who will then clarify the programming necessary before release. In addition, the question of good time has-- has caused some county attorneys to question the ability of judges to appropriately sentence and to-- and to sentence at the high enough level. I believe when given a hammer, everything looks like a nail. We all have complicity, the Legislature, the executive branch, the prosecutors. Everyone has some role in helping this overcrowding problem to-- to be averted. And so claiming that the sky is falling and that something that worked for 20 years all of a sudden won't work now, I think, is at least-- is-- is disingenuous at best. So in closing I would ask you to advance LB131. And with that, I'm happy to answer any questions.

LATHROP: Senator Chambers.

CHAMBERS: I just want to clarify something because I was here when that surreptitious act took place, and people who were not here might wonder how could something as important as the one-third rule be repealed without anybody knowing it. Well, we had a very slippery, slimy, unethical Attorney General named Don Stenberg, who was working with a former senator named Carol Pirsch. And in this omnibus crime bill, as they called it, there were any number of statutes in the repealer clause, and that particular section of statute was outright repealed. And if you read that repealer clause, you would not have examined each section mentioned because we don't do that now. When it was exposed what had happened and brought to their attention, Don

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

Stenberg was almost gleeful in having put one over on the Legislature and said he and Carol Pirsch would not do anything about rectifying that. And I wrote a very satirical rhyme about it at the time. If I can find it, I'm going to show you. And this is why we on this committee cannot take anybody at their word when they tell us what a particular piece of legislation will do. I'm not in a situ-- position where I can do it on every bill, but the bills that I have an interest in, I will take apart, so to speak, as I'm doing today. But that's how that was done. It was done knowingly, it was done intentionally, and Stenberg admitted after the fact that he knew what was going to happen. But they would not correct it, and we've never been able to get it reinstated. And if it was such a bad principal and had-- and if had it had such a negative impact, it would not have stayed in the law all of the years that it did without any problem. And you covered the subject well enough for me not to have to repeat anything that you said, but I just wanted to make that point clear.

PANSING BROOKS: Thank you, Senator Chambers.

LATHROP: If I can, just to clarify something, so if we have the one-third rule and somebody gets three to nine years, they would be eligible for parole at three and jam out at half of nine.

PANSING BROOKS: If they get three to-- three to nine years? It depends on the sentencing, I presume, that if it's three-- so they would go before the Parole Board. The Parole Board would then decide whether or not they had met their sentence-- their programming requirement.

LATHROP: The idea behind this is, is that the lower number will be the first parole eligibility date.

PANSING BROOKS: To go before the Parole Board.

LATHROP: Half of the top number will be the jam-out date, assuming they don't have any good time taken away.

PANSING BROOKS: Yeah.

LATHROP: This was also a Council of State Government recommendation.

PANSING BROOKS: Yes.

LATHROP: OK. I don't see any other questions. Thanks, Senator, for the--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

PANSING BROOKS: Thank you.

LATHROP: --introduction of LB131. Proponents?

THOMAS RILEY: Three strikes and you're out?

LATHROP: Good afternoon.

THOMAS RILEY: Good afternoon.

LATHROP: No, we appreciate you being here, by the way, so--

THOMAS RILEY: Thank you. Thank you. Mr. Chairman, members of the committee, I-- my-- my name is Thomas Riley, T-h-o-m-a-s R-i-l-e-y, and I'm here on behalf of the Criminal Defense Attorneys Association and Douglas County Public Defender's Office in support of LB131. I've been in the public defender's office since 1975, so when I started, the one-third rule was in effect. And for instance, a robbery case, if the judge wanted to max you, you would get 16 and 2/3 to 50 years. You would be parole eligible based on the 16 and 2/3, and your jam-out date would be based on the 50. Senator Chambers' and Senator Pansing Brooks's recitation of the history of this being repealed is 1,000 percent spot on. I-- I was aware of the omnibus bill that you both were referred to. And we woke up the next morning and someone just put a line through that-- that repeal section and all of a sudden we wake up the next morning and instead of 16 and 2/3 to 50, you're getting 49 to 50. And don't think by any stretch of the imagination that that is not the kind of numbers that are being doled out because they are. I've seen numerous times when they've given 50 to 50, which totally defeats the whole purpose of the corrections system. I think that the reinstating the one-third rule, I talked earlier about how I like to have judges have discretion, and I'm not talking out of both sides of my mouth. I think there's a difference between a judge having discretion to put someone in prison versus putting them on probation is a different thing from limiting their discretion by-- by the numbers. We're not saying you can't put someone in prison. We're just saying you're not going to be able to lock them up and throw away the key. One of the big components of the criminal justice system as it's been designed is for parole and parole eligibility, and this current system that we have totally defeats that. I was on the-- that committee that Senator Pansing Brooks made reference to and Senator Lathrop made reference to, and it was basically in response to the overcrowding of the prisons. And you can go right back to 1993 and work forward and find out, see the graph go up on-- on the prison

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

population. And the recommendations to decrease the population was, number one, get rid of mandatory minimum sentences; number two, go back to the one-third rule; number three, do the postrelease supervision. The postrelease supervision they sold to us on this committee thing, they were going to decrease the population in prison by about 18 percent I think in two years. And when the two years was up, the-- the decrease in the population was about eight people. So LB605, as well intended as it was with the postrelease supervision, did not nearly achieve the goal that it was designed to do. And I see the red light is on.

LATHROP: I don't see any questions. I appreciate the testimony.

THOMAS RILEY: Yeah. Thank you.

LATHROP: Thanks for being here. Next proponent.

SPIKE EICKHOLT: Good afternoon, members of the committee. My name is Spike Eickholt and-- S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska in support of the bill. Senator Pansing Brooks explained the bill. It's pretty straight-- straightforward. Mr. Riley also explained the history of how it was repealed and I-- I know it seems perhaps-- the point is not necessarily to be petty, but we-- we made a significant sentencing structure change without a real comprehensive debate. It was before my time practicing and actually before my time working here. But when I worked here, one of the first things Senator Brashear told me was read everything, including the repealer clause, because even though that was several years after that, it was still on everyone's mind who was in the body. In 2015, the Council of State Governments came in here and essentially looked at our sentencing scheme and you've got the CSG report. You can easily find it if you don't have it now. But one of the features of our system was our problem with flat sentences where people go to prison and are essentially released. And sometimes there were problems not only with flat, relatively short sentences and then also flat, lengthy sentences, and so the recommendations from CSG was in a couple of bills. One of them was LB605. LB605 focused on the low-level felonies that created the postrelease supervision scheme and those sorts of things. There was another bill that Senator Pansing Brooks had introduced to reinstitute the one-third rule. It all ended up essentially at a standoff on the floor with primarily the prosecutors and the Attorney General opposing that. We all ended up in the Hruska room across the street at a debate and essentially the consensus was just to jettison Senator Pansing Brooks's one-third bill because it

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

was going to jeopardize the LB605 bill. And there was some loose talk about perhaps revisiting the issue once we see how things go with LB05. And you could argue that the intended or anticipated results of LB605 have not been successful. But ultimately what this does, it simply provides for a mechanism where people are parole eligible sooner on these significant felonies, on the indeterminate, more serious level felonies. It doesn't mean you're going to get paroled. Our Parole Board doesn't have a problem saying no. I mean you've got almost 1,000 people in prison now who are parole eligible. It just means you're going to go in front of the board. And logic and science will tell you that if you are-- if you're an offender and you can see that date that you can be out or be in front of the Parole Board you're just going to be a better inmate, you're going to actually strive for rehabilitation. You may be told no more and more times, but you're not going to have these situations where somebody is in prison for 18 years to 20. And you heard I think Ms. Cotton testify earlier this year. They've got, what, a year on parole? They're just going to say forget it, and then we have that same problem that CSG was meant-- that LB605 was meant to address, and that is where people will go to prison and the only thing they learn when they get out is perhaps this notion of not going to get caught next time. And that just as high reoffense rates and it really hasn't done anything for the prison population. So for those reasons, we'd encourage the community to-- to intro-- to advance the bill. You know, if it's not one third, then maybe it needs to be one half or maybe we can do it for some of these different felonies. We should try something, as Senator Pansing Brooks explained, because doing what we're doing now doesn't seem to be working. Thank you.

LATHROP: OK. I-- oh, Senator Wayne's got a question.

WAYNE: So do you know who this affects the most as far as sentencing ranges? Because I just had a sentencing and that was actually a conversation we were having back in the chamber is, is it the two to four, six-- is two to-- two-to-four people who are being sentenced or is it the three-to-six people who just-- they can't get the parole because it's too short and they can't get programming. So, I mean, who-- what range is this affecting the most? Or is it the high-number people?

SPIKE EICKHOLT: I think it's the IIA felonies and above, so it's the burglaries, it's the possession with intent to deliver, not a lot but just more than just user amount. It's those people.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

WAYNE: Your longer sentencing people?

SPIKE EICKHOLT: Yeah, and you've got the same problem of flat sentences where you'll see sentences, and you've seen it before, where you've got 15 to 16 years.

WAYNE: Right. So I guess I'm trying to figure out what to do with them two to four sentences. It seems like that's-- that's my problem now because the people who I represent who get that two to four, they're-- they're there for four. They're just--

SPIKE EICKHOLT: Righty, they're not getting paroled. That's--

WAYNE: They're not getting-- I mean they might get out early maybe for good time but it's-- they're not getting programming, they're not getting-- because everybody says, well, you're-- you're only going to be here for that long and programming starts every January so you're going to miss that one, and so it just seems like we have a lot of three-to-sixes, I guess, just sitting there not doing anything for three years and then they get out and we're right back where we are. So I don't know. I'm just trying to think of something.

SPIKE EICKHOLT: I mean, the judges have some discretion now. There was a judge, who is retired, district court judge in Lancaster County, and you'd see a two-to-ten sentence. He'd do something like that and it was deliberate, so you go to prison for a while, then you'd be on parole for a long time. He had a very low number. You just don't see that as much.

WAYNE: Would you-- would you or do any of your studies show that since LB605-- have you-- are you seeing longer sentences? Because it seems like who I represent, and maybe it's just me as a bad attorney, they're just getting longer sentences, I mean 12 to 20 for some things, and I'm just not understanding it.

SPIKE EICKHOLT: What you're seeing with LB605, I've seen, you see a lot of maximum sentence--

WAYNE: Right.

SPIKE EICKHOLT: --or you see people getting the full two years and then they're getting the-- the maximum term of postrelease supervision. They're just getting everything they could possibly get.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

WAYNE: Thank you.

LATHROP: Thank you for being here. Appreciate your testimony. Anyone else here in support of LB131? Anyone here in opposition?

COREY O'BRIEN: Good afternoon again, Chairman. Members of the Judiciary Committee, my name is Corey O'Brien. It's C-o-r-e-y O-'-B-r-i-e-n, and I'm the criminal bureau chief in the Nebraska Attorney General's Office, representing the Nebraska Attorney General's Office in opposition to LB131. Again, one of our chief concerns is that this bill needlessly compromises public safety and will not make any significant difference in our prison population. For starters, let me address the one-third rule and the history. One of the things that was not addressed is that when the one-third rule existed back in the '70s and the '80s, the good-time provisions were far different than they are today where people are getting day-for-day good time. Back in those days, they were getting anywhere from three to ten days of good time per month. And so that is a significant departure when now they're getting day-for-day good time. One of the things that's really concerning is that certain offenders just have demonstrated an ability not to live a lawful existence outside of prison walls. And for those individuals, no amount of rehabilitative efforts or obtaining parole is going to be different, is going to be effective for them. And so there are certain judges that recognize this and they say, you know what, I need to keep you from hurting this victim, I need you from hurt-- I need to keep you from molesting this victim, and so I'm going to impose a sentence of 19 to 20 years. One of the other things that I wanted to address is that when we negotiated on LB605, the reason LB605 contained the provision on the one-third rule was to give an incentive to prevent jam out. And I think we all stand unanimous in that we do not like jamming, but implementation of the one-third rule is-- is reckless in that respect, in our opinion, because, again, it deprives the judges the opportunity to sentence those offenders that molest somebody or-- or traffic somebody from keeping those-- for those victims. For instance, on a 20-year sentence, under the provisions of the one-third rule, the bottom number would be 6 and 2/3 years to 20 years. Under our current good time, that means that they'd be eligible for parole after three-- three years and three months. A lot of times that's not enough time for those offenders to even obtain rehabilitative services, and it's definitely not enough time for the victims to not live in fear. And I don't think we're being genuine when we say, you know, the maximum penalty here is 20 years but the most this offender can do is-- is 3

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

years. The last thing that I want to say is that we think that it's counterproductive to change penalties, to promote a change in the population. In 2000, we changed the one-- we implement-- implemented the one-third rule for Class IV felonies. That made absolutely no impact and, in fact, raised our numbers of Class IV felonies doing prison time. So we don't believe that it's going to make a difference. And I'd ask this committee to take a look at what Texas did and how Texas reduced its prison population by 27 percent, closed eight prisons by not changing a single penalty. And we think that we can do the same here without compromising public safety. We'd ask you not to advance LB131.

LATHROP: I may have misspoke when I was talking to Senator Pansing Brooks. So your parole eligibility date is half of the low number? Is that what your testimony is?

COREY O'BRIEN: Your parole eligibility date is always halved either the minimum, the low number--

LATHROP: Half of the low-- half of the minimum?

COREY O'BRIEN: Half of the minimum and half of the maximum, they're always halved--

LATHROP: OK.

COREY O'BRIEN: --unless it's a mandatory minimum.

LATHROP: And I misspoke and I-- I'm glad you clarified that. Last week, we-- you were before the committee and you indicated you felt like it was important for the Attorney General's Office to offer opinions on policy and you come here regularly and we appreciate it. Here's the-- here's the problem this committee has, OK, and that is the Governor-- the Governor's budget proposed building 184 maximum-security prison beds that won't be done for three years, assuming that we authorize that, and in the meantime we have a prison overcrowding emergency that we're looking at of July 2020, so a little more than a year from now. We are at 160 percent capacity and we need to be below 140 percent capacity or the Parole Board needs to start letting people out until we get to 125 percent of capacity. And so when we have these bills that come before the committee where they're designed in some manner or another to address the issue, and then your office comes in and the county attorneys and law enforcement, believe me, we appreciate your perspective, but we-- we-- we're not the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

executive branch, so we're not running the prisons. All we can do is make policy. Who do you want us to let out in July of 2020? Like all these-- every time-- every time we have a bill, you say we-- you're going to compromise public safety. And I got to think-- I got to think that from our point of view, we're concerned that we're going to compromise public safety in July of 2020 if we don't do something because it's clear the executive branch isn't doing anything and no one can build a prison fast enough to take care of the problem. So tell us what we should do. If this isn't the answer, tell us what the answer is so we know what we can do from a policy perspective because we can't get a prison built fast enough and we're staring down a-- an overcrowding emergency in a little over a year.

COREY O'BRIEN: With all due respect, I'm not a policy guy. I'm-- I appear here today as a prosecutor and I appear here as a prosecutor because we are often blamed for enforcing our laws and that we created a situation. And I'm here to try to educate you that it's not the laws that are responsible. Nebraska has the ninth lowest per-capita incarceration rate in the entire country.

LATHROP: I understand that. I understand that. But that-- that doesn't-- so you're telling us today, though, and I respect the people that are-- the fact that you're here and the two guys that are on deck that are going to testify presumably similarly, but it doesn't help us. Like for you to say don't do this because it's going to compromise public safety, we've got to let a lot of people out. And I've sat down with the Parole Board Chair and said, this deadline's coming up, do we have enough parole-eligible people to get below 140 percent of capacity by July 2020? And the answer is no. And when that happens, their responsibility then is to go through the list, comb through it, and get it down to 125 percent of capacity, and they're-- we're not building our way out of this problem, and who do you want us to let out?

COREY O'BRIEN: I'm just telling you, look at-- look at the state of Texas. They cut their prison population and they closed eight prisons without--

LATHROP: OK. What policy-- what policy can we enact to-- to do whatever Texas did that we haven't done? What is that, Mr. O'Brien?

COREY O'BRIEN: Let's look at rehabilitative programs. Let's look at reintro-- forms for-- reforms for reintroduction, community

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

programming, investing in drug courts. Again, I-- I'm here telling you that, you know--

LATHROP: No, I know. I know you are. And I'm-- believe me, I am not criticizing you or the people that are going to come up here. But when you say put money into programming, you know what, when we had the director in here and when I've talked to the head of Parole, they said we don't have a problem, we got enough programming. Honestly, I don't believe it. And when we talk about putting the resources into the very things that you're talking about, we can't get it into a budget. We don't have the means or the money or the will to raise the revenue to do the things that you're talking about. And-- and this-- this committee-- this committee feels responsible for making some effort from a policy point of view to get us to 140 percent or 139.5 percent by July of 2020 and-- and no one's given us a policy answer to it.

COREY O'BRIEN: And--

LATHROP: And you are--

COREY O'BRIEN: Sorry.

LATHROP: Admittedly, you came in last week and told us that the AG Office-- AG's Office feels some responsibility to give us advice on policy, and I'm looking for some.

COREY O'BRIEN: I guess the one thing that I would say is that, again, we're all on this together and we remain committed to trying to-- to work through these solutions. But I'm hoping that the members of this committee will think through their actions. And one of the fears that we have is that we're going to turn our prisons into a revolving door. Sergeant Hanson will tell you, you know, since LB605, how quickly they see the same people that they put in prison last week back on the street again. Is that really solving the problem if they end right back up in Tecumseh a month later? And so that--

LATHROP: Clearly not--

COREY O'BRIEN: And that's-- and that's-- again, part of our fear is, are we going to do that--

LATHROP: But wasn't LB605-- wasn't the idea behind LB605 is that we would with the one-third-- with the one-third rule, we would have more people-- by the way, they said we need to make a better commitment to providing programming, but that we would have more people out on

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

parole, they would have this tail and people would follow them, ideally they would get the-- the programming while they're in prison, which apparently isn't happening, and then we would follow them when they got out and-- yeah.

COREY O'BRIEN: Well, I--

LATHROP: Well--

COREY O'BRIEN: And one other thing-- can I--

LATHROP: --here's what I would like you to do--

COREY O'BRIEN: I'm sorry. Yes.

LATHROP: --and I'm being very sincere when I say this, because I see we have the Omaha Police officers and we have the county attorneys up next, I'd like you guys to tell us what you'd like us to do, because honestly we need to do something or it's going to become indiscriminate and we're going to turn it over to the Parole Board to indiscriminate-- not indiscriminately-- try to pick through people. And I can tell you, I've talked to Ms. Cotton and she says, I don't have the people to put out on parole that will get us below 140 percent. And if you guys have an idea who we should be moving along or who we shouldn't be putting in there or who shouldn't get the sentence as long as they're getting so that we can address this problem, because I also don't see the will-- if they won't hire the psychologists and the people to do the programming over at the prison, this outfit isn't going to pay to build another prison. We might get \$49 million to build a maximum security, 184 beds. That doesn't even solve the problem. And I don't know how we're ever going to staff it. Right? So I appreciate your input on policy, but I'd really like you guys to put your heads together and tell us what you want-- what you'd like to see done because telling us what you'd that-- that every-- every idea that comes before the committee isn't going to-- you know, we're going to sacrifice public safety and what-- I don't know what to do. I-- I've studied Corrections four years ago very extensively. I've gotten a good education in the last couple of months. The committee wants to do something. We want to do something to help solve the problem, not let people out. This isn't some lefty idea that we want to start being soft on crime, but we got an overcrowded prison and we've got to figure out how to get the population down or, you know, Judge Rossiter is going to be running the place.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

COREY O'BRIEN: Thank--

LATHROP: Right?

COREY O'BRIEN: Thank you, Senator.

LATHROP: No, I-- I-- I'm--

COREY O'BRIEN: No, I mean I appreciate your--

LATHROP: That's a sincere offer--

COREY O'BRIEN: I appreciate your genuine concerns and I-- and I get it and I share those-- I share the concern that we do what's right for the people of the state of Nebraska and, you know--

LATHROP: So does this bill get better if we do half?

COREY O'BRIEN: I don't think it gets you where you--

LATHROP: Does that become a workable bill?

COREY O'BRIEN: No, it doesn't get you where you want to be. It doesn't-- it does not-- it will not solve the problem.

LATHROP: OK.

COREY O'BRIEN: There are-- there are other solutions that we need to start considering outside the box. And again, I refer you back to Texas and they did not reduce a single penalty and they still were able to close eight prisons.

LATHROP: Yeah, that was the whole Justice Reinvestment and, again, that requires an investment at the front end. Right?

COREY O'BRIEN: And ultimately what LB605 ended up being was elimination of penalties and the populations--

LATHROP: Well, we stuck a bunch of people in county jails--

COREY O'BRIEN: And the populations--

LATHROP: --and it still didn't affect our-- our population. OK. I don't mean to be argumentative. And that's a sincere offer to you and those that will follow because we've got to do something. We've got a little over a year and something needs to be done. Any other

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

questions, comments? OK. I see none. Thank you for being here. Good afternoon.

AARON HANSON: Good afternoon. Chairman Lathrop and members of the Judiciary Committee, I am Aaron Hanson, A-a-r-o-n H-a-n-s-o-n. I am a police sergeant with the city of Omaha Police Department and representing the men and women of the Omaha Police Officers Association here today in opposition of LB131. I have to tell you that as someone who is professionally passionate about this issue, I love having-- I love hearing this discussion. These issues need to come to a head. And you had asked the previous speaker what can we do. Well, we could build a time machine if we really wanted a fix. And that's not to be flippant. That's true. This has been an issue. It's-- the can has been kicked down the road for too many years and my organization has been beating on the glass for multiple years talking about the need for rehabilitation, additional prison space, if needed, as a two-part combination, and that's because we have direct contact with the folks that end up in these prisons and their families and we have contact with these folks when they get out. And my members are directly involved and very passionate about many programs that are-- that have an emphasis and a-- and a goal of trying to address the overpopulation problem by getting to the core of why they're there in the first place. I've heard a lot of discussion about why LB605 didn't work. I have an opinion, and that's because it dealt with the problem from the wrong direction, just like one-third rule does. We need to help folks that find themselves in a challenged lifestyle, who find themselves in prison. The answer is not simply to get them out sooner. The answer is to make sure that we are investing heavily in rehabilitation while they're in prison and ensuring that they're engaging in that rehabilitation, and then once they've served their prison sentence, that we know that there is an appropriate term of supervision on the back end, whether that be parole or postsupervised release. I can tell you that a lot of the young men that we deal with, they are severely lacking in the soft skills to get that job that will keep them out of prison for a multitude of reasons, whether it be upbringing, their generational challenges with their parents, or addiction or just bad choices that got them in a bad-- a bad position in life. It's not simply releasing them earlier. Just doing that will result in them being back again. It is dealing with those core issues that result in them returning, and I'll give you an example, two examples. Manslaughter case, we work on some very difficult manslaughter cases in the-- in the police department with the county attorney. where we have to look at these families and they know

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

they're facing a zero to 20. The one-third rule is going to bring that parole date down to essentially three-and-a-half years, even if they get topped out on the maximum. And secondly, to your question, Senator, who do we release, I don't know because I've put people in prison for marijuana distribution because that's the only thing we could convict them of and we knew that they were out there shooting people and couldn't get people to testify so we can put them in jail for that. It is extremely difficult problem and I'm here to answer any questions that I can from my street perspective to help.

LATHROP: Yeah, well, the first one I would have, though, is even if we made the investment in the programming and the rehabilitation that you're talking about, if the courts are handing out sentences that are nine-and-a-half years to ten years, no one's going to take advantage of it. Right? They're just going to wait and jam out.

AARON HANSON: Well, I--

LATHROP: Isn't that really sort of-- now maybe this is too short. Maybe the one-third rule doesn't work and it needs to be half or something. But we have to-- even if we put the programming in place, which I still don't believe is there, we have to incent them to do it, don't we/

AARON HANSON: We do. And I do believe that good time should be actually connected to engagement in those type of rehabilitative activities in the prison. And this is just someone that deals with these young men and women once they get back out--

LATHROP: Right.

AARON HANSON: --someone that tries to help connect them with employment, someone that talks to employers to advocate for these young men and women to try to give-- take the chance to give them a good-paying job. And the very same reasons why the employers either don't hire them or will hire them but know they're only going to be around for a month, is the same exact reasons why they're in prison in the first place, those lack of soft skills, those lack of-- of-- of skills that help keep them out of prison and keep them employed. They need structure and consistency while they're in prison, and then they need that rehabilitation and the supervision once they're out if they're truly going to stay out.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

LATHROP: OK. I appreciate that. And I know we've had conversations before your testimony. I know your concern is sincerely held. Senator DeBoer.

DeBOER: I just wanted to kind of ask you about something that you said that, I don't know, maybe you were just kind of speaking loosely, but it-- it raised a flag in my head. You were talking about that you've convicted someone for marijuana distribution but you know that they're out shooting people. Was the implication then that they should somehow be treated in prison as though they were a convicted killer? Because it seems that even though it may be difficult for you to prosecute them as a killer, we can't put them in jail as a killer if we convict them as a marijuana distributor.

AARON HANSON: And obviously, Senator, that's not-- that's not what we did nor what-- what my point was. My point was that when we ask who do we release and for what offense, all offenders who are convicted of the same offense are not all the same. That's my point. In those cases, you-- you're exactly right, Senator. We will have offenders that we know are committing violence that we just-- we can't-- we can't arrest them for those serious crimes for whatever reason. If we can get them on a different crime, whether it be a societal crime or drug distribution crime, possession of a firearm crime, we will take that opportunity--

DeBOER: I--

AARON HANSON: --and we will see that crime rate dip as a result.

DeBOER: I mean I get that, that we-- you know, we put Al Capone in for tax evasion or whatever, right? [INAUDIBLE]

AARON HANSON: It's a great example.

DeBOER: I-- I get that. But on the other hand, like there's a certain amount of integrity to our system that requires us to treat those people for-- you know, according to this-- the crime that we actually convict them on, because what if it-- what if it was not actually Al Capone and they got him on tax evasion? I mean, you know--

AARON HANSON: And to your point, that-- that example that I gave you, that young man, he got four to eight years, whereas, if we could convict him for the shooting of the-- or whatever other violence we suspected, he'd be in for much, much longer than that. So your point

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

is right on, and we are dealing with it as the convicted crime in front of us. But we are not going to give up on any tools or opportunities that we can to make sure that we are addressing someone that we believe to be a violent offender on the street.

DeBOER: I understand that. And-- and to your point about programming, we've heard in this committee time and time again that there are certain folks who will refuse to do their programming, that they aren't interested in their programming, or the programming fails for whatever reason. I know that's not the case all the time, thank goodness, but there are those folks for whom programming is not successful. So especially to those who refuse to do it, I mean, I think that's what we're kind of talking about here. If you have a six-month variation between your parole date and the actual date of your jamming out, there is, you know, very little incentive to actually do the program that you want to have happen so that these folks learn, I think you called them, the soft skills, right, so that they learn the things that they're supposed to learn. So isn't-- I mean I would almost think you would be in support of a bill like this that would, you know, incentivize the kind of rehabilitative programs that you say are going to actually help us not just to lower our prisons. That's one thing and maybe that's an issue we declare-- you know, we sort of decide differently, but-- our-- our population numbers, but also to sort of actually rehabilitate people and get to those core issues.

AARON HANSON: So are you telling me-- did I misread the bill and-- and this makes good time earned based on the one-third rule? I didn't read that language in there.

DeBOER: No. No, but the dis-- as it is now, and maybe I'm wrong, as it is now, there are certain situations in which the parole eligibility date is so near to the jam-out date that there's no incentive to do your programming.

AARON HANSON: Well, that's-- that's a problem in and of itself. And I can tell you that we've experienced a lot of situations lately, especially in Omaha, where we have seen people be paroled who, looking back with the luxury of 20-- 20/20 hindsight, you could argue they maybe shouldn't have been. I don't-- I didn't see the fact record in front of the Parole Board at the time. But let's be honest, the Parole Board is under an incredible amount of pressure to put people out, and we have seen violence and murders happen at the hands of some of those parolees. That's always going to happen. I'm not naive. But let's be

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

honest. There is a ton of pressure on that Parole Board to move people out of that prison.

DeBOER: So we should probably incentivize the inmates as much as possible to do as much programming for rehabilitation as we can.

AARON HANSON: By making good time earned, I would agree with that 110 percent. If that means simply releasing people earlier without incentivizing them engaging in the rehabilitation, that is going to be problematic and they're going to end up back in prison.

DeBOER: I think you and I agree that we want to incentivize people towards programming and then how we do that, we may have to think about. Thank you.

AARON HANSON: Thank you.

LATHROP: Thanks. Appreciate it, Sergeant.

MIKE JENSEN: Members of the committee, Mike Jensen, deputy Douglas County attorney, on behalf of the Nebraska County Attorneys Association, M-i-k-e J-e-n-s-e-n. Essentially this bill is before you to say we need people to get lower sentences, right? We're looking for a way to do that. As you're aware, Douglas County, we-- last year I think it was somewhere around 4,800 felony cases that were opened, the year before that, 4,500. We've been in the 4,000s for several years. When I first came on, it was in the 3,000s. You know, population is increasing, especially in Douglas County, in just the percentage and in the numbers, and we work in the same old building. But we're not sending 4,800 people to prison. OK? And I guess if you're looking to incentivize what other courts could do, diversion programs, right-- that's an easy one-- drug court programs, mental health court, young adult court, these alternatives that you can have rather than to send someone down to prison. It's often said it's very hard in Douglas County to get sent to prison because there are a number of alternatives that we try to work with to send you somewhere else other than prison. And I know others have spoken about these large sentences that they see. I guess I would respectfully disagree. There are a number of small sentences that happen in Douglas County because the judges realize we're in a crunch. They-- they have heard your message on LB605 loud and clear. Like Mr. Riley said, two years in, eight butts is all we've gotten and what has happened is that Douglas County, we've got them sleeping on the gym floor. You've-- you've pushed it down to the county level. I appreciate the difficult

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

position that the committee is in, but necessarily, just arbitrarily across the board, lower sentences across the board, make that first number one third, I don't think it's the wisest decision. You know, if you're going to invest, continue to invest in I guess mental healthcare, the Douglas County Jail shouldn't have to be the number-one place you go to get mental healthcare. I think a lot of people wouldn't end up in our prison system if we had a readily available place they can go for help. But in Douglas County, that help ends up being the Douglas County Jail. We're not built for that. We're like that-- that last line. We're-- the-- the criminal justice system isn't meant to take care of all these other ills of society that have led you to a life of crime. You want to invest money? Invest in the first three years of life, make child care readily available for people who are working out of the home. You know, these are the kind of things if you can get to the problem much earlier, then we're not talking about having to send people to prison. There's always going to be bad apples. The last thing you want to do is send that bad apple back out, though, and spoil the bunch who are starting to grow into good human beings. That's all we're asking. Think before you just cut it down to one third. I'd take anybody's questions.

LATHROP: I don't think I have any questions, Mr. Jensen. You know, you can see our frustration and, you know--

MIKE JENSEN: You-- you've been in the--

LATHROP: I wish we had the resources to do what everybody's now suggesting we ought to be doing but--

MIKE JENSEN: You've been down to the same building I work in. We're all packed into the gills. There's--

LATHROP: Right.

MIKE JENSEN: --never enough money.

LATHROP: OK. Thanks for your testimony.

MIKE JENSEN: Thank you.

LATHROP: Anyone else here in opposition?

STANLEY MALONE: Hi. My name is Stanley Malone I'm-- I'm representing myself as neutral.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

LATHROP: OK.

STANLEY MALONE: OK.

LATHROP: Can you spell your name for me, sir?

STANLEY MALONE: My last name? M-a-l-o-n-e.

LATHROP: And your first name?

STANLEY MALONE: Stanley, S-t-a-n-l-e-y.

LATHROP: OK. Very good.

STANLEY MALONE: OK. I came to Nebraska in '92 and I kind of like Nebraska. OK, and now I'm in your system. And as far as programs, I tried to go through a couple of your programs. And with me, it was like the people that you have running your programs are like, I don't know, people who have been addicts and stuff like that but they have no feelings. I mean, if you want me to go through a program, I want you to understand how I really feel. OK, I don't want you to just be there just to be a-- get a paycheck because addicts, everybody else have feelings, you know. And as far as the jail system, 2014, I was put in prison for strangulation and assault on a confined person, OK, in-- first time in prison in Nebraska, but in Delaware, we don't have county jails. Our-- you just go straight to prison. And the only time I went to prison in Delaware is for driving on suspension. But here it's like totally different and I could say I'm like kind of different, I guess. I don't know. But you've got young people who don't have like fathers and a male perspective or somebody to help them take the right direction. OK? I have a stepdad that I lost and I never knew my real dad, but my stepdad raised me to be a nice man. OK, and got to give credit to women who are out there raising their kids without their dads or without their dads in their life. You know, the programming that I'm thinking that, you know, got a lot of people who's getting busted for attempted possessions and stuff like that. If you set up a program, these people can go and have the confidence that when they sit in front of you, it's going to give them-- you're 100 percent that they're going to get the treatment they need, you know, because I'm at the Cornhusker and, you know, I was telling a guy, you know, sometimes when I talk, I'm kind of raspy with my voice and it seems like I'm yelling at you. And it's like, well, I'm not yelling at you, you know, I'm just trying to let you know that, you know, that's the way I am. And this guy had the nerve to tell me, I don't care if

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

you make it through the program or not. Would that make you want to sit down and go through that program if you just heard somebody that's supposed to be there helping you go through a program? I walked out, OK, and then second time, OK, it was the Cornhusker and I was in a class and I was listening to people talking about how they-- about how-- their parents and all that and it kind of touched me because I had just lost my mom and at that time, I think you guys had just stopped smoking, and I just wanted to go-- well, smoking in a building, and I just wanted to go outside and smoke a cigarette. So I asked the lady. I was like, I just want to go outside, smoke a cigarette, get myself together, can I come back in and finish the program? She tells me, well, Mr. Malone, you're so used to being told yes that, you know, no, you can't go outside and get a cigarette. I said, lady, I just want to go get a cigarette, get myself together, got to come back in and go through with the program. No. OK, for number one, I checked myself in to get help, you didn't check me in, so how are you going to tell me no, that I can't go out and smoke a cigarette? I mean, I know that you're trying to teach me something, but when I'm telling you that I just want to go out and smoke a cigarette to get myself together, then how are you going to tell me no, that I can't go out and get a cigarette to pull myself together, get my emotions right?

LATHROP: Right.

STANLEY MALONE: You know, so my thing is you have people out there that want to get help. But at the same time, we can't be forcing people to go get help, you know.

LATHROP: OK.

STANLEY MALONE: Far as mental illness, there are just a lot of people out there with mental illness. But how can you tell how deep their mental illness is, you know?

LATHROP: Right. You know what, we're-- you're out of time.

STANLEY MALONE: Thank you.

LATHROP: But I got to tell you, we appreciate you coming down here and sharing your concern about the programming.

STANLEY MALONE: Also, can I say one thing, one-- it's quickly.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

LATHROP: Briefly.

STANLEY MALONE: OK. I've been walking around Lincoln and this is the "Big Red" state. You guys got to help clean up your streets. I mean I will help myself. I mean it's just a crazy--

LATHROP: Well, you can barely walk around Omaha right now.

STANLEY MALONE: Well, I-- I probably agree. It's just like crazy to me seeing syringes and all that in the streets. It's just like--

LATHROP: Oh, boy.

STANLEY MALONE: Yeah.

LATHROP: OK. Thanks for your testimony.

STANLEY MALONE: Thank you.

LATHROP: I do not see any questions for you. Thank you. Anyone else here in a neutral capacity? Seeing none, Senator Pansing Brooks to close.

PANSING BROOKS: Thank you, Chairman Lathrop. Well, here we are, Groundhog Day number three. We've heard all of these same arguments, and it's a little bit aggravating, the-- the discussion about how we're attempting to compromise public safety. No, what we are doing is incentivizing a window, as Senator DeBoer mentioned, incentivizing a window where they're-- the inmates feel like they should take some programming rather than just waiting until the very end and jamming out. In actuality, we are fighting for our-- the public safety. So it's all about incentives. It's all about stacking of sentences. I'm happy if the AG would like to come forward and bring us the Texas bill. We all welcome it, so please bring that forward next year so we can look at that and-- and consider it rather than just always coming to say, no, no, we can't do this policy, no, we can't do that policy. We have the second most crowded institution in the United States, so something is wrong with the policies as set. Corrections came to us and said it's a sentencing problem, the judges are oversentencing, this is all sentencing. Then in comes-- here-- in come the prosecutors saying, no, it's actually programming. But of course there is a little bit of problem with that because if you put more into-- we-- we do want to put more into programming. And I've got a bill on Monday, so I'm really hoping that the county attorney, the police, and the AG will come to Appropriations on Monday. It's LB625 to get \$5.8 million

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

more into programming. And so I hope they will plan to attend. I know that they're going to be there anyway because that's the day that Appropriations considers the Corrections and AG's budget. So I hope they will come and support the money that we have put in a bill towards programming. But of course, the issue with programming is programming is tied to sentencing. And if we have sentences that are flat, like 10 to 10, 10 to 12, or 12 to 12, then there's no incentive for the inmates to take the programming because, of course, once they-- they can just jam out and once they jam out, they don't have-- they don't have postrelease supervision. So again, I'm all with county attorney Mr. Jensen, who talked about alternatives. That's another bill. I'm all about supporting mental health courts, children's courts, all of that. That's-- that's wonderful. And we do need programming. I'm with them on that. But programming alone is not going to help this. I don't know if you all remember that Deputy Director Rothwell from the Corrections-- Department of Corrections did come a number of times and spoke before us and said that in the states where he's worked, they had something similar to the one-third rule and they used it and it was positive and beneficial and it allowed people to get out better and safer. That's the point of this, getting people out and giving them a window so they have an incentive to take the programming suggested by the Parole Board. Just because they go for-- before the Parole Board, that's not-- does not mean they're going to be released. Eligible for parole does not mean eligible for release. And as Mr. Riley stated, we have all these people that are eligible for release that have not been released. So again, I thank you for your time. We have to do something. So thank you for your time and patience.

LATHROP: I don't see any other questions. Thank you, Senator Pansing Brooks.

PANSING BROOKS: Thank you.

LATHROP: That will close our hearing on LB131 and bring us to the last bill of the day, which is LB458. Been sitting a long time.

PANSING BROOKS: I know. Good evening, Chairman Lathrop. And this opens the hearing on LB458.

LATHROP: Thank you. Good afternoon, Vice Chair Pansing Brooks and members of the Judiciary Committee. My name is Steve Lathrop, L-a-t-h-r-o-p. I'm the state senator from District 12 and I'm here today to introduce LB458. The underlying goal of LB458 is to clarify

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

and solidify the role of Child Advocacy Centers and multidisciplinary teams in investigating cases of child abuse and neglect. I brought this bill on behalf of Nebraska's Child Advocacy Centers. For those who are unfamiliar, the CAC's primary focus is to provide a safe and appropriate environment for child victims of abuse to open up about what they've experienced and to connect those children and their families with needed services. Because of their expertise in working with children and families in highly sensitive and often crisis-level situations, the Child Advocacy Centers play a vital role in our child welfare system. Part of that role, and this is already codified under state law, is to serve as a bridge between human services and the criminal justice entities in Nebraska. To that end, CACs are core members of local multiple-- multidisciplinary teams that discuss and review cases involving juveniles in their area. These multidisciplinary teams include representatives from the local county attorney's office, the CAC, the Nebraska Department of Health and Human Services Division of Child and Family Services. Each part of the state has two teams, one that is focused on investigation-- investigations and another that is focused on treatment. The investigative teams also include representatives of local law enforcement agencies, and the treatment teams each include a juvenile probation officer, experts on medical and mental health, and local school district representatives. There are people speaking after me who can go into much more detail about how well this collaborative system can function as well as some of the specific issues they're trying to address with this bill. But generally speaking, we're concerned that too many cases are circumventing this partnership and that children are falling through the cracks as a result. We believe that those who have an interest in Nebraska's children at heart should be willing to communicate and work together for their benefit. The changes in LB458 would help ensure that we are making the best use of the various resources the state has to offer. In addition to the proponents you'll hear today, we have letters of support from the Douglas County Attorney Don Kleine, Children's Hospital, the Sarpy County Sheriff and the Nebraska CASA association. I've also shared a small amendment, or I have one to share with you, AM718, that addresses a concern brought to my attention by Nebraska Appleseed. And with that, I'd ask for your positive consideration of LB458. Thank you.

PANSING BROOKS: Thank you, Chairman Lathrop. Anybody have a question for-- yes, Senator Brandt.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

BRANDT: Thank you, Senator Lathrop, for bringing this bill. Real quick, could you address the fiscal note?

LATHROP: So we'll probably hear from the department--

BRANDT: OK.

LATHROP: --and they can tell you why. I think it's because we're talking about some of the same issues that came up with Senator Pansing Brooks, and in fact I think they mention that, when her bill talked about the risk of children being sex trafficked who are not put into sex trafficking by their parents, kind of the same issue, I believe.

BRANDT: OK. Thank you.

PANSING BROOKS: Thank you. I have another question then. Have you work-- have you worked with the Department of Health and Human Services on this?

LATHROP: Well, I had a meeting with the department. And-- and I mean this to be informative and not to be judgmental. They basically said, there's really nothing about this bill that we like and there's nothing about this bill that you could change to make us like it. And I don't think I'm misrepresenting their position. You'll have an opportunity to ask them.

PANSING BROOKS: OK. Thank you very much.

LATHROP: Sure.

PANSING BROOKS: OK. Next we want proponents, proponents, and if you can come down and fill the chairs, that would be great. Thank you. Welcome.

IVY SVOBODA: Hi. Thanks. Good afternoon, Vice Chair Pansing Brooks and member of the Judiciary Committee. My name is Ivy Svoboda, I-v-y S-v-o-b-o-d-a, and I'm the executive director of the Nebraska Alliance of Child Advocacy Centers. I'm testifying in support of LB458 on behalf of the Nebraska Alliance which represents all seven of our State's Child Advocacy Centers, commonly known as CACs. I want to start by thanking Senator Lathrop for working with the Nebraska Alliance on this bill and the Legislature for the longstanding support of Child Advocacy Centers. CACs firmly believe that we can best protect children and support families when agencies and professionals

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

coordinate, sharing information on cases, policies, promising approaches, and working to minimize trauma to children and families. Since 1992, Nebraska has considered child abuse and neglect to be community problems that require a coordinated approach. Use of CACs and the multidisciplinary team approach over the years has grown thanks to action and support from the Legislature, the Department of Health and Human Services, DHHS, prosecutors, law enforcement agencies, and federal and private funding. LB458 is a result of conversations with CACs and multidisciplinary team members about gaps in our systems and a review of emerging best practices. I passed out a fact sheet that highlights the key pieces of LB458. The bill more clearly defines what a CAC is, the role they play in investigations of abuse and neglect, and the range of services that are provided to children and families who are referred to CACs. CACs must provide a child-focused location, neutral fact-finding interviews conducted by a trauma-informed manner-- in a trauma-informed manner by a specially trained forensic interviewer, specialized medical evaluations, mental health services, and ongoing advocacy and support. CACs also coordinate and support multidisciplinary teams. Nebraska Statute first referenced CACs in 2006 but never clearly defined the scope of what CACs offer in the investigation and response to child abuse and neglect. LB458 closely-- more closely aligns Nebraska with requirements in the Federal Victims of Child Abuse Act. LB458 also clearly defines what types of cases should be connected to CACs by both DHHS and law enforcement. We continue to struggle with consistent statewide referrals of children, especially teens, to CACs due to-- in part, to many of the different law enforcement agencies' interpretation of which cases should be referred. LB458 creates clear, uniform statewide standards so that reported victims of child abuse, of sexual abuse, human trafficking, severe physical abuse or neglect, and other types of cases can be connected to high-quality, coordinated, trauma-informed investigations. CAC's referral provides the ability to connect children and families with the follow-up services and supports they need for healing. LB458, finally, codifies CAC direct access to electronic records maintained by the department, the Crime Commission, and the juvenile courts, which we have had access since approximately 2007. Access to these records is essential for quick, efficient information sharing between agencies and investigations. LB458 would maintain this important component that saves staff time, and for CACs, prosecutors and their investigators partners, law enforcement, and HHS. I thank the committee for the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

consideration and urge LB458's advancement. I'd [INAUDIBLE] any questions.

PANSING BROOKS: Thank you, Ms. Svoboda. Do you have any-- any questions? I have a question. Have-- have you been attempting to work with the Department of Health and Human Services on this bill?

IVY SVOBODA: Yes.

PANSING BROOKS: OK. And-- and I know we'll hear from them as well. But I'm interested in-- in what you-- can you-- can you explain what you understand to be their problem with this bill?

IVY SVOBODA: I met with the department earlier this week and we went page by page and there was something almost on every page that they were concerned about.

PANSING BROOKS: OK. As far as the trafficking portion, what part-- what parts were they concerned about?

IVY SVOBODA: With the "at risk" language that was listed

PANSING BROOKS: With the what?

IVY SVOBODA: "At risk" language, those suspect-- ultimately those that would be at risk for human trafficking.

PANSING BROOKS: OK, because we-- we worked with HHS and were able to find some more common-- a common term that they liked a little better. Did they suggest that to you and it just wasn't sufficient?

IVY SVOBODA: They did not suggest that.

PANSING BROOKS: OK.

IVY SVOBODA: But we would be open absolutely to working with the same language that you're working--

PANSING BROOKS: OK. Thank you very much.

IVY SVOBODA: Thank you.

WAYNE: I have a question.

PANSING BROOKS: Oh, sorry. I didn't see you. Sorry, Senator Wayne.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

WAYNE: Do you-- why would you guys need access to Medicaid, economic assistance, SNAP, those kind of information?

IVY SVOBODA: We don't-- probably don't necessarily need access to those areas.

WAYNE: It was one of the concerns raised in the fiscal note that it would allow direct access to those things. So you wouldn't need those?

IVY SVOBODA: That's something that's-- yeah, that's up to the department of what they're providing access to.

WAYNE: OK. Thank you.

PANSING BROOKS: I-- I have one more question. Sorry. And I-- so by this bill-- because I really appreciate the amazing work. And if-- if people haven't had the opportunity to go to the Child Advocacy Center in their area, you should do so and to see the great work that's being done to protect our kids. So I thank you for that.

IVY SVOBODA: Thank you.

PANSING BROOKS: But I guess what I'm interested in-- not but-- but what I'm interested in is, what-- what do you feel that this bill solves that has not been something you've been able to do?

IVY SVOBODA: Well, it definitely ensures that children are appropriately referred to the Child Advocacy Centers, that coordination can occur. It strengthens the multidisciplinary teams and the Child Advocacy Centers more in statute. The services that can be refined-- provided, really connecting the children and family to those services, and that is done through the multidisciplinary team case reviews, through that coordinated approach to investigations and ongoing cases.

PANSING BROOKS: So are these all the IIIA kids, the abuse, neglect, and trafficking kids? OK. Thank you. Senator Wayne.

WAYNE: On-- on child abuse cases, who-- who makes the recommendation or who does the finding? Is-- does everything run through Dr. Haney and out of Omaha throughout the whole state?

IVY SVOBODA: No.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

WAYNE: So is there another doctor that has the same qualifications as her in the state?

IVY SVOBODA: She is the only known child abuse pediatrician that I believe is in Nebraska. But other-- there's ten child advocacy standards that are national standards that the Child Advocacy Centers need to meet, and one of them is medical services. So there is a whole list of services that medical providers need to meet, training and that type of thing that medical providers need to meet. And so each Child Advocacy Center has either medicals provided on site or through linkage agreement with their local hospitals and providers that have that training that meets the requirements.

WAYNE: So why would you-- what do you think your thoughts are on why we have such a high IIIA child abuse and neglect caseload per capita than other states?

IVY SVOBODA: I don't know.

WAYNE: Well--

IVY SVOBODA: I'm not sure if I have that answer. I could probably look that up.

WAYNE: OK.

IVY SVOBODA: Yeah.

PANSING BROOKS: Any other questions? Thank you for coming today, Ms. Svoboda.

IVY SVOBODA: OK. Thank you.

PANSING BROOKS: Next proponent. Welcome.

LYNELLE HOMOLKA: Thank you. Good afternoon, members of the Judiciary Committee. My name is Lynelle Homolka, L-y-n-e-l-l-e H-o-m-o-l-k-a. I am here today on behalf of the Nebraska County Attorneys Association in support of LB458. Currently I serve as the Merrick County Attorney in District 34. I'm starting my third term in that capacity. Previously I served as a deputy Hall County attorney in Grand Island for ten years. I also serve on the board of directors for the County Attorneys Association and I'm the committee-- legislative committee's cochair. As prosecutors, we are elected to, and we have a statutory obligation to, protect children, and we as prosecutors take that role

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

very, very seriously. We greatly appreciate the role of Child Advocacy Centers and multidisciplinary teams in completing that task. I've also had the privilege to serve with many others in this room and many from different disciplines on the Governor's Commission for the Protection of Children and was recently assigned in the last year to a subcommittee for that commission who has worked to improve the functioning MDTs over the past year. The subcommittee has reviewed and revised MDT protocols across the state to harmonize them and to meet national accreditation standards. We've also worked to generate best-practice recommendations and strategies to build resiliency within the MDTs across the state with the end goal of enhancing the important work being done by these MDTs and CACs across the state. The County Attorneys Association supports LB458 because MDTs work. That is a model that is accepted as best practice across the nation. Each member of our MDTs, if you're not familiar with them, bring to the table their own perspectives and their own services that perhaps the other members of the teams cannot. As referenced in the letter that I submitted on behalf of the Lancaster County Attorney's Office, our lone concern with LB458 is in Section 1, page 4. In the definition of treatment team, it does leave out as a mandatory member of the treatment teams county attorneys, and so we would like to see that added back in. As county attorneys, by law, we are charged with convening both the investigative teams and the treatment teams, and we feel we should be at the table alongside the other disciplines. We definitely feel that collaboration of the MDTs necessary for proper oversight, as referenced by Senator Lathrop, especially since the implementation of the alternative response system. Abuse and neglect court filings across the state have significantly been reduced with the implementation of voluntary or noncourt cases. The rough numbers that I saw this morning in my county, in Merrick County, in IIIA filings decreased by 60 percent in the past four years. And the numbers I was handed by Lancaster County showed a decrease of 53 percent in the past five years. And so removing that judicial oversight for 50 to 60 percent of these cases we believe really does enhance the need for MDTs to collaborate to ensure that children and families are not slipping through the cracks and are getting the services they need to address the issues brought them-- that brought them to the table, in order to keep them safe and keep them together. With that, we do ask that you advance LB458 to ensure the necessary oversight that MDTs CACs are providing for children and families across the state. Are there questions?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

PANSING BROOKS: Yes. Thank you. Go ahead, Senator Wayne.

WAYNE: Would you be in favor of any type of amendment that said if vol-- if families are voluntarily going through and working with them, that no abuse and neglect charges could be filed during that time, or things that are discovered during those processes?

LYNELLE HOMOLKA: If there is complete transparency. We do review all noncourt, voluntary cases at our MDT treatment teams. I think currently the DHHS caseworkers are required to provide to us the status of those cases. I'd like to see that continue. As long as we're being updated and there's problem-- progress in those cases, then I will have no problem with IIIA cases not being allowed to be filed in those. However, it's my understanding with alternative response cases they're being screened out. And if families refuse to voluntarily engage in those cases, MDT teams never see them. It's only when they engage in voluntary cases that we staff those and we get those updates.

WAYNE: So when they engage in voluntary services, if their-- if their-- failure to continue or if they do things wrong, is that held against them?

LYNELLE HOMOLKA: I wouldn't say their failure to comply is held against them. But we go back to the original issue that brought them to the table and we determine at that point in time if it's worthy of filing.

WAYNE: That's the issue from-- from my perspective of whether-- whether I would ever have a client do something voluntarily because it's-- it's never in their benefit if something goes wrong.

LYNELLE HOMOLKA: I think it's always in their benefit, with all due respect, if we're trying to protect the children and correct the issue that brought them to the table.

WAYNE: Yes. Otherwise, they can go through the judicial process where they're mandated to follow things.

LYNELLE HOMOLKA: And are put on the central registry.

WAYNE: Maybe, maybe not. But again, if you volunteer and it's held against you, then what-- I don't know the incentive. That's where I'm struggling with. You give more authority-- anyway, thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

LYNELLE HOMOLKA: Thank you.

PANSING BROOKS: Any other questions? I-- I have a question. So I'm trying to wrap my head around what your letter from Mr. Condon said and what you were saying. You're saying page 4, and are you talking about in the-- in the multidisciplinary treatment team section starting on line 22? Is that what you said?

LYNELLE HOMOLKA: Yes. Subsection (k) defines multidisciplinary team investigative teams to include county attorneys and then subsection (l) defines multidisciplinary team-- treatment teams, and it does not include county attorneys. However, by law, we are charged with convening both teams and there's a provision in the bill that actually holds us accountable if county attorneys are not at the table.

PANSING BROOKS: OK. And have you spoken with Senator Lathrop about this and--

LYNELLE HOMOLKA: No I have not.

PANSING BROOKS: --to make an amendment or--

LYNELLE HOMOLKA: I spoke with the Lancaster Attorney's Office this week and--

PANSING BROOKS: Yeah.

LYNELLE HOMOLKA: I'm sure that-- that we'd be willing to talk with him about a potential amendment as we progress.

PANSING BROOKS: OK. Well, that seems like an easy fix, but I'm-- I'm glad you want to be part of it because sometimes we put people in parts of teams and everybody says, oh, my gosh, it's going to be another \$8 million if we do that. So thank you.

LYNELLE HOMOLKA: And that's--

PANSING BROOKS: We're thrilled that you want to participate.

LYNELLE HOMOLKA: That's the good thing I think about this bill is that it is happening across the state. County attorneys hopefully are at the table helping families stay together and cure the wrongs that brought them there in the first place. This bill I think just codifies what should be happening.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

PANSING BROOKS: OK. Any other questions for Ms. Homolka? Nope. Thank you for coming.

LYNELLE HOMOLKA: Thank you.

PANSING BROOKS: Any additional proponents? Welcome.

ANNE BOATRIGHT: Thank you. Good afternoon, Vice-- person-- Chair Pansing Brooks and members of the Judiciary Committee. My name is Anne Boatright, A-n-n-e B-o-a-t-r-i-g-h-t. I am a registered nurse and the state forensic nursing coordinator with the Nebraska Attorney General's Office. I come here today as the representative for the Attorney General's Office in support of LB458. While working as a resi-- registered nurse over the past 13 years, I've worked with children who have benefited from the services of the multidisciplinary teams, or MDTs, coordinated through the Child Advocacy Centers. MDTs create an environment where entities collaborate and ultimately allow for better outcomes in the children we serve. Without this approach, healthcare, law enforcement, and child protective agencies are unable to collaborate as teams due to the varying levels of confidentiality. MDTs also allow for missing puzzle pieces to be brought to light. A medical provider may document an injury or interaction that law enforcement or child protective agencies are unaware of without the MDT bringing all the parties to the same table. An example I would provide is as follows. A nanny brings a four-month-old to a hospital with difficulty breathing. Medical personnel document bruising located under the chin and statements made by the nanny and her boyfriend. The child was found to have a brain bleed and had been abused. A few days later, an MDT was called to review the case. Law enforcement, Child Protective Services, prosecution, and medical staff were brought to the same table. Law enforcement and CPS were unaware of varying statements made to hospital personnel. A court case followed and the nanny was charged and convicted of manslaughter of the child. Another example I would give is a woman and man driving in a car down the street with their two-year-old child in the back of the car. The man crashed the car and a witness stated that the man was seen punching the female repeatedly until law enforcement arrived. Man is arrested for domestic violence and child abuse. An MDT was convened a few days later with all entities present. It was revealed that this was a large-scale investigation and was actually related to trafficking. This allowed law enforcement, CPS, and healthcare providers the information and support needed to provide resources to the woman and child, along with holding the perpetrator accountable for his actions.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

The Child Advocacy Centers are able to coordinate services, bringing the needed parties together, minimize revictimization, and create environments where children are safer. We know resources vary when it comes to rural communities across our state, and this bill would ensure standards are met no matter the location. When we have more information, we're able to make better decisions for the children across our state and we are able to provide more resources to support families and we are able to determine when an intervention is necessary for the safety of all those involved. I would welcome any questions you have.

PANSING BROOKS: Thank you, Ms. Boatright. Anybody have a question for Ms. Boatright? Did you help work on this bill, Ms. Boatright?

ANNE BOATRIGHT: I did not.

PANSING BROOKS: OK, so you've just been involved and-- and are you aware of-- of how this would change what HHS is doing? Do you have a feel for that or not really?

ANNE BOATRIGHT: I don't. I will tell you that in my experience when MDTs have the opportunity to take a second look, we're just able to make better decisions, like I said, so kids are safer. Victims who are involved, instead of being labeled as a perpetrator, get more resources. So I just think things work better that way.

PANSING BROOKS: OK. So do you think that with these changes in the law, that-- that there will be-- I mean, do you have a feel for the increase of services that will occur because of this change of law?

ANNE BOATRIGHT: I think that in terms of reviewing cases, I couldn't give you a number as to how many additional services we would need. But I can say that we may be able to minimize some court proceedings. We may be able to provide services that are already being built and already exist for victims out there. So I see this as just, you know, increasing our system and-- and allowing it to work more efficiently and better.

PANSING BROOKS: Which services are-- are you speaking of that already exist that--

ANNE BOATRIGHT: Domestic violence and sexual assault programs. So our victims, whether they're being trafficked or victims of domestic violence, you know, we have, you know, the Coalition to End Sexual and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

Domestic Abuse that covers all 93 counties of our state. We have our SAFE-T program, The Salvation Army's Fight to End Trafficking, across our state that allows for victims to have access to services that they very much need but already exist. So this would be something that, you know, hopefully, instead of a victim of domestic violence being charged as a child abuse, you know, conspirator, we're able to say, no, no, no, this is a victim, let's get them the services that they need.

PANSING BROOKS: OK. I-- I just want to thank you for your work for vulnerable people in our state. It's been amazing. Thank you.

ANNE BOATRIGHT: It's an honor.

PANSING BROOKS: Any other questions for Ms. Boatright? No. Thank you. Next proponent.

AUBREY YOST: Thank you.

PANSING BROOKS: Welcome.

AUBREY YOST: Thank you. My name's Aubrey Yost, A-u-b-r-e-y Y-o-s-t. I am an advocate at the Child Advocacy Center that serves southeast Nebraska and I'm also a survivor of child sexual assault. I'm testifying in support of LB458 because I know how important access to a Child Advocacy Center is for children and their families. And so today I want to offer just an opportunity to paint a little picture for you. I was 14 when I first disclosed years of ongoing sexual assault and rape that started when I was 8 years young. The man who repeatedly sexually assaulted me was like a father figure. And when my younger sister had told me that he started coming into her room at night, I knew we had to do something, so we decided to tell. The next day my siblings were interviewed at the Child Advocacy Center in Lincoln. They came back with stories how cool the place was and how supportive the people were. However, my mom and I would feel very different. I would never be taken to the Child Advocacy Center. Law enforcement said I was too old and because I was not living in the same home as my perpetrator, I wasn't a real victim, even though he repeatedly assaulted and raped me for most of my childhood. I was interviewed in my apartment, sitting with my mom as she cried. Two male police officers in uniform sat across the table from me. The questions they asked were beyond my comprehension. The words they used I did not understand, even though I was a teen. And I also remember not saying everything that had happened to me because I was trying to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

spare my mom from learning the horrific details. Before he began assaulting me and my sister, he already was once convicted of sexually assaulting a minor before. However, with my case, nothing happened. He walked. And I often think how differently this case could have ended--ended had I been interviewed at the Child Advocacy Center, not in my home where some of the abuse had occurred and not having to worry about my mom who I was trying to protect from learning the details. Additionally, because of this negative experience with the system, I stayed silent about four additional perpetrators that had sexually assaulted me as a child. No one ever followed up with us. My mom never received updates on the case. I never received any services. I bottled up all my emotions. I became numb and labeled a troubled child. I had no one to turn to. Miraculously, I made it through high school and into college where I was able to attend my very first therapy session, something that I should have had access to a long time ago. The Child Advocacy Center could have made all the difference in the world for me. The services that I needed back then are the services that we provide on a daily basis. "Be who you needed when you were younger" is a quote that stands out to me. I started my job at the Child Advocacy Center in hopes that no family, no child would ever have the same horrific experience with the system that I did. Everything we do at the Child Advocacy Center is centered around the families and their experience: immediate and ongoing advocacy and support, regular case updates, trauma-informed services on site, setting up court school, being present for all their meetings, being there through the entire investigation and prosecution process. Simply, we are there when all they need is the emotional support to make it through the next day. I believe we could all try to understand what it would mean to someone, especially a child, to have support during the aftermath of sexual assault. This is why I am an advocate. I think back how differently my life would have been had I gone through the Child Advocacy Center. And ultimately, I live every day striving to be the person that I needed when I was a child. And I encourage you all to help small voices be heard and make sure that child advocacy services are routinely made available for child victims of abuse. Thanks for having me.

PANSING BROOKS: Thank you, Ms. Yost. Any questions? No. We thank you for coming.

AUBREY YOST: Thank you.

PANSING BROOKS: Any more proponents? Welcome.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

KIM HAWEKOTTE: It is good evening, members of the Judiciary Committee. My name is Kim Hawekotte, K-i-m H-a-w-e-k-o-t-t-e, and I'm the-- the executive director at the Foster Care Review Office, and I'm testifying as a proponent for LB458. Also, a couple of other roles that I have is I'm also a member of the Governor's Commission for the Protection of Children subcommittee that's been working on this issue. And as many of you know, I was previously a Douglas County Attorney where I was responsible for operating the multidisciplinary teams in Douglas County. Within my testimony, I'm going to be very brief. I wanted to give you some data as to what we're dealing with. We know in the past 15 months we have seen a rapid decline in court-ordered or court-involved children in out-of-home care. There's been, if you look on the second page, about a 15 percent decrease statewide. On December 31 of 2018, there were 4,200 children in out-of-home care and 80 percent of those were within Health and Human Services. So when we started digging into why there has been a decrease, if you look at Figures 2 and 3, you will notice that over the last three years there has been a very steady decline in children entering out-of-home care while the number of children exiting out-of-home care has remained very steady. A couple of-- of provisions within LB458 that we feel are very important, we know within the past year that there has been a 46 percent decrease in the number of filings for drug-endangered or parental use of drugs within the courts. One of the things that LB458 does do is define what a drug-endangered child is. It also would require that those cases be reviewed by the multidisciplinary team to ensure that there are appropriate safety plans. The other provisions of LB458, you know, both as a former county attorney and in my current role at the Foster Care Review Office, we do use the multidisciplinary teams in many fashions with cases that we feel are stuck or need some further assistance. We do go to those teams in order to have the experts from the community provide the services. Also in my testimony there's two additions that-- and I have not talked to Senator Lathrop about. They are in LB328, which is kind of a-- another bill within the Health and Human Services Committee but that we would recommend be included within LB458, and that is nowhere in statute we-- do we define what a noncourt case is. So going to your point, Senator Wayne, I don't know what it is. This would at least-- and I gave some sample language in here as to-- to why we need a definition. We know in the past year noncourt cases have gone up 37 percent. So we know most of the cases now are being done in a noncourt mechanism, not to say that's good or bad, but if that's what we're going to be using, then we have to have definitions of it. The other thing that is not currently defined in statute is a voluntary placement or voluntary

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

placement agreement within these noncourt cases that we have to know what those are and what those all include. So in conclusion, we would be in support of LB458. What it does is it sets clear definitions and transparency. We have to look at services across the state to ensure they're all available, and we need to start creating some type of external oversight system for these noncourt cases. And I'd be happy to answer any questions.

PANSING BROOKS: Any questions for Ms. Hawekotte? I just would like to say, do you-- do you have-- do you have a feel-- were you surprised by the fiscal note?

KIM HAWEKOTTE: Yes.

PANSING BROOKS: OK. Why? Do-- you don't think it'll cost that much to be able to supply the services still necessary by this bill?

KIM HAWEKOTTE: Well, to me, a lot of this bill deals with clarifying and improving what the requirements are for the multidisciplinary teams which, I don't see how that has a fiscal impact. What we see across the state with some of these teams, some are very effective, some are not very effective. This clarifies who has to be on it, when they have to meet, what type of cases they're going to prioritize, because as we've done some of our research in the past year, that's not been clarified. I don't know what the fiscal note would be of requiring that because it's a community response that would be happening.

PANSING BROOKS: Yes. OK. Thank you, Ms. Hawekotte. Next proponent. Welcome.

CARRIE STROVERS: Thank you. Good evening. Vice Chairman Pansing Brooks and Judiciary Committee, my name is Carrie Strovers, it's C-a-r-r-i-e S-t-r-o-v-e-r-s, and I am the case coordination manager at Project Harmony Child Advocacy Center in Omaha, Nebraska. I oversee the multidisciplinary teams that are included in this bill. We serve Douglas and Sarpy County and 16 counties in southwest Iowa. We facilitate a total of 12 multidisciplinary teams. I'm here to testify in support of LB458, and I'm here to talk about why multidisciplinary teams are an important tool in our system's response to child abuse and neglect cases. As you know, when LB1184 was passed in 1992, its intent was threefold: to require a cooperative response between law enforcement, the Department of Health and Human Services, and other agencies designed to protect children; to develop a clear

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

understanding of the roles and responsibilities of all players; and flexibility in our response allowing for creativeness and coming up with appropriate solutions for best handling of child abuse and neglect cases. The intent of LB458 remains the same and seeks to improve coordination and support for child abuse and neglect cases. I think the best way to illustrate is an example of how a multidisciplinary team functions. In September of 2014, we started a specialty treatment team called Impact from Infancy. The focus of that team is on children, birth to five, that are involved in the child welfare and also the juvenile justice system. That was in response to the high number of children, young children, that were placed in out-of-home care and how long-- a disproportionate amount of time that they would spend in out-of-home care. Our multidisciplinary team noticed a pattern of moms who had currently had children in foster care but were expecting new babies and there was no plan. So the emergency came when the child was born and there was a lack of information about what to do. We worked with the Department of Health and Human Services and PromiseShip and the rest of our treatment team members to staff these cases prior-- prior to the child's birth in order to determine what services is the family currently working with, what are services that we could put in place to ultimately allow that baby ideally to go home with mother upon birth, so we didn't have this emergency when the child-- or the mother presented herself at the hospital. That team functions very well and it functions well because of full and accurate information. We utilize-- we talked about the direct computer access to information systems-- we utilize N-FOCUS focus and NDEN-- to help gather information for our team meetings and supplement what caseworkers or other referral sources give us. A decision is only as good as the information that you base it on. We also use that information to determine what response is best for these child abuse and neglect cases. Oftentimes it's a team review. Oftentimes it's a conversation between our MDT members, or it might be some other flexible response, as alluded to earlier. We take confidentiality very seriously. We want to encourage the free flow of information among members. And I see my time is up, so I would be happy to answer any questions.

PANSING BROOKS: Thank you very much, Ms. Strovers. Any questions?
Thank you very much--

CARRIE STROVERS: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

PANSING BROOKS: --for coming today. OK. Any further proponents? Proponents? Opponents? Opponents? Welcome.

MATT WALLEN: Good afternoon, Vice Chairwoman Pansing Brooks and members of the Judiciary Committee. My name is Matt Wallen, M-a-t-t W-a-l-l-e-n, and I'm the director of the Division of Children and Family Services within the Department of Health and Human Services. I'm here to testify in opposition to LB458. Currently Child Advocacy Centers are responsible for conducting forensic interviews and medical evaluation for victims of child abuse and neglect to coordinate multidisciplinary team response that supports the physical, emotional, and psychological needs of children who are victims of abuse and neglect and to assist the county attorney in facilitating the case review, updating protocols, and arranging training for multidisciplinary teams. Child Advocacy Centers are nonprofit organizations located in communities throughout the state. They are under contract with the department to provide the above-mentioned services. The Child Advocacy Centers are actually doing a very good job. What is of concern to me today in LB458, it would significantly expand the definition of abuse and neglect, memorialize in state statute specific requirements for the Child Advocacy Centers with regard to investigation and treatment teams, including assuring a service array and providing services to victims through the treatment teams to ensure social services for every potential victim, further require the department and law enforcement to share every abuse and neglect report with the local Child Advocacy Center by the next working day, and to shift certain responsibilities of the teams from the county attorneys and the department to the local Child Advocacy Centers. Further, the bill elaborates on the services that shall be provided by the Child Advocacy Centers and references the Legislature's intent to provide sufficient funding without actually identifying an amount. The bill also provides for direct computer access to the state's N-FOCUS case management system. This is in direct conflict to the recent Auditor of Public Accounts' comprehensive annual financial report issued in January identifying misuse of non-state entities that access Medicaid and SNAP data in the N-FOCUS system. The department already flags certain reports of suspected child abuse to the appropriate Child Advocacy Center. If additional information is needed for the multidisciplinary teams, statute authorizes the department to share that information to the team. Just as law enforcement agencies and schools provide their own records or information to the multidisciplinary teams, the department can do the same without the Child Advocacy Centers having direct

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

computer access. The last area I would like to reference is the list of cases the multidisciplinary team will develop protocols for review. They already have protocols for these cases. Each local protocol is designed to meet the needs of those counties. Further statutory review of every case is not necessary. We also have the FCRO and OIG that reviews these cases. I would like to thank the local Child Advocacy Centers for their work with the department. However, I will reiterate my opposition to LB458. It is too much of an expansion of responsibilities for local, nongovernmental, nonprofit organizations. Those are responsibilities that are currently entrusted to the department and county attorneys to execute and the Legislature and the citizens of Nebraska have appropriate oversight responsibility over those entities. Thank you for the opportunity testify today, and I would be happy to answer any questions that the committee might have

PANSING BROOKS: Thank you, Mr. Wallen. Any questions for Mr. Wallen? Yes, Senator Brandt.

BRANDT: Thank you, Mr. Wallen, for appearing today. I'd like to talk about the fiscal note.

MATT WALLEN: Sure.

BRANDT: OK. It says that we have-- would add 9,929 cases to HHS. Are those not being served by HHS today?

MATT WALLEN: Those are being served either through law enforcement or other-- other mechanisms. Not all of those 9,000 are being served by law enforcement though. We're looking at about 17-- 1-- 1,724 that are being referred to law enforcement only. Those other categories are brought into play by the "at risk" definition that-- that-- that's added in the bill. So when you put those areas of "at risk" or have the potential of-- of being abused or neglected, it-- that's where we're identifying that it adds close to-- close to 10,000 additional cases into the child welfare system.

BRANDT: So taking out the 1,700 for law enforcement leaves us approximately 7,500 at-risk children. Who's taking care of these at-risk children today?

MATT WALLEN: Well, it's-- it's the potential, so they're -- they're-- they're the-- they're the cases that are identified or brought or reported to the hot line. And they're either reviewed and assessed through our structured decision-making model, which is an

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

evidence-based model, and they are determined to be of-- of low risk or safe, so they would not be brought into the child welfare system. They would oftentimes be referred either for community supports or other kind of avenues other than coming into the child welfare system. Most of these are very low-risk cases and most of these are-- involve some form of neglect.

BRANDT: So today somebody calls the hot line. You determine it isn't a big enough risk for HHS, and then you forward that to a local agency?

MATT WALLEN: No, first and foremost, we assess for safety-- is the child at-- safe and is there any risk of future maltreatment to that child? So safety always comes first and foremost for anything that we do and we would prioritize any intake based on if-- if the child is safe immediately and if the potential perpetrator has access to that child or not. So safety is always the first screen that's-- that that's done. After that, it goes on to-- to look at and determine any risk of future maltreatment. And that's where those referrals can be made to resources in the community or directly to law enforcement if there's a-- there's a crime element involved in it.

BRANDT: And then I'd like to address the number of bodies that you would require. I mean--

MATT WALLEN: Sure.

BRANDT: --I don't know-- do you have access to the fiscal note that you submitted, H-- [INAUDIBLE]

MATT WALLEN: Got it right here, yep. Yes, sir.

BRANDT: OK. On the-- on the back side of that, we have Child and Family Services specialist, for 2021, 134; Child and Family Services specialist supervisors, 22; case aid, 99; and 1 admin-- or an administrator I position of 4. Is that for 9,929 anticipated cases or the 7,500 anticipated cases?

MATT WALLEN: No, that's-- that's for handling close to 10,000 cases.

BRANDT: OK.

MATT WALLEN: We follow the Child Welfare League of America caseload standards.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

BRANDT: So then that includes those 1,724 that are currently in law enforcement, so really this should be an offsetting cost, if law enforcement is not involved with that anymore, if you guys are picking up the enforcement part of that.

MATT WALLEN: Now I think there would be-- law enforcement would still be involved because there is likely a criminal element involved and that's why they were referred to law enforcement. What the bill is trying to also say is that we have to either come in simultaneously with or after law enforcement and then knock on the door and offer the family services if those are necessary. Oftentimes now they're referred to law enforcement. And if law enforcement goes in and investigates the criminal side of things and identifies a family that could re-- could benefit from potential services, they'll refer those back to us and then we'll go in and do it that way.

BRANDT: I guess I-- I just look at that and it just seems for-- \$16,954,000 seems like a very high cost.

MATT WALLEN: Well, that-- I mean the cost associated with that is bringing 10,000 additional children into your child welfare system having caseload standards of, you know, 12 cases for initial assessment workers, 17 cases for an in-home family-- in-home cases, ongoing cases, and then 16 children in out-of-home cases. So we have to meet those-- that's in the state statute that we have to meet those Child Welfare League of America statutory requirements. And then we figure our initial assessment team handles about 74 intakes a year--

BRANDT: All right.

MATT WALLEN: --so--

BRANDT: Thank you.

PANSING BROOKS: Any other questions? I-- I just have a couple. I appreciate because you did work with me significantly, the Department of HHS, on my bill that had some similar issues. We-- we worked on the word-- the exact term or the phrase "at risk," so I'm wondering if-- if there's any solution? Because we did come to a solution on that, is there any-- any hope of a solution here that-- that could be similar because I-- it rings to be about-- and again, I mean, talking about trying to figure out-- I-- I heard the discussion about having the county attorney in on the treatment teams and some people spoke that-- that that wasn't a big problem, that that could be added. Would that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

help solve some of this for you if-- if that were part of it? And then also please speak to the "at risk" part.

MATT WALLEN: So if I can address a couple of things, what we heard today is-- is how well MDTs are working, multidisciplinary teams are working well, and there's a lot of collaboration that takes place. Recent committees and work groups have developed updated protocols and those are being-- being worked through and that the-- the multidisciplinary teams currently oversee the noncourt cases that are-- that are-- that are being worked by the department. So the complex elements of-- of these cases and what's going on with the CACs and the multidisciplinary teams is working quite well. I'm not aware that it's not working and I'm not aware that if we can continue to work on protocols and update that collaboration and do those things together, that why don't we continue to do that and bring the department and others to the table and see what areas we can-- can continue to improve and continue to collaborate on without putting it into state statute? I also have concern where I do think they move some responsibility away from the-- the county attorneys and they move some responsibility away from the department and we've put that into the CACs. And the CACs are-- are great partners and great collaborators, but they are local, nonprofit entities that have a contractual relationship with the department. So what-- what's a concern to me is if I'm not doing my job or if things are falling through the cracks, I'm held accountable to the Foster Care Review Office, the Office of Inspector General, the Legislature, and others. If-- if a vendor for the state is not fulfilling their responsibilities and meeting their performance outcomes in their contract, what can we do, take the contract away? Or where-- where is the direct oversight and accountability?

PANSING BROOKS: OK, so you did-- you have worked-- have you worked with Senator Lathrop in-- in trying to address some of these issues?

MATT WALLEN: As Senator Lathrop mentioned, I-- I did meet with Senator Lathrop and expressed that I had concerns with the bill and that I really didn't think there were suggestions I could make to this bill to-- to make it an improvement to move forward to something that we would-- we would be able to move forward with. I also met with the CAC Alliance and really we did go through the bill line by line and-- and expressed our-- our concerns with-- with the various sections of it.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

PANSING BROOKS: OK. Seems like there might be a happy medium somewhere, but anyway-- because you found it with my bill, so--

MATT WALLEN: Well, and I think this --this bill has some of that overlap of-- of-- I see if your bill passes, LB516, or if the other trafficking bill, LB518, passes, there are components in that bill, in both of those bills, that would be duplicative or some overlap in-- in this bill. This bill also-- I believe when we talk about our fiscal note, our fiscal note is people. So our fiscal note hasn't even addressed services yet or if the multidisciplinary teams or the treatment teams are responsible for services, strengthening services, and who's going to bring up those services and who's going to pay for those services. So our fiscal note is solely staffing those cases that are identified as the additional caseload that we would be bringing into the state.

PANSING BROOKS: OK, and I know you were here, so Ms. Hawekotte mentioned that she thought it was mostly dealing with multidisciplinary interaction rather than necessarily more people, but you don't agree with that?

MATT WALLEN: I'm not dealing with--

PANSING BROOKS: I-- I thought it was just mainly the process of-- of interacting and that it's--

MATT WALLEN: Let--

PANSING BROOKS: --making things more seamless and working together.

MATT WALLEN: Right. That-- that's how this bill-- and in the spirit of collaboration, this bill was mentioned to me that a bill was coming to tweak and clarify some-- some of these CACs' jurisdiction. And when we read the bill in January, I-- I see this as doing a little more than just tweaking the jurisdiction or-- or clarifying some responsibility. But I was told that there was a bill coming in-- you know, to tweak and clarify that responsibility. But in the collaborative nature, I saw it after it was introduced, so we didn't have a chance to work on it in advance. And again, I'm not against MDTs. I think MDTs work very well and I think they are complex cases. And the CACs do the forensic interviews very well, coordinate, you know, and help facilitate those MDT meetings well, and provide services and training well. That's not what we're saying. We're-- we're saying I-- I think we can we can work on-- on all those areas. I would rather work on those areas with the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

CACs over the next year and then come back to you and say these are some areas where we think we need additional legislative authority to address.

PANSING BROOKS: OK, and just one last question. Is some of the cost from what you see as an expansion of duty to cover kids that are at a lower level of risk than my-- I don't know if that-- I don't know if that's true, but you're-- I know that there is some concern that "at risk" might just be somebody who isn't truly in need of HHS's services. Is that correct?

MATT WALLEN: Well, I think what this will do is will-- all those-- so-- so kids can be safe in-- in their home and generally would not be brought into the child welfare system. If-- if we think someone's safe in their home but they need some-- some form of support, we would-- could essentially under this bill, if they're at risk, open up a-- a child welfare case on them.

PANSING BROOKS: OK. Thank you, Mr. Wallen. Any other questions? No, I don't see any. Thanks for coming.

MATT WALLEN: Thank you for the opportunity.

PANSING BROOKS: Next opponent. Welcome.

LAURIE HOLMAN: Good evening, Senator Pansing Brooks and Judiciary Committee. My name is Laurie Holman, that's spelled L-a-u-r-i-e H-o-l-m-a-n, and I'm here today representing the Nebraska Commission on Law Enforcement and Criminal Justice, otherwise known as the Crime Commission, in opposition to LB458. And before you ask, I have not had the chance to meet with Senator Lathrop. It's my fault entirely. This bill didn't really come to my-- on my radar until just a couple of days ago. So I'm perfectly happy to meet with him and-- and work on our concern with the bill. I just have not done so yet. But our concern with the bill is-- largely it's just Section 9, subsection (4), where the new language proposed would give the Child Advocacy Centers direct computer access to records maintained by DHHS, the juvenile courts, and the commission which relate to the work of the centers and the multidisciplinary teams. We're opposed to this for several reasons. First, the proposed language is vague and overbroad and would result in the Child Advocacy Centers having unrestricted access to data that they should not have the ability to access. This bill does not define what level of access the Child Advocacy Centers need that relate to the work that they are doing. The language in the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

bill requests access to everything and that level of access is not appropriate and it's generally not provided. Furthermore, the-- the Child Advocacy Centers have a history of accessing confidential data they should never have been able to view. And Director Wallen mentioned the CAFR letter and in that letter the Auditor's Office reviewed case files accessed by the Child Advocacy Centers from March 22, 2018, through April 22 of 2018. And in that one-month time frame, they found 584 cases of inappropriate access to master case files by employees at the Child Advocacy Centers. The inappropriate access included accessing records with no active Child/Family Services case or the case was closed, cases not related to Children and Family Services, active court cases with no recent intakes, cases outside of the Child Advocacy Center's jurisdiction, noncourt cases, cases where the Child Advocacy Center employee was previously employed, Adult Protective case services and others. Access to the information housed within N-FOCUS is supposed to be restricted by case type or geographical area . Full access to N-FOCUS is not granted to the majority of nonstate entities. The inappropriate access to the files that I listed above is a clear breach of confidential information that is restricted by state and federal laws. Further, it is in violation of data use agreements, the Nebraska Information Technology Commission standards and guidelines, and the National Institute of Standards and Technology security and privacy controls. This level of unrestricted access should not have been granted to the employees of the Child Advocacy Centers. Second, the commission does not maintain any data other than juvenile diversion data that is subject to the sealed records statute. The Child Advocacy Centers are not an entity entitled under the law to have access to the sealed records without a court order. The language in the-- the bill would not bypass this requirement and it is contradictory to other language currently in statute which governs access to sealed court records. I see that my light is red, so I will answer any questions that you have.

PANSING BROOKS: Any questions, anybody? Do you want to quickly summarize anything else you had left or are you done?

Laurie Holman: Sure. Thank you. The last thing I was going to say was that we maintain the Nebraska Criminal Justice Information System, otherwise known as NCJIS, and it-- we use data agreements and user agreements to provide specific user-level access to that data. We do training to make sure that the individuals who are allowed to access that data understand the limitations that are placed upon them, and we have specific restrictions in place to prevent users who have been

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

granted access to not be able to access other confidential data that is outside the scope of their jurisdiction. We maintain data agreements intended to protect the data that belongs to other agencies. We don't actually house any data ourselves. The NCJIS system reaches out to the courts, to law enforcement agencies to bring that data in, and it's our job to make sure that it isn't accessed inappropriately.

PANSING BROOKS: OK. Thank you, Ms. Holman. Any other questions? I guess when I visited the-- the-- a Child Advocacy Center here, there's a police officer there with all the computers, and so I guess I can't really quite understand how-- I mean, the employees are there with the police the whole time, it seems to me. So if the police are there, it seems to me that that-- a lot of that information is accessible and if--

Laurie Holman: Absolutely.

PANSING BROOKS: --new regulations need to be created, then-- then maybe so, but I-- I really don't understand how-- I mean if the-- the police and the employee were working interchangeably.

Laurie Holman: Our-- our position is that they-- that the Child Advocacy Center employees could be provided the data that they need from someone else on the multidisciplinary team who has access, like the law enforcement officer or the county attorney.

PANSING BROOKS: All right. Thank you, Ms. Holman. Any other questions? Seeing none--

Laurie Holman: Thank you.

PANSING BROOKS: --any other opponents? Opponents? Any-- anybody in the neutral? No? Senator Lathrop to close.

LATHROP: I don't know if I'm tired because it's 6:00 at night or if I'm tired because I spend all day listening to somebody from some other branch of government come in and try to find a way to stop having us legislate a way where they might have to do something. And, yeah, I'm getting tired. I'm getting tired of trying to deal with the Corrections stuff with no cooperation. And then when we come in, today it sounded like we were talking about the Child Advocacy Centers like they're just some vendor, a vendor that, you know, what are we doing giving a vendor more? They're in statute. These things are in statute.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

And it's a-- and it's a-- it's a statutory process and an organization that exists by virtue of statute because they work and they protect kids. And what it sounds like is they throw a bunch of reasons out like, oh, my God, they want access to the computer so kill the bill. These people would be happy with limited access. The Auditor even suggested that that could be accomplished. That's not a reason to not support this bill. That's a reason to come in and say, hey, got a couple of things in your bill, probably want to clean up, and-- and that will take care of our concerns. But to talk about them like they're a vendor, my-- my takeaway today is it just sounds like they're looking for-- here's what happens when the Child Advocacy Centers do their job, whether it's where they're at today or whether we expand what we ask them to do, it's going to mean more work for the Department of Health and Human Services and it's going to mean they're going to have to provide some more services. And that's not what Health and Human Services does anymore. I don't what their mission statement is. It must be look for a way to get out from doing anything that costs money. And I am-- I am really, really disheartened, disheartened when I hear an organization that wants to try to help more kids be safe-- they're kids that need protection and kids that need services and we're looking for a way to drop a big A bill on this thing so that it won't go anywhere, not to work with people, not to say-- you know, this-- this happened with the Pansing Brooks bill, right? You had "at risk" and that blew up the A bill or the fiscal note? They don't come in and say, listen, you put something in there that blew up the bill and I'm not sure that's exactly what you wanted to do, but if you take it out we're probably good. Instead, there is a potential for more services, more kids to get something they need, and the department comes in, in opposition. We'll-- we'll see if there's something we can do to try to-- try to narrow it and to take care of the Crime Commission concerns. But, yeah, at some point-- at some point, this Legislature has to decide if we're going to be policymakers and take control of the problems that we see in the Department of Corrections and we see at Health and Human Services. They're trying to pass regulations, or they have, to throw a bunch of kids off developmental disability services. And I guess we're just going to have to-- we're going to have to become the policymakers that this body used to be when I served here in the past and solve problems like we used to do in the past. And if that means-- if that means that property tax relief has to wait, then it's going to have to wait. But we can't-- we cannot keep looking at problems that are facing the state at the Department of Corrections and Health and Human Services and say, wait a minute, we're not going to do that, there's a fiscal

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee March 15, 2019

note and, by God, we want to lower somebody's property taxes by the cost of a pizza. Anyway, you can tell it's been a long day for me as well. And so I appreciate your consideration and I look forward to the committee working on LB458. Thanks.

PANSING BROOKS: Thank you, Chairman Lathrop? Any questions for Chairman Lathrop? Nope. Thank you. And that closes the hearing-- oh, before we close, there are some letters--

LATHROP: I'm going to take off if you wouldn't mind.

PANSING BROOKS: There are some-- there are some letters of support. We have 15 letters of support and 1 letter of neutral. There's too many, so-- but they'll be part of the record. And that closes the hearing on LB458. Have a good weekend, everybody.