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BOSN: Good afternoon, everyone. Welcome to the Judiciary Committee. I'm Senator Carolyn Bosn from Lincoln. I represent District 25, and I serve as the chair of this committee. The committee will be taking up bills in the order posted. This public hearing is your opportunity to be part of the legislative process and express your position on the proposed legislation. If you are planning to testify, please fill out one of the green testifier sheets on the back table. Be sure to print clearly and fill it out completely. When it is your turn to come forward, give your sheet to the testifier-- or excuse me, to the page or the committee clerk. If you do not wish to testify but would like to indicate your position on a bill, there are also yellow sign-in sheets back-- on the back table for each bill. These sheets will be included as an exhibit in the official hearing record. When you come up to testify, please speak clearly into the microphone, telling us-- and spelling your first and last name to ensure we get an accurate record. We will begin each hearing today with the introducer's opening statement, followed by proponents, then opponents, and finally, any neutral testifiers. We will finish with a closing statement by the introducer, if they wish to give one. We will be using a 3-minute light system for all testifiers. When you begin your testimony, the light on the table will be green. When the light turns yellow, you have one minute remaining, and the red light indicates you need to wrap up your final thought. Questions from the committee may follow. Also, committee members may come and go during the hearing. This has nothing to do with the importance of the bills being heard. It is just part of the process, as senators may have bills to introduce in other committees. A few final things. If you have handouts or copies, please bring up 12 and give them to the page. Please silence or turn off your cell phones. Verbal outbursts or applause are not permitted in the hearing room, and such behavior will be cause for you to be asked to leave the hearing room. Finally, committee procedures for all committees state that written position comments on a bill to be included in the record must be submitted by 8 a.m. the day of the hearing. The only acceptable method of submission is via the Legislature's website at nebraskalegislature.gov. Written position letters to be included in the official record-- will be included in the official hearing record, but only those testifying in person before the committee will be included on the committee statement. Also, you may submit a position comment for the record or testify in

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person, but not both. I will now have the committee members with us today introduce themselves, starting to my left.

HALLSTROM: Good afternoon. Bob Hallstrom, representing Legislative District 1, serving the counties of Otoe, Johnson, Nemaha, Pawnee, and Richardson in southeast Nebraska.

STORM: Good afternoon. Jared Storm, District 23, Saunders, Butler, Colfax County.

STORER: Good afternoon. I'm Senator Tanya Storer. I represent District 43, 11 counties in north central Nebraska: Dawes, Sheridan, Cherry, Brown, Rock, Keya Paha, Boyd, Garfield, Loup, Blaine, and Custer.

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

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

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

ROUNTREE: Good afternoon. Victor Rountree, I represent District 3, which is western Bellevue, eastern Papillion, and all in between, up to Harrison and down to Blackhawk.

BOSN: Thank you. Also assisting the committee today to my left is our legal counsel, Denny Vaggalis, and to my far right is our committee clerk, Laurie Vollertsen. Our pages for today, if they want to stand and introduce themselves, please.

AYDEN TOPPING: Hi. My name's Ayden. I'm a second-year psychology student at the university.

ALBERTO DONIS: I'm Alberto Donis. I'm a political science [INAUDIBLE].

BOSN: Thank you. And with that, we will begin today's hearings with LB156 and Senator Conrad. Welcome.

CONRAD: Thank you, Chair Bosn. And thank you, members of the committee. My name is Danielle Conrad. It's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I represent north Lincoln's 46th Legislative District in the Nebraska Unicameral Legislature, and I am here to introduce LB156.

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Well, before I jump into some of the legal nuances surrounding this legislation, I wanted to just help the committee to understand how this issue came to my legislative agenda and why I selected it as my personal priority bill for this year. For returning members and then also for new members, I think you hopefully will have a similar-- an experience similar to my own. One of my favorite parts about being involved in public life is that you meet people you would have never met otherwise, you learn things that you would not have learned otherwise, in this experience that we share together. And some of the people that I had an opportunity to meet due to the honor that I have to serve in this body were Loree and Taylor Woods, and Roger Woods. And I passed around an article detailing the family's long-time advocacy on support-- in support of their daughter, Taylor, who is beautiful and wonderful and vivacious, and who was a sexual assault survivor. Taylor has developmental disabilities. She was sexually assaulted during school activities, during a school program at Lincoln Public Schools. And as her case was making its way through the judicial system to ensure that her family could receive some sort of legal resource for Lincoln Public Schools and in the harm that came to Taylor. The Supreme Court, the Nebraska Supreme Court ruled in a case that you'll hear a lot about probably today, called the Moser case, that changed, really, a decades-long understanding about how we assess and assign and determine liability when somebody gets hurt and when government's involved. And because of that Moser case, as Taylor and her parents were trying to negotiate for some legal recourse with Lincoln Public Schools for their failure to protect Taylor from that sexual assault, their case got dismissed. So even though Taylor and her mom would not have been able to utilize remedies if this Legislature decided to pick them up and reset the balance after that key court decision, they still kept coming to the Legislature to advocate on behalf of sexual assault victims and their families, to try and reset the law, to try and reset the balance in favor of survivors and victims, even when government had a hand in causing that harm. So I had an opportunity to meet Taylor. Here's a picture of her and her mom during this advocacy. And then in the last biennium, Senator Wayne worked very hard with a strong bipartisan group of senators, one of which I was proud to be included in that group-- to pass a law, I believe 28 senators stood in favor of that law to try and reset the legal landscape, as it had been just a few years ago, to help people like Taylor and her family get access to justice when the government has a hand in causing their harm. Governor Pillen, in my

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opinion, needlessly and heartlessly vetoed that measure, LB25, in the last biennium on the-- and it was passed on our last day of session, so we did not have an opportunity to override that veto. I want to also point out that this measure, LB156, is actually responsive to Governor Pillen's veto letter in regards to LB25. He lifted up the fact that he was concerned that LB25 was written too broadly and would have additional unintended consequences, causing additional burdens for taxpayers and property tax implications. So being responsive to those concerns that came up in the debate on LB25 and the subsequent veto level-- letter, I worked with stakeholders to figure out the most narrow approach possible to try and ensure access to legal recourse for people-- for kids, for vulnerable kids that are sexually assaulted at their schools or during a school activity, and that's what LB156 is. So, I think it's generally important to know that the concept of sovereign immunity is, is a longstanding concept, right? You've probably heard about it a lot on the Judiciary Committee already. But it basically emanates from English common law in saying the King can do no wrong. Government can do no wrong. Right. And, and it came to the United States through our, our legal history, as well, and it applies to the state and political subdivisions, et cetera, et cetera. So generally speaking, suits against the government are barred by this principle of sovereign immunity. But the Legislature or the Congress, on the federal level, can literally make waivers or exceptions to that principle, to say, you know what, the public policy dictates that we actually want to give up our immunity. We want to give up this shield, this special protection that government has and has given itself when warranted, to ensure accountability, to ensure accessibility, to ensure legal recourse. And so, we've done that through the Political Subdivisions Tort Claims Act, the State Tort Claims Act, certain aspects of Employment Practices Act. Those are just a few examples where the Legislature has provided for a limited waiver of sovereign immunity to advance important public policy goals. I contend that this narrowly drawn measure is another instance where we should have a limited waiver of sovereign immunity to allow meritorious cases to proceed. Under the present legal landscape, there is no way for people to even file a case without being-- running the risk of perhaps sanctions for file-- filing frivolous lawsuits because of how the legal landscape exists today. So right now, in Nebraska, there is little to no legal recourse for kids who are sexually assaulted in their schools against the schools. And you will know that when schools have a hand in either a negligent hire or a negligent supervision of

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somebody that harms kids, they should have responsibility. I think they should. And when victims are raped or sexually assaulted, they have ongoing trauma. They have the initial medical issues and they have ongoing psychological needs, as well. And those kinds of medical needs cost money that a lot of families don't have. And what measures like LB156 is supposed to do is to ensure when schools have a hand in that harm happening, there's legal resour-- recourse and resources available to vulnerable kids and their families who are sexually assaulted on school grounds or during a school activity. So, I think that's probably a good, a good general oh-- a good general opening. The last point that I want to make sure to make clear for the committee here is what I am asking for in LB156 is that our public schools should be held to the same standard as our private schools, who are already under this level of accountability when they have a hand in a kid getting hurt at their schools. I'm asking this committee for a limited waiver of sovereign immunity so that our public schools are held to the same standard as private-- not only private schools, but private individuals and private businesses. We have plenty of existing models that show how this system can work and should work, and we shouldn't afford special favors and protections because little kids who are getting raped or sexually assaulted at schools, because it's happening on public grounds or in a public institution. I think if there was ever a need to have a waiver of sovereign immunity, it's for cases like Taylor's. There's people that are behind me today who practice in this area and can answer a lot of specific questions that the committee might have. I will do my best. I am a passionate advocate for the issue, but I am not a trial lawyer. I am not a litigator. I've spent my career in public policy, so I'm probably not the best person to answer the nuances of litigation questions. But I'm happy to, to do my best and if I don't know, I would be happy to follow up with the committee.

BOSN: Thank you. Questions for this testify-- or for Senator Conrad? Senator DeBoer.

DeBOER: Thank you. Last year in the debate, one of the things that kept being brought up was the federal 1983 claims. Are federal 1983 claims able to get at all the cases that you're sort of trying to get at?

CONRAD: Thank you, Senator DeBoer. That was a focal point in the 'bate during the last biennium. And I think that members who made those

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arguments were trying to thoughtfully point to other avenues of legal recourse that can or should be available to victims when they're, they're hurt in these instances. My contention is that LB1983-- or LB-- is that Section 1983 is an inadequate remedy in many instances, and, and here's why. It's not available for simple negligence, number one. Number two, there needs to be an underlying constitutional violation, which, it's not clear whether or not exactly that would be the case in each of these instances. And additionally, there's a general principle that it's best to provide a venue and an option for legal recourse, for legal recourse as close to the citizenry as possible, i.e., state court versus federal court. I know, having had a hand in 1983 cases over the course of my career, which is our bread and butter civil rights legal frame-- framework on the federal level, those cases are costly, lengthy, and uncertain at best. And so, I, I do not believe that is a full and adequate remedy to people like Taylor and her family.

DeBOER: What other kinds of waivers has the state-- can you think of a couple of waivers that the--

CONRAD: Sure.

DeBOER: --state has waived sovereign immunity for?

CONRAD: Sure. So if you look at the bill itself or the section of law that it seeks to amend, you can see, actually, a pretty clear delineation of areas where the state says, for example, in regards to ensuring healthy pregnancies for incarcerated people, we are-- we're going to, to waive sovereign immunity if we have a, a hand in any of the issues outlined in that act. Again, it happens in employment context. You can see a specific waiver of sovereign immunity that the, the state has listed as important public policy considerations, i.e. the state as an employer shouldn't discriminate in employment on the basis of race or gender or age. Those are some examples that, that pop up. And then like I said, the Tort Claim and the Political Subdivisions Act actually listed a whole host of, of other kind of specific exemptions or waivers.

DeBOER: Are you familiar with the question of whether or not a waiver is granted by the state for sovereign immunity for instances when a state car is involved in a car accident driven by a state actor?

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CONRAD: That sounds familiar. I'm trying to get the chapter and verse right off the top of my head, and I do not have it. But I do remember being a part of some of these conversations, for example, when it came to questions of assessing recreational liability that I know Senator Lathrop worked on in the past, in relation to, to some harm that was caused to citizenry and-- the citizenry, and he was able to negotiate kind of a path forward with the League and NACO and, and others on some of those kinds of issues.

DeBOER: OK. I think that's all my questions for you.

CONRAD: OK.

BOSN: Senator Holdcroft.

HOLDCROFT: Thank you, Chairwoman Bosn. One of the other arguments against LB25 was that--

CONRAD: Yeah.

HOLDCROFT: --I'm going to move this probably a little bit closer-- was that-- I mean, they can certainly go after the perpetrator and they--

CONRAD: That's right.

HOLDCROFT: --shouldn't go after the perp-- perpetrator. But if we allow them to, with a limited amount of funds they have for em-- employing lawyers-- I mean, you either go after-- the perpetrator probably doesn't have a lot of funds to make the child whole, but certainly the schools do. So they will concentrate their limited funds on suing the schools. And the perpetrator, who is the one who should be punished, is going to get away, essentially, without any pursuit. Does your, does your bill change any of the situation in that case?

CONRAD: Yeah. Thank you, Senator Holdcroft. And I do remember that important consideration during the policy debates on LB25. And so a couple of pieces, I think this committee probably more familiar than other members of the Legislature in understanding the fact that the remedies available to victims kind of writ large in Nebraska are limited at best. Additionally, I think you're exactly right. Everybody agrees that there should be liability and accountability for the perpetrator of the sexual assault or the rape, right? And in many instances, that does, in fact, happen. The problem being is that once

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that person is charged and tried and then serving for sexual assault or rape or what have you, they're essentially, in many instances, going to be judgment proof. They're not going to have-- do the incarceration, right? They're not going to be able to have resources to make restitution to the victim for counseling, or medical care, or respite care, or whatever it might be. Not in every instance, but in many instances. So you've heard about the difficulty or issues that pop up during periods of incarceration for incarcerated Nebraskans paying or meeting their child support obligations, right, and the impacts that has on society and the families and et cetera, and how it's next to impossible, in many instances, for people who are serving a, a period of incarceration be able to make their child support payments. So a lot of those same principles come into play on some sort of a, a restitution award. You can't get blood from a turnip, so to speak, right? If they don't have resources, they're not going to be able to provide the, the restitution or the resources that the victim may be entitled to otherwise. And here's the other thing, Senator. When the schools-- under LB156, for example, if the school has no hand, no hand in the harm, if they do everything right, they're not liable. But if they do something that is negligent, either in terms of a negligent hire or a negligent supervision, they should have liability. They absolutely should have liability. I think that's just a commonsense kind of thought, if you would talk to, you know, your neighbors on the street. When we send our kids to school, it's, it's, it's a very trusting relationship. We're allowing our schools to serve, you know, in the role of *parens patriae*, for many instances, right. We're giving vulnerable kids-- we're, we're, we're trusting the schools with our vulnerable kids, in many instances, and we expect them to protect them. And when they fall short, they should also have a hand in ensuring that those-- that harm is taken care of.

HOLDCROFT: Thank you.

BOSN: Any other questions for this testifier? Senator McKinney. Oh, sorry. Did you have your hand up?

McKINNEY: Thank you, Chair Bosn. Thank you, Senator Conrad. Can you speak to the narrowness of this bill and why you took this approach?

CONRAD: Yes. Thank you, Senator McKinney. It's very narrow. It is very narrow. And it was-- the decision to bring forward 2 different pieces of legislation this year was very purposeful. It was trying to be

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responsive to concerns that came up during the debate and deliberation on LB25 and be responsive to the governor's veto letter on that legislation. There was a lot, you'll remember, from the debate. There were, there were a lot of contentions that LB25 was too broad or too vague, or would be a can of worms, or a slippery slope, might have unintended consequences, et cetera, et cetera, so trying to be responsive to that threat of opposition from LB25. Frankly, this measure represents some pretty heartbreaking choices in terms of drafting, but is meant to at least say, for families like Taylors, when a kid has been sexually assaulted at school or a school activity, there has to be some level of accountability from the public school. I drew it as narrowly as I could possibly think of to be responsive to that. I personally would prefer a broader approach, and that's why I brought another companion bill. But if the committee sees fit-- I, I, I thought it would be hard to get a broader bill out of committee. I thought it would be hard to get a broader bill through the Legislature, so I thought if I could least have some initial steps to restore justice, that would be better than no steps.

McKINNEY: And do you think it's also good practice to match our public and private schools with each other in these type of situations?

CONRAD: Yes. I mean, I don't think we have kind of a universal or blanket approach. I know that we talk about this a lot on the Education Committee. Does this policy or practice apply to private schools and public? Some instances, it makes sense to have it apply to home schools, public schools, private schools. Sometimes, it's just public schools. So I do think generally, in an instance like this, when it comes to the sex assault of kids in schools, it would make sense to have the same standard.

McKINNEY: Thank you.

BOSN: Senator Hallstrom.

HALLSTROM: Yeah. Senator Conrad--

CONRAD: Yeah.

HALLSTROM: You said on a number of occasions that you believe that it's narrowly drawn. How do you, how do you discern that this is narrowly drawn? I, I don't have the same read on it.

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CONRAD: Yeah. So if you look at the measure itself, you can see that LB156-- and the new language really starts on page 3 and then carries into page 6. But it would only allow for a limited waiver of sovereign immunity if there was a sexual assault of a child that occurred on school grounds or in a vehicle owned, leased, or contracted by the school and being used for school purposes, in a vehicle driven for a school purpose by a school employee or a person designated by the school, or at any-- or at a school-sponsored activity or athletic event. So other pieces of legislation that are responding to the Moser or the Joshua M. case, more recently, are a broader waiver of sovereign immunity, perhaps for all intentional torts or looking at the State Tort Claims Act and the Political Tort Claims Act. When it comes to how we drafted-- and that's my next bill, a broader, a broader approach to remedying this situation. But when you look at LB156, it's only applying to schools, and it only applies to the state in regards to the schools that the state operates. And the state only operates a few schools, generally, in terms of youth treatment, youth corrections, and then a school for the blind and visually impaired. So it only applies as a limited waiver of sovereign immunity against the state in regards to when the state is running a school, for example, and a child is sexually assaulted in that school. It is not a broad waiver against the state for all sexual assaults.

HALLSTROM: OK. Thank you. And, and in your opening, you, you mentioned negligent hiring and--

CONRAD: Yes.

HALLSTROM: --negligent supervision. But this bill does not apply only to school personnel. Is that correct?

CONRAD: Yes. Yes, I think that's right. I was trying to give the committee concrete examples of ways in which schools could be negligent and could have a hand in causing the harm that precipitated the sexual assault. But I, I do think that-- and if I misspeak, I can definitely clean it up. I, I do think if we need to work with the committee to have some sort of clarifying or narrowing language in that regard, we can. But the goal is to ensure that when kids are sexually assaulted on school grounds or at school activities, that, if the school is negligent, has a hand in that assault, that there would be legal recourse. It may not just be regulated to negligent hire or supervision, but I use those by way of example.

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HALLSTROM: And my point was more that it doesn't have to be a school employee.

CONRAD: That-- yes. That's, that's right. I believe that's right.

HALLSTROM: So there, there would be no negligent hire and negligent supervision, at least in those types of cases.

CONRAD: That's right. If a-- for example, if a sexual assault or a rape happened on school premises by a random person who came onto the, the school grounds to conduct-- who perpetrate-- trated that assault, it-- yes. Negligent hire and negligent supervision wouldn't come into play. But if, for example-- and we might hear from some other testifiers about this later, if a school has reason to know, for example, that they have a certain security risk or issue in a certain aspect of their building, i.e. under a stairwell, there's been a pattern and practice of sexual assaults, and they've done nothing to police that--

HALLSTROM: And, and maybe part of my problem--

CONRAD: Yeah.

HALLSTROM: --in seeing that this is not, in my opinion, narrowly drawn is that you've got 2 different bills that have 2 different sets of reasonable care standards versus simply location. But last year, LB225 had proximate cause on the face of the statute. This one does not. What-- why would this bill not have a proximate cause?

CONRAD: Sure. And I think LB25, there were an array of pieces of legislation that were introduced on the very same problem, from Senator Halloran and from others. And I, I think-- I was not a member of the Judiciary Committee, so I'll defer to my colleagues who were. But I think some of those key components, in regards to proximate cause or other limitations, were part of committee deliberations as the measures moved their way through the process. We can go back and definitely revisit that if the committee is inclined to move forward with that.

HALLSTROM: Yeah, and it's just-- you're, you're suggesting that there has to be negligence, but the other bill had proximate cause. This one does not.

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CONRAD: OK.

HALLSTROM: OK.

CONRAD: That's a good--

HALLSTROM: Do you believe--

CONRAD: --good technical note.

HALLSTROM: Yeah. Do you believe school grounds are inherently dangerous?

CONRAD: No. I do not.

HALLSTROM: And so if something happens on school grounds after hours when nobody's around, we've at least opened up the door for the entities to be sued because it occurred on school grounds, irrespective of the time of the incident?

CONRAD: I don't think that's quite right, Senator Hallstrom. I mean, I think that you can't throw out traditional tort principles that, of course, provide context for this legislation, as well. You're still looking at duty, breach, causation, damages. I don't think that just location is, is going to be enough to get you in the, in, in the courthouse door, so to speak.

HALLSTROM: Right. That's the way I read the bill is--

CONRAD: OK.

HALLSTROM: --it's all about location. And then, you, you have in a vehicle and leased or contracted by a school and being used for a school purpose. Again, there's no, there's no requirement for anyone from the school to be physically present under that standard. Is there?

CONRAD: Well, I guess that's an interesting kind of law school hypothetical question to ask. I don't understand why the school would be leasing a vehicle if it wasn't being utilized by school personnel, but--

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HALLSTROM: Well, but it's being used for school purposes. It could be parked at night and, and no one's anywhere near the, the, the vehicle.

CONRAD: OK. Well, I think, perhaps, while those are really important questions to kind of sort out here, I think if we can have a meeting of the minds that if schools have a hand in kids getting sexually assaulted or raped by their personnel or on their property, they should have access to justice for medical care, I'd be happy to work with you on any technical aspects.

HALLSTROM: And, and my last question is, I, I thought I heard you say that private schools are already--

CONRAD: That's right.

HALLSTROM: --subjected to this by, by state statute?

CONRAD: I, I don't think there-- I-- I'll triple check. I don't think there's a specific state statute. But of course, sovereign immunity principles do not apply to private entities, like private schools.

HALLSTROM: OK. But if, if they're subject to it and public schools, are there any other areas where you think private schools and public schools should have equal treatment?

CONRAD: Yes. Absolutely. And, and like I said, we talk about this all the time in, in the Education Committee. Whether it's the applica-- whether it's the provision of school lunches or school breakfasts, should the state, you know, provide for those in both public and private schools? We've had bills that put forward ideas with both approaches. I actually think both are really interesting and good approaches, because I think hungry kids in either place are hungry kids that should be fed. We talk about whether or not the teacher recruitment and retention stipend should also play-- apply to private schools, and I think that the Legislature has had a lot of good arguments in that regard. So I don't think it's a blanket approach, but I think, in this instance, it is an, an important model for contracts to think about.

HALLSTROM: OK. Thank you.

CONRAD: Yeah.

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BOSN: Senator Storer.

STORER: Thank you, Chairman Bosn. And thank you, Senator Conrad. On the-- I'm going to-- I guess I'm going to continue for a minute down the path of the private versus the public--

CONRAD: Yeah.

STORER: --schools. I try to process sort of the intent here. The biggest difference between public and private is funding, at this time, right, the way, in Nebraska--

CONRAD: Yeah.

STORER: --the way we, we fund our, our private schools versus our public schools. So there wouldn't clearly be sovereign immunity for a private school because they're private. They're funded with private dollars, versus the, the public school setting would-- I guess what I'm envisioning here is-- and I, and I think Senator Holdcroft alluded to this--

CONRAD: Yeah.

STORER: --in his question, as well, is the, the unlimited sort of pot of money--

CONRAD: Yeah.

STORER: --in, in that scenario, and, I guess, 2 things in relationship to that. One, do you think that the plaintiffs' attorneys would be likely to benefit from legislation like this the more we, we sort of broaden the opportunity for a public institution to be sued?

CONRAD: Yeah. So a couple of things. I think that there are some existing caps in place under the Tort Claims Act. What is it, \$1 million for the political subdivisions, and there's no cap, I think, for the state. I think if I have that transposed, I'll go back, but I think that's generally the case, right? So when it comes to the political subdivisions aspect, there, there is a cap in place. It's not an unlimited award, even if it would warrant such for extreme cases. Right. I also don't think that we need to guess about a flood gates argument or about a slippery slope argument, because, again, the law of the land in Nebraska, for decades, until this Moser case came

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down in like 2020, 2021, that's the standard I'm advocating for. So we have a really good understanding from decades that there was-- that, that this legal standard did not bankrupt taxpayers or drive up property tax costs. Additionally, Senator Dungan brought an interim study to try and ins-- assess, for example, increased insurance costs in relation to this very issue; wasn't even afforded a public hearing on it. And then finally, I'll go back to a thread from the debate that Senator Hallstrom's predecessor, my friend, Senator Slama, brought forward during this debate. If schools are so concerned about the price tag related to this, it kind of begs the question: How many sexual predators are they hiring?

STORER: Is there, is there some evidence or a trend that that indeed is a problem in public school, that we have and a growing number of sexual predators being hired, and shouldn't that be handled more through the hiring process and the requirements for background checks, which I think it is. And, and--

CONRAD: Yes and no.

STORER: Right.

CONRAD: Yeah. Yeah. So I, I think schools are generally safe. I think-- you know, most kids in most families have a wonderful experience at their public or their private school. Right. And-- but I do think that bad things also do happen from time to time. You know, I saw a statistic in preparation for this hearing that-- from the U.S. Department of Education that demonstrated about 1 in 10 kids will be the victim of sexual assault. That wasn't necessarily regulated to teachers sexually assaulting children, right, but it was a-- kind of a broader statistic. And I, I do think there are instances where kids do get sexually assaulted at school. You see it in the newspaper. Right?

STORER: Sure.

CONRAD: I mean, that's not--

STORER: By a peer, by-- I mean, if, if there's no--

CONRAD: Yeah. It's not an everyday occurrence, but it, it is an unfortunate and real occurrence. And where the law is today, is that those families don't have recourse to get the help that they need to deal with the after-effects of that. And I even-- Senator Storer, I

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think the problem is this. It should be dealt with, with background checks. You're absolutely right. But today, because of the loopholes, because of the changed standards, even if a school fails to do basic, reasonable things when it comes to hiring or supervision, there's no liability for them, and that's a perverse incentive to not do the right thing.

STORER: I guess the-- my last comment, and, and I will leave that. I, I don't know that I disagree. I mean, I think, innately, schools certainly are-- there's no incentive or desire to have sexual predators as employees.

CONRAD: I don't think so.

STORER: But-- and, and just for comparison, even with a \$1 million cap, a \$1 million, you know, result for Arthur County school--

CONRAD: Sure.

STORER: --is going to be a much different burden than a \$1 million on Lincoln Public Schools.

CONRAD: Sure.

STORER: And, and this would not differentiate that.

CONRAD: That's right.

STORER: Right.

CONRAD: Yeah. That's exactly right. Yes. And I mean, typically, there's insurance involved, as well. Right. Yeah. Thank you.

STORER: Thank you.

CONRAD: Thank you.

BOSN: Senator Hallstrom.

HALLSTROM: Yeah. One more question. And Senator Storer's--

CONRAD: Sure. Yeah.

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HALLSTROM: --issues raised it to my mind. Years ago, Senator McCollister brought legislation on clean slate and to provide incentives to hire individuals that had been incarcerated. But there was a lot of concern from the business community on negligent hiring and the like. It, it seems to me that, perhaps, rather than bringing a stick, you bring a carrot and you provide some type of safe harbor. If the liability exposure was to be expanded, perhaps some type of safe harbor that you know by statute, if you jump through certain hoops--

CONRAD: Yeah.

HALLSTROM: --that you're not going to be threatened by that. The context, before it was in the--

CONRAD: Right.

HALLSTROM: -- in the employee references, you never--

CONRAD: Yes.

HALLSTROM: --got a good reference because you just got name, rank, and serial number.

CONRAD: Yeah.

HALLSTROM: And so, maybe that's something that some thought could be given to.

CONRAD: Yeah. Thank you, Senator Hallstrom. I think that's very creative and an interesting connection. I remember working with Senator McCollister on that measure when I was out of the Legislature and, and doing advocacy in that regard. It's kind of a, a similar-- a, a familiar legal concept for a variety of different instances that may have relevance here. I would be very open-minded to discussing that with you further. And thank you for your creativity--

HALLSTROM: Thank you.

CONRAD: --in, in lifting that.

BOSN: Senator Holdcroft.

HOLDCROFT: One last question. As Senator Storer's-- reminded--

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CONRAD: Yeah.

HOLDCROFT: --me of something that was from LB25, as I recall, from Senator Wayne. Of course, Senator Wayne's whole onus behind the bill was to make the, the, the victim whole. And so part of that, he offered towards-- on the floor, to reduce the required-- defense lawyers to reduce their fees to no more than 15%. And have you considered that? Is that part of your bill?

CONRAD: You know, I re-- thank you, Senator Holdcroft. I do remember that as part of the debate and the negotiations because there's always this concern that, you know, somehow this is about trial lawyers getting rich and this isn't about justice for victims. You know, I, I disagree with that thread. From my experience working as a civil rights attorney, I just, I, I, I just don't think that bears out with how I've seen the process work in many instances. But it, it was a good faith point in negotiation to try and build support for the matter and be responsive to opponents' concerns. Philosophically, I don't love that approach, but if that's the only way that we can move forward, again, I think a step is better-- a step forward is better than the status quo.

HOLDCROFT: OK. Thank you.

BOSN: I have just a couple--

CONRAD: Yes.

BOSN: --quick questions and I know-- OK. So one of the things that you talked about was-- I guess it sounds as though you're willing to make some--

CONRAD: Sure.

BOSN: --adjustments in order to move things forward. So as it stands right now, this is a simple negligence standard. Is that fair to say?

CONRAD: Yes.

BOSN: And there was also discussions about using a gross negligence--

CONRAD: Yes.

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BOSN: --standard. Is that-- and while you may not get there, is that a conversation you're willing to have, at some point in time?

CONRAD: Yes. I think it probably dovetails along with the line that perhaps Senator Hallstrom lifted, as some sort of framework for safe harbor provision, or ensuring that there's accountability or accessibility for something-- for a, a more harmful act, right? Something that's more gross or deliberate or--

BOSN: Because the overall-- if I'm understanding your intentions here is we want to-- while it's, one, protecting the victims, but it's, two, it's to incentivize the schools to take every single precautionary measure that they can in order--

CONRAD: Yes.

BOSN: --to eliminate any chances of this happening, within a reasonable degree of ability.

CONRAD: Yes.

BOSN: And so, I mean, to the extent that there are a list of things you think they should be doing and they're not-- unsafe stairwells. Let's use that example, because you gave it.

CONRAD: Sure.

BOSN: But let's say that there was an-- a way to address that concern in a reasonable manner so that there weren't empty, dark stairwells at the bottom, where kids could have these situations occurring, and we could address that. That would then be something that the schools could look to and say, anytime you came to us with a concern that we could have prevented this, we took it, and here's an example.

CONRAD: Right.

BOSN: I guess-- is that-- do you agree that that would be a good faith showing that they're trying to be compliant in eliminating any opportunities for--

CONRAD: Sure.

BOSN: --what are very obviously horrendous experiences--

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CONRAD: Yes.

BOSN: --for students?

CONRAD: Yeah. I-- again, I would be happy to work with the committee in any creative or thoughtful ideas to help us move the legislation forward. But again, the-- with, with the simple negligence standard, there's, there's still a standard. Right. It doesn't open up the courthouse doors to people who have no duty, who have not breached it, who have not caused damages. Right. Negligence is an existing and familiar legal concept that only works in some instances. It's not a flood gates kind of, kind of argument. Right. But if simple negligence, you know, is the sticking point for the committee and you want to move to something like gross negligence, perhaps that strikes a better balance for the committee in ensuring that the schools are doing all that they can. I think in many instances they are. I really do. But I still think that bad things do happen. And I think that presently, when they do happen and when the school has a role in that, victims are the ones who are left without recourse while we argue about these finer points of law.

BOSN: One of the other discussions that somebody brought up was some of the times last session--

CONRAD: Yeah.

BOSN: --to try to come to a negotiation. And one of those was a cap on this.

CONRAD: Yeah.

BOSN: And I don't see a cap in this bill. Is that something you're also willing to discuss as a potential resolution?

CONRAD: Yes. And I might-- if I'm mis-- if I'm misspeaking, I'll clean it up on-- either somebody behind me will or I'll clean it up on, on close, but I think there is a cap in the Political Subdivisions Tort Claim Act. I don't think there is one in the State Tort Claims Act. And of course, the school only oper-- the state only operates a handful of schools, so that would be their only application under this bill. But yes, we could talk about caps, we could look at attorney's fees, we could look at different negligence standard, we could look at safe harbor. I'd be happy to continue those conversations.

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BOSN: Thank you. That addresses my questions. Did that spark any other questions? All right.

CONRAD: OK. Thanks.

BOSN: Are you staying to close?

CONRAD: I'll be here.

BOSN: First proponent. Good afternoon and welcome.

ELIZABETH EYNON-KOKRDA: Good afternoon. Thank you, Chair Bosn and members of the Judiciary. My name is Elizabeth Eynon-Kokrda. It's spelled E-l-i-z-a-b-e-t-h E-y-n-o-n-K-o-k-r-d-a, and I'm general counsel for Education Rights Council, which is a Nebraska nonprofit organization that advocates for children's education rights. And I'm here in truly vigorous support for LB156, because, frankly, too many children are being sexually violated at school, many of whom have special education needs. We work a lot with children with special education needs. They're very vulnerable, and often they are the victims in these types of situations. And when I say sexually violated, I don't just mean sexually harassed. I mean children who have been sexually accosted at school and children who have been raped. Last year, ERC, Education Rights Council had 2 clients raped at school, each in areas known to be unmonitored. And in each instance, the predator had a worrisome history and the victim was a child with significant special needs. I believe testimony was passed out to you by one of our former clients. She goes by the initials in order to protect her child. Her child was raped in a bathroom that locked from the inside that the school knew locked from the inside. And she was raped when she was ordered to go to a different place that was outside of what her IEP required. She was in a very vulnerable situation. School districts have this very special relationship with children. They stand in loco parentis, and it means in place of the parent. We mandate that parents send their children to school. And because children have these more limited rights in the school building than outside of it, schools do have, under law, a special duty to protect them while they're in their care. And when a school district fails to do that duty, that's when we would generally expect liability to arise, not when they're doing their regular things, when they actually fail. And that failure does arise out of negligence. And we might expect that when there is a breach of duty of care, that there would

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be some sort of remedy. And we do have this Political Subdivisions Tort Claims Act that permits some liability, but it contains an exception for assault and battery that is so broad that no school district, under any circumstance, can be held responsible for rapes or other sexual assault. Why is that? Because of the language of our Political Subdivisions Tort Claims Act. The court has considered this in multiple cases. And here's what the court has said. There's no debating that the abuse of a child is deplorable. If the Legislature determines, as a matter of public policy, that tort recovery should be allowed against the state for at least some claims arising out of assault and battery, it can narrow the state through its law-- lawmaking process, and that's why we're here. This is exactly what this proposes to do. There's been some discussion about whether it's narrow or broad. Arising out of assault and battery applies to all sorts of situations. There are multiple situations that ERC experiences that would not fall into this-- kids that are harmed in multiple ways. This is only sexual assault and only at a school, or on school property, or during a school event. Senator Hold-- who, who was it? I had somebody. Ah, I think it was Holdcroft, [INAUDIBLE], Senator. Excuse me. You-- I see I'm out of time.

BOSN: Let's see if there's any questions for this testifier. Senator DeBoer. Sorry.

DeBOER: Thank you. So, Tort Claims Act, I always get caught up in the triple negatives and quadruple negatives and the exceptions to the exceptions to the exceptions. So can we go through this a little bit and help me understand it, because I'm actually getting kind of confused. So, the basic rule is can't sue the state. The State Tort Claims Act says can sue the state in these reasons. Then 13-910, which is the part of the statute that is being amended by this bill, says can't sue the state, can sue, sue the state in these exceptions, except these exceptions to the exceptions, you cannot sue. Is that right?

ELIZABETH EYNON-KOKRDA: I think so. Can I try it?

DeBOER: Yeah.

ELIZABETH EYNON-KOKRDA: So number one, you're right. State is king. No suing the state. Number two, Political Subdivisions Tort Claims Act says, except we will allow limited liability in certain circumstances.

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Then there's a broad series of "except not in these circumstances."
What this bill would amend is the one of not in these circumstances.

DeBOER: So--

ELIZABETH EYNON-KOKRDA: So number-- go ahead.

DeBOER: So this is can't sue the state; can in some circumstances, but not these circumstances; except can in this circumstance, so we're back to an exception to the exception.

ELIZABETH EYNON-KOKRDA: Correct.

DeBOER: OK. So the reason that we wouldn't need causa-- proximate causation here is because can sue the state under these circumstances, it's the claims arising out of would be a negligence statute-- negligence standard. Is that right?

ELIZABETH EYNON-KOKRDA: Right. The whole Tort Claims Act is based on negligence. OK.

DeBOER: So--

ELIZABETH EYNON-KOKRDA: Tort is a negligent act. And so they're saying when you've been negligent, we'll let you sue in these areas, except if it's one of these things. And here, the exception is arising out of assault and battery. So in other words, it's sort of a but for standard. If-- this sounds very extreme and I don't believe school districts intentionally do this, although we still have school districts that have done all their background checks and done what they've done, and then we still have employees that do bad acts. But let's say I was terribly negligent. I didn't do any background checks, or I even knew that somebody had-- who was a predator in another school district. Again, I'm just making it extreme for this case of-- sake of this case. I know this. I hired this person. I put them in the classroom. Something bad happens. A child is sexually assaulted by this person. There is no way for me to say you should have protected this child. You had no proximate. You are a proximate cause of this happening because it arises out of the assault. There would be no claim if the child hadn't been assaulted. So when I said there's literally no circumstance we could take it all the way to that extreme. And there's no remedy. Again, this is really about when we have facts that indicate that the school had a hand in what happened,

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that you could even bring a claim. I think Senator Conrad referenced a situation where-- I forgot where I was going with that, so I'm gonna skip it.

DeBOER: That's OK. Let me, let me ask you this. So Senator Hallstrom said, if there are-- there's a woman who's walking across campus of a school at night. Nobody's there. She gets assaulted by a different third party. Is that going to fall within this exception to the exception, as we have in this bill before us, just because it happens to be on school ground?

ELIZABETH EYNON-KOKRDA: Well, as a lawyer, I don't think I could bring that claim, and that's because I am not alleging that the school had any hand in it whatsoever.

DeBOER: So there's no negligence of the school and therefore it cannot be brought.

ELIZABETH EYNON-KOKRDA: In-- as you've described it, I did not see any negligence.

DeBOER: OK. So the-- let's talk about negligence standard for a minute, because when we were discussing this bill in committee last year, I remember that was something that I was trying to sort of sort through with folks. You-- in-- under the negligence standard, you have to have a duty to someone else.

ELIZABETH EYNON-KOKRDA: Correct.

DeBOER: And that duty as a, as a school is to provide a safe learning environment.

ELIZABETH EYNON-KOKRDA: Well, the duty to-- of the school is slightly higher than your average bear.

DeBOER: OK.

ELIZABETH EYNON-KOKRDA: And that's precisely because we require parents to send the school there. So they're considered standing in the shoes of the parent. So they have a reasonable-- they have a duty of reasonable care that would have to be shown in any instance, so that's why I wouldn't be able to bring that case of somebody walking across. Where is the duty of reasonable care there? So I would have to

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show that they had a duty of reasonable care and that they breached that duty, but it is a higher standard because we put children in their care.

DeBOER: So it's a higher standard than if I just were a nonschool, random person on the street?

ELIZABETH EYNON-KOKRDA: Correct.

DeBOER: OK. So they have a duty of care by virtue of being a school to provide a safe environment for the students?

ELIZABETH EYNON-KOKRDA: Correct.

DeBOER: OK. And they breached that-- how would they breach that duty?

ELIZABETH EYNON-KOKRDA: Well, using my extreme example, they hired somebody that they knew or should have known had a history of sexual predators. But another example would be in that testimony that was passed around. If you know that you have a bathroom that locks from the inside and you know you have a child that is-- has a predilection for harming or taking advantage of children with special needs and you don't watch over that and you don't follow that child's requirements, I believe that I could potentially show that you breached that care. It would be still my duty to have to meet all that standard.

DeBOER: Right. But you could--

ELIZABETH EYNON-KOKRDA: Where right now, if I tried to bring-- I'm sorry.

DeBOER: You could bring a case and allege that they failed in that duty of care, and then it would be up to the jury to decide whether the school district had, in fact, breached the duty that they owed to the child.

ELIZABETH EYNON-KOKRDA: Right. I would have to show that they had the duty. I would have to show that they had the breach. Right.

DeBOER: And that the breach caused the harm.

ELIZABETH EYNON-KOKRDA: And that the breach caused the harm. Correct.

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DeBOER: Yeah. So let's talk about third parties versus employees of the school district. Is there any distinction in the law between whether a third party convicts-- or commits the assault or whether a school district employee commits the assault.

ELIZABETH EYNON-KOKRDA: In this particular legislation?

DeBOER: Or in general. Speak to me about that issue.

ELIZABETH EYNON-KOKRDA: In general-- this particular bill would say whether the assaulter, the perpetrator, the rapist, was a student or an employee, if the school had a duty and breached that duty, and the cause of the duty resulted in the harm, there wouldn't-- it wouldn't be a difference between the teacher or the student, as I read this legislation.

DeBOER: Yeah. So I think the point that you are making with this, they didn't even do a background check at all. The problem with that is that that would be gross negligence. The situations we're dealing with more likely are like the one in the case where you gave an example or we got the letter from the parent, where it isn't gross negligence, it's negligence. Gross negligence would be you don't even do a background check. You don't care who's dealing with your kids. But in this case of the, the child that the information was passed around about, they had this other child, a third party that they know has a bad history, and then they have a locking door, and then they act with negligence to send the disabled child to be in the presence alone of the problematic child. Is that right?

ELIZABETH EYNON-KOKRDA: That's what happened in that case. Yes.

DeBOER: So the duty would have been to provide a safe environment, arguably, of course, because the jury would have to decide this. And if the jury found that they were negligent in that duty, that they breached their duty because they didn't properly monitor the situation, then they would have, in that case, breached their duty of care, been negligent. Under current law, can't sue. But here, under this law, can sue for the breach of their school district duty.

ELIZABETH EYNON-KOKRDA: Right. I would have an ability to put forth a claim. Right now, if I tried to put forth that claim, I might even be at risk of my license being removed because people could say it was a

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frivolous claim. You know that can't go anywhere. Why are you causing anybody any grief?

DeBOER: And the difference is that while the perpetrator does something terrible and we ought to be able to get at them if we can, the school also did something terrible by breaching their duty of care. That's the argument, anyway.

ELIZABETH EYNON-KOKRDA: Yeah. The, the argument is there can be more than one guilty party, which is-- yes. Obviously, the perpetrator needs to be held accountable. But if this could arise and the reason the perpetrator was able to perpetrate the act was because of the negligence of somebody else, they also should be held accountable.

DeBOER: So their faulty behavior is something that we want to disincentivize. We want to disincentivize school districts from causing or allowing harm to children because of their negligent acts, right?

ELIZABETH EYNON-KOKRDA: Right. And right now, they know that this cannot ever be brought.

DeBOER: So there is no disincentive for the school district right now to worry about whether or not they're doing things absolutely as safely as a reasonable person would do.

ELIZABETH EYNON-KOKRDA: Correct. Under the standard of negligence, I would say that's true. I mean, there are other things that can happen with-- on other laws--

DeBOER: So--

ELIZABETH EYNON-KOKRDA: --but they don't really apply here.

DeBOER: Yeah. So-- OK. So here's what I'm saying. 1983, maybe you can make a 1983 claim if you've got a gross negligence, where you don't even do any background check ever, on any of your employees. Maybe there's a claim there. Gross negligence, maybe.

ELIZABETH EYNON-KOKRDA: Well, and my challenge with that is because 1983 refers to federal actions, and there is no federal right to an education. It all rises out of states, and you have to bring a constitutional right. So you have to show that a constitutional right

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was violated. So what was violated when a child was raped at school? The child was raped. I guess I could say they had a what-- a constitutional right to attend school, and now they can't because they've been harmed and they're hospitalized. But they don't have a-- they only have a state right to go. So I'm concerned that I'm not sure I could bring in a successful 1983 action. I'm not sure it applies very-- it certainly doesn't apply specifically to the facts on its face.

DeBOER: So--

ELIZABETH EYNON-KOKRDA: It would be a roundabout way of trying to do something.

DeBOER: So you can't bring a 1983 claim. If you don't have gross negligence, you certainly couldn't bring a 1983 claim, so you'd have to go with a negligence action. And the negligence action would have to be the school district did-- breached their duty of care that they had to every student to provide this generally safe situation. And here, we see that it's barred because it's a claim arising out of an assault. So what Senator Conrad has said for this particular kind of assault, sexual assault of a child, we're making an exception to the exception and saying, you can sue, because there is a very narrow, just for sexual assault of a child, exception to the exception that they would be able to sue for these school-- in a school environment or in a vehicle, I guess.

ELIZABETH EYNON-KOKRDA: Yeah. If I can allege a sexual assault occurred, if I can allege that the school had a duty to protect the child when it was happening, if I can allege that the failure of the school, the school to engage in very specific, protected acts was the cause of the harm, then I can make an argument that they probably should be held accountable.

DeBOER: And--

ELIZABETH EYNON-KOKRDA: And that would be a-- I would have to make that prima facie case.

DeBOER: And if you make the case, can a jury say, we still don't think they should do the, the-- that this was enough negligence on be-- on behalf of the school.

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ELIZABETH EYNON-KOKRDA: A jury can always do whatever they feel is most appropriate.

DeBOER: So just because you're bringing a case-- just because you bring this case, does not mean you will prevail.

ELIZABETH EYNON-KOKRDA: Not at all. It's just may I have the opportunity to make this allegation based on the facts that are in front of me?

DeBOER: And if you have this situation where the school has failed in their duty of care, under current law, there's nothing you can do about it?

ELIZABETH EYNON-KOKRDA: That's correct.

DeBOER: Thank you.

BOSN: Anyone else have questions for this testifier? Seeing none, thank you for being here.

ELIZABETH EYNON-KOKRDA: Thank you.

BOSN: Next proponent.

LAUREN MICEK VARGAS: Good afternoon. My name-- Chair Bosn and members of the Judiciary, my name is Lauren Micek Vargas, L-a-u-r-e-n M-i-c-e-k V-a-r-g-a-s, and I am the chief executive officer of Education Rights Council. We are a nonprofit dedicated to the education rights of children and students in Nebraska. I want to name something first. And obviously it's unkosher, normally, for another colleague to kind of join here. But first, I want to say we are not plaintiffs' attorneys. We are not here to make money. I am here to protect children and families, and that is why I am here in support of LB156. And while you heard from my colleague earlier, I want to share something different for your consideration. Part of ERC's work includes helping provide trauma-informed education supports for children who are in high risk of and have been sexually trafficked. Over my 10 years of legal practice, I have represented several children who have been sexually trafficked at school. ERC works in collaboration with Project Harmony, Boys Town, and the Omaha Police Department. Unlike the movies, traffickers rarely kidnap kids and sell them into sex work. Unfortunately, they groom children. They are

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generally in positions of authority, like coaches, religious leaders, teachers, and they build trust with students by targeting their vulnerabilities like disabilities. Trust is solidified when the trafficker offers a place to stay or buying them things like makeup, electronics, before manipulating them into sexual favors. When trafficking happens, although it happens everywhere, ERC is gravely concerned about what is happening in schools and potentially, by school employees. For example, in 2024, a teacher from Texas and her son were indicted for recruiting and forcing trafficking of students ages 15-17. The teacher offered them a place to stay. One child was pistol whipped and beaten. A school employee reported that she thought it appeared to be abuse of the administration. Texas Governor Abbott stated, what some of our educators are doing is a crime. It's disgusting. No child should ever be compelled by the state to be in a school like this. Traffickers are brutal and they are in Nebraska. Victims are subjugated to serious, life-altering harm. My clients are. In the Omaha area alone, in the last 4 years, over 600 children were at risk of or were sexually trafficked. ERC has been involved with school-based issues arising out of this trafficking. For example, I have a client who was disclosed being taken off of campus by a school employee, sold during the lunch hour for sexual favors, and brought back onto campus. Traffickers are circling the school and looking for children who are vulnerable. And also, a child who was preyed upon by an employee, introduced to a trafficker, and then trafficked. Schools must be safe places, especially for our students who are living here in our state. Senator Storer, you asked if this is actually happening here in Nebraska, and I've listed many, many accounts. But I will tell you, just in January of this year, a Stapleton principal was charged with making sexual advances toward male students on school grounds. Yesterday, a school psychologist was arrested for the sexual abuse-- I see that my time is over. May I continue or would you like me to ask questions?

BOSN: If, if you'll just wrap up your fin-- I-- we can read all this, but if you'll wrap up with your final thought and then we'll see if there's any questions.

LAUREN MICEK VARGAS: Yes. I just want to close by saying, again, that we are a nonprofit organization. We are not in this to make money. We are here to protect families. That is why we're supporting this extremely narrow exception to the Political Subdivision Tort Claims Act. We aren't asking for floodgates of litigation. We are asking for

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our most vulnerable students to be protected. And we're asking for your assistance. Thank you.

BOSN: Questions for this testifier? Thank you for being here.

LAUREN MICEK VARGAS: Thank you so much.

BOSN: Next proponent. Good afternoon.

VINCENT VALENTINO: Thank you. My name is Vincent, V-i-n-c-e-n-t, last name Valentino, V-a-l-e-n-t-i-n-o. I am here on behalf of, my, my family that went through something that was horrible. My sister was gang-raped. My older sister was gang-raped in a private school. She became mentally ill. My parents found out she was with child. Back then, it was a felony to abort. They found a doctor that did it. They were on their knees a lot, praying. It broke my family, financially. My sister was in and out of institutions. The insurance coverage wasn't enough. My folks sold everything they had to get her help. I finally had to take over because both my parents had passed away. I placed my sister in a private institution and she passed away here of COVID about a year and a half ago. I'm in favor of LB156. I spent 2 years in Legal Aid, working with the poor. I was 15 years York County Attorney and York Coroner. One of the reasons I entered into the law was primarily because of what happened to my sister. Because of her mental illness, they could do nothing in terms of prosecuting the people that gang-raped her. Peggy Knowles [PHONETIC] and Art O'Leary [PHONETIC], who were in the county attorney's office at that time, determined that she wasn't well enough to have that happen and testify. I think LB156 is an exception to what the assault under Moser case came up with. There was absolute immunity under that particular Political Subdivision Tort Claims Act exception. I represented over 88 counties under that particular Political Subdivision Tort Claims Act. I was lead counsel for the Nebraska Inter-Governmental Risk Management Association. Those cases are never tried to juries. They're tried to a judge. I probably had about a 95% batting average of winning my cases. And I'm not bragging about it, but that's just the fact. I would suggest to you that LB156, I believe it's-- I'm sorry.

HALLSTROM: That's all right.

VINCENT VALENTINO: Yeah. I believe LB156 is reasonable. It doesn't address everything, because it says only on school grounds. I can tell

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you that most of these assaults don't occur on school grounds. They're groomed and they're taken off school grounds to be assaulted. And the Nebraska Department of Education clearly has administrative rules that are the force of law regarding the professional responsibilities of teachers and those that work with schools. I would also tell you that in my experience, those assaults will often occur off of school grounds and in secrecy, after grooming. The other thing I will point out to you is this. Nebraska has a statute that says consent at age 16 is a defense to sexual assault. It's not sexual assault per se, but it's how they're groomed, and they-- they're taken on at age 16. I actually had prosecutors tell me that-- I had a client. Client was assaulted, groomed, assaulted at age 18. When he turned 18, they-- this teacher thought, oh, well, this is great. But he was groomed. Unfortunately, county attorney's office said, well, he's age of consent at 16. Never considered the emotional impact on his childhood or that another professional could say, this man was incapable of providing consent. Thank you.

BOSN: Are there any questions for this testifier? Thank you very much for-- oh, I'm sorry. I'm sorry. Senator McKinney.

McKINNEY: No problem. And thank you for your testimony. Quick question. How would you respond to the thought that the perpetrator should be the one solely responsible in this situation and not the school district?

VINCENT VALENTINO: Because in the case I had the school principal was aware of this, aware of it, and did nothing. Did nothing. By and large, the, the, the individuals are subject-- that do these things-- to the Department of Education rules and they can have their licenses revoked. And that-- is very specific in terms of administrative law. If you ever try any of these cases. And I've tried child rape cases for a long time when I was county attorney, You put in the rules that govern the professional responsibility of the individuals who are in charge. Those rules are law because they're adopted pursuant to the Administrative Procedures Act. Once you put those into the record to show the professional responsibility, you're already dealing with one thing, and that is the statute regarding whether or not a person in their official capacity has committed a crime by violating their own rules and regulations that govern their behavior. But that's a misdemeanor. There is no statute of limitations for sexual assault in the first and second degree for crime, but the age of consent is

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typically brought up by individuals saying, well, this guy was old enough to know better. I mean, why wouldn't he enjoy himself doing this kind of stuff? That's the wrong approach you take. But those rules govern the professional responsibility of the actor. The principal-- if the principal's involved and knows what happens, that's when you have liability under the statute that, that is being proposed here.

McKINNEY: Thank you.

BOSN: Thank you very much for being here and for sharing your story.

VINCENT VALENTINO: Thank you.

BOSN: Next proponent. Good afternoon.

WESLEY SIME: My name is Dr. Wesley Sime, W-e-s-l-e-y, Sime, S-i-m-e. I'm a licensed psychologist and a former university professor at UNL. Like many of you from rural Nebraska, I grew up on a farm, wherein I had a healthy respect for hard work and honest behavior. We are here talking specifically about sexual abuse as it may occur between teachers and their students, perhaps the most, most egregious of such sexual crimes. I have personally assessed and treated hundreds of victims of various different kinds of sexual abuse sometime during their lives, either as innocent children, young adolescents, or adults. And in almost all cases, the effects of such travesties are lifelong tragedies for the victims. Self-harm and suicide are common outcomes among the victims. Their lives are routinely damaged beyond repair, and years of therapy and untold expenses are often accrued, and many victims never consummate healthy personal relationships or satisfying careers. There is no question that sexual abuse, especially among underage victims, is immoral and illegal. Unfortunately, far too many perpetrators are not prosecuted or held accountable, and that just blows my mind. I'm speaking about this issue both professionally, as a psychologist, but also from a personal standpoint. Both my mother and my 2 sisters were molested and possibly raped at the age of 14, 15, 16. I have to say possibly raped, because the secret was held by the victims in my family for decades. My mother went to her grave maintaining this secret, and I only found out about it through my mother's best friend, to whom she did share the gruesome details. And there were other extended family problems caused by this sexual trauma, including substance abuse. Now, I do not fully understand the

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legislative bylaws and so on, but the prosecution of offenders is so difficult. In my experience, I'm outraged by what I have seen. And in this room, I'm sure you will see victims or families of victim standing behind me. I'm hoping that you will do the right thing in passing legislation that makes this kind of act go away to some extent. I'm also very concerned when I hear what Vince mentioned a moment ago, and what you address in your bill about on school property. None, none of the violations I'm talking about or I've seen have occurred on school property. Why is it limited to school property? Thank you for your attention.

BOSN: Questions for this testifier? Seeing none, thank you for being here. Next proponent. Any other proponents? Now we'll move to opponents. Anyone here in opposition? Oh, OK. Come on up.

HEATHER SCHMIDT: Sorry.

BOSN: Good afternoon.

HEATHER SCHMIDT: Hello.

BOSN: Welcome.

HEATHER SCHMIDT: Thank you. My name is Heather Schmidt, H-e-a-t-h-e-r S-c-h-m-i-d-t. I am a proponent of LB156, because I believe we all want to do everything we can to keep kids safe. I understand and appreciate the concern that the taxpayer-able-- taxpayer would be liable for a crime they didn't commit, and as a whole, that doesn't seem fair. But that being said, there has to be a mechanism to hold enablers accountable. Amos Guiora, SJ Quinney College of Law, the University of Utah, who directs the Bystander Initiative, defines an enabler as not a coconspirator or an accomplice because they do not demonstrate the required intent. Conspiracy and accomplice liability are criminal statutes that require the actor to take actions and to have the mens rea of purpose, a specific intent that the crime be committed. Similarly, an enabler cannot be classified as an aider-abettor under existing criminal codes. For that reason, as explained below, the crime of enabling cannot be rolled into an existing aspect of a criminal code. The following language is suggested as a means of criminalizing the enabler, reflecting a crime separate from aiding-abetting, co-conspirator, or accomplice liability. The enabler does not demonstrate the level of criminality

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required by those 3 specific crimes. For that reason, there is a need to legislate a distinct crime, the crime of enabling. The following language seeks to provide legislators a path forward regarding criminalizing enablers. (1) The criminal enabler is an individual able to reasonably know another individual has been harmed and/or is likely to be harmed, yet fails to act to minimize the harm to the individual. (2) An enabler is criminally responsible for (a) failing to alert the appropriate authorities of the known perpetrators crimes, and/or (b) failing to remove or cause the removal of the known perpetrator from a position that he or she is likely to commit a crime, and/or (c) placing the perpetrator in a likely position to commit the crime. Please vote this out of committee so that the entire Legislature has the opportunity to debate what an effective mechanism might be.

BOSN: Thank you. Any questions for this testifier? Seeing none, thank you for being here.

HEATHER SCHMIDT: Thank you.

BOSN: Are there other proponents?

***TANYA ENCALADA CRUZ:** I am in support of this bill.

BOSN: All right. We will move to opponents. Anyone here in opposition to LB156? Welcome.

CAMERON GUENZEL: Chairwoman Bosn and members of the committee, my name is Cameron Guenzel. I'm a practicing attorney testifying on the behalf of the Nebraska Association of Trial Attorneys. I am testifying against this bill because it does not go far enough. This bill carves out a small exception for sexual assault of schoolkids. To be sure, that's absolutely needed. But rather than focusing on the exception, we need to reevaluate the overall rule set forth in the Moser and Joshua cases. The rule makes no sense. If a public school hires a bus driver knows-- knowing he's a drunk and he drunkenly injures kids, there's a claim. If the school hires a driver knowing he's prone to violence and the driver assaults a kid, there's no claim. Why? In other areas of immunity you look at it, it's the willful or intentional care that's not protected. In Senator Hallstrom's LB241 cybersecurity bill, that protects certain entities from civil litigation, unless they engage in willful, wanton, or gross misconduct. But for some reason, when it's the government, the worse

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the behavior, the more the protection. Now, last year, some suggested that repealing Moser legislatively would indemnify bad actors, but the opposite is true. The current law protects bad actors. Under the current law, we cannot sue employees who were engaged in the course and scope of their employment unless the tort claim law allows us to. That's what 13-902 says. So when, for example, a special needs teacher abuses her students as just was revealed in Lincoln, we cannot sue-- you cannot sue that teacher. It's not just that you can't sue the school, you also can't sue the teacher. Lastly, I want to speak somewhat unusually here to the conservatives on the committee. I would suggest that the citizens who voted for you don't support the rule behind Moser and Joshua. I know this because I am a conservative Republican. I'm a conceal carry permit holder. I've got Choose Life plates on the back of my 12-passenger van, and I don't think I've voted for a Democrat since I was a wide-eyed college kid voting for Obama in 2008. And my circles are all filled with the same types of people, and I've asked them about this. I know. I'm really fun at parties. But when I tell them you can't sue a school for an intentional tort, their-- you know what their reaction is? They don't believe me. They say that can't possibly be the case. And when I tell them that really is the case, their response is, that's absurd. Not one of them has said, well, it's a good thing we're keeping taxes low. It never had occurred to them that this is a conservative versus a Democrat type issue. This is simple justice. So, I oppose this bill because it carves a small exception into a rule that should be done away with in its entirety. If there's any questions, I'm happy to answer them.

BOSN: Thank you. Any questions for this testifier? Senator DeBoer.

DeBOER: Thank you. So, you could not sue the teacher for an act of sexual assault if they were acting as a teacher at the time they did it. Wouldn't there-- I mean, is there ever a time when a sexual assault is acting like a teacher is supposed to or in the scope of duty--

CAMERON GUENZEL: Well--

DeBOER: --of the teacher?

CAMERON GUENZEL: So, for example, one easy example is the one that I mentioned. So that-- the-- according to the news reports, the special

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needs teacher, special education teacher was abusing children, allegedly, as part of her discipline in the classroom. That clearly would not, would not be, would not be allowed outside of the Political Subdivision Tort Claims Act. And if, for example, we tried to sue her 2 years after, without ever having done a notice of the political subdivision tort claim, that's a-- that clearly would be dismissed by the court.

DeBOER: So I couldn't sue her and say hitting my child is not in the scope or course of your duty?

CAMERON GUENZEL: Yeah. The, the law is really clear that that's the case. So, for example, right now, I represent-- and to take this out of that particular situation, I represent an individual who was hit by a police officer who ran a red light. That police-- running the red light was not part of that officer's duties that day, but the police officer was driving his car. And that is clearly within the course, course and scope. And we are limited in that claim to the Political Subdivision Tort Claims Act. We're limited to \$1 million. We're limited to a, to a 1-year notice claim period. We're limited to a trial in front of a judge, not because that officer was doing something in the line of duty which directly harmed my client, but because the officer was generally performing his tasks as an employee of the Lincoln Police Department and injured my client.

DeBOER: So in that case, we've made an exception that said, you can sue for negligent driving of a police officer, but you're saying, but you have to follow all the sort of special guardrails, which are you have to file the notice, you have to do it within the statute of limitations, et cetera, et cetera, et cetera, and there are caps.

CAMERON GUENZEL: That is correct.

DeBOER: So you're saying that since we know the case law in that area of law, we know the case law in this area of law says that a-- if a teacher is generally within their scope of their duties, even if they do something egregious to a child, they will be within the State Tort Claims Act, and therefore, you cannot sue them.

CAMERON GUENZEL: That is certainly how I and every other practitioner I know interprets that law. Correct. And you can bet that if, if we filed that, that would be the defense that the schools would argue is

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that, that-- if we filed it 3 years after the event, the schools would certainly argue, this is covered by 13-910 or the Political Subdivision Tort Claims Act. You didn't follow these things. And even if you had, it was barred by 13-910.

DeBOER: So if a child is abused by their teacher, there is no recourse for that child.

CAMERON GUENZEL: There's clearly no recourse. I have several cases where I have had to tell a child who was repeatedly raped by the teacher, we have absolutely no recourse for you in civil law.

DeBOER: And now, what your opposition is, is that it's not just sexual assault. It could be another assault.

CAMERON GUENZEL: I have had other cases where a child was nonsexually assaulted. I've had case--

DeBOER: Thrown across the room.

CAMERON GUENZEL: Beat up, traumatic brain injury, things like that. I've had cases where we argued it was sexual assault for purposes of 1983, which I'm going to talk about on the next bill, and the, the school argued that it wasn't sexual. And so, yeah. There's certainly cases where, where this bill does not cover it. Kids are-- kids can be injured. Kids are being injured and-- through negligence, where this bill would not provide any recourse for that, as well.

DeBOER: So the intentional torts of employees of the school district, because they are employees, would be within the scope and course, and therefore, not actionable, regardless of the nature of those intentional torts.

CAMERON GUENZEL: It is conceivable there would be situations in which that would not be the case. But in the great majority of cases that I have reviewed, that would certainly be the case. In my situation, we looked very closely at this and determined that the rape, which occurred in the classroom after, after that class was over, that that was sufficiently close, so there was no remedy against that teacher.

DeBOER: So you can't get at the perpetrator and you can't get at the school, who was negligent in allowing that perpetrator to be in that position.

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CAMERON GUENZEL: Correct.

DeBOER: There's just no justice for those children.

CAMERON GUENZEL: It was a very hard thing to explain to those parents, yes, who were not out looking for a whole bunch of money or to make money. They were looking for justice. They were looking for help with medical care. They were looking for help paying for counseling, things like that.

DeBOER: OK, let's talk about 1983 then, since apparently I may not have understood it entirely in the last go at this particular question. 1983. Can you get 1983 relief for simple negligence?

CAMERON GUENZEL: So it's, it's a-- a lot of folks have talked about 1983. And I, I would respectfully suggest that almost everyone gets at least part of this wrong.

DeBOER: OK.

CAMERON GUENZEL: Because this is not a-- just a higher standard.

DeBOER: OK.

CAMERON GUENZEL: 1983 is-- what-- it, it really breaks it down into two different types of things. But what we usually talk about with 1983, is it is a discrimination statute. Now, 1983, a lot of creative attorneys, in trying to help horribly injured, victimized people have tried to shoehorn claims into a discrimination act under 1983, under the idea that if the discrimination is sufficient, it can constitute discrimination. But it's not-- so 1983 is an, is an entirely different deal. So I, I litigated a 1983 case against Lincoln Public Schools, where the allegation was that my client was sexually assaulted in class during the class period. Multiple students attacked him. There-- sexual assault. People held my client down and forced their genitals against his face. We brought that claim under 1983 because clearly, post-Moser, can't bring a PSTCA claim. The Lincoln Public Schools filed-- and I have a copy-- I have 12 copies of the brief here. They filed a motion to dismiss because-- explaining why, explaining why my claim failed to meet 1983. And if there's any question about this, I would ask-- take a look and see what LPS's own attorney said. Because in-- for a normal 1983, what there has to be, is there really has to be harassment that's so severe and pervasive that it deprives the

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victims of access to educational opportunities. The school also must be deliberately indifferent. And that's where a lot of times, people say, well, it's just a higher standard, deliberate indifference. It's not just that. It also has to be so pervasive that it deprives the victims of access to educational opportunities. When the U.S. Supreme Court talked about this, they said, one good example of this is boys who don't allow girls into a computer lab on campus. And that would-- that's a bad thing, right? But the law to protect females or, you know, people from being able to access a computer lab, that's not the kind of law that we use to help victims of rape. And so in that, in that brief, LPS does a very good job of going through and talking about why it wasn't sufficient that, that, that, that there was not going to be a sufficient claim there, because in my case, what-- one of the things LPS argued is that my client wasn't discriminated on the basis of his gender. It wasn't his gender that made the students press their genitals against his face. And you know what? LPS is probably right about that. I don't, I don't dispute that. But that shows how 1983 doesn't provide a claim for this. The other aspect of 1983 is it was a due process claim. And that's way further. In, in these contexts, a due process claim requires proof that the school board, not even the-- not the teacher, not even the principal, not even the superintendent, but the school board established an official policy or custom, which was the moving cause of the injury. And so I can't even imagine a scenario in which the school board says, you know, hey, we're just going to-- we're going to make it a rule that we're gonna hire sex offenders for all of our classrooms. Maybe that would do it. Absent that, a due process claim is never going to apply in this case. Sorry for going on so long about 1983.

DeBOER: No. I mean, that was-- I think that's important that there's sort of two arcs, the one, the due process one.

CAMERON GUENZEL: Offic--

DeBOER: You, you have to have an official policy.

CAMERON GUENZEL: Official policy of the school board-- not, not, not practice of the teacher, not practice of the superintendent or the principal, but official policy decision of the school board. Yes.

DeBOER: OK, so that's--

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CAMERON GUENZEL: Never going to happen.

DeBOER: That's pretty extreme. You're probably not going to find that in a sexual assault of a child situation.

CAMERON GUENZEL: Correct.

DeBOER: Because they're not going to make an official policy to sexually assault children.

CAMERON GUENZEL: Correct.

DeBOER: We would hope. OK. So then the other one is the discrimination policy, and it has to interfere with your right to education. Is that the language you use?

CAMERON GUENZEL: So it's sexual-- in, in this situation it would be sexual harassment, sexual assault, which can constitute sexual-- can, can constitute sexual harassment that is based on the victim's sex that is so pervasive and extreme that it provide-- deprives the victim of access to educational opportunities and--

DeBOER: How do you, how do you prove that a sexual assault is based on the person's sex?

CAMERON GUENZEL: Well, I-- it's a real challenge, right? I mean, that's why, that's why I call this a shoehorn, because that wasn't the purpose of this-- of the 1983. That, that wasn't the purpose of the Title IX for 1983. It's to allow it to make sure that girls have access to computer labs and boys have access to lacrosse teams and whatever the case, and they're not prevented on the basis of their gender. It's not to give a remedy for someone who's been sexually assaulted. And so, it's really, really hard. And the case-- I can go on and on about the cases. There was a case where a child was stripped naked and pictures were taken of him. And this-- the court found that that was not sufficient to give rise to a 1983, because that was not clearly sexual, and it wasn't because of his gender.

DeBOER: OK. So 1983 doesn't seem to apply. So what we've got here, you're opposing because you say it is too narrow. I assume we'll get to this on the next bill, but you would rather just take out assaults in general or, or what would you-- what's the nature of your opposition?

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CAMERON GUENZEL: So-- and, and I would, I would characterize your earlier descript-- description of how this goes as this. So the Political Subdivision Tort Claims Act allows claims against the government for any scenario in which you would have a claim against a private individual. Then 13-910 provides a bunch of areas where you do not have claims, and one of those is for an intentional-- is for intentional tort assault and battery. And that is where it just does not make sense. I've never heard a rational explanation for why that was ever initiated in the first place. Everyone-- it was there before any of us were born, and there's no good description for why that ought to be-- why the most heinous behavior, the intentional harm, ought to be the thing that is immunized, whereas when somebody backs up their car and doesn't see that-- see, see somebody, you can have a claim there. But if you aim for the kid, now you can't have a claim.

DeBOER: Thank you.

BOSN: Senator Hallstrom.

HALLSTROM: You can't bring-- any of these cases settle, or you just can't bring the case?

CAMERON GUENZEL: So you can have cases that settle. And I'm a lawyer. Part of my job is coming up with creative arguments. But I will tell you, the cases that I have had, they settle for amounts that are nearly offensive, given the amounts. But if pushed far enough-- so there's something called the nuisance value, because even if you bring a claim and somebody-- they know they're going to get a motion dismissed. Sometimes, places are willing to throw a couple thousand dollars at you, and I don't exaggerate when I say a couple thousand dollars. So-- but, but if you've got a case-- if I brought a, if I brought a Tort Claim Act for something-- for sexual assault of a kid in a classroom, under the current law, they're not gonna pay me a penny for that.

HALLSTROM: Thank you.

BOSN: Is this case still pending, just out of curiosity?

CAMERON GUENZEL: No, that case is not.

BOSN: So, is it-- did it resolve informally?

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CAMERON GUENZEL: That case was resolved. Yes.

BOSN: And is it at the point where you can discuss that or no?

CAMERON GUENZEL: In terms of the dollar figure?

BOSN: Or any part-- portion.

CAMERON GUENZEL: Yes, I can discuss--

BOSN: I guess--

CAMERON GUENZEL: --the case. Absolutely. Yes.

BOSN: What is the doll-- what was the dollar figure?

CAMERON GUENZEL: I don't recall off the top of my head, but it's a very small dollar figure. It was essentially a nuisance value-type resolution.

BOSN: I don't know what that means, and I'm sorry.

CAMERON GUENZEL: I'm sorry. A nuisance value, meaning it was an amount less than what they would have had to pay their attorney to continue through the next couple stages of the case.

BOSN: OK. So is that less than \$20,000?

CAMERON GUENZEL: I think it would-- yes. Yes.

BOSN: OK. And I assume your position is that this couldn't have proceeded under 1983. They didn't want to continue to gamble. So there was a-- ultimately, a plea negotiation, mode-- you know.

CAMERON GUENZEL: There was a, a settlement. Ultimately, part of what I argued is, hey, we're going to get this in front of the Supreme Court, and the Supreme Court is going to give us an opinion that's going to be really, really clear about this 1983 thing, and your lobbyists aren't going to want that. So maybe we settle and that doesn't happen, which I don't like doing from-- sitting right here, I'd rather have a Supreme Court case to provide you all, but my client's interests, a little bit of money is better than zero. So.

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BOSN: Thank you. That answers my question, I think, I think. Go ahead. Senator Storer.

STORER: So I'm going to take it back down to a really elementary question because I'm not-- I want to be certain that I understand what, what we've heard here. So just a scenario, math teacher assaults the 12-year-old after school in the classroom-- sexually assaults.

CAMERON GUENZEL: Yes.

STORER: You're telling me that they cannot be held accountable, whether it be criminally or civilly, or just civilly?

CAMERON GUENZEL: I'm a civil attorney. I know nothing about criminal law. So.

STORER: OK. So criminally, they can be charged, I presume. And I will probably get clarification, but--

CAMERON GUENZEL: I will say this. Criminally, they can be charged. And sometimes, prosecutors talk about, as Senator Bosn would know, about things like restitution. From my status as a personal injury attorney, where I have clients who see restitution, it's never even remotely an adequate type thing. So, just throwing out that possibility that someone might say, well, they can get restitution in the criminal case. That is never a, a sufficient-- that, that virtually never happens anyway, and it's never anything significant. So in terms of the criminal case, I presume that's the case, yes, that, that obviously, they could be charged criminally. But I cannot sue that individual to obtain civil justice for the victim.

STORER: Thank you.

BOSN: My other question on this-- I remembered after I deferred. I have read this. I'm somewhat familiar. Is it your position that the negligence that occurred in this case would not rise to the level of gross negligence?

CAMERON GUENZEL: Well, that's a really interesting question. So gross negligence has been described as negligence that's unconscionable. I think it was unconscionable for this to occur. When-- so the reason I was able to bring the 1983 claim, at least have, have a colorable argument to it, was that there had been several of these episodes and

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that the teacher and the principal knew about these episodes and still did nothing to prevent it. And they got worse, and now my client was harmed. So in a normal scenario, in a normal negligence situation, you don't always need multiples. What you need is the teacher knows that he's got kids who are challenging in the class, knows that there's this propensity, and the teacher leaves the room or does whatever the heck the teacher was doing such that this was able to happen. I mean, you should not be able to have a several minute-long situation where kids are, you know, gathering around each other and causing this kind of thing to, to begin with. So does this rise to the level of gross negligence? I could certainly make the argument that it does. But a lot of times when we talk about gross negligence, we talk about multiple events. And as a advocate for victims, I would say one rape is sufficient.

BOSN: And I'm not arguing with you, but you would agree there isn't a requirement in gross negligence for multiple events. And that just happens to be why I'm using that example. In this particular case, one, the, the principal had told the mother that the child would be removed from that class. Not only did that not happen, but the second sexual assault occurred in that same class between the same two individuals, which, to me, is gross negligence.

CAMERON GUENZEL: Yes. I, I, I think that would very-- I'm sorry. Yes. I think that would very likely be gross negligence. And, and in this scenario, gross negligence in 1983 isn't a particular element. But what is an element is the willful disregard--

BOSN: Sure.

CAMERON GUENZEL: --and, and/or the deliberate indifference. And so, that's what we cited to, to create the deliberate indifference. Yes.

BOSN: Any other questions? Thank you very much for being here.

CAMERON GUENZEL: Thank you.

BOSN: Next opponent. Welcome.

CHUCK WILBRAND: Good afternoon. My name is Chuck Wilbrand, C-h-u-c-k W-i-l-b-r-a-n-d. I'm a partner with the Knudsen Law Firm here in Lincoln, and I represent school districts throughout the state and I'm here on behalf of ALICAP, A-L-I-C-A-P. I oppose LB156. ALICAP is a

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public entity school pool-- insurance pool, with over 200 public school districts in-- that are members. They provide training courses for these schools to take. And as-- throughout this year, they have completed over 145,000 trainings. And on top-- the top 10 include trainings on child abuse, sexual misconduct, sexual assault, and mandatory reporting. That's the focus where these-- where ALICAP and these school districts are focusing on, is providing the adequate training to their employees, to the teachers, so that these assaults do not occur. That's the aim, is that these don't ex-- these don't happen, and that's what these-- this training is doing. LB156 will start to begin the dissolution of sovereign immunity. You start adding exceptions to exceptions-- you just heard from another attorney who wants the entire assault and battery exception removed or the intentional tort exception gone. And what you need to be focusing on is the bad actor-- the bad actors, the one that caused this, and that's what the trainings are supposed to be addressing. There are availabilities for other remedies through federal law. 1983, we've had discussion. Title IX exists, and I'm happy to answer questions about that after my testimony here, about how that works. But those are federal remedies, and they're different from a state remedy. The specific issues with LB156, we've already touched on a little bit. On school grounds, yeah, that could occur at any time of day. At night, I could see a foreseeable way that that claim gets brought up if a sexual assault happens on school grounds. How does that work? Well, they say they left the fence unlocked. That's how people got on the property, and then the sexual assault occurred. I would not be surprised to see that type of claim. A school-sponsored activity-- large football game, someone takes another individual, child, and then sexually assaults the person during a, a football game. They are going to bring a lawsuit against the school district for having that happen. I know that. I've seen them. I've seen the arguments and I've defended the schools on those, and I've settled cases regarding those situations in the past. So I ask the Judiciary Committee not to advance this bill. Yes.

BOSN: Questions for the committee? Senator-- or for this testifier?
Senator DeBoer.

DeBOER: Thank you. So you're an insurance pool of money, or you-- ALICAP is an insurance pool of money for the school districts. Is that-- did I understand that right?

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CHUCK WILBRAND: They do provide defense for school districts. Yes.

DeBOER: OK. And you say that one of the things that they do is they provide training.

CHUCK WILBRAND: They also provide training. Yes.

DeBOER: So they provide training. And you said that that is intended to help prevent these assaults.

CHUCK WILBRAND: And it helps to accomplish a lot of things. It's not all just sexual assault-based training, but other training for school activities, as well.

DeBOER: Do you think you can train people out of committing intentional torts?

CHUCK WILBRAND: Could you repeat that again?

DeBOER: Do you think you can train people out of committing intentional torts?

CHUCK WILBRAND: No. I, I, I mean, if the criminal is going to do the criminal action, they're going to do the criminal action. But if-- what this bill is looking at doing is to prevent the criminal action from happening. Right? Well, it's supposed to be making the school district liable if the [INAUDIBLE].

DeBOER: School district liable for their bad actions in allowing intentional torts. That's what its intent is. Its intent is to make the school district reform their behaviors or be liable for their breach of their duty for intentional torts committed by folks on their school grounds.

CHUCK WILBRAND: That's what the training is to give them, is to prevent--

DeBOER: How does a training prevent someone from, from doing an intentional tort?

CAMERON GUENZEL: Well--

DeBOER: That's the problem.

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CHUCK WILBRAND: --you're saying they breached their duty, right?

DeBOER: Their duty would be to provide a safe learning environment to these students. Right?

CHUCK WILBRAND: Right.

DeBOER: So if what you're saying is that their-- that the training is to help them from breaching their duty, then that is sort of a different thing than preventing the assaults, in terms of their employees.

CHUCK WILBRAND: I, I, I fail to see the difference here because if the training is to help them be better at implementing policies--

DeBOER: So yes.

CHUCK WILBRAND: --following-- you know, doing better background checks or whatever that would be, that is where the training comes in.

DeBOER: So that'd be great. So those parts-- so that part is fine, right, like, training them so that they, they don't negligently hire, they don't negligently leave the room where, you know, children can assault other children and that sort of thing. But it's not going to affect whether or not an intentional tort is, you know, done by the individual who does the intentional tort, so they're still just as likely-- so now we have to do-- those trainings may be helpful in preventing the school from negligently hiring or et cetera, right?

CHUCK WILBRAND: Well, it could be a lot of things. Because again, this bill is not just aimed at employees. It's also aimed-- it also would allow third party, who the school district has no control over.

DeBOER: Sure. It's both third parties and employees.

CHUCK WILBRAND: Correct. So that could be the outside pub-- people from the public, other students.

DeBOER: Sure. But you'd still have to show some duty of care that the school owed and that the breach of that duty of care caused the, the harm.

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CHUCK WILBRAND: Right. And I would argue that the cause of the harm is the criminal that decided to do the sexual assault.

DeBOER: And that may be, in many, many cases. But if the school did something that was negligent, then they are also a cause of the harm. There can be more than one cause of the harm, right?

CHUCK WILBRAND: Well, I mean, it depends on how you're analyzing on the proximate causation theory. And that's where some of this is a sticking point and would have to be litigated.

DeBOER: Sure, it would have to be litigated, but can you conceive of an instance in which there was the intentional tortfeasor who was harming the child? Clearly they have done some harm. But then there is an additional harm which was done by allowing the intentional tortfeasor to have access.

CHUCK WILBRAND: Well, and that's where you get into, with the Title IX and 1983, with, you know, the-- we've heard the term deliberate indifference, and that's when they have act-- in Title IX, you have actual knowledge or actual notice that this sexual assault occurs.

DeBOER: But if I don't act with deliberate indifference, but I act with negligence, negligent indifference or negligent behavior-- if I don't have locks on my school doors, if I let my school district bathroom double as a truck stop, whatever. That was a crazy example, but, you know, people are coming in. So now, I've got people coming in and out. I know this is a problem. We shouldn't have little kindergartners in the same bathroom with the random public people who can just come in and out of my school district anytime they want. I can behave negligently and still cause a harm. Otherwise, what's the whole point of the negligence law? I mean, there is a reason for negligence law. Right?

CHUCK WILBRAND: Yes.

DeBOER: OK.

CHUCK WILBRAND: And negligence law is different than a deliberate indifference, 1983 or Title IX case.

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DeBOER: Yes. Exactly, it is. So if a school district is negligent in protecting my child, they don't do so in a way that is reasonable standard of care, then they've done something wrong. Yes?

CHUCK WILBRAND: In which scenario?

DeBOER: Any scenario in which a school district does not reasonably provide protection for my child in a reasonable duty of care, whatever it is.

CHUCK WILBRAND: So are you saying that the kid was sexually assault for this purposes? Because--

DeBOER: Right now, I'm just saying can a school district be negligent towards the care of my child?

CHUCK WILBRAND: Sure. If the bus driver was driving negligently, yep, you could sue the school district for that.

DeBOER: OK. But that's not the only way in which a school district-- they can't-- the only negligence is not just bus drivers.

CHUCK WILBRAND: Correct. There, there are other ways to be negligent.

DeBOER: If I don't have a, if I don't have a tornado shelter and there's a tornado that comes through because we get them here in Omaha all the time, I'm sure I'm violating a bunch of things, but probably that would be negligent, too. I didn't try to make the tornado hurt the children, but I didn't provide safety for them that a reasonable person in Nebraska would do, provide a tornado shelter.

CHUCK WILBRAND: Sure, or yeah, something along those lines, or your fire alarms didn't work or something like that. There could be negligence there.

DeBOER: OK.

CAMERON GUENZEL: Could be.

DeBOER: So there's, there's possibilities for negligence for a school district for bad actions that they do. Now, we know that in civil law, outside of the area of state tort claims, a private company can negligently-- let's take a private school. I could sue a private

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school because my child was assaulted when their teacher left the room for a half an hour, knowing that there was a whole bunch of people who were bullying my kid. I could sue that private school. Yes?

CHUCK WILBRAND: Correct. You could sue them. Whether you get a result, I don't know about that.

DeBOER: I don't know, either. It would depend on if the jury found that this was-- rose to the level of negligence on my part, but they could.

CAMERON GUENZEL: You could sue them. Yes.

DeBOER: And the jury might find that.

CAMERON GUENZEL: Correct.

DeBOER: OK. Same scenario. Now it's a public school. Can't sue him. Right?

CAMERON GUENZEL: If there was an assault in the classroom by students?

DeBOER: Yes.

CAMERON GUENZEL: Under the Political Subdivision Tort Claims Act, you could bring the lawsuit. I mean, it's-- anybody can file a lawsuit.

DeBOER: OK. But--

CAMERON GUENZEL: But you--

DeBOER: There is-- you would fail to state a claim upon which relief can be granted. You would get it dismissed.

CAMERON GUENZEL: More likely that you'd lack subject matter jurisdiction under 12(b)(1), but 12(b)(1) and 12(b)(6) would be the motion to dismiss.

DeBOER: OK, 12(b)(6). It's been a long time since I've been in law school, but you'd get it dismissed.

CAMERON GUENZEL: That would be the attempt by the--

DeBOER: You would get it dismissed.

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CAMERON GUENZEL: I would file it.

DeBOER: Can you-- you would file this dismissal. OK. The point is that there is a difference in the law right now between a private school and a public school. Can you at least go that far and admit that?

CHUCK WILBRAND: There, there is. There's also a lot of other differences between a public school district and a private school.

DeBOER: Yes, and usually, the public schools are held to a higher standard, and the private schools, because of their private nature, are held to a lower standard. But in this case, it's the reverse, isn't it?

CHUCK WILBRAND: For everything or just on the--

DeBOER: On, on this particular issue that we're talking about.

CHUCK WILBRAND: Private schools do not have sovereign immunity. Correct.

DeBOER: So they can be sued for their negligent actions, which results in sexual assaults of children that they have breached their duty of care to.

CHUCK WILBRAND: A private school could-- a lawsuit could be filed against a private school.

DeBOER: And would be more likely to succeed against a private school than a public school for the exact same thing. I mean--

CHUCK WILBRAND: I don't know the-- I don't know how the private school-- what, what-- in that scenario. But the lawsuit would not have a motion to dismiss.

DeBOER: It would not be barred by the State Tort Claims Act. In a public school, it would. I don't, I don't know why we're arguing about this.

CHUCK WILBRAND: No, it's the Political Subdivision Tort Claims Act.

DeBOER: Sorry.

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CHUCK WILBRAND: But no, it-- there's not sovereign immunity for private schools.

DeBOER: And so, a private school could be and a public school couldn't, and, you know, there's no reason to argue further. Thank you for your testimony.

BOSN: Any other questions? Am I correct that part of that argument-- and since we've rehashed funding of private schools ad nauseum for the last two years, I'm thinking of all the ads that I've heard. Public schools can't deny a student.

CHUCK WILBRAND: Correct.

BOSN: And so if a private school has an individual who they know has performed these kinds of bad behaviors, they can kick the student out.

CHUCK WILBRAND: That's my understanding.

BOSN: And the pri-- the public school is, quite frankly, precluded from doing so.

CHUCK WILBRAND: They have to accept the children in their district.

BOSN: And so is the argument then that these school-- public schools would essentially be forced to have potentially as many different schools as there are students that they would have potentially no concerns about?

CHUCK WILBRAND: There is that potential. I mean, public schools can kick students out of their, their schools, but there's a long process to go through that.

BOSN: Well, but they still have to provide them some sort of an alternative education.

CHUCK WILBRAND: Correct.

BOSN: OK.

CHUCK WILBRAND: Yes.

BOSN: I mean, we have expelled student schools. We have behavioral student schools. We have--

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CHUCK WILBRAND: Correct. The, the child that can't go without an education.

BOSN: OK. Can you tell me, am I correct that it's a negligence standard, and then a little bit above that is deliberate indifference, and then above that is gross negligence, or do I have those two reversed?

CHUCK WILBRAND: Sometimes, people put gross negligence and deliberate indifference on, on the same level. It just kind of depends on which, which cases you're re-- re-- reviewing and what district you're in.

BOSN: Well, that doesn't help me, but I appreciate the answer. OK. Senator McKinney.

McKINNEY: Thank you. But isn't it correct that public schools can deny kids? For example, if they option enroll and have an IEP or special-- like a special need, they can be denied. Correct?

CHUCK WILBRAND: I don't believe a school district can deny a child on special needs. The special needs would need to be provided in some way.

McKINNEY: What about an IEP?

CHUCK WILBRAND: Well, when I-- again, my understanding is with the IEP, the school district and this isn't-- further into my practice, I have a working knowledge of it, but the IEP needs to be provided at some-- by some, whether that is going to be through the school district or the ESU or some other source, the school district has to. Even kids that go to private schools--

McKINNEY: So, so it's possible, though.

CHUCK WILBRAND: That they could deny access to a student with the IEP if they can't meet their needs. It might be possible, but I'm not 100% sure on that. That's outside of my kind of scope of practice.

McKINNEY: OK. And you mentioned, you know, not monitoring a, a kid at a football game, getting assaulted because somebody didn't monitor them. But even just-- I've been to football games. There's staff on duty that are--

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CHUCK WILBRAND: Correct.

McKINNEY: --that are checking ba-- like, standing by bathrooms, checking like-- so isn't there a breach of duty that has to occur there?

CHUCK WILBRAND: The-- for the-- they're gonna argue that you didn't have enough employees there. You weren't supervising this area well enough. You should have done something to prevent this assault during the activity.

McKINNEY: Isn't leaving a fence unlocked a breach of duty?

CHUCK WILBRAND: During a football game or--

McKINNEY: No, no, no.

CHUCK WILBRAND: OK.

McKINNEY: Just in another scenario.

CHUCK WILBRAND: So at night, you know, if it's-- but leaving the fence unlocked. Did that cause the sexual assault?

McKINNEY: No.

CHUCK WILBRAND: I mean, they're going to bring that lawsuit. That's how they're going to argue it. If a-- if an ind-- I can almost guarantee you that if an individual is assaulted on school grounds at nighttime, there's going to be-- they'll sue the school district because it happened on school grounds.

McKINNEY: Do you have a duty to secure a school?

CHUCK WILBRAND: You do. I think so. But again, did the su-- failure to secure lead to the sexual assault? That's going to be-- that's how-- that's what is going to be tried.

McKINNEY: But, but if not for the, the, the fence being unlocked-- I mean, it's a-- if you-- it's going to be an argument both ways. I'm just saying.

CHUCK WILBRAND: What if they climbed the fence? The fence is locked.

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McKINNEY: But they didn't--

CHUCK WILBRAND: Now they, now they climbed it.

McKINNEY: But they didn't climb it in the scenario.

CHUCK WILBRAND: So now, now there's-- but those are the scenarios we're talking about. When it's on school grounds, there's no limitation to that.

McKINNEY: I think there is. I think it's clearly a difference between leaving a gate unlocked and somebody hopping the fence.

CHUCK WILBRAND: Well, I'm saying as the statute's written, there's no-- there, there-- there's no-- that's not delineated out.

McKINNEY: I mean, it is, but you making this argument. I think there's a difference. But like, you-- on school grounds, we could say it's no delineation, but common sense and common knowledge and common people could clearly sit here and say, a fence being unlocked and, and hopping a fence is two differences. And you don't-- it-- as much as you say it's not clear, I don't think a lawyer is going to bring a case if some kids jump a fence versus you-- the school district leaving a door, a gate unlocked. I think that--

CHUCK WILBRAND: I think I think we'd have to respectfully disagree on that, but that's fine.

McKINNEY: I think that's a difference. Thank you.

BOSN: Thank you very much for being here.

CHUCK WILBRAND: Thank you.

BOSN: Next opponent. Welcome.

ELAINE MENZEL: Thank you. Chair Bosn and members of the Judiciary Committee, for the record, my name, my name is Elaine Menzel. That's E-l-a-i-n-e M-e-n-z-e-l, here today on behalf of the Nebraska Association of County Officials, the Nebraska County Attorneys Association, and the Nebraska Sheriffs Association in opposition to LB156. And you're likely to ask why counties are here testifying on a bill that appears to be written towards school settings only. Pursuant

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to Title 92, Chapter 18, within the Department of Education Rules and Regulations, counties do have a responsibility for some school settings, and that's related to juvenile detention facilities. There are currently 4 juvenile facilities in Nebraska, one in Omaha, one in Lincoln, one in Sarpy County, and also one in Madison County, for your information. And while the overall fiscal impact if this bill were implemented is unknown, and that's unexpected to impact many situations. However, even if there were one claim filed in some situations, it could be significant. Earlier, it was referenced what the dollar limitations are that are applicable in the Political Subdivision Tort Claims Act, and that is provided in Chapter 13, Section 922. And it's \$1 million for a claim and \$5 million per occurrence. And as was also mentioned, the State Tort Claims Act does not have a cap at this point. It had previously been mentioned that there's no juries that are actually applicable to the Tort Claims Act. And then, just a historical perspective. The intentional tort-- yeah, intentional tort exemption has been in existence since 1969, when the Tort Claims Acts were implemented or enacted, and they were enacted following an interim study resolution for-- after some legislation had occur-- or after some court cases had occurred, and that type of thing. There-- by looking back at the legislative history, there is no indication of why that exemption was adopted by the Legislature. My assumption is perhaps that was as a result of the state having looked at Iowa Tort Claims Act, which does currently still have that in place at this time. With that said, I'll attempt to answer questions if you happen to have any.

BOSN: Questions for this testifier? Thank you for being here.

ELAINE MENZEL: Thank you.

BOSN: Next opponent.

BRANDY JOHNSON: Good afternoon, members of the committee, Chair Bosn. My name is Brandy Johnson. That's B-r-a-n-d-y J-o-h-n-s-o-n. I'm here today on behalf of the Nebraska Intergovernmental Risk Management Association, also known as NIRMA, N-I-R-M-A, which has among its membership 84 of the 93 counties in Nebraska. As the name suggests, we are a risk management organization. That means we are-- try to be as proactive as we can be with our members to prevent harm. We do that through training, such as things like HR matters, proper hiring practices, conducting background checks, doing proper interviews,

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reference checks, investigating complaints of misconduct, safe law enforcement and jail practices. We do this to try to prevent the bad acts. We believe these efforts are very important. And we do them, not because we are afraid of getting sued but because the incentive is there for these entities to protect those in their custody, and they have an interest in doing that. I, I worry sometimes when I come here and am in opposition to a bill like this, that it seems as if I'm being insensitive to the-- these victims who have been harmed. And I remember a time that I testified on a similar bill previously, where Senator-- I believe it was Senator DeKay asked, what can we do to prevent these-- this harm? What can we do to prevent these terrible crimes? And I responded, I don't know. And I, I think about that now. And what I should have said is, I, I have no way to eradicate these evil actors. That's something I-- that I don't know that any of us know how to do. And I know that we would all in this room like to prevent these crimes from occurring, but what I see as a concern with this bill is that it doesn't do anything to prevent the crime of child sexual assault. It's a reactive bill after an assault-- to address an assault after it's occurred. It's not a proactive effort. And what I've learned from representing counties and seeing-- reading case law, seeing assault cases is that oftentimes the, the evil-- the schools and the counties and government entities are trying to do what they can to be proactive, but the evil perpetrator is often hiding in plain sight. They're doing their best to conceal their actions, and it's not as easy as it might seem for a government or school to be able to foresee or prevent those situations. I see I have very little time left. I just want to mention the negligence standard. I think the problem with it is that it can lead to legally incorrect results. These aren't your typical negligence case, like a car crash. Those can be tragic, but these are crimes we're talking about. These are incredibly tragic circumstances, and these are cases that are going to evoke, evoke really strong emotions, where the instinct to point a finger and say, you should have done something differently, school, or you should have done something differently is going to be amplified. And that can lead to legally incorrect results under a negligence standard. I see my time is up. I'm happy to answer any questions, if I'm able.

BOSN: Questions? Senator Storer.

STORER: Thank you, Chairwoman Bosn. And thank you. I-- having served as a county commissioner, we, we were a member. And so, I just, just

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for clarification, in your specific instance, NIRMA is self-funded. I mean, it's a pooled-- so the counties are, in essence, self-funding that risk management pool. Correct?

BRANDY JOHNSON: Absolutely. I think that's a great point, Senator Storer. By statute, NIRMA is not an insurance company. We are a self-insurance risk management pool, so these are taxpayer dollars that, that fund the payment of claims. Absolutely.

STORER: So was without-- I, I think it would be without a doubt if LB156-- and there-- and I am-- there are those instances that were explained, where the county would have some overlap with the school, but there would be the need to increase the, the amount put into that risk pool in the event of the liabilities that could occur as a result of LB156.

BRANDY JOHNSON: Right. It would-- there would definitely be a budget effect, and it's difficult for a political subdivision of any kind to address that kind of unexpected, sudden expense that you can't really plan for. I don't think these situations are common, but any one instance, as you pointed out earlier, Senator, is potentially going to devastate a small-- a smaller entity. I mean, I know of counties where their entire law enforcement budget is less than \$1 million, so you think about how, how that could play out.

STORER: I know counties where it's--

BRANDY JOHNSON: And, and, and it is a trade-off.

STORER: --far less than that. Thank you.

BOSN: Senator McKinney.

McKINNEY: Thank you, Chair Bosn. Thank you. Is it fair to say your risk management activities are not a cure-all?

BRANDY JOHNSON: I don't think any-- anything is a cure-all. I don't think this, this bill is a cure-all. There are still going to be victims that don't see any redress under-- no matter which standard you're, you're using, whether it be a 1983 standard or a negligence standard. Because these actors are often hiding, there's not going to be recourse for some people, with or without this bill. And all the same, risk management efforts aren't going to prevent every instance.

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McKINNEY: So why, in your testimony, are you saying that the federal remedies strike a appropriate public policy balance then?

BRANDY JOHNSON: That's my, that's my belief, yes. Is that the federal remedies are an appropriate balance. They address the blind eye cases, the cases where there's been deliberate indifference or you've turned the other way. A lot of the scenarios that I've heard described here in testimony today would fit under that 1983 framework, to my mind. And I understand different attorneys have different experiences. We've heard from an attorney that has had a different experience than mine, but I don't see it as an insurmountable burden for attorneys to reach in advocating for their clients. I have litigated 1983 cases and I've seen them be settled, be successful. I, I do think that it does strike an appropriate balance.

McKINNEY: Is one kid one kid too many?

BRANDY JOHNSON: I-- I'm not sure how to answer that. Yes, one kid is one kid too many. But again, I would go back to this bill doesn't prevent this crime from happening.

McKINNEY: I, I understand that. But you brought up the topic that if one of these situations happened and this law passed, that it would essentially be-- like, somebody gets, gets damages or whatever, it would be more than somebody's police budget.

BRANDY JOHNSON: I'm sorry. Could you-- I, I'm not sure I heard.

McKINNEY: So you-- when you were talking to Senator Storer, you were talking about the police budget of some small cities or some, some, some small towns that-- you're, you're weighing that. But how do we weigh the impact of a sexual assault of a, of a kid, which, which could have lifetime impacts? Are we going to weigh the budget of a police over the lifetime impact of sexual assault on a kid?

BRANDY JOHNSON: I, I appreciate what you're saying, Senator McKinney. I agree that that is an incredibly diff-- difficult public policy decision that you all have to make. I respect the seats that you're in and the decisions you have to make in that regard. I'm only here to provide information to help you in that public policy analysis, if I'm able.

McKINNEY: Yeah, but you're in opposition.

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BRANDY JOHNSON: Excuse me?

McKINNEY: None-- nevermind. I'm-- thank you.

BOSN: Other questions for this testifier? Thank you for being here.
Next opponent. Good afternoon.

JEN HUXOLL: Good afternoon. Good afternoon. Senat-- Chairperson Bosn, members of the Judiciary Committee. My name is Jen Huxoll, J-e-n H-u-x-o-l-l, and I'm the civil litigation bureau chief for the Attorney General's Office. Today, I'm testifying in opposition to LB156. Hardly a day goes by without a headline regarding child pornography, sex trafficking, and child sexual assault. Our law enforcement partners, along with our schools, counties, cities, and this Legislature are all exploring tools to combine-- to combat crimes against children. These two bills, however, will not reduce crimes against children. They will simply make our friends and neighbors, the taxpayers of Nebraska, financially responsible for judgments resulting from the harms caused by criminals. Many of you have heard me talk about sovereign immunity. Not all of you have. Some of you are new faces. But the concerns that we have and pres-- that are, that are presented by eroding the fundamental protections it affords. Sovereign immunity may have started, started as you cannot sue the King, but it has evolved into a concept of protection for taxpayer dollars and the public fisk. It is essential to the ongoing operation of the government to limit claims for damages, which may be brought against the government, claims that must be paid by taxpayer dollars. Each time sovereign immunity is waived, it becomes easier to waive taxpayer protection for the next category of claims. For example, if you allow claims for victims of sexual, sexual assault under LB156, how will you distinguish future claims by victims of other serious criminal conduct? The result is potentially unlimited exposure to claims for damages against the state and-- state of Nebraska and its political subdivisions for, again, criminal acts that are, are committed by third parties. The broad language of LB156 is also a concern, as Senator Hallstrom has noted. First, the terms sexual assault and child are not defined. It would allow for such claims-- and it would also allow for such claims when they occur on school grounds. But what are school grounds? And from the state's perspective, this is of particular concern because of our state YRTC centers where kids go to school and also live. So the state is responsible for educating children in, in that environment, but we also provide a litany of

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other services. So is this a school for purposes of LB156, and if it is, what are the school grounds? Some of you have heard me describe the negligence standard as a hindsight is 20/20, because it carries with it a great risk of liability in the face of emotionally charged claims like sexual assault. And I think the emotional nature of these claims has been present today. Everyone feels very strongly about this, including me, including my boss, the Attorney General. We just do not believe that this is the appropriate resolution under the circumstances. And I'm sure, McKinney, Senator McKinney, you're going to ask me why I'm here, because we are here in opposition, and that is because it's our duty. Because we defend the taxpayers in these cases, to help you understand what the potential implications are of passing laws that are like LB156. So I'm happy to answer questions. Senator McKinney.

BOSN: Thank you. Senator McKinney.

McKINNEY: Thank you, Chair Bosn. And thank you for your testimony. So you made the claim that you're here, you're here, you're here to defend the taxpayers, but you support legislation that would make sure the taxpayers are paying for people that are going to prison. So to me, that's a contradiction. So if a kid is raped by a teacher, can you use 1983?

JEN HUXOLL: If it is a state school, yes. I, I, I am-- I'm perplexed by the position that's been taken by Mr. Guenzel in testifying here today, because if it is a state school, a 1983 is absolutely available as a remedy.

McKINNEY: So why do you think people are having issue with that?

JEN HUXOLL: I don't know. And as, as Senator Bosn pointed out earlier, a claim was brought for the LPS student, and it was brought under 1983 and also under Title IX. What it was settled for, I'm not sure, is as important as the fact that the claim was brought and it was litigated, and there was a forum and there was a remedy, and someone decided to settle that claim. I don't know who. But what we're talking about here-- there-- there's really two parts to every litigation. One is the, the litigation that takes place, and then the second part is resolution. And I think what our tendency to do is to skip forward to the end and say, somebody is getting a payment out of this, but there's a lot that comes before that, including settlement of claims.

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But that claim was litigated, it was available, and then decisions were made by judges, by attorneys, by clients who were involved. Sometimes, clients decide they're done with the fight. They don't want to do it anymore. I don't know what the circumstances were.

McKINNEY: So could you--

JEN HUXOLL: What I want you to know is that there was a claim brought and it was available.

McKINNEY: Could you give me a hypothetical under the scenario that a kid was raped by a teacher and you were making a claim under 1983, how would you present it?

JEN HUXOLL: So that would be brought as a deliberate indifference to a-- where, where the state owes, in our case, the kids that are being educated in state schools. And I-- it's, it's difficult for me to speak generally to political subdivisions, as well, because our duties are higher, because we have kids in our custody. So we have a-- our diff-- our obligations are also different for that reason. So I want to make that clear so it doesn't seem like I'm mixing apples and oranges. But there would absolutely be a constitutional claim that could be brought under 1983, chal-- and it-- the challenge would be that we provide-- failed to provide adequate safety, care, and protection to a child that was in our custody.

McKINNEY: All right. Thank you.

JEN HUXOLL: Absolutely.

BOSN: Any other questions for this testifier? Seeing none, thank you for being here.

JEN HUXOLL: Thank you.

BOSN: Next opponent. Last call for opponents. We'll now move on to neutral testifiers. Anyone here in the neutral capacity? All right. I will have Senator Conrad come up for closing. And while she's making her way, I will quickly note, there were 36 proponent comments, no opponent, and 1 neutral. The Judiciary Committee also received 1 written ADA testimony on LB156, and it will be included in the official hearing transcript. Testimony was received from-- and I

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apologize if I mispronounce this-- Tanya Encalada Cruz, from Lincoln. And with that, you're welcome to close.

CONRAD: Thank you, Chair Bosn. Thank you, members of the committee. I know it has been a long hearing and you're just on the first bill, and appreciate your attention and consideration and good questions. I will try my best very quickly to just provide a few closing points for your consideration. So we heard a lot about kind of the general goals underlying tort law. Right. And I just want to provide perhaps a refresher, some context for the committee in regards to this measure. So we think of general deterrence and specific inter-deterrence when it comes to the utilization of the criminal law in preventing criminal acts. Right. That's the underlying policy goal in regards to criminal sanctions. When we think about tort law, the goal, the primary goal is to make the victim whole. OK, there's two differences there, and this is about making the victim whole. The kid who was sexually assaulted at school through no fault of their own, without access to justice. And I-- believe me, I do not think 1983 is an adequate remedy, and I'll talk more about that. They and their family, in many instances, do not have access to resources to provide for counseling and medical care. OK. Tort law is about making the victim whole, so we need to remember that. I do, I think, have a better grasp of the opposition that the Attorney General's Office is bringing forward, in regards to state schools, which they are running primarily, in a correctional context. Those perhaps, of course, could be subject to a deliberate indifference standard, under 1983. You typically utilize a 1983 case, deliberate indifference standards for correctional settings, wherein you see cases where prison officials were not providing adequate medical care, were not prevent-- preventing-- taking pre-- precautions to keep inmates safe from violence. That's the typical time when you see or hear or think about a deliberate indifference standard under 1983. It's enforcing Eighth Amendment rights against cruel and unusual punishment in a correctional setting against state and local officials. I don't think that is generally available in regards to the instances that we've heard about for schools, wherein a teacher or another student or a school employee rapes a student. I don't think 1983 is an adequate remedy for a variety of reasons, and I don't think the deliberate indifference standard is, is relevant in that context, which this measure is seeking to address. Again, we've heard concerns about, perhaps, impact on taxpayers or slippery slope. Again, the Tort Claims Act does have limitations on the award that is available. It is

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not a runaway award, particularly for the political subdivisions, the littler schools or the larger schools, right, with no cap on the state, which obviously is much bigger than a school district in Brown County, right, so I, I want to put that into context. And these decisions are heard by judges, Nebraska judges, conservative judges. They're not heard by juries. They're not-- you heard Mr. Valentino talk about this, as a longtime county attorney and practitioner, in regards to defending the government in regards to tort claims, right, and he almost thinks this bill is a bit too narrow, which was an interesting perspective, but-- and also, great that he came forward. I remember him from my home district in Seward and York County. The other thing that I think is important to remember about 1983 claims and what the tort claims measure seek to do, is 1983 is not available for simple negligence. 1983 is a federal law that provides access to the courts when state and local governments violate your constitutional rights. Think about free speech. Think about religion. Think about Fourth Amendment. Think about Eighth Amendment. When state and local government violate your individual rights and freedoms, that's when you go in for 1983, not negligent hire or supervision. Not at all. That's not what that case is available-- that's not what that provision is available for. You know, I know that this was part of the debate last year. It's been part of the committee hearing today, and so it's good to just hit it on the record. I know it's fun to dunk on trial lawyers. I know it's fun to have politicians say, well, this is all about greedy trial lawyers. And you know what? I, I would hope that people wouldn't paint with too broad a brush in that regard. But trial lawyers represent injured people who can't represent themselves, who can't navigate the court system by themselves as pro se litigants. And trial lawyers are held to a high ethical standard like all lawyers, and they don't bring frivolous cases because of their ethical considerations, and because it's not in their financial best interest to bring a frivolous case forward. So I think that it's important that we don't get caught on some sort of political argument about trial lawyers who are trying to help people who are injured through no fault of their own-- in this instance, when schools have a hand in little kids getting sexually assaulted-- to get wrapped up on that front. The other thing that I think is important to know about sovereign immunity is it does have a time and a place, right. We want-- we have an understanding that there needs to be some level of protection. Think, for example, for that cop in an exigent situation, who needs to make a split-second, life and death decision, right? Those are the kinds of

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instances when sovereign immunity makes sense, right, where we give a little special extra protection, a little bit of special extra immunity when a government official has to make that kind of decision, right? But sovereign immunity has been expanded and in my contention, perverted, to the point now where we're giving a license to harm to big government-- a license to big government to harm its citizens, and in this instance, vulnerable kids sex-- who are victims of sexual assault. As Mr. Guenzel stated, I think if you have this conversation with your neighbors, I think they, they would be shocked to know that there is no recourse for kids and families in that regard. The other thing that I think it's important to keep in mind is that, yes, there needs to be a balance, with this and any other public policy. And yes, sovereign immunity has been expanded for a variety of reasons to protect taxpayer dollars and resources, but our job and the law's job is to ensure justice for people who are without justice, which is where we find ourselves today in regards to little kids who are victims of sexual assault at their schools and their schools had a hand in it. So whatever we need to do to figure it out, to make it work better, I hope that we can do that together.

BOSN: Thank you. Any questions for Senator Conrad? Senator Storer.

STORER: Thank you, Chairwoman Bosn. And thank you again, Senator Conrad. Help me one more time.

CONRAD: Yes.

STORER: Differentiate between the ability to sue the teacher versus the ability to sue the institution. And a-- and what, what I'm hearing is there's currently not a provision to sue either in the case of sexual assault, that under, under the act, the teacher is also immune?

CONRAD: No, I don't think so, Senator. So, wow. I'll have to triple check that. But I-- so you're saying in the instance where the teacher commits the sexual assault, so then the, the teacher's going to be adjudicated through the criminal justice system.

STORER: Right.

CONRAD: Right, so they're going to be charged, they're going to have a criminal trial, and then resolution thereof. So assuming there's a clear case here, and then the teacher's incarcerated for the

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commensurate sentence that comes with sexual assault, right, so yes. And the government's contention is that the victims should sue the teacher for restitution or for wrongdoing. But it's important to remember that when somebody is incarcerated, their earnings change. Right. An individual may-- definitely doesn't, in many instances, a teacher, right, doesn't have the same amount of resources as a collective entity, like a school district. Right. And when making awards of restitution, the courts can imbalance all different kinds of things. Is there a child support order? Are there-- and-- well, any number of different things laid out under Nebraska Revised Statute. Right. So that may be an avenue, but it's going to be uncertain and inadequate in most instances. And it's also not reflective of the facts. Where, where a school did everything right, right, where they did absolutely everything right, from training, to hire, to supervision, there is no case. There shouldn't be any case if they did everything right. People don't just walk in if everything went right. But if they made a mistake along the way or were negligent along the way which contributed to the sexual assault on their properties, in the private setting, we say, yeah, you need to, you need to help provide accountability and justice, as well. And my contention is in this narrow instance, we should do the same for accountability and justice when schools play a part in kids getting sexually assaulted. It's just--

STORER: And I, and I appreciate the clarification, because one of the previous testifiers, one of the attorneys, I believe I understood him to say that you could not sue. There was no provision to civilly sue the teacher.

CONRAD: I don't think that's quite right. Yeah.

STORER: OK.

CONRAD: I'll triple check if I'm getting it wrong there, but I don't, I don't think that's quite right.

STORER: Thank you.

CONRAD: The last piece-- I-- I'm sorry, Senator. Was that the end of the inquiry? OK. The last piece I would just say is if senators haven't had a chance to read the Moser case or the Joshua M. case, which came down, actually, just last year, they are heartbreaking

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facts. And the judges recognize that in the text of the opinion. And in fact, in both instances, they invite the Legislature to make it right. That's a follow-up on those court-- this is a follow-up on those court decisions, as well. When government has a hand in somebody in this instance getting sexually assaulted, I think we should take, take the court up on its invitation to make it right. Thank you.

BOSN: Any other questions for Senator Conrad?

CONRAD: Yes.

BOSN: Senator DeBoer.

DeBOER: If the employee is within the scope and course of their duties, they are covered by the State Tort Claims Act. Right?

CONRAD: Yes.

DeBOER: So therefore, you cannot sue the employee.

CONRAD: OK. I'm hearing "correct" behind me.

DeBOER: You'll get back to us on that?

CONRAD: Yeah, because-- yes. Because I'm also thinking of another case that doesn't follow that thread, but--

DeBOER: So let's--

CONRAD: --I will absolutely get back with you.

DeBOER: Will you get back to us on a discussion of whether or not you can sue an individual employee who's acting within the scope and course of their duties?

CONRAD: Yes. I will be happy to, Senator. Yes.

DeBOER: Thank you.

BOSN: Any other questions? That will conclude our hearing on--

CONRAD: OK. Thanks.

BOSN: --LB156. And next up, we have Senator Conrad on LB236.

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CONRAD: OK. Chair Bosn, members of the committee, I'm going to be brief. We've had a very long hearing and there are similarly-related issues here. My name is Senator Danielle Conrad. It's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I represent north Lincoln's 46th Legislative District. I'm here today to introduce LB236. LB236 amends the Political Subdivisions Tort Claims Act and the State Tort Claims Act and would hold political subdivisions accountable for incidents of abuse or sexual assault that occurred due to their failure to exercise reasonable care. Specifically, the bill would allow claims to be filed in instances where a child is abused or sexually assaulted because a political subdivision or its employee failed to (1) control a person over whom the political subdivision has taken charge, or (2) protect a person under the political subdivision's care, custody, or control from harm inflicted by a non-employee. This bill seeks to address situations in which governmental entities may be held liable for failing to prevent harm to individuals in their care, particularly in cases of child abuse and sexual assault. The proposal was developed in response to the legal case, State v. Moser, which highlighted a failure to adequately protect individuals under the care of a political subdivision. The aim of LB236 is to ensure entities responsible for the welfare of children or vulnerable individuals are held to a appropriate standard of care and accountability in preventing harms. LB236 would provide a legal avenue for victims of abuse or assault to seek justice and potentially receive compensation when a political subdivision or its employees are found negligent in fulfilling their duty to protect and supervise. I think the committee is going to have an opportunity to hear from both proponents and opponents who practice in this area. I'd be happy to answer any questions, but generally speaking, this is to follow up on the Moser case, and would be much broader than the bill that I prioritized this year and that we had in the prior hearing.

BOSN: Questions for Senator Conrad?

CONRAD: OK. Thanks.

BOSN: Are you staying?

CONRAD: I'll be here.

BOSN: OK. Proponents. Anyone here in support? Welcome.

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JENNIFER TURCO MEYER: Hello. My name is Jennifer Turco Meyer, J-e-n-n-i-f-e-r T-u-r-c-o M-e-y-e-r, no hyphen. I am the president-elect of the Nebraska Association of Trial Attorneys, and I'm here today to support LB236. I am an attorney who owns my own law practice in Omaha, and I don't-- there's a lot of crossover between the last bill and this bill. Except for one of the main issues is we've come in to support this bill, because it addresses-- it's, it's broader in terms of addressing child abuse with, with sexual assault, and also addressing entity-- political subdivisions outside of a school context. So in my mind, you think of some child abuse or a sexual assault that would happen maybe in the custody of law enforcement, so just not, not just a school context. Some of the things I want to point out, I think specifically in the bill, it talks about the negligence standard, which we've been talking about. And I think to add a little bit more context, when you talk about the reasonable care standard of negligence, there has to be that testimony of what a reasonable law enforcement department would-- or a reasonable school, how they would act. It's not just an occurrence happens and as a result, the state must pay or the political subdivision must pay. And, and while-- and the reason why that's so important is because not every case that comes to us as trial attorneys is one that we can prove negligence. And so I think it's just important to remember that, as Senator Conrad pointed out and other people have pointed out, there's not-- there's, there's a-- still a legal process by which these cases either settle, or they go to trial, and somebody wins and somebody loses. It's not just an automatic thing that happens. The, the other point that I think is really important to make about this is it's about justice and accountability. And I think as a conservative voter, you have 2 trial attorneys here that are actually Republicans. And I think where we're failing to kind of make the bridge is if we think justice and accountability work in the criminal context, we can't skip over and leave out civil justice in terms of how it will affect the way that school districts, law enforcement agencies take care of the most vulnerable people in our society, which are children. And lastly, I do just want to point out that under 1392-- I don't know if we were stacking people, saying, yes, you can sue and people that you can't, but under 13-902, if an employee-- an employee can't be sued. They can't be named in the lawsuit under the Political Subdivision Tort Claims Act. They can't be a party, so they cannot be sued. So I just want to clear that up that the question we ended on and the question

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we're starting here is, is if you were to name that person in the lawsuit, the judge would dismiss them because they cannot be made a part under, under the, the current law.

BOSN: Questions for this testifier? Senator Storer.

STORER: Thank you, Chairman Bosn. To follow-up on that question--

JENNIFER TURCO MEYER: Yeah.

STORER: So if, if the harm-- if the action was, was solely the individual, they can't be sued? If-- I mean, I can unders-- I think what I'm hearing you say is if there was some fault, the primary fault was the institution that you can't name the individual that was involved. But if the, if the action and we'll just use the example of, you know, sexual assault, was-- the primary fault was the individual, they can't be sued? All right.

JENNIFER TURCO MEYER: Well-- and I, and I think the thing that's really interesting is it's kind of like that discussion we've had in even other negligence cases, about when an employer and employee-- who you can sue and things like that. The person is under-- in-- working in the course and scope of their employment for the entity, right, the school district, let's say. And so when they commit the negligent act-- or sorry, when they do something intentional, then they can-- they're not named as, as the party that's responsible. Like, they, they can't be sued because they're immune under the Political Subdivision Tort Claims Act. It's the 13-902.

STORER: So Teacher A undeniably rapes Student B. It's on camera. I don't know. And is charged criminally, they can't be-- I mean, that's-- just because they were in the school building--

JENNIFER TURCO MEYER: Yes.

STORER: --they can't be-- they can't be civilly sued for that action.

JENNIFER TURCO MEYER: They would not-- they would be immune under the, the Political Subdivision Tort Claims Act, so you couldn't. So let's talk about it in this context. Before Moser and Joshua M., if this case happened, we would sue the school district for the, the issue happening. And if you named the individual, too, to sue them personally, the enti-- or the lawyer representing the school district

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would actually file a motion to get the individual named out of the lawsuit, based on the fact that the-- they're protected by the immunity clause for, for their act as an employee of that entity. So-- and if you read the statute, it's very clear. It says they cannot be sued.

STORER: Even if it's-- I'm just going to use an example. It was-- they were there at 6:00 at night, after school hours. And the-- they weren't-- it wasn't during school hours. It wasn't-- they weren't there as a capacity of being a teacher. They were there because they had a key to the school.

JENNIFER TURCO MEYER: And here's the thing. So the 2 bills are different. But just generally, what you would be getting at is whether they were working in the course and scope of their employment.

STORER: Right.

JENNIFER TURCO MEYER: Right, whether they were employed. So that would be a totally different situation. Because, I mean, I think if I were on the other side and I was arguing for the entity, they are not-- are-- there are not our responsibility at that point, except for in these bills, it's contemplating where that act happened. Right. So that's something completely separate. But as of right--

STORER: So that's kind of what I'm trying to--

JENNIFER TURCO MEYER: I do.

STORER: --divide here.

JENNIFER TURCO MEYER: Yeah.

STORER: --a little bit, right.

JENNIFER TURCO MEYER: Yeah.

STORER: So there's, there's-- in the scope of their job, they need to be there during the employable hours of their job, versus if they were in that, that physical location but not during the hours of their job, then they could be civilly sued, is what I'm hearing. I mean--

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JENNIFER TURCO MEYER: No. I think the bill that we just talked about, LB156, contemplates something different. What I am saying is--

STORER: But currently, I'm asking like, could they--

JENNIFER TURCO MEYER: Yeah, currently what happens is the school district is responsible for their employees from a liability perspective, so like, they're almost attached, right. So what you're getting at with the example of them being out of-- like, not on duty, basically, you're kind of arguing should they be attached or not, and if they are or aren't determines whether or not you can sue them personally. What I'm saying is, in the very straightforward example that was given earlier, middle of the school day, sexual assault by a teacher. If you tried to sue that teacher under the current statute, they could not be named or sued because they would have immunity for discharging their duty as an employee of a political subdivision.

STORER: But if it was not during school hours, they could. I'm not saying what's right or wrong or--

JENNIFER TURCO MEYER: Well--

STORER: --that makes it better. I'm just trying to figure out.

JENNIFER TURCO MEYER: Yeah. I mean, it's kind of our job as attorneys to be like, nit-picky about that stuff. So like, in my mind, I'm thinking, well, was it a club? You know, what were the circumstances of what was going on? Like, was the student there because of an activity, even though-- you-- so I would say, as of the way that it's written now and the way that it's used in the courts, they could not be sued.

STORER: There's probably a pathway they could, but that could be an argue-- I, I mean, I think I understand what you're saying.

JENNIFER TURCO MEYER: And kind of like what another attorney has said, the pathway there would be us really reaching to help a victimized family get some justice. It wouldn't be like a very easy, straightforward example, if that makes sense. Like, it wouldn't be a case where we wouldn't be fighting motions to dismiss, motions for summary judgment, all through the litigation process and probably post-trial. If ever that the judge did with that issue, then it would be on appeal to, you know, the courts, the appeal courts.

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STORER: All right. Thank you.

BOSN: Questions from anyone else? Thank you for being here. Next proponent.

CAMERON GUENZEL: Senator Bosn, committee, my name is Cameron Guenzel, C-a-m-e-r-o-n G-u-e-n-z-e-l. And I just wanted to jump up real fast to explain a little bit more about this question about naming individuals in the lawsuit. So 13-902 specifically references that a suit can't be brought against the employee under the tort-- under the Political Subdivision Tort Claims Act. And as I mentioned, in car accident cases, you know, everyone's perfectly clear that-- I, I had a car accident case where there was a fireman on his way to a job, didn't have his lights on, blew a stop sign, really seriously injured somebody. We all agreed, agreed, clearly, under the Political Subdivision Tort Claims Act, I could not escape that and get more coverage, you know, beyond the million by naming him personally. So even if we named him personally, still governed by the Political Subdivision Tort Claims Act, I want to mention real quickly there's a case called Dieter v. Hand, from 1983, which indic-- which states that you can bring a case against the individual personally. And I don't want that to mislead anyone, because at that time, the political-- 1902 of the Political Subdivision Tort Claims Act did not list employees. It only said you can't bring a claim against a political subdivision. Subsequently, in 1999-- '92, I'm sorry, 1992, LB262 added the phrase, or agents-- officers, agents or employees to 13-902. And to my knowledge, there hasn't been any, any other case describing that. So, I just wanted to clarify that point and perhaps assist if anyone was researching this on their own. Any questions?

BOSN: Senator DeBoer.

DeBOER: So in the 1983 case that you handed out earlier, the teachers are listed.

CAMERON GUENZEL: OK. Let me, let me clarify. When I meant 1983 case, I meant from the year 1983, just to make it really confusing. The, the case that I was referencing was from year 1983. Yes. May 6, 1983. The 1983 case that I gave, so he's list-- the teacher is, is listed because that's a Section 1983 case and isn't governed at all by the Political Subdivision Tort Claims Act. So if I had to bring that under

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the PSTCA, I could not name the individual any more than I could name the school.

DeBOER: So the reason that-- in that case that you handed out, the McEntarffer?

CAMERON GUENZEL: Yeah, McEntarffer. Yes.

DeBOER: McEntarffer. Thank you. The McEntarffer case, the individuals are named because you were bringing a federal 1983-- Section 1983--

CAMERON GUENZEL: Yes.

DeBOER: --claim in that instance.

CAMERON GUENZEL: Correct.

DeBOER: But if I wanted to sue a wrongdoer who assaults a child in a school or wherever else under this bill, I can't do it if they are an employee acting within the scope and course of their duty.

CAMERON GUENZEL: If-- that is correct. You cannot sue them under the PSTCA.

DeBOER: And can I sue them outside of the PSTCA?

CAMERON GUENZEL: No.

DeBOER: I can't sue them just in their own personal capacity, as a separate lawsuit that has nothing to do with the pol-- Political Subdivision Tort Claim Act?

CAMERON GUENZEL: That is correct, because 13-902 says you can't sue the employee, that employees are immune from suit and that no suit shall be brought under 2-- against employees, except as provided in the PSTCA. PSTCA says, 13-910, you can't bring a suit for an intentional tort. Therefore, we cannot bring a claim against the employee.

DeBOER: OK. Thank you. That's helpful.

BOSN: And I'm probably going to muddy the waters, but not intentionally. Isn't that only if the employee is acting within the scope of their duty?

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CAMERON GUENZEL: So it's-- the, the waters are muddy, because this hasn't been well-established.

BOSN: But-- just yes or-- I, I'm-- rather than muddy, is--

CAMERON GUENZEL: Yes. I, I-- yes. That is my interpretation, that only if they're acting in the course and scope, and-- but I, I do want to clarify that em-- employees can commit torts, intentional or negligent, while acting in the course and scope of their duties.

BOSN: Well, a sexual assault is never within the scope of anyone's responsibilities as a teacher. You would agree. Right?

CAMERON GUENZEL: I-- so-- I would agree with that, but that's not-- I would, I would dispute that that's the question. So it's never within the course and scope of a duty for a police officer to run a red light. But the police officer was in the course and scope of his duties in my case that I referenced earlier, because the police officer was on the job, was traveling to a site, that kind of thing. Now, if a teacher, let's say, gropes a student during class, clearly that-- the defense is going to be that's in the course and scope of duties. And I think that's a-- I, I-- that would be a difficult argument for us to overcome. That individual is an employee. In that scenario, that individual is an employee of the political subdivision. He's not a pri-- he or she is not a private actor. She's a-- he or she's an employee of the political subdivision and the plain language of the statute, which is construed strictly in favor-- broadly in favor of sovereign immunity, is that those employees, employees cannot be sued. So if you have a, if you have a, a police officer who's off duty and driving to go pick up a pizza and causes an accident, that's clearly not-- he's not an, he's not an employee of the political subdivision in that situation. Causes an accident on the way, you know, driving to go investigate a scene, clearly within his, his-- it would-- he's clearly an employee in that situation. Where do those things come? This is why we have lawsuits.

DeBOER: Well, I think and we may just agree to disagree, but I think an officer who's going to perform their duties and who runs a stoplight because that's getting there as quickly as they can, be it the right or wrong decision, is slightly different, unless you have a teacher who slipped and fell on someone's private part, that's different. I mean, you're intentionally doing something that is not in

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the furtherance of your responsibilities as an educator when you grope someone [INAUDIBLE].

CAMERON GUENZEL: I don't, I don't, I don't disagree with that. But for example, in my case, he-- the police officer was not speeding to a location. The police officer was just driving casually and didn't see that the light was red. And just like any of us might do, negligently ran a red light. So that, that doesn't, that doesn't get us outside of the PSTCA. He's still an employee under the PSC-- PSTCA. Everyone would agree with that. The, the def-- the defense would agree with that. I could argue to the contrary, but I know I'm going to lose that argument. So yes, I certainly agree that the more extreme situations outside of school, in somebody's private home, there's an argument there. There's certainly an argument there. That individual is still an employee. And again, I can't overstate, the PSTCA is broadly and strictly construed in favor of the political subdivision and against a waiver of sovereign immunity. That is not an argument I'd want to make. And if I failed to give the one-year notice for a claim against a teacher in that situation, I'd be calling my malpractice carrier.

BOSN: OK. Any other questions? Seeing none--

CAMERON GUENZEL: Thank you.

BOSN: --thank you for being here. Next oppon-- or proponent. Excuse me. Good afternoon.

NATHAN ARENTSEN: Good afternoon. My name is Nathan, N-a-t-h-a-n, Arentsen, A-r-e-n-t-s-e-n, and I'm in a bit of a unique position in that I was sexually assaulted by a state contractor-- a state contracted therapist in my home, and it was horrifying and has been devastating to me. I also, ironically, have a law degree. I'm not a practicing attorney, but I am familiar and I have become intensely familiar as a result of these events with many of the legal principles that have been discussed here today. But I will leave those finer points of law to the experts who have spoken. I will speak as to my personal experience. Shortly after I was assaulted and, and got myself into a safe enough situation to pursue counsel to file a claim-- this was in late 2020, and virtually every attorney I spoke with said, oh no. There was just this decision from the Nebraska Supreme Court, Moser. And 6 months ago, we would be glad to represent you, seek justice, help you rebuild your life, but now it is impossible. I

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understand that you all have been speaking about, you know, possible avenues through 42 U.S.C. 1983, through Title IX, through various sort of personal liability on the part of a defendant. But culturally, and I think that the trial attorneys have spoken to this, culturally among the bar, these cases are not being taken. These victims do not have a remedy. These victims are under a culture of impunity by our political subdivisions and our state government. And so I'll now speak more rec-- as to the events more recently that have happened to me as I've pro se tried to litigate my claims. Recently, I had to file some legal documents in the district court in Lancaster County. Two days later, due to the stress, I was sitting at my desk at work and suffered a debilitating panic attack. I lost the ability to breathe, to speak, my body began shaking uncontrollably. I could barely get myself to the hospital. That is what it is like to be a victim without a remedy. It is not a question of whether someone was on the job, and whether, oh, were they in their personal capacity? Oh, was there deliberate indifference? That's not what a victim is thinking about for the rest of their life. That victim is reliving that event again and again and again and again and again. I have therapy twice weekly, probably will indefinitely. I take Zoloft. I basically will likely never be able to practice law. And I hope that you will see the principle under this bill, rather than the debates of the finer points of law that the Insurance Pool or the Trial Attorneys or other institutions here are speaking to. And I, and I appreciate the indulgence of the Chair regarding the time, and I'd be glad to answer any questions.

BOSN: You're welcome to finish if you aren't quite done. Go ahead. Or if you are finished, I'll take questions.

NATHAN ARENTSEN: I think I'd be fine with concluding with that.

BOSN: Any questions for this testifier? Thank you very much for sharing your story. I appreciate you being here very much. Thank you for that.

NATHAN ARENTSEN: Thank you, Chair. Thank you, members of the committee.

ROUNTREE: Thank you.

BOSN: Next proponent. Any other proponents?

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***TANYA ENCALADA CRUZ:** I am in support of this bill.

BOSN: Opponents. Anyone here in opposition to LB236?

CHUCK WILBRAND: Good, good afternoon. I'm Chuck Wilbrand, C-h-u-c-k W-i-l-b-r-a-n-d. I'm still a partner with the Knudsen Law Firm, and I'm here on behalf of ALICAP, A-L-I-C-A-P. I think I need to start off by clarifying a lot of the legal terms that we've been-- recently just came up. So employees of political subdivisions can be named personally if they were acting in the course and scope of their employment. 13-920, which is part of the Political Subdivision Tort Claims Act, goes on and says, as long as-- and it's a little backwards reading it, so I won't read the whole thing, but they have to give the appropriate notice. The claimant has to give the appropriate notice. If the appropriate notice is given, they can name the employee who was ask-- acting in the course and scope of his or her employment in the lawsuit. So I have done that, personally. I have sued the state, at one point in time. The-- ultimately, that case got dismissed, but I named employees of the state in their individual and personal capacities. And there was several cases brought up, but the Supreme Court ultimately upheld the motion to dismiss. That case cite is 297 Neb. 955. So I think we just need to get that cleared in the air, because I know there's a lot of questions of whether or not the employees can be named. And the other part is if the political subdivision employee sexually assaults someone, that is 100% outside the course and scope of the employment. Now, that will be brought up if I have that case. They, they said, the teacher sexually assaulted this person. In part of my motion to dismiss, I'm going to say the teacher is not acting in the course and scope of the employment. Therefore, this political subdivision can't be liable. So, they may be able to go get a civil judgment against that perpetrator and that criminal that went and did the sexual assault, and they still have that avenue when it's outside the course and scope of the business. LB236, you heard from Senator Conrad, it's, it's broader than LB156. I was against LB156. I'm against LB236. Things that are not defined-- child abuse. What actually is being covered by child abuse? I know they are in criminal statutes on child abuse, but are we using that same definition? Also, when we're doing care, custody, and control, that's-- that-- those terms are used a lot. There's case law for those words being used in different contexts, so those need to be further defi-- defined. That's an issue. I'm out of time. Happy to answer any questions you may have.

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BOSN: Questions for this testifier? Senator DeBoer.

DeBOER: I just have a follow-up question. When you say they can name the defend-- the individuals, do you mean that they can name them and sue them and recover against them in their individual capacity, or do you mean that they can name them and sue them, and that they will be defended by the, the school district and that the school district, if there is a judgment, will have to pay the judgment?

CHUCK WILBRAND: Depends on what they did. If they sexually assaulted someone, I don't believe the school district is going to be paying for their actions.

DeBOER: OK. So they could be named, and that naming of them on the lawsuit would not result in them being personally liable?

CHUCK WILBRAND: It depends. I mean--

DeBOER: Does that-- like there's-- they're-- in some circumstances they can be named and they would be personally liable, in some circumstances, they wouldn't.

CHUCK WILBRAND: Correct.

DeBOER: OK.

CHUCK WILBRAND: Mr. Guenzel brought up a case. You know, I've had cases where the bus driver caused an accident and the bus driver individually was named, but not the political subdivision. But because the bus driver was acting in course and scope of his employment, the politic-- the school district defended the lawsuit-- well, on that--

DeBOER: So they--

CHUCK WILBRAND: --and represented him, because he was in the course and, and scope of his employment.

DeBOER: So the, the sort of pressure point is whether or not they were within the scope and course.

CHUCK WILBRAND: And I've had other cases where there has been a sexual assault and the criminal that sexually assaulted was named

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individually in that lawsuit. The school district did not provide defense for that individual.

DeBOER: Because, in that instance, it was deemed to have been outside of the scope and course.

CHUCK WILBRAND: Right, because there was a sexual assault.

DeBOER: So the, the whole question of whether the employee can be individually liable or not, you're saying, depends on whether or not they were within the scope and course of their-- OK.

CHUCK WILBRAND: Correct. They can be named in the lawsuit. I needed to clear that up, because 13-920 says that.

DeBOER: OK. So they can be named, but also whether or not --

CHUCK WILBRAND: They can be held--

DeBOER: --they're liable is dependent on whether or not they were within the-- personally liable, depends on whether or not they were within the course and, course and scope of their employment.

CHUCK WILBRAND: Correct. And I would suspect a savvy trial attorney would have multiple causes of actions in their complaint, and that would all be delineated throughout the lawsuit.

DeBOER: OK. So answer me this. Do you know, is there any case law in Nebraska about whether or not an employee of a school who has-- who is an intentional tortfeasor against a student or whoever, was outside of the scor-- scope and course? So--

CHUCK WILBRAND: That, that the, that the judge ultimately ruled throughout the whole ca-- that they actually-- they had a trial. And then the judge ruled that they were outside of the course and scope.

DeBOER: Or even it was dismissed because they were outside the scope and course. So maybe they sue the-- is there any case like that?

CHUCK WILBRAND: Off the top of my head, I don't know. I will tell you that, you know, we, we-- there, there's always this talk about pre-Moser and post-Moser. And the one case that I could-- that comes up is that Doe v. Omaha Public Schools case. I don't know the exact

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cite. But Moser went through that and said that was really an outlier case, and that should not have really been decided the way that it was decided initially.

DeBOER: So you feel that after Moser, perhaps even before, but after Moser, at least, we're in a situation where there will be instances that would come before the court, where the court would say that this intentional tort was outside of the scope and course of your employment.

CHUCK WILBRAND: And if they brought a lawsuit where the school district is named and the individual that committed the sexual assault and they pled it correctly, I could see where the district court judge dismisses the school district, but allows them to proceed against the--

DeBOER: Individual tortfeasor.

CHUCK WILBRAND: --the individual sexual assaulter. The one that committed the act.

DeBOER: OK.

CHUCK WILBRAND: Yes.

DeBOER: We will do more research on this. Thank you.

BOSN: Thank you. I-- that clarifies some things for myself, as well.

CHUCK WILBRAND: Thank you.

BOSN: Next opponent.

ELAINE MENZEL: Good afternoon, Chair Bosn and members of the Judiciary Committee. For the record, my name is Elaine Menzel. That's E-l-a-i-n-e M-e-n-z-e-l, here today on behalf of the Nebraska Association of County Officials, the Nebraska County Attorneys Association, the Nebraska Sheriffs Association, and the League of Nebraska Municipalities in opposition to LB236. First of all, I would like to say facts of the various Supreme Court cases that have discussed and considered whether a particular claim was barred by the assault or battery provisions are not to be trivialized, nor are we to suggest that they should be. The Nebraska Supreme Court-- and will

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recommend that you perhaps look at the Joshua M. case, much for the same reasons that Senator Conrad suggested, but also that that, that there's a historical perspective of a variety of cases that they've considered on the intentional tort claims-- or exception-- or excuse me, exemption through the course of the years, since 1977. There's been, including that Joshua M. case, at least 11 cases, and, and they talk about the line of reasoning that they have selected to follow through, since that decision. My other testimony is essentially some of what I told you during LB156. And to be respectful of your time, I'll defer from further expanding on that, just that this has been in place, in terms of intentional and tort exemption since the-- 1969, when the Tort Claims Act was adopted. With that, I will be receptive to any questions, if you happen to have any.

BOSN: Questions for this testifier? Seeing none, thank you for being here.

ELAINE MENZEL: Thank you.

BOSN: Next opponent. Welcome back.

BRANDY JOHNSON: Hello, again, Chair Bosn, members of the committee. My name, again, is Brandy Johnson. For the record, B-r-a-n-d-y J-o-h-n-s-o-n. Again, I'm here on behalf of NIRMA, Nebraska Intergovernmental Risk Management Association, and its county members. I think a lot of the points have been covered with respect to the previous bill, so I don't want to belabor them. I will just offer one more example on the point that has been discussed earlier, about whether there can be liability of an individual actor or a criminal perpetrator in the civil context under the Tort Claims Act. My experience, like, like Chuck's, that testified earlier, is that, that, that is a possibility. The Joshua M. case that has been otherwise discussed here, to my understanding, visiting with one the-- one of the attorneys that was involved in that case, was one where the criminal perpetrator, the father, who had abused children, had a default judgment against him individually. As Senator Bosn pointed out, a criminal sexual assault, an assault of any kind, is, is going to be outside the person's scope of employment, and that's going to fall outside the Torts Claims Act. And I do-- I, I don't say that to be difficult with any of the other attorneys that have testified here today. These are complex legal issues. I understand that, that sometimes they require study and research. And I'm more than willing

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to answer any follow-up questions, even outside of this hearing, if anybody would-- were to contact me and do some of that research and help to answer those questions if needed. A couple of cleanup points, just from prior matters that have come up, would be, there was a question about 1983 claims and where they can be filed. I wanted to point out that those can be filed in state court, as well as in federal court. That is an option for claimants. And there was consideration about whether there is some circumstances where there might not be a, a constitutional claim at all. But in my experience, if there, if there's a state actor involved and you're accusing a state actor, it is a constitutional claim. It, it is something that can be brought under 1983. And finally, just one quick point about the Moser case that's been talked about a lot. I think that's a case that is often misinterpreted. My reading of Moser is that the, the court was trying to resolve a couple of outlier cases that existed that were inconsistent with a much larger body of case law that has been decided by the Supreme Court, consistent with the way that the law reads now. And there was one dissenting judge-- justice in that case that did invite the legislator to change-- Legislature to change the law. But there were other judges that I don't read as inviting change, necessarily. In fact, there's a comment that, that the Legislature has the prerogative to do that, but it is something that impacts the public fisc, and that's why it's within your purview. Thank you.

BOSN: Any questions for this testifier? Thank you for being here. Next opponent. Anyone else in opposition? All right. We'll take neutral testifiers. All right. Seeing none, while Senator Conrad is making her way up, I will note for the record, on LB236, there were 34 proponent, 2 opponent, and 1 neutral comment submitted. Additionally, the Judiciary Committee received an ADA testimony on LB236. This will be included in the official hearing transcript and will be included in the committee statement if one is generated. This testimony in support was received from Tanya Encalada Cruz, from Lincoln. Welcome back.

CONRAD: Thank you. Thank you, Chair. Thank you, members of the committee. I'll be as brief as possible. I want to thank everybody who came forward for both hearings, both in the opponent, proponent, and neutral capacities. I think their testimony and perspectives were illuminating and helpful. And as you can see on full display today in both of these hearings, these are very complex legal issues that even smart, experienced lawyers who spend a lot of time practicing in this area see things really, really differently. So I'm happy to work with

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the committee, all of the relevant stakeholders to figure out if there is some sort of path forward for this that people could perhaps live with. Perhaps there is not, but we had creative, good ideas here today in the hearings. I thank everybody for their time and attention. I want to give a special thanks and consideration to the Chair for, for helping to structure the hearings today, to have a clean record, and so that I could attend to a family matter. I really appreciate it.

BOSN: No problem. Any questions for Senator Conrad?

CONRAD: Thank you.

BOSN: Yes. That will conclude our hearing on LB236. Next up, we have LB12, with Senator Dungan. Welcome.

DUNGAN: Good afternoon, Chair Bosn and members of the Judiciary Committee. I'm Senator George Dungan, G-e-o-r-g-e D-u-n-g-a-n. I represent Legislative District 26 in northeast Lincoln, and today, I'm introducing LB12. LB12 is a relatively straightforward piece of legislation that has a significant impact. To put it quite plainly, this bill removes the statute of limitations on certain civil actions for sexual assault of a child. Under current state law, a victim of child sex assault has until age 33, or, as the statute somewhat confusingly reads, within 12 years after the plaintiff's 21st birthday, to pursue a civil action against a third party. My bill would remove that limitation for the victims of childhood sex assault. To address constitutionality issues, this would only affect alleged abuse occurring after the effective date of this act. What that means is that if the statute of limitations were to change, it does not allow all retroactive survivors of sexual assault to then bring lawsuits. It would only be after the effective date of this act. While we cannot remove this limitation for past victims, we can take this step to limit abuse by going forward-- or going forward by holding entities that have the responsibility to protect children under their care or their employees' care. Looking through what other states have as far as statutes of limitations, we have found a wide range of laws, all the way from no limitations at all to one year after the alleged abuse. Some have an age and some insert a number after turning 18 or sometimes 21. This shows that there's not really any consistency across any of the states. I've done a little bit of digging to try to understand why our statute is written the way that it is, this whole 12 years after the 21st birthday. I've not been able to get a good

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answer, and I don't know if anybody else after me testifying has a good answer, but it's something that I'd be curious to know, just from a historical perspective of why that's in place. If you look at the bill, you'll see that in the current statute, there is no statute of limitations for a civil suit brought against the individual who committed the act, meaning that if you are a survivor of sexual assault as a child, you are allowed to bring a civil action against that individual at any point in time. There is, however, this statute of limitations on bringing an act against a third party. What do I mean when I say a third party? I think oftentimes people think of organizations or companies that were negligent. I like to think of the example of a daycare, where maybe an individual daycare provider committed these acts, and the company or the daycare knew about it and could be proven to be negligent in that circumstance, but they are protected after the statute of limitations, whereas you could bring a suit against the individual into perpetuity. Why does this matter? We know, and I'm sure you've heard earlier today-- I've not had a chance to watch your entire hearing, but I know there's been-- that it's been a long day. We know that there's a number of survivors of child sex assault that don't come to terms with what happened to them for a very long time, or even if they do come to terms with what happened to them, there are reasons that they struggle to be public about what happened. Putting the statute of limitations on their ability to hold entities accountable for the actions that they took, I just think is inherently problematic. Obviously, any individual that's bringing this lawsuit, the burden is on them. They have to prove their case. They are the ones who have to ultimately demonstrate to a judge that this entity should be held liable for any negligence or action that they caused. And in the event that they're unable to do so, whether by lack of evidence or by a timeline that's gone on so long that they're unable to provide that evidence, the case would ultimately not be successful. So I do not think this is going to result in frivolous lawsuits. I do not think this is going to result in a number of people being held liable by courts who otherwise wouldn't be. I think what this does is it provides individuals their opportunity to be heard, their opportunity to be in court and it provides them their opportunity to be made whole and to have actual accountability. There are instances where, for example, the individual who committed the action may no longer be alive. There may not be anybody for them to hold accountable. There may be instances where perhaps the individual that committed the act doesn't have the financial means to make that

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survivor financially whole for the damages that they've incurred. So there's any number of good reasons that we should do this, but I think, to put it plainly, again, it's simply the right thing to do. And I simply don't think there's going to be a bunch of frivolous lawsuits that come out of this. And I think that we can look towards other states in that the statute of limitations are all over the place to say that what we currently have in this state simply doesn't work. So, I'll leave it at that. This is obviously a very weighty topic. I know you've heard from a number of people today on other bills in what I would say are pretty emotional testimonies. I think you're going to hear on my bill from some people, some specific testimonies about why this matters. And I would encourage you to listen to them and ask questions of maybe some of the attorneys that are coming in about what the impact of this legislation would be. With that, I'm happy to answer any questions.

BOSN: Questions for Senator Dungan? Senator DeBoer.

DeBOER: Thank you for being here. So these third parties that you would sue that are not the actual perpetrator of the sexual assault, have they done anything wrong?

DUNGAN: So in order for them to be held liable, yes, they would have had to have committed some action that was wrong. Whether that is negligently allowing this to happen or some other act, there would have to be some actual correlation between things they've done or failed to do and the actual action occurring. It's not as though, for example, an employee commits an action and then their employer is just automatically held liable. Obviously, for example, for somebody to be held negligent, there has to be a duty that they have to that individual, like a duty of care, for example, to a kid. There has to be a breach of that duty, meaning that through some action or lack of action, they then breached that obligation of care to that child. There has to be some causation between their breach and the actual harm that occurred. And then there has to be actual damages that happened. And so there has to be some harm. Those are all things that have to be proven in court. And so it's not as though simply because something occurred, an employer then is automatically liable. And again, the burden would be on the moving parties or the person bringing the lawsuit, in order to prove those things happened. So it's a long-winded way of saying they're not going to be held accountable in a court of law if they didn't do anything wrong.

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DeBOER: OK. Thank you.

BOSN: Are you staying to close?

DUNGAN: I will, yes.

BOSN: Perfect. Can I see a show of hands how many individuals are testifying on this bill in some capacity? 1, 2, 3, 4, 5, 6. OK. I'm just-- so we can let the next--

DUNGAN: Thank you.

BOSN: Yes. All right. First proponent. Anyone here testifying in support of LB12? Welcome back.

JENNIFER TURCO MEYER: Hello. Jennifer Meyer. Jennifer Turco Meyer, J-e-n-n-i-f-e-r T-u-r-c-o, Meyer, M-e-y-e-r. I am here today testifying in support of LB12 on behalf of the Nebraska Association of Trial Attorneys. Thank you for having us. I think there's been obviously, during the opening a, a lot of explanation about how this bill-- what it serves to do. And we are always going to testify in support of something that gives access to victims to have their cases heard. And in this particular case, I don't know the, the actual legal reason why 12 years was picked. I think-- if I had to guess, it would be-- sometimes, the statute of repose, which is a very strict cutoff instead of a statute of limitations, but the statute of repose tends to hover around 10-12 years for liability. But in this particular case, I do know that the reason why it starts after the individual turns the age of 21 is because the, the fact that the statute of limitations for these types of actions-- or negligence actions are tolled for victims who are children and the, the vulnerability of children. I can say, in addition to increasing access to justice for people who are victimized in this way, where there's liability on the behalf of a third party, this addresses the unique litigation challenges that we face when we litigate sexual assault cases. And we did hear about it a little bit in the other bills, but just as a reminder, a lot of times there is a barrier to bringing these claims anytime someone is sexually assaulted, because of the-- all the different psychological ways that they are affected. But with respect to children, it's particularly a, a problem because of the fact that sometimes, these memories can be repressed. There's no special formula for like when, in adulthood, someone would re-- recall or start to

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remember the incidences that led to a sexual assault. And so from our perspective, because we can't really quantify when these things typically happen or should happen, that it doesn't-- it's arbitrary to limit it in a way of putting a 12-year limit on it. And it should be, it should be unlimited to respect the rights of the victims and their, and their day in court. Thank you.

BOSN: Questions for this testifier? Senator Storer.

STORER: I guess mainly what I'm-- my question, my concern is in your example, which I wouldn't necessarily disagree with it, there may be memories that don't surface for years. But at that point, would-- wouldn't you agree the evidence is gone. I mean, so we're dealing with a memory. And if it's 10, 15, 20, 25-- I mean, this would be no limit, years later. You would, you would have, potentially, the ability to ruin somebody's life over a memory. And I'm not saying that means that it's not an accurate memory, but I'm just-- all the, the whole scenario, when there's not likely to be evidence at that point. I mean, at--

JENNIFER TURCO MEYER: I think--

STORER: --some point, there's-- the evidence is most likely gone. Right.

JENNIFER TURCO MEYER: I think that there are all different types of evidence. So I think some of the evidence will be gone. Some of it won't be because evidence can be testimony of a victim expressing what they remember and the events and how they, how they occurred. There could be corroborating witnesses and testimony. Sometimes, family members know, and they also don't say anything for lots of different reasons. But I think, more importantly, having an evidentiary issue or having a problem with the result of the fair judicial process wouldn't be a reason why we would deprive someone of the, the, the ability to actually bring the claim, which is what a statute of limitations does. It, it cuts it off, right? So even if there were evidentiary issues, I would say that that's not a-- that's a-- that's something that the court process handles, in terms of evidence and the legal process. And it wouldn't be a reason why we wouldn't want to make sure that people that have these claims can still bring them and have their day in court, just like somebody who maybe is being accused would have their day in court.

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STORER: What was the basis-- what is the basis for statute of limitations, in your professional opinion?

JENNIFER TURCO MEYER: Well, I think in terms of what the courts say and what we're taught is that at some point, we want to make sure it's a, a fair legal process, right, and that people have time to prepare cases, and people have an opportunity to expect to have a case brought against them. That's generally, I think of all statute of limitations. But we have statute of limitations that deal with things that aren't sensitive, like contracts is 5 years, for example, or products liability is 10 years. And so, I think in this particular instance, the unique challenge is the type of case we're talking about, and how people are psychologically affected, and how that plays out in their ability to, to pursue their claims.

STORER: Thank you.

BOSN: Any other questions? Thank you for being here. Next oh-- or proponent. Excuse me.

JANICE THOMAS: Good afternoon. My name is Janice Thomas, J-a-n-i-c-e T-h-o-m-a-s. I am here today as an opponent of LB12 and a mother of a child who was sexually assaulted at the age of 11 by a priest. According to the Nebraska Attorney General's report on sexual assault within the Catholic Church, there have been 255 reported sexual assaults between Lincoln and Omaha. Out of the 255 reports, 27 is the average number of years that it took the victim to report the crime. These children kept quiet for 27 years. You may wonder why they don't tell. It's shame, it's guilt, it's self-blame, it's fear, it's embarrassment, to name a few. Sexual assault of a child can affect both mental and physical health, such as depression, low self-esteem, substance abuse, and most commonly, sexual assault is-- has PTSD. The, the sunny summer afternoon with blue skies, I dropped my son off at church. He wanted to be an altar boy. My son's report is on page 56 of the Nebraska Attorney General's report. He was sexually assaulted at the Cathedral of the Risen Christ, here in Lincoln. His assault happened in 1980 and was reported in 2021. That is 41 years of silence. Now I know why he has an aversion to going to church. He'll attend funerals and weddings, if obligated. He suffers from PTSD and will carry this burden for the rest of his life. I sat in this hearing room 2 years ago and listened to Tom Venzor, executive director at the Nebraska Catholic Conference, agree with the committee members when

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questioned about his testimony. When questioned, he im-- he implied that the church had handled the issue and that it was no longer a problem. Sadly, this is far from true. On March 12, 2025, the Lincoln Journal reported that during a therapy session, a priest at Pius self-reported sexually assaulting minors. The next time you're in church and if you see a gentleman standing in the back and can't take that next step to go into church, or if you're sitting by someone who breaks out into a sweat when the Our Father is said, that is probably my son. He was sexually assaulted by a priest. Following the sexual assault, the priest made him say the Our Father. A priest sexually assaulting my son and then make him say the Our Father? Think about it. Sexual assault isn't just in the Catholic Church. It happens everywhere-- schools, churches, parks, businesses. Governor Pillen's top priority is protecting children. I think that starts right here with LB12. Protect the future of our children. I ask you today to vote for LB12 out of this committee and support on the floor.

BOSN: Thank you. Let's see if there's any questions from the committee. Are there any questions from the committee members for this testifier? Senator Hallstrom.

HALLSTROM: Ms. Thomas, I appreciate you coming in. I had an opportunity to visit with you and your daughter. And I see from the comments that Jay was able to submit some, some comments, and I, I appreciate that.

JANICE THOMAS: Yeah, he just couldn't do it today. Thank you.

STORER: Thank you.

BOSN: Thank you very much for sharing your story and for being here today. Next proponent. Good afternoon.

JAMES D. THOMAS: Thank you. I'm James D. Thomas, J-a-m-e-s, middle initial D, Thomas, T-h-o-m-a-s. Good afternoon. I'd like to thank Senator, Senator Dungan for bringing this LB12. I'm here to testify in favor of LB12. I'm in disbelief, disbelief that there is a statute of limitations on a sexual assault of a child, of a child. This issue is at the forefront of the Catholic Church as this latest report of the Lincoln Journal Star on March 12, 2025. At a young-- at 11 years old, at the-- priest at Risen Christ sexually assaulted my son at church, a place I thought he would-- could be safe. By the time I learned about

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this, my son was 50 years old. As a father, I'm proud of my son. He is a war vet-- veteran. He served on the front line of Desert Storm as a sniper, he's a business owner, and contributes, contributes to our community. He's a hero and he is a victim of childhood sex assault. The way the law is currently written, I can't-- all I can do is support him. It, it makes me angry that the state law leaves the victims of horrific crimes with no justice. Please protect the sexual assault victims of our state and support L-- LB12.

BOSN: Thank you. Any questions from the committee? Senator DeBoer.

DeBOER: Thank you for being here and for sharing your, your story. Your son was victimized by a priest.

JAMES D. THOMAS: Yeah.

DeBOER: Was he also victimized by the employer of that priest, by the church?

JAMES D. THOMAS: I'd say, I'd say right, because I tell you what, what they do. When they have something like this, they just move him on down the road, and gets re-- replaced with another, with another priest. And they take that, take that priest and put him in a different church someplace, so he can do it again. But this has, this has been going on for years and years.

DeBOER: Thank you.

BOSN: Thank you very much for being here and sharing your story. Next proponent. Good afternoon.

JILL TILLINGHAST: Good afternoon. My name is Jill Tillinghast, J-i-l-l T-i-l-l-i-n-g-h-a-s-t. I am a registered lobbyist, but today I'm representing myself, and not behalf-- on-- not here on behalf of any client. Good afternoon, committee members and Senator Bosn. I am here as a proponent of LB12. As I sat down to prepare these remarks, I found myself staring at my computer-- silent, overwhelmed, anxious and devastated. Where do I begin? How do I unpack the pain, the injustice of this issue? It is difficult to comprehend that in the state that I have called my home my entire life, Nebraska, the so-called good life, the state where leadership consistently talks about protecting children, yet we have a statute of limitations on the sexual assault of a child. My brother testified on this a couple years ago, but he

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just-- it's too hard, so he's not here today. But he's somebody that most of us would call a hero. He's a Marine, war-- Gulf War veteran. He's a husband, a father, a son, a brother, a friend, a business owner, and he's Victim 7 on page 51 of the Nebraska Attorney General's report on clergy sexual assault within the Catholic Church. What is the silent phenomenon of sexual abuse? The horror of what they have experienced is difficult to put into words-- feelings of shame, anger, betrayal, and even misplaced guilt. When sexual assault and traumatic feelings that flow from it are perpetrated and covered up within a powerful institution like the Catholic Church, the betrayal, the violence is uniquely deep. All of these places a child should feel safe, it's within a church, guided by the highest biblical principles by men claiming to be in a directly-- direct relationship with God. To know that man Monsignor Clarence Crowley engaged in such serial violence, leading to lasting impacts on children and families is unspeakable violence. I want to read the statement my brother gave the Attorney General's Office on his sexual abuse at Cathedral of the Risen Christ by Monsignor Clarence Crowley. He was Victim 7. The diocese received a call from Victim 7 in October of 2021, alleging he had been abused by a priest in the early 1980s. The diocese informed the Nebraska DOJ about the call and provided Victim 7's contact information. An investigator from the Nebraska DOJ spoke with Victim 7, who indicated he was abused by Crowley in the early 1980s. Victim 7, my brother, reported that when he was 11 years old, he went to see Crowley for confession. After completing confession, Crowley asked Victim 7 to accompany, accompany him to another room. Crowley told him to remove his clothing and proceeded to fondle Victim 7's genitals. He re-- recoll-- rec-- recollected that the fondling lasted a very long time, likely upwards of 10 minutes. When he was finished, Crowley allowed the victim-- allowed Victim 7 to put on his clothes and leave. Victim 7 compen-- commented that he knew that Crowley did-- what Crowley did was wrong. It's imperative to remove the statute of limitations for victims like my brother reporting sexual assault crimes. It is too late for him to have justice within the legal system, so I have come forward today to ensure other children like him are not limited by the law. I urge you to vote LB12 out of committee.

BOSN: Thank you. Any questions for this testifier? I'm just curious. Do you know, was any criminal action taken against the perpetrator in this case?

JILL TILLINGHAST: No, because he's dead.

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BOSN: Oh. OK. Senator Storer.

STORER: Just a comment for-- just thanking you. And how difficult I know it has to be, so I, I appreciate it.

JILL TILLINGHAST: It is. It's just hard to see him suffer. I mean, he-- I think it would give him some closure-- he made the comment to me, like to go to sleep at night and know that something's been done to help kids going forward would be helpful. So.

STORER: Thank you.

JILL TILLINGHAST: Thank you.

BOSN: Senator Rountree.

ROUNTREE: Thank you so much, Chairwoman Bosn. And, and mine is just a comment. As a Air Force retiree and other military that are here, I want to say that your brother is a hero, and we respect him being able to pick up and go on and to serve our country with great honor. So if you could pass it on from me to him, I appreciate that.

JILL TILLINGHAST: I'll do that. Thank you.

BOSN: Thank you for being here. Next proponent. Good afternoon, or I guess, evening. Good evening.

LISA ALBERS: My name is Lisa Albers, L-i-s-a A-l-b-e-r-s. I have a printed testimony here, but I'm not going to read it, because I think the personal stories are what really can affect you, and I'm actually testifying on the next bill, as well. Our daughter was groomed and, and assaulted by a frequent substitute teacher at-- and I think what this bill speaks to is the fact that you take away the time limits, because these victims are on their own time. She was going to come today and testify for the bill. And she called me yesterday and said-- I totally am give-- giving her outs. You know, you don't have to do this. Do you want to do this? Do you feel like you will come full circle if you're able to do this? And, and she talked to a good friend of hers. And her friend said, why are you punishing yourself? And she didn't see any relief in coming to testify. But I think doing-- enacting things like this allows the victims to know, like this young woman just said, that they still have some recourse. And so, they do suffer from PTSD, depression, anxiety, abuse of alcohol and drugs. It,

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it has a long-term effect on them. They're abused when they're young, when they're just forming all their neural pathways, when they're just maturing, trying to figure out who they are or what they are, what they're going to do, so it really affects their ability to then move forward, almost like a failure to thrive. So I just would encourage you to move this out of committee. And you're going to hear some more of this in the next testimony, but I just appreciate your time and I'm happy to take any questions.

BOSN: Questions for this testifier? Thank you very much for being here. Next proponent. Last call for proponents.

***TANYA ENCALADA CRUZ:** I am writing to express my support for this bill. Thank you.

BOSN: All right. We'll move to opponents. Anyone here in opposition of LB12? Good evening.

KORBY GILBERTSON: Good evening. Chairwoman Bosn, members of committee, for the record, my name is Korby Gilbertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as a registered lobbyist on behalf of the American Property Casualty Insurance Association in opposition to LB12. Back in 2017, when Senator Krist brought LB300, this issue was discussed at length. And I think I can shine-- while I can't shine the exact light on the date and the reason for the way that that was written, it was a negotiated agreement with some of the parties that were involved, and that's how that date was added to the legislation. My involvement was to the standpoint of making sure that there is evidence and that there is a prosecution in a timely manner. The second problem is if you're allowing cases against a third party. I'll give you an example of a retail establishment that might have a completely new management system, might have remodeled the store, might have done a number of things. And if there's no limitation, then it's very hard for the new-- potentially new owners of that business to then understand why they're then being sued for something that happened, because that business is still there, that the suit would come after them. And so, we argue that there should at least have to be some sort of nexus between the perpetrator and the third party, instead of just having it be a third party that could be tangentially involved. So with that, I'd be happy to try to answer any questions.

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BOSN: Can I just make sure I'm understanding your concern? Senator Dungan used a daycare example.

KORBY GILBERTSON: Right.

BOSN: Let's say I own a daycare, and an employee, when I was the owner, sexually assaulted one of the children there. But then, either because I know I'm going to get caught or just because I'm old and retire, I sell the daycare to Senator DeBoer, and that child then ultimately reports. Is it your concern, then, that unknowing buyer of my daycare is now liable to the same extent that I was, even though she maybe didn't know?

KORBY GILBERTSON: Right. I mean, obviously when we look at things, we try to find all possible things because lawsuits can be filed and the insurance companies are generally the ones that have to then defend them. And in this, it does not require that there was any knowledge of or an involvement in. And that's the concern. I think we hear of examples that are given are pretty clear fact patterns, that there was some type of protection of the perpetrator, or there was clear knowledge of the business owner that something was going on. Our concern is that's not required in this.

BOSN: Senator DeBoer.

DeBOER: So in Senator Bosn's example, if she sold me her daycare the very next year, and then it came forward, I would be responsible, even though I bought her, her daycare from her, and I wasn't the one who let the perpetrator get away with it. Right?

KORBY GILBERTSON: You could be under this, arguably.

DeBOER: Well-- and I would be now, because the statute of limitations wouldn't have run.

KORBY GILBERTSON: Right.

DeBOER: So I don't understand why the statute of limitations is relevant to the argument that you're making, that a hapless person might buy the business from the person. Because that could happen within the statute of limitations. It could happen after the statute of limitations. It really doesn't have anything to do with the statute of limitations.

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KORBY GILBERTSON: I think the concern there is the longer the time runs between that purchase or the business or it happening, that's the problem, is the number of things that could have changed with the statute of limitations increases the longer it goes. So totally eliminating it is the biggest problem.

DeBOER: Because why? Totally eliminating it is because why?

KORBY GILBERTSON: Because why? Because there's very little evidence that could be still there that anything happened. You could have a different management team there, the employees that would have had knowledge are gone.

DeBOER: Wouldn't there similarly be very little evidence for the plaintiff? I mean, these plaintiffs are on an uphill battle to try and prove something, when it's been so long since they-- since the incident happened.

KORBY GILBERTSON: And, and as you know, lawsuits can be brought for any reason. And then the insurance companies are the ones that have to then defend them and pay any settlement or decision. So, that's the concern.

DeBOER: OK.

BOSN: Seeing no other questions, thank you for being here.

KORBY GILBERTSON: Great. Thank you.

BOSN: Next opponent. Good evening.

ROBERT M. BELL: Good evening, Chairwoman Bosn and members of the Judiciary Committee. My name is Robert M. Bell, last name is spelled B-e-l-l. I'm the executive director and registered lobbyist for the Nebraska Insurance Federation. I am here today in opposition of LB12. The Nebraska Insurance Federation is a state trade association of insurance companies, and many members write liability insurance for Nebraska businesses. As you already heard, LB12 eliminates the statute of limitations for civil actions against entities for third-party liability related to child sexual assault in the first, second, and third degree-- or third degree. Current limitation is 12 years after the victim's 21st birthday. There is no current statute of limitations for actions against the actual perpetrators of such acts. Entities

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become liable when a duty to a child is owed and that entity is deemed negligent in a manner that permitted the sexual assault to occur. Entities could include various small and large businesses, such as retail establishments, daycares, foster care facilities, private schools, and businesses that employ 14- and 15-year-olds. Most of these entities are insured by business liability insurance, which obligates the insurer to defend any suits seeking damages because of the personal injury involved. If a suit is filed, the insurer would defend these covered claims, even if the proceedings find no obligation for-- on the insurer to pay damages. A lawsuit brought many years or decades against a business can be extremely difficult to defend. Evidence becomes more difficult to find, records disappear or destroyed-- or are destroyed, witnesses' memories fade or change, even if witnesses can be found. This is why statute of limitations exist to begin with, to protect against litigation that cannot be conducted justly, and to encourage injured parties to seek redress as quickly as practicable. Also, a statute of limitations bring a certain level of certainty, where an entity is no longer-- where an entity would no longer have to worry about civil liability. These are the reasons why insurers who defend these lawsuits for businesses must object to the elimination-- the complete elimination of a statute of limitations. Insurers also object to the broad nature of the legislation. The elimination of the statute of limitations would apply the same for a business or organization who acts in a manner to take some overt action against the victim, as it would to a business who had no idea the crime occurred. Additionally, the elimination of a statute of limitations could apply to victims with suppressed memory in the same manner as a victim when the crime is known and the perpetrator is convicted. In this case, there's no reason that would exist to-- not proceed with a civil action against a third-party entity before the victim's 33rd birthday. Insurers believe that a reason should exist to toll the statute of limitations. For these reasons, the Nebraska Insurance Federation respectfully opposes LB12. I appreciate the time and the opportunity to testify.

BOSN: Questions? Senator DeBoer.

DeBOER: Do you ever represent or do any of your entities that you represent--

ROBERT M. BELL: Sure. Insurance companies.

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DeBOER: Insurance companies. Do they ever insure individuals for umbrella coverage or--

ROBERT M. BELL: Yes, they do.

DeBOER: --against liability?

ROBERT M. BELL: Mm-hmm.

DeBOER: If one of those individuals was a perpetrator, they would have liability forever, because there's no statute of limitations there.

ROBERT M. BELL: Depending when the crime occurred and of course, the tolling of statutes and, and the dates that are specified in the statute, yes. If they had-- if the perpetrator had an umbrella coverage, and that umbrella coverage or that liability insurance coverage provided some sort of, of coverage for that type of tort. So.

DeBOER: So if an individual has coverage--

ROBERT M. BELL: Sure.

DeBOER: --which does exist, coverage for these things--

ROBERT M. BELL: Yeah. Sure.

DeBOER: --then you would have to cover them. You're-- not you, but the insurance company would have to cover them at any point. There's no statute of limitations.

ROBERT M. BELL: Correct. Yeah. I mean, they, they would. They would have to defend that lawsuit and provide coverage if the coverage was in, in the policy.

DeBOER: So all, all of the things that you just said makes it impossible for you to defend a business, you would already have to do for an individual who had umbrella coverage.

ROBERT M. BELL: True. And if this bill-- I mean, you can't go back in time, not bringing a bill to change the statute of limitations on, on individuals. Although, I think it's a little bit different, I mean, like, from a standpoint of first-party liability versus a third-party liability. Right, so--

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DeBOER: But it's a breach because of a negligent act. It's not like these folks who you've heard here today--

ROBERT M. BELL: Sure. Yeah.

DeBOER: It's not like the only person who did something wrong in that scenario was the priest. There was also someone else who was covering up, who was-- this is what the, the Attorney General's report says.

ROBERT M. BELL: Right. I, I haven't read the Attorney General report. The, the-- I think I read it a few years back, but it's been some time. But yeah, it said if there was a duty to care that they breached-- if the employer-- if I heard correctly--

DeBOER: So it's not like--

ROBERT M. BELL: --it was the Catholic Church, then yeah. So.

DeBOER: So it's not like in these situations and it doesn't have to just be this one. It's just that we're sitting with the family members right here.

ROBERT M. BELL: Yeah.

DeBOER: If we're in a situation where there is third-party liability, it's not third-party liability because they just happened to be in the wrong place at the wrong time. They did something wrong to be third-party liable.

ROBERT M. BELL: Well, yeah. There was a duty of care.

DeBOER: That they breached.

ROBERT M. BELL: And that duty of care was breached.

DeBOER: Which is, in this case, I'm classifying as doing--

ROBERT M. BELL: Right.

DeBOER: --something wrong.

ROBERT M. BELL: I would argue that perhaps if, if there was a vast cover-up or the employer or whatever business or whatever entity did something overtly to, to prevent some sort of litigation that perhaps

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that, that should be a different standard than per-- some other lesser breaches of of, of duty. Right. So.

DeBOER: So you recognize in that case that the concerns you have about the staleness of the claim would be overcome by the egregiousness of the claim?

ROBERT M. BELL: I don't know if I would use the word egregious. I, I, I, I would think if there was a higher duty of, of care that was required, or if there was a-- an intentional act by the employer to do something to cover up their own liability related to that, I, I, I, I think we could, we could have some discussions about that. You know, the staleness or spoilage of, of evidence is, is a real, is a real issue. And I, I would say, you know--

DeBOER: And if the, if the third-party tortfeasors, the third-party tortfeasors were covering it up, there's a reason why maybe you don't get to bring the case as early.

ROBERT M. BELL: Oh yeah. Yeah. No. And, and I would, I would say, as I said in my testimony, it would be a reason to toll the statute of limitations. If, if that was before us, I don't know that I would necessarily be testifying, but that's not the case with this particular piece of legislation. There's no limitation on that. I have had some discussions with Senator Dungan over the course of the last few years of can we find, you know, some language there, and we haven't yet. Maybe we will in the future. So.

DeBOER: So your main objection is that the staleness of the claim will cause memories to fade, evidence to not be as readily available. Is that, is that-- I mean, like--

ROBERT M. BELL: Well, that's, that's one of them. I mean, that-- yes. I mean, that's why we have statute of limitations, right? That's one of the reasons we have statute of limitations. Also, another reason we have statute of limitations-- and, and Senator Dungan and I were speaking last night on why it's 33. Right. And I didn't know, and Ms. Gilbertson's testimony helped shed some light on that. But I went back and I read some of the, the former bill, so LB300, in 2017. And there was a bill-- and I don't remember the number off the top of my head-- in 2012 that came up with the initial 30-- 33 as the statute of limitations, when it would apply to an individual perpetrator. Right.

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And I didn't see anything in the legislative record that-- official legislative record that would guide us on that, but it, it was interesting in the discussion-- reading the discussion of the senators at the time about-- it's just not spoilage of, of evidence. It's also this idea that at some point, you're free from the, the--

DeBOER: At some point--

ROBERT M. BELL: --civil liability.

DeBOER: At some point, your wrongdoings of sexually assaulting a child should just be let go because it's easier for everyone.

ROBERT M. BELL: For the third party, yes.

DeBOER: Tortfeasors.

ROBERT M. BELL: So, so.

DeBOER: OK. Thank you.

ROBERT M. BELL: You're welcome.

BOSN: Any other questions? Senator McKinney.

McKINNEY: Thank you. How are insurance companies surviving in the states that have no statute of limitations?

ROBERT M. BELL: Assume they charge more premium and that they probably write in exclusions for some of this, although they would probably still have a duty to defend.

McKINNEY: OK. Thank you.

ROBERT M. BELL: You're welcome.

BOSN: Seeing no other questions, thank you for being here.

ROBERT M. BELL: You're welcome.

BOSN: Next opponent. Any other opponents? Any neutral testifiers? Anyone here in a neutral capacity? All right. While Senator Dungan makes his way up to close, I will note there were 14 proponent, 3 opponent, and no neutral testifiers. The Judiciary Committee also

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received ADA testimony on LB12, which will be included in the official hearing transcript and included on the committee statement if one is generated. This testimony of support was received from Tammy Encalada Cruz, of Lincoln. And with that, you are welcome to close.

DUNGAN: Thank you, Chair Bosn and members of the Judiciary Committee. I want to start by thanking the Tillinghast family for being here. As they indicated to you, we've talked a number of times. They did come and testify on this bill when I brought it previously. As Mr. Bell also indicated, this bill or similar bills had been brought before, as well. The late Senator Rich Pahls, prior to my introduction, brought a bill doing exactly this. It did make it out of the Judiciary Committee and was on General File, I believe, around the time that he unfortunately passed away. That is part of the reason, but not the only reason, that I've decided to take this bill up. I've brought it before. I hope I don't have to bring it again. I certainly hope that we as a Legislature take some action. But in the event that this doesn't make it across the finish line, I will keep bringing this bill. So we're going to keep having this conversation. And I understand there's a lot of concerns that have been raised by the opponents. I respectfully think none of them hold water. I think Senator DeBoer absolutely hit the nail on the head that any concerns they have about the liability have nothing to do with the statute of limitations. If you want to bring this suit against a third party and you are 32 years old, I don't see how that's any different than when you're 34. And so if we want to say that we have to draw in the sand an arbitrary line, we can only say that, and then we can debate whether that's important or not. But I don't believe that the concerns that are raised are ones that I guess I agree with. And again, I try to say that respectfully. But I do agree that at a certain point, we need to be able to hold these third parties who have taken actions or failed to take actions accountable. I think that the concern that was raised by Senator Storer, I think, is, is one that we talk a lot about, with statute of limitations, and I understand the concern for that. You know, this idea of spoilage of evidence, or is there going to be any evidence available at the end of the day? My response to that, I guess, would just be that that is what the court is more than equipped to deal with. And we're not creating a new right of action. We're not creating some sort of new ability for any individual to bring a suit. What we're asking in this bill is simply that there's not this line drawn as to when these actions can already be brought.

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So let's say somebody brings the suit currently, under the current law, when they're 31 years old. Maybe this happened when they were 10 years old. There's always going to be that concern of what evidence exists, is there ample evidence and documentation, or any kind of testimony to uphold their claims, and the courts deal with that every day. And certainly, if there's not ample evidence, there are other avenues that can be sought by the defendant, such as summary judgment, essentially asking for these cases to be dismissed by virtue of the fact that there's simply not enough evidence on the face of it to bring this claim. And so I understand the concerns as time goes on, but I do believe that the courts are more than equipped and judges, on a regular basis, already deal with these concerns. So I don't believe that getting rid of the statute of limitations puts us in any different situation than we are in right now, with regards to how these cases are brought. For me, this is about supporting these survivors and it is about allowing individuals to have their day in court, even if it's been difficult for them to bring these issues to the forefront. I've had the ability to speak with Jay, who we've talked about here today. He did come and testify on my bill before. He's just one of many that deals with these issues. He's not an anomaly, and he is not, I guess, dealing with this any differently than any number of survivors deal with this. And the fact that it takes time to sometimes come to terms with this, or it takes time to actually want to do something is not something that we should punish people for. And so, I'm happy to continue to have conversations about what we can or can't do as a body to support these people, but I think that passing LB12 is one small step that we can do both to support survivors of sexual assault and also, and I think, as importantly, to hold the perpetrators of those actions accountable. With that, I'm happy to answer any questions.

BOSN: Questions for Senator Dungan? I just have a couple. You heard my questions and clarification question, I guess I call-- I'll call it, with Ms. Gilbertson. Is there-- if there were a way to craft some ability for new owners of said business in my example-- because you would agree that if Wendy buys my business and she was unknowing of what I provided, as far as background checks of my employees, right-- let's just use that example-- that essentially destroying her business, while does provide appropriate remedy for the victim, is maybe-- it seems a little attenuated from the bad actor. So if there were a way to craft this, or do you know of a way that we could craft

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an exception that allows for some nexus between the business, the third party, and the victim?

DUNGAN: Yeah. So I-- well, I'll start by saying I understand that concern. Right. I think, again, Senator DeBoer did kind of hit the nail on the head, though, that that is a separate issue than the statute of limitations. Because currently, if you sell that business and it's year 20 out of 30-- like let's say 10 years after the action, they bring the suit, the same thing that we just described can happen. And so whether or not we address that problem to me is separate and apart from whether there should be a statute of limitations. Currently, there's an entire subset of civil law, as I understand it, that deals with that successor liability. And when you buy a business, oftentimes in the contract of sale, my understanding, not being a civil attorney in that area, but my understanding is there are any number of liabilities that you take on, ranging anywhere from debts that you take on from that prior purchase, purchase, or even in some circumstances, civil liabilities. I believe there are ways currently that you can craft a purchase agreement that addresses successor liability. I do not know, for example, the amount to which you are able to legally limit that. But to me, that is a separate question, because if we start addressing what is and what isn't available through that successor liability in this niche circumstance, you're opening up the door to having that conversation about any and all successor liability with purchase of businesses. And so, I understand the concern that's being raised with that, but I do think it's a separate concern from statute of limitations, especially because any sale could implicate the exact same circumstances when you're within the statute of limitations. So.

BOSN: And I'm not arguing with that.

DUNGAN: Yeah. Yeah.

BOSN: I guess my, my point is I, I do see a connection between people don't own businesses forever because they also retire or pass away, and so maybe it's not a statute of limitations issue so much as it's just a fairness issue to someone who's purchasing a business. And I agree with you. I think there are some protections for that. But certainly, when we're, when we're talking about issues like this, I don't, I don't know what ability she would have or what knowledge, you know-- I, I think they're-- two things can be true at once. Right? You

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can think that there should be some protections for future business owners who are, you know, buyer beware, yes, but they didn't know, and they couldn't have known because they weren't there. And a statute of limitations-- I mean, the previous testifier talked about, I, I think she used the word 27 years-- or the number 27 years is the average number. And I may have written that down incorrectly, but she's nodding, so I'll assume that. But if the average number of years is 27, then I, I do think there's a increased likelihood, outside of the church examples, but in a private business, where someone's going to sell that business or retire and move on. And now, you're, you're holding them accountable for the very bad actions of someone that worked there before they even took over that business.

DUNGAN: Yeah. And I, and I completely understand where you're coming from. I guess I-- I'm not trying to disagree with the concern. My point is that that concern holds true for any and all civil liability in, in general, whether that's a fraud, for example, committed by a business that then is sold 10 years down the line. I-- I'm telling you, I don't know whether or not there are currently ways to limit that successor liability in a contract for a sale of a business, but whether or not you can limit that future successor liability would pertain to any and all actions taken by any business ever. So I'm saying that's a concern. If you want to talk about fairness, we can have that conversation, but I think that's a separate bill. And I think if we want to talk about whether or not a purchaser of a business should be held accountable for any of the actions of the people they bought it from seems like a legitimate conversation to have, but I don't think that we should arbitrarily carve out sexual assault of a child. If, for exam--

BOSN: Well, but there's statute of limitations on fraud.

DUNGAN: Pardon?

BOSN: There's statute of limitations on, on fraud cases.

DUNGAN: Sure. But I'm saying if we're talking about limiting this successor liability in general, we can have that conversation of how that operates. But in this circumstance, I don't think it makes sense to carve that out specifically for this offense.

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BOSN: And my point is, is that this offense wouldn't have a statute of limitations. But all of those other crimes that you've noted do have a statute. I mean, are you suggesting you don't support any statute of limitations ever?

DUNGAN: Well, that's a different conversation. I think they--

BOSN: Well, that's my question, [INAUDIBLE].

DUNGAN: I think they should exist in certain circumstances. I guess we can talk about potential language if there's something that we could agree upon, as it comes to successor liability. I'm, I'm happy to have conversations about ways to craft that. And I, I guess I get your concern, and I'm open to potential suggestions. I just want to make sure that we don't open up another can of worms with that conversation when we're trying to address a very specific niche problem here. And again, we can talk about it offline. And I do get where you're coming from, but I guess it seems to be touching on an entirely separate area of civil law that if we start opening that door, we're going to get into a larger conversation about successor liability as a whole. But you and I can chat about that moving forward. I just think that the concerns of successor liability, again, are implicated by any third party action, regardless of the statute of limitations, 5 years down the line, 10 years down the line, 15 years down the line, it doesn't matter. So that would be my-- but we can talk about trying to find potential language that would solve that problem, because I don't want to have somebody unintentionally held accountable if it's not their fault.

BOSN: Sure. Last question, for me at least. Is the statute of limitations additional number of years, is that a line in the sand for you?

DUNGAN: I would say we can always have conversations. I don't want to, I don't want to limit our ability to negotiate when it comes to conversations about that. But I guess philosophically, it doesn't make sense to me. I think that once you start picking a line, you're cutting somebody out at some point, and I think it arbitrarily eliminates the ability for survivors to have their day in court, just because maybe somebody took a little bit too long. So there's going to be people on either end of that line either way. We already don't have a statute of limitations for an action brought against the

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perpetrator. So we've already, as a state, acknowledged that we don't need a statute of limitations on that, because it's important enough to make sure those survivors have their day in court. I think if, in fact, there's ample evidence to hold a third party accountable, as well-- because, again, if there's not evidence, the case is going to get dismissed. If there's not evidence, you're going to, you're going to lose your case. But if there is evidence, I think that we should hold the third parties who are culpable as responsible as we do the perpetrator, regardless of timing.

BOSN: Any other questions? That will conclude our hearing on LB12.

DUNGAN: Thank you.

BOSN: Next up, LB329, with Senator von Gillern. Welcome.

von GILLERN: Thank you. Good evening. You all have had a long day already, so try and end on a high note. Good evening, Chairwoman Bosn. Wel-- members of the Jud-- and members of the Judiciary Committee. For the record, my name is Senator Brad von Gillern, B-r-a-d v-o-n G-i-l-l-e-r-n. I represent Legislative District 4 in west Omaha and Elkhorn. I'm here today to introduce LB329, a bill to increase protections for Nebraska school students from sexual abuse by school employees and other people working in a school setting. Currently, under Nebraska law, a school employee who engages in sexual penetration, sexual contact, or a pattern or scheme of con-- conduct with the intent to engage in any of these with a student between the ages of 16 and 19 are guilty of a very specific crime, that is, sexual abuse by a school employee. This very particular offense is necessary because it protects minors who are not covered by Nebraska's ordinary statutory rape laws, which only apply when a minor is on the-- under the age of 16. In school, students find themselves in an environment where power differentials exist, where teachers, administrators, and others exercise a significant degree of authority and influence over them. Of course, the vast majority of these people use their authority responsibly and do not seek to harm or take advantage of the young people entrusted to them by parents, and we thank them for their service. That said, we've all seen cases of people who have been-- who have abused their relationships with students and taken advantage of them sexually. Testifying after me, amongst others, is a family who will tell their own story on this issue. It was, it was this unfortunate story that compelled me to bring the, the bill to you

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today. Her daughter was a victim of sexual abuse by a school resource officer. Unfortunately, under current law, school resource officers are not included under the definition of school employees, because they are not directly employed by the school district. Accordingly, there was little that could be done from a legal standpoint to address the tragedy that befell this family. Additionally, conversations with Douglas County Sheriff Aaron Hanson encouraged me to bring a legislative solution to ensure these situations can be properly dealt with in the future. LB329 simply expands the definition of sexual abuse by a school employee to, to encompass school contract workers, who were previously left out of the law. LB329 defines a school contract work-- worker as a person 19 years of age or older who, as a part of such person's employment, spends time working in a public, private, denominational or parochial school approved or accredited by the State Department of Education but is not employed by such a school. Importantly, this provision captures school resource officers, consultants, and other independent contractors who currently are excluded under the statute. With that, I kindly urge you to help our students by advancing LB329 and I'd be happy to take any questions you may have.

BOSN: Questions for Senator von Gillern. Senator McKinney.

McKINNEY: Thank you. And thank you, Senator von Gillern. Just thinking about the school resource officer, don't, don't most school resource officers work for, like-- so I know in Omaha, the resource officers work for the police department. Would you still be able to get them under this bill because of sovereign immunity or qualified immunity? I'm just curious.

von GILLERN: Yes. So I don't know the answer to that-- to the last part of your question. But I will just-- the example, or this-- the situation that led to this was an individual who was employed by Douglas County Sheriff's Office.

McKINNEY: OK.

von GILLERN: And they were contracted with, with Elkhorn, with one of the Elkhorn schools when this happened. And interestingly and to his credit, Sheriff Aaron Hanson was the one, again, that reached out to me, and said, hey, we need to resolve this, because all I can do with

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this individual is charge him with a misdemeanor. And he did not feel that that was adequate and neither did the family.

McKINNEY: All right.

von GILLERN: I don't-- does that answer your question?

McKINNEY: Yeah.

von GILLERN: OK.

McKINNEY: Thank you.

von GILLERN: Thank you.

BOSN: Senator DeBoer.

DeBOER: What if the school contract worker is 19 years old and they happen to be dating a student who is 18 years old?

von GILLERN: Or 19 years old, as the bill is written.

DeBOER: Yeah.

von GILLERN: Yeah. There's-- that's a challenge. However, I still feel that the-- and the, and the words that, that were in my opening statement that I think are significant are the power differential, and that is that even if it's a, if it's a contract worker, it's still someone who is-- even if they're the same age or, or even a year apart in this-- of, of age.

DeBOER: But they could have had a previous relationship before they even-- like, they may have been dating, and then they get hired by the school to be a-- whatever. I mean, groundskeeper or something.

von GILLERN: Yeah. It would-- actually, that question was asked of me before the hearing. And in thinking about it, number one, I don't think there are very many 19-year-old high school students. That's, that's--

DeBOER: Well, they could be 18.

von GILLERN: --the, the first. Well, they could be 18.

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DeBOER: They could be 18. Very often, they are 18.

von GILLERN: Well, in my opinion, if, if the student is 18 and the, and the contract worker is 19, there's-- and they are in a position of authority within the school, that there's probably a challenge there. There's an issue there that needs to be addressed.

DeBOER: Yeah.

von GILLERN: And, and I-- this-- I, I-- in thinking about it, I also considered it would not be dissimilar to a, a work environment where any relationships between, between employees that could, you know, turn into a sexual nature would be considered inappropriate. So.

DeBOER: I mean, theoretically, a person could be married to an 18-year-old student and be 19 years old and working as a groundskeeper at the school.

von GILLERN: Yeah. So just for clarity, my bill does not change anything about that age relationship. That is in the original language. All I am doing is adding the definition of contract worker to the bill. So the same could be true of a teacher or a school employee. They could have a counselor. They could have a nurse, probably not a counselor, because that would be too far an advanced degree and they'd be older. They could-- the school could have an employee that is in a position of authority in a relationship with a student and be the same age or within a year apart of the same age. That's already in the existing statute. I'm not changing that. All we're doing is adding contract workers to have the same status as a school employee. So the, the issue that you raise would be at issue with the existing statute, not with the change that I'm seeking to make.

DeBOER: I mean, it would be expanded by the change that you're seeking to make.

von GILLERN: It would impact more people, yes. Yeah. Yeah.

BOSN: And I-- you and I sort of talked about this, as well. I guess-- and our legal counsel is looking into potential ways we can, you know, fix that, because I share that concern. I mean, technically, I could be in a consensual relationship as a senior. My boyfriend is a year older than me and has graduated it, and now does groundskeeping work

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at the school we both attended. And, you know, we're in love and I want to stay in that relationship, and now he's guilty of a felony because he took a job after graduation, which I don't think is the intention of your bill. And I think the intention of your bill is good. So I think it-- because all the other school employees, by virtue of having to go to college and having to do all these things, are going to be over 21, it may be as simple of a fix as saying a school contract worker means a person 21 years of age or older, or something to that effect.

von GILLERN: Yeah. I'm, I'm open to adjusting it to where we don't have--

BOSN: That--

von GILLERN: --this bizarre one-off, potential workarounds. But again, that would actually be changing the existing language-- the, the existing definition, the definitions that are, that are in the bill.

BOSN: No. No. Because the definition in your bill says school contract worker means a person 19 years of age or older. So that's an add that wasn't in there. And they're the only employee who is changed by this statute. And so--

von GILLERN: But does not the current statute say that a, a school employee, any school employee, who could be an individual of 19 years old?

BOSN: Right. And my point is I can't think of any.

DeBOER: Janitor.

BOSN: And maybe we're saying the same thing. I can't think of any.

DeBOER: Janitor.

BOSN: But they're not-- they are not--

von GILLERN: But regardless, there's a workaround.

BOSN: Yeah.

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von GILLERN: And I'm happy to, I'm happy to, to, to consider a workaround. I think the probability of having a school employee who's 19 and/or a student who's 19 are pretty minimal, so any workaround that we might, might talk about is probably pretty reasonable.

BOSN: Any other questions?

von GILLERN: I know it's too late in the day to be negotiating this right here, so-- but I'm certainly open--

BOSN: We're just getting started in Judiciary.

von GILLERN: --certainly open to--

BOSN: This is where we--

von GILLERN: Certainly open.

DeBOER: This is where we thrive.

BOSN: This is where we thrive. All right. Are you staying to close?

von GILLERN: I will.

BOSN: Awesome.

von GILLERN: Thank you.

BOSN: First proponent. Welcome back.

LISA ALBERS: Hello, members of the, the Judiciary Committee. Thank you for the opportunity to testify today. My name is Lisa Albers, L-i-s-a A-l-b-e-r-s, and I am testifying on behalf of the Nebraska Association of School Boards and Grand Island Public Schools. I serve on the executive board, governing board, and legislative committee of NASB, and the Board of Education of Grand Island Public Schools. This testimony is in support of LB329. LB329 is a needed expansion of LB881 that was passed in 2020. I worked with Senators Quick and Lathrop on LB881, after our 17-year-old daughter was groomed and taken advantage of sexually, physically, and mentally by a frequent substitute teacher that was married and more than twice her age. It is a very unfortunate that another student had to suffer at the hands of a contract employee before any of us saw this loophole in the current laws. My heart broke

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for this student and their family. I understand having no recourse when a predator harms your child. LB329 is a crucial step in strengthening Nebraska's legal protections against sexual assault in cases involving contract laborers and students who, while at the age of consent, remain vulnerable to coercion and abuse of power. By expanding the definition of individuals who can be charged with sexual assault to include contract laborers, this bill closes a significant loophole in the law and ensures greater protections for students. While students over the age of consent can legally engage in sexual activity, the influence exerted by a contract worker may-- who may serve in educational, athletic, or extracurricular roles creates an environment where true consent is compromised. By including contract laborers in the category of individuals who can be charged with sexual assault, LB329 ensures that those in positions of authority or influence cannot exploit students under their supervision. LB329 promotes accountability by ensuring that contract workers are held to the same legal standards as full-time staff and educators. Nebraska law already prohibits teachers, coaches, and other school employees from engaging in sexual relationships with students, even if the student is of consenting age. Most cases of a sexual exploitation go unreported, due to confusions over legal technicalities, fear of not being believed, or retribution from the accused. By clearly defining contract laborers as individuals who can be charged with sexual assault under these specific circumstances, the law provides stronger grounds for victims to seek justice. This not only aids in holding offenders accountable, but may serve as a deterrent against potential abuse in the future. Lawmakers should pass LB329 to help ensure that students are protected from coercion and exploitation, regardless of the employment status of those in your position of power. I appreciate your service to the people of Nebraska. Do you have any questions?

BOSN: Questions for this testifier? Seeing none--

LISA ALBERS: I read it as fast as I could.

BOSN: You did.

LISA ALBERS: Yes. Thank you.

BOSN: Next proponent. Any other proponents? Good afternoon-- or evening.

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WILLIAM RINN: Good evening. Madam Chair, members of the committee, thank you for hearing my testimony. My name is William Rinn. William is spelled W-i-l-l-i-a-m R-i-n-n. I'm the chief deputy of administration for the Douglas County Sheriff's Office. I'm representing Sheriff Aaron Hanson, who wished he could be here today, but he's other-- otherwise committed. Honorable members of the Judiciary, Judiciary Committee, we have the opportunity to review LB329, and we stand as a proponent of this bill. The Douglas County Sheriff's Office partners with it are the community members and local school districts to ensure the safety and security of the residents and students. In doing so, the sheriff contracts with the Omaha and surrounding Douglas County school districts to provide sworn deputies on their campuses to interact with both parents and students. As you all know, the Sheriff is duty bound to detect, report, and investigate crimes perpetrated against students and children of all ages. The arrest and prosecution of school linked offenders can become an intricate ballet, which considers the child's/students age, employment status of the offender against all available prosecutorial tools. Annually, the Sheriff's Office receives sexual assault and child sexual assault reports from mandatory reporters and the parents and guardians of student victims. Our incidents range in seriousness from child enticement to first-degree sexual assault. And the perpetrators range in affiliation from that of strangers to direct affiliation school employees, varying contract employment status. School resource officers, regular and subcontracted workers experience equal access to school facilities and students as full-time district employees or part-time employees. The obligation of the school district and the Sheriff's Office to protect its students is not diminished as it pertains to employees not formally on the payroll. We believe there exists a gap in current Nebraska law which underrepresents students over the age of 16. Certain students fall-- certain suspects fall short of the definition of school employee by nature of their employment status. Employees of this status may groom a relationship, perpetrate certain crimes with certain-aged students, and remain ineligible for penalty enhancements associated under 28-316.01. Upon conviction, this such activity would not be necessarily recorded in NCIC or follow the offender through other jurisdictions. As drafted, LB329 provides a mechanism to ensure convictions under these circumstances follow these offenders outside the jurisdiction. With that, I'd take any questions that you would have.

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BOSN: Thank you. Questions for this testifier? Seeing none, thank you for being here.

WILLIAM RINN: Thank you.

BOSN: Next proponent. Any other proponents? We'll move to opponents. Anyone here in opposition?

von GILLERN: Proponents.

BOSN: OK. Come on up. Are you opponents or proponents?

MANDE SAITTA: Proponent.

BOSN: Proponents. OK.

MANDE SAITTA: Good evening, Senators. My name is Mande Saitta, spelled M-a-n-d-e S-a-i-t-t-a. I'm here as a proponent of LB329. A little over a year ago, in February of 2024, we received a call from Elkhorn South High School, when our daughter, Natalee, was a sophomore. Over many hours and through many tears, we discovered that our teenager had been groomed and assaulted by the deputy resource officer at her school. In the midst of our complete shock, we were immediately thrust into a whirlwind of interviews and meetings with DHS, Project Harmony, the Sheriff's Department, and school administration. Our daughter somehow wrestled through the unreal aftermath of bearing the weight that comes from such a revelation. It has been a time of heartwrenching struggle for her, and for us, too. A few months after discovering what happened to our Natalee, I learned that some friends had lost their own daughter. She was just 22 and seemingly thriving as a student in college. This young lady was found dead in her car. And in the days following, my friends were stunned to discover that she had been sexually assaulted at her university, but felt unable to tell anyone. Under the massive burden and undue shame that she was carrying, she took her own life. Because sexual is a-- sexual assault is a struggle that is brutally hard to shake. I think of my friend's beautiful daughter all the time, of her short life and of what she endured, and then I sigh in selfish relief that our daughter is still alive. Natalee is just a few months away from completing her junior year of high school, and she amazes us with her grit. Despite what she has faced, she is the bravest person I know. I am the daughter of a veteran and I am the wife of a veteran, too. I work in vocational

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ministry and I have watched many people trudge through the bondage of addiction and abuse, but none of them compare to my daughter, who, at just 16, stared down relentless judgment and was resolute in the messy middle of this chaotic challenge we have faced. Sometimes, change requires monumental pivots, but sometimes, it only needs a tiny adjustment, like this one. An edit to the language of the Nebraska law will render more adequate consequences for contract offenders working in schools. It is a privilege to be able to influence the young and developing minds of students found inside the walls of our schools' classrooms, and we should all collectively honor that at all costs. Thank you for hearing our story today and for prayerfully considering LB329 on behalf of our Natalee. We believe fully in its potential to bear good fruit.

BOSN: Thank you. Any questions for this testifier from the committee? If not, I just want to say, probably on behalf of all of us, thank you for being here and sharing your story.

MANDE SAITTA: Thank you for having me.

BOSN: Yes. Are there any other proponents?

JAMES SAITTA: I should have gone first. Thank you, Jessica.

BOSN: Good evening.

JAMES SAITTA: Senator, thank you for your service.

ROUNTREE: Thank you for yours.

JAMES SAITTA: Good to see you again, sir. I wasn't smart enough to print mine out. Excuse me. My name is James Saitta, S-a-i-t-t-a. My daughter was Natalee-- is Natalee. And I wanted to thank everyone, like everyone else has, for being here today. I appreciate the opportunity to speak on behalf of my daughter. I want to thank Senator von Gillern for bringing this to the hearing there. I'm here today because the sanctity and peace of my family's life was torn apart by someone I consider to be a savage human. He put his disgusting, filthy hands on my daughter, Natalee, who's respectfully, 16, and he's in his mid-30s. And she is a student at Elkhorn South High. One, the deputy sheriff was trusted by us, as well as about 1,500 other students, to keep our, our, our Natalee safe, as well as the other kids. But he didn't see her as a child he needed to protect. He saw her as prey,

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and an object of his sick, perverted, and criminal actions. I really need you to understand how strong of like, this-- this has been really hard for us. As a father who's a, a veteran in Special Forces, did a lot of security, it's really, really hard to know that a guy's out there who hurt our child. It's really important for us that the law is changed. Obviously, it's-- again, I hate to say that it's too late for our daughter, but-- so it doesn't happen to someone else. I know it sounds cliché, but when you get up here it's actually 100% true. Our world collapsed because of that travesty. My daughter's countenance has changed. I'm not gonna tell you that she was one of those that lights up all the time, but that glow in her eyes has diminished, and she has a tough time sleeping and she's trapped in fear. She doesn't like to leave the house. She doesn't like crowds. She doesn't [INAUDIBLE] in the seatbelt. She's tormented by nightmares, and she often just flinches at sudden movements. And I think she's-- and I know she's scared to trust anyone. The officer didn't just assault her. He, he stole her sense of safety, and he stole her innocence and childhood from her. As her dad, I'm broken watching her. And I can't erase the pain. Our days are filled with therapy for her, legal battles, and the constant ache of seeing my daughter struggle. And it's hard to know what the difference is between just a normal 17-year-old, 16-year-old and is this the result of some actions and-- what makes us the most hard to bear is this, this injustice. This officer was only charged with a misdemeanor, a slap on the wrist for shattering my daughter's life. We're very, very worried about the long-term effects: depression, anxiety, PTSD, and wounds that could haunt our daughter forever. And I don't know if she'll ever be whole again. It's our prayer and our hope and belief, and that, that uncertainty is absolutely crushing to us. But just a misdemeanor, that's not accountability and that's not justice, and that's why we're here testifying before you. We would really like the law changed. We need that law changed. Nebraska does, and so does every other kid at every other school. Anyone who works at the school-- teachers, officers and staff-- who harms a child should face a felony charge. No exceptions. Understand this stuff earlier, and I totally get that. But a, a misdemeanor tells predators that they can get away with it, and a felony says our kids matter. It's not just about my daughter. It's about every child, as I said. No family should endure this nightmare and wondering if their kid will carry this trauma for life while the system just shrugs, sorry. Please help make this a felony. Protect our kids and give my Natalee and others like her the justice they deserve.

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BOSN: Thank you.

JAMES SAITTA: Yes.

BOSN: Any questions from the committee? Senator Rountree.

ROUNTREE: Thank you, Chairman Bosn. And just a comment, sir. I thank you for your service.

JAMES SAITTA: Yes, sir.

ROUNTREE: I'm Special Forces. My daughter was a special operator, as well, in the--

JAMES SAITTA: Oh, nice.

ROUNTREE: --Air Force. But nothing that we see out there can even come close to where you are now.

JAMES SAITTA: Yes, sir.

ROUNTREE: So I just thank you [INAUDIBLE] father and mother's heart. And we pray for your strength and [INAUDIBLE] and--

JAMES SAITTA: Thank you.

ROUNTREE: We will recover, and you'll, you'll gain your daughter. So thank you so much.

JAMES SAITTA: Appreciate that.

BOSN: Thank you very much for being here and sharing your story.

JAMES SAITTA: Thank you so much.

BOSN: Yes. Next proponent.

*TANYA ENCALADA CRUZ: I am writing to express that I am in support of this bill. Thank you.

BOSN: Are there any opponents? Anyone here in opposition to LB329?
Good evening.

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SPIKE EICKHOLT: Good evening, Chair Bosn and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t. I'm appearing as a registered lobbyist on behalf of the Nebraska Criminal Defense Attorneys Association. We are opposed to, just say a component or at least a concept of the bill or an issue of the bill. And it was identified by the vice chair and the chair earlier, and that is-- and I did mention this to Senator von Gillern and his staff some time ago. The, the-- if you look at the current law, it criminalizes contact between a school employee who's at least 19 years of age and older and a student be-- who is between the ages of 16 and 19. And if you look on page 2, lines 27-29, it explicitly says that consent is not a defense. And the law was done in such a way because there was a pattern-- and you've heard some of it earlier-- of school employees engaging in consensual relationship, because the age of consent in Nebraska is, is 16. It's not against the law, necessarily, for someone who's 17 years old to have a relationship with someone who's 35. The problem that was happening in the schools is that school employees were essentially grooming-- and that's why part of the crime is grooming-- students into believing that the students were in a truly consensual relationship. The issue-- what happens with the broadening of the language that Senator von Gillern wants to do, it changes the dynamic of the original intent of the bill. How can we fix it? I think we can. I suggested to Senator von Gillern that we, at a minimum, strike the "including but not limited to" language on page 2, lines 10. In other words, we just say what we want to say, rather than having 3 or 4 examples and then everything else. Because if you include contract employees who at least spend some time working in schools, you are going to capture those relationships where-- just like the chair gave, someone graduates from high school, they've got a job before they go to college working on a grounds crew, and the grounds crew cuts lawns at the schools, in other words, the contract employee. It's different when you talk about an actual employee of the school. They have a relationship with the kid, but the contractor who's painting at the school or doing something for the school on a contract basis doesn't even have to actually see the child to run afoul of this. I think one way we can fix it is perhaps-- at least for the contractor, to--maybe to adjust the age differently. I don't think it's really an issue for the actual employee. There might be some employees of schools who are 19 years or 20 years of age, but I think it's a practical matter to get a teaching certificate or get whatever college. You're not going to have that many. But even if you do have

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19 and 20s, they work for the schools. That's probably not a very appropriate relationship at all to have them-- consensual or otherwise, with the students. But I think it's different when you talk about contract, particularly given the nature of the language that's all-- that's not exclusive. It's, it's deliberately all of these-- I understand the, the, the school resource officer, the consultant, those are clear. But when you say anything more, just a general independent contractor, you're catching other things. That's a concern we have. I think it can easily be fixed, and that's the request that we have regarding the bill. The rest of the bill makes sense. We don't have a problem with that. It speaks to an actual issue. We are familiar with that issue that happened in the Omaha area. And I'll answer any questions if you have any.

BOSN: Thank you. Questions for Mr. Eickholt? Senator Rountree.

ROUNTREE: Thank you, Chairwoman Bosn. And thank you so much, sir. I wanted to get some clarification.

SPIKE EICKHOLT: Sure.

ROUNTREE: Again, you were talking about the-- painting my house, and painters, and so forth, around the school, and how would they relate.

SPIKE EICKHOLT: Right. Well, if you look at what the language is right now-- and I don't think it's Senator von Gillern's intent, necessarily. But if you look at the language now, it, it includes school contract worker as a definition on the same sort of impact, legally, as a school employee. But a school contractor means any person who's 19 years of age or older who, as part of their employment, spend times working at a school as a-- and then, independent contractor. So I-- or even if you're doing construction at a school, in other words, you could have scenarios like this. Are they going to get charged? Perhaps not. Are they going to get the re-- reported? They might, right? Mom and dad never liked the relationship anyway, even when they were both students. Right. And that is-- puts county attorneys in an awkward position because it is like the statutory rape-type cases that you get, where people necessarily don't want charges pursued. But the Legislature has made it clear, if you pass a bill as written that prosecutors ought to charge these things, and they're registrable and they're felonies, and they have serious consequences, and that's the only concern we have. And I don't think--

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and I can't speak for Senator von Gillern. I don't think that's his intent in doing the bill.

ROUNTREE: All right. Thank you so much, Senator.

BOSN: Any other questions? Thank you very much for being here. Next opponent. Any other opponents? Good evening.

JEANIE MEZGER: Good evening. I thought it was going to be good afternoon, but good evening works, too. Good evening. My name is Jeanie Mezger, J-e-a-n-i-e M-e-z-g-e-r, and I advocate for people listed on the sex offense registry and for their families. For over 10 years, I've been moderating support meetings for people affected by the registry, and the people I've met come home from prison to work hard, to live good lives, and to provide for their families, even when the stigma of the registry makes it difficult for them to find housing and jobs. I've also met some who ended their own lives because the hopelessness was too much. Does everything need to be a crime? Can't schools solve this problem by telling contract employees that they'll lose their job if they have a sexual relationship with a student? The law says it's legal for people over the age of 16 to make the decision to engage in sex. Most of us understand, we expect even, that those decisions will sometimes be foolish. Consensual sex is legal, even when it is unwise, even when hearts are broken. This bill and LB881, from 2020, takes something that would be legal in other workplaces and make a crime of it, and not just a crime, but a crime that will saddle the convicted person for decades with discrimination by the community. Landlords and employers use the registry status to deny housing and employment. The registry means families shunned by neighbors. It means children growing up in poverty. It means families broken under the stigma of the registry. It means elderly and sick people dying at home because they're denied admission to long-term healthcare facilities because of their registry status. In 1996, the registry began with 9 registrable crimes, and since then, the Legislature has added crimes to the list 13 times. That's 13 bills. I'm not sure if it includes more crimes than 13. We're talking about sex we disapprove of. Surely we can find a better way to convey our disapproval than to add more people to our already overcrowded prisons and to a growing registry. I urge you not to advance LB329, and I'd be happy to answer any questions.

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BOSN: Thank you. Questions for this testifier? Seeing none, thank you for being here. Any other opponents? Good evening.

GINI ALAND: My name is Gini Aland, G-i-n-i A-l-a-n-d. I'm here to vehemently oppose any and all efforts to expand the sexual offense registry. I believe the registry should be abolished, completely abolished, and not expanded for any reason. Punishment for crimes should never be extended beyond the end of the sentence date. In a recent hearing for another bill to expand the registry, Senator Holdcroft sat before this committee and proclaimed that an inclusion on the government blacklist, the sex offense registry, he quoted that it would not create an undue burden. As the girlfriend of "Person Forced to Register," I'm here to tell you that statement is very untrue, and anyone who believes that is very misinformed and uneducated about that statement, because I suffer from that sex offense registry simply because my boyfriend made a foolish mistake when he was young. He made a mistake, misunderstood things, and I met him many, many years later. This man has literally saved my life. He has given me housing, he has supported me, and helped me be brave enough to sit before you people here today and tell you my story. Among those of us who are the loved ones of the persons forced to register, we have a mantra that goes like this. If someone you love is forced to register, then you're all forced to register. Here in Nebraska, this is particularly accurate, since the Nebraska State Patrol saw it fit to control-- to collect personal information about me. I've never been accused of anything, so my personal information is no concern of theirs. Who I date is no concern of theirs. They found it their business to try and decide for me who I choose to love and support. Do I have any right to tell you who you can marry or date or go and be friends with? No. It's not my business. Now why, when I moved here back in 2015, was I-- I went to the sheriff with my boyfriend. He happened to have to register that day. They took my fingerprints. They took my personal information. They told me, you're a single woman. We have to protect you, so we need to know where you live. We need to know when your period is. No. This is--

BOSN: Ma'am, that's your time, so I'm going to have you wrap up your final thoughts.

GINI ALAND: OK. It is not right. It should be abolished. You can read more of my story in the paper I have left. Thank you. [INAUDIBLE].

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BOSN: Yeah. Let's see if there's any questions.

GINI ALAND: Any questions?

BOSN: I don't see any. Thank you very much for being here.

GINI ALAND: You have a good evening.

BOSN: Next opponent.

DEREK LOGUE: So, make sure that's face side up, because I want them to see. I want you guys to see-- this pa-- this side up first when I testify, because it's important.

BOSN: Let's have you sit down and give us your name before you start testifying.

DEREK LOGUE: My name is Derek Logue, D-e-r-e-k L-o-g-u-e. I am a person forced to register. And--

BOSN: Sir, I'm going to have you stop there just for a second, because I believe that you also submitted an online comment. So I'm happy to have you submit a letter here if you've got one, but I don't think our rules allow you to submit an online comment--

DEREK LOGUE: Well, I want you to see this because I-- because--

BOSN: I, I have seen and I have heard, and I am very respectfully telling you that our rules--

DEREK LOGUE: I sat here for 4 hours and had to listen to enough BS to fill--

BOSN: Sir.

DEREK LOGUE: --up the, the, the-- I had to listen to 4 hours of nonsense. The least you can do is entertain me for 30 seconds.

BOSN: Well, and here's the problem--

DEREK LOGUE: Because I want you to--

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BOSN: --with that, sir. I respect your frustration. But the rules of the committee are the rules of the committee. And if I break them for you, then I have made a precedent that if I--

DEREK LOGUE: [INAUDIBLE] There has been a lot of people who testified longer than 2 minutes today. I think you can give me 2 minutes.

BOSN: I'm not willing to do that. So I appreciate you being here, and I think we're going to move on and see if there's another opponent testifier.

DEREK LOGUE: Yeah, you just don't want to hear the goddamn truth. That's what it is.

BOSN: Thank you for being here.

DEREK LOGUE: Yeah. Fuck you.

BOSN: Are there any other-- thank you very much.

McKINNEY: Sir, can you not be disrespectful?

DEREK LOGUE: You disrespect me, I disrespect you right back. Fuck you.

BOSN: OK, you can leave. I'm going to ask that the--

DEREK LOGUE: Fuck each and every one of you goddamn people.

STORER: He had submitted online-- he had submitted an online comment.

GINI ALAND: [INAUDIBLE] talk about Julie Slama again and then insult me. No.

DEREK LOGUE: Fuck you, and fuck Julie Slama, and fuck all of you Goddamn people. You ought to be kissing my ass.

DeBOER: I'm sorry. You can't talk about Julie Slama that way.

BOSN: Or any of us, quite frankly. OK. I apologize on behalf of everyone who's here and had to entertain that. Are there any-- we on opponent-- opponents?

DeBOER: Opponents.

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BOSN: Are there any other opponents? I apologize. Any other neutral testifiers? OK. While Senator von Gillern makes his way back up, I'm going to note-- LB329, we had 49 proponent comments submitted, 4 opponent comments, one of which you just witnessed, and no neutral comments. Additionally, the Judiciary Committee received written ADA testimony on LB329, which will be included in the official hearing transcript and on the committee statement, if one is generated. This testimony in support was received from Tanya Encalada Cruz, of Lincoln. And with that, you're welcome to close.

VON GILLERN: Thank you, Senator Bosn. Just for the record, thank you to the State Patrol, who does such a good job here, taking care of us and, and watching out for us, so just appreciate everything that they do. I was hoping to end on a high note, so we'll see where we go here. The, the, the testimony that was given, obviously, it was compelling. I, I do want to draw attention to a couple things, and, and Mr. Eickholt did draw attention to the original bill, line 2, page 12, where a school employee means a person 19 years of age or older. Just for additional clarity, nothing in the bill addresses the sex registry and I think everybody probably realizes that, but just for additional clarity and for the record. Mr. Eickholt talked about the potential of a painter working in a building. Well, that is the life that I lived before I came down here to serve. I've worked for 32 years for a contractor in Omaha. And during that 32 years, there was not one time where we were not working in or on a school in the Omaha metro area. We did lots and lots of renovation work, addition work, new construction work. And one of the things that we took very, very seriously was the, the existing environment that, that we were working in, and we wanted to make sure that we were protecting people in that environment. So I know that environment very well. I know the challenges. I know the, the personnel. I know, I know of which is being spoken there, so this is not overcome-able. If there's a word or two we need to tweak in here, I'm willing to do that, but I am not willing to, to gut the bill in order to, to, to get things advanced. The-- this is a very simple expansion. It's a reasonable expansion. The existing language in the bill is sufficient, where we simply are adding the, the categories of individuals that might come into contact with students. And again, I, I want to reach back to the, the comments that were made earlier, about the power differential between people that are in authority and students, and that-- that's very real. So I'm not going to belabor the points. I think we all heard the

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testimony, and very compelling. And my heart goes out to the Saittas. I've-- we've known that family for 15 years, so I'm very compassionate about what they've been through, and others in the room have been through similar scenarios. I know that, so, compassionate to all of those. With that, I'd be happy to take any questions.

BOSN: Thank you. Are there any questions from the committee? Senator Rountree.

ROUNTREE: Thank you, Chairwoman Bosn. And thank you so much, Senator, for bringing the bill. I just wanted to go back and circle back around to Mr. Eickholt's conversation about some maybe possible modification. I know you don't want to gut the bill, and we don't want to gut it, but is there anything that he has spoken that you could work with that can get it still with the intent, so we don't have any unintended consequences?

von GILLERN: Yeah. The "including, but not limited to," I think we can maybe work through--

ROUNTREE: OK.

von GILLERN: --what-- to maybe make that more workable. Yeah.

ROUNTREE: That's-- all right. Thank you so much.

von GILLERN: Thank you.

BOSN: Thank you very much.

von GILLERN: Thank you.

BOSN: I appreciate it. That will conclude our hearing on--

von GILLERN: Appreciate you all.

BOSN: --LB329 and also our hearings for today.