WAYNE: Welcome, everyone. Good afternoon. Welcome to the Judiciary Committee. My name is Senator Justin Wayne. I represent Legislative District 13, which is north Omaha and north Douglas County. I serve as Chair of Judiciary and we'll start off by having members of the committee and staff do self-introductions starting with my right, Senator Ibach.

IBACH: Good afternoon, I'm Teresa Ibach, senator from District 44, which is 8 counties in southwest Nebraska.

McKINNEY: Good afternoon, I'm Terrell McKinney, District 11, north Omaha.

MEGAN KIELTY: I'm Megan Kielty, legal counsel.

ANGENITA PIERRE-LEWIS: Angenita Pierre-Lewis, committee clerk.

DeBOER: Hi, everyone. Good afternoon, my name is Wendy DeBoer. I represent District 10 in northwest Omaha.

BLOOD: Good afternoon. Senator Carol Blood, representing District 3, which is western Bellevue and eastern Papillion, Nebraska.

HOLDCROFT: Rick Holdcroft, District 36, west and south Sarpy County.

DeKAY: Good afternoon, I'm Barry DeKay. I represent District 40 out of northeast Nebraska, which includes the counties of Holt, Knox, Cedar, Antelope, northern part of Dixon and northern part of Pierce.

WAYNE: Also, who will be helping us today are our committee pages: Isabel Kolb from Omaha, who is a political science major and prelaw major and UNL-- we are still trying to convince her not to go to law school-- and Ethan Dunn from Omaha, who is a political science major. This afternoon, we will be hearing 8 bills and we'll take them up in the order listed outside of the room. On the table right there on that column, you will see blue testifier sheets. If you are planning to testify, please fill out a blue testifier sheet and hand it to the page when you come up. This will help us keep accurate records. If you do not wish to testify or during testimony you hear things that you're just going to repeat, for the committee sake, you can fill out a gold sheet over there, sign your name and list your position. Hearing the same testimony over and over sometimes it gets lost. We are human, so just keep that in mind. If you do not-- also the Legislature notes it's our policy that all letters must be received by the committee at

8 a.m. the day of the hearing. Any handouts-- this is very important, please listen, you need 10 copies. If you don't have 10 copies of the handouts, please give them to the page before you come up so when you're talking we can understand what you're talking about with the copies of whatever you're presenting or the handouts. Those handouts will be a part of the record as exhibits. I am a big First Amendment guy and Second Amendment guy. We don't allow signs. We don't allow open carry in here because both of those are props in my eyes. So if you are open carrying, I would ask you to either conceal or you will be removed. Again, we allow no props as far as posters or anything like that. So if you have those, I will ask you to be removed. We begin testimony with the opening statement from the introducer of the bill, then we'll follow up with supporters of the bill, those are called proponents; then we'll have opposition, those are called opponents; then lastly, we'll have those speaking in the neutral capacity. After that, the introducer has an opportunity to make closing statements. When you begin your testimony, please state and spell your name for the record. We will be using the 3-minute light system today. That means when you start talking, there will be a green light. When it turns yellow, that's your 1-minute warning. No, you don't get a timeout like in the NFL 2-minute warning, we keep moving. And at the red light, we cut you off. I would like to remind everyone, including senators, to please turn off your cell phones and put them on vibrate. Last thing, I'll just make a note. We do not allow for applause or outbreaks or any type of emotion from the crowd or the people sitting in the gallery. So please, if you do that you get 1 warning, the second time you will be asked to be removed. With that, we will begin today's hearing. Oh, lastly, if people are getting up from the committee and leaving or they're on their phones or laptops-- most of all the documents up here-- most of us are paperless so we are actually looking through things-- if they get up and leave, it's most likely because they have hearings in other committees. So the committee makes sure that all this is recorded, all of this is transcribed, and they talk to other senators so that they don't miss anything. So don't take it as any disrespect. I would like to remind everyone-- please, again, I'm going to say it make sure your cell phones are off or turned on vibrate. With that, we will begin our first hearing with Senator Conrad. Where is she at? She's not here. Oh, I'm sorry, I guess we'll start with Senator Dungan's bill, LB1123. Senator Dungan, welcome to your Judiciary Committee.

DUNGAN: Thank you, Chair Wayne and members of the Judiciary Committee. I do appreciate being able to go here even though Conrad is not here.

My name is George Dungan, G-e-o-r-g-e D-u-n-g-a-n. I represent Legislative District 26, which is northeast Lincoln. I'm here today to introduce LB1123. LB1123, to put it simply, provides for a post-conviction claim of actual innocence and to establish guidelines around how such a claim would work. Additionally, LB1123 seeks to enshrine the notion that procedural guidelines and statutorily constructed time limits should not stand in the way of an individual who has an actual claim of innocence which can be demonstrated by either newly discovered evidence or the debunking of bad science that was used in a wrongful conviction. I want to be clear what LB1123 does not do is allow for individuals with frivolous claims to bog down courts and to be released. Statutory protections ensure that only those who can prove their actual innocence claims by clear and convincing evidence would be affected by this section of statute. Last session I had the incredible opportunity to meet somebody by the name of Ricky Kidd. I think a number of you might have met him as well. I brought him in with the help of the Midwest Innocence Project, and Mr. Kidd came to Lincoln and he told a lot of us his story. We had a luncheon and I, I think I saw a number of you there. I'm not going to go into all the details about it, but Mr. Kidd spent 23 years in prison for a crime he did not commit. 23 years and countless appeals and, and was told time and time again that he simply couldn't have his day in court by virtue of the fact that there were these statutory limits in place and timelines in place. Mr. Kidd now actually makes a living off of telling his story and trying to make sure the same thing doesn't happen to others. He goes around and speaks at organizations like us and also district attorneys and county attorneys and defense attorneys explaining what some of the problems are when it comes to these wrongful convictions. Mr. Kidd is hardly an anomaly. We know from documentation that there's been hundreds of others who have been exonerated based on either newly found evidence, DNA evidence and the such, or based on the debunking of science. There are some people who are going to be here to testify after me who might be able to share more about that with you, but I was shocked to find out that I think there's 5 or 6 people that are currently on the Texas death row who were convicted using hypnosis, science that has actually been debunked pretty regularly. So what this bill seeks to do is ensure that individuals who find themselves in a similar situation in Nebraska have a path forward. A post-conviction relief system in Nebraska has become a quagmire of case law and statute that makes it almost impossible to navigate, especially without the help of an attorney. The statute or LB1123 seeks to clarify the process and allow those who do have claims of actual innocence to have their day in court. There

have been cases before the Nebraska Supreme Court about this exact same thing, and they've actually stated in those cases that it's up to the Legislature to acknowledge such a claim. And if we do not do so, their hands are tied. There's experts here to testify after me. Folks who have worked both in Nebraska and in other states on claims of actual innocence, gateway innocence, as described. We have some practitioners who work in post-conviction relief. They're going to be able to answer questions probably better than I will. But with that, I'm happy to answer any questions you might have about this bill.

WAYNE: Any questions from the committee? Seeing none, will you be here for closing?

DUNGAN: I'm going to try. I'll stick around as long as I can.

WAYNE: Thank you. First proponent. First proponent. Welcome.

TODD LANCASTER: Thank you. My name is Todd Lancaster, T-o-d-d L-a-n-c-a-s-t-e-r. I'm chief counsel for the Nebraska Commission on Public Advocacy. I'm here today to support LB1123. This bill addresses 2 problems that we have currently, 1 is adding actual innocence to a grounds for post-conviction relief, and also addressing the fact that if you-- appellate counsel does address post-conviction claims on direct appeal. They can't do it later on. The actual innocence claim includes things like DNA. We know those cases. The Beatrice Six case is a good example. But we forget that in that case, there's also lots of other bad stuff that was brought in as good evidence for forensics, things like hypnosis, and Mr. Dungan just talked about, repressed memory, false confessions, misleading forensic evidence. If we look at the 196 exonerations from people on death row, those same types of things have been brought in to convict people who are then later found who are actually innocent. Things like bad forensic science, perjury, misleading testimony. This bill will address that. Those types of things can be addressed in post conviction. The other issue that I think it addresses is the fact that if somebody who is not trial counsel appeals a case and does not address all the ineffective assistance that counsel claims on direct appeal, our Supreme Court says there are waived. One of the big problems with that is somebody doing a direct appeal that wasn't trial counsel may not know those post-conviction issues, may not have evidence that can support those issues, so may not be able to sufficiently address those claims on direct appeal. As a result, those claims later on are precluded from being addressed. And that's a problem, particularly when there are big cases where there have been lots of errors, lots of post-conviction

problems at trial that the attorney doing direct appeal may not be aware of and can't fully address. This bill will help address those problems. The Nebraska Supreme Court, a case in 1996, basically said that the post-conviction statute was a comparative measure of raising both federal and constitutional claims and the procedures were intended to be swift, simple, and easily invoked. Post conviction is not that at this time. And I think this bill will address issues that need to be addressed and can make it swift, simple, and easily invoked in the future. Thank you very much and I'll take any questions that you may have.

WAYNE: Any questions from the committee? Seeing none, thank you for being here.

TODD LANCASTER: Thank you.

WAYNE: Next proponent. Welcome.

RACHEL WESTER: Thank you. Good afternoon, my name is Rachel Wester, R-a-c-h-e-l W-e-s-t-e-r, and I'm the managing attorney at the Midwest Innocence Project. We're a nonprofit organization dedicated to exonerating people in a 5-state area: Arkansas, Missouri, Nebraska, Iowa, and Kansas. For the past 9 years, I've worked to investigate and litigate innocence cases. And in that time, it's become clear that Nebraska's current post-conviction landscape makes it especially difficult for innocent petitioners to succeed in having their wrongful convictions overturned. Almost always, a wrongful conviction case will involve both new evidence of innocence and constitutional claims, like ineffective assistance of trial counsel or state misconduct. In states like Missouri or Kansas, we can file 1 pleading, capturing evidence of innocence, and evidence of an unfair trial in 1 court, and an innocent petitioner can present their case to 1 trier of fact, who has the benefit of seeing the full picture of how someone may have been wrongfully convicted. But Nebraska has several different statutory mechanisms for relief, each addressing different types of error, and it creates a splintered structure that wastes judicial resources, reduces efficiency, and diminishes public integrity. Because it's hard to see how all of the errors intertwine to create injustice, and it's why accumulative analysis is needed. Some current challenges to the statute as it exists are that the current statute doesn't carve out a freestanding, actual innocence claim that would allow someone to get relief and establish their innocence by clear and convincing evidence, even if they don't have a constitutional violation. Second, Nebraska is one of few jurisdictions left in the country that subjects

ineffectiveness claims to a strict procedural default rule, which pressures defendants into raising those claims on direct appeal even when they can't be resolved there. And third, and relatedly, unlike many other jurisdictions, Nebraska has not adopted what's known as gateway innocence, which allows a defendant who can have persuasive evidence of innocence to overcome statutory procedural bias and have their constitutional claims heard on the merits. It's a narrow exception established by the U.S. Supreme Court, and the Supreme Court gives us other guidance on these topics. They explicitly know over and over again in case law that procedural rules and hurdles and statutes have to yield when there is a manifest injustice, like the conviction and incarceration of an innocent person. Senator Dungan talked about our client, Ricky Kidd, who was incarcerated for 23 years for a crime he did not commit in Missouri. And had his conviction happened here in Nebraska, he might still be incarcerated because the mechanisms wouldn't exist for his claims to be heard. In order to allow Nebraskans a pathway to demonstrate their wrongful convictions and regain their freedom, I respectfully ask the committee to support LB1123.

DeBOER: All right. Are there any questions from the committee? Thank you for being here.

RACHEL WESTER: Thank you.

DeBOER: Oh, oh, sorry, I didn't see you. Senator McKinney.

McKINNEY: Thank you.

RACHEL WESTER: Yeah.

McKINNEY: Thank you, Senator DeBoer. And thank you for your testimony. How many people yearly are exonerated due to wrongful convictions?

RACHEL WESTER: Yeah, it's a great question. So I don't have the stats year by year, but I can tell you that the numbers show us that, on average, someone is exonerated every 2 to 3 days across the country. Since the 1980s, there have been over 3,000 people who have been exonerated, whether that's through DNA evidence or because of other evidence that comes forward. So it is a pervasive problem that exist across the country and it certainly exists in Nebraska. It exists everywhere and so we have to allow innocent people a pathway forward.

McKINNEY: So it's not a wild idea or concept to think that there are-- there are potentially innocent men and women currently incarcerated in our criminal justice system right now?

RACHEL WESTER: Absolutely. Studies tell us that between 2 and 7% of the entire U.S. prison population are people who are sitting behind bars for crimes they did not commit. And so we work in a 5-state area, that means that just in our 5-state area, there's between 2 and 10,000 people who are incarcerated for crimes they didn't commit. And some of those people are in Nebraska.

McKINNEY: All right. Thank you.

RACHEL WESTER: Thank you.

DeBOER: Thank you, Senator McKinney. Any other questions? Senator DeKay.

DeKAY: Thank you, Senator DeBoer. As evidence gathering techniques have come forward with DNA and forensics and stuff like that, has, has there been less people that have been convicted percentagewise than they were, say, 15, 20, 25 years ago or--

RACHEL WESTER: Yeah, it's a good question. I think partially, yes. Like, we know a lot more right now about DNA evidence or even things like false confessions or the problems with eyewitness identification than we did 20 years ago. But the reality is that those things are still being used in courts today, right? There might be protections around them, but it's still happening, there's still certainly people who are being wrongfully convicted. And 1 pattern you've seen is that when sort of like the Innocence Project started and the movement started, there were lots of cases where DNA was the thing that would exonerate someone, right, because there were all these cases from the '70s or '80s where DNA wasn't a thing. 20 years later, we can test evidence and people were exonerated. But we've seen sort of a slowdown in that and more exonerations that come from things like a false confession being realized, eyewitness identifications that were wrong that we know now, they're unreliable at the time of trial, those other types of evidence, other sorts of new science.

DeKAY: Thank you.

RACHEL WESTER: Thank you.

DeBOER: Thank you, Senator DeKay. Other questions? Thank you.

RACHEL WESTER: Thank you.

DeBOER: We'll have our next proponent testifier. Next person in favor of the bill.

BAY SCOGGIN: Thank you very much.

DeBOER: Welcome.

BAY SCOGGIN: Thank you. My name is Bay Scoggin. That's B-a-y S-c-o-g-g-i-n. I'm the state policy advocate with the Innocence Project and I'm here to testify in favor of the bill today. So hope you all are doing great. I am going to break my own rule and talk a lot about numbers today, as opposed to telling good stories about why this matters to you. So here is hopefully some of the answers to some of these questions that we're talking about. And we'll start with how many exonerations have happened in this state, specifically. Outside of the Beatrice Six, which happened in 2009, there were only 3 other exonerations in this state. That's out of a prison population of about 5,500. So using the most conservative possible estimate, we can say that there's probably 75 to 90 individuals who are currently incarcerated who have some claim of actual innocence. That's important for 2 reasons: (1) those are actually innocent people who are serving time that they shouldn't be serving and that's a manifest injustice. But also it's important to realize the type of numbers that we're talking about here. We aren't talking about hundreds and thousands of petitions, pro se petitions coming into the court and flooding the court, our whole reason of being here is to increase judicial efficiency so that we can have more people have their DNA tested, more people have actual innocence claims back into court. Just as some comparisons-- by the way, the last Nebraska exoneration that we have record of is in 2009 and so it has been quite some time. In Missouri, there have been 50-plus exonerations; Kansas, 20-plus; New Mexico, more than 10; Indiana, more than 40. In those same states, I want to give you some other numbers about the amount of petitions that are being made in a post-conviction space for DNA testing. In Iowa, for example, there were 2 total petitions in 2021 and 3 petitions in 2022. In, in Indiana, there have been 6 total petitions filed by our office, which means probably double that from another set of advocates. And in Missouri, there have been 2 total in St. Louis, and 2 total in KCK, Kansas City, Missouri, obviously. So all of that is to say, we are not talking about a massive overhaul of our system. We are talking about a targeted, specific effort to reduce manifest injustice of wrongfully incarcerated individuals. Last thing to note is, yes, DNA evidence and

exonerations have slowed down over time. Quick-- in addition to the hypnosis aspect of Senator Dungan, realize there's other faulty forensic science. For example, a company is now going on record as saying that they can reconstruct your face based on DNA and have an accurate enough template composite from that to search through facial recognition software. Faulty science and junk science forensics will keep perpetuating, we need targeted interventions like this to do better. Thank you.

DeBOER: Thank you. Are there any questions? I don't see any.

BAY SCOGGIN: Thank you.

DeBOER: Oh-- but not this time, you raised your hand late.

McKINNEY: I was-- it was late.

DeBOER: Senator McKinney.

McKINNEY: Thank you. What do you think it means to taxpayers when we are passing things to address the issue of having people that are wrongfully convicted and giving them a chance to have their cases heard?

BAY SCOGGIN: Thank you for that question, Senator. I think it's a-- it's a great point. I, I, I don't think that there's a voter in the state that would say that there should be wrongfully convicted people still spending time incarcerated.

McKINNEY: Do you think giving them a chance is somehow demonizing law enforcement or county attorneys and--

BAY SCOGGIN: Thank you very much for that question. I should have started with that. You know, this-- none-- nothing that we do at the Innocence Project is about blaming people or, or casting aspersions in any way. What we are focused on entirely is what does the science say and what do we need to implement the things, the tools that science is giving us in the criminal justice system? So this is absolutely not about blame game in any way. And you'll notice, I think none of the testimony will include any, you know, acrimonious stuff.

McKINNEY: And I ask those questions because we've had similar type of bills come before this committee and a lot of times we get the arguments that we think we did a good job. And we, we don't think we-- anybody's ever been wrong ever in the history of this state. And

statistically, I don't think any of us think, think that is true. But when you raise that argument, it's like, oh, so you're saying we don't do our jobs right or we're bad people or whatever, and it's like, no, we're human. People, people make mistakes. And I think that's what we got to get to a point of just acknowledging we're humans. Humans mess up, and we just got to acknowledge the human error in this system of justice that we have and address it to make-- to make the system better.

BAY SCOGGIN: I think that's exactly right, Senator. And, and that's why the leading cause of, of wrongful conviction in this country is eyewitness misidentification. It's not malpractice, that happens, but it's-- much more often that it's a, a human error that causes wrongful conviction in the first place.

McKINNEY: All right. Thank you.

BAY SCOGGIN: Thank you.

DeBOER: Thank you, Senator McKinney. Other questions? Thank you for being here.

BAY SCOGGIN: Thank you.

DeBOER: I'll have our next proponent testifier. Next proponent. Welcome.

JESSIE McGRATH: Thank you, Senator DeBoer and members of the committee. I really wasn't planning on testifying today about this bill. However, in listening to what has occurred, I, I, I figured I would throw my 2 cents in on this. My name-- I did my name, right?

DeBOER: Nope.

JESSIE McGRATH: Jessie McGrath, J-e-s-s-i-e M-c-G-r-a-t-h. I am a criminal prosecutor. I've been a deputy district attorney for the Los Angeles County District Attorney's Office for the last 36 years, and I'm still employed there, but I'm living in Nebraska part time now. I wish we got it right every time. I, I really wish we did. But as history and, and events have shown, criminal prosecutors are not infallible. And with the advent of new technologies, we're finding that things that we may have thought were true at one point are not true. And I also need to say that I'm here speaking on my own behalf and not on behalf of my office. This is-- these are my personal views that, that come from my extensive experience as a criminal prosecutor.

The, the fact is, is that sometimes evidence looks one way and then you discover something new, and it tells you that something is different and, and you have made a mistake. I would think that as, as humans, the last thing that we want to do is see somebody who is factually innocent continue to be incarcerated because of some technicality. That is just inhumane. And if we do have the ability to make these changes, to allow us to be able to bring these forward and, and give these individuals an opportunity to get their freedom that they deserve, that they are, in fact, are entitled to, is something that we need to do. Now, in fact, in my office, we have a conviction review unit, and we work with the Innocence Project and we examine cases and we have exonerated over the, the last couple of years, I, I believe, 5 or 6 individuals that were convicted out of Los Angeles County. And that is a good thing. And that's what we need to do, and we need to have this bill. It, it doesn't need to be killed yet again. I think this is something that needs to go forward because these individuals deserve their freedom. And I'll be glad to answer any questions.

DeBOER: Thank you. Are there any questions? Senator McKinney, are you asking any questions? [LAUGHTER] I don't see any. Thank you.

JESSIE McGRATH: Thank you so much.

DeBOER: Next proponent.

JASON WITMER: Good afternoon. I am Jason Witmer, J-a-s-o-n W-i-t-m-e-r. I am a policy fellow for the ACLU of Nebraska, and we are here in support of LB1123. Despite the modest size, Nebraska grapples with a weighty burden of an overcrowded prison system, a burden that has failed to enhance public safety, particularly people of color. According to the Vera Institution, from 2000 to 2018, Nebraska had a 40% surge in our incarceration rate, with the blacks being 29% of the prison population, even though being 5% of the state's population. In UNO, a report was put out over a 6-year period that blacks were, on average, 19% of the arrests. Again, we make up 5% of the, the state's population. A national report by the Equal Justice Initiative reveals that blacks are 7 times more likely than whites to be falsely convicted of serious crime, with the racial disparity increasing by 19% when it's a drug-related crime, which brings me to LB23-- LB1123. The notion of convicting an innocent individual is a grave injustice, however, what's more disturbing is denying them the opportunity to prove their innocence based on some type of procedural default, limiting legal language, or the time constraints. The infamous

Beatrice Six case serves as a sobering reminder of how flawed our system is and the value of time. Six individuals were exonerated through DNA evidence after collectively spending 77 years of their lives incarcerated. On a fiscal note, today the cost of incarcerating somebody in the state of Nebraska is $41,000 per year, so that would be $3,157,000 spent keeping just those 6 innocent people in prison. And that's just the prison cost. So that's something to relate to every person that we keep in prison and the cost that that would cost us. In conclusion, if we can afford significantly investing in incarcerating individuals for life in the name of public safety, then surely we can afford to provide them the same guarantees of effort and opportunities to prove their innocence. While LB1123 does not go that far, it represents a crucial step in bringing this gap and providing meaningful access to post-conviction justice where it is sorely lacking. We urge you-- we urge this committee to advance LB1123, and I thank you for your time. And if I can answer any questions, I will or I will follow up.

DeBOER: Thank you. Are there any questions from the committee? Don't see any. Thanks for--

JASON WITMER: Thank you.

DeBOER: --being here. Our next proponent, please. Proponent.

SARAH NEWELL: Good afternoon, committee members. My name is Sarah Newell, S-a-r-a-h N-e-w-e-l-l. I am an attorney at the Barry Law Firm, and I'm testifying today in support of the bill on behalf of the Criminal Defense Attorneys Association, of which I am past president. I provided written testimony. I won't belabor that. I'll just cut through to a couple-- the few things that Mr.-- Senator Dungan alluded to. The bill does essentially 3 things: (1) it provides a claim for actual innocence which is not present in our statute of present; it allows or broadens somewhat the statute of limitations relating to claims that if they were not addressed would result in a manifest injustice, which is an incredibly high standard; and (3) it eliminates the requirement for counsel-- new counsel on direct appeal to preserve any kind of post conviction or preserve any ineffective assistance of counsel claims at the direct appeal level, rather-- in order to preserve them or in order to argue them later at, at post conviction. If you do nothing else, I would urge you strongly to adopt that language alone, which is subsection (8). A tangible example of why that is important is that I was the attorney that handled the, the brief on the Anthony Garcia homicide. The original brief that I wrote

was 800 pages long and alleged roughly 130-some assignments of error, most of which I think over-- I'm, I'm estimating, I don't recall offhand, but I think over 100 of them were ineffective assistance of counsel claims, preserving the deficient performance that the trial counsel had engaged in. None of those things were likely to be resolved at, at the trial level or at the appellate level. Those are things that I have to outline and lay out is like enough sufficiency or enough specificity to preserve those issues so that the court later if, if Dr. Garcia wants to allege post conviction that they'll know that I recognize those and that we allege them and that they were preserved. But, again, they're not even-- they're not touching those. So over 500 pages of that brief were completely unnecessary and the court knew they weren't going to do anything with. The biggest reason why that's important is because under the federal rules, the federal statutes do not require that kind of preservation. I'll skip to the next issue because this is something probably I'm uniquely suited to address. The procedural quagmire that Senator Dungan referred to is that there are multiple ways that you can raise these kinds of claims. Post conviction only addresses constitutional deficiencies. There's a writ of error coram nobis, which essentially is, is relic at this point, it does almost nothing. There's also motions for a new trial based on newly discovered evidence and motions for a new trial based on DNA and DNA testing. Each of those only addresses certain specific types of claims. So if you have a client that has-- or, you know, or, God forbid, you're a pro se defendant and you have to do this yourself, if you have a claim that kind of fits in multiple categories, you have to figure out which one you file first and how do you phrase it so that you can preserve those issues and actually get some traction. And it's hard enough for regular attorneys to do that, it is absolutely impossible for, for unsophisticated defendants to do so. I'm happy to field any questions.

DeBOER: All right. Thank you. Are there questions? Senator McKinney.

McKINNEY: Thank you. Quick question. Well, questions possibly. What--

SARAH NEWELL: Bless you.

McKINNEY: I guess what, what would you anticipate the opposition of this to be?

SARAH NEWELL: So I anticipate that my, my colleagues on the other side of the bench, or the other side of the aisle, I should say, will say that this will increase the number of filings and that it will clog

the system with a glut of unnecessary litigation. If I may, I, I can tell you my responses to that. And I'll take your nod as a yes?

McKINNEY: Yes.

SARAH NEWELL: Sorry, use court reporters where they tell me I have to say it out loud. With regard to the idea that this will clog the court system with unnecessary litigation, I don't-- one, I just don't think that's patently-- that's patently untrue. In my experience, the courts are very good at weeding through these cases and you can tell pretty quickly, as a judge, if it's going to pass the smell test. You know, you read the pleadings. Is there anything here that is-- that is truly problematic or-- and if it's not, then basically they issue an order laying out why, why this default? Either procedurally or because the claims have been raised before or because they're just simply not enough. And so courts are already very efficient at getting rid of frivolous litigation. The challenge is, though, if there is a legitimate case that has merit, the procedural bar is absolute. There's no real way to get around that. And so oftentimes we have clients, and I, I will also tell you that in terms of freeing people unnecessarily, the only-- I mean, I litigate these cases for a living, and the only cases that I have gotten significant traction on had to do with procedural quagmires. You know, a situation where should it have been raised as a motion for a new trial? Should it have been raised as a post-conviction motion? You know, was, was the statute followed appropriately? So then that case gets remanded and relitigated. But those are not-- those aren't frivolous cases. These are cases that we haven't even gotten to the merits of whether there's a legitimate issue, because we're too busy trying to figure out what the heck the statute actually says. So I, I don't think that this will actually result in that kind of floodgates. And with regard to-- you know, the standard here is very limited. Manifest injustice is a very high burden. It's not something that somebody is going to say, oh, well, you know, I got you. You didn't read me my Miranda rights and so, therefore, I get to go free. It has to be something that really would have changed the outcome.

McKINNEY: Yeah, and when I hear the floodgate argument, I just say, well, if the floodgates are going to open, how many people did you wrongfully, wrongfully convict? And if you-- if you argue we haven't wrongfully convicted a bunch of people, then you shouldn't be worried. So I'm with you. Thank you.

SARAH NEWELL: Great.

DeBOER: Thank you, Senator McKinney. Senator Holdcroft, any questions?

HOLDCROFT: Nope.

DeBOER: OK. I actually have a few.

SARAH NEWELL: Oh, OK.

DeBOER: Can you-- what, what constitutes actual innocence? So is actual innocence they didn't do the act in question or would it be showing that any one of the elements of the crime is, is missing? Which-- what constitutes actual innocence?

SARAH NEWELL: My understanding of the current case law is that it is a very high bar. There's a fair question about whether even the Beatrice Six would have fit that standard, because actual innocence is not just a failure of proof. It's not just the state didn't, you know, meet each of the elements. You have to demonstrate that you would have actually been found innocent and that you actually didn't commit the crime. So, under federal case law, there are also difficulties if someone has entered a plea and acknowledged some kind of responsibility where you can't even go forward, because if you've acknowledged some kind of responsibility, even if it's a legal technicality, then that's not enough for actual innocence.

DeBOER: OK. And then-- so you're saying-- I've never worked in post conviction. I have no, no idea how any of this really works. So let me see if I got it right. You're saying that in order to raise ineffective assistance of counsel in a post conviction, you have to have alleged it with some sort of specificity during the appellate process?

SARAH NEWELL: Yes, if you have new counsel on direct appeal. And I've got to belabor with a little bit of detail. So the standard is that you have to raise these claims at the first opportunity that you have. So if you have-- like, if, if I represent somebody at trial and then direct appeal, I can't allege my own ineffectiveness because that's a conflict of interest, because I have a reason to maybe not want to admit that I screwed up. So in that situation, if there's another attorney that takes over direct appeal, like, you know, with, with Dr. Garcia, he was represented by the Motta's out of-- out of Chicago. The ineffectiveness claims were, were such that when we were new counsel on direct appeal, we needed to lay out each aspect of deficient performance. Because ineffective assistance of counsel is 2-prong: (1)

deficient performance-- how did you mess up, basically, and (2) was it prejudicial? Was the error so bad that had it not happened the outcome would be different?

DeBOER: OK. So those are-- that's one of the-- that's-- you said subsection (8).

SARAH NEWELL: Yeah.

DeBOER: OK. All right. Did that raise any other questions? Thank you so much for being here.

SARAH NEWELL: Thank you.

DeBOER: We'll take our next proponent. Next person in favor of the bill. Welcome.

KALA MUELLER: Thank you. Good afternoon, my name is Kala Mueller, K-a-l-a M-u-e-l-l-e-r. I am the director of Public Interest Programs at the University of Nebraska College of Law. I am also a former prosecutor and a member of the board of directors for the Midwest Innocence Project. I'm not speaking today on behalf of the University of Nebraska or any other organization, but instead as a private citizen of the state, and I'm here to testify in support of LB1123. Last October, the U.S. Department of Justice awarded the University of Nebraska College of Law a $600,000 grant under the Bureau of Justice Assistance's Upholding the Rule of Law and Preventing Wrongful Convictions Program. This program furthers the DOJ's mission to protect civil rights, address inequities, and advance criminal justice integrity and reform by supporting wrongful conviction entities that represent individuals with post-conviction claims of innocence. With the support of this grant from the DOJ, the College of Law will be establishing a new Innocence Clinic where law students will work to investigate and litigate wrongful conviction claims. This legislation is imperative to our ability to move these cases forward. Under existing law, as others have noted, procedural barriers make it incredibly difficult to raise these claims in court, even where there is compelling evidence of innocence. No one benefits by having an innocent person in prison without a system of review. In its solicitation of grant applications, the DOJ states, quote, Public safety is adversely impacted by delays in the identification and apprehension of actual perpetrators. Exonerations based on false testimony, for example, primarily occur in murder cases, meaning that those who pose the greatest public safety threat remain on the street,

potentially committing further crimes. Close quote. As a former prosecutor, I am sympathetic to the fact that relitigating cases can be difficult for survivors and families of victims. But how can we elevate these concerns above the right of an innocent person to be free? How can we put concerns about judicial resources before legislation that could save innocent people from spending decades of their lives or dying in prison? LB1123 would be a significant step forward for our state. I wanted to share some of the information we cited in our grant application as to why an Innocence Clinic was needed in Nebraska. I provided written testimony and many of those reasons have actually been cited by previous testifiers today so I won't belabor some of the data that we've included there. But as Mr. Scoggin noted, the very, very low level of exonerations that have happened in Nebraska history compared to the overall number of exonerations nationally. Since 2018, the Midwest Innocence Project has processed 416 applications from incarcerated Nebraskans. Of these 416 applications, 41 have been placed on a waitlist for further screening, investigation, and litigation. This means there are 41 people incarcerated in Nebraska currently who are potentially innocent and could be exonerated with the assistance of this clinic. As Mr. Witmer noted, the racial disparities, the fact that Nebraska as, as a death penalty state--

DeBOER: Ma'am, you've got the red light. I'm sorry.

KALA MUELLER: That's OK.

DeBOER: Let me see if there's any questions for you.

KALA MUELLER: Sure.

DeBOER: Are there any questions? Why don't you finish up with one sentence?

KALA MUELLER: Sure. So the last thing I really wanted to reiterate is the fact that the DOJ has awarded the law college this funding is an indication they agree we need to be doing more to identify and remedy wrongful convictions in this state, but that remedy is going to be nearly impossible under existing state law.

DeBOER: OK. Any other questions? All right. Thank you.

KALA MUELLER: Thank you.

DeBOER: Before we take our next testifier, we're going to take a quick pause. We're having some technical difficulties with the online streaming. So--

DUNGAN: They're all out.

DeBOER: Oh, the whole--

DUNGAN: Yeah, everything is out or down.

DeBOER: OK. What do you think, Megan? We could probably keep going. Right?

MEGAN KIELTY: [INAUDIBLE]

DeBOER: Oh.

MEGAN KIELTY: We just don't have [INAUDIBLE] or do we?

DeBOER: I think-- I think it's-- if you think it's fine and if Megan thinks legally we're fine, we can go on. All right. We're going to continue anyway, but we'll recognize that, unfortunately, our streaming is down. And so these things happen with technology. So we are still on proponents. Is there anyone else who would like to testify in favor of this bill? Come on up, sir. Thank you. Welcome.

MICHAEL CONNELY: Hello, my name is Michael Connely, M-i-c-h-a-e-l C-o-n-n-e-l-y. Yeah, many of you know me as one of these hard right-type of conservative guys and I wasn't actually coming here to speak for this bill. But when I saw it up there, I, I had to come up and throw in my 2 cents worth. I have at least a half a dozen family members who have worked for the prison system in Nebraska, and a lot of the times they will come home and they'll have a gloomy look on their face because they can't talk about specifics, of course, you know, their job. I said, another one in there who shouldn't be in there. Right? And they go-- it's all they'll do is nod. And that's something that I, I would recommend the senators do is actually bring in a lot of the different prison guards, especially the ones where they bring them into processing and ask them, do you think there are individuals here who should not be here who are innocent of the charges against them? You'll find a big handful. Personally, I have a lot of members of my family and individuals that I know who are incarcerated who should not have been incarcerated. I know an individual, a young lady who was put in the Penitentiary for 2.5 years because she had a box put on her table, her kitchen table, for 3 days.

One of her friends dropped off a box for 3 days, and it was because of something that was in the box and they couldn't find anybody else and so she was a scapegoat. I have seen individuals have charges pushed against them, have it dismissed by one court, charges change slightly, put in another court, dismissed from a second court, brought up to a third court and be convicted on the same thing. Things like this happen all the time in Nebraska. I have seen too many cases to even count, and the Project Innocence should have a go at everybody who's incarcerated. I would like to see a complete reformation of our justice system. I have-- one of my sisters named her second child "Justice" because she said that's the only way we can get justice in this family is if we name someone like that. I like all of your questions over there. Sorry about my blurt outs. I have a problem with that. If I think something is funny, you will hear me laugh out loud. But-- and I am an educational administrator for private schools in Japan. I was also previously one of the candidates for Nebraska Governor, currently a congressional candidate. But, no, I'm a strong right guy. But, hey, this is something that you guys need to-- need to pass. It's just a scratch in the mess, but makes a small dent in the process, but it should be passed. And bring in some prison guards, talk to those guys, find out what they see there, things that should not be. All right. That's all I've got to say.

DeBOER: All right. Are there questions? Thank you for being here. Next proponent. Next person in favor of the bill. OK. We're going to switch now to opponents. Welcome.

MIKE GUINAN: Good afternoon. Good afternoon, Vice Chair DeBoer and members of the Judiciary Committee. My name is Mike Guinan, M-i-k-e G-u-i-n-a-n, and I'm the criminal bureau chief for the Nebraska Attorney General's Office. I appear before you today on behalf of the Attorney General's Office and the Nebraska County Attorneys Association in opposition to LB1123. There are several concerns we have with the bill. To start, the Nebraska Supreme Court has already acknowledged the possibility that a post-conviction motion asserting the pervasive actual innocence claim might allege a constitutional violation. Before analyzing defendants' claims in those cases, though, the court first noted that the threshold standard to even trigger consideration of the claim is extraordinarily high leaving serious questions about whether LB1123's clear and convincing standard is adequate. Moreover, LB1123's not produced at trial language throws open the doors to all sorts of mischief, such as review in a vacuum of all the remaining evidence generated in an investigation, despite its relevance or inadmissibility at trial. Second, the examples listed in

lines 22 to 24, the bill would already be covered by the post-conviction relief statutes or a motion for a new trial or the DNA Testing Act, depending on whether such as third-party confession-- the facts, such as a third-party confession, was known or knowable at the time of trial. On this point, in 2015, then Senator Pansing Brooks introduced LB245, which ultimately became law. That bill, in addition to expanding the circumstances in which the DNA could be tested under the DNA Testing Act, also increased the statute of limitations for motions for a new trial from 3 to 5 years, and effectively eliminated it where the new evidence is so substantial that a different result may have occurred at trial, which are the circumstances we are speaking about today. Third, the evolving forensic evidence scientific piece, page 2, line 24 to page 3, line 4 should also be removed from the bill. Post-conviction relief under these statutes concern violations of a defendant's constitutional rights which render the judgment void. If evolving standards in science would be a grounds for relief at all rather than just a grounds to relitigate what has already been litigated, it may be more akin to newly discovered evidence under a motion for a new trial or possibly a stand-alone provision like DNA testing. Either way, that section of the bill is more appropriate for different discussions and a different bill on a different day. Lastly, when you strip out the other portions of the bill, you're only left with section (8), which would reverse Nebraska Supreme Court precedent and eliminate a quarter century of clear and settled case law. And you're also left with section (7), which would create an exception to the 1-year statute of limitations to file a post-conviction relief claim where the exception of no limitations would swallow the rule. And I'll stop there.

DeBOER: All right. I think we can probably finish reading. Thank you.

MIKE GUINAN: Yes. Thank you.

DeBOER: Are there questions from the committee? Senator McKinney.

McKINNEY: Thank you, Senator DeBoer. So you've been sitting here and I'm sure you heard the data from the proponents about the statistics and the potential of innocent people being housed in our-- in our prisons currently. Is it the stance of the Attorney General's Office that we should keep those innocent-- potentially innocent people housed in our criminal-- in our prisons?

MIKE GUINAN: Should we keep innocent people in prison?

McKINNEY: Yeah.

MIKE GUINAN: Of course not.

McKINNEY: So what should we do about it?

MIKE GUINAN: Well, we would exercise--

McKINNEY: If you oppose this bill, what's the solution?

MIKE GUINAN: Yeah, the solution is to use the 7 grounds that already exist or the 7 avenues to raise their post-conviction claims. There are 7 currently, and they would use those systems that are already in place.

McKINNEY: OK, if that's your argument. For whatever reason, those 7 grounds are, are ineffective and not working. So how do we improve those 7 grounds?

MIKE GUINAN: Well, I wouldn't say-- I would disagree with you, Senator, on that. In fact, the DNA Testing Act did work to release the Beatrice Six, or at least the members that were in prison. So I do think that they are effective.

McKINNEY: So all of them are effective?

MIKE GUINAN: These grounds are effective?

McKINNEY: Yeah.

MIKE GUINAN: Yes, there are 7 in place that I think work rather well. Yes.

McKINNEY: So they shouldn't be looked at, updated, we shouldn't ever update them?

MIKE GUINAN: I'm not making that statement. No, Senator.

McKINNEY: So do you think some of them could be improved?

MIKE GUINAN: I, I think the way that this bill is laid out, that this bill is not a, a good design to do that update.

McKINNEY: So what's a better way?

MIKE GUINAN: Well, for instance, and I don't know if I got to it, well, I did, I mentioned that there may be a situation where the evolving forensic science piece. Now, I don't-- I would probably debate whether or not that is actually a legitimate area. The reason being is because those questions are, are litigated in pretrial. So if there is a, a, a movement that a-- an area of science has some problems with it, like hypnosis and so on, that's going to be brought up in litigation before trial. And if it's bad enough, there will be what's called a Daubert proceeding to determine whether or not you can even introduce that kind of evidence. And there are experts on both sides. So that all gets litigated pretrial. So that I guess I would-- I would say would-- what, what is a better way of doing that? There are-- I can imagine a, a situation where outside of that, for instance, if we have advancements in, I mean, ubiquitous surveillance cameras everywhere, and maybe there's an, an advance in computers and AI technology and so on, such that we can read somebody's face on these things that cannot be done now. And if that becomes a, a true and, and accepted-- similar DNA becomes so accepted that this technology is so good, then I can imagine that that would be-- could be stood up as a similar to a DNA Testing Act. So if somebody-- we could go back-- going forward, this technology is so well accepted that likely it's going to be introduced in a lot of these cases. But we go back and look at the 40 years of grainy video, and we go back and look at all that, just like we did with DNA, I could imagine that there would be a section that would be similar to a DNA Act. I'm not aware of that right now, but I can ask and find out.

McKINNEY: What if you accept some science today that is found 20 years from now to be very problematic? How would you address that 20 years from now?

MIKE GUINAN: Well, if that is the case, the evolution of the science is what you're talking about. Well, again, the problems that are going to be-- raise their head are going to be litigated pretrial, which means both sides going to get their experts.

McKINNEY: No, no, I get convicted of life in prison today based on a form of science that 20 years from now is found to be very problematic. How do I get myself back in trial or heard again to make my case to say I was wrongfully convicted because of this problematic science?

MIKE GUINAN: And that would be for a different day, we would have to discuss a bill that-- and look at those facts. But I'm not aware of what science you're speaking of.

McKINNEY: I'm, I'm-- it's a hypothetical.

MIKE GUINAN: Oh, OK.

McKINNEY: Because you're saying I would be able to argue against the science before trial,--

MIKE GUINAN: Correct.

McKINNEY: --what I'm saying is, and I think what Senator Dungan is saying is, what if somebody is convicted wrongfully based on bad science that is trying to get reheard-- make their case in the future?

MIKE GUINAN: Well, what I-- what I would say, Senator, is part of that is there might be a discussion for such a-- such a topic in a different bill and a different time. But what I will tell you, it's been my experience in trial that it isn't just a science that convicts anybody. There's a whole plethora of information all taken together. And one science isn't the be-all, end-all. It isn't like you have an expert to come in and talk about this science and, and present to the jury or educate them on the full broad width of it. They might take certain pieces of the science and apply them to these facts and the other side hires an expert to counter it. I mean, that's the way it works. So, again, I do think that there might be some avenue for discussion. I don't think that this is the proper way in this bill.

McKINNEY: But your DNA being on something and my DNA being on something makes a world of a difference when you're saying did I kill somebody or did you kill somebody?

MIKE GUINAN: It may. It may. Yes, depending on the facts of the case, you're right.

McKINNEY: Yes. So you can't say that science wouldn't make a, a big difference because it could.

MIKE GUINAN: And, again, if we're talking about a, a readily and accepted science like DNA, OK, that's one thing. Right?

McKINNEY: Yeah.

MIKE GUINAN: And, and-- like I'm saying, there might be avenues where we would have those types of things in the future [INAUDIBLE].

McKINNEY: Yeah. But I'm just saying, statistically speaking, there's more than likely innocent people that are housed in Nebraska state prisons that have a low shot of ever getting out because you're opposing this bill and have opposed other bills similar to this. But thank you.

MIKE GUINAN: Thank you, Senator.

DeBOER: Thank you, Senator McKinney. Other questions? Thank you for being here.

MIKE GUINAN: Yep. Thank you.

DeBOER: Let's have our next opponent testifier. We'll note for the record that Senator Bosn has joined us. Any other opponents? Is there anyone in the neutral capacity for this bill? I don't see any. While Senator Dungan is coming up to give his closing, I will note for the record that there are 18 letters, all of which are in support for this bill.

DUNGAN: Thank you, Vice Chair DeBoer and members of the committee. I want to thank everybody that came in and testified today. I think you heard from a really interesting array of individuals, both with practical experience and the professional experience to talk about the intricacies of this as well as individuals with personal experience. And I think that those are both really important things. What I know about this bill is that it's dealing with a very complicated subject. Anybody who works in not just the law but specifically post-conviction relief will tell you that it is a very difficult area of the law to navigate. And for lawyers, if you don't practice in this on a regular basis, it can be a quagmire, is the word I think that gets utilized quite a bit, even for people who do this. And what I think is really important to note about that is there are hundreds of people who are currently in custody that are trying to navigate this system on their own and it's not workable. So that's one thing. Second of all, I want to say that this is really about getting innocent people out of prison. There are innocent people in prison. There just are. We know that. You've heard studies and statistics from the Midwest Innocence Project. You've heard other people talk about that, and it's not everybody. I'm not saying that everybody is an innocent person that's been convicted, but we know they exist. We know they exist in

multitudes. And what this bill seeks to do is present an opportunity to allow their day in court. If you work in the justice system or if you interact with incarcerated people, you will know that there are constantly day in and day out motions, handwritten motions being filed by people who are in custody and sending them to court. So the idea that the courts are going to somehow be flooded with all of these people requesting these kind of hearings, I just would respectfully disagree with, because that's already happening, right? When I go and talk to people who are incarcerated, they will show me their filings they're sending in every single day. Judges and courts are already receiving this kind of request, so they are more than capable of handling this. And this is not some novel idea. What we're doing here is we are enshrining in Nebraska state statute a claim that is already allowed, as was indicated by the Midwest Innocence Project under federal statute. And it's been incorporated into state law by other states as well. So this is not some ridiculous scheme that was come up with to see if it will work. This is looking at case law and trying to encompass it in Nebraska law. I would also respectfully disagree with the opposition, who I do appreciate being here, and I appreciate their perspective because as practitioners they do understand some of the implications here. But, Senator McKinney, to your point, the idea of debunked science, this is the bill. Today is the day to have that conversation. And so to answer your questions and say we can have that conversation maybe in a different bill, maybe in a different time, I simply don't understand that because part of this bill is specifically crafted to address debunked science. And I am more than open to having conversations about ways we can make this better. I think that oftentimes bills are not always in their final form when they're heard in committee and so if the Attorney General or the county attorneys want to sit down and have a conversation with me about what we can do to improve the language in this with regards to debunked science, I would be absolutely more than happy to do that. What we know is that there are a number of people who have been convicted based on debunked science, and that I can tell you myself as a practitioner, science is oftentimes the key, right? DNA evidence or, or other kinds of scientific evidence presented. When a jury hears scientific evidence, to them it carries a lot of weight. And you're exactly right, Senator McKinney, there's a number of circumstances where years, decades can go by. And over time it can be determined that that evidence is now debunked. And I think a really good example of that would be, you know, polygraph tests that oftentimes aren't admissible in court anymore. There's a lot of good examples when it comes to bite mark evidence that has now been debunked. And I think you hit the nail on

the head, the Daubert standard, where you have these pretrial hearings to analyze whether or not science is essentially real or not happens based on current understanding. Right? There's all these standards the court has to consider for whether or not science is valid when you have a Daubert hearing prior to a trial, but it's all based on our current understanding of that science. And we all know science has evolved over a very long period of time. And there's a lot of things that used to be held out as science that we now think is ridiculous. Talk about, like, the four humors and yellow bile, green bile, whatever, you know. Science changes over time. And what this bill seeks to do is enshrine or at least focus on the idea that somebody who was convicted on debunked science should not be held in custody forever, just because we, as a state, have put in place these statutory limitations out of convenience. So that's what this seeks to do. I want to touch on one last thing and I think the testifier Ms. Newell talked about this in particular. I do want to draw your attention to that part of the statute that has to do with not needing to allege ineffective assistance of counsel on direct appeal in order to address it on post-conviction relief. That may seem like a really, really small change, but I can tell you that that would have a very important effect on people who are currently, right now, being denied the ability to argue that in court on post conviction. If you get new counsel on your appeal and they mess up-- like, let's say you get a bad lawyer, right, they exist-- let's say you get a bad lawyer and they fail to allege ineffective assistance of counsel about your other lawyer that you had first and it doesn't actually get talked about in that direct appeal, you're done. You don't get to allege that on post-conviction relief, ever. And I have talked firsthand to people-- firsthand to people where that's their problem, where they literally have, have said, you know, my, my counsel that I got didn't do this. And they filed motion after motion after request after request that the courts take up this ineffective assistance of counsel claim. But because we currently have this case law that says it can't be considered, they are barred from having their day in court. And I think that's wrong. And I think that we as a system have the capability of addressing that. I think we have the capacity to handle those concerns. And I absolutely, 100% think we have the obligation to make sure that innocent people have an opportunity to have their case heard. So more than happy to talk about the logistics of this bill, would love to sit down and talk about what we can add in to make this a little bit more fleshed out with regards to the science aspect, but I think we need to do something, and I think we need to do something sooner than later because there's people who've been waiting for us to

act for years and we should step up. Happy to answer any questions anybody has.

DeBOER: Are there any questions? I don't see any. That's going to end the hearing on LB1123.

DUNGAN: Thank you.

DeBOER: And we will start with LB1045. Welcome, Senator John Cavanaugh. We'll take a short break while we wait for Senator Cavanaugh to get here, will be a minute.

McKINNEY: Good afternoon, Senator Cavanaugh.

J. CAVANAUGH: Good afternoon. LB1045. Good afternoon, Vice Vice Chair McKinney and members of the Judiciary Committee. My name is Senator John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, and I'm here to introduce LB1045, which would prohibit the use of peremptory challenges on the basis of sexual orientation or gender identity. The use of peremptory challenges on the basis of race is prohibited under the Fourteenth and Sixth Amendments by the U.S. Supreme Court decision in Batson v. Kentucky in 1986. Courts have subsequently extended that prohibition to other protected classes. LB1045 would clearly establish under Nebraska law that such protections exist on the basis of sexual orientation and gender identity. This would mean that jurors could not be stricken because of their actual or perceived sexual orientation or gender identity. I won't take up too much of your time because I know you've got a busy day, be happy to take any questions.

McKINNEY: Thank you. Are there any questions from the committee? Nope. Thank you. We'll welcome up first proponent.

DeBOER: Welcome.

ABBI SWATSWORTH: Thank you, Vice Chair DeBoer and members of the Judiciary Committee. Thank you for the opportunity to provide testimony. I'm Abbi Swatsworth, A-b-b-i S-w-a-t-s-w-o-r-t-h. I'm the executive director of OutNebraska, a statewide nonpartisan nonprofit working to celebrate and empower LGBTQ Nebraskans of all ages. OutNebraska speaks today in support of LB1045. We support these efforts to further clarify the jury selection process. We trust that this update can be fairly easily implemented and that lawyers should be able to continue to access strikes as necessary to ensure a fair trial process. We appreciate Senator Cavanaugh for bringing this cleanup bill to the committee and respectfully encourage you to

advance it to General File. I am not a lawyer and I cannot speak to legal perspective details, but I'm happy to answer other questions that you might have to the best of my ability.

DeBOER: All right. Are there any questions for this testifier? I don't see any. Thank you so much for being here.

ABBI SWATSWORTH: Thank you.

DeBOER: We'll have our next proponent. Next proponent.

DEWAYNE MAYS: Good afternoon to the members of the Judiciary Committee. I'm Dewayne Mays, D-e-w-a-y-n-e M-a-y-s, and I'm representing the Lincoln Branch of NAACP in support of LB1045. The NAACP is the largest civil rights organization in this country and has advocated for the rights, including social justice rights, for all citizens. It is our mission to advocate, encourage, and support fair and equitable treatment for all people. Through our collaborative efforts with community partners, we have determined that this is a need for-- there is a need for strong efforts toward juries that reflect a cross section of their population. The community of color has expressed their distrust of the criminal justice system, because the jury selection process allows for bias without justification. Such a bias can be used to influence the outcome of a court decision. An example of such bias that we have witnessed is the peremptory challenge of a black prospective juror in a case that involves a black defendant and the person was eliminated because of his race. A researcher for the National Center for State Courts has testified that the best way to protect against implicit bias in the jury deliberation is to have juries that are representative of it. The proposed bill, LB1045, suggests that peremptory strikes would not be allowed when motivated-- when motivated by implicit bias and, and importance of practical. A first step is to address that problem. Juries that are representative of the community make for fair verdicts and help to restore confidence in the criminal justice system. A study committee would be a good offer-- I offer as a good solution or that might help. Therefore, we're asking that you vote yes on this LB1045. Thank you for your time.

WAYNE: Any questions from the committee? Senator McKinney.

McKINNEY: Thank you, Senator Wayne. And thank you for your testimony. Sometimes this is something that isn't, maybe it is because I've never been in this directly, but I've just heard and, and it's not always

expressly stated. It's kind of done without being said. So how do we address that of, like, you know it happened but you can't necessarily prove it?

DEWAYNE MAYS: I wish I knew how, but I certainly know how that feels--

McKINNEY: Yeah.

DEWAYNE MAYS: --because I was that juror, potential juror, and it-- there was nothing that I could do and certainly at that time and certainly was nothing that that person could do because that person-- the prosecutor was certainly within his, his rights or what the co-- the courts had offered or allow.

McKINNEY: All right. No, and I don't know, I was just trying to think about, like, how do you really hold them accountable to it? I mean, we don't-- can't use affirmative action so that's hard. You can't-- you probably couldn't use a diversity requirement. So I don't know, I was just thinking out loud, honestly, but thank you.

WAYNE: Any other questions from the committee? Seeing none, thank you for being here. Next proponent. Next proponent. Welcome.

JESSIE McGRATH: Thank you, Senator Wayne and members of the committee. I am Jessie McGrath, J-e-s-s-i-e M-c-G-r-a-t-h. As a trial lawyer who has tried a number of jury cases, that's one of the most important parts of a trial, especially in a criminal system, because you're asking 12 people from the community to set and weigh evidence and ask, ask them to put somebody in prison, potentially, for the rest of their life. And that is a solemn, solemn procedure. Selecting a jury and getting a jury of your peers requires you to take a cross section of the people from the community and arbitrarily allowing exclusion of certain people from the community is a denial of those individuals' constitutional rights to a fair and impartial jury. As we know, and, and Senator McKinney just asked this question, how do you go about doing that on a case if, if somebody is, is striking somebody for an apparent wrong reason? Well, you have the judge-- the defense counsel makes the objection or the prosecutor makes the objection, and then the judge makes an inquiry. So why are you exercising your peremptory challenge against Ms. Jones here? And the, the prosecutor or the defense lawyer then has to [INAUDIBLE] neutral reasons why. I didn't like the way that they described their interaction with a law enforcement officer on a previous occasion or I didn't-- and so if there are sufficient neutral nonprotected class justification for it,

the judge has to make that finding. And if you see a repeated pattern of somebody doing that, that can be brought up. As a member of the LGBTQ community, I would find it particularly offensive if I were called to jury duty and I give my time to my community and give back to the system that I work in, if I were-- if it was allowed to just simply exclude me because I'm a trans person. I mean, what justice is that? I'm somebody who is a member of a community. I, I have life experiences. Why is my being trans somehow a disqualification for sitting in judgment on my fellow humans? It's not. And so this particular bill protecting somebody for their membership in a-- in a class or their perceived membership in the class, is a way of ensuring that individuals get a constitutionally protected right to a fair and balanced jury that makes up a whole cross section of the community. So I support Senator Cavanaugh on this bill and thank you for bringing this on behalf of the members of my community. Thank you.

WAYNE: Any questions from the committee? Seeing none, thank you for being here.

JESSIE McGRATH: Thank you.

WAYNE: Next proponent. Proponent. Seeing none, any opponents? Opponents?

RYAN LINDBERG: Good afternoon, members of the Judiciary Committee. My name is Ryan Lindberg, R-y-a-n L-i-n-d-b-e-r-g. I am here on behalf of the Nebraska County Attorneys Association in opposition to LB1045, although the County Attorneys Association absolutely agrees with any effort to eliminate discrimination from jury selection. But I think this bill does two really different things; one thing it does is just simply adds to 25-1645, ethnicity, gender identity, and sexual orientation. I don't think there's any issue if the Legislature wants to add those categories. I could certainly do so. The, the bigger thing it does, though, is it completely changes the framework for evaluating a challenge to a jury strike made by either a prosecutor or a defense attorney. The U.S. Supreme Court in Batson v. Kentucky set out the standard that has been adopted by the Nebraska Supreme Court and is the current law and, and prosecutors cannot discriminate on the basis of race, gender, ethnicity, things of that nature. And there's a procedure, a sort of a 3-step process that is in existence under a law that prosecutors, judges, and defense attorneys are familiar with. This law in the second section, Section 2, essentially completely changes that process. It includes even anyone's perceived membership in any one of those groups. I think in some respects the law as

written is, is somewhat vague. Currently, the person has to make a strike and a prima facie showing that there's some discrimination there. The prosecutor then has to provide for and show a race-neutral basis or reasons for striking that juror. And then a court's got to make a determination as to whether there's been sufficient information provided there or if there is an indication that there is discrimination on behalf of the prosecutor and then that juror would be back on the jury. The law here takes a, a totally different view and looks at if anyone's membership or perceived membership in any of the groups is even a factor in striking that juror. So what I think is difficult is when you look at striking a juror, it's going to be based on a person's life experiences, whether that's their religion, their gender that I think it'd be difficult for a prosecutor or defense to make strikes that would survive the challenge that's set out here. So that's the, the part that the County Attorneys Association objects to is changing completely the framework that has been set up by the United States Supreme Court and Nebraska Supreme Court. So I think the Legislature, absolutely, if it wants to change some of the-- or add to the groups under that statute could do so. But the, the issue would be with the mechanism that the statute sets out. Again, I do think it is vague and overbroad and applying it would be pretty, pretty difficult. And it also gives the court a role in even making strikes or objections on its own, which I think that's kind of not the process we have. The process is the lawyers ultimately make the strikes that they are entitled to for that particular case.

WAYNE: Thank you. Any questions from the committee? Seeing none, thank you for being here.

RYAN LINDBERG: Thank you.

WAYNE: Next opponent. Next opponent. Anybody testifying in the neutral capacity? Seeing none, Senator Cavanaugh, as you come up to close, we have 13 letters, 11 in support and 2 in opposition.

J. CAVANAUGH: Thank you, Chairman Wayne and members of the Judiciary Committee. And I want to thank everybody who came out and testified today. It is a pleasure to see Mr. Lindberg here, who I'm trying to recall if I've ever had a jury trial against him or if we've ever been through this process together. You know, I appreciate him coming and testifying. I, I would actually describe his comments as proponent to neutral. I think his criticisms are well meaning and well, well taken and I just consider them constructive. So I'd be happy to sit down with Mr. Lindberg and the County Attorneys Association and work out

the issues that he's raised and see if we can find a way to fix some of those issues with the bill. And I do appreciate, particularly, Ms. McGrath's testimony as somebody who has been on both sides or represents both sides of this issue here and I think it's really important to consider with her wealth of experience. So I plan to keep on working on this bill and, like I said, I'll talk to Mr. Lindberg and the county attorneys and see if we can figure out a way that will resolve their concerns and move forward with this bill, but. I'd be happy to take any questions.

WAYNE: Thank you. Any questions from the committee? Seeing none, thank you for being here.

J. CAVANAUGH: I'm, actually, next too.

WAYNE: That'll close the hearing on LB2011-- 20-- I'm sorry, LB1045. And now we'll open the hearing on LB983. Senator Cavanaugh to open.

J. CAVANAUGH: Thank you. Good afternoon, Chairman Wayne and members of the Judiciary Committee. My name is Senator John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, and I represent the 9th legislative District in midtown Omaha. I'm here today to introduce LB983, which provides for a clear process by which a defendant can seek to withdraw a plea if the judge first indicates that they will adopt the plea agreement, but later decides that they will not impose a sentence consistent with that plea agreement. Judges generally are not part of a plea agreement in criminal cases, but in some instances judges may be informed at the time of plea agreement that includes a sentencing recommendation from the parties. The judges may state that they intend to impose the recommended sentence. The defendant then enters a plea of guilty or no contest in reliance on a sentencing recommendation and the judge's statement. If, however, after the presentence investigation or other information comes to the judge's attention, the judge decides to impose a sentence greater than the recommendation, the judge should not be bound by that prior assertion of a particular-- of a particular sentence. But if the defendant waived the right to trial and reliance on the judge's statement, the defendant should be able to withdraw their prior plea of guilty or no contest. LB983 would provide for procedure by which a defendant in a criminal case could ask to withdraw their plea prior to sentencing if the judge indicates they will not impose a sentence consistent with the plea agreement. Under current law, there's no clear remedy or process if the court decides to not impose a sentence consistent with the plea agreement. The bill does not require the court to indicate whether they will accept the

sentence recommendation by plea-- by the plea agreement, but if the court does indicate that it will not accept the recommendation the defendant will not be given an opportun-- will not be given the opportunity to withdraw their plea. I would add that I'm willing to add language to clarify that the court's indication should-- would be on the record. I know the committee is busy this afternoon so I'll conclude my opening remarks and ask for your support of LB983 and be happy to take any questions.

DeBOER: Are there any questions from the committee? Senator Bosn.

BOSN: Thank you. Senator Cavanaugh, can you give me an example of where this situation has occurred?

J. CAVANAUGH: I've not personally seen it, but I, I might have somebody behind me that might have personally or have some reference. But what I've heard is that it might happen in some of our smaller courthouses.

BOSN: OK. So in-- you practice in Douglas County?

J. CAVANAUGH: Yes.

BOSN: OK. So in your experience, do judges state at the time of the plea, you may have reached a plea agreement in this case but I'm not bound by whatever terms of that plea agreement are and I will fashion a sentence based on the PSI and the criminal history and whatnot?

J. CAVANAUGH: That's almost exactly my experience. Yes.

BOSN: OK. That's been my experience in Lancaster County, Saunders County, Platte County, and Seward County, so I've never been to a county where they don't say something along those lines. But it's my understanding there is a process for a defendant to withdraw their plea and it's pretty, specifically-- I believe it's within 3 days of entering the plea. Is that your recollection?

J. CAVANAUGH: Within entering the plea, but not-- I, I don't-- I think after final disposition which includes sentencing. I don't know if you'd be able to withdraw the plea at that point. Is that what you're asking?

BOSN: Well, I guess I'm talking about if you had second thoughts on that you didn't want to enter that plea. I've had cases where the defendant would say I want to withdraw my plea. And typically there is

somewhat of a leniency on withdrawing that plea within a short period of time after entering that plea. But you under-- typically when a defendant enters a plea, there's around a 6-week waiting period to get the PSI or presentence investigation if ordered completed. Right?

J. CAVANAUGH: Yeah.

BOSN: And I would assume that you tell your clients and you're also aware the other attorneys tell their clients your behavior between the time of your plea and the time of your sentencing will impact whether or not you're a candidate for a fine, probation, or whether or not to judge thinks you need to go to jail.

J. CAVANAUGH: Yes, I would certainly admonish my client to be on their best behavior.

BOSN: And so if they've reached a plea agreement and they comply with going to treatment or doing-- getting a job so they show they're a good candidate for probation, the court can't take that into consideration when entering a plea or when entering a sentence under this.

J. CAVANAUGH: I, I think if the court-- my intention, I guess, with this bill would potentially contemplate what you're talking about because I think if, if the-- in the scenario you're laying out, the sentencing recommendation is contingent upon doing those other steps. I-- this bill would address situations where you have an agreement that says-- say, say hypothetically, which is always a dangerous thing to say, but someone enters a plea and they say-- they don't go directly to sentencing at that point because they want a presentence investigation to determine the terms of probation. But they have an agreement task, joint recommendation for probation, and the judge says I will follow that agreement. And then however, 6 weeks down the line, you get the PSI, presentence investigation, and the judge looks at it and says, well, I would never put this person on probation, even though they had previously said they would, and now they are going to impose a sentence of incarceration rather than probation. And the person entered the plea after being told by the judge that they would intend to put them on probation. I think that's the scenario I'm talking about. I think the scenario you're laying out is maybe more akin to somebody who's on questionable grounds and they need to earn their way to probation during that intervening time. So I'd be-- I'd certainly be willing to clarify that in the-- in the language of the bill to make sure that--

BOSN: Well, I guess what-- it sounds like what you're saying is that the judge enters a sentence saying I'm going to put you on probation or I'm agreeing to your probation, then why don't they-- why wouldn't they just put him on probation on that day at the time of the plea?

J. CAVANAUGH: Well-- and, and that's what I'm saying is I, I have definitely seen where they say we need a PSI to determine what the terms of probation will be. What the length of probation will be, what exactly we're going to order them to do while they're on probation. So I think that, that is something that does happen.

BOSN: OK. I'm not sure I'm following then the intention.

J. CAVANAUGH: Well, I think--

BOSN: Because it seems to me that alternatively, you'd be telling a judge you don't get the right to sentence this defendant because the prosecutor and the defense attorney came to the terms of the sentencing and so, now, thanks for being here but we're judge and jury and prosecutor and defense attorney and you're not needed.

J. CAVANAUGH: And I think that's a great point. And I had-- I've had this conversation with some of our, our friends on the bench, who probably will not comment here, but I would attempt to represent the conversation I've had with them. They are concerned that this bill would undermine their discretion. And I would say the conversation I've had with them is-- and the reason I commented and said that about placing it on the record is that if they, they don't-- they're not required to say I will accept that recommendation. If they do, as you stated earlier, say on the record I'm not obligated to accept the recommendation and I will impose a sentence as I see fit, then they're free to do what they want. This is only in the scenario where they have said that they will-- they intend to adopt the recommendation, so they're not required to do that. But if they do do that, I-- the bill would, would say that the defendant has relied upon that statement by the judge, the judge's adoption of the recommendation. And in acting upon that reliance, they waive their right to a trial and pled guilty or no contest. And so they responded to the judge's assertions. And so that when the judge changes their mind or is presented with different information, that that person, since they act in reliance on that, should be able to get back, back to where they were when they acted in reliance upon that information. And so they still have-- still are subject to trial and still would be-- you know, potentially could enter a different plea or enter the same plea if they don't get to

that point, but they just would be back to the position they were in before they entered the plea the first time.

BOSN: So let me present you with this issue. So let's say under your-- the judge tells us, I'm going to accept that. I'm just wanting to see what the terms of your probation order are. Right? Carolyn, as defendant, goes in, I do my presentence investigation. I make a bunch of incriminating statements. I then come before Judge Cavanaugh and Judge Cavanaugh says, wow, she's not going on probation at all. I withdraw my plea. Can the county attorney now use the statements that I made in my presentence investigation admitting to the crime against me or have we created more problems?

J. CAVANAUGH: That is a good question. I'll have to think about that.

BOSN: OK. I'm done.

DeBOER: Any other questions for Senator Cavanaugh? I don't see any. Are you going to stick around to close?

J. CAVANAUGH: Of course.

DeBOER: All right. Let's have our first proponent testifier.

SARAH NEWELL: Good afternoon again. My name is, again, Sarah Newell, S-a-r-a-h N-e-w-e-l-l. I'm an attorney at the Barry Law Firm and I'm testifying as a-- I guess as a proponent for the Criminal Defense Attorneys Association, of which I am a past president. I will try to address some of the questions here to give some background to the folks who are not lawyers, or who are not criminal lawyers. The way that this process works in the state system is that assuming that the state and the defense can reach an agreement, you can either, you know, you can agree to reduce the charges and maybe agree upon a factual basis that might be what we would call a legal fiction, in which case you might want to make sure that the judge is going to be OK with accepting that. There might also be, in some jurisdictions, an agreement towards a recommendation for a sentence. This bill does not make anyone engage in those kind of negotiations. It's just if the state and the prosecutor want to-- state and the prosecutor-- state and the defense wants to reach an agreement and make a recommendation with regard to a specific sentence, then you are allowed to do that. And if the court were to change their mind about whether or not they're willing to accept that, that sentence or that, that recommendation, then the defendant would withdraw their plea. It's

very similar to what happens in the federal system. To address some of your questions, Senator Bosn, part of what happens in the federal system is that most pleas are written pleas, and they are like written plea agreements and they lay out very specifically, you know, what statements are made. And because this is the procedure, everybody knows that if somebody makes incriminating statements in their PSI, well, we basically-- we sit with them as defense attorneys during those PSIs and tell them not to address those issues and we agree upon a specific factual basis. And also the-- in the federal system, this-- the court does not accept that plea agreement until after the PSI is received. So the court has an opportunity to review the PSI, and then the court can say I'm not going to accept your plea. And then what happens is then it goes back, reverts back to the pretrial motion stage. So a lot of those issues are, are avoided that way. The bill was drafted, as I understand it, with this kind of broader language to allow for differences across jurisdictions, because obviously the federal system handles things one way and the Nebraska has 93 counties that each handle things differently. So that's part of the, the reason why that language is, is, is broad. But the idea would be that the court does not have to impose a sentence if they don't want-- or, you know, they don't have to agree with the recommendation. But if they are clear that they're not going to then the defendant could, could take back their plea. The reason for this is because it moves things along faster. If defendants know what they're going to get, they are much more likely to plead and resolve a case. For example, I've handled many homicide cases. And in those situations, if I can make it an arrangement with the-- with the prosecutor saying they're willing to agree to, you know, 20-- 20 to 40 years or something like that, the defendant is much more apt to take that knowing that that's the sentence that they're going to get, as opposed to a life to life range or a 20 to life range. So it gives them certainty and it makes them more comfortable resolving the case and pleading it out. To answer your earlier questions, I see I'm running out of time, there are-- I have had this happen in other counties, obviously not Lancaster County, because Lancaster County doesn't make sentencing recommendations but in other situations. May I finish?

WAYNE: Yes, you can finish.

SARAH NEWELL: Sorry, I apologize. Just this thought. In other counties we have-- what we would typically do is make the agreement, somebody makes the recommendation or the state's going to make the recommendation, we'd approach the judge beforehand and say, Judge, we know you're not bound to accept this recommendation, but this is kind

of what we're thinking. Is this something that you would consider? And then we'll move forward if the judge says, you know, generally yes or generally no. Obviously the judge is never bound to accept the recommendation under the current statutes, but this would basically provide the defendant a little extra assurance that, that if they were to-- if everyone is on board with reaching that kind of agreement, that we could resolve it quickly.

BOSN: Can you give me an example of one of those counties?

SARAH NEWELL: Yes. It happens quite a fair amount in Hall County. I've also personally had come up in Platte County and I think in Scotts Bluff County. And I can tell you more about the Platte County case.

BOSN: OK.

SARAH NEWELL: In that situation, it was a, a homicide-- well, an attempted homicide situation where the alleged-- well, my defendant had been allegedly sexually assaulted by her, her brother on a-- on a prior event, but that case had been-- I think a motion to suppress was successful and so that never ended up going forward. But in that situation, the prosecutors were sympathetic to the situation because the victim in our case was the brother who sexually assaulted her. So we had reached an agreement that is very uncommon in homicide cases to plead to a low-level felony and then agree to recommend probation. The judge at the time-- I think there were also some differences with the factual basis that we had to kind of finesse the factual basis in order to get to the low-level felony that we agreed upon. So we had to talk to the judge in advance to say, you know, this is kind of what we're thinking. Is this something that, one, would accept regarding the factual basis? And, two, would you consider probation? The court ultimately did accept the factual basis, but when it came down after he saw the PSI, he was not willing to, to place her on probation. She ended up getting a slightly harsher sentence. That this bill would allow under that circumstance to, you know, if we got to the point where after he reviewed the PSI and he said, you know, I just-- I'm not willing to go forward that recommendation, then the option would go back to her and say, you know, the judge said he's not willing to accept this plea now. Do you now want to go back and have a trial or do you now want to just go forward and see what he does? I think ultimately she probably-- had, had she known what the judge was going to do, she probably would have still gone forward with the plea. But it gives her that option to decide if, you know, in this situation

would she rather, you know, roll the dice and go to trial and see how it goes.

BOSN: Thank you.

SARAH NEWELL: Does that answer your question?

BOSN: Yes, it does.

WAYNE: Any other questions from the committee?

SARAH NEWELL: All right.

WAYNE: Seeing none, thank you for being here.

SARAH NEWELL: Thank you.

WAYNE: Next proponent. Next proponent. Seeing none, moving to opponents. Welcome.

RYAN LINDBERG: Good afternoon again. My name is Ryan Lindberg, R-y-a-n L-i-n-d-b-e-r-g. I'm here on behalf of the Nebraska County Attorneys Association and I should have mentioned previously, I'm also a Deputy Douglas County Attorney. We are here in opposition to LB983. Ultimately, I think this bill substantially invades upon the province of the court. The court's role in the criminal sentencing scheme is to determine if a plea will be taken. If the court takes the plea, the court specifically should be telling the parties that it is not bound by any plea negotiations. And so far as sentencing, it's not bound by-- and the judges-- every judge I have ever appeared before has told the parties it's not bound by the prosecutor's recommendation, the defense attorney's recommendation, and often will say nor what's contained or recommended in the presentence report. And ultimately, you know, before a court makes a judicial finding to take a plea it has to find that it's been freely, voluntarily, knowingly, and intelligently given. And this includes generally a colloquy that's quite lengthy with the defendant explaining all of that, including that the court is not bound by any sentencing recommendation. And so only after all of that is done can the court accept a plea, find a party guilty of that charge, and set the matter for sentencing. And so I think this bill really just-- what it's providing is some sort of escape hatch, I guess, if the defense or the defendant is not happy with--

WAYNE: Hold on a second. Who's talking? Who's on the phone? I can't see. Whoever's on the phone needs to be off their phone or I'll ask you to leave. Go ahead.

RYAN LINDBERG: Sure. If they're not happy with what the sentence is going to be. But ultimately, you know, no defendant or prosecutor is guaranteed an outcome. That's the judge's role to determine what an appropriate sentence is. And often the judge doesn't know everything about a particular defendant, a particular case, until they've had the benefit of a presentence report, hearing from victims, hearing from the defendant, hearing from the defendant's family, workers, things of that nature. So I think really what this does is it's requiring a court to undo a judicial finding, and it places the parties in a very different situation. If you're with the state and you've dismissed charges as part of a plea, what happens to those charges now if all of a sudden the person gets the opportunity to withdraw their plea? Do we get the chance to go back and, and reinstate those charges? But ultimately, I don't think this is, is good law and would invade on the province of the courts. And there is a procedure under our law for a defendant to withdraw a plea. So if a defendant has entered their plea and believes that the sentence isn't going to be fair, or they have a reason, they can file that motion and have a hearing and then they would have a essentially a burden of showing that it's going to prevent, I think, that's manifest injustice to get their plea withdrawn.

WAYNE: Thank you. Any questions from the committee? Seeing none, thank you for being here.

RYAN LINDBERG: Thank you.

WAYNE: Next opponent. Next opponent. Anybody testifying in the neutral capacity? Neutral capacity?

KATRINA BURKHARDT: Katrina--

WAYNE: Welcome.

KATRINA BURKHARDT: --Katrina Burkhardt, K-a-t-r-i-n-a B-u-r-k-h-a-r-d-t. And I'm, I'm not in the legal system. My background is healthcare, teaching, and I do have some military background. I heard on the radio that there was a man that committed a homicide in Holdrege, Nebraska a year or two ago. He was hearing voices. And I called the attorney that had represented him and I said, hey, look,

this guy might not be as guilty as you think. And he said he pled guilty. The trial is over. Done. And I said there's more going on than just this guy hearing voices and being mentally ill. And I said I could even probably help out. You know, if you need somebody to testify to, to help find the truth in some of these situations. I said I, I have some of this experience and he, he said no thanks. So the big thing I have is that I'm really disappointed in the criminal justice system when I see in the newspaper or hear in the news that people are hearing voices and committing homicides because we need to know what the real truth is, as opposed to just resolving conflicts in the court system. These, these people sometimes are diagnosed as schizophrenic, and a lot of times they may be experiencing something called a microwave hearing effect, or the frey effect, they are sounds that are not audible to people nearby. I would like to see meters used to measure the electromagnetic frequencies while they are in court to try to ascertain the truth and they should also be in safe environments. And that is part of the Fourteenth Amendment. The Department of Health and Human Services currently is not regulating that and I would like to see not probation because that's more remote monitoring and more surveillance using more electromagnetic frequencies. This really needs to be addressed. Thank you.

WAYNE: Thank you. Any questions from the committee? Seeing none, thank you for being here. Next neutral testifier. Neutral testifier. Seeing none, as Senator Cavanaugh comes up, we had 3 letters, all in support. Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Wayne. Thank you, members of the Judiciary Committee for your time and attention on both my bills this afternoon. I, again, appreciate the comments of everyone who came and testified: Ms. Newell and Mr. Lindberg and, I believe, it was Ms. Burkhardt was last. I think that, that there's something to be worked on here. I do appreciate Mr. Lindberg's comments and he and I have the shared experience of working in the same courthouse and he has experienced the same thing I have which is judges routinely do clearly admonish people that they-- that they do not have to follow these plea agreements. But there is a, a real issue when somebody is waiving their rights to a trial in reliance upon what they've been told. I do agree with a lot of Senator Bosn's concerns here and, and the County Attorneys Association as raised by Mr. Lindberg that there are extenuating circumstances. There are times in which new information comes to light, new behavior comes to light that needs to be taken into consideration and judges shouldn't be bound by something when there's circumstances changing outside of their control. But there is

still this situation where things have not changed and a, a judge has made a statement that they would follow a sentencing recommendation and then that individual's acting reliance on that. So I'm willing to keep working on this. I already have some notes on here of changes that I think we can make. I think there may be more elegant solutions to this, which is what I'm always looking for that could serve this purpose. But we will continue working on this bill and I'd be happy to take any questions. But like I said, I can see the room is full and you guys have an afternoon in front of you.

WAYNE: Any questions from the committee? Is this creating a new section of law?

J. CAVANAUGH: It would be a-- well, yeah, it would be a new section, I guess. Yeah.

WAYNE: OK. Yeah, I couldn't-- didn't know where it would fit in. OK. Thank you. Any other questions from the committee? Seeing none, thank you for being here. That'll close the hearing on LB983. Next, we'll open the hearing on LB1269. Senator Hardin. Welcome.

HARDIN: Thank you, Chairman Wayne. Good afternoon, fellow senators of the Judiciary Committee. I'm Senator Brian Hardin. For the record, that is B-r-i-a-n H-a-r-d-i-n, and I represent Banner, Kimball, and Scotts Bluff Counties of the 48th District in western Nebraska. I'm here today to introduce LB1269, which will remove the duty to retreat before using force and self-defense from Nebraska statutes, and puts in place a legal process to protect individuals who are forced to defend themselves. Plainly stated, the main goal of LB1269 is to provide an avenue to ensure that an individual who is already the victim of a crime and had to use force in self-defense is not also victimized by the legal system. I'll address the first point of the bill: removing the duty to retreat from our state laws. Bills similar to this are often referred to as stand-your-ground laws. Nebraska already has castle doctrine laws on the books. In Nebraska Revised Statute 28-1409 in sections (4)(B)(i), where it states: An actor shall not be obliged to retreat from his dwelling or place of work. Stand-your-ground laws take this one step further in allowing an individual the right to self-defense wherever they have a legal right to be. 38 other states are considered stand-your-ground states; 30 of those are by state statute, 8 by case law. Looking to our neighbors: Iowa, Kansas, Missouri, South Dakota, and Wyoming all have stand-your-ground laws in statute. And Colorado-- yes, dark blue Colorado-- is a stand-your-ground state establishing case law. For

further reference, I encourage you to look at the map handout from our very own Legislative Research Office. I believe in the principle that all individuals have the inherent right to protect themselves and their loved ones from harm. A person should have the ability to defend themselves and their loved ones without having to face the decision on if they can retreat safely or not. Requiring a duty to retreat imposes an unrealistic expectation on a person to make a split-second decision about their safety, possibly leading to hesitation and harm. Removing the duty to retreat also removes the confusion that comes with these chaotic situations. Nebraska Revised Statute 28-1409, Section (4), subsection (b), that is stricken in this bill states that the actor knows that he can avoid the necessity of using such force with complete safety by retreat. Complete safety is a very subjective phrase. That would be-- or what would be complete safety to me would be very different for anyone else. If I stubbed my toe during the retreat, is that considered to be in complete safety? Or would complete safety only apply to instances where severe physical harm is possible? What's considered to be complete safety for juror number 1 could be far different than the definition for juror 12, and you could have 10 other definitions between those 2. This question extends the argument in court, prolongs the legal process, increases the burden of the justice system, and revictimized the person who's already been the victim of a crime. Removing the duty to retreat takes the question of complete safety out of our courtroom. The Supreme Court decision of 1894 in Coffin v. U.S. established the principle of innocent until proven guilty. If the government accuses a person of a crime, the burden of proving that guilt lies with the government. A duty to retreat, in my opinion, and in the opinion of 38 other states, violates this long-held belief. Requiring a defendant to prove that there was no other option available than to use force unfairly flips the table and makes a person guilty until proven innocent. LB1269 will also remove confusing language in statute for when use of force is justified. Looking at the same section that establishes castle doctrine in Nebraska, if you continue reading, it gets to be a gray area. Current law reads the actor shall not be obliged to retreat from his dwelling place of work unless he is assailed in his place of work by another person whose place of work the actor knows it to be. I don't know why legal language has to be so confusing sometimes, but by this there's no duty to retreat at work if the bad guy is not a fellow employee. But if the bad guy is a coworker, I have to retreat. How does that make sense? At a large company, it's unlikely that an employee will know every other person employed. And in a high-tense situation, I doubt that there will be time for dialogue to ask

someone, hey, you work here? Section 11 of the bill is the new portion of the law that provides for immunity from criminal prosecution or civil liability when an actor uses force in self-defense. Section 11, subsection (4) creates what I have been calling illegal off-ramp for cases where force is used in self-defense. When charges were filed against the person for use of force that may be justifiable under the new stand-your-ground law, the defendant can assert that the use of force was justifiable under the law at a pretrial immunity hearing. This shifts the burden where it belongs back to the state to prove that a person is guilty of violating the law. Here's another instance of Nebraska law being backwards where a defendant is guilty until proven innocent. LB1269 fixes that. I understand there will be some heartburn from prosecutors over this section. This forces them to work a little harder to prove that a person was not justified in the use of force and they broke the law. It should be difficult to convict someone who had to use force in self-defense. It should be hard to put someone in jail, possibly for life, who is protecting their own life. I would counter the prosecutor's argument and say that this section actually will make life easier for them. This provides an avenue for cases where it is clear cut that self-defense was justified. This is where the case can take the off-ramp and no longer be a burden on the court system. These clear cut cases should not be taking up the time of our prosecutors, judges, or jury members. Finally, and most importantly, LB1269 will ensure that the justice system is not revictimizing a person who has already been the victim of a crime. For someone to be able to justify use of force under either the current law or the law as amended by LB1269, they are first a victim of a crime. A legal system should not be making their lives even worse by making a person prove that they were a victim. You'll hear from some opponents that this is a racist law. In fact, when you look at the position comments, that's about the main comment you'll see. I assure you this has absolutely nothing to do with race. This is not a white versus nonwhite conversation. This is an issue of allowing all Nebraskans the same legal protections for self-defense that Colorado, California, Oregon, Washington, Illinois, Michigan, Nevada, Virginia, Vermont, New Hampshire, all states on the list of 38 that are stand-your-ground states have. The opposition will also tell you this is a license to kill bill, 007, and with its passage there will be 10 deaths a day and there will be blood in the streets. This is simply not true. There's evidence of that. Or rather, there's absolutely no evidence to support the opposition's claim. We heard the same arguments last year with Senator Brewer's LB77. Nebraska has been a constitutional carry state for 6 months. We still have yet for there

to be a single reported incident of so much as a fluff up or a scuffle because of a Nebraskan who is carrying a firearm as allowed by LB77. Thank you for your time. I'm prepared to answer some questions if you have them and will also defer to others following me. Thank you.

WAYNE: Any questions from the committee? You'll be here for the end? We'll ask you questions then. First proponent. First proponent.

MICHAEL CONNELY: Before you start my time, when does the yellow light kick in?

WAYNE: 1 minute mark.

MICHAEL CONNELY: 1 minute mark.

WAYNE: Yeah.

MICHAEL CONNELY: Got 3 minutes?

WAYNE: Yes.

MICHAEL CONNELY: All right. Thank you.

WAYNE: Your time hasn't started, the green is on, but it doesn't start until you start talking.

MICHAEL CONNELY: All right. Michael Connely, M-i-c-h-a-e-l C-o-n-n-e-l-y. Brought some of those handouts, I don't know if you can pass them out. I guess it's like the kid in the ice cream shop, if you didn't show up you don't get ice cream. I only made 8 copies. I didn't know how--

WAYNE: We'll take care of it.

MICHAEL CONNELY: --didn't know how many of you would be here. But I am thankful for Senator Hardin bringing this bill up. I was one of the coauthors of initiatives for 2022 constitutional carry stand your ground and full access which allows you to carry your weapon anywhere that the public is allowed to go. Now we, we didn't make ours, we were more than 10,000 short. But I can tell you that in all the 10 initiatives we ran, none of them made it. Stand your ground was by far the most popular in every group, even more popular than constitutional carry. Now I will be taking a little bit of a different perspective than some of the other individuals. You'll notice I have a little educational thing on the top of this, it shows in Wyoming schools

they're teaching marksmanship training to elementary school children. You will have various different opponents who will come up and talk about safety factors and people getting shot erroneously. The biggest problem with that is education. Now, a couple of things about my background. I'm an old jarhead. That means marine for those of you who don't know. I worked in military intelligence and as military police. Also, I'm an educational director. I work remotely for schools in Asia, and the biggest problem that we would have with this is simply a lack of education. If the-- if anyone is opposed to something like this, perhaps they should consider making gun training and education courses beginning in elementary school so everyone knows how to handle this. They know the repercussions. They know that they're in the state people are allowed to defend themselves. Personally me, if I'm jumped by a few thugs, I'm going to beat them silly. But if they've got-- not everyone has that option. And then if they have some weapons, you know, hey, if someone's got a gun and they're about ready to take you out, are you going to take your grandkids or your children and run across the parking lot and hope you can get away from these guys? No, you have to be able to stand your ground. Now the other viewpoint I was going to take is I want to mention something, this, I believe, should be a first step in a lot of the state of Nebraska. I was in a conference down in Santiago, Chile, and I ran into some Jewish families down there who gave me some details of some current Communist Chinese party forward operating bases within the United States. I will have information on that at a later time if anyone wants to see that. I also have some contacts down on the border who tell me that the biggest ethnic group crossing across the southern border are Chinese. And where are the Chinese when they get over here? You don't find them in groups in the cities. And it's too bad I've only got 3 minutes, I could give you the details.

WAYNE: All right. Let's see if there's any question from the committee. Any questions from the committee? Seeing none, thank you for being here and thank you for this material.

MICHAEL CONNELY: Yeah.

WAYNE: Next proponent. Proponent. Go ahead. Welcome.

RANDY BENDORF: Hi, Senator Wayne, good to see you again. Randy Bendorf, B-e-n-d-o-r-f. I notice this is pretty emotionally charged, it sounds like on both sides of the aisle. So I think the most prudent thing here would be to see what it would it be like in somebody's shoes if that was a person that was attacked. And you probably have to

have multiple cases to be able to objectively look at that. I was a DV, VIP guard, basically a body-- [INAUDIBLE] bodyguard for quite a few years and had quite a few violent encounters. When somebody attacks you violently, it's, it's, it's a hurricane. It's pretty horrendous unless you're young like back when I was 20-some years ago and are trained to do all these things, defend against knives, guns, etcetera. Can you really defend yourself? I've had 39 surgeries, I've got a boatload of metal body parts. I can't-- I can't run down the hallway to get away from a violent attacker. Probably can't defend myself that well either anymore. But the point is, the violence is, is like a hurricane. You really don't have a chance to go-- oh, for example, look at this room as a training room if the officers weren't here and we were doing training, how are you going to get out these 2 little doors when everybody-- well, when 2 or 3 people got attacked and everybody scrambles? It's pretty hard to figure out where are you going to go and I could pretty much bet those guys and myself are probably the only guys that looked at the room we came in to say, all right, how would I get out of here? So violence is fast, you don't have the time to sit back and go, which way can I run? Can I pick up my kid? Can I pick up my wife and get away from this guy? It's been quite a few years back, around the early '80s, but we had a 130-pound guy and it took 5 of us to take down. They're very, very strong and very, very fast. So I'm not a real advocate for, hey, just whip out your gun and do all this crap, but you should have that opportunity to defend yourself whether it's swinging your purse at them or somehow to fight back without trying to run and then get-- have that assailant come after you. So I, I just definitely want to have people look at that consideration because I, I was involved with a lot of that violence trying to protect the people and the DVs and VIPs that we were protecting, it's extremely hard to get them and get them out of there and take care of that assailant at the same time. So, yeah, stand your ground and try to defend yourself a little bit. Give me a few minutes or seconds, whatever it takes to see where I can get out of this place is probably what it would take. But you don't usually get that opportunity. So any-- anyways, any questions?

WAYNE: Any questions from the committee? Seeing--

RANDY BENDORF: Thank you.

WAYNE: --none, thank you for being here. Next proponent. Welcome.

ALLIE FRENCH: Thank you. Good afternoon, everybody. My name is Allie French, A-l-l-i-e F-r-e-n-c-h. I'm here representing our grassroots

group, Nebraskans Against Government Overreach. We are in support of LB1269. This bill is really quite simple. It allows Nebraskans to protect themselves and others. I do want to add that it does not allow firearms where they are currently prohibited. That is not being changed. So there is the same risk in those locations versus others. But we are not adding to-- adding guns to schools. We're not adding guns to any location that has a prohibited sign in their window. It does, however, promote gun safety as it stops those who are using them in an unsafe and attacking manner. So we have to think about this clearly. In these circumstances, you're talking about a case where there is somebody purposely and willingly breaking the law and bringing harm to others. The law has already been broken. That person is causing harm or likely to cause harm. What this change means is that somebody can come in and protect themselves if they can stop that individual from harming either themself or others. It does allow victims of, say, carjackings, assault, or other harm being done to another for that person to take action to save a life and, potentially, even that of an officer. It's important to remember that we are a team, not adversaries. We paint this mainstream picture that firearm owners are irrational or itching to cause harm with said firearm. And this couldn't be further from the truth. This bill would likely extend protections, and correct me if I'm wrong, beyond the use of firearms specific to actions that protect oneself or others. I'll give you an example. We were at Home Depot earlier, it was late last year, but in the summer, and we were walking through the parking lot with my daughter and my son and my daughter all of a sudden was gone from our sight and there was a car parked very nearby where she had been taken to and I heard her in the car so I was able to get her back. But the important part of this story is that my fiance, who was carrying his firearm, did not reach for his firearm. He did not pull his firearm. He tackled the man to the ground. OK? His, his first inclination was not to shoot somebody or kill somebody. It was to protect myself and my family. And so I want people to really take into consideration that these laws extend beyond just people's desire to shoot somebody, that this allows protection for ourselves and our families. And, currently, those who attempt to protect themselves or family may very likely find themselves in legal trouble themselves. And I think that is a major problem with our law as it currently stands. Thank you for your time.

WAYNE: Any questions from the committee? Seeing none, thank you for being here. Appreciate your testimony. Next proponent.

STEVE DAVIES: Thank you, Senator Wayne and members of the committee. My name is Steve Davies, S-t-e-v-e D-a-v-i-e-s. I'll make my point succinctly. I testify in support of LB1269. Stand your ground will enhance the safety of Nebraskans in 2 ways. First, under duty to retreat, an aggressor is emboldened knowing that a citizen has to retreat, thereby increasing the level of aggression. Additionally, the extent of retreat is subjective and a citizen can be held liable if it can be argued that the extent of retreat was not enough. Thank you for your time.

WAYNE: Any questions from the committee? Seeing none, thank you for being here. Next proponent.

PATRICIA HARROLD: Good afternoon, everyone. My name is Patricia Harrold, P-a-t-r-i-c-i-a H-a-r-r-o-l-d, and today I'm speaking in-- as a representative of Women for Gun Rights in the state of Nebraska. First and foremost, I have actually spent hundreds of hours examining case law and have worked with defense and prosecuting attorneys to formulate some training programs and seminars on how the law applies to actual defensive use of force cases. So I'm a firearms instructor, I teach concealed carry and several other topics. This is really an important point to make. This is not a gun bill. It has nothing to do with firearms, actually, in a sense, it's actually a self-defense bill. Whether armed or unarmed, the idea that citizens are required to endanger themselves by turning their backs and running away from a clear and present danger is nonsensical, especially when you understand the remainder of our self-defense statutes. Under the law, it is, and will continue to be, if this is passed, illegal to use force on anyone without their consent. That language is pretty specific. You cannot strike, constrain, or injure anyone. That's illegal. However, under our statutes. It goes on to explain there are, though, specific circumstances where what is illegal becomes permissible because they are deemed justifiable, very key legal term, for our behavior. To qualify as justifiable use of force, there must be some conditions met first. The first condition is you must be innocent. You cannot be doing anything illegal at the time where self-defense incident begins. You also cannot do in any way any act that contributes to escalating the situation. Additionally, by law, you must act in a reasonable manner for the circumstances, and what is considered reasonable is a legal standard commonly understood as rational and appropriate behavior. You may only use a level of force appropriate to the threat you face. There should be no disparity use of force. For lethal force to be justified, first and foremost, and this is the key word, you must be facing an immediate threat. An

immediate threat is where the violent criminal actor has the opportunity and the intent and the means to cause death, serious bodily harm, injuring, kidnapping or rape, which precludes any chance for retreat. Which is why even removing this language does, does not actually change what I have always taught is your rightful use of force in these circumstances. This will help our citizens be proactive in their behaviors, to take the time appropriate to be legal, reasonable, and take action to defend themselves in such a way that remains appropriate for our state. I welcome any questions.

WAYNE: Any questions from the committee? Seeing none, thank you for your volunteer of hours you put it.

PATRICIA HARROLD: Thank you.

WAYNE: I really appreciate that. Next proponent. Proponent. Welcome.

JON ANDERSON: Thank you. My name is Jon Anderson, J-o-n A-n-d-e-r-s-o-n. I'm a lifelong Nebraskan. I own firearms. I have my own concealed handgun permit. I train people to get their permits, and I'm currently serving on the board of directors for Nebraska Firearms Owners Association but I am here today to testify on my own behalf. I sat up late last night to type this up, timed myself so I wouldn't violate 3 minutes. Cut stuff out, cut stuff out, got it under time and then Senator Hardin takes most of it in his opening statement, so. I'll spare you going back over, Ms. French and Ms. Harrold pretty much took over the rest of it. I do want to, again, reemphasize, though, that if justi-- if, if, if deadly force is justifiable, then escape is not even an option. And if escape is an option, deadly force is not justifiable. So, again, really, LB1269 just kind of clears up a, a few legal pitfalls, possibly, in a-- in a criminal defense case, but we really kind of have stand your ground in that sense anyway. Just codifies it in the law. It takes away that extra thought in the thought process before one defends oneself of I have to check for exits, I can't-- I can't get out of here so, yeah, I have to defend myself. If you've ever been in a, a fender bender or a near-miss car accident, you know the reaction time. Milliseconds matter. And so just removing that from the equation may be the difference between life or death. And with the rest of my time, I just would, would like to maybe suggest a, a possible amendment to, to Senator Hardin. Maybe not be, maybe, on this bill or not, but I think that maybe we could go one step further and also put into law that if somebody forces entry into a, a dwelling or workplace that they are-- we can assume criminal intent and, and maybe get some, some justifiable use there again to

stand your ground inside your house if somebody kicks in your door and says I'm not going to hurt you. OK, what do I do with that? What level can I apply force to remove them then in that scuffle if it escalates? Again, possibly a pitfall, so. Otherwise, thank you all for doing my job for me, those that spoke ahead of me.

WAYNE: Thank you. Any questions from the committee? Seeing none, thank you for being here.

JON ANDERSON: Thank you.

WAYNE: Next proponent. Welcome.

ROBERT ANTHONY: Robert Anthony, R-o-b-e-r-t A-n-t-h-o-n-y. Members of the Judiciary Committee, I'm here today as a concerned citizen, retired disabled veteran, private business owner in Nebraska, deeply invested in the principles of justice, personal safety, and inherent right to self-defense that every individual should possess irrespective of the circumstances they find themselves in. I urge you to recognize the vital importance of affirming the right to stand one's ground, a principle that is not only foundational to our understanding of natural law, but also critical to ensuring the safety and liberty of our citizens. The essence of stand-your-ground laws is not mere legislative preference. It is rooted in the natural law that acknowledges every individual's intrinsic right to defend themselves against imminent threats. This right is universal and precedes any written law or social contract. It is articulated in the understanding that when faced with danger, the primal instinct to self-preservation should not be legally penalized by a duty to retreat. Historically, the legal framework of the United States has recognized as inherent right, the castle doctrine, for instance, allows individuals to use force in defense of their home without the duty to retreat. This bill seeks to extend this principle, acknowledging that one's safety should not be contingent upon their location, but is a fundamental right that accompanies them. In support of this prospective, I cite the landmark case of District of Columbia v. Heller, 2008, where the Supreme Court affirmed the Second Amendment protects an individual's right to possess a firearm for self-defense within the home. This decision underscores the principle that individuals have a constitutional right to defend themselves and their family. Furthermore, the case of McDonald v. City of Chicago extended an understanding emphasizing that right to self-defense is deeply rooted in this nation's history and is fundamental to the American conception of order liberty. The importance of this legislation is further underscored by concerning

statements from members of our own Legislature. Last year on the Unicameral floor, a statement was made by a senator on this Judiciary Committee talking about me in regards to LB77, constitutional carry. And I quote, if we are going to ban people, those are who we should ban because he was being irresponsible in how he discussed why he was open carrying. This highlights a dismissive attitude towards our fund-- to our fundamental rights of self-defense. Such flippant remarks not only undermine the dignity of our citizens, but also signal potential judicial biases that could unfairly penalize individuals for exercising their right to self-defense. This underscores the necessity for clear legal protections, much like constitutional carry did last year. I'm about to run out of time. I was going to make a point about the county attorneys in the room likely being opponents, but at the end of the day, many, many comments have already been made that highlight we must be able to protect ourself. If something went down in this room at this moment, a duty to retreat with 30 or 40 people trying to get out here is not possible. That is all.

WAYNE: Any questions from the committee? Seeing none, thank you for being here. Next proponent.

LINDA VERMOOTEN: Good afternoon, Senators and Senator Wayne. My name is Linda Vermooten, L-i-n-d-a V-e-r-m-o-o-t-e-n. I want you to imagine that you are alone in your home and you have a visual challenge, and now your front door gets broken down. Now I have a duty to run backwards in my home. I can't see, I have split seconds, less than 2 seconds to make that decision, and I'm not allowed the right to stand my ground and defend myself however I can with whatever might be handy at the time. I think we have to think this through and say, now, wait a minute. I'm not the one that broke the door down into someone else's home. I'm in my own home. Why should I have to retreat? And if they break the door down, they're coming in the front door, which is practically next to the back door going into the garage, so I can't go that route. Now I have to go backwards towards the glass door that's locked, down 3 steps, which I can't see. It's, it's just crazy in the sense of what you call insanity. We have to do a better job in allowing us, as citizens, to be able to defend ourselves wherever we are, wherever you have a threat. You know, if you take self-defense, the first thing they will say to you is "prefence" is the best defense. What is that? You prepare to defend yourself at any moment. Why? Because you don't have faster than a blink of an eye to make that decision as to what's happening to me right now. By the time you figure out what's happening, it's too late. The attacker is on you. If

someone is intent on hurting you, you definitely need the right to defend yourself with whatever means you have handy. And so I rise in support of this bill and going to ask you to advance it out of committee. Thank you for your time.

WAYNE: Thank you. Any questions from the committee? Seeing none, thank you for being here. Next proponent. Next proponent.

CHANTELL FENDER: Good afternoon. My name is Chantell Fender, C-h-a-n-t-e-l-l, Fender, F-e-n-d-e-r. Thank you, Chairman Wayne and senators for your consideration of LB1269 and to Senator Hardin for introducing it. Stats are stats, facts are facts, and I do believe all of us can debate on all those all day long. I'll also admit, as in a lot of our worldviews, values, and emotions differ in every situation, everything in this life-- and, and can be a trade off for something else. Life is about choices and we will all face either reward or consequences as a result of our choices. With that being said, LB1269 is a bill where we can see another clear example of division on personal stances. Opponents are going to state that LB1269 is going to increase homicides, which stats do show in some states that it does. Also, opponents will state that it will support unfair racial deaths, which also we all know is true, true in some cases. Just like we saw the innocent young black man in Georgia, Ahmaud Arbery, who was violently targeted by 3 white men and died without reason. This is a clear example of evil and wrong. There will always be bad actors, and with ill intent and evil motives who will target and abuse the rights and true intentions of the stand-your-ground laws. Nebraska's duty to retreat is not effective living in the reality that we are living in today, evil is everywhere. I'm speaking as a woman and as a resident of Nebraska who also supports the Second Amendment and gun rights of women in Nebraska, but I'm also a legally trained and concealed carry citizen, and lastly, also being a victim of an assault as a young child. As Nebraska law states that if I or, God forbid, another human were to be violently attacked, either robbed, raped, or killed, I would have to attempt to retreat first before I would be able to use deadly force to protect myself. I'm sorry, but if I'm being attacked or my family, whether in my home, car, work or in public, I constitutionally have a right to protect myself and be safe. I do not believe that it's right that I give a perpetrator the advantage and turn my back to them to retreat. And if I do defend myself after being violently attacked and victimized, I then have to be revictimized by having to be put on trial and prove my justification, even face jail time because I couldn't retreat. Nebraska is only 1 of 12 states that has duty-to-retreat laws. Very liberal states such as California and

Illinois have better protections for women and all victims of violent crime no matter what your race is, your religion, or your gender. It's time for Nebraska to do a better job to protect the innocent. So I ask senators to move this bill forward to protect all citizens in Nebraska who could be a victim of violent crimes. These victims could be you or your loved ones, God forbid. I do pray fervently that no one has to stand in this situation ever in their lives. I pray for protection for all, all of ours. So I thank you for your consideration and that LB1269 moves forward.

WAYNE: Thank you. Any questions from the committee? Seeing none, thank you for being here.

CHANTELL FENDER: Thank you.

WAYNE: Next proponent. Next proponent. Welcome.

JOHN ROSS: Chairman Wayne and fellow senators of Judiciary Committee, good afternoon. My name is John Ross, J-o-h-n R-o-s-s. Thank you for the opportunity to testify. Thank you, Senator Hardin, for introducing LB1269. On the handout you have just received, there's a statement of rights in the Nebraska Constitution. It states: All persons are by nature free and independent, and have certain inherent and inalienable rights; among these are life, liberty, the pursuit of happiness, and a right to keep and bear arms for security or self-defense of family, home, and others, and for lawful common defense, hunting, recreation use, and all other lawful purposes. When anyone in Nebraska is engaged in lawful activities anywhere in our state, they would include nonresidents and people convicted of felonies as long as they are engaged in lawful activities, any person engaged in lawful activities would be covered with a statement of rights, which includes life, liberty, and the pursuit of happiness and the right to keep and bear arms for security or self-defense of self, family, home, and others. The exception would be felons who have the loss of the right to possess firearms. So when someone faces the threat of death or serious bodily injury, there should be no duty to retreat before you use deadly force to protect yourself or someone close to you. You could be anywhere in today's world, and you could be facing someone that will attempt to cause serious bodily injury that might end your life. It is impossible to try and keep track of where you are at all times and have a plan to retreat. If, if it happens, you will only have a few seconds. You must begin to defend yourself now, not after thinking about it. Is there a way to retreat to safety? Any person that is not prohibited to carry firearms should be able to use one to protect

themselves and someone near them if they are facing the threat of death. Thank you for your time and listening to me.

WAYNE: Thank you. Any questions from the committee? Seeing none, thank you for being here today.

JOHN ROSS: Thank you.

WAYNE: Next proponent. Proponent. Next proponent.

TERRY LANE FITZGERALD: Good afternoon, committee members. My name is Terry Lane Fitzgerald, T-e-r-r-y L-a-n-e F-i-t-z-g-e-r-a-l-d. I live here in Lincoln. I'm a member of the Nebraska Firearms Owners Association. I've been a firearms and personal protection instructor for 30 years. LB1269, if passed into law, removes the burden of a victim having to immediately determine the motive of unlawful and forced entry or attack and protects them from devastating criminal and civil penalties as long as lawful force is used to resist. By its very nature, an unlawful forced entry indicates violent intent. Immediate response is necessary not only to protect oneself, but to protect others who may be present at the time and be for a variety of reasons unable to retreat. Indecision at that time may be fatal. The common law practice of castle doctrine says that individuals have the right to use lawful force, including deadly force to protect themselves against an intruder in their home. 38 states now have statutes providing that there is no duty to retreat from an attack or in any place in which one is lawfully present and includes presumption of fear provisions as well as protection from civil awards if lawful force is used. It is time for Nebraska to join these states in allowing law-abiding citizens to protect themselves and others any place they are legally entitled to be without a duty to retreat from an attacker. Thank you. I'll take questions.

WAYNE: Thank you. Any questions from the-- any questions from the committee? Seeing none, thank you for coming down today.

TERRY LANE FITZGERALD: Thank you.

WAYNE: Next proponent. Proponent. Welcome, sir.

SCOTT THOMAS: Good afternoon. My name is Scott Thomas, S-c-o-t-t T-h-o-m-a-s, with Village in Progress. And I'd like to thank Senator Hardin for bringing this bill, like to testify in support of LB1269. I've said before that I'm going to make every effort I can make to try and support every bill that limits the subjective interpretation that

clarifies the statutory language and bills and the law in general. And this body is meant to implement laws, to create laws that the bureaucratic systems can implement without any subjective interpretation. There shouldn't be any play in the joints, and that's how you provide for equality in the law. It's contingent upon that action. So to avoid any disparate treatment, I think it's a good idea as well. But Article 3 in the 1948 UDHR, the Universal Declaration of Human Rights, gives you a right to life and that's codified in the U.S. Constitution in the Fifth Amendment, the right to life and liberty, not to be deprived without due process and a chance meeting in the street doesn't hardly qualify for due process. So I've been a father in Nebraska for 12 years, and if you have an issue-- I've had issues where I felt that-- I, I had a question on the interpretation of the law. I felt that my daughter's boundaries had been pushed and I wanted to try and advocate for her. I called the sheriff's office, called the DA's, called the AG for legal interpretation. And it's really difficult because they don't give legal advice and that's a result of there being too much play in the joints. They don't know how to answer these questions because the language isn't pinned down. So these efforts to pin down the language really kind of set goalposts so that we can all function under a system of equality under the law. And that's all I got to say. I'll take any questions from the senators who support the bill.

WAYNE: Any questions from the committee?

SCOTT THOMAS: Thank you so much, Senator Hardin, for bringing this. Appreciate that.

WAYNE: Seeing none, thank you for being here.

SCOTT THOMAS: Thank you, sir.

WAYNE: Next proponent. Proponent. Moving on to opponents. Opponents. Was there any other proponents? Just want to make sure. So [INAUDIBLE] proponents. OK. Just saw some movements and I wasn't sure before we started on opponents. Opponents. Welcome, Mr. Kleine.

DON KLEINE: Good afternoon. My name is Don Kleine, D-o-n K-l-e-i-n-e. I'm Douglas County Attorney and I'm here as the Douglas County Attorney and also as a representative of the Nebraska County Attorneys Association in opposition to this bill. You know, I, I-- I've handed you out a, a copy of the, the jury instruction that we give in Nebraska-- Nebraska jury instructions on, on use of deadly force. And

also, if you look at number 4 there, Nebraska has adopted the castle doctrine, which says you don't have-- you know, at your dwelling or your place of work, you don't have to retreat from it, there's no duty to retreat. So there's been a lot of misstatements made, and I don't think they're intentional misstatements, but I think they're misunderstandings about what the current law is. So I, I think this, this, this law change is unnecessary. And I'd ask the proponents of this to tell me or give me an example somewhere where there's been somebody unjustifiably convicted of, of, of a use of deadly force where it was justified under the current law as it exists. So we have the current law that says you don't have to retreat and that the, the-- if you look at the statute and the jury instruction, it says, you know, complete safety. It says most of the time. Obviously, if somebody points a gun at you, you don't have to even think about using deadly force to defend yourself. You don't have to turn around and run or try and hide when somebody's got a gun pointed at you. You know, it-- it's, it's the way the statute is written. It, it-- it's not something you even need to do in any stretch of the imagination under those circumstances. And the other statement that was made earlier was that somehow the burden is on the defendant or the person who uses deadly force to prove that they were justified. That's not true. You know, the instruction is given and the judge will instruct also that the state-- the prosecution in a case like this would have to prove beyond a reasonable doubt that the person wasn't justified, OK, in, in using deadly force or whatever it is. This isn't a anti-- you know, I'm not [INAUDIBLE] up here. I, I believe in the Second Amendment. I've-- I bet you I've had over 20 cases, more than that where I found an individual to used deadly force and was justified in doing so when somebody is breaking the front door of the house or when there's other circumstances. I'm more worried about-- we have gang problems in Omaha at times, and I'm more worried about a, a, a gang involved with another gang and using this defense saying, well, you know, I, I had to use deadly force because I thought this other gang member was going to draw down on me and, and so I shot. And so there's all kinds of consequences for this that are, I think, are unintended. And I think that the current law, as it exists, protects people and allows them to use deadly force when, when it's necessary. And I'll be happy to answer any questions. My time is up but I have a lot of things I could say.

WAYNE: Any questions from the committee? We'll start with Senator DeBoer.

DeBOER: Thank you. So it's been a long time for me since I've done any of this criminal stuff all that much. Self-defense is not an affirmative defense?

DON KLEINE: Sure, it's-- you have to-- if the defense raises self-defense and there's a scintilla of evidence that it could exist according to the judge because the judge looks at all of the facts and evidence in the case, then the judge has to give an instruction on self-defense. So the-- but-- and it still has to be a situation where the state has to prove that the person wasn't acting in self-defense. Even though they have to raise it, they don't have to prove anything. We have to prove that it wasn't self-defense beyond a reasonable doubt. So I think it's a-- you know, I've, I've tried cases on both sides. I was in private practice. I tried-- and I thought the self-defense instruction was very good from a defendant's perspective and I won a couple-- won a couple of homicide cases as a defense attorney on basis of self-defense or justification. Because besides that, it also says at the end, when you're instructing the jury, the person who used the deadly force may have been wrong in estimating the danger, and that doesn't matter as long as they had a reasonable basis for what their belief was about having to use it to protect themselves. So it's very good from the standpoint of the user of, of force to protect themselves in any stretch, by any stretch. So, again, I think--

DeBOER: Does the-- so the scintilla of evidence, does the defendant have to raise that or does it have to just-- like, do they have to ask for the instruction? That's my question.

DON KLEINE: Oh, sure, that-- but if-- but if it gets-- if it's brought up during the case, the judge is going to give the self-defense instruction. They don't want to have any, any error in the case. You know, they may even just argue that in the opening statement that, that there's some evidence here that this person used force so-- and there was an implication that maybe they needed to, they're going to give the self-defense instruction.

DeBOER: OK. Thank you.

DON KLEINE: Sure.

WAYNE: Any other questions? Starting with DeKay.

DeKAY: Thank you, Chairman Wayne. Does the castle doctrine, does that apply to any other dwellings besides personal homes or do they go--

DON KLEINE: Well, I think it's anytime you're in a place-- it's-- like a residence. I think if you're staying in a hotel room, at any place that you're, you're living even with your family, whatever it might be. Sure. I think that applies. You don't have to leave. And when somebody breaks your door down and, and, and you don't know what they're there for, you don't have to wait and find out. You can use deadly force. And I've, I've said I've had that happen in Omaha where somebody broke down the front door of somebody's house and the homeowner was there and pulled a gun and, and shot that person, that they don't have to wait for anything once that happens. And so--

DeKAY: Thank you.

DON KLEINE: --in my estimation-- my opinion, I should say.

WAYNE: Any other questions?

DON KLEINE: All right.

WAYNE: Seeing none, thank you for being here.

DON KLEINE: Thank you.

WAYNE: Next opponent. Opponent. Welcome.

ALISON SHIH: Thank you. Good afternoon. My name is Alison Shih, and I serve as senior counsel at Everytown for Gun Safety, where I'm responsible for supporting state legislative efforts across the Midwest. Thank you so much for hearing my testimony today. You know, the killing of Trayvon Martin in February of 2012 served as a national wake-up-- wake-up call about the dangers of shoot first legislation, which is euphemistically called stand your ground by the gun lobby, spurred multiple studies demonstrating the unnecessary deaths and disparate racial impacts associated with these laws. It's no surprise that shoot first laws promote vigilantism, as was the case in the murder of Ahmaud Arbery. Even if a person is eventually brought to justice for using impermissible deadly force, Georgia's shoot first law may have helped bring the situation to violence in the first place by encouraging people to use deadly violence as a first and not last resort. This bill would have disastrous implications for Nebraska. Nebraska has a traditional self-defense law, modeled after a legal doctrine established under English common law 4 centuries ago, with

roots tracing back to the Roman Empire. Traditional self-defense laws, like Nebraska's, allow a person to defend themselves or others at any time, at any place, whether at their home, in their car, in their place of business, or on a public street. When a person is outside of a home, traditional self-defense laws have required that a person avoid using deadly force if they know there is a safe way to do so, such as by walking away from the situation. Traditional self-defense laws like Nebraska's do not prohibit a person from using deadly force if they believe it's necessary to protect against serious harm. It merely requires a person take an alternative course of action when they are in a threatening situation outside of their home if they know that they can safely do so. Traditional self-defense principles reflect the value of life. They recognize that it is best to avoid killing another human being when possible, while still giving a person the right to protect themselves when necessary. This bill would upend that doctrine and allow people to use deadly force outside their home, even when they can safely and easily walk away. This would turn Nebraska into a shoot first state. These laws are relatively new. So new, in fact, that the first modern law of its kind was codified in Florida in only 2005. Prior to the enactment of its first shoot law, Florida, like many other states and like Nebraska currently, required a person to walk away if they knew it was safe to do so before using deadly force in public. In quick succession, several other states passed shoot first laws to deadly effects. There has been no evidence since states that have adopted shoot first laws that these laws deter crime. On the contrary, they are associated with 700 more homicides per year nationally. While homicides have increased in states that have adopt these laws, the number of homicides in states with traditional self-defense laws has remained steady or decreased. The Tampa Bay Times reported that in the year since Florida passed shoot first, the law was invoked with unexpected frequency in ways no one imagined to free killers and violent attackers whose self-defense claim seemed questionable at best. That's included a case where a man killed 2 unarmed people and walked free, another where a man shot a person lying on the ground. Several killers went free after shooting their victims in the back. In 68% of Florida shoot first cases, the person who was killed was unarmed. And I also want to note, almost 80% of those cases in Florida, the person was the initial aggressor who raised the defense. They had not been attacked first.

WAYNE: I'll ask you to wrap up here.

ALISON SHIH: Thank you for hearing my testimony today. I'm happy to answer any questions you may have.

WAYNE: Any questions from the committee? So when you mentioned homicides at 700, you're saying overall increase of homicide, but how many of those cases were where they raised the self-defense? Do you know that?

ALISON SHIH: Those are the number of homicides in excess that are in the shoot first cases in shoot first states that have those laws.

WAYNE: OK.

ALISON SHIH: So there are far fewer homicides in states that don't have these laws. I have a, a graphic actually with me that might be helpful and maybe you can get a copy of it that has-- it tracks the-- the trend line on the top are the states that have shoot first laws and below it are the states that have traditional self-defense laws.

WAYNE: Yeah, we'll make copies of that.

ALISON SHIH: Yeah. So you can see that it is consistently higher in states that have shoot first laws than in states that have the traditional self-defense laws that have been around for centuries.

WAYNE: Thank you. Any other questions from the committee? Seeing none, thank you for being here.

ALISON SHIH: Thank you so much.

WAYNE: Next opponent.

JASON WITMER: My name is Jason Witmer, J-a-s-o-n W-i-t-m-e-r. I'm a policy fellow at the ACLU, and I'm here and oppose LB1269. As we-- as already said, this law mirrors the stand-your-ground laws, the shoot first laws, whatever people want to call it. And I will just skip that verse that I had. In 2017, an article in the Journal of Human Resources found that this law was associated with at least 30 individuals killed each month and an increase in hospitalizations to firearm-related injuries. In 2021, the Journal of American Medical Association stated that there was 8 to 11% national increase in the monthly rate of firearm homicides due to these laws. Then there's recent stories and this may not include the defense, but this inspires people that 2 cheerleaders in Texas who were shot going to the wrong car, stand your-- stand your law says they were coming to my car. The young man who went to the wrong door to pick up a sibling and was shot to death that could say fear, stand your ground. You know where this might give a person a hesitation, these have provoked some fatalities,

I believe. The ACLU opposes-- also opposes LB1269 given the rare racial justice implications. One study of the Urban Institute examined FBI crime data, concluded that the states stand-your-law grounds, a white shooter is 355-- 350% more likely to have their homicide ruled justified if the victim is black. Enacting LB1269 means that people of color will disproportionately and unfairly bear the consequences. Throughout the United States, including Nebraska, individuals of color experience higher rates of being stopped, being searched, being ticketed, being arrested, being convicted, being in prison, being given longer sentences, sentenced to death, and executed then compared to their white counterparts. Further, when looking at national crime data, we know an enormous racial disparity when it comes to justified homicide. LB1269 will lead to a more race-based injustice and inequity. With the state law as now as it stands is one time I'm agreeing with Don Kleine, you do not have to back down if it's not safe, you can use deadly force. LB29 [SIC] will only encourage individuals to use lethal, lethal force as a first step rather than a last resort. It is a law and a path well documented after 2 decades of implementation-- implementations. Given the increased harms of stand your laws and given the racial justice issues that are implicated, we urge the committee to postpone LB1269 indefinitely. And I'll answer any questions or--

WAYNE: Thank you.

JASON WITMER: --follow up.

WAYNE: Any questions from the committee? Seeing none,--

JASON WITMER: Thank you.

WAYNE: --thank you for being here. Next opponent. Opponent.

ABBI SWATSWORTH: Thank you, Chair Wayne and senators of the Judiciary Committee. I am Abbi Swatsworth, A-b-b-i S-w-a-t-s-w-o-r-t-h, here today with OutNebraska, a statewide nonpartisan nonprofit working to celebrate and empower LGBTQ+ Nebraskans of all ages. OutNebraska speaks today in opposition to LB1269. As Nebraskans, we do value our safety and being good neighbors. We also value our personal freedoms and our long history of hunting and other gun sports. I know that-- personally, I've celebrated the University of Nebraska rifle team and their performance over the last several years. But we believe that LB1269 does not improve community safety, especially for members of communities who are typically marginalized. We've seen in other states

with similar laws that the mere perception of threat has led to the killing of joggers, young people knocking on the wrong door or eating Skittles in a hoodie, and women when they act against domestic violence. We also know that anecdotal evidence illustrates that members of the LGBTQ+ community routinely face higher rates of violence based on the perceived threat that is being put forward by historical and current rhetoric. As in, we are dangerous in the bathroom and/or grooming children. While we agree that each of us has a right to self-defense, we must also agree with other opponents that efforts encouraging the use of lethal force increase the risk of death for racial and gender-diverse communities. And for these and other reasons, we respectfully ask the committee not advance this bill. And I am willing to answer questions to the best of my ability.

WAYNE: Any questions from the committee? Seeing none, thank you for being here.

ABBI SWATSWORTH: Thank you.

WAYNE: Next opponent. Welcome.

STEPHANIE MACKEPRANG: Thank you. Good afternoon, Chairman Wayne, committee members and staff. Thank you for hearing my testimony today. My name is Stephanie Mackeprang, S-t-e-p-h-a-n-i-e M-a-c-k-e-p-r-a-n-g. I am a Lincoln resident, a mom, and a domestic gun violence survivor. I am here to testify in opposition to LB1269. Will this law make people safer? The answer is no. Nebraska already has a self-defense law. Instead, this law would lead to more gun violence and trauma. Two years ago, I testified in opposition to permitless carry-- concealed carry. During that testimony, I told the story of how my father, a veteran in distress, repeatedly used an unlicensed firearm to threaten our family. After a particularly violent incident, the police confiscated that firearm and saved all of our lives. Proof that sensible gun laws do save lives. As a gun violence survivor, I have met other gun violence survivors. Survivors can be witnesses to gun violence, the shot and wounded, and loved ones of witnesses and victims of gun violence. I have met students running from gunfire, gunshot victims, and far too many mothers who buried their children due to murder, suicide, or accidental gun deaths. What binds us together is our shared trauma. Sadly, that number is growing. A survey of U.S. adults by Everytown for Gun Safety found that 59% of adults or someone they know or care about have experienced gun violence in their lifetimes. That's a lot of gun violence trauma. For some, the trauma can be debilitating. For others, it motivates them to

activism. I am here today to speak on behalf of the many victims of gun violence who are too afraid to be here today. It's their pain and their trauma that motivates me to speak out against gun laws that threaten our safety. LB1269 provides cover for those who seek out gun violence as a solution to their fears. Research shows shoot first laws are linked to an increase in homicide rates and laws that result in 700 additional gun deaths every year. States with weak gun laws, especially those with shoot first laws, have higher rates of gun deaths. Instead, I would like to see this body support legislation proven to make us safer like guns-- safe storage laws, background checks for all gun sales, and emergency response protection orders, ERPO, or red flag laws. Again, I ask you to think about who LB1269 intends to benefit? Certainly, not the law-abiding citizens of Nebraska. Vote no to advance LB1269. This concludes my testimony. Thank you for giving me the opportunity to speak today.

WAYNE: Any questions from the committee? Seeing none, thank you for being here. Welcome, sir.

PATRICK CONDON: Thank you, Senator-- or Chairman Wayne, members of the Judiciary Committee. My name is Patrick Condon, P-a-t-r-i-c-k C-o-n-d-o-n. I am the Lancaster County Attorney and I'm here on behalf of the Lancaster County attorney and also the Nebraska County Attorneys Association in opposition of LB1269. In Senator Hardin's introduction of this bill, he said that, you know, it was a clear cut case. Rarely, in the 34 or 33 years that I've been prosecuting, have-- do you have clear cut cases. You don't have them-- cases-- criminal cases are often messy cases. The initial bill of this afternoon's session introduced by Senator Dungan, he called the post-conviction matters a procedural quagmire. And it is my contention is that's exactly what we're doing with this bill. We're putting officers into a position that they must make a decision at the time of arrest that the force was not justifiable and, therefore, they can make an arrest. Does that-- if that is determined later to be wrong, does that subject them to any type of civil claims? After this occurs, then the defense may assert that the force was justifiable and show by a prima facie case that it was justifiable. And then the burden shifts back to the county attorney to make a determination that by clear and convincing evidence that such force was not justifiable under this-- under such sections. And where does this occur? Does this occur before a preliminary hearing, after a preliminary hearing, before arraignments, after arraignment in district court, before trial? There's, there's nothing in here where this takes place. And after the finding or by the showing of the county attorney by clear and convincing evidence,

does that-- does that end the-- end the inquire, does a jury not even get to take up the consideration of whether or not force was justifiable and self-defense was justifiable? I think that under the difficulties that are proposed by this law, it is unworkable the way that this law is written and is the reason why that we as the County Attorneys Association are in opposition of LB1269. Thank you.

WAYNE: Thank you. Senator DeBoer.

DeBOER: Thank you. So the clear and convincing evidence standard is less than beyond a reasonable doubt.

PATRICK CONDON: Correct.

DeBOER: So this would actually mean that fewer people could make the claim of self-defense under that standard.

PATRICK CONDON: Under--

DeBOER: Under the clear and convincing.

PATRICK CONDON: They have to make a prima facie evidence, right?

DeBOER: So right now they don't have to make-- my understanding from talking to the--

PATRICK CONDON: Right. And that's what I'm saying. This, this doesn't say that that ends-- that this doesn't go to a jury, that this doesn't go to the, the question of the jury. There's nothing in here that says that if there is still that scintilla of evidence, it just says that, that the-- that the, the defense is there or not there. But then are they prohibited? That's what I'm wondering. Are they prohibited at trial saying--

DeBOER: From raising it.

PATRICK CONDON: Yeah.

DeBOER: So in that case, it would actually make it more difficult for a defendant to be able to bring this defense at trial. Is that right?

PATRICK CONDON: It very well could.

DeBOER: OK. All right. Thank you.

WAYNE: Any other questions?

PATRICK CONDON: Thank you.

WAYNE: I have a whole bunch of questions for you.

PATRICK CONDON: Oh, sorry.

WAYNE: I'm, I'm done. I'm done. Thank you for being here. Next opponent. Opponent. Opponent. Welcome.

MARK RICHARDSON: Thank you. Good afternoon, members of the Legislative Judiciary Committee, Judicial Committee. My name is Mark Richardson, M-a-r-k R-i-c-h-a-r-d-s-o-n. I am here today testifying on behalf of the Nebraska Association of Trial Attorneys in opposition to LB1269. We don't have any input or are not taking a position on the first part of this in terms of making this a defense or anything like that. Our interest is in the second part of this bill that grants immunity to any individual that relies on this potential defense from any sort of civil litigation or civil liability. That's what the Nebraska Association of Trial Attorneys is always interested in is promotion, protection of the civil justice system in Nebraska and, in particularly, the right to trial by jury in the civil justice system. We look at this, this bill, as it's currently drafted, as having a broad and sweeping immunity for any individual that is, I guess, successfully able to utilize a stand-your-ground type of defense. And much like Mr. Condon just indicated, I think this raises a whole can of worms of the interplay between criminal law, criminal evidentiary standards versus what happens on the civil side. And depending on what happened on the criminal side, then becomes conclusive on the civil side. We have a pretty functional tort system in Nebraska right now. I think if you ask defense-- civil defense attorneys and civil plaintiffs attorneys, I think they'd tell you that Nebraska citizens can be trusted to get it right in the courtroom. That civil-- that tort system that we have that's working is based on the premise that Nebraskans are going to expect their fellow Nebraskans to act in a reasonable manner under whatever those circumstances are that they're facing, and that if they fail to meet that reasonable standard that they're going to be held accountable for that. Imposing liability immunity like this takes away the ability of Nebraska citizens to, to have their complaints heard by other Nebraska citizens and render the proper verdicts. I would also note that this bill goes above and beyond just immunity. It actually arguably creates a cause of action for a civil cause of action for the individual who may have a civil claim brought against them by allowing attorney fee award, by allowing lost compensation, and by allowing, I think, the phrase is "any

expenses incurred" that is above and beyond what you will ever see in a-- just regular civil trial where personal injuries or injuries are sustained by a current-- by a plaintiff. I just think there's all kinds of issues in how this gets implemented and how it gets heard by the civil justice system. I think you're potentially creating not only a lot of new work for attorneys in terms of potential new clients, actually, but you're also creating a laundry list of issues that the Nebraska judges are going to have to sort through because they're just not clarified in the current version of the bill. For that reason, we'd ask you to not advance this bill.

WAYNE: Thank you. Any questions from the committee? Seeing none, thank you for being here.

MARK RICHARDSON: Thank you.

WAYNE: Next opponent. Welcome.

TESSA DOMINGUS: Hello, my name is Tessa Domingus, T-e-s-s-a D-o-m-i-n-g-u-s. I'm here testifying on behalf of myself and not any other organization that I might be affiliated with. I-- really what I have to share will be very brief. It almost just kind of supports some of the things that were already shared here today. While the proponents of this bill argue that the bill enhances self-defense rights and promotes public safety, I firmly believe that it-- that its enactment would have a detrimental consequence for our community. The stand-your-ground laws undermine the role of our law enforcement and the judicial, judicial system in maintaining public safety. I also second that I think that Nebraska does have a really good system in place that already does these things for us. And by this, it empowers individuals to take matters into their own hands, we risk vigilante justice and the erosion of trust in our institutions instead of fostering a safer society. A little over a year ago, I was assaulted in a parking lot. I did defend myself to the extent necessary that I was able to create a way to get away safely. Our justice system reviewed that evidence and did find that I indeed did act in self-defense. And so I just share this because I want to trust in our systems. I think that we have great systems and I think that most people do as well. And I-- my fear is that laws like this will do damage to that trust. Thank you.

WAYNE: Any questions from the committee? Seeing none, thank you for--

TESSA DOMINGUS: Thank you.

WAYNE: --being here. Next opponent. Next opponent. Seeing none, anybody testifying in the neutral capacity? The neutral capacity? OK. Seeing none, Senator Hardin is making his way back up. We had 163 letters: 91 in support and 72 in opposition. Senator Hardin to close.

HARDIN: Thank you, Chairman Wayne. I would like to thank everyone who took the time and effort to come out and testify. And I appreciate both sides and the debate is very healthy. It's very good. It's an emotionally charged issue and this is the place to talk it out. And I think we-- I learned a lot of good things hearing from both sides. And I really do appreciate it. I would like to point out a missing dynamic. And Senator Wayne, you just read it. Of the 72 comments for the record that were in opposition, 62 of them are from the Lincoln and Omaha area, 86% of them. Of the 91 comments for the record in favor of this bill, 37 of those are from Lincoln and Omaha, or 40%. This is another one of those bills that demonstrates a rural versus urban divide. 2% of the geographic area determines a really weighty response for the entire state. That is the other 98% of the geographic area. When you're in Lincoln and Omaha, seconds and seconds can go by before law enforcement might come to your rescue. Where I'm from, it could be hours and hours during a snowstorm. And so there are very different perspectives based on very different experiences and why people might want to have something like stand your ground like the majority of states in the country. It's interesting because people do bring things up like the Trayvon Martin case, but the fact is that the evidence has demonstrated that he was, in fact, the aggressor and he attacked first and so self-defense applied. We also know that when we see that stand-your-ground scenarios seem to cause more violence, the fact is that it is a correlation, not a causation. What comes first is the violence. Violence comes first. In response to it comes stand-your-ground laws. What this is really about is not dragging an innocent person through the fire on the way to an acquittal. You see prosecutors, of course, who don't like this law-- this bill determined the subjective standard of the duty to retreat. If lethal force is used, of, of course, county attorneys would prefer to retain the power and they do not want that compromised. I think the two bills or, I'm sorry, the two articles that I just handed out to you, one of those is from the Washington Post and one is from CNN. Those great bastions of the Second Amendment. Of course, I'm being facetious. One of these is entitled: Black women feeling let down by America are arming themselves. It's a recent article. Another one from CNN: Liberal, female and minority: America's new gun owners are not who you'd think. Things are changing and because of the violence that is happening. Our

laws, like they typically do, are running along behind. And so with that, I would take questions and I appreciate your, your help as we look at how to move forward.

WAYNE: Any questions from the committee? Senator McKinney.

McKINNEY: Thank you, Senator Wayne. And thank you, Senator Hardin. In your testimony, you mentioned the difference in need, depending on-- based on your location and-- but you also have to acknowledge the difference in how the law is applied and how people are perceived based on your race. You mentioned a young man who 2 days ago would have turned 29, who was not the aggressor, who left his home to go get some snacks, who was followed by a vigilante who was told by the, the, the operator to stop following him, who, instead of doing that, who did not follow those, those commands who continued to follow that young man and he killed him. And it was all based on race. So you also have the factor that in when you say I want a stand-your-ground law. Even in states that have stand-your-ground laws, when black individuals try to assert that right, a lot of times they're not-- it's not available to them when they try to do it. So it's disproportionately one-- on one hand used against-- for, for those who are white, they are able to use it more so than their black counterparts. Then you have the case where-- and I'm trying to keep my words cool. But I think you also got to think about race and that-- and that's where I'll leave it. Like, you, you could say, yeah, I live in a rural area so we need this. But we was talking yesterday, this is the state of Nebraska, we can have different laws for different parts of the state. They tried that 3 years ago with the constitutional carry and that was ruled unconstitutional. We can't have one side of the state able to have a, a different set of laws. But you also have to understand that there is a racial component to how laws are applied and how people are perceived. And I would also say when you mentioned-- you mentioned Trayvon Martin, I think you should really do your research on that story. He was not the aggressor. And, and, and also when you-- you shouldn't mention the dead period. You, you could have said everything but his name. If you're going to mention the dead, I would hope that you mention it in a fact-based manner. He is dead. He can't defend himself.

HARDIN: May I respond?

McKINNEY: Sure.

HARDIN: Senator McKinney, we will have to agree to disagree on the facts regarding that case. I invoked his name because it was voked-- invoked against the bill, and that was why I quoted it back to you in terms of using his name. What's more is I think the intent of this bill is to remove that subjectivity when you're talking about, wait a minute, bad things are happening to people who are a minority. This removes the subjectivity that is there now. It makes it more objective to say let's start on a philosophical ground of saying you have a legal right to be there. You have a legal right to defend yourself. Again, that does not cover in any way, shape, or form if someone does not have a legal right to be there.

McKINNEY: I think what you're missing and why I said, like, you're missing the racial component of--

HARDIN: You would like-- you would like to say that I'm missing the racial component, I would sub-- I would submit that I am not missing the racial component. I'm saying it-- this actually helps that racial component that you're saying it needs to be more central.

McKINNEY: Can you explain how it helps when-- and, and, and I'll ask you this. How does it help the racial component when you have people in this country that are still scared of black people, in general? So a hypothetical, because this happened to a young black man last year. He walked to the wrong house and was shot.

HARDIN: Well, I'm very sorry that that happened to that young man. But what I'm talking about and the reason that it applies to people--

McKINNEY: But the person under this law could say I was scared so I stood, stood my ground.

HARDIN: Again, this is not saying that someone is in the right simply because they pick up a gun and pull the trigger. What it is-- it doesn't make them 007. It doesn't give them a license to kill. What it does say is that let's say that, hypothetically, we have black-on-black crime that's happening. Let's say that we have black-on-white crime or some other situation going on racially.

McKINNEY: All crime is, is, is based on proximity. There's white-on-white crime. All-- most crime happens-- I hate when people-- and, and, and, and this is not to you personally, I hate when people say black-on-black crime. Most crime is based on race. Like white people commit crime more so against white people. Asian people commit

most crime because Asian people. Like it, it-- like that-- the whole notion that black people are the only racial group that commits crime against themselves is just not even factually accurate.

HARDIN: Nor is that what I'm maintaining.

McKINNEY: No-- well, no-- but what I-- the why I say that is because I, I dislike when people bring it up because it leaves out the factual-- the factual truth of every racial group commits offenses against itself.

HARDIN: They do, Senator McKinney. But it is also ignored that the largest percentage of gun violent crimes in America happened within black-on-black crime. Just so to, to ignore it and say we can't talk about that is a tremendous disservice.

McKINNEY: But the-- but the largest group of individuals that commit school shootings are not black. The, the largest group of people that commit mass shootings are not black.

HARDIN: That's correct.

McKINNEY: They're white males.

HARDIN: That is-- that is correct.

McKINNEY: So what's--

HARDIN: And in this case, I would hope that, again, what we're talking about in the context of LB1269 is not talking about the, the horrendous nature of what happens with school shootings. Believe me, I was there in Colorado on the day of Columbine. I was there holding the hands of children who ran out of the school. I get it when you're talking about the horror of school shootings. I've lived it with the families.

McKINNEY: And, and, and--

HARDIN: I am talking about--

McKINNEY: --I've lived it with families. I've seen people literally laying on the ground with gunshot wounds in their head. I've lived it in my community as well. I just last weekend was laying in bed and heard shots literally outside of my window. I live it every week.

HARDIN: And I think that neither one of us wants to see more of that. What LB1269 sets out to do is to remove the subjectivity regardless of race.

McKINNEY: That's the problem.

HARDIN: So that the power is not determined by a prosecutor in terms of was this enough of a duty to retreat or not regardless of that person's race?

McKINNEY: If prosecutors-- nope, I'm not going to say that. You know what, I'm, I'm gonna stop asking questions. Thank you.

DeBOER: Thank you, Senator McKinney. Are there other questions from the committee? I don't see any at this time so that will end our hearing on LB1269 and begin our hearing on LB934. Senator Bosn. We're going to take an extra second or two while we wait for this to clear out before we start with Senator Bosn. All right. Welcome, Senator Bosn.

BOSN: Thank you, Vice Chair, and good afternoon to the members of the Judiciary Committee. For the record, my name is Carolyn Bosn, C-a-r-o-l-y-n B-o-s-n. I represent District 25, which is southeast Lincoln, Lancaster County, including Bennet. I introduced LB934 at the request of the Attorney General. LB934 would, would provide the Attorney General with additional tools to best protect Nebraska consumers and prioritize restitution to victims. Looking-- starting at Section 1 amends the Consumer Protection Act and provides the Attorney General with the choice of venue bringing an action in the name of the state to enforce the Consumer Protection Act. This would add to the existing options the ability to bring such action in the district of a-- excuse me, in the district court of a county in which the Attorney General brings a related claim arising under the Uniform Deceptive Trade Practices Act. It also adds express authority for the Attorney General to elect to bring a claim under the Consumer Protection Act for a trial by jury. Cases brought under the Consumer Protection Act or the Uniform Deceptive Trade Practices Act, which I'll refer to as UDTPA for unfair or deceptive trade practices are necessarily fact intensive. A jury of one's peers are best at-- excuse me, adept as finders of fact at deducing whether the state has met its burden of proving that a business has engaged in a deceptive or unfair trade practice. Section 2 harmonizes the Consumer Protection Act with both existing and new authorities of the Attorney General under the UDTPA, specifically as it relates to restitution for victims. Victim

restitution should be a primary objective of Nebraska's consumer protection laws. This section allows, per an order of the district court, the ability to temporarily freeze any financial accounts or impound any money or property connected with the Consumer Protection Act violation for a period of time until the completion of all Consumer Protection Act proceedings. This will allow the Attorney General to temporarily freeze, rather than to impound bank accounts in order to better ensure that defendants do not abscond with or expend money paid by victims of the defendants' unlawful practices. That, therefore, better insures the prospect of restitution for victims. Again, victim restitution should be a primary objective of the Nebraska consumer protection laws. Moving to Section 3. This is a Revisor addition with cleanup language. Section 4 amends existing authorities of the Attorney General in section 87-303.02. The changes are intended to clarify the Attorney General's authority to issue civil investigative demands and receive responses, thereto, for businesses that engage in unfair or deceptive trade practices related to services in addition to those businesses that do so with regard to the sale of products. Section 5 adds a new section to the UDTPA to provide for the Attorney General's election to bring any claim under the UDTPA for a trial by jury. We have all heard stories about Nebraskans who have been victims of unfair or deceptive trade practices and have lost their hard-earned money to these businesses. This bill will give Nebraskans the best opportunity to be able to get their money back. Unfortunately, every day we are hearing more stories about Nebraskans and others close to Nebraska falling victim to scams and unfair or deceptive trade practices. I am asking this committee to help me give Nebraskans hope when they fall victim to these circumstances. Thank you for your time and attention. I would be happy to answer any questions. I will note that Bebe Strnad, from the Attorney General's Office, will be following me and can also answer any detailed questions from the perspective of the Attorney General's Office. I also had some cases that I can provide you of recent examples of this because I thought that might be helpful that I can either email to you or print and give to you.

WAYNE: Any questions? Senator DeBoer.

DeBOER: And this may be-- you say ask the Assistant AG, but what's the, the-- it says: Pursuant to an order of any district court, impound any record, book, etcetera. This is the impound part.

BOSN: Is this Section 4?

DeBOER: I believe so. No, it's Section-- it's on the top of page 6.

WAYNE: Section 2. Section 2(d).

DeBOER: Yeah, Section 2(d): Pursuant to any order of any district court, impound any record, book, document, etcetera, etcetera, etcetera.

BOSN: I would refer that to--

DeBOER: OK, I will ask her. Thank you.

BOSN: I don't have a note next to that so I must've overlooked it as a part of the explanation so I apologize.

DeBOER: No, that's all right.

WAYNE: Any other questions? I have one in the same area so if you didn't mark it, we'll talk offline. But the concern or question is around the financial freeze or property freeze. Is there any exception to make sure people can still provide their own living? So, like, let's say a farmer is accused of something and you freeze all his assets or her assets, can they even operate their farm during the time? So essentially you would be-- what we find-- what we see in misdemeanors all the time is they just sit and they end up losing their ability to work. But in this case, their assets would be frozen. So you would assume they would be out of prison or jail, but they still couldn't do anything, they couldn't pay their workers, they couldn't-- how would you handle?

BOSN: I would assume she can probably explain this in better detail, but here's what I can tell you. So it's a temporary freeze of the assets that are claimed as a result of the unfair business-- or deceptive trade practices. So it wouldn't be that I could come and secure all $12,000 that you made this year. I would only be able to secure the $12,000 that I could point to was illegally gotten, if that makes sense.

WAYNE: Right. But could you freeze the assets that-- let's say-- let's say I bought a business for $12,000 that you think came from the other one. How far down the road could you--

BOSN: Yeah. I don't have an answer to that. I can get it for you. What I can tell you, as it relates to that, because I had questions about the freezing of those accounts and potentially putting someone out of

business during the pendency, you know, of the case and then the defendant is found innocent, right?

WAYNE: Right.

BOSN: 40 states already have the restitution freeze right now in their consumer protection laws. I was not able to find an answer on 6 of the states so I don't know the answer to those 6. They may also have the ability to freeze those funds, but I would be happy to try and answer your specific questions.

WAYNE: So why is the right for a jury trial so important?

BOSN: So-- well, I, I guess that would go back to the fact that I think they're fact intensive cases gives the peers of that community the ability to make those determinations and so that would go back to that issue.

WAYNE: OK. Senator DeKay.

DeKAY: Thank you, Chairman Wayne. A thought popped into my mind when he was asking you about assets. And what if there's liens held against assets on different businesses and stuff? Can they still come in and collect them if they're-- say if a bank's holding a lien on prop-- on a piece of equipment or something or would that still be under the bank's jurisdiction at that point?

BOSN: I don't know the answer to that either, but I can look into that.

DeKAY: OK.

WAYNE: Thank you. Is there anything that you-- any question you would like to answer if I ask but I haven't thought of it yet? [LAUGHTER]

BOSN: No.

WAYNE: OK. First proponent. Welcome.

BEBE STRNAD: Good evening, my name is not Bebe Strnad, B-e-b-e S-t-r-n-a-d. I am the Consumer Protection Bureau Chief at the Attorney General's Office. I'm here in support of LB934. The bill essentially modernizes and harmonizes our two main consumer protection statutes. First, most violations of UDTPA are also violations of our CPA, so it makes sense to have the venue reflect that overlap. Second, this bill

allows for consumer protection claims to be presented to a jury. To answer your question, juries are particularly well-suited to determine these claims because they are a cross section of consumers. These issues are largely nonlegal, fact intensive, and they turn often on how the average consumer thinks, not how judges think. Third, and most importantly, this bill fixes a fundamental flaw in Nebraska's consumer protection framework by providing a tool that is modern, flexible, realistic for getting consumers their money back, of course, with the proper safeguards of requiring approval for a judge limiting it to restorative needs and also providing for temporal flexibility. 50 years ago, this Unicameral charged our bureau with protecting Nebraskan consumers, including giving us the ability to go after funds and, and restore them once they've been harmed. Currently, all we can do is try. By the end of a case, even a slam dunk case, the money is usually gone and Nebraskans won't see it back. Instead, we see fraudsters squandering their ill-gotten gains on things like lavish trips to the tropics, subscriptions to adult performers, gambling, and more. The funds that are being squandered were hard earned by Nebraskans and your constituents deserve better. What this tool would allow us to do is stop stolen funds from being depleted and drained. It is modeled after the same tools used by our federal counterparts at the FTC and SEC, who regularly freeze assets to prevent these consumer and financial harms. Nebraskans deserve this same level of protection. Lastly, this tool is critical for consumer justice. When Nebraskans cannot afford an attorney, and most people can't, or their claims aren't large enough to warrant a lawsuit, and most consumer claims don't, our bureau is really their only option for getting financially restored. We should not accept a legal framework that falls short on what is arguably our bureau's most important function. Getting Nebraskans their stolen funds back. This bill fixes this fundamental flaw and allows for restoration of consumer funds to be a priority as it should be. Thank you very much.

WAYNE: Thank you. Senator DeBoer.

DeBOER: He didn't even look. He knew I was going to ask the question. OK, so can you just take me through this a little bit because I don't-- so what's the current law in terms of what you in the consumer protection division-- is it division?

BEBE STRNAD: Bureau--

DeBOER: Bureau.

BEBE STRNAD: --division. I'll take either.

DeBOER: OK. What's the current law right now if there is some sort of defrauding entity in terms of what you can do? I think I understand you saying you cannot in any way freeze any assets or seize them or anything. Is that right?

BEBE STRNAD: That's incorrect. Sorry, if I-- if I stated that. We are-- we actually have a tool called our impound power. It's currently in our-- in our toolkit. It's a very big hammer. It allows us to seize assets and accounts, bank accounts, products, anything that is material to the deceptive act. What it does not allow us to do is once that money is brought into a system and then it goes out it's spent or often with online scams it's, like, sent abroad that we can't go after that. So what this tool seeks to do is essentially fix that loophole where bad actors, and it's bad actors the ones who are depleting it and draining it, not legitimate businesses. This allows us to go after them and get that-- those funds that they took from consumers.

DeBOER: OK, so I must be having a slow day--

BEBE STRNAD: No, you're good.

DeBOER: --or I'm tired. So you're saying that right now you do have a tool--

BEBE STRNAD: Yes.

DeBOER: --but the deficiency in the tool is that there's some way for folks to hide their assets from you in some way?

BEBE STRNAD: Yes, that is correct. It-- outside of the scope of our current impound power.

DeBOER: So how would you get someone's assets that are overseas anyway? I mean, are you-- would this solve that problem?

BEBE STRNAD: So it, it would depending on the jurisdiction. So every jurisdiction has different processes for how we go after money. To use an example, we might reach out to the Attorney General offices of that country and take this judge's order and use-- basically go through them and have them help us if it's a local bank. If it's a global or international financial institution, then we can just go to a local-- to them in the United States.

DeBOER: So it says: Pursuant to the order of any district court. What's the-- so this is obviously before adjudication. So what is the standard? What is the rule? What is the kind of, like, procedure for how the court decides what kind of evidence you have to show? Is this just like, hey-- I mean, I, I don't expect this is like, hey, judge A, I'd like to freeze, you know, so-and-so's assets, like, what's the necessary findings, the standard, etcetera?

BEBE STRNAD: So we would have to prove that the, the amount that we're requesting. And so that would require us to confirm with the consumers, make sure we have proper documentation that shows that that specific amount that we are accosting was actually taken. In addition to that, the judge could also say no. We have to have approval of a judge. If a judge doesn't buy our evidence, if, if the judge doesn't think it's appropriate, that's up to them. That's part of our due process. We just get to make our case.

DeBOER: So-- but, but what's this-- what's the stand-- like, I, I just don't know this.

BEBE STRNAD: Oh, you mean the-- like--

DeBOER: What's the standard?

BEBE STRNAD: --evidentiary--

DeBOER: Yeah, what's the evidentiary standard?

BEBE STRNAD: So we have an evidentiary standard already on our impound power, which is cause to believe. We need to have specific cause that makes us believe that these funds have been ill-gotten through the Deceptive Trade Practices Act.

DeBOER: OK. And it's temporary during the pendency of the case. Is that right? And then could roll over if there was a conviction?

BEBE STRNAD: So it's, it's temporary in the sense that we can release it. But our impound power, we don't have ability to just release it if we-- for example, let's say we get it wrong. Let's say we, we have this evidence from a consumer that was actually not reliable, like a consumer made up a claim, but they were able to do it enough where a judge approved it. We could go backwards for fairness and say, hey, we're no longer entitled to X amount of the money we took and release it. And that's-- oh-- it's-- sorry, go ahead.

DeBOER: No, no, no, that's helpful. What about if you get it wrong and, like, you think that it's me that defrauded Senator DeKay, but really it was Senator Wayne, and you have frozen my assets because you just-- you thought and a judge said, well, OK. And so now you've frozen my assets, it's actually Senator Wayne, and he looks a little "defraudy" today-- I'm just kidding-- so-- I mean, what happens then? Do I have any recourse after you've sort of-- so I've had a bunch of my money I couldn't get access to, you got it wrong, do I have any recourse against you or the state?

BEBE STRNAD: Sure. And first of all, let me say that we have all the financials at this point. So we see where the money is going and we know all the financial accounts that are available. But if you transferred it to Senator Wayne or-- you would be able to come in, for example, and do a motion to set aside an order, that's something you can do in most courts. In this situation, the money that we're going after, fraudsters and people who are scamming people online, they don't show up to court. They're-- they almost always default. I've never had one of these really bad actors show up in their defense. But if it was a-- an innocent citizen, you could go into the-- you could go into the court and, and do a motion to set aside. You could also come to our bureau and explain it to us, and then we have the flexibility to say let's release this immediately. And that's what's better about this power, in my opinion, than using the impound power which doesn't have that necessarily.

DeBOER: OK.

BEBE STRNAD: It's not built into the statute.

DeBOER: OK. I was just joking about Senator Wayne. I'm done.

WAYNE: Any other questions? So-- oh, Senator Ibach.

IBACH: I have a couple. Thank you very much. Could you just rewind for me back to earlier in your testimony and explain to me the difference between impounding and freezing funds?

BEBE STRNAD: So a freeze, we don't take possession. It-- what would occur is the bank basically would prevent it from moving in and out of account. Obviously, you can't freeze everything. That's why injunctive relief doesn't work in these situations. So in certain-- like when it comes to a situation where a consumer loses property as a result of a

scam, we would want to go seize that property if possible to make sure that we are able to restore them and make them whole.

IBACH: OK. Thank you. And I have one other just quick question. This is a side note and it may be on a completely different braille, but could you use these powers which are referenced in here against any of the CBD stores that currently sell Delta-8?

BEBE STRNAD: So in those 10 lawsuits, we are not seeking restitution. And for the nonlawyers, restitution is basically restoration. In product liability cases, there's almost never a restitutionary element. This is-- you see that more often in our consumer transaction cases. If we were wanting to seize a bank account of a CBD store, we would just use our impound power. This tool allows us to go after money that is actually lost. That's what restitution covers, is when a-- when a consumer-- in our case, that's the restitutionary interest we protect-- when a consumer has an actual loss, then we can come in and use this tool to secure that loss to make sure that we don't end up winning a case with nothing to show for it and no ability to get consumers their money back.

IBACH: All right. Thank you very much.

WAYNE: I'm still not understanding the judge's standard.

BEBE STRNAD: Yeah.

WAYNE: So is it probable cause, is it clear and convincing?

BEBE STRNAD: It's cause to believe. And this is the standard that has existed in, in Nebraska for consumer protection claims for 30 years.

WAYNE: What is cause to believe?

BEBE STRNAD: Cause to believe means that, essentially, we need to have a factual basis for our belief. It must be a belief. It can't just be a whim. And sometimes in Nebraska law, you say may be possible. We have to actually believe that this money has been ill-gotten, taken from, from a consumer and is in the possession of a fraudster or scammer.

WAYNE: Let me ask this question differently.

BEBE STRNAD: Sure.

WAYNE: From probable cause to reasonable doubt, what is cause to believe?

BEBE STRNAD: So you're talking in terms of criminal law, we're in, we're in the civil realm.

WAYNE: Well, even in civil, you got clear and convincing, you got--

BEBE STRNAD: So if you think, like, preponderance of an evidence-- of the evidence, that's 50/50.

WAYNE: Right.

BEBE STRNAD: That's not cause to believe. That's cause to assume. So it's actually a much higher standard than that. We have to see something and be convinced and have cause to be convinced that that money has been, basically, unlawfully obtained or, or property because property scams do happen. They're just not as common, especially because most scams are on the Internet and money, that's where money is more easily taken.

WAYNE: OK. Senator DeKay.

DeKAY: Thank you, Chairman Wayne. Early in your testimony-- the second or third paragraph says most courts allow for jury in consumer actions and for good reason. Why do we need to add a jury trial option to this?

BEBE STRNAD: So it's a-- it's an issue of when you have, for example, a claim like whether an ad is misleading. That's a question in private practice where you can spend lots of money to run consumer surveys. In our case, we don't have the resources to, you know, survey 2,000 Nebraskans. But if we brought in a jury, it would better reflect Nebraskan consumers than a, a single judge.

DeKAY: Don't they already have that option for a jury or not?

BEBE STRNAD: We do not currently have that option. Nebraska has a criminal right to a jury, and there are some common law rights to a jury, but there's no civil right.

DeKAY: All right. Thank you.

WAYNE: Any other questions? Seeing none, thank you for being here.

BEBE STRNAD: Thank you.

WAYNE: Next proponent. Proponent. Proponent. First opponent.

SPIKE EICKHOLT: Good evening, Chair Wayne and members of the committee. My name is Spike Eickholt, S-p-i-k-e, last name is E-i-c-k-h-o-l-t. I'm appearing on behalf of the Nebraska Criminal Defense Attorneys Association as their registered lobbyist in opposition to LB934. Most of our members generally don't practice in the civil Consumer Protection Act arena, but the CPA and the UDTPA do have quasi-criminal components. When we saw this bill, we were-- we were-- to quote the-- well, we were concerned with the amount of authority this gives the Attorney General. One thing that I think all of you know as legislators, the things that people talk about, the subjective hopes and adlibs and opinion perspectives to what a law means and what the bill text is, doesn't matter. You need to look at this proposal within its 4 corners and how it reads. A couple of things, and I'll, I'll answer any questions that you have because I'm probably going to run out of time. First, with respect to the jury trial provision, I think what the earlier testifier said is probably accurate. These are equitable actions so you don't have a right under law if you demand a jury trial. But if you look at this proposal, it proposes that the Attorney General makes the decision to have a jury trial. That is very unusual. Jury trial rights protect you from the government. It's not something you give the government. And if you look at this, I think the court could very well understand, well, if the Attorney General doesn't request a jury trial, that's their only-- if they're the only one that has that option then there is no jury trial. So I think that if the-- if the committee's going to act on that, that that should be something that either party could claim as a jury trial right. We don't have any position with respect to the venue proposal regarding both of the acts. The part that we are most concerned about is in Section 2 on pages 5 and 6. This allows the Attorney General, if they have cause to believe that any person has engaged in or is engaging in any violation of either act. And I've passed out copies of both of those acts. They are not simply-- you can violate the act a whole series of different ways: misleading advertising, mimicking other brands, unfair sort of charging what you are listing it. If you list an item for one-- for a certain price, but then it rings up differently at the register, that sort of thing. It's not always deceptive and it's not always financial gain. If the Attorney General believes that, then they can seek a court order freezing assets. And if you look on page 6, lines 4 through 13, that's what the court does. It's temporary-- during the temporary-- during

the proceedings itself, it doesn't say anything about the assets being froze or hold or blocked or whatever you want to call it, it has nothing to do with victim restoration. It has nothing to do with restor-- it has nothing to do restitution at all. It says: if there's any, any record bank document which is material to such violation. The standard is simply the Attorney General believes that. This is-- doesn't even have to have a lawsuit being filed, it's something that they can do early on. That's concerning. I'm only here for the defense-- oh, OK.

WAYNE: Any questions from the committee? Senator DeBoer.

DeBOER: So-- OK, let's look at that section that is the, the freezing of assets. It does say: temporarily freeze any bank account or other financial account. This is page 6, line 9:--

SPIKE EICKHOLT: Right.

DeBOER: --Pursuant to the order, they may temporary freeze or impound connected with any such violation for a period deemed necessary. Does that not provide the safeguards that you think are necessary?

SPIKE EICKHOLT: Not at all. Because if you continue reading on page 6, lines 11 through 13: connected with any such violation for any period deemed necessary until the completion of all proceedings undertaken under the Consumer Protection Act. I'm going to-- I'm only here for the defense lawyers, but I do represent the cannabis factory, which is one of the CBD stores that Senator Ibach asked about that is subject one of those 10 Consumer Protection Act lawsuits. Those cases were actually filed. They were filed back, I think, in August. They're still pending. This allows the Attorney General to get an order to freeze their assets. What does that mean? That means if you have a business and you got a business account, you can't pay employees, you can't pay rent, you can't buy product, you can't hire a lawyer to represent you to defend against something like this. That's what that means. And that's what's so dangerous that we see that. I understand the Attorney General representative said, well, it's for restitution, and I think Senator Bosn says, well, if there's $12,000 loss, that's what it's for, but that's not in the text of this bill at all.

DeBOER: OK. So let's say that we suddenly put it in the text of the bill, that would alleviate some of it?

SPIKE EICKHOLT: That would make it-- I mean, that would-- that would make it more redeeming.

DeBOER: So the standard-- the standard of cause to believe, where does that-- because that was sort of what I was also trying to get at because I've not heard of that standard before. So is that a standard that's elsewhere in statute that you know? I mean, that was-- that was what I was trying to get at is,--

SPIKE EICKHOLT: I haven't--

DeBOER: --what is that standard?

SPIKE EICKHOLT: --I haven't seen that before. And I know that the Attorney General representative-- and I, I missed her name, I'm sorry-- said that we understand that to mean that we have reason to believe this happened, but that's not in the text. It's simply, if the Attorney General has cause to believe that any violation-- it could be-- it could be a, a, a mimicking type of claim that you're selling Rice Krispies Treats, but you're not actually selling Rice Krispies Treats, that kind of thing.

DeBOER: So, so if we could find case law that outlined that standard, that'd be one thing or else--

SPIKE EICKHOLT: Yes.

DeBOER: --otherwise we would have to explicitly state the standard in order to alleviate concerns that--

SPIKE EICKHOLT: If we presumably don't have it now, I don't know how the judges would measure that. I think what you asked before was, was spot on. And that is what is the court supposed to consider? They're going to look at the statute, assuming it passed like this, and says, well, I guess the only measure I have to whether approve this order is whether the Attorney General has cause to believe it. And they put in this affidavit or motion that they have cause to believe it so I guess I'm going to grant the order. And one thing that might make this easier, and I don't know what the other states do, admittedly, I have not researched that. For what it's worth, I've kind of given up that argument what other states do because it kind of goes one way. If we talk about what other states do when it comes to some areas of law, it doesn't seem to make any difference whatsoever in this building so I've kind of just given up that point. But other states, I don't know what they do, perhaps they have this power early on once a case has

actually been filed, right, where you can at least sort of be heard if you're the defendant company and argue, hey, don't freeze all these assets or let me have, you know, $5,000, $6,000 a month to pay for my rent and representation, I'll let my employees go, or something like that. This doesn't have any sort of provision where you can sort of be heard on it. You just find out one day you just don't have access to your assets.

DeBOER: OK. So the standard, the fact that the case hasn't been filed, these are things that, that I'm identifying as concerns.

SPIKE EICKHOLT: That's exactly right.

DeBOER: OK. Is there any concern in here in this bill that, that they could go after businesses that were not? Like, it's not-- I'm not necessarily worried about the Delta-8 or whatever they were talking about earlier, but like what if the Attorney General has a sincerely held belief that a gun business is just fundamentally wrong.

SPIKE EICKHOLT: Yeah.

DeBOER: Could the Attorney General under this go after them?

SPIKE EICKHOLT: I think so, because if you look at the--

DeBOER: I should have asked the other question, too, but I didn't. So in fairness, should have asked that question before. Sorry.

SPIKE EICKHOLT: If you look at the Consumer Protection Act, and I handed it out, at least some of the definitions, it applies to entities that offer goods and services. You know, I offer a service, in theory at least, I guess. You'll have to ask my clients whether I actually do or not. But, you know, and if I-- I, I believe I'm subject to some-- at least some parts of the Consumer Protection Act. I can't misrepresent what I offer for services. I can't disingenuously charge for it or whatever. Maybe not law practice, that's what I represent. That's probably regulated by the Supreme Court and counsel for discipline and those things, but lobbying, certainly. It lets the Attorney General do whatever they want to do for any violation of the act. And I think-- I've been in and I saw Attorney General Hilgers in the hallway, I think, this week and I mentioned I was going to be opposing this bill and I-- in discussing with him, I explained that I-- it's my opinion he's going to use this to shut down those CBD stores. This debate that you are having on the other bill about whether this should be regulated or that applies here, this bill will

let him just handle it. If he believes they are violating it and he expressly and unequivocally said he believes they are violating the law, he will use this. In my opinion, he already has used the Consumer Protection Act against those businesses.

DeBOER: OK. What would be the remedy? Because she's-- the Assistant Attorney General, whose name, I'm sorry, I'm not getting out of my head right now, she has clearly articulated a, a thing that we should-- a, a, a state interest that we should try and fix, which is that somebody has a fraudulent situation and they've gotten their money taken from them and the Attorney General has an interest in making sure that that money isn't spent before, before they can get to the money.

SPIKE EICKHOLT: Right.

DeBOER: What's the solution to that problem if this isn't it?

SPIKE EICKHOLT: Well, this-- well, this will solve it. But this will do so much more because it is what we have.

DeBOER: Right. So how do you-- how do you limit it so it doesn't do the things you don't want it to do, but still does the things that everybody does want it to do?

SPIKE EICKHOLT: I think one thing you can do, and I'm thinking of those, like, say, roofing companies that come in after a disaster and charge a bunch of money and then they just drive right back to Missouri or Arkansas or wherever they're based out of. Perhaps if you had a standard where if they could show something like that, that this business doesn't have any ties to the state, doesn't have any-- they don't have a bond requirement or something like that for their business. They don't have any insurance requirements or some similar thing where there's just no way to get it, that would be something. And I have not done a survey to see what other states do, but that's one thing that could matter. I think another thing this would be perhaps be a little bit more-- a little bit more appropriate for due process is if it was not done just sort of preemptively to any case actually being filed. This is-- as far as I can read, is ex parte, it's done without any sort of notice necessarily to the business that you're targeting. It's just you go in front of the judge and get the order freezing their assets and then you go from there.

DeBOER: OK, so the guardrails I'm hearing you want is case has already been filed, clarity on the standard-- did I miss something-- and what evidence is shown in order to--

SPIKE EICKHOLT: And whatever the court's supposed to consider.

DeBOER: What the court's supposed to consider. OK. Thank you.

WAYNE: Any other questions? Seeing none, thank you for being here. I guess I do have a question. Hold up-- hold up. Have you looked at Brewer's bill yet on forfeiture?

SPIKE EICKHOLT: Yes.

WAYNE: What is the standard for forfeiture?

SPIKE EICKHOLT: In-- under Senator Brewer's proposal, it's-- the civil forfeiture is, is an extension of the conviction itself versus found guilty of some underlying crime. And then the state can forfeit the money that they seized as part of the crime. It's sort of-- it's, it's almost like a fine or another condition of the sentence itself. This is in some respects a preemptive first strike civil forfeiture even before they file a lawsuit.

WAYNE: All right. Thank you. Any other questions? Seeing none, thank you for being here. Next opponent. Next opponent. Seeing none, anybody in neutral testifier? Welcome. Thank you for being here.

JESSIE McGRATH: Senator Wayne, members of the committee, my name is Jessie McGrath, J-e-s-s-i-e M-c-G-r-a-t-h. I happen to have a little bit of experience in consumer-protection-related-type of cases. I spent 20 years in the L.A. County DA's Office handling consumer protection cases. I've sued Uber, I've sued Time Warner. I have sued Sony BMG. And I've made a living doing this type of work. And, frankly, I'm, I'm a little distressed about what I'm seeing here. I, I like some of the premises of what they're trying to accomplish, but how they're going about doing it is-- leaves me just a little bit-- I have questions, as we've all been hearing in relationship to what is the standard? The first thing I, I want to talk is, I'm concerned and wanting to know why they're seeking a jury trial right. Because that is something that I, as a prosecutor, doing consumer cases, I rarely want to have a jury making a decision, especially on a case involving equity and, and determinations of whether something is or is not legal under the law. And, and most of the time it's not a factual question, it-- it's, it's a question of does this conduct qualify under how

we've defined what the statutes are? And that's best handled by a judge, at least in our experience that in the cases that I've all handled. There have been a couple of times that I've-- we've had people representing businesses want to, to get a jury trial because they think they can smoke, smoke and mirrors for the jury to, to, to show that they weren't violating it. But I-- I've never heard a prosecutor who really wants to have a jury trial on a case like this. The other question I have is, is why is there an expansion to allow this to be in multiple jurisdictions? So for example, what is an associated or a related claim? Is this the fact that you can have a whole bunch of shops in Omaha that are-- that are selling CBD or whatever, and you have a, a shop out in Scottsbluff who's doing it so the Attorney General can file the claim in Scottsbluff and force all of those people to go to-- from Omaha to go to Scottsbluff to defend themselves in relationship to this? The other question I have in relationship is this-- is-- this is just what on, on information and belief that the Attorney General believes a violation may have occurred, and they're giving authorization from a court to basically conduct a search warrant. What is impound their businesses-- their, their records? How do you impound them? You go and you just politely ask them to give us all of your documents and related business or do you conduct a search? And if it is a search, there are standards that have to be met in relationship to probable cost in order to seize property from somebody. And I don't see any type of protections like that in here. So that is a, a couple of my concerns that I have in relationship to this. I, I like some of the prospects of, of trying to get things a little bit better, but doing it this way without safeguards for constitutional protections for individuals is, is, is a little bit troubling.

WAYNE: Any questions from the committee? Seeing none, thank you for being here.

JESSIE McGRATH: Thank you.

WAYNE: Next opponent. Next opponent. Oh, sorry, neutral testifier.

_____: Neutral.

WAYNE: Neutral. Sorry. Neutral testifier. Any other neutral testifiers? Seeing none, we had-- Senator Bosn comes to close-- we have 1 letter and that is a letter of support. Senator Bosn to close.

BOSN: Thank you and thank you to those who testified. I tried to take as good of notes as I can on the concerns that were raised. Happy to try and get answers to them or make accommodations to satisfy those issues. Bottom line is, the goal that I'm trying to accomplish with this legislation or that the Attorney General is trying to accomplish when they asked me to bring it, is the ability to seize these funds for purposes of restitution. So if that needs to be clarified in some way, shape, or form, I will work with them and any of you on that. I think the issue is pending litigation. If there's 6 months or 6 years, that money is not going to sit in the account by the bad actor waiting for that trial to resolve itself. It's going to get shipped overseas. I'm going to buy a fancy car. I'm going to get a second property or I'm going to take my family to Disney and those victims will never see that money. And so the goal here is to be able to put a freeze on those funds to allow for restitution for the victims. It's not a punitive seize. It's not intended to fund the AG. It's intended to secure those funds for purposes of restitution. So with that, I will submit it and answer any questions that you might have.

WAYNE: Any questions from the committee? Seeing none, thank you for being here.

BOSN: I have to be here.

WAYNE: You don't have to be here. You can do anything you want. That'll close the hearing on LB934. And now we will open the hearing on LB1098. Senator DeKay. Welcome, sir.

DeKAY: Good late afternoon, Senator Wayne. Good afternoon, Senator Wayne and members of the Judiciary Committee. For the record, my name is Senator Barry DeKay, spelled B-a-r-r-y D-e-K-a-y. I represent District 40 in northeast Nebraska, and I'm here today to introduce LB1098. LB1098 is my attempt to try to clean up, consolidate, and streamline existing statutes pertaining to domestic abuse, sexual assault, and harassment protection orders by consolidating them under a single act, the Protection Orders Act. The bill would also enable a protection order issued under this act to be issued for an initial period of at least 1 year, and no more than 2, set at the court's discretion based upon evidence presented and add the option to renew an existing harassment protection order. I want to provide some insight into how I got here. Last session, I was contacted by a constituent requesting longer duration protection orders. I understand that there was a pushback with Senator Morfeld's LB118 from 2021, which would extend-- which would have extended the duration of

protection orders from 1 to 5 years. In working with the County Attorneys Association, I believe we are closer to the mark with the 2 years, though, finding the right length still needs some work. More on that later. During the drafting process, the Drafters felt that changing the length of the protection orders was a substantial enough change to try to streamline a protection order statute since there is quite a bit of duplicate language in the domestic abuse, sexual assault, and harassment protection order statutes. As such, my office worked with the Bill Drafters to try to get as close as we could to streamline the statutes prior to January. The state of Washington recently underwent a similar process and overhauled their statutes a couple of years ago. While my proposal is less comprehensive, my bill would harmonize our [INAUDIBLE] them simpler to follow. I've been on this committee for a little over a year now, and will be honest, it is hard to keep track of what you can and cannot do with each type of protection order. Regarding the renewal of harassment protection orders, this is something that my staff, the bill drafter, and I believe could have been an oversight, since domestic abuse and sexual violence protection orders can currently be renewed. We are open to input on this change. I am sure others behind me will offer their thoughts on this legislation, and I am happy to work with anybody-- anyone, to produce the best bill possible. Several groups have brought their concerns to me already. I have handed out 2 amendments, AM2326 and AM2367. AM2326 does 2 things. First, it would revert the initial length of the protection order back to 1 year, which could help address concerns raised by the defense attorneys. Second, the Omaha Police Department expressed concerns with a mandatory booking requirement for a violation of a protection order and wanted the provision to only apply to domestic abuse protection order or a sexual assault protection order. AM2367 was drafted in collaboration with the Supreme Court and would address things such as granting the ability to deliver orders and provide clarity when dismissing certain protection orders. I am sure those who requested the aforementioned amendments will speak more on their portions. My intent in bringing these amendments is to provide room for discussion, so we can have more direction in how we can modernize or clean up our protection order statutes. I would be happy to try to answer any questions. Thank you.

WAYNE: Any questions from the committee? Seeing none, thank you for being here. First proponent, proponent.

ASHLEY BOHNET: Good afternoon. My name is Ashley Bohnet, A-s-h-l-e-y B-o-h-n-e-t. I am a rep-- appearing on behalf of the Nebraska County Attorney Association. I have been a deputy county attorney in

Lancaster County since 2012. And during that time, I've also worked on domestic violence cases. I've handled strangulation cases, stalking, protection order violations, and domestic violence matters. The Nebraska County Attorney Association is supportive of this bill. As stated earlier, it does help to centralize the protection orders, sex assault-- or sexual assault protection orders and harassment protection orders into one more centralized location. Lancaster County is a county that has many great assist-- victim assistance programs, such as Friendship Home, Voices of Hope, and Victim Assistance. But other places, especially in western Nebraska, may not have those resources. And furthermore, when a nonlawyer or a layperson is attempting to file for a protection or harassment order, it is helpful that all that information is centralized for that individual to proceed in getting a protection order. Furthermore, as also mentioned, this would extend, potentially, the-- a longer initial period for the orders, from maybe just 1 year up to 2 years. That's kind of a decision by the judge. For many victims, they have been facing years of stalking or abuse, and most of this behavior will not stop within 1 year. Furthermore, cases may be resolved within a year, with no ability to further protect that victim. No bond conditions, no probation condition-- conditions, so victim only has that protection order. Defendants may also be difficult to locate, difficult to serve. So this helps to keep victims safe, without undue burden of attempting to find the perpetrators of abuse. So the potential to expand the protection orders for an additional year is a benefit to victims of abuse. And finally, the renewal of all protection orders. In the past, domestic abuse protection orders could be renewed, but it's been a problem for those with harassment protection orders because they couldn't renew them. This is where cases-- cases where it's not a domestic partner or maybe not physical violence. Many of these victims, though, still have long-term stalkers, people who are going to their home and leaving threatening messages. Stalking is not a singular incident, but it's multiple incidents. These victims have no reason to believe that the perpetrator's behavior will discontinue within a set number of years. With the change to statute, these victims then are now able to renew protection orders or harassment protection orders without having to endure new incidents in order to apply for a new harassment protection order. They'll be able to renew without additional threats or harassment. Victims can then take measures to continue to protect themselves from perpetrators of abuse, rather than having a lapse in protection orders and a new violence of that abuse. So with that, the County Attorney's Association is in support of this bill.

WAYNE: Any questions from the committee? Senator Bosn.

BOSN: Thank you. Can you tell me, under the renewing the harassment protection order, do they have to appear before the court for a new hearing?

ASHLEY BOHNET: It would still-- I think they have to still say-- follow the same procedures that you have to do with a protection order, which you still have to get the perpetrator served, and could have to have a hearing if it's contested.

BOSN: OK.

ASHLEY BOHNET: So it's--

BOSN: So it does require-- there's no ability to expand it without notice of hearing and all of that.

ASHLEY BOHNET: Yes.

BOSN: So it--

ASHLEY BOHNET: It followed the same procedure that are for-- set in forth for protection orders right now.

BOSN: And so, one of the things that my recollection of when this was initially discussed was that there were victims who reported, at least when I was doing the domestic violence docket, that they were afraid. I want the protection or-- the harassment protection order expanded, but I feel like if I poke the bear and re-notice them, maybe they would have gone away. Maybe they-- maybe I need this, maybe I don't. And so, they-- I guess the complaint that I got was I'm putting myself at greater risk of fear doing that. And do you have those same concerns or have you heard those same concerns?

ASHLEY BOHNET: I have not heard those same concerns, because I think the problem I had experienced was victims not necessarily having a new inciting event to then go into another harassment protection order. But, you know, as I say, stalking, it's not just, OK, he left me a threatening message. I'm not going to be able to get it off of that. He has to do it continuously to get that. So I thought victims in some of my cases would rather just continuously have that protection order in place, knowing that he wasn't going to be able to come back. So there was no poking of the bear again. It was, nope. This is-- we've-- we're cutting this off.

BOSN: Right. So what you're saying is they wouldn't have to subject themselves to the-- you know, I mean, I usually had the rule of you have to have 3 incidents-- instances of alleged stalking before I can really fight this for you. Because if it's once--

ASHLEY BOHNET: It's not.

BOSN: --shame on you, if it's twice, may be an accident, 3 times, we're not messing around. Right? And so, what you're saying is we're not going to make you go back and count to 3 again before I'll file another--

ASHLEY BOHNET: Yep.

BOSN: --that's you're-- OK.

ASHLEY BOHNET: This is not, this is not going to force victims to be threatened, abused, before where they can get another harassment protection order against the same perpetrator.

BOSN: Thank you. Yep.

WAYNE: Any other questions?

ASHLEY BOHNET: Thank you for your time.

WAYNE: I have a question. Why would somebody be against this?

ASHLEY BOHNET: I don't know, because I'm supportive of it.

WAYNE: I know. I'm--

ASHLEY BOHNET: I, I don't know why-- like I said, I thought I actually had a very easy bill, because I was thinking this one is the one I don't think that people could really be against.

WAYNE: All right. Thank you. Next proponent.

SUSAN SARVER: Good evening, Chairperson Wayne and committee members. Thank you for this opportunity to testify in support of LB1098, "Adopt the Protection Orders Act." My name is Susan Sarver, S-u-s-a-n S-a-r-v-e-r, and I'm a resident of Bellevue and a constituent in District 3. I appreciate the opportunity to share why changing the current law is so important to me. In September of '22, I entered a 10-year relationship. Later, I sought and was granted a harassment protection order, effective for 1 year starting January 31, 2023.

Because attempts to terrify, threaten and intimidate me have not ceased, I was forced to file for a new protection order that went into effect February 1, 2024. One of the changes proposed in LB1098 would have helped me dramatically, specifically, the renewal provision, allowing victims to submit an affidavit attesting that circumstances have not changed. I'll address this more later. I also urge members of the committee and Senator DeKay to close loopholes in the current law that allow abusers to continue to harass them with little or no fear of punishment. Specifically, I implore you to eliminate opportunities for abusers to game the system by contacting third parties, contacting lawyers for no legitimate purpose, and using the court system as a weapon. My abuser would threaten to ruin my professional reputation during our relationship, and he tried to do this despite the harassment protection order in place. The most egregious example of this was a public records request submitted at my workplace, requesting the email, telephone, and text records from me, my supervisors, one of my peer colleagues, and several people who report to me. This was an obvious attempt to intimidate me with the threat of professional embarrassment and humiliation. My abuser has also skirted the protection order by harassing me through communication with my legal counsel. In several communications with them. He mentions the increased legal fees he is causing while incurring no fees of his own. He most recently congratulated them, quote, charging your client hundreds of thousands of doll-- hundreds-- excuse me, thousands of dollars to achieve the worst possible outcome. My abuser has also used the court system as a weapon. He filed a petition in small claims court claiming ownership of my dog, the same dog he would threaten to kill during our relationship. Currently, domestic abuse protection orders include language that allow petitioners to have sole possession of household pets, yet harassment orders do not. Because he had purchased her as a gift for me, he had a receipt and the court awarded him possession. I am devastated by the result of his ability to use the court system to continue to terrorize me, and I worry for the safety of my dog every day. Despite these and many other behaviors over the past year, my harasser has not been charged with breaking the protection order. A detective in Bellevue was sympathetic and saw cause, but was unable to charge him without the support of the local prosecutor. Without prosecution for breaking the protection order, I was forced to request a new harassment protection order, submitting over 120 pages of evidence documenting his abuse during the period of my initial protection order. Let me repeat that: I have over 120 printed pages of emails, attachments, transcripts, and screenshots of text messages that my abuser sent to people in my life for no

legitimate reason beyond harassment. Thank you for your attention to this issue that's so personal to me and so important to many other people. Thank you.

DeBOER: Thank you for your testimony. Any questions from the committee? I don't see any. Thank you so much for being here. Let's have our next proponent.

MISTY AHMIC: Hello, my name is. Misty Ahmic and I'm here to speak in support of this bill. In 2016, I left my husband because I had reached my--

DeBOER: Can you, can you spell your name?

MISTY AHMIC: Oh, I'm so sorry. I forgot to do that. It's M-i-s-t-y A-h-m-i-c. In 2016, I left my husband because I had reached my limit with his addiction to drugs and alcohol. I moved in with my mom and eventually built a home next to hers. Unfortunately, her neighbor was my husband's dealer, and I-- and he had a problem with the fact that I left. I will save you the details and the nightmare that I have lived since then, but I will say that I fear for my life because of that neighbor. Unfortunately, I have my fifth protection order against the man I have described. He has, in the past, broken a previous protection order which caused him to serve a small amount of jail time. That was 3 protection orders ago. He now lives in a completely different county, but like clockwork, starts his harassment every year when the order expires. I have tried ignoring it and not filing for new orders, thinking maybe he will stop and get-- and it only gets worse. Once I do receive an ex parte order, he avoids being served. LB1098 originally allowed the term for protection orders to be extended to 2 years. For someone like me, this is extremely helpful, as I approach the expiration of my current order. I know once it expires, I will have to wait to be harassed so that I have something new to put down on the paper when applying for another order. Then, I will have to sit through my sixth appeal hearing while my harasser defends his actions, just to have that order stay in place. Only having to go through this process every 2 years would be great for my mental health, and honestly, probably for his, too. I would ask the committee to consider 2 things regarding protection orders when looking at, at this bill. First, to limit the amount of time a respondent can avoid being served a protection order. In my case, the respondent knows he's going to be served and he dodges this for months, once for 5, all while continuing to harass me. There is no use in issuing an order if it's not even in place. Second, is eliminating

the text under Section 11(2)(b)(ii), that states a renewal can be granted if the respondent-- if-- basically, if he doesn't-- if he doesn't object. So having to go through that appeal process all over again. So if no circumstances have changed and we have to go through serving it all over again, it's basically just like reapplying for the protection order, so it's not really a renewal in my opinion. And you kind of referenced that earlier. Today, the justice system has failed me. My harasser can break protection orders, stand in front of my house and threaten to kill me, threaten to poison my animals, leave letters on my personal property telling me how he would dispose of my body parts, openly speaking about window-peeping to law enforcement officers, sent terrorizing emails and threatening letters, and still be allowed to continue his obsession. A harassment protection order does nothing to prevent him from snapping and doing physical harm to me, but it does hold him accountable for his actions by ensuring that these incidents all must be documented, instead of being shrugged off as a neighbor feud. Having to do this less, less frequently and knowing they are placed-- and knowing they-- and knowing they are placed when an issue would be-- sorry-- and knowing they are-- I don't know what I'm trying to say here. I'm sorry. Please, please support this bill, and please consider those additional issues that I brought up.

DeBOER: Thank you for your testimony. Are there questions from the committee?

MISTY AHMIC: Thank you.

DeBOER: Thank you so much for being here.

MISTY AHMIC: Thank you. It's been a long day. Thank you.

DeBOER: Let's have our next proponent.

MELANIE KIRK: Good afternoon, members of the Judiciary Committee. My name is Melanie Kirk, M-e-l-a-n-i-e K-i-r-k. I'm the legal director for the Nebraska Coalition to End Sexual and Domestic Violence. The coalition is testifying in support of LB1098, on behalf of the coalition, as well as its network programs of sexual and domestic violence program services across the state. There are-- our coalition's network is 20 programs that collectively serve all 93 counties across Nebraska. I'm here today to voice our support because I believe that this-- these changes will help harmonize and make things less confusing for survivors as they seek out justice and

protection. The-- part of the bill's aim is to streamline and consolidate the protection order statutes under 1 single act. And the majority of Nebraskans who seek out protection orders do so pro se. And while we have advocates to help them, very few are able to get an attorney to represent them. And there are provisions within the protection order statutes that allow judges to change between, if they feel that a circumstance fits better in a sexual assault protection order, then it becomes a domestic abuse protection order versus a harassment protection order. And when those are in 3 different sections, it can sometimes be difficult to explain to survivors that it's not a lesser-- it's not, it's not that much different. If it's all within the same statute, it's much-- it would be much easier for them to understand. And if all of the provisions are harmonized so that the same responsibilities, the same things are, are for the most part, put under the, the same restrictions, I think it would, it would put some of the, the survivors at ease. I, I hope that you will continue or you will consider leaving in the petition, the option to continue it for 2 years. It gives the survivors more time. It doesn't require them to allege new offense-- new offenses if they are harassment protection orders. It-- it's not something that, that you can just get over in a year. If you've been in a, in a abusive relationship, by the time that you've gotten the protection order and then you're starting a life over again, that takes time and it takes resources. And 2 years would give them more time to be able to do that without having to sit again in front of their abuser, and have to prove why they should have this place-- in place again. Finally, the last provision that I think is important is this extends the conflict of laws beyond just domestic abuse protection orders to sexual assault protection orders and harassment protection orders, which I think it provides clarity to our judiciary across the state, and consistency to those who are seeking protection orders. With that, I'd answer any questions that you had.

WAYNE: Any questions?

MELANIE KIRK: All right.

WAYNE: Seeing none, thank you.

MELANIE KIRK: Thank you so much.

WAYNE: Next proponent. Welcome.

WILLIAM RINN: Good evening. My name is William Rinn, R-i-n-n. I'm the chief deputy of administration for the Douglas County Sheriff's Office. On behalf of Sheriff Hanson and the Douglas County Sheriff's Office, we thank the Judiciary for allowing us to testify as a proponent of LB1098. The Douglas County Sheriff's Office responds to and investigates numerous incidents of protection order violations,and domestic violence abuse annually. Additionally, both child and sexual assault exploitations cases occupy a large volume of our criminal investigation caseload. These-- the DCSO champions these causes hand in hand with the Douglas County Attorney's Office Victim Assistance Unit and the Omaha Women Center for Advancement, who best represent victims of crimes and the Nebraska Victim Bill of Rights. We are aligned with the collective goals of LB1098 to specify and enhance the varying classes of protection orders. We believe it's important to identify the types and classes of protection orders, more specifically, as has been done in this bill. It assessed-- it assists both street level and investigative officers in doing their case-- caseload more quickly and not making mistakes in the field or unduly detaining people that don't need to be detained. Additionally, we feel the provisions of the sexual assault protection order, that have been enhanced, will go beyond the court orders that are being given on the bench, to keep people away and reduce victim witness intimidation. With regard to the 2-year length period, I know that the, the-- there has been some proposed amendments on that. We propose that many domestic violence situations, whether married or, or not, result in lengthy proceedings. Divorce proceedings and child custody proceedings can go on well past a year and the terms of those protection orders can be expired. And if they're extended past the year or if someone is still in a, a recently adjudicated hearing, those, those tempers and those hurt feelings come up, we feel it adds a level of protection for the, the victims of, of that. As an enhanced benefit, with legislation on the floor or, or coming to the floor with regard to handgun permitting, we believe the extended period of time on the protection orders will improve the point of sale-- safety for gun purchasers if, if allowed to expand that way. With that, I'll close and say we're eagle-- eager to implement any positive changes that come forth with the passage.

WAYNE: Any questions from the committee? Seeing none, thank you for being here.

WILLIAM RINN: Thank you.

WAYNE: Next proponent, proponent. Start with opponents, opponents. Seeing no opponents, anybody testifying in the neutral capacity, neutral capacity?

AMY PRENDA: Good afternoon, Senator Wayne and members of the Judiciary Committee. My name is Amy Prenda. It's A-m-y P-r-e-n--d-a. I'm deputy administrator for Court Services Division, and we are here testifying in a neutral capacity to LB1098. First, we'd like to thank Senator DeKay for offering amendment, AM2367 to LB1098. The intent of the amendment is, to the domestic abuse, harassment, and sexual assault statutes, is to address concerns raised in the protection order petition process and to facilitate court staff being able to assist self-represented litigants. Specifically, the amendment clarifies a petition for a domestic abuse protection order may be renewed ex parte. Some trial court judges are of the opinion that current statute and LB1098 will only allow them to re-- renew a domestic protection order if the respondent has been properly served with notice of the petition for renewal and notice of a hearing and fails to appear, or indicates they do not contest the renewal. Without this amendment, it also appears a judge will no longer be able to renew an ex parte-- a sexual assault protection order, without the respondent being served and a hearing scheduled. The amendment also provides a judge may dismiss a domestic and sexual assault protection order if they are frivolous. The amendment also replaces the term "bad faith" with the term "frivolous," because case law provides clear direction on what is considered frivolous and not bad faith. The amendment permits clerks of the court to provide copies of a protection order electronically. Current statute and LB1098 requires clerks to provide certified copies of a protection order to the petitioner and copies to law enforcement. There's confusion as to whether clerks must provide paper copies or may also electronically send copies to the petitioner and to law enforcement. The amendment allows court staff to assist SRLs in the completion of forms, in compliance with AOCP policy. Current statutes and LB1098 specifically prohibit court staff from helping with the completion of protection order forms. This language is a barrier to court staff assisting self-represented litigants, and has been used by court staff to refuse to assist petitioners. It is also in conflict with AOCP policy, which is court staff are prohibited from giving legal advice and from advising what to put in the form, but are permitted to check forms for completeness and to answer any process questions related to completing forms. In your materials, I provided you with our AOCP guidelines for court staff assisting court users, and also, an education guidebook that we prepared to help court staff

know what they can and can't do when assisting self-represented litigants. Finally, the amendment allows the petitioner to request their contact information on the petition be kept confidential and for court staff to maintain the contact information so that it is only available for the court to use. Under current law, a petitioner may only keep their address confidential if they appear for address-- if they apply for address protection with the Secretary of State or if they are living in a domestic violence shelter. This means many petitioners do not include their contact information on their protection order forms, which results in the petitioner not receiving communication from the court and the likelihood the request for a protection order is dismissed. Thank you for allowing us to testify today, and I'd be happy to answer any questions you have.

WAYNE: Yes. Any questions from the committee? Seeing none, thank you for being here.

AMY PRENDA: Thank you.

WAYNE: Next neutral testifier. Welcome.

KATRINA BURKHARDT: Thank you. My name is Katrina Burkhardt, K-a-t-r-i-n-a B-u-r-k-h-a-r-d-t. And basically, I'm so glad that maybe some changes will be made to the Protection Orders Act. I would like Nebraska to forward think a little bit more when we're looking at sophisticated technology. This is postmodern. And it's degrading our society, in that we have-- now the harassers have turned into electronic means. I have tried to get help with my harassers, and I have experienced sexual harassment by electronic devices. This has gone on for over 8 years. I have been in several counties across the state of Nebraska, and this is not good. This is a biological hazard. I have complained to the Department of Health and Human Services. I have complained to the Board of Health. We have a problem not only in Nebraska, but it is across the United States. We can start here in Nebraska if the problem would be addressed. I have talked to OPPD, when they are raising the amount of electricity that's being allowed and this is causing a lot of energy in the atmosphere. And that is basically creating chronic nuisances, and it is assault and battery. And I can ask-- answer any questions if you have any.

WAYNE: Any questions from the committee? Seeing none, thank you for being here.

KATRINA BURKHARDT: Thank you.

WAYNE: Any other neutral testifiers? Seeing none, as Senator DeKay comes up to close-- Senator DeKay, DeKay, you have 3 letters, and those 3 letters are in support.

DeKAY: Thank you, Senator Wayne, and members of the Committee for hearing-- for the hearing on this bill. I appreciate the discussion we had today. In regard to the 2 amendments, I hope that they can work collectively to put together a good bill and be enacted into law. Other than that, I'll try to answer any questions. Thank you.

WAYNE: Any questions from the committee? Senator Ibach.

IBACH: No. I was just holding my hand up. It's like I didn't [INAUDIBLE].

WAYNE: I saw your hand, so I wasn't sure what you [INAUDIBLE].

IBACH: Oh, no.

WAYNE: OK.

BOSN: Gotta ask one now.

WAYNE: Seeing none, that'll close the hearing on LB1098. And now, we will open the hearing on LB1097. Senator DeKay, welcome to your Judiciary Committee.

DeKAY: Good evening, Senator Wayne, and members of the Judiciary Committee. For the record, my name is Barry DeKay, spelled B-a-r-r-y D-e-K-a-y. I represent District 40 of northeast Nebraska, and I'm here today to introduce LB1097. LB1097 would clarify the required daily reimbursement rate the Department of Health and Human Services pay for lodging defendants after the first 30 days, when those individuals remain in a county/correctional facility awaiting transfer to the Lincoln Regional Center for competency restoration. The language in LB1097 has set the rate to $100 after the first 30 days. The current law allows for a per diem rate plus, plus costs. Setting a flat per diem would allow the department to project and budget costs more accurately. Additionally, I brought with me a copy of an amendment that I would like to have included in the bill that addresses 2 concerns that have been brought to my attention. The first addition would add clarification to the proposed language that the department will be responsible for paying for a defendant in custody lodged in the county jail, unless the defendant is released on bond. The second addition in the amendment follows input from the Nebraska County

Judges Association, requesting language to address inconsistencies in procedure across the state related to competency determinations under the Nebraska Revised Statutes Section 29-1823. The language proposed would change the subsection (1) to include that, the court in which the defendant will be tried is responsible for determining the defendant's competency to stand trial. This change would only affect felony defendants, as county judges would still be able to determine the competency of a misdemeanor defendant who are going to be tried in the county court. This concludes my opening on LB1097. I'm happy to try to answer questions, but there is someone following me from the DHHS who is here to testify who is probably better equipped than I am. Thank you.

WAYNE: Any questions? I have some questions. On page 3, why are we going with 30 days and not 45, 60, 90? Or on the bill. I mean both of them have 30 days, so I was just wondering.

DeKAY: Page 3, what line?

WAYNE: Line 17. Like, why are we-- after the first 30 days, the defendant remains in custom-- why not 7? Why not 10? Bosn asked me-- Senator Bosn asked me to ask that question.

DeKAY: What's that?

WAYNE: Senator Bosn asked me to ask that question, by the way. So if you don't want to answer it, it's fine.

DeKAY: I'm-- this is my second year in here. I'm working on my GED. So after 6 more years I might have that. But if I could defer that to somebody else, I'd appreciate it.

WAYNE: Not a problem. I'll wait. Thank you. We'll start with proponents.

BOSN: I'm not being good today. Not helping. Sorry.

TONY GREEN: Good evening, Chairperson Wayne and members of the Judiciary Committee. My name is Tony Green, T-o-n-y G-r-e-e-n, and I am the interim director for the Division of Behavioral Health of the Department of Health and Human Services, here to testify in support of LB1097, which would clarify language in Nebraska Revised Statute 29-1823 regarding the amount that DHHS reimburses county jails for defendants waiting in jail longer than 30 days, after being found incompetent and committed to DHHS for competency restoration

treatment. Under current statutory language, there are discrepancies as to what should be billed to DHHS. The language does not make it clear if the rate is inclusive of all costs, or whether costs beyond the lodging can be billed separately. The creation of this language was in LB921, passed in the 107th Legislature. The fiscal note that was prepared by the Legislative Fiscal Office for LB921 clearly indicated that the per diem rate established at $100 per day was inclusive of the lodging, food, medical, transportation, and any other necessary cost incurred. The changes proposed in LB1097 will allow for greater clarity to ensure that all counties appropriately receive the all-inclusive per diem. It also allows for greater accuracy in budget planning and management, reduces confusion on invoices for county jails that are submitted for reimbursement, and streamlines the reimbursement process. I would add an additional piece of clarification not in my written testimony. The $100 was the rate that was originally established back in 2022. There has been a, a rate increase that went into effect on July 1, '23, so the current rate is $103 per day. So with that, I would be happy to answer any questions on this bill that I can.

WAYNE: Thank you. Any questions? Senator Bosn.

BOSN: Thank you. Thank you, Mr. Green. I am a little bit confused as to this bill. And I've-- not because I didn't read it. What are we trying to accomplish with this bill? Is this a reimbursement rate issue?

TONY GREEN: From the department's perspective, yes. We, we are wanting clarity in, in the, the language of the statute. Again, the, the, the wording of the statute has some counties interpreting it to, to indicate that it's $103 per day or $100 per day when it was enacted, plus any of the other cost. And so, there's a smaller number of counties who are billing us, the daily per diem, plus any other costs for medication, food, treatment, above that, which makes it very difficult for us to plan and budget. So all we're asking for is that it be clarified to include a, a day daily per diem rate that becomes all-inclusive, so that we can then have better budget planning and forecasting, to work with Appropriations.

BOSN: OK. So if this county, let's just use Lancaster, for example, even though it's probably not a great county because you're in the same county then, as the Regional Center, but you get the point. Lancaster County says, I want to be reimbursed $103 per day, plus $55 per day for medicine and food. So they're sending you a bill, is what

you're saying, for $158 per day for individuals, under this fact pattern?

TONY GREEN: Yes. Each individual is, is different based on the cost attributed to, to that person, as I understand it. And so, we're trying to-- we would like it to just be an all-inclusive rate, that would include lodging and all support services that they would be receiving while at the county facility.

BOSN: OK. So even though it wasn't my question, it now is my question. Why 30 days and not-- I mean, the day after they're committed to the Lincoln Regional Center, ideally, we would have enough beds and the individual would begin treatment the next day. Right?

TONY GREEN: Yeah.

BOSN: Ideally isn't the case here. So why would we reimburse differently on day 29 than we would reimburse on day 30?

TONY GREEN: You know, Senator, I can't speak to the-- how the 30 days was established, but I'm, I'm certainly willing to go back and see if anyone in the office knows that answer, but I do not.

BOSN: That's OK. OK. Thank you.

WAYNE: Any other questions? Does this apply to juveniles?

TONY GREEN: This does not. This is only for those that are found to need competency restoration at the Regional Center. [INAUDIBLE] competent.

WAYNE: Do we do all of our competency at the Regional Center?

TONY GREEN: We do not. We have an outpatient competency restoration program that was stood up a few years back, that is getting off the ground and slowly gaining traction. So we're, we're very proud of that program.

WAYNE: Who would we-- who go-- how do we determine where-- Regional versus the other one? How do you deter-- how is that determined?

TONY GREEN: The court process would evaluate the, the, the risk that the patient would have, whether that needs to be done inpatient or outpatient.

WAYNE: But they're in custody, though, so isn't it all inpatient?

TONY GREEN: Not always.

WAYNE: So you could have somebody daily commute, or weekly, go down for treatment and come back, or how-- what do you-- what do you mean, not all?

TONY GREEN: So there are times when the, the restoration process would be done on an outpatient basis. So they're in the community, not in jail.

WAYNE: So if they're in the community, the reimbursement rate is still the same? Is that what you're saying?

TONY GREEN: That would not-- that's a separate program from this. So, so this issue is for those that have had-- that have an order for commitment to the Lincoln Regional Center. And this would be the-- this addresses the cost beyond that 30 days, if we don't have them removed by then.

WAYNE: Are you finding the, the Lincoln Regional Center and the other one con-- are they consistent in their evaluations, or do you ever get one where the court says, no, send it to here, gets an evaluation, and they say, no, I don't like that evaluation. Send it somewhere else. And so, do we pay for it twice?

TONY GREEN: I'm not sure I'm following, Senator.

WAYNE: I'm not following myself, so don't worry about it. Nevermind. Any other questions from the committee? All right. Thank you for being here.

TONY GREEN: Thank you.

WAYNE: Next proponent. Next proponent. Next opponent. We're starting with opponents, opponents.

SPIKE EICKHOLT: Good evening, Chair Wayne and members of the committee. My name is Spike Eickholt, S-p-i-k-e, last name is spelled E-i-c-k-h-o-l-t. I'm appearing as a registered lobbyist on behalf of the Nebraska Criminal Defense Attorneys Association in opposition to the bill. We're also opposed to one of the amendments that I heard be described that I've not seen or heard before today. Senator DeBoer and Senator Wayne may remember, over the last, maybe 8 years, the

Legislature has made some significant changes to address this competency issue. And to kind of tell everyone to make sure the record's clear, what competency is, is someone is charged with a crime, but they are just not able to assist in their attorney representing them, they are unable to appreciate that they're in a criminal case and what the charges are. And it's usually, for the most part, because they are suffering from some sort of mental illness and they're not medication compliant and-- or they've not been properly diagnosed, or their mental health has deteriorated to some point that they need professional treatment. The way our law provides for is that if a court determines that they're not competent but they can be restored, that they are committed to the Regional Center to basically either be medicated, diagnosed, and forcibly medicated in some circumstances, and then restored to competency and then brought back to the county to trial. For a variety of reasons, there's a waitlist to the Lincoln Regional Center. It's been a persistent problem for years. So what the Legislature did was a number of different changes. One was, and it was really, I would concede, perhaps an act of frustration, the Legislature said to the HHS, 30 days from when a judge says you're supposed to have these people, you need to start paying the counties back to reimburse them for the cost of housing them and pay them $100 a day, and we're going to index $100 on inflation. And it was meant to be a pressure point on Health and Human Services in the state to somehow address the issue of the waitlist. If you contact your jails back in all your districts, this is a persistent problem. It continues to be. One of the other things that the Legislature did was not necessarily directed at HHS, but it was deliberately done in those circumstances when someone is charged with a felony. And as, as you probably know, when you're charged with a felony, you're charged in county court. Before we did the law change a number or the Legislature did the law change a number of years ago, if an issue of competency came up, you would have to file a separate civil action in the district court, either the defense or the, or the prosecutor or both, in some circumstances, get a hearing date, have a district court judge order competency to be done at the Regional Center. The county court case-- the criminal case would be pending, waiting to see what happened. One of the things the Legislature did to address this persistent wait problem was let the county court judge determine competency, send that person there, even though that's not the trial judge. Because a trial judge in a felony case is going to be the, the district court. So I would suggest, respectfully, that the committee not adopt that amendment that the county court judges want. That was something that, frankly, the defense bar and the county

attorneys joined in requesting a law change just to sort of shorten the 2-- 3 or 4 week window that would happen all the time when you had a felony case, when you have to do that district court procedure. And that would really just be an undoing of what the Legislature has done. And respectfully, with this cost ratio, I understand HHS wants to have that cost be capped, wants to have it be predictable. But the reality it is, and I can't speak for the counties, this is the cost of the county jails are going to assume. They're going to have to bear, for people who are in custody, in jail, not competent, waiting for placement at the Regional Center. I passed out a graph, a 1-page document, which shows for Lancaster County the historical waiting average. And I know that Brad Johnson from the jail is here. He can speak more to it. I'm going to run out of time. But he, he and I are on this Justice Council together with some other people. It's not just me and him. And he tracks this data, and you can see that it's been a persistent problem here in Lancaster County. And I would suggest if you contact your counties, if you don't represent Lancaster County, there's a similar trend in all the jurisdictions across the state. So we would encourage the committee to not advance the bill.

WAYNE: Thank you. Any questions? Senator Bosn.

BOSN: Thank you. Can I give him this amendment so I can ask him questions while he's got it?

WAYNE: Sure. You may approach the bench. You are looking at what has been marked as exhibit 1.

BOSN: I didn't want to just start getting up.

WAYNE: I believe it's a true and accurate copy, just so you know that.

SPIKE EICKHOLT: I'm going to phone a friend here while you guys-- no, I'm going to look-- I'm going to look and see when the bill was that we did this. I guess I could ask about it.

IBACH: Do you want the bill, too?

SPIKE EICKHOLT: No. No. The, the bill to the, the statute. But I'm sorry. I'm listening.

BOSN: OK, so my question is, I read the portion that I think you have alluded to, causing you concern to not say what you're thinking it says. So I agree with you that it made more sense to have the county

court judge before it was bound over, just make the determination, that we were trusting the evaluator's opinion, and--

SPIKE EICKHOLT: Right.

BOSN: --we did-- we alleviated the delay.

SPIKE EICKHOLT: Right.

BOSN: But I don't know that this amendment-- it's on page 2. It just-- it strikes district or county, and it just says the court.

SPIKE EICKHOLT: I'm looking at the amendment. And for the record, it's AM2311.

BOSN: I gave you my copy [INAUDIBLE].

SPIKE EICKHOLT: OK. It's AM2311. I can actually just take a picture of it.

WAYNE: What is it? Is it AM21-- AM2311?

SPIKE EICKHOLT: AM2311.

WAYNE: OK. [INAUDIBLE].

SPIKE EICKHOLT: If you look at--

BOSN: It is page 1. I'm sorry.

SPIKE EICKHOLT: --page, page 1, line 7 and 8, the proposal strikes district or county court and instead, puts where the defendant is to be tried. In a felony charge, a defendant is tried in district court.

BOSN: So you read this to mean that now you can't do it in county court?

SPIKE EICKHOLT: No. I think you're gonna have to file something in district court, if you're in-- if you're pre-bindover and an issue of competency comes up-- and, and you may recall, this would happen sometimes halfway during a prelim even.

BOSN: Yep.

SPIKE EICKHOLT: An issue of competency would happen. You've got a defendant that's catatonic, essentially. Proceedings are halted. The

county court continues it for an indefinite period of time. And then, I think this would require that you'd have to bring to the attention of the court where the defendant is to be tried, which would be the district court. And that reverts back to what we had before. And I was going to try to look up to see what that bill language in 29-- amended 29-1823 a couple of years ago, struck or changed, I can't recall immediately, but if I look at it, I can link to it, you know, online. I wonder if this is what the language was before, where we had to do that sort of separate proceeding-- or separate filing. And I think we had to do it actually, almost as a civil action, if I remember right.

BOSN: It was.

SPIKE EICKHOLT: Yeah. And it wouldn't necessarily be the same judge that actually was going to try the case later, sometimes, too, remember, if the case was bound over.

BOSN: OK. I'd be curious if it was the same, because I don't know--.

SPIKE EICKHOLT: I'm almost there.

BOSN: --that I read it the same as you, but.

SPIKE EICKHOLT: That's how I read it. And I think I'm right. But that's how I read it.

BOSN: Of course you do.

SPIKE EICKHOLT: But I can't recall is-- well, if you look at the statute, we amend-- it was amended in 2017, 2019, 2020 and 2022.

BOSN: OK. So your concern is that it diverts back to what it was, which was unworkable.

SPIKE EICKHOLT: Well, it's-- it was not unworkable. It was just a-- at a minimum. And you may recall, because when you and I worked against each other, that was how we did it. It was a 2 or 3 week thing. And we would try to accelerate it by convincing the judge not to have to have a hearing. We'd just bring up an order. And still, that would be a several day delay. And the reason it was changed was to address this waitlist problem, because that was just an unnecessary 3 weeks added on. Because the-- this clock that you see in the graph, where they're ordered, until they get there. It doesn't start until a judge orders they go there. And meanwhile, you've got someone in the jail where nothing's really happening with the case. And that's why the law was

changed. I read it that way because a-- the court where the defendant is to be tried in a felony case is district court.

BOSN: OK. I agree. OK.

WAYNE: Any other questions from the committee? So if, if hypothetically, my bill passed, where we would-- the state would take over the costs, then we don't have to worry about this, right?

SPIKE EICKHOLT: Well, now last time I talked about this, I got in a little bit of trouble. So I, I say that with some trepidation, but, you know, but that, that is one sort of positive feature about your bill. Because what you have now is you have the jails that-- they're not mental health facilities. They don't have psychiatrists on staff, they don't have staff that can forcibly medicate people. They don't have-- and you know, I don't know that-- there was a proposal when we were debating this to sort of let them do that, but that's sort of embracing the problem that the counties and jails are having. You want to solve it, not sort of welcome it. They are doing some restoration in the jail, to try to do that somewhere HHS comes in and works with people, or contractors of HHS do that. And that might be easier to facilitate if you had just one government agency, one-- the state do it all, that might be one thing. But that's just an observation I have.

WAYNE: Another property tax savings. Any other questions from the committee? Thank you for being here. Wendy, I have to go grab my bill stuff for next bill.

DeBOER: OK. Next opponent, please.

BRAD JOHNSON: Good afternoon, Senator Wayne and members of the Judiciary Committee. My name is Brad Johnson, spelled B-r-a-d J-o-h-n-s-o-n. I'm appearing before the committee in my capacity as director of Lancaster County Corrections. I am here to testify on behalf of Lanc-- of the Lancaster County Board of County Commissioners, in opposition to LB1097. We are in the midst of a behavioral health crisis in our jail, and it is my strong belief that detainees who need to be restored to competency should not be housed in a correctional facility any longer than is necessary. At the time of adopting LB921, the average wait time to get an individual admitted to the Regional Center for competency restoration had skyrocketed to 145 days. The Lancaster County Jail had 16 individuals housed in our facility who had been ordered to the Regional Center, and on average,

they had waited 97 days. We are housing and-- we were housing an individual who had been on the waitlist for 356 days, almost a full year. Moreover, the full financial cost of these unacceptable wait times were being borne by the taxpayers in Lancaster County. After LB921 was adopted, wait times had shown some improvement. The current average wait for competency restoration sits at 123 days, and the 14 individuals housed in our facility who have been ordered to the Regional Center have waited so far, on average, 74 days, with one individual on the waitlist for 112 days. In addition, under LB921, after the first 30 days of wait time, the taxpayers of Lancaster County no longer are on the hook for subsidizing the housing costs for individuals who should be receiving treatment at the Regional Center. Since LB921 has gone into effect, the jail has billed DHHS approximately $676,000 that otherwise would have been billed directly to the taxpayers of Lancaster County. LB1097 is entirely out of step with the Legislature's effort to adopt historic property tax relief for our citizens. Capping reimbursement at $100 per day ignores the true costs of Regional Center wait times on local property taxpayers, including treatment and other medical costs for detainees who require the most intensive care and highest levels of observation. Based on billing since LB921 went into effect, LB1097 would have eliminated around $146,000 in reimbursements. Moreover, reducing bills also reduces financial incentives for the Regional Center to continue to improve wait times, inevitably leading to even longer stays in our jail at even greater cost to our property taxpayers. Make no mistake, LB1097 is a property tax increase, plain and simple. We ask this committee not to advance LB1097 because we owe it to the detainees and their families to ensure the detainees receive court-ordered treatment, and we owe it to our taxpayers. Thank you for the opportunity to testify and for your service to our state.

DeBOER: Thank you, sir. Let's see if there are any questions from the committee. I don't see any. I'll say, I remember when we passed that bill. And I remember being told in this very room about people staying almost a whole year, waiting for competency to be restored. So thank you for your testimony.

BRAD JOHNSON: Thanks.

DeBOER: Next opponent. Anyone else in opposition to this bill? Now we'll take neutral testimony. Is there anyone who would like to testify in the neutral? Welcome.

KATRINA BURKHARDT: Hi, I'm Katrina Burkhardt, K-a-t-r-i-n-a B-u-r-k-h-a-r-d-t, and I bought the law books for the state of Nebraska. And I came across 3 important laws to me. One was the Psychology Practice Act, which talks about a mental illness being an important loss of freedom, which is true. And the Radiation Control Act, which talks about ionizing or nonionizing energy that creates biological hazards to public health and safety in the environment. The DHHS repealed the Chapter 17, Title 180, control and enforcement of radiation. And things that use radiation would be something like the microwave auditory effect or the Frey effect. I also found out that there's something called intercepted telecommunications within law, and I would consider myself an aggrieved person. I have experienced oral transfer, which is voice, voice sounds, and I do experience electronic communication, which is where you have auditory and visual areas of the brain affected, but other people cannot see or hear. Some people call that a mental illness. The first time that happened to me, I had no idea what was happening and nobody explained it to me. That was when the police came and took me and put me into emergency protective custody. Thereby, I was in the emergency room and I was attacked even worse. The energy was much stronger. So it's like the enemy is "lying in wait" at the hospital. Then, I was put into the mental ward so that I could get help. However, you get attacked worse. You don't get-- you're considered mentally ill. You're supposed to take medication. You're supposed to take these hypnotic drugs, and, and then you're going to take counseling and stuff like that. It's a true tragedy. It's a true tragedy, and it's taking away American freedoms. Not even OSHA Omaha would take my calls, in August of 2023. And I would consider these electronic devices to be tampering with evidence. My main thing is, is why aren't people educated about electronic warfare? It's almost like being in Hadamar, which was in Germany. And I read that book by Leon Jaworski. It's called Crossroads. And I could identify with that. Thank God I was not killed. Any questions?

WAYNE: Any questions from the committee? Seeing none, thank you for being here.

DeBOER: Neutral.

WAYNE: Any other neutral testifiers? Neutral testifiers? Seeing none, so Senator DeKay, as you come up, you have 1 letter. That letter was in opposition. Senator DeKay to close.

DeKAY: Thank you again, Senator Wayne and members of the committee for our hearing-- for the hearing on this bill. I appreciate the discussion we had. There was some talk about the timetable, the 30 day timetable. And it was my understanding that this was a provision that was a compromise when LB1223 and now LB921 was enacted between the counties and DHHS, back in '21-22. Now that's what I've been told on this, so if there's any other questions I'll try to answer them. Otherwise, thank you.

WAYNE: Any other questions from the committee? Seeing none, thank you for being here. That will close the hearing on LB1097. And we will--

BOSN: You get comfortable up there.

HOLDCROFT: I thought this was Linehan. She's, she's listed on the roster.

DeBOER: All right.

WAYNE: Huh?

HOLDCROFT: [INAUDIBLE] into Revenue and I told her, I think you're last on our, on our agenda for, for Judiciary. Because she's listed on our, on our agenda. Is she not?

BOSN: No. Who?

DeBOER: Linehan.

HOLDCROFT: Linehan.

BOSN: She has a bill in Judiciary?

HOLDCROFT: She's not coming. I mean, don't you have the agenda here?

McKINNEY: Oh.

HOLDCROFT: I didn't make this up.

McKINNEY: It's probably, it's probably because that doesn't have-- it, it doesn't got 280. It's, it's--

DeKAY: It was [INAUDIBLE]-- It was [INAUDIBLE].

McKINNEY: No. It's, it's 2080.

_____: Oh, hers is 280.

McKINNEY: Her-- no. Hers is 2--

DeBOER: OK. Let's--

McKINNEY: 28.

DeBOER: Yeah. There was some kind of clerical error, but we're--

WAYNE: So this is not-- I'm not--

DeBOER: --we're all good.

WAYNE: OK.

DeBOER: We're all good.

WAYNE: I don't-- at this point.

DeBOER: All right. Let's welcome Senator Wayne for the hearing on LR28CA.

DeKAY: OK.

WAYNE: All right. My name is Justin Wayne. I represent Legislative District 13, which is north Omaha and northeast Douglas-- north Douglas County. My bill is really simple. My office has been a little stressed this week, with some people being gone, so I think it's important that I lift up my own bill and we can read it together.

IBACH: We're going to learn together.

BOSN: Would you like a copy?

WAYNE: Wait.

McKINNEY: It's 2 pages.

WAYNE: Is it 200-- is it 280?

BOSN: Yes.

McKINNEY: 280, yeah.

WAYNE: That's why Linehan's on here, because hers is LR28CA, the exact number. So this is wrong.

DeBOER: OK. So we are now doing the hearing on LR280CA, with Senator Wayne.

McKINNEY: That's what I said.

HOLDCROFT: OK. Now I understand. Now [INAUDIBLE].

DeBOER: Sorry, sorry to everyone, [INAUDIBLE].

WAYNE: Sorry for those at home watching. Even a blind squirrel can find a nut now and then, so my office, every once in a while, makes a mistake. That's on me. All right. We're doing a constitutional amendment here to remove the Attorney General and Secretary of State from the Board of Pardons. Here's the reason for that. Most states have the Governor who does pardon. And it seems like we've been having a lot of pardon, I don't want to say issues, but just things that aren't really going, I think, accordingly. And I think it'd be smoother if it was just 1 person making this decision. So what I was-- what I want to share with you is, in 1866, which was our first attempt to ratify Nebraska's Constitution, it was-- it said he shall have the power after conviction to grant reprieves, commutations, and pardons for all crimes except for treason and cases of impeachment upon such condition he may think is proper. However, such regulations-- the point of it is like most founding states, is it was in the-- the pardon power was literally in the Governor's hand. In 1875, our first attempt-- or our actual attempt to where we did finally pass the Constitution, which, by the way, was a condition of us being entered into the United States, is we had to pass a new constitution with certain conditions, one of those being everybody can vote. And you couldn't discriminate based off of race, because our prior constitution didn't. Just a side note, taking a little time. It wasn't really until later we introduced the concept of a Pardons Board, and that was actually amended in the 1920 Constitution, where-- at the constitutional convention, where we became a Unicameral. And at the time, the-- I think it was trying to be checks and balances. That's kind of what we-- if you look at our constitution, we have a lot more things in our constitution than most states, and primarily because it was a Unicameral, and we did have this-- we believed in the second house. But as things have changed over the years, not that we still are not a Unicameral and believe in the second house, looking at this provision, I just think it's-- it makes it harder. We just heard bills today for our Attorney General. There are bills in government for the Secretary of State. Having those 2 also be a part of the Pardons Board is kind of out of the realm. The biggest reason why I think the

Attorney General should not be on the Pardons Board, I think it's an inherent conflict. They're essentially the prosecutor on any appeal that relates to the pardons. And think about all your post-conviction release. They are the attorney of record. So then at the same time, you go before your pardons, they are essentially the ones who's been against you the entire time, and now you think you have a different opportunity because they put on a different hat called the Pardons Board. I don't think it is. I, I think it should be clean. It should be somebody who is-- has an objective standpoint, not saying the Attorney General's not. But just by the nature of the office defending all the appeals, oftentimes, those cases aren't. And if you watch it, it's like, kind of like, one, they can't ever talk. Right. So if 2 of them meet, they're in violation of open meetings. So literally, they show up and try to figure this all out at the hearing. I just think it's not a very good process. To me, I'd rather have-- or try to convince on1 person than trying to convince 3, and then hoping when they all show up together, they can bounce ideas off and have this super intense dialogue, which they can't have, if you ever really watch them. So I think it's just comp-- more complicated. And the reality is, is I think to align ourselves with our federal government and most of the states, it leaves it with the Governor. And so, how this works is if this is voted out of committee and passed on the floor, the Exec Board will look at the suggested language, then send that over to the Secretary of State to be placed on the ballot. So then the people would vote on it. But this isn't new. Our constitution was consistent all the way to the 1920s when we started the Uni-- started talking about the Unicameral and how we should change things. And that's when this change was created, to add the Attorney General and Secretary of State. And I just think now it's outdated. It's really that simple.

DeBOER: OK. Are there questions for Senator Wayne from the committee?

WAYNE: Did I spell my name for the record? OK.

DeBOER: Senator Wayne, Senator DeKay has a question for you.

WAYNE: Yes.

DeKAY: Would-- you're going to leave this in the hands of 1 person and not replace him with other-- 2 other people, right?

WAYNE: Correct. Well, and there's 2 reasons. Well, it'll be applied as I said, and also, I think it's more effective and more efficient. You

don't have to worry about trying to schedule these things. The Governor can do it at their own-- at their own time and their own pace. They can talk to multiple people. They can still get the Attorney General's opinion. They can still get other people's opinion. I think it actually will add more dialogue and have a better outcome than 3 people, who can't ever talk about the case, sit in a room in front of a whole public body and try to talk about it at the same time. I think it's difficult.

DeBOER: Other questions? Senator Bosn.

BOSN: Thank you. So your Attorney General is a inherent conflict argument raises the next issue. What happens when the Governor has a conflict?

WAYNE: Like a family member or like, what do you mean?

BOSN: Well, I watched pardons hearings this summer. And one of them, I-- the Governor said, I cannot take a position on this. I'm going to recuse myself because you're an employee of mine. And so obviously, he has a conflict so he didn't participate in the decision of whether or not to pardon that individual. And so, it was just the 2 of them. So theoretically, I suppose, then it made it difficult, because what if 1 of them said yes and 1 of them said no? You know, what if the AG said yes, pardon him, and--

WAYNE: Well, I mean--

BOSN: So who would be the backup to the Governor having a conflict like that?

WAYNE: No one, because I don't think the conflict actually exists. When you're a full-time Governor, you're not, you're not an owner of another company.

BOSN: Right. So let's say--

WAYNE: So I don't, I don't think there's a--

BOSN: --it is a family member, I guess.

WAYNE: Then they got to wait for the next Governor.

BOSN: Then they what?

WAYNE: I mean, if, if the Governor feels that there's a conflict and they can't rule, then they would have to wait for another Governor. I mean, I, I guess the conflict doesn't change. And, and I mean, I guess there's a con-- there could always be a conflict. And I guess no other state-- and I haven't--

BOSN: Well you said that--

WAYNE: No, I know what you're saying. I just haven't seen another state say-- in fact, I've seen presidents pardon cousins. So I, I mean, we could-- the Legislature can put, put conflicts in place-- actually, the Legislature can't. That would be a un-- the Pardons Board right now, is in there-- is in the constitution, and it's a quasi-separate entity. So they could have conflicts now, I guess, too. So I don't think it changes the outcome. And I guess there's 44 other states that do it. So.

BOSN: Do you know whether or not they have a backup for a conflict situation?

WAYNE: I will research that. I did not think of that, honestly.

BOSN: Would your concerns be alleviated if there was some way to allow them to go into exec session and have those conversations that would make their ability to rule on issues more meaningful?

WAYNE: I don't know. I'm kind of an open, transparent person. I don't know if them going into exec and talking about it would make it-- make a difference. I don't know. And honestly, I haven't seen a whole lot of-- actually, I haven't seen any split decisions since I've been down here, for, for a pardon. I can't recall seeing any. I'll go back and double check, but I can't recall seeing any. Which lends to my point that they're not having a lot of conversations, so I don't know if going into exec would, would change that.

DeBOER: Thank you, Senator Bosn. Other questions from the committee? Senator McKinney.

McKINNEY: Thanks, Senator DeBoer. I guess my issues with the Pardons Board is one, they have like this 3-year rule before you even get a pardon, which is not even in the constitution. They make decisions on pardons in bulk, which is an issue, which I don't understand how they can make a decision whether or not you, you can get a pardon in a in a vote-- in a bulk-- so basically, a couple of years ago and even last year, it was a bunch of people who thought they had hearings. They had

people show up, and they were like, oh no, you don't got a hearing, but you also did not get a pardon. That, that doesn't make sense to me. But it-- there's nothing that says they can't do it either. So I think either we have to create some rules for the Pardon Board or restructure the whole board, period. I, I don't know. I, I mean, I think we have to do something. I know people might not want to change the, the makeup of the Pardons Board, but it's kind of just like the Parole Board. We need to create some better rules of operations, because both are inefficient.

WAYNE: They are. And for the Pardons Board, it, it becomes a political, in my opinion, a political like, par-- conundrum. Whether they are all from the same political side or not, when you take that vote, you're actually voting against other statewide elected officials, and how does that play out? And that, to me, it's just-- there's too many other unknowns. Like if I-- if Senator Holdcroft and I are on the Pardons Board, and I'm-- he's the Attorney General and I'm Secretary of State. I mean, if I vote, am I voting against him? And is that going to be used somehow later or, you know-- I just think we don't need to have 3 elected officials making this decision when clearly, in most states, it's been done with 1, and I think it can be done with 1 here.

McKINNEY: I guess-- I got one more. What sense does it make for the Secretary of State to be on a pardon-- that doesn't make sense to me at all. That's the one that doesn't connect.

WAYNE: So when you actually do a deep dive into some of the floor documents and transcripts, the fear was a unchecked Governor. The fear was a unchecked Attorney General. And so, they were literally just having conversations about statewide offices. Because other elected officials are typically in a region or a county, and they didn't want a urban to decide for a rural and a rural to decide for an urban. So they-- there was just a lot of conversations. For those who-- I don't know if you guys think I'm making this up, but I actually read the transcripts. I'm kind of weird like that. Huh? Oh. Well, sorry. But yeah. So there, there was a lot of-- and I actually have the 3 constitutions lined up here and I'm looking at them. No. So it is-- it, it was just like, random kind of conversation. Yeah.

DeBOER: There's no props, sir.

WAYNE: No. True. I mean, I'll, I'll give you an example, like--

DeBOER: Touche.

WAYNE: --when we-- in 1947, when they, when they moved Westside into its own district, there was no floor debate. It was all done behind the scenes. And I can point out to multiple things, particularly in our constitution, that were just done. But the, the fear here was a unchecked Governor. And I don't have that, that fear, I don't think, with term limits, is the same fear anymore. The Governor is done in 8 years.

DeBOER: Are there other questions from the committee? Senator Ibach.

McKINNEY: Yeah. I'm done.

DeBOER: Oh. OK.

IBACH: Would there be any value in adding more members to the board? Are there other states that have more members?

WAYNE: So some states have like an entire separate board. But that board oversees-- some of them-- like in Arkansas, kind of oversees the corrections. And so it's more like the Parole Board, where they oversee the entire process. And then at the end, they may grant or not grant. But there's only like 2 other states that do that. By large, most states, I think it was 46 or 48-- and my LA has been out for 3 days. For that exact number, I can get-- that are all Governor-based.

IBACH: Just the Governor--

WAYNE: Just the Governor, yeah.

IBACH: --is in control. So he would have sole discretion at the advice of a-- of maybe somebody-- or legal or--

WAYNE: May have to have-- really, at the advice of any, any of their choosing. And so part of it, what, what part of the argument is for the Governor, too, is it allows the Governor to do more in-depth search, and have conversations. I mean, especially if you have a Attorney General who's maybe been on a case for multiple times, and you get that record, you-- why not call up the Attorney General and have that conversation? Right now, that conversation is barred.

IBACH: Thank you.

DeBOER: Thank you, Senator Ibach. Other questions? Senator McKinney.

McKINNEY: Thank you. Isn't it currently in the constitution that the Board of Parole is supposed to advise the Board of Pardons on commutations? And so--

WAYNE: Yes.

McKINNEY: --it's already supposed to happen, but it doesn't happen.

WAYNE: Yes. So, I thought it would be in this section, but I don't see it.

McKINNEY: Because I have a bill to change the Pardons Board, and I had an idea to create a board of commutation.

WAYNE: Yes. So the, so the Parole Board is supposed to advise or may advise, I think, is the word it uses--

McKINNEY: Yeah.

WAYNE: --the Pardons Board. Yeah.

DeBOER: Thank you, Senator McKinney. Other questions? So I do have one, Senator Wayne. Is what you're trying to do make it more like the kind of like, common law, traditional, the sovereign can pardon who the sovereign wants to sort of system, where the Governor just decides, from anything from a whim to some detailed research, who they want to pardon?

WAYNE: Correct.

DeBOER: OK. So you would like it more like the federal model, more like the common law model of the sovereign, in this case not the sovereign but the, the Governor, gets to decide with his executive power who gets pardoned and who doesn't get pardoned. And we can, we can speculate on what his reasons were or her reasons, if there is-- Governor Orr or someone else involved.

WAYNE: Correct.

DeBOER: OK. I understand what you want now.

WAYNE: I think-- I mean, I think the fear of the-- a runaway Governor with term limits just doesn't exist anymore. You're, you're not going to have a Governor for 20 years. It's going to be a 8-year term. So yeah, I think the fear of that has gone now.

DeBOER: OK. Other questions? Senator DeKay.

DeKAY: Real quick. Would-- could this also happen, say, if you got an outgoing Governor, that if it's 1 person, he might defer and delay that pardon hearing to a year, whatever, to another Governor?

WAYNE: Correct.

DeBOER: OK. I think that's it for Senator Wayne. Let's take our first proponent. Anyone here to testify in favor of Senator Wayne's legislative resolution for a constitutional amendment? Anyone here in opposition to this constitutional amendment? Anyone here in the neutral capacity? There we caught one. There we caught one.

BOSN: We knew you had the [INAUDIBLE].

SPIKE EICKHOLT: Good evening, Vice Chair DeBoer and 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 Nebraska Criminal Defense Attorneys Association as their registered lobbyist. We are in a neutral capacity, although we do support-- we are neutral capacity because we understand what Senator Wayne is proposing, but we would have, perhaps, some additional suggestions or thoughts regarding the Board of Pardons. I think what Senator Wayne has highlighted, though, is kind of an odd situation. You have a 3-member Board of Pardons, and that's what our constitution provides. The Governor, which makes some sense because he's elected by everyone in the state. You have the Attorney General, which I would submit is an inherent conflict because the Attorney General represents the state, chances are, on that person's appeal, arguing that they should have been found guilty, they should have got the sentence they got, and whatever else they might want to argue. And then you have the Secretary of State, which is charged by statute with regulating businesses and conducting elections. I understand they chose the Secretary of State because that is another statewide office-- officer, but so is the Treasurer, so is the Auditor, I mean, equally as suited or not suited to do the role of pardoning people for crimes. I've helped some people try to get pardons recently. And I appreciate that Senator Bosn and others have sort of worked and, and observed the Board of Pardons. What you see now and what our members want the committee to know is that there really is a lot of work that could be done with our pardons process. There really isn't a clear way or clear standards for how people get pardoned. It's just some sort of amorphous process of doing. And maybe that's structural, maybe it's just because you have a constitutional

provision that creates the Board of Pardons. And I think that's-- the intent was is that the Board of Pardons could act with grace. There's nothing tying them or binding them. They can simply step in and undo a wrong or forgive someone for something they did, and they should be given that great sort of discretion to do that. But what's frustrating is that so many people, as Senator McKinney explained, they apply for a pardon. They think they're going to have a hearing. They think they're going to have a chance to argue their case. And the Board of Pardon just simply says, we're not going to hear the following cases. Sorry. Other states have made use of that great power that pardons have. I know that Senators Conrad, Wayne, and McKinney did write the Governor, I think, a couple of times in the last year or 2, suggesting the Governor affirmatively use the pardons power to pardon people for marijuana and low-level drug convictions. When I worked at the ACLU in their legal department, during COVID, we urged the Governor, then Governor Ricketts, to use his commutation power to commute some of the sentences for older people who were at exceptional risk to get COVID but are serving life sentences or de facto life sentences, to have them go in front of the Pardons Board, have their sentences commuted, and then be medically paroled. We never got a response. So there's some power that could be used in a positive way. And unfortunately, it's just not done. Our association would suggest something what, I think Senator Ibach may have been indicating, perhaps it could be the Governor or even the same 3 members, but have some sort of an apparatus or people working for them that could screen applicants, or research, or have it be more interactive. Because what you see-- saw-- so many times when you see a pardon, is you see someone who has filled out their application, they don't have counsel, they come unprepared, they don't really know what they're doing. They're facing the Governor and the Attorney General and the Secretary of State for the first time in their life, asking for this thing, and they just stumble and fumble. And it's just, it's just-- from observation, it doesn't work very well. And I think it's a disservice not to the people just asking, but the people of the state. It takes a lot for someone to ask for a pardon. It shouldn't be dismissed just outright. I mean, they've got to fill the application out. It's people who want to be forgiven. It's not a casual thing. I understand there's people in jail that are-- or in prison trying to maybe get their sentences commuted, and they're maybe just swinging for the fence to try it and see how it goes. But so many times, you see people who are showing up, people have limited means, that just ask for a pardon, and they really have no expectations about how it's going to work. And there really is no predictability to it. And I think what Senator Wayne has, has

identified is, is that issue, with the Board of Pardons make-up. I'll answer any questions if anyone has any.

DeBOER: Questions from the committee? I don't see any. Thank you for being here. Next neutral.

KATRINA BURKHARDT: I'm Katrina Thompson-- or Katrina Burkhardt, K-a-t-r-i-n-a B-u-r-k-h-a-r-d-t. I would like to challenge Senator Wayne to go a little bit further. When I looked at this as I prepared this for this afternoon, I pulled out my Blue Book and I looked at the article in the Nebraska Constitution. And then I also looked at the Board of Parole and the Board of Pardons. I think it's a bit naive to put the Governor as the sole person to be pardoning a criminal. Criminals can be shady. And you don't want to expose that Governor. You should protect him a little bit more. And sometimes you can make the Governor also do a criminal act by exposing him so much. If you look at how I crossed out a few of those words, it might be an, an elegant solution. What it would do is it would basically still have the Board of Paroles. It would go to the Governor. The Governor could then see what he wants to do, would go through him. But then ultimately, the pardon would go to the Legislature. And then the Legislature could look at their laws that they had created. And they could say, oh, you know, maybe that was a bad law and we should pardon this person, and we should change the law, also. So I thought that was a-- something to consider. And it might be more efficient that way. The other thing is, is in the Blue Book, they do have pardon statistics, but they do not have any statistics-- they have parole statistics, but they do not have statistics for the pardons. So that would be interesting to know who gets pardoned, and it would be interesting for the Nebraska citizen to know why they got pardoned. And any questions?

DeBOER: Thank you for your testimony. Are there any questions? I don't see any.

KATRINA BURKHARDT: Thanks.

DeBOER: Thanks for being here. We'll have our next neutral testifier. Next neutral testifier? While Senator Wayne is coming back for his closing, I will announce that there were 7 letters, 4 of which were in support of the LRCA, and 3 in opposition.

WAYNE: I misspoke on stats, so I want to make sure I get it right. So there's 6 states that have independent boards. And that's Alabama,

Connecticut, Georgia, Idaho, South Dakota, and Utah. There are 22 states that the governor has the power, but they are shared with a board. And there's 4 states that have a governor on the board, which is Florida, Nebraska, Nevada and Minnesota. There is a-- 10 states that have a, a board in consultation with the Governor. And then there's a-- I'm sorry, 18 states that do that. And then there's 19 states that have a may consult with the board, the Governor, so 19 states is truly just the Governor. The other one, like I said, there's a con-- consult. And then there is no statutory purpose-- process for D.C. federal courts, obviously it would be President, but no process-- Maine, Oregon and Wisconsin. So I, I-- actually, the amendment that was given out at the end, I think that's workable. So part of the reason why I just struck those 2, is you also have to think about, when you change the Constitution, how it plays out in the voter's mind. And so making it very complicated, sometimes overcomplicates the voter. So, that's that thought, but I'm more than happy to have any conversations and work on the amendment.

DeBOER: Any questions for Senator Wayne? Senator DeKay.

DeKAY: Thank you, Senator Wayne. With the stats that you just showed us there, the 4 states that are similar to us, are, are they made up of board of-- made up like ours, with the Secretary of State, or do you have that in front of you? Secretary of State and AG?

WAYNE: The governor is required to report annually to the legislature and the board. The board is made up of different peo-- different people. So let's just grab one of them. I said Florida. That's why it's so great to have technology here. Florida has 3 cabinet people who serve on the board, but the governor decides, with the concurrence of 2 of the 3. So there still must be a majority, but it's his cabinet officials. So it's still the governor. That's what I mean when I say over 39 states, it's still the Governor. It just depends on how that board is made up. But it's typically the governor's people on the board.

DeKAY: Thank you.

DeBOER: Any other questions? I don't see any. That ends our hearing on LR--

WAYNE: Hang on. Don't go anywhere.

DeBOER: --280CA, and it ends our hearings for the day.